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:	**2022/62/93615/W**
Site Address:	26, Grimescar Meadows, Birkby, Huddersfield, HD2 2DZ
Description:	Change of use of part of dwelling (C3a) for online pharmacy
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: 1st February 2023

Officer Report

Site Description

2022/93615 – 26, Grimescar Meadows, Birkby, Huddersfield, HD2 2DZ

The application site relates to a detached, two-storey dwellinghouse with an integral garage on a cul-de-sac. It is constructed of stone and tile roof. To the front is a modest amenity space with a small area of hedging as well as a driveway (shared with No.24 which has a detached garage to the front). The property has a rear garden with a change in ground levels, so adjacent is decking and lower ground is lawned. The property has been extended to the rear with a conservatory.

There is also a rear extension/structure which appears to be metal framed with a lean-to roof with open elevations except for some plastic material tied to its posts. It appears to be used for storage and drop off by the delivery services. Aerial surveys indicate that this was erected between April 2020-April 2021 and is therefore potentially unauthorised development.

The immediate area is residential in character with large, detached properties with minimal property separation gaps, small front amenity areas, driveways, sparsely continuous service margins within cul-de-sacs, and no pavements predominantly being design characteristics of the wider modern build estate. Materials and architectural styles are all of a relatively similar type.

It is not within a Conservation Area, not a Listed Building or affecting the setting of, and not adjacent to a PROW.

Description of Development

Planning permission is sought for a change of use of part of dwelling (C3a) for online pharmacy. The main part of the property is to remain in C3a use with residential functions therefore the planning unit would have a sui generis use as a result of the application.

The application seeks temporary permission to use the internal garage to be in operation as an online pharmacy limited for two years, while the online pharmacy seeks a new premise. The garage is currently being used in the use being applied for under this planning application, as is the storage area to the rear of the building

The application form states that there are 3 off street parking spaces and that there are 3 full time and one part time employees. Working hours are 9:00-17:00 Monday to Friday.

Plans submitted indicate a single-storey rear extension with a ~3m projection from rear, which is ~3.15m wide. This is displayed on existing plans as a store in connection with the online-pharmacy in place of an existing lean-to structure referred to above (which is potentially unlawful), and as a result this

built development is not subject of this application. The current unauthorised structure on this footprint is also currently used as a store.

History of negotiations/amendments received

The case officer considered the application on review and requested clarification on whether the application intends to have a single-storey rear extension included within its description and materials. A change of description was initially requested, and an Extension of Time was requested twice and there was no reply from the agent on the matter. A representation requested this to be advertised as a retrospective planning application for clarity, this is not required as this is an application for temporary permission for the change of use and not a retrospective application.

To achieve a timely result, Officers proceeded with the application for the change of use to online pharmacy as the unauthorised structure is for related ancillary use to the online pharmacy and to be treated under the application.

Relevant Planning History

Planning history for the estate:
91/06527 – Grimescar Meadows/Off, Reap Hirst Road, Birkby, Huddersfield. Construction of Roads and Sewers – Conditional Full Permission.

94/92692 – Land Off, Grimescar Meadows, Birkby, Huddersfield. Erection of 38 no. Dwellings with garages. Decision – Refused.

95/91007 – Plots 1 - 39, Off, Grimescar Meadows, Birkby, Huddersfield. Erection of 39 no. Dwellings with garages. Decision – Conditional Full Permission.

Enforcement history:
COMP/20/0059 – Alleged material change of use of dwelling to a mixed use of dwelling and wholesale of prescription drugs. Status: Invited retrospective planning permission application. Outcome: Pending.
Officer Note: The Enforcement case was initially opened in 26/02/2020 and closed on 12/05/2020 following investigation. The business was self-reported to be running since 26/02/2016 at the premises. It was not believed that a material change of use had occurred then, but the case could be opened should further evidence come to light on its impacts.

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: 23/12/2022

27 representations have been received, all objecting to the application; a summary of the concerns/comments received is set out below with the approximate quantity of similar objections are in brackets:

Visual amenity:

- From the commercially branded, delivery vehicle activity, it is clear a business is operating and is not in keeping with the area's pleasant, residential character.

