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:	2020/62/94292/W
Site Address:	Land at Occupation Road, off Birkby Road, Birkby, Huddersfield, HD2 2ES
Description:	Erection of detached dwelling
Recommending Officer:	Stuart Howden

DECISION – Refused

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.

Neil Bearcroft

AUTHORISED OFFICER

Date: 11-Mar-2021

Officer Report

Site Description

Land at Occupation Road, off Birkby Road, Huddersfield, HD2 2ES

The site relates to a narrow parcel of land to the north of Birkby Road, and the rear of residential properties of Prince's View and Harefield Park (to the west), as well as residential properties of Birchroyd Close (to the east).

The site comprises a private unsurfaced access lane off Birkby Road at the western side, which runs to the residential property of Wood View Farm, and a soft landscaped area to the eastern side. It appears that a number of trees on the eastern side of the site have recently been felled.

The site and surrounding land slopes downwards from south west to north east. The site is within an area characterised by residential development, mostly comprising of detached dwellings within spacious plots.

The site is not within a conservation area and is not within close proximity to any listed buildings.

Description of Proposal

Planning permission is sought for the erection of a detached dwelling.

The dwelling is proposed on the east side of the site and would face the track to the east (which the site would also be accessed from).

The dwelling is proposed to be 1 ½ storey in height and comprise 3 bedrooms. The dwelling could consist of a 1 ½ storey main body, with a single storey garden room element protruding from the north side and a single storey utility, car port and store element protruding from the south side. The dwelling would have a maximum width of approximately 36.5 metres and a maximum depth of approximately 8.1 metres. The dwelling is proposed to have a maximum ridge height of 6.6 metres. The dwelling is proposed to be constructed from coursed stone, but details regarding the roof materials have not been provided in the submission.

Details regarding the landscaping appear limited, but the garden areas would be located to either side of the dwelling. A driveway would be located to the front of the proposed car port element of the building.

History of negotiations/amendments received

An amended site plan was received with a reduced red line area which omitted part of the access track which runs to Wood View Farm.

The applicant's agent was notified that Officers would not be able to support the principle of residential development due to concerns that such development would fail to sympathetically integrate with built development in the locality. For this reason, amended plans were not requested. The applicant's agent was informed that the application would be recommended for refusal if not withdrawn. The applicant's agent did not accept this opportunity to withdraw the application, but provided further information in support of this application. This additional information was considered by Officers, but it did not address their concerns therefore the application has been refused.

Relevant Planning History

91/06527 – Construction of road and sewers – Approved.

2001/91361 – Erection of two detached dwellings with detached garages – Refused.

2001/92801 – Erection of 2 detached dwellings and detached garages – Approved.

2002/93523 – Erection of detached dwelling – Approved.

As can be seen above there is history of planning applications for residential development at the site. The most recent application relating to the site was approved on 16th January 2003 (2002/93523), and the dwelling in this approved scheme was relatively similar to the proposed dwelling under this current application, albeit there was a minor difference in the layout. This will form a material consideration in the assessment of this planning application and this will be discussed in more detail below in the assessment section of the report.

Representations

Final publicity date Expires:
Neighbour letters expired on 8th March 2021.

6 representations objecting to the application have been received as a result of the above publicity:

- previous permission at site no longer extant and policy context has changed since;
- would not be in-keeping with surrounding development (contrary to Policy LP24 of the Kirklees Local Plan and Paragraph 127 of the NPPF)
- loss of privacy/overlooking;
- loss of light/overshadowing/overbearing effect;
- prejudices neighbours from future extensions;
- poor standard of amenity for proposed occupiers in terms of natural light;

- noise, disturbance and odour from the proposed development;
- Many trees removed prior to application be submitted, and if permission is granted there should be new planting (but this will take time to mature);
- Harm to protected trees adjacent to the site;
- Development would impact upon trees and hedges at site, and this could reduce privacy of neighbours. Survey of trees required to understanding the impact upon of the development on trees and impact on the privacy of neighbours;
- Concerns with space for turning and manoeuvring;
- Concerns with relation to drainage;
- Concerns over right of access;
- Land ownership dispute;
- Concerns regarding construction phase.

