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:	**2022/62/91834/W**
Site Address:	adj, 5, Fernside Avenue, Almondbury, Huddersfield, HD5 8NR
Description:	Erection of 4 dwellings
Recommending Officer:	William Simcock

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.

Teresa Harlow

AUTHORISED OFFICER

Date: 17th November 2022

Officer Report 2022/91834
Land adjacent to 5 Fernside Avenue

Site Description

The application site consists of an irregularly-shaped plot of land measuring some 75m from Fernside Avenue to its farthest point in the north-west. Within the site is an old stone building, built on to the end of 1-5 Fernside Avenue, originally a barn but much altered and more recently used as a Council depot and, it is claimed, a private builders' store (see "Assessment" part 4). These buildings are built on land this is raised above the highway.

To the side of this and behind it (to the north-east and north-west) is a flat gravel-surfaced area extending approximately 9m to the rear of the former depot building used informally for the parking of vehicles. Beyond this, the land rises and consists of overgrown and untended vacant land which is elevated above the established residential development to the south-west and north-east.

The only vehicular access into the site is via a narrow track that joins the adopted highway at the corner of Fernside Avenue and Town End. The surroundings of the site are residential, comprising medium-density, mostly semi-detached two-storey houses, but with bungalows on Bank End Lane.

Description of Proposal

The proposal is for the demolition of the existing former depot and builder's store and the erection of 4 no. detached dwellings. These are to comprise:

- Two new dwellings (Plots 1 & 2) built on to the end of 5 Fernside Avenue, in place of the existing barn / store, which is to be demolished. Their width would be, in aggregate, 11.3m, and their front and back walls would be in alignment with those of no. 5, a depth of 7.05m. Each would provide a kitchen, dining room and living room at ground floor with two bedrooms, a bathroom and a study above. Each would have a small rear garden. They would be designed with a double-pitched gable roof, 7.1m high to the ridge.

- A pair of semi-detached dwellings (Plots 3 & 4) measuring 14m in width (or 7m each) and 10m in depth, each a living room, kitchen / dining room and study at ground floor with 4 bedrooms above. They would have a double-pitched roof, 8.3m high to the top of the ridge.

Materials are to be natural stone with reconstituted stone for heads and cills, and grey concrete tiles for the roof.

The existing access track is to be used. A total of 12 parking spaces are to be provided to serve the development, of which 10 are allocated to specific houses.

It is proposed that surface water is to be drained to two separate soakaways.

The far north-western part of the site, comprising the rear 20m approximately, will not be developed.

History of negotiations/amendments received

03-Aug-2022: Highways statement submitted

04-Nov-2022: Highways Technical Note (TRICS information) submitted.

The above were not subjected to new publicity since it was considered that they did not raise new issues that would require the opportunity for public comment.

Relevant Planning History

95/92833 – Change of use of existing depot building and yard to one dwelling and residential garden. Approved, not implemented.

2001/90799 – Reuse of former barn and new extension to form dwelling and erection of detached double garage. Approved, not implemented

2017/94072 – Demolition of existing builder's store / depot and erection of 2 terraced dwellings. Conditional full permission.

2018/93741 – Demolition of existing builder's store/ depot and erection of 5 dwellings and detached garage, formation of new access road and parking area. Invalid.

2019/91617 – Demolition of existing builder's store/ depot and erection of 5 dwellings, formation of new access road and parking area. Refused and appeal dismissed.

2019/94052 – Demolition of existing builder's store / depot and erection of 5 dwellings, formation of new access road and parking area. Invalid.

Pre-application enquiry 2021/20087 – Proposed erection of 4 no. dwellings. Officers advice was that there were unresolved concerns about access to the site.

Representations

Final publicity date expires: 05-Aug-2022. Publicity by neighbour letter, site notice and press publicity since the development is deemed to affect the setting of a Listed Building.

10 representations have been made, all objecting to the proposal. Summary of concerns raised:

- Extra vehicles using the unadopted dirt track across the front of nos. 1, 3, 5 Fernside Avenue very close to a busy junction. There are two schools down Fernside Avenue and traffic taking short cuts from Lepton and Kirkburton. The access is only 2.7m wide and has poor visibility.

- Plots 3&4 are imposing and out of keeping with their surroundings

- Loss of light

- Plot 3 is too close to an existing dwelling

- Parking provision is inadequate. The plans do not acknowledge the need for parking for the existing dwellings including 3 Fernside Avenue. Residents of nos. 3 and 5 will be forced to park on the roadside. Any more parking near the junction will block vision.

- Privacy: it would mean more cars passing by the front windows of neighbouring properties reducing their privacy. Also overlooking from windows.

- The bin collection point would not be useable in practice as it would narrow the lane. They would have to be moved to the pavement.

- Bat assessment is out of date

- Loss of wildlife habitat

- Loss of trees and natural vegetation

- Topographical survey (form 2018) is out of date and there have been enormous changes since then.