Officer Note: *To be discussed within the visual amenity section of the report.*

Residential amenity:

- Reference is made to a court case Sage v SoS for Housing, Local Govt and Communities [2021] EWHC 2885 (Admin). It was held that the comings and goings of at least 4-5 clients a day can cause disturbance to neighbours which is exacerbated by the close design of the properties with the proximity, presence and passage. Residents are aware of the proximate activities of No.26 and have complained on this basis.
- A comment quoted section 55(1) of the Town and Country Planning Act 1990 (as amended) in stating that development means *"the making of any material change in the use of any buildings or other land"* and government guidance setting out that while there is no statutory definition of a 'material change of use' it is linked to the significance of a change and the resulting impact on the use of land or buildings. It is a matter of fact and degree and should be determined on the individual merits of a case. The multiple complaints carry material weight as the proposed business use is clearly having a harmful effect on residential amenity.
- Kirklees Local Plan policy LP24b and paragraphs 130f and 185 of the NPPF are quoted to ensure high standard of amenity to future and neighbouring occupiers.
- The business is located in a residential area and should not expand or be continued with impacts on residential amenity.
- Business is incompatible with residential area.

Officer Note: *To be discussed within the residential amenity section of the report*

Noise:

- The noise and disturbance from the frequency of vehicles' transit, delivery stock trolleys, engines, conversations and banging of door openings has an increased cumulative impact on noise levels above normal expectations throughout the day.

Officer Note: *To be discussed within the residential amenity section of the report.*

Unauthorised rear structure:

- The pharmacy business is not confined to the garage as stated in the Planning Statement, a structure has been built to the rear of the property for the use of the pharmacy.

Highway safety:

- Due to the narrow width of the road and parked vehicles, other vehicles may not be able to pass those parked and the single-track road does not appear to have the capacity for this additional intensity to the residents.
- Concerns with frequency of deliveries and high volume of traffic:
    - 10-12 vehicles a day outlined in the Planning Statement, but there have been as many as 15 in one day. A record is supplied. **Officer Note:** *[this shows a range of 9-15 vehicles arriving between 08:10-18:55].* This is excessive and disproportionate to what might be expected for a residential area. Occasionally multiple vehicles arrive at once (verified by video). Royal Mail vans serve No. 26 only with other post delivered on foot to residents.
    - Deliveries start 9am and continue until 6pm with sometimes 3-4 vehicles per hour Monday to Friday.
    - Pedestrian safety is adversely affected by volume of traffic for children, elderly and other users.
- Excessive speed and manoeuvres linked to deliveries.
- Large size of vehicles and others obstructing traffic.
- Queuing traffic/deliveries.
- Dangerous pavement parking.
- Blocking of road and residential driveways being blocked.
- Obstruction from vehicles stopping other vehicles from delivering to properties.
- Damage to highway/trip hazard.
- Grass verge as part of 1.8m service margin adjacent to No. 26 had been paved over contravening highway rules as well as restrictive covenant for the road. The commercial vehicles park over it leaving part of the public highway in state of disrepair. This is not intended for parking however is used by vehicles causing an obstruction to the highway and damage to the service margins.
- The road and the speed ramp has been damaged by the volume of traffic; the ramp creates noise due to speed overhead.
- The cul de sac is narrow with no pavements. Pedestrians have to walk on highway and dangerous parking forcing people into road:
    - The Planning Statement sets out that regular and new drivers are advised on considerate parking. Photographic record shows that this may not be the case at all times with non-staggered deliveries exacerbating the parking issue.
    - Despite being advised not to park on the grass verges storing utility services, vehicles still park and damage the highway.
- There is a popular bridleway on Reap Hirst Road which is being obstructed by vehicles from the pharmacy workers' cars causing a hazard to pedestrians forced to walk into highway.
- There is no provision for managing the additional vehicles to and from the property with limited visitor parking congested:
    - Until recently (mid November 2022), employees were parking in visitor bays which restricted the parking availability for other

visitors within the street. This parking behaviour was altered when residents complained.
    - Limited visitor spaces being used by employees for business.
    - Doubt is raised on the Planning Statement's assertion that an employee parks 160m distance in order to avoid impact on parking close by with communal parking spaces approved for residential use not for business use which potentially displaces genuine residential users.
- Parking for three cars appears factually incorrect. There is space for two cars and a small-tarmacked area was created without the necessary planning consents and building regulations given that it appears to be constructed from impermeable materials. **Officer Note:** *Paving the front amenity space does not normally require planning permission subject to conditions for areas under 5 metres squared, one of which is that the driveway must be permeable/porous or to have its rainwater directed to soft ground to drain naturally. A parking layout has been submitted to be considered in the Highways section of the report.*