As an amended site plan was provided, adjacent neighbouring properties were re-consulted following the receipt of this. The applicant's agent provided further arguments to support the application on 10th March 2021, but as this did not lead to alterations to the development it was not considered necessary to re-consult again.

Consultation Responses

KC Ecology: No comments received.

KC Environmental Health: No objections subject to conditions.

KC Highways Development Management: No objections subject to conditions.

KC Trees: Cannot support development until a tree survey, method statement and replacement planting plan are submitted.

The above is a summary of the consultation responses received. Full responses from consultees can be viewed on the Council's Planning Webpage.

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 Proposals Map.

Kirklees Local Plan (LP):

- **LP 1** – Achieving Sustainable Development

- **LP 2** – Place Shaping
- **LP 3** – Location of New Development
- **LP 7** – Efficient and Effective Use of Land and Buildings
- **LP 20** – Sustainable Travel
- **LP 21** – Highway Safety
- **LP 22** – Parking Provision
- **LP 24** – Design
- **LP 28** – Drainage
- **LP 30** – Biodiversity and Geodiversity
- **LP 33** – Trees
- **LP 51** – Protection and Improvement of Local Air Quality
- **LP 52** – Protection and Improvement of Environmental Quality

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 4** – Decision-Making
- **Chapter 5** – Delivering a Sufficient Supply of Homes
- **Chapter 9** – Promoting Sustainable Transport
- **Chapter 11** – Making Efficient Use of Land
- **Chapter 12** – Achieving Well-Designed Places
- **Chapter 14** – Meeting the Challenge of Climate Change, Coastal Change and Flooding
- **Chapter 15** – Conserving and Enhancing the Natural Environment

Assessment
The following matters are considered in the assessment below –

1) Principle of development
2) Impact on visual amenity (including impact upon historic environment)
3) Impact on residential amenity
4) Impact on highway safety
5) Ecology and trees
6) Other matters
7) Representations
8) Planning balance
9) Conclusion

1 – Principle of development:

NPPF Paragraph 11 and LP1 outline a presumption in favour of sustainable development. Paragraph 8 of the NPPF identifies the dimensions of

sustainable development as economic, social and environmental (which includes design considerations). It states that these facets are mutually dependent and should not be undertaken in isolation.

The dimensions of sustainable development will be considered throughout the proposal. Paragraph 11 concludes that the presumption in favour of sustainable development does not apply where specific policies in the NPPF indicate development should be restricted. This too will be explored.

The site is without notation on the KLP Policies Map. Policy LP2 states that:

> *"All development proposals should seek to build on the strengths, opportunities and help address challenges identified in the local plan, in order to protect and enhance the qualities which contribute to the character of these places, as set out in the four sub-area statement boxes below..."*

The site is within the Huddersfield sub-area. The listed qualities will be considered where relevant later in this assessment.

As set out in the Authority Monitoring Report (AMR), the assessment of the required housing (taking account of under-delivery since the Local Plan base date and the required 5% buffer) compared to the deliverable housing capacity, windfall allowance, lapse rate and demolitions allowance shows that the current land supply position in Kirklees is 5.88 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.

Policy generally seeks to support residential development upon unallocated sites. However, LP7 establishes a desired target density of thirty-five dwellings per hectare. However, LP7 states this target should be 'where appropriate' and in the policy justification set out in para 6.40 that the policy allows for lower 'densities where a site would not be compatible with its surroundings'.

This area is characterised by relatively large detached dwellings, set in spacious curtilages. As will be discussed below, Officers have concerns that one dwelling will appear contrived on the site in relation to surrounding development, therefore it is considered that a higher number of dwellings on the site would cause greater harm to the character and appearance of the area.