- 24-hour access to electricity substation is required including the transformer box at the rearm which the plans do not acknowledge.

- Insufficient access for emergency vehicles including fire engine.

- Detrimental to mental health of one or more local residents because of building work and negative impact on garden.

- Drains, electric and gas supply under the unadopted road.

Cllr B McGuin – Requested the application be determined by the Planning Sub-Committee decision if officers minded to approve.

Consultation Responses

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

KC Highways Development Management – Object

KC Waste Strategy – Do not object in principle.

KC Ecology – No objection subject to condition.

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 within a land that is without designation on the Local Plan Proposals Map.

Nos. 1 & 3 Fernside Avenue are Grade II Listed Buildings.

List entry:

> No. 1: Early or mid C19. Hammer-dressed stone. Pitched stone slate roof. 3 storeys. One 8-light stone mullioned sash with glazing bars on 1st and 2nd floors. One 5-light stone mullioned window on ground floor. Door with 2 moulded panels.
>
> No. 3: Early or mid C19. Hammer-dressed stone. Pitched stone slate roof. 3 storeys. One 6-light stone mullioned sash on each floor (one light blocked on 1st floor).

It is considered that the scale and nature of the development does not raise access or Equality Act considerations.

Kirklees Local Plan (LP):

- **LP 1:** Presumption in favour of sustainable development
- **LP 7:** Efficient and effective use of land and buildings
- **LP 11:** Housing mix and affordable housing
- **LP 21:** Highways and access

- **LP 22:** Parking
- **LP 24**: Design
- **LP 28**: Drainage
- **LP 30:** Biodiversity and geodiversity
- **LP 33:** Trees
- **LP 35:** Historic environment
- **LP 53:** Contaminated and unstable land.

Supplementary Planning Documents:

- KC Highways Design Guide 2019
- Housebuilders Design Guide Supplementary Planning Document (2021)

Other guidance

- Biodiversity Net Gain Technical Advice Note
- Climate Change Guidance for Planning Applications

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 5 – Delivering a sufficient supply of homes
- Chapter 11 – Making effective use of land
- Chapter 12 – Achieving well-designed places
- Chapter 14 – Meeting the challenge of climate change, flood risk 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: Policy LP1 of the Local Plan states that when considering development proposals, the council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF. LP1 goes on further to stating that:

"The council will always work pro-actively with applicants jointly to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area."

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 NPPF clearly identifies that Local Authority's should seek to boost significantly the supply of housing. Housing applications should be considered in the context of the presumption in favour of sustainable development.

Paragraph 69 of the NPPF recognises that "small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. To promote the development of a good mix of sites local planning authorities should… support the development of windfall sites through their policies and decisions – giving great weight to the benefits of using suitable sites within existing settlements for homes".

Although the Local Planning Authority can demonstrate a five-year housing land supply, it is noted that the development of this plot would be contribute to the housing supply in the district. However the provision of housing needs to be balanced against all policies and material planning considerations considered below.

The proposal will be assessed according to the following Local Plan policies:

- LP7 - encourages the efficient use of previously developed land in sustainable locations provided that it is not of high environmental value and appropriate housing densities to ensure that land is used efficiently.
- LP11 – Housing must aim to provide a mix in terms of size and tenure.
- LP21 – that proposals must ensure the safe and efficient flow of traffic and safe access.
- LP22 – appropriate parking to be provided given the type of development and the accessibility of the site.
- LP24 – the form, scale, layout and details of development must respect and enhance the character of the townscape and landscape, provide a high standard of amenity for future and neighbouring occupiers including appropriate distances between buildings and a high level of sustainability.

- LP28 – Sustainable urban drainage systems to be used where possible.
- LP30 – Development to incorporate biodiversity enhancement measures.
- LP33 – Trees and woodlands of significant amenity should be protected.
- LP35 – Heritage matters (given the potential impact on the significance of designated heritage assets)
- LP53 – Potential contamination should be remediated or measures incorporated to ensure it does not cause harm.

The adopted Highways Design Guide and Housebuilders Design Guide SPDs are of direct relevance to the application and are considered throughout the assessment.

The building and at least some of the associated land, can be classed as "previously developed" within the meaning of the NPPF. But this does not imply that a development making "efficient use" of land will necessarily be acceptable – this will be assessed having regard to its compatibility with local character (see part 2 below).

Whilst the achievement of a mix of size and tenure in a multi-unit scheme is desirable, Policy LP11 specifies that schemes of more than 10 units or those covering an area of greater than 0.4ha should provide a mix reflecting the proportions of households that require housing and achieve a mix of house size and tenure. For a small minor scheme such as this (4 units on a site of approximately 1500sqm), it would be unreasonable to treat this requirement as being mandatory. It is noted however that whilst all 4 units are classed as market housing, two different house types are provided, one substantially smaller than the other.

