

**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>2023/62/91896/E</b>
Site Address:	Poplar House, 35, Old Lane, Birkenshaw, BD11 2LA
Description:	Change use of dwelling to day nursery
Recommending Officer:	Elenya Jackson

**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:** 15-SEPT-2023

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## **Site Description**

Poplar House, 35, Old Lane, Birkenshaw, BD11 2LA is a stone built end terrace which currently benefits from a shared parking facility and no private amenity space.

The site is situated within a courtyard that is shared with four other dwellings.

There is a listed building 34m to the east of the site; however, as the proposal does not feature any external alterations it would not impact the setting of a listed building.

The application property is not within a conservation area but is within a High Risk Coal Area

## **Description of Proposal**

The applicant is seeking permission to change the use of the existing dwelling into a nursery.

The site has requested to operate with 24 Children.  
Would require six members of staff on part time hours  
Opening times would be 7:30am to 6:00pm

None of the site would be retained as a residential use.

Cooking facilities will be retained as the existing kitchen in the dwelling

## **Relevant Planning History**

2002/94501: Re-use and adaptation of vacant farm building to form 2 dwellings. Refused

2003/91606: Re-use and adaptation of vacant farm building to form two dwellings. Conditional Full Permission

## **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 2/09/2023.

Following the above publicity, four representations were received.

The objections raised the following concerns:

- Concerns regarding highways and parking allocation
- Lack of outdoor amenity space for children

- Noise

## **Consultation Responses**

KC Highways DM: Unable to support the application.

KC Environmental Health: objection related to the lack of amenity space associated with the proposal, noise of the proposal and associated pickup/drop off.

## **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.

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. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan predates the declaration of a climate emergency and the net zero carbon target, however it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications, the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

## **Kirklees Local Plan Policies**

- **LP 1** – Achieving sustainable development.
- **LP 2** – Place shaping
- **LP 21** – Highway safety and access
- **LP 22** – Parking
- **LP 24** - Design
- **LP48** – Community facilities
- **LP 51** – Protection and improvement of local air quality
- **LP52** – Protection and Improvement of Environmental Quality

## **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, and 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 6 – Building a Strong Competitive Economy
- 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

## **Assessment**

The following matters are considered in the assessment below –

- 1) Principle of development
- 1) Impact on visual amenity
- 2) Impact on residential amenity
- 3) Impact on highway safety
- 4) Other matters
- 5) Representations
- 6) Negotiations
- 7) Conditions
- 8) Conclusion

### 1 – Principle of development:

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. This policy stipulates proposals that accord with policies in the KLP will be approved without delay, unless material considerations indicate otherwise. Policy LP24 of the KLP is the overarching policy in relation to the design of all proposals, requiring them to respect the appearance and character of the existing development in the surrounding area as well as to protect the amenity of the future and neighbouring occupiers, to promote highway safety and sustainability. These considerations, along with others, are addressed in the following sections in this report.

The proposal is for a change the use from C3 dwelling to children's nursery (Class E) which is not a permitted change under the current use classes order.

Policy LP24 of the Kirklees Local Plan and chapter 12 of the National Planning Policy Framework are relevant in terms of the impacts of the proposal on visual amenity and the street scene.

The development proposals do not include any physical alterations or external constructions. The operations would result in intensification of use of the site for a nursery purpose.

The site would not retain a residential use and would be entirely class E. Class E relates to services which it is appropriate to provide in a commercial, business or service locality.

Policy LP48 of the Kirklees Local Plan details that community facilities should be provided in accessible locations where they can minimise the need to travel or they can be made accessible by walking, cycling and public transport. This policy details that such facilities will normally be in town, district or local centres. The site is not situated within a centre. The location of such a facility should not result in any harm to residential amenity or highway safety. It is acknowledged by officers that the inclusion of a nursery within a residential setting is not an uncommon relationship. However, in the context of this site and with each application being considered on its own merits, this site is overly constrained when considering its proposed use; the very close proximity of neighbouring residential properties; the lack of amenity space; the number/volume of children using the site; the poor access and absence of adequate parking on site are all of concern. Taking into account the proposed use and numbers associated along with the site specific circumstances and proximity to other residential properties, the proposed development would be detrimental to amenity and not be appropriate within this residential setting.

These material planning considerations are further assessed below.

## 2 – Impact on visual amenity

Policy LP24 of the Kirklees Local Plan, consistent with chapter 12 of the NPPF, states that the form, scale, layout and details of all development respects and enhances the character of the townscape.

The proposal would not introduce any physical external alterations or additional parking to the front and side of the dwelling.

As there would be no alterations to the site, it is considered that the proposal would not cause any material harm to the visual amenity of either the host building or the wider street scene, thus complying with policy LP24 of the KLP and the aims of chapters 12 and 16 of the NPPF.

## 3 – Impact on residential amenity:

Policy LP24 of the Kirklees Local Plan requires of developments, inter alia, a good standard of amenity for future occupants and neighbouring occupiers, as well as a minimising of the impact on residential amenity of future and neighbouring occupiers.

It is acknowledged that the adjoining properties are within the blue line boundary associated with the application; however, it is considered that there would still be an impact to the occupiers of these dwellings.

The impact of the proposed change of use on adjacent neighbouring occupiers is assessed as follows:

35A Old Lane: is attached to the application property to the south.

Overlooking, overshadowing, loss of light/overbearing: there is no additional construction proposed to support the nursery and therefore no significant issues would arise regarding overlooking, overshadowing/loss of light/overbearing.

37 Old Lane: adjoins the application site to the west.

Overlooking, overshadowing, loss of light/overbearing: there is no additional construction proposed to support the nursery and therefore no significant issues would arise regarding overlooking, overshadowing/loss of light/overbearing.

