KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) – SECTION 73

DELEGATED DECISION TO DETERMINE PLANNING APPLICATIONS TO CARRY OUT DEVELOPMENT WITHOUT COMPLIANCE WITH PLANNING CONDITIONS PREVIOUSLY ATTACHED

Reference No:	**2023/70/92225/W**
Site Address:	29, Gernhill Avenue, Fixby, Huddersfield, HD2 2HR
Description:	Variation of condition 2 (plans and specifications) on previous permission 2022/91553 for variation of condition 2 (plans and specifications) on previous permission 2021/90888 demolition of existing dwelling and erection of detached dwelling with integral garage
Recommending Officer:	Sam Jackman

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: 09-Nov-2023

Officer Report – 2023/92225

https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2023%2f92225

Site Description

29 Gernhill Avenue, Fixby, Huddersfield, HD2 2HR

No.29 Gernhill Avenue, the original dwelling which has now been demolished, comprised of a detached bungalow dwelling constructed from stone, brick and render under a tile roof, set within a relatively spacious plot. The dwelling was set back from the highway of Gernhill Avenue, which it faced, and there is a driveway to the front of the plot which is accessed off Gernhill Avenue. The site benefits from a relatively sizeable front and rear garden. To the front of the site is a dwarf wall with planting screening parts of the site from the highway. A spring runs under the rear garden of the property.

The site is sited towards the end of a residential cul-de-sac comprising detached dwellings, ranging from single storey to two storey in height. Dwellings tend to be set back from the road, but dwellings vary in terms of form and detailing. The surrounding land slopes down from west to east. To the rear of the site is a woodland (Gernhill Wood) which is designated as part of the Kirklees Wildlife Habitat Network and is within the Green Belt.

The site is not within a conservation area and is not within close proximity to any listed buildings.

Description of Proposal

Planning permission is sought to vary condition 2 of previous permission 2022/91553 for variation of condition 2 (plans and specifications) on previous permission 2021/90888 demolition of the existing dwelling on the site and the erection of a replacement detached dwelling with an integral garage, which was granted on 2nd August 2022.

Condition 2 of permission 2022/91553 relates to the plans and details approved under the application, which is identical to condition 2 on 2021/90888 and reads as follows:

"2. The development hereby permitted shall be carried out in complete accordance with the plans and specifications schedule listed in this decision notice, except as may be specified in the conditions attached to this permission, which shall in all cases take precedence.
***Reason:** For the avoidance of doubt as to what is being permitted and so as to ensure the satisfactory appearance of the development on completion, and to accord with Policies LP3, LP7, LP21, LP22, LP24, LP28, LP30, LP33, LP51 and LP52 of the*

Kirklees Local Plan and Chapters 4, 5, 9, 11, 12, 14 and 15 of the National Planning
Policy Framework, as well as the Kirklees Highways Design Guide SPD and Kirklees
Housebuilders Design Guide SPD.

This Section 73 application seeks to vary the approved plans due to design changes proposed in these revised plans. The proposal seeks to remove the basement approved on application 2022/91553, include 2 new rear dormers and raise the height of the central gable on the rear elevation. The internal layout has also changed, however, this does not fundamentally change the internal layout. The main changes include the main staircase reduced in size, the internal lift being removed, and existing rooms enlarged.

History of negotiations/amendments received.

Amended plans have been requested to remove the rear dormers, reduce the central gable to 'as approved' on the previous application and reduce the size of the gable windows in the west elevation, again to that already approved. It was agreed that the loss of the basement was acceptable along with the revised internal layout. These amendments would allow the revised internal layout to be approved, including the removal of the basement. Both of the previous proposals are extant.

However, the amended plans received reduced the 2 rear dormers and only slightly reduces the height of the rear central gable. Furthermore, only one ground floor gabled window was removed, the remaining windows were unchanged.

Relevant Planning History

2022/91553 - Variation of condition 2 (Plans and Specification) on previous permission 2021/90888 demolition of existing dwelling and erection of detached dwelling with integral garage – Approved 2nd August 2022. (This permission included a basement.)

> Condition 10. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any Order revoking or re-enacting that Order) no development included within Classes A, B, D or E of Part 1 of Schedule 2 to that Order shall be carried out without the prior written consent of the Local Planning Authority. Reason: To prevent further development of the site, which could materially harm the visual amenity of the site and the amenity of neighbouring residents, to mitigate flood risk through potential damage to the culvert crossing the site to comply with Policy LP24 of the Kirklees Local Plan and Chapters 12 and 14 of the National Planning Policy Framework, as well as Principles 2 and 6 of the Kirklees Housebuilders Design Guide SPD.

