

**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:	2024/70/91914/E
Site Address:	8, Heaton Road, Upper Batley, Batley, WF17 0AT
Description:	Variation condition 1 (plans) on previous permission 2023/92859 for demolition of existing dwelling and erection of one detached dwelling (Within a Conservation Area)
Recommending Officer:	Nicole Helliwell

DECISION – APPROVE VARIATION OF CONDITION 1

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: 06-Sep-2024

Officer Report

Reference No. 2024/70/91914/E

Site Address: 8, Heaton Road, Upper Batley, Batley, WF17 0AT

Proposal: Variation of condition 1 (plans) on previous permission 2023/92859 for demolition of existing dwelling and erection of one detached dwelling (Within a Conservation Area)

Site Description

The application site relates to 8 Heaton Road, a two-storey detached property located in Upper Batley, Batley. The topography changes from the south-west to the north-east and the site is accessed via Heaton Road. The site is unallocated on the Kirklees Local Plan and is situated within a predominantly residential area. The surrounding dwellings are highly varied in age, size, style, and materials. There are no listed buildings or Public Rights of Way (PROW) within close proximity of the site. However, the site is located within the Upper Batley Conservation Area.

Description of Proposal

The applicant seeks consent to vary condition 1 of previous permission 2023/92859 for the demolition of existing dwelling and erection of one detached dwelling, which was granted on 19th December 2023.

Condition 1 of permission 2023/92859 relates to the plans and details approved under the application and reads as follows:

“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, LP3, LP7, LP11, LP20, LP21, LP22, LP23, LP24, LP26, LP28, LP30, LP33, LP35, LP51, LP52 and LP53 of the Kirklees Local Plan and the aims of the National Planning Policy Framework”*

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

- Erection of an orangery (projection approx. 5.65m, maximum height approx. 3.63m and eaves height approx. 3.2m)

Relevant Planning History

- **2024/91595:** Discharge conditions 3 (boundary treatments), 4 (evc) on previous permission 2023/92859 for demolition of existing dwelling and erection of one detached dwelling (Within a Conservation Area). Planning application details | Kirklees Council – Discharge of Condition(s) Approved
- **2023/92859:** Demolition of existing dwelling and erection of one detached dwelling (Within a Conservation Area). Planning application details | Kirklees Council – Conditional Full Permission
- **2020/93261:** Erection of extensions and alterations (within a Conservation Area). Planning application details | Kirklees Council – Conditional Full Permission

Representations

The application was publicised by site notice, press advertisement and neighbour notification letters, which expired on 2nd September 2024. As a result of the above publicity, no representations have been received.

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 27th February 2019).

The site is UNALLOCATED on the Kirklees Local Plan Proposals Map. However, the site is located within the Upper Batley Conservation Area. The most relevant policies for consideration in this case are:

Kirklees Local Plan Policies

- **LP 1** - Achieving Sustainable Development
- **LP 2** - Place Shaping
- **LP 3** - Location of New Development
- **LP 7** - Efficient and Effective Use of Land
- **LP 11** - Housing Mix and Affordable Housing
- **LP 20** - Sustainable Travel
- **LP 21** - Highways and Access
- **LP 22** - Parking
- **LP 23** – Core Walking and Cycling Network
- **LP 24** - Design
- **LP 26** - Renewable and Low Carbon Energy
- **LP 28** - Drainage

- **LP 30** - Biodiversity & Geodiversity
- **LP 33** - Trees
- **LP 35** - Historic Environment
- **LP 51** - Protection and Improvement of Local Air Quality
- **LP 52** - Protection and Improvement of Environmental Quality
- **LP 53** - Contaminated and Unstable Land

National Policies and Guidance:

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) updated 20 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 4** - Decision-Making
- **Chapter 5** - Delivering a Sufficient Supply of Homes
- **Chapter 9** - Promoting Sustainable Transport
- **Chapter 11** - Making Effective Use of Land
- **Chapter 12** - Achieving Well-Designed Places
- **Chapter 14** - Meeting the Challenge of Climate Change, Flooding and Coastal Change
- **Chapter 15** - Conserving and Enhancing the Natural Environment
- **Chapter 16** - Conserving and Enhancing the Historic Environment

Other Guidance Documents:

- Kirklees Highways Design Guide (2019)
- Housebuilders Design Guide (2021) - Nationally Described Space Standards
- National Design Guide
- Biodiversity Net Gain Technical Advice Note (2021)
- Planning Applications Climate Change Guidance (2021)
- West Yorkshire Low Emissions Strategy and Air Quality and Emissions Technical Planning Guidance (2016)

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 demolition of the existing dwelling and the erection of one detached dwelling was established under permission 2023/92859. 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 and Historic Environment

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.' The Housebuilders Design Guide SPD also sets out design principles which need to be considered for new dwellings to ensure that they are of an appropriate design and scale.

