

KIRKLEES METROPOLITAN COUNCIL STATEMENT OF CASE
TOWN AND COUNTRY PLANNING ACT 1990

Appeal by Mr Philip Fletcher against the refusal of Kirklees Metropolitan Council to grant outline planning permission for the erection of a retail unit with flat above at 1 Grimscar Avenue, Birkby, Huddersfield, HD2 2TY

Appellant:	Mr Umair Aziz
Appeal Site:	1 Grimscar Avenue, Birkby, Huddersfield, HD2 2TY
Appellant's Agent:	Mr Philip Fletcher
LPA Reference:	2021/90242
Planning Inspector Reference:	APP/Z4718/W/21/3276517

1 INTRODUCTION

- 1.1 The Local Planning Authority's (LPA) case in this appeal is principally set out within the officer's report for the planning application, a copy of which was sent to the Inspectorate with the appeal questionnaire. This Statement of Case does not intend to repeat or duplicate the arguments set out in this report, but instead focusses on responding to and clarifying the key issues that arise from the appellant's grounds of appeal.

2 COMMENTS ON THE APPELLANT'S GROUNDS OF APPEAL

Absence of Sequential Test

- 2.1 The third paragraph of the Appellant's Statement of Case relates to the LPA's first ground for refusal. The Statement of Case refers to two alternative sites in Birkby Local Centre, which were cited in the LPA delegated officer report, and these were identified by the LPA from the last occupancy survey for Birkby Local Centre (carried out in September 2020).
- 2.2 The Appellant's Statement of Case outlined that these two sites referred to by the LPA would be of no financial gain to the appellant as the appellant owns the appeal site, the Local Centre sites have no off-street parking and the Local Centre units are unsuitable and insufficient in size and scale. However, if the Local Centre sites are available, the LPA consider that limited weight can be

given to the fact that the appellant does not own these sites in the Local Centre. The Statement of Case also does not elaborate on why these units are of insufficient size and scale in this particular instance. Further to this, the LPA fails to understand why off-street parking is required for such a retail use. Other commercial uses within Birkby Local Centre do not require parking due to its accessibility. The LPA therefore consider that the appellant has still not sufficiently demonstrated why these two units listed are not suitable for the proposal.

- 2.3 Furthermore, the appellant's agent in the Statement of Case still fails to outline if there are any other sites/shop units which may have come available in or on the edge of Birkby Local Centre since the time of the occupancy survey (September 2020), and if there are, why these are not suitable for the proposal.
- 2.4 In summary, the appellant has failed to provide a sequential test, and as outlined in Paragraph 91 of the NPPF and Policy LP13 of the Kirklees Local Plan, where an application fails to satisfy the sequential test, it should be refused. In the absence of such information, the LPA consider that it is not possible to satisfactorily conclude whether the proposal would have a harmful effect on the vitality and viability of the Birkby Local Centre.

Character and Appearance of the Area

- 2.5 The fourth paragraph of the Appellant's Statement of Case refers to the LPA's second ground for refusal, this being the impact upon character and appearance of the area, as well as the significance of the Birkby Conservation Area.
- 2.6 The Appellant's Statement of Case refers to the outline form of the application. Whilst the LPA acknowledge that the application is in outline form, layout, scale and appearance are matters to be considered as these were selected in the application form.
- 2.7 The Appellant's Statement of Case states that there is a 'substantial variety of styles and sizes in the area'. The Statement of Case then notes that the design is 'simplistic' and 'consistent with the area'.
- 2.8 The LPA strongly disagree with Appellant's Statement of Case that the design is in-keeping, and consider that it fails to sympathetically integrate with built development in the locality. Firstly, the Appellant's Statement of Case does not address the concerns of the LPA in relation to siting and layout. Of note, the LPA consider that the proposed building, by virtue of its cramped appearance taking up a large amount of the plot (without any amenity space) and its siting further forward than the buildings neighbouring the site, would appear as a contrived and visually jarring form of development.

- 2.9 In regard to scale and appearance, whilst the LPA acknowledge that there is some variety in the locality, the LPA hold the view the majority of dwellings in the immediate vicinity are two-storey in height, including along Grimscar Avenue, which the building is proposed to front. The LPA hold the view that bungalow dwellings are further to the north and read part of Norwood Road. As a result of this, the LPA consider a 1 ½ storey building on this plot would appear highly peculiar, thereby further contributing to the visually jarring nature of this proposed development.
- 2.10 The Appellant's Statement of Case also fails to address the LPA's concerns with the proposed dormers. As outlined in the LPA delegated officer report, the LPA consider these dormers are bulky and would dominate the building and overwhelm the ground floor, whilst appearing incongruous within the locality.
- 2.11 The Appellant's Statement of Case states that there would be no harm to the Birkby Conservation Area but fails to discuss the significance of this adjacent conservation area (as required by Paragraph 194 of the National Planning Policy Framework) and how the proposal would impact upon its significance. Without a discussion of the significance of this designated heritage asset, the LPA do not understand how such a conclusion can be reached within the Appellant's Statement of Case. Furthermore, the LPA disagree with the Appellant's Statement of Case given significant concerns with the design of the proposal, and consider that the proposal would cause less than substantial harm to the significance of the Birkby Conservation Area (without clear public benefits to outweigh this harm being demonstrated).

Residential Amenity

- 2.12 The fifth paragraph of the Appellant's Statement of Case refers to the LPA's third reason for refusal, this being the impact upon residential amenity. However, the LPA consider the Appellant's Statement of Case does not pay specific attention to any of the Council's concerns in this respect. Whilst reference to a lack of objections to the proposal by neighbours is acknowledged by the LPA, the LPA consider that this in itself does not mean that the application is acceptable on residential amenity grounds, especially as regard should be had to future occupiers (as outlined in Policy LP24(b) of the Kirklees Local Plan and Paragraph 130(f) of the National Planning Policy Framework).

