



Statement of Case

Planning Appeal

St Lukes, East Bierley

Planning appeal against the refusal by Kirklees Borough Council for
Erection of 5 Dwellings, Land at St Luke's, Bierley Marsh, East
Bierley. BD4 6PL

APPLICATION NO: 2020/94345

A previous application for the site by the same developer 2020/90996 Erection of 6 dwellings – was withdrawn 16th December 2020 following detailed negotiations and discussions with officers which had been ongoing over a period of many months. The local planning authority entered into constructive discussions with the applicant and the revised application addressed those concerns and resulted in a recommendation for approval. Refer to supporting document – Planning Application History and Process.

The refused application to which this statement relates, was validated on 21st December 2020 with an initial target date for decision of 15th February 2021. The application was recommended by Planning Officers for approval and supported by a Officers Report dated 02nd September 2021.

Covid 19 restrictions meant the case officer was not present at the committee meeting to personally represent and justify his report under questioning by the committee, with a single officer covering all cases without detailed individual project knowledge.

The application was heard by the committee as a result of a concerted campaign against the development, orchestrated by a neighbour to the site. This is evidenced by the significant amount of negative communication across the mediums, received by the planning authority throughout the period of the two applications. Meetings were held with the principal objectors during the deliberation period, where the proposals were reviewed in detail, in an attempt to resolve the concerns. The applicant is concerned that the decision by the committee was made without the benefit of the case officer being present to be able to answer queries in detail. Committee members chose to extract explanatory statements from the report without context and present them as valid policy reasons for a refusal. As the Report's recommendations were ignored, the final reasons for refusal were debated at random within the chamber to ensure that a documentable reason for the refusal could be agreed.

Relevant Policies

The following national policies and guidance contained within the National Planning Policy Framework together with the Kirklees Local Plan (2019) were considered satisfied by planning officers and consultees with reference to the application



- LP 01 – Achieving sustainable development
- LP 02 – Place shaping
- LP 07 - Efficient use of land
- LP 21 – Highways and Access
- LP 22 - Parking
- LP 24 – Design
- LP 30 - Biodiversity
- LP 33 - Trees
- LP 35 – Historic Environment
- LP 52 – Protection and improvement of environmental quality
- LP 61 – Urban Green Space

The following Supplementary Planning Guidance documents were also considered satisfied by the detail of the application

The Kirklees Open Space Study (KOSS) 2015 (Revised 2016)
Highways Design Guide SPD
Housebuilders Design Guide SPD

The full planning application was refused by Kirklees Council Heavy Woollen planning sub-committee, with a refusal notice dated the 07th September 2021, for the following reason: -

Reason1

The applicant has failed to demonstrate that the open space as designated in the Kirklees Local Plan is no longer required. Insufficient evidence has been provided to justify to the Local Planning Authority that the land in its current form cannot be used for the purposes of open space, sport or recreational facilities. Nor has it been demonstrated that this land is clearly no longer required for such uses. The proposed development would, therefore, fail to meet the criteria set out within Policy LP61 of the Kirklees Local Plan.

Reason2

The proposed development, due to the intensification of the site arising from the density of development, together with the design of the proposed dwellings, would negatively affect the character of the area, contrary to Policy LP24 of the Kirklees Local Plan, the adopted Housebuilders Design Guide SPD and guidance contained within Chapter 12 of the National Planning Policy Framework.

Appellant Response

Reason1

Please refer to separate Report prepared by ELG Planning Consultants
The report outlines the reasons that the proposals are in accordance with LP 61 – Urban Green Space



Rason2 Intensification

Any development of an open site will be an “intensification” of its use. The site is currently left barren after the demise of the business that previously occupied it to grow chrysanthemums for the nearby nursery.

Without development, the site will negatively impact both the village and the listed memorial. Vacant and redundant brownfield land within development limits should be appropriately developed for essential housing needs.

The council’s Strategic Housing has identified that the site lies in an area which has one of the highest levels of need for housing in Kirklees, in particular 3 plus bedrooms as well as 1–2-bedroom homes and 1–2-bedroom homes for older people specifically. Given the identified need and demand in the area, the scheme delivers four 3-bedroom dwellings and a single three-bedroom bungalow, suitable for a wide range of people but specifically older people. All properties have a bedroom adaptable to be a home office or workplace.

Density

The density of the development is in accord with local policy guidance and good practice.

The proposed terrace is by its nature a relatively dense form of build and reflects the character of the Victorian terraces within the nearby conservation area. It is of a scale which affords adequate amenity space and parking, also in accord with local policy and guidance.

The proposed bungalow to the rear, sits harmoniously with its single storey neighbours to the rear and respects the listed memorial in its low scale and massing. The introduction of a “garden wall” to the boundary, reinforces this enclosure and separation and generates a visual backdrop to the memorial, consistent with other examples within the village.

The bungalow is a single storey element concealed behind a stone “garden wall”. The terrace is a calming and enclosing element to the marsh. Both have minimal impact upon the Memorial. The effective and efficient use of derelict land is in accordance with Policy LP7.

Design

The Design Statement and Heritage Statement which supported the application clearly set out the quality of the design response to the site.

The proposed design draws on the richness of nearby Victorian houses and reinterprets them to create its own architecture, articulated through a strong sense of materiality and attention to detail. The Memorial Trust were consulted on the original development proposals and responded positively to the Officer, confirming that the Kirklees Conservation officer should have the ultimate decision on impact. Constructive meetings were held with Design and Conservation officers during the withdrawn application process, and which informed and guided the revisions which are represented by the appealed submission. We understand that a positive recommendation was issued to the case officer. This was not made a public response.

