

**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:	2024/62/90461/W
Site Address:	Land at Occupation Road, Off Birkby Road, Birkby, Huddersfield, HD2 2ES
Description:	Erection of detached dwelling with detached garage
Recommending Officer:	Tom Hunt

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.

John Holmes

AUTHORISED OFFICER

Date: 2nd May 2024

Officer Report

Site Description

2024/90461 – Land at Occupation Road, Off Birkby Road, Birkby, Huddersfield, HD2 2ES

The site relates to a narrow parcel of land to the north of Birkby Road, and the rear of residential properties of Prince's View and Harefield Park (to the west), as well as residential properties of Birchroyd Close (to the east). The plot of land narrowly tapers close to the highway with a bend and then gently widens towards the north.

The site comprises a private unsurfaced access lane off Birkby Road (Prince's View) at the western side, which runs to the residential property of Wood View Farm, and a soft landscaped area to the eastern side. To the east boundary, there are significant leylandii of 5.3m height.

The site and surrounding land slopes downwards from south west to north east. The site is within an area characterised by residential development, mostly comprising of detached dwellings of significant width within spacious plots, properties to the west are more tightly spaced together with varying property gaps and to the east and south, they are more generously proportioned in relation to their large plots with more significant property gaps to flank boundaries.

Description of Proposal

Erection of detached dwelling with detached garage

All figures are approximate and in metres.

It is proposed to erect a two-storey detached dwelling with a L-shape plan and cross gable roof design; this would appear as side gabled conventional appearing house with a small, pitched roof, front porch, and would have a two-storey rear projection set down from the main roof ridge and projecting more than twice the depth of the main body. This is within a sloping plot so the building would be sited on raised foundations, a maximum of 1m in height from the ground, to level out the grounds.

The main body would be set back 7m from the footway (6.25m set back for the porch) and would have a 0.9m drystone wall to the front and side as a boundary extending down half the length of the plot. Behind the property, there would be limited hardstanding with lawned garden, gated access to an off street parking space for two vehicles linked with a double garage. The existing access is to be used and modified to include a turning point behind the garage then the remaining rear garden would be turned over to wildlife friendly planting. Bin storage and presentation points are set out to the side of the property. The property would have a gap to its west flank boundary of 1m

and be sited directly adjacent to the access lane appearing to have a property gap of 5.8m.

The main body would be 8m wide and 7m depth with an overall height of 7.8m and eaves 5.7m from gently sloping ground. The front porch would extend 1.5m from the front, be 2m width with an overall height of 3.5m and eaves 2.4m from sloping ground. The fenestration and door would be symmetrically arranged at front and the east elevation would have three windows (one ground/two first floor) and at rear, french doors and traditional windows. No further openings are proposed to the main body and porch.

The rear projection would be 4.7m wide and 8m depth with an overall height of 7m and eaves 4.8m from ground falling from front to rear. The rear and west elevation fenestration would have a curtain glazed section over both storeys and two windows to its east elevation at mid storey and first storey level.

This would be finished in natural stone with ashlar, dentils and stone roof coping on the main body's gable ends and tiled with natural slate; the rear projection would be of simpler design without stone roof coping. The fenestration would be double glazed uPVC, doors in composite material and rainwater goods in aluminium. There would be two stone built, feature chimneys, one to main and one to the rear projection at the west elevation.

This would have an open plan living/dining kitchen towards the front, utility, hall and living room toward the rear at ground floor; the first floor would have four double bedrooms with a bathroom, landing and one ensuite.

As mentioned, it is proposed to have a single-storey, double garage with pitch roof behind the host. This would be 6.5m width, 6.5m depth and would have an overall ridge of 4.3m and eaves of 2.4m height from ground level. It would be windowless with one double garage door opening facing the host's rear elevation. Facing materials would be in natural stone and slated roof.

Officer note: The submitted tree report sets out that T3 is within no. 3 Birchroyd Close (page 17). Aerial surveys indicate that it is within no. 1's rear garden and as such is closer to the proposed dwelling than indicated.

History of negotiations/amendments received

The case officer considered the application on review and notified the agent that the proposal could not be supported. The draft reasons were that the proposal would appear cramped and contrived within the plot and would not be sympathetically integrated with the streetscene. It was advised to proceed to determination on the basis of the scheme as submitted.

Relevant Planning History

2001/91361 Erection of two detached dwellings with detached garages.

Refused

2001/92801 Erection of 2 detached dwellings and detached garages.
Conditional Full Permission.

2002/93523 Erection of detached dwelling.
Conditional Full Permission.

Since these consents, which date back to 2001 & 2003, there has been a significant change in the policy context against which such development is assessed. Specifically the Council has adopted the Kirklees Local Plan (2019) and Housebuilders Design Guide (2021) since the determination of these applications. Furthermore national planning policy has changed, with the National Planning Policy Framework coming into force in 2012 (with the most recent update being in December 23). As such limited weight is afforded the 2001 and 2003 applications, particularly as there does not appear to have been a lawful commencement of these permissions and they have subsequently lapsed.

