

**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:	2023/62/93713/W
Site Address:	410, Birkby Road, Birkby, Huddersfield, HD2 2DN
Description:	Demolition of garage/office and erection of new building to form annexe and associated operations to form retaining walls associated with 410 Birkby Road, Birkby, Huddersfield, HD2 2DN (retrospective)
Recommending Officer:	John Holmes

DECISION – Conditional Full Permission

I hereby authorise the approval 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: 9th April 2024

Officer Report – 2023/93713

Site Description

The application site forms the location where a garage was previously located, within the grounds of 410 Birkby Road which is in the process of being re developed. A bank of protected trees is located to the east of no. 410 with further protected trees to the north and west. Access is taken from a private drive that leads to Birkby Road that serves a number of other dwellings.

Surrounding the site to the south is a church and associated car park, to the east the rear of properties off Valley Head, a residential cul de sac. To the west is the housing allocation HS35 and the existing dwellings off Westward Croft. To the north is a protected woodland. Stone is the predominant construction material in the local area and detached dwellings the most common form of property type.

Development Under Consideration

The Scheme

The applicant is seeking retrospective permission for the demolition of garage/office and erection of new building to form annex and associated operations to form retaining walls associated with 410 Birkby Road.

Supporting Information

In addition to the submitted plans the following documents have been submitted to support the application

- Design and Access Statement (dated December 2023)
- Climate Change Statement (received 18th December 2023)

During the course of the assessment of the application, the following additional/amended plans/information was submitted for consideration:

- Drawing 04 RevD

Following the registration and initial publicity of the application, drawing 04RevC was submitted (to address the fact the as built development at site was not reflected in the initially submitted plan). This drawing was re-publicised inviting comments by 11th March 2024.

Following review, for clarity in relation to the scale of drawing 04RevC, this plan was further updated (drawing ref: 04RevD) which sets out the relevant scales for the various parts of the development which are depicted within the submitted plan.

It is drawing 04RevD against which this application is being determined. As drawing 04RevD differs from RevC insofar as the 'C' drawing neglected to point out the elevations were at scale 1:100 and is, in all other respects, the same plan it is not considered necessary for readvertisement of the RevD version of this plan, in this case.

The building the subject of this drawing is the following dimensions:

- Height to topmost part of the roof – 6.8m
- Height to eaves – 4.5
- 78m² building footprint

The distance of the building from a 2.4m high retaining wall, and the location of the wall, is detailed in the plans submitted.

The submitted block plan details, at scale 1:1250, the location of the building. This details the building as being in excess of 30m from neighbouring properties.

Relevant Planning History

The most relevant planning history relates to the following planning applications

2022/90191 - Extension and alterations to existing garage / office building to create dwelling forming annexe associated with 410, Birkby Road, Birkby, Huddersfield, HD2 2DN – Granted Conditional Full Permission on 22nd April 2022

The planning history detailed above permitted a building in largely the same location as that the subject of this application, which had the following dimensions:

- Height to topmost part of the roof – 6.25m
- Height to eaves – 4.1m
- 78m² building footprint

Following receipt of complaints, the Council's Enforcement Team undertook investigations and established that the extent of works undertaken at site to implement the 22nd April 22 consent were beyond the scope of works which were granted by that permission.

This application has been submitted to regularise the works undertaken at site.

The planning history for the site is a material consideration which is afforded appropriate weight, where applicable, in the determination of this application.

Representations

Publication of the application has been undertaken in accordance with the Council's Development Management Charter (July 2015).

The application has been publicised on the Council's website and by neighbour notification letter. Following two periods of publicity (the first being between 9th January and 13th February 2024) the final expiry date of the publicity period was the 11th March 2024.

As set out in the 'Development Under Consideration' section of this report. The drawing which is being assessed was updated twice (RevC and RevD). Whilst the development set out in RevC was re advertised, for the reason set out in the aforementioned section of this report, it was considered that the scheme as detailed within the RevD version of this plan was not required to be subject to further advertisement in this case and the scheme as advertised adequately alerted the public to the nature of the development in this case.

