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:	**2022/70/90223/E**
Site Address:	23, Fall Lane, Hartshead, Liversedge, WF15 8AP
Description:	Variation of condition 2 (plans and specifications) on previous permission 2021/92116 for erection of detached dwelling and single and two storey rear extension to existing dwelling
Recommending Officer:	Liz Chippendale

DECISION – VARIATION OF CONDITION 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.

Emma Thompson

AUTHORISED OFFICER

Date: 09-May-2022

Officer Report

Background

Planning permission was granted for the erection of a detached dwelling and the erection of a single and two storey rear extension to an existing dwelling under permission 2021/92116.

Site Description

The application site is a two storey detached dwelling with attached garage. The dwelling is set within a large plot which slopes significantly to the rear. The site is surrounded by residential dwellings of a mixture of form and age with a children's play area and open space to the North.

Description of Proposal

The application seeks permission to vary condition 2 (plans and specifications) on the previous permission reference 2021/92116 for erection of a detached dwelling and the erection of a single and two storey rear extension to an existing dwelling.

The original condition reads as follows:

2. *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, and to accord with Policies BE1 and BE2 of the Kirklees Unitary Development Plan, Policy PLP 24 of the Kirklees Publication Draft Local Plan and guidance contained within the National Planning Policy Framework*

Proposed alterations:

The addition of a central glazed pitched roof entrance feature above the entrance door. The window will not serve any additional rooms. In addition to windows serving the garage and first floor side window serving an ensuite.

History of negotiations/amendments received

No amendments were sought or received during the consideration of the application.

Relevant Planning History

2021/92116	Erection of detached dwelling and erection of single and two storey extension to existing dwelling. Full conditional permission

Neighbouring site planning history of relevance –

88/04923 Erection of detached bungalow
Granted conditionally

Representations

We are currently undertaking the legal statutory publicity requirements, as set out at Table 1 in the Kirklees Development Management Charter. As such, we have publicised this application via neighbour notification letters. The submission of amended plans were not advertised as there have been no representations received and the proposals were similar in position and scale. Final publicity date expired 7th March 2022.

One representation has been received. A summary of the comments received is set out below:

- Impact on surface water drainage
- Impact on existing trees
- Variations to the approved plan will keep being submitted until it resembles the originally submitted proposal

Consultation Responses

No consultations were required for the assessment of the proposal.

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).
Kirklees Council has adopted supplementary planning guidance on house building which now carries full weight in decision making. This guidance indicates how the Council will usually interpret its policies regarding such built development, with the general thrust of the advice aligned with both the Kirklees Local Plan (KLP) and the National Planning Policy Framework (NPPF). The SPD will assist with ensuring enhanced consistency in both approach and outcomes relating to new housing.
On 12/11/2019, the Council adopted a target for achieving net zero carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan pre-dates the declaration of a climate emergency and the net zero carbon target, however it includes a series of policies which are used to assess the suitability

of planning applications in the context of climate change. When determining planning applications, the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda

The site is Unallocated within the Kirklees Local Plan.

Kirklees Local Plan (LP):

- **LP1** – Presumption in favour of sustainable development
- **LP2** – Place shaping
- **LP11** – Housing mix
- **LP21** – Highway safety and access
- **LP22** – Parking
- **LP24** – Design
- **LP32** – Landscape

National Policies and Guidance:

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 20th July 2021, 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 12 – Achieving well-designed places
- Chapter 14 – Meeting the challenge of climate change, flooding and coastal change

Supplementary Planning Guidance / Documents:

- West Yorkshire Air Quality and Emissions Technical Planning Guidance
- Highways Design Guide SPD
- Housebuilders Design Guide SPD
- Planning Practice Guidance

Many policies within the National Planning Policy Framework are relevant to this proposal and, where relevant, are referred to in the main report text.