2020/94292 Erection of detached dwelling.
Refused.

Refused on 12/3/2021 for the following reasons:

1. *“The proposed development, by virtue its siting on a constrained site, as well as its contrived and incongruous layout and design, would fail to sympathetically relate to existing development within the locality and would appear as a visual intrusion within this location, detrimental to the visual amenities and overall character of the area. The proposal is therefore contrary to Policy LP24 (a) of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework.*

2. *The proposed dwelling, by virtue of the close proximity of the proposed first floor window and rooflights to the neighbouring properties of No’s. 3 and 5 Birchroyd Close and No’s. 2 and 3 Prince’s View, would cause detrimental harm to these neighbouring properties in terms of loss of privacy and overlooking. In addition, the close relationship with these properties would result in the proposed dwelling having an unsatisfactory level of privacy, thereby harming the living conditions of the future occupants of the proposed property. Therefore, the proposal would fail to provide a high standard of amenity for occupants of both the existing and proposed dwellings, contrary to Policy LP24 (b) of the Kirklees Local Plan Chapter 12 of the National Planning Policy Framework.”*

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 had a final expiry date of 24/04/2024.

14 representations have been received (two duplicates), all Objecting; a summary of the comments received is set out below:

- The design would appear as a cramped form of development with a contrived layout and of smaller plot width than adjacent properties which would appear out of keeping in design and character to the locality.

Officer Note: Assessed under the Visual Amenity section of the report.

- Overbearing and of two-storey construction sited close to the boundary.
- Overshadowing
- Overlooking/loss of privacy
- Extant permission ref: 2021/92301 may be affected, the proposal does not show the 'new' layout of neighbour to be affected by this.
- Poor daylighting due to northern aspect for rear elevation main windows
- Noise, artificial light, hazardous materials and dust nuisance from development and gate operation
- Equality Act concerns from development

Officer Note: While Local Authorities have a duty to have due regard to the need to achieve the objectives (a-c) set out under s149 of the Equality Act 2010, the construction time and modest scale of the proposed development for one dwelling would be limited to a temporary period of development and be subject to other regulatory functions and powers of Kirklees Council concerning noise, nuisance and other matters. As such, Officers consider it would be unreasonable of the LPA to impose conditions relating to the construction phase of the development / control of artificial light given the scale of the development and other powers available to control these matters. Hazardous materials are controlled by Building Regulations and other legislative functions, and in this case it is considered it would be unreasonable of the LPA to require a full assessment of land quality as part of this application. Other points raised are assessed further, including impact of the development upon a dwelling which benefits from an extant permission, under the Residential Amenity section of the report.

- Affects Tree Preservation Orders with no Arboricultural survey submitted.
- Previous loss of biodiversity and trees would be exacerbated by this development with newts identified within a nearby pond and harm to leylandii.

Officer Note: Assessed under the Biodiversity and Trees section of the report.

- Access road serves as a public right of way and any obstructions would be detrimental to the sole means of access.
- A party wall agreement would be required for scaffolding subject to agreement.
- Traffic would be increased.
- Impact on drainage and utilities

Officer Note: The access road is not a registered Public Right of Way, it is possible that this is a private right of way; this would not be a planning material consideration. The right of access to land, use of party wall agreements and impacts to utilities would be a private civil matter in this case. It is noted that certificate C of the application form has been signed which sets out not all the land in the application site is under the applicant's ownership, the legal implications of this would be for the applicant to investigate and satisfactorily address and are a separate matter to which little weight is afforded as a consideration which is material to the determination of this application. Traffic and drainage is assessed under the Highway Safety section of the report

- Ownership is disputed including land not owned by applicant.

Officer Note: The agent was contacted concerning this matter to confirm that the correct notice of ownership was submitted to comply with the requirements of the submission of an application for planning permission. The red line boundary does not confer land ownership but sets out the application site. Access and right to develop the land is a separate civil matter to be resolved by the applicant. Were planning permission to be granted it would not confer any legal right to develop land. The applicant has signed certificate C of the application form which sets out that they do not own all the land in the application site, and is unable to identify the land owner, with the necessary advertisement of this has been undertaken by the applicant in the local press.

- Refused application ref: 2018/93326 – Demolition of existing dwelling and erection of 5 detached dwellings with garages. Used as an equivalent example of why development should be refused.

Officer Note: Noted.

- The proposed garage could be re-designed to be sited elsewhere as integral to the host or positioned at the front of the property.
- There is space remaining served by the turning point to allow future development of the site which is not supported.

Officer Note: This application is assessed on its own merits on the basis of the submitted plans.

- Views to the rear would be obscured by the garage.

Officer Note: This is not considered to be a consideration which is material to the determination of this application in this case.

- Proposal would prejudice future extensions of neighbours.