The advice in Chapter 12, "Achieving well-designed places", should also be taken into account, in particular that planning decisions should aim to ensure that developments will function well, add to the overall quality of the area, optimise the potential of the site to accommodate development and create safe and accessible environments. Also of relevance is Chapter 14 (opportunities to be taken to prevent development contributing to flooding) and 15 (any potential pollution impacts should be assessed at the planning stage, and biodiversity should be enhanced where possible.)

Finally, when making decisions on planning applications for development that affects the setting of a listed building there is a duty under Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, that Local Planning Authorities must have special regard to the desirability of preserving the building and its setting, and any features of interest it possesses. In this context preservation means not harming the interests of the building as opposed to keeping it unchanged. This approach is also supported by Policy LP35 and by Chapter 16 of the NPPF.

2 –Impact on visual amenity: The following Principles within the Housebuilders' Design Guide SPD are highlighted as being particularly relevant for the purposes of this report in assessing impact on visual amenity:

Principle 2
New residential development proposals will be expected to respect and enhance the local character of the area, creating a positive and coherent identity, complementing the surrounding built form and illustrating how landscape opportunities have been used.

Principle 5
Buildings should be aligned and set-back to form a coherent building line and
designed to front on to the street, including corner plots, to help create active
frontages. The layout of the development should enable important views to be
maintained.

Principle 8
The transition from urban to open land should be carefully considered where development is located on the edge of the urban area. Proposals should demonstrate how the new development makes a positive contribution to the character and function of the landscape.

Principle 13
Applicants should show how different materials which are prevalent in the vicinity of the site have been taken into account in the proposal. Consider the use of locally prevalent materials and finishing of buildings to reflect the character of the area.

Principle 14
The design of windows and doors is expected to relate well to the street frontage and neighbouring properties and reflect local character in style and materials. Innovation for energy efficiency is encouraged, particularly for maximising solar gain to allow for passive solar construction.

Principle 15
The design of the roofline should relate well to the site context, including topography, views, heights of buildings and the roof types.

The erection of four dwellings on a site of approximately 1,000sqm (not including the access road and left-over area to the north), would equate to a density of 40 units per hectare, slightly higher than the recommended minimum of 35 units per hectare. Density would be somewhat higher on the part of the site that is near the road frontage. It is considered that density would not be excessive given the overall character of the area. The northernmost part of the site would be left undeveloped, with the opportunity

for additional tree planting, which would in principle support the aim of Principle 7 of the SPD, the integration of green infrastructure into a scheme.

The principle of residential development (2 dwellings) in the front part of the site has been established (2017/94072). This approval has now lapsed but can be given moderate weight as a material consideration.

The site in its present form, it is considered, does not provide a significant positive contribution to the visual amenity of the area and it does not form part of any green space allocation.

The new dwellings on plots 1-2 would be seen as a continuation of an existing row in terms of their scale, built form, roof style and their close relationship with the access road. Window design would contain elements that would reflect the pattern of windows on the adjoining dwelling. The former barn they would replace is considered to have minimal amenity or heritage value, having been substantially altered since it was built.

The proposed new dwellings for Plots 3 and 4 would be of more modern appearance and would be considerably larger. They would however be set a lot further back from the public highway. A previous application, 2019/91617, was refused partly because the three proposed dwellings in the central part of the site would have had very steeply-pitching roofs which would not be in keeping with the surrounding residential development. The development now under consideration would have only two dwellings erected in this part of the site and roof pitch would be typical of the local area. The scheme therefore represents a less intensive form of development than the refused scheme and the previous planning-related objection over design has been overcome.

The distance that Plot 3 would maintain between its own outer side wall and the north-eastern site boundary would vary 3.8m to 10.0m. The distance between the south-western side wall of Plot 4 and the south-western side boundary would be approximately 7m. Their back gardens would have a depth of up to 8.6m. No. 111 Bank End Lane, the nearest dwelling to the south-west, is set well below the application site and is not clearly visible from most points within the site boundaries, although new dwellings would be visible from Bank End Lane. Nos 6-8 Rockley Close can be seen from the application site, and are again at a lower level, but the relationship between the two would not be apparent when viewed from the public highway. It is considered that whilst the neighbouring properties both to the west and to the north-east have some significance in forming the site's visual context, the site appears as self-contained. It is considered that the scale of the dwellings and their relationship with site boundaries would not be such as would give rise to the appearance of overdevelopment or have a dominating effect on its surroundings, despite being somewhat raised above Fernside Avenue. It is also considered that the development would not have any significant impact upon the wider landscape.

It is therefore considered that all aspects of the proposed development would support the aims of Policy LP24(a) and the parts of the SPD listed above.

