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:	**2023/70/91542/W**
Site Address:	Holmfirth Fresh Fish, Berry Bank Lane, Holmfirth, HD9 7LN
Description:	Variation condition 2 (plans and specifications), 9 (drainage) on previous permission 2021/93059 for demolition of existing industrial unit and erection of new industrial unit with use classes E(g)(iii), B2 and B8 use (flexible planning permission)
Recommending Officer:	William Simcock

DECISION – Approve Variation of Conditions

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

Teresa Harlow

AUTHORISED OFFICER

Date: 06-Dec-2023

Officer Report – 2023/91542
Holmfirth Fresh Fish, Berry Bank Lane, Holmfirth

Site Description

The site comprises a single storey rectangular building with a pitched roof with a footprint of approximately 106m2. The building is constructed from corrugated metal. The site also includes an area of hardstanding to the front (south) and west side of the building. The site is accessed off A635 New Mill Road (to the east of the site) via an unadopted access lane, Berry Bank Lane. This access lane also serves Holmfirth Fresh Fish (directly to the east of the site), industrial units further to the east, as well as, on a temporary and informal basis, Holmfirth Parish Church Tennis Club directly to the west of the site and Jam Factory Music School to the front of the site. New Mill Road is on higher land to the site, with the access sloping down towards the site.

Description of Proposal

The proposal is for variation condition 2 (plans and specifications), 9 (drainage) on previous permission 2021/93059 for demolition of existing industrial unit and erection of new industrial unit with use classes E(g)(iii), B2 and B8 use (flexible planning permission).

The following reasons have been given for the developer not wishing to implement the originally approved drainage strategy. There is a 10m level difference between the applicant's site and the mains sewer in New Mill Rd (A635) which requires the drainage to be pumped. Due to the requirement for pumping, the pumping station required would be substantial yet would only be for 2 toilets and sinks and surface water. As a result, the costs for the original drainage scheme are in excess of £150k making the scheme as a whole unviable.

The updated drainage report states that foul water will discharge to private foul water drainage network located within adjacent site to the south-west subject to agreement with the third-party landowner.

Surface water will discharge to private surface water drainage network via storage at restricted rate of 2.2 litres per second to adjacent site to the south-west subject to agreement with the third-party landowner.

History of negotiations/amendments received

None.

Relevant Planning History

2021/93059: demolition of existing industrial unit and erection of new industrial unit with use classes E(g)(iii), B2 and B8 use (flexible planning permission). Expires 09-Mar-2025.

2022/93623 – Discharge of conditions on above: 3 (materials), 4,(sustainability and energy statement) 6, (bins/refuse store) 15, (phase 1 contamination survey) 16 (phase 2 intrusive survey), 17 (remediation strategy), 18 (remediation of the site), 19 (validation report), 20 (artificial lighting). Split decision. Details for C3,4,6,15,16,17,20 all accepted. As development was yet to commence the LPA was not able to grant discharge of conditions 18 and 19 (validation report) at that time.

Representations

Final publicity date expires: 14-Jul-2023. Publicity by neighbour letter only. A Public Right of Way, HOL/50/80, passes through the site and the original application was publicised by site and press notice for this reason. The current application proposes changes that have no implication for the safety and useability of the PROW above or beyond the originally approved scheme, and it was therefore considered unnecessary to advertise the application in this manner. It is considered that the requirements of the Development Management Procedure Order have thereby been fulfilled.

Holme Valley Parish Council – No comment; defer to Planning Officers.

No representations were made by any other third party.

Consultation Responses

The following is a brief summary of Consultee advice (more details are contained in the Assessment section of the report, where appropriate):

- Yorkshire Water – Recommend approval.

Policy

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019) and the Holme Valley Neighbourhood Development Plan (adopted 8th December 2021).

Kirklees Local Plan (LP):

- LP24 – Design
- LP28 – Drainage

- LP51 – Protection and improvement of local air quality
- LP52 – Protection and improvement of environmental quality

Holme Valley Neighbourhood Development Plan (2020-2031)

The Holme Valley Neighbourhood Development Plan was adopted on 8th December 2021 and therefore forms part of the Development Plan.