Officer Note: Noted

- No landscaping detail has been submitted.

Officer Note: Noted and discussed in more detail within the 'Assessment' section of this report.

Consultation Responses

The following is a brief summary of Consultee advice (more details are contained in the 'Assessment' section of the report, where appropriate):

- Highways Development Management – No objection, subject to recommended conditions being applied to ensure highway safety and drainage.
- Trees – No objection, subject to recommended conditions to show how Tree Preservation Orders will be sufficiently protected from development.

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 27th February 2019).

The site is unallocated land for development on the Kirklees Local Plan.

The site is partly within a Bat Alert layer and a Low Risk Coal area for development. There are Tree Preservation Orders at the entrance of the access road known as Prince's View.

It is within Flood Zone 1, and Birkby Road has been identified as at risk of local, low level surface water flooding.

Kirklees Local Plan (LP):

- LP 1 – Presumption in favour of sustainable development
- LP 2 – Place shaping
- LP 3 – Location of new development
- LP 7 – Efficient and effective use of land and buildings
- LP11 – Housing Mix and Affordable Housing
- LP 21 – Highways and access

- LP 22 – Parking
- LP 24 – Design
- LP 28 – Drainage
- LP 30 – Biodiversity & Geodiversity
- LP 33 – Trees
- LP 34 – Conserving and enhancing the water environment
- LP 35 – Historic Environment
- LP 43 – Waste management hierarchy
- LP 51 – Protection and improvement of local air quality
- LP 52 – Protection and improvement of environmental quality
- LP 53 – Contaminated and unstable land

Supplementary Planning Guidance and other considerations

- Highways Design Guide SPD
- Housebuilders Design Guide SPD (2021)
- Nationally Described Space Standards
- Biodiversity Net Gain in Kirklees Technical Advice Note (2021)
- Kirklees Climate Change Guidance for Planning Applications (2021)

National Policies and Guidance:

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 20th 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 5 – Delivering a sufficient supply of homes
- Chapter 9 – Promoting sustainable transport
- Chapter 11 – Making effective use of land
- 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
- 2) Impact on visual amenity
- 3) Impact on residential amenity
- 4) Impact on highway safety

- 5) Other matters – e.g. trees/ecology
- 6) Representations
- 7) Conclusion

1 – Principle of development:

Policy LP1 of the Local Plan states that when considering development proposals, the council will take a positive and proactive approach that reflects the presumption in favour of sustainable development contained in the NPPF.

Policy LP2 sets out that all development proposals should seek to build on the strengths, opportunities and help address challenges identified in the Local Plan. Policy LP24 of the KLP is relevant and states that “*good design should be at the core of all proposals in the district*”.

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.

The Local Plan identifies a minimum housing requirement of 31,140 homes between 2013 and 2031 to meet identified needs. This equates to 1,730 homes per annum.

National planning policy requires local planning authorities to demonstrate five years supply of deliverable housing sites against their housing requirement.

The February 2024 update 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. Housing applications should be considered in the context of the presumption in favour of sustainable development. The judgement for application, where applicable, will be set out in the officers’ assessment.

Chapter 5 of the NPPF clearly identifies that Local Planning Authorities should seek to boost significantly the supply of housing. The site is unallocated land for development but is partially within Underbank Conservation Area.

Paragraph 70 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 generally seeks to support residential development upon unallocated sites. Policy LP7 establishes a desired target density of 35 dwellings per hectare unless the individual site characteristics dictate a lower density of development could only be considered compatible with its surroundings. This is further clarified by Principle 4 of the Housebuilders Design Guide which states that densities lower than 35 per hectare are only permitted in line with Local Plan Policy LP7. As the application site is narrow and long with an unadopted road, it is considered that a higher density would lead to issues in relation to parking / amenity space provision and in this case the density of the development is considered to be suitable.

The approval of residential development at the site on 16th January 2003 (2002/93523) is acknowledged. This constitutes a material consideration in the assessment of this proposal. However, as this permission has lapsed and this decision was made a considerable period of time ago (over 21 years) the weight which can be ascribed to this previous permission is limited.

Further to this, it is considered that the 2003 permission was granted under a different policy context, for instance the Kirklees Local Plan was adopted in 2019 and the NPPF was first published in 2012 (and has subsequently been revised). Both Policy LP24 of the Kirklees Local Plan and Chapter 12 of the NPPF stress the importance of good design. Of note, Policy LP24a outlines that to promote good design, the form, scale and layout and detail of development should respect and enhance the character of the townscape.

Importantly, the Government has recently placed further emphasis on high quality design. Paragraph 131 of the NPPF stresses that *“the creation of high quality, beautiful and sustainable buildings and places is fundamental”* to what the planning development process should achieve. Paragraph 138 of the NPPF also sets out guidance for Local Planning Authorities in relation to the design of development to make use of the National Design Guide (2019) and Kirklees Council Housebuilders Design Guide (2021). It is worth noting that the previously approved development is not considered to constitute good design. In addition to the above, Chapter 12 of the NPPF and Policy LP24c highlight the importance of protecting residential amenity, including that of future occupiers. As such, Officers have regard for the current policy background and continue to assess every application on its own merits.

