

**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: 2020/62/93467/W

Site Address: Brigsteer, 402, Birkby Road, Birkby, Huddersfield,
HD2 2DN

Description: Erection of gates and gate posts

Recommending Officer: Neil Bearcroft

DECISION – CONDITIONAL FULL PERMISSION

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

Emma Thompson

AUTHORISED OFFICER

Date: 17-Dec-2020

Officer Report

Site Description

402 Birkby Road, known as Brigsteer, is a large detached dwelling situated on the north side of Birkby Road approximately 45m east of the junction with Halifax Road. Vehicular access is provided by an unadopted road adjacent to the eastern boundary of the plot which continues to serve 5 other dwellings. The plot, which measures approximately 39m from north to south and 30m west to east (on average), is somewhat elevated above the level of Birkby Road. Vehicular access to the unadopted road is taken at the north-east corner of the site. The dwelling itself is of an asymmetrical design and layout, with an attached double garage at the northern end. Most of the amenity space is to the south and west, and there are several mature trees on the southern and eastern boundaries.

To the west, the site is bounded by the Church of Jesus Christ of Latter Day Saints grounds, and to the north by no. 408 Birkby Road. To the east, on the other side of the access road, is no. 400 Birkby Road, a detached dwelling on a large plot, while to the south, on the opposite side of Birkby Road, are some modern detached dwellings on smaller plots. The wider area is characterised by detached dwellings which are mostly either individually designed or form part of small modern developments.

Description of Proposal

The application seeks the erection of an electric gate and gate posts. The gate would have a maximum height of 2 metres and the gate posts a maximum height of 2.15 metres. The entrance is 7.6 metres in width. The gate is constructed from a metal frame finished in black infilled with composite boarding in grey. The gate posts are constructed from natural stone and a low profile light is proposed on top.

The gate and gate posts are already present on site, and this application is partly retrospective, however this application seeks an amended scheme smaller than that on site.

History of negotiations/amendments received

The case officer secured amended plans which reduce the scale of the gate from 2.3 to 2 metres and reduced posts from 2.5 metres to 2.15.

Relevant Planning History

Planning History

- 2020/92400 – Erection of detached garage – Approved by Huddersfield Planning Sub Committee
- 2019/91842 - Erection of detached garage – Refused. Appeal dismissed.
- 2018/93226 - Erection of two storey extension – Approved by Huddersfield Planning Sub-Committee. The development authorised by this permission was not implemented due to application 2018/90978 being allowed at appeal.
- 2018/90978 – Erection of single-storey and two-storey extensions. Refused by Huddersfield Planning Sub-Committee and subsequently allowed at Planning Appeal, ref APP/Z4718/D/18/3218457. Permission Implemented.
- 2004/91771 – Reserved matters for the erection of a detached dwelling. Approved and implemented.
- 2003/94421 – Outline application for the erection of a detached dwelling (within the curtilage of the dwelling now known as 408 Birkby Road). Approved and implemented.

Representations

The application has been advertised via neighbour notification letters to addresses bordering the site in accordance with Table 1 of the Kirklees Development Management Charter. Final publicity date Expires: 1 December 2020, the amended plans were not formally re-advertised as these represented a reduced size scheme. In total 13 comments were received, 11 in objection and 2 in support. The 3 ward Councillors also submitted a letter.

The 11 comments received in objection, include multiple comments by individual local residents, these are summarised below:

- The gate was erected without permission and can be easily taken down.
- The lane is private and this is signposted and access to parts of the lane is restricted, chains are used to restrict access and such an approach is considered preferable to a large gate.
- Access along the lane by refuse vehicles have been disrupted by other vehicles parking on the lane.
- The gate is visually assertive and not in keeping with other properties and are larger than any others locally. The width at 7 metres is out of

keeping with other openings locally. There are no other properties locally with such a scale of gate.

