

**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: 2019/70/90648/E

Site Address: Red House, Bristfield Road, Bristfield, Dewsbury,
WF12 0NX

Description: Variation condition 2 (plans) on previous permission
2017/90677 for demolition of existing dwelling and
outbuilding and erection of new detached dwelling
with attached garage

Recommending Officer: Anthony Monaghan

DECISION – APPROVE VARIATION OF CONDITION 2

**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.**

Sarah Longbottom

AUTHORISED OFFICER

Date: 08-May-2019

SITE DESCRIPTION

The application relates to The Red house, Bristfield Road, Bristfield, a two storey, traditional stone built dwelling with stone slate roof. The dwelling has now been demolished along with a large single storey, detached outbuilding to the side of the dwelling which was used as garaging.

The site is located within the Green Belt.

DESCRIPTION OF PROPOSAL

This application is for a Variation of Condition 2 to the previously approved application, 2017/90677, for the demolition of the existing dwelling and the erection of a replacement dwelling. The new dwelling will be 2 storeys with a replacement garage to the side which would be attached to the dwelling by a two storey link element.

The main amendment to the scheme would be the slight reorientation of the dwelling within the plot to increase the external amenity space to the front of the building.

Other amendments to the application comprise a slight increase to the height of the roof of the link element, alterations to the fenestration and the removal of the water tabling to the roof.

There is also a slight increase to the external paved area to the rear of the proposed dwelling.

The alterations also include changes to the internal layout and external landscaping, however these amendments were assessed and approved as part of a previous variation of condition (2018/90309)

There are no other apparent amendments proposed on the submitted plans.

History of negotiations and amendments received.

24/04/19 Amended plans received showing the ridge height of the link extension reduced and the fenestration to the front altered after concerns raised by the officer.

RELEVANT HISTORY

2018/91589. Discharge of conditions 3-6 on previous permission 2018/90309 for the variation of Condition 2 to the previously approved application, 2017/90677, for the demolition of the existing dwelling and outbuilding and erection of a detached dwelling with attached garage. Split decision.

2018/90309. Variation of Condition 2 to the previously approved application, 2017/90677, for the demolition of the existing dwelling and outbuilding and erection of a detached dwelling with attached garage. Approved.

2017/90677. Demolition of existing dwelling and outbuilding and erection of detached dwelling with attached garage. Approved.

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 statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019).

The site is within the Green Belt on the Kirklees Local Plan.

Kirklees Local Plan (KLP)

PLP 22. Parking (as modified).

PLP 24. Design (as modified).

PLP 30. Biodiversity and geodiversity (as modified).

PLP 33. Trees (as modified).

PLP 53. Contaminated and unstable land (as modified).

PLP 57. The extension, alteration or replacement of existing buildings in the Green Belt (as modified).

National Policies and Guidance:

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 19th February 2019, 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 9 - Promoting sustainable transport.

Chapter 12 – Achieving well designed places.

Chapter 13 – Protecting Green belt Land.

Chapter 14- Meeting the challenge of climate change, flooding and coastal erosion.

Chapter 15 – Conserving and enhancing the natural environment.

Other policy considerations.

Greater flexibility for planning permissions published 2009.

Section 73 of the Town and Country Planning Act 1990.

Access Considerations

CONSULTATION RESPONSES

None required for the Variation of Condition however the original responses are relevant to any conditions which may be required.

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

KC Ecology. 18/04/17. Recommend a presence/absence survey is undertaken.

Bat survey submitted 9/08/17.

20/11/17. The survey, report and method statement submitted (if secured through condition and implemented) are sufficient to ensure criminal offences and impacts to roosting bats are avoided. An additional condition is required in respect of nesting birds.

KC Trees. No objection subject to appropriate footnote.

Coal Authority. A Coal Mining Risk Assessment has been submitted which identifies any risks present. More detailed considerations of ground conditions are required by an intrusive site investigation and remediation work if required. These measures should be conditioned.

PUBLIC/MEMBERS RESPONSE

Final date of publicity 17/04/19

No representations received.

ASSESSMENT

Principle of Development.

Section 73 of the Town and Country Planning Act 1990 allows for the variation or removal of a condition on a previous permission. Variation/removal of condition 2 on the original approval would allow for the submission of amended plans for a minor material amendment to the permission.

It should be noted that Section 73 does not allow for the extension of time to the original commencement of development date, however it is noted from the site visit that as the dwelling has been demolished the development has commenced.

There is no statutory definition of what is considered as a minor material amendment to a planning application however it is likely to include any amendment where the its scale and/or its nature results in a development which is not substantially different from the one which has been approved.

The main amendment is the proposed reorientation of the dwelling and garage within the site. The building would be rotated clockwise by a few degrees around the western end of the garage which remain in the same position. As the site is fairly large with any other neighbouring properties some distance away it would have no effect on the relationship with other properties. It would also have an additional impact on the openness of the Green Belt.

