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:	**2022/62/91487/W**
Site Address:	1, Grimscar Avenue, Birkby, Huddersfield, HD2 2TY
Description:	Erection of detached retail unit
Recommending Officer:	Tom Hunt

DECISION - Refuse

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.

Stuart Howden

AUTHORISED OFFICER

Date: 4th November 2022

Officer Report

Site Description

2022/91487 – 1, Grimscar Avenue, Birkby, Huddersfield, HD2 2TY

The site mainly consists of hardstanding used for parking 2-3 vehicles, a strip of soft landscaping and accommodates a single storey detached garage, and this is associated with 1 Grimscar Avenue. No.1 Grimscar Avenue is a two-storey end of terrace building with a convenience store at the ground floor, a flat at the first floor, and is sited on a corner plot, with Bromley Road to the side and Grimscar Avenue to the front. The building at 1 Grimscar Avenue is set back from Grimscar Avenue with a hard surfaced forecourt to the front of it. The site is situated to the north of this building and is on raised ground sloping towards the highway.

The site is within a predominantly residential area, but there is a handful of commercial premises within the immediate vicinity. Dwellings within the locality tend to consist of two storeys terraced and semi-detached buildings, and there is a range of construction materials in the area. The properties have a mixed boundary treatment of green hedging with fences to the north of the site providing a welcome softening feature within the streetscene. To the south, the boundary treatment has a mix of stone boundary walls, fencing and hedging.

To the north side of the site is an adopted lane which provides access to the rear of properties on Bromley Road and Heathdale Avenue. The site and surrounding land slopes downwards from south west to north east.

The site is not within close proximity to any listed buildings. However, the site is adjacent to Birkby Conservation Area which is located on the other side of Grimscar Avenue to the site.

Description of Proposal

Erection of detached retail unit

Permission is sought to erect a detached single-storey retail unit with side gable roof. The single-storey outbuilding is to be demolished with a footprint of ~3.6m by ~6m.

It would have a footprint of ~7.95m wide x ~8.05m deep with a roof ridge height of ~4.85m and eaves at ~3.05m from ground.

It would be simply finished with a large shopfront style glazing to the fore and a door to its northwest flank elevation. It would be forward of the building line between No. 1 and No.3 Grimscar Avenue.

The application form states facing bricks for its elevation and no detail on roofing material.

It proposes Class A1 Use on the application form which is revoked, and the A1 use has been replaced by Use Class E(a).

Two full time and two part time employees are proposed to work but the application form does not state hours of opening. Apart from the shopfloor, a WC is proposed for its employees.

No parking arrangements have been set out.

History of negotiations/amendments received

The case officer considered the application on review and repeatedly requested a Sequential Test to be submitted 4 times on 20/05/2022, 12/08/2022, 28/09/2022 and 30/09/2022. None was submitted and therefore the Officer proceeded to assess plans as submitted without the benefit of a Sequential Test.

Relevant Planning History

89/06628 – Change of Use of living room of dwelling to shop extension – Approved.

90/06190 – Erection of single storey extension – Approved.

2011/90525 – Erection of single storey front extension to shop – Conditional Full Permission.

2012/90525 – Erection of single storey front extension (modified proposal) – Refused.

2021/90242 – Outline application for erection of retail unit with flat above – Refused.

Dismissed at appeal (**APP/Z4718/W/21/3276517**) on 16/12/2021.

Officer Note regarding Inspector's reasons to dismiss the appeal:

- Lack of Sequential Test
- Harm to significance of Birkby Conservation Area and the impact upon the visual amenities of the locality.
- Would result in the living conditions of the occupiers of No.2 and No.3 being significantly adversely affected, having regard to outlook and light.
- Development would not provide a satisfactory standard of accommodation for future occupiers.
- Unacceptable impact on highway safety with loss of off-street parking and likelihood of conflict between highway users is increased.