- The gate has not improved or reduce highway safety there is no need for it to be 7 metres wide. The large width means they are slow to open leading to vehicles having to wait on the lane. The scheme should be amended and reduced in size.
- The lane which is used to access the site should be considered a highway as it can be easily accessed by residents or visitors to properties located off the lane and the propose gate should not exceed 1 metre in height.
- The fence erected at the site is located adjacent to the highway and this should also be restricted in height to 1 metre as it would not form permitted development. The site therefore does not benefit from a permitted development fall back position of 2 metres but 1 metre.
- The original permission for the house from 2003 and 2004 required highway improvements to sightlines to allow access to the dwelling the proposal would obstruct these.

2 comments in support are summarised below.

- Whilst being retrospective concern can only relate to 30-40 cm of the gate and to amend it would cause additional disruption locally.
- The proposal does not affect any property or person locally and the site is not located within the conservation and it is considered that it should be supported.
- The new gate has improved safety arrangements at the site as the previous gate caused accidents. The new gate allows vehicles to safely enter and leave the site and its position further back in the site has improved highway safety. It has also increased the pull off area at the site.
- The design of the gate is considered to be acceptable and there are other substantial gates in the local area.

The letter submitted by the 3 Ward Cllr's raised concerns with the development and sought for them to be kept updated with progress on the application. The Ward Cllr's were advised by e-mail on Thursday 3rd December of the Officer recommendation with a cut off date of 7th December for any additional comments. One additional comment was received seeking clarification if a site visit had been undertaken and officers confirmed that they have been to the site previously and taken photos of the gate.

The letter submitted by the Ward Cllr's can be summarised as follows:

- The sliding gate is 2.25 metres high and 7 metres long. Several residents have contacted us to express their concern that the gate is a large construction which is out of keeping with the local area. This includes properties on the lane, but also those along Birkby Road and the roads that branch off it. Most of the properties along the lane do not have gates and the only one that does, has wrought iron gates which are usually left open.

- Some residents have also pointed out that the gate fronts onto a privately-owned, unadopted road that leads to 6 properties, each with its own private driveway within the curtilage of each property, and it is not a private drive to the applicant's property.
- Some residents would also like clarity on what constitutes a highway that is privately owned. If the unadopted road is a highway for planning purposes, should not the application also have sought planning permission for the erection of the fence?
- We are writing to share our concerns and to express our objection to this planning application on the basis that the gate and gateposts are harmful to the visual amenity of the local area. We do not believe that it constitutes appropriate development and we share the view that it is not in keeping with the local setting.

Consultation Responses

No consultations necessary.

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
- **LP 21:** Highway safety and access
- **LP 22:** Parking
- **LP 24:** Design

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 12 – Achieving well-designed places

Assessment

The application site is unallocated on the Local Plan and therefore Policies LP1 and 2 are relevant which support sustainable development. The key assessment for this application will be the design of the development and its impact on the character and appearance of the local area. The impact of the development on residential amenity, highway safety and all other material planning considerations will also be assessed.

Design

General design considerations are set out in Policy LP24, which seeks to secure good design in all developments by ensuring that they respect and enhance the character of the townscape and protect amenity. This is reiterated in Chapter 12 of the NPPF.

The proposal, as amended, seeks the permission for gates to be installed at the vehicular entrance to host property and replace a previously gated entrance at the site. The gates which previously occupied the site were significantly smaller both in terms of the opening at 3.4 metres but also in terms of the gate design which originally were black railings with an approximate height of 1.5 metres.

The new gated entrance whilst substantially larger than the original opening is considered to be of an acceptable size when the context of the site is assessed. The plot along the access has a total length of approximately 38 metres and the 7.6 metre wide opening is not considered to detrimentally dominate the site in design terms. The gate whilst larger than the original scheme, at 2 metres high is the same height as typical boundary treatment that can be undertaken under permitted development and whilst slightly imposing in its appearance would be read in the context of the overall site which includes tall boundary treatment including a fence and planting. The gate posts whilst slightly higher at 2.15 metres are only marginally taller and would also be read in conjunction with the wider context at the site.

