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:	**2023/62/92127/E**
Site Address:	Church of the Holy Innocents, Vicarage Road, Dewsbury, WF12 9PD
Description:	Alterations to convert church to 2 dwellings, formation of residents car park, external amenity spaces and associated works (Listed Building)
Recommending Officer:	Edward Cheseldine

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: 23-NOV-2023

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<u>Officer Report</u>

2023/92127 - Church of the Holy Innocents, Vicarage Road, Dewsbury, WF12 9PD

Site Description

Church of the Holy Innocents is a gothic revival church, designed by architects Mallinson and Healy. It was constructed in 1858/9 and was paid for by the Wormald and Cook families of Dewsbury Mill. The church is a significant grade II listed building with a broach spire, stone pulpit and listed gate piers amongst other special architectural features.

There is an active graveyard within the curtilage of the site with access paths running through the churchyard.

There are several protected trees on the site which form part of the character of the listed building.

The application site is part of the Kirklees Wildlife Habitat network and is designated under the Kirklees Local Plan as Urban Green Space.

Application Description

The application is for planning permission for the alteration of the church, to be converted into 2 dwellings, formation of a car park and other associated internal works.

There are no external alterations proposed to the listed church, however, planning permission is required for the alterations within the curtilage including the formation of the car park and landscaping works.

Listed Building Consent 2023/92128 is the aligned application for the internal works and other alterations of the listed building.

History of Negotiations

The planning officer has raised concerns regarding the inadequacy of the information submitted for the application. Details which planning officers consider to be required for the assessment of the application are:

- Viability considerations to support a change in use from a public space to private residential dwellings.
- Options appraisal for the reuse of the church since the church became vacant and was sold.
- Details of the marketing exercises since the church was closed in 2019.
- An ecology impact assessment due to the installation of hard standing material within the church grounds.
- A tree impact assessment for the felling of trees on site.
- A mitigation strategy for the loss of urban green space, or in the case of a loss of ecological habitats or loss of trees, a strategy for suitable replacement or uplift.

In addressing the issues underpinning the application, a site meeting was held by the planning officer and conservation officer with the planning agent and applicant. As substantial information was required for the necessary planning regards of the application the planning officer retained a dialogue with the planning agent for future applications, however the scope of the required information was considered to be too great to be received within the timeframes of this application.

Relevant Planning History

2023/92128 – Aligned Listed building consent for alterations to convert church to 2 dwellings, formation of resident's car park, external amenity spaces and associated works – Recommended for refusal.

Consultation Responses

KC Conservation & Design – Conservation & Design were consulted in respect of the reuse of a listed heritage asset. Viability and marketing details were not presented within the submitted details which are required to enable full consideration of the application. Due to the absence of this information, and details submitted, the principle of the change of use from a community asset to a private dwelling could not be supported.

As the principle of the conversion cannot be supported, only informal comments, as to the impact the proposals would have on the listed heritage asset, were provided during a meeting with the planning agent.

KC Policy – Comments from KC Policy were received regarding the impact of converting parts of the church grounds to a car park. To assess the impact, KC Policy required further information on the loss of the Urban Green Space,

as well as outlining that further consultations would be required including KC Trees and KC Ecology, once impact assessments had been received.

National Amenities Society – Raised that further information was needed on the design details of the application in respect of internal and external details as well as this, they suggested details were to be provided of the structural maintenance of the building, post-development were outlaid.

West Yorkshire Archaeological Advisory Service – Recommended as part of the change of use and due to the importance of the site, that an archaeological investigation would take place before any demolition/development took place.

Public Representations

The application was advertised by neighbourhood notification letters that expired on 30 August 2023.

Additionally, a site notice was displayed to advertise the application that expired on 08 August 2023.

As a result of the publicity 11 objections were received. Full comments can be viewed on the Kirklees Planning website. A summary of the planning related comments is as follows:

- The graveyard would not be open and freely accessible to members of the public because of the change of use to private residential apartments.
- Public access within the church ground will be restricted at certain times or there will be a perception that the public is not wanted due to the changes to the design of the site.
- The car park is placed in a close proximity to some of the graves which will appear to deter people from respecting graves sited in these areas.
- The placement of the car park will be in close proximity to neighbouring properties, which will in turn remove green space which is viewed from the residents and negatively impact the privacy of neighbours.
- Information as to the impact on ecology within the site is uncertain and not publicly available.
- Information as to the protected trees within the site is uncertain and not publicly available.
- There will be an increase in traffic within the surrounding area due to the conversion from a church to residential homes.