• Policy 1 – Protecting and Enhancing the Landscape Character of the Holme Valley • Policy 2 – Protecting and Enhancing the Built Character of the Holme Valley and Promoting High Quality Design
• Policy 12 – Promoting Sustainability

The site lies within Landscape Character Area 4 – River Holme Settled Valley Floor.

National Policies and Guidance:
National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 5th September 2023, the Planning Practice Guidance Suite (PPGS) first launched 6th March 2014 together with Circulars, Ministerial Statements and associated technical guidance.

The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

- Chapter 12 – Achieving well-designed places
- Chapter 14 – Meeting the challenge of climate change, flood risk and coastal change
- Chapter 15 – Conserving and enhancing the natural environment

Assessment
The following matters are considered in the assessment below –

1) Principle of development
1) Impact on visual amenity (including any heritage considerations)
2) Impact on residential amenity
3) Impact on highway safety
4) Other matters – e.g. trees/ecology (e.g. bats)
5) Representations
6) Conclusion

<u>1 – Principle of development</u>: Policy LP1 of the Local Plan 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 NPPF. LP1 goes on further to stating that:

> "The council will always work pro-actively with applicants jointly to find solutions which mean that proposals can be approved wherever possible,

and to secure development that improves the economic, social and environmental conditions in the area."

The principle of development has already been established. The only changes proposed are to drainage arrangements and, as such, the only issues that fall to be considered are the implications for the safe and sustainable drainage of the land and any impact this might have on health, safety and the environmental conditions of the area. In assessing these factors, due weight will be placed on the Local Plan, Holme Valley NDP Polices and NPPD guidance as set out above.

The original drainage scheme showed the site having a self-contained drainage system with the outfall to the public sewer on New Mill Road (subject to Yorkshire Water approval). The amended version shows, as before, a cellular crate attenuation system within the site, but with its outfall by gravity to the proposed surface water
drainage system on the adjacent site (previous permission 2018/91579 for reserved matters application pursuant to outline application 2015/93824 for erection of 56 dwellings). There will be a separate foul drainage outfall to the foul drainage system within the same site, subject in both cases to approval from the third-party landowner and Yorkshire Water.

It is considered that the scheme now proposed would support the aims of safe and sustainable drainage as set out in Policy LP28, and would have no material implications for the built environment, landscape, residential amenity or highway safety. The implementation of the drainage system will depend upon the approval of third party landowners, as acknowledged by the applicant, but since the relevant statutory undertaker, Yorkshire Water, accept the scheme, it is considered that there are no technical obstacles to its implementation and successful functioning.

It is therefore recommended that variation of conditions (2) and (9) can be granted, with the wording of Condition (9) changed to refer to the new drainage scheme.

The conditions that were imposed on the original permission will be carried over to the new permission, with the exception of 15-17, which are no longer applicable as they are for the submission of a documents (Phase 1, 2 and 3 Contamination Reports) that have been submitted and found to be acceptable, and implementation is covered by separate conditions. Other conditions will need to be re-worded as prescriptive conditions where they deal with the requirement to submit further information that has been approved under application 2022/93623. Condition (1) will also need to be reworded to take into account that the time limit for implementing the development cannot be extended and is tied to the three-year limit originally imposed (commencement on or before 09-Mar-2025)

Climate Change:
On 12th November 2019, the Council adopted a target for achieving 'net zero' carbon emissions by 2038, with an accompanying carbon budget set by the

Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan pre-dates the declaration of a climate emergency and the net zero carbon target; however it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

In this instance the applicant has not submitted any supplementary statement or other information to explain how the proposed development would help to address or combat climate change effects.

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 2 & 9

Decision Authorisation - Delegated Powers

Application Number: **2023/91542**

Officer Recommendation: APPROVE VARIATION OF CONDITIONS

Conditions and Reasons

1. The development hereby permitted shall be begun no later than 9th March 2025.
Reason: Pursuant to the requirements of Section 91 of the Town and Country Planning Act 1990.

