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:	**2022/70/93035/W**
Site Address:	Site Adj, 34, Sunny Bank Road, Meltham, Holmfirth, HD9 5LL
Description:	Variation of condition 2 (plans and specifications) on previous permission 2017/91891 for erection of 3 detached dwellings with integral garages
Recommending Officer:	Luke Walstow

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.

John Holmes

AUTHORISED OFFICER

Date: 07-Nov-2022

THE SITE

The site is a very steeply sloping piece of land off Sunny Bank Road in Meltham. The land is predominantly covered in overgrown vegetation and includes a number of trees and a small building. The land is bound by Meltham Dike to the south. The site sits between Lower Sunny Bank Court to the west and 34 Sunny Bank Road to the east with an undeveloped embankment and residential development to the north.

The Development

Submitted under Section 73 of the Town and Country Planning Act 1990 (as amended), this application seeks permission for the variation of condition 2 of the permission (Ref- 2017/62/91891/W) which granted permission for the erection of 3 detached dwellings with integral garages. It appears to be the case that a lawful start of this consent has been made.

The purpose of the application is to alter the wording of condition 2, to allow amended plans to be the agreed plans used for the development, allowing the position of the proposed houses to be further back on the site to accommodating an existing wall.

Condition no.2 in full reads as follows: -

2. The development hereby permitted shall be carried out in complete accordance with the plans and specifications 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, BE2, D2, D6 and T10 of the Kirklees Unitary Development Plan and guidance in the National Planning Policy Framework.

The approved plans are as followes:-

Plan type	Reference	Version	Date Received
Location Plan	-	-	5/6/17
Proposed Site Plan and Section	865 / 05	-	5/6/17
Proposed Floor Plans	685 / 09	A	23/10/17
Proposed Elevations	865 / 07		5/6/17
Topographical Survey	NDP/343/SP	-	5/6/17
Planning Statement	-		5/6/17

The application form for this application requests the revised condition to refer to the updated drawings submitted with this application. The proposal would see drawings 05, 09 and 07 replaced by submitted plans 685-20, 685-22 and 685-21.

PLANNING HISTORY

2020/91812/W - Discharge conditions 3, 4, 6, 7, 8 On previous permission 2017/91891 for erection of 3 detached dwellings with integral garages – Discharge of Conditions Approved.

2017/91891/W - Erection of 3 detached dwellings with integral garages - Approved

2004/93428 Reserved Matters for erection of 3 detached dwellings with integral garages – Approved

2001/91672 Renewal of unimplemented outline permission for erection of 3 detached houses – Approved

98/92150 Renewal of unimplemented outline permission for erection of 3 detached houses – Approved

92/04563 Outline application for 3 detached houses – Approved

PUBLICITY & REPRESENTATIONS

The Council are currently undertaking the legal statutory publicity requirements, as set out at Table 1 in the Kirklees Development Management Charter. As such, this application has been publicised via neighbour notification letters.

Final publicity date expired 19 September 2022– no representations received
Meltham Parish Council comments – no comments received.

CONSULTATIONS

KC Highways – Asked for the following conditions to be implemented;

1. Before the development commences a scheme detailing the location and cross sectional information together with the proposed design and construction details for all new retaining walls/ building retaining walls adjacent to the existing highway shall be submitted to and approved by the Highway Authority in writing. The approved scheme shall be implemented prior to the commencement of the proposed development and thereafter retained during the life of the development.

1. The site slopes steeply in a southerly direction away from Sunny Bank Road. No development shall take place until the design and construction details for all temporary and permanent retaining structures supporting the embankment within the site have been approved in writing by the Council's Highways Structures Section. The details shall include an assessment statement, all necessary ground investigations on which assessment assumptions are

based on, method statements for the removal of any bulk excavation together with a full slope stability analysis and structural calculations to verify the structural adequacy of the embankment. Subject to the results and the outcome of the ground investigation undertaken at this site, the analysis should also identify any remedial measures required to deal with instability issues, which will need to be submitted to and agreed in writing by the Council's Highways Structures Section prior to their implementation and shall be so maintained throughout the life of the development

ALLOCATION & POLICIES

This application seeks permission to amend condition no.2 of a 2017 consent (ref: 2017/62/91891/W) for 3 dwellings. Since the granting of the 2017 consent the Council has adopted the Kirklees Local Plan, and two supplementary planning documents. The National Planning Policy Framework has also been re-issued.