Concerns were also raised regarding what would happen to the graves after the Church of England relinquished ownership of the site. Any decision as to the graves would ultimately be the decision of the parish clergy, however it was stated by the Church in a site meeting that the graves were to remain within the church boundary and would not be altered as part of the proposal. Kirklees Planning Authority would prefer if the graves, which are intrinsically tied to the site of the listed building and its setting, remain as they benefit the general public and character of the area.

All other comments will be evaluated within the assessment stage of this application.

Councillor Comments

Dewsbury South ward members were aware of the planning application and submitted a general query on behalf of local residents questioning if site would remain open and accessible for visitors of the church yard and its associated graves so there were no barriers to respecting and observing the graveyard.

Members of Parliament

Member of Parliament Kim Leadbeater MP submitted a general query seeking clarity that the development would not be built over existing graves or that access to the graves would not be restricted.

Policies

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

The site is within designated as Urban Green Space and with the Wildlife Habitat Network on the Kirklees Local Plan Proposals Map.

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 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 7 – Efficient and effective use of land and buildings
- LP 21 – Highway Safety
- LP 22 – Parking
- LP 24 – Design
- LP 30 – Biodiversity & Geodiversity
- LP 33 – Trees
- LP 35 – Historic environment
- LP 48 – Community facilities and services
- LP 61 – Urban Green Space

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, and 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 7 –Ensuring the vitality of town centres
- 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
- Chapter 16 –Conserving and enhancing the historic environment

Other Material Considerations:

- Planning (Listed Buildings and Conservation Areas) Act 1990

Assessment

1) Principle of development
2) Impact on visual amenity & historic environment
3) Impact on residential amenity
4) Impact on highway safety
5) Environmental matters
6) Conclusion

Principle of development:

Sustainable Development

NPPF Paragraph 11 and LP1 outline a presumption in favour of sustainable development. Paragraph 8 of the NPPF draws on the objectives of sustainable development being economic, social and environmental as the central pillars as well as multiple facets of achieving sustainable development within the decision-making process.

The dimensions of sustainable development will be considered throughout the proposal. 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 within the dimensions of the proposal.

Land Allocation

Policy LP2, Place Shaping - draws on the strengths of the character existing within sites to enhance the positive features of the places that make up Kirklees.

> *All development proposals should seek to build on the strengths, opportunities and help address challenges identified in the Local Plan, in order to protect and enhance the qualities which contribute to the character of these places.*

The site has been identified on the Local Plan Policies Map, set out in the Kirklees Local Plan as Urban Green Space and part of the Wildlife Habitat Network. As well as the land allocations within the local plan, contributing assets to the character of the site such as protected trees, architecture of the listed church and features found within its associated grounds will contribute to the visual strengths of the site.

Loss of Urban Green Space

The development as outlined is considered a departure of designated Urban Green Space due to the construction of a car park. Policy LP61 states; Development proposals which would result in the loss of urban green space (as identified on the Policies Map) will only be permitted where:

a. *an assessment shows the open space is clearly no longer required to meet local needs for open space, sport or recreational facilities and does not make an important contribution in terms of visual amenity, landscape or biodiversity value; or*
b. *replacement open space, sport or recreation facilities which are equivalent or better in size and quality are provided elsewhere within an easily accessible location for existing and potential new users; or*
c. *the proposal is for an alternative open space, sport or recreation use that is needed to help address identified deficiencies and clearly outweighs the loss of the existing green space.*

As there will be a substantial loss to designated Urban Green Space, which is a high value community asset that is currently in use and meets local needs, a mitigation strategy is required and was requested by the case officer. No such information has been forthcoming. The principle of a loss of designated Urban Green Space would be unacceptable and contrary to the Local Plan given there would not be a mitigation strategy in place.

Wildlife Habitat Network

An ecological impact assessment is absent from the submitted application information. The site is allocated as part of the Kirklees Wildlife Network (Local Plan Policy LP30) and is an open green space which has the potential to have a high ecological value due to the green, undeveloped nature of the site. Such a proposal, especially those within the Kirklees Wildlife Network should contribute to the protection of existing habitats and enhance the ecological value of the site given there will be development within the church boundary.

