

**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:	<b>2024/62/92351/W</b>
Site Address:	Whinney Close Farm, 106, Cockley Hill Lane, Kirkheaton, Huddersfield, HD5 0PF
Description:	Erection of detached dwelling and associated landscaping
Recommending Officer:	Lucy Taylor

**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:** 6<sup>th</sup> December 2024

## **Officer Report.**

**Reference:** 2024/92351

**Location:** Whinney Close Farm, 106, Cockley Hill Lane, Kirkheaton, Huddersfield, HD5 0PF

**Proposal:** Erection of detached dwelling and associated landscaping

## **Site Description.**

The site consists of a two-storey detached dwelling. The external walls of the dwelling are faced in stone and render. To the rear of the property, there is a two-storey flat roofed addition and a single storey lean-to extension.

The land to the north consists of tarmac hardstanding for parking and turning. The property benefits from extensive gardens to the south. Access to the adopted highway is gained by means of a narrow driveway extending north-west from the site to Cockley Hill Lane.

The property is in a rural area some 300 metres east of the built-up park of Kirkheaton. Viewed on a map, it appears within a loose-knit grouping of 10 dwellings, including former agricultural buildings. However, the site itself gives the impression of being self-contained, with no close neighbours.

The application site is located within the Green Belt.

Public Footpath KIR/9/30 goes through the site in a north / south direction within the western part of the site (close to the western boundary).

## **Development Proposal.**

Planning permission is sought for the erection of a detached dwelling and associated landscaping.

The new dwelling would be of a symmetrical design, with a rectangular plan form, measuring 28 metres to the front and rear elevations and 12.5 metres to the side elevations. The measurement from ground level to the highest part of the hipped roof would be 9 metres. The building will incorporate some neo-classical elements in its design, including a pediment.

The existing access will continue to be used.

The proposal would see the creation of terrace and associated engineering operations, the terrace to the rear being at an above ordnance level (AOD) of 155.85 AOD and the terrace to the front being 156 AOD. Steps from the front terrace would provide pedestrian access to the vehicular access to the site which is at a higher land level (158 AOD). The terrace to the rear is of a semi-

circular shape and would see retaining structures constructed to retain the terrace level of 155.85 AOD from the lower level of 153 – 153.5 AOD.

Within an area which currently hosts a tennis court, a formal garden is proposed, accessed through a terraced garden.

Hedgerows as indicated are being incorporated throughout.

The route of the public right of way which crosses the site is indicated as being re-routed along an alignment which it appears to currently be utilised. The area of the public right of way which is upon the Council's records appears unaffected upon the submitted site plan (ref: 006RevB).

A bin storage area is indicated as being adjacent to a ramped access within the driveway towards the eastern point of the drive.

### *Supporting Documents submitted as part of the application*

With regard to design, the application has been accompanied by a 'Landscape and Visual Appraisal' (dated December 2023) and also a document titled 'Specialist Design Review' dated December 2024.

Within the Specialist Design Review document, it is set out that the replacement dwelling at Whinney Close Farm is for a new Classical house and that it is considered this to be an outstanding design. The document sets out that the proposal is inspired by John Carr-designed 1770s Middleton Lodge which was chosen by the designer to inform the design of this new house. Within this document the author sets out their view the proposal 'would be an enhancement to the rural scene in this area, helping to give an appropriate visual focus, to the wider rural landscape, and setting a benchmark for the highest quality of traditional domestic design in the region' and that they consider it meets the definition in this regard as set out in para 139b of the NPPF.

### *Landscape and Visual Appraisal – Dated December 2023*

From review of the submitted 'Landscape and Visual Appraisal' (dated December 2023), including the analysis contained within this document, which sets out the submitted plans and landscape character photographs, including those taken at greater distance from the site, it is noted that 7 viewpoints are identified.

From the 7 viewpoints, the overall sensitivity of the visual receptors is assessed to be medium/high from viewpoints 1, 2, 3, 4, 5, 6 and medium at viewpoint 7. The assessment considers the overall visual effects to be minor / negligible neutral from viewpoints 7, 6 & 5.

At viewpoint 4, the assessment considers the impact to be moderate beneficial as new tree planting would partially screen the replacement property. The assessment of viewpoint 4 sets out that there would be some

loss of openness looking east due to the tree planting however this is not a view in the direction of travel and openness would be retained looking south.

The assessment considers the impact to be minor/moderate beneficial from viewpoint 3. Setting out that new tree planting is proposed in front of the proposed western gable end, which would be visible across the mid-ground of the view, partially screening the replacement building.

There is considered to be a minor/negligible beneficial from viewpoint 2 by this document. In terms of scale of change, the replacement property, like the existing would also be screened from view, it would be screened by proposed a 1.8-2m high hedge with retention of trees.

Finally with regard to viewpoint 1, the document considers the impact to be minor/moderate/beneficial from viewpoint 1, with new tree planting proposed to the right hand side of the view which would screen the replacement building.

### **History of Negotiations / Amendments Received.**

The case officer entered into discussion with the planning agent / applicant, regarding the planning history at the application site, specifically the prior notification application and certificate of lawfulness applications at the site. In particular whether these would form a 'fallback' position in the assessment of the proposal against Green Belt policies.

In response to these negotiations, the planning agent / applicant submitted amended plans and further documentation.