2A Setting of the listed buildings: The proposed dwelling on Plot 1 would be located 8m from a grade II listed building, 3 Fernside Avenue. No. 5, which is joined to no. 3, is also Listed. The Conservation Officer was consulted on the 2017 application (two dwellings, now plots 1 and 2), under which the proposed dwellings would have been of the same design and scale and with the same relationship to the Listed Building, and had no objection. Furthermore, from informal discussion regarding development to the rear of the site – now plots 3 and 4 the Conservation Officer verbally confirmed that they had no concerns 'as the buildings are located some distance from the listed buildings I consider them to cause minimal harm to their setting'.

It is considered that the development would not have an adverse impact on the setting of the listed buildings, subject to high-quality materials and design details (for example, the use of traditional-style gutters). The 'minimal harm' to the significance of the setting is overcome by the public benefits of providing additional dwellings on a long vacant site. The application would, in these circumstances, accord with Chapter 16 of the NPPF, Policy LP35 of the Local Plan, and the Council's duties under the Act referred to above.

3 – Impact on residential amenity: Section (b) of Policy LP24 of the 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.

In addition, 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.

The following principles within the Housebuilder Design Guide are of particular importance:

Principle 6 – Residential layouts must ensure privacy and avoid negative impacts on light, having regard to the following standards:

- 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;
- 10.5 metres between a habitable room window and the boundary of adjacent undeveloped land; and
- for a new dwelling located in a regular street pattern that is two storeys or above, there should normally be a minimum of a 2 metres distance from the side wall of the new dwelling to a shared boundary.

Principle 16 – all new dwellings to have sufficient floor space to meet basic lifestyle needs, having regard to the Nationally Described Space Standards.

Principle 17 – All new houses should have adequate access to private outdoor amenity space that is functional and proportionate to the size of the dwelling and the character and context of the site.

The proposed dwellings on Plots 1 and 2 would have their habitable room windows facing south-east across Fernside Avenue where they would face the windows of the nearest opposing property at a distance of about 23m which is considered far enough away to avoid intrusive overlooking, and would face the proposed new dwellings on Plots 3 and 4 at a distance of 21m, which complies with the recommended minimum and is judged acceptable.

The two 4-bedroom dwellings would have a number of side-facing windows but these are either non-habitable (bathroom and en-suite) or secondary windows to the kitchen / dining room, which are indicated as obscurely-glazed. The new dwelling on Plots 3 would have rear windows approximately 8m from the rear boundary (with the rear garden of no. 8 Rockley Close). This does not accord with the recommendation in Principle 6 that 10.5m should normally be retained between a habitable room window and adjacent undeveloped land, but as it would only face towards the rear part of no. 8's garden it would not be perceived as intrusive. The distance between the side wall of Plot 4 and the rear wall of 111 Town End Lane is 15m. This is in excess of the stand-off distance between a blank wall and a wall containing a habitable room window as set out in Principle 6 above. Whilst it is noted that the new dwelling would be elevated considerably above no. 111, which is a bungalow, it is considered that its impact, at this distance, would not be overbearing or cause significant loss of light. Similarly the relationship between Plot 3 and the adjacent or nearby dwellings on Rockley Close is also considered not to be overbearing, on account of the distance before the boundary.

It is considered that all new dwellings would experience an adequate outlook and receive sufficient natural light, and that the private amenity space provided for each dwelling would be proportionate and functional. Total internal space would be above the minimum set in the Nationally Described Space Standards. Although compliance with the NDSS does not form part of an adopted Policy of the Council, within Principle 16 of the Housebuilders Design Guide, the Council recognises the NDSS as best practice to ensure that new homes are able to meet basic lifestyle needs
and provide high standards of amenity for future occupiers.

To conclude, it is considered that the development would provide an acceptable standard of living for future occupants whilst not harming the amenities of neighbouring properties, thereby according with the aims of LP24(b) of the Local Plan, Chapter 12 of the NPPF and Principles 6, 16 and 17 of the Housebuilders Design Guide SPD.

4 – Impact on highway safety: The unsatisfactory nature of the access has been noted on previous applications, and application 2019/91617 (which

involved forming a new access) was refused partly on the grounds of inadequate parking. These and other issues will be assessed under sub-headings (A-E).

4A – Access to the site from the public highway:
The development would take access to the public highway by means of a narrow, unadopted track. The access track already provides pedestrian access, and potentially vehicular access, to three dwellings (nos. 1-5 Fernside Avenue); no. 5 however does not use the main length of the track since it has an independent driveway that only joins the shared access track near the junction. It appears that the development would displace some existing parking. But any ongoing use for parking by third parties will depend upon the consent of the landowner and under planning powers there is nothing to prevent the applicant fencing off the land. Following the approach that has been taken with similar applications in recent years, no substantial weight will therefore be placed on the loss of existing informal parking space, nor on any possible decrease in the use of the access that might occur as a result.