2 Prospect Lane: adjoins the blue line boundary of the site to the south.

Overlooking, overshadowing, loss of light/overbearing: there is no additional construction proposed to support the nursery and therefore no significant issues would arise regarding overlooking, overshadowing/loss of light/overbearing.

64 Old lane: adjoins the application site to the east.

Overlooking, overshadowing, loss of light/overbearing: there is no additional construction proposed to support the nursery and therefore no significant issues would arise regarding overlooking, overshadowing/loss of light/overbearing.

66 Old Lane: adjoins the application site to the east.

Overlooking, overshadowing, loss of light/overbearing: there is no additional construction proposed to support the nursery and therefore no significant issues would arise regarding overlooking, overshadowing/loss of light/overbearing.

2 & 3 Royd Well: adjoins the application site to the south.

Overlooking, overshadowing, loss of light/overbearing: there is no additional construction proposed to support the nursery and therefore no significant issues would arise regarding overlooking, overshadowing/loss of light/overbearing.

#### *Noise*

Notwithstanding the above considerations, it is considered that the use has the potential to result in a material intensification in terms of disturbance including noise, or other pollution that could pose a nuisance to nearby occupants.

There is no outdoor amenity space indicated on the information provided and due to site layout, officers consider that there is limited scope for sufficient amenity space to be provided which would serve 24 children. Any use of external spaces would result in noise from the site. Furthermore traffic movements associated with the use is likely to result in a loss of amenity to nearby residents and there is no evidence to suggest otherwise.

Officers have spoken to the applicant regarding the amenity space and noise concerns associated with the application and the applicant has explained the thickness of the building walls. It is considered that a noise report would be required to demonstrate impact and any mitigation.

Therefore, it is considered that the proposal is unable to demonstrate an acceptable impact to the residential amenity of neighbouring residents and would fail to accord with policy LP24 and LP52 of the Kirklees Local Plan.

#### 4 – Impact on highway safety:

KC Highways DM have been formally consulted as part of this application, as the site is currently in use as a residential property.

The comments provided state that Highways cannot support the application as submitted due to clarification of the existing and proposed car park area. Details of eight parking spaces have been provided to support this application; however, these are shared with other properties and not exclusive to the development.

In addition, Details of waste storage and collection for the proposed Nursery should be provided, with the location of a waste collection presentation point being clearly marked on a drawing. however, the application form indicates that the site intends on obtaining commercial bins.

The walls adjacent to the access would need to be lowered to provide for driver/pedestrian intervisibility.

Due to the lack of clarity surrounding parking provision on site, the lack of information provided relating to access and egress, drop off times associated with the development and lack of details related to bin storage the development there are concerns regarding impact on the highway and other road users to the detriment of highway safety thereby unacceptable from a highways safety perspective, failing to comply with policies LP21 and LP22 of the KLP.

#### 5– Other matters:

##### *Carbon Budget*

There are controls in terms of Building Regulations which will need to be adhered to as part of the construction process which will require compliance with national standards.

*Climate Change* - Principle 8 of the Kirklees House Extensions and Alterations SPD states that extensions and alterations should, where practicable, maximise energy efficiency. Principle 9 goes on to highlight that the use of innovative construction materials and techniques, including reclaimed and recycled materials should be used where possible. Furthermore, Principles 10 and 11 request that extensions and alterations consider the use of renewable energy and designing water retention into the proposals.

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.

Due to the scale of the proposal and intensification of use associated with the site, it is considered reasonable to implement a condition requiring electric vehicle charging points if the application was to receive permission.

## 6 – Representations:

Two representations were received raising the following objections:

- Concerns regarding highways (access & parking)

Response: KC Highways DM have been consulted on the application and have not raised any significant concerns. Officers concur with concerns raised regarding the proposals. It has not been demonstrated that the use will not detrimentally impact on highway safety.

- Noise and disturbance

Response: Noise implications have been assessed as part of this report and as a result conditions are to be imposed should the proposal receive permission.

- Lack of outdoor space for children.

Response: Officers have commented on the lack of outdoor space associated with the proposal; however, this would not create a material planning reason for refusal.

## 7 – Negotiations:

N/A

## 8 – Proposed conditions

None as the proposal is recommended for refusal.

9 – Conclusion:

This application to change the use of Poplar House, 35, Old Lane, Birkenshaw, BD11 2LA into a Day nursery 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. Given the harm in terms of residential amenity and Highway Safety, the proposed alteration is considered to be unacceptable.

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.

As set out above, this application has been assessed against relevant policies in the development plan and other material considerations. 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:** 2023/91896

**Officer Recommendation:** Approve

### Conditions and Reasons

1. The proposed use would result in an unacceptable impact on the occupants of neighbouring properties due to noise and activities that would be generated from the premises and associated outdoor areas. The harmful impact on residential amenity would be contrary to Policy LP24 and LP52 of the Kirklees Local Plan and Chapter 12 and 15 of the National Planning Policy Framework.
1. Due to lack of off-street parking, and information regarding access/egress and drop off times associated with the development the development would result in detriment to highway safety and other road users and is therefore unacceptable from a highways safety perspective contrary to policy LP21 and LP22 of the Kirklees Plan.

Plans and specifications schedule: -

<b>Plan Type</b>	<b>Reference</b>	<b>Date Received</b>
Existing ground floor plans		21/07/2023
Existing first floor plans		21/07/2023
Site location plan		12/09/2023
Supporting information		21/07/2023

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.

No additional information was requested. Due to the scale of the proposal and the significant lack of information provided, it was considered that the principal of a nursery in this location would be unacceptable.

