

**KIRKLEES METROPOLITAN COUNCIL  
INVESTMENT & REGENERATION SERVICE**

**DEVELOPMENT MANAGEMENT**

**Town and Country Planning Act 1990 (as amended)**

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

Reference No:	<b>2024/44/93526/W</b>
Site Address:	adj, 18B, Cowlersley Lane, Cowlersley, Huddersfield, HD4 5TY
Description:	Discharge of details reserved by conditions 3 (facing materials), 7 (floor levels), 9 (walls and fences), 10 (risk assessment), 15 (land stability), 16 (noise), 18 (renewable energy) on previous permission 2023/90582 for erection of 2 detached dwellings
Recommending Officer:	Elenya Jackson

**DECISION – Discharge of Conditions – Split Decision**

**I hereby authorise the split decision 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: 12-Feb-2025**

## Officer Report

adj, 18B, Cowlersley Lane, Cowlersley, Huddersfield, HD4 5TY

**Discharge of details reserved by conditions 3 (facing materials), 7 (floor levels), 9 (walls and fences), 10 (risk assessment), 15 (land stability), 16 (noise), 18 (renewable energy) on previous permission 2023/90582 for erection of 2 detached dwellings**

### Condition 3

Development above slab/foundation level shall not commence until details of all external facing and roofing materials have been submitted to and left on site for the inspection and written approval of the Local Planning Authority. The development shall thereafter be undertaken in accordance with the details so approved.

**Reason:** In the interests of visual amenity and to accord with Policy LP24(a) of the Kirklees Local Plan, Principle 13 of the Housebuilders' Design Guide SPD, and policy within Chapter 12 of the National Planning Policy Framework.

### Condition 7

Development shall not commence until a full scheme of existing and proposed floor levels and ground levels within the site, related to Ordnance Datum or an alternative identifiable datum have been submitted to and approved in writing by the Local Planning Authority. The development shall not be brought into use until the approved scheme has been completed which shall be retained thereafter.

**Reason:** To ensure that the development harmonises with its surroundings and to accord with policy LP24(a) of the Kirklees Local Plan. This information is required pre commencement to ensure development can be undertaken which has an acceptable visual impact in relation to final land levels and finished floor levels.

### Condition 9

Before either new dwelling is occupied or brought into use, full details of the design and height of new walls or fences to be erected or constructed at the site or plot boundaries shall be submitted to and approved in writing by the Local Planning Authority. The approved boundary treatments shall be erected or constructed before the dwelling to which they relate is first occupied or brought into use, and thereafter retained as such.

**Reason:** In the interests of visual amenity, so as not to detract from the amenities of adjacent properties by reason of loss of privacy, and to accord with Policy LP24(a&b) of the Kirklees Local Plan and Principle 6 of the Housebuilders' Design Guide SPD

### Condition 10

Groundworks shall not commence until actual or potential land contamination at the site has been investigated and a Preliminary Risk Assessment (Phase I Desk Study Report) by a suitably competent person has been 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 183 of the National Planning Policy Framework. This information is required pre-commencement so as to ensure that pollution can be properly investigated and appropriate remedial measures incorporated into the construction at an early stage.

#### Condition 15

Groundworks shall not commence until a report demonstrating that the works shown on the plan can be undertaken without endangering the stability of the cliff at the northern boundary of the site or any of the land that it supports has been submitted to, and approved in writing by, the Local Planning Authority. The report shall be signed off by a competent person and include details in relation to any additional works required to safeguard stability, specific details of such works shall be provided within the said report, including plans, cross-sectional information and structural calculations. Development shall proceed only in full accordance with the recommendations in the approved report.

**Reason:** To ensure that the development does not contribute to land instability endangering the safety of future residents or those of neighbouring properties and to accord with the aims of Policy LP53 of the Kirklees Local Plan and paragraphs 174 and 183 of the National Planning Policy Framework. This information is required pre-commencement to ensure that groundworks can be undertaken safely and that the ground can safely take the additional loading from the two dwellings.