As no ecological impact assessment has been received Officer's cannot comment on the impact the development will have on ecology habitats on the site, including protected and notable species, nor can it recommend if the development is suitable considering an area of the Wildlife Habitat Network will be developed on. Furthermore, a biodiversity net gain cannot be

established. The development would be contrary to Policy LP30 of the Local Plan and Chapter 15 of the NPPF.

Loss of Protected Trees

The application proposes the felling of three mature trees that are protected by tree preservation orders (TPOs). Policy LP33 of the Kirklees Local Plan, states '*The Council will not grant planning permission for developments which directly or indirectly threaten trees or woodlands of significant amenity'.* The trees in question are thought to provide a high level of distinctiveness to the site, are associated to the setting of the listed building and contribute to the visual amenity of the site.

A tree impact assessment report or a detailed mitigation strategy has been requested by the case officer to assess the impact of the loss of protected trees, however no such information has been received.

Change of Use from a Community Facility to Residential Dwellings

A church is considered a community facility under Local Plan Policy LP48.

Proposals which involve the loss of valued community facilities such as shops, public houses and other facilities of value to the local community will only be permitted where it can be demonstrated that:

> *a. there is no longer a need for the facility and all options including the scope for alternative community uses have been considered; or*
> *b. its current use is no longer viable; or*
> *c. there is adequate alternative provision in the locality to serve the local community which is in an equally accessible location; or*
> *d. an alternative facility of equivalent or better standard will be provided, either on-site or equally accessible; and*
> *e. any assets listed on a Community Asset Register have satisfied the requirements under the relevant legislation.*

Information relating to the proposed viability of the change of use(s) and sale marketing of the listed building has been requested by the case officer in order to satisfy the clauses set out in Policy LP48. KC Conservation & Design required information relating to viability and the marketing of the sale of the listed building to fulfil requirements of paragraph 202 of the NPPF relating to securing the optimal viable use of a designated heritage assets considering the proposed conversion plans. No information has been provided detailing

the viability of the proposed change of use or the sale marketing of the church.

Whilst Officers concede that the sale of the church by the Church of England may indicate there is no longer the need for a place of worship, the exploration of uses should be evidenced in order to fully evidence that he proposed change in use is fitting, and other viable measures have been explored, when considering there will be the loss of a community asset. It is therefore not possible for officers to appraise if the change of use satisfies the need of Policy LP48.

Residential Use, New Dwellings

Turning to the proposed residential use, the 2023 up-date of the five-year housing land supply position for Kirklees shows 3.96 years supply of housing land. As the Council is currently unable to demonstrate a five-year supply of deliverable housing sites, it is necessary to consider planning applications for housing development in the context of NPPF paragraph 11 which triggers a presumption in favour of sustainable development. This means that for decision making "Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date (NPPF Footnote 8), granting permission unless: (i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed (NPPF Footnote 7) ; or (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole." The Council's inability to demonstrate a five-year supply of housing land weighs in favour of housing development but has to be balanced against any adverse impacts of granting the proposal.

Chapter 5 of the National Planning Policy Framework clearly identifies that Local Authorities should seek to significantly boost 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".

Policy LP7 of the Kirklees Local Plan establishes a desired target density of thirty-five dwellings per hectare. By that standard, this site in theory, could accommodate 2 to 3 dwellings. However, LP7 states this target should be

‘where appropriate’ and in the policy justification set out in paragraph 6.40 that the policy allows for lower ‘densities where a site would not be compatible with its surroundings’. Two dwellings are proposed for the site in this instance, but this is considered appropriate as more dwellings would likely require further works to the Listed Building thereby resulting in further harm to the significance of the listed heritage asset and its curtilage.

Listed Building

This application is for the conversion of a listed church into residential accommodation therefore the impact to the special architectural and historical of the designated heritage asset must be assessed.

Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires, that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets’ importance and no more than is sufficient to understand the potential impact of the proposal on their significance. (NPPF Paragraph 194).

