KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended)

DELEGATED DECISION TO DETERMINE APPLICATIONS FOR CONSENT, AGREEMENT OR APPROVAL REQUIRED BY CONDITION

Reference No:	**2024/44/91917/E**
Site Address:	adj, 115, Westfield Lane, Wyke, BD12 9LY
Description:	Discharge of details reserved by condition 17 (Validation Report) of previous permission 2023/91472 for variation of conditions 9, 11, 12, 22, 23, 25, 27, 29, 30, 33, 34 and 38 of previous outline permission 2020/90436 for the demolition of one dwelling and erection of residential development and associated works with details for access
Recommending Officer:	Louise Bearcroft

DECISION – Discharge of Condition – Refuse

I hereby authorise the refusal of this application for the reasons set out in the officer's report and recommendation annexed below in respect of the above matter.

Victor Grayson

AUTHORISED OFFICER

Date: 28/11/2024

Discharge of details reserved by condition 17 (Validation Report) of previous permission 2023/91472 for variation of conditions 9, 11, 12, 22, 23, 25, 27, 29, 30, 33, 34 and 38 of previous outline permission 2020/90436 for the demolition of one dwelling and erection of residential development and associated works with details for access

Condition 17 (Validation Report)

Condition Wording

> *Following completion of any measures identified in the approved Remediation Strategy or any approved revised 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 the remediation measures have been completed for that part of the site in accordance with the approved Remediation Strategy or the approved revised Remediation Strategy and a Validation Report in respect of those remediation measures has been approved in writing by the Local Planning Authority. Where validation has been submitted and approved in stages for different areas of the whole site, a Final Validation Summary Report shall be submitted to and approved in writing by the Local Planning Authority.*
> ***Reason:*** *To ensure unacceptable risks to human health and the environment are identified and removed, and to ensure that the development is safely completed in accordance with the requirements of Policy LP53 of the Kirklees Local Plan and Chapter 15 of the National Planning Policy Framework.*
> *This pre-commencement condition is necessary to ensure that contamination is identified and suitable remediation measures agreed at an appropriate stage of the development process.*

Documents Submitted

- Phase 4: Validation Report. Plots 1 to 6, Westfield Lane, Wyke by Solmek Ltd ref S221109 dated November 2024.

Consultations Responses

KC Environmental Health - Further to our comments dated 01/10/2024, we have reviewed the revised Validation Report authored by Solmek (ref: S221109 Issue 3), dated November 2024. We note the revisions to the report, including the inclusion of additional lead data and waste transfer notes. However, we require clarification on the following:

- Responses to all previously raised points.
- The location and methodology of the additional sampling. The sample IDs suggest that the additional samples relate to plots outside of Plots 1 to 6, which appears to fall outside the remit of this report.

For these reasons, we recommend that condition 17 is not discharged at this time for Plots 1 to 6.

Assessment

The applicant initially submitted a Validation Report dated July 2024, which refers to the validation of remediation works at plots 1 to 6 only.

KC Environmental Health were consulted and raised concerns. Section 1.3 informs *"Imported soils were opted for by the client. Greenfield soils were proposed for importation to the site to form the topsoil of the garden areas, whilst imported crushed stone was proposed*." KC Environmental Health noted that there were no documents to evidence the source of the imported materials, or the quantities brought onto site, and as such it was unclear whether the topsoil can be classed as greenfield. They also noted that there was insufficient commentary in relation to how the imported material had been stored once on site.

KC Environmental Health went on to say one sample of "proposed" topsoil was taken, in June 2024, and that it was unclear if this was at source, from stockpile or from a garden area. Two samples of cover material were taken, in January 2024, prior to importation, but no documentary evidence or quantity information had been provided. KC Environmental Health noted the results of the sampling were summarised in tables 1 and 2 of the report, with no exceedances demonstrated. The report was in relation to plots 1 to 6 only, and it confirmed imported topsoil and sub-base has been applied to the garden areas of the plots to a total depth of 600mm. The report went on to confirm depth of cover by way of description and photographs in plots 4, 5 and 6. Whilst KC Environmental Health accepted the depth of cover information and the test results to date, they did not accept the report for the reasons above. They required additional commentary and documentary evidence in line with YALPAG guidance. They also wished to see a more appropriate spread of photographic evidence across the plots, clear clarification regarding source/quantities and clarification as to whether sampling had been undertaken at source, from stockpiles or in situ.