The amended plans and further documentation reduced the volume of the proposed dwelling from 3,119.3m<sup>3</sup> to 2,815m<sup>3</sup> but increased the footprint of the proposed dwelling from 339.8m<sup>2</sup> to 352.8m<sup>2</sup>. The further documentation was also submitted to clarify the nature of the application and it's planning policy background.

Whilst amended plans were submitted, it was not deemed necessary to re-advertise the application as the principle of development remained as originally proposed and the amendments saw an overall reduction in volume to the new dwelling, with the proposed footprint increasing minimally.

### **Relevant Planning History.**

- 2023/90643 – Demolition of existing dwelling and detached garage and erection of replacement dwelling, detached garage and associated landscaping. *Withdrawn.*
- 2023/92292 – Prior Notification for single storey rear extension. *NANR – Not Required.*

- 2023/92300 – Certificate of Lawfulness for proposed single storey extensions. *Cert of Lawful Opps Granted*.
- 2024/90607 – Certificate of Lawfulness for proposed erection of outbuilding. *Cert of Lawful Opps Granted*.

### **Representations.**

The application was advertised via neighbour letters, a site notice and within the newspaper.

Final publicity date expired: 25<sup>th</sup> October 2024.

No representations received.

### **Consultation Responses.**

**KC Environmental Health** – No objections with the inclusion of conditions and informative notes regarding contaminated land and construction site working times.

**KC Highways Development Management** – Confirms they consider that the proposals are acceptable from a highways perspective.

**The Coal Authority** – Do not object, subject to the imposition of conditions.

**KC PROW** (informal) – The current plans do not show how the existing footpath can be incorporated in the proposed landscaping.

Officers note that during the course of previous application 2023/90643 a consultation was undertaken with KC Conservation and Design, who concluded that the building should be regarded as a non-designated heritage asset and that demolition should therefore be assessed against LP35 of the Kirklees Local Plan. This approach will be taken during the course of assessing this current planning application.

### **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 27<sup>th</sup> February 2019).

The application site is located within the Green Belt.

Public Footpath KIR/9/30 goes through the site.

The Council's GIS mapping system identifies the site to be located within an area with a known presence of great crested newts.

The site is within an area identified by the Coal Authority as being at high risk of ground movement as a result of former mining activity.

#### **Kirklees Local Plan:**

- LP1 – Achieving sustainable development
- LP2 – Place shaping
- LP3 – Location of new development
- LP7 – Efficient and effective use of land and buildings
- LP11 – Housing mix and affordable housing
- LP20 – Sustainable travel
- LP21 – Highway safety and access
- LP22 – Parking
- LP24 – Design
- LP28 – Drainage
- LP30 – Biodiversity & geodiversity
- LP32 – Landscape
- LP35 – Historic environment
- LP51 – Protection and improvement of local air quality
- LP52 – Protection and Improvement of environmental quality
- LP57 – The extension, alteration or replacement of existing buildings.
- LP59 – Brownfield sites in the Green Belt

#### **Supplementary Planning Documents (SPD):**

- Highways Design Guide (2019)
- Housebuilders Design Guide (2021)

#### **Other Guidance Documents:**

- Biodiversity Net Gain Technical Advice Note (2021)
- Nationally Described Space Standards
- National Design Guide
- Kirklees Waste Management Design Guide for New Developments (2020)
- 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 and sufficient supply of homes
- Chapter 11 – Making effective use of land
- Chapter 12 – Achieving well-designed and beautiful places
- Chapter 13 – Protecting Green Belt land
- Chapter 14 – Meeting the challenge of climate change, flooding and coastal change
- Chapter 15 – Conserving and enhancing the natural environment

## **Assessment.**

### **1) Principle of Development**

NPPF Paragraph 11 and LP1 outline a presumption in favour of sustainable development. Paragraph 8 of the NPPF identifies the dimensions of sustainable development as economic, social and environmental (which includes design considerations). It states that these facets are mutually dependent and should not be undertaken in isolation.

The dimensions of sustainable development will be considered throughout the proposal. Paragraph 11 concludes that the presumption in favour of sustainable development does not apply where specific policies in the NPPF indicate development should be restricted. This too will be explored.

The Council is currently unable to demonstrate a five-year supply of deliverable housing sites, and as such it is accepted that relevant Local Plan policies for the supply of housing land are out-of-date. This now triggers the NPPF presumption in favour of sustainable development.

As set on in NPPF paragraph 11d, 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.”*

Policy LP7 of the Kirklees Local Plan states encourages the efficient use of previously developed land in sustainable locations provided that it is not of high environmental value and a net density of at least 35 dwellings per hectare should be provided. Principle 4 of the Housebuilders Design Guide seeks to ensure a density of 35 dwellings per hectare or more is achieved. Where a density of 35 dwellings per hectare cannot be achieved, policy LP7 sets out that lower densities will only be acceptable if it is demonstrated that this is necessary to ensure the development is compatible with its

surroundings, development viability would be compromised, or to secure particular house types to meet local housing needs.

The site measures around ~ 10,414.33sqm, however, it is noted that the size of the site includes the access route to the property. Notwithstanding this, even if there was a possibility to provide more dwellings at the site, it is likely that this would increase the potential for other issues to arise, which could have a harmful impact, including to the openness of the Green Belt and highway safety. Therefore, in this instance, the density of development is considered to be appropriate in this case.