In respect of the above, the quantum of development is considered acceptable although a more detailed assessment of the proposal's design and its impact on the surrounding environment, assessed against LP24 amongst other Policies, is undertaken below.

2 – Impact on visual amenity (including impact upon historic environment):

The NPPF offers guidance relating to design in chapter 12 (achieving well designed places) whereby 124 provides a principal consideration concerning design which states:

"The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities."

Kirklees Local Plan policies LP1, LP2 and significantly LP24 all also seek to achieve good quality, visually attractive, sustainable design to correspond with the scale of development in the local area, thus retaining a sense of local identity.

LP24 states that proposals should promote good design by ensuring:

"a. the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape…"

Within the vicinity of the site, there are number of lanes and cul-de-sacs stemming from the north of Birkby Road with residential dwellings facing these cul-de-sacs, and the development site is situated in between two such lanes. The proposed property would also be accessed off a lane stemming from Birkby Road, and the dwelling would front this lane thereby the siting of the dwelling could potentially be acceptable from an urban morphology perspective.

It is noted that the applicant's agent has stated there is 'no clearly established characteristics of the built environment in around the site'. However, Officers disagree with this statement. The development in the locality, notably the residential properties adjacent to the site, consists of relatively large two storey dwellings within spacious plots with front and rear gardens. This creates a spacious and attractive character to the locality. It is pertinent to note that the depth of the residential properties immediately to the west of the site on Prince's View are a minimum of ~25 metres, whilst the depth of those immediately to the east on Birchroyd Close are a minimum of ~34 metres.

Whilst the application site is relatively wide, it is also very narrow in comparison to these neighbouring residential properties, being a depth of around 12 metres where the dwelling is proposed, when measured from the access track to the east boundary of the site. As a result of this, it is considered that any residential development on the site would likely appear

incompatible with existing development in the locality, and would appear cramped in relation to adjoining properties. The development which is proposed in this instance only serves to support this view held by Officers, given that the main body of the proposed dwelling would almost be a similar depth to the plot and there would essentially be no garden to the rear of the dwelling (the gardens are instead located to the sides). The fact that the gardens would have to be located to the side of the dwelling emphasises the contrived nature of the proposal.

The wide footprint of the dwelling would also be in contrast to other development in the immediate vicinity on the north side of Birkby Road, and the dwelling would roughly have a similar width as two dwellings combined on the east and west of the site.

This proposed development would be visible from the public domain, and as well as appearing cramped on what is a tight plot, it would appear as an incongruous addition when viewed against other development within the vicinity, notably the adjacent properties on Prince's View and Birchroyd Close.

In terms of the scale and appearance, the majority of the dwellings on the north side of Birkby Road within the vicinity of the site tend to be two storey in height. The proposed dwelling would be 1 ½ in height and it is assumed that this is the case so as to prevent harm to the amenities of neighbouring properties. A two storey dwelling would also appear more cramped on this tight site. However, as the dwelling would not be a similar height to surrounding neighbouring dwellings, it is considered that this further demonstrates that the proposal would represent a contrived form a development.

In addition, as referred to above, the width of the dwelling is considered to be in contrast to adjacent development being almost a similar width to two of the adjacent dwellings combined.

Further to the above, the narrow gable element to the front of the dwelling would appear as an awkward feature that would poorly relate to the proportions of the rest of the proposed building.

However, the proposed materials for the walls of the dwelling are considered acceptable given that stone is the dominant material within the locality. Further details regarding the materials for the roof could be conditioned should permission be granted.

Regarding landscaping, limited details have been provided in relation to this matter but details regarding the finer details of soft and hard landscaping, including means of enclosures could be conditioned should permission be granted. That said, and as noted already, because the private gardens would have to be located to the side of the dwelling, rather than to the rear due to the narrow plot depth, this emphasises the contrived nature of the proposal.

