

**KIRKLEES METROPOLITAN COUNCIL  
INVESTMENT & REGENERATION SERVICE**

**DEVELOPMENT MANAGEMENT**

**Town and Country Planning Act 1990 (as amended) – SECTION 73**

**DELEGATED DECISION TO DETERMINE PLANNING APPLICATIONS TO  
CARRY OUT DEVELOPMENT WITHOUT COMPLIANCE WITH PLANNING  
CONDITIONS PREVIOUSLY ATTACHED**

Reference No:	<b>2024/70/93328/W</b>
Site Address:	Former Royd Edge Dyeworks, Holmfirth Road, Holmfirth, HD9 4BY
Description:	Variation of Condition 1 (plans and specifications) of previous permission 2021/92788 for variation of condition 7 (plans) of previous Reserved Matters approval 2009/92557 for residential development for 30 dwellings with associated parking pursuant to outline permission 2007/92595
Recommending Officer:	William Simcock

**DECISION – Variation of Condition – Approve**

**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.**

Nick Hirst

***AUTHORISED OFFICER***

Date: 21-Feb-2025

## Officer Report

**2024/93328 - Former Royd Edge Dyeworks, Holmfirth Road, Meltham, Holmfirth, HD9 4BY**

### Site Description

Formerly known as Royd Edge Dyeworks, the site is accessed via a linear road from Holmfirth Road to the east which runs parallel with the rear gardens of properties on Grasmere Road. The original mill buildings have been demolished and the site cleared. A public footpath runs through the site and whilst not in the red line of the application site a mill dam exists to the north-west. The land to the north, west and south rises up away from the site where there are open fields above the valley eventually leading to open moorland. The site lies in close proximity of the Peak National Park. There are residential properties to the north and east of the site with three residential properties to the south also accessed from Holmfirth Road.

### Description of Proposal

The proposal is for variation of condition 1 (plans and specifications) on previous permission 2021/92788, which reads:

*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 LP21, LP22, LP24, LP30 and LP33 of the Kirklees Local Plan, the aims of the National Planning Policy Framework and the Housebuilders Design Guide Supplementary Planning Documents.*

Permission 2021/92788 was itself an application for the variation condition 7 (plans) on previous permission 2009/92557 for Reserved Matters for residential development for 30 dwellings with associated parking, arising from outline permission 2007/92595.

The following changes are now sought:

- 1) Alterations to the approved house type on plots 21 and 22. Plot 21 would change from the approved house type F1 (four bedroom) to house type F (three bedroom), becoming a detached unit. It would lose its attached garage, and its parking would be located to the front of the plot. Plot 22 would remain as house type F1 but become a detached unit, decoupled from plot 21.
- 2) The houses would still be built using the approved materials schedule. However, the developer wishes to amend the design of the apartment

block - plots 9-14 - by removing the decorative chimneys on gable ends.

- 3) A substation is to be added to the site, at the south-western corner of the estate road adjacent to Plot 22 and the visitor parking spaces. This is to be externally faced in stone, with an artificial stone slate roof.

### **History of Negotiations**

Substation redesign requested by case officer.

14-Feb-2025: Amended substation plans received.

### **Relevant Planning History**

2023/92761 Discharge of conditions 2 (materials) and 3 (landscape) of previous permission 2021/92788 for variation condition 7 (plans) on previous permission 2009/92557 for reserved matters application for residential development for 30 dwellings. Approved.

2021/92788 for the variation condition 7 (plans) on previous permission 2009/92557 – Granted.

2020/90779 - Non-material amendment to previous permission 2009/92557 for Reserved Matters application for residential development for 30 dwellings with associated parking (Outline application 2007/60/92595/W3) – Granted.

2019/90344 - Certificate of lawfulness to confirm commencement of development approved under outline planning permission ref: 2007/92595 pursuant to reserved matters approval ref: 2009/92557 for the erection of 30no. dwellings within the 2 year time limit given in condition 4 – Granted.

