

**STAFFORDSHIRE MOORLANDS DISTRICT COUNCIL
PLANNING APPLICATIONS COMMITTEE**

25th January 2024

Application No:	SMD/2023/0469	
Location	Land off Kiln Lane, Leek	
Proposal	Erection of a single split level detached dwelling with associated means of access and hard and soft landscaping works	
Applicant	Mr M Briand	
Agent	Sammons Architectural Limited	
Parish/ward	Leek / Leek West	Date registered 19 th Sept 2023
If you have a question about this report please contact: Arne Swithenbank tel: 01538 395578 or e-mail arne.swithenbank@staffs Moorlands.gov.uk		

REFERRAL

The application is a Full – Minor and is referred to Committee at the request of Cllr Worthington to consider the site suitability for this proposal.

1. SUMMARY OF RECOMMENDATION

Refuse

2. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS

- 2.1 A very steeply sloping narrow strip of ground between the lane-side edge of Kiln Lane and no.3 Orchard Court. Within the town development boundary. Semi mature broadleaved trees within the land have been recently felled prior to the application. A large mature Sycamore growing close to the site boundary in adjacent land to the west grows out over the site by some 7m or so. There is further tree cover generally on the land west of the site and on higher ground above Kiln Lane to the south where trees form a dense colonnade.
- 2.2 A moderately well used footpath crosses the site to link Kiln Lane with Bridge End via a ginnel rear of nos.3 to 5 Orchard Court.
- 2.3 The application is a re-submission following officer delegated refusal of a similar proposal under SMD/2023/0208. The land has also previously been included by the same owner / applicant within differing sites both put forward and subsequently approved for residential development without itself being proposed for development.

3. DESCRIPTION OF THE PROPOSAL

- 3.1 This is a full planning application for the development of a single detached dwelling on two levels accessed off Kiln Lane. A revised scheme was submitted in response to LPA comments given to the agent during the assessment (at the five-week stage). Proposed in brick with concrete tile roof to specification to be LPA approved. Application form states eaves formed with upvc fascia and soffit.
- 3.2 The application is accompanied by a tree survey and arboricultural report, a preliminary ecological appraisal and a Design and Access Statement.

4. RELEVANT PLANNING HISTORY

- 4.1 01/01184/FUL [SMD/2001/0986] – erection of five dwellings – refused – allowed on appeal [Site included the current application plot though not shown as being developed.]
- 4.2 03/00177/FUL [SMD/2003/0088] – revised house types plots 3, 4 and 5
- 4.3 SMD/2013/1201 – The erection of 11 dwellings (Outline) with details of vehicular access – approved [Site included the current application plot though not shown as being developed.]
- 4.4 SMD/2018/0706 – Approval of reserved matters following outline approval SMD/2013/1201 – refused
- 4.5 SMD/2019/0213 – Approval of reserved matters following outline approval SMD/2013/1201 – approved
- 4.6 SMD/2023/0208 – erection of a single split level detached dwelling with associated means of access and hard and soft landscaping works – refused

5. PLANNING POLICIES RELEVANT TO THE DECISION

- 5.1 **Local Plan (adopted 9th September 2020)**
- SS1 Development Principles
 - SS2 Settlement Hierarchy
 - SS5 Leek Area Strategy
 - H1 New Housing Development
 - DC1 Design Considerations
 - DC3 Landscape and Settlement Setting
 - NE1 Biodiversity and Geological Resources
 - NE2 Trees, Woodland and Hedgerows
 - T1 Development and Sustainable Transport

National Planning Policy Framework December 2023

Paragraph(s) 1 – 14;

Section(s) 4 – Decision making; 5 – delivering a sufficient supply of homes; 8 Promoting healthy and safe communities; 9 – promoting sustainable transport; 11 – Making effective use of land; 12 – Achieving well designed and beautiful places; 15 – Conserving and enhancing the natural environment; 16 – Conserving and enhancing the historic environment.

