KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) – SECTION 96A

DELEGATED DECISION TO DETERMINE APPLICATIONS FOR NON-MATERIAL AMENDMENTS

Reference No:	**2025/NM/91252/E**
Site Address:	Land off, Westgate, Cleckheaton, BD19 5DR
Description:	Non material amendment to previous permission 2021/93567 for demolition of existing commercial buildings and erection of 180 dwellings with associated works
Recommending Officer:	Farzana Tabasum

DECISION – Non-material amendment – 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: 28-May-2025

Application: 2025/NMA/91252

Site: Land off, Westgate, Cleckheaton, BD19 5DR

Proposal: Non material amendment to previous permission 2021/93567 for demolition of existing commercial buildings and erection of 180 dwellings with associated works

Overview

The original consent was approved with the following condition:

> *3. The development shall be undertaken in accordance with the advice and directions (recommendations) contained in the Arboricultural Impact Assessment and Arboricultural Method Statement, reference 14572 Rev. 4.0 by Ecus Ltd. These shall be implemented and maintained throughout the construction phase and retained thereafter.*
> ***Reason**: To protect trees in the interests of visual amenity and to accord with the requirements of Policy LP33 of the Local Plan and advice within the National Planning Policy Framework.*

The non material amendment seeks to supersede the approved Arboricultural Impact Assessment and Method Statement Report with a new version.

The reason given for this is set out in the accompanying covering letter, and is on two grounds which can be summarised as:

Removal of T099 and T100: further engineering details have been produced in relation to site levels which require two trees along the western boundary to be removed. The difference in levels means a retaining wall is to be installed along the western boundary of the site which will impact upon the route protection areas of the trees making it impossible to retain them. T099 and T100 are both category C trees and are classified as being of low-quality.

Demolition of Industrial Units: Existing industrial units within the site have been demolished. As a result of this, the area of vegetation which directly abuts the industrial units can be freely accessed without obstruction and therefore has been surveyed (whereas previously it was not surveyable).

On the basis of the above, it is proposed that the approved plan titled 'Westgate, Cleckheaton – BS 5837: 2012 Arboricultural Report and Impact Assessment and Method Statement Rev: 6 (Date: 10/10/24)' is to be replaced by the proposed plan titled 'Westgate, Cleckheaton – BS 5837: 2012 Arboricultural Report and Impact Assessment and Method Statement Rev: 7 (Date: 25/04/2025)'. This would necessitate an amendment to condition 3, which currently reads:

This application will be assessed having regard to Section 96A of the Town & Country Planning Act 1990: '*In deciding whether a change is material, a Local Planning Authority must have regard to the effect of the change, together with*

previous changes made under this section, on the planning permission as originally granted'. To assist with this assessment, the LPA has published its 'Protocol for dealing with non-material amendments'.

This application seeks an amendment to a condition imposed on the original application. The Council's Protocol for dealing with non-material amendments references changes to conditions as being unlikely to be non-material. However, the Protocol makes it clear that it is guidance only, not formal rules. Each NMA application must be assessed against its own merits and all relevant circumstances considered. Section 96A of the Town and Country Planning Act 1990, which confers the power to make non-material changes to planning permissions, includes the following:

> *(1) A local planning authority in England may make a change to any planning permission relating to land in their area if they are satisfied that the change is not material.*
>
> *(3) The power conferred by subsection (1) includes power—*
>
> *(a) to impose new conditions;*
> *(b) to remove or alter existing conditions*

Therefore, subject to the change in condition not being material, in principle it is possible to change a condition via an NMA application.

Assessment

The two component parts of the NMA are assessed individually, then cumulatively:

Removal of T099 and T100

Discussions have been undertaken with the Councils' Arboricultural team, who agree with the finding of the updated reports, which show that the trees identified as T099 and T100 are both category C trees and are classified as being of low-quality, therefore the implications of removing these trees, for a retaining wall to be installed to contain the difference in levels, is considered limited.

The proposal is subject to a separate condition requiring a detailed landscaping strategy (condition 26). Opportuntieis for commensurate re-planting, to offset the additional two trees to be removed, may be explored as part of the discharge of that condition.

Demolition of Industrial Units

The demolition has allowed for a more accurate survey of the trees to be identified. Within this, several category U trees have been identified and are proposed to be removed. The more accurate details is not a cause for concern, and the removal of category U trees is not unusual.