2012/91063 – Discharge of condition 21 on previous permission 2007/92595 – Granted

2009/92557 – Reserved Matters application for residential development for 30 dwellings with associated parking – Granted

2007/92595 – Outline Application for Residential Development – Granted (Section 106 agreement dated 03/03/2016)

### **Representations**

The application was advertised by a site notice and in the press. These steps were essential to fulfil the LPAs statutory obligations as the proposal is Major development and also potentially affects the setting of a Public Right of Way (PROW).

Neighbour notification letters were not sent. At the time of receipt of this application these were a standard requirement under the Kirklees

Development Management Charter (which has since been revised). It was standard practice to serve them only on properties that share a boundary with the application site, are directly across the road from it, or are otherwise close enough to be affected. In this instance, several residential properties share a boundary with the development site as indicated by the red line boundary (which includes the access track) or lie close to the main developable part of the site.

But since the proposal does not involve a change in the scale or quantum of development, only changes to house type and design which would have very limited visual impact outside the site boundary, it was considered that it would be disproportionate to individually notify neighbouring properties and that the site notice and press publicity would be sufficient.

Final publicity expired on 24-Jan-2025.

One representation was received. Comment:

- Seeks more clarity about how it would affect the PROW and would oppose if the PROW is to be obstructed by the development.

### **Consultation Responses**

No consultations were deemed necessary.

### **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 proposed variations have potential implications for the following policies:

- **LP7** – Efficient and effective use of land and buildings
- **LP11** – Housing mix and affordable housing
- **LP21** – Highways and access
- **LP24** – Design
- **LP30** – Biodiversity and Geodiversity
- **LP33** – Trees

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)

National Policies and Guidance National planning policy and guidance is set out in National Policy Statements, primarily the updated National Planning

Policy Framework (NPPF), published 20th July 2021, and 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 12 – Achieving well-designed places

## **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, 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 in this case is 2021/92788 (itself a S73 permission). The grant of a lawful development certificate 2019/90344 has confirmed that the said permission has been lawfully commenced and remains capable of implementation.

However, 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 local context, it is considered there have been no changes in the environment (including built and natural) which would impact on the assessment of the application. No policy changes, either local or national, have come into force which would have material implications for the proposal.

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

Finally, paragraph 140 of the NPPF states that local planning authorities should also seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme (for example through changes to approved details such as the materials used)

### Variation of Condition 1 (to be built in accordance with approved plans)

#### *Impact upon the Green Belt*

The application site lies with the Green Belt as allocated on the Kirklees Local Plan (2019). The principle of residential development on the site has already

been established by outline permission 2007/92595 and reserved matters permission 2009/92557, the latter of which this application specifically relates. The proposed variation is not considered material from the point of view of Green Belt policy.

The number of units forming part of the development would be unchanged. The combined built footprint would even be slightly reduced as only Plot 22 would have an attached garage, whereas before both would have done. The substation would be located centrally within the site, fully surrounded by larger dwellings, and its built volume would be a nominal increase. There would be no additional incursion into undeveloped or greenfield land. Therefore, no material harm to the Green Belt would arise through this variation to the already approved scheme.

### *Housing mix and balance*

In the housing market sub-area designated as Kirklees Rural West, the breakdown of house types by number of bedroom should normally fall within the following parameters:

- 1-2 bedroom: 30-60%
- 3 bedroom: 25-45%
- 4+ bedroom: 10-30%

Under the original permission, 2021/92788, the mix provided would have been:

- 1-2 bedroom: 20%
- 3 bedroom: 20%
- 4+ bedroom: 60%

Under the amendment now proposed, the mix would be:

- 1-2 bedroom: 20%
- 3 bedroom: 23%
- 4+ bedroom: 57%

The proposal would mean the loss of one 4-bedroom house, to be replaced with a 3-bedroom house. At the time when the original permission was granted, the Housing Mix and Affordable Housing SPD had not been enacted and any guidance on the mix of housing types would have been informal only. The swapping of house types would mean the percentage of three-bedroom units would be 23%. This is just below the 25% lower threshold recommended in the SPD for this housing market sub-area, but is, in terms of the SPD's aims, an improvement. The change therefore does not diminish the quality of the development.

The proposal remains an effective and efficient use of the housing allocation, as required by LP7 and LP11.

