

**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:	2024/70/93227/E
Site Address:	land at, St Luke's, Bierley Marsh, East Bierley, BD4 6PL
Description:	Variation condition 2 (plans) on previous permission 2020/94345 (APP/Z4718/W/21/3289729) for erection of 5 dwellings
Recommending Officer:	Elenya Jackson

DECISION – Variation of Condition - Approved

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

Kirsty Nicholls

AUTHORISED OFFICER

Date: 09-Jun-2025

Officer Report

Site Description

Land at, St Luke's, Bierley Marsh, East Bierley, BD4 6PL is a parcel of land in the settlement of East Bierley. The site is immediately east of Bierley Marsh, an unadopted road with access to the public highway, South View Road, to the north. Bierley Marsh carries a public right of way (PROW), SPE/6/20. The site is characterised by self-seeded semi-dense shrubland behind St. Luke's Church and Hall. The site borders, but is not included in, the East Bierley Conservation Area.

The site previously received permission for five dwellings at appeal, APP/Z4718/W/21/3289729 .

Description of Proposal

The application seeks a section 73 variation of condition 2 (plans) on previous permission 2020/94345 (APP/Z4718/W/21/3289729) for erection of 5 dwellings.

The previous condition(s) read as:

2. The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan - 19.157.101; Proposed Site Layout - 19.157.104B; North and West Facing Elevations - 19.157.105; South and East Facing Elevations - 19.157.106; Ground and First Floor Plans - 19.157.107; Front and Rear Elevations - 19.157.108; Section A - 19.157.109; Section B - 19.157.110; House Type B Floor Plan - 19.157.111; House Type B Elevations - 19.157.112; House Type B Elevations - 19.157.113; Sections - H20017-260 P4; Drainage Layout H20017-200 P4..

The application has requested alterations to this condition to amend plan entitled 'Proposed Site Layout - 19.157.104B to 19.157.104G' which would revise the access onto the site.

SITE HISTORY

2025/91001 - Discharge of details reserved by condition 5 (access re-surface) on previous permission 2020/94345 (APP/Z4718/W/21/3289729) for erection of 5 dwellings – Pending Consideration

2024/93226 - Discharge of details reserved by conditions 3 (Ecological Design Strategy), 4 (Condition Survey of Bierley Marsh), 6 (Construction Management Plan), 7,9 (Intrusive Investigation Phase2 SI), 14,15 (Boundary Treatment, Hard and Soft Landscape) on previous permission 2020/94345 (APP/Z4718/W/21/3289729) for erection of 5 dwellings – Pending Consideration

2020/94345 – Erection of 5 dwellings – Upheld at appeal
APP/Z4718/W/21/3289729

History of Negotiations

There have been ongoing revisions to the application in response to comments from KC Highways. The initially received plan omitted the previously agreed/required highway improvements to Bierley Marsh which include the creation of a 5.0m shared surface carriageway.

The applicant has provided details of how the site would be surfaced as part of this application which is in accordance with condition 5 of the substantive permission.

Additional details have been provided such as the details of site clearance; however, as these details relate to condition 4 which is subject to a separate discharge of conditions application, no further comments on this have been made.

Representations

The application was advertised on the Kirklees Website, a site notice and a press notice which expired on 14.01.2025. This allowed for three additional days of publicity to account for public holidays.

Only one round of consultation was undertaken as the revisions received in response to concerns raised by Highways did not fundamentally alter the application. In addition, the objectors to the initial application remained in contact during the course of the application.

The 16 grounds of objection raised were as follows:

- Concerns PROW officer not consulted
- Concerns regarding the creation of a new access
- Concerns regarding the utilisation of a PROW
- Concerns regarding other planning applications
- Loss of land from urban green space
- Incorrect measurements on site/plans
- Bierley Marsh not being appropriately surfaced for adoption
- Reference to legislation outside of planning system i.e Traffic Control Act
- Encroachment onto common land
- Change of use of land
- The revoking of the permission received via the Planning Inspector

Consultations

Due to the application referring to access, KC Highways and KC PROW were consulted.

KC Highways: Following the receipt of amended plans requested by KC Highways, no further objections were raised.

KC PROW: Matters relating to private access rights, landowner consent, and consent from the Secretary of State in respect of common land, are all matters for the developer to address but which fall outside the planning application process.

Policy

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications be 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 maps.