Assessment

The following matters are considered in the assessment below –

1) Principle of development
1) Impact on visual amenity
2) Impact on residential amenity

3) Impact on highway safety
4) Other matters
5) Representations
6) Conclusion

Principle of development

Section 73 of the Town and Country Planning Act 1990 allows for the variation or removal of a condition of a previous permission.

The principle of development for the erection of a detached dwelling and the erection of a single and two storey extension to an existing dwelling was established under permission 2021/92116.

As such, it is considered that the principle of development remains established by way of the previous application. This assessment will deal with the merits of the proposed variations.

Urban Design issues

Policy LP24 states that good design should be at the core of all proposals. Proposals should incorporate good design by ensuring that the form, scale, layout and details of all development respects and enhances the character of the townscape and landscape. This is supported by The National Planning Policy Framework (NPPF) which sets out that, amongst other things, decisions should be sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (para.130 of the NPPF).

The variation to introduce the proposed entrance feature is considered to be acceptable. It is of a design and scale that will complement the host building. Whilst the feature appears bulkier when viewed from the side it is not considered so great to appear incongruous. The dwelling will be screened mostly from the street scene by the existing dwelling and visible only through the proposed driveway and as such will have a neutral impact on the character of the area.

The introduction of windows to the garage and first floor side window are acceptable and will not detrimentally impact on the character of visual amenity.

It is considered that the variation to the development proposed is acceptable from a visual amenity perspective and is in accordance with Policies LP24 of the Kirklees Local Plan, as well as the aims of the NPPF.

Residential Amenity

A core planning principle set out in the NPPF is that development should result in a good standard of amenity for all existing and future occupiers of

land and buildings. Policy LP24 of the Kirklees Local Plan states that proposals should promote good design by ensuring that they provide high standard of amenity for future and neighbouring occupiers, including maintaining appropriate distances between buildings
The proposed entrance feature will not serve an additional room. The window will deliver light to the entrance to the property only. As such, it is considered by officers, that this part of the development would not result in any material harm to the amenity of nearby residents and an acceptable standard of amenity would be provided for the future occupants of the development thereby according with policy LP24 of the Local Plan, in terms of residential amenity.
The windows proposed to the garage serve non habitable space and will have no greater impact on neighbouring occupants as the originally approved scheme. The first-floor side window serves an ensuite and should be conditioned to be obscurely glazed to prevent any loss of privacy to the neighbouring occupants.
Subject to conditions the development is not considered to have any greater impact on any adjoining occupants than the approved scheme. As such, the development is in accordance with LP24 of the Kirklees Local Plan.

Highways:

The proposal does not impact upon the level of parking or access to the site of the approved scheme. Therefore, the proposal is in accordance with policies LP21 and LP22 of the KLP.

Other:

Other matters were considered as part of the original permission was coal mining legacy. The proposed amendments do not impact upon these matters as originally approved. Therefore, there are no other matters considered relevant to the determination of this application.

Representations:

So far as the points have not been dressed above:

- Impact on surface water drainage
  Response: The principle of development remains valid. The proposed alteration will not impact on surface water as it relates only to a design feature of the approved dwelling.
- Impact on existing trees
  Response: The development has already been approved. The proposed alteration will not impact on existing trees as it relates only to a design feature of the approved dwelling.

- Variations to the approved plan will keep being submitted until it resembles the originally submitted proposal

Response: There is no restriction on the amount of variation of condition applications that can be submitted for a scheme. However, Officers would take into consideration previous amended plans when considering any proposals.

Conditions review

As this application is a Section 73 application to vary conditions, it is necessary to re-impose all those conditions, which remain relevant. An additional condition is considered necessary due to the introduction of a side window.

The application form states that the development commenced on 27.4.21. However, it would appear that pre-commencement conditions have not been discharged and as such any commencement is likely to be unlawful. Standard condition 1 is therefore amended to represent the time remaining for implementation.

As the Kirklees Local Plan had also been adopted since the original application, the reasons for all conditions were reworded to reference the relevant local plan policies.

