

# **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:         | <b>2021/70/93928/W</b>                                                                                                                                                           |
| Site Address:         | Former Midlothian Garage, New Mill Road, Holmfirth,<br>HD9 7LN                                                                                                                   |
| Description:          | Variation of condition 1 (Plans) on previous<br>permission 2018/91579 reserved matters application<br>pursuant to outline application 2015/93824 for erection<br>of 56 dwellings |
| Recommending Officer: | Nick Hirst                                                                                                                                                                       |

**DECISION – Variation of Conditions- Approved**

**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.**

David Wordsworth

***AUTHORISED OFFICER***

Date: 07-Feb-2022

**Application:** 2021/70/93928/W

**Site:** Former Midlothian Garage, New Mill Road, Holmfirth, HD9 7LN

**Proposal:** Variation of condition 1 (Plans) on previous permission 2018/91579 reserved matters application pursuant to outline application 2015/93824 for erection of 56 dwellings

### Site Description

The application site comprises an area of 2.25 ha and is located on the western side of New Mill Road, Holmfirth. The site is formerly accommodated Midlothian garage but is now being developed for residential use.

On the opposite side of New Mill Road are residential properties and there is a large, detached dwelling located to the south. To the north is a tennis club, and several small business units, these are accessed off Berry Bank which is also a public footpath. To the west of the site is former railway line.

### Description of Proposal

Permission is sought to vary condition 1, which is as follows:

*1. The development hereby permitted shall be carried out in complete accordance with the approved plans and specification except as may be require by other conditions.*

**Reason:** *So as to ensure the satisfactory appearance of the development upon completion.*

The applicant wishes to amend house types of 'phase 2', as follows:

| Plot | Former Unit Type | Proposed Unit Type |
|------|------------------|--------------------|
| 22   | Brearley – 4bed  | Venice – 4bed      |
| 23   | Lawton – 3bed    | Roma – 3bed        |
| 24   | Lawton – 3bed    | Roma – 3bed        |
| 25   | Brearley – 4bed  | Venice – 4bed      |
| 26   | Brearley – 4bed  | Venice – 4bed      |
| 27   | Carron – 4bed    | Florence – 4bed    |
| 28   | Carron – 4bed    | Florence – 4bed    |
| 29   | Brearley – 4bed  | Venice – 4bed      |
| 30   | Brearley – 4bed  | Venice – 4bed      |
| 31   | Carron – 4bed    | Florence – 4bed    |
| 32   | Bowland – 3bed   | Roma – 3bed        |
| 33   | Bowland – 3bed   | Roma – 3bed        |
| 34   | Brearley – 4bed  | Roma – 3bed        |
| 35   | Brearley – 4bed  | Venice – 4bed      |
| 36   | Carron – 4bed    | Florence – 4bed    |

|    |                   |                         |
|----|-------------------|-------------------------|
| 37 | Marsden – 4bed    | Florence Variant – 4bed |
| 38 | Bowland – 3bed    | Tuscany Variant – 3bed  |
| 39 | Bowland – 3bed    | Tuscany Variant – 3bed  |
| 40 | Bowland – 3bed    | Tuscany Variant – 3bed  |
| 41 | Bowland – 3bed    | Tuscany Variant – 3bed  |
| 42 | Bowland – 3bed    | Tuscany Variant – 3bed  |
| 43 | Bowland – 3bed    | Tuscany Variant – 3bed  |
| 44 | Bowland – 3bed    | Tuscany Variant – 3bed  |
| 45 | Bowland – 3bed    | Tuscany Variant – 3bed  |
| 46 | Ferncliffe – 3bed | Roma – 3bed             |
| 47 | Ferncliffe – 3bed | Venice – 4bed           |
| 48 | Ferncliffe – 3bed | Florence – 4bed         |

The development would go from the approved 15 3-beds and 12 4-beds to 14 3-beds and 13 4-beds. The total remains at 27. Overall, all plots would have nominal re-alignment, with plots 38 – 48 having more notable shifts.

