

**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:	2025/70/93297/W
Site Address:	Land Off, Burn Road, Birchencliffe, Huddersfield, HD3 3BT
Description:	Variation of condition 3 (highways structures) on previous permission 2021/94719 for reserved matters application (for layout, appearance and scale) pursuant to outline permission 2018/91838 for erection of a residential development formed of 25 dwellings
Recommending Officer:	William Simcock

DECISION – S73 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: 04-Feb-2026

Officer report

Application: 2025/93297

Site: Land Off, Burn Road, Birchencliffe, Huddersfield, HD3 3BT

Proposal: Variation of condition 3 (highways structures) on previous permission 2021/94719 for reserved matters application (for layout, appearance and scale) pursuant to outline permission 2018/91838 for erection of a residential development formed of 25 dwellings

Site description

The application site is an overgrown field that lies on the western side of Burn Road, Birchencliffe. The site slopes downwards from the northern and southern boundaries where it then forms a watercourse ditch that crosses the site from west to east and becomes culverted towards the east as it passes beneath Burn Road.

There are two fields to the north, within the same Local Plan allocation (HS35) that are subject to 'live' reserved matters planning permissions. Recent residential developments surround the site to the north-east and south-east (east of Burn Road) and there is further recent residential development north of Yew Tree Road, all of which were brought forward under the same Local Plan allocation. Further information in respect of all applications within the allocated site (HS35) can be found in section 4 below.

A short distance west of the site is situated a Co-operative Petrol Station and Convenience Store accessed from Halifax Road and separated by a belt of deciduous woodland.

Description of Proposal

The proposal seeks to vary condition (3). The current wording of condition (3) is:

3. a) No development shall commence until the following highway structural details are submitted to and approved by the Local Planning Authority:

i) a full structural dilapidation survey of the existing retaining wall on Burn Road along the site boundary. The survey shall be undertaken by a suitably qualified and experienced structural engineer;

i) a full structural assessment of the existing Yorkshire Water sewer located within the proposed highway footprint and/or influence zone of highway loading (the purpose of which is to determine the sewer's structural adequacy to support highway loading in connection with the details required under part a) iii), iv) and v) of this condition);

ii) a scheme detailing the proposed design and construction details for the new culvert structure/s (including any wing walls) which shall carry the new access road over the un-named watercourse in the centre of the site;

iii) a design scheme for all new retaining walls adjacent to the existing and proposed adoptable highways including any modifications to the existing highway retaining wall abutting Burn Road to form a new access road;

iv) a scheme including cross-sectional information, locations, and proposed design and construction details for all new oversize pre-cast concrete manholes with internal diameter of >0.90m, and their cover slabs located within the proposed highway footprint or influence zone of highway loading.

b) The approved details in part a) iii), iv) and iv) of this condition shall be implemented prior to the commencement of any substructure or foundation works to form dwellinghouses on the site. The implemented works shall be retained thereafter.

b) Pursuant to part a) i) of this condition and prior to any dwellinghouses being occupied for habitation, the following highway structural details shall be submitted to, reviewed and approved by the Local Planning Authority:

v) a post-development structural dilapidation survey of the retaining wall on Burn Road, undertaken by a suitably qualified and experienced structural engineer, which identifies any defects arising in the highway retaining walls due to the works or deliveries associated with the proposed development, as well as the remediation works. Once approved, the defects shall be made good in accordance with the approved remediation works.

Reason: *To ensure that any new, modified or dilapidated retaining structures do not compromise the stability of the highway in accordance with the requirements of Policies LP21 and LP24 of the Kirklees Local Plan. This pre-commencement condition is necessary to ensure that load-bearing structures are designed to a satisfactory standard prior to their construction which could otherwise be unsafe and elicit abortive works/demolition should the structures be inadequately designed or constructed.*

It should be noted that the sub-clauses in part (a) were incorrectly numbered (due to an IT clerical error) and would more appropriately have been numbered (i) to (v), so that the second clause would be (ii), and so forth.

The applicant's reason for seeking a variation is that the current wording of the condition as a blanket pre-commencement condition will make it difficult for the developer to lawfully commence within the timescale mandated by the original permission, as the majority of the requirements cannot be discharged until other related agreements are in place, such as finalising an Agreement In Principle for some of the required works. The planning permission lapses 07/02/2026. Obtaining the AIPs is expected to be a lengthy process, as will the process of seeking the necessary consent from Yorkshire Water for works over, or in the vicinity of the sewer, and the developer has calculated that at

this stage it will not be possible to complete, submit, and obtain sign-off of these non-planning consents before the permission lapses.

The applicant proposes that the wording of condition 3 is amended, not to change the level or scope of information required, but to adjust the scope of the matters for which approval must be obtained pre-commencement. The aim is to ensure that works pursuant to the permission can commence and thereby prevent the planning permission from lapsing.

