

KIRKLEES METROPOLITAN COUNCIL INVESTMENT & REGENERATION SERVICE

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended)

DELEGATED DECISION TO DETERMINE APPLICATIONS FOR CONSENT, AGREEMENT OR APPROVAL REQUIRED BY CONDITION

Reference No:	2023/44/90773/W
Site Address:	Land at, Penistone Road, Fenay Bridge, Huddersfield, HD8 0AW
Description:	Discharge of conditions 4 (highway works), 5 (right turn lane), 6 (internal adoptable estate roads), 8 (retaining walls/structures), 9 (surface water), 10 (highway survey), 11 (surface water and land drainage), 12 (storm events), 13 (temporary surface water drainage), 15 (archaeological evaluation), 16 (levels), 18 (Biodiversity Net Gain Assessment) and 19 (EDS) of previous permission 2020/90725 for erection of 68 dwellings with associated access, parking and open space (revised plans)
Recommending Officer:	Nick Hirst

DECISION – Discharge of Conditions – Split Decision

I hereby authorise the split decision of this application for the reasons set out in the officer's report and recommendation annexed below in respect of the above matter.

Victor Grayson

AUTHORISED OFFICER

Date: 21-May-2024

Application: 2023/44/90773/W

Site: Land at, Penistone Road, Fenay Bridge, Huddersfield, HD8 0AW

Proposal: Discharge of conditions 4 (highway works), 5 (right turn lane), 6 (internal adoptable estate roads), 8 (retaining walls/structures), 9 (surface water structures), 10 (highway survey), 11 (surface water and land drainage), 12 (storm events), 13 (temporary surface water drainage), 15 (archaeological evaluation), 16 (levels), 18 (Biodiversity Net Gain Assessment) and 19 (EDS) of previous permission 2020/90725 for erection of 68 dwellings with associated access, parking and open space (revised plans)

Assessment

Condition 4 (highway works), Condition 5 (right turn lane), and Condition 6 (internal adoptable estate roads)

4. No development shall take place until details of the junction and associated highway works, between the proposed estate road and Penistone Road have been submitted to and approved in writing by the Local Planning Authority. The details shall include the following:

- Full sections*
- Details of speed reducing features*
- Construction specifications*
- Drainage works*
- Lighting*
- Signage and white lining*
- Surface finishes*
- Treatment of sight lines*
- An independent safety audit covering all aspects of the works.*

No building shall be brought into use until the works to provide the junction have been completed in accordance with the approved details, which shall thereafter be retained.

Reason: *This is a pre-commencement condition to ensure that suitable access is available for the development and retained for the duration of the development.*

5. No development shall take place until a detailed scheme for the provision of a right turn lane from Penistone Road into the site with associated signing and white lining shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include construction specifications, white lining, and signing, surface finishes together with an independent Safety Audit covering all aspects of the work. All of the agreed works shall be implemented before any part of the development is first brought into use.

Reason: *This is a pre-commencement condition to ensure that suitable access is available for the development and retained for the duration of the development.*

6. No development shall take place until a scheme detailing the proposed internal adoptable estate roads have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include full sections, drainage works, street lighting, signing, surface finishes and the treatment of sight lines, together with an independent safety audit covering all aspects of work. Before any building is brought into use the scheme shall be completed in accordance with the scheme shown on approved plans and retained thereafter.

Reason: *To ensure that suitable access is available for the development.*

The applicant has been progressing through the Section 38 and Section 278 processes with the Local Highway Authority. As it stands, neither process has been concluded, and matters are outstanding. The proposed highway design does not therefore address the requirement of ensuring the safe and efficient use of the highway. Until the design is revised to the satisfaction of the Local Highways Authority, officers are unable to recommend approval of any of the above conditions.

Condition 8 (retaining walls/structures)

8. Prior to the commencement of development, a scheme detailing the location and cross-sectional information, together with the proposed design and construction details, for all new retaining walls/structures adjacent to the existing/ proposed adoptable highways, including any modifications to the existing retaining wall on the A629 Penistone Road, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in accordance with the approved details prior to first occupation of any of the dwellings hereby approved and thereafter retained during the life of the development.

