

**KIRKLEES METROPOLITAN COUNCIL  
INVESTMENT & REGENERATION SERVICE**

**DEVELOPMENT MANAGEMENT**

**Town and Country Planning Act 1990 (as amended) – SECTION 70**

**DELEGATED DECISION TO DETERMINE PLANNING APPLICATIONS**

Reference No:	<b>2023/62/90172/W</b>
Site Address:	114, Fitzwilliam Street, Huddersfield, HD1 5PH
Description:	Change of use, alterations, part demolition of boundary wall and erection of two storey side extension to convert from hot food takeaway to residential (Listed Building within a Conservation Area)
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:** 3<sup>rd</sup> May 2023

## **Officer Report 2023/90172**

### **114 Fitzwilliam Street, Huddersfield**

#### **Site Description**

114 Fitzwilliam Street is a two-storey building, most recently in use as a hot food takeaway, on the northern side of the highway. It forms the right-hand half of a pair of semi-detached buildings, and is attached to no. 116, a clinic, from which it is stepped down. At the side of the property is a small yard, approximately 7m wide at the front, where the highway boundary is formed by a high mortared stone wall, and tapering to a narrow passageway at the rear where it provides access to a large car park (not part of the application site). To the right of no. 114 is a two-storey detached property known as Commerce House (no. 112). All three properties are built in coursed stone and have ashlar stone frontages. Nos. 114 and 116 have parapet roofs.

The property faces redundant college buildings but otherwise the surroundings are mostly residential.

#### **Description of Proposal**

The proposal is for change of use and alterations to building, part-demolition of boundary wall and erection of two-storey side extension to convert the building from a hot-food takeaway to residential (two dwellings).

The side extension would be a maximum of 4.85m in width, the first part of the side elevation built parallel to the existing side wall but then tapering in to a width of 1.6m at the rear. It would be set in from the existing front wall by 300mm and would have a flat roof with a parapet.

Each dwelling would contain living accommodation over two floors. The rear dwelling would be accessed by means of a side door and would comprise about 40% of the ground floor plus the whole of the original first floor. This would contain 4 bedrooms. The other dwelling, which would be accessed from the front door and would contain two bedrooms, would consist of the remainder of the original ground floor accommodation, and both floors of the new extension.

It would be externally faced with stone, with ashlar stone used at the front.

#### **History of negotiations/amendments received**

Case officer advised the architect that the proposal was unacceptable, for reasons including, but not limited to, impact on heritage assets. The architect was advised during the application process that the proposal was unacceptable in its present form but did not submit any amended plans.

## **Relevant Planning History**

2023/90252 – Listed building consent for change of use, part demolition of boundary wall, alterations and erection of two storey side extension to convert from hot food takeaway to residential. Awaiting determination.

## **Representations**

Final publicity date expires: 20-Apr-2023. Publicity by site notice and press publicity in addition to neighbour notification letter on account of the site being within a Conservation Area and Listed Building.

No representations have been made.

## **Consultation Responses**

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

- The Coal Authority – Fundamental concern, request Coal Mining Risk Assessment.
- KC Environmental Health – No objection subject to conditions.
- KC Conservation & Design – Recommend refusal.

## **Policy**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27<sup>th</sup> February 2019).

The site is within a land that lies within the Greenhead Park / New North Road Conservation Area on the Local Plan Proposals Map. The building is Grade II Listed.

Historic England list entry:

FITZWILLIAM STREET 1. 5113 (North Side) No 114 SE 1316 33/537 II GV 2. Mid C19. Ashlar, Hipped slate roof. 2 storeys. Pitched slate roof. Moulded eaves cornice. Blocking course. 2 ranges of sashes.

The two neighbouring buildings, no. 112 and 116, are also Grade II Listed.

The site is also within a Coal Referral Area.

**Kirklees Local Plan (LP):**

- **LP 1:** Presumption in favour of sustainable development
- **LP 7:** Efficient and effective use of land and buildings
- **LP 21:** Highways and access
- **LP 22:** Parking
- **LP 24:** Design
- **LP 28:** Drainage
- **LP 30:** Biodiversity and geodiversity
- **LP 35:** Historic environment
- **LP 52:** Protection and improvement of environmental quality
- **LP 53:** Contaminated and unstable land

**Supplementary Planning Documents:**

- KC Highways Design Guide 2019
- Housebuilders Design Guide Supplementary Planning Document,
- 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 20<sup>th</sup> July 2021, the Planning Practice Guidance Suite (PPGS) first launched 6<sup>th</sup> March 2014 together with Circulars, Ministerial Statements and associated technical guidance.

