

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:	2024/62/93279/W
Site Address:	9, Inglewood Avenue, Birkby, Huddersfield, HD2 2DS
Description:	Erection of extensions and alterations to existing dwelling to create three storey dwelling with rear extension and associated works
Recommending Officer:	Charlotte Hancock

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: 16-Jan-2025

OFFICER REPORT - 2024/93279– Erection of extensions and alterations to existing dwelling to create three storey dwelling with rear extension and associated works

1. Development

1.1 This retrospective application proposes the retention of alterations to the existing dwelling to create a three-storey dwelling, single storey extension to the rear and associated works.

1.2 The area surrounding the site is residential in nature, with the site being surrounded by large, detached dwellings. The site has a substantial curtilage, with garden areas to the front and the rear. The site also benefits from a private driveway to the front of the site.

2. Salient Planning History

2008/91144- Demolition of existing house and garage and outline application for erection of 4 no. Detached dwellings- Refused

2008/93776- Demolition of existing house and garage and outline application for erection of 3 detached dwellings- Refused- APP/Z4718/A/09/2110732- Appeal dismissed

2010/90936- Erection of two detached dwellings with integral garages and demolition of existing dwelling with detached garage- Refused

2011/91529- Demolition of existing dwelling and erection of 1 dwelling with detached double garage and formation of new access- Refused- APP/W4705/D/11/2163870- Appeal dismissed

2013/90733- Demolition of existing dwelling and detached garage and erection of new detached dwelling and associated works- Refused- APP/Z4718/D/13/2200470- Appeal dismissed

2018/91542- Erection of two storey rear extension, porch to front and alterations to roof- Conditional full permission

2024/91805- Deemed application via enforcement appeal APP/Z4718/C/24/3347031 for erection of extensions and alterations to a dwelling- Pending

Enforcement action

2.1 Enforcement Notice dated 21st May 2024- Appeal lodged- APP/Z4718/C/24/3347031.

2.2 It is important to note that prior to serving the enforcement notice, a retrospective planning application was invited for the development. At the time of inviting the retrospective planning application, the dwelling was in the process of being built. Therefore, should the applicant have submitted a

scheme at that point, positive engagement with the applicant may have resulted in amendments to the built scheme. As the applicant was not forthcoming with a planning application at this time and continued to progress with the development, a full assessment was taken on the substantially complete dwelling which resulted in an enforcement notice being served.

3. Scheme of Delegation

3.2 The Councils Scheme of Delegation states:

“Any Minor or Other Planning applications which receives a significant number of representations against the officers recommended decision or if a Ward Members refers a Minor or Other Planning Application to the district Wide Planning Committee (Minor and Other applications) with the Chairs agreement or if a significant Departure from the Development Plan (Local Plan 2019 or any future updates).”

3.3 27 representations have been received with regard to this planning application. The vast majority of these representations provide no material considerations to be taken into account when assessing this application and therefore does not amount to a significant number of representations received. As a result in terms of the scheme of delegation, officers would have not considered it appropriate to take the application to the Chair of the district Wide Planning Committee.

4. Decision to decline to determine the retrospective planning application

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

‘A local planning authority in England may decline to determine an application for planning permission for the development of any land if granting planning permission for the development would involve granting, whether in relation to the whole or any part of the land to which a pre-existing enforcement notice relates, planning permission in respect of the whole or any part of the matter specified in the enforcement notice as constituting a breach of planning control

4.2 *(2) For the purposes of the operation of this section in relation to any particular application for planning permission, a “pre-existing enforcement notice” is an enforcement notice issued before the application was received by the planning authority’*

5. Assessment

5.1 The submitted planning application for the “Erection of extensions and alterations to existing dwelling to create three storey dwelling with rear extension and associated works” (2024/93279) relates to matters specified in the Enforcement Notice as constituting a breach of planning control. The Enforcement Notice specified the breach of planning control as:

“Without the benefit of planning permission: (i) alteration/extension to the property to raise the height of the roof of the dwelling; (ii) erection of a three-storey rear extension; and (iii) alterations including rendering of all external elevations and alterations to window and door fenestration details.”

5.2 The Enforcement Notice required the demolition of the extensions and removal of the alterations, including the render and new window and door fenestrations, to return the dwelling to its previous condition, prior to the unauthorised works taking place, as shown on Plan Q14.028(A).P-04 Existing Elevations attached to Appendix 1 in the Notice and to remove all resulting material from the site following steps (a) and (b).

5.3 Plans 24-01-0210 and 24-01-0211 submitted as part of this application demonstrates the site subject to this application, and these plans were submitted as part of their enforcement appeal. Consequently, the development applied for within this application is identical to the development subject to the enforcement notice.

5.4 As per the above, it is recognised that the development as part of this proposal is the same as that specified in the enforcement notice and following *Chesterton v Wokingham BC* [2018] EWHC 1795 (Admin), it is clarified that S70C is not concerned with the existence of differences between two developments, but with the existence of similarities. Thus, the discretion to decline to determine application is available to the Local Planning Authority where any part of an enforced against matter is involved in the application regardless of whether the application would involve consideration of different planning merits.

5.5 It is clear *Chesterton* is relevant in this instance as the application is seeking permission for the development enforced against in light of the planning submission. There is no doubt that the development which includes the alteration/extension of the property to raise the height of the roof of the dwelling as well as the rear extension and external alterations are the same developments enforced against. That being said, this application proposal seeks permission for a single storey rear extension, but the submitted plans demonstrate the as-built development at the site which includes the erection of a three-storey rear extension. This three-storey rear extension is subject to the enforcement notice. Since the plans demonstrate the “as-built” development which includes this three-storey rear extension, it can be reasonably concluded that the development being applied for as part of this application is the same as the development which is subject to the enforcement notice. Section 70C is therefore engaged if it is considered the applicant is seeking permission for a development already considered and enforced against by the Local Planning Authority.

5.6 The applicant states that the proposed development is no different to the scope of works allowed under Class AA as part of The General Permitted Development Order 2015 however in any event the alterations to the dwelling would not be permitted development under this class as prior approval would have been required, which cannot be applied for retrospectively.

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

6. Recommendation – Decline to Determine

6.1 In accordance with Part 3, Section 70C (1) 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. 2024/93279.

Decision

The Local Planning Authority exercises its discretion under section 70C of the Town and Country Planning Act 1990 to decline to determine the application no. 2024/93279 by reason that the granting of planning permission would involve granting permission for a development on the land to which a pre-existing enforcement notice relates.

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

Plan Type	Reference	Date Received
Location Plan	0101	18/11/2024
Existing site block layout	IQ14.028(A).P-02A	18/11/2024
Existing floor plans	IQ14.028(A).P-03	18/11/2024
Existing elevations	IQ14.028(A).P-04	18/11/2024
South and East elevation	24-01-0211	18/11/2024
North and West elevation	24-01-0210	18/11/2024
As built floor plans	24-01-0200	18/11/2024
Application Form	-	18/11/2024
Retrospective planning application- Inglewood Avenue- November 2024	-	18/11/2024
Climate change statement	-	18/11/2024
Site plan	-	18/11/2024

Report dated: 9th January 2025