

# 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:	<b>2024/70/90751/E</b>
Site Address:	Cliffe Street, Dewsbury, WF13 1RD
Description:	Variation condition 9 (permitted development rights) on previous permission 1993/04199 for erection of 20 dwellings and garages
Recommending Officer:	William Simcock

#### **DECISION – Variation of Conditions- 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.**

Majors Team

***AUTHORISED OFFICER***

Date: 12-Jun-2024

## **Officer Report – 2024/90751 – target date 12-Jun-2024 Cliffe Street, Dewsbury, WF13 1RD – s.73 application.**

### **Site Description**

This application relates to no. 59 Cliffe Street, a three-storey dwelling contained within a row of modern townhouses. It faces south onto Cliffe Street on the opposite side of which are one- and two-storey detached and semi-detached dwellings. It formerly contained an integral single garage, which has now been converted to living accommodation. It is approximately 265m from the boundary of Dewsbury Town Centre.

### **Description of Proposal**

The proposal is Variation of condition 9 (permitted development rights) on previous permission 1993/04199 for erection of 20 dwellings and garages. The condition, as approved, reads:

The submission proposes a modified condition reading:

*'Notwithstanding the provisions of the Town and Country Planning General Development Order 1995, permitted development rights are withdrawn for the conversion of integral garages on plots 1-9, 11-17, and 20 -21.*

The conversion of the integral garage at No. 59 Cliffe Street (Plot 10) had, at the time when the application was submitted, commenced and almost completed. The applicant was incorrectly advised that the conversion and external changes to the garage could take place at the property without the requirement of planning permission. This has come to the attention of Planning Compliance and, accordingly, a breach of condition notice was served. The application now being considered is therefore a retrospective one.

The variation sought is in respect of the former Plot 10 only, not for every dwelling under the remit of the original condition.

The applicant's statement provides, in brief, the following arguments in justification:

- It is acknowledged that the dwelling would be left with only one parking space.
- It is acknowledged that Cliffe Street is not a wide road, and parking on street could lead to potential highways issues, however this would be very much limited given the street is a cul-de-sac and therefore is only used and accessed by the limited number of residents that drive past the applicants dwelling. A second car could easily be parked on the many available public spaces along this highway, visitor car parking

spaces are provided between every fourth house on Cliffe Street and which are available the majority of times.

- In addition to the above, the applicant, like many other homeowners on this street do not use the integral garage to park their cars, this is due to the limited width of the garages which do not allow for the nowadays large modern vehicles to effectively fit and for a door to open and the driver to step out once a vehicle is parked in the garage. As such many residents already use the highway to park their second car. The garages are used for storage in most cases.
- The Council should have regard to, amongst other things, the small scale of the development in this sustainable location, the setting of the dwelling amongst widely available modes of transport, the levels of public transport accessibility and opportunities for walking and cycling in the area.

The external changes comprise the removal of the garage door and its replacement with an exterior wall in matching artificial stone and a three-pane window with mullions and stone surrounds.

### **History of negotiations/amendments received**

None.

### **Relevant Planning History**

1993/04199: erection of 20 dwellings and garages. Approved and implemented.

COMP/23/0222: alleged breach of condition (9) on above permission.

### **Representations**

Final publicity date expires: 02-May-2024. Publicity was by site notice and press advertisement in addition to neighbour notification letter on the grounds of it being classed as Major development.

No representations were made as a result of publicity.

### **Consultation Responses**

KC Highways Development Management – no objection

### **Policy**

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 27<sup>th</sup> February 2019).

The site is land without designation in the Kirklees Local Plan. Other constraints:

- The site is within a Coal Referral Area
- Within 200m of a former landfill site
- Bat alert layer and within an area in which there are Swift nesting records.

The following Local Plan policies are considered relevant to the determination of this application:

- LP1 – Presumption in favour of sustainable development
- LP2 – Place shaping
- LP20 – Sustainable travel
- LP21 – Highways and access
- LP22 – Parking
- LP24 – Design

#### **Supplementary Planning Documents:**

- Housebuilders Design Guide Supplementary Planning Document, (HGD SPD)
- Kirklees Highway Design Guide

These documents can also be viewed in [G:\Planning\SPDs & Guidance Notes](#).

