Town and Country Planning Act 1990

Town and Country Planning (Development Management Procedure) (England) Order 2015

REFUSAL OF PERMISSION FOR DEVELOPMENT

Application Number: 2019/62/90190/E

To: Emma Hanks,
L'Arche Developments (Yorkshire) Ltd
No 3, The Old Brickworks
Top O' Th Bank
Thurstonland
Huddersfield
HD4 6UY

For: Hirst Properties Ltd

In pursuance of its powers under the above-mentioned Act and Order the KIRKLEES COUNCIL (hereinafter called "The Council") as Local Planning Authority hereby refuses to permit:-

ERECTION OF 3 DWELLINGS (WITHIN A CONSERVATION AREA)

At: ADJ, 1, LOWGATE, KIRKBURTON, HUDDERSFIELD, HD8 0SE

In accordance with the plan(s) and applications submitted to the Council on 04-Feb-2019. The reasons for the Council's decision to refuse permission for the development are:

1. The application site currently forms a prominent and important space within the Kirkburton Conservation Area; its development for residential purposes would subsequently result in its loss as open space. Furthermore, the proposed development, by reason of its scale, design and prominence would appear out of keeping with the established character of the street scene and Conservation Area. The development would offer no benefit to the public to outweigh such impact. As such, to permit the erection of 3 no. dwellings in this position would cause undue harm to the visual amenity and character of the Conservation Area, contrary to Policies LP24 and LP35 of the Kirklees Local Plan and Chapters 12 and 16 of the National Planning Policy Framework.

2. The proposed development, by reason of its scale, siting and design would result in significant overlooking of the occupants of the adjacent dwellings at nos. 8 to 18 Low Town, which would be unduly detrimental to their living conditions. To permit the proposal, which would not maintain the appropriate distances between buildings and provide a high standard of amenity for future occupiers and neighbouring occupiers, would be unduly harmful to residential amenity, contrary to Policy LP24 (b) of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework.

3. The proposed development has failed to demonstrate the safe manoeuvre of vehicles in and out of plots 1 and 2 from the junction of Low Gate and Low Town. Furthermore, it is not considered that safe and suitable access to each plot can be achieved due to inadequate visibility splays onto Low Town and Low Gate for the future occupants of the proposed dwellings, thereby giving rise to unacceptable harm to highway safety. In addition, a substandard footway has been proposed. To permit the proposal as submitted would be severely prejudice to highway and pedestrian safety, contrary to Policies LP21 and LP22 of the Kirklees Local Plan.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Plans and elevations as proposed plots 1 and 2	1051/00-04		01.08.2019
Plans and elevations as proposed plot 3	1051/00-03		01.08.2019
Proposed site plan	1051/00-02		01.08.2019
Flood Map	RFI/2019/123351		14.06.2019
Flood Risk Assessment	RFI/2019/123351		14.06.2019
Highway Statement by Beam Consulting	186-31-DOC-02		27.03.2019
Visibility splays 2 of 2	186-31-002		27.03.2019
Visibility splays 1 of 2	186-31-001		27.03.2019
Design and Access Statement and Heritage Statement by L'arche Developments	January 2018		04.02.2019

Pursuant to article 35 (2) of the Town and Country Planning (Development Management Procedure) Order 2015 and guidance in the National Planning Policy Framework, the Local Planning Authority have, where possible, made a pre-application advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application. The applicant was advised during the course of the planning application that the principal of built form on the site was not acceptable due to the impact on the significance of the Kirkburton Conservation Area. There was also concern raised in regard to the impact on residential amenity as well as upon highway safety. The applicant submitted amended plans however, these were not considered to overcome the significant concerns set out in this decision notice.

Development within a Coal Mining Area

The proposed development lies within an area that has been defined by the Coal Authority as containing potential hazards arising from former coal mining activity. These hazards can include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and previous surface mining sites. Although such hazards are seldom readily visible, they can often be present and problems can occur in the future, particularly as a result of development taking place.