Kirklees Local Plan:

- **LP 01 – Achieving sustainable development**
- **LP 02 – Place shaping**
- **LP 07 - Efficient use of land**
- **LP 21 – Highways and Access**
- **LP 22 - Parking**
- **LP 24 – Design**
- **LP 30 - Biodiversity**
- **LP 33 - Trees**
- **LP 35 – Historic Environment**
- **LP 52 – Protection and improvement of environmental quality**
- **LP 61 – Urban Green Space**

National Policies and Guidance:

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published December 2024, together with Circulars, Parliamentary Statements and associated technical guidance. The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications. NPPF relevant chapters:

- Chapter 2 – Achieving sustainable development.
- Chapter 4 – Decision Making
- 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

Assessment

The proposed variations to the previously approved plans are set out in full above, within the 'Description of Proposal' section of the report.

Proposed Variations

This Section 73 application has requested revisions to the site access since the previously approved scheme as the applicant was unable to receive permission to access some of the land delineated.

As a result, the access has been relocated further to the southwest. It is understood by officers that the land which would be incorporated as part of the scheme is 'Common Land' and not within the ownership of the applicant; however, as this is a separate matter to be resolved between the applicant and the Secretary of State, the Local Planning Authority has no further comments on this matter as it is not a material planning consideration. It is considered that the proposal would not alter the previously approved development, and the variation proposed would be limited to the access arrangements.

Previous conditions attached

Officers have reviewed the details provided in support of this application and recommend the amendment to the wording of condition 5 to reflect the details received.

Condition 1 will also be amended as the timeframe for implementation of a planning application cannot be extended.

Representations

16 Objections were received to this application from two individuals. The objections raised were as follows:

- Concerns PROW officer not consulted
Officer response: KC Prow has been consulted on the current application.
- Concerns regarding the creation of a new access
Officer response: This application is for a variation of application 2020/94345 which received permission via an upheld appeal. The principle of an access in this location has previously been established and KC Highways and KC PROW have been consulted on the application raising no objections.

- Concerns regarding the utilisation of a PROW
 Officer response: This application is for a variation of application 2020/94345 which received permission via an upheld appeal. The principle of an access in this location has previously been established. Legal matters in regard to the use of the PROW are not a material planning consideration.
- Concerns regarding other planning applications
 Officer response: This application is for the variation of application 2020/94345 and therefore the principle of this application has been established.
- Loss of land from urban green space
 Officer response: This application is for the variation of application 2020/94345, the principle of this development is established as acceptable. The revisions would not encroach onto urban green space.
- Incorrect measurements on site/plans
 Officer response: Boundary disputes between the applicant and adjoining neighbours are not a material planning consideration. Officers have been able to scale the plans for the purpose of determining the application and therefore the submitted plans are considered appropriate for the purpose of the application.
- Bierley Marsh not being appropriately surfaced for adoption
 Officer response: This application is for the variation of condition 2; however, details have been provided which demonstrate the layout/surfacing of the site to satisfy condition 5. The site could be surfaced to an adoptable standard.
- Reference to legislation outside of planning i.e Traffic Control Act
 Officer response: Matters in relation to regulatory functions outside the planning system are not a material planning consideration.
- Encroachment onto common land
 Officer response: The utilisation of common land is not a material planning consideration and would be controlled by regulatory functions outside the planning system. The applicant would have to apply under the Commons Act 2006 to either carry out works on the common land or to exchange land, that is to provide another area to become common land to replace common land they used as part of the development.
- Change of use of land
 Officer response: The principle of development at this site has previously been established. The utilisation of common land is not a material planning consideration and would be controlled by regulatory functions outside the planning system

- The revoking of the permission received via the Planning Inspector Officer response: This is not within the scope of the Local Planning Authority.

Conclusion

The proposed variations as set out above accord with all relevant national and local planning policy. This variation will still represent high quality sustainable development, whilst still maintaining a good standard of amenity for nearby dwellings.

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.

Decision Authorisation - Delegated Powers

Application Number: 2024/93227

Officer Recommendation: Approve

Conditions and Reasons

1) The development hereby permitted shall begin by 20th July 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 accordance with the following approved plans: Location Plan - 19.157.101; Proposed Site Layout - 19.157.104G; North and West Facing Elevations - 19.157.105; South and East Facing Elevations - 19.157.106; Ground and First Floor Plans - 19.157.107; Front and Rear Elevations - 19.157.108; Section A - 19.157.109; Section B - 19.157.110; House Type B Floor Plan - 19.157.111; House Type B Elevations - 19.157.112; House Type B Elevations - 19.157.113; Sections - H20017-260 P4; Drainage Layout H20017-200 P4.

Reason: For the avoidance of doubt as to what is being permitted and so as to ensure the satisfactory appearance of the development on completion, and to accord with Policies LP1, LP2, LP 07, LP 21, LP 22, LP 24, LP 30, LP 33 ,LP 35, LP 52 and LP 61 of the Kirklees Local Plan and advice within the National Planning Policy Framework.