2. The development hereby permitted shall be carried out in complete accordance with the plans and specifications schedule listed in this decision notice, except as may be specified in the conditions attached to this permission, which shall in all cases take precedence.
Reason: For the avoidance of doubt as to what is being permitted and so as to ensure the satisfactory appearance of the development on completion, and to accord with Policies LP3, LP7, LP8, LP13, LP20, LP21, LP22, LP24, LP28, LP30, LP43, LP51, LP52 and LP53 of the Kirklees Local Plan, Policies 1, 2, 7, 11, 12 and 13 of the Holme Valley Neighbourhood Development Plan and Chapters 6, 7, 8, 9, 11, 12, 14 and 15 of the National Planning Policy Framework.

3. The external materials used in the construction of the building shall be in full accordance with the Materials Schedule approved under application 2022/93623 for discharge of conditions and the building shall thereafter be retained as such.
Reason: In the interests of visual amenity and to accord with Policy LP24 of the Kirklees Local Plan, Policies 1 and 2 of the Holme Valley Neighbourhood Development Plan and Chapter 12 of the National Planning Policy Framework.

4. The details contained within the Sustainability Statement, SBEM Calculations – Part L2 Compliance Assessment, and BRUKL Output Document approved under application 2022/93623 for discharge of conditions shall be incorporated into the development before it is first brought into use and retained as such thereafter.
Reason: To ensure sustainable construction and reduce carbon emissions and to comply with Policies LP51 and LP52 of the Kirklees Local Plan, Policy 12 of the Holme Valley Neighbourhood Development Plan and Chapter 14 of the National Planning Policy Framework.

5. A bat box and a bird box shall be incorporated into the approved building; the boxes shall be long-lasting Schwegler `woodcrete' type or similar and shall be located away from sources of light and located at least 3 metres above ground level. The bat box and bird box shall be provided prior to first occupation of the building and thereafter retained.

Reason: To enhance the biodiversity of the site in accordance with Policy LP30 of the Kirklees Local Plan, Policy 13 of the Holme Valley Neighbourhood Development Plan and Chapter 15 of the National Planning Policy Framework.

6. The refuse/bin store details as shown on: drawing no. 037-21-BR01 Revision A – Proposed Site Plan; drawing no. 037-21-BR05 – Proposed Close Boarded Fencing Detail to Bin Store, as approved under application 2022/93623 for discharge of conditions shall be provided prior to the first use of the development hereby approved and thereafter retained.
Reason: In the interests of visual amenity and residential amenity, and to accord with Policies LP24 and LP52 of the Kirklees Local Plan, Policies 1 and 2 of the Holme Valley Neighbourhood Development Plan and Chapters 12 and 15 of the National Planning Policy Framework.

7. Prior to first occupation of any of the unit hereby approved, an electric vehicle recharging point shall be installed at one of the provided parking spaces as shown on Drawing No. 037- 21-PL01 Revision C received on 8th March 2022. Cable and circuitry ratings shall be of adequate size to ensure a minimum continuous current demand of 16Amps and a maximum demand of 32Amps. The electric vehicle charging point so installed shall thereafter be retained.
Reason: In the interest of supporting low emission vehicles and to accord with the guidance contained in Policies LP24 and LP51 of the Kirklees Local Plan, Policies 11 and 13 of the Holme Valley Neighbourhood Development Plan and Chapters 9 and 15 of the National Planning Policy Framework.

8. The unit hereby approved shall not be brought into use until all areas to be used for parking, turning and vehicular access as shown on Drawing No. 037-21-PL01 Revision C received on 8th March 2022, have been surfaced and laid out. Thereafter the parking spaces shall be so retained, free of obstructions and available for parking thereafter.
Reason: In the interests of amenity and traffic safety, to ensure adequate space within the site for vehicle movements and parking, and in accordance with Policies LP21 and LP22 of the Kirklees Local Plan, Policy 11 of the Holme Valley Neighbourhood Development Plan and Chapter 9 of the National Planning Policy Framework.

