
Report of the Head of Planning and Development

HEAVY WOOLLEN PLANNING SUB-COMMITTEE

Date: 15-Dec-2022

Subject: Planning Application 2022/90804 Erection of dwelling, formation of access and other associated operations Bell Cabin, Long Lane, Earlsheaton, Dewsbury, WF12 8LG

APPLICANT

P Audsley

DATE VALID

11-Mar-2022

TARGET DATE

06-May-2022

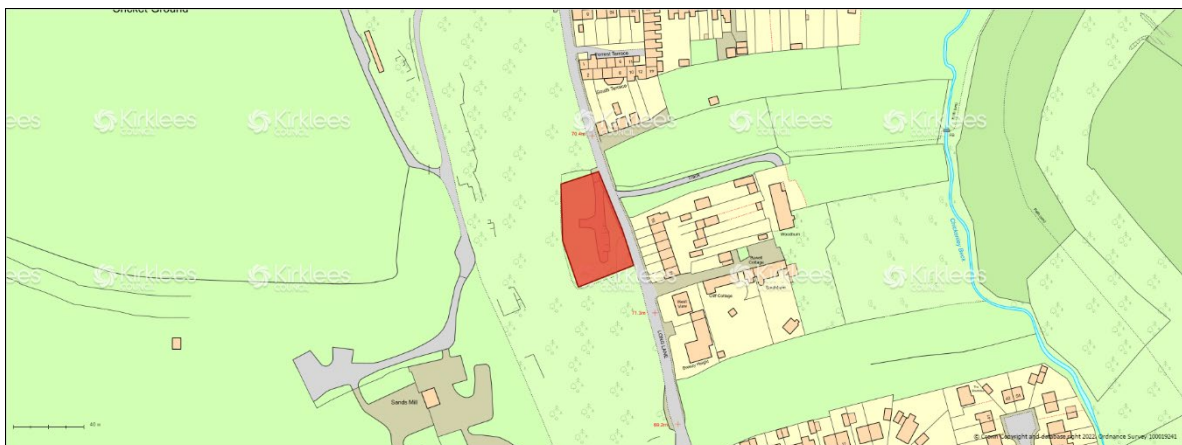
EXTENSION EXPIRY DATE

20-Dec-2022

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[Public speaking at committee link](#)

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral wards affected: Dewsbury East

Ward Councillors consulted: No.

Public or private: Public

RECOMMENDATION: REFUSE

1. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The proposed change of use of undeveloped land to residential and the erection of a dwelling is considered to constitute inappropriate development in the Green Belt, thus, detrimentally harming the openness and character of the Green Belt, whereby no very special circumstances have been demonstrated. To approve the application would impact adversely upon the openness of the Green Belt contrary to chapter 13 of the National Planning Policy Framework.
2. The proposed development to domesticate land within the Kirklees Wildlife Habitat Network and the Strategic Green Infrastructure Network would change the character of the existing habitat corridor by introducing a human presence that is hitherto absent, thus contrary to the purpose of the allocation with the area of Kirklees Wildlife Habitat Network. By the virtue of the proposed change of use, the function and connectivity of green infrastructure networks and assets are not retained and there are no sufficient mitigating measures or scope to replace the loss of the network. Therefore, the principle of the development is considered inappropriate, given the detrimental ecological impact of the proposal and thus, it is deemed contrary to Policies LP30 and LP31 of the KLP and Chapter 15 of the National Planning Policy Framework.
3. The applicant has failed to demonstrate, through the submission of a suitable plan, supporting information or sight lines that the proposals would not have a harmful impact on the safe flow of highway. Officers consider it is unlikely that the access to the land provides safe exit from the site, given the gradient and angle of the access. The proposals, therefore, fail to accord with the aims of Policy LP21 of the Kirklees Local Plan, regarding highway safety.

1.0 INTRODUCTION:

- 1.1 The application is brought to the Heavy Woollen Planning Sub-Committee for determination in accordance with the Council's scheme of delegation at the request of Councillor Eric Firth for the following reason:

'I do believe this is brown field land and there is enough evidence in my mind to prove this. You can and it does happen that you can have a brownfield site in the middle of a green belt area. Not only was there historically a building there but also industry, 'a coal mine', so I'm satisfied.'