The amendments to the building are mainly alterations to fenestration, internal layout and external landscaping, there would be a slight increase to the height of the link extension however in terms of the principle it would not result in a material increase in the scale of the development.

With regard to other relevant factors, the Local Plan has now been adopted since the previous approval, however it is considered that there is nothing in the relevant policies which would affect the principle of development.

Given the above, it is considered that the principle of development was established with the previous application and the proposals would, in principle be acceptable as a minor material amendment.

Design.

The proposals would result in minor changes to the front elevation of the dwelling; however, following the submission of the amended plans, this would not affect the overall design and character of the proposed development.

The changes to the internal layout of the dwelling would result in an improvement to the way the space functions. There would be a slight increase to the height of the link element, however it would still retain the subordinate appearance which is an important factor in ensuring the development as a whole does not appear as one bulky element.

As such these proposals are considered acceptable.

Overall it is considered that the proposals are sympathetic to the location and as such it is considered that the development is in accordance with policies PLP 24 (as modified) and PLP 57 (as modified) of the Kirklees Local Plan and Chapters 12 and 13 of the NPPF.

In terms of conditions these should be for the materials; in addition, as it is considered that any large extensions built under permitted development rights, could result in a substantial increase in the scale of the dwelling and as such cause harm to the openness of the Green Belt, permitted development rights should be removed for extensions and outbuildings under classes A, B and E of the GPDO.

Residential Amenity

The dwelling is a considerable distance (over 50m) from the nearest residential property and is separated by an agricultural field, as such there is unlikely to be any impact on residential amenity from the proposals which are considered in accordance with policy PLP 24 (as modified) of the KLP.

Highways Issues.

The dwelling is located on a large plot with an existing driveway hard-standing to the rear of the site; this will be retained and is sufficient for several vehicles. The proposal would also include a double garage. These have not altered from the previous approval.

A condition should be included that the surfacing of the parking areas should be provided and sustainably drained.

Subject to appropriate condition, there will be no impact on highway safety from the proposals which are considered in accordance with policy PLP 21 (as modified) of the KLP.

Other Issues.

Trees. Within the site are a number of mature trees; including a row of 8 poplar trees to the south western boundary of the site. The protected trees are to be retained as are most of the other mature trees, although 2 closest to the development, on the rear of the site are to be removed.

The council's Arboriculturalist has been consulted and has not objected to the proposals however a footnote has been requested to bring to the attention of the developer that the trees on this boundary are protected. Subject to appropriate footnote the proposals are considered to be in accordance with policy PLP 33 (as modified) of the KLP and chapter 15 of the NPPF.

Ecology. The site is within a Bat alert area and due to the type of building and nature of the development a Bat Survey is required. Initially a Bat scoping survey was submitted which recommended that Bat presence/absence surveys are undertaken during the activity season. This survey was submitted 9/08/17 and is sufficient to ensure that impacts to roosting bats are avoided.

The Council's Ecologist has requested that conditions are included with any permission requiring that the work is carried out in accordance with the submitted method statement and evidence submitted that this has been carried out.

Subject to appropriate conditions the proposals are considered to be in accordance with policy PLP 30 (as modified) of the KLP and Chapter 15 of the NPPF.

Coal Mining Risk. The site lies within a High Risk area and as such a Coal Mining Risk Assessment is required. This was submitted with the application and was acceptable. The Coal Authority has suggested standard conditions to require phase 2 intrusive investigations and remediation work if required. A discharge of conditions application has subsequently been submitted including details of the intrusive site investigations and the remediation strategy.

Subject to appropriate conditions (discussed below) the proposals are considered to be in accordance with policy PLP 53 (as modified) of the KLP and Chapter 15 of the NPPF.

Relevant conditions.

A section 73 application is a variation of a previous permission, but will also be a stand-alone permission, as such the conditions from the previous approval should be attached where relevant. In this case as the development has commenced there is no requirement for a condition limiting the time before a development must be commenced.

In terms of other conditions a Discharge of condition application has been submitted for conditions 3-6 on approval 2018/90309; conditions 3-6 relate to the historic Coal Mining on the site. A split decision was recorded and only conditions 3 (phase II intrusive site investigation) and 4 (remediation strategy) have been discharged, therefore conditions 5 (site remediation), and condition 6 (Validation Report) shall be repeated.

Representations.

Final date of publicity 17/04/19

No letters of representation received.

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.

Decision Authorisation - Delegated Powers

Application Number: 2019/90648

Officer Recommendation: Approve variation of condition 2.

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, in the interests of the protection of the openness and character of the Green Belt and local area and to accord with Policies PLP1 (as modified), PLP 21 (as modified), PLP 24 (as modified), PLP 30 (as modified), PLP 53 (as modified) and PLP 57 (as modified) of the Kirklees Local Plan and Chapters 12 and 13 of the National Planning Policy Framework.

