

**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>2023/70/90747/W</b>                                                                                                                                                                                                                                                           |
| Site Address:         | 5, Southway, Lindley, Huddersfield, HD3 3LN                                                                                                                                                                                                                                      |
| Description:          | Variation of condition 2 (plans and specifications) on previous permission (2021/92354 for erection of single and two storey extensions, dormer windows to front and rear and external alterations) in relation to alterations to rear extension roof and associated alterations |
| Recommending Officer: | Laura Yeadon                                                                                                                                                                                                                                                                     |

**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-Jul-2023

## Officer Report

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2023%2f90747>

## Site Description

5 Southway is a large dormer bungalow which is constructed from red brick with render and a tiled roof. The property is located on a small cul-de-sac where dwellings are comprised of relatively modest sized dwellings within large gardens which are a mix of bungalows and two storey dwellings of varying styles. To the front of the main body of the dwelling is an attached double integral garage and an off-street parking area with lawn and to the rear is a larger garden which is set up from the finished floor level of the dwelling.

## Description of Proposal

The application is to Condition 2 on application number 2021/92354 for the erection of single and two storey extensions, dormer windows to front and rear and external alterations.

Works to implement the approved scheme have commenced however the works as constructed at the site do not correspond with the approved plans under the 2021 application. This application seeks to regularise the works as built.

The application has been submitted with a Supporting Statement which details the design changes which are summarised as follows:

- Small rear dormer has been refurbished and retains the original pitched roof
- Large south facing box dormer has been built with a flat roof with a larger overhang to the eaves and white fascia windows rather than grey
- Small front dormer approved to be enlarged has been constructed with a flat roof but with white fascias
- The rear extension overhang eaves detail omitted and subsequent reduction in volume and size of the existing pitched roof which has made the approved dormer seem larger when in fact the same dimensions. Overall height of rear extensions is no higher than the original approval
- The eaves and gutter located on the south side of the extension facing the garden have been raised in line with the flat roof gutter details and approximately 500mm above the previously approved scheme but set back approximately 800mm from where they were approved with the large overhanging eaves detail
- Volume of rear extension including the dormer is considerable less than 2021 approval vs as built drawings

- Approved 2021 drawings indicate a render finish to the proposed extensions, however the as built extensions have been constructed using red brick that matches that of the existing

It is noted that the description of development of the application for which this variation of condition application relates to is as follows:

*Erection of single and two storey extensions, dormer windows to front and rear and external alterations*

As part of this application a dormer is proposed to an additional roof slope. It is considered that whilst this is an alteration from the previous proposal it can be considered under the scope of an application to vary condition 2 of the 2021 consent given the wording of the description.

### **History of negotiations/amendments received**

No negotiations have taken place with the applicant/agent due to the application being acceptable in its submitted format.

### **Relevant Planning History**

- |            |                                                                                                                                                                                                       |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1996/92457 | Erection of extensions and dormer window<br><i>Conditional Full Permission</i>                                                                                                                        |
| 2018/91169 | Erection of extensions and alterations<br><i>Conditional Full Permission</i>                                                                                                                          |
| 2020/91843 | Erection of single and two storey extensions, dormer windows to front and rear and external alterations<br><i>Conditional Full Permission</i>                                                         |
| 2021/92354 | Erection of single and two storey extensions, dormer windows to front and rear and external alterations<br><i>Conditional Full Permission</i>                                                         |
| 2022/91226 | Erection of dormer window<br><i>Refused</i> – appeal allowed, and planning permission is granted for the erection of a dormer                                                                         |
| 2023/90729 | Discharge of Conditions 3 (materials), 4 (obscure window) on previous permission 2022/91226 (APP/Z4718/D/22/3307226) for erection of dormer window<br><i>Under consideration – not yet determined</i> |

### **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, site notice

and newspaper advertisement. This was due to the application site affecting the setting of a Conservation Area.

