

**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: | 2024/70/92167/W |
| Site Address: | Land off, Edgerton Road, Edgerton, Huddersfield, HD3 3AA |
| Description: | Variation of condition 1 (plans) of previous reserved matters approval 2017/90190 pursuant to outline permission 2014/93014 for erection of residential development comprising of 41 dwellings plus associated works (within a Conservation Area) |
| Recommending Officer: | Nick Hirst |

DECISION – GRANT VARIATION OF CONDITION

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.

Julia Steadman

AUTHORISED OFFICER

Date: 07-Nov-2024

Application: 2024/92167

Site: Land off, Edgerton Road, Edgerton, Huddersfield, HD3 3AA

Proposal: Variation of condition 1 (plans) of previous reserved matters approval 2017/90190 pursuant to outline permission 2014/93014 for erection of residential development comprising of 41 dwellings plus associated works (within a Conservation Area)

Site Description

The application relates to a large open site of approximately 3.1ha. It partly fronts Edgerton Road to the south. The western boundary abuts a public footpath alongside the large grounds of 18-20 Edgerton Road (HUD/345/20). The northern boundary is marked by Clayton Dyke with woodland along its banks and council owned allotments to the north. This boundary does not follow the current channel of the Dyke but meanders across it. The southeastern and east boundaries of the site abut dwellings off Queens Road and Deveron Grove. The site slopes down from north to south.

The site lies within the Edgerton conservation area, which hosts numerous listed buildings. Adjacent to the site, these include nos. 18 - 20 Edgerton Road to the site's west, the tram shelter to the site's south, nos. 1, 2, and 9 Queens Road to the site's south-east, and 4 Murray Road due east. All are Grade II listed.

The site contains sporadic woodland and individual trees, most notably along the Dyke, which are protected by specific preservation orders as well as by virtue of their location in the conservation area. Within the conservation area trees above a minimum size are protected. Historic tree preservation orders (TPO) were required to be reviewed under legislation and a new Order was served in January 2015. This consolidates those historic TPOs some of which were unconfirmed and reflects the current coverage of significant individual trees and woodland on site.

Description of Proposal

A variation is sought to condition 1 (plans) of Reserved Matters application ref. 2017/90190, which currently reads:

1. The development hereby permitted shall be carried out in complete accordance with the approved plans and specifications except as may be required by other conditions.

Reason: *So as to ensure the satisfactory appearance of the development on completion.*

No alteration is sought to the wording of the condition. Amendments are sought to the approved plans table, specifically the plans comprising the site

layout, landscaping, and all housing types. This incorporates alterations to the appearance of the dwellings and their position within their plots.

The reserved matters considered by 2017/90190, and therefore able to be considered as part of this S73 application, were layout, scale, appearance, and landscaping. Access was approved as part of the parent outline approval 2014/93014. The current S73 adheres to the access arrangements secured as part of that application.

Relevant Planning History

Application Site

2014/93014: Outline application for residential development comprising of 41 dwellings plus associated works (within a Conservation Area) – Granted (at appeal)

2017/90190: Reserved matters application pursuant to outline permission 2014/93014 for erection of residential development comprising of 41 dwellings plus associated works (within a Conservation Area) – Granted

2017/91916: Variation condition 23 (highway works) on previous permission 2014/93014 (APP/Z4718/W/15/3002523) for outline application for residential development comprising of 41 dwellings plus associated works (within a Conservation Area) – Granted

2017/92670: Variation conditions 1 (plans) and 2 (siting) on previous permission 2017/90190 for reserved matters application pursuant to outline permission 2014/93014 for erection of residential development comprising of 41 dwellings plus associated works (within a Conservation Area) – Refused

2019/90244: Discharge of conditions 3 (stone) and 4 (roofing materials) of previous permission 2017/90190 for reserved matters pursuant to outline permission 2014/93014 for erection of residential development comprising of 41 dwellings plus associated works (within a Conservation Area) – Granted

2019/90245: Discharge of conditions 5, 7, 8, 9, 10, 12, 13, 14, 15, 17, 20, 22, 23 and 24 of previous permission 2014/93014 for outline application for residential development comprising of 41 no. new dwellings plus associated works (within a Conservation Area) – Part granted

2019/90514: Discharge of conditions 8 (landscape and ecological management plan) and 9 (woodland walk method statement) of previous application 2017/90190 for reserved matters application pursuant to outline permission 2014/93014 for erection of residential development comprising of 41 dwellings plus associated works (within a Conservation Area) – Part granted

2019/90964: Certificate of lawfulness for existing commencement of formation of access road – Withdrawn

