

**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/93365/E
Site Address:	Cross Rink Street, Batley, WF17 6BH
Description:	Non material amendment to previous permission 2009/93382 for erection of retail development
Recommending Officer:	Katie Chew

DECISION – Non-Material Amendment – Refuse

I hereby authorise the refusal 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: 19-Dec-2025

Application: 2025/93365

Application Site: Cross Rink Street, Batley, WF17 6BH

Description of Proposal

The application seeks a non-material amendment to previous permission 2009/93382 for erection of retail development.

The proposed amendments are as follows:

- Modifications to past approval for the erection of retail unit, approved 04/04/2011, under application ref: 2009/93382.

Amendments have been sought to the originally approved structure to increase its height by around 0.7m. Changes have also been made throughout the external elevations in terms of the design, window and door arrangements. No details have been provided in respect of materials and therefore Officers cannot confirm whether these are to be as approved, or not. The access and parking arrangements appear to have also changed, with a smaller, gated entrance shown on the submitted block plan, than previously approved. Parking numbers have changed with an increase of 2 spaces, due to the loss of 2 originally approved disabled spaces. Finally, the overall use of the site is proposed to be changed from a retail unit with storage and staff facilities, to 10 flats and warehouse storage.

The proposed amendments are illustrated in the following drawings:

- Proposed Elevations, Drawing No. 24.2782.05, received 11/12/2025.
- Proposed Floor Plans, Drawing No. 24.2782.04, received 11/12/2025.
- Proposed Site Plan, Drawing No. 24.2782.03, received 11/12/2025.

Relevant Planning History

2021/94437 – Certificate of Lawfulness for confirmation of use class E on previous permission 2009/93382 erection of retail development. Approved 19/01/2022.

2009/93382 – Erection of retail development. Approved 04/04/2011.

2008/90537 – Erection of retail unit for convenience store. Approved 17/10/2008.

2005/95354 – Erection of two storey building forming shop and warehouse. Withdrawn 14/07/2006.

2004/94871 – Outline application for residential development. Approved 10/02/2005.

2004/93565 – Outline application for erection of residential development (eight dwellings). Refused 30/09/2004.

99/92128 – Erection of retail unit. Approved 19/10/1999.

98/90638 – Outline application for the erection of retail unit. Approved 15/01/1999.

Assessment

This application must be assessed having regard to Section 96A of the Town and Country Planning Act 1990 which states “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”, and the Council’s adopted protocol for dealing with Non-Material Amendments. This protocol states that the four tests as to the acceptability of a change to an approved scheme under the Non-Material Amendment procedure are:

1. Are the proposed changes inconsequential in terms of scale (magnitude, degree etc) in relation to the original approval?

NO. The proposed changes are not inconsequential in relation to the original approval. The proposed amendments include a change of use to residential, the impacts of which Officers, consultees and third parties have not had chance to formally assess. The increase in height of the building, and external alterations (which include changes to the access/parking arrangements) also affect the magnitude and degree of the original proposal and are all material considerations that need to be assessed via a full planning application.

Whilst the proposals do fail the above test, for clarity the three further tests have also been used to assess the proposals and are discussed as follows:

1. In the Council’s view would the proposed changes result in a detrimental impact either visually or in terms of living conditions?

Given the increase in height, altered arrangement of windows and doors, lack of detail in terms of materials used, and a change to the parking layout and use overall of the site, Officers cannot give a view on these matters at this time. A full assessment would need to be undertaken under a full planning application to ascertain whether the proposals would result in a detrimental impact either visually or in terms of living conditions.

1. In the Council’s view would the interests of a third party or body who participated in or were informed of the decision be disadvantaged in any way?

YES. The proposals would result in a change of use from retail (approved under application ref: 2009/93382) to residential with the provision of 10 apartments. This includes alterations to the internal and external layout of the site/building, external appearance and height of the originally approved structure. For these reasons, third parties should be notified of the proposed changes and therefore they fall outside the scope of an NMA.

2. In the Council's view would the amendment be contrary to any policy of the Council?

Without a full assessment being undertaken within a full planning application, Officers cannot confirm whether the proposals would be contrary to any policy of the Council at this time. Such an assessment (i.e., a full and detailed assessment of a materially different scheme) could not be reasonably undertaken as part of this NMA assessment, particularly given the lack of appropriate consultation or advertisement.

In considering the above, the following factors are relevant:

- 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 proposed change would fall outside of the description of development, which is for 'erection of retail development'. This does not include the provision of residential properties.

- The proposed changes must not contravene any condition attached to the original permission

YES, the proposed changes would contravene several conditions as the decision of application 2009/93382 was based on a retail unit, not residential dwellings, and therefore many of the conditions would be in breach.

- The proposed changes should not require a further restriction to make them acceptable

In this case, it is likely that several conditions would need to be imposed to make this application acceptable as a change from retail use to residential and warehouse storage would typically require conditions of a different nature.

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

YES. The proposals seek to increase the size of the building by 0.7m.

- The proposed changes would have likely been approved had it formed part of the original application

Without further assessment with consultees, third parties and in respect of Local Plan Policies and guidance contained within the National Planning Policy Framework in relation to residential development and warehouse storage, Officers cannot confirm that the proposed changes would have been approved had they formed part of the original application.

Conclusion

Taking the above assessment into consideration, the proposed amendments to the permitted scheme would result in the development falling outside of the originally approved description of development as set out in the decision notice.

Furthermore, Officers consider that considering the other changes proposed, third parties, Officers and relevant consultees (e.g. KC Highways Development Management and KC Environmental Health) should be given the opportunity to consider these changes further. This is to ensure that the proposals are considered under the correct planning protocol and would not result in any significant impacts in respect of residential and visual amenity, highway safety or on any other material considerations.

These works fall outside the reasonable scope of a NMA application. The applicant would be required to submit a new full planning application to enable this type of assessment to be undertaken.

For the above reasons, the proposal is not considered to comply with the Council's protocol and therefore would not be considered a non-material amendment, thus refusal is recommended.

Recommendation: Refuse NMA

Decision Authorisation: Delegated Decision

Report Dated: 16/12/2025.

Recommended Decision Letter Text

The proposed amendments are identified as follows:

Modifications to past approval for the erection of retail unit, approved 04/04/2011, under application ref: 2009/93382. Including:

- Amendments to the originally approved structure to increase its height by around 0.7m.
- Changes made throughout the external elevations in terms of the design, window and door arrangements.

- No details have been provided in respect of materials and therefore Officers cannot confirm whether these are to be as approved, or not.
- Alterations to the originally approved access with a smaller, gated entrance shown on the submitted block plan, than previously approved.
- Parking numbers have changed with an increase of 2 spaces, due to the loss of 2 originally approved disabled spaces.
- Finally, the overall use of the site is proposed to be changed from a retail unit with storage and staff facilities, to 10 flats and warehouse storage.

The proposed amendments are illustrated in the following drawings:

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- Proposed Site Plan, Drawing No. 24.2782.03, received 11/12/2025.

I can confirm that the proposed alterations as outlined above cannot be accepted to form a non-material amendment to the original proposal.

The proposed changes to the permitted scheme would result in the development falling outside of the description of the development as set out on the decision notice. This, in addition to the level of changes proposed to the internal and external elevations and layout of the site, are considered to be material in nature.

Therefore, Officers consider that due to the changes proposed, third parties, planning officers and consultees should be formally given the opportunity to consider these changes further.

The application for a non-material amendment is hereby refused.