The track does not meet adoptable standards. The substandard width of the track would make it impossible for two vehicles to pass each other, which could lead to one vehicle having to reverse back on to Fernside Avenue in order to let another pass. A visibility splay at the point where it meets Fernside Avenue has not been shown on the drawings. Whilst it might be possible to demonstrate a visibility splay in each direction commensurate with vehicle speeds, the shallow angle at which the track meets the adopted highway gives it an inconvenient alignment, which would be likely to result in awkward turning movements for emerging drivers intending to turn left on to Fernside Avenue.

The track also joins the adopted highway very close to the junction of Fernside Avenue and Town End. Both roads are non-classified, but since Town End connects Almondbury village centre and Wakefield Road, and as Fernside Avenue serves a primary school, it is reasonable to expect that the junction will experience significant levels of traffic at peak times. It would therefore not be in the best interests of highway safety to grant permission for a development that would give rise to a significant intensification of the track.

The Highway Design Guide, paragraphs 3.15-16 states that:

> "New development serving more than five dwellings (or any existing private road which will serve more than five dwellings after completion of new development) should be laid out to an adoptable standard and be able to be offered for adoption. Developments in excess of 5 dwellings with appropriate layouts and served by private driveways may be acceptable under certain conditions."

Principle 11 of the Housebuilder's Design Guide SPD states that developments should provide inclusive spaces that meet the needs of all users including pedestrians, and ensure that streets are well integrated into

the development. Principle 12 requires developers to consider the need for car parking and how it can be integrated into the development.

This access has previously been considered suitable to serve two dwellings (permission 2017/94072). At that time, no formal highway statement was submitted and officers did not request a statement of trip generation or details of the previous use. Officers however took the view that the erection of two small dwellings would on the balance of probabilities not lead to material intensification of the site access compared to the former use.

The present application was accompanied by a Highway Statement prepared by Paragon Highways. Section 4.1 of this document – "Existing Traffic" – estimates that the former use of the site as a builder's store and depot, which it is envisaged would have had at least two employees, would have generated up to three vehicle movements a day during peak hours, with additional visits during the day by employees, potential customers, or delivery drivers, amounting to 2-4 further trips per day. These would have included vehicles larger than a typical private car. It further points out that the existing turning area is informal, leading to difficult reversing manoeuvres along the shared driveway and long-term deterioration of the surface. It estimates that the traffic generation under the proposed use would be comparable to the site's former use.

Officers raised concerns that the Highway Statement was not rigorous or evidence-based. In response, the applicant submitted a Technical Note with TRICS (Trip Rate Information Computer System) data. This assesses trip generation under the old use based on the building (around 94sqm) having had a light industrial use and the external areas associated with the site (1,255sqm based on the whole of the site being so used) having been put to a storage and distribution use. It estimates that the two uses would have generated an average of 10.2 peak hour trips (0.8 for the light industrial use, 9.0 for the storage use), and 66 daily vehicle movements altogether, and that the proposed dwellings would generate 5.6 daily trips in peak hours and around 24-32 trips per day in total.

A builder's store or yard may be treated as either a storage and distribution or a sui generis use. It may have similarities both with storage and distribution (Class B8), and with light industrial use (Class E(g)(iii)). The approach taken by the highway consultant has been to break the site down into light industrial and storage, presumably because the TRICS database does not provide specific figures for builder's yard or builder's store.

Having read the Technical Note, the Highway Officer has raised three concerns:

- The previous use as a builders' yard has not been established by way of the issuing of a certificate of lawfulness. As such, the access continues to be substandard for the number of dwellings it is intended to serve.

- The bin store is located too far from plots 3 and 4 as it is further than the maximum resident dragging distance of 25m. Furthermore, the location narrows the already substandard width of the access at this point.

- The parking space to the rear of plot 1 (allocated to plot 2) looks awkward to enter and exit if a vehicle is parked in the space to the rear of plot 2 (allocated to plot 1) and is therefore not deemed acceptable.

Concerns about parking and refuse collection will be examined in parts 4B and 4C below.

The site was used as a Kirklees Council depot until 1989. According to the applicant, the site was subsequently used by a private owner as a base for "other operations" including maintenance of a nearby care home and that this continued up until his death, shortly before the present owner acquired the land. It was acknowledged in the assessment of the 2017 application that the access was substandard, but it was accepted on the balance of probabilities the site might have had a previous use which could be resumed, and which would have generated traffic. It had not been proven that the site had a lawful use, but as the number of vehicular trips arising from two small dwellings would have been small, it was considered that requiring the application to submit further evidence of the past use would have been disproportionate and a refusal would have been difficult to defend.

Trip generation from a 4-unit development, where two of the dwellings have four bedrooms, would obviously be greater than for the two dwellings approved in 2017. The question of whether there is a fall-back position – resumption of a past use without further planning permission – therefore becomes critical.