Letters of Objection

Five objections have been received to this proposal. The received objections are summarised as follows: -

- Previous consent stated the development was required to be in accordance with the details of that consent.
- The D and A Statement does not set out who advised the applicant to demolish the garage.
- Partial demolition amounted to total demolition.
- Question why structural surveys were not undertaken at the point of the previous application to ascertain the extent of works necessary.
- Not clear why a new application was not submitted immediately to regularise matters when the building was demolished, rather than submitted at the point it has been.
- Planning enforcement have seen differences to an extent to require an application to be submitted to regularise them, what were the differences.
- The block plan is not clear in relation to any potential change of position of the previously approved permission for conversion.
- The height of the building the subject of this application is not detailed, and it is not clear if it is the same as that of the previous consent.
- The planning history of the design and access statement does not include all previous consents applicable to the site. The correct history for the site should be quoted.
- The access to the site was recently excavated causing considerable disruption to neighbouring occupiers.
- The installation of power and water supplies along the access to the site would likely require the excavation of part of Birkby Road, and question whether this should be included as part of this application.
- Hope this is the final application at this site, question the outcome had all the proposals which have been applied for been put forward in one application.

- The detached house is larger than many family homes and forms a 7th dwelling from a private access where the standard is recognised as being or 5 as a maximum (set out in the Highways Design Guide SPD).
- Consider the development to constitute a new dwelling.
- The development which is the subject of this application is 20% larger than it should be.
- The consideration of this application should be independent to the previous application which was for conversion rather than construction of a new building.
- Permission to development the site in 2005 should have no bearing on the consideration of this case, the April 22 permission was for conversion only and did not grant permission for extension
- Trees are not being protected upon the site
- Disruption caused during the construction phase, and has been ongoing for 2 years.
- How is drainage to serve the new properties
- There have been breaches of planning control at this site
- The proposal constitutes a stand alone third property
- Contractors parking is a hazard to access and highway safety

Consultation Responses

The following consultations have been undertaken for this application with the summarised responses listed below.

KC Trees: No objection, advice provided in relation to protected trees

KC Ecology: No objection subject to condition requiring provision of a bat box

KC Highways: No response received

The responses of the above consultees are discussed in greater length within the 'Assessment' section of this report.

Allocation and Policy

Kirklees Local Plan (KLP)

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 unallocated on the LP Policies Map.

- **LP1** – Presumption in favour of sustainable development
- **LP2** – Place shaping
- **LP3** – Location of new development

- **LP21** – Highway safety and access
- **LP22** – Parking Provision
- **LP24** – Design
- **LP30** – Biodiversity and Geodiversity
- **LP33** – Trees

Supplementary Planning Documents (SPDs)

- House Extensions and Alterations SPD

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 December 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 12 – Achieving well-designed and beautiful places
- Chapter 14 – Meeting the challenge of climate change, 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 upon the character and appearance of the area
 2. Impact upon residential amenity
 3. Impact upon highway safety
 4. Climate Change
 5. Other matters
 6. Representations
 7. Conclusion

1 – Principle of Development

The site represents unallocated land on the Local Plan and therefore policies LP1 and 2 apply which support sustainable development and seek to ensure that new developments protect and enhance the quality's which contribute to the character of an area. The proposal would lead to the formation of annex associated with the adjacent dwelling by the conversion and extension of an existing building.

The principle of developing the site is considered to be acceptable subject to assessment of design, residential amenity, highway safety, ecology and all other material planning considerations and representations received.

2 – Impact on character and appearance of the area

General design considerations are set out in Policy LP24 of the Local Plan and Chapter 12 of the NPPF, which seek to secure good design in all developments by ensuring that they respect and enhance the character of the townscape and protect amenity. The House Extensions and Alterations SPD needs to be considered as it forms an annex to the main dwellinghouse, Key Design Principles 1 and 2 are relevant which state:

- Principle 1 – that “extensions and alterations to residential properties should be in keeping with the appearance, scale, design, and local character of the area and the street scene.”
- Principle 2 – that “extensions should not dominate or be larger than the original house and should be in keeping with the existing building in terms of scale, materials and detail.”

Section 5.6 specifically covers outbuildings advising that outbuildings can have the same impact as any other extension and therefore they need to be carefully designed, setting out that outbuildings should normally:

- be subservient in footprint and scale to the original building and its garden taking into account other extensions and existing outbuildings;
- be set back behind the building line of the original building so that they do not impact on the street scene; and
- preserve a reasonable private amenity space appropriate to the potential number of occupants of the house and follow a general principle that no more than 50% of garden space should be lost.