The application is accompanied by a Heritage Statement and plan details, whilst the details were forthcoming, the ability of case officers to determine to what extent the development would harm the significance of the heritage asset, and to what extent the harm would be mitigated through the provision of public benefits has not been adequately demonstrated. Therefore, officers cannot state that the special regard to the desirability of preserving the building or its setting would be met from the submitted plans and supplementary evidence. Nor is it possible to fully establish the level of harm for which clear and convincing justification is required.

<u>Impact on Visual Amenity & Historic Environment</u>

The subdivision of the church’s nave and other alterations that have been proposed as part of the conversion to residential dwellings will result in less than substantial harm to the designated heritage asset.

Alterations within the historic church boundary such as the removal of mature trees and the installation of car parking facilities will cause less than substantial harm to the setting of the listed building.

Given the proposed scheme will cause less than substantial harm to the listed building, the development should be weighed against public benefits that have been evidenced to comply with paragraph 202 of the NPPF. The agent was given the opportunity to evidence the public benefits that *could* weigh against the harm to the heritage asset through documentation such as a viability assessment, tree and ecology mitigation scheme, however further information that would outline these benefits has not provided.

Considering this, as the proposal will result in less than substantial harm to the significance of the heritage asset, and without any public benefit being evidenced, officers consider that the heritage asset would not be conserved and, with no justification, as set out in paragraphs 199 to 202 of the NPPF.

In the absence of further details, the special architectural and historical interest of the building is not being preserved as the design of the dwellings and features are of a sub-satisfactory standard for the conversion of a grade II listed building.

Considering the proposal will result in the felling of mature trees within the church yard, the special character of the listed building will not be preserved as the alterations will detract from the historic character of the designated heritage asset.

In respect of the open access to the graveyard, which is designated Urban Green Space, details including the landscaping, access paths, gates are circumstantial to the use of the site being agreed upon.

On the basis of the submitted information, the proposal will result in less than substantial harm to the architectural and historical significance of the heritage asset for which no public benefits have been presented or evidenced adequately, as such, there would be a negative impact to the visual amenity and historic environment of the site contrary to Local Plan Policies as well as Chapter 16 of the NPPF.

<u>Impact on Residential Amenity</u>

The properties likely to be affected by the proposed development are considered to be the row of houses to the east of the site.

The proposed development is considered to be a sufficient distance away from any other neighbouring properties not referred to so as to prevent undue harm in terms of loss of light, loss of outlook, overlooking or loss of privacy, or the creation of an overbearing effect. Of note, whilst there are a number of properties to the east of the site, the proposed residential dwellings would be over ~21 metres from the rear elevation window to the east boundary of the site, this being 18, 20, 22 & 24 Selbourne Road.

Within representations there were concerns regarding the proximity of the car park to residential buildings with the removal of landscaping. Whilst the sitting of the car parking has been provided, the principle of developing the car park has not been agreed upon and will be fully assessed and could be subject to further design amendments once an evidence-based justification has been received.

Impact on Highway Safety

Similarly, details concerning parking, vehicle access and bin storage areas are subject to details to be agreed upon once matters concerning ecology, trees and urban green space policy have been provided.

Environmental Matters

Trees

As discussed there has been insufficient information submitted for officers to assess the impact to trees, however the proposal is for the felling of three protected trees with no mitigation strategy for their replacement or a justified evidence-based response calling for their destruction. The proposal is therefore contrary to Policy LP33 of the Kirklees Local Plan as the development would directly affect protected trees.

Ecology

No ecology surveys have been presented with the application to address the impact of the development to be assessed in terms of its harm and provide mitigation and enhancement. This would conflict with Policy LP30 of the Kirklees Local Plan as the development will result in harm to the ecological habitats present due to the loss of trees, landscape clearances of the car park and the fact the green space is part of the Wildlife Habitat Network within the site. Furthermore, there is no evidence to suggest otherwise.

West Yorkshire Archaeological Advisory Service

The West Yorkshire Archaeological Service have been consulted. It is recommended that an archaeological assessment is submitted prior to determination to ensure adequate archaeological response.

Further archaeological advice will depend upon the results of the appraisal but may vary from: a recommendation for refusal or re-design of the development proposal, to carry out archaeological recording in advance of development, to have an archaeologist on site during development works to record anything of interest that is revealed (a 'watching brief'), or that no further archaeological work is required. Further information is required to ensure the development can adequately address matters regarding archaeological recording/response in accordance with Policy LP35 of the Kirklees Local Plan and Chapter 16 of the NPPF.