Reason: *This is a pre-commencement condition to ensure that details of all works to existing and proposed retaining walls/structures are provided before development commences on site to inform its construction and to ensure that it is appropriately built in the interests of highway safety.*

The submitted details have been reviewed by K.C. Highways (Structures). No technical specifications have been provided, nor has the applicant progressed the design through the Approval in Principle process. As such the applicant has failed to demonstrate that the proposed retaining walls would not harm the safe and effective use of the highway. Officers are unable to recommend that condition 8 be discharged.

Condition 9 (surface water structures)

9. Prior to the commencement of development, a scheme detailing the location and cross-sectional information together, with the proposed design and construction details for all new surface water attenuation tanks/pipes/manholes located within the proposed highway footprint

shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the commencement of the proposed development and thereafter retained during the life of the development.

Reason: *This is a pre-commencement condition to ensure that details of surface water attenuation tanks/pipes/manholes located within the proposed highway are provided before any works commence on site to inform the development and to ensure that it is appropriately constructed in the interests of highway safety*

The submitted details have been reviewed by K.C. Highways (Structures). No substantive details pursuant to this condition have been provided. K.C. Highways (Structures) advise:

This will require the submission of detailed and fully dimensioned X-sectional details so as to determine whether the design of proposed culvert headwalls on the A629 Penistone will be liable to a formal technical approval (AIP). In addition, the design of all oversize PCC manholes (ID > 900mm) will be liable to approval via certification, as stated in <https://www.kirklees.gov.uk/beta/regenerationand-development/pdf/highways-structural-procedures.pdf>.

Officers support this assessment and recommend that the submitted details not be accepted.

Condition 10 (highway survey)

10. Development shall not commence until a survey of the existing condition of the highway on Penistone Road has been submitted to and approved in writing by the Local Planning Authority. The survey shall include carriageway and footway surfacing, verges, kerbs, edgings, street lighting, signing and white lining. Upon completion of the development and before any building is occupied, a highway condition survey identifying a scheme to reinstate any subsequent defects in the condition of the highway on the aforementioned roads shall be submitted to and approved in writing by the Local Planning Authority. A schedule of inspection throughout the construction period of the development shall be agreed and implemented prior to works commencing.

Reason: *This is a pre-commencement condition because, in part, it requires a survey of the existing highway before works commence in the interests of highway safety*

Following a request for and receipt of further details, K.C. Highways Development Management have informally confirmed that the submission is acceptable. Officers support this assessment and recommend that the initial pre-commencement element of condition 10 be discharged. However, the condition has later requirements, and it is recommended that a note of these be placed on the decision notice.

Condition 11 (surface water and land drainage)

11. Development shall not commence until a detailed design scheme detailing foul, surface water and land drainage has been submitted to and approved in writing by the Local Planning Authority. The details shall include the following:

- a) Agreed discharge rates with the LLFA indirectly or directly to watercourse;*
- a) Attenuation for the critical 1 in 100 + 30% climate change storm event,*
- b) Attenuation construction design*
- c) Plans and longitudinal sections d) Hydraulic calculations*
- e) Phasing of drainage provision*
- f) A risk assessment and method statement in accordance with CDM Regulations 2015 for access to and into the attenuation structure, and an itinerary of maintenance tasks with schedules.*

None of the dwellings shall be occupied until such approved drainage scheme has been provided on the site to serve the development or each agreed phasing of the development to which the dwellings relate. The approved drainage scheme shall be retained thereafter in accordance with the approved details.

Reason: *This is a pre-commencement condition that relates to the provision of infrastructure and the details are required to ensure sustainable drainage and flood prevention*

The submitted details have been reviewed by the Lead Local Flood Authority (LLFA). Insufficient information has been provided to enable the LLFA to support the details, which are specifically lacking regarding the type / specifications of the attenuation tank along with how the tank would be managed and maintained.

