

**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:	2023/70/92030/W
Site Address:	90, Lingards Road, Slaithwaite, Huddersfield, HD7 5HY
Description:	Variation of conditions 2, 4, and 7 on previous permission 2020/91838 erection of front raised terrace, extension of existing basement and internal and external alterations
Recommending Officer:	Katie Chew

DECISION – APPROVE REMOVAL / 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.

John Holmes

AUTHORISED OFFICER

Date: 04-Sep-2023

Officer Report

Site Description

90, Lingards Road, Slaithwaite, Huddersfield, HD7 5HY

The application site relates to a three-storey detached dwelling located off Lingards Road in Slaithwaite. The property benefits from 3 car parking spaces, with garden/amenity space to the rear. The host dwelling is constructed from random stone with concrete roof tiles.

The application site is not within a Conservation Area or located in close proximity to any Listed buildings.

Description of Proposal

The application seeks consent for the variation of conditions 2, 4, and 7 on previous permission 2020/91838 erection of front raised terrace, extension of existing basement and internal and external alterations.

Condition 2 of application 2020/91838 states the following:

“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 Policies LP21, LP22, LP24 of the Kirklees Local Plan, Chapter 12 of the National Planning Policy Framework and the Council’s adopted SPD ‘house extensions and alterations’”.

Condition 4 of application 2020/91838 states the following:

“4. The steel structure of the raised terraced area hereby approved shall be finished in the colour Anthracite Grey (RAL 7016) before the terrace is first brought into use and shall be retained as such thereafter.

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

Condition 7 of application 2020/91838 states the following:

“7. The external face of the modified retaining wall to the south west of the drive, as indicated on the approved layout plan, shall be completed in materials which harmonise with the existing ‘random stone’ finish found within the host dwelling, the existing materials shall be re-used where possible.

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

The proposed alterations include the retention of the retaining wall on the south-western boundary which was previously approved to be relocated within the site to the further to the west by approximately 0.6m to provide additional space for the parking of vehicles within the driveway. In terms of condition 4, the applicant proposes to wrap the posts and beam with a metal sheeting which is to be finished in anthracite grey, this is to protect the steel from being exposed to the elements and prevent it from rusting over time. The applicant also seeks to remove condition 7 previously approved as this relates to the materials of the modified retaining wall to the south-west but as this is now to be retained as is, condition 7 could not be complied with.

History of negotiations/amendments received

No amendments have been sought in this instance.

The attention of the planning agent for this application has been drawn to third party representations which have been received. The planning agent has subsequently confirmed they do not consider further detail is required to be included upon the submitted plan. In relation to lighting, they set out these are down lighters which do not lead to significant light spill outside of the application site.

Relevant Planning History

2020/91838 – Erection of front raised terrace, extension of existing basement and internal and external alterations. Approved 21st July 2021.

94/91515 – Erection of first floor extension. Approved 22nd June 1994.

Planning Enforcement

COMP/22/0509 – Development not in accordance with approved plans 2020/91838.

COMP/20/0259 – Alleged unauthorised installation of new windows and doors and formation/extension of basement. Application approved.

Representations

Final publicity date expires:

Neighbour Letters – Expired 18th August 2023.

1 representation has been received in objection; comments are summarised below.

- Pleased to see the retaining wall is no longer planned to be moved, and agreeable to the removal of condition 7.

Officer note: Noted.

- The rationale for previously accepting the colour Anthracite Grey was that it would match the colour of the UPVC windows and doors. This colour specification should not be removed from the condition.

Officer note: Noted. This condition is to remain as previously approved.

- The application is retrospective, LP24 refers to decisions being made at the outset. A retrospective application suggests that this did not happen.

Officer note: Noted.

- The application fails to incorporate other retrospective changes that have been made such as lighting and cladding beneath the raised terrace.

Officer note: Noted. Whilst it is unlikely that the lighting, given its nature would require planning permission, this application is considering the amendments for which consent is sought. The planning agent has been contacted in light of this matter and states they do not see a requirement for further plans on the basis the submitted details address the amendments.

- The steps built at the end of the fire escape leg do not appear to provide adequate damp-proofing.

Officer note: Noted. This matter would fall under the remit of building regulations and it is not considered reasonable of the LPA to require this matter to be investigated as part of an application for variation of condition.

- Within the section description of proposal in the application forms it makes reference to external and internal alterations. However, the conditions referred to fail to mention any internal alterations.

Officer note: Noted. This proposed description derives from the description of the previously approved application 2020/91838 and is deemed to be acceptable in this instance.

- The width of the fire escape route is grossly inflated on the plans. The width fails to exceed 60cm but is shown as 142cm. This fire escape route fails to provide a route to safety.

Officer note: Noted. However, this would fall under building regulations and therefore if third parties have concerns regarding this matter it is recommended that this is flagged up with the Council's Building Control team.

- There are still no known plans for drainage.

Officer note: Noted. However, given the nature of this S73 application only the impact of amendment / removing conditions 2, 4 and 7 can be considered.

