

**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>2024/70/91385/W</b>
Site Address:	3, Park View Court, Cleckheaton, BD19 3FA
Description:	Variation of condition 2 (plans and specifications) and 3 (materials) on previous permission 2022/92685 for erection of single storey rear extension and installation of obscured side window
Recommending Officer:	Nicole Helliwell

**DECISION – APPROVE VARIATION OF CONDITIONS**

**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.**

Sarah Longbottom

***AUTHORISED OFFICER***

Date: 14-Aug-2024

## **Officer Report**

**Reference No.** 2024/70/91385/E

**Site Address:** 3, Park View Court, Cleckheaton, BD19 3FA

**Proposal:** Variation of condition 2 (plans and specifications) and 3 (materials) on previous permission 2022/92685 for erection of single storey rear extension and installation of obscured side window

## **Site Description**

The application relates to 3 Park View Court, a two-storey detached property located in Cleckheaton. The dwelling incorporates a dual-pitched roof and is predominately constructed in harvest buff brick with cream render at first floor level. The property benefits from a driveway to the front, an integral garage and gardens to the front and rear. The neighbouring properties are of residential use and of a similar age to the host dwelling. The street scene comprises two storey properties and a three-storey apartment block of varying architectural designs, styles and materials.

## **Description of Proposal**

The applicant seeks consent to vary conditions 2 and 3 of previous permission 2022/92685 for the erection of single storey rear extension and installation of obscured side window, which was granted on 4<sup>th</sup> October 2022.

Condition 2 of permission 2022/92685 relates to the plans and details approved under the application and reads as follows:

*“2. The development hereby permitted shall be carried out in complete accordance with the plans and specifications schedule listed in this decision notice, except as may be specified in the conditions attached to this permission, which shall in all cases take precedence.*

**Reason:** *For the avoidance of doubt as to what is being permitted and to ensure the satisfactory appearance of the development on completion, and to accord with Policy LP24 of the Kirklees Local Plan, Key Design Principles 1 & 2 of the House Extensions and Alterations SPD and the aims of the National Planning Policy Framework.”*

Condition 3 of permission 2022/92685 requires the external wall and roofing materials of the single storey extension to match those used in the construction of the existing building and reads as follows:

*“3. The external walls and roofing materials of the extension hereby approved shall in all respects match those used in the construction of the existing building.*

**Reason:** *In the interests of visual amenity and to accord with Policy LP24 of the Kirklees Local Plan, Key Design Principles 1 & 2 of the House Extensions*

*and Alterations SPD and the aims of Chapter 12 of the National Planning Policy Framework.”*

This Section 73 application seeks to vary the approved plans due to changes to the design and material palette. The proposed alterations are as follows:

- Application of render to the single storey rear extension
- Introduction of overhang to flat roof of rear extension
- Alterations to the opening within the rear elevation of the extension
- Alterations to lantern lights

### **Relevant Planning History**

- **2022/92685:** Erection of single storey rear extension and installation of obscured side window. [Planning application details | Kirklees Council](#) – Conditional Full Permission
- **2019/90821:** Discharge of condition 8 (parking survey) of previous permission ref: 2015/90022 for erection of 23 dwellings. [Planning application details | Kirklees Council](#) – Discharge of Condition(s) Approved
- **2016/93345:** Variation of conditions 2,3,5,6,7,13,14,18 and 22 on previous application 2015/90022 for erection of 23 dwellings. [Planning application details | Kirklees Council](#) – Removal or Modification of Condition(s)
- **2016/90208:** Discharge of Conditions 5,6,7,9,13-16,18-20 & 22-24 on previous application 2015/90022 for erection of 23 dwellings. – Withdrawn
- **2016/90110:** Erection of two dwellings (modified proposal). [Planning application details | Kirklees Council](#) – Withdrawn
- **2015/90022:** Erection of 23 dwellings. [Planning application details | Kirklees Council](#) – Section 106 Full Permission

