

# **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>2023/70/91259/W</b>                                                                                                                                                                                                   |
| Site Address:         | Land to rear of, Row Street, Crosland Moor,<br>Huddersfield, HD4 5AY                                                                                                                                                     |
| Description:          | Variation condition 2 (plans) and 3 (facing and roofing materials) on previous permission 2015/92227 for erection of 19 single storey dwellings including development of associated access and hard and soft landscaping |
| Recommending Officer: | Ellie Thornhill                                                                                                                                                                                                          |

#### **DECISION – S106 Variation of Conditions- Granted**

**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.**

**David Wordsworth**

***AUTHORISED OFFICER***

Date: 23-Apr-2024

## **Officer report**

### **Site description**

The application site comprises of an area of land located to the rear of Row Street at Crossland Moor. The site is approximately 0.7 ha and was previously occupied by Paddock Field Mill but has since then been cleared. The site benefits from an extant consent for the erection of 19 dwellings, including development of associated access and hard and soft landscaping and the demolition of No.1 Row St (Approved: 2017-02-08 – which is extant by virtue of commencement of development on site (confirmed by a Lawful Development Certificate).

The site is bounded by closely spaced, terrace properties to the north and a railway line/footbridge to the east. The west of the site is immediately adjoined by an area of unallocated land (former garage site) which itself is then bounded by a tree belt separating it from the adjacent recreational open space further west.

The site is currently accessed from between No.3 Row Street and No.17 Row Street, to the north-eastern corner of the application site. A hard surfaced track then separates the application site from the gardens to the rear of the terraced properties (known as Row Street) and exits back onto Mill Street adjacent to No.43 Row Street.

At the time in which the site visit was undertaken, it was evident that the previous permission (2015/92227) had been implemented.

The surrounding area is predominately residential, and the site is unallocated as part of the Kirklees Local Plan (2019).

### **Description of development**

This application is submitted under Section 73 of the Town and Country Planning Act. National Planning Guidance confirms that permission granted under Section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. The guidance also confirms that in deciding any application under Section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – is it not a complete re-consideration of the proposal.

The applicant seeks planning permission for the variation of conditions 2 (plans) and 3 (facing and roofing materials) on previous permission 2015/92227 for erection of 19 single storey dwellings including development of associated access and hard and soft landscaping. The conditions are as follows:

Condition 2:

*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 D2, BE1, BE2, BE2 and T10 of the Kirklees Unitary Development Plan.*

Condition 3:

*3. Samples of all facing and roofing materials shall be submitted to and approved in writing by the Local Planning Authority before works to erect the superstructure of any dwelling commence. Thereafter the development shall be constructed of the approved materials. Reason: In the interests of visual amenity and to accord with Policies BE1 and BE2 of the Kirklees Unitary Development Plan.*

The variation includes minor amendments to the site layout, the elevational details of the house types and the proposed materials. These are identified in more detail below:

House type 01:

- To omit the entrance canopy and replace with an overhang, glazed canopy
- Re-location of windows (including their enlargement, in some cases)
- Installation of double doors

House type 02:

- To omit the entrance canopy and replace with an overhang, glazed canopy
- Enlargement of windows
- To amend the patio door design (double doors)

House type 02a:

- To omit the entrance canopy and replace with an overhang, glazed canopy
- Enlargement of windows
- To amend the patio door design (double doors)

House type 3:

- To omit the entrance canopy and replace with an overhang, glazed canopy
- Re-location of windows (including their enlargement, in some cases)
- Installation of double doors

The previous house type 3a has now been omitted as part of this modified proposal.

Materials are to include artificial stone walls, with Marley Modern tiles to the roofs.

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

Initial concerns were raised with the walling material proposed, as red brick is not a common material within the immediate landscape. As such, discussions were held with the agent and contractor and an art-stone has been proposed. Amended plans have been sought, along with a material sample. These were received on the 4<sup>th</sup> July 2023.

### **Relevant Planning History**

#### At the application site:

2023/93455 Variation of conditions 2 (plans and specifications), 4 (walls/fences), 5 (fence), 19 (lighting) and 20 (waste collection) on previous permission 2015/92227 for erection of 19 single storey dwellings including development of associated access and hard and soft landscaping – Pending consideration.

