

**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: 2020/44/93563/W

Site Address: 81, Common End Lane, Lepton, Huddersfield, HD8 0AF

Description: Discharge conditions 4, 5, 6, 7 on previous permission 2020/91092 for demolition of existing dwelling (no 81 Common End Lane) to be replaced with a new detached dwelling

Recommending Officer: Katie Chew

DECISION – Partial Approval of Conditions

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

Teresa Harlow

AUTHORISED OFFICER

Date: 22-Jan-2021

Officer Report

Site Address - 81, Common End Lane, Lepton, Huddersfield, HD8 0AF

Proposal - The application seeks to discharge conditions 4, 5, 6, 7 on previous permission 2020/91092 for demolition of existing dwelling (no 81 Common End Lane) to be replaced with a new detached dwelling.

Officer note: The application was originally submitted to discharge conditions 5, 6, and 7 on previous permission 2020/91092 only however, during the course of application the applicant's agent requested condition 4 also be discharged under this application. Given that the application was in the early stages it was in officer's opinion that this was deemed to be acceptable in this instance.

Condition 4 (Ecological Design Strategy)

4. Prior to the hereby approved dwelling being first brought into use an ecological design strategy (EDS) addressing mitigation and enhancement has been submitted to and approved in writing by the Local Planning Authority. The EDS shall include the following.

- a) Purpose and conservation objectives for the proposed ecological works.*
- b) Location (shown on appropriate scale plans) of specific make and model, or design, of habitat boxes, such as bat boxes, bird boxes, and hedgehog refuges. Habitat boxes to be integral to new structures where appropriate.*
- c) Details of how lighting design will not impede the function of the adjacent Kirklees Wildlife Habitat Network.*
- d) Details of how the design of boundary treatments will not obstruct the movement of hedgehogs.*
- e) Planting schedule and planting plan showing the inclusion of native species of tree and shrub to be included within/at the boundary of the application area, and how this achieves the stated purpose.*
- f) Details of maintenance.*

The EDS shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.

Reason: *To ensure the development hereby permitted provides ecological enhancement measures sufficient to provide a biodiversity net gain in accordance with Policy LP30 of the Kirklees Local Plan and Policies in the National Planning Policy Framework.*

Condition 5 (Intrusive Site Investigations)

5. No development shall commence (excluding the demolition of existing structures) until intrusive investigations have been carried out on site to establish the exact situation in respect of coal mining legacy features. The findings of the intrusive site investigations shall be submitted to the Local

Planning Authority for consideration and approval in writing. The intrusive site investigations shall be carried out in accordance with authoritative UK guidance.

Reason: *The undertaking of intrusive site investigations, prior to the commencement of development, is considered to be necessary to ensure that adequate information pertaining to ground conditions and coal mining legacy is available to enable appropriate remedial and mitigatory measures to be identified and carried out before building works commence on site. This is in order to ensure the safety and stability of the development, in accordance with paragraphs 178 and 179 of the National Planning Policy Framework.*

Condition 6 (Remediation Scheme)

6. Where the findings of the intrusive site investigations (required by the condition 5 above) identify the coal mining legacy on the site poses a risk to surface stability, no development shall commence (excluding the demolition of existing structures) until a detailed remediation scheme to protect the development from the effects of such land instability has been submitted to the Local Planning Authority for consideration and approval in writing. Following approval, the remedial works shall be implemented on site in complete accordance with the approved details.

Reason: *The undertaking of intrusive site investigations, prior to the commencement of development, is considered to be necessary to ensure that adequate information pertaining to ground conditions and coal mining legacy is available to enable appropriate remedial and mitigatory measures to be intensified and carried out before building works commence on site. This is in order to ensure the safety and stability of the development, in accordance with paragraphs 178 and 179 of the National Planning Policy Framework.*

Condition 7 (Remediation Strategy/Validation Report)

7. In the event that contamination not previously identified by the developer prior to the granting of this planning permission is encountered during the development, all groundworks in the affected area (except for site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within 2 working days. Groundworks in the affected area 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 implementation and completion of the approved remediation measures. Therefore, 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 by the Local Planning Authority, no part of the site shall be brought into use until such time as the 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: *To ensure the safe occupation of the site in accordance with Policy LP53 of the Kirklees Local Plan and paragraph nos. 178 and 179 of the National Planning Policy Framework.*

Officers Assessment:

Condition 4 (Ecological Design Strategy)

The applicant has submitted an Ecological Design Strategy (report reference: LC.CE.6.2020) dated 2nd November 2020 to support the application.