The applicant's agent has referred to development on the other side of Birkby Road to the site, and has noted there is a variety in terms of the design of dwellings, including a dwelling which was approved in 2012 (LPA ref: 2012/90153). Officers acknowledge that there is a mixture in terms of the style and appearance of the dwellings on this other side of the road. However, given the location of the application site, it more closely related to the development on the north side of Birkby Road. That said, the dwellings on the other side of the road to the site are also set within generously sized plots and this reinforces the spacious and attractive character to the locality. As noted above, the site is a narrow and constrained plot, and the proposed development on this site would appear as cramped and contrived form of development, especially in relation to surrounding development.

It is therefore considered that the proposed development, by virtue its siting on a constrained site and its contrived and incongruous layout and design, would fail to sympathetically relate to existing development within the locality and would appear as a visual intrusion within this location, detrimental to the visual amenities and overall character of the area. The proposal would fail to reinforce or enhance local distinctiveness. The proposal is therefore considered contrary to Policy LP24 of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework.

3 – Impact on residential amenity:

Section B and C of LP24 states that alterations to existing buildings should:

"…maintain appropriate distances between buildings' and *'…minimise impact on residential amenity of future and neighbouring occupiers."*

Further to this, Paragraph 127 of the National Planning Policy Framework states that planning decisions should ensure that developments have a high standard of amenity for existing and future users.

The properties most likely to be impacted by the proposed development are those sharing a boundary with the site, these being No's. 1, 3, 5 Birchroyd Close to the east of the site, 1, 2, 3 Prince's View and 10 Harefield Park to the west of the site, and Wood View Farm to the north west of the site. An assessment of the impact on neighbouring properties will be undertaken below. It is considered that the proposed development would be sited a sufficient distance away from any other neighbouring properties not referred to above so as to prevent undue harm to these properties in terms of loss of light, loss of privacy or overlooking, or the creation of an overbearing effect.

No's. 1, 3, 5 Birchroyd Close

The neighbouring properties, comprising two storey detached dwellings, are located directly to the east of the site and the rear elevation of the proposed dwelling would be adjacent to the rear boundary shared with these neighbouring properties.

In relation to No.1 Birchroyd Close, only a small section of the proposed development would be sited directly to the rear of this dwelling, and this would be single storey in height and would be over 16 metres away from the rear elevation of this neighbouring dwelling, thereby it is considered that the proposed development would not cause undue harm to No.1 in terms of loss of light, loss of outlook, overshadowing or the creation of an overbearing effect.

Regarding No.3, this proposed dwelling would be approximately 10.7 metres away from the conservatory to the rear of this neighbouring dwelling and approximately 14 metres away from the rear wall of the main body of this neighbouring dwelling. The dwelling at No.5 would be set approximately 10.5 metres from the proposed dwelling. This neighbouring dwelling at No.5 is set at an oblique angle and the side elevation, which only has windows at ground floor level, would face towards the proposed dwelling. Whilst a close relationship with both dwellings and the proposed development would be on higher land, given the 1 ½ storey height of the dwelling with the roof pitching away from these neighbouring dwellings, the orientation of the highest part of this building to No.3, and that there is already high planting on this rear shared boundary it is considered that, on balance, the proposal would not cause undue harm to No.3's and 5 in terms of loss of light, loss of outlook, overshadowing or the creation of an overbearing effect.

Regarding the matters of loss of privacy and overlooking, the rear roofslope of the 1 ½ storey element of the dwelling would directly face towards the rear gardens of No's 3 and 5, and there are windows within this roof slope. It is noted that there is planting on boundary between the site and these properties, but the planting appears to be under the ownership of the neighbours therefore the applicant has no control over this planting. In addition, given the proximity to of the proposed dwelling to this planting on the rear boundary it may also be the case that the proposal damages these trees (no evidence has been submitted to suggest otherwise). Thus, as there is no guarantee that these trees would be retained, and given the proximity of the rear windows to these properties, the proposal has the potential to clearly overlook the rear gardens of these properties and gain clear views of rear facing windows of these neighbouring dwellings, views of which are not currently experienced. Whilst these rooflights could potentially be obscurely glazed, it is felt that this would still allow for a perception of overlooking and loss of privacy. Officers also consider that the clear views from the proposed Juliet Balcony on the north side elevation over the rear garden of No.5 would be clear and new ones. The proposal is therefore considered to cause undue harm to No's 3 and 5 in terms of overlooking and loss of privacy.