Adopted Supplementary Planning Documents/Guidance (SPD/G):

- Space About Dwellings SPG
- Design Principles SPG
- Design Guide SPD adopted 21st February 2018

Local Plan Supporting Evidence Documents:

- Landscape and Settlement Character Assessment (2008)

6. CONSULTATIONS CARRIED OUT

Public

6.1 The last consultation expiry date was 24th October 2023 (site notice). A total of 17 neighbouring dwellings were notified directly by letter.

6.2 One representation has asked if the public footpath on the site boundary will be fully reinstated so as to be usable. Representations raising objection have been received from a further 4 individuals or households on the following grounds:

- implications for neighbour amenity / living conditions
- privacy intrusion
- overbearing
- illustrative reference to 46 Kiln Lane is a little out of context in the 'real world' as this property is further back and almost exclusively screened by trees
- rights of access status of Kiln Lane
- much of Kiln Lane is unadopted and it is left to the residents to maintain and provide clear and safe access to their properties
- land stability concerns
- stability of Kiln Lane
- heavy traffic impacts during construction
- stability of land in the adjacent Bryn Helyg
- safety of pedestrians on Kiln Lane
- reduction in safety and convenience of the publicly used footpath across the site

Leek Town Council

6.3 No response received.

SCC Highways

6.4 The following is the Highways Authority consultation response.

Recommendation Summary: Conditional

Site visit conducted on 4th October 2023

1. No development shall take place until a Construction Vehicle Management Plan (CVMP) has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. The statement shall include:

- Suitability of access route for largest anticipated vehicles taking into account restricted width of Kiln Lane and lack of turning area;
- Arrangements for the parking of site operatives;
- Loading and unloading of plant and materials taking into account restricted width of Kiln Lane and lack of turning area;
- Storage of plant and materials used in constructing the development;
- Construction and delivery hours
- Recorded daily inspections of the highway (Kiln Lane) from the site access to Macclesfield Road.

REASONS

ALL: To comply with NPPF Paragraph 110; to comply with SMDC Local Plan Policy DC1; to consider access arrangements in light of restricted width and lack of turning area on Kiln Lane; in the interests of highway safety.

IMPORTANT INFORMATIVE TO BE INCLUDED ON DECISION NOTICE

Construction works may require traffic management on the highway. This will require approval from SCC Traffic and Network. Details are available at Permissions and licences overview - Staffordshire County Council and Permission to temporarily manage traffic on the public highway - Staffordshire County Council.

The developer should contact Network Management as early as possible to ensure road space can be booked and works programmed on the highway. The developer should allow adequate time for processing of the application.

This development will need to ensure stability of Kiln Lane

Notes to planning officer:

Application is for a dwelling to be constructed on a steeply sloping plot. A resubmission of SMD/2023/0208.

Kiln Lane at the point of access is a private/unadopted road. The red line does not connect to the public highway. The applicant should ensure they have

appropriate rights of access to carry out the works and to provide access for the occupiers of the development.

During construction, it is likely that Kiln Lane will be blocked for periods of time. Applicant should liaise with the owner/s of the track to ensure access is maintained for the owners of the Kiln Lane, occupiers beyond the site and for users of the path to Westwood Heath Lane. Construction vehicle management plan is recommended in order that the developer can consider at an early stage how the site will be supplied. Kiln Lane is of restricted width and large delivery vehicles will not be able to turn around. Traffic management may be required to allow delivery vehicles and construction plant to access/depart the site.

Kiln Lane is a narrow road with few passing places. There are sections with narrow footway and sections without footway. It already serves multiple dwellings. There is an existing gate at the point of access.

The input of appropriately qualified geotechnical and structural engineers will be required to design appropriate foundations and support for the dwelling and to support Kiln Lane. Applicant should liaise with owners of Kiln Lane.

SMDC waste collection services

- 6.5 No issues regarding waste collections.

SMDC Environmental Health

- 6.6 Potential areas of concern: construction impacts; land contamination; lighting impacts. Conditions recommended in relation to all three. The proposed development is close to existing residential properties so care needs to be taken during construction. Five conditions recommended in total, plus informative: limits on timing of noisy activities during development work; measures to limit pollution during construction; measures in the event of encountering unexpected contamination; no top soil to be imported until tested and confirmed suitable in accordance with a methodology to be first submitted and agreed; artificial lighting not to increase pre-existing illuminance.

