

**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:	2021/62/91809/E
Site Address:	adj, 16A, Ossett Lane, Chickenley, Dewsbury, WF12 8LY
Description:	Erection of detached dwelling
Recommending Officer:	Lyle Robinson

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: 5th August 2022

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Officer Report

Site Description

The site is that of a brownfield site in the settlement of Dewsbury, comprising a level plot of land in a state of overgrowth and neglect in between the properties known as no. 16A Ossett Lane - the end of terrace house to the immediate west - and no. 22 Ossett Lane which is the semi detached house to the immediate east. Surrounding development consists of a mix of forms and finishes, with traditionally articulated terraced properties to the immediate west and more modern semi detached properties to the north and south. A relatively modern housing estate lies to the south with a cul-de-sac bordering the application site to the south. To the north lies an area of urban green space.



Description of Proposal

Planning permission is sought for the erection of 1 no. 2 ½ storey detached dwellinghouse, some 8m in total height and some 5m to the eaves, 6m x 7m in footprint dimensions, with an associated garden curtilage and a turning head. The proposed dwelling would have a front gable dormer serving loft bedroom accommodation. Access would be taken from Ossett Lane.

History of negotiations/amendments received

This planning application has been determined on the basis of revised drawings which were sought in an attempt to resolve issues relating to visual and residential amenity. These amenity issues could be resolved and the visual and residential amenity issues were rectified by the revisions so these have been

accepted. However, the reason for refusal relating to trees was not able to be overcome by amended plans as the tree in question is not considered to be able to be removed without contravening policy LP33.

Relevant Planning History

2008/92335 ERECTION OF DETACHED HOUSE WITH ASSOCIATED PARKING AND TURNING AREA *Approved 17/AUG/2008*

2008/91373 ERECTION OF DETACHED DWELLING, FORMATION OF 2 NO. PARKING SPACES AND TURNING AREA *Withdrawn 01/JUN/2008*

2007/94111 ERECTION OF DETACHED DWELLING, FORMATION OF 2 NO. PARKING SPACES AND TURNING AREA *Refused 16/NOV/2007*

Representations

This application was publicised by neighbour letters, which expired on 22-Jun-2021. Following this publicity, no letters of objection were received from neighbours or members of the public.

Consultation Responses

KC Environmental Health Service – No objection subject to conditions.

KC Highways Development Management – No objection subject to conditions

KC Trees - object on the basis of loss of high amenity tree

Policy

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications be 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 in the Kirklees Local Plan.

Kirklees Local Plan (KLP):

- • **LP 01** – Achieving sustainable development
- • **LP 02** – Place shaping
- • **LP 21** – Highway safety and access
- • **LP 22** – Parking
- • **LP 24** – Design
- **LP 33** - Trees
- • **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 July 2021, 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 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 places
- Chapter 15 – Conserving and enhancing the natural environment

Housebuilders Design Guide SPD (2021)

Kirklees Council has adopted supplementary planning guidance on new housing development which now carries full weight in decision making. This guidance indicates how the Council will usually interpret its policies regarding such built development, although the general thrust of the advice is aligned with both the Kirklees Local Plan (KLP) and the National Planning Policy Framework (NPPF). As such, it is anticipated that this SPD will assist with ensuring enhanced consistency in both approach and outcomes relating to new housing development.

Highway Design Guide SPD (2019)

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

Assessment

The following matters are considered in the assessment below –

- 1) Principle of development
- 2) Impact on visual amenity
- 3) Impact on residential amenity
- 4) Impact on highway safety
- 5) Other matters
- 6) Representations
- 7) Conclusion

1 – 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 application site is within a settlement boundary where residential development such as this is acceptable subject to the satisfactory taking into account of material considerations.

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 with the deliverable housing capacity, windfall allowance, lapse rate and demolitions allowance showed that the current land supply position in Kirklees was 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).

The housing land supply position has recently been updated to provide evidence for a forthcoming planning appeal against the refusal of planning permission. The Council can currently demonstrate 5.17 years of deliverable housing land supply and therefore continues to operate under a plan-led system.

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 National Planning Policy Framework (NPPF) clearly identifies that Local Authority's should seek to significantly boost the supply of housing.

Housing applications should be considered in the context of the presumption in favour of sustainable development.

The proposal would represent a more effective use of land than the current situation, which would contribute positively to delivering a sufficient supply of homes, in accordance with chapters 5 and 11 of the NPPF.

2 –Impact on visual amenity and character of the area:

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 site in its existing state is overgrown and in a state of dereliction, containing the remnants of long disused workshop. It has a negative impact on the character of the area in terms of visual amenity.

