

**KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE**

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) – SECTION 73

**DELEGATED DECISION TO DETERMINE PLANNING APPLICATIONS TO
CARRY OUT DEVELOPMENT WITHOUT COMPLIANCE WITH PLANNING
CONDITIONS PREVIOUSLY ATTACHED**

Reference No: 2017/70/92557/W

Site Address: Land Off, St Mary's Avenue, Netherthong, Holmfirth,
HD9 3XN

Description: Variation condition 1 (plans) on previous permission
2016/93365 for reserved matters application pursuant
to outline permission 2014/91533 for erection of 30
dwellings

Recommending Officer: Adam Walker

DECISION – Variation of condition

**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.**

David Wordsworth

AUTHORISED OFFICER

Date: 19-Oct-2017

Officer Report

Site Description

The application relates to a site of approximately one hectare bounded by open fields to the north and dwellings off St Mary's Avenue to the west. The southern boundary abuts dwellings on St Mary's Road and Haigh Lane. The western boundary approaches an access road serving further properties off St Mary's Road. The eastern boundary abuts car parks to the Cricketers Public House and the Cider Press Café, however the site does not have a frontage to that road.

The Netherthong /Deanhouse Conservation Area lies to the south and east of the site and abuts a section of the site's southern boundary.

Public footpath Hol/25/10 shares the access road to the east continuing to Honley and Oldfield. The site is crossed by a 'line of tread' from the end of St Mary's Avenue in a north easterly direction, however this is not a definitive right of way.

Dwellings on St Mary's Avenue, St Mary's Crescent and St Mary's Road comprise dormer bungalows principally faced in brick with concrete roof tiles. The area to the south-east at Deanhouse comprises older, traditional vernacular stone buildings.

The site is grassland and scrub with sporadic semi-mature trees and drystone boundary walls. The levels drop down on either side of a central ridge with a shallow drop down to Deanhouse to the east.

Description of Proposal

Variation of condition 1 (plans) on reserved matters application 2016/93365 for 30 dwellings.

The changes relate to the layout and appearance of the site.

The principal changes concern plots 16 and 30.

Plot 16: It is proposed to amend the house type from 'Styal' (4 bed) to 'Banbury' (4 bed). The reason for the proposed change is to accommodate the proposed surface water drainage strategy. The change repositions the dwellinghouse and reduces its footprint allowing for necessary stand-off distances to drainage infrastructure.

There are minor changes to the position of plots 17-19 to accommodate the revised plot 16.

Plot 30: The house type remains the same but it is proposed to make the attached single garage into a double garage and add a conservatory to the rear elevation. The dwelling is also repositioned 0.8m to the west of its approved location to facilitate the enlarged garage. The main reason for the proposed change is because the applicant wants to use this property as a show home with the double garage forming the sales office.

There are minor changes to the position of plots 24,27 , 28 and 29 to accommodate the wider plot area for plot 30.

History of negotiations/amendments received

Officers have negotiated with the applicant an amendment to the proposed double garage on plot 30 to mitigate the impact on an adjacent existing property (6 St Mary's Ave).

- The double garage has been reduced in width by 0.55m to achieve 12m separation to the side elevation of 6 St Mary's Ave
- The garage roof has been hipped to reduce its massing

In addition, the developer has decided to re-orientate the conservatory doors towards the length of the garden rather than towards 6 St Mary's Ave to mitigate any potential privacy concerns.

Relevant Planning History

2014/91533 - Outline application for erection of residential development - Approved

2016/93365 Reserved matters application pursuant to outline permission 2014/91533 for erection of 30 dwellings - Approved by committee

2016/94029 - Discharge conditions 5 (affordable housing) and 6 (public open space) on previous permission 2014/91533 for outline application for erection of residential development – Approved

Representations

Application advertised by site notices, neighbour letters and press advert.