2. Remediation of the site shall be carried out and completed in accordance with the approved Remediation Strategy submitted by Adobe Builders dated 8th October 2018. In the event that remediation is unable to proceed in accordance with the approved Remediation Strategy or contamination not previously considered [in either the Preliminary Risk Assessment or the Phase II Intrusive Site Investigation Report] is identified or encountered on site, 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 shall not recommence until proposed revisions to the Remediation Strategy have been submitted to and approved in writing by the Local Planning Authority. Remediation of the site shall thereafter be carried out in accordance with the approved revised Remediation Strategy.

Reason: To address coal mining legacy issues and to ensure the site is fit to receive new development and to accord with Policy PLP 53 (as modified) of the Kirklees Local Plan and guidance given in the National Planning Policy Framework

3. Following completion of any measures identified in the approved Remediation Strategy or any approved revised 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 remediation measures for the whole site have been completed in accordance with the approved Remediation Strategy or the approved revised Remediation Strategy and a Validation Report in respect of those remediation measures has been approved in writing by the Local Planning Authority.

Reason: To address coal mining legacy issues and to ensure the site is fit to receive new development and to accord with Policy PLP 53 (as modified) of the Kirklees Local Plan and guidance given in the National Planning Policy Framework

4. The development hereby approved shall be faced in dyed and tumbled, natural coursed stone.

Reason: In the interests of visual amenity and the character of the Green Belt and local area and to accord with Policies PLP 24 (as modified) and PLP 57 (as modified) of the Kirklees Local Plan and Chapters 12 and 13 of the National Planning Policy Framework.

5. The roofing material shall be Greys Artstone.

Reason: In the interests of visual amenity and the character of the Green Belt and local area and to accord with Policies PLP 24 (as modified) and PLP 57 (as modified) of the Kirklees Local Plan and Chapters 12 and 13 of the National Planning Policy Framework.

6. All new windows and door frames shall be recessed a minimum of 75mm from the face of the building and so retained thereafter.

Reason: In the interests of visual amenity and character of the Green Belt and local area and to accord with Policies PLP 24 (as modified) and PLP 57 (as modified) of the Kirklees Local Plan and Chapters 12 and 13 of the National Planning Policy Framework.

7. The boundary treatment shall be a dry stone wall of random natural stone of a type to match that used on the existing boundary.

Reason: In the interests of visual amenity and character of the Green Belt and local area and to accord with Policies PLP 24 (as modified) and PLP 57 (as modified) of the Kirklees Local Plan and Chapters 12 and 13 of the National Planning Policy Framework.

8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that Order with or without modification) no development within Schedule 2, Part 1 Classes A, B and E, shall take place without the prior written approval of the Local Planning Authority.

Reason: In the interests of visual amenity and the protection of the openness and character of the Green Belt and local area and to accord with Policies PLP 24 (as modified) and PLP 57 (as modified) of the Kirklees Local Plan and Chapters 12 and 13 of the National Planning Policy Framework.

9. The development shall be carried out in complete accordance with the Method Statement in section 5 of the Bat Survey Report by Quants Environmental received 9/08/17. The proposed mitigation measures shall be provided before the development is first brought into use and retained thereafter.

Reason: To provide a biodiversity net gain in accordance with Policy PLP 30 (as modified) and the requirements of Chapter 15 of the National Planning Policy Framework.

10. The development shall not be brought into use until all areas indicated to be used for access/parking/turning on the approved plan(s) have been laid out with a hardened and drained surface in accordance with the Communities and Local

Government; and Environment Agencies '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) (England) Order 2015 (or any order revoking or re-enacting that Order with or without modification) this shall be so retained, free of obstructions and available for the use(s) specified on the submitted/listed plan(s) thereafter.

Reason: In the interests of amenity and traffic safety, to ensure adequate space within the site and to accord with Policy PLP 21 (as modified) of the Kirklees Local Plan and Government policy in Chapter 14 of the National Planning Policy Framework, Meeting the challenge of climate change, flooding and coastal change.

NOTE: It is brought to the attention of the applicant that the site includes/adjoins a tree protection area, 26/76/g7 which comprises of 8 poplars. It is an offence to fell, prune, lop or otherwise harm the trees.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Location plan	2458- LOC	1	5/03/19
Proposed site plan.	2458-10	1	5/03/19
Proposed elevations and floor plans.	2458-11A	2	24/04/19
Coal Mining Risk Assessment	Jnpgroup ref: B21627/CMRA	1	28/02/17
Design and Access Statement.	Acumen	1	28/02/17
Bat scoping survey	Quants Environmental. Feb 2017	1	28/02/17
Bat Survey	Quants Environmental. August 2017	1	9/08/17
Additional supporting information.	Various.	1	28/06/17
Remediation Strategy.	e-Mail from Alex Moscovitch (Adobe Builders)	1	8/10/18

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. A discussion took place with the agent regarding the proposed fenestration detail and the height of the link

element. An amended plan was submitted which addressed these issues, the decision and conditions is based on this amended plan.

Report Dated: 1/05/19