Given this lack of detail, the LLFA object and officers are unable to recommend that the condition be discharged.

Condition 12 (storm events)

12. Development shall not commence until an assessment of the effects of 1 in 100-year storm events, with an additional allowance for climate change, blockage scenarios and exceedance events on drainage infrastructure and surface water run-off pre and post development between the development and the surrounding area, in both directions, has been submitted to and approved in writing by the Local Planning Authority. No part of the development shall be brought into use (dwellings shall not be occupied) until the works comprising the approved scheme have been completed and such approved scheme shall be retained thereafter.

Reason: *This is a pre-commencement condition that relates to the provision of infrastructure and the details are required to ensure sustainable drainage and flood prevention.*

The submitted details have been reviewed by the LLFA who confirmed them to be acceptable. Officers therefore recommend that the submitted details be accepted. However, the condition has an ongoing requirement which must be adhered to which prevents full discharge at this time.

Condition 13 (temporary surface water drainage)

13. Development shall not commence until a scheme detailing temporary surface water drainage for the construction phase (after soil and vegetation strip) has been submitted to and approved in writing by the Local Planning Authority. The scheme shall detail:

- Phasing of the development and phasing of temporary drainage provision*
- Details of methods to prevent silt, debris and contaminants entering existing drainage systems and watercourses*
- Details how flooding of adjacent land would be prevented.*

The temporary works shall be implemented in accordance with the approved scheme and phasing. No phase of the development shall be commenced until the temporary works approved for that phase have been completed. The approved temporary drainage scheme shall be retained until the approved permanent surface water drainage system is in place and functioning in accordance with written notification to the Local Planning Authority.

Reason: *This is a pre-commencement condition that relates to the construction phase and the details are required to ensure sustainable drainage and flood prevention.*

The LLFA expressed concerns about the initial details submitted. Discussions took place and a revised scheme was submitted. The LLFA have reviewed the submitted details and consider them to be acceptable. Officers support this assessment.

As the condition has an ongoing requirement it cannot be fully discharged at this stage, however the submitted details may be approved.

Condition 15 (archaeological evaluation)

15. No development, including any demolition and groundworks, shall take place until the applicant, or their agent or successor in title, has submitted an archaeological evaluation to reflect the site's location close to an area of archaeological interest. Thereafter the development shall only take place in accordance with the approved WSI and the development shall not be brought into use until the Local Planning Authority have confirmed in writing that the requirements of the WSI have been fulfilled or alternative timescales agreed. The evaluation shall include:

- The programme and method of site investigation and recording*
- An evaluation of any identified features of importance and any necessary preservation in situ of identified features of importance*
- The programme for post-investigation assessment.*

- *The provision to be made for analysis and reporting.*
- *Nomination of a competent person/persons or organisation to undertake the works.*
- *The timetable for completion of all site investigation and post-investigation works.*

Thereafter the development shall only take place in accordance with the approved evaluation and the development shall not be brought into use until the Local Planning Authority have confirmed in writing that the requirements of the evaluation have been fulfilled or alternative timescales agreed.

Reason: *To ensure that any archaeological remains present are investigated and a proper understanding of their nature, date, extent and significance gained.*

Consultation has been undertaken with West Yorkshire Archaeological Advice Service.

The condition has two parts. First, it requires the submission of a Written Scheme of Investigation (WSI). Thereafter, it requires works to be done in accordance with the WSI and a subsequent evaluation be submitted and approved prior to occupation.

The submitted details relate to the first requirement only and a WSI has been provided. West Yorkshire Archaeological Advice Service have reviewed this and confirm it to be acceptable. Officers support this assessment.

Given the nature of the condition it is recommended that the first part be approved, enabling the progression of the scheme. However, it shall be clearly noted to the applicant that the condition has further requirements and has not been fully discharged.