Officer Note: *These highways safety comments will be addressed within the highway section of the report.*

Crime/personal safety:

- Storing pharmaceutical products in a residential area could encourage crime and impact on personal safety of the residents

Officer Note: *To be discussed within the residential amenity section of the report.*

General concerns:

- There are 4 businesses registered at No. 26 Grimescar Meadows not just the online pharmacy.

Officer Note: *It should be noted, that that rooms of the house could in theory be used as home-working spaces however this is dependent on whether there had been a material change in use from part of the property being used for business use. Officers are currently unable to verify if a change of use has occurred, but this is not subject to the application under consideration and is therefore not a material consideration in the assessment of this application.*

Waste/Litter:

- Commercial vehicles continue to drop litter on the highway.
- Commercial waste allegedly being collected within three domestic recycling waste collection bins.
- There is no commercial waste provision including for hazardous waste.

Officer Note: *This is a private matter to be managed by the business owners to fulfil their legal and regulatory duties with regard to disposal of confidential, commercial and hazardous waste if generated. However, there will need to be adequate space on the site to accommodate the suitable amount of waste storage.*

Business:

- It is unclear whether commercial/business rates are being paid for the business use.

Officer Note: *This is not a material planning consideration as this would be subject to regulation by other authorities.*

- Official Company House records states that the business had six employees and not three. This could affect the parking and traffic intensity/demand within the application. It is unclear how many employees would be present.

Officer Note: *This application states that the number of full time employees is three and that there is one part time employee. Employees can be employed elsewhere and not based within the property, therefore the assessment has been made on the basis that it is seeking permission for three full time and one part time employees within this planning proposal.*

- Inappropriate for businesses to benefit from being located in residential areas avoiding the overheads of legitimate businesses. This unfair trading advantage would be encouraged by inappropriate planning approvals by the Local Authority. It would set a precedent for other businesses of a similar nature to be set up.

Officer Note: *Competition is not a material planning material consideration and each case is based on its own individual merits.*

- Personal Retail activity – customer has picked up an order.

Officer Note: *There is no evidence provided for this, but nonetheless, Officers are assessing the application in front of them.*

Planning Statement accuracy:

- Planning Statement is allegedly factually incorrect.
    - In stating "The internet pharmacy, officially called a DSP (distance selling pharmacy) was approved by NHS England Leeds and the General Pharmaceutical Council who have both inspected and approved the premise initially and on an ongoing basis." A General Pharmaceutical Council link to this visited 11/01/2023 states "Not yet inspected".
    - There is no NHS England Leeds. Relevant NHS authority for the Huddersfield area is "Calderdale and Huddersfield NHS Foundation Trust"

Officer Note: *This is not material to the consideration of the application.*

Business operating hours:

- Pharmacy does not operate within stated working hours of 9:00-17:00. Employee and collection movements can be outside this stated time range.

Officer Note: *To be discussed in more detail within the residential amenity section of the report, but this has what has been applied for under this application and Officers are assessing the application in front of them.*

Planning Permission:

- Residents were erroneously led to believe that Planning Permission was given at the time of the business commencing trading. It appears that the current use is unlawful in breach of planning permission, building regulations, covenant and mortgage conditions.

- Lack of planning permission for seven years.

Officer Note*: Officers are assessing the planning application in front of them. The application is a retrospective planning application with no previous history attached to it in terms of the proposed business use. An Enforcement Officer visited the site at the time and considered that the use of the garage as an online pharmacy then did not have impacts on residential amenity upon initial assessment. Advice was given to the applicant that should the use intensify then this may require planning permission.*

Officer Note: *This would be discussed in the following report.*

- Red line boundary – this does not match the deeds of the house or acknowledge that there is a joint access area

Officer Note: *The applicant has signed Certificate A within the application form and if this has been incorrectly signed, the applicant has done so at their own risk. It should be noted that land ownership is a civil matter, and not a planning matter.*

- The applicant has been running the business from 2016-2017 and is seeking retrospective permission in order to find suitable premises elsewhere. This should not be needed given the multiple number of empty commercial properties in the area. The applicant has had more than enough time to find alternate premises.
    - Is the intent to gain temporary permission then to gain a permanent permission in future?
    - Granting even temporary permission deprives the Local Authority of business rates.
    - More time is unreasonable. Temporary planning permission should only be given when the LPA wishes to assess the impact of the proposed development before considering whether to grant full planning permission. The duration of the business has demonstrated the impact.

