

**KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE**

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) – SECTION 70

DELEGATED DECISION TO DETERMINE PLANNING APPLICATIONS

Reference No: 2020/62/90224/E

Site Address: 125, Oxford Road, Dewsbury, WF13 4EH

Description: Erection of detached dwelling and first floor extension to existing dwelling (modified proposal)

Recommending Officer: Louise Bearcroft

DECISION - REFUSE

I hereby authorise the refusal of this application for the reasons set out in the officer's report and recommendation annexed below in respect of the above matter.

Sarah Longbottom

AUTHORISED OFFICER

Date: 07-Apr-2020

Site Description

No.125 Oxford Road at Dewsbury comprises a detached dwelling within a triangular shaped plot with a spacious front garden area. The eastern site boundary abuts public right of way DEW/114/10. The site slopes from west to east upwards towards the public right of way.

Works have commenced on site to construct a dwelling to the side of No.125 Oxford Road pursuant to planning application ref 2017/93197.

The surrounding area is characterised by a variety of house and bungalow types, generally set within large plots with spacious front gardens. The site is unallocated on the Kirklees Local Plan.

Description of Proposal

The application seeks planning permission for a modified proposal for the erection of a detached dwelling within the garden area, and for a first floor extension to the existing dwelling to remodel it into a two storey dwelling. During the site visit it was observed that works have commenced to construct the foundations of the new dwelling, however no works have yet commenced to the existing dwelling.

The new dwelling is sited to the east of the existing property and as approved proposes a detached three bedroom, two storey property with a hipped roof. The proposed revision to the approved scheme is to extend the footprint of the dwelling further to the rear with an additional room which would project a further 4.05 metres. It was observed during the site visit that foundations relating to the proposal under consideration have already been laid. Alterations are also proposed to the fenestration detailing and window arrangements. The proposed construction materials are stone, stone blocks and concrete roof tiles, however the use of Ashlar stone blocks to the front elevation is no longer proposed.

The proposed first floor extension to the existing dwelling would create a two storey four bed dwelling. It is proposed the upper floor would be erected of stonework to match the existing property and would have a hipped roof of concrete tiles. These details are as previously approved.

It is also proposed to widen the existing driveway which would be shared between the two properties, and provide three off-street parking spaces to the front of each property. These details are also as previously approved.

History of negotiations/amendments received

Officers have liaised with the agent to discuss the concerns regarding the proposal.

In response, the applicant has submitted a revised block plan for consideration, with a revision to the proposed layout of the amenity spaces, and additional annotation.

Relevant Planning History

2017/93197 – Erection of detached dwelling and first floor extension to existing dwelling – Conditional Full Permission

2015/90955 – Certificate of lawfulness for proposed erection of fence – Granted

2011/90014 – Erection of extension and alterations – Conditional Full Permission

2011/90407 – Erection of detached dwelling with integral garage –Refused. Appeal dismissed.

1. The erection of a detached dwelling at 125 Oxford Road by reason of its design, scale and layout would have a detrimental impact on the character of the local area and the street scene of Oxford Road. The scale and layout of the dwelling would be out of keeping with other dwellings in the immediate vicinity of the site. The proposal would therefore fail to comply with Policies D2, BE1 and BE2 of the Kirklees Unitary Development Plan and guidance in PPS1: Delivering Sustainable Development.

2. The propose fence by reason of the location, height and length would be detrimental to the setting and safety of the pedestrian link and would therefore conflict with provisions of policy BE23 of the Unitary Development Plan.

2010/93118 – Erection of extension and alterations and erection of fence – Refused

Representations

The application was advertised by site notice, neighbour letter and press notice with the final publicity expiring 12th March 2020. As a result of this publicity four representations have been received.

A summary of the comments received is set out below:

- Query how work has already been completed on the foundations while the application is pending a decision.
- Work has been going on for the last two months
- The area of Oxford Road is being blighted by turning nice bungalows into monstrous houses that do not complement the conservation area
- The whole build is against what Kirklees wanted, winning an appeal and then altering the plans, putting non approved footings in, thinking your automatically going to get plans passed. The house is already too big for the plot and extending it further will only make it a bigger eyesore on what is a beautiful road.
- Work has already started, the applicant removed all the trees before planning to build.

- It will block the light of the other neighbours.
- The new property will look strange and crowded and will not fit in with the neighbourhood.
- Concern it will create a precedent.

Consultation Responses

The following is a brief summary of Consultee advice (more details are contained in the Assessment section of the report, where appropriate):

- **K.C Highways Development Management** – No response
- **K.C Ecologist** – No response
- **The Coal Authority** – No objection
- **K.C Public Rights of Way** – Comments from the previous application still stand

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 statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019).