The applicant therefore proposes the following wording:

3. Full highway structural details are to be submitted to and approved by the Local Planning Authority prior to the commencement of any works relating to that aspect of development, as follows:

a) Prior to the commencement of any works relating to the new access road, the existing highway of Burn Road, and any existing or proposed retaining structures that provide support to (or are within the zone of influence of) said highways, the following information shall be submitted to and approved by the Local Planning Authority:

- i) A full structural dilapidation survey of the existing retaining structures, undertaken by a suitably qualified and experienced structural engineer;*
- i) A design scheme for all new and/or amended retaining structures adjacent to the existing and proposed adoptable highways, including any modifications to the existing highway retaining wall abutting Burn Road;*
- ii) Details to provide confirmation where proposed retaining structures or re-graded land do not provide any adverse loading to the highway.*

b) Prior to the commencement of any works relating to the new access road and new foul/surface water drainage installations, the following information shall be submitted to and approved by the Local Planning Authority:

i) A full structural assessment of the existing Yorkshire Water sewer located within the proposed highway footprint and/or influence zone of highway loading (the purpose of which is to determine the sewer's structural adequacy to support highway loading);

ii) A scheme detailing the proposed design and construction details for the new culvert structure/s (including any wing walls) which shall carry the new access road over the un-named watercourse in the centre of the site;

iii) A scheme including cross-sectional information, locations, and proposed design & construction details for all new oversize pre-cast concrete

manholes with internal diameter of >0.90m, and their cover slabs located within the proposed highway footprint or influence zone of highway loading.

c) Pursuant to parts a) & b) of this condition and prior to the occupation of any dwelling, the following information shall be submitted to and approved by the Local Planning Authority:

- i) A post-development structural dilapidation survey of any remaining retaining structures that provide support to (or are within the zone of influence of) the highway, undertaken by a suitably qualified and experienced structural engineer, which identifies any defects arising in said structures due to the works or deliveries associated with the proposed development, as well as details of the required remediation works. Once approved, the defects shall be made good in accordance with the approved remediation works.*

Reason: *To ensure that any new, modified or dilapidated retaining structures do not compromise the stability of the highway in accordance with the requirements of Policies LP21 and LP24 of the Kirklees Local Plan. This pre-commencement condition is necessary to ensure that load-bearing structures are designed to a satisfactory standard prior to their construction which could otherwise be unsafe and elicit abortive works/demolition should the structures be inadequately designed or constructed.*

Under the applicant's proposal, the commencement of the aspects affected by or dependant on the required highway structures information would still not be allowed to commence until the required information has been suitably prepared and approved.

In short, all of the individual requirements of the condition as originally worded would be incorporated into the new condition but the trigger for compliance would change. None of the requirements would have to be undertaken pre-commencement.

History of negotiations/amendments received

None were required.

Relevant Planning History

2018/91838, Outline application for erection of residential development – Approved

2021/94719, Reserved Matters application (for layout, appearance & scale) pursuant to outline permission 2018/91838 for erection of a residential development formed of 25 dwellings – Approved

2025/91681, Discharge of details reserved by conditions 3 (highway structural details), 5 (retaining wall materials), 12 (CEMP) on previous permission 2021/94719 for reserved matters application – Split decision

Note: This decision part approved condition 3, namely the details pursuant to 3a(i)¹ and 3a(i)²

2025/92269, Discharge of details reserved by conditions 7 (Phase II Intrusive Site Investigation Report), 8 (Remediation Strategy), 11 (WSI) on previous permission 2018/91838 for outline application for erection of residential development – Ongoing

2025/93520, Variation of conditions 6 (access and RSA) and 17 (highway layout access and RSA) on previous permission 2018/91838 for outline application – Ongoing

Representations

The application has been advertised via site notice and the press as being Major development.

Final publicity expired: 18-Jan-2026 (this is the standard 21 days from the publication of the press notice plus another two days allowance for public holidays, Boxing Day and New Year's Day).

As a result of the above publicity, no representations have been received.

Local ward councillors

The site is in Lindley ward.

The ward members were notified as part of this application process. No comments were received as a result.

Consultation Responses

- K.C. Highway Structures – Do not object to the condition trigger being amended to 'Prior to the commencement of any infrastructure works', as opposed to pre-commencement.
- K.C. Highways Development Management – No formal response received.

Note: No comments have been received by K.C. Highways Development Management, with additional time beyond 21 days given. Nevertheless, given the condition in question was imposed by K.C. Highway Structures, who do

¹ structural dilapidation survey of the existing retaining wall on Burn Road along the site boundary

² structural assessment of the existing Yorkshire Water sewer located within the proposed highway footprint and/or influence zone of highway loading

not object to the proposal, the lack of comments is not considered unacceptable.

Planning Policy Background

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 this part of Kirklees is the Local Plan (adopted 27/02/2019).

Kirklees Local Plan

The site falls within Housing Allocation HS35 within the Kirklees Local Plan. The relevant policies within the Kirklees Local Plan include:

- LP1 – Presumption in favour of sustainable development
- LP2 – Place shaping
- LP21 – Highways and access
- LP24 – Design
- LP27 – Flood risk
- LP28 – Drainage

The following are relevant Supplementary Planning Documents or other guidance documents published by, or with, Kirklees Council;

Supplementary Planning Documents

- Highway Design Guide SPD
- Housebuilders Design Guide SPD
- Open Space SPD

Guidance documents

- Biodiversity Net Gain Technical Advice Note (2021)
- Planning Applications Climate Change Guidance (2021)
- West Yorkshire Low Emissions Strategy and Air Quality and Emissions Technical Planning Guidance (2016)
- Waste Management Design Guide for New Developments (2020)
- Green Streets Principles for the West Yorkshire Transport Fund

National Policies and Guidance

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF), the Planning Practice Guidance Suite (PPGS) 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 5 – Delivering a sufficient supply of homes
- Chapter 8 – Promoting healthy and safe communities
- Chapter 11 – Making effective use of land
- Chapter 12 – Achieving well-designed places
- Chapter 14 – Planning for climate change, flood risk and coastal change.