Condition 11. Prior to the first occupation of the dwelling hereby approved, any windows above ground floor level in the west side elevation of the development hereby approved shall be fixed shut (unless parts of the windows which can be opened are more than 1.7 metres above floor level), and obscure glazed (Level 3 or above), and shall be retained as such thereafter. Reason: To restrict overlooking, to preserve the amenity of future occupiers and neighbouring residents and to comply with Policy LP24 of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework, as well as Principle 6 of the Kirklees Housebuilders Design Guide SPD.

Condition 12. Prior to the first occupation of the dwelling hereby approved, the first floor bay windows on the rear elevation detailed as to be obscurely glazed on Drawing No. P-2 received from the applicant pursuant to application 2021/90888 shall be fixed shut (unless parts of the windows which can be opened are more than 1.7 metres above floor level), and obscure glazed (Level 3 or above), and shall be retained as such thereafter. Reason: To restrict overlooking, to preserve the amenity of future occupiers and neighbouring residents and to comply with Policy LP24 of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework, as well as Principle 6 of the Kirklees Housebuilders Design Guide SPD.

2021/90888 – Demolition of existing dwelling and erection of detached dwelling with integral garage – Approved on 9th July 2021. This current application seeks to vary condition 2 of 2021/90888.

2020/93759 – Demolition of existing dwelling and erection of detached dwelling with integral garage – Withdrawn on 10th December 2020 due to Officer concerns with the scale and design of the development. Pre-application discussions took place after this and prior to the submission of 2021/90888.

97/91915 – Erection of Sun Lounge Extension and New Pitched Roof to Existing Garage – Approved on 15th August 1997.

94/91089 – Erection of Ground Floor Extension – Approved on 27th May 1994.

Representations

Final publicity date Expires:
Neighbour letters expired on 14th September 2023.

No representations were received as a result of neighbour notification letters; letters in support of the application were received with the application itself.

Consultation Responses

None

Policy

The site is unallocated on the Kirklees Local Plan Proposals Map.

Kirklees Local Plan (LP):

- **LP 1** – Achieving Sustainable Development
- **LP 2** – Place Shaping
- **LP 3** – Location of New Development
- **LP 7** – Efficient and Effective Use of Land and Buildings
- **LP 20** – Sustainable Travel
- **LP 21** – Highway Safety
- **LP 22** – Parking Provision
- **LP 24** – Design
- **LP 27** – Flooding
- **LP 28** – Drainage
- **LP 30** – Biodiversity and Geodiversity
- **LP 33** – Trees
- **LP 51** – Protection and Improvement of Local Air Quality
- **LP 52** – 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 5th September 2023, the Planning Practice Guidance Suite (PPGS) first launched 6th March 2014 together with Circulars, Ministerial Statements and associated technical guidance.

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

- **Chapter 2** – Achieving Sustainable Development
- **Chapter 4** – Decision-Making
- **Chapter 5** – Delivering a Sufficient Supply of Homes
- **Chapter 9** – Promoting Sustainable Transport
- **Chapter 11** – Making Efficient Use of Land
- **Chapter 12** – Achieving Well-Designed Places
- **Chapter 14** – Meeting the Challenge of Climate Change, Coastal Change and Flooding
- **Chapter 15** – Conserving and Enhancing the Natural Environment

Other Material Considerations

- Kirklees Highways Design Guide (2019)
- Kirklees Housebuilders Design Guide SPD (2021)
- Kirklees Biodiversity Net Gain Technical Advice Note (2021)
- Kirklees Climate Change Guidance for Planning Applications (2021)

Legislation

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).

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 – e.g. trees/ecology (e.g. bats)
5) Representations
6) Conclusion

1 – Principle of development:

In this instance, the principle of the erection of a replacement dwelling at the site has already been established through the approval of planning application 2022/91553 and 2021/90888.

This application looks to vary the design of the dwelling, and this could be acceptable subject to the impact upon the visual amenities of the locality, residential amenity, highways safety as well as other matters, which will all be discussed below.

2 – Impact on visual amenity:

The NPPF 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."

Kirklees Local Plan policies LP1, LP2 and significantly LP24 all also seek to achieve good quality, visually attractive, sustainable design to correspond with the scale of development in the local area, thus retaining a sense of local identity.

