

**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>2023/62/91649/E</b>
Site Address:	11, Wood Street, Skelmanthorpe, Huddersfield, HD8 9BN
Description:	Demolition and rebuild boundary wall
Recommending Officer:	Nicole Helliwell

**DECISION - REFUSED**

**I hereby authorise the refusal of this application for the reasons set out in the officer's report and recommendation annexed below in respect of the above matter.**

Emma Thompson

***AUTHORISED OFFICER***

**Date:** 20-Sept-2023

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### **Officer Report**

**Reference No.** 2023/62/91649/E

**Site Address:** 11, Wood Street, Skelmanthorpe, Huddersfield, HD8 9BN

**Proposal:** Demolition and rebuild boundary wall

### **Site Description**

The application relates to 11 Wood Street, a detached bungalow located in Skelmanthorpe, Huddersfield. The dwelling is faced in stone and incorporates a dual pitched roof finished in slate. The property benefits from a driveway to the rear and garden areas to the front, side and rear. The neighbouring properties are of residential use and comprise two storey dwellings of similar materials and varying architectural styles. The site is also located adjacent to the Skelmanthorpe Conservation Area.

### **Description of Proposal**

The application seeks planning permission for the demolition and rebuild of a boundary wall. The existing trees and vegetation directly behind the wall will be removed to allow for the proposed works. The new retaining wall would be erected along the southern boundary of the application site. The submitted plans confirm that the wall would be constructed in stone and would measure approximately 2.67m above ground level.

### **Relevant Planning History**

Not Applicable.

### **Representations**

The application was publicised by site notice, press advertisement and neighbour notification letters, which expired on 4<sup>th</sup> August 2023. As a result of the above publicity, 18 representations have been received. The material considerations raised are summarised below:

- The proposal will destroy beautiful, protected trees which lend great character and amenity value of the area.
- Any deviation from the existing design would substantially impact the character of the area.
- The proximity of many of the trees to the wall does give cause for concern that it may be impossible to complete the works without the trees being damaged and ultimately needing to be removed.
- This appears to be a back door approach to felling perfectly healthy trees.
- Whilst some repair work is necessary, the risk to the protected and unprotected trees along the wall is just too great under the current proposals.

- The proposal involves not only the destruction of two TPOs but the entire row of mature trees which fringe the Conservation Area.
- The trees have a high amenity value and form a very distinctive and attractive feature not only on Wood Street, but are visible from a wide area around the western side of Skelmanthorpe.
- In the fight to combat climate change, the trees are an asset to the environment and wildlife and it seems likely all will be affected by the plans.
- The proposed works would damage the root systems of the trees in the wall.
- Although only 2 trees are shown on the plans there are at least 5 mature trees which would be affected and most, if not all, of these are subject to a TPO.

### **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 Conservation and Design** - No objections providing that the wall is like for like in terms of appearance and the protected trees are retained.

**KC Trees** - Objection

**KC Ecology** - Bat scoping survey is required before determination

**KC Highways Structures** - No objections subject to the recommended 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 27<sup>th</sup> February 2019).

The site is UNALLOCATED on the Kirklees Local Plan Proposals Map. However, the application site does sit adjacent to the Skelmanthorpe Conservation Area. The most relevant policies for consideration in this case are:

### **Kirklees Local Plan Policies**

- **LP 1** - Achieving Sustainable Development
- **LP 2** - Place Shaping
- **LP 21** - Highways and Access
- **LP 22** - Parking
- **LP 24** - Design
- **LP 30** - Biodiversity & Geodiversity

- **LP 33** - Trees
- **LP 35** - Historic Environment
- **LP 52** - Protection and Improvement of Environmental Quality
- **LP 53** - Contaminated and Unstable Land

**In this case, the following SPDs are applicable:**

- Highways Design Guide SPD (adopted 4th November 2019)
- Biodiversity Net Gain Technical Advice Note (adopted 29th June 2021)

**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 12** - Achieving Well-Designed Places
- **Chapter 14** - Meeting the Challenge of Climate, Flooding and Coastal Change
- **Chapter 15** - Conserving and Enhancing the Natural Environment
- **Chapter 16** - Conserving and Enhancing the Historic Environment

**Assessment**

**1. Principle of development**

The site is without notation on the Kirklees Local Plan (KLP). Policy LP1 of the KLP 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. In terms of extending and making alterations to a property, Policy LP24 of the KLP is relevant, in conjunction with Chapter 12 of the NPPF, regarding design.