KC Ecology Unit were consulted on the application and provide comments in relation to condition no. 4.

The submitted Ecological Design Strategy (EDS) includes prescriptions for integral faunal boxes and native planting on the site as well as a schedule of when these will be installed within the construction work schedule. KC Ecology therefore conclude that provided that all works are carried out in accordance with the ecological measures set out within the EDS, officers confirm the condition would be satisfied. There is an ongoing requirement that *“features shall be retained in that manner thereafter”* so the condition cannot be ‘discharged’.

Conditions 5, 6 & 7 (Site Investigations and Coal Risk)

The applicant has submitted a Coal Investigation Report by Rogers Geotechnical dated 29th September 2020 (ref: C902/20/E/1438) to support the application.

KC Environmental Health were consulted on the application and provide comments in relation to conditions 5, 6 & 7. Their comments relate only to the land contamination aspects of the above report.

Condition 5 -

Intrusive investigations have been undertaken within the above report to establish the exact situation in respect of coal mining legacy features. Evidence was found during the investigation to suggest coal workings (i.e. flush losses, voids, and intact coal). Ground gas concentrations of methane and carbon dioxide were not detected during the drilling, however due to the water flush drilling technique adopted and the fractured nature of the ground a credible risk from mine gases may remain. The report concluded the workings were likely associated with the Black Bed Coal seam and a moderate risk from mine gas remains. The report then recommended gas monitoring is necessary.

Whilst ENVH agree a credible risk from mine gas may exist at the site and that further investigation is required, the coal mining legacy remains only

partially investigated. As such, Condition 5 must remain as further information is required relating to mine gas. Any future gas monitoring should be carried out in accordance with CIRIA 665 - *Assessing risks posed by hazardous ground gases to buildings* guidance.

Officer note: A Gas Monitoring letter by Rogers Geotechnical Ltd, dated 5th January 2021 (ref: C902/20/E/1438) has been provided by the applicant's agent. Four ground gas monitoring visits were undertaken between 27th November and 22nd December 2020. The report details that a maximum methane concentration of 0.1% v/v, and a maximum carbon dioxide concentration of 7.5% v/v were recorded. Oxygen levels ranged between 10.7% and 21.7% v/v and peak flow reached 0.1 litres/h. satisfactory justifications for the cessation of gas monitoring were provided. From the readings the gas screening value was calculated as 0.0001 l/hr for methane and a GSV of 0.0075 l/hr for carbon dioxide. The report then considers that as the carbon dioxide concentration exceeded 5% v/v that the site should be upgraded to a Characteristic Situation Level 2 (CS2) following CIRIA C66 guidance. Environmental Health agree with these findings and are content for condition 5 to be discharged.

Condition 6 –

As detailed in the submitted report, KC Environmental Health consider that further investigation is necessary to determine the risk from mine gas to end-users. In light of this, the site is not fully risk assessed and a remediation strategy will likely be required following the further work. At this stage, they conclude that it would be unreasonable to discharge Condition 6.

Officer note: Within the Gas Monitoring Letter discussed above it discusses that the site should be upgraded to a Characteristic Situation Level 2 (CS2) and details the combination of gas protection elements to be implemented at the development. The listed elements will achieve a minimum total score of 3.5. satisfactory information is also provided relating to the installation of the gas protection measures. Environmental Health are satisfied that the proposals will provide the necessary protection against ground gas exposure at the site. The combination of gas protection elements should be implemented as detailed. Following which, a Phase 4 report should be submitted for consultation detailing the validation of the gas protection measures, to demonstrate the site is safe for end-use. Environmental Health are therefore content, on the basis, for condition 6 to be discharged PROVIDED *“the remedial works [are] implemented on site in complete accordance with the approved details”*.