The Bowland housetype was two storeys in height. The replacement Tuscany Variant is three storeys. Modest retaining walls are proposed to the rear of plots 38 – 48, within their garden spaces, to provide flatter garden spaces.

## **Relevant Planning History**

### Application Site

2015/93824: Outline application for erection of 56 dwellings and care home with associated car parking – Conditional Outline Permission

2018/91579: Reserved matters application pursuant to outline application 2015/93824 for erection of 56 dwellings – RM Approved

2018/92802: Discharge condition 17 (electrical charging point) on previous permission 2015/93824 for outline application for erection of 56 dwellings and care home with associated car parking – Refused

2019/91658: Discharge conditions 5, 8, 11, 12, 13, 14, 17, 21, 22, 23, 24 on previous permission 2015/93824 for outline application for erection of 56 dwellings and care home with associated car parking – DOC Split decision

2019/91721: Certificate of lawfulness for existing commencement of formation of access road – Pending consideration

2020/91997: Variation condition 1 (plans) on previous permission 2018/91579 for reserved matters application pursuant to outline application 2015/93824 for erection of 56 dwellings – VOC Approved

2020/92158: Discharge conditions 5, 8, 21, 22, 23 on previous permission 2015/93824 for outline application for erection of 56 dwellings and care home with associated car parking – DOC Refused

2020/93779: Discharge conditions 21-23 on previous permission 2015/93824 for outline application for erection of 56 dwellings and care home with associated car parking – Ongoing

2021/92901: Discharge of conditions 5 (junction works) and 8 (internal estate roads) of previous outline permission 2015/93824 for erection of 56 dwellings and care home with associated car parking – Pending consideration

2021/93921: Discharge of condition 16 (Validation Report (phase 1)) of previous outline permission 2015/93824 for erection of 56 dwellings and care home with associated car parking – Pending consideration

### Surrounding Area

#### *Pentlands*

2020/91896: Demolition of existing dwelling and erection of 17 dwellings with associated access and external works – Pending consideration

#### *Land Adjacent, Glen View*

2021/94732: Outline application for erection of residential development – Pending consideration

### **History of Negotiations**

Officers expressed initial concerns over changes to the housing mixture, replacing all 3-bed units with 4-bed units and implications for layout. Following discussions and amended plans these matters were resolved.

### **Representations**

*Final publicity date expired: 03.12.2021*

No public representations were received.

Holme Valley Parish Council: No comments received.

Local ward councillors were notified of the proposal.

Cllr Nigel Patrick expressed objection to development on historically contaminated land. Cllr Paul Davies commented that the change in housing sizes was not appropriate.

### **Consultation Responses**

#### *Statutory*

K.C. Highways: Expressed concerns over the Florence house type lacking 1 parking space. Noted as an error, as there is a Florence variant, with detached garage and Florence with integral. No objection once clarified.

K.C. Lead Local Flood Authority: Accepts and offers no comment.

*Non-Statutory*

None.

## **Planning Policy**

### Kirklees Local Plan (KLP)

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 27<sup>th</sup> February 2019).

The site is a Housing Allocation on the LP Policies Map. The proposed variations have potential implications for the following policies:

- **LP7** – Efficient and effective use of land and buildings
- **LP11** – Housing mix and affordable housing
- **LP21** – Highways and access
- **LP24** – Design
- **LP51** – Protection and improvement of local air quality

The following are relevant Supplementary Planning Documents or other guidance documents published by, or with, Kirklees Council;

### *Supplementary Planning Documents*

- Highways Design Guide SPD (2019)
- Housebuilders Design Guide SPD (2021)
- Open Space SPD (2021)

### *Guidance documents*

- Kirklees Interim Affordable Housing Policy (2020)
- Biodiversity Net Gain Technical Advice Note (2021)
- Planning Applications Climate Change Guidance (2021)
- West Yorkshire Low Emissions Strategy and Air Quality and Emissions Technical Planning Guidance (2016)
- Waste Management Design Guide for New Developments (2020)

### Neighbourhood Planning

The Holme Valley Neighbourhood Plan (HVNDP) was adopted on the 8<sup>th</sup> of December 2021 and therefore forms part of the Development Plan.