The application site is located adjacent to the Skelmanthorpe Conservation Area. Section 72 of the Listed Buildings & Conservation Areas Act (1990) requires that special attention shall be paid in the exercise of planning functions to the desirability of preserving or enhancing the appearance or character of the Conservation Area. This is also mirrored in Chapter 16 of the National Planning Policy Framework and LP35 of the Kirklees Local Plan.

In this case, the principle of development on the application site could be acceptable subject to its assessment against all other material planning considerations, including design, visual and residential amenity, as well as

highway safety. These issues along with other policy considerations will be addressed below.

## **1. Impact on Visual Amenity and Historic Environment**

### *Visual Amenity*

Policy LP24 of the Kirklees Local Plan 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, extensions are subservient to the original building, are in keeping with the existing buildings in terms of scale, materials and details.

The NPPF also offers guidance relating to design in Chapter 12 (achieving well designed places) whereby Paragraph 126 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.”*

The proposed retaining wall would be erected along the southern boundary of the application site. The visual structural inspection report confirms that the wall would replace the existing boundary wall that is currently in poor condition and at risk of collapse. The proposed wall would be of stone construction and would measure approximately 2.67m above ground level. Given that the wall would be of a similar scale and appearance to the nearby boundary treatments, it is considered that the proposed development would not have any significant visual impact on the character and appearance of the surrounding area.

### *Summary*

Having taken into account the above, it is considered that the proposed development would be acceptable from a visual amenity perspective, in accordance with Policy LP24 of the Kirklees Local Plan and Chapters 12 and 13 of the NPPF.

### *Historic Environment*

LP35 of the Kirklees Local Plan requires development proposals affecting a designated heritage asset to preserve or enhance the significance of the asset, retaining those elements of the historic environment which contribute to the distinct identity of the Kirklees area and ensuring that proposals maintain and reinforce local distinctiveness.

Paragraph 197 of the NPPF is also of relevance and states that in determining applications, local planning authorities should take account of:

- a) *the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;*
- a) *the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and*
- b) *the desirability of new development making a positive contribution to local character and distinctiveness.*

Section 72 of the Planning (Listed Buildings & Conservation Areas) Act (1990) is relevant, and requires that special attention shall be paid in the exercise of planning functions to the desirability of preserving or enhancing the appearance or character of the Conservation Area.

The application site sits adjacent to the Skelmanthorpe Conservation Area. As such, KC Conservation and Design were informally consulted on the proposed scheme. The retaining wall would be visually acceptable with regard to its scale, siting and design. Furthermore, the retaining wall would be set back from the conservation area and is not considered to harm its heritage significance. However, Officers did confirm that they would like to see the protected trees retained.

#### *Summary*

On this basis, it is considered that the proposed development would not cause any detrimental harm to the significance of the Skelmanthorpe Conservation Area and would comply with Policy LP35 of the Kirklees Local Plan, Chapter 16 of the NPPF and the requirements of Section 66 and 72 of the Town & Country Planning (Listed Buildings & Conservation Areas) Act 1990.

## **2. Impact on Residential Amenity**

Consideration in relation to the impact on the residential amenity of neighbouring occupants shall now be set out, taking into account Policy LP24 c), which sets out that proposals should promote good design by, amongst other things, extensions minimising impact on residential amenity of future and neighbouring occupiers. The SPD goes into further detail with respect to Key Design Principle 3 on privacy, Key Design Principle 5 on overshadowing/loss of light, Key Design Principle 6 on preventing overbearing impact and Key Principle 7 for outdoor space.

The retaining wall proposed would be erected along the southern boundary of the application site. Given that the wall would be in the same location and of a similar scale to the existing, it is considered that there would be no further harm to the neighbouring occupants with regards to overshadowing and overbearing impact.

### *Summary*

Having considered the above factors, the proposals are not considered to result in any adverse impact upon the residential amenity of any surrounding neighbouring occupants, complying with Policy LP24 of the Kirklees Local Plan (b) in terms of the amenities of neighbouring properties and Paragraph 130 (f) of the National Planning Policy Framework.

### **3. Highway Safety**

With regards to Highways Safety, Policies LP21 and LP22 of the Local Plan have been considered along with the KC Highway Design guide. The policies seek to ensure that new developments have an acceptable impact on highway safety and provide sufficient parking and access to sustainable transport options.

The proposal would not intensify the domestic use at the dwelling and would not affect the existing parking arrangements on site. KC Highways Structures were formally consulted as part of the application and have recommended that a pre-commencement condition is imposed should the application be approved. The condition requires the demolition details of the existing retaining wall cumulatively with the design and construction details of the proposed retaining wall to be submitted prior to development commencing on site.