Representations: 5 received

Representations summarised as follows:

- Query raised regarding boundary treatment to plot 30 – seeking confirmation 2m fence to plot 30 is still proposed
- Works have already started to plot 30. This application is a waste of time. Why bother consulting? Developer had no intention of building the single garage. Kirklees Planning Service is a pushover.
- Concerns with proximity of garage to 6 St Mary's Avenue: Garage is within the 13m rule. This will have a significantly greater impact than the approved plans. Impact on light into main living area. The garage results in a pinch point along the boundary; this will make maintaining the existing drystone wall more difficult.
- Visual impact of garage on 6 St Mary's Avenue. Main windows in side of 6 St Mary's Avenue will face onto the garage.
- Amendment to plot 30 is already underway (foundations dug etc). This is a breach of planning law.

Following the amendment to plot 30 the revised plans were advertised by neighbour letter. One comment has been received in response which seeks confirmation that the reduced size of garage has been agreed by all parties because the foundations of the double garage as originally proposed within this application remain in place. This neighbour has also queried whether there should be a footpath through the site.

Holme Valley Parish Council comments – Support the application

Consultation Responses

The following is a brief summary of Consultee advice (more details are contained in the Assessment section of the report, where appropriate):

KC Lead Local Flood Authority – The amendment to plot 16 is in line with our understanding of drainage solutions on this site.

Policy

The statutory development plan comprises the Kirklees Unitary Development Plan (saved Policies 2007).

The statutory development plan is the starting point in the consideration of planning applications for the development or use of land unless material considerations indicate otherwise (Section 38(6) Planning and Compulsory Purchase Act 2004).

The Council is currently in the process of reviewing its development plan through the production of a Local Plan. The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government

on 25th April 2017, so that it can be examined by an independent inspector. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

The site is allocated as Provisional Open Land on the Unitary Development Plan Proposals Map.

Kirklees Unitary Development Plan:

- BE1 – Design principles
- BE2 – Quality of design
- BE12 – Space about dwellings
- BE23 – Crime prevention
- D2 – General development principles
- G6 – Land contamination
- NE9 – Retention of mature trees
- H1 – Housing needs of the district
- H18 – Provision of open space
- T10 – Highway Safety
- T19 – Parking Standards
- EP11 – Ecological landscaping

Kirklees Publication Draft Local Plan (PDLP):

The site is allocated for housing in the PDLP.

PLP1 Presumption in favour of sustainable development

PLP21 Highway safety and access

PLP22 Parking

PLP24 Design

PLP28 Drainage

PLP30 Bio diversity and geodiversity

PLP32 Landscape

PLP35 Historic Environment

National Policies and Guidance:

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 27th March 2012, together with Circulars, Parliamentary Statements and associated technical guidance.

The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

Core planning principles:

Chapter 4: Promoting Sustainable Transport

Chapter 6: Delivering a wide choice of high quality homes

Chapter 7: Requiring good design

Chapter 8: Promoting healthy communities

Chapter 11: Conserving and enhancing the natural environment

Chapter 12: Conserving and enhancing the historic environment

Assessment

The principle of allowing this variation of condition application is acceptable, in accordance with legislation under Section 73 of the Town & Country Planning Act 1990 (as amended) and Government advice in dealing with material alterations to existing planning permissions. Section 73 provides a different procedure from that which applies to planning applications; it requires the local planning authority to consider only the conditions in question. A planning authority may grant the application subject to differing conditions to the original permission, it may grant unconditionally or may refuse the application. In any event the original permission remains intact.

The amendments relate to the layout and appearance of plots 16 and 30. No other changes are proposed, including to the landscaping of the site.

Plot 16:

It is proposed to amend the approved house type from 'Styal' to 'Banbury'. The Banbury house type has been approved elsewhere on the site and so is considered acceptable.

The new dwelling is set slightly further to the east than the approved dwelling but this is not significant and would not materially affect any neighbouring landowner/property.

The footprint of the new dwelling is smaller than the approved and both properties are two stories in height. The massing of the new dwelling would not result in any undue harm.

