

**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: 2018/70/91758/W

Site Address: Land to rear of, 52 and 54, Mountjoy Road, Edgerton,
Huddersfield, HD1 5QQ

Description: Variation condition 2 (plans) on previous permission
2017/94332 for erection of one detached dwelling

Recommending Officer: Farzana Tabasum

DECISION – Grant Variation of Conditions

**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.**

Neil Bearcroft

AUTHORISED OFFICER

Date: 10-Aug-2018

Officer Report

Site Description

The site is set back from the highway and to the rear of properties on Mountjoy Road, by approximately 20 metres and is served by a single width vehicular access located between No.52 and No.54 Mountjoy Road. The site is bounded by residential properties to all sides including properties on Mountjoy Road, Cedar Mount and Edgerton Grove Road. The site is unallocated on the Unitary Development Plan Proposals Map and it borders the boundary of the Greenhead Conservation Area to the north. At the time of my site visit construction had commenced on site to implement an earlier permission for a dwelling granted recently under application no. 2017/94332, although this is not completed as the swimming pool part of the dwelling had not been commenced.

Description of Proposal

The application seeks permission to vary condition no. 2 of the earlier permission as a number of modifications are sought to the approved plans. The plans have been revised to omit the initially proposed roofed veranda. The variations as now sought are:

- Enlargement of the kitchen window on the rear elevation
- Raising the ground level to the patio/terrace area only, to provide level access from dining/kitchen area and provision of 1m fencing to the parameter of the patio area.
- Roof overhang above 1st floor terrace, previously approved now to be omitted.
- For the provision of a 1.8m high close boarded timber fence on the perimeter of the site instead of brick wall as previously approved.

History of negotiations/amendments received

The case officer raised concerns regarding the over development of the site with the agent which resulted in the submission of amended plans reducing the scale of the development.

Relevant Planning History

The most relevance is application no. 2017/94332 for the erection of a dwelling.

2017/94332 – erection of detached dwelling – granted April 2018

2017/94327 - Discharge condition 5 (levels) on previous permission

2016/94309 for erection of one dwelling and associated landscaping – granted 22nd March 2018

2017/91310 – variation of condition no. 2 (plans) on previous permission

2016/94309 – granted

2017/91843 – discharge of condition no. 5 of 2016/94309 – existing & proposed ground and finished floor levels – details approved

2017/91220 – discharge of condition nos. 3 and 10 of 2016/94309 – details approved May
2016/94309 – Erection of dwelling with associated landscaping - granted April 2017
2013/93419 – Outline application for 1no. dwelling – Approved – 18/02/2014
2014/93029 – reserved matters for the erection of a detached dwelling – Granted April 2015
2016/91800 - Erection of 2 detached dwellings with detached garages and associated landscaping – Pending Consideration

Representations

Final publicity date expired 5th July 2018

A summary of the comments received is set out below:

- Querying proposed finished ground floor levels
- Impact on privacy of no 7 Cedar Court
- Querying drainage of surface water from the site
- Requests made that conditions be imposed requiring regrading of the site to original level and a surface water drainage scheme be approved

Consultation Responses

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

Conservation & Design - informal discussions in relation to the veranda proposals. Cannot support on design principles

Policy

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). 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 Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 48 of the National Planning Policy Framework (2018). 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 (2018), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

The site is unallocated on the UDP Proposals Map but immediately abuts the Greenhead Park/New North Road Conservation Area (the northern boundary of the application site abuts this conservation area) and would remain as such on the Kirklees Publication Draft Local Plan.

Kirklees Unitary Development Plan:

D2 – Unallocated Land

BE2 – Quality of design

BE12 – Space about buildings

Kirklees Publication Draft Local Plan (PDLP):

PLP 24 – Design

National Policies and Guidance:

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 24th July 2018, the Planning Practice Guidance Suite (PPGS) first launched 6th March 2014 together with Circulars, Ministerial Statements and associated technical guidance.