Severn Trent Water

- 6.7 No objection subject to condition that the development hereby permitted shall not be commenced until drainage plans for the disposal of foul and surface water flows have been submitted to and approved in writing by the Local Planning Authority, and that the scheme shall be implemented in accordance with the approved details before the development is first brought into use. Reason: This is to ensure that the development is provided with a satisfactory means of drainage as well as to prevent or to avoid exacerbating any flooding issues and to minimise the risk of pollution. Also add informative re possible un-mapped public sewers on the site.

7. POLICY AND MATERIAL CONSIDERATIONS / PLANNING BALANCE

Principle of Development and Main Issues

- 7.1 In its general approach, in accordance with policy SS1, the Council expects the development and use of land to contribute positively to the social, economic and environmental improvement of the Staffordshire Moorlands. When considering development proposals the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF. This means that planning applications that accord with the policies in the Local Plan shall be approved without delay, unless material considerations indicate otherwise.
- 7.2 In principle, being within the Leek town development boundary, development at this location is acceptable in overall policy terms. It is also a sustainable location in terms of transport and access to services. The main issues to be considered in relation to this specific proposal are design appearance; site location character and appearance; impact on neighbour living conditions; site suitability including ground stability; occupier living conditions; access and trees.
- 7.3 Policy SS5 sets out the Leek Area Strategy and confirms that the Council will continue to meet the housing and community needs of Leek and its rural hinterland through, inter alia, supporting the development of new housing on sustainable sites within the Development Boundary. Policy H1 states that housing development on sites not allocated for such purposes, will be supported within the development boundaries of the towns and larger villages, subject to compliance with the Spatial Strategy and wider Local Plan policies.

Design – impact on character and appearance

- 7.4 In feedback to the agent at the five week stage of the determination period the LPA raised a number of issues specific to the design appearance and impacts on existing dwelling amenity. The existing development below to the north of the site (3, 4 and 5 Orchard Court) along with Jason Court below to the north west is seen to be particularly successful, especially in the overall juxtaposition of the heights and roof profiles giving the current development a relatively pleasing overall 'rhythm'. Also, to an extent, the recent existing development is helped by brickwork detailing such as in the prominent brick roof verge edges.
- 7.5 Despite a further revision being put forward the design awkwardness has not been resolved and there remain identified adverse impacts on existing neighbours.
- 7.6 The north elevation shown on drawing 2023-2764-06 revision D attempts to mirror the scale, at least in width, of the buildings below but this is only partially achieved and the roof pitch angles do not match. The appearance in profile will

seem out of kilter. On the Kiln Lane side the elongated or 'cat-slide' roof slope to the east introduces a further confusion to the design appearance.

- 7.7 In response to concerns about overlooking of properties below and to the west the scheme omits any first floor level windows in the west elevation. Unfortunately this results in an unusual amount of blank wall. The design proposes a recessed brick to emulate a 'blind window' but this really only serves to prove the point.
- 7.8 The agent in discussions has stressed how Kiln Lane on its upper or south side is lined by a varied range of dwelling designs and this can be accepted. For the LPA case officer what is remarkable about the character of Kiln Lane is how the buildings below on its north side are barely visible from the lane itself save for some glimpses of roof ridge tops. This creates a very pleasing openness to the Lane and as a public footpath the elevated un-obstructed outlook is likely to be valued for the amenity it provides for people walking from within the town. Whilst the dwelling would be slightly set down it would still have an impact on Kiln Lane and this would be further emphasised by the need to develop the parking area on the Kiln Lane side.
- 7.9 It can also be seen that the proposed parking would dominate the west side of the development and overlook both the garden of the immediate neighbour below at 3 Orchard Court and the rear outlook of some in Jason Court. Due to the steepness of the site a parking platform would need to be built up and would be very prominent. The agent suggests that planting and fencing could screen the impacts but this would need to be quite abruptly engineered in terraced structure and would again add to the overall protrusion and dominance of the development, at odds with the current characteristic of the sloping and partly semi-natural location.