Final publicity date expired 30<sup>th</sup> April 2023

Parish/ Town Council – not applicable

As a result of the public consultation period three representations have been received with the summary of comments set out below:

*Visual amenity:*

- Due to use of large and white soffits, fascias and eaves to the dormers, the height of the property is altered with respect to the previous plans
- Completed with the overall appearance is overwhelming due to the overhanging eaves and soffits to the main flat roof both in terms of they size, construction and colour
- Appearance is unsightly and detrimental

*Residential amenity*

- Overlooking due to windows opening southward
- Increase in overshadowing
- Every south facing room in neighbouring property and garden views the application site
- Privacy compromised by a window on west facing gable which looks directly onto gardens and habitable rooms

*Built works*

- Not built in accordance with the approved plans

*North elevation dormer*

- Originally described as a dormer – a flat roofed extension has been built
- A dormer extension should be situated below the roofline of the property and whilst this maybe the case from the street view it is certainly not from garden views and driveway on Daisy Lea Lane
- The overall appearance could be improved by the lowering of the soffits and eaves - even a change of the colour from white to a matching colour would be more aesthetically acceptable

*General comments*

- Appeal allowed subject to conditions however development has been in place for 12 months
- Extremely unfair and flaunts the overriding principles of the need to seek planning permission

- Latest application gives the impression that what has been built has received permission on appeal which is not the case as the previous plans were successful but not the actual completed building work – latest plans produced on what is now built and not on what has been approved

## **Consultation Responses**

None required

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

The site is without notation on the Kirklees Local Plan however the western (rear) boundary forms the boundary with the Conservation Area.

### Kirklees Local Plan:

- **LP 1** – Achieving sustainable development
- **LP 2** – Place shaping
- **LP 21** – Highway safety and access
- **LP 22** – Parking
- **LP 24** – Design
- **LP 30** – Biodiversity and geodiversity
- **LP 35** – Historic environment
- **LP 51** – Protection and improvement of local air quality
- **LP 53** – Contaminated and unstable land

### Supplementary Planning Documents:

- Highways Design Guide
- House Extensions and Alterations SPD

### National Policies and Guidance:

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 21<sup>st</sup> July 2021, the Planning Practice Guidance Suite (PPGS) first launched 6<sup>th</sup> 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 9 – Promoting Sustainable Transport
- Chapter 12 – Achieving well-designed places
- Chapter 14 – Meeting the challenge of climate change, flooding & coastal change.
- Chapter 15 – Conserving and enhancing the natural environment
- Chapter 16 – Conserving and enhancing the historic environment

## **Assessment**

### Principle of development:

The site is without notation on the Kirklees Local Plan. Policy LP1 states that when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. LP1 goes on further to stating that:

“The Council will always work pro-actively with applicants jointly to find solutions which mean that the proposal can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.

The site shares a boundary with the Edgerton Conservation Area. Section 72 of the Listed Buildings & Conservation Areas Act (1990) requires that special attention shall be paid in the exercise of planning functions to the desirability of preserving or enhancing the appearance or character of the Conservation Area. This is mirrored in Chapter 16 of the National Planning Policy Framework and also LP35 of the Kirklees Local Plan.

In terms of extending and making alterations to a property Policy LP24 of the Kirklees Local Plan will be used to assess, in conjunction with Chapter 12 of the National Planning Policy Framework regarding design, including the adopted Kirklees Supplementary Planning Document on House Extensions (SPD).

Within the adopted SPD, Key Design Principles 1 and 2 are relevant to the consideration of the principle of the development & visual amenity and are considered within the following report. These policies state the following:

- Principle 1 – that “extensions and alterations to residential properties should be in keeping with the appearance, scale, design, and local character of the area and the street scene.”
- Principle 2 – that “extensions should not dominate or be larger than the original house and should be in keeping with the existing building in terms of scale, materials and detail.”