Local guidance and policy is provided by the Kirklees Local Plan (adopted February 2019) as such the following policy, guidance and legislation is considered relevant to the determination of this application:-

Kirklees Local Plan

LP1 Achieving Sustainable Development
LP2 Place Shaping
LP21 Highway Safety
LP24 Design

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. Considered to be of relevance to the consideration of this application are policies within the following chapters: -

Chapter 12 – Achieving sustainable design

Supplementary Planning Guidance

Housebuilders Design Guide SPD (2021).
Kirklees Highway Design Guide (November 2019)

Legislation

The Town & Country Planning Act 1990 (as amended).

Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out that in considering planning applications the determination must be made in accordance with the plan unless material considerations indicate otherwise

ASSESSMENT

This Section 73 application seeks to amend the wording of condition no.2 to allow for a scheme to be implemented with the retention of a wall close to Sunnybank Road. This was agreed in the previous application (2017/62/91891/W) and cannot be achieved with current plans.

Policy LP2 sets out that all development proposals should seek to build on the strengths, opportunities and help address challenges identified in the Local Plan. Policy LP24 of the KLP is relevant and states that "good design should be at the core of all proposals in the district".

Local Plan Policy LP24(a) states that all proposals should promote good design by ensuring the following: *'the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape'.*

Principle 5 of the Housebuilders Design Guide states, amongst other things, that buildings should be aligned and set-back to form a coherent building line and designed to front on to the street. To avoid dominating the street, principle 12 states parking to the front will need creative design solutions to be incorporated. Consideration of the use of locally prevalent materials is required by principle 13. The design of windows and doors to relate well to the street frontage and neighbouring properties is required by principle 14. Principle 15 sets out that the design of the roofline should relate well to the site context, including topography, views, heights of buildings and the roof types.

Principle 17 of the Council's adopted Housebuilders Design Guide Supplementary Planning Document (SPD) requires development to ensure an appropriately sized and useable area of private outdoor space is retained. Principle 16 of the Housebuilders Design Guide seeks to ensure the floorspace of dwellings accords with the 'Nationally Described Space Standards' document (March 2015).

A core planning principle as 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. This is also reinforced within part (b) of Policy LP24 of the Kirklees Local Plan. Principle 6 of the House Builders Design Guide sets out that residential layouts must ensure adequate privacy and maintain high standards of residential amenity, to avoid negative impacts on light, outlook and to avoid overlooking.

Policy LP21 of the Kirklees Local Plan relates to access and highway safety and is considered to be relevant to the consideration of this application. The Council's adopted Highway Design Guide and Principles 12 and 19 of the Housebuilders design guide which seek to ensure acceptable levels of off street parking, adequate waste storage facilities are provided, are also considered to be of relevance.

It is noted that both the local plan and the National Planning Policy Framework have been updated since the 2017 grant of permission. This is taken into account in the assessment of the impact of the change in the proposed development.

This application seeks to vary the wording of condition no.2 (detailed in 'The Proposal' section of this report) to wording which is intended to enable the development to go ahead whilst retaining a wall close to sunny bank road.

The applicant has submitted the following plans as part of this application: -

- Site Plan (ref: 685-21)
- Floor Plans (ref: 685-20)
- Elevation Plans (ref: 685-22)
- Planning Statement (Dated September 2022).

The Council's Highways Team have been consulted and have confirmed that they consider the scheme to be constructed to a standard which is suitable to be adopted by the Council, however, have requested two further conditions be included. These two requested conditions are to require a detailed location and cross-sectional scheme with the proposed design and construction details for all new retaining wall/building adjacent to the highway should be submitted and approved to the Highway Authority in writing before and development commences.

The highway authority have also requested a condition be implemented that enforces no
development shall take place until the design and construction details for all temporary and permanent retaining structures supporting the embankment within the site have been approved in writing by the Council's Highways Structures Section. These condition were not included upon the 2017 consent however, given the response of the Highways Team and the nature of the alterations being proposed it is recommended any grant of permission includes them.

The proposal would see some small scale alterations to the design of the dwelling, with the overall ridge height at a reduced height (by approximately 1m). The proposal would also see the creation of a tiered garden with the inclusion of associated boundary walls (rather than sloping gardens as granted consent). It is considered that the visual impact of the proposal would not be significant and the proposed scheme is acceptable in this regard.

The proposal would not significantly alter the floor space or amenity space or waste storage arrangements from that as approved. As such the impact of the proposal upon residential amenity of neighbouring / future occupiers is not considered to be significant in this case.

Subject to re wording of condition no.2 the proposal is considered to be acceptable in terms of access and highway safety and accord with the updated policies.

