

**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: **2024/NM/90035/W**

Site Address: Land off, Blackmoorfoot Road and Felks Street,
Crosland Moor, Huddersfield, HD4 7AD

Description: Non material amendment to previous permission
2020/92546 for outline application (with details of
points of access only) for development of up to 770
residential dwellings (Use Class C3) including up to 70
care apartments (Use Classes C2/C3) with doctors
surgery of up to 350 sqm (Use Class D1); up to 500
sqm of Use Class A1/A2/A3/A4/A5/D1 floorspace
(dual use), vehicular and pedestrian access points off
Blackmoorfoot Road and Felks Stile Road and
associated works

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: 29-Jan-2024

Application: 2024/90035

Site: Land off, Blackmoorfoot Road and Felks Street, Crosland Moor, Huddersfield, HD4 7AD

Proposal: Non material amendment to previous permission 2020/92546 for outline application (with details of points of access only) for development of up to 770 residential dwellings (Use Class C3) including up to 70 care apartments (Use Classes C2/C3) with doctors surgery of up to 350 sqm (Use Class D1); up to 500 sqm of Use Class A1/A2/A3/A4/A5/D1 floorspace (dual use), vehicular and pedestrian access points off Blackmoorfoot Road and Felks Stile Road and associated works

Overview

The change sought is to amend condition 18 from:

18. For each phase of development, there shall be no piped discharge of surface water from the development within that phase prior to the completion of surface water drainage works, details of which will have been submitted to and approved by the Local Planning Authority. The information shall include, but not be exclusive to:

- a) *The means of discharging surface water for the relevant area of the site to a satisfactory outfall, other than the public sewerage network i.e. soakaway; and;*
- b) *The means of restricting the discharge for the relevant area of the site to the public sewer network at a maximum rate of 27 (twenty-seven) litres per second to outfall A and **6 litres per second** to outfall B.*

Each phase shall be implemented in accordance with the approved details and thereafter retained.

Reason: *To ensure that no surface water discharges take place until proper provision has been made for its disposal)*

To:

18. For each phase of development, there shall be no piped discharge of surface water from the development within that phase prior to the completion of surface water drainage works, details of which will have been submitted to and approved by the Local Planning Authority. The information shall include, but not be exclusive to:

- a) *The means of discharging surface water for the relevant area of the site to a satisfactory outfall, other than the public sewerage network i.e. soakaway; and;*
- b) *The means of restricting the discharge for the relevant area of the site to the public sewer network at a maximum rate of 27 (twenty-*

seven) litres per second to outfall A and **61 litres per second** to outfall B.

Each phase shall be implemented in accordance with the approved details and thereafter retained.

Reason: *To ensure that no surface water discharges take place until proper provision has been made for its disposal)*

Officers have highlighted the wording sought to be changed for clarity. The reason given for this desired change is:

- *To correct the wording outlined in Condition 18 to align with the agreed position with the LLFA and Yorkshire Water in respect of approved drainage discharge rates.*

The applicant's claim is that the condition's wording is erroneous and seeks to amend it to the position claimed to be agreed within the application's negotiations.

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'.

This application seeks an amendment to a condition imposed on the original application. The Council's Protocol for dealing with non-material amendments references changes to conditions as being unlikely to be non-material. However, the Protocol makes it clear that it 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 it is possible to change a condition via an NMA application.

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. It would not conflict with any of the other original conditions, beyond condition 18 which is sought to be changed.

Officers have reviewed the original application's documents, including the committee report, Flood Risk Assessment (FRA) and consultee responses from Yorkshire Water and the Lead Local Flood Authority. The only place other than the decision notice that '6 litres a second' is referenced within the application (including the applicant's submission and consultee comments) is within paragraph 10.109 of the committee report. All other documentation, most notably the applicant's FRA and the LLFA's consultation responses, reference the 61 litres a second figure.

It should be noted that in Yorkshire Water's last comments they omit reference to any discharge to outfall B. Earlier correspondences from Yorkshire Water (on the previous application at the site, ref. 2018/90748) does clearly reference and accept the 61 litres a second figure. The applicant's submission includes emails from both the LLFA and Yorkshire Water acknowledging and accepting the error. Officers have also discussed the matter with LLFA officers as part of this application to verify the situation, but this was not deemed necessary for Yorkshire Water on the strength of the evidence provided by the applicant.

Officers accept that the evidence demonstrates that the two references (the committee report and decision notice) to '6 litres a second' is a simple a typographical error and should have been written as '61 litres a second'. There is no indication from any source that '6 litres a second' was ever considered, with all relevant sources citing '61 litres a second' as that being proposed and accepted. On the balance of probability, it can be speculated that the committee report was the original source of the typo, which was repeated when drafting the conditions. That that the typo is from 6 to 61 (as opposed to un-associated numbers, such as 1 to 9) adds credence to this situation.

Conclusion

Officers are satisfied that the reference to '6 litres a second' is a typo. There is no planning justification for keeping the erroneous wording and, as the application was assessed at 61 litres a second, no third party would be prejudiced by the change.

Officers do not consider the proposed alteration to be material in nature. The desired amendment is not considered to affect other material planning considerations. No new conditions are considered necessary to make the proposed amendment acceptable.

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: 26.01.2024.

Proposed Letter Text

The change sought is:

Amending an accepted error in condition 18 in reference to outfall B's discharge rate. This was erroneously (due to a typographical error) conditioned at '6 litres a second' as opposed to the assessed and accepted '61 litres a second'. I confirm that the alterations are acceptable and may be considered as a non-material amendment to the approved drawings. To account for the change hereby approved, condition 18 is hereby amended to:

18. For each phase of development, there shall be no piped discharge of surface water from the development within that phase prior to the completion of surface water drainage works, details of which will have been submitted to and approved by the Local Planning Authority. The information shall include, but not be exclusive to:

- a) The means of discharging surface water for the relevant area of the site to a satisfactory outfall, other than the public sewerage network i.e. soakaway; and;*
- b) The means of restricting the discharge for the relevant area of the site to the public sewer network at a maximum rate of 27 (twenty-seven) litres per second to outfall A and 61 (sixty-one) litres per second to outfall B.*

Each phase shall be implemented in accordance with the approved details and thereafter retained.

Reason: *To ensure that no surface water discharges take place until proper provision has been made for its disposal)*