The conclusion section of this report sets out the conclusions in relation to the principle of the development in light of all other material considerations.

2 –Impact on visual amenity:

In terms of visual amenity, general design considerations are set out in Policy LP02, and LP24 of the Local Plan, the Principles in the Housebuilders Design Guide SPD and Chapter 12 of the NPPF, which seeks to achieve good quality, visually attractive, sustainable design to correspond with the scale of development in the local area, respecting and enhancing the character of the townscape, heritage assets and protect amenity.

Paragraph 134 of the NPPF sets out that design guides and codes carry weight in decision making. Of note, Paragraph 139 of the NPPF states that development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes.

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.”*
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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.”*

Amongst other considerations, Principle 6 sets out that *“for a new dwelling located in a regular street pattern that is two storeys or above, there should normally be a minimum of a 2 metres distance from the side wall of the new dwelling to a shared boundary.”*

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, whilst Principle 14 notes that the design of openings is expected to relate well to the street frontage and neighbouring properties.

Within the vicinity of the site, there are a number of lanes and cul-de-sacs stemming from the north of Birkby Road with residential dwellings facing these cul-de-sacs, and the narrow site is situated in between two such lanes. The development in the locality, notably the residential properties adjacent to the site, consists of relatively large two storey dwellings within spacious plots with front and rear gardens. These properties, and others on the north side of Birkby Road also tend to benefit from relatively wide plots. This creates a spacious and attractive character to the locality.

The proposed property would also be accessed off a lane stemming from Birkby Road with the dwelling appearing to face Birkby Road. The proposal would lead to a two-storey, detached dwelling with a substantial two-storey rear projection of considerably elongated form and narrower frontage to those present within the two neighbouring cul-de-sac developments, it is considered that it would appear as a detached and standalone feature that would not sympathetically integrate with existing development in the locality. While it would be set back in line with the building line of the side elevations of the adjacent cul de sac properties, those properties are heavily screened by green landscaping and trees so the dwellinghouse would appear disconnected and isolated being more visible within its exposed plot compared to those. Other properties to the south appear with a greater set back from the highway than the proposed with considerable green screening so the dwellinghouse would again appear to contrast with its surrounding development's more spacious character and setting within generous wider plots.

Further to this, with the plot being between the access track and No.1 Birchroyd Close, the width of the dwelling and the site would be noticeably smaller/narrower than properties in the immediate vicinity. In addition, it does not comply with Principle 6 of the SPD to have a 2m gap to flank boundaries nor would appear to be in keeping with those properties emphasising the dwelling as an alien feature in the streetscene.

The proposed garage would be simple in form and appearance, set back from Princes View and the east flank boundary to retain some sense of openness within its setting. However the need for the large areas of hardstanding for parking, the garage and the turning area to be sited to the rear of the plot adjacent to high hedging border to the east with minimal property gap to this boundary emphasises the narrow, over engineered and contrived nature of the proposed development.

The dwellinghouse would appear to have a roofline appearing in keeping at front however the extended rear projection would appear dominant and out of scale with the main body; this design would have its flank elevation/roof design highly visible, even above the hedging, and intrusive to the local character of its locality. The proposed materials and fenestration to the front of the host and to the garage appear high quality and in keeping with the locality

however the proposed fenestration at the host's rear and side introduces significantly uncharacteristic extents of glazing out of keeping with the area. The proposed boundary treatment of drystone wall are acceptable and would delineate between public and private realm. To ensure a high quality landscaping arrangement for visual amenity and biodiversity, this could be conditioned, should the proposal be otherwise acceptable.

As such, the proposed development, by virtue of its siting on a constrained site of limited width and its contrived and incongruous layout and design, would fail to sympathetically relate to existing development within the locality and would appear as a visual intrusion within this location, detrimental to the visual amenities and overall character and appearance of the area. The proposal would fail to reinforce or enhance local distinctiveness. The proposal is therefore considered contrary to Policy LP24 of the Kirklees Local Plan, Principle 2 of the Housebuilders Design Guide SPD and Chapter 12 of the National Planning Policy Framework.

3 – Impact on residential amenity:

Section B and C of Policy LP24 of the Kirklees Local Plan states that proposals should:

“...maintain appropriate distances between buildings’ and ‘...minimise impact on residential amenity of future and neighbouring occupiers.”

Principle 6 of the Housebuilders Design Guide SPD seeks to ensure that housing maintains high standards of residential amenity by setting the relevant recommended separation distances:

21 metres between facing windows of habitable rooms at the backs of dwellings

12 metres between windows of habitable rooms that face onto windows of a non-habitable room; for a new dwelling located in a regular street pattern that is two storeys or above, there should normally be a minimum of a 2 metres distance from the side wall of the new dwelling to a shared boundary

Further to this, Paragraph 135f) of the National Planning Policy Framework 2023 states that planning decisions should ensure that developments have a high standard of amenity for existing and future users.