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

### Principle of Development - Green Belt:

#### *Green Belt Policy*

The application site is located within the Green Belt. As such the proposal falls to be assessed against Chapter 13 of the NPPF. Policies also referenced to within the Kirklees Local Plan are LP57 and LP59, set out as follows:

#### *LP57:*

*Proposals for the extension, alteration or replacement of buildings in the Green Belt will normally be acceptable provided that:*

- a. in the case of extensions the original building remains the dominant element both in terms of size and overall appearance. The cumulative impact of previous extensions and of other associated buildings will be taken into account. Proposals to extend buildings which have already been extended should have regard to the scale and character of the original part of the building;*
- b. in the case of replacement buildings, the new building must be in the same use as and not be materially larger than the building it is replacing;*
- c. the proposal does not result in a greater impact on openness in terms of the treatment of outdoor areas, including hard standings, curtilages and enclosures and means of access; and*
- d. the design and materials should have regard to relevant design policies to ensure that the resultant development does not materially detract from its Green Belt setting.*

#### *LP59:*

*Proposals for infilling within existing brownfield sites or for their partial or complete redevelopment will normally be acceptable, provided that:*

- a. in the case of infilling, the gap is small and is located between existing built form on a brownfield site;*

- b. in the case of partial or complete redevelopment the extent of the existing footprint is not exceeded; and*
- c. redevelopment does not result in the loss of land that is of high environmental value which cannot be mitigated or compensated for.*

*Land at Storthes Hall has been designated in the Local Plan in order to recognise it as a major brownfield site in the Green Belt. Development proposals should be accompanied by a masterplan with special attention paid to the impact of any proposal on the openness of the Green Belt.*

*In all cases regard should be had to relevant design policies to ensure that the resultant development does not materially detract from its Green Belt setting.*

Section 13 ('Protecting Green Belt Land') of the National Planning Policy Framework is relevant and in particular the following paragraphs:-

Paragraph 142. *'The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.'*

Paragraph 143 specifies the five purposes of including land within the Green Belt, which are:-

*'to check the unrestricted sprawl of large built-up areas; to prevent neighbouring towns merging into one another; to assist in safeguarding the countryside from encroachment; to preserve the setting and special character of historic towns; and to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.'*

Paragraph 150 *'local planning authorities should plan positively to enhance the beneficial use of the Green Belt, such as looking for opportunities to provide access; to provide opportunities for outdoor sport and recreation; to retain and enhance landscapes, visual amenity and biodiversity; or to improve damaged and derelict land.'*

Paragraph 152. *'Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.'*

Paragraph 153. *'When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.'*

Paragraph 154. *'A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:*

- a) buildings for agriculture and forestry;
  - b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;
  - c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
  - d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
  - e) limited infilling in villages;
  - f) limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and
- g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:
- not have a greater impact on the openness of the Green Belt than the existing development; or
  - not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.’

Paragraph 155. ‘Certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These are:

- a) mineral extraction;
- b) engineering operations;
- c) local transport infrastructure which can demonstrate a requirement for a Green Belt location;
- d) the re-use of buildings provided that the buildings are of permanent and substantial construction;
- e) material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds); and
- f) development brought forward under a Community Right to Build Order or Neighbourhood Development Order.’

These policies are taken into account / assessed in the following sections of this part of the report.

Principle of Development - Green Belt - Whether the development constitutes appropriate development

The architect has calculated the existing aggregate volume of the house, garage and outbuilding at 1,386.5m<sup>3</sup> and that of the proposed dwelling at 2,815m<sup>3</sup>, representing a volume increase of 96.4%. The existing aggregate footprint of the house, garage and outbuilding has been calculated at 292.9m<sup>2</sup>, with the proposed building to have a footprint of 352.8m<sup>2</sup>, representing a percentage increase in footprint of 20.5%.

LP59 (redevelopment of previously developed land) requires that in all cases regard should be had to relevant design polices to ensure that the resultant development does not materially detract from its Green Belt setting. Paragraph 154 (g) of the NPPF requires redevelopment to 'not have a greater impact on the openness of the Green Belt than the existing development'.

Whether the resultant building would be materially larger than the existing dwelling and have a materially greater impact on the openness of the Green Belt is discussed as follows:

*Principle of Development - Green Belt - Impact on openness, the purposes of including land in the Green Belt and whether very special circumstances exist*

The submitted structural report concludes that the inspection revealed a property requiring significant works to ensure the long-term serviceability and structural stability of the property, ranging from carrying out rebuilding through to replacement of undersized timber lintels etc. The report does not suggest that the building is so defective that it cannot be retained or that the cost of remedial works would be prohibitive. Notwithstanding this, even if demolition were the only financially viable option, this would not provide justification for a significantly larger replacement dwelling.

A further factor to be considered, is a possible fall-back position that may exist under permitted development rights. In this case, the recent planning history of the site, particularly 2023/92292, 2023/92300 are judged to be relevance, since these applications have established a proven fall-back position for extensions to the host property. Furthermore, Certificate of Lawfulness application 2024/90607 established a fall-back position for an outbuilding.

Court cases have established (*Gambone v Secretary of State for Communities and Local Government* [2014]) that once the fallback position has been determined as a material consideration, the question for the decision-maker is the weight to be attached to it. Other appeals and court cases have not reached any general conclusion on the amount of weight that should be attached to a fallback position. The Local Planning Authority is however entitled to consider factors besides the mere existence of a fall-back position, including the likelihood of it being implemented.

In this case it is considered the structural matters identified weigh in the balance as to whether there is a realistic likelihood of such development(s) being undertaken through utilisation of pd rights.

