

**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:         | <b>2021/62/91597/E</b>                          |
| Site Address:         | Land Adjacent, 58, Upper Road, Batley, WF17 7LT |
| Description:          | Erection of electronic gates                    |
| Recommending Officer: | Jennifer Booth                                  |

**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.**

Emma Thompson

***AUTHORISED OFFICER***

**Date:** 27-June-2024

## **OFFICER REPORT**

### **NOTE:**

This application was referred to District Wide Planning Committee by Cllr H Zaman and Cllr A Zaman. Following consideration of the committee request along with full Officer report and presentation, the Chair of the District Wide Planning Committee has delegated the application to officers for determination. This is in accordance with the Council's Scheme of Delegation set out in the Constitution.

### **Site Description**

The application site relates to an estate of 8no. dwellings arranged into two terraces, facing a cul-de-sac with access to Upper Road, in the settlement of Batley.

### **Description of Proposal**

This is an application for full planning permission for steel electronically opening gates, approx. 1.8m in height and approx. 9.5m in width, including all sections of the structure.

### **Relevant Planning History**

2021/91596 Discharge of condition 4 (Boundary) on previous permission 2015/92255 for erection of 8 dwellings *Refused 16/JUL/2021 N.B. Condition 4 on boundary fencing not discharged*

2020/93513 Discharge of condition 4 (Boundary) on previous permission 2015/92255 for the erection of 8 dwellings *Refused 17/DEC/2020 N.B. Condition 4 on boundary fencing not discharged*

2019/93512 Discharge condition 9 (landscaping) on previous permission 2015/92255 for erection of 8 dwellings *Approved 06/DEC/2019*

2017/91656 Discharge conditions 3, 4, 6, 8, 9, 10, 11, 12 on previous permission 2015/92255 for erection of 8 dwellings *Part Approved/Part Refused 09/OCT/2017 N.B. Condition 4 on boundary fencing not discharged*

2017/91652 Variation condition 2 (plans) on previous permission 2015/92255 for erection of 8 dwellings *Refused 14/JUL/2017*

2016/91672 Removal of condition 13 (Affordable Housing) on previous planning permission 2015/92255 for the erection of 8 dwellings *Approved 22/JUL/2016*

2015/92255 Erection of 8 dwellings *Approved 15/APR/2016*

2014/91793 Outline application for demolition of existing derelict arts centre building and erection of residential development and car parking *Granted under Reg.4 General Regulations*

### **History of negotiations**

Kirklees Development Management Charter together with the National Planning Policy Framework and the DMPO 2015 encourages negotiation/engagement between Local Planning Authorities and agents/applicants, this is only within the scope of the application under consideration. Discussions have taken place via email outlining the position of Officers being unable to support the proposals and a suggestion that the agent could pursue something similar through permitted development. The agent responded to confirm that they did not wish to withdraw the application.

### **Representations**

The application was advertised by neighbour letters, which expired on 18/06/2021

As a result of the above publicity, no representations have been received.

Cllr H Zaman & Cllr A Zaman - support

### **Consultation Responses**

K.C. Highways DM- no objections

### **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 27<sup>th</sup> February 2019).

The site is UNALLOCATED on the Kirklees Local Plan Proposals Map

On 12<sup>th</sup> 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.

### **Kirklees Local Plan Policies**

- LP01 – Achieving sustainable development
- LP02 – Place shaping
- LP21 – Highway safety and access
- LP22 – Parking
- LP24 – Design
- LP35 – Historic environment
- LP52 – Protection of environmental quality

Kirklees Council has adopted supplementary planning guidance on highway design which carries full weight in decision making. This guidance indicates how the Council will usually interpret its policies regarding highway design and layout, although the general thrust of the advice is aligned with both the Kirklees Local Plan (KLP) and the National Planning Policy Framework.

### **National Policies and Guidance:**

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published December 2023, and the Planning Practice Guidance Suite (PPGS) first launched 6<sup>th</sup> 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 6 – Building a strong, competitive economy
- Chapter 8 – Promoting healthy and safe communities
- Chapter 11 – Making effective use of land
- Chapter 12 – Achieving well designed and beautiful places
- Chapter 16 – Conserving and enhancing the historic environment

### **Assessment**

#### Principle of development:

Chapter 2 of the NPPF introduces the presumption in favour of sustainable development, which is the focus of policy LP1 of the Kirklees Local Plan (KLP). This policy stipulates that proposals that accord with policies in the KLP will be approved without delay, unless material considerations indicate otherwise. Policy LP24 of the KLP is the overarching policy in relation to the design of all proposals, requiring them to respect the appearance and character of the existing development in the surrounding area as well as to

protect the amenity of the future and neighbouring occupiers, to promote highway safety and sustainability. These considerations, along with others, are addressed in the following sections in this report.

The site relates to a residential development on a brownfield site in a settlement. The application proposal pertains to a set of gates at the access of a non-classified cul-de-sac from a public highway. The site is unallocated in the Kirklees Local Plan. This sort of development is considered acceptable subject to the satisfactory taking into account of other material considerations.