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

Chapter 12 – Achieving well-designed places

Chapter 15 - Conserving and enhancing the natural environment

Assessment:**Principle of development:**

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.

As noted above during my site inspection it was evident the dwelling was very near completion. The assessment below will relate solely to the variations proposed and impact on the visual and residential amenity of the surrounding development, taking account of the relevant material considerations.

Visual amenity:

The variations proposed are mainly to the rear elevation at ground floor level. These are considered to be minor modifications which would have a neutral effect on the character of the design of the approved dwelling. Furthermore, given the variations are on the rear elevation, these would have no bearing on the visual amenity of the surrounding development or street scene, given this elevation is well screened with the existence of the properties beyond the site

boundaries. Furthermore, the exclusion of the overhang to the balcony at first floor level, previously approved under application no. 2017/94332, although a minor revision, would result in a reduced bulk and scale of the overall dwelling.

The substitution of a 1.8m high close boarded timber fence instead of a brick wall to the site boundaries is welcomed as it would appear less harsh than a 1.8m high brick wall as previously approved. The variations would accord with Policies D2, BE2 of the UDP, PLP24 of the PDLP as well as guidance in the NPPF.

Residential amenity:

In terms of residential amenity the variations proposed would have no more of an impact on the surrounding development in comparison to the previously approved scheme.

Concerns are received from the occupiers of one of the neighbouring properties, in relation surface water drainage and finished ground levels. Whilst I appreciate works on site is currently on going, it can be assumed that the current levels on site represent those previously approved as shown on drawing no. 14036-P77 of permission 2017/94332. Notwithstanding the level changes now proposed to the patio area, the applicant has advised the finished ground levels will be in accordance with drawing no.14036-P77.

For the avoidance of doubt, it is considered necessary to impose a condition to restrict the proposed increase in levels to the patio area and for the remainder of the site to be finished in accordance with the previously approved levels. This together with the proposed hedge which is indicated to include a mixture of shrub planting some of which are evergreen and quick growing species (to be conditioned), I do not consider the proposal would cause a significant harm to the amenities of the neighbouring dwellings nor compromise their privacy. A refusal would therefore be difficult to substantiate on these grounds.

With regards to surface water drainage it would not be appropriate nor necessary to condition for such details as drainage matters are adequately dealt with through the building control regime, separate to planning permission.

Other issues:

I have reviewed the previously imposed conditions in light of the proposed variations and given the implementation of the previous permission, in this instance it would not be necessary to include the standard time condition nor the materials conditions. It would however, be necessary to include conditions for the soft landscaping and provision of bat/bird and electric charging points to be included as per the requirements of the original permission on this site as well as a condition for dealing with unexpected contamination of the site as the works have not yet been completed. Finally it is again considered necessary to restrict permitted development rights to avoid over development of the site, to ensure the design is not compromised

and so as not to detract from the amenities of adjacent properties. This would include for means of enclosures within the site.

Conclusion

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: 2018/91758

Officer Recommendation: grant variations

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 D2, BE1, BE2, BE5, T10 and T19 of the Kirklees Unitary Development Plan, PLP24 & PLP35 of the Publication Draft Local Plan and guidance within the National Planning Policy Framework.

2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 as amended (or any Order revoking or re-enacting that Order), no buildings or extensions falling within Classes A-E of Part 1 and Minor operations within Class A of Part 2, Schedule 2 of the order shall be undertaken without the prior written consent of the Local Planning Authority.

Reason: To prevent overdevelopment of the site, in the interests of visual amenity, so as not to detract from the amenities of adjacent properties, to avoid a loss of off road car parking in the interests of highway safety and to accord with Policies D2, BE2 and T10 of the Kirklees Unitary Development Plan, PLP 24 & 35 of the Publication Draft Local Plan as well as guidance in the National Planning Policy Framework.