- 1.2 The Chair of the Sub-Committee has confirmed that Councillor Eric Firth's reason for making this request are valid having regard to the Councillor's Protocol for Planning Committee.

2.0 SITE AND SURROUNDING

- 2.1 The application site forms an area of land, which is set down significantly from Long Lane. The site has been significantly cleared from trees and shrubbery, with some excavation and removal of material to form an area of level hardstanding with a high stone wall and steep access up to the highway. The engineering works that have taken place on site do not have planning approval. The site is bounded by Long Lane to the east and dense areas of scrub/trees to the west and south. A large area of playing fields occupies the area to the north-west. The site is 7m below the adjacent land to the east.
- 2.2 It is understood historical that there has been a building on the site, with GIS Maps dating back to 1933 show this. However, aerial imagery dating back to 2000 do not show a building on the site. Upon visiting the site there is the base of one building only. There are no walls or roof to the building. Figures 1, 2 and 3 in the appendices show the site in 2012, 2018 and 2021 respectively. No planning permission has been granted for the works conducted in this time. It is likely the building to which the remaining base relates to has not stood for a number of decades.

3.0 PROPOSAL

- 3.1 The application seeks planning permission for the erection of one dwelling, formation of access and other associated operations. The proposed dwelling would be single storey with accommodation in the roof space, comprising of two bedrooms. The dwelling would be 7.4m high, 11.6m wide and 9.7m deep. The dwelling would be faced in coursed natural stone to the lower part of walls, with render above. The roof would be finished with dark grey 'Marley Modern' tiles.
- 3.2 The proposal for the formation of the access is retrospective. The access is a steep, single lane track which is set at an acute angle from Long Lane. The access, set on a steep gradient leads to an open area of hard surfaced land which provides a vehicle turning area also.
- 3.3 Other associated operations proposed include mine shaft remediation and minor works to land levels to create a flat site.

4.0 RELEVANT PLANNING HISTORY

4.1 Planning Applications:

2020/90946 – Change of use of land for siting of caravan – refused.

2020/92828 – Erection of detached dwelling – invalid.

2016/93946 – Demolition of remaining structure, engineering operations to facilitate the formation of access and erection of detached dwelling – refused by Heavy Woollen Planning Sub-Committee (23 February 2017)

2016/91833 – Demolition of building and erection of dwelling – withdrawn

4.2 Enforcement Cases:

COMP/18/0055 - Unauthorised engineering operation to alter land levels to form access and hard surfaces and the material change of use of the land from woodland to use for the siting of a residential caravan and associated container.
– notice served, not complied with, case still ongoing.

5.0 HISTORY OF NEGOTIATIONS (including revisions to the scheme)

5.1 This application follows a long series of planning applications and enforcement action. The applicant has been made aware of the Local Planning Authority's consistent stance that the development of this undeveloped, Green Belt land for residential purposes is not acceptable. Matters such as the unsuitability of the site in regard to highway safety and the historic coal mining legacy, have also been an issue for many years. As such, given the extensive history and issues with the principle of development, no amendments have been sought on this application.

6.0 PLANNING POLICY:

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

The application site is located within the Green Belt as allocated on the Kirklees Local Plan (2019).

Kirklees Local Plan (2019):

6.2 Relevant Local Plan policies are:

- LP1 – Presumption in favour of sustainable development
- LP2 – Place shaping
- LP3 – Location of new development
- LP21 – Highways and access
- LP22 – Parking
- LP24 – Design
- LP26 – Renewable and low carbon energy
- LP28 – Drainage
- LP30 – Biodiversity and geodiversity
- LP31 – Strategic Green Infrastructure Network
- LP33 – Trees
- LP51 – Protection and improvement of local air quality
- LP52 – Protection and improvement of environmental quality
- LP53 – Contaminated and unstable land

Supplementary Planning Guidance / Documents:

6.3 Relevant guidance and documents are:

- West Yorkshire Low Emissions Strategy and Air Quality and Emissions
- Negotiating Financial Contributions for Transport Improvements (2007)
- Highway Design Guide SPD (2019)
- Waste Collection, Recycling and Storage Facilities Guidance – Good Practice Guide for Developers (2017)
- Green Street Principles (2017)
- Housebuilders Design Guide SPD (2021)
- Open Space SPD (2021)
- Biodiversity Net Gain Technical Advice Note (2021)

Climate change

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

National Planning Guidance:

6.5 The National Planning Policy Framework (2019) seeks to secure positive growth in a way that effectively balances economic, environmental and social progress for this and future generations. The NPPF is a material consideration and has been taken into account as part of the assessment of the proposal. Relevant paragraphs/chapters are:

- Chapter 2 – Achieving sustainable development
- Chapter 4 – Decision-making
- Chapter 9 – Promoting sustainable transport
- Chapter 11 – Making effective use of land
- Chapter 12 – Achieving well-designed places
- Chapter 13 – Protecting Green Belt land
- Chapter 14 – Meeting the challenge of climate change, flooding and coastal change
- Chapter 15 – Conserving and enhancing the natural environment

6.6 Since March 2014 Planning Practice Guidance for England has been published online

7.0 PUBLIC/LOCAL RESPONSE:

7.1 In accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO), the application was advertised as neighbour notification letters.

7.2 As a result of the application's publicity, no comments have been received on the application to date.

8.0 CONSULTATION RESPONSES:

8.1 Statutory:-

The Coal Authority – Object due to insufficient information being submitted

KC Highways Development Management – Object due to insufficient information being submitted.

KC Environmental Health – No objections.

9.0 MAIN ISSUES

9.1 The appraisal of the application will review the following topics: -

- Principle of Development in the Green Belt and Design
- Impact on Residential Amenity
- Site Contamination and Stability
- Trees and Biodiversity Matters
- Carbon Budget
- Representations

10.0 APPRAISAL

Principle of Development

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

10.2 As per Chapter 13 of the NPPF, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 144 states 'When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.'

10.3 Paragraphs 149 and 150 of the NPPF sets out a list of development which is considered not inappropriate in the Green Belt. None of these exceptions include the erection of a dwelling. Whilst there is an exception for agricultural workers' dwellings, this is not proposed as an agricultural workers' dwelling. Local Plan policies also do not allow for the erection of dwellings in the Green

Belt. As such, the erection of a dwelling is, therefore, considered inappropriate development and is, by definition, harmful. Although the applicant alleges that there is a building on the site and this is a replacement, the building no longer exists, but its mere footings remain only, thus, no weight can be applied to this.

- 10.4 Officers note Councillor Eric Firth's comments that the site is brown field / previously developed land. Previously developed land is defined in the NPPF Glossary as:

*'Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. **This excludes:** land that is or was last occupied by agricultural or forestry buildings; **land that has been developed for minerals extraction** or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and **land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.'*** (Officer emphasis).

- 10.5 The site has undergone several unlawful works and therefore it is difficult to ascertain what the site was like previously, however, all evidence indicates that the site is not previously developed land. Firstly, aerial imagery dating between 2000 and 2012 does not evidence any signs of development at the site. Whilst historical maps show a building in place since the late 19th century the site visit undertaken by officers as part of the application clearly shows that this building no longer remains. Furthermore, there is no up to date evidence presented as part of this application to evidence the site as previously developed, nor during the course of previous applications since 2016, whereby the Heavy Woollen Planning Sub-Committee refused development on this site. It is clear from this time that the land has become further overgrown to the point it would be considered to have blended into the surrounding countryside, becoming greenfield in the Green Belt as defined in paragraph 10.4. It is therefore the view of officers that the proposal does not constitute a previously developed site. A consistent stance the local planning authority has maintained during all previous applications on this site.