3) Prior to the commencement of development, an ecological design strategy addressing mitigation and enhancement shall be submitted to and approved in writing by the Local Planning Authority. The ecological design strategy shall include the following:

- a. Purpose and conservation objectives for the proposed works.
- b. Review of site potential and constraints.
- c. Detailed design(s) and/or working method(s) to achieve stated objectives.
- d. Extent and location/area of proposed works on appropriate scale maps and plans.
- e. Type and source of materials to be used where appropriate, e.g. native species of local provenance.
- f. Timetable for implementation demonstrating that works are aligned with the proposed phasing of development.
- g. Persons responsible for implementing the works.
- h. Details of initial aftercare and long-term maintenance.
- i. Details for monitoring and remedial measures.
- j. Details for disposal of any wastes arising from works.

The ecological design strategy shall be implemented in accordance with the approved details and timetable and all features shall be retained thereafter.

Reason: This is a pre-commencement condition and is required in the interests of mitigating ecological harm and providing enhancement on site following the development and to accord with Local Development Framework policies LP30, and the National Planning Policy Framework.

4) Prior to the commencement of development, a conditions survey of that part of Bierley Marsh within the application boundary as shown on plan

19.157.101 shall be submitted to and approved in writing by the Local Planning Authority. On completion of the development, a second condition survey of the same part of Bierley Marsh shall be carried out to identify defects attributable to the construction traffic associated with the development, the findings of which shall be submitted to and approved in writing by the Local Planning Authority. Any damage that is identified to have occurred between the period of the two surveys shall thereafter be remedied prior to any dwelling being first occupied.

Reason: This is a pre-commencement condition and is required in the interests of maintaining Bierley Marsh following the development and to accord with Local plan policies LP21, and the National Planning Policy Framework.

5) The re-surfacing of the part of Bierley Marsh within the application boundary as shown on plan 19.157.101, shall be surfaced in accordance with the details submitted in plan MCB/24/018/0701 Rev B as amended on 12.05.2025. The approved scheme shall thereafter be implemented in its entirety and completed prior to any dwelling being first occupied.

Reason: To ensure the site has safe and sufficient access in the interests of highway safety to accord with Local plan policies LP21, and the National Planning Policy Framework.

6) Prior to the commencement of development, a Construction Management Plan shall be submitted to, and approved in writing by the Local Planning Authority. The approved Construction Management Plan shall be adhered to throughout the construction period for the development.

Reason: In the interests of highway safety and in accordance with policy LP21 of the Kirklees Local Plan.

7) Prior to the commencement of development: a. a scheme of intrusive investigations shall be carried out to establish the risks posed to the development by past shallow coal mining activity; and b. any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, shall be implemented in full in order to ensure that the site is made safe and stable for the development hereby permitted. The results of the site investigation shall be made available to the local planning authority before any development takes place.

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

8) Prior to the first occupation of the development hereby permitted, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. This document shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.

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.

9) Prior to the commencement of any groundworks, other than those required for a site investigation report, a Phase II Intrusive Site Investigation Report shall be submitted to and 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

10) Where site remediation is recommended in the Phase II Intrusive Site Investigation Report approved pursuant to condition 9, further groundworks shall not commence until a Remediation Strategy has been submitted to and approved in writing by the Local Planning Authority. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures.

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

11) Remediation of the site shall be carried out and completed in accordance with the Remediation Strategy approved pursuant to condition 10. In the event that remediation is unable to proceed in accordance with the approved Remediation Strategy or contamination not previously considered in either the Preliminary Risk Assessment or the Phase II Intrusive Site Investigation Report is identified or encountered on site, 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 two working days. Works shall not recommence until proposed revisions to the Remediation Strategy have been submitted to and approved in writing by the Local Planning Authority. Remediation of the site shall thereafter be carried out in accordance with the approved revised Remediation Strategy.

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

12) 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 development hereby permitted shall be first occupied until such time as the remediation measures have been completed for 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.

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

13) No above ground construction work shall be undertaken until details/samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall be carried out in accordance with the approved details.

Reason: To ensure the proposal would have an acceptable visual appearance and to accord with Local plan policies LP24, and the National Planning Policy Framework.

14) No above ground construction work shall be undertaken until details of the boundary treatment of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall be carried out in accordance with the approved details and retained thereafter.

Reason: To ensure the proposal would have an acceptable visual appearance and to accord with Local plan policies LP24, and the National Planning Policy Framework.