3. The development shall not be brought into use until all areas indicated to be used for access, parking, and turning on the approved plans have been laid out with a hardened and drained surface in accordance with the Communities and Local Government; and Environment Agency's 'Guidance on the permeable surfacing of front gardens (parking areas)' published 13th May 2009 (ISBN 9781409804864) as amended or any successor guidance. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 as amended (or any Order revoking or re-enacting that Order) this shall be so retained, free of obstructions and available for the uses specified.

Reason: In the interests of visual amenity and to ensure adequate space within the site for vehicle movements and parking, in the interest of adequate drainage of the site, and in accordance with Policies BE1, BE2, and T10 of the Unitary Development Plan, PLP24 of the Publication Draft Local Plan as well as guidance in the National Planning Policy Framework.

4. Notwithstanding the rear patio finished ground levels, which shall be in accordance with the details on drawing no. 14036-P75 revision E, the remainder of the ground levels within the garden shall be completed in accordance with the levels detail shown on drawing no. 14036-P77, pursuant to application no. 2017/94332, prior to the occupation of the dwelling. Thereafter the finished ground levels shall be retained in accordance with these approved details.

Reason: In the interests of visual amenity and to ensure the residential amenities of neighbouring sites and conservation setting is not compromised and to accord with Policies D2, BE2 and BE5, of the Kirklees Unitary Development Plan, PLP 24 & 35 of the Publication Draft Local Plan as well as guidance in the National Planning Policy Framework.

5. Prior to the occupation of the dwelling hereby approved, the 1.8m high close boarded timber fence as shown on the perimeter of the site boundary on drawing no. 14036-P75 Rev E, shall be erected to all boundaries from the approved finished ground levels and retained as such thereafter.

Reason: In the interests of visual and residential amenity, to ensure that suitable boundary treatment is in place to protect the amenities of existing occupiers and future occupiers in advance of the soft landscape proposals becoming established and to accord with Policies D2, BE1 and BE2 of the Kirklees Unitary Development Plan, PLP 24 & 35 of the Publication Draft Local Plan as well as guidance in the National Planning Policy Framework.

6. Prior to the occupation of the dwelling hereby approved, all the soft landscaping proposals as shown on drawing no. 14036-P75 Rev E, shall be carried out during the first planting, seeding or management season following the completion of the dwelling, or as otherwise may be agreed in writing by the Local Planning Authority, and shall be maintained for a period of five years from the completion of planting works. All specimens which die within this period shall be replaced with like for like species unless otherwise approved in writing by the Local Planning Authority

Reason: In the interests of visual amenity and to promote biodiversity and to accord with Policies D2, BE1 and BE2 of The Kirklees Unitary Development Plan, PLP 24 & 35 of the Publication Draft Local Plan as well as guidance contained in Chapter 15 of the National Planning Policy Framework.

7. The bat and bird nesting opportunities as shown on drawing no. 14036-P75 revision E shall be provided prior to the occupation of the approved dwelling and thereafter retained. The bat boxes shall be incorporated integrally into the dwelling during construction works prior to completing the dwelling.

Reason: To enhance ecological interest within the site, in accordance with the guidance contained within the National Planning Policy Framework and Policies EP11 of the Kirklees Unitary Development Plan and PLP30 of the Publication Draft Local Plan.

8. Prior to occupation of the hereby approved dwelling an electric vehicle recharging point shall be installed in the integral garage. Cable and circuitry ratings shall be of adequate size to ensure a minimum continuous current

demand of 16 Amps and a maximum demand of 32Amps. Thereafter the electric vehicle recharging point shall be retained.

