

**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:	2025/70/92034/W
Site Address:	land off, Rafborn Avenue, Salendine Nook, Huddersfield, HD3 3UJ
Description:	Variation of condition 5 (Permitted Development Rights) on previous permission 2007/91505 for reserved matters application for erection of 4 detached dwellings with integral garages
Recommending Officer:	Nicole Helliwell

DECISION – APPROVE VARIATION OF CONDITION 5

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.

Sarah Longbottom

AUTHORISED OFFICER

Date: 12-Sep-2025

Officer Report

Reference No. 2025/70/92034/E

Site Address: Land off, Rafborn Avenue, Salendine Nook, Huddersfield, HD3 3UJ

Proposal: Variation of condition 5 (Permitted Development Rights) on previous permission 2007/91505 for reserved matters application for erection of 4 detached dwellings with integral garages.

Site Description

The application relates to 17 Rafborn Avenue, a two-storey detached property located in Salendine Nook, Huddersfield. . The site is unallocated on the Kirklees Local Plan and is situated within a predominantly residential area. The surrounding dwellings are highly varied in age, size, style, and materials. The site is not within a conservation area, nor are there any listed buildings or public right of ways within close proximity

Description of Proposal

The applicant seeks consent to vary condition 5 (Permitted Development Rights) of previous permission 2007/91505 for the erection of 4 detached dwellings with integral garages, which was granted on 7th June 2007.

Condition 5 of permission 2007/91505 relates to permitted development rights and reads as follows:

5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order with or without modification) no buildings or extensions shall be erected in the area within the red line on the approved plan without the prior written approval of the Local Planning Authority.

This Section 73 application seeks to vary condition 5 which relates to permitted development rights. The variation sought is in relation to Plot 4 (17 Rafborn Avenue) only and is not for every dwelling under the remit of the original condition. The submitted planning statement outlines the following:

- Since the original permission was granted, the planning context has evolved. The Kirklees Unitary Development Plan (UDP) has been superseded by the adopted Kirklees Local Plan, and the GPDO itself has been revised and consolidated through the 2015 Order (as amended).
- The dwelling occupies a generous and well-defined curtilage and there is no realistic prospect of “close overlooking” from minor domestic development.

- Varying the condition to exclude No. 17 from its scope would not set a precedent for unrestricted development but would merely restore rights enjoyed by most homeowners.
- The proposed variation would not weaken local design control but would allow proportionate and low-impact domestic development in a location where the original justification for restriction no longer applies.
- The proposal does not undermine the Council's ability to manage development on the wider site, nor does it introduce any risk of adverse impacts.

Relevant Planning History

- **2025/91552:** Erection of wooden outbuilding. – Withdrawn
- **2025/90916:** Certificate of lawfulness for proposed wooden outbuilding. [Planning application details | Kirklees Council](#) – Certificate of Lawful Opps Refused
- **2024/91099:** Work to TPO(s) 23a/02. [Planning application details | Kirklees Council](#) – Granted
- **2023/92431:** Erection of single storey rear extension and alterations. [Planning application details | Kirklees Council](#) – Conditional Full Permission
- **2021/92085:** Work to TPO 23a/02. [Planning application details | Kirklees Council](#) – Granted
- **2021/90407:** Work to tree TPO 23a/02. [Planning application details | Kirklees Council](#) – Part Granted/Part Refused
- **2007/91505:** Reserved matters application for erection of 4 no. Detached dwellings with integral garages. [Planning application details | Kirklees Council](#) – Approval of Reserved Matters
- **2007/90351:** Reserved matters application for erection of 4 detached dwellings with integral garages. [Planning application details | Kirklees Council](#) – Withdrawn
- **2004/91031:** Outline application for residential development. [Planning application details | Kirklees Council](#) – Section 106 Outline Permission

Representations

The application was publicised by site notice, which expired on 2nd September 2025. As a result of the above publicity, no representations have been received.

Consultation Responses

Not Applicable.

Policy

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 UNALLOCATED on the Kirklees Local Plan Proposals Map. The most relevant policies for consideration in this case are:

Kirklees Local Plan Policies

- **LP 1** - Achieving Sustainable Development
- **LP 2** - Place Shaping
- **LP 21** - Highways and Access
- **LP 22** - Parking
- **LP 24** - Design
- **LP 30** - Biodiversity and Geodiversity
- **LP 52** - Protection and Improvement of Environmental Quality

In this case, the following SPDs are applicable:

- Highways Design Guide SPD (adopted 4th November 2019)
- Housebuilders Design Guide (2021)
- National Design Guide
- Planning Applications Climate Change Guidance (2021)

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, 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 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 15** - Conserving and Enhancing the Natural Environment

Assessment

1. Principle of development

Section 73 of the Town and Country Planning Act 1990 allows for the variation of a condition of a previous permission.

The principle of development for the erection of 4 detached dwellings with integral garages was established under permission 2007/91505. As such, it is considered that the principle of the development remains established by way of this permission. This assessment will deal with the merits of the proposed variations only.

2. Impact on Visual Amenity

General design considerations are set out in Policy LP24 of the Kirklees Local Plan and Chapter 12 of the NPPF, which seek to secure good design in all developments by ensuring that they respect and enhance the character of the townscape and protect amenity. Policy LP24 of the Kirklees Local Plan states that *'the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape.'*

The application seeks to vary condition 5 which relates to permitted development rights for 17 Rafborn Avenue. No plans have been submitted to show how the site will be developed. However, due to the generous size of the plot, it is considered that the curtilage could support extensions/outbuildings without them appearing incongruous or amounting to overdevelopment. Furthermore, due to the siting of the dwelling at the end of the cul-de-sac, any development would have limited visibility from public vantage points. On this basis, the proposed variation would have no impact with regard to visual amenity in accordance with the aims of Policy LP24 of the Kirklees Local Plan and the aims of Chapter 12 of the NPPF.