Condition 16 (levels)

16. No development shall commence until details of existing and proposed ground levels have been submitted to and approved in writing by the Local Planning Authority. These details shall include cross-sections of existing and proposed levels across the site (including soft landscape areas, floors, paths, drives, walls, garages and parking areas) both north-south and east-west across the site to include the levels of existing residential properties adjoining the site. The development shall be carried out in accordance with the approved details.

Reason: *To ensure works are carried out at suitable levels in relation to adjoining properties and highways in the interests of the living conditions of existing and future occupiers.*

The proposed levels are intrinsically linked to the proposed internal road works which, as set out above, cannot currently be supported. Therefore, it would be premature to support the details pursuant to condition 16 until condition 4 is resolved to inform the site's wider levels.

Furthermore, limited cross sectional details have been provided. What has been submitted does not adhere to the condition's requirement for:

...cross-sections of existing and proposed levels across the site (including soft landscape areas, floors, paths, drives, walls, garages and parking areas) both north-south and east-west across the site to include the levels of existing residential properties adjoining the site.

Based on the details submitted, officers have specific concerns over the extent and scale of the retaining walls, and the impact they may have on the amenity of existing and future residents. Without the further details required to enable a more thorough assessment, officers are unable to support approval of the submitted details.

Condition 18 (Biodiversity Net Gain Assessment) and Condition 19 (EDS)

18. Development shall not be commenced unless a strategy for the achievement of biodiversity net gain has been submitted to and approved in writing by the Local Planning Authority. The strategy shall be developed in accordance with the details provided in the Biodiversity Net Gain Assessment and Off-site Compensation Report prepared by Ecus Ltd (Ref: 16603 date April 2021). The strategy shall also include a timescale for the delivery of off-site compensation. The net gain shall then be implemented in accordance with the approved strategy and in accordance with the agreed timescales.

Reason: *This is a pre-commencement condition to ensure the development generates demonstrable net gains for bio-diversity.*

19. No development shall take place until an Ecological Design Strategy (EDS) for within the site has been submitted to and agreed in writing by the Local Planning Authority. The EDS shall include the following:

- Purpose and conservation objectives for the proposed works*
- Review of site potential and constraints*
- Extent and location/area of proposed works to include bird and bat boxes, hedgehog friendly fencing*
- Details of areas for the establishment of mixed scrub and introduced shrub planting on the site to correspond to the details provided pursuant to condition 15*
- Details of planting and other landscape features for the bio-diversity area between Plots 39-40 and Plot 38*
- Timetable for implementation of the works*
- Persons responsible for implementing the works*
- Details of initial aftercare and long-term maintenance*
- Details for monitoring and remedial measures*

The EDS shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.

Reason: *To ensure a scheme that provides on-site ecological enhancement and habitat creation. This is a pre-commencement condition to ensure ecological measures are capable of being fully integrated into the construction phase.*

The submitted details have been reviewed and accepted by K.C. Ecology. Officers support this assessment and recommend that the details be approved for each condition. However, each condition has an ongoing requirement which prevents full discharge at this time. It is recommended that this be noted on the decision notice.

Representation

Kirkburton Parish Council has stated:

The Parish Council objects on Highways' grounds: the carriageway is too narrow on Penistone Road (section past Rowley Lane). Also, there is no provision for pedestrians to cross Penistone Road to get to the bus stop.

The above matters go beyond the conditions under consideration and are not deemed material to this Discharge of Conditions application.

Summary

The following conditions may have their details approved and/or be discharged (either in part or in full): 10, 12, 13, 15, 18 and 19.

The details submitted pursuant to the following conditions are inadequate and cannot be supported: 4, 5, 6, 8, 9, 11 and 16.

Recommendation: Issue split decision.

Report Dated: 10/05/2024.

Proposed Letter Text

Condition 4 (highway works), Condition 5 (right turn lane), and Condition 6 (internal adoptable estate roads)

You have submitted the plan ref. AMA-21312-D-2020-01 Rev. P1, titled S278 Works General Arrangement to discharge conditions 4, 5, and 6.