Policy LP52 of the Kirklees Local Plan states that proposals which have the potential to increase pollution from noise, vibration, light, dust, odour and other forms of pollution must be accompanied by evidence to show the impacts have been evaluated and measures have been incorporated to prevent or reduce the pollution, so as to ensure it does not reduce the quality of life and well-being of people to an unacceptable level or have unacceptable impacts on the environment.

The properties most likely to be impacted by the proposed development are those sharing a boundary with the site, these being No's. 1, 3, 5 Birchroyd Close to the east of the site, 1, 2, 3 Prince's View and 10 Harefield Park to the west of the site, and Wood View Farm to the north west of the site. An assessment of the impact on neighbouring properties will be undertaken below. It is considered that the proposed development would be sited a sufficient distance away from any other neighbouring properties not referred to above so as to prevent undue harm to these properties in terms of loss of light, loss of privacy or overlooking, or the creation of an overbearing effect.

No's. 1, 3, 5 Birchroyd Close

The neighbouring properties, comprising two storey detached dwellings, are located directly to the east of the site and the rear elevation of the proposed dwelling would look out northeast towards the rear of the plot with a substantial quantity of glazing. This outlook would be screened by the significant high hedging to the side boundary of the plot and to the rear of those neighbouring gardens if this is maintained in height. Officers note that the hedging could be reduced in height by any of the neighbours leading to increased overlooking, and the height of this is not subject to planning controls/powers and a privacy fence of 5.5m height could not be supported by Officers given this would have a significantly overbearing impact. There are mature trees to the rear southwest corner to the gardens of both no.s 3 and 5 providing additional screening effect. The tree between no. 3 and 1 is identified as a maple on the submitted Tree report and is noted to be deciduous. This has been taken into consideration as follows.

No.5 is set at an oblique angle, with its rear facing away from the proposed development; the side elevation windows separated 14m to the boundary, at ground floor level, would have oblique views and be separated 36.5m from the rear elevation of the proposed dwelling. Extant application ref: 2021/92301 would have this proposed development closer to the boundary with a two-storey side extension with narrow first floor windows separated 7.9m to the boundary (obscurely glazed by condition) and rear balcony. This would be separated by over 29.5m to the side elevation and balcony and would not introduce an adverse overlooking effect or loss of privacy even if the hedging/tree were to be reduced/removed.

Regarding No.3, this proposed dwelling would be approximately 15m away from the conservatory to the rear of this neighbouring dwelling and approximately 17m away from the main body of this neighbouring dwelling. No. 3 is set northeast of the development and the host would be set 1m away from the property boundary.

For both no.s 3 and 5, views from the rear section of glazing at (internal) first floor level for the bedroom, would be presently screened by the hedging at a height of 1.7m with a limited section of 40cm at the top of the glazing and also the neighbouring trees, which would appear adequate to preserve privacy and avoid overlooking to the neighbours and their private gardens. The closest tree to the rear window is deciduous and would have leaf fall annually

exposing the rear garden of no. 3. Given the proximity of the proposed dwelling to the tree on the neighbouring rear boundary, it may also be the case that the proposal damages this tree (no evidence has been submitted to suggest otherwise). Thus, as there is no guarantee that this tree or hedging would be retained, and given the proximity of the proposed expanse of reflective glazing at ground and first floor of the proposal, facing these properties, the proposals design would clearly overlook the private rear garden amenity space of no. 3, and openings to this property would experience a degree of overlooking also.

It is considered a condition requiring obscure glazing of this expanse of glazing at first floor level would not suitably mitigate the identified harm as the bedroom does not have alternate windows in order to provide daylighting and a good sense of outlook (and would thus introduce a new issue for future occupiers of the development proposal). The proposal is therefore considered to cause undue harm to no. 3's rear private garden in terms of overlooking and loss of privacy.

In relation to No.1 Birchroyd Close, the proposed development would extend 15m in depth, be two storeys and be sited in close proximity to the shared boundary which has hedging and a tree nearby. The height of the hedging is 5.5m however the close siting of the development may harm the longevity of the hedging and tree.

There would be two bathroom windows to side elevation at first floor with potential half window views of the neighbour's garden separated by 16m to the rear elevation of no.1's conservatory complying with Principle 6. If the proposal was otherwise acceptable, Officers recommend that this be conditioned as obscurely glazed to maintain the privacy of both neighbours given the close distance to no. 1's boundary and garden and in the event that the hedging may be reduced either by damage to roots or removal/pruning. There is a lower level, first floor shower room window within the rear projection which would have very restricted views, this is also recommended to be obscurely glazed for the same reasons. The other windows on the ground floor would serve a landing and utility room and the separation distance would comply with Principle 6 of the SPD in this respect and their uses would not require obscure glazing even considering the possibility of the hedging to be removed. Given its distance and position west of no. 1, subject to condition, under a finely balanced assessment, it is considered that the proposed development would not cause undue harm to No.1 in terms of loss of light, loss of outlook, overshadowing or the creation of an overbearing effect in the event of the green screening being removed.