2019/91025: Discharge conditions 4, 6, 7, 8, 9, 11, 13, 14, 16, 19, 21, 22, 23 on previous permission 2017/91916 for variation of Condition 23 (highway works) on previous permission 2014/93014 (APP/Z4718/W/15/3002523) for outline application for residential development comprising of 41 dwellings plus associated works – Part granted (at appeal)

2020/92571: Discharge of condition 9 (arboricultural method statement) of previous permission 2017/90190 for reserved matters application pursuant to outline permission 2014/93014 for erection of residential development comprising 41 dwellings plus associated works (within a Conservation Area) – Granted

2020/93416: Discharge of conditions 17, 20 and 24 of previous permission ref: 2014/93014 for outline application for residential development comprising 41 dwellings plus associated works (within a Conservation Area) – Part granted

2021/91608: Discharge of conditions 20 and 24 of previous permission 2014/93014 for outline application for residential development comprising of 41 new dwellings plus associated works (within a conservation area) – Refused

2021/94588: Discharge of conditions 20 (Construction Method Statement), 22 (Proposed Estate Road), 23 (Proposed Highway Works) and 24 (Boundary Treatment) on previous permission 2014/93014 for outline application for residential development comprising 41 dwellings plus associated works (within a Conservation Area) – Part granted

2022/91822: Modify Section 106 obligation relating to previous permission 2014/93014 for outline application for residential development comprising of 41 dwellings plus associated works (within a Conservation Area) – Refused

2022/92755: Non material amendment to previous permission 2014/93014 for outline application for residential development comprising of 41 dwellings plus associated works (within a Conservation Area) – Granted

2022/92756: Non material amendment to previous permission 2017/91916 for variation condition 23 (highway works) on previous permission 2014/93014 (APP/Z4718/W/15/3002523) for outline application for residential development comprising of 41 dwellings plus associated works (within a Conservation Area) – Granted

2023/90072: Discharge condition 21 (estate road), 22 (highway works) on previous permission 2017/91916 for variation condition 23 (highway works) on previous permission 2014/93014 (APP/Z4718/W/15/3002523) for outline application for residential development comprising of 41 dwellings plus associated works (within a Conservation Area) – Withdrawn

Surrounding Area

8, 8A, 8B 8C, 8D, Queens Road

2024/90679: Change of use from Class C3 dwellinghouses (nos 8A-8D) and C4 House in Multiple Occupation (no 8) to Class C1 40-bed hotel (within a Conservation Area) – Ongoing

15, Queens Road, Edgerton

2018/93133: Outline application for erection of detached dwelling (within a Conservation Area) – Granted

2024/90407: Erection of detached dwelling (within a Conservation Area) – Granted

plot 6, land at, Edgerton Road

2021/91609: Erection of detached dwelling (modified house type) (within a Conservation Area) – Refused

12, Queens Road, Edgerton

2017/94232: Demolition of existing attached garage, canopy and rear porch and erection of two storey side and rear extensions (Conservation Area) – Granted

History of Negotiations

The application was not subject to a pre-application submission.

On initial assessment, officers raised concerns over the lack of a heritage assessment, and elements of the proposal including the open space and landscaping, impact on neighbours, and the design of plot 41. These concerns were discussed with the applicant, who provided amended documents. Officers were satisfied that the amendments overcame the concerns initially expressed.

Representations

Final publicity date expired: 20/09/2024

The application has been advertised as a major development via site notices and through neighbour letters to properties bordering the site, along with being advertised within a local newspaper. This is in line with the Council's adopted Statement of Community Involvement.

Amendments and further details were received to the proposal during and post the public representation period, which were considered to not warrant a re-consultation period.

In total, 14 public representations were received in response to the proposal. The following is a summary of the comments received:

Urban design, trees, and the historic environment

- Question over the proposals impact upon the 'heritage bus stop' on Halifax Road.
- A 'green corridor' should be provided / retained along Clayton Dyke.
- Clayton Fields has historical importance as a registered village green.
- The removal of the trees (e.g. T43 and T44) seem simply for profit and with no good reason.
- Materials are to be artificial, not natural.
- The development fails to harmonise with the character and setting of the Edgerton Conservation Area. The dwellings are cramped and at odds with the historic layout.

Residential amenity

- The proposal will cause noise pollution.
- The site is attractive and of value to the local community. It provides physical and mental health benefits.

Highways

- The plans do not show the existing public right of way footpaths. They should show both the present right of way footpaths and any planned relocation.
- The proposal will result in harmful overbearing, overlooking, and overshadowing of neighbouring properties and their gardens.
- Concerns expressed over the development's impact upon local roads. The access Roads, including Deveron Grove, Queen's Road and Murray Road, are narrow, with poor pavements and sharp bends. There are nearby schools and children who access the site will be put at risk. These concerns relate to the operational and construction phases.