### *Urban design and visual amenity*

The layout of the development will remain substantially unchanged and it is considered that the placement of the two units, Plots 21 and 22, within the site, with respect to other dwellings and the estate road, would not be significantly different in terms of its visual impact and how it would fit in with the overall design of the estate.

Neither of the two new units would have a greater overall height than those previously approved and they would not be prominent when viewed from vantage points outside the site.

The loss of the external chimney stacks to plots 9-14 represents only a minor simplification to their design. It is on balance considered an improvement since they would better reflect local vernacular domestic architecture.

The addition of the substation might appear to represent a small loss of public landscaping, but the boundary between the public landscaped area and the curtilage of plot 22 is being pushed about a metre further west to compensate, so the overall amount of landscaping is not materially changed. No public open space would be lost as a result of changes to layout.

The substation will be 2.5m high to the eaves and with a double pitched roof at 30 degrees. It would be built of tumbled coursed stone and artificial stone slate. It is considered whilst it does not enhance the development, in terms of scale, design, facing materials and roof style it would harmonise with the rest of the development and is therefore an acceptable, and in this case, necessary addition.

The proposed dwellings accord with the nationally described space standards and would provide suitable outdoor amenity space also. Therefore, the development accords with Local Plan policy LP24, Chapter 12 of the NPPF and the relevant supplementary planning documents with regard to residential amenity.

### Highway issues

Means of access, road layout and junction visibility would all be unaffected.

Plot 21 would have two external parking spaces, which is adequate for a 3bed unit, Plot 22 would have three parking spaces overall (one in the form of an internal garage) which is appropriate for a four-bedroom house. The proposal as modified is therefore considered to accord with the aims of LP21-22.

### Conditions

As this is an application under S73 of TCPA 1990 it would, in effect, be a new permission, or more properly here a new approval of reserved matters, with the outline staying intact in any event.

Planning practice guidance (The Use of Conditions) confirms that the original planning permission would continue to exist whatever the outcome of the application under section 73 and that the conditions imposed on the original permission (being again the approval of reserved matters) still have effect unless they have been discharged.

The PPG also confirms that for the purpose of clarity, decision notices for the grant of planning permission under section 73 should set out the conditions imposed on the new permission, and restate the conditions imposed on earlier permissions that continue to have effect (Paragraph: 040 Reference ID: 21a-040-20190723).

The remaining conditions from 2021/92788 for the variation condition 7 on the Reserved Matters approval should therefore, where relevant, be repeated barring any that have been previously discharged, or no longer applicable given the stage of development the site is at.

Two of the conditions that were worded in such a way as require further details to be submitted and approved (materials and landscaping). Details were approved under Discharge of Condition application 2023/92761. These two conditions can therefore be reworded as prescriptive conditions. The landscaping scheme did not however contain a timescale for implementation so for the avoidance of doubt the condition will state that the landscaping scheme shall be implemented in the first planting season following the substantial completion of development.

### S106 Obligations

A s106 was not entered into for the original reserved matters application 2009/92557 (nor its subsequent variation 2021/92788).

A s106 Planning Obligation was entered into at the time of the Outline permission and is therefore still enforceable regardless of any changes to the reserved matters. All obligations therein are triggered or otherwise restricted by occupation of residential dwellings and therefore remain outstanding, to be fully complied with once the relevant triggers/ restrictions are reached.

### Representations

One representation was received, the content of which is summarised here with officer's response.

- Comment: would oppose the application if the PROW is to be obstructed by the development.

**Response:** The original application layout made provision for the PROW to be maintained within the proposed road layout, which is unchanged. The functionality and safety of the PROW would therefore be unaffected.

### 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:** Grant variation of condition

**Report Dated:** 14/02/2025

**Decision Authorisation:** Delegated Powers  
**Application Number:** 2024/93328  
**Officer Recommendation:** Grant variation of condition

### **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 LP21, LP22, LP24, LP30 and LP33 of the Kirklees Local Plan, the aims of the National Planning Policy Framework and the Housebuilders Design Guide Supplementary Planning Documents.

2. The development shall be constructed of the materials shown on the approved materials schedule, reference 1629, approved under Discharge of Condition application 2023/92761.

**Reason:** In the interests of visual amenity and to accord with Policy LP24 of the Kirklees Local Plan, Chapter 12 of the National Planning Policy Framework and the Housebuilders Design Guide Supplementary Planning Document.