It is acknowledged that the previous use would have meant commercial vehicles using the site entrance, such as vans, pick-up trucks, and vehicles with trailers, which might in some cases have given rise to more safety hazards and greater inconvenience to other highway users when negotiating the junction, and it is possible that there would even have been heavy goods vehicles visiting the site. The applicant's statement and technical note do not attempt a break-down of traffic by vehicle type, and it would be very difficult to undertake such a detailed assessment now given that the use of the site ceased many years ago. In assessing the highway safety implications of the proposal, the main considerations are however the number of trips generated, whether this would represent a material increase upon the past use, or uses, and whether these could be lawfully resumed.

Determining whether or not the resumption of an old use needs planning permission is not always straightforward. If the use is deemed to have been "abandoned" then the former lawful use has been lost. Court and appeal decisions have established four criteria for assessing whether a use had been abandoned, for planning purposes. These are: (1) the physical condition of the buildings; (2) the period of non-use; (3) whether there has been any other

use; and (4) the owner's intentions (the latter, based on the view that would be taken by "a reasonable man with knowledge of all the relevant circumstances".)

Historic aerial photographs held by Kirklees Council do not provide any basis for concluding that the land associated with the building was in use as a builder's yard or similar use at any time in the last 20 years. Images from 2006, 2009, 2018, and 2021 all show vehicles parked in the area behind the old barn / depot building, which mostly appear to be private cars, not vans or trucks. Besides the parking area, and another, smaller hard-surfaced area extending a few metres back beyond this, the land appears as covered with vegetation on all the images from 2002 to the present, with no evident storage of plant, materials or equipment that would be associated with a builder's yard. The 2000 aerial photograph is considered to be too low-resolution to have evidential value. Whilst the photographs do not conclusively disprove that the former depot building was in use as a builder's store during any part of this period, or that any of the associated land was so used, they indicate that by far the greater part of the site was unused during this time, or only minimally used.

It is considered, on the basis of the above, that there is a strong possibility that abandonment of the former use has occurred in planning terms. The evidence available does not convincingly demonstrate that a lawful use exists, even for the building and associated hard-surfaced land. It might be possible to argue that the use of the building has not been "abandoned", since it appears, from an external viewing, to be weatherproof and therefore capable of being put to some form of commercial use. It is far more difficult to apply such an argument to the associated vacant land since in its present condition, uneven and overgrown, it is difficult to envisage it being productively used, or see any intention on the part of recent owners to maintain it in a useable state. Indeed, it has not been demonstrated that this overgrown land was ever used to a significant extent either in association with the Council Depot use or any subsequent use under private ownership. The TRICS calculation depends on the assumption that the whole of the land within the red line boundary (other than the building and the access track) was actively used for storage and distribution, including the uneven and overgrown parts, and it should be noted that the final calculation of trips generated relies far more on the land than the building in arriving at the final figure.

In conclusion, the proposed housing development of the site would clearly lead to an increase in motorists using a substandard access, as against the present situation. If it could be demonstrated that a lawful use existed that could be resumed and would generate an equal or greater number of daily trips, then it might be possible to accept the principle of development on the grounds that it would not lead to a more dangerous situation than the resumption of the old use. Since it has not been demonstrated that such a fall-back position exists, officers' conclusion is that the development would result in a significant intensification of a substandard access close to a junction and as such would be likely to give rise to a significant increase in conflicts between road users and increase the risk of accidents. As such it would be

contrary to the aims of Policy LP21 of the Local Plan, Principle 11 of the Housebuilders' Design Guide SPD, and paragraphs 111 and 130(a) of the NPPF.

4B – Internal parking and turning provision: Parking provision is judged to be adequate in numbers having regard to the Highways Design Guide SPD (3 per unit for a 4-bedroom house, 2 per unit for a 2-bedroom house, visitor provision of one per 4 units, in this case one more than what is required as standard).

The parking space to the rear of plot 1 (allocated to plot 2) could be awkward to enter if a vehicle were parked in front, but the plans indicate some unused space behind it, so it ought to be possible to remedy this problem with only minor changes to the layout.

The layout of the site would enable turning to take place within the application site without vehicles having to reverse on or off the public highway.

It is therefore considered that the scheme generally accords with the aim of LP22 of the Local Plan and Principle 12 of the Housebuilders Design Guide SPD.

4C – Refuse collection: Principle 19 of the Housebuilders Design Guide SPD states that provision for waste storage should be made in such a way is to be convenient for future occupants and collectors. This is also discussed in Principle 11, paragraph 7.49 of the SPD.

The site plan only indicates a single space for a wheeled bin for each property. A minimum of two would normally be required, but the plan could easily be modified to provide two (or more) spaces if there were no obstacles to the granting of planning permission.

A collection point is shown on the south-eastern side of the access track which would accommodate 4 wheeled bins. This is beyond the recommended maximum drag distance for householders (25m). There would realistically be no way of enabling a refuse collection vehicle to enter the site and turn safely, and it is considered that it would be difficult to justify a refusal on this basis alone, but that this in conjunction with other concerns about the access to the site is a reason to oppose the development in its current form. The bin collection area would require refuse workers to drag bins between 9m and 13m to the public highway. Whilst future residents would be aware of the need to drag or push bins quite a large distance on collection day (approximately 70m in the case of Plot 4), the distance that refuse workers would have to carry the bins is in excess of the recommended distance.