Drainage

- The local area struggles with flooding, which the proposal would exacerbate. The site floods and becomes boggy. Therefore, the development should improve the existing storm sewer system under the site.

Ecology

- Local wildlife uses the site, and protected species would be affected by the proposal. The proposal does not include Net Gain.

Other

- The application does not have a location plan, with a covering letter incorrectly identified as 'location plan'.
- The plans extend across Clayton Dike onto Clayton Fields allotment, which is outside the ownership of the applicant. Correct ownership should be shown on the submitted plans.
- There are no affordable dwellings proposed, with the proposal being for all 4 and 5-bed units.
- The site notice erected to advertise the proposal was removed early.
- The S106 contributions need to be revised to reflect inflation, as those secured 9 years ago are out of date.
- The proposal will set a precedent for future developments to take place.
- The proposal will cause structural issues for nearby dwellings.

Planning Policy

Kirklees Local Plan (KLP)

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 a Housing Allocation, ref. HS30, on the LP Policies Map. The site is within the Edgerton Conservation Area.

The following policies are deemed most relevant to this application:

- **LP1** – Presumption in favour of sustainable development
- **LP2** – Place shaping
- **LP21** – Highways and access
- **LP22** – Parking
- **LP24** – Design
- **LP32** – Landscape
- **LP33** – Trees
- **LP35** – Historic environment

The following are relevant Supplementary Planning Documents or other guidance documents published by, or with, Kirklees Council:

Supplementary Planning Documents

- Highways Design Guide SPD (2019)
- Housebuilders Design Guide SPD (2021)

Guidance documents

- Planning Applications Climate Change Guidance (2021)
- Waste Management Design Guide for New Developments (2020)
- Green Streets Principles for the West Yorkshire Transport Fund

National Policies and Guidance

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) 2023, published 19/12/2023 and the Planning Practice Guidance Suite (PPGS), first launched 06/03/2014, 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 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 16** – Conserving and enhancing the historic environment

Other relevant national guidance and documents:

- MHCLG: National Design Guide (2021)
- DCLG: Technical housing standards – nationally described space standard (2015)

Climate change

The Council approved Climate Emergency measures at its meeting of full Council on 16/01/2019, and the West Yorkshire Combined Authority has pledged that the Leeds City Region would reach net zero carbon emissions by 2038. A draft Carbon Emission Reduction Pathways Technical Report (July 2020, Element Energy), setting out how carbon reductions might be achieved, has been published by the West Yorkshire Combined Authority.

On 12/11/2019 the Council adopted a target for achieving 'net zero' carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system, and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan predates 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 would use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

Consultation Responses

K.C. Conservation and Design: Provided the following assessment:

Having reviewed the new plans against what was previously approved, we are concerned by the proposed amendments to the design of the dwellings. The previous designs do appear to have taken some design cues from the surrounding buildings and incorporated details such as external chimney breasts and stacks, glazing bar details, barge and eaves boards and fenestration details. They did appear to be more bespoke in design.

Looking at the proposed plans they do have a more generic feel and looking at the website it does appear that the same designs used elsewhere are simply being replicated. Given the context and setting of the site, the designs of the dwellings do need to be more bespoke and ensure they reflect the character and context of the site and the surrounding Edgerton Conservation Area. The site can be experienced from public rights of way and directly off Edgerton Road to the south. Given the site is within a sensitive location in regard to the Listed Buildings and Conservation Area, the design of the dwellings is critical.

We consider that the designs need to revert back to reflect the previously approved designs under 2017/90190. As proposed we are not convinced, they meet the test of LP24 or LP35 of the Local Plan.

K.C. Highways (Development Management): No concerns.

K.C. Trees: No objection.

K.C. Lead Local Flood Authority: No objection.

K.C. Public Right of Way (PROW): No objection.

Assessment

This application is made under S73 of the Town and Country Planning Act 1990, which allows for the 'Determination of applications to develop land without compliance with conditions previously attached'. In addition to removing conditions, S73 enables the varying of a condition's wording. The effect of a granted S73 application is the issuing of a fresh planning permission. Therefore, all previously imposed conditions should be retained if they remain relevant. Conversely, the time limit for development to commence cannot be extended through S73.

The starting point for a S73 application is the previously granted planning permission, which must carry significant material weight. In this case, it should be noted that the permission to be varied, 2017/90190, was a reserved matters application with the considerations of layout, appearance, scale, and landscaping. Matters of principle and access were considered at outline stage, under application 2014/93014. Therefore, officers' assessment as part of this application is restricted to only the question of the conditions subject to which planning permission should be granted (i.e., the impacts of varying condition 1) and how it impacts upon the aforementioned reserved matters of layout, appearance, scale, and landscaping.