No's. 1, 2, 3 Prince's View and 10 Harefield Park

These properties consist of two storey detached dwellings which are located to the west of the site, and their rear boundary is shared with the site. However, the proposed dwelling would be set off from the boundary shared with these neighbouring properties and would be on lower ground level. The property would be sited at closest 17.7m from no. 1 with intervening protected

trees which are controlled by TPOs and therefore unlikely to be removed; it is noted that they are deciduous trees so screening would be most significant when they are in leaf. In addition, the west elevation of the host would be windowless and the northwest elevation of the projection (separated 19.6m to the single-storey conservatory extension) would have its glazed section providing oblique views for a stairway/non-habitable room use, for those reasons, the proposal would adequately maintain privacy to this neighbour and comply with Principle 6 of the SPD.

Turning to the other neighbours, the proposed would have its northeast/rear glazing arrangements in its elevations orientated away from their rear elevations and gardens and be sited at sufficient distance so as to prevent undue harm to the amenities of these properties in terms of loss of light, loss of outlook, overshadowing and the creation of an overbearing effect.

Wood View Farm

Wood View Farm is a 1 ½ storey dwelling to the north west of the site, with its private garden surrounded by trees to boundary and shares Prince's View as its sole access for vehicles. The proposed dwelling would have its rear elevation windows facing away from the host, whilst the width of the glazing would allow a wider field of outlook, this would be at such a distance (50.5m to rear garden boundary/75m to Wood View and screened by trees that no additional harm would be accrued to this neighbouring dwelling in terms of overlooking, loss of privacy, overshadowing, loss of privacy or loss of light.

Noise, nuisance and hazardous materials

As previously noted, the limited scale of the development and expected temporary limited period of construction would not give rise to an unacceptable level of noise and other nuisances over an extended time so as to require those being limited by condition. Should the proposal be acceptable, Officers would recommend a footnote attached to the Decision highlighting Kirklees Council powers over limiting undue impacts of construction for residential amenity and to accord with LP52 of the Kirklees Local Plan. It is also noted that effects of construction is a matter of concern to some third parties, but this temporary effect is not considered to be such that it would be reasonable to impose controls during the construction phase in this case, given the scale of the development proposal.

In terms of operation of gates, it is considered it would be unreasonable of the LPA to refuse permission on the basis of possible associated noise given it is unlikely to result in a material increase in the level of noise experienced by neighbouring residential properties and other powers at the Council's disposal which can control noise.

Future Occupiers

In terms of the amenities of the proposed occupiers, Principle 16 of the Kirklees Housebuilders Design Guide SPD states that: "*All new build*

dwellings should have sufficient internal floor space to meet basic lifestyle needs and provide high standards of amenity for future occupiers. Although the government has set out Nationally Described Space Standards, these are not currently adopted in the Kirklees Local Plan.” Further to this, Principle 17 of the Kirklees Housebuilders Design Guide SPD outlines that: “All new houses should have adequate access to private outdoor space that is functional and proportionate to the size of the dwelling and the character and context of the site. The provision of outdoor space should be considered in the context of the site layout and seek to maximise direct sunlight received in outdoor spaces.”

The proposal would meet the aims of Principles 16 and 17 in this respect. All bedrooms have windows for daylighting, are of sufficient size for NDSS and have substantial floor space and private amenity space for excellent residential amenity.

That said, Officers have concerns with the level of privacy that would be enjoyed by the occupants of the proposed property, especially given the expanse of glazing to both storeys of the rear elevation exposing living and bedroom arrangements, in the event that the green screening be removed or die back. As such, the proximity of glazing and the dwellinghouse to no. 3’s rear garden would provide an unsatisfactory level of privacy for both no. 3 and the future occupiers.

It is therefore considered, that the proposed dwelling, by virtue of the close proximity of the proposed rear glazed section to the private rear amenity space of no. 3 Birchroyd Close, would cause undue harm in terms of loss of privacy and overlooking. In addition, the close relationship of no. 3 Birchroyd Close to the proposed dwelling with extensive glazing to living quarters on both storeys in having a limited level of privacy, thereby having a harmful impact upon residential amenity contrary to Policy LP24b) of the Kirklees Local Plan, Principle 6 of the Housebuilders Design Guide SPD and Chapter 12 of the National Planning Policy Framework.

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 Principles 12 and 19 of the Housebuilders design guide which seek to ensure acceptable levels of off street parking, adequate waste storage facilities are provided, are also considered to be of relevance.