It is recommended that information outlining how the former mining activities affect the proposed development, along with any mitigation measures required (for example the need for gas protection measures within the foundations), be submitted alongside any subsequent application for Building Regulations approval (if relevant).

Any form of development over or within the influencing distance of a mine entry can be dangerous and raises significant safety and engineering risks and exposes all parties to potential financial liabilities. As a general precautionary principle, the Coal Authority considers that the building over or within the influencing distance of a mine entry should wherever possible be avoided. In exceptional circumstance where this is unavoidable, expert advice must be sought to ensure that a suitable engineering design is developed and agreed with regulatory bodies which takes into account of all the relevant safety and environmental risk factors, including gas and mine-water. Your attention is drawn to the Coal Authority Policy in relation to new development and mine entries available at:
www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, digging of foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain a Coal Authority Permit for such activities is trespass, with the potential for court action.

Property-specific summary information on past, current and future coal mining activity can be obtained from: www.groundstability.com or a similar service provider.

If any coal mining features are unexpectedly encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is available on the Coal Authority website at:
www.gov.uk/government/organisations/the-coal-authority

The application has been publicised by notice(s) in the vicinity of the site. It is respectfully requested that the notice(s) now be removed and responsibly disposed of to avoid harm to the appearance of the area

Appeals to the Secretary of State

- **If you are aggrieved by the decision of your Local Planning Authority to refuse permission for the proposed development then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.**
- **If an enforcement notice is served or has been served relating to the same or substantially the same land and development as in your application and if you want to appeal against the local planning authority's decision on your application, then you must do so within:**

i) 28 days from the date of this notice where the enforcement notice has been served,
ii) 28 days of the date of service of the enforcement notice or,
iii) the specified period starting from the date of this notice,

whichever period expires earlier.

- **If you want to appeal against your Local Planning Authority's decision then you must do so within the specified period, starting on the date of this notice.**

- **The "specified period" is 12 weeks where the development relates to a "minor commercial application" as defined within the Town and Country Planning (Development Management Procedure) Order 2010 (as amended), or 6 months in any other case.**

- **Appeals must be made using a form which you can get from the Secretary of State at Temple Quay House, 2 The Square, Temple Quay, Bristol BS1 6PN (Tel: 0303 444 5000) or online at https://www.gov.uk/planning-inspectorate**
  Further information on the Planning Appeal process can be found online at the Planning Inspectorates website https://www.gov.uk/government/organisations/planning-inspectorate.
- **You must use the correct Planning Appeal Form when making your appeal. If requesting forms from the Planning Inspectorate, please state the type of application that the appeal relates to so they can send you the appeal form you require.**
- **The Secretary of State can allow a longer period for giving notice of an appeal, but he will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.**
- **The Secretary of State need not consider an appeal if it seems to him that the Local Planning Authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.**

- **In practice, the Secretary of State does not refuse to consider appeals solely because the Local Planning Authority based their decision on a direction given by him.**

Please note, only the applicant possesses the right of appeal.

Purchase Notices

- **If either the Local Planning Authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.**

In these circumstances, the owner may serve a purchase notice on the Council. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.

An important part of improving our service is to review your feedback on the way that we have dealt with your planning application(s). Please take a couple of minutes to email your comments to dc.admin@kirklees.gov.uk so that we can work on continually improving our customer service. Thank you.

Dated: 09-Sep-2019

Signed:



Karl Battersby
Strategic Director Economy and Infrastructure

Decision Documents

The decision notice indicates which documents relate to the decision. These documents can be viewed online at the Planning Services website at www.kirklees.gov.uk/planning, and by clicking on the 'search and view existing planning applications and decisions' and by searching for application number 2019/62/90190/E .

If a paper copy of the decision notice or decided plans are required please email dc.admin@kirklees.gov.uk or telephone 01484 414746 with the application number. There may be a charge for this service.

All communications should be sent to one of the following address:

E-mail: dc.admin@kirklees.gov.uk

Write to: Planning Services
Investment and Regeneration
PO Box B93
Civic Centre III
Off Market Street
Huddersfield
HD1 2JR