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:	**2022/70/92816/W**
Site Address:	Land adj, 105, Highgate Lane, Lepton, Huddersfield, HD8 0HQ
Description:	Variation of conditions 2 (plans) and 3 (materials) on previous permission 2021/90749 for demolition of detached garage and erection of two detached dwellings and associated landscaping
Recommending Officer:	Stuart Howden

DECISION – Approve variation of conditions

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.

Teresa Harlow

AUTHORISED OFFICER

Date: 04-Nov-2022

Officer Report

Site Description

Land Adjacent 105 Highgate Lane, Lepton, Huddersfield, HD8 0HQ

The site comprises the part of the garden of No.105 Highgate Lane, and is to the north west side of this property. A detached single storey double garage sits on the site. There is an existing access to the site from Highgate Lane, with a driveway running to the front of the garage. The site slopes upwards from the front to the rear.

The dwelling at No.105 is located to the south east side of the site, and is detached, two storey in height, and is externally faced in timber boarding under a shallow pitched roof. This dwelling has a modernist appearance. This dwelling is set back from Highgate Lane, and the front wall is set at a slight angle from the highway. Whilst the access to the site serves this dwelling, there is also another access to this dwelling from Highgate Lane not within the site area.

The site is in a predominantly residential area, with dwellings to the front and rear of the site, as well as to the north west side of the site. The dwellings within the immediate locality tend to be primarily 2 storeys in height, but there is variation in dwelling types and appearance. The surrounding land rises from the south west to the north east. The site is not within a conservation area and not within close proximity to any listed buildings.

Description of Proposal

Planning permission is sought to vary conditions 2 and 3 of 2021/90749 for the demolition of a detached garage and the erection of two detached dwellings and associated landscaping which was approved 28th July 2021

Conditions 2 of permission 2021/90749 relates to the approved plans and 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 LP3, LP7, LP21, LP22, LP24, LP28, LP30, LP33, LP51, LP52 and LP53 of the Kirklees Local Plan and Chapters 4, 5, 9, 11, 12, 14 and 15 of the National Planning Policy Framework.'*

Condition 3 of permission 2021/90749 relates to the materials approved under the application, and reads as follows:

‘3*. Prior to the construction of dwellings hereby approved above slab level, details of all the external facing and roofing materials of the dwellings shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details and retained as such.*
Reason: In the interests of visual and to comply with Policy LP24 of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework.’

This Section 73 application seeks to vary the approved plans (condition 2) due to changes to the proposed materials for the walls and roof of the dwellings. Under the original application, natural stone walls with timber elements under a natural slate roof were approved. This was set out in the application form and elevational drawings. However, the materials schedule now proposes reconstituted stone and concrete tiles. As details of these materials have also been submitted alongside the proposed timber for the walls (a secondary material) the applicant is also seeking to vary condition 3 into a compliance condition (i.e. that the development should be constructed in accordance with the details provided). Of note, the following details in relation to finishing materials have been submitted (with pictures):

Walls:

- 100mm Newlay Calder Buff Walling Stone
- Vertically spanning cedar cladding

Roof

- Marley Modern Smooth Grey Interlocking concrete tiles.

History of negotiations/amendments received

The application was considered acceptable as submitted.

Whilst the description of development was altered to include the variation of condition 2 as well, no additional information was submitted by the applicant therefore the variation proposed has not fundamentally altered throughout the processing of this application. Given this, it was not considered necessary to reconsult.

Relevant Planning History

2021/90749 – Demolition of detached garage and erection of two detached dwellings and associated landscaping – Approved on 28th July 2021. This current Section 73 application seeks to vary conditions 2 and 3 of this permission.

2022/91841 – Discharge of conditions 3 (materials), 9 (Phase II Site Investigation), 10 (Remediation Strategy), 13 (adj property plans) on previous permission 2021/90749 – Pending consideration. In relation to condition 3, the applicant’s agent was made aware that the details of the materials submitted

under this discharge of conditions application would deviate away from what was approved under the original application hence why this current Section 73 application has been submitted.

Representations

Final publicity date Expires:
Neighbour letters expired on 6th October 2022.