Planning permission 2008/92335 approved a two storey dwellinghouse at the east of the plot with an associated turning area and garden. A visit to the site by the case officer suggests that this permission has not been implemented. Given that the principle of development has been established as per section 1 of this report, the previous planning permission is however instructive in providing for a basis of what would be acceptable in terms of visual amenity, notwithstanding changes to the Development Plan such as the adopted Local Plan and SPDs since then.



North Elevation towards
'The Common' Land

Above: Proposed north facing front elevation of approved dwelling on site ref. 2008/02335



Above: Proposed site plan of approved dwelling on site ref. 2008/02335

The proposed design has been revised from the originally proposed full width dwellinghouse, which would have filled the plot more prominently and which was greater in bulk and massing vis-à-vis this previous approval, to a design much more similar in respect of form and massing to the previously approved scheme.

Whilst the property would have a fairly close relationship with the surrounding dwellings, the close knit relationship is considered characteristic of the existing

pattern of development within the area. As such, it would not appear unduly out of place.

The Kirklees Housebuilders Design Guide Supplementary Planning Document (SPD) states that for a new dwelling located in a regular street pattern that is two storeys or above, there should normally be a minimum of a 2m distance from the side wall of the new dwelling to a shared boundary. The revised plans clearly accord with this requirement.

The scheme would develop an existing unsightly overgrown plot of land whilst providing an appropriately massed dwelling in respect of the surrounding area, which, as noted, features a variety of forms and finishes. The proposed scheme which would, on balance, be appropriate in respect of materials, form, density and massing.

The development therefore would be acceptable in terms of visual amenity and would accord with policies LP24 of the KLP and chapter 12 of the NPPF.

3 – 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.

Principle 9 of Kirklees Housebuilders Design Guide Supplementary Planning Document (SPD) states that the residential layouts must ensure adequate privacy and maintain high standards of residential amenity, to avoid negative impacts on light, outlook and to avoid overlooking.

For a belt and braces approach to ensure the protection of residential amenity locally it is considered reasonable and necessary to condition that the first floor bathroom windows at south facing rear elevation be obscure glazed. The proposed WC off the kitchen/diner would be at ground floor level and as such it is not considered necessary for the purposes of planning regulation to condition this to be obscure glazed.

There is no privacy impacts arising from the proposed front dormer window at the loft or the rooflight above the en-suite.

Following revisions to the plans there would be no side facing or rear facing habitable room windows.

The SPD states that for two storey houses typical minimum separation distances are advised:

- 21 metres between facing windows of habitable rooms at the backs of dwellings;
- 12 metres between windows of habitable rooms that face onto windows of a non-habitable room

The initial iterations of the scheme proposed first floor habitable room windows at the rear elevation. The proposed first floor habitable room window shown serving the bedroom would have had an interface of some 6.5m-6.8m from the north facing non-habitable room window (landing) and gable wall of no. 12 Pavilion Court. This is significantly below the 12m guideline and would have represented an overbearing effect to occupants of this bedroom by reason of the close quarters of no. 12 Pavilion Court and attendant loss of light and outlook to this south facing window. These rear bedrooms have been replaced by non-habitable room windows and it is now considered that the interface is acceptable.

The 2m retention of space about the sides of the property and the height and bulk of the proposed dwelling would nullify any potential loss of light to neighbouring residential property.

Contaminated land is not considered a risk by Environmental Health as detailed in their consultee response however it is considered reasonable to attach a condition regarding unexpected discovery of contaminated land to the Decision Notice were the application to be approved, in common with approvals of dwellings on brownfield land in Kirklees and nationwide.

All told however policy LP24 in terms of residential amenity would now be complied with.

4 – Impact on highway safety:

The site will utilise a new access from Ossett Lane which will include the works for a dropped kerb that will need to be done under a s184 agreement. There is adequate visibility in both directions at the proposed access. The access is where the oak tree currently is which indicates that the traffic island and crossing point will not affect access into or out of the site.

Originally the dwelling was proposed to have 4 bedrooms and in accordance with the Kirklees Highways Design Guide 4+ bedroom dwellings should provide 3 parking spaces. The originally proposed integral garage was considered to have insufficient width to be classed as a parking space in a garage due to it measuring 2.75m when it should be 3m wide. However sufficient parking can still be provided by 3 cars on the driveway. Each parking space is independently accessible and there is adequate space for turning to the rear of each space which allows cars to exit in forward gear.

The dwelling is to be reduced in scale from 4 beds to 3 beds, removal of the integral garage and the parking area changed with the removal of an area of garden space and re-arrangement and reduction of parking provision. There are no changes to the access.