The window arrangement between the approved and new dwellings is comparable in terms of the location of habitable windows and would not materially affect overlooking.

The consequential changes to the position of plots 17-19 are very minor and do not result in any material impacts.

In light of the above and to facilitate the drainage of the site the proposed amendment to plot 16 is accepted.

Plot 30:

The amendment to the proposed double garage has made it acceptable. The garage has been moved slightly further away from 6 St Mary's Avenue which enables it to comply with Policy BE12. The pitched roof of the garage has also been changed to a hipped roof which reduces the bulk and mass of the garage as perceived from the neighbouring property. It is to be noted as well that plot 30 is set down slightly from 6 St Mary's Avenue which also helps to mitigate the impact of the garage in these circumstances. Overall I am satisfied that the amenity of 6 St Mary's Avenue would not be significantly harmed by the change.

To accommodate the double garage the property has been moved 0.8m to the east. The position of plots 24, 27, 28 and 29 have also been revised to accommodate the larger plot for plot 30. The separation between plot 30 and plot 27 to the east remains acceptable, especially as this is a new dwelling to new dwelling relationship and no existing occupiers would be prejudiced in any way. The repositioning of plots 24, 27, 28 and 29 is very minor and do not result in any material impacts.

It is worth noting as well that the two storey element of plot 30 will now be slightly further away from 6 St Mary's Avenue which would be a minor benefit to this existing neighbour.

The conservatory to the rear of plot 30 is also considered to be acceptable. It is of a proportionate size and would not have any significant impact on neighbouring property. It is around 8m from the boundary with 6 St Mary's Avenue and 21.5m from the side wall of this neighbouring dwelling. The developer has decided to re-orientate the conservatory doors towards the length of the garden rather than towards 6 St Mary's Ave to mitigate any potential privacy concerns, albeit the neighbour had not raised any specific concerns with the conservatory. The rear wall of the conservatory is well separated from properties to the south and there would be screening on the boundary. The conservatory would be screened on the eastern boundary to plot 28 by timber fencing.

Highway matters:

The proposals do not alter the original highways assessment. Both plot 16 and 30 would continue to have an acceptable level of parking.

Representations:

It is considered that the concerns raised in relation to the impact of the double garage to plot 30 on 6 St Mary's Avenue have been satisfactorily addressed.

Concerns have been raised about maintenance of an existing stone boundary wall between plot 30 and 6 St Mary's Avenue and whilst this is not a material planning consideration the amendment would lessen the identified pinch point at the rear corner of the garage.

It has been stated that works to the double garage have already commenced and the foundations remain as originally proposed within this application (i.e. larger than that on the amended plans to be approved). The developer is required to carry out development in accordance with the approved plans and non-compliance would be a matter for planning enforcement.

A neighbour has sought confirmation that a 2m fence to plot 30 is still proposed. There are no proposed changes to the approved boundary treatment.

Other matters:

This application will result in a new stand-alone planning permission being issued. The conditions as originally imposed remain relevant (with the new plans being substituted).

An additional condition is recommended in the interests of clarity because the applicant has not provided an updated site layout and streetscene drawings that reflect the amendment to the garage of plot 30.

A neighbour has previously contacted the LPA regarding the proposed hedging along the southern boundary of plot 23 and 24 (outside of this application). A hedge in this part of the site is shown on the approved landscaping scheme and condition 3 requires it to be provided at least 1.7m high before occupation in the interests of amenity (privacy). The concern relates to the proximity of the hedge to the existing drystone boundary wall and the potential impact on the wall's stability. Whilst the concerns are acknowledged it is not considered that it is realistic to seek to impose a 'stand-off' distance between the hedge and the wall to address this potential issue. Such a condition is unlikely to meet the tests for planning conditions; it is unlikely to be enforceable for example given that the hedge will grow and require maintenance to maintain any 'stand-off'. It would also be unreasonable to seek to set the hedge in from the boundary by any meaningful extent.