Officer Note: *Planning Officers are not able to speculate on what the future intent is as this would be controlled by a new planning application when submitted and is outside this application to assess. Whether a temporary use is acceptable will be assessed in the assessment section of the report below. Business rates are not a material planning consideration.*

Covenants/conditions/deeds:

- Breach of freehold conditions, covenant and deeds

Officer Note*: This is a legal matter and not material to the assessment of the planning application.*

Ancillary use:

Comments have been received on whether the change of use could be considered ancillary to the residential property due to staffing, vehicle movements, the amount of stock and the size of the area of storage.

Officer Note: *This would be considered within the report, but it is concluded that the proposal represents a material change of use.*

Consultation Responses

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

- Environmental Health – No objections. Received objections from residents however EH response unchanged. Discussed further in residential amenity section of the assessment.
- Crime Prevention – No objections. Recommended details on security arrangements provided.
- Waste Management – No objection. Advised that commercial waste generated on site is not to be collected within domestic/household waste collections.
- Highway Development Management – Formal response not received to date.

Three Councillors requested updates on this applicationl: Cllrs Gregg, Burke and Smith.

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 21 – Highways and access**
- **LP 22 – Parking**
- **LP 24 – Design**
- **LP 30 – Biodiversity and geodiversity**
- **LP 43 – Waste management hierarchy**
- **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 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

Assessment

The following matters are considered in the assessment below –

1) Principle of development
2) Impact on visual amenities and character and appearance.
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 of the Kirklees Local Plan 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 assessment. 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 Kirklees Local Plan. Policy LP1 confirms that the Council will take a positive and proactive approach when considering development proposals to reflect the presumption in favour of sustainable development embedded in the National Planning Policy Framework.
Policy LP2 of the Kirklees Local Plan sets out that all development proposals should seek to build on the strengths, opportunities and help address challenges identified in the Local Plan.

Chapter 6 of the NPPF is relevant in that Officers should seek to ensure that *"Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development."*

The application is considered to represent a material change of use, and the partial use of the dwelling as an online pharmacy is not deemed to be

ancillary to the dwellinghouse. Whether there is a change of use is a matter of fact and degree, and given the number of employees, the number of vehicular movements associated with the online pharmacy, the hours of operations and the size of the operation, Officers are confident that the development represents a change of use of the site to a mix use of residential and online pharmacy thereby constituting a sui-generis use.

The online pharmacy element, which stores or distributes goods for sale online is not considered a main town centre use and a sequential test required by Policy LP13 of the Kirklees Local Plan and Chapter 7 of the NPPF is not needed in this instance as a consequence.

The principle of the development will therefore be subject to whether it prevents detrimental harm to visual and residential amenity, and highways safety as well as not having any other undue impacts. This will be discussed below.

2 –Impact on visual amenities and character and appearance:

In terms of visual amenity, general design considerations are set out in Policy LP24 of the Local Plan, and Chapter 12 of the NPPF, which seek to secure good design in all developments by ensuring that they respect and enhance the character of the townscape and protect amenity.
Policy LP24(a) states that proposals should promote good design by ensuring: *"The form, scale, layout and details of all development respects and enhances the character of the townscape"*
Paragraph 126 of the NPPF provides a principal consideration concerning design which states: *"The creation of high quality, beautiful and sustainable 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."*
Paragraph 130 of the NPPF outlines that planning decisions should ensure that:

a) developments will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development.
b) Are visually attractive
c) Are sympathetic to local character