Therefore, subject to the recommended condition, the development is considered acceptable in accordance with Policies LP21 and LP22 of the Kirklees Local Plan, Chapter 9 of the NPPF and the Highways Design Guide SPD.

### **4. 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.

In this case, due to the nature of the proposal is not considered reasonable to require the applicant to put forward any specific resilience measures.

### *Protected Trees*

The proposed development site is heavily constrained by two protected Sycamore trees subject to Tree Preservation Order 03/22. The trees are a prominent feature on Wood Street and provide significant amenity to the users of it. The trees, though outside it, also contribute to the setting of the Skelmanthorpe Conservation Area. The proposal requires the removal of these trees along with other substantial trees, shrubs and vegetation at the site. The submitted structural report states that the existing wall does not meet current highway/design standards and without repairs may deteriorate and be at risk of collapse.

The Arboricultural Impact Assessment argues that the trees subject to the TPO (T7 and T9 in the report) are justifiable Arboricultural Management losses on the grounds of the present and increasing conflict they pose to the neighbouring retaining wall and public highway. And as a result, categorises them as “U”, Those in such a condition that they cannot realistically be retained as living trees in the context of the current land use for longer than 10 years, due to the alleged tree related hazard (BS5837:2012 Paragraph 4.5.8). In addition to guidance within BS5837 in Annex A Table A1 that trees with a growth potential above 600mm stem diameter at 1.5m height should be planted no closer than 2m to a masonry boundary wall. The location of trees T1, T3, T5, T6, T7 and T8 would appear to conflict with this guidance.

For the assessment of T7, KC trees have noted the justification. Its position in relation to surrounding structures does limit its remaining years to enough to give it a lesser tree quality assessment. However, the assessment of T9 being category C seems to be unnecessarily downgraded. The tree is double the 2m recommended minimum distance to masonry boundary wall and from the survey schedule it is a “Visually prominent tree” that “exhibits good vitality and vigour with no major defects evident save for minor snags and dead wood”.

KC Trees are not convinced that T9 should be included within a similar comparison as T7, in that a tree related hazard (BS5837:2012 Paragraph 4.5.8) or lumping it in with T7 should downgrade it. Trees of generally high quality and/or value which have a defect or defects that do not reduce their retention span below the suggested 40 year threshold which seems to be the case for T9, should be placed in category A and should not be downgraded as a result of minor imperfections.

Overall, from an arboriculture perspective there remains an objection to the proposal, as the proposal conflicts with the Policy LP33 of the Kirklees Local Plan. The proposal would directly threaten trees of significant amenity and KC Trees are not convinced that the proposed is necessary and that there are no other options available to repair/maintain the wall.

### *Ecology*

The application site is located within the bat alert layer and therefore KC Ecology were formally consulted on the proposed scheme. At this stage, it is unclear whether the trees (particularly those to be lost to the proposed development) present within the site offer suitable roosting opportunities for bats. In addition to bats, the trees on site that are scheduled to be removed are likely to provide suitable habitat for nesting birds.

The government circular on Biodiversity and Geological Conservation (ODPM, 2005) and recent explanatory note from Natural England (Natural England, 2020) indicates that information on protected species, and in particular European protected species (including bats), should be made available prior to determination. The applicant should engage with a suitably qualified ecologist to undertake a bat scoping survey of the trees on the site. The survey should be undertaken in accordance with methods outlined by the Bat Conservation Trust (BCT) and Bat Roosts in Trees (Bat Tree Habitat Key (BTHK), 2018). The report of the above should cover whether there are potential impacts to roosting, commuting and foraging bats during and post-development (i.e., as a result of new lighting provisions, due to the location of the site as a potential commuting route for bats). The trees on site that are due to be removed are likely to provide suitability for nesting birds. Therefore, it is recommended that these trees are inspected by a suitably qualified ecologist, prior to their removal.

On this basis, KC Ecology have expressed that the application should not be determined until the necessary assessments have been received. However, given that the application will be refused on Arboricultural grounds, it was not considered necessary to request this information.

There are no other matters relevant to the determination of this application.

## **5. Representations**

18 representations were received following the statutory publicity. The material considerations raised are summarised as follows:

- The proposal will destroy beautiful, protected trees which lend great character and amenity value of the area.