Consideration must first be given to whether any material changes in circumstances have taken place. This includes the policy and local context.

In terms of policy, the original application 2017/90190 was assessed against the Unitary Development Plan (UDP), which has since been superseded by the Local Plan (LP) in 2019. As part of the Local Plan the application site was allocated for housing. Furthermore, this S73 application relates to a Reserved Matters submission, with the outline which established the principle being a separate matter. Therefore, the principle remains acceptable. Due regard will be given to policy changes between the UDP and LP, if relevant, elsewhere within this report.

The NPPF has been subject to revision(s) since the previous assessment, however, none of the changes are deemed relevant to the current proposal.

Regarding the local context, there has been no material changes in the environment (including built and natural) which would materially impact on the assessment of the application.

Considering the above, consideration must principally be given to the specific changes proposed and their interaction with adopted planning policy.

Variation of Condition 1 (plans table)

Urban design and the historic environment

There are various listed buildings around the site. Adjacent to the site, these include nos. 18 - 20 Edgerton Road to the site's west, the tram shelter to the site's south, nos. 1, 2, and 9 Queens Road to the site's south-east, and 4 Murray Road due east. All are Grade II listed. In addition to listed buildings, the site is adjacent to the Huddersfield Town Centre Conservation Area.

The heritage value of the identified listed dwellings can be summarised as being high quality examples of 19th century architecture in a leafy suburban setting, whereas the tram shelter's value is from its historic use and design. The Edgerton Conservation Area benefits from a Conservation Area appraisal. The appraisal identifies 5-character areas, with the site falling within character area 2. However, character area 2 comprises open land. Permission has established the loss of this site as open land, and is

considered more appropriate to consider the development as forming an expansion to the built-up character area 1. This area is fined by buildings which are predominantly large, detached properties set in generous landscaped grounds, thus with a lower density of development. The heritage value drives from the buildings being of a high-quality architectural standard, prominently faced in stone, and being within a treed setting.

Sections 16 and 66 of Planning (Listed Buildings & Conservation Areas) Act 1990 introduces a general duty in respect of conservation areas and listed buildings. In considering whether to grant planning permission for development which affects a heritage asset or it's setting the Local Planning Authority should have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

Comparing the layout of the approved and proposed plans, the differences between the two are minimal, principally being minor tweaks to the position / footprint of units (to reflect the different house types) within their plots. Officers are satisfied that there would be no material different impacts from the layout from a design perspective.

The principal changes being made relates to the house-types, with those proposed being a full replacement to the approved units. While different, the two sets of dwellings share various core design elements, including:

- Consistent in scale, comprising larger detached units which is typical in the area.
- High quality and attractive architectural design features include stone heads and cills around windows, bay windows, gable stones / vents
- Feature front-facing secondary gables which add an interesting and grandiosity to the design which is characteristic of the area.

The most significant change relates to plot 41, which for both the approved and proposed scheme is a bespoke house-type to respond to the constraints of the plot, constraint by the site access and neighbouring property. The original plot 41 was designed to mimic a converted subservient outbuilding of a larger historic property. The applicant has raised concerns that plot 41, as approved, would not be achievable under building regulations, due to ceiling height issues, with the proposed plot 41 being larger to address this. Officers are satisfied that the proposed plot 41 reflects the original design intent, while also retaining the high quality seen elsewhere within the site.

Notwithstanding the above, K.C. Conservation and Design have expressed reservations over the proposed unit types, stating:

The previous designs do appear to have taken some design cues from the surrounding buildings and incorporated details such as external chimney breasts and stacks stacks, glazing bar details, barge and

eaves boards and fenestration details. They did appear to be more bespoke in design.

They conclude that the original approved unit types were more fitting in the historic environment, particularly the character of the Edgerton Conservation Area.

Officers do not share these concerns. The proposed dwellings are of a high quality and while they do not include all the abovementioned design features, this would not result in them appearing incongruous in the setting or harm the identified heritage value of the identified heritage assets.

The new dwellings would be a modern intervention in a historic environment, but with a traditional design approach to help them harmonise with the established character. While not including all the design elements identified by Conservation officers, planning officers are satisfied that they have been designed to sufficiently reflect and respect the historic environment, without directly replicating aspects or being a pastiche. The inclusion of redundant design features, such as chimney breasts, is not necessary for new properties to respect the historic environment. Considering the previously identified heritage value of the Conservation Area and adjacent properties, officers are satisfied that the new development would harmonise well and not detract from the value of the area.

