KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) – SECTION 96A

DELEGATED DECISION TO DETERMINE APPLICATIONS FOR NON-MATERIAL AMENDMENTS

Reference No:	**2023/NM/92118/E**
Site Address:	Land south of, Leeds Road, Mirfield, WF14 0JE
Description:	Non material amendment to previous permission 2020/92368 for erection of 14 dwellings with garages and formation of new access road
Recommending Officer:	Nick Hirst

DECISION – Non-Material Amendment- Approved

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: 19-Sep-2023

Application: 2023/NMA/92118/E

Site: Land south of, Leeds Road, Mirfield, WF14 0JE

Proposal: Non material amendment to previous permission 2020/92368 for erection of 14 dwellings with garages and formation of new access road

Overview

The change(s) sought are all:

- Removal of reference to gabion retaining walls on Conditions 27 & 30 and replacement with Tobermore Secura Grand retaining wall system

This application will be assessed having regard to S96A of the Town & Country Planning Act 1990: 'In deciding whether a change is material, a Local Planning Authority must have regard to the effect of the change, together with previous changes made under this section, on the planning permission as originally granted'. To assist with this assessment, the LPA has published its 'Protocol for dealing with non-material amendments'.

Assessment

The proposed amendment would fall within the original description of development. All works are to be within the red-line boundary of the original application.

Conditions 27 and 30 are as follows:

> *27. Prior to the occupation of the hereby approved dwellings, notwithstanding the submitted plans, a scheme detailing the boundary treatment of all the site shall be submitted to, and approved in writing by, the Local Planning Authority. This shall include details of the gabion basket wall, including a management and maintenance plan for the gabion wall. New boundary treatment along the south boundary shall be erected to the retaining wall's rear. The approved dwellings shall not be brought into use until the works comprising the approved boundary scheme have been completed. The approved boundary treatment shall thereafter be retained.*
> ***Reason**: In the interests of visual and residential amenity, and highway safety, to comply with Policies LP21 and LP24 of the Kirklees Local Plan.*
>
> *30. Prior to the occupation of the hereby approved dwellings, a comprehensive schedule of hard and soft landscaping, with timescales, and a maintenance plan shall be submitted, to and approved in writing by, the Local Planning Authority. The soft landscaping scheme shall include, but not be limited to, an assessment of the trees to be removed, mitigatory tree re-planting and layout, species, number, density and size of trees and plants and/or seed mixes and sowing*

rates, including extensive use of native species and details of green planting on the approved gabion retaining wall. 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. The hard landscape proposals shall thereafter be retained.
***Reason**: In the interest of visual and residential amenity, to ensure that there is a well laid out scheme of hard and soft landscaping, to comply with the aims and objectives of Policies LP24 and LP63 of the Kirklees Local Plan.*

Officers have underlined sections relating to the gabion walls for ease of reference.

Given the location of the wall, being on the edge of the development, it will have little to no interaction with future occupiers of the development. The wall in question backs onto an area of open land and then the rear gardens of properties recently built via app 2014/90688. It has some limited visibility from the public realm from within the roads of 2014/90688.

From a residential amenity perspective there is considered no material difference between a green gabion and solid stone retaining wall. The height and location of the wall is not subject to the NMA, just the design. Therefore, the change would not prejudice the residential amenity of neighbouring residents.

The principal consideration is deemed to be the visual impact. As part of the original application a normal, non-planted gabion wall was originally considered undesirable. Therefore, the applicant proposed a 'green' gabion wall system to improve its appearance. While a well implemented 'green' gabion wall system could be an attractive feature, this would be dependent upon a strict management and maintenance programme of the planting. Given the scale of the wall, crossing numerous properties, its height, and difficulties of access, when originally proposed by the applicant this led to reservations from officers. Nonetheless, on balance it was accepted subject to the above conditions that sought to ensure appropriate management and maintenance was considered and implemented, to achieve adequate greenery.

The applicant has decided not to proceed with a green gabion wall, possibly due to the above-mentioned difficulties and proposed a typical solid stone wall. It is noted that the wall has been largely completed using the proposed Tobermore Secura Grand retaining wall system, allowing for a direct inspection. Ultimately, the condition sought to secure an attractive retaining structure. Officers are satisfied that this would be achieved by the proposed Tobermore Secura Grand retaining wall system, which is considered a good quality material that is visually attractive. The change would not prejudice the visual amenity of the development nor wider area.