#### Condition 16

Before construction work commences, a report specifying the measures to be taken to protect the development from noise from all significant noise sources that are likely to affect the proposed development from nearby commercial premises shall be submitted to and approved in writing by the Local Planning Authority. The report shall:

- a) Determine the existing noise climate
- b) Predict the noise climate in gardens (daytime), bedrooms (night-time) and other habitable rooms of the development
- c) Detail the proposed attenuation/design necessary to protect the amenity of the occupants of the new residences (including ventilation if required).

All works specified in the approved report shall have been carried out in full before the dwelling to which they relate is first occupied and such works shall be thereafter retained.

**Reason:** To ensure that future occupants do not suffer loss of amenity arising from noise, and to accord with Policies LP24(b) and LP52 of the Kirklees Local Plan and policies within Chapter 15 of the National Planning Policy Framework. This information is required pre-commencement to ensure that suitable noise attenuation measures, where required, can be incorporated into the fabric of the development.

### Condition 18

Before work commences on the superstructure of the building, details shall be submitted to and approved in writing by the Local Planning Authority of on-site renewable energy generation or other measures to reduce carbon emissions associated with the hereby approved development. The approved measures shall be installed or incorporated within the development before it is first brought into use and thereafter retained as such.

**Reason:** To ensure that the development contributes to the reduction of carbon emissions in order to facilitate the Council's net zero emissions target and to accord with the policies within Chapter 14 of the National Planning Policy Framework – Planning for climate change, flooding and coastal change, Policy LP24 of the Kirklees Local Plan and Principle 18 of the Housebuilders Design Guide SPD

### **Assessment:**

#### Condition 3

The following has been submitted:

- N/A

The condition requires details to be submitted to and left on site for inspection. No details have been provided to support the application and therefore the condition cannot be discharged at this time.

#### Condition 7

The following has been submitted:

- Sheet 1 of 1 site levels

The plans provided indicate that the site would increase in topography from north to west and would be marginally higher than Cowersley lane.

Within the officer report for the previous permission, it was commented that existing and proposed site/floor levels should be provided to ensure the proposal would accord with LP24 of the Kirklees Local Plan and for the avoidance of doubt, so that it will be clear how proposed levels relate to the existing topography.

It is considered that, the plans show the existing site levels but not the proposed with the dwellings in situ; therefore, the plan does not satisfy the full requirement of condition 7 and it cannot be discharged.

### Condition 9

The following has been submitted:

- Proposed site plan

The plans submitted are matching to those submitted at the application stage and refer only to the 0.9m boundary wall to the principal elevation of the dwellings.

Within the officer report, a rear boundary fence is referred to as further justification for limiting overlooking and stated that conditions would define this boundary. The report makes the following comments 'The ground floor rear windows might allow some overlooking at the land at the foot of the drop that is in use as gardens and associated land serving these properties (this would depend partly on the height of the boundary wall or fence, which can be conditioned).'

However, this was followed by 'It is considered on balance that a refusal of the current scheme on the basis of overlooking of gardens or other associated land would not be justified in policy terms, especially following the appeal decision which did not highlight mutual overlooking as a concern.'

It is therefore considered that a rear boundary fence does not have to be provided on site and that no 'new' boundary treatments are provided as stipulated by condition 9. Therefore, the details provided are considered acceptable for the purpose of condition 9.

### Condition 10

The following has been submitted:

- Phase 2 Geoenvironmental report

KC Environmental Health have been consulted on the application as the condition required the submission of a phase one desk study to identify actual or potential land contamination at the site.

Their comments are as follows:

'Condition 10 requires the submission of a Preliminary Risk Assessment (Phase I Desk Study Report) by a suitably competent person. The report should identify actual or potential land contamination at the site and inform if intrusive investigation is necessary.

In support of the application a Phase 2 Geo-Environmental Report, ref: C4351/24/E/6664, dated August 2024. The report informs a Phase 1 Desk Study has been undertaken by Rogers Geotechnical Services (RGS) and the results were presented in report number C4351/24/E/6662, dated June 2024.

In order to discharge condition 10, we require this report to be submitted. In any future application for the discharge of condition 11, we strongly recommend that all necessary monitoring has been fully completed before submission of the Intrusive site investigation. Due to the absence of the necessary report, we are unable to recommend the discharge of this condition'.