#### Impact on visual amenity:

Policy LP24 of the Kirklees Local Plan, consistent with Chapter 12 of the NPPF, states, inter alia, that the form, scale, layout and details of all development respects and enhances the character of the townscape.

The existing housing development is set back from the public highway and arranged into two terraces facing inwards to a turning head. The proposed gates would be situated at the access to this turning head. At some 1.8m in height, they would appear prominent and incongruous within the streetscene.

Discharge of conditions applications 2021/91596, 2020/93513 and 2017/91656 attempted to discharge boundary treatments of equal height to the proposed gates here. These were deemed unacceptable due to the effect of creating a gated development and the impact on the adjacent listed church. The Decision notice for DoC application 2021/91596 stated that Annotations on the plan stated the boundary treatment would be 1.8m high closed timber boarded fencing. It is important to note that the site is bordered by Trinity Street to the east, beyond which is the Grade II listed Holy Trinity Church, hence the requirement for the condition. The proposed boundary treatment is of a very standard design, giving the impression that there has been little, or no, consideration given to the setting of the Grade II listed Church. The erection of 1.8m high closed timber fences, along the boundary with Trinity Street would harm the setting of the listed building, contrary to policy LP35 of the Kirklees Local Plan and Chapter 16 of the National Planning Policy Framework.

The existing fencing therefore cannot be used as justification by way of precedent for the proposed gates as it is unauthorised.

Paragraph 134 of the NPPF states that development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents which use visual tools such as design guides and codes. As with the proposed fencing, which was the subject of previous DoC applications, the proposed gates would create the appearance of a gated community development, which would not integrate with the street scene, nor respect the character of the wider area. Development surrounding the application site is left open, with limited, or low-level boundary treatments visible when viewing from public land. The

proposed boundary treatment for the approved development should reflect this character, to accord with Policy LP24 of the Kirklees Local Plan.

The development therefore would not be acceptable in terms of general visual amenity and would accord with policy LP24 of the KLP and chapter 12 of the NPPF.

Impact on residential amenity:

Policy LP24 of the Kirklees Local Plan require of developments, inter alia, a good standard of amenity for future occupants and neighbouring occupiers, as well as a minimising of the impact on residential amenity of future and neighbouring occupiers.

The proposed gates would not introduce any overshadowing, privacy implications or overbearing effect to neighbouring residential property.

Therefore Policy LP24 in terms of residential amenity would be complied with.

Impact on highway safety:

The gates have been set back 6m from Upper Road which is a sufficient area to avoid stopping on the highway whilst the gates open. The gates should only be set to open inwards, and this should be controlled by a condition.

Visibility at the access will not be affected by the proposals due to the gates being set back. KC Highways Development Management (HDM) requests a waste collection point to be clearly presented on a plan which should be accessible to a collection team if the gates are closed but this should not obstruct the highway or footway for highway safety reasons and this will be conditioned.

HDM would also like to note that the gates may delay any response time to emergency vehicles, and it is suggested that the applicant contacts Kirklees emergency service (ambulance, fire and rescue) to discuss emergency access arrangements. HDM has no objection to the proposals and therefore deems the application acceptable from a highway's perspective with the appropriate condition as set out above.

The development therefore is concerned to be acceptable in terms of highway safety and parking and inconsistent with policies LP21 and LP22 of the KLP.

Other matters:

*Carbon Budget*

The proposal is a small scale development to an existing dwelling. As such, no special measures were required in terms of the planning application with regards to carbon emissions. However, there are controls in terms of Building

Regulations which will need to be adhered to as part of the construction process which will require compliance with national standards.

There are no other matters for consideration.

Representations:

None

Proposed conditions

None as the recommendation is for refusal

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 not constitute sustainable development and is, therefore, recommended for refusal.

**Recommendation**

**Refuse**

## **Decision Authorisation - Delegated Powers**

**Application Number:** 2021/91597

**Officer Recommendation:** Refuse

### **Reasons for refusal**

1. The proposed gates would result in the creation of a gated community development, which would not integrate with the street scene, nor respect the character of the wider area. Development surrounding the application site is left open, with limited, or low-level boundary treatments visible when viewing from public land. The proposed boundary treatment for the approved development would not reflect this character and would cause less than substantial harm to the setting of the nearby Grade II listed building to the east. The proposed development would therefore be contrary to Policies LP24 and LP35 of the Kirklees Local Plan.

Plans and specifications schedule: -

| <b>Plan Type</b>    | <b>Reference</b> | <b>Web ID</b> | <b>Date Received</b> |
|---------------------|------------------|---------------|----------------------|
| Location plan       | -                | 867915        | 10/05/2021           |
| Proposed layout     | -                | 867916        | 10/05/2021           |
| Proposed site plan  | -                | 867917        | 10/05/2021           |
| Proposed elevations | -                | 870230        | 10/05/2021           |

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 Planning 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.

Discussions have taken place via email outlining the position of Officers being unable to support the proposals and a suggestion that the agent could pursue something similar through permitted development. The agent responded to confirm that they did not wish to withdraw the application. The application was also considered by the Chair of the Area Planning Committee at the request of a ward Cllr, the Chair considered the reasons for the request to be insufficient.

**Report Dated** 27/06/2024