Other relevant national guidance and documents are:

- MHCLG: National Design Guide (2021)
- DCLG: Technical housing standards – nationally described space standard (2015)

Assessment

Scope of this application

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, all previously imposed conditions should be retained if they remain relevant. Conversely, the time limit for development to commence cannot be extended through a S73.

The starting point for a S73 application is the previously granted planning permission, which must carry significant material weight. 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 that there have been no changes in the environment (including built and natural) which would materially impact on the assessment of the application.

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

Paragraph 140 of the NPPF advises that planning authorities should 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). As previously stated, no changes to the means of access, scale, layout, appearance or landscaping of the development are proposed. Provided that condition 3 as reworded still fulfils its intended purpose, and not giving rise to any safety implications for the existing highway network (to be assessed in the relevant sections below), the variation of condition would

have no impact upon planning objectives and therefore no effect on the quality of the approved development.

Variation of condition 3

Implications for structural stability of existing and proposed highways, highway retaining walls and public sewerage infrastructure

The purpose of condition 3, as set out on the original decision notice is as follows:

“To ensure that any new, modified or dilapidated retaining structures do not compromise the stability of the highway in accordance with the requirements of Policies LP21 and LP24 of the Kirklees Local Plan. This pre-commencement condition is necessary to ensure that load-bearing structures are designed to a satisfactory standard prior to their construction which could otherwise be unsafe and elicit abortive works/demolition should the structures be inadequately designed or constructed.”

In short, the principal and explicit purpose of the condition is to protect the stability of the (existing and proposed) highway, which could be endangered by new or modified retaining structures that have not been designed to the correct standard, or by the partial collapse of the existing public sewer, new culvert structures or manholes. Implicitly, the condition would also safeguard the stability of retaining walls that are adjacent to the highway and are maintainable at the expense of Kirklees Council. The purpose of the condition will still be fulfilled if, in any amended wording, it ensures that any works that are permitted to take place on site *before* the structural information is submitted and approved would not affect the stability of any existing or proposed adoptable roads retaining structures.

The developer’s intention is that before the submission and approval of the details set out in parts (a) and (b), they would commence work on plots 1 and 2³ (which are located near the north-eastern corner of the site) but not on the associated access road / estate road that would ultimately provide residential and servicing access to these properties when complete.

Officers accept that these operations would have no implications for the Yorkshire Water sewer or culverted watercourse since these both cross the middle part of the site from west to east, away from plots 1 and 2. The plans approved under application 2021/94719 for reserved matters do not indicate that the building of Plots 1 and 2 would involve the formation of substantial retaining walls immediately adjacent to the new estate road. Retaining walls might be required for the front gardens of these properties but considering the difference between finished floor level (170.6m Above Ordnance Datum) and adjacent parts of the new estate road (varying between 170.120 and 169.620m Above Ordnance Datum) it is considered that these would be

³ As shown on approved plan ref. 1354/P/001 Rev. V on the original Reserved Matters application ref. 2021/94719.

modest in height. Moreover, the wording of the proposed alternative condition would ensure that satisfactory details would be supplied before work commences on any such retaining walls. Therefore, it is not considered necessary to word the condition in such a way that work cannot commence on Plots 1-2 before the structural information for Approval In Principle is submitted and approved.

It is recognised that there is still a possibility that the works might weaken or damage the stone retaining wall that lies adjacent to Burn Road owing to excavations in the general vicinity of the wall, vibrations from plant or machinery, etc. A pre-commencement survey was submitted, and subsequently approved, as part of the submissions for application 2025/91681⁴ (by Partington Associates, reference 4872-22/DJO, dated 12/03/2025). KC Highways Structures confirmed (consultation responses dated 04/07/2025 and 19/01/2026) that the pre-commencement survey was acceptable and as such it can be taken a baseline for any damage that might occur during operations carried out in building Plots 1-2, so that the extent of any appropriate remedial works can be assessed in a post-construction survey.

In light of the above, it is concluded that the proposed variation would not prejudice safety or the structural stability of existing and proposed highways, highway retaining walls and public sewerage infrastructure.

Highway safety

The proposed variation of condition would not result in any change to the means by which the proposed development would gain access to the existing public highway network, nor to the design of the internal estate road. It is proposed that the existing field access will be used to gain access to the site by construction vehicles. Means of access to site is covered by condition 6 on the outline permission (2018/91838), which reads:

6. Notwithstanding the submitted details, a detailed design for the construction of the approved point of access on Burn Road that is based on drawing number 2529 - 03 Rev B shall be submitted to and approved in writing by the Local Planning Authority before development commences. The design details shall include a Stage 1 Road Safety Audit and Designer's Response for the junction. The access shall be constructed in accordance with the approved details and retained thereafter. Reason: To ensure a suitable access and layout in the interests of highway safety and to accord with Policy LP21 of the Kirklees Local Plan. This is a pre-commencement condition to ensure that highway matters are addressed at an appropriate stage.