For a dwelling of 3 bedrooms, local guidance requires 2 parking spaces to be fit for purpose and drawing 09 2020 4c shows that two parking spaces can be easily provided. It should be noted that the turning space available may be a little tight to allow vehicles to easily turn so they can enter/exit the site in forward gear, however we would accept using reversing to park at this location.

The access would still require a dropped kerb crossing which should be done within a s184 agreement with the council, this should be added as a footnote, and details of waste storage and a collection presentation point should also be clearly indicated on a

drawing in such a place where they are accessible to collection crews and do not obstruct the parking, access or adopted highway/footway for road safety reasons, and this should be conditioned.

The parking area should be surfaced in a permeable finish to national standards or surfaced and fully drained as to not allow run-off to enter the adopted highway and this should be added as a condition and guidance added as a footnote for permeable surfacing. The access and parking area should be infilled so as to not exceed a gradient of 1 in 10 and this may also require a condition.

Highways Development Management consider sufficient parking is provided and therefore believes the proposals are acceptable in principle with the appropriate conditions.

The development concerned is acceptable in terms of highway safety and parking and consistent with policies LP21 and LP22 of the KLP.

5 – 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.

The proposal is for the erection of a new dwelling. To ensure it contributes positively to mitigating the impact of climate change and air quality, a condition should be inserted to the Decision Notice requiring an electric vehicle recharging point be provided within the site for the future occupants of the dwelling. This is to comply with the aims of policy LP24 of the KLP and chapters 9 and 14 of the NPPF, which seek to promote sustainable transport and to support low carbon future.

Permitted Development Rights

It is considered reasonable and necessary to rescind Permitted Development rights classes A, B, D and E of Part 1 of Schedule 2 to the GPDO and Class A of Part 2 to the GPDO. This would be necessary to retain the visual amenity afforded by the proposal's siting, massing and the density of built form in the plot, as well as to avoid additional built form such as extensions, dormers and porches contributing to a possible cramped appearance of the plot and undermining the design case for the approval of the proposal in this planning application.

Trees

Policy LP33 of the Kirklees Local Plan states that, inter alia, the Council will not grant planning permission for developments which directly or indirectly threaten trees or woodlands of significant amenity. Proposals should normally retain any valuable or important trees where they make a contribution to public amenity, the distinctiveness of a specific location or contribute to the environment, including the Wildlife Habitat Network and green infrastructure networks

The site's redline boundary includes land showing as council owned and under the control of leisure who have been maintaining the land and planted trees, two cherries, as recently as 2020. The single mature Ash tree on this land is positioned within the redline of the proposals and the amended plans show it as removed in favour of a tarmacked access.

The removal of the Ash tree would be contrary to policy LP33 of the Kirklees Local Plan and no tree information has been provided with the application contrary to our validation guidance and checklist. The tree is not protected by a TPO because it is sited on Council land and would not normally be considered at risk or under poor arboricultural management; it was assessed by council Tree Inspectors in June 2021 and was found to be in good health with no major defects. The tree provides significant public amenity value due to its location adjacent to the road and size/stature.

It is noted that the previous planning permission for the location of the dwelling, from 2008, did not include the removal of the tree as the driveway was round to the site of the green space. As there is no precedent or prior agreement in planning for the removal of this tree I can see no justification for its loss and the public benefit of the proposals do not outweigh the benefit of the tree.

The proposed development would result in the loss of an Ash tree which provides significant public amenity value due to its location adjacent to the road and its size and stature. No public benefits are apparent which would outweigh the benefit of the tree. The proposed development would therefore contravene policy LP33 of the Kirklees Local Plan and chapter 15 of the National Planning Policy Framework.

6 – Representations:

None received.

7 – 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 approval.

Recommendation: Refuse

Decision Authorisation – Delegated Powers

Application Number: 2021/91809

Officer Recommendation: Refuse

Conditions and Reasons

1. The proposed development would result in the loss of an Ash tree which provides significant public amenity value due to its location adjacent to the road and its size and stature. No public benefits are apparent which would outweigh the benefit of the tree. The proposed development would therefore contravene policy LP33 of the Kirklees Local Plan and chapter 15 of the National Planning Policy Framework.

Plans and Specifications Schedule

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 has, 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. In this case, the design of the original scheme has been found unacceptable on visual and residential and drawings have been obtained to correct this to remove these reasons for refusal. However a reason for refusal on arboricultural grounds remains and it is not considered that this could be resolved within the scope of this application. No further amendments or

Plan Type	Reference	Version	Date Received
Location Plan			11/MAY/2021
Proposed Elevations and Floor Plans	CARR 09 2020 3	C	27/JUL/2022
Proposed Site Plan	CARR 09 2020 4	C	27/JUL/2022

details were sought thereafter.