Amenity

- 7.10 Owing to the site levels, the ground floor entrance would be set down 1.4m from the parking level necessitating a flight of 9 steps. The plans show a c.4.5m height difference from lane side to lower ground floor level and the exterior patio.
- 7.11 For usable outdoor space the dwelling would rely on the patio to the east side and grassed area to the west. It can reasonably be estimated that the dwelling would have at least the minimum 65m² recommended by the Space About Dwellings guidance. It would appear from the site plan that the east and west garden areas could only be accessed separately from the house.
- 7.12 Neighbours at 2 and 3 Orchard Court and in Jason Court are all to varying degrees concerned about over-looking and loss of privacy. The agent has responded in discussions that this could be addressed with close board fencing as evidently has been adopted in the existing developments at 3 to 5 Orchard Court. This is perhaps inevitable and it would create a somewhat boxed-in appearance and 'feel' to the development but it would tend to eliminate over-

looking of no. 3 from the lower garden levels. It would not readily deal with overlooking from the higher garden slopes and the parking area west of the dwelling.

7.13 The degree of overlooking from the east lower ground floor windows towards no.2 Orchard Court may perhaps reasonably be considered acceptable. There would be 11m to the garden boundary, the window elevations would be orientated at right angles and there is reasonable boundary screening. Even so the occupier of 2 Orchard Close objects for reasons of privacy.

7.14 For future occupiers of the proposed development close consideration needs to be given to the practicalities of living in the property with regard to the levels changes between the main parking access point and the main living space which is at lower ground floor and the main garden space. Policy H1 (3) opens by saying that:

3) All development will be assessed according to the extent to which it provides for high quality, sustainable housing and to which it meets identified housing needs, having regard to the location of the development, the characteristics of the site and the economics of provision.

7.15 Policy H1 (3) (d) in particular is relevant saying that:

d) All new dwellings should aim to provide flexible accommodation which is capable of future adaptation by seeking to achieve adequate internal space for the intended number of occupants in accordance with the Nationally Described Space standard (NDSS) and delivered to meet accessibility standards set out in the Optional Requirement M4(2) of Part M of the Building Regulations. This will be determined on a site-by-site basis subject to considerations such as viability and design.

7.16 Due to the levels involved it can be seen that this development would not be capable of providing the accessibility or adaptability that this policy expects. For example the scheme cannot provide step-free access from the parking area to the dwelling entrance. In terms of NDSS the dwelling provides 118m² of internal space which does meet the required minimum of 102m² for a three bedroom 6 person two storey dwelling.

Highway Safety

7.17 It is for the landowner / developer to establish that they have the necessary private rights of access in order to develop the site. Whilst the Highway Authority (HA) do not say the site is not capable of being accessed for this development it is far from clear to the LPA how access could be achieved at a construction scale. The site itself does not offer a means of turning, taking into account its steep gradient down from the lane; the hedged boundary with the lane, and the growth-reach in roots and branches from surrounding trees. The site is 300m from the Kiln Lane junction with the main highway and appears to be single width for much if not all that length. Many of in excess of a dozen dwellings along this length appear to depend upon the lane for their parking further constricting the available road width. A condition to require a

construction traffic management plan would be essential in the event of approval.