Turning to highway safety and parking, policies seek to ensure that new developments have an acceptable impact on highway safety and provide sufficient parking.

Paragraph 115 of the NPPF states that: “*Development should only be prevented or refused on highways grounds if there would be an unacceptable*

impact on highway safety, or the residual cumulative impacts on the road network would be severe.”

The Highways Design Guide SPD advises that new development should have sufficient off street parking spaces to meet need and to ensure on street parking impact is limited. For a 4 plus bedroom dwelling, it should have three off street parking spaces to achieve this aim.

The proposal would adequately supply 4 off street parking spaces, including the garage which meets Highways Design Guide SPD internal space standards, for the expected occupancy for this dwellinghouse and modern vehicles. It would also supply bin storage areas sectioned from the highway and adequate presentation points close to the highway to ensure efficient collection of waste and safe functioning of the highway.

The proposal would not have a high frequency of traffic expected from one dwelling and makes use of a single access track shared with another resident. Concerning shared access and the private right of way, it is re-iterated that this is a civil matter and that the applicant should ensure that this access is not obstructed. Should permission be forthcoming, an informative would be included to this effect.

The proposal would require changes to the access within the adopted highway fronting the property which would need to be constructed under a section 184 agreement of the 1980 Highways Act (vehicle crossings over footways and verges). A footnote would be attached to the permission with regard to obtaining approval of the construction specification for the safe functioning of the highway. Interference with the highway without such permission is an offence which could lead to prosecution.

The Highway Development Management Officer recommended conditions to secure visibility splays and for those to be retained free of obstruction and drained surfaces for its parking areas. Officers concur with this recommendation should the proposal be considered otherwise acceptable.

Subject to the recommended conditions, the proposed development would not cause additional harm to highway safety. This would comply with Policies LP21 and 22 of the Kirklees Local Plan, Principles 12 and 19 of the Housebuilders Design Guide SPD, Policy 11 of the Holme Valley Neighbourhood Development Plan, the KC Highway Design Guide SPD and Chapter 9 of the NPPF

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 Housebuilders Design Guide sets out that new proposals should contribute to the Council's ambition to have net zero carbon emissions by 2038, with high levels of environmental sustainability by ensuring the fabric and siting of homes, and their energy sources reduce their reliance on sources of non-renewable energy. Proposals should seek to design water retention into proposals.

When determining planning applications, the Council will use the relevant Local Plan policies, NPPF and guidance documents/SPDs to embed the climate change agenda and to achieve 'net zero' carbon emissions by 2038. A Climate Change Statement has been supplied. Due to the limited nature of the development proposed, it is not considered that specific mitigation measures are required to facilitate this development.

Drainage

Policy LP28 of the Kirklees Local Plan & Section 14 ('Meeting the challenge of climate change, flooding and coastal change') of the National Planning Policy Framework and the National Planning Policy Framework technical guidance document are considered to be relevant in terms of foul / surface water drainage.

The site is within a low probability Flood Risk Zone and therefore if Officers are so minded to approve the application, a condition would be placed to ensure that the additional parking spaces would be drained sufficiently and/or made permeable in accordance with Policy LP28 of the Kirklees Local Plan and the Highways Design Guide SPD.

Biodiversity

Whilst considering Biodiversity, Principle 9 of the Housebuilders Design Guide SPD, LP 30 and LP 33 of the Kirklees Local Plan and Chapter 15 of the NPPF is relevant.

The site was previously heavily wooded before when reviewing aerial records of the site. However these trees were not protected.

To the west of the site and close to the access there are trees protected by Tree Preservation Order (ref: 31/92). It appears from the submitted plans that the access is to remain unaltered. The proposals include upgrades or new surfacing to the existing track this could cause damage to roots that are likely

to be growing under this area and compaction of the rooting area. As no details of the driveway surface or methodology for any works here have been provided, Officers concur that, should the development be supported, the submission of an Arboricultural Impact Assessment and an Arboricultural Method Statement would be required prior to development to ensure those significant trees are protected and their longevity is not impacted. The Trees Officer noted that the land had been previously cleared for development and compensatory planting is recommended as per the previous pre-application advice. Officers are still of the considered opinion that a landscaping plan submitted prior to the development taking place can be conditioned to ensure sufficient biodiversity net gain and ecological enhancement under Principle 9 of the SPD in the event of the proposal being found acceptable.

Whilst it is acknowledged that the site is located within an identified bat alert area, the proposals are relatively modest and therefore considered unlikely that the proposals would have a significant impact on the bat population. Nonetheless, should permission be granted, it is considered that bat boxes could be conditioned to enhance biodiversity and a Bat informative included to any permission.

