

DELEGATED DECISION REPORT

SMD/2023/0208
Valid 09/05/2023

LAND OFF KILN LANE
LEEK

**ERECTION OF A SINGLE
SPLIT LEVEL DETACHED
DWELLING WITH
ASSOCIATED MEANS OF
ACCESS AND HARD AND
SOFT LANDSCAPING WORKS.**

(FULL - MINOR)

MAIN ISSUES

- Design appearance and location setting
- Impact on neighbour living conditions
- Site suitability and occupier living conditions
- Access
- Trees

DESCRIPTION OF SITE

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.

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.

The land has 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.

PROPOSAL

A single detached dwelling on three 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.

The application is accompanied by a tree survey and arboricultural report, a preliminary ecological appraisal and a Design and Access Statement.

RELEVANT LOCAL AND NATIONAL PLANNING POLICIES

Local Plan (adopted 9th September 2020)

SS1 Development Principles
SS2 Settlement Hierarchy
SS5 Leek Area Strategy
DC1 Design Considerations
DC3 Landscape and Settlement Setting
H1 New Housing Development
NE1 Biodiversity and Geological Resources
NE2 Trees, Woodland and Hedgerows
T1 Development and Sustainable Transport

National Planning Policy Framework February 2019

Paragraph(s) 1 – 14;

Section(s) 4 – Decision making; 6 – Building a strong and competitive economy; 7 – Ensuring the vitality of town centres; 8 Promoting healthy and safe communities; 11 – Making effective use of land; 12 – Achieving well designed 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)

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

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.]

03/00177/FUL [SMD/2003/0088] – revised house types plots 3, 4 and 5

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.]

SMD/2018/0706 – Approval of reserved matters following outline approval
SMD/2013/1201 – refused

SMD/2019/0213 – Approval of reserved matters following outline approval
SMD/2013/1201 – approved

CONSULTATIONS

Publicity

Site Notice expiry date: 7th June 2023
Neighbour consultation period ends: 9th June 2023
Press Advert: N/A

Public Comments

Representations of objection received from four individuals raising the following points:

From the occupier of 3 Orchard Court, the existing adjacent dwelling below...

- that due to the height and proximity the resulting property will be overbearing and unneighbourly
- in all likelihood it will overshadow our rear garden and further block sunlight at certain times of the day
- each of the patios overlooks our gardens, impacting on privacy and quiet enjoyment of our area.

From the occupier of 2 orchard Court, the existing adjacent bungalow dwelling to the east...

- will have a negative impact on my property and my quality of life
- The elevation of the dwelling will mean that all windows to the front of the property will look into my property and into my private garden. This will remove all of my privacy and natural light
- This could also have an impact on the value of my property in the future.
- also concerned about the wildlife and nature that will be affected by the development. The development will destroy this natural environment and reduce the biodiversity of the area.
- worried about the access and noise from Kiln Lane. The development will increase the traffic and congestion on this narrow road, which has already suffered from a recent development on Orchard Court.
- The construction work will also create noise and dust that will disturb the peace and tranquillity of the neighbourhood.

From an occupier of Bryn Helyg – the existing adjacent dwelling to the west...

- No access off kiln lane – there has never been vehicle access to this parcel of land. There is only pedestrian access for the footpath. The top of kiln lane is an unadopted road that has been maintained by the residents. To try and establish vehicle access the applicant replaced the stile with a gate around 4-5 years ago. This was reported at the time and there has never been access for vehicles. The lane is very much single track and will pose a concern for the safety of walkers due to the restricted access of entering a vehicle in and out.

- Damage from recent development - the lane cannot take any more heavy excavation in close proximity. Around halfway down the lane there was a recent development that was approved and completed. Barriers have been in place for over 2 years as the foundations of the lane collapsed. The highways have taken no responsibility for the maintenance and have refused to rectify the damage that has been caused.
- Relocation of a public footpath – the existing footpath has been utilised for many years and is used by children in a morning on route to school, and people attending football at Leek town football club. Again, relocation of this will pose a risk to the safety of walkers and children in already a tight area.
- With several trees in close proximity to the proposed dwelling, the concern is that heavy excavation will cause irreversible damage to our already challenged eco system.

From a further occupier of Bryn Helyg...

