

**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/92529/W**

Site Address: Land at, Hart Street, Newsome, Huddersfield, HD4 6LS

Description: Non material amendment to previous permission 2021/91638 for reserved matters application pursuant to outline permission 2016/91479 (appeal no. APP/Z4718/W/17/3173711) for erection of 22 dwellings

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/92529/W

Site: Land at, Hart Street, Newsome, Huddersfield, HD4 6LS

Proposal: Non material amendment to previous permission 2021/91638 for reserved matters application pursuant to outline permission 2016/91479 (appeal no. APP/Z4718/W/17/3173711) for erection of 22 dwellings

Overview

The change(s) sought are all:

- Amendment to condition 9 from requiring details 'pre-commencement' to 'pre-superstructure'.

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 change would fall within the original description of development and red-line plan.

The condition in question reads:

9. Prior to development commencing, excluding any ground investigation works, establishment of site compound and working area, a scheme detailing the proposed internal adoptable estate roads comprising of the new carriageway to an adoptable standard, shall be submitted to, and approved in writing by the Local Planning Authority. The scheme shall include full sections, details of speed reducing features, construction specifications, drainage works, lighting, signage, white lining, surface finishes, and treatment of sightlines together with an independent safety audit covering all aspects of the works. Before any building is brought into use the scheme shall be completed in accordance with the scheme shown on approved plans and retained thereafter.

Reason: *To ensure that suitable access is available for the development, in the interest of the safe and efficient operation of the highway and to comply with the aims of Policy LP21 of the Kirklees Local Plan. This is a pre-commencement condition to ensure the necessary design has been secured prior to relevant works being undertaken.*

It is noted that the Council's Protocol for dealing with non-material amendments references changes to conditions as unlikely to be non-material. Conversely the Protocol makes it clear that the list in which the above is

included is guidance only, not formal rules. Each NMA application must be assessed against its own merits and all relevant circumstances considered. S96A of the Town and Country Planning Act 1990, which confers the power to make nonmaterial changes to planning permissions, includes the following:

(1) A local planning authority in England may make a change to any planning permission relating to land in their area if they are satisfied that the change is not material.

(3) The power conferred by subsection (1) includes power—

(a) to impose new conditions;

(b) to remove or alter existing conditions

Therefore, subject to the change in condition not being material, in principle and based on the merits of the proposal it is possible to amend a condition via an NMA application.

The principal impact of the proposal would be upon highways. No other material considerations are deemed relevant.

The reasoning for the condition being pre-commencement was to ensure that the road and associated elements are fully designed before potentially abortive works are undertaken which may complicate the road being built to an acceptable standard. Conversely, following the granting of 2021/91638 the LPA's position has progressed and the condition in question has been imposed on other development with the trigger being 'prior to superstructure commencing' (or similar), as requested by the applicant in this case. Amending the condition to that desired would therefore be consistent with other decision notices issued.

The applicant has commenced the review process with the Council's S38 department. Delays in the S38 process have been caused due to complexities with the site. The two former mill ponds on site require in-filling which has geo-tech implications relating to ground conditions and structural elements of the road that is causing atypical delays. Nonetheless, the design is advanced. Officers had an informal discussion with the S38 engineer, who offered no substantive concerns over the change. In informal discussions, the LLFA did raise concerns over land levels and water flood-routing. However, unit levels and flood routing are governed by separate conditions on the original application that will remain in effect: therefore, the modification will not prejudice flood safety.

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 condition 9 which would be updated. 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.

Based on 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: 19/09/2023.

Proposed Letter Text

The amendment sought is as follows:

- Modification to condition 9, amending the trigger for compliance from being 'pre-commencement' to the desired 'pre-superstructure'.

I confirm that the desired modification to condition 9 may be considered a non-material amendment to the proposal. Therefore, condition 9 is hereby amended to:

9. Prior to commencement of the superstructure of any of the hereby approved dwellings, a scheme detailing the proposed internal adoptable estate roads comprising of the new carriageway to an adoptable standard, shall be submitted to, and approved in writing by the Local Planning Authority. The scheme shall include full sections, details of speed reducing features, construction specifications, drainage works, lighting, signage, white lining, surface finishes, and treatment of sightlines together with an independent safety audit covering all aspects of the works. Before any building is brought into use the scheme shall be completed in accordance with the scheme shown on approved plans and retained thereafter.

Reason: *To ensure that suitable access is available for the development, in the interest of the safe and efficient operation of the highway and to comply with the aims of Policy LP21 of the Kirklees Local Plan. This is a pre-commencement condition to ensure the necessary design has been secured prior to relevant works being undertaken.*

Note: For the purposes of interpretation, the definition of 'superstructure' is the part of a building or construction entirely above its foundation.