No representations have been received.

Consultation Responses

Kirkburton Parish Council: No comment

The above is a summary of the comments received and full comments are available on the Council's Planning Webpage.

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).

The site is unallocated on the Kirklees Local Plan Proposals Map.

Kirklees Local Plan (LP):

- LP1 – Presumption in favour of sustainable development
- LP2 – Place shaping
- LP3 – Location of new development
- LP7 – Efficient and effective use of land and buildings
- LP20 – Sustainable travel
- LP21 – Highways and access
- LP22 – Parking
- LP24 – Design
- LP27 – Flood risk
- LP28 – Drainage
- LP30 – Biodiversity and geodiversity
- LP33 – Trees
- LP51 – Protection and improvement of local air quality
- LP53 – Contaminated and unstable land

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 2** – Achieving sustainable development
- **Chapter 4** – Decision-making
- **Chapter 5** – Delivering a sufficient supply of homes
- **Chapter 9** – Promoting sustainable transport
- **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
- **Chapter 15** – Conserving and enhancing the natural environment

Other Material Considerations

- Kirklees Housebuilders Design Guide SPD (2021)
- Kirklees Highways Design Guide SPD (2019)
- Kirklees Biodiversity Net Gain Technical Advice Note (2021)
- Kirklees Climate Change Guidance for Planning Applications (2021)

Assessment
The following matters are considered in the assessment below –

1) Principle of development
1) Impact on visual amenity
2) Representations
3) Review of planning conditions
4) Conclusion

1 – Principle of development:

In this instance, the principle of the demolition of the detached garage and the erection of two detached dwellings and associated landscaping at the site has already been established through the approval of planning application 2021/90749. This proposal does not seek to increase the footprint of the building or change the siting of this building.

As the proposal only relates to a change in the finishing materials, it is not considered necessary to re-visit the impacts upon residential amenity, highways safety, trees, biodiversity, climate change and contaminated land as it is considered that such a proposal would not create any new issues in relation to these matters. However, the impact upon the visual amenities of the locality requires assessment and this is discussed below.

2 – Impact on visual amenity:

The NPPF offers guidance relating to design in Chapter 12 (achieving well designed places) whereby 126 provides a principal consideration concerning design which states:

"The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities."

Kirklees Local Plan Policies LP1, LP2 and significantly LP24 all also seek to achieve good quality, visually attractive, sustainable design to correspond with the scale of development in the local area, thus retaining a sense of local identity.

Policy LP24 states that proposals should promote good design by ensuring:

"a. the form, scale, layout and details of all development respects and enhances the character of the townscape…"

Principle 13 of the Kirklees Housebuilders Design Guide states that applicants should consider the use of locally prevalent materials and finishing of buildings to reflect the character of the area.

As noted above, the proposal seeks to change the finishing materials to the dwellings approved. Under the original application, natural stone walls with timber elements under a natural slate roof were approved. This was set out in the application form and elevational drawings. However, the materials schedule now proposes reconstituted stone and concrete tiles.

Brick is the predominant building material in the locality, but there are other materials in the locality, including natural stone and render. The use of natural stone and slate would have been preferred to the materials now proposed, but it is considered that the use of such materials in this locality would not cause significant harm given the mixture of materials in the locality.

Details for the vertical cladding have been provided too and these details are considered to be acceptable and would not cause detrimental harm to the visual amenities of the locality.

Thus, the proposal is considered to be in accordance with Policy LP24 of the Kirklees Local Plan, the SPD and Chapter 12 of the NPPF.

3 – Representations:

No representations have been received.

4 – Review of Planning Conditions:

The conditions attached 2021/90749 are set out below:

Conditions 4-17 will be re-issued as they are considered to remain relevant:

The following conditions shall be reworded:

- 1. Time: This shall reflect the date development shall begin by.
- 2. Approved plans: The plans and specification table will be amended to reflect the plans approved under this Section 73 application.
- 3. Materials: Altered to compliance condition to state dwellings will be constructed in accordance with the details provided in relation to finishing materials

5 – 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 proposed development would constitute sustainable development and is therefore recommended for approval.