- **Policy 1** – Protecting and Enhancing the Landscape Character of Holme Valley
- **Policy 2** – Protecting and Enhancing the Built Character of the Holme Valley and Promoting High Quality Design
- **Policy 6** – Building Homes for the Future
- **Policy 11** – Improving Transport, Accessibility and Local Infrastructure
- **Policy 12** – Promoting Sustainability
- **Policy 13** – Protecting Wildlife and Securing Biodiversity Net Gain

The application site is within Landscape Character Area 4 - River Holme Settled Valley Floor.

One key characteristic of the area is framed views from the settled valley floor to the upper valley sides and views across to opposing valley slopes and beyond towards the Peak District National Park. Where the built-up characteristics are terraced cottages, narrow streets within small tight knit settlements.

- Framed views from the settled valley floor to the upper valley sides and views across to opposing valley slopes and beyond towards the Peak District National Park.
- Boundary treatments comprised largely of millstone grit walling. The stone walling which runs parallel with Upperthong Lane is representative of local vernacular detailing.
- A network of Public Rights of Way (PRoW) including the Holme Valley Riverside Way which follows the River Holme from Holmbridge through Holmfirth and downstream. National Cycle Route no. 68 follows minor roads through Upperthong towards the centre of Holmfirth before climbing the opposing valley slopes.
- Mill ponds reflect industrial heritage and offer recreation facilities.

Key built characteristics of the area are:

- Mill buildings, chimneys and ponds, including Ribbleden Mill with its chimney, associated mill worker houses and ashlar fronted villas link the area to its industrial and commercial heritage and are a legacy of the area's former textile industry.
- Terraced cottages and distinctive over and under dwellings feature on the steep hillsides with steep ginnels, often with stone setts and narrow roads.

- Narrow winding streets with stepped passageways, stone troughs and setts characterise the sloping hillsides above Holmfirth town centre.
- Small tight knit settlements on the upper slopes are characterised by their former agricultural and domestic textile heritage.
- There are mixed areas of historic and more recent residential and commercial developments.

### National Policies and Guidance

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) 2021, published 20<sup>th</sup> July 2021, and 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 2** – Achieving sustainable development
- **Chapter 4** – Decision-making
- **Chapter 5** – Delivering a sufficient supply of homes
- **Chapter 11** – Making effective use of land
- **Chapter 12** – Achieving well-designed places
- **Chapter 14** – Meeting the challenge of climate change, flooding and coastal change

Other relevant national guidance and documents:

- MHCLG: National Design Guide (2021)
- DCLG: Technical housing standards – nationally described space standard (2015)

### **Assessment**

This application is made under S73 of the Town and Country Planning Act 1990, which allows for the ‘Determination of applications to develop land without compliance with conditions previously attached’. In addition to removing conditions, S73 enables the varying of a condition’s wording. The effect of a granted S73 application is the issuing of a fresh planning permission. Therefore, all previously imposed conditions should be retained, if they remain relevant. Conversely, the time limit for development to commence cannot be extended through S73.

The starting point for a S73 application is the previously granted planning permission, which must carry significant material weight. However, consideration must first be given to whether any material changes in circumstances have taken place. This includes the policy and local context.

In terms of policy 2018/91579 was assessed against Kirklees Unitary Development Plan, Kirklees Publication Draft Local Plan and NPPF2012. Since then, the UDP and PDLP have been superseded by the Kirklees Local Plan. The NPPF2012 has been superseded by the NPPF2019. These policy changes are not considered to have a fundamental impact upon the assessment of the proposal: any pertinent changes would be considered where relevant in this assessment.