The building has been constructed and is in place on site, it is considered to have a simple architectural form, the materials are in keeping with those used to neighbouring properties and in particular those used for the construction of no.410 Birkby Road.

The building is considered to be adequately in keeping with the vernacular of the wider locality which benefits from being large plots in spacious grounds surrounded by vegetation. The window proportions are considered to be appropriate and in keeping with the locality and surrounding properties.

Whilst it is noted that the building is in front of the principal elevation of the host building and not according with the guidance set out in section 5.6 of the SPD, given that this plot forms part of a large plot which is in a secluded location set well back from the main highway accessed from a private drive and does not command a prominent view from public vantage points it is considered that there is suitable justification in place in this case in regard to the fact it would not be in accordance with Section 5.6.

The scale of the development ensures that not more than 50% of the garden space is developed meeting this criterion of section 5.6 of the SPD.

The proposal is therefore considered to be acceptable in relation to visual impact, in accordance with the aforementioned policies.

3. Impact on Residential Amenity

The impact of the proposal on the amenity of surrounding properties and future occupiers of the dwellings needs to be considered in relation to Policy LP24 of the Local Plan which seeks to “*provide a high standard of amenity for future and neighbouring occupiers; including maintaining appropriate distances between buildings.*”

The House Extensions and Alterations SPD sets out a number of design principles which will need to be considered when assessing a proposals impact on residential amenity, which state:

- Principle 3 - that “extensions and alterations should be designed to achieve reasonable levels of privacy for both inhabitants, future occupants, and neighbours.”
- Principle 4 - that “extensions and alterations should consider the design and layout of habitable and non-habitable rooms to reduce conflict between neighbouring properties relating to privacy, light, and outlook.”
- Principle 5 - that “extensions and alterations should not adversely affect the amount of natural light presently enjoyed by a neighbouring property.”
- Principle 6 - that “extensions and alterations should not unduly reduce the outlook from a neighbouring property.”
- Principle 7 - that “extensions and alterations should ensure an appropriately sized and useable area of private outdoor space is retained. Normally at least half the garden area should be retained as part of the proposals.”

The closest properties to the proposed annex are nos. 410 and 412 which are in the process of being reconstructed. The annex would be used ancillary to no.410 and therefore any impact on these properties is considered to be acceptable.

A condition would be attached to the decision notice to ensure that the building is used for ancillary purposes only. All other properties are located over 40 metres away which is considered to be sufficient separation to ensure that residential amenity of any occupants of those properties is safeguarded.

In light of the above and subject to the suggested condition, the proposal is considered to have an acceptable impact on residential amenity and would therefore accord with Policy LP24 of the Local Plan, the Extensions and Alterations SPD and Policies in Chapter 12 of the NPPF.

4. Impact on Highway Safety

Policies LP21 and LP22 of the Kirklees Local Plan and Chapter 9 of the NPPF relate to access and highway safety and are considered to be relevant to the consideration of this application. The Council's adopted Highway Design Guide and Key Design Principle 15 of the adopted House Extensions & Alterations SPD which seek to ensure acceptable levels of off street parking are retained are also considered to be of relevance.

Contractors parking is raised in third party representations, in relation to causing a hazard to access and highway safety. As this relates to wider development of the site and the fact the development the subject of this application is largely completed it is considered it would be unreasonable of the LPA to require a construction management scheme to be submitted as part of this application.

The site benefits from substantial off-street parking and whilst the development would provide an annex accommodation any additional parking generated could be accommodated within the existing parking arrangements. In terms of access, it is noted that this is taken from a private lane.

Whilst there may possibly be one additional vehicle from the occupiers of the annex, it is not considered that this would adversely impact on the operation of the private lane or cause a detrimental impact to highway safety. A condition shall be attached to the decision notice to ensure that the building is used for ancillary purposes only to ensure that the highway impact remains the same as applied for.

In conclusion the proposal is considered to have an acceptable impact on highway safety and would accord with Policies LP21 and LP22 of the Local Plan and guidance in the SPD.