The applicant was sent a copy of KC Environmental Health's comments and was asked to address them. A subsequent revised report was submitted, dated September 2024.

KC Environmental Health were consulted and raised further concerns. They noted the report added additional information relating to the imported materials and the results of additional testing. Notably, an exceedance of lead was identified in one of the samples (610mg/kg). Solmek consideredd this to be an outlier and concluded that no significant contamination was identified within the cover layer in the gardens tested and the capping material and capping thickness was recorded as sufficient and suitable for garden areas.

However, KC Environmental Health do not accept the document for the following reasons:

- No soil delivery notes appear to be included in the document.
- They wish to see a more appropriate spread of photographic evidence across the plots in, clear clarification regarding source/quantities and if sampling has been undertaken at source, from stockpiles or in situ.
- They do not agree with the information regarding the lead concentrations, as there is insufficient commentary. It may be that additional sampling is necessary and/or removal of the impacted material.
- It is unclear why six samples were tested for organic contaminants, seven were tested for inorganic contaminants and only four samples were tested for asbestos.
- The laboratory reports described sample deviations for some of the samples.

The applicant was sent a copy of KC Environmental Health's second consultation response and was asked to address the issues raised. A subsequent revised report was submitted, dated September 2024.

KC Environmental Health were consulted for a third time, however concerns remained with respect to the acceptability of the report. KC Environmental Health noted the revisions to the report, including the inclusion of additional lead data and waste transfer notes. However, the report is still unacceptable, requiring:

- Responses to all previously raised points.
- The location and methodology of the additional sampling. The sample IDs suggest that the additional samples relate to plots outside of Plots 1 to 6, which appear to fall outside the remit of this report.

For these reasons, KC Environmental Health recommended that condition 17 should not be discharged at this time for plots 1 to 6.

<u>Concluding assessment</u>

Officers have given the applicant opportunities to address the issues raised by KC Environmental Health, resulting in the submission of second and third iterations of the Validation Report submitted for the purposes of discharging the condition. KC Environmental Health do not accept the report for the reasons stated above, and it is now considered reasonable to determine the application. It is concluded that condition 17 cannot be discharged at this time.

Notwithstanding the recommendation, it is noted the submitted report relates only to the validation of plots 1 to 6, and further validation of the remaining plots will also be necessary to fully satisfy the condition.

Matters related to coal mining legacy are covered by separate planning conditions (33, 34 and 35) on decision notice ref 2023/91472. These conditions require the submission of a report from intrusive site investigations to establish the exact situation in respect of coal mining legacy features, and

where risk to surface stability is identified, the submission of a remediation scheme and subsequent validation report.

Recommendation: Refuse

On the basis of the submitted report condition 17 cannot be discharged.

Decision Notice Text

Condition 17 (Validation Report)

Document Submitted

- Phase 4: Validation Report. Plots 1 to 6, Westfield Lane, Wyke by Solmek Ltd ref S221109 dated November 2024.

Assessment

You have submitted the above document. KC Environmental Health have acknowledged the latest revisions to this report, including the additional lead data and waste transfer notes. The report, however, fails to provide responses to all the matters previously raised by KC Environmental Health, and furthermore, the sample IDs suggest that the additional samples relate to plots outside of Plots 1 to 6, which appear to fall outside the remit of this report. Accordingly, further clarification on the location and methodology of the additional sampling would also be required. For the reasons set out above, condition 17 cannot be discharged at this time for Plots 1 to 6.

Advisory Note Notwithstanding the decision above, it is noted the submitted report relates only to the validation of plots 1 to 6, and further validation of the remaining plots will also be necessary to fully satisfy the condition.

Advisory Note It is noted matters related to coal mining legacy are covered by separate planning conditions (33, 34 and 35) on decision notice ref 2023/91472. These conditions require the submission of a report from intrusive site investigations to establish the exact situation in respect of coal mining legacy features, and where risk to surface stability is identified, the submission of a remediation scheme and subsequent validation report.

Report Dated: 27/11/2024