- Any deviation from the existing design would substantially impact the character of the area.
- The proximity of many of the trees to the wall does give cause for concern that it may be impossible to complete the works without the trees being damaged and ultimately needing to be removed.
- This appears to be a back door approach to felling perfectly healthy trees.
- Whilst some repair work is necessary, the risk to the protected and unprotected trees along the wall is just too great under the current proposals.
- The proposal involves not only the destruction of two TPOs but the entire row of mature trees which fringe the Conservation Area.
- The trees have a high amenity value and form a very distinctive and attractive feature not only on Wood Street, but are visible from a wide area around the western side of Skelmanthorpe.
- In the fight to combat climate change, the trees are an asset to the environment and wildlife and it seems likely all will be affected by the plans.
- The proposed works would damage the root systems of the trees in the wall.
- Although only 2 trees are shown on the plans there are at least 5 mature trees which would be affected and most, if not all, of these are subject to a TPO.

These matters have been addressed within the relevant sections of this report.

Concerns were raised regarding drainage, ground water and flooding as a result of felling the trees. However, the site does not fall within a flood zone and therefore, the proposed works are not considered to present harm to any neighbouring occupants with regard to flooding. Furthermore, the development proposed is not considered to materially impact on drainage and would be acceptable in this regard.

Concerns were expressed regarding a road closure as a result of the proposed works. However, this matter would not constitute a material planning consideration.

Concerns were raised regarding the application being a ruse to build more housing and rid the area of trees. However, it is noted that the application is for a retaining wall and is therefore assessed on this basis. Should an application be submitted for residential development, the merits of such a proposal would be assessed at that time.

Concerns were also expressed regarding the wildlife species that inhabit the wall & surrounding area (Owls, bats, newts, birds, squirrels, dormice, shrews, amphibians, lizards, buzzards, bees, mice, rat, fly, frogs, ants). However, as the application has been recommended refusal, it was not considered necessary to request additional information with regard to Ecology.

Concerns were raised regarding damage to the neighbouring properties as a result of the proposed works. However, any damage would be a private matter and would not constitute a material planning consideration.

Concerns were raised regarding ownership given that previous repair works have been completed by Kirklees Council. However, the retaining wall would be within the applicant's red edge and is not considered to encroach on the highway.

Concerns were also expressed regarding how the proposed masonry faced retaining wall would tie into the existing retaining walls. However, this would be a private matter and would not be a material planning consideration.

## **6. Negotiations**

An Arboricultural impact assessment was submitted during the course of the application. KC Trees have reviewed this additional information and have confirmed that there remains an objection to the development as the proposed retaining wall would directly threaten protected trees of significant amenity within the application site.

## **7. Conclusion**

This application for the demolition and rebuild of a boundary wall at 11 Wood Street has been assessed against relevant policies in the development plan as listed in the policy section of the report, the National Planning Policy Framework and other material considerations.

The proposed retaining wall would directly threaten protected trees of significant amenity within the application site. To permit the development would be contrary to Policies LP24 and LP33 of the Kirklees Local Plan and Chapters 12 & 15 of the National Planning Policy Framework.

Chapters 12 & 15 of the National Planning Policy Framework. 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. For the reasons set out above, it is considered that the development would not constitute sustainable development and is therefore recommended for refusal.

**Recommendation: Refuse**

**Decision Authorisation - Delegated Powers**

**Application Number:** 2023/91649

**Officer Recommendation:** Refuse

**Reasons for refusal**

1. The proposed retaining wall would directly threaten, and could lead to the loss of, protected trees of significant amenity within the application site. To permit the development would be contrary to Policies LP24 and LP33 of the Kirklees Local Plan and Chapters 12 & 15 of the National Planning Policy Framework.

**Plans and specifications schedule: -**

<b>Plan Type</b>	<b>Reference</b>	<b>Date Received</b>
Location Plan	TQRQM2315915124 3780	12/06/2023
Site Plan	SB/102	12/06/2023
Retaining Wall – Construction Method Section	SB/103	12/06/2023
Retaining Wall – Construction Method Plan	SB/104	12/06/2023
Section Through Area A	SB/105	12/06/2023
Section Through Area D	SB/106	12/06/2023

<b>Plan Type</b>	<b>Reference</b>	<b>Date Received</b>
Visual Structural Inspection Report	132/010/STR_v1.0	12/06/2023
Arboricultural Impact Assessment	AIA-1550-1	04/09/2023
Email from OEC Consulting Engineers Ltd	LTR1-MA-132.010	04/09/2023

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 Planning 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 submitted plans raised significant concerns in terms of the developments impact on the protected trees. Although the Kirklees Development Management Charter together with the National Planning Policy Framework and the DMPO 2015 encourages negotiation/engagement between Local Planning Authorities and agents/applicants, this is only within the scope of the application under consideration. Although further information was submitted during the course of the application. KC Trees have reviewed this additional information and have confirmed that there remains an objection to the development as the proposed retaining wall would directly threaten protected trees of significant amenity within the application site.

**Report Dated: 20/09/2023**