Representations

We are currently undertaking statutory publicity requirements, as set out at Table 1 in the Kirklees Development Management Charter. As such, we have publicised this application via neighbour notification letters which expired on: 24/06/2022.
Site Notice Expired: 01/07/2022
Press Notice expired: 25/06/2022

Two representations have been received of support; a summary of the comments received is set out below:

- Neighbour has no objection to the build.
- This would have a positive impact on the local community with greater access to goods and would employ people. The benefits would outweigh the impacts of the development.

Ward Member: Cllr Sokhal raised an interest in the application and outlined that the proposal would not cause harm to residential amenity and considered that sequential test was not required. These matters will be discussed in the below assessment

Consultation Responses

The following is a brief summary of Consultee advice (more details are contained in the Assessment section of the report, where appropriate):

- Conservation & Design – External materials and design detailing should be in keeping with the local area. The proposed scale would be small and the impacts to the Conservation Area are low, therefore no opposition.
- Highways Development Management – Objection. Needs to demonstrate parking arrangements and parking/bins layout existing and proposed for safety and does not compensate for the loss of three off street parking spaces in an oversubscribed area for on street parking.
- Environmental Health – Insufficient information to comment on impact in residential area regarding proposed Class E use.

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.

Kirklees Local Plan (LP):

- **LP 1 – Presumption in favour of sustainable development**
- **LP 2 – Place shaping**
- **LP 3 – Location of new development**
- **LP 7 – Efficient and effective use of land and buildings**

- **LP 13 – Town centre uses**
- **LP 20 – Sustainable travel**
- **LP 21 – Highways and access**
- **LP 22 – Parking**
- **LP 24 – Design**
- **LP 25 – Advertisements and shop fronts**
- **LP 28 – Drainage**
- **LP 30 – Biodiversity & Geodiversity**
- **LP 35 – Historic Environment**
- **LP 51 – Protection and improvement of local air quality**
- **LP 52 – Protection and improvement of environmental quality**

Supplementary Planning Guidance

- Highways Design Guide SPD
- Waste Management Design Guide for New Developments (Oct 2020, v.5)

National Policies and Guidance:

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 20th 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 4 – Decision-making
- Chapter 6 – Building a strong, competitive economy
- Chapter 7 – Ensuring the vitality of town centres
- Chapter 8 – Promoting healthy and safe communities
- Chapter 9 – Promoting sustainable transport
- Chapter 12 – Achieving well-designed places
- Chapter 14 – Meeting the challenge of climate change, flooding and coastal change
- Chapter 15 – Conserving and enhancing the natural environment
- Chapter 16 – Conserving and enhancing the historic environment

Assessment

The following matters are considered in the assessment below –

1) Principle of development
2) Impact on visual amenity (including any heritage considerations)
3) Impact on residential amenity
4) Impact on highway safety
5) Other matters – e.g. trees/ecology (e.g. bats)
6) Representations
7) Conclusion

1 – Principle of development:

NPPF Paragraph 11 and Policy 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..."*

With particular relevance to the proposal, those strengths, opportunities and challenges to sustainable development in the Kirklees District have been considered in the Kirklees Local Plan Policies to aid sustainable development enhancing the area's character unless other material planning considerations indicate otherwise.

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

Principle of Town Centre Use
Chapter 7 of the NPPF relates to the ensuring the vitality of town centres. Paragraph 85 of the NPPF outlies that planning decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation.

Paragraph 87 of the NPPF goes on to state that Local Planning Authorities should apply a sequential test to planning application for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Paragraph 86 of the NPPF goes on to state that main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre locations be considered.

Policy LP13 of the Kirklees Local Plan is consistent with Government guidance contained within the NPPF stating that within Kirklees, main town centre uses shall be located within defined centres (principal centres, town centres, district centres, and local centres), as shown on the Policies and Town Centre Maps, and as detailed in the shopping centre hierarchy and then in accordance with the sequential test.

Policy LP13 goes on to note that proposals which come forward for main town

centre uses, which are located outside of the defined centre boundaries, will require the submission of a Sequential Test. Policy LP13 states that for retail proposals the boundary shall form the Primary Shopping Area; for all other main town centre uses this shall be the extent of the centre boundary. Main town centre uses shall be first located in the defined centres, then edge of centre locations and only if there are no suitable sites shall out of centre locations be considered. The NPPF defines edge-of-centre location as being those within 300m from a town centre boundary.