Orangery

The proposed single storey extension would project approximately 5.65m from the rear elevation of the approved dwellinghouse. The extension would be faced in Chatsworth Antique brickwork and would incorporate a flat roof finished in fibre glass with a lantern. Although this feature would generally constitute poor design, the extension would be concealed by the existing boundary treatments and would have limited visibility from public vantage points. Whilst the extension would have a large projection it would appear subservient and would have an acceptable scale relative to the host property. Furthermore, it is considered that the property and its curtilage would support the extension without it appearing incongruous. 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.

The application site is located within the Upper Batley Conservation Area. However, KC Conservation and Design were not formally consulted on the proposed scheme given that the proposed extension would be sited to the rear of the site and would have limited views from public vantage points within the Conservation Area. Therefore, due to its siting, design and location, it is concluded that the proposal would not have an adverse impact on the character of the Upper Batley Conservation Area.

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. Furthermore, the proposal would not cause any detrimental harm to the significance of the Upper Batley Conservation Area and would comply

with Policy LP35 of the Kirklees Local Plan, Chapter 16 of the NPPF and the requirements of Section 66 and 72 of the Town & Country Planning (Listed Buildings & Conservation Areas) Act 1990

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 135(f) 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.

Principle 6 of the Kirklees Housebuilders Design Guide SPD also states that: "Residential layouts must ensure adequate privacy and maintain high standards of residential amenity, to avoid negative impacts on light, outlook and to avoid overlooking."

The submitted plans confirm that no properties located to the south, east and north of the application site would be affected by the proposed alteration.

Impact on 10 Heaton Lodge

10 Heaton Lodge is a residential property located west of the application site and is orientated away from the proposed dwelling. It is noted that no.10 contains two windows within its gable end, both of which are known to be of secondary use or serve non-habitable rooms. A separation distance of approximately 13.2m would be retained between the side elevation of no.10 and the proposed orangery. Furthermore, due to the changes in topography and the orangery being single storey in height, it is considered that the proposed alteration would not have a greater impact on the neighbouring occupants than the originally approved dwellinghouse.

On this basis, it is considered that the proposed development would accord with Policy LP24 of the Kirklees Local Plan, Chapter 12 of the National Planning Policy Framework and Principles 6 and 16 of the Kirklees Housebuilders Design Guide SPD.

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, Principle 12 of the Kirklees Housebuilders Design Guide SPD 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 (climate changed, construction noise, contaminated land, public right of way, Ecology, and drainage), the proposal is unchanged in relation to these aspects and any conditions imposed in regard to these matters to make the development acceptable will be repeated as part of this application.

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 relating to the original permission will be re-issued as they are considered to remain relevant:

- External Materials of Dwelling
- Surfacing and Drainage of Parking Areas
- Permitted Development Rights

The following conditions relating to the original permission shall be reworded:

- Approved plans (The plans and specification table will be amended to reflect the plans approved under this Section 73 application)
- Boundary Treatment Details (This shall reflect the documents approved under app no. 2024/91595)
- Electric Vehicle Charging Point Details (This shall reflect the documents approved under app no. 2024/91595)
- Unexpected Contamination (This shall reflect the changes to the NPPF Paragraphs)

The following conditions shall be reworded:

- Orangery Materials

5. Representations

No representations were received following the statutory publicity.

6. Negotiations

No amendments were sought or received during the course of the application.

7. Conclusion

This proposal is a Section 73 Variation of Condition application to vary condition 1 (development in accordance with the approved plans). 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 Condition 1 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: 2024/91914

Officer Recommendation: Grant Variation of Condition 1

Conditions and Reasons:

1. 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, LP3, LP7, LP11, LP20, LP21, LP22, LP23, LP24, LP26, LP28, LP30, LP33, LP35, LP51, LP52 and LP53 of the Kirklees Local Plan and the aims of the National Planning Policy Framework.

2. The detached dwelling hereby approved shall be faced in 65mm Chatsworth Antique Brick for the external walls and slate for the roof. The materials of construction shall thereafter be retained for the lifetime of the development.

Reason: In the interests of visual amenity and to accord with Policy LP24 of the Kirklees Local Plan, Principle 13 of the Council's Housebuilders Design Guide SPD, and the aims of Chapter 12 of the National Planning Policy Framework.

3. The orangery hereby approved shall be faced in 65mm Chatsworth Antique Brick for the external walls. The materials of construction shall thereafter be retained for the lifetime of the development.

Reason: In the interests of visual amenity and to accord with Policy LP24 of the Kirklees Local Plan and the aims of Chapter 12 of the National Planning Policy Framework.

4. The boundary treatments shall be completed in accordance with the Boundary Treatment Plan (reference no. 2037-D-20-050, dated February 2024) and the Boundary Treatment Details (reference no. 20237-D-20-052, dated May 2024) approved under app no. 2024/91595 and retained thereafter.

Reason: In the interest of visual amenity and to accord with the aims of Policy LP24 and LP35 of the Kirklees Local Plan as well as Chapter 12 of the National Planning Policy Framework and key principles of the Housebuilders Design Guide Supplementary Planning Document.