#### **National Policies and Guidance:**

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 5<sup>th</sup> September 2023, the Planning Practice Guidance Suite (PPGS) first launched 6<sup>th</sup> 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.

- Chapter 5 – Delivering a sufficient supply of homes
- Chapter 11 – Making effective use of land
- Chapter 12 – Achieving well-designed places
- Chapter 14 – Meeting the challenge of climate change, flood risk and coastal change

## **Assessment**

The following matters are considered in the assessment below –

- 1) Principle of development
- 1) Impact on visual amenity (including any heritage considerations)
- 2) Impact on residential amenity
- 3) Impact on highway safety
- 4) Other matters – e.g. trees/ecology (e.g. bats)
- 5) Representations
- 6) Conclusion

1 – Principle of development: Policy LP1 of the Local Plan states that when considering development proposals, the council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF. LP1 goes on further to state that:

“The council will always work pro-actively with applicants jointly to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.”

The principle of the erection of 20 dwellings has been accepted and this application does not involve a change in the number of units. The housing land supply position is therefore deemed not to be relevant to the determination of this application.

The assessment of this application will however have due regard to Paragraph 140 of the NPPF, which states that local planning authorities should seek to ensure that “the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used).”

The principal factors in assessing this application will be its anticipated impact upon the safe and convenient use of the highway, and its impact on visual amenity and local character.

2 –Impact on visual amenity: The walling-up of the original garage door opening has been undertaken using matching artificial stone. The design, placement and proportions of the new windows match those on the upper floors.

In conclusion, it is considered that the changes in design from the scheme as originally approved would not result in the quality of the development being diminished.

It is considered that the development as modified would respect the quality and character of the townscape and landscape and would accord with the aims of LP24a in addition to the relevant parts of the SPD.

3 – Impact on residential amenity: The proposed development involves the creation of new habitable room windows. These would be approximately 18m from the nearest facing habitable room windows in the dwellings on the opposite side of the road, which is considered far enough away not to give rise to a material loss of privacy. It is considered that the development does not result in the living conditions of the present or future occupants, or any third party, thereby according with the aims of LP24(b).

4 – Impact on highway safety: The dwelling, as originally shown on the approved plans, would have had three bedrooms. Under the Highway Design Guide for Kirklees, a three-bedroom dwelling should be provided with two parking spaces unless the specific circumstances of the site justify a lower level of provision.

The development contains three formal visitor spaces. At the time of the case officer's site visit, two were in use and a further two vehicles were parked informally in the turning head (one car and one minibus).

The whole of the property frontage is surfaced in tarmac, block paving or other hard materials. The layout of the property does not, however, allow the inclusion of two parking spaces of standard size, being approximately 5m wide but with a depth of approximately 4m at its left-hand side owing to the projecting porch. The conversion of the garage therefore leaves the dwelling with only a single usable parking space.

The garage, it is noted, falls short of modern standards in its internal dimensions, being 2.8m in width, as against the recommended minimum 3.0m. It is therefore considered unreasonable to treat it as being a useable garage that would have contributed to meeting parking demand before the conversion works were undertaken.

On this basis, it is considered very unlikely that its conversion to living accommodation will result in the displacement of cars on to the public highway or other locations. The Highway Officer concurs with this view and has no objection to the variation of condition (9).

It is also noted that the dwelling is in a sustainable location, being approximately 265m from the boundary with Dewsbury Town Centre and approximately 650m from Dewsbury Rail Station. This does not necessarily mean that the standard requirement of two parking spaces per dwelling would be relaxed if the same development proposal were being considered today, but it increases the likelihood that present and future occupants will be able to fulfil most of their daily and weekly needs without the use of a private car and

therefore reduces the likelihood that the dwelling would be occupied by a two-car family.

For the above reasons, and notwithstanding that there is already evidence of informal on-street parking occurring, it is considered that it would not be possible to substantiate a refusal on the basis of highway safety concerns. To allow the proposal, it is considered, would thereby be in accordance with the aims of Policies LP21-22.