2022/90672 Erection of 19 single storey dwellings, associated access, and hard and soft landscaping, including demolition of 1 Row Street – Refused.

2021/93457 Certificate of lawfulness to confirm valid commencement of development approved under 2015/92227 for erection of 19 single storey dwellings including development of associated access and hard and soft landscaping within the 3 year time limit given in condition 1 – Granted.

2015/92227 Erection of 19 single storey dwellings including development of associated access and hard and soft landscaping – Granted.

2009/92785 Demolition of no.1 Row Street and erection of 33 dwellings with associated parking and landscaping – Granted.

2005/94809 Demolition of 1 Row Street and erection of 31no terrace houses – Granted.

### **Representations**

The application has been advertised via site notice, neighbour notification letter and the press.

Final publicity expires: 27<sup>th</sup> September 2023.

As a result of the above publicity, no representations have been received.

Given that there has been a change to the materials proposed as part of this application, officers have re-advertised the application via a 7 day neighbour notification letter.

## **Consultation responses**

None required given the changes proposed.

## **Local ward councillors**

Ward councillors have been consulted as part of this application; however, no comments have been received.

## **Planning Policy Background**

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.

### Kirklees Local Plan (2019):

- LP1 – Presumption in favour of sustainable development
- LP2 – Place Shaping
- LP3 – Location of new development
- LP7 – Efficient and effective use of land and buildings
- LP11 – Housing Mix and Affordable Housing
- LP20 – Sustainable travel
- LP21 – Highways and access
- LP22 – Parking
- LP24 – Design
- LP27 – Flood risk
- LP28 – Drainage
- LP30 – Biodiversity & Geodiversity
- LP32 – Landscape
- LP33 – Trees
- LP52 – Protection and improvements of environmental quality
- LP53 – Contaminated and unstable land
- LP63 – New open space

### Supplementary Planning Guidance / Documents:

- Biodiversity Net Gain Technical Advice Note (June 2021)
- Planning Applications Climate Change Guidance (June 2021)
- Housebuilders Design Guide SPD (June 2021)
- Open Space SPD (June 2021)
- Viability Guidance Note (June 2020)
- Interim Affordable Housing Policy (January 2020)
- Kirklees Highway Design Guide (November 2019)

### National Planning Guidance:

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF), published 19/12/2023, and the Planning Practice Guidance Suite (PPGS), first launched 06/03/2014, 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 8 – Promoting healthy and safe communities
- 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

## **Assessment**

This application is made under S73 of the Town and Country Planning Act 1990, which allows for the ‘determination of applications to develop land without compliance with conditions previously attached’. In addition to removing conditions, S73 enables the varying of a condition’s wording. The effect of a granted S73 application is the issuing of a fresh planning permission. Therefore, all previously imposed conditions should be retained if they remain relevant. Conversely, the time limit for development to commence cannot be extended through a S73.

The starting point for a S73 application is the previously granted planning permission, which must carry significant material weight. However, consideration must first be given to whether any material changes in circumstances have taken place. This includes the policy and local context.

In terms of local context, there has been no changes in the environment (including built and natural) which would impact on the assessment of the application.

In light of the above, consideration must be given to the specific changes proposed and their interaction with adopted planning policy.

## **Principle of development**

The site is unallocated on the Kirklees Local Plan. In this instance, the principle of residential development on the site has already been established by the planning application 2015/92227, to which this application relates. It

has been assessed that this variation would not impact on the principle of development.

More specifically, the number of units as a whole would not change, along with the number of bedrooms or housing mixture. Therefore, the proposal remains an effective and efficient use of land, as required by Policies LP7 and LP11 of the Kirklees Local Plan.

#### Impact on visual amenity

Policies LP1, LP2 and LP24 of the Kirklees Local Plan are all relevant, as these policies seek to achieve good quality design that retains a sense of local identity, which is in keeping with the scale of development within the area and is visually attractive.

These aims are also reinforced within Chapter 12 of the NPPF (Achieving well designed plans) where paragraph 131 provides an overarching consideration of design stating that:

*“the creation of high quality buildings and places are 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”.*

In this instance, the variations sought are to slightly amend the visual appearance of each house type. This would include the omission of the entrance canopy with an overhang glazed canopy, an amendment to the patio door design, the enlargement of the windows and in some cases, the re-location of windows and the installation of double doors.