LP24 states that proposals should promote good design by ensuring:

"a. the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape…"

Principle 2 of the Kirklees Housebuilders Design Guide SPD states that: *"New residential development proposals will be expected to respect and enhance the local character of the area by:*

- *Taking cues from the character of the built and natural environment within the locality.*
- *Creating a positive and coherent identity, complementing the surrounding built form in terms of its height, shape, form and architectural details.*
- *Illustrating how landscape opportunities have been used and promote a responsive, appropriate approach to the local context."*

Principle 5 of this SPD states that: *"Buildings should be aligned and set-back to form a coherent building line and designed to front on to the street, including corner plots, to help create active frontages. The layout of the development should enable important views to be maintained to provide a sense of places and visual connections to surrounding areas and seek to enable interesting townscape and landscape features to be viewed at the end of streets, working with site topography."*

In addition to this, Principle 15 states that the design of the roofline should relate well to site context. Further to this, Principle 13 states that applicants should consider the use of locally prevalent materials and finishing of buildings to reflect the character of the area, whist Principle 14 notes that the design of openings is expected to relate well to the street frontage and neighbouring properties.

The variation of condition application looks to remove the basement previously approved, along with adding two rear dormers and raising of the rear central gabled roof which would not lead to a change in the overall siting or footprint of the dwelling. The loss of the basement would be acceptable given the original proposal didn't include this element.

The original proposal was for the demolition of an existing bungalow which had an approx. height of 4.5m (similar to the proposed garage, as no existing drawings have been submitted). The replacement property has an overall height of being two storey 9.65m an increase of 5.15m, where the original report stated: -

> *"The dwelling subject of this application is proposed to appear two storeys in height with accommodation at third floor level in the roof space. From a visual amenity point of view, the principle of a dwelling two storeys in appearance on this site is considered acceptable when taking into account existing development along this street, even though the next-door dwelling of No.27 is a bungalow."*

> *“However, whilst a two-storey appearing dwelling could be acceptable, it is noted that the dwelling would be relatively high, deep and wide and would therefore has a large volume. The main body of the dwelling would have a ridge height of ~9.6 metres and an eaves height of ~5.7 metres. This eaves height would not be too dissimilar to other dwellings within the locality, but the ridge height would be relatively high in comparison to other two dwellings on the street (so as to achieve another storey in the roof space). Further to this, the dwelling would be a width of approximately 23 metres and depth of approximately 11 metres, and whilst it is considered that this would not be unusually wide or deep for a dwelling along the south side of Gernhill Avenue, it would add to the overall scale and mass of the proposed dwelling when taking into account the proposed height. The pitch of the roof would also be relatively steep in comparison to other dwellings on Gernhill Avenue.”*

It was considered that the building was set back from the road and adjacent boundaries which would help prevent it from appearing an overly dominant or materially larger feature within the streetscene. The report went on to state that: -

> *“Gable protrusions would add to the overall bulk of the building, but 3 of these would be contained to the rear of the building, away from Gernhill Avenue. “*

The conclusion of the report was “*that the proposed dwelling would be relatively large in scale and mass, but on balance, was considered acceptable.”* However, permitted development rights were removed for all further extensions to the property, due to the fact additional extensions could materially harm the visual amenity of the site as well as the amenity of neighbouring residents and mitigate flood risk through potential damage to the culvert crossing the site.

Therefore, when considering the modified proposal which introduces 2 rear dormers and raising the ridge height of the rear central gable, which themselves could be deemed relatively small in scale in relation to the original approved proposal, these additions are adding additional bulk and mass to the proposal due to the steepness of the roof form. This further departs from the original planning permission.

It is accepted that the dormers have been reduced in size from the original submission, which totally infilled the area between the existing rear gables, to two smaller dormers with flat roofs. The central gable has also been lowered. However, these additions would add volume to the already steep roof as referred to in the previous report, detrimental to the overall appearance and design of the original building. The two rear dormers appear to be random additions with no consideration to the original design of the property. Removing these elements would not make the third floor unusable, which would still provide accommodation comprising of a gym, games room & home office.

The is therefore considered that the amended design would not result in a *satisfactory appearance of the development on completion* and would cause detrimental harm to the visual amenities of the locality and the quality of the design as a whole. The proposed development is considered not to comply with Local Plan Policy LP24a or Chapter 12 of the National Planning Policy Framework.

Guidance in the NPPF at paragraph 135 states that LPAs, should seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme. In this case the proposed changes are concluded to (incrementally) materially diminish the quality of the originally approved permission.

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.

Principle 6 of the Kirklees Housebuilders Design Guide SPD states that: *"Residential layouts must ensure adequate privacy and maintain high standards of residential amenity, to avoid negative impacts on light, outlook and to avoid overlooking."*

The proposal would not extend the dwelling further outwards than already approved at ground floor level and above. But would enlarge the roof mass and albeit introduces additional window openings these are smaller than the already approved windows within the rear elevation.