- 10.6 Whilst engineering operations are not wholly inappropriate in the Green Belt, this is on the proviso that they preserve its openness and do not conflict with the purposes of including land within it. The vehicular access, which is in the form of a steep ramp at 7m in height and approximately 25m long, offers an incongruous and urban form of development in the Green Belt. The cumulative development, including the erection of a dwelling and vehicular access would see domesticated, urban development introduced to a previously undeveloped site in the Green Belt. As such, the development would have a significant impact on and cause substantial harm to the openness of the Green Belt. The applicant has not proposed any very special circumstances to justify approving the change of use of the land in the Green Belt which is inappropriate development and would cause significant harm to the openness and character of the Green Belt, contrary to chapter 13 of the NPPF. The principle of development is, therefore, considered unacceptable.

- 10.7 Officers accept the design of the dwelling is modest. However, as the development is not acceptable in principle and officers conclude that a dwelling is not acceptable in this Green Belt location, officers cannot state the dwelling is suitable or in the character of the area. Notwithstanding the principle of development issue, in pure isolation, the design is inoffensive and does not represent a standalone reason for refusal.

Impact on Residential Amenity

- 10.8 Local Plan Policy LP24, Chapter 12 of the NPPF and the Housebuilder Design Guide SPD seek to ensure a good standard of amenity for future and neighbouring occupiers.
- 10.9 The proposed dwelling is located more than 40m from any neighbouring dwelling and located on lower ground. As such it would not be visible from any surrounding dwellings. Furthermore, the dwelling is of a modest size as well as being set in a modestly sized plot with ample outdoor space. Given this, the proposal would not impact on the residential amenity of any neighbouring dwellings, whilst still ensuring a good standard of amenity for future occupiers. The proposal is, therefore, considered to accord with policy LP24 of the KLP, regarding residential amenity.

Impact on Highway Safety

- 10.10 The proposal would not intensify the site to such an extent that it would cause any significant material generation in traffic. The site also contains sufficient parking area. There are, however, concerns regarding the safety of the access that has already been formed. It likely does not provide sufficient sight lines to the south along Long Lane, given the angle and gradient of the access. Given the limited information submitted, a true assessment cannot be undertaken. For this reason, as officers are not confident the proposal provides a safe flow of the highway required by policy LP21 of the KLP regarding highway safety, the proposal is unacceptable based upon the submission of insufficient information regarding highway safety.
- 10.11 For reference, the same highways issues were raised on applications 2018/90170 and 2020/90946. On both of the previous applications, the applicant was provided with the information required to address the matter however failed to supply sight lines and demonstrate that a vehicle can safely manoeuvre in and out of the access.

Site Contamination and Stability

- 10.12 The site is located within the High Risk Area based upon the historic coal mining legacy. Records indicate that within 20m of the application site there are two mine entries. The Coal Authority, through formal consultation, state that they hold no treatment details for these mine entries and due to the historic source plans used to plots the mine entries current position, this could vary by several metres. This could significantly affect the safety and stability for the redevelopment at this site.

- 10.13 The submitted Coal Mining Risk Assessment concludes that the on-site mine shaft poses no danger to the proposed dwelling as this is located circa 30m to the south of it. However, the report author goes on to state that it poses a potential future ground instability risk to the adjacent section of steep slope and public highway. To demonstrate that the risk is not a danger to the development, the applicant would be required to submit additional information regarding the location of the mine entry together with the calculated zone of influence of both mine entries (no build exclusion zones) and how these relate to the layout (proposed site layout plan), in order that adequate separation between the mine entries and buildings are maintained. Officers took the decision not to request this information given the additional issues with the principle of development, however, if members were minded to support the application, this information could be secured via a pre-commencement condition. As such, as this could be addressed via conditions, to refuse on this matter would be unreasonable.
- 10.14 Furthermore, this site has been identified on the Council's mapping system as potentially contaminated land due to its previous use/s associated with colliery/coal pits and mills and is also within 250m of a historic landfill. A Mine Shaft Drilling Investigation Report has been submitted. The report identifies that there is an uncapped mine shaft on site. Therefore, Environmental Health and The Coal Authority consider there to be a potential risk to future receptors associated with the coal mining legacy at the site (e.g. from mine gases and combustible materials). Considering the report findings and records for the site, full contaminated land conditions are necessary also if the application were to be approved.
- 10.15 Subject to the above information being submitted and subsequent conditions, the scheme is considered to accord with Local Plan Policy LP53 and Chapter 15 of the NPPF with regard to stability and contaminated land.