The arrangements, are probably the best that it would be possible to devise without creating a new access to the highway, but are not wholly acceptable This arrangement further highlights the inadequacies of the proposed access arrangement to serve a development of 4 dwellings.

4D – Access for emergency vehicles: According to Building Regulations Approved Document B, which deals with all aspects of fire safety, a fire engine should not have to reverse more than 20m and there should be vehicle access for a fire appliance to within 45m of all points on the dwelling. This is also set out in the accompanying text to Principle 11 of the Housebuilders Design Guide SPD. The rear elevation of the proposed Plots 3 and 4 would be just over 45m back from the carriageway Fernside Avenue, so it would not be possible for fire crews to tackle the fire from the public highway. It would be difficult for a fire engine to drive up the access track because of its width and alignment. A vehicle tracking plan has not been submitted. For new developments where accessibility for a fire engine is difficult or unsatisfactory, alternative arrangements such as the installation of sprinklers or a dry-riser may be considered. This issue was not raised as a concern by Highways Development Management on any past application, but these were in advance of the adoption of the Housebuilders Design Guide. In the event of a planning approval, the acceptability of any arrangements for fire vehicle access would have to be assessed in the context of a Building Regulations application. Nevertheless, this matter again highlights the inadequacies of the proposed access arrangements.

4E – Highway safety issues – conclusion: Whilst some of the concerns about the internal layout of the site, in particular the layout of parking spaces, could be allayed by minor changes to the layout, there is very little scope for improving the access track, which is below adoptable standards and therefore not suitable for residential development of this scale. The bin collection arrangements are also problematical. It is considered that the intensification of the use of the track raises serious highway safety concerns and that the application, for this reason, cannot be supported. The development is contrary to Policy LP21 of the Local Plan, Principle 11 of the Housebuilders' Design Guide SPD, and paragraphs 111 and 130(a) of the NPPF.

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 site entrance is about 360m from a bus stop with a frequent service, and a similar distance from the edge of Almondbury Local Centre, where there is a large convenience store, a pharmacy, cafes and other services. The location

will therefore not force future occupants to be heavily dependent on the use of a private car. The applicant has not submitted any supplementary statement or other information to explain how the proposed development would help to address or combat climate change effects. In the event of an approval, further measures to reduce reliance on non-renewable energy sources, including, but not restricted to, the installation of electric vehicle charging points, could be the subject of negotiation with the developer or be secured by condition.

It is therefore considered that the development is in principle compatible with the aims of carbon reduction outlined above, and as set out in Chapter 14 of the NPPF and Principle 18 of the Housebuilders' Design Guide SPD.

Trees:
There are no trees within or on the boundaries of the site that are covered by a tree preservation order or are deemed worthy of one. There are a few mature trees within the site near to the south-western boundary but since these are not very close to the new build, which would have no windows facing towards them, this is not a concern. The development is therefore not considered to be in conflict with Policy LP33 which states that trees of significant value should be retained.

Ecology:
The site is within the Bat Alert Layer. A bat survey, including an activity survey, was submitted (report dated 11th July 2022). The survey found the building to have low bat roost potential and there are limited foraging opportunities in the immediate vicinity. The development would not result in the loss of any high-value natural habitat. In order to deliver biodiversity net gain in accordance with the aims of LP30-31 of the Local Plan, Principle 9 of the Housebuilders Design Guide SPD and NPPF Chapter 15, enhancement measures could be agreed or conditioned if officers were minded to approve.

Drainage:
The site has not been identified as being at risk of flooding. The application form states that a soakaway will be used for surface water disposal. This is one of the more sustainable options within drainage hierarchy principle and would uphold the aims of NPPF Chapter 14 and Policy LP28 in reducing the causes and impacts of flooding. They are not always practical for small sites in urban areas, but given the size and topography of the site there appears to be no reason why they would not work here. Approval under Building Regulations will be required and so this regime of control will not be duplicated here.

Land contamination:
A small part of the site is recorded as potentially contaminated. This appears to be associated with the use of the electricity substation, which is just outside the site, and therefore may have been a plotting error. Environmental Health were consulted on application 2017/94072, which included the potentially contaminated land within its boundary, and raised no concerns. It is considered that in the event of an approval, any potential contamination

issues could be addressed by a precautionary condition. This would be in accordance with Policy LP53 of the Local Plan and Chapter 15 of the NPPF.