The site is unallocated on the Kirklees Local Plan.

Kirklees Local Plan (LP):

- **LP1** – Presumption in favour of sustainable development
- **LP2** – Place Shaping
- **LP21** – Highways and Access
- **LP22** – Parking
- **LP24** – Design
- **LP28** – Drainage
- **LP30** – Biodiversity and Geodiversity
- **LP51** – Protection and improvement of local air quality
- **LP53** – Contaminated and Unstable Land

National Policies and Guidance:

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 19th February 2019, 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 9** – Promoting sustainable transport
- **Chapter 12** – Achieving well-designed places
- **Chapter 14** – Meeting the challenge of climate change, flooding and coastal change
- **Chapter 15** – Conserving and enhancing the natural environment

Assessment

Principle of Development:

The application seeks permission for a modified scheme for the erection of a detached dwelling in the garden area of No.125 Oxford Road, as well as the erection of a first floor extension to the existing dwelling. The principle of development has previously been approved and this proposal seeks consent for modifications to the approved scheme. These are discussed below.

Impact on Visual Amenity:

The proposed revisions to the scheme as approved are to the scale and appearance of the new dwelling to be sited to the east of the existing property. Works have begun on site to lay the foundations, including foundations relating to the modified proposal which is the subject of this application.

Concerns have been raised in the representations received that the area of Oxford Road is being blighted by turning nice bungalows into monstrous houses that do not complement the conservation area. There is also concern the new property will look strange and crowded and will not fit in with the neighbourhood, and that the house is already too big for the plot and extending it further will only make it a bigger eyesore on what is a beautiful road.

The proposed new dwelling as approved, is a detached three bedroom, two storey property with a hipped roof. The proposed revision to the approved scheme is for the erection of an additional room at the rear of the property which would project a further 4.05 metres from the approved rear elevation. Alterations are also proposed to the fenestration detailing and the use of Ashlar stone blocks to the front elevation is no longer proposed.

It is considered the proposed addition to the approved footprint of the new dwelling would result in a cramped form of development, taking into account the site constraints with the plot tapering significantly to the rear adjacent to the public footpath. The additional footprint of the dwelling would occupy a significant amount of the private amenity space available to serve the dwelling and it is not considered the plot due to its size constraints is sufficient to accommodate the footprint now proposed, even taking into account that the proposed addition would be single storey. Indeed, extensive negotiations took

place between the applicant and officers during the previous 2017 application to amend the scheme, and in particular reduce the footprint of the proposed dwelling to ensure the proposal would not amount to an overdevelopment of the site, and to bring it away from the public footpath. It is appreciated that the red line boundary incorporates an open area to the front of the proposed dwelling however this is intended to be a landscaped area rather than a private garden, considered essential to assimilate the dwelling satisfactorily into the street scene.

In response to this concern raised by officers the applicant has submitted an amended plan which shows the dividing line between the two private gardens adjusted so that the boundary fence between the two properties would now be positioned in part in front of the rear elevation of the existing dwelling. Whilst this increases the amenity space available to serve the proposed new dwelling, it does not negate the fact that the proposed addition to the footprint would have the effect of the resultant dwelling being squeezed into a site which tapers to the rear adjacent to the public footpath. This impact is created by the extent of the footprint of the proposed dwelling, and its proximity to the public footpath / boundary of the site.

A similar issue was raised by the Inspector in a previous 2011 appeal decision (ref 2011/90407) and which is a material consideration. In paragraph 5 of the decision the Inspector said 'the appeal site decreases in width from north to south and the proposed dwelling is pushed as far to the south so as to retain the open frontage that is characteristic of the area. However, the effect of this would be to make the proposed dwelling look as though it had been squeezed into the site'.

Officers acknowledge the differences between the proposal which was the subject of this previous appeal and the current scheme being considered, a matter that the applicant has commented on in detail in correspondence. The appeal scheme was for a dwelling with a larger footprint and which extended closer to the public footpath, whereas the applicant contends that in the current scheme the distance between rear corners is similar to the previous approval. The question is whether the proposal as now presented would appear squeezed in by virtue of its footprint and the constraints of the site, and whether this would result in a development which fails to achieve good design. Officers consider that the proposal would appear cramped taking into account the extent and shape of the site, and the fact that the surrounding area is characterised by a variety of house and bungalow types, generally set within large plots. In the 2011 appeal decision the Inspector made their judgement whilst taking into account that the 2011 scheme proposed a far greater amount of rear amenity space to serve the proposed new dwelling. It is not considered therefore that the proposed adjustment of the boundary fence, or a possible further adjustment would overcome these concerns.