The submitted details are not accepted. It is understood that negotiations are continuing between the applicant and the Local Highway Authority's Section 38 and Section 278 departments, with various concerns raised and outstanding. As it stands the proposal would not secure the safe and effective use of the highway. Negotiations with the relevant teams should continue to resolve any outstanding matters.

For the avoidance of doubt conditions 4, 5, and 6 are not hereby discharged.

Condition 8 (retaining walls/structures)

Inadequate information has been provided to assess this condition. The initial requirement of the condition is repeated below for information purposes:

a scheme detailing the location and cross-sectional information, together with the proposed design and construction details, for all new retaining walls/structures adjacent to the existing/ proposed adoptable highways, including any modifications to the existing retaining wall on the A629 Penistone Road, shall be submitted to and approved in writing by the Local Planning Authority

While a site plan showing the retaining walls and general cross-sectional information has been provided, the information does not amount to the required 'design and construction details' required to resolve this condition.

For the avoidance of doubt condition 8 is not hereby discharged.

Condition 9 (surface water structures)

Inadequate information has been provided to assess this condition. The initial requirement of the condition is repeated below for information purposes:

a scheme detailing the location and cross -sectional information together, with the proposed design and construction details for all new surface water attenuation tanks/pipes/manholes located within the proposed highway footprint shall be submitted to and approved in writing by the Local Planning Authority.

K.C. Highways (Structures) have provided the following advice:

This will require the submission of detailed and fully dimensioned X sectional details so as to determine whether the design of proposed culvert headwalls on the A629 Penistone will be liable to a formal technical approval (via an AIP). In addition, the design of all oversize PCC manholes (ID> 900mm) will be liable to approval via certification, as stated in <https://www.kirklees.gov.uk/beta/regenerationand-development/pdf/highways-structural-procedures.pdf>.

For the avoidance of doubt condition 9 is not hereby discharged.

Condition 10 (highway survey)

You have submitted the document titled 'Dilapidation Survey' by Andrew Moseley Associates dated March 2023 pursuant to condition 10.

Condition 10 has requirements related to different stages of development. I can confirm that the submitted details are acceptable for the initial pre-commencement aspect of the condition. However, be aware that condition 10 has the following ongoing requirement which must be adhered to, to ensure ongoing compliance with the condition:

Upon completion of the development and before any building is occupied, a highway condition survey identifying a scheme to reinstate any subsequent defects in the condition of the highway on the aforementioned roads shall be submitted to and approved in writing by the Local Planning Authority. A schedule of inspection throughout the construction period of the development shall be agreed and implemented prior to works commencing.

Condition 11 (surface water and land drainage)

You have submitted the following details pursuant to condition 11:

- Plan ref. 22/491/FST/500/001 rev. C
- Plan ref. 22/491/FST/500/004
- Plan ref. 22/491/FST/500/005
- Plan ref. 22/491/FST/500/006
- Plan ref. 22/491/FST/500/007
- Plan ref. 22/491/FST/500/008
- Plan ref. 22/491/FST/500/009
- Plan ref. 22/491/FST/500/010
- Plan ref. 22/491/FST/500/012
- Plan ref. STS3889 rev. 0
- Micro Drainage calculations ref. File SWSV1 REV B.MDX

The submitted details are not accepted. Please refer to the consultation comments from the Lead Local Flood Authority dated 17/04/2024 for details.

For the avoidance of doubt, the details submitted pursuant to condition 11 are not hereby approved.

Condition 12 (storm events)

You have submitted the plan titled General Arrangement Drawing, ref. 22/491/FST/100/001, pursuant to condition 12.

I can confirm that the submitted details are acceptable. However, be aware that condition 12 has the following ongoing requirement:

No part of the development shall be brought into use (dwellings shall not be occupied) until the works comprising the approved scheme have been completed and such approved scheme shall be retained thereafter.

Adherence to this requirement is required to ensure ongoing compliance with condition 12.