The term “*materially larger*”, it should be noted, does not have to be applied solely with reference to differences in volume but can also take into account whether the resulting development gives the visual impression of being larger. Factors including associated engineering operations, size / scale of the existing / replacement building and the overall appearance all contribute in the assessment of whether a development is materially larger / would have a greater impact upon openness.

The architect has made the following calculations concerning the proposed development, and that which could be accomplished under permitted development rights:

- % Increase in volume from existing to proposed: 96.4%
- % increase in volume from existing to existing with PD extensions: 139.8%
- % decrease in volume from existing with PD extensions to proposed: 18.1%
  
- % Increase in footprint from existing to proposed: 96.4%
- % increase in footprint from existing to existing with PD extensions: 139.8%
- % Decrease in footprint from existing with PD extensions to proposed: 18%

The proposal would therefore be 18% smaller in footprint than that which could be achieved if the proven option under permitted development rights were to be fully implemented.

Based on built volume alone, the resultant development would be significantly materially larger than the existing building (+96.4%) but would be marginally smaller were it the case the development(s) of the pd fall back existed if the proven permitted development option were implemented (-18.1%).

If footprint alone is taken into consideration, it would be significantly materially larger than that which now exists (+96.4%) and marginally smaller than the permitted development option (-18%).

It is noted that in this case, according to the architect’s own calculations, taking the permitted development option as the baseline would mean a reduction in volume of 18.1% and a reduction in footprint of 18%.

As previously stated, it is reasonable for the assessing officer to take into account how likely it is that the permitted development proposal will be implemented. As part of this current planning application, a Design & Access and Heritage Statement was submitted. Within this document is photographic evidence of excavation works being carried out around the existing dwellinghouse and details that works commenced on 2<sup>nd</sup> July 2024. However, based on the details submitted within the Design & Access and Heritage Statement, it would appear that works are restricted only to excavation works

for the extensions (not the outbuilding), with no further photographic evidence submitted regarding later building stages, despite the ongoing negotiations between the case officer and planning agent / applicant.

In addition, despite the evidence of works commencing, officers consider that there is an essence of the permitted development extensions being contrived, for the purposes establishing a fall-back position, rather than with the aim of actually achieving extensions to the existing dwellinghouse under the parameters of permitted development. This conclusion has been drawn as a result of the design of the extensions:

The larger side extension shown on drawing (02)100 Revision C would have a roof height almost equal to the eaves height of the existing dwelling. Given that it is a single-storey extension (or would not qualify as permitted development), such an elevated height would be considered to serve no purpose. In reality, this extension could be built to a height of approximately 2.5 metres (with either a pitched or flat roof) and would still fulfil the function of providing living accommodation over one floor. Similarly, the single-storey extension of an 8-metre projection, confirmed as being permitted development by the 2023/92292, would have had a height of 4m (or 3.2m excluding the parapet) which is taller than is functionally necessary for a single-storey extension.

Based on the above, it is considered that the dimensions of the extensions as proposed under certificate of lawfulness applications 2023/92292 and 2023/92300 were designed to create a fall-back position for the scheme now sought under this current planning application, for a new dwelling, rather than for the purposes of serving the existing dwelling as extensions in the future. This argument is further enhanced by the evidence submitted with regards to the building of such extensions, which is limited to excavation works, despite works commencing on 2<sup>nd</sup> July 2024.

Therefore, if the present or future owners did wish to implement a similar scheme to the extensions confirmed under permitted development, they could in fact build them to a lesser height than shown on the drawings. If this were to happen, the volume of the extensions as actually built would, in all likelihood, be less than the predicated fall-back volume. The figures therefore do not realistically represent the difference between the scheme now proposed, and what a developer would likely build relying on permitted development rights.

Turning to the outbuilding, this was granted permission on 14<sup>th</sup> May 2024, to house a swimming pool and gym. Officers consider that, given the location of the exaction works photographed within the Design & Access and Heritage Statement, these relate to the extensions only and not the outbuilding. In addition, given the timeframe between permission granted on the outbuilding and the submission of this current planning application, which was submitted on 20<sup>th</sup> August 2024, officers question the intention to build the proposed outbuilding to serve the existing dwellinghouse and raise the query as to

whether Certificate of Lawfulness 2024/92351 was submitted with the intention to form a fall-back position for this current application.

Notwithstanding the above, officers note that the resultant scheme of the fall-back position would be entirely different to the description of proposal sought under this current application. The fall-back positions confirm permitted development for the erection of a single storey rear extension, single storey side extensions and an outbuilding. This current planning application seeks permission for the demolition of the existing dwelling, garage and outbuilding and erection of replacement two-storey detached dwelling. Therefore, it is not considered that the fall-back position would meet the brief of development as sought under this current planning application.

The difference between the development briefs of the fall-back position and this current planning application further evidences the potentially contrived nature of establishing a fallback position and reduces the reasonable probability that the fall-back position would be built beyond the excavation stages as photographed.

In addition, if the fall-back extensions were to be built beyond excavation stages, the extensions could be developed to a lesser height as discussed in the above paragraph.

For the reasons discussed above, it is considered that only limited weight can be placed on the fall-back position.

Turning to the visual and spatial impacts of the proposed dwelling to the openness of the Green Belt, the extensions which fall under the argument of the permitted development fallback are single storey in height. The outbuilding under permitted development is also one storey in height.