The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

- Chapter 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 Local Plan identifies a minimum housing requirement of 31,140 homes between 2013 and 2031 to meet identified needs. This equates to 1,730 homes per annum. National planning policy requires local planning authorities to demonstrate five years’ supply of deliverable housing sites against their housing requirement. The latest published five-year housing land supply position for Kirklees, as set out in the Authority Monitoring Report (AMR), is 5.17 years. This includes consideration of sites with full planning permission as well as sites with outline permission or allocated in the Local Plan where there is clear evidence to justify their inclusion in the supply.

The Housing Delivery Test results are directly linked to part of the five-year housing land supply calculation. The 2022 Housing Delivery Test results have yet to be published and the government is currently consulting on changes to the approach to calculating housing land supply. Once there is further clarity on the approach to be taken, the council will seek to publish a revised five-year supply position. 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 land supply, it is noted that the change of use and extension of this building would 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.

When making decisions on planning applications for development that would affect a Listed Building or its setting, there is a duty under Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, to have special

regard to the desirability of preserving the building and its setting, and any features of interest it possesses. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that Local Planning Authorities shall pay special attention to the desirability of preserving or enhancing the appearance of buildings or land within a Conservation Area. This is also reflected in NPPF Chapter 16 and LP35 of the Local Plan which require that development should not be permitted if it would give rise to loss of significance of heritage assets, unless there is a proportionate justification for the harm caused.

The proposal will be further assessed according to the following 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.
- 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.
- LP52 – Proposals with pollution implications, including as receptors, should demonstrate that the impacts can be suitably mitigated.
- LP53 – Potential contamination or land instability should be remediated or measures incorporated to ensure it does not cause harm, including coal mining legacy.

Under Chapter 11 of the NPPF, planning decisions should support development that makes “efficient use of land” taking into account the need for different types of housing, local market conditions, infrastructure, the prevailing character of the area, the desirability of promoting regeneration or change, and the importance of securing well-designed, attractive and healthy places. 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.)

The application would result in 2 dwellings occupying a site of 250sqm. This would be the equivalent of 40 per hectare. Policy LP7 recommends achieving a minimum of 35 dwellings per hectare. The achieved residential density would be appropriate having regard to this aim and the prevailing residential densities in the surrounding area, and is therefore considered to be an efficient use of land.

It is considered that there are no constraints on this site that would make residential development (whether by conversion, new build or a combination of these) unacceptable in principle.

The acceptability of the proposal will however need to be thoroughly assessed having regard to the need to conserve or enhance the Listed Building and other affected heritage assets, as well as general considerations of amenity, highway safety, and environmental issues, to be examined in detail below.

The Housebuilders' Design Guide SPD can only be given limited weight since this application is primarily conversion rather than new build. The principles within the SPD, including those on space about buildings, can however be treated at least as tentative guidelines where applicable.

2 –Impact on visual amenity: In addition to No.114 and the two nearest neighbouring buildings being Grade II listed the site is also within the Greenhead Park & New North Road Conservation Area. The site is visible from the west along Fitzwilliam Street however, the site and the side elevation is highly visible from long views along Fitzwilliam Street and also when looking off New North Road.

The Heritage Statement makes the observation that “there are several [sic] items that can be deemed detrimental to the aesthetic on the side elevation” in particular highlighting the two flues, metal railings on the sash windows, pipe work and damaged stonework around the external door. These, and the external wiring, undeniably have a negative impact on the appearance and character of the building. They could however be removed, and conservation repair works undertaken to address any harm caused by their removal. This might be undertaken in the context of a conversion scheme (to residential or another use) without new build. The statement however fails to provide any clear benefit or justification for the consideration of such a substantial extension.

The principal elevation is finished in the finer ashlar stone whereas the side elevation is finished in hammer-dressed stone. The elevation does still have details of note, including original window and door openings and stone corbel gutter hangers. The elevation has always been exposed and prominent and there is no historic evidence to show that there has ever been any structure in this location.

The works would also require the removal of a large section of wall to the front which is protected under the listing for the Wall in front of No.112 (Historic England ref. 1134229). The wall is listed in its own right and also from a part of the character of the setting of the listed building and the street scene. The reason for the demolition appears to be a desire to provide an unobstructed outlook for the ground floor windows in the proposed extension, and to provide pedestrian access.