### **Representations**

The application was publicised by neighbour notification letters, which expired on 5<sup>th</sup> July 2024. As a result of the above publicity, one representation has been received. The comments have been summarised below:

- The applicant states extension cannot be seen from the road; this is incorrect it can clearly be seen from Waltroyd Road.
- The original plans showed no front and side roof overhang. Had it, we would have objected at the time as it would have restricted daylight into our kitchen and sunlight on to our patio. The finished construction has done exactly that.
- The original plan did not show a chimney however the finished construction has one of around 3 meters in height which omits unpleasant odours and is not in keeping with the other properties.
- We have no objection to the render finish of the extension

### **Consultation Responses**

Not Applicable.

## **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 ALLOCATED under Housing allocations (HS94) on the Kirklees Local Plan Proposals Map. The most relevant policies for consideration in this case are:

### **Kirklees Local Plan Policies**

- **LP 1** - Achieving Sustainable Development
- **LP 2** - Place Shaping
- **LP 21** - Highway Safety and Access
- **LP 22** - Parking
- **LP 24** - Design
- **LP 53** - Contaminated and Unstable Land

### **Supplementary Planning Guidance/Documents:**

Kirklees Council adopted supplementary planning guidance on house extensions on 29th June 2021 which now carries full weight in decision making. This guidance indicates how the Council will usually interpret its policies regarding such built development, although the general thrust of the advice is aligned with both the Kirklees Local Plan (KLP) and the National Planning Policy Framework (NPPF), requiring development to be considerate in terms of the character of the host property and the wider street scene. As such, it is anticipated that this SPD will assist with ensuring enhanced consistency in both approach and outcomes relating to house extensions.

### **In this case, the following SPDs are applicable:**

- Highways Design Guide SPD (adopted 4th November 2019)
- House Extensions and Alterations SPD (adopted 29th June 2021)

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

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 20<sup>th</sup> December 2023, the Planning Practice Guidance Suite (PPGS) first launched 6th 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 2** - Achieving Sustainable Development
- **Chapter 12** - Achieving Well-Designed Places
- **Chapter 14** - Meeting the Challenge of Climate Change, Flooding and Coastal Change

## **Assessment**

### **1. Principle of development**

Section 73 of the Town and Country Planning Act 1990 allows for the variation or removal of a condition of a previous permission.

The principle of development for the erection of a single storey rear extension and the installation of an obscured side window was established under permission 2022/92685. As such, it is considered that the principle of the development remains established by way of this permission. This assessment will deal with the merits of the proposed variations only.

### **1. Impact on Visual Amenity**

General design considerations are set out in Policy LP24 of the Kirklees Local Plan and Chapter 12 of the NPPF, which seek to secure good design in all developments by ensuring that they respect and enhance the character of the townscape and protect amenity. Policy LP24 of the Kirklees Local Plan states that ‘the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape.’

Key Design Principle 1 of the House Extensions & Alterations Supplementary Planning Document (SPD) does state that extensions and alterations to residential properties should be in keeping with the appearance, scale, design and local character of the area and the street scene. Furthermore, Key Design Principle 2 of the SPD goes onto state that extensions should not dominate or be larger than the original house and should be in keeping with the existing building in terms of scale, materials and details.

### **Application of Render**

The proposal seeks to apply render to the approved single storey rear extension. Although the use of render would alter the external appearance of the property, it is noted that render is prevalent and forms a characteristic of the street scene. Therefore, it is considered that the alterations would not have any significant visual impact on the character and appearance of the host property and the surrounding area.

### **Alterations to Fenestration and roof**

The application seeks to make alterations to the roof design (introducing an overhang), sliding doors within the rear elevation of the approved single storey rear extension and the roof lanterns. Given that the changes would

maintain the appearance of the wider site, they are not considered to impact on the visual amenity of the area and would be considered acceptable from a visual amenity perspective.

In view of the above, It is considered that the variation to the development proposed is acceptable from a visual amenity perspective and is in accordance with Policies LP24 of the Kirklees Local Plan and the aims of the NPPF.