Conversely, since the previous assessment the Holme Valley Neighbourhood Plan (HVNDP) has been adopted and carried material weight. As an extant and implemented permission the HVNDP does not conflict with the principle of development. Should any policies on specific material planning considerations be relevant, they will be outlined in this assessment.

In terms of local context, there has been no changes in the environment (including built and natural) which would impact on the assessment of the application.

In light of the above, consideration must principally be given to the specific changes proposed and their interaction with adopted planning policy.

#### Variation of Condition 1 (To be done in accordance with approved plans)

The site is a housing allocation, which policy requires to be developed in an effective and efficient way, outlined in LP7 and LP11.

The total number of units proposed would not change through the proposed variation, therefore the density remains as previously approved. Regarding housing mixture, the approved layout was;

- 55% 3-bed
- 45% 4-bed

The proposal would change this to (rounded):

- 51% 3-bed
- 49% 4-bed

This represents a nominal shift and is not considered to signify an unrepresentative housing mixture. The proposal remains an effective and efficient use of the housing allocation, as required by LP7 and LP11.

LP24 requires consideration of a proposal's impact upon various material planning considerations, including visual and residential amenity.

In terms of urban design and visual amenity, the proposed house types would bring 'phase 2' in line with 'phase 1', which received a Variation of Condition permission (ref. 2020/91997) to update the house types to those proposed previously (and have been commenced on site). The house types proposed remain visually appropriate for the area and are attractive. The inclusion of 3-

storey dwellings and retaining walls to their rear is consistent with phase 1 and would not cause the development to appear incongruous within its area. The land levels previously would have had a steep slope making gardens impractical, which this change addresses without material detrimental impact. Construction materials for dwellings were previously stated and secured in a material schedule within the plans table, which has not been sought to change. Overall, the proposed new layout and units are considered visually acceptable.

The layout change has led to gardens encroaching into previously approved communal / shared landscaped areas. However, the changes have also opened up other areas of land to take its place, which is clearly denoted on the plans and are accepted as comparable benefit.

Assessing residential amenity, most of the plots to be affected are removed from 3rd party dwellings and would not have a direct impact upon them. No other 3rd party dwellings are anticipated to be affected by the proposal. In terms of distances between units within the site, these have been reduced marginally compared to that previously approved. Nonetheless the distances remain acceptable and do not raise concerns of overbearing, overlooking or overshadowing between future occupiers.

All new units have a floor space which complies with Nationally Described Space Standard. All habitable rooms would be served by one or more windows which would provide an acceptable level of outlook and natural light. Garden sizes remain commensurate to the host dwellings. Internal separation distances remain acceptable.

The variation sought would not prejudice visual or residential amenity, complying with LP24. Furthermore, the proposed design is considered with the policies contained within the HVNDP, specifically the quality of design and giving due regard to the Landscape Character Area.

On highways, the access onto New Mill Road will not be affected. The internal road layout is principally unaffected. All units would have adequate off-road parking facilities. The Florence house type (note, separate to the Florence Variant type) has an internal garage measuring 6.0m x 2.8m. Typically the LPA seek 6.0m x 3.0m. Nonetheless this minor shortfall would not make parking a car unfeasible. The Florence house type has a utility room and is sizable, it is not considered the garage is unduly small. Previously approved bin-storage and collection arrangement for units not fronting the public highway have been replicated although these are shown on a dedicated plan (as opposed to denoted on all plans as per the original application). To ensure that the dedicated collection points for units served off a private drive are provided, a condition for their provision and retention is proposed.

A previous DOC on the site, ref. 2020/91997, approved a variation to phase 1. This is strictly contained within this application too. App 2020/91997 included a condition for situational tree study, due to:

*Plot 21's new garage would move development closer to the adjacent trees, which are protected by a TPO. On review of the previous tree survey, this is not anticipated to cause issue. Nonetheless, it is considered prudent to impose a condition requiring the submission of further details, should further works to trees protected by a TPO be needed.*

It is deemed prudent to retain the same condition.

