

**KIRKLEES METROPOLITAN COUNCIL  
INVESTMENT & REGENERATION SERVICE**

**DEVELOPMENT MANAGEMENT**

**Town and Country Planning Act 1990 (as amended)**

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

Reference No:	<b>2023/44/92061/E</b>
Site Address:	119, Huddersfield Road, Mirfield, WF14 9DA
Description:	Discharge of conditions 6 (right-turn lane), 8 (Construction Management Plan), 10 (electric vehicle charging), 11 (Phase II report), 16 (Air Quality Impact Assessment), 18 (temporary drainage), 20 (surface water drainage), 22 (hardstanding drainage) and 27 (external lighting) of previous outline permission 2019/92221 for demolition of existing buildings and erection of Class E retail unit, access, car parking, servicing, landscaping and associated works (all matters reserved other than access)
Recommending Officer:	Nick Hirst

**DECISION – Discharge of Conditions – Split Decision**

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

*Victor Grayson*

**AUTHORISED OFFICER**

**Date: 04-Jan-2024**

**Application:** 2023/44/92061/E

**Site:** 119, Huddersfield Road, Mirfield, WF14 9DA

**Proposal:** Discharge of conditions 6 (right-turn lane), 8 (Construction Management Plan), 10 (electric vehicle charging), 11 (Phase II report), 16 (Air Quality Impact Assessment), 18 (temporary drainage), 20 (surface water drainage), 22 (hardstanding drainage) and 27 (external lighting) of previous outline permission 2019/92221 for demolition of existing buildings and erection of Class E retail unit, access, car parking, servicing, landscaping and associated works (all matters reserved other than access)

## Overview

An interim decision notice was issued 17/10/2023 as follows:

- Approved: conditions 10, 16, 18, 20, 22 and 27.
- Not Approved: condition 6, 8 and 11.

The following assessment relates to conditions 6, 8, and 11 only.

## Assessment

### Condition 6 (right-turn lane)

*6. Notwithstanding the submitted information, a detailed scheme for the provision of a right turn lane from Huddersfield Road into the site and new pedestrian refuges on Huddersfield Road that is based on drawing number 15151-101 Revision D shall be submitted to and approved in writing by the Local Planning Authority before development commences. The scheme shall include construction specifications, white lining, signing, surface finishes and transport regulation orders together with an independent Safety Audit covering all aspects of the work. All of the agreed works shall be implemented before any part of the development is first brought into use.*

**Reason:** *In the interests of highway safety and to accord with Policy LP21 of the Kirklees Local Plan. This is a pre-commencement condition so that such matters are addressed at an appropriate stage of the development process.*

The applicant is currently in negotiations with K.C. Highways (Section 278 and Structures teams). To date, an acceptable design for the highway interventions has not been submitted. The applicant's proposed design does not address the requirements to ensure the safe and efficient use of the highway. Until the design is revised to the satisfaction of K.C. Highways, it remains the case that officers are unable to recommend approval.

### Condition 8 (Construction Management Plan)

8. A Construction Management Plan (CMP) shall be submitted to and approved in writing by the Local Planning Authority before development commences. The CMP shall include:

- Details of the times of use of the access for construction traffic;
- Routing of construction traffic;
- Construction workers parking facilities;
- A scheme to demonstrate how the highway will be kept clear of mud/debris;
- Measures to mitigate the impact of noise & vibration on neighbouring residential properties arising from all construction related activities (including suitable restrictions on the hours of working on the site including times of deliveries);
- Measures to mitigate the impact of dust on neighbouring residential properties arising from all construction related activities and;
- Details of artificial lighting used in connection with all construction related activities.
- Details of the times of use of the access for construction traffic;

*The approved CMP shall be adhered to throughout the construction of the development.*

**Reason:** *In the interests of highway safety and residential amenity and to accord with Policies LP21 and LP24 of the Kirklees Local Plan. This is a pre-commencement condition so that such matters are addressed at an appropriate stage of the development process*

The submitted details (a Construction Phase Health and Safety Plan, rev 3) have been reviewed by K.C. Highways, K.C. Environmental Health, and Planning Officers.

K.C. Environmental Health previously considered the elements pertinent to them to be acceptable. This position has not changed. It should be noted that the proposed hours of construction are longer than typically recommended by K.C. Environmental Health, including 30 minutes earlier on weekday mornings (a 0700 start, as opposed to 0730). Saturday working is proposed until 1400, as opposed to the recommended 1300. While these times being outside of those recommended is noted, the difference is minimal and, given the site-specific circumstances of being adjacent a busy main road with no immediately adjacent residential properties, on balance this is not considered unreasonable by officers or K.C. Environmental Health.

Notwithstanding the above, K.C. Environmental Health have requested that a note be placed on the decision notice reminding the applicant of the Council's Section 60 powers, should nuisance noise be generated at the site.

K.C. Highways Development Management previously expressed concerns over the management of mud / debris and times of access. The applicant has considered these points and updated their submission accordingly to respond

to the concerns. The amendment document is considered acceptable to K.C. Highways.

Planning officers likewise consider the details to now be acceptable, complying with the aims and objectives to be acceptable. Officers therefore recommend that the details be approved. However, given the condition has an ongoing requirement it cannot be fully discharged at this time.

