

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:	2024/62/91742/W
Site Address:	23, Rock Fold, Golcar, Huddersfield, HD7 4AD
Description:	Demolition of existing shed and erection of replacement single storey front extension (within a Conservation Area)
Recommending Officer:	Tom Hunt

DECISION – Decline to Determine

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.

Lee Stoney

AUTHORISED OFFICER

Date: 18-Jul-2024

OFFICER REPORT - 2024/91742 – Demolition of existing shed and erection of replacement single storey front extension (within a Conservation Area).

Address – 23 Rock Fold, Golcar, Huddersfield

1. Development

1.1 This retrospective application proposes the demolition of the previously existing shed and erection of a replacement single storey front extension. In effect, permission is being sought for development which was previously Refused (upheld at Appeal).

1.2 The application site relates to a two-storey, detached dwellinghouse which sits at the end of Rock Fold. It was previously a garage converted into a dwellinghouse with extensions. It is constructed of stone and slate tile to its roof and timber windows. There was a detached, single storey outbuilding to its front shown last in 2018 aerial surveys. Currently in its place, there is an existing attached single-storey extension, constructed of black cladding and lean-to roof first appearing within 2021 aerial surveys. To the rear is a section of previously garden space extending 2.7m from the rear now under the ownership of the applicant.

1.3 The site topography is within a steeping sloping hill site, falling from north to south.

1.4 It is within the Golcar Conservation Area, in the setting of several Listed Buildings to its north and south, and a PROW runs outside of but is not adjacent to the red line boundary as a footpath identified as COL/52/10 in the Kirklees Local Plan.

2. Salient Planning History

2023/92315	Demolition of existing shed and erection of replacement single storey front extension (within a Conservation Area). Refused 13/10/2023 Appeal: APP/Z4718/D/24/3336388 Dismissed 05/04/2024
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Enforcement Notice to be issued following the Decision of the Inspector.

3. The development proposed is the alteration to a pre-existing front extension, the pre-existing extension being dismissed at appeal. It is open to the LPA therefore to consider if Section 70A of the Act is engaged. The question of whether or not the discretion is available to a local authority is an objective exercise, requiring a comparison between two documents, whereas the decision whether or not to exercise such a discretion is a matter of judgment.

Part 3, Section 70A. - (1) and subsection (3) of the Town and Country Planning Act 1990 states the following:

A local planning authority may decline to determine a relevant application if—

*(a) any of the conditions in subsections (2) to (4) is satisfied, and
(b) the authority think there has been no significant change in the relevant considerations since the relevant event.*

(3) The condition is that in that period the Secretary of State has dismissed an appeal—

(a) against the refusal of a similar application

4. Assessment

4.1 Retrospective planning permission is sought for the alteration to the single-storey front extension. It would be reduced in width from 7.3m to 6.9m and be of the same depth. Its lean-to roof design would have an overall increase in height from 3m to 3.3m from ground level to be aligned with the existing single-storey front projection; this would have a marginally similar eaves height from ground level. The fenestration and door opening is to remain the same. The materials proposed would be changed from black horizontal cladding and felted roof to natural stone and roofed with tile to match the host.

4.2 The latest submission is an amended proposal to the earlier application, which was refused and subsequently dismissed at appeal. The revised proposal would reduce the width, increase the overall height and face/roof the front extension with matching materials. This would have the effect of reducing the overall visible width of the scheme from 6.2m to 5.7m.

4.3 As per the above, it is recognised that there are some differences in the submitted application (2023/92315) and the previously Refused application which was Dismissed at Appeal. However, following *Chesterton v Wokingham BC* [2018] EWHC 1795 (Admin), used as a guide, it is clarified that S70C is not concerned with the existence of differences between two developments, but with the existence of similarities. Whilst *Chesterton* relates to Section 70C, there is no reason why the same principles, that being of similarities, would not apply to Section 70A.

4.4 The proposal would still have an unacceptable level of overlooking and loss of

Privacy to the neighbouring property to the south at no. 21. The Inspector noted that even a condition, to have the opening be non-opening and obscurely glazed, would still given the proximity, remain a perception of loss of privacy for the occupiers of No.21.

4.5 The Inspector considered that even if the materials were altered to be stone and tile to match the host, the scheme's notable long projection relative to its host, and mono-pitched roof – would appear incongruous in the context of the traditional pitched roof cottages on Rock Fold, as well as Mount Street and Handel Street. Its form, and siting results in a building that is unduly prominent and causes harm to the character and appearance of the streetscene, Golcar Conservation Area and to Listed Buildings.

4.6 Less than substantial harm was identified by Officers and the Inspector. Paragraph 208 of the Framework requires that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, that harm should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimum viable use. There remains to be no evidence, including in the submitted Design and Access Statement, to confirm any public benefits of the proposal to outweigh the harm.

4.7 There is no doubt that the development to demolish an existing shed and erect a replacement single-storey front extension is the same development than that sought under the current application. Consequently, Section 70A is therefore engaged if it is considered the applicant is seeking permission for a similar development already considered by the Local Planning Authority, which was later dismissed at Appeal, and there is no significant change.

4.8 There are no material differences in the circumstances or other mitigating measures proposed by the applicant.

4.9 Consequently, it is appropriate for the LPA to decline to determine this application in light of the planning history.

5. Recommendation – Decline to Determine

5.1 In accordance with Part 3, Section 70A (1) and (3) of the Town and Country Planning Act 1990, it is recommended that the Local Planning Authority exercise its discretion to decline to determine application no. 2024/91742.

Decision Notice Text

The Local Planning Authority exercises its discretion under section 70A of the Town and Country Planning Act 1990 to decline to determine the application no. 2024/91742 by reason that the granting of planning permission would involve granting permission for a development on land previously dismissed at Appeal.

This decision is based on the following plans/documents: -

Plan Type	Reference	Date Received
Location and Proposed Floor and Elevation Plans	2327-01	28/06/2024
Design and Access Statement	-	28/06/2024
Climate Change Statement	-	28/06/2024