

**KIRKLEES METROPOLITAN COUNCIL  
INVESTMENT & REGENERATION SERVICE**

**DEVELOPMENT MANAGEMENT**

**Town and Country Planning Act 1990 (as amended)**

**DELEGATED DECISION TO DETERMINE APPLICATIONS FOR  
CONSENT, AGREEMENT OR APPROVAL REQUIRED BY CONDITION**

**Reference No:** 2019/44/90422/E

**Site Address:** adj 20, Bank View, Birkenshaw, BD11 2AG

**Description:** Discharge conditions 3 (materials), 7 (ground investigation report), 8 (boundary treatment) on previous permission 2014/93679 for erection of detached dwelling

**Recommending Officer:** Josh Kwok

**DECISION – APPROVE DISCHARGE OF CONDITIONS 3 AND 8**

**I hereby authorise the approval of conditions 3 and 8 of this application for the reasons set out in the officer's report and recommendation annexed below in respect of the above matter.**

Rebecca Drake

***AUTHORISED OFFICER***

**Date: 09-May-2019**

## 2019/90422 - Officer Report

This application relates to planning permission for the erection of a detached dwelling on land adjacent to no.20 Bank View, Birkenshaw – 2014/93679. This application seeks to discharge conditions 3 (materials), 7 (ground investigation report) and 8 (boundary treatment).

### Condition 3 – Materials

*3. No development shall take place until samples of all facing and roofing materials have been submitted to and approved in writing by the Local Planning Authority and the development shall thereafter be carried out in accordance with the details so approved.*

**Reason:** *In the interests of visual amenity and to accord with policy BE1 of the Unitary Development Plan.*

The applicant has submitted photographs of natural stone and concrete tiles, which are considered acceptable. A site visit was undertaken on 27-Feb-2019. No issues regarding construction materials were identified during the visit.

### Condition 7 – Ground Investigation Report

*7. The development shall be carried out in accordance with the recommendations contained within the Geological and Mining Appraisal and Ground Investigation Report, including a scheme of remedial measures which shall be submitted to and approved in writing by the Local Planning Authority before development commences. The remedial measures shall be implemented in accordance with the approved details and retained thereafter.*

**Reason:** *So as to protect existing and future residents from the effects of historic coal mining legacy and to comply with Policy G6 of the Unitary Development Plan and guidance contained within the National Planning Policy Framework.*

The Coal Authority considered the submitted information to be inadequate for the discharge of this condition as the applicant appeared to resubmit the same Coal Mining Risk Assessment (CMRA) without providing further information in respect of remedial measures. The agent confirmed in an email received on 03-Apr-2019 that they adopted a set of remedial measures which were different from those specified in the CMRA. Due to the way this condition was worded, the remediation measures adopted by the agent do not comply with the requirements of condition 7. The agent was therefore advised to submit a variation/ removal of condition application to resolve the issue above.

### Condition 8 – Boundary Treatment

*8. Notwithstanding the submitted plans, full details of the position, height, and materials for all boundary treatments shall be submitted to and approved in writing by the Local Planning Authority before any*

*boundary treatments are first erected. The development shall then be completed in accordance with the approved details before the dwelling is first occupied and thereafter retained.*

**Reason:** *In the interests of visual amenity and to accord with policy BE1 of the Unitary Development Plan.*

The applicant has provided a site plan and photographs to illustrate the position, scale, design and materials of the boundary fencing. There would be a 1.5m high post and rail fencing to the west of the dwelling and a 1.8m high feather edges timber panel fencing to the east of the dwelling. The existing stone boundary wall to the north of the dwelling would be retained as well. Although a post and rail fencing is less effective than a timber panel fencing in terms of screening, it can be considered acceptable in this particular instance because the land immediately adjacent to the application site is marked as Green Belt land. It is unlikely to be developed for residential purposes. No residential amenity concerns are expected to arise as a result of the design of the proposed boundary treatments. Besides, the post and rail fencing would provide a natural and smooth transition between the urban grain and the open field adjacent to it. In short, the boundary treatment as proposed can be acceptable from a visual amenity perspective and compliant with condition 8 in the decision notice.

The condition cannot be fully discharged as it requires that the development is completed in accordance with the approved details before the dwelling is first occupied and that the boundary treatment is thereafter retained.

## **Decision Text**

### Condition 3 – Materials

The samples of construction materials for the external walls and roof as shown in the submitted photographs are considered to be acceptable from a visual amenity perspective and compliant with condition 3 of the original planning permission. This condition will be discharged upon completion of the approved development being constructed in accordance with these materials.

### Condition 7 – Ground Investigation Report

The applicant has resubmitted the same Coal Mining Risk Assessment for the discharge of condition 7. The Coal Authority consider the level of details to fall short of the requirement as prescribed in condition 7 of the original planning permission. For this reason, condition 7 cannot be discharged.

### Condition 8 – Boundary Treatment

The submitted block plan and photos show that a 1.5m post and rail fencing and a 1.8m timber panel fencing would be erected at the west boundary and the east boundary of the application site respectively. These details are considered to be acceptable for the purposes of this condition. However, the condition cannot be fully discharged as it requires that the development is

completed in accordance with the approved details before the dwelling is first occupied and that the boundary treatment is thereafter retained.

**NOTE:** The applicant is advised to submit a variation/ removal of condition application to address the discrepancy between the approved remediation measures in the Coal Mining Risk Assessment and the proposed remediation measures, which has been constructed in breach of condition 7 of the previous permission 2014/93679.

**Report Dated: 08-May-2019**