In considering the cumulative impacts of the above, the council's NMA guidance notes identify the following five tests:

> 1. The proposed changes to the permitted scheme must not result in the development falling outside the description of the development as set out on the decision notice.

The description of development would remain the same.

> 2. The proposed changes must not contravene any condition attached to the original permission.

The proposal would not contravene any planning conditions attached to the original decision.

> 3. The proposed changes should not require a further restriction to make them acceptable.

No further restrictions would be required.

> 4. The proposed change would not result in any material increase in height, scale, width or depth of a building.

The proposals are in relation to the removal of two trees therefore would not result in an changes to buildings.

> 5. The proposed changes would have likely to have been approved had it formed part of the original application

It is likely that the proposed changes would have been approved had they formed part of the original application.

Conclusion

Officers do not consider the proposed alterations to be material in nature. The desired amendment is not considered to affect other material planning considerations. No new conditions are considered necessary to make the proposed amendment acceptable, nor would any consultee or representative involved in the initial applicant be unduly prejudiced by the change.

The development has been subject to previous non material amendments under application reference 2024/93247. Having regard to the previous changes made under this section, on the planning permission as originally granted, together with the now proposed non material amendment, there are no concerns regarding cumulative impact from the amendments as a whole, which are considered insignificant not considered to warrant material amendments to the original approved scheme.

On the basis of the above, while considering the council's Protocol for dealing with non-material amendments, giving weight to the purpose of NMA applications, the proposed change would be acceptable under the non-material amendment procedure. Furthermore, notwithstanding the approved plans, condition 26 of the 2021/93567 permission remains to be discharged, which requires full details of landscape works/proposals. The submitted covering letter states, this new information will be accompanied for details under condition 26, it is advised that the landscape proposals account for the loss of these further trees under this non material amendment.

In light of the above assessment, condition 3 would need to be updated to reflect the new AIA / AMS document, from:

> *3. The development shall be undertaken in accordance with the advice and directions (recommendations) contained in the Arboricultural Impact Assessment and Arboricultural Method Statement, reference 14572 Rev. 6.0 by Ecus Ltd. These shall be implemented and maintained throughout the construction phase and retained thereafter.*
> ***Reason**: To protect trees in the interests of visual amenity and to accord with the requirements of Policy LP33 of the Local Plan and advice within the National Planning Policy Framework*

To:

> 3. The development shall be undertaken in accordance with the advice and directions (recommendations) contained in the 'Westgate, Cleckheaton – BS 5837: 2012 Arboricultural Report and Impact Assessment and Method Statement Rev: 7 (Date: 25/04/2025)' by Cura Terrae. These shall be implemented and maintained throughout the construction phase and retained thereafter.
> **Reason:** To protect trees in the interests of visual amenity and to accord with the requirements of Policy LP33 of the Local Plan and advice within the National Planning Policy Framework

Recommendation: Approve NMA

Report Dated: 23/05/2025

Proposed Letter Text

The non material amendment seeks to replace the Arboricultural Impact Assessment and Method Statement Report previously approved under the 2024/93247 non material amendment.

An Arboricultural Report, Impact Assessment and Method Statement Rev: 7 (Date: 25/04/2025)' by Cura Terrae is received and considered to be appropriate.

To account for the non-material amendment(s) hereby approved, condition 3 is hereby updated to:

3. The development shall be undertaken in accordance with the advice and directions (recommendations) contained in the 'Westgate, Cleckheaton – BS 5837: 2012 Arboricultural Report and Impact Assessment and Method Statement Rev: 7 (Date: 25/04/2025)' by Cura Terrae. These shall be implemented and maintained throughout the construction phase and retained thereafter.
Reason: To protect trees in the interests of visual amenity and to accord with the requirements of Policy LP33 of the Local Plan and advice within the National Planning Policy Framework

You are reminded that this Non-Material Amendment decision notice sits alongside and should be read with the original application's decision notice. The new details are subject to the originally imposed conditions.

Furthermore, notwithstanding the approved plans, condition 26 of the 2021/93567 permission remains to be discharged, which requires full details of landscape works/proposals. The accompanying covering letter states, this new information will accompany details to be submitted under condition 26. It is advised that any landscape details to be submitted under condition 26, account for the further loss of these trees under this non material amendment and also the technical details of the newly approved grasscrete track, including the management and maintenance arrangements previously considered as a non material amendment under application 2024/93247.