The development as proposed under this current planning application would be 9 metres in height throughout the entirety of the built form of the proposed new dwelling. The existing dwellinghouse (with or without permitted development) has a maximum ridge height of approximately 6.8 metres, with the flat roof element having a ridge height of approximately 6.3 metres and other single storey elements having a significantly less ridge height (approximately 3 metres). Therefore, it is considered that the resultant extent of bulk / massing would be significantly increased by the design of the proposed replacement dwelling, with its built form to be taken to a much greater height than existing, resultantly increasing its impact on the openness of the Green Belt by way of increasing in elevation and prominence.

Whilst officer's note that the proposed new dwelling is to be set to a lower topographical ground level than the existing dwelling, submitted plans Dwg No. (02) 221 and Dwg No. (02) 220 show that the ridge height of the proposed dwelling would still exceed the maximum ridge height of the existing dwelling by approximately 1.25 metres and significantly exceed the roof height of the single storey elements currently attached to the host dwelling by approximately 3.3 metres and 5.7 metres.

The proposal would be built into the landscape, as such the ridge height would be at a similar level as the existing building. However, the overall size of the structure is greater than that of the existing building. The resultant impact is that the building is a structure of a greater height than that of the existing structure upon the site, whilst engineering operations and regrading of the land would be undertaken, it is considered this does not diminish from the overall impact of the size / scale of the structure within the landscape and the resultant impact it has upon openness.

The new dwelling would not be clearly seen from the adopted highway (including from Lane Side Lane to the south, where it would be obscured both by the local topography and by roadside trees), but it would be visible from parts of the Public Rights of Way network, including KIR 9/30 which crosses the site. The site is considered to be of a prominent location including when viewed at distance. Similarly, whilst the content of the submitted landscape assessment is noted, it is considered much of the assessment relies on screen planting / vegetation obscuring the view of the building.

It is therefore considered that, despite the footprint and volume of the proposed new dwelling being less than the potential development of the site through utilisation of pd rights it is concluded that the resultant built form would be materially larger and have a greater impact on the openness of the Green Belt in any case. Whilst the existing dwelling and permitted development fallback proposals would result in greater footprint, much would be single storey in height, with the proposed new dwelling 9 metres in height in its entirety. Furthermore, much of the pd fall back development(s) would be viewed in the context of the existing dwelling, and as additions which are of a subservient design in terms of being single storey.

The submitted landscape assessment, and assessment relating to the design of the building is noted. The fact the design of the building takes reference to a local historical architect is a factor which is weighed into the balance in considering whether very special circumstances exist in this case. However it is considered that these factors do not constitute factors either cumulatively or singularly which outweigh the harm by reason of inappropriateness.

In conclusion, the new dwelling would be larger in scale and height than the existing development on site, and would see a new dwelling which is materially larger than the one it replaces and would have a greater impact upon openness. Therefore the development constitutes inappropriate development for which very special circumstances need to be present which clearly outweigh the harm to the green belt.

It is noted that assessment of the design and wider landscape assessment has been undertaken and the impact of the proposal has been set out in the context of a potential pd fall back that may be undertaken. However, it is considered that these factors do not constitute very special circumstances that outweigh the harm of the development in this case. The fact there is a lack of 5 year supply, and the subsequent requirements of the NPPF to weigh

this in as a factor is considered to be afforded limited weight as a factor to outweigh the identified harm given the proposal is for a replacement dwelling and would have a neutral impact upon provision of housing in the district.

The proposed dwelling would therefore amount to inappropriate development in the Green Belt, and would also be contrary to policies LP57 and LP59 of the Kirklees Local Plan. As such the development proposal would conflict with the policies set out in Chapter 13 of the NPPF. It is concluded that very special circumstances have not been demonstrated that would outweigh the harm of the development by definition.

## **2) Impact on Visual Amenity**

Section 12 of the NPPF discusses good design. Good design is a key aspect of sustainable development, it creates better places in which to live and work and helps to make development acceptable to communities.

Paragraph 139 of the NPPF sets out 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. Conversely, significant weight should be give to:*

- a) development which reflects 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; and/or*
- b) outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings.”*

Local Plan Policies LP1, LP2 and most importantly LP24, are also relevant. All the policies seek to achieve good quality design that retains a sense of local identity, which is in keeping with the scale of development in the local area and is visually attractive.

Policy LP24 states that all proposals should promote good design by ensuring the following:

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

*c. extensions are subservient to the original building, are in keeping with the existing buildings in terms of scale, materials and details...”*

Policy LP11 of the Kirklees Local Plan requires that All proposals for housing, including those affecting the existing housing stock, will be of high quality and design and contribute to creating mixed and balanced communities in line with the latest evidence of housing need.

Principle 5 of the Housebuilders Design Guide states, amongst other things, that buildings should be aligned and set-back to form a coherent building line and designed to front on to the street.

Principle 6 of the Housebuilders Design Guide SPD highlights that *'the space between buildings can help maximise residential amenity in terms of maintaining privacy, reducing overlooking and ensuring natural light is able to penetrate buildings...normally new build development should seek appropriate separation distances for servicing, accommodating future adaptations and creating attractive street scenes. These should be in keeping with the character and context of the site and proportionate to the scale of the dwellings'*.

Principle 13 seeks to ensure consideration is given to use locally prevalent materials and finishing to reflect the locality.

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

Principle 15 of the Housebuilders design guide sets out that the design of the roofline should relate well to the site context, including topography, views, heights of buildings and the roof types.