Conclusion

This application for the conversion of a listed building with other alterations at Church of the Holly Innocent has been assessed against relevant policies in the development plan as listed in the policy section of the report, the Kirklees Local Plan, the National Planning Policy Framework, and Planning (Listed Buildings and Conservation Areas) Act 1990 other material considerations.

The proposed conversion, due to the lack of information, would cause harm to the significance of the listed building with no evidence to suggest overwise. To permit the development would be contrary to policies LP1, LP2, LP21, LP22, LP24, LP30, LP33, LP35, LP48, LP61 of the Kirklees Local Plan, advice within Chapters 12 & 15 of the National Planning Policy Framework and the Planning (Listed Buildings and Conservation Areas) Act 1990.

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: 2023/92127
Officer Recommendation: Refuse
Reason(s) for refusal:

1. The applicant has failed to demonstrate that the proposed works would not have a harmful impact on the listed building and has not demonstrated public benefits which outweigh the harm caused by the internal and external alterations of the listed building including but not exclusively, the subdivision of the nave, formation of a car park and felling of mature trees. The proposals do not meet the requirements of Paragraph 202 of the National Planning Policy Framework, which requires less than substantial harm to the significance of a designated heritage asset to be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. This is also contrary to the general thrust of Policy LP35 of the Kirklees Local Plan insofar as this requires development proposals to preserve or enhance the significance of designated heritage assets; which this proposals does not. The internal and external alterations will not preserve the building or features of architectural and historic interest which it possesses, as required by Section 16(2) of the Planning Listed Building and Conservation Area) Act 1990.

2. The applicant has failed to demonstrate the appropriateness of the development when considering the change of use and external alterations to the church grounds which would result in the loss of urban green space and contrary to policies LP1, LP2, LP21, LP22, LP24, LP30, LP33, LP35, LP48, LP61 of the Kirklees Local Plan. To allow the development would have a significant impact on land designated as urban greenspace in the Kirklees Local Plan for which no assessment or replacement has been demonstrated resulting in a negative impact to the character of the listed church and wider area contrary to Policy LP61 of the Kirklees Local Plan and the National Planning Policy Framework.

3. The development proposed would result in a detrimental impact on ecology and protected trees for which no supporting information has been submitted. The development does not include mitigation strategies for the loss of designated urban green space, biodiversity net gain or

tree replacements resulting in an unacceptable loss to protected trees as well as biodiversity contrary to Policies LP61, LP30 and LP33 of the Kirklees Local Plan and National Planning Policy Framework.

Plans and specifications schedule: -

Plan Type	Reference	Version	Date Received
Existing site / block layout	22-111-A01	1	18/07/2023
Existing floor plan – ground floor	22-111-A02	1	18/07/2023
Existing floor plan – 1st floor to roof	22-111-A03	1	18/07/2023
Existing elevations	22-111-A04	1	18/07/2023
Existing elevations	22-111-A05	1	18/07/2023
Plan general – sht1	22-111-A06	1	18/07/2023
Plan general – sht2	22-111-A07	1	18/07/2023
Plan general – sht3	22-111-A08	1	18/07/2023
Plan general – sht4	22-111-A09	1	18/07/2023
Plan general – sht5	22-111-A10	1	18/07/2023
Plan general – prop demo st1	22-111-A11	1	18/07/2023
Proposed site / block layout	22-111-A12	1	18/07/2023
Proposed floor plans – ground floor	22-111-A13	1	18/07/2023
Plan general – 1st floor to roof	22-111-A14	1	18/07/2023
Proposed elevations – sht1	22-111-A15	1	18/07/2023
Proposed elevations – sht2	22-111-A16	1	18/07/2023
Plan general – prop sec 1	22-111-A17	1	18/07/2023
Plan general – prop sec 2	22-111-A18	1	18/07/2023
Location plan	LP	1	18/07/2023
Conservation and heritage statement	CHS	1	21/07/2023

Climate Change statement	CCS	1	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. Negotiations have taken place over the impact of the proposals on the character and significance of the listed building. These discussions have not led to the submission of additional information, therefore given the harm to the listed building has not been evidenced the proposal will result in less than substantial harm which cannot be supported.