The above alterations have been considered acceptable from a visual perspective and would aid symmetry and natural passive gain to the properties. As such, no design concerns are raised in relation to the minor tweaks proposed.

The application is also looking to seek approval of the proposed wall and roofing materials. Initial concerns were raised in regard to the red brick proposed and therefore amendments have been sought to secure an artificial stone. This is welcomed from a visual perspective as the prevalent material within this area appears to be stone. Marly modern tiles are proposed to the roofs. Whilst thinner than a natural slate tile, their visual appearance would not be dissimilar to those found within the vicinity. As such, these materials can be supported.

In conclusion, the changes to the scheme are considered to be acceptable and therefore would accord with Policy LP24 of the Kirklees Local Plan, Chapter 12 of the NPPF and the Council's adopted Housebuilders Design Guide SPD.

#### Impact on residential amenity

Paragraph 135 of the National Planning Policy Framework states that Local Planning Authorities should seek to achieve a good standard of amenity for all existing and future occupants of land and buildings.

This is echoed within Kirklees Local Plan Policy LP24 which states that: - *proposals should provide a high standard of amenity for future and neighbouring occupiers, including maintaining appropriate distances between buildings and the creation of development-free buffer zones between housing and employment uses incorporating means of screening where necessary*’.

In this instance, given the nature of the site and the proposed amendments, officers are satisfied that the works proposed would not detrimentally overbear, overshadow or overlook any existing third parties. The nearest being no.s 3 – 35 Row Street. Instead, the plans show the separation distances of approximately 22m to be retained, whereby the enlargement to any rear windows would not unduly prejudice this relationship.

The changes would also not impact upon the amenity of the future occupiers.

For these reasons, the development has been considered acceptable from a residential amenity perspective, to accord with Policy LP24 of the KLP, the aims of the Housebuilder SPD and Chapter 12 of the NPPF.

#### Impact on highway safety

Given the nature of the amendments proposed, no alterations will occur to the previously approved access and parking arrangements. Therefore, there are no concerns in respect to highway safety. This is to accord with Policies LP21 and LP22 of the Kirklees Local Plan and the aims of the Highways Design Guide SPD and National Planning Policy Framework.

#### Other matters

The proposed variations are not considered to impact upon any other material planning considerations such as drainage, refuse, ecology, land contamination, crime and safety etc which remain as previously addressed within the parent application (2015/92227). These are addressed via conditions attached to the previous application (reviewed below).

#### Planning obligations:

If approved, this application would result in a new planning permission being issued. As contributions were sought under the original application, a Deed of Variation is required to tie this application back to the existing S106 agreement.

National Planning Guidance confirms that for the purpose of clarity, decision notices for the grant of planning permission under Section 73 should set out all of the conditions imposed on the new permission, and restate the

conditions imposed on earlier permissions that continue to have effect. This approach is reflected in this decision.

Application 2015/92227 was granted with 24 conditions:

1. Time limit to commence (to be omitted)
1. In accordance with the plans (to remain as existing)
2. Samples of facing and roofing materials (to be amended as part of this application)
3. Details of walls or fences to boundaries, screens or retaining walls (to remain as existing, with a revised trigger point)
4. Details of a trespass proof fence along the boundary with the railway line (to remain as existing, with a revised trigger point)
5. A scheme detailing the layout, construction and specification of the highway works at the site access junction with Row Street (approved under 2019/93651)
6. A schedule of the means of access to the site for construction traffic (approved under 2019/92793)
7. The laying of the vehicle parking areas in a permeable surface (to remain as existing)
8. A detailed scheme for the estate road (approved under 2019/93651)
9. Submission of a Preliminary Risk Assessment (approved under 2019/92171)
10. Submission of a Phase II Intrusive Site Investigation Report (approved under 2019/92171)
11. Submission of a Remediation Strategy (approved under 2019/92171)
12. Site remediation to be carried out in accordance with Remediation Strategy (to remain as existing)
13. Submission of a Validation Report (to remain as existing)
14. Development to be constructed in accordance with Overland Flood Route Location Plan Ref C614-101-P03 s (to remain as existing)
15. Submission of a drainage scheme detailing surface water drainage traffic (approved under 2019/92171)
16. Details of how the drainage system will be maintained until adoption (to remain as existing, with a revised trigger point)
17. Submission of a Biodiversity Mitigation and Enhancement Plan (approved under 2019/92171)
18. Submission of a scheme detailing any external lighting (to remain as existing, with a revised trigger point)
19. Details of storage and access of waste (to remain as existing, with a revised trigger point)
20. Submission of a scheme detailing landscaping, tree/shrub planting etc (approved under 2019/92793)
21. A comprehensive schedule of maintenance of the informal open space and all landscaping works (to remain as existing, with a revised trigger point)
22. Removal of permitted development rights for Classes B and C of Part 1 of Schedule 2 (to remain as existing)