With specific regard to the House Extensions and Alterations SPD the other key design principles for consideration are:

- Key design principle 3: Privacy
- Key design principle 4: Habitable rooms and side windows
- Key design principle 5: Overshadowing/loss of light
- Key design principle 6: Preventing overbearing impact
- Key design principle 7: Outdoor space
- Key design principle 9: Construction materials
- Key design principle 12: Natural environment
- Key design principle 15: Provision for parking
- Key design principle 16: Provision for waste storage

The principle of extending the property has been established through previous planning permissions at the application site. This application seeks to vary the plans on application 2021/92354 for the erection of single and two storey extensions, dormer windows to the front and rear and external alterations which were subsequently approved.

Following the approval of that application, construction works began on site which included a dormer extension within the north facing roofslope. Planning permission was sought for this feature under application number 2022/91226 which was refused by the LPA for the following reasons:

1. The proposed development, by reason of its siting, scale, massing and form, would dominate the host building and not result in a subservient addition to the host building when assessed cumulatively against the original property, and would also result in an incongruous addition to the host dwelling that would constitute an injurious visual intrusion within street scene. The proposal would therefore cause detrimental harm to the visual amenities of the locality and character and appearance of the area, contrary to Policy LP24 (a and c) of the Kirklees Local Plan, Key Design Principles 1 and 2 within the House Extensions and Alterations SPD and Policies within Chapter 12 of the National Planning Policy Framework.
2. The proposed rear dormer extension, by virtue of its large scale, siting and close proximity to neighbouring properties to the north, would be a dominant feature that would cause undue harm to the amenities of No. 6 Southway and No's. 50 and 52 Daisy Lea Lane in terms of the creation of an oppressive overbearing and overshadowing impact upon the gardens of these neighbouring properties, which would be contrary to Key Design Principles 5 and 6 of the House Extensions and Alterations SPD, Policy LP24 (b) of the Kirklees Local Plan and Policies within Chapter 12 of the National Planning Policy Framework.

Following the refusal of permission, the application was appealed and subsequently allowed under appeal reference APP/Z4718/D/22/3307226. Within the decision letter issued by the Planning Inspectorate paragraph 3 stated the following:

*‘On my site visit I observed that a dormer has already been erected. However, it is clear from the evidence before me that the proposed scheme is different to that built. Therefore, for the avoidance of doubt, I have assessed the appeal proposal and based my decision on the plans before me, and this is reflected in the tense used in my decision.’*

The Inspector's decision to allow permission for this application was based upon the impact of the development on visual amenity whereby the Inspector considered that the proposal would not be a large stark feature and it would be in keeping with the southern elevation dormer and that the style, materials and scale had been designed to match. The letter concludes the section of report with regard to character and appearance by stating that the dormer would not be an incongruous structure and would not cause unacceptable harm to the character and appearance of the host dwelling or surrounding area.

In terms of the impact of this dormer extension in isolation and the impact of the proposal on neighbouring properties, the Inspector considered that the proposal would have an acceptable impact on the living conditions of the neighbouring properties.

As such, in terms of the principle of developing the application site in a manner similar to that which is proposed, this has been established with reference to the approved applications under 2021/92354 and 2022/91226. The Inspector considered the cumulative impact of both developments and concluded that the 2021 application and the dormer would be a subservient addition to the host dwelling and would respect the character of the host dwelling and locality.

It is important to note that both approved developments can be implemented at any point and form a fall-back position in terms of the consideration of this application to vary the plans list condition upon permission 2021/92354.

#### Points of consideration

The application has been submitted to vary the plans within application 2021/92354 from plan number A(20)-01 to drawing number 22186-03 dated March 2023. The latter plan is annotated with red dashed lines to outline the approved works from the 2021 application and details and also details the works as built. It is clear that some works have not been built as per the previous plans approved.

This application has been submitted to vary the plans to reflect the 'as built' works at the site.

A Supporting Statement has been submitted which itemises each of the changes to the plans and these shall be considered below:

- Small rear dormer has been refurbished and retains the original pitched roof

It is noted that the approved flat roof dormer has been constructed with a pitched roof dormer. It is considered that visually, this is acceptable, reflecting the style of the previous pitched roof dormer and due to its location within the roof space would not cause undue harm to the amenity of neighbouring properties.