In terms of the impact upon No.1, it is considered that the views of the rear of the property from the rooflights would be oblique ones, whilst the views of this neighbouring property from the proposed first floor window in the south side elevation would be oblique and mainly obscured by the pitched roof of the proposed single storey extending element. The proposal is therefore considered to prevent undue harm to No.1 in terms of overlooking and loss of privacy.

No's. 1, 2, 3 Prince's View and 10 Harefield Park

These properties consist of two storey detached dwellings which are located to the west of the site, and their rear boundary is shared with the site. However, the proposed dwelling would be set off from the boundary shared with these neighbouring properties and would be would be on lower land. In addition to this, the proposed dwelling is of a relatively modest height with its roof pitching away from these neighbouring properties. Given the above, it is considered that the separation distances involved between these neighbouring properties and the proposed dwelling (at a minimum, this being ~13.7 metres between the proposed dwelling and the dwelling at No.2, and ~5.7 metres between the proposed dwelling and the rear boundary of No.2) would be sufficient so as to prevent undue harm to the amenities of these properties in terms of loss of light, loss of outlook, overshadowing and the creation of an overbearing effect.

However, it is considered that the front facing rooflights and first floor windows in the proposed dwelling would gain clear views of the first floor rear windows of No's. 2 and 3, especially given the close proximity (~18 metres separation distance). Such a close relationship is not keeping with relationships within this spacious locality. Further to this, as the 1 ½ storey element of the dwelling would only be approximately 5 metres from the rear boundary of No's. 2 and 3, it is considered these same windows would clearly overlook these rear gardens to a detrimental level, especially given that current views of these gardens are oblique ones. The proposal is therefore considered to cause undue harm to No's 2 and 3 in terms of overlooking and loss of privacy.

It is considered that views of No.1 Princes View No.10 Harefield Park from first floor windows and rooflights would be oblique ones at a sufficient distance so as to prevent undue harm to these neighbouring properties in terms of overlooking and loss of privacy.

Wood View Farm

Wood View Farm is a 1 ½ storey dwelling to the north west of the site. The proposed dwelling would be orientated roughly 90 degrees to this neighbouring dwelling. As the proposed dwelling would be over 35 metres away from the dwelling at Wood View Farm it is considered that the proposal would not result in undue harm to this neighbouring dwelling in terms of overshadowing, loss of privacy or loss of light.

In relation to the impact upon the privacy garden of Wood View Farm, the proposed dwelling would be approximately 16 metres from this garden and this distance is considered sufficient to prevent undue harm in terms of the creation of an overbearing impact upon this garden. Given this separation distance, that no new windows would directly faces towards this garden and there are windows within No.12 Harefield Park which overlook this neighbouring garden already, it is considered that the proposal would not cause undue harm to Wood View Farm in terms of overlooking.

Noise, disturbance and odour

A third party has raised concerns in relation to noise nuisance from the proposed residential properties as well as odour. However, given that residential development is proposed in a predominantly residential area it is considered that the proposed use is unlikely to result in a material increase in the level of noise and odour experienced by neighbouring residential properties.

There is the potential for the intensification of the access road to Wood View Farm as a result of the proposed development to cause some additional nuisance to the properties to the east on Prince's View, but given that the track is set off from the rooms within these dwellings and that there would not be a significant number of movements along this lane it is considered that the level of disturbance to the living environment of these properties would not be unacceptable.