The proposed alterations to the fenestration detailing would be acceptable, and the proposed materials are the subject of a condition, with samples to be inspected. In the Design and Access statement the applicant states they seek to address this condition and details the use of natural stonework, buff cast

stone artificial door and window surrounds, and roof tiles. It remains however that samples are required to be inspected and the necessity of the inclusion of a condition remains.

The proposed extension and re-modelling works to the existing dwelling remain as previously approved. The proposed first floor extension to the existing dwelling would increase the scale and massing of the dwelling but it is considered this would not have a detrimental impact within the street scene which is characterised by a mix of two storey and single storey properties. As previously assessed it is considered the proposed first floor extension and the dwelling can be accommodated without having a detrimental impact on visual amenity.

The proposed shared driveway would differ from the linear driveways of neighbouring properties and in the previous application a scheme to plant Yew hedge plants to a height of 1.5metres along the frontage of the site was proposed. It was considered however that whilst this would provide screening, it has the potential to create other issues with sightlines from the development, and therefore an alternative landscaping was the subject of a condition. On the plan now presented, it indicates the same species but a different height (1.0m), this needs further clarification, and if the application was considered to be acceptable in all other regards this could be addressed by condition.

As per the previous application the proposed construction materials are stone, stone blocks and concrete roof tiles. To be in keeping with neighbouring properties however, the use of natural stone is required to be secured by condition.

Residential Amenity:

Policy LP24 stipulates that proposals should provide a high standard of amenity for future and neighbouring occupiers. The nearest neighbouring properties which would be affected by the development are No.127 Oxford Road to the west of the site, No.99 Oxford Road to the east of the site (beyond the public footpath) as well as neighbouring properties directly opposite the site off Oxford Road.

Concerns have been raised in the representations received that the proposal will block the light of the other neighbours.

As per the previous assessment, in respect of the impact on No.127 Oxford Road this is a two storey property located to the west of the application site, which has been recently extended. The proposed first floor extension to the existing dwelling would result in the remodelled property sitting higher than this neighbouring property due to the difference in levels. The proposal would not alter the footprint of the existing dwelling however, which achieves a distance of 2.3 metres to the shared boundary, and it is considered there would be no undue detrimental overshadowing impact. It is proposed to retain the existing 1.5 metre timber fence along the shared boundary. No habitable

room windows are proposed on the side elevation at first floor level which would front onto this property and there are no habitable room windows on the side elevation of No.127 which would be affected. There would therefore be no loss of privacy. As per the previous application it would be appropriate to condition that the landing window and bathroom window are obscurely glazed.

In respect of the impact on No.99 Oxford Road this property is separated from the application site by the public right of way. Taking into account the level differences, the existence of the public right of way and the distances from the proposed dwelling to this existing dwelling it is considered there would be no detrimental overbearing impact or loss of privacy.

In respect of the impact on neighbouring properties opposite the site due to the distances from the proposed dwelling and the remodelled dwelling there would be no loss of privacy or detrimental overbearing impact.

There would be no detrimental impact on residential amenity and the proposal would accord with policy LP24 of the Kirklees Local Plan.

Highway Safety (not including the impact on the Public Right of Way):

The proposal consists of the demolition of an existing garage, the extension of the existing property to a four-bedroomed dwelling, and the creation of a new three-bedroomed dwelling within the existing curtilage.

The scheme provides six off-street parking spaces; three for each dwelling, and the proposed access would have a width of 4.5m. In the previous application KC Highways Development Management considered the proposal would not impact on highway safety, and no modifications are proposed to the approved access arrangements. The proposal would thus accord with Policy LP21 of the Kirklees Local Plan.

Impact on Public Right of Way Dew/114/10:

The eastern boundary of the site abuts public right of way Dew/114/10. Proposals which would affect a public right of way should take account of the convenience of users of the right of way. The existing public footpath is raised about the garden of No.125 Oxford Road and is retained by a stone boundary wall and a grassed bank.

In the Design and Access statement the applicant refers to the impact on the Public Right of Way seeking to address a previously imposed condition (5) on application ref 2017/93197. This was a pre-commencement condition, which was required to be addressed before construction commenced.

The submitted site section drawing submitted indicates a profile battered slope between the proposed house and the boundary wall/path. The Council's Public Right's of Way team note their previous comments from 2017/93197 still apply.

In these comments they raised no objections in principle but noted that the submitted section is limited in its content. Accordingly they recommended a pre-commencement condition for the submission of a scheme regarding the proposed earth works and existing boundary stone wall, and any associated works, which are proposed to support, or may affect the support of the public footpath. Although proposed and existing ground works and structures are not and would not be the responsibility of the local highway authority to maintain, they would perform a highways function, to support and retain the public highway. A condition would protect users of the public footpath in regard to the excavation and construction and retaining features, including the boundary wall and any earth batter.