Condition 13 (temporary surface water drainage)

You have submitted the following documents pursuant to condition 13:

- Plan ref. 22/491/TSWMP/001 rev. A

- Document titled Surface Water Management Method Statement
- Document titled. Risk Assessment for location Land Off Penistone Road, Fenay Bridge, Huddersfield

I can confirm that the submitted details are acceptable for the initial requirement of condition 13. However, be aware that condition 13 has the following ongoing requirement:

The temporary works shall be implemented in accordance with the approved scheme and phasing. No phase of the development shall be commenced until the temporary works approved for that phase have been completed. The approved temporary drainage scheme shall be retained until the approved permanent surface water drainage system is in place and functioning in accordance with written notification to the Local Planning Authority.

The above must be adhered to, to ensure continued compliance with condition 13.

Condition 15 (archaeological evaluation)

You have submitted the Written Scheme of Investigation (WSI) document titled 'Land at Penistone Road, Fenay Bridge, West Yorkshire' by maparch. The document was received by the Local Planning Authority on 27/03/2023.

Condition 15 includes requirements related to different stages of development. The submitted WSI is accepted for the initial requirement of the condition. However, the following requirements of the condition remain:

Thereafter the development shall only take place in accordance with the approved WSI and the development shall not be brought into use until the Local Planning Authority have confirmed in writing that the requirements of the WSI have been fulfilled or alternative timescales agreed. The evaluation shall include:

- *The programme and method of site investigation and recording*
- *An evaluation of any identified features of importance and any necessary preservation in situ of identified features of importance*
- *The programme for post-investigation assessment.*
- *The provision to be made for analysis and reporting.*
- *Nomination of a competent person/persons or organisation to undertake the works.*
- *The timetable for completion of all site investigation and post-investigation works.*

Thereafter the development shall only take place in accordance with the approved evaluation and the development shall not be brought into use until the Local Planning Authority have confirmed in writing that the requirements of the evaluation have been fulfilled or alternative timescales agreed.

The development shall be undertaken with the above.

For the avoidance of doubt condition 15 is not hereby discharged, however the submitted WSI is accepted for the condition's initial (pre-commencement) requirement.

Condition 16 (levels)

You have submitted the following information pursuant to condition 16:

- Plan ref. 22/491/FST/EXT/001 Rev. A
- Plan ref. H22-0016_002 Rev. A
- Plan ref. Z078.600

The proposed levels are intrinsically linked to the proposed internal road works which, as set out above, cannot currently be supported. Therefore, it would be premature to support the details pursuant to condition 16 until condition 4 is resolved, so as to inform the site's wider levels.

Furthermore, limited cross sectional details have been provided. What has been submitted does not adhere to the condition's requirement for:

...cross-sections of existing and proposed levels across the site (including soft landscape areas, floors, paths, drives, walls, garages and parking areas) both north-south and east-west across the site to include the levels of existing residential properties adjoining the site.

Based on the (inadequate) details held, officers have specific concerns over the extent and scale of the retaining walls, and the impact they may have on the amenity of existing and future residents. Without the further details required to enable a more thorough assessment, officers are unable to support the submitted details.

For the avoidance of doubt, the details submitted pursuant to condition 16 are not hereby approved.

Condition 18 (Biodiversity Net Gain Assessment)

You have submitted the document Biodiversity Offsetting Management Plan pursuant to condition 18.

I can confirm that the submitted details are acceptable for the initial purpose of condition 18. However, be aware that the condition has the following requirement which must be adhered to:

The net gain shall then be implemented in accordance with the approved strategy and in accordance with the agreed timescales.

Adherence to this requirement is required to ensure ongoing compliance with condition 18.

Condition 19 (EDS)

You have submitted the document Ecological Design Strategy pursuant to condition 19.

I can confirm that the submitted details are acceptable for the initial purpose of condition 19. However, be aware that the condition has the following requirement which must be adhered to:

The EDS shall be implemented in accordance with the approved details and all features shall be retained in that manner thereafter.

Adherence to this requirement is required to ensure ongoing compliance with condition 19.