Recommendation **Approve**

Decision Authorisation - Delegated Powers
Application Number: 2022/90749
Officer Recommendation: Approve
Conditions and Reasons

1. The development hereby permitted shall be begun before 28th July 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 LP3, LP7, LP21, LP22, LP24, LP28, LP30, LP33, LP51, LP52 and LP53 of the Kirklees Local Plan, the Kirklees Housebuilders Design Guide SPD and Chapters 2, 4, 5, 9, 11, 12, 14 and 15 of the National Planning Policy Framework.

3. The dwellings hereby approved shall be constructed in accordance with the 'Materials Schedule Document by Hinchliffe Architecture & Design Ltd' specifying '100mm Newlay Calder Buff Walling Stone', 'Vertically spanning Cedar Cladding' and 'Marley Modern Smooth Grey interlocking Concrete Tiles', and retained as such thereafter.
Reason: In the interests of visual amenity and to comply with Policy LP24 of the Kirklees Local Plan, Principle 13 of the Kirklees Housebuilders Design Guide SPD and Chapter 12 of the National Planning Policy Framework.

4. Prior to the first occupation of either of the dwellings hereby approved, and notwithstanding the hard landscaping details in Drawing No. 001-21-PL01 Revision A, a hard landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme for hard landscaping the site shall include:

- details of the hard surface areas, including pavements, pedestrian areas, reduced-dig areas, crossing points and steps; and
- the position, height and materials of means of enclosure/boundary treatments.
- Timetable for the hard landscape scheme to be implemented

The development shall be undertaken in accordance with the approved details and timetable for implementation and shall be retained as such thereafter.
Reason: To ensure the creation of a pleasant environment for the development, in the interests of residential amenity and to comply with Policy LP24 of the Kirklees Local Plan, Principle 2 of the Kirklees Housebuilders Design Guide SPD and Chapter 12 of the National Planning Policy Framework.

5. Prior to the first occupation of the dwellings hereby approved, the areas indicated to be private drives on Drawing No. 001-21-PL01 Revision A for the approved dwellings shall be 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 as amended or any successor guidance. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any Order revoking or re-enacting that Order) these areas shall be so retained, free of obstructions and available for parking thereafter.
Reason: In the interests of visual amenity and traffic safety, to mitigate flood risk arising from surface water run-off, to ensure adequate space within the site for vehicle movements and parking and to comply with Policy LP24 of the Kirklees Local Plan, Principle 12 of the Kirklees Housebuilders Design Guide SPD and Chapter 9 of National Planning Policy Framework.

6. Prior to the first occupation of the dwellings hereby approved, two parking spaces shall be provided for No.105 Highgate Lane as displayed within the blue line area on Drawing No. 001-21-PL01 Revision A, and shall be 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 as amended or any successor guidance. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any Order revoking or re-enacting that Order). Thereafter, these areas shall be so retained, free of obstructions and available for parking thereafter.
Reason: In the interests of visual amenity and traffic safety, to mitigate flood risk arising from surface water run-off, to ensure adequate space within the site for vehicle movements and parking and to comply with Policy LP24 of the Kirklees Local Plan, Principle 12 of the Kirklees Housebuilders Design Guide SPD and Chapter 9 of National Planning Policy Framework.

7. Prior to the commencement of development of the two parking spaces for No.105 Highgate Lane as displayed within the blue line area on Drawing No. 001-21-PL01 Revision A, an Arboricultural Method Statement (AMS), undertaken in accordance with BS:5837:2012 and all subsequent amendments and revisions, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, all works on site shall be carried out in accordance with the approved details.
Reason: To ensure the continued health of protected trees and to ensure that they are not adversely affected by the construction works, in the interests of the visual amenity of the area, to ensure the integration of the development into the existing landscape and to comply with Policies LP24 and LP33 of the Kirklees Local Plan, Principle 2 of the Kirklees Housebuilders Design Guide SPD and Chapter 12 of the National Planning Policy Framework.