Other matters

- 7.18 Land stability The HA and objectors have referred to concerns about land stability. The NPPF at para. 174 refers to preventing new development from contributing to, or existing development being put at unacceptable risk from, or being adversely affected by, land instability. At paragraph 189 the NPPF says that planning decisions should ensure that: a) “a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability - this includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation)”. The LPA and the HA have knowledge of issues having occurred on the lower south side of Kiln Lane a little way east from the proposal site. Given the steepness, restricted width and the proximity of an existing dwelling at the foot of the site it would be appropriate to require site investigation by a competent person (as defined in the NPPF p.69) to provide ground stability and slope stability reports. There are currently no such supporting documents with the application.
- 7.19 Ecology The applicant’s submitted professional ecology report identifies “multiple habitats on site” but that the scheme would “not impact upon any rare or valuable habitats”. They recommend that designated wildlife corridors are incorporated into the design scheme and these to be identified within a soft landscaping plan and management strategy. In terms of species and/or species groups, the applicant’s report identifies bats and birds amongst others as likely or potentially to be or have been affected by the development including the recent preparatory site clearance. In the event of an approval, conditions should be attached to mitigate these impacts and contribute to a biodiversity net gain.
- 7.20 Footpath access The site is crossed by an evidently in-use footpath which, although not registered on the Staffordshire County Council definitive map of public rights of way, appears likely to be capable of being registered. Registration would need to demonstrate user evidence – usually for a period of at least 20 years and this would need to be a period prior to any signs ‘prohibiting’ or denying the access.
- 7.21 Separate from the potentially provable public right the LPA through its previous consents has sought to retain the access on foot through the land. The application proposes re-directing this retained route to the west boundary edge where it would extend the existing corridor arrangement (behind nos. 3, 4 and 5) and involve a much steeper route than currently crosses the site slope on a diagonal that is relatively commodious and, as noted, evidently in use. The overall corridor would be extended from c.35m to c. 60m. This would tend to become a threatening route for users as it would be narrow and enclosed for a significant length.

- 7.22 The NPPF at para. 100 states that: Planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks.
- 7.23 Trees The applicant has submitted a professional tree survey report which assesses two trees on adjoining land. This finds the closest tree (T1) to be a category A tree – one of high quality with at least 40 years of remaining longevity. The report comments that the development “may encroach into the RPA of T1 which is a Category A Sycamore tree. It should be possible to build up the land using a cellular confinement system such as “Cellweb” and create these spaces without causing damage to the roots of this tree. It is essential that whatever system is used that it does not dig into the ground within the RPA and that it allows water and air to percolate down to the roots. In the event of approval this would need to be covered by condition.
- 7.24 Rights of access to / from Kiln Lane Objectors have suggested that the applicant and site owner does not have rights of access using Kiln Lane and the Highways Authority has made reference to the need for the developer to ensure this is in place. This of itself however does not strictly give rise to a planning consideration that would necessitate refusal. If consent were granted it would not overcome any lack of access rights should the developer not have these in place.

8. Conclusion and Planning Balance

- 8.1 Although within the Leek town development boundary where in principle policy SS5 provides strategic support for new development this must still take place subject to meeting the policies of the Development Plan taken as a whole.
- 8.2 In this case the development raises concerns chiefly in terms of its design fit to the character and appearance of the location and adjacent dwellings especially nos 3 to 5 Orchard Court, issues which stem from the difficulties of establishing a detached dwelling on this restricted, steeply sloping site at a publicly prominent and visually attractive location. It is concluded that the proposal would result in a significant adverse impact on the character and appearance of the area and important views into and out of the settlement.
- 8.3 There are specific adverse effects for the living conditions or amenities of the immediate neighbouring dwellings for whose occupiers the development would be likely to be overbearing. This would affect in particular some dwellings in Jason Court for whom it must be judged there would be un-acceptable intrusions on privacy as a result of direct overlooking from a high elevation where effective screening could not be satisfactorily achieved. Overlooking of rear garden areas is especially sensitive for occupiers when it intrudes on the very closest space at the rear of a dwelling, as on balance it is found this would, perhaps especially for properties in Jason Court. The impact on 2 Orchard Court is found likely to be moderated by the boundary features but will give at least a sense of being overlooked. There is likely also to be a sense of

overbearing for 3 Orchard Court, again due to the abrupt gradients and height / levels differences.