Under Policy LP35(2), a development resulting in the complete removal of any heritage asset should only be permitted where the benefits (that is, public benefits) outweigh the harm caused having regard to the significance of the heritage asset and its contribution to local character. LP35(3) states that proposals should retain those elements of the historic environment which contribute to the distinct identity of the Kirklees area and ensure that they are appropriately conserved, to the extent warranted by their significance, also having regard to the wider benefits of development. A heritage asset is defined as a building, place or other feature identified as having a degree of significance meriting consideration in planning decisions because of its heritage interest. Paragraph 14.6 of the policy justification says that where the impact of a planning proposal upon a heritage asset is not fully understood, the developer may be expected to carry out a Heritage Impact Assessment to inform their planning application.

A Design & Access and Heritage Statement has been submitted in an attempt to demonstrate that the proposed development will have a positive effect in terms of visual amenity.

The following paragraphs from the NPPF are judged to be of relevance to the question of how to assess non-designated heritage assets in particular:

*"209. The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a*

*balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”*

*“210. Local planning authorities should not permit the loss of the whole or part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred.”*

The existing dwelling is believed to date from the late 18<sup>th</sup> or early 19<sup>th</sup> century. As part of the consultation undertaken with KC Conservation & Design under previous application 2023/90643, Conservation and Design officers expressed the view that the building has retained enough of its vernacular character to be classed as a non-designed heritage asset, despite some very unsympathetic modern additions. Whilst recognising that this involves an element of subjective judgement, in the absence of a local list for heritage assets, the case officer on balance concurs with this view.

Taking into account the advice in paragraphs 209-210, it is considered that, as the heritage asset is non-designated, it would be difficult to justify a refusal of planning permission, unless it could be demonstrated that the replacement building would be of poorer quality.

The dwelling incorporates some features of Neoclassical architecture but without wholly adopting its language. The proportions of the building are not Neoclassical. In particular, the relationship between the upper and lower floor windows; in a true Neoclassical building, there would be more space between the lintels of the ground floor windows and the sills of the first-floor windows, which would be smaller (vertically) in comparison. It is considered however that the replacement building would have a coherent design, and in many respects resembles the type of country house that would have been popular among the upper- and upper-middle class in the late 18<sup>th</sup> and early 19<sup>th</sup> centuries. Whilst much of the nearby development to the north, north-west and north-east of the site is of more modest and unassuming character, and more influenced by the local domestic and agricultural vernacular, the new dwelling would not be seen in the same context owing to the mature trees at the northern end of the site blocking the line of vision.

From viewing aerial images and online street-view images it can be inferred that it would have very limited visibility from the adopted highway (approximately 600m to the south) although it might be viewable from the public footpath, KIR/10/10, which is approximately 250m away. It is considered that whilst it would certainly detract from the openness of the Green Belt and whilst accepting the status of the existing building as a non-designated heritage asset, it is considered that the development would not result in a dwelling that is inferior in design terms.

Notwithstanding this consideration, the visual impact of the is considered to have a materially greater impact than the existing dwelling and is considered to have a greater impact upon openness than the site currently has. It is noted there would be engineering operations / creation of terraces and hard standings all of which would add to the impact the site would have visually.

Weight is afforded to para 139(b) of the NPPF. However, in this case it is considered that such weight cannot be afforded to the design of the dwelling to be such that it is concluded to be outstanding design which fits in with its overall form and layout of their surroundings.

The resultant impact is that the building is a structure of a greater height than that of the existing structure upon the site, whilst engineering operations and regrading of the land would be undertaken, it is considered this does not diminish from the overall impact of the size / scale of the structure within the landscape and the resultant impact it has upon the openness of the Green Belt.

The design of the building would introduce a large new building which is in a style similar to that of a local historical architect (John Carr). However whilst the design of the building is noted, it is also noted the existing building already has a historical character and it is not considered the proposal would be of such an outstanding / innovative design or help raise the standard of design more generally that it would outweigh the identified harm as a result of impacting upon the open character of the countryside setting it would be sited within. The levels of sustainability of the proposal is not set out in detail as part of this application.

It is considered that whilst weight is afforded para 139 of the NPPF, it is not considered such weight can be afforded this consideration in light of the development proposal that it can be concluded to outweigh the identified harm of the proposal.

It is therefore considered that whilst it is concluded the proposal would not conflict with the aims of LP35, or the aforementioned parts of the Housebuilders' Design Guide SPD. However the proposal would, for the reasons set out in this and the 'Principle of development' section of this report, have a greater visual impact than the existing site which has a greater visual impact within the countryside setting it would be viewed and is contrary to policy LP24 of the Kirklees Local Plan in this regard.

### **3) Impact on Residential Amenity**

Sections B & C of the Kirklees Local Plan Policy LP24 which states that alterations to existing buildings should: *'Maintain appropriate distances between buildings'* and *'...minimise impact on residential amenity of future and neighbouring occupiers'*.

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

The following principles within the Housebuilders Design Guide are of particular importance:

- Principle 6 – Residential layouts must ensure privacy and avoid negative impacts on light.
- Principle 16 - All new dwellings to have sufficient floor space to meet basic lifestyle needs, having regard to the Nationally Described Space Standards. These are not currently adopted in the Kirklees Local Plan. The council will seek to adopt such a policy in the future in accordance with evidence and in the meantime will seek to ensure high quality living environments through the application of Local Plan policy LP24 (Design).
- Principle 17 - All new houses should have adequate access to private outdoor amenity space that is functional and proportionate to the size of the dwelling and the character and context of the site.