The proposed extension would not form an enhancement or better reveal the significance of the building, it would however create a highly obtrusive element which would detract from the building's character and fail to respect the setting of the neighbouring Listed Buildings, especially no. 112, and the character of the Conservation Area. It has not been demonstrated either that the present use is unviable or that it would be impossible to adapt or repurpose the building without extension or significant alteration. In short, there is no justification for the scheme because there is no public benefit which would outweigh the harm caused.

The proposals are therefore unacceptable and do not accord with policies LP24 or LP35 of the Local Plan, Section 16 (paragraphs 199, 202 or 206) of the NPPF and would be incompatible with the Council's duties under the Planning (Listed Building and Conservation Areas) Act.

3 – Impact on residential amenity: Section (b) of Policy LP24 of the Kirklees Local Plan states that proposals should promote good design by ensuring they provide a high standard of amenity for future and neighbouring occupiers, including maintaining appropriate distances between buildings.

Further to this, Paragraph 130 of the National Planning Policy Framework states that planning decisions should ensure that developments have a high standard of amenity for existing and future users.

The Housebuilder Design Guide SPD is principally for new build schemes, and the standards within it therefore should not be applied strictly to applications for conversion of buildings, but the following principles may be held applicable at least as guidelines:

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.

The Council recognises the nationally described space standards as best practice to ensure that new homes are able to meet basic lifestyle needs and provide high standards of amenity for future occupiers. These are not currently adopted in the Kirklees Local Plan. The council will seek to adopt such a policy in the future in accordance with evidence and in the meantime will seek to ensure high quality living environments through the application of Local Plan policy LP24 (Design).

Most habitable rooms would have their outlook to the rear, over the car park, or to the front, across Fitzwilliam Street. In both cases it would not be obstructed at close quarters and would deliver an acceptable outlook and natural light to future occupants.

The side-facing “bedroom 3” within the extension would however experience very limited light and outlook since it would face the neighbouring building across a narrow passageway.

The front / side dwelling would be approximately 86.6sqm which is deemed adequate for a three-bedroom dwelling, being 2.6m over the recommended minimum in the NDSS. The rear / upper floor dwelling would have a gross internal floor area of 91.5sqm, and then only if the porch is included in the calculation. Having regard to the above standards, this falls short of the floorspace normally demanded in a four-bedroom dwelling (97sqm). A minor shortfall in floorspace might in theory be acceptable if the scheme were for conversion alone, although it would still need to be clearly justified (by demonstrating, for example, that it was the only viable way to convert the building). A scheme delivering sub-standard levels of residential amenity, by reason of limited floorspace in one dwelling and poor natural light and outlook to one bedroom in the other will not, however, be possible to justify in the context of a proposal for a substantial extension that would also detract from the building’s significance.

The proposed development would be approximately 25m from the junction with New North Road, and approximately 50m from Castlegate Slip, which both carry high volumes of traffic. There is a possibility that noise could affect the quality of life of future residents. It is considered that this does not represent a significant enough concern to justify a refusal of planning permission. If officers were minded to approve, however, a condition would have to be imposed, in accordance with Environmental Health officer’s advice, that a noise assessment be submitted, with mitigation measures if necessary, before the accommodation is first occupied, thereby supporting the aims of Policies LP24(b) and LP52.

It is concluded that whilst it would not be harmful to the amenities of any existing residential properties, the development would fail to provide an acceptable standard of living for future occupants owing to limited internal space for one of the two dwellings and limited light and outlook for at least one room, and would thereby not accord with the aims of LP24(b) and Chapter 12, paragraph 130(f) of the NPPF.

4 – Impact on highway safety: The two proposed dwellings could be classed either as flats or houses since each would contain accommodation over two floors but would also share a party floor / ceiling. The Highways Design Guide SPD recommends that an apartment with 1-2 bedrooms, should, as a starting point, be provided with one parking space each unless the location or other specifics of the development indicate a lower level of provision is acceptable. Given the location, which is within walking distance of the Town Centre and which governed by waiting restrictions on both sides of the road, it is considered highly probable that the dwellings would be occupied by tenants who do not own cars. The lack of parking provision is therefore not considered to be a problem in planning terms.

The extension would not result in the loss of, or interference with, any existing parking arrangements. If officers were minded to approve, details of refuse collection arrangements would be sought (which is unlikely to pose a problem since the quantities of waste produced would in all likelihood be lower than under the past use).