The alterations to the proposed windows in the west elevation have been enlarged, where amended plans were requested for these to revert back to the approved scheme. The applicant replied requesting these remain

unchanged so that they allow additional light into these rooms. Given that on the revised internal floor plan these are to non-habitable rooms, therefore, on balance considered acceptable. However, if the proposal was minded to be approved then the previous condition 11 should be repeated to prevent overlooking if the internal layout changed.

Therefore, the proposed revision would not result in additional undue harm to the next-door neighbouring properties of No's. 27 and 31 Gernhill Avenue in terms of loss of light, loss of privacy or overlooking, the creation of an overbearing effect or loss of outlook.

Given the above, it is considered that the proposed development complies with Local Plan Policy LP24 and Chapter 12 of the National Planning Policy Framework, as well as Principles 6, 16 and 17 of the Kirklees Housebuilders Design Guide SPD.

4 – Impact on highway safety:

Whilst the proposal would result in additional living space at the dwelling, it would not result in the loss of any of the parking area initially approved and no additional bedrooms are being identified, and albeit the rooms could change their use, even if this was the case, Officers are satisfied that sufficient parking is provided on site for such a development when referring to the Kirklees Highways Design Guide parking guidance. No alterations are proposed to the site access.

Given the above, Officers consider that the proposal would not cause detrimental harm to the safe and efficient operation of the highway network. The proposal is therefore considered to comply with Policies LP21 and LP22 of the Kirklees Local Plan and Chapter 9 of the National Planning Policy Framework, as well as Principle 12 of the Kirklees Housebuilders Design Guide SPD and advice within the Kirklees Highways Design Guide SPD.

5 – Other matters:

Climate Change:
On 12th November 2019, the Council adopted a target for achieving 'net zero' carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. 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. Principle 18 of the Kirklees Housebuilders Design Guide SPD sets out that new proposals should contribute the Council's ambition to have net zero carbon emissions by 2038.

It is considered that the proposed alteration to the scheme does not require additional measures above what has already been approved at the site (EV charging space) so as to combat climate change.

Plans table
For clarification and in the event of any future appeal the documents included within the previous application have been include within the decision notice plans table.

6 – Representations:

No representations were received, as part of the consultation process.

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 development proposals do not accord with the development plan and the adverse impacts of granting permission would significantly and demonstrably outweigh any benefits of the development when assessed against policies in the NPPF and other material consideration.

Recommendation **Refuse**

Decision Authorisation - Delegated Powers
Application Number: 2023/92225
Officer Recommendation: Refuse

The proposed amendments to the approved dwelling, by reason of the design and mass of the dormers and central gable feature, would introduce visually unsympathetic additions, failing to harmonise with the original design of the dwelling and materially diminishing the quality of the permitted scheme This would result in harm to the visual amenity of the area and would be contrary to Policy LP24 (a) of the Kirklees Local Plan, and paragraphs 126, 130 and 135 of the National Planning Policy Framework.

Plan Type	Reference	Version	Date Received
Application Form pursuant to application 2021/90888	-	-	7th August 2023
Location Plan pursuant to application 2021/90888	P-4	-	24th May 2021
Proposed Floor Plans	P1	5.7A	2nd November 2023
Proposed Elevations 2023	P2	5.5A	2nd November 2023
Culvert Report pursuant to application 2021/90888	-	-	24th May 2021
Culvert Location Plan pursuant to application 2021/90888	-	-	28th May 2021
Bat Scoping Survey by John Gardner dated 23rd March 2021 pursuant to application 2021/90888	-	-	24th May 2021
E-mail from applicant on 11th June 2021 detailing proposed roofing materials pursuant to application 2021/90888	-	-	11th June 2021
Tree Protection Plan pursuant to application 2021/90888	T-1	-	23rd June 2021
Culvert Protection Plan pursuant to application 2021/90888	C-1	-	23rd June 2021

Interpretive Report on a Ground Investigation by GEOENVIRO Solutions Limited dated May 2021	GES 1402-21	-	6th May 2022

Pursuant to article 35 (2) of the Town and Country Planning (Development Management Procedure) Order 2015 and guidance in the National Planning Policy Framework, the Local Authority have, where possible, made a pre-application advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application. Amended plans were requested to remove the rear dormers and revert the central rear gable to that already approved, in order to reduce the mass of the proposal and for the internal layout to be approved and the basement removed. The amended plans did not overcome concerns and the application could not be supported.

Report Dated: 8.11.23