- Large south facing box dormer has been built with a flat roof with a larger overhang to the eaves and white fascia windows rather than grey

The south facing dormer has been constructed which has a lower eaves height to that approved in the 2021 application. The dormer faces into the garden area of the property and whilst deeper than that approved, it is considered to be visually acceptable. The Supporting Statement justifies the use of white for the soffits and window openings by stating that the materials were annotated on the 2021 application approved plans were in terms of render and roof tiles however it states that the previous plans.....*'does not specify the materials for the other elevations or roof plans of the development. In light of the above, there is doubt about the other materials not annotated, on the different elevations and as mentioned, even when annotated, colour, texture and quality and not mentioned..... the drawing seeks to avoid any doubt as to the proposed finishes to the building'*. The Statement is correct in that the previous plans 'indicated' the colour on plans however the materials for details not annotated on plan were not conditioned. This in itself is not unusual on a household development application. As such, given the siting of this dormer, facing into the garden with a fall-back position in terms of the previously approved plans with limited harm in terms of residential and visual amenity, this variation to this element of the proposal is acceptable.

- Small front dormer approved to be enlarged has been constructed with a flat roof but with white fascias

The plans for this application appear to be similar to that approved via the 2021 application. As the finishing colour of the window frames were not conditioned and were not annotated plan to change the colour of the frames would not be breach of any planning condition. Therefore, this element of the proposal is acceptable.

- The rear extension overhang eaves detail omitted and subsequent reduction in volume and size of the existing pitched roof which has made the approved dormer seem larger when in fact the same dimensions. Overall height of rear extensions is no higher than the original approval

The plans for this application have the outline of the approved plan dashed in red. This shows that there is a clear reduction in bulk, scale and massing of

the structure. The resulting roof slope is therefore lower than that approved. As this results in an overall reduction, this is considered to be acceptable.

- The eaves and gutter located on the south side of the extension facing the garden have been raised in line with the flat roof gutter details and approximately 500mm above the previously approved scheme but set back approximately 800mm from where they were approved with the large overhanging eaves detail
- Volume of rear extension including the dormer is less than 2021 approval vs as built drawings

This has been addressed above.

- Approved 2021 drawings indicate a render finish to the proposed extensions, however the as built extensions have been constructed using red brick that matches that of the existing

As the extension has been constructed using red brick rather than render, as the host property is constructed from brick, Officers consider that this would be acceptable.

#### Summary:

Whilst it is noted that, due to the alterations to the rear extension, the development has resulted in a flat roofed structure to the dormer with the soffits above the ridge height of the extension, weight is afforded the fact that permission has been granted for similar works, and there is a realistic fall back position in place.

As part of the previous application for the dormer extension Officers were not supportive of some of the additional works however this was subsequently granted permission and allowed at appeal by the Planning Inspectorate. Taking into account the decision of the Planning Inspectorate, and the other approved permission relating to this site, it is considered that the resultant impact, over and above the approved development on the previous plans would not be so harmful that there would be sufficient grounds to refuse the application. It is noted that representations have been made regarding the proposed colour of soffits and windows colours however there is no restriction by condition and these elements could likely be changed post construction without the requirement of planning permission in any event. As such it is considered refusal on such grounds could not be substantiated by the LPA.

In terms of the impact on the setting of the Conservation Area, the Inspector's decision letter is clear in that the details, as shown on plan, were considered to be such that the development would have a neutral impact on the character and appearance of the CA and the development would not cause harm to the significance of the designated heritage asset. This is due to the location of the dormer (on the side elevation), distance to the CA as well as the intervening built development, trees and vegetation. It is considered the development the

subject of this application is of a scale and impact whereby the same conclusion can be drawn.

Impact on residential amenity:

In terms of the works 'as built' the plans demonstrate the differences between the approved plans. It is not considered that there would be a significant impact resulting from the scheme submitted as part of this application from the extant permissions which can be implemented in any event. There would be no increase in overlooking and the concerns regarding the window within the north elevation dormer can be addressed by inclusion of a condition requiring this window to be obscure glazed.