## **2. Impact on Residential Amenity**

Section B and C of LP24 states that alterations to existing buildings should: "...maintain appropriate distances between buildings' and '...minimise impact on residential amenity of future and neighbouring occupiers". Further to this, Paragraph 130 of the National Planning Policy Framework states that planning decisions should ensure that developments have a high standard of amenity for existing and future users.

Although alterations have been proposed to the fenestration, the submitted plans confirm that the windows would serve the same rooms as previously approved and are not considered to have a greater impact on the neighbouring occupants than the originally approved.

In respect of the roof overhang, this is not considered to be of significant depth to warrant a detrimental impact upon the amenity of adjacent occupiers by reason of overshadowing.

The proposed alterations would not result in any further harm upon the residential amenities of the neighbouring properties. As such, the proposal would comply with Policy LP24 of the Kirklees Local Plan (b) in terms of the amenities of neighbouring properties and Paragraph 135 (f) of the National Planning Policy Framework.

## **3. Impact on Highway Safety**

Local Plan Policies LP21 and LP22 of the Kirklees Local Plan are relevant and seek to ensure that proposals do not have a detrimental impact on highway safety and provide sufficient parking. Furthermore, Paragraph 115 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Given the nature of the amendments proposed, no alterations would occur to the access and parking arrangements of the approved scheme. Therefore, the

impact on highway safety is still considered acceptable and unchanged since the previously issued decision.

Given the above, Officers consider that the proposal would not cause detrimental harm to the safe and efficient operation of the highway network. The proposal is therefore considered to comply with Policies LP21 and LP22 of the Kirklees Local Plan, Chapter 9 of the National Planning Policy Framework, and advice contained within the Kirklees Highways Design Guide SPD.

#### **4. Other Matters**

With regard to other matters that were assessed as part of the previous planning permission (contaminated land and carbon budget), the proposal is unchanged in relation to these aspects.

#### Conditions Review

As the application is a Section 73 application to vary conditions, it is necessary to re-impose all conditions which remain relevant.

The following conditions shall be reworded:

- 1. Time (This shall reflect the date development shall begin by)
- 2. Approved plans (The plans and specification table will be amended to reflect the plans approved under this Section 73 application)
- 3. Materials ( This shall be altered to reflect the amendments to the scheme)
- 4. Unexpected Contamination (Changed to reflect the alterations to the paragraphs within the NPPF)

#### **5. Representations**

One representation was received following the statutory publicity. The comments made have been summarised and addressed below:

- The applicant states extension cannot be seen from the road this is incorrect it can clearly be seen from Waltroyd Road.

**Response:** *This is noted.*

- The original plans showed no front and side roof overhang. Had it, we would have objected at the time as it would have restricted daylight into our kitchen and sunlight on to our patio. The finished construction has done exactly that. **Response:** *The proposal's potential impact to the neighbouring properties has been assessed within the 'Residential Amenity' section of the report.*

- The original plan did not show a chimney however the finished construction has one of around 3 meters in height which omits unpleasant odours and is not in keeping with the other properties.

**Response:** *This application does not include the installation of a chimney. Although, this element may require planning permission, this is not a consideration of this application.*

- We have no objection to the render finish of the extension

**Response:** *This is noted.*

### **Conclusion**

This proposal is a Section 73 Variation of Condition application to vary condition 2 (plans and specifications) and 3 (materials). In determining a S73, the Local Planning Authority must only consider the 'disputed' condition that is the subject of the application – it is not a complete re-consideration of the application. Therefore, it is a consideration of Conditions 2 and 3 only. As detailed within the report, given the acceptable design and lack of harm in terms of visual and residential amenity, the variation is considered to be acceptable.

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 the relevant policies in the development plan and other material considerations. The proposal would remain in accordance with the development plan and there are no material considerations to indicate otherwise. The development would therefore constitute sustainable development and it is recommended for approval.