8. Prior to the first occupation of the dwellings hereby approved, one electric recharging point shall be installed within the dedicated parking area of each dwelling hereby approved. Cable and circuitry ratings shall be of adequate

size to ensure a minimum continuous current demand of 16 Amps and a maximum demand of 32Amps. The electric vehicle charging points so installed shall thereafter be retained.
Reason: In the interest of supporting low emission vehicles and to accord with the guidance contained in Policies LP24 and LP51 of the Kirklees Local Plan, Principle 18 of the Kirklees Housebuilders Design Guide SPD and Chapters 9 and 15 of the National Planning Policy Framework.

9. The Groundworks (other than those required for a site investigation report) shall not commence until a revised Phase II Intrusive Site Investigation Report has been submitted to and approved in writing by the Local Planning Authority.
Reason: This is required as a pre-commencement condition to ensure any unidentified contamination is established and to identify and remove unacceptable risks to human health and the environment in accordance with Policy LP53 of the Kirklees Local Plan and Chapter 15 of the National Planning Policy Framework
10. Where site remediation is recommended in the Phase II Intrusive Site Investigation Report approved pursuant to condition 9, further groundworks 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: This is required as a pre-commencement condition to ensure any unidentified contamination is established and to identify and remove unacceptable risks to human health and the environment in accordance with Policy LP53 of the Kirklees Local Plan and Chapter 15 of the National Planning Policy Framework

11. Remediation of the site shall be carried out and completed in accordance with the Remediation Strategy approved pursuant to condition 10. In the event that remediation is unable to proceed in accordance with the approved Remediation Strategy or contamination not previously considered [in either the Preliminary Risk Assessment or the Phase II Intrusive Site Investigation Report] is identified or encountered on site, 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. 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 ensure the safe occupation of the site and to accord with Policy LP53 of the Kirklees Local Plan and Chapter 15 of the National Planning Policy Framework.

12. 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 have been completed for (that part of) the site 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. Where validation has been submitted and approved in stages for different areas of the whole site, a Final Validation Summary Report shall be submitted to and approved in writing by the Local Planning Authority.
Reason: To ensure the safe occupation of the site and to accord with Policy LP53 of the Kirklees Local Plan and Chapter 15 of the National Planning Policy Framework.

13. Prior to the construction of dwellings hereby approved above slab level, full design details, including elevations and floor plans, of the blocking up of windows, new windows on the front and rear elevations and the removal of the conservatory to no. 105 Highgate Lane, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the dwellings approved subject of this application shall not be first occupied until the blocking up of windows, new windows and removal of the conservatory to no. 105 Highgate Lane has been carried out in accordance with the approved details.
Reason: To prevent an adverse loss of outlook for the occupiers of No.105 Highgate Lane and to comply with Policy LP24 of the Kirklees Local Plan, Principle 6 of the Kirklees Housebuilders Design Guide SPD and Chapter 12 of the National Planning Policy Framework.

14. A bat box and a bird box shall be incorporated into each dwelling; the boxes shall be long-lasting Schwegler `woodcrete' type or similar and shall be located away from sources of light and at least 4 metres above ground level. The bat and bird boxes shall be provided prior to first occupation of the dwellings and thereafter be retained.
Reason: To enhance the biodiversity of the site in accordance with Policy LP30 of the Kirklees Local Plan, Principle 9 of the Kirklees Housebuilders Design Guide SPD and Chapter 15 of the National Planning Policy Framework.

15. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any Order revoking or re-enacting that Order) no development included within Classes A, B, D or E of Part 1 of Schedule 2 to that Order shall be carried out without the prior written consent of the Local Planning Authority.
Reason: To prevent further development of the site, which could materially harm the visual amenity of the locality and residential amenity, and to comply with Policy LP24 of the Kirklees Local Plan, Principles 2, 6 and 17 of the Kirklees Housebuilders Design Guide SPD and Chapter 12 of the National Planning Policy Framework.

16. Prior to the first occupation of the dwellings hereby approved, any windows above lower ground floor level in the north west side elevation of the north west dwelling hereby approved shall be fixed shut (unless parts of the windows which can be opened are more than 1.7 metres above floor level),

and obscure glazed (Level 3 or above), and shall be retained as such thereafter.
Reason: To restrict overlooking, to preserve the amenity of future occupiers and neighbouring residents and to comply with Policy LP24 of the Kirklees Local Plan, Principles 2, 6 and 17 of the Kirklees Housebuilders Design Guide SPD and Chapter 12 of the National Planning Policy Framework.

