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## Appeal Decision

Site visit made on 24 February 2026

by **K Mee BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 March 2026

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### Appeal Ref: 6002647

### Land Adjacent 38 Upper Road, Batley Carr, WF17 7LT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr Nazir Rajah against the decision of Kirklees Council.
  - The application Ref is 2025/62/92758/E.
  - The development proposed is described as “proposed dwelling”.
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is the effect of the proposed dwelling on the character and appearance of the area, including the setting of the nearby listed building, known as Holy Trinity Church.

### Reasons

3. The appeal site comprises land situated between the highway and a modern end-of-terrace dwelling at 38 Upper Road. The surrounding area is predominantly formed of two-storey terraced dwellings and small blocks of flats. These are typically set back from the footway, with areas of open space on corner plots. Together, these features give the area a verdant and open character.
4. The proposed dwelling would adjoin the modern two-storey terrace block. Each dwelling within this terrace features small dormer windows within the front roof slope and rooflights to the rear roof slope. The proposed dwelling would appear as a single storey extension to the terrace row, albeit with a discordant eaves level, with similar front dormer window, noticeably narrower footprint, side entrance door and an additional rear dormer window. These elements combined would result in a contrived and cramped appearance that sits uncomfortably with the established terrace form and wider area. Furthermore, its height and bulk would erode the established open character.
5. The appeal site lies opposite the Holy Trinity Church which is a grade II listed building. I have therefore had special regard to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA). The significance of the building derives from its high architectural and artistic interest as an example of Gothic Revival design and its medium-high historic interest as a representation of worship and community life in the locality. Its setting is principally defined by the churchyard, with low stone walls and established trees, and the longer ranging

views of the church and tower, particularly from the western approach along Upper Road.

6. The adjacent modern terraced dwellings are set back from Upper Road, with open space on the corner, allowing long views of the church from the west. Owing to the height and position of the proposed dwelling, it would obscure views of the church from the western approach, including its key architectural features, such as its buttresses and a substantial part of the tower. Furthermore, the incongruous design of the proposed dwelling would detract from the prominence of the church within its setting. I therefore find that the proposal would adversely affect the setting of the Holy Trinity Church such that it would not preserve its special interest, contrary to the statutory duty.
7. The proposal would deliver a new dwelling in a location with good access to a wide range of services and facilities, and on land which is currently undeveloped. The provision of housing is a clear public benefit, particularly in light of the Council's housing land supply position which the parties agree is a 3.96-year supply of deliverable housing sites. There would also be associated economic benefits during the period of construction and once occupied. However, the weight to be given to the benefits is lessened by the fact that the proposal would only deliver one dwelling.
8. My attention has been drawn to an extant permission for a new dwelling in the same position and with the same footprint as the current proposal. However, the approved scheme is for a single storey building with a lower eaves and ridge height and simpler roof design. The proposal before me has a considerably larger built form, given the increased eaves and ridge heights and the introduction of dormer windows to the front and rear roof slopes. The impact of the appeal scheme on the character and appearance of the area, including the setting of the listed building, is therefore more harmful and as such I afford limited weight to this fallback position.
9. Paragraph 202 of the National Planning Policy Framework (the Framework) states that heritage assets are an irreplaceable resource. In terms of the Framework the harm to the listed building would be at the lower end of less than substantial. Nevertheless, this is a matter of considerable weight and importance. Paragraph 215 of the Framework requires me to weight this harm against the public benefits of the scheme. The public benefits of the proposal carry modest weight in combination, however for the reasons above and on the basis that paragraph 212 of the Framework establishes that great weight should be given to the conservation of a designated heritage asset, the public benefits would not outweigh the degree of harm identified.
10. Accordingly, the proposal would harm the character and appearance of the area, including the setting of the nearby listed building. It would fail to comply with the requirements of the LBCA and would not accord with Policies LP24 and LP35 of the Kirklees Local Plan (February 2019) which together seek to promote good design which, with regard to the form, scale, layout and details, respect and enhance the character of the townscape and preserve or enhance the significance of heritage assets.

### **Other Matters**

11. The appellant contends that the appeal site was historically occupied by buildings such that, at the time the Holy Trinity Church was constructed, the openness of the area was not something which typically characterised the surroundings. However, I must assess the impact of the proposal in the current context, and this does not therefore lead me to an alternative conclusion.
12. I acknowledge that no concerns have been raised with regard to residential amenity, highway safety or environmental matters. However, these are neutral factors and as such do not weigh in the developments favour.

### **Planning Balance**

13. The Council is unable to demonstrate a 5-year housing land supply and therefore paragraph 11d) of the Framework is engaged. However, an exception is provided where policies in the Framework that protect assets of particular importance provide a strong reason for refusing the proposal. Footnote 7 establishes that this includes designated heritage assets.
14. I have found that the scheme would cause harm to the character and appearance of the area, including the setting of the nearby Holy Trinity Church which is a designated heritage asset. This harm carries great weight. Consequently, this is a strong reason for dismissing the appeal and, therefore, the presumption in favour of sustainable development contained in paragraph 11d) of the Framework does not apply.
15. As set out above there are modest benefits associated with the appeal scheme. Nevertheless, the adverse impacts of granting planning permission for the proposed development would outweigh the benefits when assessed against the policies in the Framework taken as a whole.

### **Conclusion**

16. For the reasons given above, I conclude that the proposal conflicts with the development plan when considered as a whole and there are no material considerations that indicate that the development should be determined otherwise than in accordance with it. I therefore conclude that the appeal should be dismissed.

*K Mee*

INSPECTOR