Officer note: We are currently undertaking the legal statutory publicity requirements as set out at Table 1 in the Kirklees Development Management Charter. As such, we have publicised this application via neighbour notification letters, details of which are outlined above.

Consultation Responses

KC Highways Development Management (informal) – Comments received 25th July 2023. As they are still providing 3 appropriately sized spaces highways have no objections to the proposals.

Parish/Town Council

N/A.

Local Ward Members

None.

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 application site is located within a Bat Alert Area adjacent to Housing Allocation HS125 to the north and Green Belt to the rear (the application site is not located within the Green Belt).

Kirklees Local Plan (LP):

- **LP1** – Presumption in favour of sustainable development
- **LP2** – Place shaping
- **LP21** – Highway safety and access
- **LP22** – Parking
- **LP24** – Design
- **LP30** – Biodiversity and geodiversity

Other Guidance Documents:

- Kirklees Highways Design Guide (2019)
- House Extensions and Alterations SPD (2021)
- Biodiversity Net Gain in Kirklees Technical Advice Note (2021)

National Polices and Guidance:

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) updated 20th July 2021, the Planning Practice Guidance Suite (PPGS) first launched 6th March 2014 together with Circulars, Ministerial Statements and associated technical guidance.

The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications. Most specifically in this instance, the below chapters are of most relevance:

- **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

Summary of Principal Planning Issues

The following matters are considered in the assessment below –

- 1) Principle of development
- 2) Impact on visual amenity
- 3) Impact on highway safety
- 4) Other matters
- 5) Conclusion

1 - Principle of Development:

Section 73 of the Town and Country Planning Act 1990 allows for the variation or removal of a condition of a previous permission. Whilst it is acknowledged that the previously approved application 2020/91838 established the principle of extensions and additions to the host dwelling on 90 Lingards Road, Officers do note that these extensions and additions have in part, not been built/finished in accordance with the approved plans and conditions. Nevertheless, the principle of this type of development in this location is considered to be acceptable and therefore the assessment will deal with the merits of the proposed variations.

2 – Impact on Visual Amenity:

The application seeks to vary condition 2 relating to the approved plans and specifications, this is to accommodate the retention of the existing retaining wall along the south-western boundary of the site. This retaining wall was originally approved to be pushed further to the west by approximately 0.6m to allow for additional space for the parking of vehicles on the driveway, as this is no longer required the existing retaining wall is to remain as is. This change therefore has a negligible impact on the visual appearance of the site and is deemed to be acceptable. As the retaining wall is to now be retained, condition 7 is no longer relevant and therefore the proposed removal of this condition is also deemed acceptable.

In addition, the application seeks to vary condition 4 which relates to the finish of the steel structure supporting the previously approved terrace area. Condition 4 outlines that the structure shall be finished in the colour Anthracite Grey (RAL 7016). Within the submitted supporting statement the applicant's agent outlines that the applicant wishes to wrap the posts and beam in a metal sheet which is to be finished in anthracite grey, they intend to do so to protect the steel from being exposed to the elements and prevent it from rusting over time. As the condition imposed does not outline the specific finish to the posts and beam, simply referring to the colour, Officers do not consider it necessary to significantly amend Condition 4 other than to state the supporting structure shall be of an anthracite grey colour finish.

Whilst minor amendments are proposed within the site, these changes are not considered to have a significant impact on the visual appearance of the site, or how it sits within the streetscene. Furthermore, no changes are proposed in respect to the overall scale, massing or design of the dwelling and therefore it is considered that the proposals would still accord with Policies LP1, LP2 and LP24 of the Kirklees Local Plan, Principles 1 and 2 of the House Extensions and Alterations SPD and Chapter 12 of the National Planning Policy Framework.

3 - Impact on Highway Safety:

In terms of parking provision and access, the proposed amendments would not alter the existing and approved access, and whilst the amount of space around the 3 parking spaces proposed to the front of the dwelling would be reduced, 3 off-street spaces of suitable size can still be provided and therefore the proposals are still in accordance with Policies LP21 and LP22 of the Kirklees Local Plan, Chapter 9 of the National Planning Policy Framework and Principle 15 of the House Extensions and Alterations SPD. This view is also supported by the Council's Highways team who were consulted and raised no objections to the scheme.

4 - Other Matters:

With regard to other matters that were assessed as part of the previous planning permission – residential amenity, biodiversity, trees and climate change, the proposal is considered to have the same impact in relation to these aspects and any conditions imposed in regard to these matters to make the development acceptable will be repeated as part of this application.

Conditions Review

As the application is a Section 73 application to vary conditions, it is necessary to re-impose all conditions which remain relevant.

Within the submitted application form the applicant's agent notes that the development started in August 2021 but is yet to be finished, condition 1 is therefore no longer applicable and would be removed. Whilst the plans would

be updated within the plans table to reflect the amendments the wording of condition 2 would remain unchanged. Condition 4 would also remain, albeit slightly altered, as discussed within the above report. Condition 7 is no longer relevant and therefore is recommended to be removed.