Review of conditions

In the instance of any grant of approval of a S73 application a new consent is issued by the LPA, as such all conditions upon the original consent are required to be reviewed and where necessary re applied or amended. This section sets out a review of all conditions upon consent 2017/91891.

Condition No.1

This condition related to the timeframe to commence development. Given that the development appears to have commenced, this condition shall not be included upon any grant of permission.

Condition no.2

This condition listed the plans against which the decision was based, and that the development shall be carried out in complete accordance with them (other than where specified within other conditions of the approval). It is recommended this condition is slightly amended to make reference to the plans / conditions submitted as part of both application 2017/62/91891/W and this application (where relevant).

It is recommended the reason for this condition is updated to policies which are within the Kirklees Local Plan and updated National Planning Policy Framework rather than the policies which are quoted.

Condition no.3

This condition relates to materials used for the development, including the retaining wall shall be approved in writing by the Local Planning Authority before works and construction is started. It is recommended this condition is changed to reflect the previously submitted planning application 2020/91812/W and that the condition has been discharged within a decision issued 02 September 2020.

It is recommended the reason for this condition is updated to policies which are within the Kirklees Local Plan and updated National Planning Policy Framework rather than the policies which are quoted.

Condition no.4

This condition stated that the development shall not be occupied until a footway 1.8 metres wide has been provided and was previously shown on drawing 865 / 05. It is recommended this condition is changed to reflect the previously submitted planning application 2020/91812 and that the condition has been discharged within a decision issued 02 September 2020.

It is recommended the reason for this condition is updated to policies which are within the Kirklees Local Plan and updated National Planning Policy Framework rather than the policies which are quoted.

Condition no.5

This condition refers to the vehicle parking within the development to ensure approved vehicle parking areas shall be surfaced and drained. This condition shall remain as worded.

It is recommended the reason for this condition is updated to policies which are within the Kirklees Local Plan and updated National Planning Policy Framework rather than the policies which are quoted.

Condition no.6

This condition refers to details of storage and access for collection of wastes from the development. It is recommended this condition is changed to reflect the previously

submitted planning application 2020/91812 and that the condition has been approved within a decision issued 02 September 2020.

It is recommended the reason for this condition is updated to policies which are within the Kirklees Local Plan and updated National Planning Policy Framework rather than the policies which are quoted.

Condition no.7

This condition refers to details of the foul and surface water drainage scheme for the site shall be submitted to and approved in writing by the Local Planning Authority before development commences. It is recommended this condition is changed to reflect the previously submitted planning application 2020/91812 and that the condition has been discharged within a decision issued 02 September 2020.

It is recommended the reason for this condition is updated to policies which are within the Kirklees Local Plan and updated National Planning Policy Framework rather than the policies which are quoted.

Condition no.8

This condition referrers to the submission of a detailed landscaping scheme for the undeveloped part of the site and along the southern boundary with Meltham Dike, which would be submitted to the Local Planning Authority for approval before any works commence on the start of the second house's superstructure. This document t should include planting of shrubs and trees and how this the landscaping on the site would be maintained. It is recommended the reason for this condition is updated to policies which are within the Kirklees Local Plan and updated National Planning Policy Framework rather than the policies which are quoted.

Condition No.9

This condition relates to electric vehicle charging points, stating prior to occupation of any of the dwellings hereby approved, an electric vehicle recharging point shall be installed at each dwelling. It is recommended the reason for this condition is updated to policies which are within the Kirklees Local Plan and updated National Planning Policy Framework rather than the policies which are quoted.

CONCLUSION & RECOMMENDATION

It is considered that, subject to the wording of conditions being amended, where relevant, to the wording set out in the 'Review of Conditions' section of this report, this Section 73 application the proposal is acceptable.

It is therefore concluded that the variations to the approved plans proposed under this Section 73 application are acceptable and do not alter the conclusions reached and the recommendation made for approved application 2017/91891.

Approval is Recommended.

Recommendation **APPROVE**

Decision Authorisation – Delegated Powers
Application Number: 2022/93035
Officer Recommendation: Conditional Full Permission

Conditions

1. The development hereby permitted shall be carried out in complete accordance with the plans and specifications schedule listed in this decision notice as well as the drawing titled 'Location Plan' received 5th June 2017, Topographical Survey (ref NDP/343/SP) and Planning statement received 5th June 2017 submitted as part of application 2017/91891 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 LP1, LP2, LP7, LP11, LP21, LP22, LP24, LP28, LP30 & LP51 of the Kirklees Local Plan and policies within Chapters 2, 12, 14 and 15 of the National Planning Policy Framework.