**Recommendation:** Approve

**Decision Authorisation:** Delegated Powers

**Application Number:** 2024/91385

**Officer Recommendation:** Grant Variation of Conditions 2 and 3

**Conditions and Reasons:**

1. The development hereby permitted shall be begun before 3<sup>rd</sup> October 2025.

**Reason:** Pursuant to the requirements of Section 91 of the Town and Country Planning Act 1990

2. The development hereby permitted shall be carried out in complete accordance with the plans and specifications schedule listed in this decision notice, except as may be specified in the conditions attached to this permission, which shall in all cases take precedence.

**Reason:** For the avoidance of doubt as to what is being permitted and to ensure the satisfactory appearance of the development on completion, and to accord with Policies LP1, LP2, LP21, LP22, LP24 and LP53 of the Kirklees Local Plan, and the aims of the National Planning Policy Framework.

3. The external walls of the single storey extension hereby approved shall be faced in render. This shall in all respects match the render used in the construction of the existing building and be retained thereafter.

**Reason:** In the interests of visual amenity and to accord with Policy LP24 of the Kirklees Local Plan, Key Design Principles 1 & 2 of the House Extensions and Alterations SPD and the aims of Chapter 12 of the National Planning Policy Framework.

4. In the event that contamination, or the presence of coal not previously identified by the developer prior to the grant of this planning permission is encountered during the development, 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. Groundworks in the affected area shall not recommence until either (a) a Remediation Strategy by a suitably competent person has been submitted to and approved in writing by the Local Planning Authority or (b) the Local Planning Authority has confirmed in writing that remediation measures are not required. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures. Thereafter remediation of the site shall be carried out and completed in accordance with the approved Remediation Strategy. Following completion of any measures identified in the approved 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 that part of the site has been remediated in accordance with the approved Remediation Strategy and a Validation Report in respect of those works has been approved in writing by the Local Planning Authority.

**Reason:** To ensure the safe occupation of the site in accordance with Policy LP53 of the Kirklees Local Plan and Paragraph nos. 189 and 190 of the National Planning Policy Framework.

**NOTE:** The granting of planning permission does not override any private legal rights or consents that may be required. It is the responsibility of the applicant / developer to ensure that all appropriate consents are in place prior to any development commencing; during the period of construction existing access for neighbouring properties is maintained; and no damage is caused to the access driveway or surrounding properties.

**NOTE:** All contamination reports shall be prepared by a suitably competent person, as defined in Annex 2 of the National Planning Policy Framework 2019. Reports must be prepared in accordance with the following guidance:

- Land Contamination Risk Management (LCRM)
- BS 10175:2011+ A2:2017 Investigation of Potentially Contaminated Sites. Code of Practice
- Development on Land Affected by Contamination - Technical Guidance for Developers, Landowners & Consultants - (v11.2) June 2020 by the Yorkshire and Lincolnshire Pollution Advisory Group

**NOTE:** To minimise noise disturbance at nearby premises it is generally recommended that activities relating to the erection, construction, alteration, repair or maintenance of buildings, structures or roads shall not take place outside the hours of:

- 07.30 and 18.30 hours, Mondays to Fridays
- 08.00 and 13.00hours, Saturdays
- With no working Sundays or Public Holidays

In some cases, different site-specific hours of operation may be appropriate. Under the Control of Pollution Act 1974, Section 60 Kirklees Environment and Transportation Services can control noise from construction sites by serving a notice. This notice can specify the hours during which the works may be carried out.

**Plans and Specifications Table:**

<b>Plan Type</b>	<b>Reference</b>	<b>Revision</b>	<b>Date Received</b>
<b>Plans and details pursuant to 2024/91385</b>			
Location Plan	-	-	19/06/2024
Block Plan	-	-	19/06/2024
Existing and Proposed South & West Elevations and Floor Plan	1	-	19/06/2024
Existing and Proposed East Elevations and Section	2	-	19/06/2024

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 has, 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 Officer did not enter into negotiations with the applicant as the proposal was considered to be acceptable as submitted.

**Date: 08/08/2024**