In addition, all conditions have been reviewed and updated to ensure that they are up to date with both local and national policies.

5 - Conclusion:

The proposal is a Section 73 Variation of Condition application to vary conditions 2 (plans) and 4 (finish of the post and beams of the terrace area) and remove condition 7 (materials – retaining wall). This amendment is required to retain the existing boundary wall to the south-west which was previously approved to be relocated within the site, and to amend the finish proposed to the steel posts and beams supporting the approved terraced area. As set out above, in determining a S73 application, the local planning authority must only consider the 'disputed' conditions that are subject of the application – it is not a complete reconsideration of the application. As such, it is a consideration of conditions 2, 4 and 7 only. As detailed within the report, given the minor modifications sought by this proposal, which is reflected in the plan numbers associated with Condition 2, the minor variation is considered to be acceptable.

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. The proposal would remain in accordance with the development plan and there are no material considerations to indicate otherwise. The development would therefore constitute sustainable development and it is recommended for approval.

Recommendation:

Approve.

Decision Authorisation - Delegated Powers

Application Number: 2023/92030

Officer Recommendation: Grant Variation of Condition 2 and remove Condition 7. Condition 4 is to remain.

Conditions and Reasons:

1. The development hereby permitted shall be carried out in complete accordance with the plans and specifications schedule listed in this

decision notice, except as may be specified in the conditions attached to this permission, which shall in all cases take precedence.

Reason: For the avoidance of doubt as to what is being permitted and so as to ensure the satisfactory appearance of the development on completion, and to accord with Policies LP1, LP2, LP21, LP22, LP24, LP30 of the Kirklees Local Plan, policies within Chapters 2, 4, 12, 14 and 15 of the National Planning Policy Framework and Principles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 15 and 16 of the Council's adopted House Extensions and Alterations Supplementary Planning Document.

2. The 1.5m high opaque glass privacy screen shown on the hereby approved Proposed Layouts and Elevations plan ref: 02 Rev J, received 13th July 2023 shall be installed prior to the raised terrace area to the front being first brought into use and retained thereafter.

Reason: In the interests of residential amenity and to accord with Policies LP24 of the Kirklees Local Plan, Chapter 12 of the National Planning Policy Framework and Principle 3 of the House Extensions and Alterations Supplementary Planning Document.

3. The supporting structure of the raised terraced area hereby approved shall be of an Anthracite Grey colour finish, completed in such a finish before the terrace is first brought into use, the colour finish shall be thereafter retained.

Reason: In the interests of visual amenity and to accord with Policies LP1, LP2 and LP24 of the Kirklees Local Plan, policies within Chapter 12 of the National Planning Policy Framework and Principles 1 and 2 of the Council's adopted House Extensions and Alterations Supplementary Planning Document.

4. The development shall not be brought into use until all additional hard surfaced areas indicated to be used for parking on the submitted plans have been laid out with a hardened and drained surface 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 any successor guidance. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended (or any Order revoking or re-enacting that Order) these areas shall be so retained, free of obstructions and available for the use specified on the submitted plans.

Reason: In the interests of amenity and traffic safety, to ensure adequate space within the site for vehicle movements and parking, to mitigate flood risk and in accordance with Kirklees Local Plan Policies LP21 and LP24, Principle 15 of the Council's adopted House Extensions and Alterations Supplementary Planning Document and policies within Chapter 14 of the National Planning Policy Framework.

5. The raised terrace hereby approved shall not be brought into use until the car parking area to accommodate three vehicles as indicated on

the proposed layout plan have been laid out and made available for use. Thereafter the car parking area to accommodate three vehicles shall be retained.

Reason: In the interests of amenity and highway safety, to ensure adequate space is provided within the site for car parking, in accordance with Kirklees Local Plan Policy LP21, policies within Chapter 9 of the National Planning Policy Framework and Principle 15 of the Council's adopted House Extensions and Alterations Supplementary Planning Document.

NOTE: The site is within an area where bats forage. Bats are a European protected species under regulation 41 of the Conservation of Habitats and Species Regulations 2010. It is an offence for anyone to intentionally kill, injure or handle a bat, disturb a roosting bat, or sell or offer a bat for sale without a licence. It is also an offence to damage, destroy or obstruct access to any place used by bats for shelter, whether they are present or not.

NOTE: Please note that the granting of planning permission does not override any private legal rights of ownership and it is your responsibility to ensure you have the legal right to carry out the approved works. This includes issues for construction and maintenance or parking of construction vehicles as this may involve access to land outside your ownership, for example the public highway.

Plans and specifications schedule: -

Plan Type	Reference	Version	Date Received
Planning Drawing	01	E	13 th July 2023
Proposed Layouts and Elevations	02	J	13 th July 2023
Supporting Statement – Supporting Information	-	-	14 th July 2023
Supporting Photograph – Supporting Information	-	-	14 th July 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 preapplication advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application. No amendments have been sought in this instance as the proposals are deemed to be acceptable upon submission.

Report Dated:

21/08/2023