23. Submission of a landscape management plan for the long term maintenance of the informal open space (to remain as existing, with a revised trigger point)

### **Representation**

As a result of the above publicity, no representations have been received.

### **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: Grant Variation of Condition**

#### **Decision Authorisation - Delegated Powers**

**Application Number:** 2023/91259

**Officer Recommendation:** Grant Variation of Condition

### **Conditions and Reasons**

1.[Condition no longer required].

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 LP1, LP2, LP21 and LP24 of the Kirklees Local Plan and guidance contained in the National Planning Policy Framework.

3. The development shall be constructed from Calder buff artstone and Marley Modern (Anthracite) tiles to the roof. The development shall be completed in the approved materials and retained thereafter.

**Reason:** In the interests of visual amenity and to accord with Policy LP24 of the Kirklees Local Plan and the aims of Chapter 12 of the National Planning Policy Framework.

4. Within three months from the date of this permission, details of the siting, design and materials to be used in the construction of walls or fences for boundaries, screens or retaining walls for the dwellings shall be submitted to and approved in writing by the Local Planning Authority. The approved walls/fences shall then be erected before any of the dwellings hereby approved are first occupied and shall thereafter be retained.

**Reason:** In the interests of visual amenity and to safeguard the amenity of occupiers of neighbouring residential properties, and to accord with Policy LP24 of the Kirklees Local Plan and the aims of Chapter 12 of the National Planning Policy Framework.

5. Within three months from the date of this permission, details of a trespass proof fence to be sited along the boundary adjacent to the railway, to include details of provision for future maintenance and renewal, shall be submitted to and approved in writing by the Local Planning Authority. The approved fence shall then be erected before first occupation of any of the dwellings and be retained.

**Reason:** In the interests of the safety, operational needs and integrity of the adjacent railway and to accord with the aims of the National Planning Policy Framework.

6. The development shall be carried out in accordance with the details approved pursuant to condition 6 on 02/01/20 under application ref: 2019/93651 in relation to the layout, construction and specification of the highways works at the site access junction with Row Street, before the development is first brought into use. The approved scheme shall thereafter be retained.

**Reason:** In the interests of highway safety and to accord with Policy LP21 of the Kirklees Local Plan and the aims of the National Planning Policy Framework.

7. The development shall be carried out throughout the full period of construction in accordance with the details approved pursuant to condition 7 on 21/01/20 under application ref: 2019/92793 in relation to the Construction Traffic Management Plan.

**Reason:** In the interests of the safe and free use of the highway and to accord with Policy LP21 of the Kirklees Local Plan and the aims of the National Planning Policy Framework.

8. Prior to the development being brought into use, the approved vehicle parking areas shall be surfaced and drained 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 (ISBN 9781409804864) as amended or superseded; and retained thereafter.

**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 LP28 of the Kirklees Local Plan and the aims of the National Planning Policy Framework.

9. The development shall be carried out in accordance with the details approved pursuant to condition 9 on 02/01/20 under application ref: 2019/93651 in relation to the proposed estate road, before any building is first brought into use and shall be retained thereafter.

**Reason:** In the interests of the safe and free use of the highway and to accord with Policy LP21 of the Kirklees Local Plan and the aims of the National Planning Policy Framework.

10. [Condition no longer required].

11. [Condition no longer required].

12. [Condition no longer required].