3. Impact on Residential Amenity

Section B and C of LP24 states that alterations to existing buildings should: "...maintain appropriate distances between buildings' and '...minimise impact on residential amenity of future and neighbouring occupiers". Further to this, Paragraph 135 of the National Planning Policy Framework states that planning decisions should ensure that developments have a high standard of amenity for existing and future users.

No plans have been submitted to show how the site will be developed. However, the submitted block plan demonstrates that no.17 Rafborn Avenue occupies a spacious plot approximately 22-24m from the residential properties to the rear along Laund Road, approx. 23.3m from 159 Laund Road and approx. 16.2m from 15 Rafborn Avenue. Given that the separation distances are sufficient, it is considered that the proposed variation would not result in any significant harm to the neighbour's residential amenity.

With regard to the adjacent residential property at no.19 Rafborn Avenue, the host dwelling is sited approx. 1.2m from the shared boundary. As the host

property has been extended under planning permission 2023/92431 (single storey rear extension), it is considered that the proposed variation would not result in any additional harm to the residential amenity of the neighbouring occupants.

As such, the proposed variation would comply with Policy LP24 of the Kirklees Local Plan (b) in terms of the amenities of neighbouring properties and Paragraph 135 (f) of the National Planning Policy Framework.

4. Impact on Highway Safety

Local Plan Policies LP21 and LP22 of the Kirklees Local Plan are relevant and seek to ensure that proposals do not have a detrimental impact on highway safety and provide sufficient parking. Furthermore, Paragraph 116 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Given the nature of the variation proposed, no alterations would occur to the access and parking arrangements of the approved scheme. Therefore, the impact on highway safety is still considered acceptable and would be unchanged since the previously issued decision.

Given the above, Officers consider that the variation would not cause detrimental harm to the safe and efficient operation of the highway network in accordance with Policies LP21 and LP22 of the Kirklees Local Plan, Chapter 9 of the National Planning Policy Framework, and advice contained within the Kirklees Highways Design Guide SPD.

5. Other Matters

With regard to other matters that were assessed as part of the previous planning permission, the proposal is unchanged in relation to these aspects and any conditions imposed in regard to these matters to make the development acceptable will be repeated as part of this application.

Conditions Review

As the application is a Section 73 application to vary and remove conditions, it is necessary to re-impose all conditions which remain relevant. The following conditions relating to the original permission shall be reworded:

- 1. Approved plans (The plans and specification table will be amended to reflect the plans approved under this Section 73 application)
- 4. Use of Garage (This condition will be amended to reflect changes to policy)

- 5. Permitted Development Rights (This condition will be amended to reflect the changes made under this Section 73 application)

The following conditions relating to the original permission are no longer relevant and shall be removed:

- 2. Facing & Roofing Materials
- 3. Garage, Parking Spaces & Turning Areas
- 6. Protective Fencing
- 7. Landscaping Treatment
- 8. Planting, Seeding & Tree Management Works
- 9. Boundary Treatment Details

6. Representations

No representations were received following the statutory publicity.

7. Negotiations

No amendments were sought or received during the course of the application.

8. Conclusion

This proposal is a Section 73 application to vary condition 5 (permitted development rights). In determining a S73, the Local Planning Authority must only consider the 'disputed' condition that is the subject of the application – it is not a complete re-consideration of the application. Therefore, it is a consideration of Condition 5 only. As detailed within the report, given the lack of harm in terms of visual and residential amenity and highway safety, the variation is considered to be acceptable.

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 the relevant policies in the development plan and other material considerations. The proposal would remain in accordance with the development plan and there are no material considerations to indicate otherwise. The development would therefore constitute sustainable development and it is recommended for approval.

Recommendation: Approve

Decision Authorisation: Delegated Powers

Application Number: 2025/92034

Officer Recommendation: Grant Variation of Condition 5

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 LP1, LP2, LP21, LP22, LP24, LP30, and LP52 of the Kirklees Local Plan, and the aims of the National Planning Policy Framework.

2. The garage(s) shall not be used for any purpose other than the parking of vehicles.

Reason: In the interests of the free and safe use of the highway in accordance with Policy LP21 and LP22 of the Kirklees Local Plan and the aims of the National Planning Policy Framework.

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that Order with or without modification) no buildings or extensions shall be erected in the area within the red line on the approved plan without the prior written approval of the Local Planning Authority, with the exception of development within the curtilage of 17 Rafborn Avenue, Salendine Nook, Huddersfield, HD3 3UJ (Plot 4 on drawing ref: 06-D29-04E of the original approval ref 2007/91505).

Reason: To ensure that unsatisfactory extensions do not result in close overlooking of adjoining property in accordance with Policy LP24 of the Kirklees Local Plan and the National Planning Policy Framework.

Plans and specifications schedule: -

Plan Type	Reference	Revision	Date Received
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Plans and details pursuant to 2007/91505:			
Location Plan	-	-	03/04/2007
Plot 1 - Plans & Elevations	06/D29/05	D	03/04/2007
Plots 2 & 3 - Plans & Elevations	06/D29/03	D	03/04/2007
Plot 4 - Plans & Elevations	06/D29/ 06	B	03/04/2007
Site Sections	06-D29-07A	-	03/04/2007
Plans and details pursuant to 2025/92034:			
Site Layout	06-D29-04E	-	18/07/2025
Planning Statement	-	-	18/07/2025

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 2024 and otherwise actively engaged with the applicant in dealing with the application. In this case, the design of the original scheme has been found acceptable. No further amendments or details were sought thereafter.

Report Dated: 11/09/2025