The proposal is for a retail unit (Class Ea) at ground floor level and the site is located approximately 525 metres away from Birkby Local Centre (LCB6) as designated in the Kirklees Local Plan, therefore this site is in an out-of-centre location and a Sequential Test will need to submitted alongside this application.

Further detail on the Sequential Test are provided in paragraph 9.12 of the Local Plan which supports Policy LP13, and this states that the Sequential Test will need to provide evidence of the following:

- The business model for the development.
- An appropriate catchment that the business will seek to serve in accordance with the Shopping Centre Hierarchy Table
- An appropriate audit trail of any sequentially preferable sites that have been discounted with a robust justification.

As noted by Kirklees Planning Policy, the last occupancy survey for Birkby Local Centre was carried out in September 2020 and this shows that there are potentially two sequentially preferable sites in Birkby as follows:

- 44 Blacker Road
- 145 St John's Road

In addition, Officers conducted their own desktop research and as of 25/10/2022, a search for commercial properties for sale or rent in Birkby revealed that there would still be three sequentially preferable sites close to Birkby within 300m

- Bay Hall Common Road, £260,000. Edge of centre for Birkby Local Centre. Source: RightMove.
- Fern Street Huddersfield, £1,583pcm at 1478sq.ft. Edge of centre for Birkby Local Centre. Source: RightMove.
- Halifax Old Road, Huddersfield, £500pcm. Edge of centre for Birkby Local Centre. Source: OnTheMarket.

The applicant should therefore demonstrate why the three Class E units listed above are not suitable for the proposal. The applicant should also demonstrate why any other sites and/or shop units which may have come available in or on the edge of Birkby Local Centre since the time of the survey are not suitable for the proposal taking into account flexibility in format and scale.

If there are shopping centres in the catchment of the proposal. i.e., where the customers will come from to shop other than Birkby which are defined in the Local Plan, then the applicant should also demonstrate that these centres also do not have any vacant sites or units that could accommodate the proposed development.

However, no sequential test has been submitted despite repeated requests from the Planning Officer to aid the proposal. This is despite the Planning Inspector concurring with the LPA that sequential test was required for a previous application for a retail unit at the same site recently. 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, 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. Accordingly, the proposal would conflict with Policy LP13 of the Kirklees Local Plan and Chapter 7 of the NPPF.

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

On the other side of Grimscar Avenue to the site is the Birkby Conservation Area. Section 72 of the Planning (Listed Building & Conservation Areas) Act (1990) is mirrored in Policy LP35 of the Kirklees Local Plan and Chapter 16 of the National Planning Policy Framework.

Furthermore, LP35 states *"Development proposals affecting a designated heritage asset…should preserve or enhance the significance of the asset. In cases likely to result in substantial harm or loss, development will only be permitted where it can be demonstrated that the proposals would bring substantial public benefits that clearly outweigh the harm."*

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…".* In addition, Policy LP25 states that new shopfronts are subject to high standards of design and well-integrated within the locality.

The surrounding area is characterised by primarily two storey terraced dwellings and there are also some commercial premises within the vicinity of

the site. The appeal site consists of a single-storey garage and hardstanding enclosed by a fence and hedge. The appeal site is adjacent to the CA. This section of the CA is characterised by primarily two-storey, terraced dwellings constructed of stone with a simple appearance.

The layout would have a single-storey, detached property occupying most of a constrained plot and as a result would appear relatively cramped, especially as building within the locality tend to benefit from some external space The proposed building would also be sited further forward of the building line, being closer to the road than the neighbouring buildings on this side of Grimscar Avenue, which would appear jarring within the streetscene and would fail to sympathetically respond to the built development in the locality. Thus, the siting and the layout of the proposed building on the constrained site would result in a visually jarring and contrived form of development In terms of the scale of the building, most buildings within the immediate locality are two storey in height, including the neighbouring buildings to the side, and it is considered that the single storey height of the building would add its visually jarring nature within the streetscene, and this reinforces the contrived nature of the proposal. Whilst there are bungalow properties elsewhere, these have an extremely limited visual relationship with the site (as noted by the Planning Inspector). The appeal site is seen in conjunction with two storey buildings.

