

**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:** 2021/44/90875/W

**Site Address:** Barn at Harroyd Farm, Dean Brook Road,  
Netherthong, Holmfirth, HD9 3TE

**Description:** Discharge conditions 4, 5, 13 on previous permission  
for 2017/92774 for demolition of existing building and  
erection of detached dwelling

**Recommending Officer:** Stuart Howden

**DECISION – Details submitted for discharge of conditions refused**

**I hereby authorise the refusal 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: 27-Apr-2021**

## **Officer Report - Discharge of Conditions Application**

The application seeks to discharge conditions 4, 5 and 13 on previous permission 2017/92774 for demolition of existing building and erection of detached dwelling at Barn at Harroyd Farm, Dean Brook Road, Netherthong, Holmfirth, HD9 3TE. Planning permission for 2017/92774 was approved on 16<sup>th</sup> November 2021.

### **Condition 4: External Facing Materials**

#### Wording

4. The hereby approved dwelling shall be externally faced in coursed natural stone and artificial stone roof tiles, details of which shall be submitted to and approved in writing by the Local Planning authority before commencing the superstructure of the approved dwelling. The development shall thereafter be undertaken in accordance with the details so approved.

**Reason:** In the interests of visual amenity, the character of the local area and to preserve the openness of the green belt and to accord with Policies BE1 and BE2 of the Kirklees Unitary Development Plan and Policies PLP 24 of the Publication Draft Local Plan and Policies in Chapters 12 and 13 of the National Planning Policy Framework.

#### Officer Assessment

Photos of natural stone and stone roof tiles have been submitted alongside this application. The applicant's agent, on request, has provided further details by email in relation to these materials noting that the stone is reclaimed from the barn that was demolished on the site, and the stone slate is from Easy Pave (and is the Indian Stone, aged Yorkshire Blend).

The re-use of the stone as displayed in the submitted photo is considered acceptable, but it is probable additional stone will be required for the construction of the walls of the dwelling beyond the reclaimed stone available at the site, and given this, details of additional stone should be provided. As details of the additional natural stone have not been submitted, it is considered that Condition 4 should not be discharged.

In addition to this, the applicant's agent was asked by e-mail whether the stone slate was artificial as worded in Condition 4, or natural. No clarity has been provided on this matter and details of this were not clear from searching online for the stone slate proposed. Given this, it is not clear as to whether the slate sample would be artificial stone slate as requested by this condition, therefore Condition 4 should not be discharged. If it is proposed to use natural stone slates, then a variation of condition (Section 73) application or potentially a non-material amendment to alter the wording of the condition would be required.

### **Condition 5: Waste storage area and private access improvements scheme**

### Wording

5. Before development commences on the superstructure of the hereby approved dwelling details of a full scheme of works for the waste storage area and for improvements to the private access track from Dean Brook Road leading to the new dwelling, as shown on drawing no. 124/2.004 Revision D shall be submitted to and approved in writing by the Local Planning Authority. The details of improvements to be submitted shall include:

- introduction of passing places,
- surfacing details, and
- re siting of an existing street lighting column

The development shall be completed in accordance with the approved details before occupation of the approved dwelling and thereafter retained in accordance with the approved details.

**Reason:** In the interests of highway/pedestrian safety and to ensure that the development shall protect the visual amenity and openness of the Green Belt and to accord with Policies T10 of the Kirklees Unitary Development Plan, PLP21 and PLP57 of the Publication Draft Local Plan and as well as guidance in the National Planning Policy Framework

### Officer Assessment

A drawing relating to the site entrance/access has been submitted in relation to this condition (Drawing No. 186-29-410).

The submitted plan displays a re-aligned stone wall to the front, with the height tapered to tie in with the existing wall. A gabion basket retaining wall along the private track is also proposed with the existing ground between the track and the re-aligned front wall re-profiled at a max of 1:3. A bin storage area is also displayed adjacent to the private access track.

However, despite being requested within the wording of the condition, details of passing places, surfacing details and the re-siting of the existing street light have not been provided.

Further to this, it is considered that the works proposed to the access go beyond the scope what was approved under the planning application, due to the creation of a new retaining wall adjacent to the private access track and the creation of a new kerb outside the red line area (both features were not initially proposed or approved).

For the above reasons, it is considered that Condition 5 cannot be discharged.

### **Condition 7: Unsuspected Contamination**

### Wording

13. 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. 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 by 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:** To identify and remove unacceptable risks to human health and the environment and in accordance with Policies BE1 and G6 of the Kirklees Unitary Development Plan and PLP53 of the Publication Draft Local Plan as well as guidance in the National Planning Policy Framework.

#### Officer Assessment

To discharge this condition, the following documents have been received.

- A Phase 2 Geo-Environmental Investigation by Dunelm (report ref: M751)
- A Remediation Strategy by Beam Consulting dated 6th November 2019 (no reference)

The Council's Environmental Health Officer has assessed these reports and has noted the following:

*"The Phase 2 Geo-Environmental Investigation by Dunelm (report ref: M751) identified chrysotile asbestos in 2 samples taken from WS02 and WS05 at 0.10 m bgl. The gravimetric analysis confirmed asbestos concentrations of 0.001% and 0.005% respectively. Lead contamination at WS01 (220 mg/kg) is also reported but the author considers that since WS01 is outside the proposed residential development area, no receptors will be affected by the lead contamination. The report concludes by detailing that a remediation strategy will be produced.*

*In the Remediation Strategy by Beam Consulting, it is proposed that the affected made ground is removed and buried at two locations (noted as 'A' and 'B') and capped with a clean cover system to remove the significant*