Whilst Officers have their concerns with the design of the extension displayed on the existing plan, as it would appear to create a discordant utilitarian addition to the residential property, this is not subject of this application as discussed in the description of development section of the report above.
Given the nature of the use being, partly being an online pharmacy, commercial deliveries and collections of goods would likely be required and there are noted to be concerns how this will not be in keeping with the residential character of the area. There have been records and representations provided by residents that they frequently see deliveries 9-12 times a day and associated congestion with parked cars on the highway

within their narrow cul-de-sac and consequently have a visual disturbance. While it may be within normal parameters to have deliveries 1-5 times a day, a sustained high frequency delivery schedule every weekday in excess of this would suggest that this is more expected in a commercial area and not a residential area. This is considered unacceptable giving rise to a visual change in character from a pleasant residential setting to a more commercial setting. There is considered to be conflict with Policy LP24(a) of the Kirklees Local Plan and Chapter 12 of the NPPF (notably Paragraph 130) in this instance as the development would not be sympathetic to local character, but would instead be harmful to it.

Litter has been included in objections as an example of the business use's impact on the visual amenity of the area; the examples shown could be described as stray littering of a size that could be considered minor in form. While the cumulative annoyance of seeing those dotted about is noted, this would not be of a size or quantity enough to reasonably state this would be so different from a typical residential area to have a visual clutter that creates the impression of a commercial area. There is also considered to be adequate space on the site to suitably store refuse for both the proposed mixed residential/online pharmacy use which should help to prevent littering.

3 – Impact on residential amenity:

Section B of Policy LP24 of the Kirklees Local Plan states that developments should promote good design by ensuring: *'they provide a high standard of amenity for future and neighbouring occupiers; including maintaining appropriate distances between buildings and the creation of development-free buffer zones between housing and employment uses incorporating means of screening where necessary.'*

Further to this, Paragraph 130(f) of the NPPF states that planning decisions should ensure that developments have a high standard of amenity for existing and future users.

Paragraph 185 of the NPPF states that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects of pollution on living conditions. In addition to this, Policy LP52 of the Kirklees Local Plan states that proposals which have the potential to increase pollution from noise, vibration, light, dust, odour and other forms of pollution must be accompanied by evidence to show the impacts have been evaluated and measures have been incorporated to prevent or reduce the pollution, so as to ensure it does not reduce the quality of life and well-being of people to an unacceptable level or have unacceptable impacts on the environment.

As noted, whilst a revised store room is displayed on the existing plans, this is not subject to this application. Nonetheless, it is considered to be sufficiently sited away from any other neighbouring properties 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.

The immediate locality is that of a residential area with minimal property separation gaps, small front amenity areas, open driveways, and sections of lawned margins. The street design and visual openness of the cul-de-sac and correspondingly the closeness of the neighbours to the highway and to each other without the benefit of visual screening indicates that any additional vehicle movements, disturbance to neighbours and damage to the highway within a typically quiet cul-de-sac are of increased visual sensitivity.

KC Environmental Health (Pollution and Noise) Officers have been consulted on the scheme and raise no concerns regarding noise. Following comments from the third parties, KC Environmental Health were contacted and re-examined the matter and found that there is insufficient evidence related to pollution and noise to raise an objection. The submitted information and a search of the complaints database did not reveal any issues related to those. KC Environmental Health consider that it is not unreasonable to have deliveries every day and the delivery activity days are Monday to Friday. The submitted audio recordings have been examined by KC Environmental Health and they do not indicate excessive or unreasonable noise.

Whilst Officers acknowledge that such a use is unlikely to result in detrimental levels of environmental pollution in relation to Policy LP52 of the Kirklees Local Plan and Chapter 15 of the NPPF given the levels of activity recorded by third parties and what is noted in the Planning Statement, Officers still hold concerns about the impact of such a use upon the living conditions of neighbouring residential properties as a result of the development. This is due the residential nature of the area, the amount of vehicular movements (‘comings and goings’) associated with the use, the types of vehicles visiting to the site as a result of the use, the closing of doors, noise from the movement of good, general auditory noise and pressures to park on the street. This concern in increased given the number of representations received objecting to the application expressing concerns with the impact the use is having on the living conditions.

Of note, at the time of the site visit, this being during working hours in the day, the cul-de-sac was clear and the street was quiet. Officers hold the view that it would not normally be expected in a residential area to have a maximum of 12 vehicles per weekday for one residence within a cul-de-sac which is, by design, not designed to be a busy throughfare. It is also uncommon for the type of deliveries required to be made to a residential property on such a frequent basis.

