



Kirklees Council  
Planning and Development Service  
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Date: 19-Jul-2023  
Our Ref: 2022/91822

Dear Sir,

**Application for Approval of Details Reserved by Condition  
Town and Country Planning Act 1990  
Planning (Listed Buildings and Conservation Areas) Act 1990**

**Modify Section 106 obligation relating to previous permission 2014/93014 for outline application for residential development comprising of 41 dwellings plus associated works (within a Conservation Area)**

**Land at Edgerton Road, Huddersfield, HD3 3AA**

**Application Number: 2022/91822**

I write with reference to your application to modify a Section 106 for the above development as submitted on 25-May-2022.

**The application is refused for the following reason:**

The Local Planning Authority has determined that the planning obligation agreement, dated the 16<sup>th</sup> of June 2015 and pursuant to application 2014/93014, shall, in accordance with s.106A(6)(a) of the Town and Country Planning Act 1990, continue to have effect without modification and hereby refuse the proposed planning obligation modification.

**For information**

The reason for this decision is that, based on the conclusions of the Council's Independent Viability Assessor and given the insufficient levels of detail within the applicant's submitted financial viability information, the applicant has failed to demonstrate that the planning obligation would make the development unviable. The IVA considered that the reliance on 2015 viability data is not appropriate to calculate the effects of any ongoing or unforeseen costs on the scheme's viability in the current financial climate. This is in line with the Council's Viability Guidance Note (2020) which states that development costs should be based on current day figures. No updated viability report has been submitted by the

applicant in this regard. The IVA also notes that *“the applicant has provided a brief breakdown of costs incurred due to not developing the land in recent years, although this again cannot be used to assess viability”*.

Planning obligations were originally required to make the development acceptable in planning terms. Officers note the up-to-date position of the Kirklees Local Plan (adopted in 2019, after the decision on the original planning permission) and the Council’s ability to demonstrate a 5-year Housing Land Supply. As such, it is considered that the planning obligations secured under the extant planning permission and associated Unilateral Undertaking would still be required to make the development acceptable in planning terms. Consultee comments received from KC Strategic Housing demonstrate the ongoing need for the provision of affordable housing arising from the development.

Plans and specifications schedule:

Plan Type	Reference	Version	Date Received
Supporting Statement	Supporting Statement Modification of S106 Agreement Land at Edgerton Road, Huddersfield		01.06.2022

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.

In accordance with the Local Planning Authority’s procedure and guidance, an independent viability assessor was appointed with the agreement of the applicant. On the resolution of the independent viability assessment officers considered it reasonable to conclude the application given the nature of the assessment’s conclusion.

### Appeals to the Secretary of State

If you are aggrieved by the decision of your local planning authority to refuse the desired variation, then you can appeal to the Secretary of State under section 106B of the Town and Country Planning Act 1990 as amended.

If you want to appeal, you must do so using a form which you can obtain from [www.gov.uk/government/organisations/planning-inspectorate](http://www.gov.uk/government/organisations/planning-inspectorate) or by email from [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk) or by phoning 0303 444 5000.

You must send one copy of the completed form to [DC.Admin@kirklees.gov.uk](mailto:DC.Admin@kirklees.gov.uk) or via post to ‘Kirklees Council, Planning & Development Service, PO Box 1720, Huddersfield HD1 9EL’, as well as to the Planning Inspectorate at the address on the form.



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If you intend to submit an appeal that you would like examined by inquiry, you should notify the Local Planning Authority ([DC.Admin@kirklees.gov.uk](mailto:DC.Admin@kirklees.gov.uk)) and the Planning Inspectorate ([inquiryappeals@planninginspectorate.gov.uk](mailto:inquiryappeals@planninginspectorate.gov.uk)) of your intention to appeal a minimum of 10 working days before the appeal is submitted to the Planning Inspectorate.

The notification form and further guidance is available at [www.gov.uk/government/publications/notification-of-intention-to-submit-an-appeal](http://www.gov.uk/government/publications/notification-of-intention-to-submit-an-appeal)

Yours faithfully,

Mathias Franklin  
Head of Planning and Development