5. The development shall be completed in accordance with the Boundary Treatment Plan (reference no. 2037-D-20-050, dated February 2024 approved under app no. 2024/91595 and retained thereafter.

Reason: In the interest of supporting and encouraging low emission vehicles, in the interest of air quality enhancement, to comply with the aims and objectives of Policies LP20, LP24 and LP47 of the Kirklees Local Plan, Chapters 2, 9 and 15 of the National Planning Policy Framework and the West Yorkshire Low Emission Strategy (WYLES).

6. 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 works 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. Works 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 Verification 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 Verification 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.

7. The development shall not be brought into use until the areas to be used by vehicles and/or pedestrians have been surfaced and drained in accordance

with the Communities and Local Government; and Environment Agency's 'Guidance on the permeable surfacing of front gardens (parking areas)' published 2009 (ISBN as amended or any successor guidance. The parking space shall be so retained, free of obstructions and available for the use thereafter.

Reason: In the interests of highway safety and to ensure satisfactory surface water drainage of the site in accordance with Policies LP21 and LP28 of the Kirklees Local Plan and the aims of the National Planning Policy Framework.

8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order (with or without modification)) no development included within Classes A through E of Part 1 of Schedule 2 to that Order shall be carried out without the prior written consent of the Local Planning Authority.

Reason: In the interests of visual amenity and to avoid overdevelopment in accordance with Policy LP24 of the Kirklees Local Plan and the National Planning Policy Framework.

NOTE: The electrical supply of the final installation should allow the charging equipment to operate at full rated capacity and the installation must comply with all applicable electrical requirements in force at the time of installation. The conditions relate to Planning Control only. Approval under the Building Regulations may also be required, and the applicant should contact their Building Control Provider for further information in relation to Approved Document S.

NOTE: All contamination reports shall be prepared by a suitably competent person, as defined in Annex 2 of the National Planning Policy Framework 2021. 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.

The conditions relate to Planning Control only. Approval under the Building Regulations may also be required, and the applicant should contact their Building Control Provider for further information. Any other necessary consent must be obtained from the appropriate authority. If the applicant commences work without discharging conditions, they will be at risk of enforcement action and invalidating the permission if the planning condition is a pre commencement condition.

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: Kirklees Council has powers under Section 60 of the Control of Pollution Act 1974 to control noise from construction sites and may serve a notice imposing requirements on the way in which construction works are to be carried out. It has additional powers under Sections 80 of the Environmental Protection Act 1990 to prevent statutory nuisance including noise, dust, smoke and artificial light and must serve an abatement notice when it is satisfied that a statutory nuisance exists or is likely to occur or recur. Failure to comply with a notice served using the above-mentioned legislation would be an offence for which the maximum fine on summary conviction is unlimited.

NOTE: Public footpath BAT/21/10 is located adjacent to the development site and must not be interfered with or obstructed, prior to, during or after development works. The Council's Public Rights of Way unit may be contacted by telephone on 01484 221000. Public rights of way are based at Flint Street, Fartown, Huddersfield HD1 6LG and the email address is publicrightsofway@kirklees.gov.uk

NOTE: Due to its location, a bat roost may be present on site. Bats are a European protected species under regulation 41 of the Conservation of Habitats and Species Regulations 2010. It is an offence for anyone intentionally to kill, injure or handle a bat, disturb a roosting bat, or sell or offer a bat for sale without a licence. It is also an offence to damage, destroy or obstruct access to any place used by bats for shelter, whether they are present or not. If bats are discovered on site development shall cease and the applicant is advised to contact Natural England for advice.

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:

Plan Type	Reference	Revision	Date Received
Plans and details pursuant to 2023/92859			
Location Plan	2037-D-20-031	-	25/09/2023
Existing Ground Floor Plan	2037-D-20-032	-	25/09/2023
Existing First Floor Plan	2037-D-20-033	-	25/09/2023
Existing Elevations	2037-D-20-037	-	25/09/2023
Design and Access Statement	-	-	25/09/2023
Climate Change Statement	-	-	25/09/2023
Plans and details pursuant to 2024/91595			
Boundary Treatment Plan	2037-D-20-050	-	07/06/2024
Boundary Treatment Details	2037-D-20-052	-	07/06/2024
Plans and details pursuant to 2024/91914			
Existing and Proposed Site Plans	2037-D-20-032	A	12/07/2024
Proposed Ground Floor Plan	2037-D-20-035	A	12/07/2024
Proposed First Floor Plan	2037-D-20-036	A	12/07/2024
Proposed Elevations	2037-D-20-038	A	12/07/2024
Proposed Site Plan and Street Elevation	2037-D-20-039	A	12/07/2024
Planning and Heritage Statement	-	-	12/07/2024

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. In this case, the design of the original scheme has been found acceptable. No further amendments or details were sought thereafter.

Report Date: 04/09/2024