Biodiversity and Trees

- 10.16 Policy LP30 of the KLP requires all developments safeguards and enhance the function and connectivity of the Kirklees Wildlife Habitat Network.
- 10.17 The proposals would result in the loss of an area of Kirklees Wildlife Habitat Network within the Strategic Green Infrastructure Network due to erection of a dwelling on the site. By virtue of siting a residential dwelling within the site, the application is introducing a human presence that is hitherto absent. As such there is biodiversity and ecological harm caused by this proposal. These concerns have not been addressed in any of the submitted information, despite being raised on the previous applications on the site.
- 10.18 By virtue of the proposal for development within this allocated land, the function and connectivity of green infrastructure networks and assets are not retained and there are no sufficient mitigating measures, or scope to replace the loss of the network, and, therefore, the principle of the development is wholly inappropriate and contrary to policy LP30. Given the reasons set out above, the development of land allocated entirely within the Kirklees Wildlife Habitat Network and the Strategic Green Infrastructure Network is deemed unacceptable and contrary to policies LP30 and LP31 of the KLP and the purposes of Chapter 15 of the NPPF.

10.19 Officers note that a substantial number of trees have been removed from the site, however these trees were not subject to a tree preservation order. Furthermore, their removal has already been conducted and is not a part of this application. As such there is no scope for officers to seek replacement planting. However, their removal does factor into the biodiversity concerns set out in the above paragraphs. But in sole relation to trees, the scheme accords with Local Plan Policy LP33.

Carbon Budget

10.20 On 12/11/2019 the council adopted a target for achieving “net zero” carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system, and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan predates the declaration of a climate emergency and the net zero carbon target, however it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications the council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

10.21 With regard to this application, if it were to be approved, a condition would be required for the provision of an electric vehicle charging point to be installed prior to occupation of the dwelling. Subject to said condition, the development accords with Local Plan Policy LP26 and LP51 of the Kirklees Local Plan and Chapter 15 of the NPPF.

Representations

10.22 No representations were received.

10.23 With lodging the call to committee request, Cllr Firth stated *‘I do believe this is brown field land and there is enough evidence in my mind to prove this.... Not only was there historically a building there but also industry, ‘a coal mine’.*

10.24 As stated in paragraphs 10.4 and 10.5 of the above report, Annex 2 (Glossary) to the NPPF is relevant in relation to these comments. Annex 2 states: ‘Previously developed land: Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. **This excludes:** land that is or was last occupied by agricultural or forestry buildings; **land that has been developed for minerals extraction** or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds 71 and allotments; and **land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape**” (officers emphasis). As such, land that has previously been developed but becomes blended in to the landscape, and land that has been used for minerals extractions such as coal, is not classed as previously developed or brownfield land. This matter has been addressed in full in the earlier paragraphs of this assessment.

11.0 CONCLUSION

- 11.1 The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF, taken as a whole, constitute the Government's view of what sustainable development means in practice.
- 11/2 The proposed development is considered to be harmful regarding the openness and character of the Green Belt as it would represent inappropriate development. There are also detrimental impacts with regards to ecology highway safety. This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development proposals do not accord with the development plan and the adverse impacts of granting permission would significantly and demonstrably outweigh any benefits of the development, when assessed against policies in the NPPF and other material considerations.

Ownership Certificates:

Certificate A was signed on 08/02/2022

Background Papers:

This application:

[Planning application details | Kirklees Council](#)

Previous applications which were determined (not withdrawn):

[Planning application details | Kirklees Council](#)

[Planning application details | Kirklees Council](#)

[Planning application details | Kirklees Council](#)

Appendices

Figure 1 - aerial of the site in 2012



Figure 2 - aerial of the site in 2018



Figure 3 - aerial of the site in 2021