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**

Decision Authorisation - Delegated Powers

Application Number: 2021/92116

Officer Recommendation: Approve

Conditions and Reasons

1. The development hereby permitted shall be begun prior to the 15th December 2024.
Reason: Pursuant to the requirements of Section 91 of the Town and Country Planning Act 1990.

2. 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, and to accord with Policies D2, BE1, BE2, and T10 of the Kirklees Unitary Development Plan, Policies PLP21, PLP22 and PLP24 of the Kirklees Publication Draft Local Plan as well as the aims of the National Planning Policy Framework.
3. Samples of all facing and roofing materials shall be submitted to and approved in writing by the Local Planning Authority before development commences on the superstructure of the new dwelling hereby approved. The development shall then be completed using the approved materials.
Reason: In the interest of visual amenity and to accord with the aims Policy LP24 of the Kirklees Local Plan as well as aims of Chapter 12 of the National Planning Policy Framework and key principles of the Housebuilders Design Guide SPD.
4. Prior to first occupation of the dwelling an electric vehicle recharging point shall be installed. Cable and circuitry ratings shall be provided to ensure a minimum continuous current demand of 16 Amps and a maximum demand of 32Amps. Thereafter the electric vehicle recharging point so provided shall be retained.
Reason: In the interests of promoting modes of transport with ultra-low emissions and to accord with the sustainability principles of the National Planning Policy Framework and key principles of the Housebuilders Design Guide SPD
5. Development shall not commence until actual or potential land contamination at the site has been investigated and a Preliminary Risk Assessment (Phase I Desk Study Report) has been submitted to and approved in writing by the Local Planning Authority.
Reason: To identify and remove unacceptable risks to human health and the environment from a coal mining features and hazards in accordance with Policy LP 53 of the Kirklees Local Plan and the Chapter 15 of the National

Planning Policy Framework. This is a pre-commencement condition as it could affect the method of construction of the dwelling.

6. Where further intrusive investigation is recommended in the Preliminary Risk Assessment approved pursuant to condition 5 development shall not commence until a Phase II Intrusive Site Investigation Report has been submitted to and in writing by the Local Planning Authority.

Reason: To identify and remove unacceptable risks to human health and the environment from a coal mining features and hazards in accordance with Policy LP 53 of the Kirklees Local Plan and the Chapter 15 of the National Planning Policy Framework. This is a pre-commencement condition as it could affect the method of construction of the dwelling

7. Where site remediation is recommended in the Phase II Intrusive Site Investigation Report approved pursuant to condition 6 development shall not commence until a Remediation Strategy has been submitted to and approved in writing by the Local Planning Authority. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures.

Reason: To identify and remove unacceptable risks to human health and the environment from a coal mining features and hazards in accordance Policy LP 53 of the Kirklees Local Plan and the Chapter 15 of the National Planning Policy Framework. This is a pre-commencement condition as it could affect the method of construction of the dwelling

8. Remediation of the site shall be carried out and completed in accordance with the Remediation Strategy approved pursuant to condition 7. In the event that remediation is unable to proceed in accordance with the approved Remediation Strategy or contamination not previously considered in 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. 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 identify and remove unacceptable risks to human health and the environment from a coal mining features and hazards in accordance with Policy LP 53 of the Kirklees Local Plan and the Chapter 15 of the National Planning Policy Framework

9. 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. 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 ensure that unacceptable risks to human health and the environment from a coal mining features and hazards have been

appropriately remediated in accordance with Policy LP 53 of the Kirklees Local Plan and the 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 parking 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 Agency's '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) Order 2015 as amended (or any Order revoking or re-enacting that Order) this shall be so retained, free of obstructions and available for the use(s) specified on the submitted/listed plan(s) for the lifetime of the development.
Reason: In the interests of amenity and traffic safety, to ensure adequate space within the site for vehicle movements and parking and to ensure that the areas of hardstanding are appropriately drained in accordance with Policies LP21 and LP22 of the Kirklees Local Plan as well as the aims of the NPPF