There are no other dwellings nearby that are in a position to be affected by the development.

The proposed dwelling would allow a good outlook and receipt of natural light to its occupants, the landscaping of the site would ensure that a generous amount of outdoor amenity space would be provided, and floorspace would be comfortably in excess of that required under the Nationally Described Space Standards for a five-bedroom house.

In conclusion, it is considered that the proposals are acceptable with regard to impacts on residential amenity, in accordance with Policies LP24 and LP52 of the Kirklees Local Plan and policies within Chapters 12 and 15 of the National Planning Policy Framework. The proposals are also considered to accord with Principles 6, 16 and 17 of the Council's Housebuilders Design Guide SPD.

#### **4) Impact on Highway Safety**

Turning to highway safety, Local Plan Policies LP21 and LP22 are relevant and seek to ensure that proposals do not have a detrimental impact on highway safety and provide sufficient parking. Paragraph 111 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.

Principle 12 of the SPD sets out, amongst other things, that parking to serve dwellings should not dominate streets and should be to the side / rear.

Principle 19 of the SPD states that provision for waste storage and recycling must be incorporated into the design of new developments in such a way that it is convenient for both collection and use whilst having minimal visual impact on the development.

As part of the determination of this application, a formal consultation was undertaken with KC Highways Development Management. Within their

consultation response, the Council's Highways Officers made the following comments:

The proposed access uses the existing vehicle access to the site and ample parking is proposed for the dwelling.

Internal turning is available to ensure vehicles can enter and leave the site in forward gear.

The approved vehicle parking areas would need to be surfaced and drained in accordance with the Communities and Local Government; and Environment Agencies 'Guidance on the permeable surfacing of front gardens (parking areas)' published 13th May 2009 (ISBN 9781409804864) as amended or superseded.

No information has been provided on waste collection. However, it is expected that this will remain the same as for the existing property.

It is therefore considered that the proposal accords with the aims of LP21 and LP22 of the Kirklees Local Plan.

*Public Right of Way (PROW):*

The proposed new dwelling would not overlie the definitive route of the Public Right of Way but would be sited close to it. Upon informal consultation, the Council's Public Rights of Way Team noted that the current plans do not show how the existing footpath can be incorporated in the proposed landscaping. As it is important to protect the safety and convenience of present and future footpath users, this is something for which full details would have to be obtained if officers were generally minded to approve the application and a condition would be appended to any grant of permission requiring submission of details which demonstrated how the prowl would be incorporated and continued operation maintained.

It is noted the plans indicate a new route of the prowl, this would need to be subject to a separate process and whilst indicative and potentially forthcoming through successful application for the stopping up / diversion of a public right of way, this would be a separate legislative process and therefore it is considered little weight can be afforded to this matter given there is potential for such an application to fail. Therefore a condition to ensure the continued operation of the right of way is considered both reasonable and necessary.

## **5) Other Matters**

*Biodiversity:*

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 9 of the Housebuilders Design Guide SPD states that *“Proposals are required to provide net gains in biodiversity, with ecological enhancement integral to the design of the development.”*

The Council's GIS mapping system identifies the site to be located within an area with a known presence of great crested newts. However, officers consider it unlikely that newts are to be found on site owing to lack of any standing water or wetland.

As part of this application, a Great Crested Newt (GCN) Risk Assessment was submitted. This assessment concluded that no GCN's were recorded on site and that GCN's are unlikely to be encountered during demolition and construction works. The assessment does however recommend that a precautionary approach be adopted, given the size of the GCN population recorded at Laneside Quarry to the south and that, as a consequence, demolition works should be completed under the guidance of a Reasonable Avoidance Measures Method Statement and supervised by a suitable licensed and qualified ecologist. If officers were minded to approve this application, a condition would be attached regarding the submission of a Reasonable Avoidance Measures Method Statement. This method statement would have been expected to include details of the following:

- Methods to be adopted for the hand dismantling of all raised bed dry stone walls and areas of paving potentially accessible to resting GCN.
- How the works will be supervised by a suitably qualified and licensed ecologist.
- Timing of works to ensure that they occur during the GCN active season and that no work is undertaken when the night time temperature is below 5 degrees C.
- The actions to be taken if GCN are encountered at any point during the demolition works.

The site is not within the bat alert layer, but the altitude of the site and its rural surroundings may make it attractive to roosting or foraging bats. The submitted Bat Survey concludes that the house is considered to have suitability to support roosting bats and that, in order to determine the species present and the status of the roost, it is necessary to undertake further survey work. The submitted Ecological Report sets out the following:

*“The current residence roof was covered with large Yorkshire stone slates, and these were to be removed carefully by hand and recycled, initially under supervision/tools talk. It was recommended that no more than 50% of the roof covering was removed in each 24-hour period. Once the roof structure had been removed there was no longer any significant risk of bats roosting in the remaining structure and demolition could proceed.*”

*It was be recommended that any demolition works avoided the hibernation period (generally November to March, but variable depending on temperature). This should be done with liaison with a Class-2 licenced bat ecologist.”*

In terms of Biodiversity Net Gain as set out by the statutory framework introduced by Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021), a Biodiversity Net Gain Assessment was submitted. A Biodiversity Metric has been submitted which shows a 12.88% increase. An informative note would have been included within the decision notice should permission have been granted, which would have included information relating to the effect of section 73D of the Town and Country Planning Act 1990.