9. Prior to the first use of the building hereby approved, a surface water drainage scheme shall be carried out in strict accordance with the 'Surface Water Drainage Strategy' section (section 5) of the revised 'Drainage Strategy' dated July 2021, Revised August 2022 by JNP Group Consulting Engineers (ref – B24578-JNP-XX-XX-RP-C-0001 P02 & B24578 JNP XX XX DR C 2001 P03) and Foul Water Drainage Strategy in section 6 of the aforementioned documents. The surface water drainage scheme shall thereafter be retained in accordance with the approved surface water drainage strategy.
Reason: To ensure that the provision of adequate and sustainable systems of drainage are employed, in the interests of amenity, environmental well-being

and to accord with Policy LP28 of the Kirklees Local Plan and Chapter 14 of the National Planning Policy Framework.

10. The combined noise from any fixed mechanical services and external plant and equipment shall be effectively controlled so that the combined rating level of noise from all such equipment does not exceed the background sound level at any time. “Rating level” and “background sound level” are as defined in BS 4142:2014+A1:2019.
Reason: To protect the amenities of existing and future neighbouring residents and to accord with Policies LP24 and LP52 of the Kirklees Local Plan, Policy 2 of the Holme Valley Neighbourhood Development Plan and Chapters 12 and 15 of the National Planning Policy Framework.

11. No activities shall be carried out on the premises, including deliveries to or dispatches from the premises, outside the times of 08:00 to 18:00 Monday to Friday, and 09:00 to 13:00 on Saturdays. No activities shall take place on Sundays or Bank Holidays.
Reason: To protect the amenities of existing and future neighbouring residents and to accord with Policies LP24 and LP52 of the Kirklees Local Plan, Policy 2 of the Holme Valley Neighbourhood Development Plan and Chapters 12 and 15 of the National Planning Policy Framework.

12. Prior to the first operation of the site for the use hereby approved, a 2.4 metre high solid acoustic timber fence shall be installed to the southern end of the site in accordance Drawing No.037-21-PL01 Revision C received on 8th March 2022 and Paragraph 5.18 of the Noise Impact Assessment by Environmental Solutions Limited dated 9th December 2021 (ref: NIA/1009/21/10175/v1/BerryBankLane). Thereafter, the acoustic fence shall be retained.
Reason: To protect the amenities of existing and future neighbouring residents from noise and disturbance and to accord with Policies LP24 and LP52 of the Kirklees Local Plan, Policy 2 of the Holme Valley Neighbourhood Development Plan and Chapters 12 and 15 of the National Planning Policy Framework.

13. There shall be no operation of plant or machinery on any outdoor part of the site (except vehicles, including forklift trucks). All openings within the building shall be fully shut when operating plant and machinery within the building hereby approved. **Reason**: To protect the amenities of existing and future neighbouring residents and to accord with Policies LP24 and LP52 of the Kirklees Local Plan, Policy 2 of the Holme Valley Neighbourhood Development Plan and Chapters 12 and 15 of the National Planning Policy Framework.

14. No display or storage of goods, materials, plant, machinery or equipment shall take place other than within the building(s) on the site.
Reason: In the interest of the visual amenities of the locality, in the interest of highways safety and to accord with Policies LP21 and LP24 of the Kirklees Local Plan, Policy 2 of the Holme Valley Neighbourhood Development Plan and Chapter 2 of the National Planning Policy Framework.

15. Remediation of the site shall be carried out and completed in accordance with the Remediation Statement by Rogers Geotechnical Services Ltd dated September 2022 (ref; C2446/22/E/4492) approved under application 2022/93623 for discharge of condition. In the event that remediation is unable to proceed in accordance with the approved Remediation Strategy or contamination not previously considered, in either the Preliminary Risk Assessment or the Phase II Intrusive Site Investigation Report is identified or encountered on site, all groundworks in the affected area (except for site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within 2 working days. Works shall not recommence until proposed revisions to the Remediation Strategy have been submitted to and approved in writing by the Local Planning Authority. Remediation of the site shall thereafter be carried out in accordance with the approved revised Remediation Strategy.
Reason: To ensure the safe occupation of the site in accordance with Policy LP53 of the Kirklees Local Plan and Chapter 15 of the National Planning Policy Framework.