Amenity of future occupiers of proposed dwellings
It is considered that the proposed dwelling would benefit from adequate internal space, given that it would comfortably exceed the minimum required GIA for a 3 bedroom 2 storey dwelling as set out in the Nationally Described Space Standards. The amount of private external amenity space for the proposed dwelling is also considered acceptable.

That said, Officers have concerns with the level of privacy that would be enjoyed by the proposed property, especially given the close relationship between the windows of neighbouring properties both to the east and west of the site to the window and rooflights at first floor level of the proposed dwelling. Above, officers have outlined significant concerns with these relationships in terms of the impact upon the neighbouring properties, and it is considered that the level of privacy enjoyed by the occupiers of the proposed dwelling would be unsatisfactory.

It is therefore considered, that the proposed dwelling, by virtue of the close proximity of the proposed first floor windows and rooflights to the neighbouring properties of No's. 3 and 5 Birchroyd Close and No's. 2 and 3 Prince's View, would cause undue harm to these neighbouring properties in terms of loss of privacy and overlooking. In addition, the close relationship with these properties would result in the proposed dwelling having a limited level of privacy, thereby harming the living conditions of the future occupants of the proposed property. Therefore, the proposal would fail to provide a high standard of amenity for occupants of both the existing and proposed dwellings, contrary to Policy LP24 of the Kirklees Local Plan Chapter 12 of the National Planning Policy Framework.

4 – Impact on highway safety:

Paragraph 109 of the NPPF states that: *"Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe."*

In relation to parking, the Kirklees Highways Design Guide sets out that 2 on-site parking spaces are expected for 3 bedroom dwellings. Officers and Kirklees Highways Development Management (HDM) are consent that there is sufficient space to provide 2 on-site parking spaces on the site. Should permission be granted a compliance condition could be attached in relation to the surfacing and drainage of these parking areas.

Concerns have been raised from a third party in relation to turning and manoeuvring, but it is considered that there is ample room on the site to achieve this so as to leave the site onto Birkby Road in a forward gear.

Kirklees HDM are satisfied that suitable visibility splays of 2.4 x 43m have been presented for when exiting the site, but have requested a compliance condition stating that the sightlines to the eastern side of the access on to Birkby Road shall be cleared of all obstructions to visibility exceeding 1 metre in height. This matter could be condition should permission be granted.

Bin storage is noted to be located adjacent to the proposed car port and this is considered to be an acceptable arrangement to which Kirklees HDM have no objections to.

Given the above, subject to conditions, Officers consider that the proposal would not cause detrimental harm to the safe and efficient operation of the highway network. The proposal is therefore considered to comply with Policies LP21 and LP22 of the Kirklees Local Plan and Chapter 9 of the National Planning Policy Framework.

5 – Ecology and trees

It would appear that a number of trees on the application site have been removed relatively recently, and prior to the submission of this planning application. Whilst these trees were not protected, this is unfortunate as they were considered to be of amenity value. That said, should permission be granted a compliance condition relating to the submitted replacement planting plan could be conditioned to mitigate this loss in accordance with Policy LP33 of the Kirklees Local Plan.

That said, to the west of the site and close to the access there are trees protected by Tree Preservation Order 31/92. It appears from the submitted plans that the access is to remain unaltered. However, the Council's Arboricultural Officer has raised concerns that if the proposals were to include upgrades or new surfacing to the existing track this could cause damage to roots that are likely to be growing under this area. The Arboricultural Officer has also noted that the importing of materials and machinery to the site will all have to pass over the rooting area of the adjacent protected trees which could lead to compaction of the rooting area. As no details of the driveway surface or methodology for any works here have been provided, the Council's Arboricultural Officer has noted that they cannot support the approval of the application.

Whilst Officers understand these concerns of the Arboricultural Officer, the application documentation does not refer to the upgrading of this access and the applicant's agent has stated that this is not the intention. In relation to construction methodology, it is considered that a condition requesting an Arboricultural Method Statement is sufficient to ensure the protection of these trees at the construction phase.