Overall, the existing and approved designs, while different, are of a similar appearance and quality. Planning officers are satisfied that the amended house-types (and their nominally amended layouts) would represent good urban design that would deliver a high quality of visual amenity, while also not causing material harm (giving due regard to the relationships and impacts established by the approved scheme) to the identified heritage assets or their heritage value.

Materials of the dwellings do not fall to be considered. Condition 3 of the original approval requires that the proposed dwellings are constructed in natural stone, with samples to be provided. Condition 4 requires samples of the proposed roofing to be provided. Neither of these conditions are sought to be varied and would remain in force.

Regarding landscaping, no significant material changes are proposed. Due to the nominal layout changes, the central POS area would increase in size by 10sqm, which is welcomed. Beyond this, the proposed house-type changes and corresponding nominal layout alterations to units would not result in many changes. All trees previously intended to be retained are still to be retained and would be protected via condition 7 (compliance with the Arboricultural Method Statement) which is to be unaltered and remain in force. This would ensure that the setting of the site remains of a verdant nature, ensuring it blends well into the wider Edgerton Conservation Area. The new planting arrangements would be suitably similar that previously approved and remain at a high standard, except for to the rear of plots 20-24. As approved, this was to be turfed with three trees: as proposed, nothing is shown. This is assumed

to be an error, as prior to amendments being made as part of this application, the current proposal sought to include the land behind plots 20-24 within their gardens. On the original scheme, this strip of land was kept out of gardens as a buffer zone to PROW HUD/345/20. To preserve the attractiveness of the PROW, officers requested that the previous arrangement be reverted to, which the applicant acquiesced to. To ensure suitable landscaping along this strip, a condition for landscaping details specific to this area is recommended.

In summary, the proposal represents an appropriate modification to the approved scheme. The proposal would be a high quality of design which would not conflict with the heritage value of the historic environment. It is therefore concluded that the proposed development complies with S16 and S66 of the Act, LP24 and L35 of the Kirklees Local Plan.

Impact on residential amenity

Existing neighbouring properties are sited to the south-west, south, east, and north-east of the site.

Overall, the development's relationship with neighbouring dwellings would not be materially affected by the proposed house-type and minimal layout amendments, compared to the original approval. Mostly, separation distances would be maintained and window arrangements (i.e., the direction windows would face) are consistent between the two proposals, or the separation distances between plots and existing neighbouring dwellings are substantial enough that the changes do not result in any impact, resulting in no materially different impact.

Exemptions to the above include plots 2, 3, 16, and 41.

Plot 2 would be sited to the rear of nos. 8a, 8b, 8c, and 8d Queens Road. As approved, plot 2 (house type D) would be set between 11.0m and 12.1m from these properties, due to their not quite parallel arrangement. It would have eaves at 5.25m and ridge at 7.8m, with a gable closest to the boundary. Plot 2 would be changed to a Connaught II. It's layout and orientation to the dwellings would be nominally changed, with the separation distance changing to between 11.5 and 11.0m. The eaves would fall to 5.1m, but the ridge increase 8.5m, although it'd be a hipped roof, reducing the massing close to the boundary. While the new house type would be closer, it would only be nominally so, and the potential impact from the ridge height increase would be offset by the hipped form and lower eaves. This is also giving due regard to nos. 8a, 8b, 8c, and 8d Queens Road being three storeys and on a higher ground level. Plot 2 would remain only having non-habitable room windows on the elevation facing nos. 8a, 8b, 8c, and 8d Queens Road, as per the previous plans, which is acceptable. Therefore, the proposed changes to plot 2 are not anticipated to cause material harm to neighbouring occupiers.

As approved, plot 3 is at an oblique angle to no. 6 Deveron Grove, with a separation distance of 13.4m. No. 6 primarily would face towards plot 3's side elevation to host only non-habitable windows. As proposed, plot 3 would

diagonally, resulting in its separation from no. 6 reducing to 12.7m, but also being set a further 0.3m from the shared boundary. As a result, the angle between the properties' front and rear elevations would become more oblique. No. 6's view would remain towards the side of plot 3, which would remain hosting only non-habitable room windows. The reduction in separation distance does not raise concerns of overbearing, overshadowing, or overlooking upon no. 6's occupiers.

Plot 16 is approved as a house type D, which includes an integral garage wing. Plot 16 was approved at 21.4m away from no. 9 Deveron Grove. The proposed house type, Knight II, does not, but would have a detached double garage. As a result, the dwellinghouse of plot 16 would move further from no. 9 Deveron Grove than the approved layout, but the detached garage would be closer, at 16.2m. Nonetheless, as a single storey ancillary outbuilding, a separation distance of 16.2m raises no concerns of overbearing or overlooking which would result in material harm for no. 9's occupiers.