The proposed paragraph in the design and access statement regarding this condition, and the proposed annotation on the revised block plan saying “no works to embankment” is not sufficient to negate the necessity for the condition, and having started works the applicant is now in breach of this pre-development condition. There are groundworks and should the applicant be reliant on the worked ground being stable without retaining structures, details are required of the land and angle of repose etc. The applicant must demonstrate that the works do not and will not affect the stability of the path, and the necessity for this condition remains.

The public rights of way team also expressed concern about the construction of a proposed boundary fence along the edge of the footpath. However, the issue about the proposed boundary fence and its construction or support is not a matter for this application as it benefits from a certificate of lawfulness subject to application Ref 2015/90955. It is important to clarify that the consideration of this application does not extend to the proposed fence.

In respect of the usability of the footpath, it is not considered the proposed dwelling would have a detrimental overshadowing impact. As noted above the proposed fence is the subject of a certificate of lawfulness.

Ecology Issues:

In the previous application the Council's ecologist notes that great crested newts have previously been recorded breeding within approximately 200m of the site. The site is also partially within the bat alert layer identified by the Council's mapping system and supports mature trees that will likely be affected by the proposals. No ecological report has been submitted with the application, although this could be requested if the application was considered to be acceptable in all other regards.

Health and Safety Issues (Coal Mining Legacy):

The site falls within the defined Development High Risk Area where within the application site and surrounding area there are coal mining features and hazards which need to be considered. The Coal Authority's records indicate that the site is located in an area where historic unrecorded underground coal

mining activity is likely to have taken place at shallow depth associated with a thick coal seam outcrop.

The applicant has submitted a report on Rotary Probing. On the basis that commentary within the Report confirms that only a thin intact coal seam was encountered, The Coal Authority is satisfied that the issue of the potential for coal mining legacy to affect the proposed development has been adequately addressed.

The Coal Authority considers that the content and conclusions of the Report on Rotary Probing (November 2019, prepared by RGS Ltd) are sufficient for the purposes of the planning system in demonstrating that the application site is safe and stable for the proposed development. The Coal Authority therefore has no objection to the proposed development. This would effectively remove the requirement for condition 8 on the previous decision notice (Phase II report).

Climate Change

On 12th November 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 pre-dates 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.

The proposal to erect a new dwelling would generate significant carbon emissions compared to its existing use as a private garden. However this is a relatively small development site within an existing residential area and the proposal incorporates measures to encourage electric vehicle use by providing electric vehicle re-charging points for the existing and proposed dwelling which will assist in helping the climate change emergency.

Representations:

Four representations have been received. In so far as the comments raised have not been addressed above:

Query how work has already been completed on the foundations while the application is pending a decision.

Response: This comment is noted.

Work has been going on for the last two months.

Response: This comment is noted.

The whole build is against what Kirklees wanted, winning an appeal and then altering the plans, putting non approved footings in, thinking you're automatically going to get plans passed.

Response: This comment is noted.

Work has already started, the applicant removed all the trees before planning to build.

Response: This is noted

Concern it will create a precedent.

Response: Each planning application is assessed on its own merits.

Conclusion

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 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 consideration.

Recommendation – Refusal

Decision Authorisation - Delegated Powers

Application Number: 2020/90224

Officer Recommendation: Refusal

Reason for Refusal

1. The proposed addition to the approved footprint of the new dwelling would result in a cramped form of development, taking into account the site constraints with the plot tapering significantly to the rear adjacent to the public footpath. The additional footprint of the dwelling would occupy a significant amount of the private amenity space available to serve the dwelling and it is not considered that the plot, due to its size constraints, is sufficient to accommodate the footprint now proposed, even taking into account that the proposed addition would be single storey. The proposal would therefore be contrary to Policy LP24 of the Kirklees Local Plan, and guidance contained within Chapter 12 of the National Planning Policy Framework.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Location Plan	0563/001/A4/Rev		04.02.20
Existing Floor Plans & Elevations	0563/002/A2/Rev B		04.02.20
Proposed Site Plan	0563/003/A2/Rev E		25.03.20
Proposed Extension Plans and Elevations	0563/004/A2/Rev B		04.02.20
Proposed New Dwelling Plans and Elevations	0563/005/A1/Rev D		04.02.20
Design and Access Statement			04.02.20
Coal Mining Risk Assessment	C134/19/E/216		04.02.20
Geological Desk Study			04.02.20

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 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. Officers liaised with the agent to discuss the concerns regarding the proposal. In response, the agent has submitted a revised block plan for consideration, with a revision to the proposed layout of the amenity spaces, and additional annotation. This has however not overcome officers' concerns and for the reason set out in the reason for refusal the development would not improve the environmental conditions of the area.

Report Dated: 2nd April 2020