Given that a number of trees within the site have recently been removed which had ecological potential and that Policy LP30 of the Kirklees Local Plan sets out that development should provide a biodiversity net gain, a condition requesting a Biodiversity Enhancement Method Statement could be attached should permission be granted.

6 – 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 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.

Due to the nature of the scheme, this being a proposal providing one new residential unit within the site, it is considered that one electric vehicle charging for this dwelling should be provided to aid in the contribution to climate change. This matter could be conditioned should planning permission be granted.

Drainage
Concerns have been raised from third parties in relation to drainage as a result of the proposed development. However, the site is not within a high risk flood zone being located within Flood Zone 1 and the site is identified as being at low risk of surface water flooding. In terms of drainage the submitted application outlines that foul water would connect to an existing mains sewer, with specific details subject to the proper assessment via building regulations and Yorkshire Water. As noted above, a condition can be attached to prevent surface water run off the site from the driveway.

Construction Practices
The Council's Environmental Health Officer has requested that construction site working times are conditioned. Given that construction practices are covered by other regulations it is not considered necessary or reasonable to attach such a condition, but an informative regarding such practices can be attached instead. It is also noted that construction is a matter of concern to

some third parties, but this is not a material planning consideration in the assessment of this application.

7 – Representations:

6 representations have been received objecting to the application. A number of the comments raised have been addressed in the above assessment. Any other comments will be addressed below:

Third Party Comment: Concerns about land ownership and rights of access.
Officer Response: These are matters which are not material planning considerations in the assessment of this application.

Third Party Comment: A tree survey should be submitted alongside the application as the proposal could result in the loss of the trees to the rear of the site (which would preserve the privacy of the neighbouring properties to the rear should permission be granted):
Officer Response: Officers agree that the proposal may negatively impact upon the health of these trees to the rear of the site, but these trees are not protected and not considered to be of high amenity value. The impact on neighbouring properties as a result of the loss of these trees is discussed in more detail in sub-section 3 of this assessment, but it is not considered necessary to request a tree survey in this instance, especially given Officer concerns with the principle of residential development on this site.

Third Party Comment: The proposal would prejudice neighbours from future extensions.
Officer Response: There are no extant or current applications for extensions at neighbouring properties. Each case is also assessed on its own merits. Given the above, the weight that can be given this matter is considered to be limited.

8 – Planning balance:

Paragraph 12 of the NPPF states that where a planning application conflicts within an up to date development plan, permission should not be granted. Paragraph 12 goes onto note that Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed. This is consistent with Section 38(6) of the Planning and Compulsory Purchase Act 2004.

In this case, and as discussed above, the proposal is considered to cause detrimental harm to the visual amenities and character of the area, as well as undue harm to the amenity neighbouring properties in terms of loss of privacy and overlooking. It is also considered that the proposal would not provide an adequate standard of amenity for future occupiers of the proposed development in terms of the level of privacy experienced. The proposal is therefore considered to be contrary to Policy LP24 of the Kirklees Local Plan.

In terms of materials considerations, a dwelling with a relatively similar footprint and design was approved at the site on 16th January 2003 (2002/93523). This constitutes a material consideration in the assessment of this planning application. However, as this permission has lapsed (i.e. it was not implemented) and this decision was a considerable time ago (over 18 years) the weight which can be ascribed to this previous permission is reduced.

Further to this, it is considered that the 2003 permission was granted under a different policy context, for instance the Kirklees Local Plan was adopted in 2019 and the NPPF was first published in 2012 (and has subsequently been revised). Both Policy LP24 of the Kirklees Local Plan and Chapter 12 of the NPPF stress the importance of good design. Of note, Policy LP24a outlines that to promote good design, the form, scale and layout and detail of development should respect and enhance the character of the townscape.