Condition 7 –

KC Environmental Health state that the above-mentioned credible risks from ground gas come within the scope of this condition. Until the ground gas situation at the site has been fully characterised and addressed and the development has finished and a validation report has been submitted as required by Condition 7, and accepted, Condition 7 cannot be discharged at

this time. There is still a chance of unexpected contamination to become apparent.

Officer note: Following the submission of the above gas monitoring letter by Rogers Geotechnical Ltd, Environmental Health conclude that until the development has finished and a validation report has been submitted and accepted, as per the requirements of Condition 7, then they cannot recommend the discharge of condition 7 at this time as there is still a chance of unexpected contamination to become apparent.

The Coal Authority were also consulted on the application. Their particular interest in this instance lies with Conditions 5 and 6 of planning permission 2020/91092.

The report indicates that three boreholes were drilled at the site to a maximum depth of 30.0m bgl in order to investigate possible unrecorded shallow coal mining legacy which could pose a risk to the proposed development. The report also states that whilst the Better Bed Band coal seam does not appear to have been worked beneath the site, it highlights that voids, considered to be associated with workings within the Black Bed Coal seam, were encountered during drilling. Based on the thickness of the voids and their depth, the report considers that instability derived from these workings is unlikely, but it is unable to discount the potential for voids migrating to the surface. Other losses of flush during drilling were attributed to joints and fractures within the rock.

On the bases of the results of the intrusive site investigations, the report author recommends that the dwelling should be constructed with raft foundations as a precautionary measure against shallow coal mining related settlement. Based on the information submitted, and the professional opinions and recommendations of the report author, the Coal Authority wishes to raise no objection to the LPA discharging condition 5. They would also have no objection to the LPA discharging Condition 6 of the issued consent providing that the dwelling is constructed with a raft foundation, as recommended in the report, which is designed by a suitably qualified and experienced person to adequately mitigate against shallow coal mining related ground movement.

Recommendation – Split Decision

Decision Notice Text

Split decision

Refuse

Condition 7 (Remediation Strategy/Validation Report)

Whilst a Gas Monitoring letter by Rogers Geotechnical Ltd, dated 5th January 2021 (ref: C902/20/E/1438) was submitted by the applicant's agent in support of this condition. Environmental Health conclude that until the development has been completed and a validation report has been submitted and accepted, as per the requirements of Condition 7, then condition 7 cannot be discharged at this time as there is still a chance of unexpected contamination to become apparent. Condition 7 of 2020/91092 cannot therefore be discharged at this time.

Approve

Condition 4 (Ecological Design Strategy)

The listed details are considered to be acceptable for the purposes of Condition 4:

- Ecological Design Strategy (report reference: LC.CE.6.2020) dated 2nd November 2020, submitted alongside the discharge of conditions application (received 9th November 2020).

The condition will be partly satisfied upon the completion of the development in accordance with these details. There is an ongoing requirement within the condition stating that “*features shall be retained in that manner thereafter*”. This means that the strategy as approved and implemented will need to be retained in accordance with the maintenance schedule.

Condition 5 (Intrusive Site Investigations)

The listed details are considered to be acceptable for the purposes of Condition 5:

- Coal Investigation Report by Rogers Geotechnical dated 29th September 2020 (ref: C902/20/E/1438) submitted alongside the discharge of condition application (received on 21st October 2020);
- Gas Monitoring letter by Rogers Geotechnical Ltd, dated 5th January 2021 (ref: C902/20/E/1438) submitted alongside the discharge of condition application (received 5th January 2021).

Condition 5 of 2020/91092 can therefore be discharged.

Condition 6 (Remediation Scheme)

The listed details are considered to be acceptable for the purposes of Condition 6:

- Coal Investigation Report by Rogers Geotechnical dated 29th September 2020 (ref: C902/20/E/1438) submitted alongside the discharge of condition application (received on 21st October 2020);
- Gas Monitoring letter by Rogers Geotechnical Ltd, dated 5th January 2021 (ref: C902/20/E/1438) submitted alongside the discharge of condition application (received 5th January 2021).

Condition 6 of 2020/91092 can therefore be discharged; subject to the dwelling being constructed using a raft foundations (as recommended in the report) which is designed by a suitably qualified and experienced person to adequately mitigate against shallow coal mining related ground movement.

Report dated 22/01/2021.