This is currently the subject of an application for variation of condition, reference 2025/93520, at present undetermined.

⁴ Discharge of details reserved by conditions 3 (highway structural details), 5 (retaining wall materials), 12 (CEMP) on previous permission 2021/94719 for reserved matters application (for layout, appearance & scale) pursuant to outline permission 2018/91838 for erection of a residential development formed of 25 dwellings

Given the nature of the amendments proposed, no alterations will occur to the previously approved access and parking arrangements. Therefore, there are no concerns in respect to highway safety. This is to accord with Policies LP21 and LP22 of the Kirklees Local Plan and the aims of the Highways Design Guide SPD and National Planning Policy Framework.

Other matters

The proposed variation would not modify the physical aspects of the proposal, i.e., the appearance or layout of dwellings, or the proposed road works. Likewise, the reserved matters of layout, appearance, and scale, would be affected.

The proposed variation is not considered to impact upon any other material planning considerations such as ecology, drainage, land contamination etc which remain as previously addressed within the parent reserved matters application (ref 2021/94719) and subsequent discharge of condition application (ref 2025/91681). These are addressed via conditions attached to the previous application (reviewed below).

Proposed variation wording

For the reasons given, officers support the principle of changing the wording, as recommended by the condition. However, the exact wording as proposed by the applicant is not agreed. The following is recommended:

- The condition in its present wording contains many clauses and sub-clauses. For the sake of ease of interpretation, and to ensure that the various requirements are grouped together according to their trigger for compliance, it is recommended that the condition be broken down into three separate conditions, as set out below.
- The two 3a(i) and 3a(i) requirements have been approved via DOC 2025/91681. These required a dilapidation survey of the existing retaining wall on Burn Road along the site boundary and structural assessment of the existing Yorkshire Water sewer located within the proposed highway footprint and/or influence zone of highway loading. Therefore these no longer need to be included within the condition, but are to be included in the approved plans table.
- The trigger proposed by the applicant is to be expanded, in the interest of precision.
- it is recommended that a clause requiring all approved works to be implemented before first occupation, or in the case of remedial works to the existing highway boundary wall, within a timescale to be agreed as part of the schedule of works.

Utilising the above, officers' proposed wording for the varied condition is as follows:

3a. Prior to the commencement of any works relating to the new access road, the existing highway of Burn Road, and any existing or proposed retaining structures that provide support to (or are within the zone of influence of) said highways, the following information shall be submitted to and approved by the Local Planning Authority:

- (i) A design scheme for all new and/or amended retaining structures adjacent to the existing and proposed adoptable highways, including any modifications to the existing highway retaining wall abutting Burn Road;
- (i) Details to provide confirmation where proposed retaining structures or re-graded land do not provide any adverse loading to the highway.

All of the works approved pursuant to this condition shall be implemented before any dwelling is first occupied, and thereafter retained as such.

Reason: To ensure that any new, modified or dilapidated retaining structures do not compromise the stability of the highway in accordance with the requirements of Policies LP21 and LP24 of the Kirklees Local Plan. This pre-commencement condition is necessary to ensure that load-bearing structures are designed to a satisfactory standard prior to their construction which could otherwise be unsafe and elicit abortive works/demolition should the structures be inadequately designed or constructed.

3b. Prior to the commencement of any works relating to the new access road and new foul/surface water drainage installations, the following information shall be submitted to and approved by the Local Planning Authority:

- (i) A scheme detailing the proposed design and construction details for the new culvert structure/s (including any wing walls) which shall carry the new access road over the unnamed watercourse in the centre of the site;
- (i) A scheme including cross-sectional information, locations, and proposed design & construction details for all new oversize pre-cast concrete manholes with internal diameter of >0.90m, and their cover slabs located within the proposed highway footprint or influence zone of highway loading.

All of the works approved pursuant to parts (i) and (ii) of this condition shall be implemented before any dwelling is first occupied, and thereafter retained as such.

Reason: To ensure that any new, modified or dilapidated retaining structures do not compromise the stability of the highway in accordance with the requirements of Policies LP21 and LP24 of the Kirklees Local Plan. This pre-commencement condition is necessary to ensure that load-bearing structures are designed to a satisfactory standard prior to their construction which could

otherwise be unsafe and elicit abortive works/demolition should the structures be inadequately designed or constructed.

3c. Prior to the occupation of any dwelling, a post-development structural dilapidation survey of any remaining retaining structures that provide support to (or are within the zone of influence of) the highway shall be submitted to and approved by the Local Planning Authority. This shall be undertaken by a suitably qualified and experienced structural engineer, and shall identify any defects arising in said structures due to the works or deliveries associated with the proposed development, as well as a schedule of required remediation works including a timescale for their implementation. Once approved, the defects shall be made good in accordance with the approved schedule of remediation works.

Reason: To ensure that the long-term stability of highway retaining structures is safeguarded in the interest of the safe use of the highway, in accordance with the aims of Policies LP21 and LP24 of the Kirklees Local Plan.

The above approach and specific wording have been agreed with the applicant via email dated 04/02/2025.