- The application states that Kiln Lane is a 'public highway' when in reality it is an 'unadopted road' that is not maintained by the public highways department.
- We have lived on Kiln Lane for nearly 35 years and have established a 'legal right of way' over the lane over time, but there is no reference to this within the application for the applicant, therefore it is assumed that this right of way isn't in place.
- Kiln Lane has suffered previously with approved housing developments sitting below it, and structural damage to the lane has been caused as a result
- The application states that access to the site will be via an agricultural gate, off the singletrack section of the lane. This gate replaced a stile/gap in the fence about 4-5 years ago that was used by pedestrians using the footpath to the Leek Town Football Club area. This gate has never been used for vehicular access and there are concerns for the safety of walkers and other vehicles on the lane, as this will be a very restricted entrance, simply due to the lane being single track at this point.
- The application is proposing to move the public footpath that has been in existence for many years, which currently runs diagonally across the site, joining the fenced section of the path, lower down, towards Leek Town FC.
- The application is proposing that the footpath is moved to the edge of the site, running down the boundary between our property and the site. The existing footpath access to Kiln Lane from the middle of the site, provides clear visibility of traffic on the lane, whereby the proposed change would provide limited access and restricted visibility – This footpath is used by children walking to and from school and this change could compromise their safety.

Town / Parish Comments

Leek Town Council raises no objection and comments that it is "not un-neighbourly".

Severn Trent Water

No objection subject to the inclusion of the following condition:

The development hereby permitted shall not commence until drainage plans for the disposal of foul and surface water flows have been submitted to and approved by the

Local Planning Authority, and the scheme shall be implemented in accordance with the approved details before the development is first brought into use. 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.

We would not permit a surface water discharge into the public combined sewer, and recommend the applicant seeks alternative arrangements – please note, we would insist soakaways and other SUD techniques are investigated before considering a discharge to the public surface water sewer with restricted rates.

IMPORTANT NOTE: This response only relates to the public waste water network and does not include representation from other areas of Severn Trent Water, such as the provision of water supply or the protection of drinking water quality.

Staffordshire County Council Highways

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 Kiln Lane; occupiers beyond the site, and for users of the path to Westwood Heath Lane [Road]. 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.

Attach condition to require a Construction Vehicle Management Plan (CVMP). Also it is advised that construction work may require traffic management on the highway and that this would require approval from SCC Traffic and Network. The development will need to ensure stability of Kiln Lane.

OFFICER COMMENTS

Principle of Development

Being within the Leek town development boundary, in principle development at this location is acceptable in overall policy terms. 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.

Design

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. The existing development below to the north of the site (3, 4 and 5 Orchard Court) along with Jason Court to the north west is seen by the LPA 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 roof verge edges.

As first submitted the proposal scheme ran its roof ridge parallel with Kiln Lane and at right angles to the roof ridge lines adopted in the series of dwellings aligned directly below. The proposal also seemed to have an awkwardly elongated front elevation facing Kiln Lane. In the amended details now under consideration a 'hybrid' roof is shown with twin gables and a valley in-between filled across by a ridge at right angles. The building as a whole remains an awkward and indeed somewhat complicated configuration overall.

Seen from surroundings below to the north

The north elevation shown on drawing 2023-2764-06 revision A shows some roof slope mirroring in terms of slope angle or pitch with the existing buildings below but also illustrates a building dramatically taller – 8.0m to the eaves. Whilst the raked height increases between nos. 5, 4 and 3 are of the order of 1.5m to 2.0m, there would be a 3.0m addition between the ridge of no 3 and the proposal building. The drawing also shows an overall much greater amount of blank wall in a 'towering' form which contrasts aggressively with the more 'comfortable' juxtapositions of the lower building series. In dotted outline this drawing also shows no.46 Kiln Lane. This building is not however readily seen as it is appreciably further back on the slope and is separated by a strong band of trees which almost obscure it when in leaf and with their density of branches and trunks and some evergreen trees in the mix is likely to be well concealed in winter. It does not therefore add a particularly supporting context to consideration of the height and mass of the proposal building.

In terms of 'fit' with the surrounding buildings the scale and form would be found overtly at odds when viewed in approaches from below and the north.

Seen from Kiln Lane

Turning to the relationship with Kiln Lane the proposal would again be found to stand out uncomfortably. 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. They also suggest there is some direct comparability in the revised design with the twin gabled aspect of Nabhill Cottage at no. 42 Kiln Lane opposite to the east of the proposal site. For the LPA 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.