While the sources of noise may be short-lived at the range of normal background levels, the repetition, frequency and similarity of noises within a quiet residential area at different times throughout the day between 09:00-17:00 have a cumulative effect on sensitive receptors in the area causing auditory disturbance and nuisance to nearby residents, which would go over and beyond that from the original use of the building as a dwelling.

Deliveries/collections can be after 5pm for residential areas and may give rise to the perception that the business is similarly operating both visually and

audibly. This could have some nuisance however from submitted reports, there is limited movement and it could be considered that those are within the realm of commuting traffic times with heavy traffic extending this further. Whilst delivery and collection hours could potentially be conditioned, it is considered that this would not be sufficient to address Officer concern in relation to impact on residential amenity.

While working hours are stated within the Statement, employees can and do arrive before working shifts to start and leave afterwards late on occasion. This could not be reasonably enforced by Planning controls unless they give rise to an unacceptable and detrimental impact on residential amenity. The Planning Statement sets out that there are three full time and one part time non-resident employees, and they either park by private arrangement, park elsewhere on another road, park outside (18:00-20:00) or walking to work; representations dispute this. It is not known whether the residents of the property also work at the business. Nevertheless, three full time and one part time employees with up to 6 vehicular movements per day for a commercial activity within a residential property in a residential area does appear to have an intensity of additional activity unusual for a residential area, and this adds the disturbance already identified and discussed above.

Given the above, the development is considered to be an incompatible use within this residential area, resulting in unsatisfactory living conditions for residential properties. Therefore, as a result of the change of use, neighbouring residents do not benefit from a high standard of amenity and the application is therefore contrary to Policy LP24(b) of the Kirklees Local Plan and Paragraph 130(f) of the NPPF.

It is noted that a temporary use is applied for. The PPG sets out that: *"Circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period."*

The PPG goes on to note that: *"It will rarely be justifiable to grant a second temporary permission (except in cases where changing circumstances provide a clear rationale, such as temporary classrooms and other school facilities). Further permissions can normally be granted permanently or refused if there is clear justification for doing so. There is no presumption that a temporary grant of planning permission will then be granted permanently."*

However, given the above concerns from Officers, the number of representations received objecting to this use which already exists without permission, and the only reason temporary permission is noted to be sought is because the applicant is seeking an alternative permanent location, then it is not considered a 'trail run' is required or that a temporary permission would satisfactorily address Officer concerns.

4 – Impact on highway safety:

Turning to highway safety, Policies LP21 and LP22 of the Kirklees Local Plan have been considered along with the KC Highway Design Guide SPD, Waste Management Design Guide for New Developments and Chapter 9 of the NPPF.

Of note, Paragraph 111 of the NPPF sets out that development should 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. This is echoed by Policy LP21 of the Kirklees Local Plan.

Considering the proposed change of use within a residential property, as a general guide, it is expected that for a 4 plus bedroom dwelling, it should have three off street parking spaces for this use to have sufficient off street parking spaces to meet need and to ensure on street parking impact is limited (as set out in the Highways Design Guide SPD). The locality has non-continuous grass service margins, one service margin that is paved over and used as a temporary parking space and two visitor parking spaces.

The site has an integral garage 5.2m by 2.4m approx, and the removal of this being used in a residential use in itself could potentially be acceptable as it would not be of sufficient size to provide garaging space for modern vehicles. The parking layout plan supplied sets out three off street parking spaces approximately 5m by 3.3m which is considered sufficient to be regarded as 3 off-street spaces. As mentioned previously, the front amenity space could be hard surfaced over under Permitted Development Rights with specific requirements to avoid surface water run-off affecting the road and drainage (however, if the site has a sui generis use, such a right would be removed). The Planning Statement indicates that it is surfaced with slate chippings which could potentially be permeable if the substrate is similarly porous.

Whilst the site maybe capable of accommodating suitable parking for the residential element at the site, this would in theory leave insufficient space on the site for the parking of vehicles in connection with the online pharmacy element, including staff and delivery vehicles. Parking arrangements are within existing driveways, an informal parking space within a converted service margin and seemingly two visitor spaces which, within the narrow cul-de-sac, limit where visitors could park. The Planning Statement indicates that the agent is aware of this issue, commenting that the applicant has made clear to regular drivers of the importance of considerate parking with support for new drivers to avoid inadequate parking. Whilst this may be the case, Officers consider that conditioning some schedule would unlikely be enforceable.