13. Remediation of the site shall be carried out and completed in accordance with the Remediation Strategy (Remediation Method Statement Ref BEK-18359-3) approved pursuant to condition 12 on the 22/08/19 under application ref 2019/92171. 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 works on site (save for site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within 2 working days. Unless otherwise agreed in writing with the Local Planning Authority, 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:** In order that proper account is taken of any contamination on the site in the interests of future occupiers of the site and the surrounding environment and to accord with Policy LP53 of the Kirklees Local Plan and the aims of Chapter 15 of the National Planning Policy Framework.

14. 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. Unless otherwise agreed in writing with the Local Planning Authority, no part of the site shall be brought into use until such time as the remediation measures for the whole site have been completed 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.

**Reason:** In order that proper account is taken of any contamination on the site in the interests of future occupiers of the site and the surrounding environment and to accord with Policy LP53 of the Kirklees Local Plan and the aims of Chapter 15 of the National Planning Policy Framework.

15. The development shall be constructed in accordance with Overland Flood Route Location Plan Ref C614-101-P03 to include flood routing from

blockages and exceedance events in the road network, finished floor levels set at 150mm above driveway levels adjacent to the property, and no driveways sloping towards property. **Reason:** To ensure the provision of adequate and sustainable systems of drainage are employed, in the interests of amenity, environmental wellbeing and to accord with Policies LP21, LP24 and LP28 of the Kirklees Local Plan and the aims of the National Planning Policy Framework.

16. The development shall be carried out in accordance with the details approved pursuant to condition 16 on 21/01/20 under application ref: 2019/92171 in relation to surface water drainage. None of the dwellings shall be first 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 and thereafter retained.

**Reason:** To ensure the provision of adequate and sustainable systems of drainage are employed, in the interests of amenity, environmental wellbeing and to accord with LP28 of the Kirklees Local Plan and the aims of the National Planning Policy Framework.

17. Within three months from the date of this permission, details of how the drainage system will be maintained and renewed until such time as it is adopted by a statutory body shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be undertaken in accordance with the approved details and be maintained.

**Reason:** To ensure the provision of adequate and sustainable systems of drainage are employed, in the interests of amenity, environmental wellbeing and to accord with Policies LP21, LP24 and LP28 of the Kirklees Local Plan and the aims of the National Planning Policy Framework.

18. The development shall be carried out in accordance with the details approved pursuant to condition 18 on 25/10/2019 under application ref: 2019/92171 in relation to the Biodiversity Mitigation and Enhancement Plan.

**Reason:** In the interests of promoting biodiversity interest within and beyond the site and in accordance with Chapter 15 of the National Planning Policy Framework.

19. Before the site is first brought into use, a scheme detailing any external lighting shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the external lighting shall be installed in accordance with the approved details and be retained.

**Reason:** In the interests of the safety, operational needs and integrity of the adjacent railway and to accord with the aims of the National Planning Policy Framework.

20. Before the site is first brought into use, details of storage and access for collection of wastes shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the works comprising the approved details shall be retained free of obstructions.

**Reason:** In the interests of highway safety and to accord with Policy LP21 of the Kirklees Local Plan and the aims of the National Planning Policy Framework.

21. The development shall be carried out in accordance with the details approved pursuant to condition 21 on 17/10/2019 under application ref: 2019/92793 in relation to landscaping.

**Reason:** To ensure that there is a well laid out scheme of healthy trees and shrubs in the interests of amenity and biodiversity and to accord with chapter 15 of the National Planning Policy Framework.

22. A comprehensive schedule of maintenance of the informal open space and all landscaping works, pursuant to the details indicated on plan ref 2138\_01H shall be submitted to and approved in writing by the Local Planning Authority before the site is first brought into use. The scheme shall include the method of site improvement,

- Where relevant removal of weed species,
- ground preparation and details of new tree and shrub planting, seeding and maintenance, and
- timescales and arrangements for its implementation. The development shall thereafter be carried out in complete accordance with the approved schedule and timescales. The approved landscaping scheme shall, from its completion, be maintained for a period of five years. If, within this period, any tree, shrub or hedge shall die, become diseased or be removed, it shall be replaced with others of similar size and species.