With regard to appearance, the gate posts are constructed from natural stone which is in keeping with the host property which is considered to be acceptable. The gate which is metal painted black with a small degree of ironwork at the top is also considered to be acceptable. The composite panels are akin to a typical fence, and whilst having a solid appearance is not considered to be significantly detrimental in the street scene.

It is noted that that the site is within close proximity to the Edgerton Conservation Area. Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 needs to be considered which requires that special attention is paid to the desirability of preserving or enhancing the character and appearance of the conservation area. Whilst within proximity of the Conservation Area the gate and gate posts are substantially set away from the boundary of the Conservation Area. The highway provides a clear separation between the site and Conservation Area. Taking this into account it is considered that the proposal would preserve the setting of the Conservation Area.

The proposal is therefore on balance considered to have an acceptable impact on the character and appearance of the local area and local street scene and would accord with the requirements of Policy LP24 of the Kirklees Local Plan and Policies in Chapter 12 of the NPPF.

Residential Amenity

With regard to residential amenity, Policy LP24 advises that proposals should ensure that a high standard of amenity is achieved for future and neighbouring occupiers.

The proposed gate and posts are separated from unrelated properties with the closest being 400 and 408 Birkby Road. However the gate and gate posts are at least 17 metres from the dwelling of 408 and 30 metres from the dwelling of 400. Given the limited height of the structure and its separation from the adjacent dwellings the proposal is not considered to adversely impact on residential amenity of these properties or other properties locally and would accord with Policy LP24 in terms of residential amenity.

Highway Safety

Policy LP21 of the Local Plan is relevant in terms of highway safety which seek to ensure that proposals do not have a detrimental impact to highway safety.

The proposed gate and gate posts would operate in sliding mechanism which would require users to wait on the adjacent lane before entering the site. Such an arrangement is similar to the originally gated entrance to the site, but it is noted that the wider opening may require vehicles to wait on the lane for possibly longer. Whilst vehicles would have to wait on the lane, it is not considered to be significantly detrimental to highway safety as the road serves a limited number of properties and the gates are slightly set back from the site boundary allowing a small degree of pull off space. Furthermore given the width of the lane at 4.2 metres which combined with the pull area would provide some degree of passing to occur at low speeds.

In conclusion the proposed gates are not considered to have a detrimental impact to highway safety and would accord with Policy LP21.

Other Matters

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.

Given the nature of the proposed gates they are not considered to impact on climate change.

Representations

In total 13 representations have been received for the above application a summary of these is set out below, along with a response to the points raised.

The 11 comments received in objection, include multiple comments by individual local residents, these are summarised below:

- The gate was erected without permission and can be easily taken down.

Response: Noted and this application has been submitted to regularise the situation.

- The lane is private and this is signposted and access to parts of the lane is restricted, chains are used to restrict access and such an approach is considered preferable to a large gate.

Response: It is noted that the site is a private lane, the applicant has proposed a gate and not chains and the application has been assessed on those grounds. It is noted that the new gate has replaced a former gate which was on site.

- Access along the lane by refuse vehicles have been disrupted by other vehicles parking on the lane.

Response: As set out above the proposed gate is not considered to lead to additional disruption along the lane.

- The gate is visually assertive and not in keeping with other properties and are larger than any others locally. The width at 7 metres is out of keeping with other openings locally. There are no other properties locally with such a scale of gate.

Response: As set out above the design and scale of the gate is considered to be acceptable.

- The gate has not improved or reduce highway safety there is no need for it to be 7 metres wide. The large width means they are slow to open leading to vehicles having to wait on the lane. The scheme should be amended and reduced in size.

Response: Comments noted, but the gates impact on highway safety is considered to be acceptable for the reasons set out above.