Whilst the residential property has three off-street parking spaces of its own as established, those would require more manoeuvring than parking parallel alongside the property for delivery vans and this is unlikely to change given their time constraints/schedules. Representations received with photographs show this being the preferred method of planning which does have some impact on the joint shared driveway as this is blocked by the delivery vans.

Parking is not formally set out outside the property for visitor parking which potentially limits the use of those by delivery vehicles which presumably wish to park as close as possible to a property to collect or deliver items for efficiency. It is also potentially the case that such laybys are of an inadequate size to accommodate certain delivery vehicles.

The Planning Statement indicates that there is some spill over managed by one employee parking in a resident driveway under arrangement following visitor parking being oversubscribed. Another employee parks further away on Reap Hirst Road to avoid overloading the cul-de-sac. One part time employee works three days 6-8pm parking in the same space as delivery vans. Those overspill examples are considered the emphasise the overloading the day-to-day ability of the cul-de-sac.

The tight constrained space of the cul-de-sac without footways would necessitate both pedestrians and vehicular traffic to share the carriageway; it is acknowledged that there would be increased sensitivity around how this space is shared and with poorer safety of users compared to highways with pavements to separate pedestrians from vehicular traffic.

Given the above, it is considered that the development creates pressure for parking on the highway, including the parking of delivery vehicles and staff vehicles. There are significant concerns with such parking on the highway given the narrow width of the highway and that there are no footways on this cul-de-sac. In addition to this passing, whilst it may be possible for vehicles to pass other vehicles parked on highway, passing may not be possible for larger vehicles, such as refuse vehicles and other larger vehicles accessing other properties, including emergency service vehicles. Officers also have concerns with the frequency of such vehicles associated with the using this narrow residential street which is share with pedestrians and the potential conflict this could lead to. It is therefore considered that the development increases the likelihood of conflict between highway users. The development therefore results 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.

The damage of the highway as a consequence of the development has been referred to by third parties, but it is considered that such vehicles are unlikely to result in significant damage to the road, although the parking on grass verges can deteriorate the quality of the locality.

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. When determining planning

applications the Council will use the relevant Local Plan and NPPF policies and guidance documents to embed the climate change agenda.
Should Officers be minded to approve the application, due to the scale of the proposed development the scheme would not require additional climate change measures.

Bridleway

A representation on the employee parking obstructing a bridleway cannot be verified however should the development be considered acceptable, this would have a footnote attached to the Decision reminding the applicant of their duties to avoid obstructing a public right of way and KC legal powers over enforcement in this regard.

Biodiversity

Policy LP30 of the Kirklees Local Plan is relevant as is Chapter 15 of the NPPF in relation to biodiversity. The site is not within a high sensitivity area for biodiversity as it is not within a bat alert area or a strategic green infrastructure network. The scheme is relatively minor in scale and it is considered it would not harm protected species and that it would not be reasonable or necessary to have additional biodiversity net gain requirements attached should permission be granted.
Crime/Personal safety

Third parties have raised concerns over the storage of pharmaceutical drugs within a residential property in a quiet area which may attract attention of crime. The fear of crime is a material planning consideration as set out in Paragraph 130(f) of the NPPF.

In addition, LP24(e) of the Kirklees Local Plan guides Officers to ensure that *"the risk of crime is minimised by enhanced security, and the promotion of well-defined routes, overlooked streets and places, high levels of activity, and well-designed security features".* This has to be counterbalanced by the need for evidence in instances where the use, by its very nature, could provide a reasonable basis for concern.

The KC Crime Prevention Officer was consulted and raised no objections. Details were given on recommended security measures. The deliveries are to be stored in a purpose-built storeroom with doorway access and no windows which would be an improvement on the current open sided structure with no obvious security features. The business use takes place within a residential area, and it may be that the frequency of branded delivery vans for healthcare in a quiet, non-thoroughfare residential area could attract attention as an unusual activity.