**Reason:** To secure appropriate maintenance of the landscaped areas and to accord with Policy LP32 of the Kirklees Local Plan and the aims of the National Planning Policy Framework.

23. Notwithstanding the provisions of section 55 (2)(a)(ii) of the Town and Country Planning Act 1990 and the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Act or Order with or without modification) no development included within Classes B or C of Part 1 of Schedule 2 to that Order shall be carried out.

**Reason:** So as not to detract from the amenities of adjoining property by reason of loss of privacy and / or an overbearing impact and to accord with Policy LP24 of the Kirklees Local Plan and the aims of Chapter 12 of the National Planning Policy Framework.

24. A landscape management plan for the long term maintenance of the area of informal open space, pursuant to the details indicated on plan ref 2138\_01H shall be submitted to and approved in writing by the Local Planning Authority before the site is first brought into use. The management plan shall include details of maintenance in perpetuity, together with any land transfers and management responsibilities. The area of informal open space shall thereafter be maintained in accordance with the approved landscape management plan.

**Reason:** To ensure the long term maintenance of the area of informal open space to serve the development and to accord with Policy LP32 of the Kirklees Local Plan and the aims of the National Planning Policy Framework.

## **NOTE: Advice from Network Rail**

### Fail Safe Use of Crane and Plant

All operations, including the use of cranes or other mechanical plant working adjacent to Network Rail's property, must at all times be carried out in a "fail safe" manner such that in the event of mishandling, collapse or failure, no materials or plant are capable of falling within 3.0m of the nearest rail of the adjacent railway line, or where the railway is electrified, within 3.0m of overhead electrical equipment or supports.

### Excavations/Earthworks

All excavations/ earthworks carried out in the vicinity of Network Rail property/ structures must be designed and executed such that no interference with the integrity of that property/ structure can occur. If temporary works compounds are to be located adjacent to the operational railway, these should be included in a method statement for approval by Network Rail. Prior to commencement of works, full details of excavations and earthworks to be carried out near the railway undertaker's boundary fence should be submitted for the approval of the Local Planning Authority acting in consultation with the railway undertaker and the works shall only be carried out in accordance with the approved details. Where development may affect the railway, consultation with the Asset Protection Project Manager should be undertaken. Network Rail will not accept any liability for any settlement, disturbance or damage caused to any development by failure of the railway infrastructure nor for any noise or vibration arising from the normal use and/or maintenance of the operational railway. No right of support is given or can be claimed from Network Rail's infrastructure or railway land.

### Security of Mutual Boundary

Security of the railway boundary will need to be maintained at all times. If the works require temporary or permanent alterations to the mutual boundary the applicant must contact Network Rail's Asset Protection Project Manager.

### Fencing

Although the existing NR fence is adequate in preventing trespass there will inevitably be pressure from the new residents to soften or even attempt to alter its appearance. It should be noted that our fence should not be altered or moved in any way and nothing should be put in place to prevent us from maintaining our boundary fence as we are obliged to do so in law. It is our experience that most developments seek to provide their own boundary enclosure so as to avoid such future problems. It would also help to reduce the impact of railway noise. We would advise that the developer should provide a trespass proof fence adjacent to Network Rail's boundary (minimum 1.8m high) and make provision for its future maintenance and renewal. Network Rail's existing fencing / wall must not be removed or damaged.

### Method Statements/Fail Safe/Possessions

Method statements may require to be submitted to Network Rail's Asset Protection Project Manager at the below address for approval prior to works

commencing on site. This should include an outline of the proposed method of construction, risk assessment in relation to the railway and construction traffic management plan. Where appropriate an asset protection agreement will have to be entered into. Where any works cannot be carried out in a “fail-safe” manner, it will be necessary to restrict those works to periods when the railway is closed to rail traffic i.e. “possession” which must be booked via Network Rail’s Asset Protection Project Manager and are subject to a minimum prior notice period for booking of 20 weeks. Generally, if excavations/piling/buildings are to be located within 10m of the railway boundary a method statement should be submitted for NR approval.

### OPE

Once planning permission has been granted and at least six weeks prior to works commencing on site the Asset Protection Project Manager (OPE) MUST be contacted, contact details as below. The OPE will require to see any method statements/drawings relating to any excavation, drainage, demolition, lighting and building work or any works to be carried out on site that may affect the safety, operation, integrity and access to the railway.