5. 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, this includes Key Design Principles set out in the SPD.

A Climate Change Statement has accompanied this application, which sets out use of local contractors and supplies, re used existing material, greater levels of insulation undertaken than would have been through conversion of the existing building, use of low energy light fittings and use of water efficient

sanitary fixtures. These are considered suitable measures. It is considered that the insistence of further requirements by the LPA, such as use of carbon reduction technologies would not be reasonable in this case.

6. Other Matters

Ecology

Chapter 15 of the National Planning Policy Framework are relevant, together with The Conservation of Habitats and Species Regulations 2017 which protect, by law, the habitat and animals of certain species including newts, bats and badgers.

Policy LP30 of the Kirklees Local Plan requires that proposals protect Habitats and Species of Principal Importance.

Principle 12 of the Kirklees House Extensions and Alterations SPD states that extensions and alterations should consider how they might contribute towards the enhancement of the natural environment and biodiversity.

The Council's Ecologist has been consulted regarding the proposal and has advised that, in order to ensure there is a biodiversity enhancement at the site they recommend a condition of any grant of permission requires the **provision of a bat box.**

Whilst it is noted that there was no such condition upon the April 22 permission it is considered that an enhancement of biodiversity on the site in the form of the provision of a bat box is a reasonable requirement in this case, given the proposal relates to a new building. It is considered that the eastern elevation is the most appropriate location as it is facing an open part of the site but would have the least exposure to artificial light than other elevations which face the more open parts of the site.

It is considered the inclusion of such a condition requiring the provision of a bat box to this elevation would ensure that the development meets the requirements of the aforementioned policies and is acceptable in this regard.

Trees

The site is located adjacent to a number of protected trees and the application has been assessed by the Council's Arboriculturist and assessed in relation to Policy LP33 of the KLP which seeks to retain mature and protected trees. The proposed development included the erection of a retaining wall, close to trees.

The Arboriculturist sets out that, as there is no change to the site's footprint, they do not foresee any reason there should be an impact on the surrounding trees. It is recommended that tree protection measures are included as a condition of compliance with this application if it is approved. The Arboriculturist recommends the tree protection plan from the previous

consent, be included with this application for that purpose as it would adequately protect the trees near to the proposals for this application.

The Arboriculturist's comments have been considered. As the development is seeking retrospective consent and the works are largely complete and the requirements of other consents (such as the redevelopment of 410 and 412) and the ongoing requirements of tree protection by consents for redevelopment of those sites, it is not considered necessary for inclusion of tree protective measures in this case and any such inclusion would not meet the test of reasonableness as required by all conditions.

7. Representations

Insofar as they are not addressed elsewhere in this report, the third party representations which have been received are addressed as follows:

- Previous consent stated the development was required to be in accordance with the details of that consent.

Response: Whilst the conditions of consent 2022/90191 have not been complied with, the application under consideration has been submitted to regularise any such non compliance.

- The D and A Statement does not set out who advised the applicant to demolish the garage.
- Partial demolition amounted to total demolition.
- Disruption caused during the construction phase and has been ongoing for 2 years.

Response: It is considered these matters are considerations which are not material to the consideration of this application; which is assessed on its own merits.

- Question why structural surveys were not undertaken at the point of the previous application to ascertain the extent of works necessary.
- Not clear why a new application was not submitted immediately to regularise matters when the building was demolished, rather than submitted at the point it has been.

Response: It is considered sufficient information was available / provided to enable the LPA to determine the previous application in April 22. There is no requirement, in law, that works undertaken without planning permission proceed to gain such permission however undertaking works in this manner is at the applicants' / developers' own risk.

- Planning enforcement have seen differences to an extent to require an application to be submitted to regularise them, what were the differences.

Response: It is considered that the extent of demolition does not allow for the April 22 consent to be able to be implemented / completed. Non compliance with the April 22 would potentially see all conditions of that consent unenforceable where non compliance to take place for a prolonged period of time, therefore an application to regularise the non compliance with the consent was invited by the Council's Planning Enforcement Team.