## 5 – Other matters:

### *Climate Change:*

The Local Plan pre-dates the declaration of a climate emergency and the net zero carbon target; however it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

Since the changes for which retrospective consent is being sought do not involve an intensification of the site and only minor external works, their implications for carbon emissions are judged to be insignificant.

### *Land contamination and coal mining legacy*

The alterations to the dwelling will not have required any new foundations and do not extend the built footprint of the development. It is therefore considered that the proposals do not raise land contamination or stability concerns.

### *Ecology:*

The alterations to the dwelling are considered not to have any implications for protected species or their habitats.

### *Conditions:*

Since the approval of an application for variation or removal of a condition has the effect of superseding the original permission, all conditions on the original decision notice should be applied to the permission as varied, if they remain relevant.

The following conditions are no longer relevant as they relate to the construction of the development:

- 1) Commencement within five years;
- 2) Sample of stone;
- 3) Sample roofing tile;
- 4) Protective tree fencing;
- 5) Landscaping scheme;
- 6) Planting to be maintained for five years minimum;
- 7) Buff-coloured brick shall not be used;

- 8) The areas to be used by vehicles to be laid out before occupation and thereafter retained;
- 9) Permitted development rights withdrawn for the conversion of the integral garages on plots 1-17 and 20-21;
- 10) Nothing planted or erected within 2.4m of the carriageway edge exceeding 1m in height;
- 11) Parking of workforce vehicles within site during construction;
- 12) This permission does not extend to plots 15 and 22;
- 13) No piped discharge of surface water shall take place until the required surface water drainage works have been completed.

Of the above, it is considered that 8, 9 (with the modification to exclude Plot 10), 10, 12 should be re-applied to the permission as varied. In some cases, changes to wording may be required for the purposes of clarity.

6 – Representations: No representations were made.

7 – Conclusion: 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. It is considered that the development would constitute sustainable development and is therefore recommended for approval.

**Recommendation – GRANT VARIATION OF CONDITION**

## Decision Authorisation - Delegated Powers

**Application Number:** 2024/90751

**Officer Recommendation:** Grant variation of condition

### Conditions and Reasons

1. The areas to be used for the parking of vehicles as indicated on the approved plans shall be retained at all times with a hardened and drained surface.

**Reason:** In the interests of the free and safe use of the highway and to accord with the aims of Policies LP21-22 of the Kirklees Local Plan.

2. Notwithstanding the provisions of section 55(2)(a)(ii) of the Town and Country Planning Act 1990 and the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that Act or Order with or without modification), the integral garages on plots 1-9, 11-17 and 20-21 shall be retained as such and shall not be converted to living accommodation.

**Reason:** In the interests of the free and safe use of the highway and to accord with the aims of Policies LP21-22 of the Kirklees Local Plan.

3. Nothing shall be permitted to be planted or erected within a strip of land 2.4m deep measured from the carriageway edge of the access road along the full frontage of the site which exceeds 1m in height above the level of the adjoining highway.

**Reason:** To preserve adequate intervisibility in the interests of the free and safe use of the highway and to accord with the aims of Policy LP21 of the Kirklees Local Plan.

4. Notwithstanding the details on the approved plans, this permission does not extend to plots 15 and 22 as shown on the approved site plan.

**Reason:** In the interests of preventing damage to mature trees close to the application site and to accord with the aims of Policy LP33 of the Kirklees Local Plan.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Application form			13-Mar-2024
Proposed plans and elevations Plot 10	S01	B	13-Mar-2024
Planning statement			13-Mar-2024
Site plan	93/62/A		06-Oct-1993
Grouped plans house type A	93/62/B		03-Sep-1993
Grouped plans house type B	93/62/C		03-Sep-1993
Grouped plans house type C	93/62/D		03-Sep-1993

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Grouped plans house type D	93/62/E		03-Sep-1993
Elevations	93/62/F		03-Sep-1993
Proposed sections and road layout	93/62/F		06-Oct-1993

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 pre-application advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application. The case officer did not enter into negotiation with the applicant as no additional or amended plans were deemed necessary.

**Report Dated:** 30-May-2024