Whilst no landscaping is proposed, there is a mixed green hedging/fencing to its boundary which is currently in line with No. 3's terraced row's boundary treatment and this appears to be removed. Given that that the proposed building would cover most of the site while being forward of the established building line, and the removal of the boundary treatment, this would further emphasise the contrived and cramped nature of the proposal.

Consequently, even with materials to respond to local vernacular, the scheme would be an incongruous addition due to its height, layout and siting and which would not reflect the character of the area. In addition, for the same reasons, it would cause harm on account of the effect on the setting of the Birkby Conservation Area and would fail to preserve or enhance the character and appearance of the Birkby Conservation Area.

The harm arising to the conservation area would be localised and less than substantial, nevertheless it is of considerable importance and weight. As set out in Paragraph 202 of the NPPF, this harm should be weighed against the public benefits of the proposal, where appropriate, securing its optimum viable use. The benefits of the proposal highlighted by local residents, including that it would create employment and create access to goods, have been considered, but these public benefits are considered to be limited and would not justify or outweigh the harm to the heritage asset identified.

It is therefore considered that the proposed development, by virtue its single-storey scale siting further forward than neighbouring two-storey buildings and cramped layout on a constrained site, would fail to sympathetically integrate with existing development within the locality and would appear as an

incongruous form of development within the street scene, detrimental to the visual amenities and overall character of the area. As a result, the proposal would also cause less than substantial harm to the significance of the Birkby Conservation Area without clear public benefits to outweigh this harm. The proposal is therefore considered to be contrary to Policies LP24 and LP35 of the Kirklees Local Plan and Chapters 12 and 16 of the National Planning Policy Framework.

3 – Impact on residential amenity:

Section B of Policy LP24 of the Kirklees Local Plan states that proposals should promote good design by ensuring: *"They provide a high standard of amenity for future and neighbouring occupiers; including maintaining appropriate distances between buildings".*

Further to this, Paragraph 130 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.

No.2 Bromley Road

No.2 is located to the rear of the site and has its rear elevation set back behind No. 1 Grimscar Avenue's flank elevation, and the proposed building would lie adjacent to the side boundary of the modest rear garden of No.2 with a narrow width. No.2 has windows to the rear elevation which, although they do not directly face the appeal site, would be in close proximity to the proposed building. The proposed building would be sited directly adjacent to the common boundary shared with No.2 and run alongside the majority of the boundary. Due to the topography of the area, the appear site and No.2's garden sit lower than No.2

Given the relatively narrow width of this neighbouring garden, the set back elevation to No. 1 and that the proposed single storey building would run alongside this shared side boundary for quite some distance, it is considered that it would be an oppressive feature from within this garden. Furthermore, given these factors and the close proximity of the ground floor rear windows to proposed building, it is considered that the proposal would detrimentally impact upon the outlook from these ground floor windows and would appear overbearing from them.

That said, given that the building would not be directly in front of these windows and that the roof of the proposed building pitches away from this neighbouring property, it is considered that the proposal would not unduly effect these first floor windows in terms of loss of outlook and the creation of an overbearing effect. It is therefore considered that the proposal would cause undue harm to No.2 in terms of the creation of overbearing impact and loss of outlook to the ground floor windows. No windows are proposed in the rear wall or the flanks of the proposed building to affect No. 2 in terms of overlooking/loss of privacy.

No.1 Grimscar Avenue

The proposed development would remove the outdoor space to the side of No.1 Grimscar Avenue and Officers have concerns with this, like they did with the previous proposal at the site as it would remove this neighbour's external amenity space. However, The Planning Inspector under the previous refused scheme stated that this area does not read as a garden due to the area being dominated by hard landscaping and because it contains a garage. The Inspector also noted that there is amenity space located on Bromley Road and many properties within the local area have small private amenity space areas. The Inspector therefore concluded that given the existing use of the appeal site, the outdoor space located on Bromley Road and nature of the area, the reduction in outdoor space would not be a reason to withhold planning permission. Given that site circumstances have not changed since this appeal, Officers will concur with Inspector in relation to this point.