Importantly, the Government has recently placed further emphasis on high quality design. Paragraph of 124 of the NPPF stresses that the creation of high quality buildings and places is 'fundamental' to what the planning development process should achieve. Paragraph 127 of the NPPF also sets out guidance for Local Planning Authorities in relation to the design of development. Further to the above, the National Design Guide was published in 2019 which sets out the characteristics of well-designed places and highlights the Government's motivation to create well-designed places. It is worth noting that the previously approved development is not considered to constitute good design.

In addition to the above, Chapter 12 of the NPPF and Policy LP24c highlights the importance of protecting residential amenity, including that of future occupiers. Of note, unlike the now abolished UDP, the Kirklees Local Plan does not refer to minimum separation distance standards for development.

The applicant's agent has referred to case law, this being *R (Midcounties Co-operative Limited) v Forest of Dean District Council [2013] EWHC 1908 (Admin),* which sets out that a previous decision is a material consideration unless this earlier decision is distinguishable. As noted above, the Council are not in disagreement that the previous decision is a material consideration in the assessment of this case, but the weight to ascribe to this also requires consideration. However, as the previous permission has lapsed, this decision was a considerable time ago (over 18 years ago at the time of writing) and with the change in the policy context and national guidance referred to since this previous decision, it is considered that the weight that can be afforded to this previous permission is modest.

Further to the above, there are some economic and social benefits associated with housing development, including a contribution to the Council's five year housing land supply, but these benefits are considered to be limited given the application is for one dwelling.

It is considered that the minor benefits associated with the proposal as well as the lapsed planning application at the site are material considerations, but they are clearly outweighed by the harm caused by the proposed development as a result of the conflict with the Development Plan.

9 – 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/or 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 **Refuse**

Decision Authorisation - Delegated Powers
Application Number: 2020/94292
Officer Recommendation: Refuse
Reasons for Refusal

1. The proposed development, by virtue its siting on a constrained site, as well as its contrived and incongruous layout and design, would fail to sympathetically relate to existing development within the locality and would appear as a visual intrusion within this location, detrimental to the visual amenities and overall character of the area. The proposal is therefore contrary to Policy LP24 (a) of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework.

2. The proposed dwelling, by virtue of the close proximity of the proposed first floor window and rooflights to the neighbouring properties of No's. 3 and 5 Birchroyd Close and No's. 2 and 3 Prince's View, would cause detrimental harm to these neighbouring properties in terms of loss of privacy and overlooking. In addition, the close relationship with these properties would result in the proposed dwelling having an unsatisfactory level of privacy, thereby harming the living conditions of the future occupants of the proposed property. Therefore, the proposal would fail to provide a high standard of amenity for occupants of both the existing and proposed dwellings, contrary to Policy LP24 (b) of the Kirklees Local Plan Chapter 12 of the National Planning Policy Framework.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Location Plan	0101	P02	12th February 2021
Topographic Survey	FBA_213_Birkby Road Sheet 1	-	5th January 2021
Proposed Elevations and Floor Plans	0702	P01	5th January 2021
Proposed Site Layout Plan	0701	P01	5th January 2021
Application form	-	-	5th January 2021
E-mail from applicant's agent dated 10th March 2021	-	-	10th March 2021
Letter from Nick Willock dated 10th March 2021	-	-	10th March 2021
Proposed Site Frontage Planting	9601	P01	10th March 2021
Temporary Access and TPO Protection Plan	1001	P01	10th March 2021

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.

An amended site plan was received with a reduced red line area which omitted part of the access track which runs to Wood View Farm.

The applicant's agent was notified that Officers would not be able to support the principle of residential development due to concerns that such development would fail to sympathetically integrate with built development in the locality. For this reason, amended plans were not requested. The applicant's agent was informed that the application would be recommended for refusal if not withdrawn. The applicant's agent did not accept this opportunity to withdraw the application, but provided further information in support of this application. This additional information was considered by Officer, but did not address their concerns therefore the application has been refused.

Report Dated: 11.03.2021