6 – Representations: 10 representations have been made, all objecting to the proposal. Summary of concerns raised:

Extra vehicles using the unadopted dirt track across the front of nos. 1, 3, 5 Fernside Avenue very close to a busy junction. There are two schools down Fernside Avenue and traffic taking short cuts from Lepton and Kirkburton. The access is only 2.7m wide and has poor visibility.
Response: These concerns are considered to be substantiated for the reasons set out in section 4 of the Assessment.

Plots 3&4 are imposing and out of keeping with their surroundings
Response: The design, siting and scale of Plots 3-4 are considered acceptable and compatible with local character, for the reasons set out in Part 2 of the Assessment.

Loss of light
Response: It is considered that none of the new dwellings would be in a position to significantly block light to any existing property.

Plot 3 is too close to an existing dwelling
Response: It is considered that space around buildings is acceptable. This has been assessed in Part (3) above.

Parking provision is inadequate. The plans do not acknowledge the need for parking for the existing dwellings including 3 Fernside Avenue. Residents of nos. 3 and 5 will be forced to park on the roadside. Any more parking near the junction will block vision.
Response: Parking provision is adequate, having regard to the standards set out in the Highway Design Guide SPD. For the reasons set out in part 4A above, it is considered that it would not be possible to defend a refusal based on displacement of existing parking.

Privacy: it would mean more cars passing by the front windows of neighbouring properties reducing their privacy. Also overlooking from windows.
Response: It is considered that it would be difficult to substantiate a refusal on the grounds of increased vehicular movements causing loss of privacy. Privacy arising from mutual overlooking between windows has been examined in Part (3) of the Assessment.

The bin collection point would not be useable in practice as it would narrow the lane. They would have to be moved to the pavement.
Response: The lane is already too narrow to allow two vehicles to pass each other. The proposed collection point would occupy an existing grass verge.

Bat assessment is out of date

Response: This is incorrect. An assessment dated July 2022 was submitted with this application.

Loss of wildlife habitat
Response: A full ecological survey has not been submitted but since the site is not designated for nature conservation purposes (except for bats) and does not appear to contain high-value habitat, this is considered disproportionate in the circumstances. The Ecology Officer has raised no objection.

Loss of trees and natural vegetation
Response: The development would not require the felling of mature trees and it would not be reasonable to refuse on the grounds of loss of vegetation.

Topographical survey (form 2018) is out of date and there have been enormous changes since then.
Response: The case officer did not observe any obvious recent changes to ground levels on site and it is unclear why a 2018 topographical survey should be treated as unreliable.

24-hour access to electricity substation is required including the transformer box at the rear which the plans do not acknowledge.
Response: In the event of officers being minded to approve it might be possible to address these concerns.

Insufficient access for emergency vehicles (including fire engine).
Response: This issue was not raised as a concern by Highways Development Management either in this or previous applications for the site. It is considered however, acknowledged the later guidance in the Housebuilders Design Guide SPD makes reference to this matter in Principle 11.

Detrimental to mental health of one or more local residents because of building work and negative impact on garden.
Response: It is considered that it would not be possible to substantiate a refusal on such grounds.

Drains, electric and gas supply under the unadopted road.
Response: Impact upon existing private service connections during, or as a result of, development, is generally treated as a private civil matter.

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 adverse impacts of granting permission would significantly and demonstrably

outweigh any benefits of the development when assessed against policies in the NPPF as a whole.

Recommendation – REFUSE PERMISSION

Decision Authorisation - Delegated Powers

Application Number: **2022/91834**

Officer Recommendation: REFUSE PERMISSION

Reason for refusal

The proposed development would take access to the public highway by means of an unadopted track that it is substandard in terms of its width, which would not allow two vehicles to pass, and would join Fernside Avenue near to the existing junction with Town End. It has not been demonstrated that there is an existing lawful use on either all or part of the site that could be resumed without the need to seek planning permission and which would generate an equal or greater number of vehicular trips to the development proposed. The proposed development would thereby give rise to a significant intensification of a sub-standard access close to an existing junction, leading to an increased potential for conflict with other road users and for accidents to occur. The proposed development, furthermore, would cause difficulties with arrangements for the collection of wastes. The proposed development is therefore contrary to the aims of Policy LP21 of the Kirklees Local Plan, Principle 11 of the Housebuilders' Design Guide Supplementary Planning Document, and paragraphs 111 and 130(a) of the National Planning Policy Framework.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Application form			26-May-2022
Proposed site plan and sections	AL01		26-May-2022
Proposed plans and elevations plots 1&2	AL02		26-May-2022
Proposed plans and elevations plots 3&4	AL03		26-May-2022
Topographical survey			26-May-2022
Bat survey	John Gardner		14-July-2022
Highways Statement	1438		03-Aug-2022
Highways Technical Note	1438C		04-Nov-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 case officer notified the applicant of concerns over the access to the development, and in particular that that the submitted highway statement contained insufficient detail. The additional

Technical Note provided further details and enabled a fuller assessment to be made, but did not allay officer concerns over the substandard access.

Report Dated: 16-Nov-2022