A ground floor window and partially glazed door within the side elevation of No.1 would face directly towards the proposed building, but this window serves a commercial premises and the loss of light and outlook caused to this window as a result of this development is considered acceptable. There are also two side first floor windows facing towards the site and these serve a residential apartment, but given the single storey scale of the building and that these windows are obscurely glazed it is considered that this proposal would not result in an undue loss of light or outlook to the rooms these windows serve. No windows are proposed in the side elevation facing towards the side wall of No.1 therefore it is considered that the proposal would not cause undue harm to No.1 in terms of loss of privacy.

No.3 Grimscar Avenue
No.3 is located to the north of the site and fronts Grimscar Avenue. It sits lower than the application site and has 3 south side windows facing towards the site (and what would be the proposed building). There is a window at ground floor level and two windows at first floor level. An access lane separates the site with No.3. Given the southern orientation of the proposed building to these windows, that this neighbouring dwelling is on a lower land level to the site, and the very close proximity of ground floor window to the proposed building, it is considered that the proposal would detrimentally affect the level of outlook currently gained from the ground floor window, as well as result in undue overshadowing and an undue loss of light to the room served by this ground floor window. First floor windows are likely to be set hight enough to receive adequate outlook and light.

Whilst the proposed building would be set forward of the front wall of this neighbouring dwelling, it is considered that the set off between the buildings would be sufficient so as to prevent undue harm to the front windows in this neighbouring dwelling in terms of loss of light or overshadowing.

No side windows are proposed in the building that would directly face towards No.3

Other Residential Properties

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.

4 – Impact on highway safety:

Paragraph 111 within Chapter 9 of the NPPF sets out 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."*

Policies LP21 and LP22 of the Kirklees Local Plan also relates to highway safety and parking with the supporting text stating that: *"Proposals shall demonstrate adequate information and mitigation measures to avoid a detrimental impact on highway safety and the local highway network."*
Policy LP22 of the Kirklees Local Plan relates to parking and the supporting text to this policy states that: *"The council will use car parking standards to support government objectives to reduce carbon emissions and congestion, to encourage use of sustainable transport modes and to ensure efficient use of roads."*

The Kirklees Council Waste Management Design Guide for New Developments sets out expectations for waste management arrangements to minimise impacts on highway safety, fire safety and visual amenity.
The Kirklees Highways Development Officer has supplied an informal consultation response, with agreement with Officers that the current proposal does not supply the proposal parking layout or bin arrangement.

By virtue of the layout of the proposed building, it would result in the loss of the current off-street parking area serving No.1 Grimscar Avenue, which can currently accommodate up to 3 vehicles. There is no provision for compensatory off-street parking in a locality. In addition, there is no provision for commercial customers and loading/off-loading.

Officers have significant concerns with the lack off street parking to support the existing residential unit as well as the proposed retail unit, especially how well used the surrounding highways are used. Of note, the Inspector for the previously dismissed scheme at the site stated the following:

"…although my site visit was only a snapshot during the day, I observed that Grimscar Avenue was a well-used highway with a relatively steady flow of vehicles. Furthermore, the adjacent roads had limited available parking spaces due to the majority of dwellings not benefiting from off-street parking. There are also bus stops close to the appeal site as well as various junctions including Bromley Road and Grisedale Avenue.

The retail unit is intended to provide a service for the local community. However, it would not be possible to control whether customers drive to the retail unit. Some customers may walk to the retail unit and use public transport, however it is likely that the scheme would result in an increase in

on-street parking on a well-used highway. Therefore, based on the evidence submitted, it is likely that the scheme would result in vehicles parking on Grimscar Avenue which would increase the likelihood of conflict between highway users due to the nearby junctions, bus stops and frequency of vehicles on Grimscar Avenue."

These comments from the Planning Inspector are therefore still considered relevant for this proposed retail unit.