The change in house type for plot 41 would increase the building's footprint, bringing it closer to the side elevation of no. 12 Queen's Road. The separation distance would fall from 15.8m to 13.7. Nonetheless, as no. 12's side elevation hosts no habitable room windows, this reduced distance would not materially impact upon no. 12's occupiers' amenity.

Since the assessment of 2017/90190, application 2024/90407 has granted permission for a new dwelling within the rear garden of no. 15 Queens Road, which remains an extant but (as of the time of writing) unimplemented permission. The new dwelling would be adjacent to plots 40 and 41. It is evident that the design of the dwelling approved under 2024/90407 was informed by the approved layout of 2017/90190. The variations proposed would not materially affect the relationship of the new dwellings from the two applications, as per the assessment made within 2024/90407.

Regarding future occupiers, all of the proposed house-types exceed the Nationally Described Space Size minimums. The dwellings would be served by commensurately scaled gardens and the proposed dwellings' relationship with the trees to be retained accords with that previously approved, regarding potential for overshadowing or tree nuisance. Internal separation distances between units are consistent with those previously approved and raise no concerns of detrimental amenity standards.

Concluding on the above, the proposed changes would not result in harm to neighbouring third party dwellings and would retain a high standard of amenity for future occupiers. Therefore, the proposed variation complies with Policy LP24 of the Kirklees Local Plan.

Impact on highways and public footpaths

The road layout would not be materially affected by the variation between the approved and proposed. Footways would be retained in the same locations and only nominal alterations are

All units would retain adequate off-road private parking, commensurate with their size (number of bedrooms). Visitor parking, or lack thereof, would be unchanged.

The site hosts various Public Rights of Ways and claimed routes. These matters were considered at length as part of the original application K.C. PROW team have reviewed the submission and said:

The provision of alternative routes from the extinguishment and provision of new routes order appears to match.

Prow has checked the alignment of the current proposal (the same as in Anite 13/3/24 2489-1-001) with the previous permission and the order plan prow are satisfied that the route are a close match, except for the access where it meets Queens Road. However, this when built will be part of the Highway maintainable at public expense.

To inform their comments, K.C. PROW overlaid the approved and proposed plans with the footpath routes.

In line with K.C. PROW colleague's statement, officers are satisfied that the proposed variation would not materially affect previously established arrangements regarding Public Rights of Way.

Previous conditions and obligations

As this is an application under S73 of TCPA 1990 it will in effect be a new permission. The Planning Practice Guidance confirms that for the purpose of clarity, decision notices for the grant of planning permission under section 73 should set out all of the conditions imposed on the new permission, and restate the conditions imposed on earlier permissions that continue to have effect.

Application 2017/90190 was granted with 10 conditions.

All conditions remain pertinent and are to be retained, although it is recommended that their reasons are updated to reflect modern (Local Plan) policies. While one (condition 9) has been discharged via a separate Discharge of Condition application, in the interest of consistency and expediency the conditions are to be repeated as originally imposed alongside a note relating to the previously submitted information, via DOC application, remaining relevant.

Application 2017/90190 was a reserved matters submission. For the avoidance of doubt, all conditions on the parent outline application (ref. 2014/93014) are unaffected by this S73 application and remain in force.

Application 2017/90190 was not granted subject to a S106 agreement. For information, planning obligations associated with the proposal were

considered (including a viability review process) and secured as part of the parent outline permission 2014/93014.

Representations

As a s73 application, officers are limited in their assessment to the impacts of the condition being varied, and in this case, to the reserved matters of layout, landscape, appearance, and scale. Officers are satisfied that the amendments sought to the plans, via the variation of condition 1, would not prejudice other material considerations assessed at the previous outline and reserved matters stages. Representations have raised concerns over drainage and ecology; these matters were considered and managed via conditions attached at outline stage so are not for consideration at this time.

With the above noted, the following are the representations raised which are material considerations to this application

Urban design, trees, and the historic environment

- Question over the proposals impact upon the 'heritage bus stop' on Halifax Road.

Response: This would not be directly affected by the proposal. The new development would be seen within its setting, the impact of which has been considered elsewhere within this report.

- A 'green corridor' should be provided / retained along Clayton Dyke.

Response: The previously imposed condition for a riverside walk is to be repeated.

- The removal of the trees (e.g. T43 and T44) seem simply for profit and with no good reason.

Response: Following amendments, these trees are to be retained.

- Materials are to be artificial, not natural.

Response: The use of natural stone is mandated by condition 3, which is to be retained.

Residential amenity

- The proposal will cause noise pollution.
- The proposal will result in harmful overbearing, overlooking, and overshadowing of neighbouring properties and their gardens.