No other material planning considerations are identified as being affected by the desired variation to condition 1. Summarising the above, the proposed variation sought to condition 1, to modify the approved plans table, is considered acceptable as the amendments sought comply with the relevant planning policies.

### Previous conditions

As this is an application under S73 of TCPA 1990 it would, in effect, be a new permission.

Planning practice guidance (The Use of Conditions) confirms that the original planning permission would continue to exist whatever the outcome of the application under section 73 and that the conditions imposed on the original permission still have effect unless they have been discharged.

The PPG also confirms that for the purpose of clarity, decision notices for the grant of planning permission under section 73 should set out all of the conditions imposed on the new permission, and restate the conditions imposed on earlier permissions that continue to have effect (Paragraph: 040 Reference ID: 21a-040-20190723).

The conditions from the 2018/91579 permission should therefore be repeated. 2018/91579 was granted with 5 conditions:

1. To be done in accordance with plans (sought to be varied)
2. Boundary walling onto New Mill Road to be natural stone
3. Landscaping to be implemented, managed and maintained
4. Method statement for species rich grassland to be submitted
5. Proposed internal estate road details to be submitted.

Condition 1 is sought to be varied; however, the wording will not change. The associated plans table would be updated to supersede the approved landscaping strategy with that proposed.

All other conditions remain pertinent and are to be kept. None which require discharging, have been discharged and are to remain as originally drafted.

### Representations

No public representations were received.

Cllr Nigel Patrick expressed objection to development on historically contaminated land.

**Response:** This is a matter of principle which has previously been considered and addressed at outline stage.

Cllr Paul Davies commented that the change in housing sizes was not appropriate.

**Response:** Officers shared this concern. Discussions took place and the house sizes (no. of bedrooms) was amended to an appropriate level.

### 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

**Application Number:** 2021/93928

**Decision Authorisation:** Delegated Powers

**Officer Recommendation:** Grant Variation of Condition

### **Conditions and Reasons**

1. The development hereby permitted shall be carried out in complete accordance with the approved plans and specification except as may be required by other conditions.

**Reason:** So as to ensure the satisfactory appearance of the development upon completion.

2. Notwithstanding the submitted details the dwellings on plots 1-6, and 49-56, and the proposed boundary walling that front onto New Mill Road, shall be substantially, constructed of natural stone, a sample of which shall be submitted for the written approval of the Local Planning Authority, before above ground works commence upon these plots.

**Reason:** In the interests of visual amenity and to accord with Policy LP24 of the Kirklees Local Plan.

3. Any planting, seeding or tree management works forming part of the agreed landscape scheme shall be carried out following the commencement of the development, or in accordance with a timetable agreed with the Local Planning Authority and shall be maintained for a period of five years from the completion of the planting works. All specimens that die within this period shall be replaced.

**Reason:** In the interests of visual amenity and to accord with Policies LP24 and LP33 of the Kirklees Local Plan.

4. Notwithstanding the submitted plans, prior to implementation of the landscape proposals, a method statement for the establishment of species rich grasslands shall be submitted to and approved in writing by the local planning authority. The content of the method statement shall include the: a) extent and location of proposed works shown on appropriate scale maps and plans; b) details of the seed mix (including supplier and species composition) and sowing rate to be used; c) details of type of substrate, and its preparation, suitable to establish species rich grasslands; d) initial aftercare and long-term maintenance. The works shall be carried out strictly in accordance with the approved details, within the first planting season after the approval of the method statement, and shall be retained in that manner thereafter.

**Reason:** In the interest of ecological enhancements, to accord with Policy LP30 of Kirklees Local Plan.

5. Works to the highway are not to commence until a scheme detailing the proposed internal estate roads have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include full sections, drainage works, street lighting, signing, surface finishes and treatment of sight lines together with an independent safety audit covering all aspects of the work. Before any building brought into use the scheme shall be completed in

accordance with the scheme shown on approved plans and retained thereafter.