Previous conditions and obligations

Review of conditions

S73 of the Town and Country Planning Act 1990 allows the Local Planning Authority to review the previously applied conditions attached to the previous permission ref: 2021/94664 and to update, revise, add to or delete redundant conditions as part of the assessment of the current application. Those conditions would normally be re-applied in any subsequent approval of a S73 application, as the effect of the S73 approval is the issue of a fresh grant of permission.

It is recommended that the original conditions should be reimposed in their original form or modified, as set out below:

1. Timescale for implementation
 1. Development to be in full accordance with approved plans
 2. (To be broken down into three separate conditions and re-worded, as described above)
 3. Easement strip
 4. Retaining wall facing
 5. Sound attenuation scheme
 6. Surfacing of driveways and parking areas
 7. Construction materials
 8. Temporary storage and collection of wastes
 9. Soil and vent
 10. Cills lintels and mullions to rear of type G units
 11. Construction Environmental Management Plan – can be re-written as a prescriptive condition in accordance with the details submitted under discharge of condition application 2025/91681.

Application 2021/94719 was a reserved matters submission. For the avoidance of doubt, any and all pertinent conditions on the parent outline application (ref. 2018/91838) are unaffected by this S73 application and remain in force.

Planning obligations

The issuing of an approval under a Section 73 application will result in a new planning permission. In many cases, this means that a Deed of Variation will need to be entered into to ensure that obligations pertaining to any Section 106 Agreement entered into for the original application will remain valid.

In this instance, part 12 of the original agreement contains the following text:

12.1 in the event that an application is made pursuant to Section 73 of the 1990 Act for an amendment to the Planning Permission and a planning permission is granted in respect of that application then:

12.1.1 references to "Planning Permission" in this Deed shall thereafter be deemed to include both the Planning Permission and the new planning permission granted pursuant to Section 73 of the Act, and

12.1.2 this Deed shall apply to and remain in full force in respect of both the Planning Permission and that new planning permission without the need for a further agreement to be entered into pursuant to Section 106 of the Act unless required to do so by the Council.

In short, the obligations imposed by the original Section 106 Agreement will remain in force in the event of this permission being granted.

Subsequent clause 12.1.3 states that the Council still have discretion to new or varied planning obligations by way of a new or supplemental deed pursuant to Section 106 / 106A of the Act. It is considered that in this instance no new or varied planning obligations are necessary since the proposal does not involve any changes to the character of the development (scale, layout, landscaping, etc) and therefore none of the matters covered by the original agreement would be affected.

Representations

As a result of the above publicity, no representations have been received.

Conclusion

This application does not provide an opportunity to revise or reconsider the original outline grant of planning permission. This application only relates to the consideration of the variation of condition 3 as indicated.

Subject to the recommended conditions as set out earlier in this report, the proposed development is considered acceptable.

The NPPF 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: 04/02/2026

Decision Authorisation: Delegated Powers

Application Number: 2025/93297

Officer Recommendation: Grant variation of condition

Conditions and Reasons

1. In line with Condition 4 of 2018/91838, the development hereby permitted shall be begun either before the expiration of two years from the final approval of reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: Pursuant to section 92 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2. 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 so as to ensure the satisfactory appearance of the development on completion, and to accord with Policy LP24 of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework.

3a Prior to the commencement of any works relating to the new access road, the existing highway of Burn Road, and any existing or proposed retaining structures that provide support to (or are within the zone of influence of) said highways, the following information shall be submitted to and approved by the Local Planning Authority:

- (i) A design scheme for all new and/or amended retaining structures adjacent to the existing and proposed adoptable highways, including any modifications to the existing highway retaining wall abutting Burn Road;
- (i) Details to provide confirmation where proposed retaining structures or re-graded land do not provide any adverse loading to the highway.

All of the works approved pursuant to this condition shall be implemented before any dwelling is first occupied, and thereafter retained as such.

Reason: To ensure that any new, modified or dilapidated retaining structures do not compromise the stability of the highway in accordance with the requirements of Policies LP21 and LP24 of the Kirklees Local Plan. This pre-commencement condition is necessary to ensure that load-bearing structures are designed to a satisfactory standard prior to their construction which could otherwise be unsafe and elicit abortive works/demolition should the structures be inadequately designed or constructed.

3b Prior to the commencement of any works relating to the new access road and new foul/surface water drainage installations, the following information shall be submitted to and approved by the Local Planning Authority:

- (i) A scheme detailing the proposed design and construction details for the new culvert structure/s (including any wing walls) which shall carry the new access road over the un-named watercourse in the centre of the site;
- (i) A scheme including cross-sectional information, locations, and proposed design & construction details for all new oversize pre-cast concrete manholes with internal diameter of >0.90m, and their cover slabs located within the proposed highway footprint or influence zone of highway loading.

All of the works approved pursuant to parts (i) and (ii) of this condition shall be implemented before any dwelling is first occupied, and thereafter retained as such.

Reason: To ensure that any new, modified or dilapidated retaining structures do not compromise the stability of the highway in accordance with the requirements of Policies LP21 and LP24 of the Kirklees Local Plan. This pre-commencement condition is necessary to ensure that load-bearing structures are designed to a satisfactory standard prior to their construction which could otherwise be unsafe and elicit abortive works/demolition should the structures be inadequately designed or constructed.