3. The landscaping scheme shown on 7241.01D and 7241.02D shall be implemented within the first sowing or planting season following the substantial completion of development. The planting shall be maintained for a period of five years from the completion of works. All specimens which die within this period shall be replaced.

**Reason:** In the interests of visual amenity and ecology, to accord with Policy LP24 and LP30 of the Kirklees Local Plan, Chapters 12 and 15 of the National Planning Policy Framework and the Housebuilders Design Guide Supplementary Planning Document.

4. 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 with or without modification) the garages hereby approved shall not be converted into habitable rooms and shall be retained for the garaging of private motor vehicles.

**Reason:** In the interests of highway safety, to accord with Policy LP21 and LP22 of the Kirklees Local Plan, Chapter 12 of the National Planning Policy Framework and the Housebuilders Design Guide and Highways Design Guide Supplementary Planning Document.

5. The areas to be used by vehicles and/or pedestrians shall be surfaced and drained prior to the first occupation of the dwellings unless otherwise agreed in writing by the Local Planning Authority.

**Reason:** In the interests of highway safety, to accord with Policy LP21 and LP22 of the Kirklees Local Plan, Chapter 12 of the National Planning Policy

Framework and the Housebuilders Design Guide and Highways Design Guide Supplementary Planning Document.

6. Where the internal estate roads within the proposed development (which for the avoidance of doubt shall not be taken to include the access road from Holmfirth Road to the development site) shall not be highways maintainable at the public expense, no dwelling shall be occupied until a management plan for the future maintenance of the said unadopted internal estate roads has been submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt, the management plan shall include the following details:

- A site plan detailing the roads included within the management plan.
- Details of responsibility for the upkeep of the roads.
- Details of maintenance and safety checks for the roads.
- Details of how repairs in the event of incidents/damage shall be managed and rectified.
- Details of how the street lighting shall be managed and maintained.

**Reason:** In the interests of highway safety by virtue of ensuring the internal estate roads continue to provide safe use as to accord with Policy LP21 and LP22 of the Kirklees Local Plan, Chapter 12 of the National Planning Policy Framework and the Housebuilders Design Guide and Highways Design Guide Supplementary Planning Document.

Plans and specifications table:

<b>Plan Type</b>	<b>Reference</b>	<b>Revision</b>	<b>Date Received</b>
Proposed Site / Block Layout	01_01	R	22/11/2024
House type A - 5 bedroom	02_01	A	09/07/2021
House type B - 5 bedroom	02_02	A	09/07/2021
House type C - 5 bedroom	02_03		09/07/2021
House type D - 4 bedroom	02_04	A	09/07/2021
House type D1 - 4 bedroom	02_05		09/07/2021
House type E - 2 bedroom	02_06	B	22/11/2024
House type F - 3 bedroom	02_07	A	22/11/2024
House type F1 - 4 bedroom	02_08	B	22/11/2024
Substation plans and elevations	09_01	B	14/02/2025
Materials schedule			22/11/2024

Landscaping scheme 1 of 2	7241.01	D	22/11/2024
Landscaping scheme 2 of 2	7241.02	D	22/11/2024
Proposed Site Sections	01_02	A	09/07/2021
Proposed Site Sections	01_03		09/07/2021
Transport Assessment	2145-01-SK04	B	09/05/2022
Flood Risk Assessment	2145/01 SK01		07/09/2021
General	No ref, no author (titled: Application For A Variation Of A Condition Former Royd Edge Dyeworks, Meltham)		09/07/2021
General	Appendix 1 - Decision Letter (2020/90779)		09/07/2021
General	FRA Addendum Rev1 Part 3 of 3		09/07/2021
Flood Risk Assessment	FRA Addendum Rev1 Part 2 of 3		09/07/2021
General	FRA Addendum Rev1 Part 1 of 3		09/07/2021
General	1629 Drawing No: 01_05		09/07/2021
General	1629 Drawing No: 01_04		09/07/2021

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 has, where possible, made a pre-application advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application. The case officer entered into negotiation with the applicant to seek an amended sub-station design in the interests of visual amenity.