- 8.4 There are evident concerns about the developability of the site in terms of gaining access for construction.
- 8.5 There are important concerns that the ground stability of this narrow steeply sloping site has not been established and given the proximity of an existing dwelling at the foot of the site and given a known or reported history of ground stability problems elsewhere nearby along Kiln Lane it would not be appropriate to consider granting consent without appropriate professional survey to confirm the slope stability and any measures needed to secure it.
- 8.6 The Council's published updated 5 year housing supply statement concludes that the Staffordshire Moorlands only has a supply of 3.71 years as of 1 April 2022. As such, para. 11d of the NPPF now applies to applications for housing development i.e. grant permission unless covered by policy in the closed list at footnote 7 (e.g. Green Belt, Local Green Space, SSSI etc), or unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole – The "Tilted Balance".
- 8.7 The proposed development would result in harm to the character and appearance of its surroundings and harm to neighbour living conditions along with a number of other adverse effects including the footpath access line and also concerns in terms of construction access and site land stability. Whilst some of these may be capable of resolution with the submission of further specialist information, fundamentally the scheme as put forward is judged unsuitable in its impacts. Put simply the proposal amounts to an over-development of a location that up to now has been sympathetically and successfully completed.
- 8.8 Whilst the provision of one dwelling would make a small contribution to the housing supply and would also, through its construction and future occupiers, provide some modest economic and social benefits to the local area, as the proposal is for one dwelling, these benefits are attributed only limited weight. By contrast the adverse impacts of granting permission would significantly and demonstrably outweigh these benefits. The proposal would conflict with the development plan and there are no other considerations, including the Framework, that outweigh this conflict.
- 8.9 The case officer met with the applicant and agent on site and it is fair to say that the revised version of the scheme – and a later revision during the determination period – has progressed significantly from the earlier refused scheme. The recommendation is now more balanced than in the earlier schemes but ultimately it is concluded the recommendation must remain one of refusal.

9. RECOMMENDATION

A. Refuse for the following reason(s):

- 1. The development owing to its design form, scale and position on steeply rising ground close above existing neighbouring dwellings is found to be out of keeping in particular with nos 3 to 5 Orchard Court. The development at this publicly prominent and visually attractive location would result in a significant adverse impact on the character and appearance of the area and on important views into and out of the settlement in particular for users of Kiln Lane which is a definitively registered public footpath right of way. The development is therefore for this reason found contrary to Local Plan policies SS1, SS5, H1, DC1 and DC3 and to the NPPF.**
- 2. There are specific adverse effects for the living conditions or amenities of the immediate neighbouring dwellings for whose occupiers the development would undoubtedly be overbearing in particular for nos 2 and 3 Orchard Court and for whom there would also be un-acceptable intrusions on privacy as a result of direct overlooking from a high elevation where effective screening could not be satisfactorily achieved. Overlooking of rear garden areas is especially sensitive for occupiers when it intrudes on the very closest space at the rear of a dwelling as this would including for properties in Jason Court as well for neighbours Orchard Court. The development is therefore for this reason found contrary to Local Plan policies SS1, SS5, H1 and DC1 and to the NPPF.**
- 3. Given the proximity of an existing dwelling at the foot of the site and given a known or reported history of ground stability problems elsewhere nearby along Kiln Lane and given the steepness and narrowness of the ground available it would not be appropriate to consider granting consent without appropriate professional survey to confirm the slope stability and any measures needed to secure it. On the information as currently submitted the Council therefore cannot be satisfied as to the developability of this site on this basis. There is further uncertainty about construction access feasibility. The development is therefore for this reason found contrary to Local Plan policies SS1, SS5, H1 and DC1 and to the NPPF.**
- 4. Notwithstanding that the Council cannot currently demonstrate a full five year housing land supply the development of just a single dwelling despite having some benefits the adverse impacts of granting permission would significantly and demonstrably outweigh these benefits. The proposal would conflict with the development plan and there are no other considerations, including the Framework, that outweigh this conflict.**

Informative

- 1. This recommendation is made following careful consideration of all the issues raised through the application process and thorough discussion with the applicants. In accordance with Paragraph 38 of the NPPF the Case Officer has sought solutions where possible to secure a development that improves the economic, social and environmental conditions of the area.**

B In the event of any changes being needed to the wording of the Committee's decision (such as to delete, vary or add conditions/informatives/planning obligations or reasons for approval/refusal) prior to the decision being issued, the Head of Development Services has delegated authority to do so in consultation with the Chairman of the Planning Applications Committee, provided that the changes do not exceed the substantive nature of the Committee's decision

10. APPENDICES TO THE REPORT

10.1 The link below to the Council's website is where the detail of this application can be viewed.

<http://publicaccess.staffs Moorlands.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=174165>

10.2 – location plan