*pollutant linkages. The report considers that 450mm subsoil and 150mm topsoil upon a 150mm no-dig layer (either membrane or granular material) will provide sufficient clean cover.*

*Whilst I agree with the requirement for remediation there are several issues requiring clarification. For clarity, these have been addressed on a point-by-point basis below:*

*1. It is unclear from the report where the clean cover system will be applied. For instance, the report reads as locations A and B will be remediated using a clean cover system. Yet there is insufficient information concerning the remediation of excavated boreholes (WS02 and WS05) and whether this extends to WS01. Further clarification is required.*

*Paragraph 178b of the NPPF states that planning policies and decisions should ensure that after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990. So, essentially, we want to ensure that all soft-landscaping areas within the planning boundary are suitable for its intended end-use i.e. residential.*

*2. The remediation strategy fails to provide sufficient information concerning the lateral and vertical extents of asbestos and lead contamination and how the excavated surfaces will be validated. Further information is required detailing how the lateral and vertical extents of asbestos will be confirmed and how the excavation surfaces will be validated to confirm no contamination remains*

*3. The remediation strategy fails to provide any information with regards to the source of clean cover material and the proposed screening to confirm the suitability of the soils. Further information is required detailing the source of clean cover, any additional testing, and the assessment criteria. These should be presented as part of the remediation strategy.*

*4. Whilst the remediation strategy states a validation report will be produced, the remediation strategy fails to include important validation proposals, e.g., how the depth of the clean cover will be verified. These must be included in any robust remediation strategy.*

*5. The clean cover proposed (450mm subsoil and 150mm topsoil upon a 150mm no-dig layer of either membrane or granular material) should be finalised at this stage. Due to the concentration of asbestos reported we are not prepared to accept the remediation proposals because they do not include the provision of a 1000mm cover system within all areas where asbestos fibres will remain within the underlying ground and do not confirm the provision of a geotextile membrane.”*

Given the issues raised above by the Council's Environmental Health Officer, it is considered that the information received in support of Condition 13 is unsatisfactory and that the Condition 13 cannot be discharged.

Further information in relation to the remediation of contaminated land is required in order to discharge this condition. For assistance, the Environmental Health Officer notes that the requirements for a Phase 3 Report (remediation strategy) can be found in the Yorkshire and Lincolnshire Pollution Advisory Group (YALPAG) *Development on Land Affected by Contamination: Technical Guidance for Developers, Landowners and Consultants (June 2020, Version 11.2)* guidance document. Further guidance specific to cover systems can be found in YALPAGs Verification Requirements for Cover Systems (dated November 2017, version 3.4) document.

## **Recommendation – Refuse**

### **Decision Text**

#### **Refuse**

##### **Condition 4 (External Facing Materials)**

Photos of natural stone and stone roof tiles have been submitted alongside this application. The applicant's agent, on request, has provided further details by email in relation to these materials noting that the stone is reclaimed from the barn that was demolished on the site, and the stone slate is from Easy Pave (and is the Indian Stone, aged Yorkshire Blend).

The re-use of the stone as submitted in the photo is considered acceptable, but it is likely additional stone will be required for the construction of the walls of the dwelling beyond the reclaimed stone available at the site, and given this, details of additional stone should be provided. As details of the additional natural stone required for the walls of the dwelling have not been submitted, Condition 4 cannot be discharged. If it is confirmed that only re-used stone from the site is required then this part of condition 4 would be satisfied.

In addition, it is unclear as to whether the stone slate proposed is artificial as worded in Condition 4, or natural, therefore Condition 4 cannot be discharged. Whilst the use of natural Indian slate is likely acceptable, if it is proposed to use such natural stone slates, then a variation of condition (Section 73) application, or an application for a non-material amendment to the wording of condition 4, would be required.

##### **Condition 5 – Waste storage area and private access improvements scheme**

Details of passing places, surfacing details and the re-siting of the existing street light, which were requested within the wording of the condition have not been displayed. Further to this, the works proposed to the access go beyond the scope what was approved under the planning application, due to the creation of a new retaining wall adjacent to the private access track and the creation of a new kerb outside the red line area (both features which were not initially proposed or approved and would need to be made under a Section 73 application). For these reasons, Condition 5 cannot be discharged.

### **Condition 13 (Contamination)**

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*1. It is unclear from the report where the clean cover system will be applied. For instance, the report reads as locations A and B will be remediated using a clean cover system. Yet there is insufficient information concerning the remediation of excavated boreholes (WS02 and WS05) and whether this extends to WS01. Further clarification is required.*

*Paragraph 178b of the NPPF states that planning policies and decisions should ensure that after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the*

*Environmental Protection Act 1990. So, essentially, we want to ensure that all soft-landscaping areas within the planning boundary are suitable for its intended end-use i.e. residential.*

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*3. The remediation strategy fails to provide any information with regards to the source of clean cover material and the proposed screening to confirm the suitability of the soils. Further information is required detailing the source of clean cover, any additional testing, and the assessment criteria. These should be presented as part of the remediation strategy.*

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*5. The clean cover proposed (450mm subsoil and 150mm topsoil upon a 150mm no-dig layer of either membrane or granular material) should be finalised at this stage. Due to the concentration of asbestos reported we are not prepared to accept the remediation proposals because they do not include the provision of a 1000mm cover system within all areas where asbestos fibres will remain within the underlying ground and do not confirm the provision of a geotextile membrane.”*

Given the issues raised above by the Council’s Environmental Health Officer, it is considered that the information received in support of Condition 13 is unsatisfactory and that the condition 13 cannot be discharged.

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**Report Dated:**

26/04/2021
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