Response: Residential properties are not considered a typical source of noise pollution. Officers have considered the residential amenity impacts of the proposal and found them to be acceptable.

Highways

- The plans do not show the existing public right of way footpaths. They should show both the present right of way footpaths and any planned relocation.
- Concerns expressed over the development's impact upon local roads. The access Roads, including Deveron Grove, Queen's Road and Murray Road, are narrow, with poor pavements and sharp bends. There are nearby schools and children who access the site will be put at risk. These concerns relate to the operational and construction phases.

Response: Officers, along with colleagues in the Public Right of Way team, are satisfied that the proposed layout alterations would not materially affect the previously approved relationship with the Public Right of Way network.

Other

- The application does not have a location plan, with a covering letter incorrectly identified as 'location plan'.
- The plans extend across Clayton Dike onto Clayton Fields allotment, which is outside the ownership of the applicant. Correct ownership should be shown on the submitted plans.

Response: This has been rectified. Location plans are not required for S73 applications, which, by default, utilise the same plans (and red-line boundary) of their original consent (unless sought to be varied). The red-line plan, and extent of development, is not sought to be changed as part of this permission and no works are proposed across Clayton Dike

- There are no affordable dwellings proposed, with the proposal being for all 4 and 5-bed units.
- The S106 contributions need to be revised to reflect inflation, as those secured 9 years ago are out of date.

Response: The sizes of the dwellings proposed are consistent with those previously approved. Plot 41 is the exemption, going from a 3-bed to a 4-bed. While this would remove the one 3bed within the proposal, as a single unit the impacts would be negligible and not raise material harm.

The previously agreed S106 contributions fall outside the remit of this application.

- The site notice erected to advertise the proposal was removed early.

Response: Officers replaced the site notice in question.

- The proposal will set a precedent for future developments to take place.

Response: Each application is assessed on its own merits.

- The proposal will cause structural issues for nearby dwellings.

Response: There is no evidence to suggest the site has any intrinsic stability issues. Beyond this, it is the applicant's responsibility to ensure a safe development and any harm caused would be a private matter between landowners and/or contractors.

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: Approve

Application Number: 2024/92167

Decision Authorisation: Delegated Powers

Officer Recommendation: Approve Variation of Condition

Conditions and Reasons

Note: The applicant is advised that the following conditions were originally imposed by planning permission 2017/90190 (i.e., those conditions that have not been sought for variation as part of this application). They are hereby reproduced on this notice, to provide you with a complete record of all conditions, regardless of whether some may have already been discharged.

Where the details pursuant to the above conditions, in accordance with 2017/90190's corresponding original list of conditions, have already been submitted for discharge and approved, or part approved, by the Local Planning Authority, and where there is no change to the details required by that condition, a further discharge of condition application pursuant to this application's reference will not necessary.

1. The development hereby permitted shall be carried out in complete accordance with the approved plans and specifications except as may be required by other conditions.

Reason: So as to ensure the satisfactory appearance of the development on completion.

2. This permission does not extend to the siting of Plot 38.

Reason: To protect trees in the interest of visual amenity and to accord with Policies LP24 and LP33 of the Kirklees Local Plan.

3. The dwellings hereby approved shall be constructed of natural stone, a sample of which shall be submitted to the Local Planning Authority for approval, prior to any development commencing.

Reason: In the interests of visual amenity and preserving the historic environment, to accord with Policies LP24 and LP35 of the Kirklees Local Plan.

4. No building work shall take place until a sample of roofing materials has been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed of the approved materials.

Reason: In the interests of visual amenity and preserving the historic environment, to accord with Policies LP24 and LP35 of the Kirklees Local Plan.

5. With the exception of works to trees on Plot 38, which are not approved, the development shall be completed in accordance with the advice and directions (recommendations) contained in the Arboricultural Method Statement, reference (JCA 11854e/JC/TT-Rev 1). These shall be implemented and maintained throughout the construction phase and retained thereafter.

Reason: To protect trees in the interest of visual amenity and to accord with Policies LP24 and LP33 of the Kirklees Local Plan.

6. Details of any additional tree works required during the construction process, that is not identified within the submitted information, shall be submitted to and approved in writing by the Local Planning Authority prior to the work being carried out. The works shall thereafter be carried out in complete accordance with the approved details.

Reason: To protect trees in the interest of visual amenity and to accord with Policies LP24 and LP33 of the Kirklees Local Plan.

7. Before first occupation, the developer shall provide written and/or photographic evidence to the Local Planning Authority to demonstrate that the arboricultural supervision specified in section 3.1.2 of the Arboricultural Method Statement, reference (JCA 11854e/JC/TT-Rev 1) was undertaken. The development shall not be brought into use until this evidence has been approved in writing by the Local Planning Authority.