Legal Services have confirmed that this application does not affect the planning obligations relating to the site; the S106 relates to the outline consent and not the approved reserved matters and so there is no requirement for a deed of variation to the S106.

Conclusion

Following an amendment to the double garage of plot 30 the proposals would not result in any significant detriment to the amenity of neighbouring property and are acceptable.

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 development would constitute sustainable development and is therefore recommended for approval.

Recommendation – Approve

Decision Authorisation - Delegated Powers

Application Number: 2017/92557

Officer Recommendation: Approve

Conditions and Reasons

1. The development hereby permitted shall be carried out in complete accordance with the plans and specifications schedule listed in this decision notice, except as may be specified in the conditions attached to this permission, which shall in all cases take precedence.

Reason: For the avoidance of doubt as to what is being permitted and so as to ensure the satisfactory appearance of the development on completion, and to accord with Policies BE1, BE2, BE5 and T10 of the Kirklees Unitary Development Plan and guidance in the National Planning Policy Framework.

2. The development shall be carried out in accordance with proposed site plans 16-029 PL02 Rev T and 16-029 PL03 Rev E and drawing number 16-029 PL12 Rev J (Proposed Street Scenes) with the exception of plot 30 which shall be carried out in accordance with drawing numbers NOR-1167-PLAN30 Rev A and NOR-1167-PLAN1630 Rev A.

Reason: In the interests of clarity and for the avoidance of doubt as to what is being permitted because the site plan and street scene drawings have not been updated to reflect the revision to plot 30 as indicated on drawing number NOR-1167-PLAN1630 Rev A and NOR-1167-PLAN30 Rev A. This is to accord with Policies BE1, BE2 and BE12 of the Unitary Development Plan and guidance in the National Planning Policy Framework.

3. The tree, shrub and hedge planting forming part of the landscaping details hereby approved shall comprise native species of plants and shall be retained as such.

Reason: To enhance the biodiversity of the development and to accord with guidance in the National Planning Policy Framework.

4. The hedge planting in front of existing stone wall to the southern boundary of plots 23, 24 and 29, as indicated on approved drawing number JHY/1167/202 Rev B, shall be provided at a minimum height of 1.7 metres before any of these plots are first occupied. A screen hedge of at least 1.7m in height shall be provided along this boundary thereafter.

Reason: In the interests of the amenity of adjacent residential properties and to accord with guidance in the National Planning Policy Framework (Core planning principles).

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Design & Access Statement	16-029 / 4.01 / 08.16	Rev B	4/10/16
Planning Statement	Prepared by Savills Sept 2016	-	4/10/16

Topographical Survey	sut4818091	-	7/2/17
Proposed Site Plan	16-029 PL02	Rev T	20/7/17
Proposed Site Plan (colour)	16-029 PL03	Rev E	20/7/17
Location Plan & Plot 16 & 30 Layout as Proposed	NOR-1167-PLAN1630	Rev A	14/9/17
Plot 30 Plans & Elevations 9Northwood with double garage & conservatory)	NOR-1167-PLAN30	Rev A	14/9/17
Proposed Boundary Treatment Plan	JHY/1167/202	Rev B	18/1/17
Banbury House Type	16-029 / PL04	Rev A	20/7/17
Langley House Type	16-029 / PL05	-	4/10/16
Davenham House Type	16-029 / PL06	-	4/10/16
Northwood House Type	16-029 / PL07	-	4/10/16
Styal House Type	16-029 / PL08	-	4/10/16
Sutton House Type	16-029 / PL09	Rev A	4/10/16
Stratton House Type	16-029 / PL10	-	4/10/16
Thornton House Type	16-029 PL11	Rev A	12/12/16
Proposed Street Scenes	16-029 / PL12	Rev J	20/7/17
Garage Details	16-029 / PL14	-	4/10/16

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 Planning 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. Negotiations were undertaken to amend the garage of plot 30 in order to mitigate the impact on an adjacent property.

Report Dated: 19/10/17