3c Prior to the occupation of any dwelling, a post-development structural dilapidation survey of any remaining retaining structures that provide support to (or are within the zone of influence of) the highway shall be submitted to and approved by the Local Planning Authority. This shall be undertaken by a suitably qualified and experienced structural engineer, and shall identify any defects arising in said structures due to the works or deliveries associated with the proposed development, as well as a schedule of required remediation works including a timescale for their implementation. Once approved, the defects shall be made good in accordance with the approved schedule of remediation works.

Reason: To ensure that the long-term stability of highway retaining structures is safeguarded in the interest of the safe use of the highway, in accordance with the aims of Policies LP21 and LP24 of the Kirklees Local Plan.

4. An easement strip of not less than 3.0m wide shall be retained between the proposed buildings and the proposed adoptable highway burr walls/ existing highway retaining wall on Burn Road to facilitate access for their future maintenance/ reconstruction.

Reason: To ensure that any new, modified or dilapidated retaining structures can be adequately accessed for future maintenance in accordance with the requirements of Policy LP21 of the Kirklees Local Plan.

5. Details of the facing materials for the externally exposed retaining walls within the site shall be submitted to and approved in writing by the Local Planning Authority before works to construct the retaining walls commence.

The retaining walls shall be faced in the approved materials and thereafter maintained as such.

Reason: In the interests of visual amenity and to accord with Policy LP24 of the Kirklees Local Plan and guidance in the National Planning Policy Framework.

6. Cognisant of Condition 20 of 2018/91838, no dwellinghouse shall be occupied until all works which form part of the sound attenuation scheme as specified in the Noise Impact Assessment authored by Philip Dunbavin Acoustics Ltd dated 26 May 2022 Ref J003824-5593-TD-01 are:

a) completed; and

b) written confirmation that the building has been constructed in line with assumptions in the acoustic report shall be submitted to and approved in writing by the Local Planning Authority

Reason: In the interests of amenity of the occupiers of the development and to accord with the requirements of Policy LP24 of the Kirklees Local Plan and guidance in the National Planning Policy Framework.

7. Driveways and vehicle parking areas accessed from the approved streets must be properly consolidated and hard surfaced and drained into the site and subsequently maintained in good working order at all times thereafter for the lifetime of the development.

Reason: To ensure that there are adequate parking facilities to serve the development which are constructed to an acceptable standard in accordance with LP22 of the Kirklees Local Plan.

8. The external materials and windows shall be installed in accordance with the specifications outlined within the External Materials Statement by HNAarchitects (Referenced 1354/EMS, dated June 2023). Physical samples of the external materials and windows cited in the statement shall be made available for inspection on-site prior to the commencement of superstructure works. No external finishing materials shall be used in the development of the site until the samples are approved by the Local Planning Authority.

Reason: In the interests of visual amenity, to preserve and enhance the character of the local area and to accord with Policy LP24 of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework.

9. Where any of the dwellings hereby approved are to become occupied prior to the completion of the development, details of temporary arrangements for the storage and collection of wastes from those residential units, and details of temporary arrangements for the management of waste collection points, shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of those residential units.

The temporary arrangements so approved shall be implemented prior to first occupation of those residential units and shall be so retained thereafter for the duration of the construction works unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure satisfactory arrangements are implemented in relation to waste during the construction phase, in the interests of visual and residential amenity and highway safety, to assist in achieving sustainable development, and to accord with Policies LP21 and LP24 of the Kirklees Local Plan.

10. Notwithstanding the plans and specifications schedule, all soil and vent pipes are to be located within the internal envelope of each residential unit and shall not project above the roof-slope.

Reason: In the interests of the visual amenity and to accord Policy LP24 of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework.

11. Notwithstanding the plan and specification schedule, the cills, lintels and mullions present upon the principal elevation of the Type G units (Reference 1354/P/28 Rev C) shall also be installed to the fenestration at the rear of the type G units.

Reason: Plots 14 & 15 are in a visible central position within the site, as such it is necessary to ensure that the quality of the rear elevations are such that the visual appearance of the development is maintained in line with the requirements of the Housebuilders Design Guide SPD and Policy LP24 – Design of the Kirklees Local Plan

12. The development shall be undertaken and implemented in full accordance with the Construction Environmental Management Plan approved under discharge of condition application reference 2025/91681.

Reason: In the interests of highway safety and to safeguard the amenities of the occupiers of nearby properties in accordance with part 15 of the NPPF as well as Policies LP51 and LP52 of the Local Plan.

Note: Outline Permission

This notice is supplementary to the decision notice made under outline permission 2018/91838 and should be read together alongside any other reserved matters decision notices that are also made in relation to the outline permission.

Note: Retaining Structures

It is the applicant's responsibility to find out whether the work approved by this planning permission requires written approval from the Highways Structures section for works near or abutting highway and any retaining structures. Contact Highways Structures Section on 01484 225616 who can advise further on this matter. More information on highway design specifications, including Highway Structures, can be found via the following link:

<https://www.kirklees.gov.uk/beta/regeneration-and-development/highways-guidance-andstandards.aspx>

Note: Highway Structures

All new storm water attenuation tanks/pipes/culverts with internal diameter/spans exceeding 0.9m must be located off the adoptable highway. Any decision to locate these facilities within the adoptable highway footprint must be accompanied with a full risk evaluation report with particular reference to their proposed inspection, structural assessment and maintenance regime in compliance with the CDM Regulations 2015 requirements. The adopting authority (i.e. Yorkshire Water) will also be required to produce and submit a legally binding agreement to the Highway Authority explicitly stating that they will be fulfilling their obligations in relation to the systematic and cyclical inspection and structural assessment of any attenuation structure located within the highway footprint, in full compliance with CS450-Inspection of Highway structures. See the following link for further details.