In conclusion, the development would avoid any impact on the free and safe use of the highway and accord with LP21-22.

#### 5 – Other matters:

##### *Climate Change:*

On 12<sup>th</sup> November 2019, the Council adopted a target for achieving ‘net zero’ carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. When determining planning applications the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda. At the time when this application was submitted, a climate change mitigation statement was not part of the standard local validation requirements.

It is noted that the building is in a highly sustainable location, being situated within 20m of the Town Centre boundary and 600m walk from the bus and rail stations. The proposed development would allow an existing building to be retained in an income-generating use, although the new build element would contain embodied energy and would be expected to generate emissions, over and above those caused by the existing building, throughout its lifetime.

It is therefore considered that the proposal is in principle compatible with the sustainability objectives set out in the NPPF and the Council's carbon reduction aims set out above. Further details of how it would contribute to these aims could be requested of the applicant if officers were minded to approve.

*Ecology:*

The site is within the bat alert layer but from an external viewing does not have obvious bat roost potential. Given the nature and location of the proposal, opportunities to enhance the ecological value of the site are limited, but enhancement measures could be considered in the event of an approval.

*Drainage:*

The site has not been identified as being at risk of flooding. It is assumed that drainage of surface water will be by means of existing mains drainage. Since the extension would be built in an area that is already hard-surfaced, it would not result in increased run-off from the site.

*Coal mining legacy:*

The site is within a Coal Referral Area (or High Risk Area). Under the Coal Authority's guidelines, a Coal Mining Risk Assessment should normally be submitted to that an initial assessment of risk can be undertaken. Householder extensions are usually exempt from this requirement, but most other built development is not, even if it comprises an extension to an existing building.

The proposal would involve the building of a substantial two-storey extension which would clearly involve significant groundworks. The Coal Authority has identified this as a fundamental concern and recommend that approval should not be granted without a Risk Assessment having been submitted. In these circumstances therefore, the development in contrary to Policy LP53 of the Local Plan and Chapter 15 of the NPPF.

6 – Representations: No representations were made.

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 taken as a whole.

**Recommendation – REFUSE PERMISSION**

## Decision Authorisation - Delegated Powers

**Application Number:** 2023/90172

**Officer Recommendation:** REFUSAL

### Reasons for refusal

1. The proposed development, owing to the scale, siting of the proposed extension, and by its resulting in the loss or obscuring of original architectural features in the side elevation and the substantial demolition of the boundary wall, would undermine the character and significance of the Listed Building, the setting of the neighbouring Listed Buildings, in particular no. 112 New North Road, and the character of the Greenhead Park / New North Road Conservation Area. The degree of harm caused is deemed less than substantial within the meaning of the National Planning Policy Framework (NPPF). It is considered that no public benefit has been demonstrated that would outweigh the harm caused in this instance. The proposals therefore do not accord with policies LP24(a) and LP35 of the Kirklees Local Plan, Chapter 16 (paragraphs 199, 202 or 206) of the NPPF, and would be incompatible with the Council's duties under the Planning (Listed Building and Conservation Areas) Act 1990.
2. It is considered that the proposed development, owing to the very limited receipt of natural light and outlook for the proposed side-facing 'bedroom 3', and the limited internal floorspace for the proposed four-bedroom dwelling, would result in an unacceptably poor level of residential amenity for the occupants of both dwellings, contrary to the aims of Policy LP24(b) of the Kirklees Local Plan and paragraph 130(f) of the National Planning Policy Framework.
3. The site is within a Coal Referral Area, within which there is a significant risk of ground instability arising from historic mine workings. The proposal would involve substantial new build and significant groundworks. A Coal Mining Risk Assessment, which would allow an initial assessment of the level of risk to be made, has not been submitted. It has therefore not been demonstrated that the site is suitable, or can be made suitable, for its proposed use, taking into account any risks from land instability, as required by Policy LP53 of the Kirklees Local Plan and paragraph 183 of the National Planning Policy Framework.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Application form			13-Feb-2023

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Existing floorplans	UD-520		23-Feb-2023
Proposed floorplans	UD-520		23-Feb-2023
Proposed elevations	UD-520		23-Feb-2023
Existing elevations	UD-520		23-Feb-2023
Heritage Statement			06-Feb-2023

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 advised the applicant during the application process that the proposal was unacceptable. The applicant did not submit any amended plans, the proposal was therefore assessed on the basis of the originally submitted plans.

**Report Dated:**

02-May-2023