#### Condition 11 (Phase II report)

*11. Groundworks shall not commence until a Phase II Intrusive Site Investigation Report has been submitted to and approved in writing by the Local Planning Authority.*

**Reason:** *To identify unacceptable risks to human health and the environment arising from potential contamination. This is to accord with Policy LP53 of the Local Plan and guidance given in the National Planning Policy Framework. This is a pre-commencement condition to ensure that such matters are identified at an appropriate stage.*

Following the previous assessment, where K.C. Environmental Health raised an objection to the details provided, further details have been provided. The applicant has provided the additional information requested by K.C. Environmental Health, who have reviewed it and concluded it to be acceptable. Therefore they, and planning officers, are in a position to recommend the discharge of condition 11.

Condition 11 may be discharged in full. However, the conclusion of the Phase II report is that remediation works are required. Therefore conditions 12, 13 and 14 are hereby activated. It is recommended that a note to this effect be included in the decision notice.

#### **Summary**

The submitted details for the following conditions are acceptable:

- Condition 8 (Construction Management Plan)
- Condition 11 (Phase II report)

Condition 8 has ongoing clauses which prevent full discharge at this stage. The applicant will be reminded of this. Condition 11 can be fully discharged, however conditions 12, 13 and 14 are hereby activated.

The details submitted for the following conditions remain unacceptable and cannot be approved at this stage:

- 6 (right-turn lane)

In the council's decision of 17/10/2023, the applicant was allowed additional time to resolve outstanding matters. No additional time is considered

reasonable, and it is recommended that this application be determined and closed down.

**Recommendation:** Issue split decision.

**Report Dated:** 04/01/2024.

### **Proposed Letter Text**

This letter relates to conditions 6, 8, and 11 only. For details regarding all other conditions please see the council's decision letter dated 17/10/2023.

#### Condition 6 (right-turn lane)

Since the council issued its previous letter of 17/10/2023, in which it was confirmed that the details submitted pursuant to condition 6 could not be accepted, it is understood that discussions with K.C. Highways (S278 and Structures teams) have continued. However, a resolution has not been reached at the time of writing and no new details have been submitted to the Local Planning Authority. Therefore, the submitted details remain as follows:

- AMA/40110/D/001 Rev. I
- AMA/40110/D/002 Rev. B
- AMA/40110/D/004 Rev. A
- AMA/40110/D/005 Rev. A
- AMA/40110/D/006 Rev. B
- AMA/40110/D/007 Rev. B
- AMA/40110/D/100
- AMA/40110/TRO/001
- AMA/40110/TRO/002

It remains the case that the submitted details are not considered acceptable. Discussions should continue between your team and K.C. Highways (Section 278 and Structures teams) as various matters are outstanding. The current proposals would not result in safe and effective use of the highway.

For the avoidance of doubt condition 6 is not hereby discharged. A new Discharge of Condition application will be required for the Local Planning Authority to consider any updated plans.

#### Condition 8 (Construction Management Plan)

You have submitted the document titled Construction Phase Health and Safety Plan, rev 3, received by the Council on 06/11/2023, pursuant to condition 8.

The submitted details are acceptable for the initial purpose of condition 8. However, be aware that condition 8 has the following further requirement which must be adhered to, to ensure compliance with the condition:

*The approved CMP shall be adhered to throughout the construction of the development.*

Notwithstanding the above, it is noted that the proposed hours of construction differ to those typically recommended by the Council's Environmental Health department. Given site specific circumstances, this is not currently considered to be a cause for concern subject to appropriate working practise. However, again notwithstanding this decision, the applicant is reminded that 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.

#### Condition 11 (Phase II report)

You have submitted the following documents pursuant to condition 11:

- Geo-Environmental Report by DTS Raeburn Limited (ref: E13431/1), received by the Local Planning Authority on 16/11/2023.
- Letter authored by Igne (formerly DTS Raeburn), dated 06/11/2023 (ref: E13431/1 L1.JMS)

The submitted details are acceptable and condition 11 is hereby discharged. However, be aware that the conclusion of the submitted documents, in which the need for remediation is identified, hereby activities conditions 12, 13 and 14. These conditions are repeated below for convenience:

*12. Where site remediation is recommended in the Phase II Intrusive Site Investigation Report approved pursuant to condition 11, further groundworks shall not commence until a Remediation Strategy has been submitted to and approved in writing by the Local Planning Authority. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures.*

**Reason:** *To address unacceptable risks to human health and the environment arising from potential contamination. This is to accord with Policy LP53 of the Local Plan and guidance given in the National Planning Policy Framework. This is a pre-commencement condition to ensure that such matters are identified at an appropriate stage.*

*13. Remediation of the site shall be carried out and completed in accordance with the Remediation Strategy approved pursuant to condition 12. 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 remove unacceptable risks to human health and the environment arising from potential contamination. This is to accord with Policy LP53 of the Kirklees Local Plan and guidance given in the National Planning Policy Framework. This is a pre-commencement condition to ensure that such matters are identified at an appropriate stage.*

*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. 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:** *To ensure unacceptable risks to human health and the environment arising from potential contamination have been addressed. This is to accord with Policy LP53 of the Kirklees Local Plan and guidance given in the National Planning Policy Framework.*