Reason: To protect trees in the interest of visual amenity and to accord with Policies LP24 and LP33 of the Kirklees Local Plan.

8. A landscape and ecological management plan (LEMP) shall be submitted to, and be approved in writing by the local planning authority prior to the commencement of the development (including any demolition, ground works and site clearance). The LEMP shall include details of all habitats created as part of the approved scheme, including installed habitat boxes, and shall refer to the possible presence of non-native invasive plant species. The content of the LEMP shall include the following:

- a) Description and evaluation of features to be managed.
- b) Ecological trends and constraints on site that might influence management.
- c) Aims and objectives of management.
- d) Appropriate management options for achieving aims and objectives.
- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
- g) Details of the body or organization responsible for implementation of the plan.
- h) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

Reason: To ensure all adverse ecological impacts of construction of the scheme are compensated for within the final design, and that all habitats

created as mitigation are managed in an appropriate manner thereafter, in order to ensure the approved scheme is acceptable under the requirements of Chapter 11 of the National Planning Policy Framework.

9. Prior to the development commencing a detailed method statement for the construction and provision of the woodland walk shall be submitted for the written approval of the Local Authority. This statement shall provide for details of the construction, and supervision of that construction by a suitable qualified person.

Reason: To safeguard the trees/ planting on the site, in accordance with Policies LP24 and LP33 of the Kirklees Local Plan.

10. Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 2015 as amended or any Order revoking or re-enacting that Order no development included within Classes A, B, D and E of Part1 Schedule 2 of that Order on Plots 1, 2, 8, 9, 16, 17, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39 and 40.

Reasons: To ensure the safeguarding of the mature protected trees within the site in accordance with Policies LP24 and LP33 of the Kirklees Local Plan.

11. Notwithstanding the submitted details, prior to the occupation of plots 20 – 24, as identified on plan ref. 4135 2100 rev. C, a supplemental landscaping strategy for the land behind plots 20 – 24, adjacent to PROW HUD/345/20, shall be submitted to, and approved in writing by, the Local Planning Authority. The strategy shall include a timescale for implementation. The development shall thereafter be carried out in complete accordance with the approved schedule and timescales. The approved supplemental landscaping scheme shall, from its completion, be maintained for a period of five years. If, within this period, any tree, shrub, or hedge shall die, become diseased or be removed, it shall be replaced with others of similar size and species.

Reason: In the interest of visual and residential amenity, to ensure that there is a well laid out scheme of hard and soft landscaping, to comply with the aims and objectives of Policies LP24 and LP63 of the Kirklees Local Plan.

Plans and specifications schedule:

| Plan Type | Reference | Version | Date Received |
|---|------------|---------|---------------|
| Approved via S73 application ref. 2024/92167 | | | |
| Block plan | 2489-1-001 | Rev. K | 21/10/2024 |
| Proposed Site Sections | 2489-1-003 | Rev. C | 08/10/2024 |
| Grouped Plans and Elevations | 2489-1-010 | Rev. B | 04/10/2024 |
| Grouped Plans and Elevations | 2489-1-011 | | 01/08/2024 |
| Grouped Plans and Elevations | 2489-1-012 | | 01/08/2024 |
| Grouped Plans and Elevations | 2489-1-013 | | 01/08/2024 |
| Grouped Plans and Elevations | 2489-1-014 | | 01/08/2024 |
| Grouped Plans and Elevations | 2489-1-015 | | 01/08/2024 |
| Grouped Plans and Elevations | 2489-1-016 | | 01/08/2024 |
| Grouped Plans and Elevations | 2489-1-018 | | 01/08/2024 |
| Grouped Plans and Elevations | 2489-1-019 | | 01/08/2024 |

| Plan Type | Reference | Version | Date Received |
|--|--------------------|----------------|----------------------|
| Proposed Landscaping Layout | 2101 | Rev. C | 24/10/2024 |
| Proposed Landscaping Layout | 2100 | Rev. C | 24/10/2024 |
| Supporting Information | Heritage Statement | | 12/09/2024 |
| Design and Access Statement | | | |
| Approved via Reserved Matters application ref. 2017/90190 | | | |
| Location Plan | 1414/100 | | 20/1/17 |
| Arboricultural Method Statement | JCA 11854e/JC/TT | Rev 1 | 19/4/17 |
| Japanese Knotweed Control Method Statement | 161109/JKW | | 16/3/17 |

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 Planning 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.

Officers expressed initial concerns over certain elements of the proposal, including landscaping and impact on trees. Following negotiations, an amended set of plans were received which were considered to address the matters raised. Based on this, officers were able to recommend the application for approval.

Report Dated: 06/11/2024.