**Reason:** In the interests of highway safety in accordance with Policy LP21 of the Kirklees Local Plan

6. Prior to the occupation of plots 22 – 24 and plots 30 – 34, their dedicated bin collection points, as shown on plan ref. '1602-146', shall be provided and made ready for use. Thereafter the bin collection points so installed shall be retained.

**Reason:** In the interest of highway efficiency, to comply with Policy LP21 of the Kirklees Local Plan.

7. Details of any additional tree works required during the construction process, that is not identified within the submitted information, shall be submitted to and approved in writing by the Local Planning Authority prior to the work being carried out. The works shall thereafter be carried out in complete accordance with the approved details.

**Reason:** To protect trees in the interests of visual amenity and to accord with the requirements of Policies LP 24 and LP33 of the Kirklees Local Plan.

Plans and specifications schedule:

| Plan Type                               | Reference                 | Version | Date Received |
|-----------------------------------------|---------------------------|---------|---------------|
| <b>Plans submitted via 2021/93928</b>   |                           |         |               |
| Block Plan                              | 1602-140                  | Rev. D  | 17.01.2022    |
| Proposed Site Sections                  | 1602-141                  |         | 12.10.2021    |
| Proposed Site Sections                  | 1602-142                  |         | 12.10.2021    |
| Grouped Plans and Elevations            | 1602-143                  | Rev. A  | 17.11.2021    |
| Grouped Plans and Elevations            | 1602-144                  | Rev. A  | 17.11.2021    |
| Location Plan                           | 1602-145                  | Rev. A  | 12.10.2021    |
| Block Plan                              | 1602-146                  |         | 04.02.2022    |
| Supporting Information                  | Supporting Statement      |         | 12.10.2021    |
| Supporting Information                  | Schedule of Accommodation |         | 17.11.2021    |
| <b>Plans submitted via 2018/91579</b>   |                           |         |               |
| Location Plan                           | 704-LOC-01                | A       | 27/7/18       |
| Block/ Site Plan                        | 704-SKL-08                | H       | 22/10/18      |
| Block Plan (bin storage and collection) | 704-RP-01                 | E       | 22/10/18      |
| Swept Path analysis                     | 10519-004                 |         | 910/18        |
| Proposed Landscaping (on plot)          | 8313-L-04                 | F       | 14/9/18       |
| Proposed landscaping (central area)     | 8313-L-03                 | F       | 14/9/18       |
| Materials schedule                      |                           |         | 24/9/18       |
| <b><u>House types (plans and</u></b>    |                           |         |               |

| Plan Type                                    | Reference     | Version | Date Received |
|----------------------------------------------|---------------|---------|---------------|
| <u>elevations)</u>                           |               |         |               |
|                                              | The Marsden   | V2      | 14/5/18       |
|                                              | The Lawton    | V2      | 14/5/18       |
|                                              | The Elton     | V2      | 14/5/18       |
|                                              | The Carron    | V2      | 14/5/18       |
|                                              | The Brierly   | V2      | 14/5/18       |
|                                              | The Bowland   | V2      | 14/5/18       |
|                                              | The Adel      | V2      | 14/5/18       |
|                                              | Double garage | V2      | 14/5/18       |
| Updated Design and Access Statement          | 8313DAS       | G       | 14/9/18       |
| Updated Tree/Arboricultural survey           |               | B       | 14/9/18       |
| Updated Tree/Arboricultural Method Statement |               |         | 7/9/18        |
| Bat and Bird box location plan               |               | Fig 3   | 14/9/18       |

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.

Officers expressed initial concerns over changes to the housing mixture, replacing all 3-bed units with 4-bed units and implications for layout. Following discussions and amended plans these matters were resolved.

**Report Dated: 04.02.2022**