<https://www.kirklees.gov.uk/beta/regeneration-anddevelopment/highways-guidance-andstandards.aspx>

Note: Retaining Wall Materials

The facing material of the retaining walls on the site should be agreed in conjunction with the AiP process with the Local Highway Authority.

Note: Superstructure Definition

For the purpose of interpretation, the definition of 'superstructure' is the part of a building or construction entirely above its foundation or basement.

Note: Combined Sewer Overflow

The proximity of an existing combined sewer overflow to the site may mean a loss of amenity for future residents. In order to minimise the risk of odour, noise and nuisance, water industry standards recommend that habitable buildings should not be located within 15 (fifteen) metres of the existing combined sewer overflow.

To reduce the visible impact of the installation, the erection (by the developer) of suitable screening is advised.

Note: Recommended hours of work

Noisy construction related activities should not take place outside the hours of:

- Mondays to Fridays: 07.30 to 18.30
- Saturdays: 08.00 to 13.00
- With no noisy activities on Sundays or Public Holidays

Institute of Air Quality Management document "Guidance on the assessment of dust from demolition and construction" Version 1.1 2014 provides detailed information regarding dust control. Kirklees Council has powers under Section 60 of the Control of Pollution Act 1974 to control noise from construction sites

and may serve a notice imposing requirements on the way in which construction works are to be carried out. It has additional powers under Sections 80 of the Environmental Protection Act 1990 to prevent statutory nuisance including noise, dust, smoke and artificial light and must serve an abatement notice when it is satisfied that a statutory nuisance exists or is likely to occur or recur. Failure to comply with a notice served using the above-mentioned legislation would be an offence for which the maximum fine on summary conviction is unlimited.

Plans and specifications schedule:

Plan Type	Reference	Version	Date Received
Received via this application, 2025/93297			
Application form			01/12/2025
Topographical Survey	CTES Surveying	A	01/12/2025
Full structural assessment of the existing Yorkshire Water sewer located within the proposed highway footprint and/or influence zone of highway loading	Burn Rd 290125		19/06/2025
Full structural dilapidation survey of the existing retaining wall on Burn Road	P&A 4872-22/DJO		19/06/2025
Received via original reserved matters application 2021/94719			
Location plan	1354/LP	-	07/01/2022
External Materials Statement	1354-EMS Dated June 2023	-	30/01/2024
Additional Model Run Summary Issued (Compiled)	SHF.1935.001.HY.R.004.A	-	05/08/2022
Hydraulic Modelling Compiled	SHF.1935.001.HY.R.001.A	-	15/08/2022
Appendix D - Retaining Wall Calculations	4872-22 AIP	-	17/08/2022
Phase II Ground report	B22335-JNP-11-00-RP-G-1001	-	17/08/2022
CEMP	By Wiggett Construction	-	17/08/2022
Ecology Extended Phase 1 Habitat Survey	Dated July 2022	-	17/08/2022

Noise Assessment	J003824-5593-TD-01	-	17/08/2022
Transport route for deliveries	-	-	17/08/2022
Existing Cross Sections	1354-P-EX-02	-	17/08/2022
Proposed Floor Plans – House Type B	1354-P-102	-	17/08/2022
Swept path analysis	24030-HYD-XX-XX-DR-TP-0001	P01	17/08/2022
Swept path analysis	24030-HYD-XX-XX-DR-TP-0002	P01	17/08/2022
Visibility Splay	24030-HYD-XX-XX-DR-TP-0003	P01	17/08/2022
Forward visibility	24030-HYD-XX-XX-DR-TP-0004	P01	17/08/2022
Plot 10 refuse collection	24030-HYD-XX-XX-DR-TP-0006	P01	17/08/2022
Viability Assessment	Dated July 2022	-	31/08/2022
Viability Appraisal Submission – Budget Costs	-	-	04/10/2022
Viability Appraisal – Abnormal Costs Statement	-	-	06/10/2022
Viability Appraisal – Clarification questions	220906 Land at Burn Road_Clarification Questions_v1	-	06/10/2022
Burns Rd - Viability Assessment - WCL Construction Base Cost supporting information	-	-	06/10/2022
Viability Appraisal Submission - Calculations	-	-	06/10/2022
Appendix C - Phase II Ground Report	4872-22 AIP		10/10/2022
Burns Road, Birchencliffe	4872-22 AIP	-	10/10/2022
Appendix A - TAS	4872-22 AIP	-	10/10/2022
Appendix B - Highway Retaining Wall Drawing	4872-22 AIP	-	10/10/2022
Independent Viability Assessment Review	V1.0	-	30/10/2022
Tree schedule	6724.01	B	31/01/2023
Tree survey	PD.6724.TSR.REV	C	31/01/2023