11. Before construction work commences a report specifying the measures to be taken to protect the development from noise from all significant noise sources that are likely to affect the proposed development eg the adjacent children's playground and recitation ground shall be submitted to and approved in writing by the Local Planning Authority.
The report shall:
a) Determine the existing noise climate
b) Predict the noise climate in gardens (daytime), bedrooms (night-time) and other habitable rooms of the development
c) Detail the proposed attenuation/design necessary to protect the amenity of the occupants of the new residences (including ventilation if required).
the development shall not be occupied until all works specified in the approved report have been carried out in full and such works shall be thereafter retained
Reason: So as not to detract from the amenities of future occupiers by reason noise disturbance and to accord with Policy LP 24 of the Kirklees Local Plan and key principles of the Housebuilders Design Guide SPD

12. Notwithstanding the submitted plans and information, full details of all boundary treatments and retaining walls, including their height and material, shall be submitted to and approved in writing by the Local Planning Authority before development commences on the superstructure of any dwelling hereby approved. The development shall thereafter be completed in accordance with the approved details before the dwellings are first brought into use and thereafter retained.
Reason: In the interest of visual amenity and to accord with the aims of Policy LP24 of the Kirklees Local Plan as well as Chapter 12 of the National Planning Policy Framework and key principles of the Housebuilders Design Guide SPD

13. Notwithstanding the provisions of section 55(2)(a)(ii) of the Town and Country Planning Act 1990 and the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that Act or Order with or without modification) no doors, windows or any other openings (apart from any expressly allowed by this permission) shall be created within the East and West elevation of the extension hereby approved.
Reason: So as not to detract from the amenities of future occupiers and neighbouring properties by reason of loss of privacy and to accord with Policy LP24 of the Kirklees Plan and key principles of the Housebuilders Design Guide SPD

14. Before the development is brought into use, the window shown in the first floor south east elevation of the dwelling hereby approved shall be obscurely glazed to a minimum grade 4 and thereafter be retained.
Reason: So as not to detract from the amenities of adjoining neighbouring properties by reason of loss of privacy and to accord with Policy LP24 of the Kirklees Plan and key principles of the Housebuilders Design Guide SPD

NOTE: The changes to the access within the adopted highway fronting the property will need to be constructed under a section 184 agreement of the 1980 Highways Act (vehicle crossings over footways and verges). You are required to consult the Design Engineer (Kirklees Street Scene: 01484 221000) with regard to obtaining this permission and approval of the construction specification. Interference with the highway without such permission is an offence which could lead to prosecution.

NOTE: To minimise noise disturbance at nearby premises it is generally recommended that activities relating to the erection, construction, alteration, repair or maintenance of buildings, structures or roads shall not take place outside the hours of:

07.30 and 18.30 hours Mondays to Fridays
08.00 and 13.00 hours, Saturdays

With no working Sundays or Public Holidays In some cases, different site specific hours of operation may be appropriate. Under the Control of Pollution Act 1974, Section 60 Kirklees Environment and Transportation Services can control noise from construction sites by serving a notice. This notice can specify the hours during which work may be carried out.

Plans and specifications schedule:-

Plan Type	**Reference**	**Version**	**Date Received**
Proposed plans and elevations existing dwelling	2691(100)05	G	24.01.2022
Documents pursuant to permission			

Plan Type	Reference	Version	Date Received
2021/92116			
Existing dwelling	2690 (100)02		11.06.2021
Location plan	2691 LOC		11.06.2021
Existing block plan	2961 (100)01		11.06.2021
Coal Mining Risk Assessment by Geotechnical Environmental June 2021	C1800/21/E/2782		11.06.2021
Proposed site sections	2691 (100) 06	C	23.11.2021
Proposed plans and elevations	2691 (100) 05	D	23.11.2021
Proposed block plan	2691 (100) 03	C	23.11.2021

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 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. The applicant was not approached throughout the application process as the proposal was considered to be acceptable as submitted.

Report Dated: 29.04.2022