Therefore, the details provided are not considered sufficient for the purpose of condition 10 and cannot be discharged at this time.

### Condition 15

The following has been submitted:

- Phase 2 Geoenvironmental report

Paragraph 10.1 of the document refers to site stability.

This states that the plans have not yet been linked to ordnance datum, but it is thought the proposal would be an excess of 1m away from the crest, provided that foundations are placed within the rock itself. Consequently, it is considered that the development itself shall not cause instability to the site itself once complete.

Notwithstanding this, care must be taken during the groundworks and construction phase to ensure that no machinery or plant is placed directly on the crest of the slope. As such, before any construction takes place, a visual barrier must be constructed circa 1m from the crest of the slope to prevent the loading of the crest itself. A daily watching brief should be undertaken to assess the cliff.

Should made ground or any weak zones be revealed in the excavation bases, they should be removed and replaced by suitably compacted granular soil or lean-mixed concrete. Should excavations be required to stand open for any length of time, it will be necessary to place a blinding layer of lean-mixed concrete over the sub-grade. The stability of the excavation faces cannot be guaranteed thus temporary support to the excavation faces may become necessary unless the foundations are constructed using trench-fill techniques. In this method the foundation trenches should be excavated, inspected and backfilled with concrete as a continuous operation. Under no circumstances should operatives be allowed to enter unsupported excavations.

Furthermore, the report states that: 'should made ground or any weak zones be revealed in the excavation bases, they should be removed and replaced by suitably compacted granular soil or lean-mixed concrete. Should excavations be required to stand open for any length of time, it will be necessary to place a blinding layer of lean-mixed concrete over the sub-grade. The stability of the excavation faces cannot be guaranteed thus temporary support to the

excavation faces may become necessary unless the foundations are constructed using trench-fill techniques. In this method the foundation trenches should be excavated, inspected and backfilled with concrete as a continuous operation. Under no circumstances should operatives be allowed to enter unsupported excavations’.

Based on the information provided, officers consider that the report is acceptable for the consideration of the Local Planning Authority. However, the applicant is reminded that, in accordance with paragraph 197 of the NPPF, where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.

#### Condition 16

The following has been submitted:

- Noise Assessment authored by RP Acoustics dated 30 October 2024 Ref CDIS/1315/24/382 V1.0

Officers from KC Environmental Health have been consulted on the application and consider the findings of the report acceptable for the purpose of condition 16; however, the condition cannot be fully discharged until the mitigation measures are implemented on site and retained for the lifetime of the development.

#### Condition 18

The following has been submitted:

- N/A

No details have been submitted.

#### **DECISION NOTICE TEXT**

The following has been submitted:

- N/A

The condition requires details to be submitted to and left on site for inspection. No details or material specifications have been provided to support the application and therefore the condition cannot be discharged at this time.

#### Condition 7

The following has been submitted:

- Sheet 1 of 1 site levels

It is considered that, the plans show the existing site levels but not the proposed with the dwellings in situ; therefore, the plan do not satisfy the full requirement of condition 7 and it cannot be discharged.

#### Condition 9

The following has been submitted:

- Proposed site plan

The details provided are considered acceptable for the purpose of condition 9.

#### Condition 10

The following has been submitted:

- Phase 2 Geoenvironmental report

No Phase 1 report has been provided as stipulated by condition 10.

Therefore, the details provided are not considered sufficient for the purpose of condition 10 and it cannot be discharged at this time.

#### Condition 15

The following has been submitted:

- Phase 2 Geoenvironmental report

Based on the information provided, officers consider that the report is acceptable for the consideration of the Local Planning Authority. However, the applicant is reminded that, in accordance with paragraph 197 of the NPPF, where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.

#### Condition 16

The following has been submitted:

- Noise Assessment authored by RP Acoustics dated 30 October 2024  
Ref CDIS/1315/24/382 V1.0

The findings of the report are considered acceptable for the purpose of condition 16; however, the condition cannot be fully discharged until the mitigation measures are implemented on site and retained for the lifetime of the development.

#### Condition 18

The following has been submitted:

- N/A

As no details have been provided, condition 18 cannot be discharged at this time.

As all conditions have not been satisfied as part of this application, a further application will be required to satisfy outstanding matters.