- The lane which is used to access the site should be considered a highway as it can be easily accessed by residents or visitors to

properties located off the lane and the proposed gate should not exceed 1 metre in height.

- The fence erected at the site is located adjacent to the highway and this should also be restricted in height to 1 metre as it would not form permitted development. The site therefore does not benefit from a permitted development fall back position of 2 metres but 1 metre.

Response: Planning permission has been sought for the development and has been assessed above including its impact on highway safety.

- The original permission for the house from 2003 and 2004 required highway improvements to sightlines to allow access to the dwelling the proposal would obstruct these.

Response: As set out above the proposal is considered to have an acceptable impact on highway safety. Sightlines for users of the lane onto Birkby Road has been sufficiently retained and access via the gate is considered to be acceptable.

The letter submitted by the Ward Cllr's can be summarised as follows along with a response to the points raised. :

- The sliding gate is 2.25 metres high and 7 metres long. Several residents have contacted us to express their concern that the gate is a large construction which is out of keeping with the local area. This includes properties on the lane, but also those along Birkby Road and the roads that branch off it. Most of the properties along the lane do not have gates and the only one that does, has wrought iron gates which are usually left open.

Response: The design of the development has been assessed above and is considered to be acceptable.

- Some residents have also pointed out that the gate fronts onto a privately-owned, unadopted road that leads to 6 properties, each with its own private driveway within the curtilage of each property, and it is not a private drive to the applicant's property.
- Some residents would also like clarity on what constitutes a highway that is privately owned. If the unadopted road is a highway for planning purposes, should not the application also have sought planning permission for the erection of the fence?

Response: It is noted that the site is accessed off a lane which serves a number of properties. The definition of a highway taken from the permitted development technical guidance is "*a public right of way such as a public road, public footpath and bridleway. For the purposes of the Order it also includes unadopted streets or private ways.*" The applicant has not applied for the fence and this would be a matter to be raised with the enforcement team if necessary.

- We are writing to share our concerns and to express our objection to this planning application on the basis that the gate and gateposts are harmful to the visual amenity of the local area. We do not believe that it

constitutes appropriate development and we share the view that it is not in keeping with the local setting.

Response: The design of the development has been assessed above and is considered to be acceptable.

2 comments in support are summarised below.

- Whilst being retrospective concern can only relate to 30-40 cm of the gate and to amend it would cause additional disruption locally.

Response: Noted, however the application has been assessed on its own individual merits.

- The proposal does not affect any property or person locally and the site is not located within the conservation and it is considered that it should be supported.

Response: Noted.

- The new gate has improved safety arrangements at the site as the previous gate caused accidents. The new gate allows vehicles to safely enter and leave the site and its position further back in the site has improved highway safety. It has also increased the pull off area at the site.

Response: Noted.

- The design of the gate is considered to be acceptable and there are other substantial gates in the local area.

Response: Noted.

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 would constitute sustainable development and is therefore recommended for approval.

Recommendation – Approve

Decision Authorisation - Delegated Powers

Application Number: 2020/93467

Officer Recommendation: Full Conditional Permission

Conditions and Reasons

1. The development hereby permitted shall be begun within three years of the date of this permission.

Reason: Pursuant to the requirements of Section 91 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Order 2004.

2. The development hereby permitted shall be carried out in complete accordance with the plans and specifications schedule listed in this decision notice, except as may be specified in the conditions attached to this permission, which shall in all cases take precedence.

Reason: For the avoidance of doubt as to what is being permitted and so as to ensure the satisfactory appearance of the development on completion, and to accord with Policy LP24 of the Kirklees Local Plan and Policies in the National Planning Policy Framework.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Location Plan	2352 - LOCB		13/10/2020
Proposed Plans and Elevations	2352 14 Rev B		4/12/2020

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. The case officer undertook negotiations with the applicant to secure amended plans which reduce the overall height of the gate. The application was determined based on the amended plans.

Report Dated: 16/12/2020