The proposals are in accordance with Policies LP 01 Achieving sustainable development, LP 02 – Place shaping, LP 24 Design and LP 35 Historic Environment

“Negatively Affect the Character of the Area”

The character of each part of Kirklees is defined by the distinctive local landscape and townscape (buildings, open spaces and trees) and the presence of historic buildings. The village of East Bierley is no exception to this. The proposed development of this small parcel of land can be achieved whilst retaining the characteristics that make East Bierley attractive and distinctive.

The proposed development is well designed, is informed by a good understanding of the site and its context and takes opportunities to improve the local environment to create a sense of place



which responds to the existing patterns of development, and which contributes to the character of this area.

The proposed new buildings will be of a size, position and orientation that will not result in any significant adverse impact on neighbouring properties through overlooking, overbearing, overshadowing or a loss of outlook. The proposal is a sufficient distance and at an orientation from neighbour's boundaries and habitable room windows to avoid overlooking.

The resulting separation distances, orientation of the properties and location/orientation of new window openings, mean the neighbouring buildings will be unaffected by the development.

Therefore, it is considered that there will be no concerns in regard to overlooking, loss of privacy or the proposals being overbearing on the neighbouring dwellings.

With regards to scale and appearance, the proposal is designed sympathetically to neighbouring buildings so as not to appear overbearing and oppressive.

The design of the proposed development is both sympathetic and appropriate within the context of the village, reinforcing local distinctiveness (refer to artists impression). This has been achieved by sensitive design in relation to scale, form, siting, appearance and materials.

Other Matters

The minutes of the committee meeting do not accurately record the numerous items raised and discussed as "potential reasons for refusal" during the meeting. For clarity we list these below with a brief description of their status and impact.

Listed Memorial

The relationship to the listed memorial was cited as unacceptable, but as documented within the submission, had been reviewed by the Memorial Trust and the Kirklees Conservation Officer who both found the proposal acceptable and not harmful to the listed structure or its garden, or the listed church building and conservation area.

Common Land

Throughout the two applications, the issue of the potential impact upon common land was of concern to both applicant and local authority. This issue was satisfactorily resolved prior to determination and no impact upon common land is necessary to facilitate the development.

Highways

The highways officer is supportive of the proposal and raised no concerns.

The proposal is in accord with Policies LP 21 Highways and Access and LP 22 Parking

Arboricultural and Ecology

Ecology Reports and Arboricultural Assessments supported the application.

The tree Officer has no concerns with the proposal and supports approval.

The councils Ecologist has no issues with the proposal, the quality of the land or thr loss of biodiversity.

The proposals are in accordance with Policies LP 30 Biodiversity and LP 33 Trees

Separation Distances

Whilst the adopted Local Plan has omitted dimensional criteria under Policy 11.1, reference to the old UDP Policy BE12 represents good practice.

BE12 required 12m between habitable room windows and a blank wall or a wall containing the window of a non-habitable room, where secondary windows were treated as non-habitable room windows.



BE12 clarified it was acceptable practice to take the stated dimensions from the original wall of a dwelling and not the dwelling as extended ie. not from a resulting extension or conservatory. With direct reference to the dimensions as confirmed within the Design Statement in relation to the neighbouring building Thornfield, the above criteria are satisfied.

Conclusion

The changes to planning officer and the delays caused by both COVID19 and Kirklees Council internal processes, have meant that this developable parcel of land, capable of meeting housing need in the village, has been stifled for an unacceptable length of time.

We believe that the local authority should grant planning permission on clearly developable sites where it can be shown that the proposed development would result in a substantial and specific benefit to the local community, that clearly outweighs the small degree of harm caused by development in general. We further believe that local authorities should be pro-active in their support for appropriate development and not reluctant to help development teams navigate their own internal hierarchy and processes, resulting in unacceptable delays and costs to developers.

The redevelopment of the site has been accepted in principle by the case officer and it is not considered that there are any overriding circumstances for members to have reached an alternative view.

We support Local Plan policy guidance which identifies that development proposals will not be permitted which would be harmful. The significant benefits of development should however be embraced by Kirklees when it has been demonstrated that they are appropriate. To reach that stage requires public and private sector engagement in a positive manner. This has unfortunately not been our experience on this project.

Costs

When refusing the application, the local planning authority committee did not consider carefully whether it had a sufficiently strong case, capable of being argued at appeal, based on the material before it. The procedures under COVID restrictions meant that the case planning officer was not present at the meeting, with a single planner attempting to cover all the detailed applications being considered that day. The officer had no detailed knowledge or historic knowledge of the proposal and could not therefore satisfactorily support the detail of the officer's report/recommendation, when responding to the varied issues raised by committee members. The committee chose to ignore the recommendations of the officer's report and debate issues which were therefore ill informed.

We contest that the Local Authority in ignoring the Officers recommendation, derived over many months of consultation and deliberation, did not behave reasonably, and therefore we seek costs awarded against them, on the basis that their behaviour has directly caused the clients to incur expenses that would not otherwise have been necessary.



These additional costs include.

- Interest payments over the extended period, required for the Option Agreement
- The considerable increase in building material costs, over and above what could have reasonably been anticipated when submitting the application in December 2020. As a revised proposal, amended to reflect detailed discussions on the original proposal, the clients should have expected a more pro-active and efficient planning process.
- Consultants' fees to prepare and submit the appeal
- Disruption to the continuity of work that a small developer must have, to ensure workforce and cash flow efficiencies essential to the operation of a business.