### Vibro-impact Machinery

Where vibro-compaction machinery is to be used in development, details of the use of such machinery and a method statement should be submitted for the approval of the Local Planning Authority acting in consultation with the railway undertaker prior to the commencement of works and the works shall only be carried out in accordance with the approved method statement

### Scaffolding

Any scaffold which is to be constructed within 10 metres of the railway boundary fence must be erected in such a manner that at no time will any poles over-sail the railway and protective netting around such scaffold must be installed.

### Two Metre Boundary

Consideration should be given to ensure that the construction and subsequent maintenance can be carried out to any proposed buildings or structures without adversely affecting the safety of, or encroaching upon Network Rail’s adjacent land, and therefore all/any building should be situated at least 2 metres from Network Rail’s boundary. This will allow construction and future maintenance to be carried out from the applicant’s land, thus reducing the probability of provision and costs of railway look-out protection, supervision and other facilities necessary when working from or on railway land. Particularly plot 2 on the plans provided looks to be proposed within this distance from the railway boundary.

### Encroachment

The developer/applicant must ensure that their proposal, both during construction, and after completion of works on site, does not affect the safety, operation or integrity of the operational railway, Network Rail and its infrastructure or undermine or damage or adversely affect any railway land and structures. There must be no physical encroachment of the proposal onto

Network Rail land, no over-sailing into Network Rail air-space and no encroachment of foundations onto Network Rail land and soil. There must be no physical encroachment of any foundations onto Network Rail land. Any future maintenance must be conducted solely within the applicant's land ownership. Should the applicant require access to Network Rail land then must seek approval from the Network Rail Asset Protection Team. Any unauthorised access to Network Rail land or air-space is an act of trespass and we would remind the council that this is a criminal offence (s55 British Transport Commission Act 1949). Should the applicant be granted access to Network Rail land then they will be liable for all costs incurred in facilitating the proposal.

#### Noise/Soundproofing

The Developer should be aware that any development for residential use adjacent to an operational railway may result in neighbour issues arising. Consequently, every endeavour should be made by the developer to provide adequate soundproofing for each dwelling. Please note that in a worst case scenario there could be trains running 24 hours a day and the soundproofing should take this into account.

#### Trees/Shrubs/Landscaping

Where trees/shrubs are to be planted adjacent to the railway boundary these shrubs should be positioned at a minimum distance greater than their predicted mature height from the boundary. Certain broad leaf deciduous species should not be planted adjacent to the railway boundary. We would wish to be involved in the approval of any landscaping scheme adjacent to the railway. Where landscaping is proposed as part of an application adjacent to the railway it will be necessary for details of the landscaping to be known and approved to ensure it does not impact upon the railway infrastructure. Any hedge planted adjacent to Network Rail's boundary fencing for screening purposes should be so placed that when fully grown it does not damage the fencing or provide a means of scaling it. No hedge should prevent Network Rail from maintaining its boundary fencing. Lists of trees that are permitted and those that are not permitted are provided below and these should be added to any tree planting conditions:

#### Acceptable:

Birch (Betula), Crab Apple (Malus Sylvestris), Field Maple (Acer Campestre), Bird Cherry (Prunus Padus), Wild Pear (Pyrus Communis), Fir Trees – Pines (Pinus), Hawthorne (Cretaeagus), Mountain Ash – Whitebeams (Sorbus), False Acacia (Robinia), Willow Shrubs (Shrubby Salix), Thuja Plicatata "Zebra"

Not Acceptable: Acer (Acer pseudoplatanus), Aspen – Poplar (Populus), Small-leaved Lime (Tilia Cordata), Sycamore – Norway Maple (Acer), Horse Chestnut (Aesculus Hippocastanum), Sweet Chestnut (Castanea Sativa), Ash (Fraxinus excelsior), Black poplar (Populus nigra var, betulifolia), Lombardy Poplar (Populus nigra var, italica), Large-leaved lime (Tilia platyphyllos), Common lime (Tilia x europea)

A comprehensive list of permitted tree species is available upon request.