A third party raised the possibility of newts nearby which could be affected. Council records of Great Crested Newt populations place the closest to be 3400m distance southeast. Otherwise access to Calderdale Council records are not available, and indeed, there are other protected species of newts including smooth and palmate which are not on Council record. Officers consider that should permission be supported, an informative relating to newts advising the developer they are a protected species be included which draws their attention to their obligations in law should they be encountered. Subject to informative note the proposal is considered acceptable in this regard. With those conditions and informative notes, it is considered the proposal would be in accordance with Policy LP30 and LP33 of the Kirklees Local Plan, Principle 9 of the Housebuilders Design Guide SPD and Chapter 15 of the NPPF.

Contaminated and unstable land

With regard to land quality, paragraphs 180, 189 and 190 of the National Planning Policy Framework and policy LP53 of the Kirklees Local Plan which seeks to ensure land quality is maintained as part of new development are considered to be relevant.

The site is not potentially contaminated land and is not within a Coal Risk Area. Should the proposal be found acceptable, Officers would recommend a precautionary condition on what developers are required to do if unexpected land contamination is found to comply with the aims of Chapter 15 of the NPPF and LP53 of the Kirklees Local Plan.

6 – Representations:

14 representations had been received and these have been taken into account and addressed within this assessment.

7 – Conclusion:

This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that 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.

The proposed development, by virtue of its siting on a constrained site of limited width and its contrived and incongruous layout and design, would fail to sympathetically relate to existing development within the locality and would appear as a visual intrusion within this location, detrimental to the visual amenities and overall character and appearance of the area. The proposal would fail to reinforce or enhance local distinctiveness. The proposal is therefore considered contrary to Policy LP24 of the Kirklees Local Plan, Principle 2 of the Housebuilders Design Guide SPD and Chapter 12 of the National Planning Policy Framework.

The proposed dwelling, by virtue of the close proximity of the proposed rear glazed section to the private rear amenity space of no. 3 Birchroyd Close, would cause undue harm in terms of loss of privacy and overlooking. In addition, the close relationship of no. 3 Birchroyd Close to the proposed dwelling with extensive glazing to living quarters on both storeys in having a limited level of privacy, thereby harming the living conditions of the future occupants of the proposed property. Therefore, the proposal would fail to provide a high standard of amenity for occupants of both the existing and proposed dwellings, contrary to Policy LP24b) of the Kirklees Local Plan, Principle 6 of the Housebuilders Design Guide SPD and Chapter 12 of the National Planning Policy Framework.

This application has been assessed against relevant policies in the development plan and other material considerations. The development is identified as being contrary to a number of policies within the Council's adopted local plan. It is therefore considered the development constitutes unsustainable development and is therefore recommended for refusal.

The development is therefore considered to be contrary to policy LP2 which seeks to ensure all development builds 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.

For the reason set out in this report, refusal is therefore recommended.

Recommendation – Refuse

Decision Authorisation – Delegated

Application Number – 2024/90461

Officer Recommendation – Refuse

Reasons

1. The proposed development, by virtue of its siting on a constrained site of limited width and its contrived and incongruous layout and design, would fail to sympathetically relate to existing development within the locality and would appear as a visual intrusion within this location, detrimental to the visual amenities and overall character and appearance of the area. The proposal would fail to reinforce or enhance local distinctiveness. The proposal is therefore considered contrary to Policy LP24 of the Kirklees Local Plan, Principle 2 of the Housebuilders Design Guide SPD and Chapter 12 of the National Planning Policy Framework.
2. The proposed dwelling, by virtue of the close proximity of the proposed rear glazed section to the private rear amenity space of no. 3 Birchroyd Close, would cause undue harm in terms of loss of privacy and overlooking thereby harming the living conditions of the occupants of that property. Therefore, the proposal would fail to provide a high standard of amenity for occupants of both the existing and proposed dwellings, contrary to Policy LP24b) of the Kirklees Local Plan, Principle 6 of the Housebuilders Design Guide SPD and Chapter 12 of the National Planning Policy Framework.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Location and Proposed Site Plans.	Drawing no. 21.1158/(AL)10.	A	07/03/2024
Proposed Elevation and Floor Plans for Garage.	Drawing no. 21.1158/(AL)12.	Unamended	19/02/2024
Proposed Elevation and Floor Plans for Dwelling with Artist Impressions.	Drawing no. 21.1158/(AL)11 .	Unamended	19/02/2024
Arboricultural Report to BS 5837:2012	Arboricultural Report to BS 5837:2012 by JCA Arboricultural and Ecological Consultants Ltd. JCA Ref: 21563/AJB.	No version or revision stated	19/02/2024
Planning Statement	Planning	Unamended	19/02/2024

Plan Type	Reference	Version	Date Received
	Statement by D5 Planning. Reference: TP2323. February 2024.		

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. The case officer considered the application on review and notified the agent that the proposal could not be supported. The draft reasons were that the proposal would appear cramped and contrived within the plot and would not be sympathetically integrated with the streetscene. An in-depth review could not amend the scheme to be acceptable provided the limited width of the plot. The agent wished to proceed to determination with reasons provided prior to determination, which were provided.

Report Dated: 01/05/2024