- The block plan is not clear in relation to any potential change of position of the previously approved permission for conversion.
- The height of the building the subject of this application is not detailed, and it is not clear if it is the same as that of the previous consent.
- The planning history of the design and access statement does not include all previous consents applicable to the site. The correct history for the site should be quoted.
- The development which is the subject of this application is 20% larger than it should be.

Response: It is considered the plans, details and information submitted are sufficient to enable the LPA to determine the application in this case, which is assessed on the basis of its own merits.

- The access to the site was recently excavated causing considerable disruption to neighbouring occupiers.
- The installation of power and water supplies along the access to the site would likely require the excavation of part of Birkby Road, and question whether this should be included as part of this application.

Response: Excavation works by statutory undertakers to install services is development for which an application for planning permission (by the relevant property to which those services will serve) is not required to be submitted to the LPA.

- Hope this is the final application at this site, question the outcome had all the proposals which have been applied for been put forward in one application.

Response: Whilst repeat applications can be declined to be determined by the LPA, the circumstances for such an approach as set out in section 70b of the town and Country Planning Act 1990 (as amended) are not met in this case.

- The detached house is larger than many family homes and forms a 7th dwelling from a private access where the standard is recognised as being or 5 as a maximum (set out in the Highways Design Guide SPD).
- Consider the development to constitute a new dwelling.
- The proposal constitutes a stand alone third property

Response: The application under consideration in this case relates to accommodation to be used ancillary to no.410.

- How is drainage to serve the new properties

Response: It is considered that, for a development of this scale, drainage matters would be dealt with by the requirement for building regulations and it would be unreasonable of the LPA to insist upon submission of a scheme of foul / surface water drainage to be submitted as part of this application.

- There have been breaches of planning control at this site

Response: The Council's Planning Enforcement Team have been made aware, and taken appropriate action, in relation to reports of breaches of planning control in relation to this site.

8. 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, the proposed development would constitute sustainable development and is therefore recommended for approval.

Recommendation

APPROVE

Decision Authorisation: Delegated Powers

Application Number: 2023/93713

Officer Recommendation: Conditional Full Permission

Conditions

1. 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 to accord with Policies LP01, LP02, LP21, LP22, LP24, LP30 and LP33 of the Kirklees Local Plan, Principles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 & 15 of the Council's adopted House Extensions & Alterations Supplementary Planning Document, and Policies within Chapters 2, 9, 12 and 14 of the National Planning Policy Framework
1. The annex building hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as no.410 Birkby Road, Birkby, Huddersfield, HD2 2DN. It shall not be sold or let independently to no. 410 Birkby Road.
Reason: To ensure that the annex is used solely as ancillary accommodation to the main dwelling house in the interests of highway safety, residential amenity of future occupiers and adjoining occupiers

in accordance with Policies LP21 and LP24 of the Kirklees Local Plan, Principles 7 and 15 of the House Extensions and Alterations SPD and chapters 2 and 12 of the National Planning Policy Framework.

2. Within three months of the date of this decision one bat box shall be installed within the eastern elevation of the building hereby approved at least 2.5m above ground level; the box shall be long-lasting Schwegler 'woodcrete' type or similar and shall be located away from sources of light. Once installed the bat box shall be retained thereafter.

Reason: To enhance the biodiversity of the site in accordance with Policy LP30 of the Kirklees Local Plan, Principle 12 of the Kirklees House Extensions and Alterations Supplementary Planning Document and policies within Chapter 15 of the National Planning Policy Framework.

NOTE: The site is within close proximity of Tree Preservation Order 14/75/a1. An Order prohibits the cutting down, topping, lopping, uprooting, wilful damage and / or wilful destruction of trees without the local planning authority's written consent. If consent is given, it can be subject to conditions which have to be followed. In the Secretary of State's view, cutting roots is also a prohibited activity and requires the authority's consent.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Plans and Elevations	04RevD	RevD	27 th March 2024
Location Plan			18 th December 2023
Block Plan			18 th December 2023

Pursuant to article 35 (2) of the Town and Country Planning (Development Management Procedure) Order 2015 and guidance in the National Planning Policy Framework, the Local Authority have, where possible, made a pre-application advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application. Amended plans to ensure the scheme within the plans corresponded to that as undertaken at site and to clarify the scale of the plans submitted were provided during the course of the application.

Report Dated:

9th April 2024

Coal – low