Highways Safety

- 2.13 The penultimate paragraph of the Appellant's Statement of Case refers to the LPA's fourth reason for refusal, this being the impact upon highway safety. The Appellant's Statement of Case essentially outlines that street parking is acceptable in the locality and that the retail unit would not attract 'large scale traffic movements'.

2.14 However, the Appellant's Statement of Case does not make any reference to the point that the proposal would displace the current off-street parking area serving No.1 Grimscar Road (which can currently accommodate up to 3 vehicles). Further to this, the Statement of Case fails to acknowledge that there would be no space for off-street parking for the proposed residential unit. The LPA consider that the displacement of current off-street parking onto the highway network, as well as the further demand for highway parking that would arise from the proposed retail unit and residential unit, would increase the likelihood of conflict between highway users. Of note, the LPA consider that the surrounding highway network is well-used and there is a relatively high level of on-street parking in the locality, which increases the likelihood of conflict between highway users. The LPA also consider it relevant to note that the No.1 Grimscar Avenue and the site are close to a number of junctions whereby highway parking could result in visibility issues for vehicles from these junctions. In summary the LPA considers that the proposal would result in a detriment to the safety and convenience of highway users including pedestrians.

3 CONCLUSIONS

3.1 It is the opinion of the Local Planning Authority that the appeal proposal clearly conflicts with Government guidance contained within the National Planning Policy Framework as well as development plan policy for the reasons set out in its decision notice, the case officer's delegated report, and this statement of case. Accordingly, the Inspector is respectfully requested to uphold the decision made by the Local Planning Authority and dismiss this appeal.

4 SUGGESTED CONDITIONS

Without prejudice to the case put forward by the Local Planning Authority, should the Inspector be minded to allow the appeal it is respectfully requested that the following conditions be attached to the permission granted:

1. No development shall be commenced until full details of the access and the landscaping of the site (hereinafter called 'the reserved matters') have been submitted to and approved in writing by the Local Planning Authority.

Reason: This permission is in outline only and to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and Article 5(1) of the Town and Country Planning (Development Management Procedure) Order 2015 (as amended).

2. In the case of the reserved matters, application for approval shall be made not later than the expiration of three years beginning with the date of this permission.

Reason: This permission is in outline only and to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and Article

5(1) of the Town and Country Planning (Development Management Procedure) Order 2015 (as amended).

3. The development to which this permission relates shall be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last reserved matters to be approved.

Reason: This permission is in outline only and to comply with the provisions of Section 92 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004, and Article 5(1) of the Town and Country Planning (General Development Procedure) Order 2015 (as amended).

4. Except where otherwise stipulated by conditions attached to this permission and unless otherwise agreed with the Local Planning Authority, the development hereby approved shall be carried out strictly in accordance with the plans and specifications schedule listed below.

Reason: For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority, and in accordance with Government guidance contained within the National Planning Policy Framework.

5. Prior to the commencement of development of the building hereby approved above slab level, full details of the materials to be used for the external walls and roof of the building hereby approved shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be constructed in accordance with the approved details and be retained as such.

Reason: In the interests of visual amenity, to preserve the significance of the adjacent Birkby Conservation Area, and to accord with Policies LP24 and LP35 of the Kirklees Local Plan and Chapters 12 and 16 of the National Planning Policy Framework.

6. Prior to the first occupation of the building hereby approved, full details of bin storage and collection areas shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and the building not brought into use until the agreed details have been provided. The refuse/bin storage and collection areas so approved shall thereafter be retained.

Reason: In the interests of residential and visual amenity, in the interests of highway and pedestrian safety and to accord with Policies LP21, LP24 and LP52 of the Kirklees Local Plan and Chapters 9, 12 and 15 of the National Planning Policy Framework.

7. Prior to the first occupation of the building hereby approved, a scheme for biodiversity enhancement, shall be submitted to and agreed in writing with the Local Planning Authority. The biodiversity enhancement measures shall be carried out in accordance with the approved details prior to the first use of the building hereby approved and shall be retained as such thereafter.

Reason: To protect habitats of importance to biodiversity conservation from any loss or damage in accordance with Policy LP30 of the Kirklees Local Plan and Chapter 15 of the National Planning Policy Framework.

8. Prior to the commencement of the development of the building hereby approved above slab level, a Sustainability and Energy Statement, outlining how sustainability will be built into the approved development, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, and prior to the first use of the building hereby approved, these sustainability measures will be implemented in accordance with the approved details.

Reason: To ensure sustainable construction and reduce carbon emissions and to comply with Policies LP51 and LP52 of the Kirklees Local Plan and Chapter 14 of the National Planning Policy Framework.

9. The first-floor window in the north side elevation and rooflights in the rear elevation hereby approved shall be fixed shut unless parts of these openings which can be opened are more than 1.7 metres above the first floor level, and obscurely glazed (Level 3 or above), and shall be retained as such thereafter.

Reason: To safeguard the privacy and amenities of the occupants of the neighbouring properties and to comply with Policy LP24 of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework.

Plans and specification schedule:

Plan Type	Reference	Version	Date Received
Application Form	-	-	2nd February 2021
Location Plan at a scale of 1:1250 on A4 paper	-	-	2nd February 2021
Proposed Block Plan, Front and Rear Elevations and Floor Plans	-	-	2nd February 2021
Proposed Side Elevations	-	-	2nd February 2021

Link to full planning application:

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2021%2F90242>

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Date: 08/10/2021