The existing developments at Orchard Court conform with this established pattern. Rounding the corner of Kiln Lane from the south west the immediate vista is dramatic and gives rise to a surprisingly rural, and in summer, verdant scene – see Fig. 1 below. In shadow, middle left in Fig. 1 (just above the fence rail), can just be seen part of the roof ridge of no. 3 Orchard Court – this currently is the highest development on the lower (north) side of Kiln Lane. The vista at this point would be abruptly and solidly interrupted by the proposal building and the consistency of the lane's current character and the quality outlook it provides would be broken.



Fig. 1

The scheme proposal shows vehicle pull-in parking initially (at the gateway) on a level with Kiln Lane at a proposed equivalent level of 167.55m then falling by about a metre to its northerly edge where the parking would be built up by 1.5m to 2.0m from the existing site land level (all as shown on dwg 2023-2764-02 rev D).

Finished ground floor level (as opposed to lower ground floor) is given as 166m. On both the east and west ends of the building an exterior flight of steps is proposed descending 3.0m to the lower ground floor level to reach a small patio off each corner of the building. The proposed level for the patio is put at 162.8m. Interior finished floor level for the lower ground floor is given as 163.5m. No access from the dwelling is proposed at lower ground floor.

Amenity

Owing to the site levels, the ground floor entrance would be set down 1.5m from the Kiln Lane road side level, slightly less – about 1.3m from the parking level. The plans show a 4m height difference from lane side to lower ground floor level – and approaching a 5m height difference to the exterior patio level.

The patios are shown each c. 9m² in area. Assuming the grassed areas immediately east and west could be included, some 50m² of relatively level garden area may be available. This is somewhat short of the Council's minimum 65m² expectation stated in its adopted guidance. Whilst there is no reference in the guidance to usability, the exceptional steepness in this site must become a consideration. From the door of the dwelling the east and west patios can each only be accessed separately via the c.3.0m level change which necessitates a flight of steps on each side of the building. Alternatively if the shown landscaping were omitted it is possible that a narrow 1m access at the foot of the north elevation of the dwelling could link the two patios and this is perhaps an inevitable step by any occupier.

The neighbour at 3 Orchard Court is concerned about over-looking and loss of privacy from the proposed patio / garden areas. 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 Close. Again this is perhaps inevitable. 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 deal with overlooking from the higher garden slopes and the parking area west of the dwelling.

The occupier of no.2 Orchard Close has also raised concerns about overlooking commenting: *"The elevation of the dwelling will mean that all windows to the front of the property will look into my property and into my private garden."* The scope to see into the dwelling rear elevation of no.2 would probably be limited as the development would be set at right angles but the height elevation of the proposed dwelling with its ground floor (in effect first floor windows in the east elevation) serving a dining kitchen likely to be perceived as somewhat intrusive – as indeed demonstrated by the objection. There would be a more direct and actual consequence for the privacy across the rear garden area of no.2 and particular weight should be given to this concern as raised in the objection.

The neighbour at no. 2 has raised concern about loss of property value as a result of these impacts. In general potential loss of property value cannot be taken into consideration in the planning assessment as it is not accepted as a 'material consideration'. If there are however adverse effects on the amenities of the occupier – as discussed above – these must be taken into consideration but not on a property value basis.

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 multiple levels both inside and in the outside 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.

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 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.

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.

Highway Safety

It is notable that the Highways Authority (HA) predicts that, *“it is likely that Kiln Lane will be blocked for periods of time”* further noting that: *“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”*. Whilst the 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. The site itself does not offer a means of turning taking into account its steep gradient down from the land, its 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. Whilst the HA recommends a traffic management condition it would not be appropriate for the LPA to attach a condition where there is significant uncertainty that it can be met. Given this uncertainty and taking into account the degree of inconvenience that could result for current residents – not least at Bryn Helyg which would be cut off at times – it may reasonably be concluded by the LPA that there is insufficient information with the application to be satisfied that it can realistically be undertaken.

Other matters

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 183 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.65) to provide ground stability and slope stability reports.

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.

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.

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.

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.*

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 remain 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.

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.

CONCLUSION / PLANNING BALANCE

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.

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 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.

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 for both neighbours – perhaps especially no.2 Orchard Close.

There are evident concerns about the developability of the site in terms of gaining access for construction.

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.

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".

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.

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.

OFFICER RECOMMENDATION : Refuse

Case Officer: Arne Swithenbank

Recommendation Date: 10th July 2023

X 

Signed by: Ben Haywood

On behalf of Staffordshire Moorlands District Council