	C.JAN23		
Proposed Run Summary Issued Compiled	SHF.1935.001.HY.R.003.A		13/02/2023
Hydraulic Modelling Report	SHF.1935.001.HY.R.002.A	-	13/02/2023
Applicants response to Viability Assessment	Dated 20 th February 2023	-	20/02/2023
SW Drainage Plots 1 to 13 A1.000-1.003.1, 30, 100+30%CC yr	1298	D	30/01/2024
SW Drainage Plots 14 to 25 B1.000-1.004.1, 30, 100+30%CC yr	1298	D	30/01/2024
Updated viability summary for phase 1	230320 Burns Rd, Birchencliffe v2 MS	-	22/03/2023
Updated Appraisal for phase 1	230320 Burns Rd, Birchencliffe v2 PC	-	22/03/2023
Technical Note - Hydraulic Modelling Exercise	SHF.1935.001.HY.R.004.A – Grimescar Dike, Huddersfield		23/03/2023
100% Blockage Comparison	SHF.1935.001.HY.D.001.A	-	23/03/2023
Stage 1 Road Safety Audit	MCA.HYD.025		06/04/2023
Proposed Floor Plans – House Type D	1354-P-103	A	06/04/2023
Proposed Floor Plans – House Type D1	1354-P-104	A	06/04/2023
Proposed Floor Plans – House Type D2	1354-P-105	A	06/04/2023
Visibility splay layout	1354-23m	-	04/05/2023
Revised viability submission	Dated 11 th May 2023		11/05/2023
Swept path analysis	24030-HYD-XX-XX-DR-TP-0004-P01	-	11/05/2023
Tree survey and root protection area	6724.01	C	17/05/2023
Swept path analysis	24030-HYD-XX-XX-DR-TP-1001-P02		15/06/2023
Swept path analysis	24030-HYD-XX-XX-DR-	-	15/06/2023

	TP-1002-P02		
Swept path analysis	24030-HYD-XX-XX-DR-TP-1003-P02	-	15/06/2023
Proposed Floor Plans – Apartment Type H	1354-P-109	-	19/06/2023
Proposed Floor Plans – House Type G	1354-P-108	C	19/06/2023
Proposed Cross Sections	1354-P-301	C	19/06/2023
Proposed Street Elevations	1354-P-302	D	19/06/2023
Proposed Floor Plans – House Type F	1354-P-107	-	17/08/2023
Viability Appraisal – Market Sale Appraisal	220629 Burns Rd, Birchencliffe V1 MS	-	11/10/2023
Viability Appraisal – Policy Compliant Appraisal	220629 Burns Rd, Birchencliffe V1 PC	-	11/10/2023
Proposed Elevations – House Type B	1354-P-202	A	11/10/2023
Proposed Elevations – House Type D	1354-P-203	A	11/10/2023
Proposed Elevations – House Type D1	1354-P-204	A	11/10/2023
Proposed Elevations – House Type D2	1354-P-205	A	11/10/2023
Proposed Elevations – House Type F	1354-P-207	A	11/10/2023
Proposed Elevations Apartments – House Type H	1354-P-209	A	11/10/2023
Proposed Elevations – House Type G	1354-P-208	D	11/10/2023
Biodiversity Impact Assessment	Land off Burn Road, Huddersfield - 2022	A	23/10/2023
Biodiversity Metric 3.1 auditing and accounting for biodiversity calculation tool	Burn Road, Huddersfield - 2022	A	23/10/2023
Ecological Design Strategy (EDS)	Burn Road, Huddersfield 2023	B	10/11/2023
Landscaping proposals	6724.03	G	10/11/2023

Proposed site layout (POS)	1354/P/004	-	08/12/2023
Viability - Final with appendices	220704 Burn Rd, Birchencliffe FVA v4_JDM -		21/12/2023
Existing topography survey	BURN ROAD HUDDERSFIELD-PLOT 250	-	21/12/2023
BNG Calcs Jul'22	6724	-	21/12/2023
Gas monitoring	B22335	-	21/12/2023
QED calibration Report November 2019 (2)	November 2019 (2)	-	21/12/2023
QED calibration Report	26.06.20 (2)	-	21/12/2023
Noise impact assessment	J003824-5593-TD-01	-	21/12/2023
Archaeological WSI	Dated September 2021	-	21/12/2023
Hydraulic Modelling report	SHF.1935.001.HY.R.002.A	-	21/12/2023
CEMP	By Wiggett Construction and Wiggett Homes	A	21/12/2023
Tree protection plan	6724.02	D	21/12/2023
Arboricultural Impact Assessment and Method Statement	MG.6724.AIA&AMS.	D	21/12/2023
Drainage Layout	1298-900	P3	21/12/2023
Post Dev Areas	1298-701	P3	21/12/2023
Flood Routes	1298-702	P3	21/12/2023
Proposed Site Layout Plan (trees)	1354-P-001	V	31/04/2023
Proposed Site Layout – Roof Plan	1354-P-002	P	12/01/2023
Submitted under discharge of condition application 2025/91681			
Construction Environmental Management Plan	Wiggett Homes	B	19/06/2025
Delivery Route	Transport route to site for deliveries		19/06/2025
Site setup plan		C	15/10/2025
Email re. lighting			15/10/2025

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.

In this instance, no amended plans or additional information were sought from the applicant since the submitted information was considered adequate to determine the application.