Reason: To accord with the guidance contained in Part 9 of the National Planning Policy Framework “Promoting sustainable transport”, guidance in the West Yorkshire Low Emissions Strategy and to encourage low carbon forms of transport in accordance with Part 15 of the National Planning Policy Framework as well as Policies PLP 24 & 51 of the Publication Draft Local Plan

9. In the event that contamination not previously identified by the developer prior to the grant of this planning permission is encountered during the development, all works on site (save for site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within 2 working days. Unless otherwise approved in writing with the Local Planning Authority, works on site shall not recommence until either (a) a Remediation Strategy has been submitted to and approved in writing by the Local Planning Authority or (b) the Local Planning Authority has confirmed in writing that remediation measures are not required. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures. Thereafter remediation of the site shall be carried out and completed in accordance with the approved Remediation Strategy. Following completion of any measures identified in the approved Remediation Strategy a Validation Report shall be submitted to the Local Planning Authority. Unless otherwise approved in writing with the Local Planning Authority, no part of the site shall be brought into use until such time as the whole site has been remediated in accordance with the approved Remediation Strategy and a Validation Report in respect of those works has been approved in writing by the Local Planning Authority.

Reason: So as to safeguard the amenity of future occupants of the development from the potential risk of land contamination in accordance with Policy G6 of the Unitary Development Plan, PLP53 of the Publication Draft Local Plan as well as the aims of chapter 15 of the National Planning Policy Framework.

10. The hereby approved development shall be carried out in complete accordance with the recommendations set out in section 8 of the accompanying Phase 2: Ground Investigation Report ref: project no. 17- 125, dated 31st March 2017, pursuant to application no. 2017/91220.

Reasons: To ensure the health and safety of future occupants of the site is not put at unacceptable risk from historic coal workings beneath the site and to accord with Policies D2 and G6 of the Kirklees Unitary Development Plan, PLP53 of the Publication Draft Local Plan as well guidance in the National Planning Policy Framework.

NOTE: The responsibility for securing a safe development rests with the developer and/or landowner. It is advised where a site could be affected by land stability issues this be taken into account and dealt with appropriately by the developer and/or landowner

NOTE: The granting of planning permission does not override any private ownership rights or legal covenants that may apply to the land forming part of this planning application. It is the responsibility of the applicant/developer to ensure that all appropriate consents are in place prior to any development commencing.

NOTE: Link to Communities and Local Government; and Environment Agency's 'Guidance on the permeable surfacing of front gardens' published 13th May 2009 (ISBN 9781409804864):
www.communities.gov.uk/publications/planningandbuildingcontrol/pavingfrontgardens

NOTE: To minimise noise disturbance at the nearby premises it is generally recommended that activities relating to the erection, construction, alteration, repair or maintenance of buildings, structures or roads shall not take place outside the hours of

07.30 and 18.30 hours Mondays to Friday

08.00 and 13.00 hours on Saturdays

With no working Sundays or Public Holidays

In some cases, different site specific hours of operation may be appropriate. Under the Control of Pollution Act 1974, Section 60 Kirklees Environment and Transportation Services can control noise from construction sites by serving a notice. This notice can specify the hours during which the works may be carried out.

Plans and specifications schedule:-

Plans and Information Approved as part of application 2018/91758			
Plan Type	Reference	Version	Date Received
Proposed site block plan	14036-P75	e	09/08/18
Proposed roof plan	14036-P76	c	23/07/18
Proposed Ground floor plan	14036-P70	f	20/07/18
Proposed 1st floor plan	14036-P73	c	20/07/18
Proposed 2nd floor plan	14036-P74	c	20/07/18
Proposed side and rear elevations	14036-P72	G	20/07/18
Plans and Information approved as part of application 2017/94332			
Plan Type	Reference	Version	Date Received
Proposed Front and side elevations	14036-P71	C	22/1/18
Location Plan	14036-S01	B	22/1/18
Proposed Section	14036-77		22/1/18
Information approved as part of application 2017/1220			
Plan Type	Reference	Version	Date Received
Phase 2 Ground Investigation Report	17-125	-	7/4/2017

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 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. Revised drawings were negotiated to ensure the proposals did not result in over development of the site and to avoid detracting from the character/design of the previously approved dwelling.

Report Dated: 9/8/18