16. Following completion of any measures identified in the approved Remediation Strategy or any approved revised Remediation Strategy a Validation Report by a suitably competent person shall be submitted to the Local Planning Authority. No part of the site shall be brought into use until such time as the remediation measures have been completed for the site in accordance with the approved Remediation Strategy or the approved revised Remediation Strategy and a Validation Report in respect of those remediation measures has been approved in writing by the Local Planning Authority. Where validation has been submitted and approved in stages for different areas of the whole site, a Final Validation Summary Report shall be submitted to and approved in writing by the Local Planning Authority.
Reason: To ensure the safe occupation of the site in accordance with Policy LP53 of the Kirklees Local Plan and Chapter 15 of the National Planning Policy Framework.

17. The external artificial lighting shall be installed in full accordance with the External Lighting Drawing (ref: 0002258753-EX-R0-251022 Revision R0) approved under application 2022/93623 for discharge of condition and operated thereafter in accordance with the approved scheme.
Reason: To safeguard the amenities of the occupiers of nearby properties and promote sustainable development in accordance with Policies LP24 and LP52 of the Kirklees Local Plan, Policy 2 of the Holme Valley Neighbourhood Development Plan and Chapters 12 and 15 of the National Planning Policy Framework.

18. The premises shall only be used for either E(g)(iii) use, B2 use or B8 use and for no other purpose (including any other purpose in Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended) or in any provision equivalent to that Class in any Statutory Instrument revoking or re-enacting that Order with or without modification).

Reason: To protect the vitality and viability, as well as the role and function of local, district and town centres, in the interest of highways safety, in the interest of residential amenity and in accordance with Policies LP13, LP24, LP21 and LP52 of the Kirklees Local Plan, Policies 2 and 11 of the Holme Valley Neighbourhood Development Plan and Chapters 7, 9, 12 and 15 of the National Planning Policy Framework.

Construction Site Working Times – Footnote
It is recommended that noisy construction related activities should not take place outside the hours of:
07.30 to 18.30 hours Mondays to Fridays
08.00 to 13.00hours Saturdays
With no noisy activities on Sundays or Public Holidays

Construction Sites working times – Footnote
Kirklees Council has powers under Section 60 of the Control of Pollution Act 1974 to control noise from construction sites and may serve a notice imposing requirements on the way in which construction works are to be carried out. It has additional powers under Sections 80 of the Environmental Protection Act 1990 to prevent statutory nuisance including noise, dust, smoke and artificial light and must serve an abatement notice when it is satisfied that a statutory nuisance exists or is likely to occur or recur. Failure to comply with a notice served using the above mentioned legislation would be an offence for which the maximum fine on summary conviction is unlimited.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Application form			30th July 2021
Location plan	2123		18th February 2022
Proposed site plan and floor plan	037-21-PL03	C	8th March 2022
Proposed elevations	037-21-PL03	A	25th October 2021
Proposed site sections	037-21-PL03	A	25th October 2021
Noise Impact Assessment by Environmental Noise Solutions Limited dated 9th December 2021	NIA/10091/21/ 10175/v1/Berry Bank Lane		9th December 2021
Design and Access Statement by Hinchcliffe Architecture & Design dated 14.07.2021	037-21-R1		30th August 2021
Drainage strategy	B24578-JNP-XX-XX-RP-C-0001	P02	30-May-2023

Plan Type	Reference	Version	Date Received
Drainage strategy drawing	B24578 JNP XX XX DR C 2001	P03	08-Jun-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 request any amended or additional plans as these were not deemed necessary.

Report Dated: 04-Dec-2023