15) No above ground construction work shall be undertaken until a hard and soft landscaping scheme indicating the type, height, species and location of all new trees and shrubs, and hard surfacing materials has been submitted to and approved in writing by the Local Planning Authority. The landscaping works shall be carried out in accordance with the approved scheme before the dwellings hereby permitted are first occupied. Any trees or plants which within a period of 5 years of planting die, are removed, or become seriously damaged or diseased, shall be replaced with others of similar size and species.

Reason: To ensure the proposal would have an acceptable visual appearance and provide ecological enhancement opportunities on site to accord with Local plan policies LP24, LP30 and LP33 and the National Planning Policy Framework.

16) Prior to the first occupation of the development hereby permitted, details of the bin collection point shall be submitted to and approved in writing by the Local Planning Authority. The collection point shall be made/constructed in accordance with the approved details before the dwellings are first occupied and retained thereafter.

Reason: In the interests of highway safety and visual amenity and in accordance with policy LP21 and LP24 of the Kirklees Local Plan.

17) No removal of or any works to hedgerows, trees and shrubs shall take place between 1st March and 31st August inclusive unless a competent ecologist has inspected the area no more than 24 hours prior to its removal and has provided written confirmation to the Local Planning Authority that no

nests or breeding birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on the site.

Reason: To protect nesting birds in vegetation and built structures in accordance with the Wildlife & Countryside Act 1981 (as amended) and BS 42020:2013 and LP30 of the Kirklees local Plan.

18) The development shall be completed in accordance with the advice and directions (recommendations) contained in the Arboricultural Method Statement, reference Iain Tavendale, Land at St Lukes, Bierley Marsh, East Bierley. These shall be implemented and maintained throughout the construction phase.

Reason: To ensure the proposal would have a satisfactory impact on trees and vegetation on site in accordance with LP33 of the Kirklees Local Plan.

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

Reason: To ensure the proposal would have a satisfactory impact on trees and vegetation on site in accordance with LP33 of the Kirklees Local Plan

20) Prior to the first occupation of the development hereby permitted, the accesses to the site shall be set out and constructed in accordance with the approved plans and retained as such thereafter.

Reason: In the interests of highway safety and in accordance with policy LP21 of the Kirklees Local Plan.

21) Prior to the first occupation of the development hereby permitted the parking areas shown on the approved plans shall be laid out on site and retained thereafter for that purpose and clear of any obstructions.

Reason: In the interests of highway safety and to ensure a suitable site layout in accordance with policy LP21 and LP22 of the Kirklees Local Plan.

22) Notwithstanding the provisions of Article 3 and Part 1 and Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order with or without modification), no development as specified in Classes A, B, D or E of Part 1 and Class A of Part 2 of Schedule 2 of that Order shall be carried out, other than those expressly authorised by this permission.

Reason: In the interests of visual amenity and to retain a satisfactory layout in accordance with policy LP24 of the Kirklees local plan.

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: 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 schedule: -

Plan Type	Reference	Revision	Date Received
Location Plan	19.157.101 Location Plan.pdf		21/12/2020
Proposed site plan	Proposed Site Layout - 19.157.104G	G	30/05/2025
Proposed elevations	North and West Facing Elevations - 19.157.105		21/12/2020
Proposed plans	South and East Facing Elevations - 19.157.106		21/12/2020
Ground and First Floor Plans	Ground and First Floor Plans - 19.157.107		21/12/2020
Front and rear elevations	Front and Rear Elevations - 19.157.108		21/12/2020
Section Plan	Section A - 19.157.109		21/12/2020
Section Plan	Section B - 19.157.110		21/12/2020
House B Floor Plan	House Type B Floor Plan - 19.157.111		21/12/2020
House B Elevations	House Type B Elevations - 19.157.112		21/12/2020
House B Elevations	House Type B Elevations - 19.157.113		21/12/2020

Sections	Sections - H20017-260 P4		21/12/2020
Drainage Layout	H20017-200 P4.		21/12/2020
Access surfacing Details	MCB/24/018/0701	Amendment B	12/05/2025
Tree protection Plan	PL-09		21/12/2020
Tree Survey	SURVEY DETAILS FOR TREES AT ST LUKES SITE, EAST BIERLEY MARSH. 13 th February 2020		21/12/2020
Arboricultural Method Statement	Authored by Iain Tavendale		21/12/2020
Coal Mining Risk Assessment	H 19166B CMRA		21/12/2020
Preliminary Ecological Appraisal			21/12/2020
Geoenvironmental Assessment Part 1,2 &3	H19166B	December 2019	21.12.2020
Drainage Layout		P4	21.12.2020
Standard Details	HD-SD-07-17A		12/03/2025

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.

Amended plans were requested during the course of the application following comments from KC Highways. This resulted in a new site plan being provided and details of surfacing of the proposed scheme being provided.