17. Prior to the first occupation of the dwellings hereby approved, any windows above lower ground floor level in the south east side elevation of the south east dwelling hereby approved shall be fixed shut (unless parts of the windows which can be opened are more than 1.7 metres above floor level), and obscure glazed (Level 3 or above), and shall be retained as such thereafter.
Reason: To restrict overlooking, to preserve the amenity of future occupiers and neighbouring residents and to comply with Policy LP24 of the Kirklees Local Plan, Principles 2, 6 and 17 of the Kirklees Housebuilders Design Guide SPD and Chapter 12 of the National Planning Policy Framework.

NOTE: The granting of planning permission does not authorise the carrying out of works within the highway, for which the written permission of the Council as Highway Authority is required. You are required to consult the Design Engineer, Flint Street, Fartown, Huddersfield (Kirklees Street Care: 01484 221000) with regard to obtaining this permission and approval of the construction specification. Please also note that the construction of vehicle crossings within the highway is deemed to be major works for the purposes of the New Roads and Street Works Act 1991 (Section 84 and 85). Interference with the highway without such permission is an offence which could lead to prosecution.

NOTE: It is the applicant's responsibility to find out whether the work approved by this planning permission requires written approval from the Highways Structures section for works near or abutting highway and any retaining structures. Contact Highways Structures Section on Tel No. 01484-221000 who can advise further on this matter.

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 13.00hours, 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.

NOTE: Birds and their nests are fully protected under the Wildlife and Countryside Act 1981 (as amended), which makes it an offence to intentionally take, damage or destroy the eggs, young or nest of a bird whilst it is being built or in use. Disturbance to nesting birds can be avoided by carrying out vegetation removal or building work outside the breeding season, which is March to August inclusive.

NOTE: All contamination reports shall be prepared in accordance with Model Procedures for the Management of Land Contamination – Contaminated Land report 11 (CLR11), National Planning Policy Framework (NPPF) and the Council's Advice for Development documents or any subsequent revisions of those documents.

Plans Pursuant to Planning Application 2021/90749			
Plan Type	**Reference**	**Version**	**Date Received**
Proposed Site Plan	001-21-PL01	A	6th May 2021
Location Plan	001-21-PL08	-	24th February 2021
Existing and Proposed Street Scene	105HG-20-PL04	A	6th May 2021
Existing and Proposed Sections (sheet 1)	001-21-PL05	A	6th May 2021
Existing and Proposed Sections (sheet 2)	001-21-PL06	A	6th May 2021
Plot 1 Elevations and Floor Plans	001-21-PL02	A	6th May 2021
Plot 2 Elevations and Floor Plans	001-21-PL03	A	6th May 2021
Design, Access & heritage Statement by Hinchcliffe Architecture and Design Ltd dated 22.02.2021	001-21-R1	-	24th February 2021
Phase 1 Environmental Desk Study by Rogers Geotechnical Services Ltd dated 18.02.2021	C1431/20/E/2255	-	4th March 2021
Mineral Resource Assessment by Rogers Geotechnical Services Ltd dated 18.02.2021	C1431/21/E/2255	-	4th March 2021
Highgate Lane Site Plan	HADL_01_Highate Lane (Sheet 1)	-	24th February 2021
Highgate Lane Site Plan	HADL_03_Highgate Lane (Sheet 2)	-	24th February 2021
Highgate Lane Elevation Plan	HADL_03_Highate Lane (Sheet 3)	-	24th February 2021
Plans Pursuant to Planning Application 2022/92816			
Plans Type	**Reference**	**Version**	**Date Received**

Materials Schedule Document by Hinchliffe Architecture & Design Ltd specifying '100mm Newlay Calder Buff Walling Stone', 'Vertically spanning Cedar Cladding' and 'Marley Modern Smooth Grey interlocking Concrete Tiles'	-	-	22nd August 2022

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Report Dated: dsfffsdf