Taking account of the scale of the proposal the subject of this application, and that of the approved permissions, subject to inclusion of the recommended condition the proposal is considered to be acceptable in this regard.

Representations:

3 representations have been received with the following being a summary of comments and LPA response:

*Visual amenity:*

- Due to use of large and white soffits, fascias and eaves to the dormers, the height of the property is altered with respect to the previous plans

Response: It is considered the overall height of the dormers has not been significantly increased from the previously approved scheme

- Completed with the overall appearance is overwhelming due to the overhanging eaves and soffits to the main flat roof both in terms of they size, construction and colour

Response: This has been addressed within the above assessment

- Appearance is unsightly and detrimental

Response: This has been addressed within the above assessment

*Residential amenity*

- Overlooking due to windows opening southward

Response: This has been addressed within the above assessment

- Increase in overshadowing

Response: This has been addressed within the above assessment

- Every south facing room in neighbouring property and garden views the application site

Response: This has been addressed within the above assessment

- Privacy compromised by a window on west facing gable which looks directly onto gardens and habitable rooms

Response: The window in the west facing gable was included as part of the 2021 approved scheme. As such, given the extant permissions which can be implemented in any case it is considered it would be unreasonable of the LPA to refuse permission on the basis of the impact of this opening in this case.

#### *Built works*

- Not built in accordance with the approved plans

Response: The submission of this application seeks approval for the 'as built' development.

#### *North elevation dormer*

- Originally described as a dormer – a flat roofed extension has been built

Response: This has been addressed within the above assessment

- A dormer extension should be situated below the roofline of the property and whilst this maybe the case from the street view it is certainly not from garden views and driveway on Daisy Lea Lane

Response: This has been addressed within the above assessment

- The overall appearance could be improved by the lowering of the soffits and eaves - even a change of the colour from white to a matching colour would be more aesthetically acceptable

Response: This has been addressed within the above assessment

#### *General comments*

- Appeal allowed subject to conditions however development has been in place for 12 months

Response: Noted

- Extremely unfair and flaunts the overriding principles of the need to seek planning permission

Response: Noted

- Latest application gives the impression that what has been built has received permission on appeal which is not the case as the previous plans were successful but not the actual completed building work – latest plans produced on what is now built and not on what has been approved

Response: Noted

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:** 2023/90747

**Officer Recommendation:** Approve

**Conditions:**

1. 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 LP1, LP2, LP6, LP21, LP22, LP24 and LP33 of the Kirklees Local Plan, principles 1, 2, 3, 4, 5, 6, 7, 8, 9, 13, 15 and 16 of the Council's adopted Supplementary Planning Document on House Extensions and Alterations and to accord with Policies within Chapters 2, 4, 12, 14 and 15 of the National Planning Policy Framework.

2. Within 3 months of the date of this permission the window shown within the north elevation dormer extension shall be fitted with an obscure glazed top opening window with the lower part of the opening section no lower than 1.7 metres above the finished floor level. 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) The obscure glazing shall thereafter be retained for the lifetime of the development.

**Reason:** So as not to detract from the amenities of adjoining property by reason of loss of privacy and to accord with Policy LP24 of the Kirklees Local Plan, principles 3 and 4 of the Council's adopted House Extensions and Alterations SPD and policies within Chapter 12 of the National Planning Policy Framework.

Plans and specifications schedule:-

| Plan Type                                                                                                        | Reference                                  | Version | Date Received               |
|------------------------------------------------------------------------------------------------------------------|--------------------------------------------|---------|-----------------------------|
| Location plan, existing site layout, proposed site layout, proposed elevations, floor plans and roof layout plan | As Built - 22186 – 03                      |         | 7 <sup>th</sup> March 2023  |
| Supporting Statement                                                                                             | PS – 05 – dated 6 <sup>th</sup> March 2023 |         | 13 <sup>th</sup> March 2023 |

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 Case Officer did not undertake any negotiations with the applicant due to the application being considered acceptable in its submitted format.

**Report Dated:** 5<sup>th</sup> July 2023

Coal – low