However, crime as a consequence of the development would unlikely effect anyone else apart from the applicant. Also, crime has to be balanced by the immediate estate setting having limited access afforded by Reap Hirst Road and consequently reduced casual traffic on foot except for residents and

visitors to the estate. The open plan design of the estate in close proximity to the highway without screening ensures that residents within the cul-de-sac are keenly aware of movement within the area that may appear unusual. The existence of the business use operating since 2016 without criminal activity linked to it reviewed by the KC Crime Prevention Officer gives further evidence that there is no reasonable basis of concern for the proposed partial use of the property as an online pharmacy.

Thus, whilst the concerns of crime are acknowledged, it is considered, that the arguments do not carry sufficient evidence and weight in planning terms to warrant a refusal of the application.

Litter and Waste

Representations on these matters have been received. The Kirklees Waste Management Officer has been formally consulted. No details on waste arrangements or on a take-back service for expired, spoiled, or partially used drugs have been provided. It was stated by the Kirklees Waste Management Officer that any disposal or recycling of commercial waste on site should not use domestic/household waste collections unless the Waste Collection Authority or a private sector waste collector operate this fee-payable commercial waste collection service. A detailed response publicly available online sets out specific waste activity requirements for medicines, needle exchange and cytotoxic/cytostatic waste. Officers are content that this waste storage require can be suitably accommodated on the site.

With regard to litter from commercial vehicles, the submitted photographic evidence indicates stray litter which would have some visual clutter to the residential area however this would not appear of sufficient quantity to visibly alter the character of the area.

Section 215 of the Town and Country Planning Act 1990 (as amended) empowers Local Planning Authorities to require owners/occupiers tidy up a site if it is adversely affecting the amenity of the area by serving a Notice under this section.

As such, should Officers be minded to approve this application, subject to a waste management strategy plan being approved by the LPA on the disposal of commercial wastes, an additional footnote would be attached reminding applicants of LPA powers over litter to ensure that the development sufficiently manages its impacts to litter.

6 – Representations:

27 Objections have been received and have been considered above within the delegated report.

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 and other material consideration.

Recommendation **Refuse**

Decision Authorisation - Delegated Powers

Application Number: 2022/93615

Officer Recommendation: Refuse

Reasons for Refusal:

1. The change of use, by virtue of the residential character and nature of the area, the close proximity of other residential uses to the site, the material increase in frequency of vehicular movements to and from the site, the types of vehicles visiting the site, the associated noise with deliveries including the closing of doors and noise from the movement of goods, general auditory noise and pressures to park on the street adding clutter, introduces a incompatible form of development in the locality which is unsympathetic to the local character of the area and results in unsatisfactory living conditions for residential properties in terms of auditory disturbance and nuisance. The development is therefore contrary to Policy LP24(a and b) of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework (notably Paragraphs 130(a, c and f)).

2. The development, by reason of the lack of on-site parking to accommodate the number of spaces that would be required to adequately accommodate the vehicles associated with the part residential/part online pharmacy use at the site, creates pressures for parking on a narrow cul-de-sac which is shared with pedestrians, thereby increasing the likelihood of conflict between highway users. This likelihood of conflict is increased further due to the frequency of delivery vehicles on this shared narrow residential street. The development therefore results 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 National Planning Policy Framework.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Location Plan.	Ref: TQRQM22307150852374.	Unamended.	08/11/2022
Existing Block Plan with Parking Layout.	Existing Block Plan with Parking Layout.	Unamended.	08/11/2022
Proposed Block Plan with parking layout.	Proposed Block Plan with parking layout.	Unamended.	16/11/2022
Existing Floor and Elevation Plans (without store).	Existing Floor and Elevation Plans (without store).	Unamended.	16/11/2022

Plan Type	Reference	Version	Date Received
Existing Floor and Elevation Plans (with store).	Existing Floor and Elevation Plans (with store).	Unamended.	08/11/2022
Planning Statement	Planning Statement by Rose Consulting Planning & Regeneration. Dated:01/11/2022.	Original	08/11/2022

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. For the reasons set out, the development is considered to constitute an incompatible use in this residential location, which unduly harms the character of the area and amenities of neighbouring residents, as well as has detrimental impacts upon highways safety, and the application has been refused on this basis.

Report Dated: 01/02/2023