Bin enclosures have not been set out to prevent bins being blown into the highway considering the site's elevated ground to the highway for safety but this could be conditioned if Officers were minded to approve.

Nonetheless, given the above, the proposal would therefore result in a detriment to the safety and convenience of highway users including pedestrians, contrary to Policies LP21 and LP22 of the Kirklees Local Plan and Chapter 9 of the NPPF.

5 – Ecology and trees

There are no trees on the site and the site mainly consists of hardstanding, therefore it is considered that the proposal is unlikely to cause harm to protected species. However, as 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.

The proposal would not have any parking on the site, but it is likely that the proposal would result in private vehicular movements for the retail use as discussed in subsection 4 of the assessment above. Given this and the scale of the proposal, Officers would expect to see a sustainability and energy statement, and this matter could be conditioned, should permission be granted.

Environmental Health

Informally consulted with Environmental Health: The applicant has submitted an application form, location plan, block plan, elevation & floor plans and no other supporting documents. Environmental Health would require detailed information relating to the proposed use at the address. It is noted that a retail unit is proposed and Officers consider that measures to prevent undue noise to neighbouring properties could be conditioned should permission be granted.

7 – Representations:

Two representations have been received in support of the application. This makes reference to how the proposed development would appear in the streetscene and this matter is addressed above in subsection 2 of this assessment. This also makes reference to employment opportunities as a result of the proposed development, and whilst this is a modest benefit of the development, it is not considered to outweigh the harm identified by virtue of conflict with the development plan.

8 – 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 the adverse impacts of granting permission would significantly and demonstrably outweigh any benefits of the development when assessed against policies in the NPPF taken as a whole.

Recommendation **Refuse**

Decision Authorisation - Delegated Powers

Application Number: 2022/91487

Officer Recommendation: Refuse

Reasons

1. In the absence of a Sequential Test, 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, and the proposal is therefore contrary to Policy LP13 of the Kirklees Local Plan and Chapter 7 of the National Planning Policy Framework.

2. The proposed development, by virtue its siting/layout further forward than neighbouring buildings, cramped layout on a constrained and elevated site and its out-of-keeping single storey scale/height, would fail to sympathetically integrate with existing development within the locality and would appear as an incongruous form of development within the street scene, detrimental to the visual amenities and overall character of the area. The proposal would also cause less than substantial harm to the significance of the nearby Birkby Conservation Area and there are no public benefits to outweigh such harm. The proposal is therefore contrary to Policies LP24a and LP35 of the Kirklees Local Plan and Chapters 12 and 16 of the National Planning Policy Framework.

3. The proposed dwelling, by virtue of its siting/layout and single storey scale on elevated ground, would cause undue harm to the amenities of No.2 Bromley Road in terms of loss of outlook and the creation of an overbearing effect, and undue harm to the amenities of No.3 Grimscar Avenue in terms of loss of outlook, loss of light and overshadowing. Therefore, the proposal would fail to provide an adequate standard of amenity for the occupants of these existing properties, contrary to Policy LP24b of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework.

4. By reason of the loss of off road parking to serve the residents of the existing dwelling as well as the lack of off street parking spaces to serve the customers of the proposed retail unit, the proposal would result in vehicles parking on well-used highways increasing the likelihood of conflict between highway users. The proposal would therefore result in a detriment to the safety and convenience of highway users including pedestrians. The proposal is therefore contrary to Policies LP21 and LP22 of the Kirklees Local Plan and Chapter 9 of the National Planning Policy Framework.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received

Plan Type	Reference	Version	Date Received
Existing Location and Proposed Block Plan.	Existing Location and Proposed Block Plan.	Unamended.	03/05/2022
Proposed Elevations and Floor Plan.	Proposed Elevations and Floor Plan.	Unamended.	03/05/2022

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. The applicant was approached regarding the application's likely refusal on the basis of the Sequential Test not being supplied. Repeated attempts to get the Sequential Test were unfruitful despite the applicant being made aware that this is a policy requirement and the proposal was assessed on submitted plans to achieve a timely determination.

Report Dated: 27/10/2022