Considering the above, officers consider the change to be non-material and recommend that conditions 27 and 30 be modified as follows (simply omitting reference to the green retaining wall and its management and maintenance):

> *27. Prior to the occupation of the hereby approved dwellings, notwithstanding the submitted plans, a scheme detailing the boundary treatment of all the site shall be submitted to, and approved in writing by, the Local Planning Authority. New boundary treatment along the south boundary shall be erected to the retaining wall's rear. The approved dwellings shall not be brought into use until the works comprising the approved boundary scheme have been completed. The approved boundary treatment shall thereafter be retained.*
> ***Reason**: In the interests of visual and residential amenity, and highway safety, to comply with Policies LP21 and LP24 of the Kirklees Local Plan.*
>
> *30. Prior to the occupation of the hereby approved dwellings, a comprehensive schedule of hard and soft landscaping, with timescales, and a maintenance plan shall be submitted, to and approved in writing by, the Local Planning Authority. The soft landscaping scheme shall include, but not be limited to, an assessment of the trees to be removed, mitigatory tree re-planting and layout, species, number, density and size of trees and plants and/or seed mixes and sowing rates, including extensive use of native species. 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. The hard landscape proposals shall thereafter be retained.*
> ***Reason**: In the interest of visual and residential amenity, to ensure that there is a well laid out scheme of hard and soft landscaping, to comply with the aims and objectives of Policies LP24 and LP63 of the Kirklees Local Plan.*

As a solid wall retaining system, officers do not consider a management and maintenance strategy to be needed for the wall. The originally sought management and maintenance expectations related to the planting on the gabion walls, not relating to its structural elements.

The application has been subject to a separate NMA, ref. 2022/92281. That NMA sought to change the roof pitch of several units and the roof direction of the garage units. The cumulative impacts of the two NMAs is considered acceptable and would not add up to a material change.

Conclusion

The desired amendments are not considered to affect other material planning considerations. No new conditions are considered necessary to make the

proposed amendment acceptable. The proposed variations would not materially conflict with any of the conditions attached to the parent permission, bar 27 and 30 as considered above. It is considered that the proposed amendment would comply with the policies of the LPA and, if received as part of the original application, are likely to have been approved.

On the basis of the above, while considering the Council's Protocol for dealing with non-material amendments, giving weight to the purpose of NMA applications the proposed change would be acceptable under the nonmaterial amendment procedure.

Recommendation: Approve

Report Dated: 09.08.2023

Proposed Letter Text

The amendment sought is:

- Removal of reference to gabion retaining walls on Conditions 27 & 30 and replacement with Tobermore Secura Grand retaining wall system

This amendment is shown on the following plans / documents:

- 21 – 584 – 204

I confirm that the alterations are acceptable and may be considered as a non-material amendment to the approved drawings.

To account for the amendment hereby approved, condition 27 is hereby amended to:

> *27. Prior to the occupation of the hereby approved dwellings, notwithstanding the submitted plans, a scheme detailing the boundary treatment of all the site shall be submitted to, and approved in writing by, the Local Planning Authority. New boundary treatment along the south boundary shall be erected to the retaining wall's rear. The approved dwellings shall not be brought into use until the works comprising the approved boundary scheme have been completed. The approved boundary treatment shall thereafter be retained.*
> ***Reason**: In the interests of visual and residential amenity, and highway safety, to comply with Policies LP21 and LP24 of the Kirklees Local Plan.*

To account for the amendment hereby approved, condition 30 is hereby amended to:

> *30. Prior to the occupation of the hereby approved dwellings, a comprehensive schedule of hard and soft landscaping, with timescales, and a maintenance plan shall be submitted, to and approved in writing*

by, the Local Planning Authority. The soft landscaping scheme shall include, but not be limited to, an assessment of the trees to be removed, mitigatory tree re-planting and layout, species, number, density and size of trees and plants and/or seed mixes and sowing rates, including extensive use of native species. 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. The hard landscape proposals shall thereafter be retained.

***Reason**: In the interest of visual and residential amenity, to ensure that there is a well laid out scheme of hard and soft landscaping, to comply with the aims and objectives of Policies LP24 and LP63 of the Kirklees Local Plan.*