### Lighting

Where new lighting is to be erected adjacent to the operational railway the potential for train drivers to be dazzled must be eliminated. In addition, the location and colour of lights must not give rise to the potential for confusion with the signalling arrangements on the railway. Detail of any external lighting should be provided as a condition if not already indicated on the application.

### Access to Railway

All roads, paths or ways providing access to any part of the railway undertaker's land shall be kept open at all times during and after the development. Access over the adjacent footbridge should remain unobstructed at all times both during and after construction. Network Rail is required to recover all reasonable costs associated with facilitating these works.

**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.

**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

Plans and specifications schedule:

| Plan Type               | Reference | Version | Date Received |
|-------------------------|-----------|---------|---------------|
| Site layout plan        | 2138_01H  | -       | 29/09/2023    |
| Proposed house type 01  | 2138_11E  | -       | 04/07/2023    |
| Proposed house type 02  | 2138_12B  | -       | 04/07/2023    |
| Proposed house type 02A | 2138_13B  | -       | 04/07/2023    |
| Proposed house type     | 2138_14B  |         | 04/07/2023    |

|                                                                                                                                                                                             |                                                                  |   |            |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|---|------------|
| 03                                                                                                                                                                                          |                                                                  |   |            |
| Wall samples - Calder Buff Artstone                                                                                                                                                         | -                                                                | - | 04/07/2023 |
| Design and Access statement                                                                                                                                                                 | By Chetwynd Architects – dated 16/05/2023                        | - | 16/05/2023 |
| Roof sample – Marley Modern                                                                                                                                                                 | -                                                                | - | 27/04/2023 |
| Anthracite Double Glazed Window Unit sample                                                                                                                                                 | -                                                                | - | 27/04/2023 |
| Various drawings and documents submitted pursuant to conditions 6 and 9 of planning permission ref: 2015/92227 and approved on 28/01/2020 under application ref: 2019/93651                 | See decision letter – dated 28/01/2020                           | - | Various    |
| Various drawings and documents submitted pursuant to conditions 7 and 21 of planning permission ref: 2015/92227 and approved on 21/01/2020 and 17/10/2019 under application ref: 2019/92793 | See decision notices dated 21/01/2020 and 17/10/2019             | - | Various    |
| Various drawings and documents submitted pursuant to conditions 10, 11, 12, 16 and 18 on planning permission ref: 2015/92227 and approved on 22/08/2019,                                    | See decision notices dated 22/08/2019, 25/10/2019 and 21/01/2020 | - | Various    |

|                                                                      |                 |     |            |
|----------------------------------------------------------------------|-----------------|-----|------------|
| 25/10/2019 and<br>21/01/2020 under<br>application ref:<br>2019/92171 |                 |     |            |
| <b>Original planning permission: 2015/92227</b>                      |                 |     |            |
| Location Plan                                                        | 1598-001        | -   | 28/07/2015 |
| Swept path Analysis                                                  | 103             | P03 | 10/11/2015 |
| Ecological Appraisal                                                 | -               | B   | 20/01/2016 |
| Phase I Habitat<br>Survey Plan                                       | RCM 01          | A   | 20/01/2016 |
| Bat Survey                                                           | -               | -   | 17/12/2015 |
| Overland Flood<br>Route Location Plan                                | 101             | P03 | 10/11/2015 |
| External Works<br>Drainage General<br>Arrangement Plan               | 100             | P03 | 10/11/2015 |
| Proposed SUDS<br>Strategic GA Plan                                   | 102             | P03 | 10/11/2015 |
| Phase 1<br>Contaminated Land<br>Report                               | 905A/March 2005 | -   | 28/07/2015 |
| Phase II<br>Contaminated Land<br>Report                              | 1004/July 2005  | -   | 28/07/2015 |

Pursuant to article 35 (2) of the Town and Country Planning (Development Management Procedure) Order 2015 and guidance in the National Planning Policy Framework, the Local Planning Authority have, where possible, made a pre-application advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application. In this instance, initial concerns were raised with the walling material proposed, as red brick is not a common material within the immediate landscape. As such, discussions were held with the agent and contractor and an art-stone has been proposed. Amended plans have been sought, along with a material sample. These were received on the 4<sup>th</sup> July 2023.

Dated: 23/04/2024