2. The facing materials for the development, including the retaining wall at the rear of the site adjacent to Meltham Dike, dwellings shall be submitted for application 2020/44/91812/W and subsequently approved within a letter dated 02 September 2020 and retained thereafter.
Reason: In the interests of visual amenity and to accord with Policy LP24 of the Kirklees Local Plan and policies contained within Chapter 12 of the National Planning Policy Framework.

3. The development shall not be brought into use until the 1.8 metre wide footway has been provided submitted for application 2020/44/91812/W and subsequently approved within a letter dated 02 September 2020 and retained thereafter.
Reason: In the interests of highway safety and to allow for safe pedestrian access to and from the site and in accordance with policy LP21 of the Kirklees Local Plan.

4. The approved vehicle parking areas shall be surfaced and drained before the dwelling to which the parking space relates is first occupied. The parking areas shall thereafter be retained as such.
Reason: In the interest of highway safety, sustainable drainage, and to ensure adequate space within the site for vehicle movements and parking and in accordance with Policies LP21 and LP22 of the Kirklees Local Plan and the policies within Chapter 9 of the National Planning Policy Framework.

5. Storage and access for collection of wastes from the development shall be submitted for application 2020/44/91812/W and subsequently approved within a letter dated 02 September 2020 and retained thereafter.
Reason: In the interests of highway safety and amenity and to accord with Policy LP21 of the Kirklees Local Plan.

6. The foul and surface water drainage scheme shall be in accordance with those submitted for application 2020/44/91812/W and subsequently approved within a letter dated 02 September 2020 and retained thereafter.
Reason: To ensure the provision of adequate and sustainable systems of drainage in the interests of amenity, environmental well-being and to accord with Policy LP24 and LP28 of the Kirklees Local Plan,and the National Planning Policy Framework.

7. The development shall not be brought into use until the landscaping of the undeveloped part of the site has been completed in accordance with the scheme

submitted for application 2020/44/91812/W and subsequently approved within a letter dated 02 September 2020 and retained thereafter.
Reason: To mitigate against the loss of existing habitat and in the interests of visual amenity and to accord with, Policy LP24 of the Kirklees Local Plan and guidance in the National Planning Policy Framework.

8. Prior to occupation of any of the dwellings hereby approved, an electric vehicle recharging point shall be installed at each dwelling. Cable and circuitry ratings shall be of adequate size to ensure a minimum continuous current demand of 16 Amps and a maximum demand of 32 Amps. Thereafter the electric vehicle recharging point shall be retained.
Reason: In the interest of sustainable transport, to accord with Policy LP51 of the Kirklees Local Plan, guidance within the West Yorkshire Low Emissions Strategy and to accord with policy within Chapter 9 of the National Planning Policy Framework.

9. No further development shall commence until a scheme detailing the location and cross sectional information together with the proposed design and construction details for all new retaining walls/ building retaining walls adjacent to the existing highway has been submitted to, and approved by, the Local Planning Authority. The approved scheme shall be completed prior to the development being brought into use and thereafter retained.
Reason: In the interest of highway safety in accordance with Policies LP21 and LP24 of the Kirklees Local Plan and the policies within Chapter 9 of the National Planning Policy Framework.

10. No further development shall take place until the design and construction details for all temporary and permanent retaining structures supporting the embankment within the site has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall include an assessment statement, all necessary ground investigations on which assessment assumptions are based on, method statements for the removal of any bulk excavation together with a full slope stability analysis and structural calculations to verify the structural adequacy of the embankment. Subject to the results and the outcome of the ground investigation undertaken at this site, the analysis should also identify any remedial measures required to deal with instability issues, which will need to be submitted to and agreed in writing by the Council's Highways Structures Section prior to their implementation. The development shall not be brought into use until the scheme(s) required by this condition have been completed which shall be thereafter retained.
Reason: In the interest of highway safety in accordance with Policies LP21 and LP24 of the Kirklees Local Plan and the policies within Chapter 9 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 (Kirklees Street Scene: 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.
Plans and specifications schedule:-

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Proposed Site Plan	685 / 21		12/09/2022
Proposed Elevations	685 / 22		12/09/2022
House Plans	685 / 20		12/09/2022
Planning Statement	-	-	12/09/2022

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 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. No amendments were sought as it was considered that the proposal was acceptable as submitted.

Report Dated: 4th November