Should the application have been recommended for approval, a condition would have been imposed to ensure the provision of bat boxes / bird boxes.

With the inclusion of the aforementioned conditions / footnotes, the development would thereby accord with Policy LP30 of the Local Plan and Key Design Principle 12 of the SPD of the Housebuilders Design Guide SPD.

#### Land Stability:

Policy LP53 of the Kirklees Local Plan and paragraphs 189 and 190 of the National Planning Policy Framework are relevant which seek to ensure that a site is suitable for its new use taking account of ground conditions and land instability, including from natural hazards or former activities such as mining, pollution arising from previous uses and any proposals for mitigation.

As part of this application, a Coal Mining Risk Assessment report was submitted. The report concluded that, in light of the potential risks of instability at the site from the working of shallow coal, it cannot be recommended that development takes place without further investigation to conclusively determine the presence of such workings, including physical drilling methods to explore the ground conditions.

The site is in a Coal Referral Area, in which the risk of instability arising from past coal mining activity is deemed to be significant. The Coal Authority's comments set out that they do not object, subject to the imposition of conditions. It is therefore considered that there are no grounds to object to the application on potential land stability issues.

#### 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 application form states that drainage of surface water will be by a soakaway, which is in principle supported as being one of the more sustainable methods. Foul drainage would be by a package treatment plant. Further details of this would need to be sought by condition in the event of an approval in order to ensure that it would function well and avoid pollution of the environment.

### 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 SPD 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.”*

In this case, it is considered that the resultant residential development would have an acceptable impact on Climate Change, given the requirements in relation to building regulations. The fact a replacement dwelling would likely have a greater thermal efficiency (and resultant impact upon carbon emissions) is not considered to be a factor either singularly or cumulatively taking into account with other factors set out in this report which outweighs the harm of the development upon the Green Belt.

## **6) Conclusion**

The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government’s view of what sustainable development means in practice.

This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the 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, having regard in particular to the site’s status as part of the adopted Green Belt, within which it is intended that development is tightly restricted.

## **Recommendation: Refuse permission**

### **Decision Authorisation – Delegated Powers**

**Application Number: 2024/92351**

**Officer Recommendation: Refuse**

### **Reason for Refusal:**

1. The proposed replacement dwelling would be materially larger than the existing dwelling and would have a greater impact on the openness of the Green Belt than the existing development. No very special circumstances have been demonstrated that are sufficient to clearly outweigh the harm by reason of inappropriateness. The development is therefore contrary to policies LP57 and LP59 of the Kirklees Local Plan and policies contained within Chapter 13 of the National Planning Policy Framework.
2. By virtue of the scale of the development, additional built form and associated engineering operations the development would have a harmful impact on the visual and spatial openness of the Green Belt which fails to respect or enhance the character and appearance of the area. The development is therefore contrary to Policies LP24, LP57 and LP59 of the Kirklees Local Plan and policies contained within Chapters 12 & 13 of the National Planning Policy Framework.

Plans and Specifications Schedule: -

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Site Location Plan	(02)001	-	28.11.24
Existing Site Plan	(02)002	-	28.11.24
Block Plan Existing & Proposed	(02)003	-	28.11.24
Existing PROW Route & Sections	(02)004	-	28.11.24
Proposed PROW Route & Sections	(02)005	A	28.11.24
Proposed Site Plan	(02)006	B	28.11.24
Existing Site Plan Illustrated P.D. Fallback Position	(02)007	-	28.11.24
Photomontages	(02)070	A	28.11.24
Elevations Existing	(02)110	-	28.11.24
Proposed Floor Plans	(02)200	-	28.11.24
Proposed	(01)210	A	28.11.24

Elevations Lower Version			
Site Sections Existing & Proposed	(02)220	-	28.11.24
Site Sections Existing & Proposed	(02)221	-	28.11.24
Proposed Visuals	(02)250	A	28.11.24
Proposed Visuals	(02)251	-	28.11.24
Comparative Volume and Area Analysis	489/01	-	28.11.24
Planning Statement	-	-	28.11.24
Specialist Design Review Comment	-	-	28.11.24
Design & Access and Heritage Statement, Revision A	489/01 LA	-	28.11.24
Biodiversity Net Gain Metric	-	-	28.08.24
Survey Cover Sheet	-	-	28.08.24
Ecological Report by CCNW	JE 8329-24	V1.0	28.08.24
Bat Survey: Preliminary Roost Assessment by Verity Webster	-	-	20.08.24
Coal Mining Risk Assessment Report by RGS Environmental Geotechnical Specialists	C3678/23/E/5584	-	20.08.24
Landscape and Visual Appearance	SF 3469	-	20.08.24
GCN Risk Assessment report by RDF Ecology	-	-	20.08.24
Critical Peer Review	2316/A1/01	-	20.08.24
Report by Holdgate Consulting	22-914	-	20.08.24

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 entered into discussion with the planning agent / applicant, regarding the planning history at the application site, specifically the prior notification application and certificate of lawfulness applications at the site and whether these would form a 'fallback' position in the assessment of the proposal against Green Belt policies. In response to these negotiations, the planning agent / applicant submitted amended plans and further documentation. The applicants' agent was made aware of the recommendation and the potential for withdrawal of the application.

**Report Dated: 06.12.2024**