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:	**2026/70/92066/W**
Site Address:	rear of, 1, Sparks Road, Oakes, Huddersfield, HD3 4BX
Description:	Variation of conditions 2 (plans), 3 (vehicles/pedestrians areas surface and drainage) and removal of condition 5 (widened access) on previous permission 2023/90956 for erection of 4 dwellings
Recommending Officer:	Joanna Rednall

DECISION – REFUSED

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.

John Holmes

AUTHORISED OFFICER

Date: 11-Nov-2026

SCHEDULE 1

This is a Schedule 1 Application. By virtue of Regulation 4, it must be dealt with under delegated powers

THE SITE & DEVELOPMENT

The site description and extent of the development are set out in the case officer report for application 2023/90956 hereafter referred to as the original application/permission.

This report should be read in conjunction with the case officer report for application 2023/90956 which can be viewed here: https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2023%2f90956

THE PROPOSED VARIATION OF CONDITION/S

Submitted under Section 73 of the Town and Country Planning Act 1990 (as amended), this application seeks permission for variation of conditions 2 and 3 and for the removal of condition 5.

Condition 2 of 2023/90956 reads as follows:

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 Policies LP1, LP2, LP3, LP7, LP11, LP21, LP22, LP24, LP28, LP30, LP33, LP35, LP51, LP52 and LP53 of the Kirklees Local Plan, Chapters 2, 4, 5, 9, 11, 12, 14, 15 and 16 of the National Planning Policy Framework and Principles 2, 5, 6, 9, 12, 13, 14, 15, 16, 17,18 and 19 of the Housebuilders Design Guide SPD.*

Condition 3:

3. Prior to the development being brought into use, areas to be used by vehicles/pedestrians shall be surfaced and drained in accordance with the Communities and Local Government; and Environment Agency's 'Guidance on permeable surfacing of front gardens (parking areas)' published 13th May 2009 (ISBN 9781409804864) as amended or superseded; and thereafter retained throughout the lifetime of the development.

Reason: *In the interests of highway safety and to achieve a satisfactory layout, to mitigate flood risk and in accordance with LP21 and LP22 of the Kirklees Local Plan, Principle 12 of the Council's adopted Housebuilders Design Guide Supplementary Planning Document and Chapter 14 of the National Planning Policy Framework.*

Condition 5:

5. Prior to development commencing, a detailed scheme for the provision of a widened access from New Hey Road into the site with associated white lining shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include construction specifications, white lining, signing, surface finishes and any associated drainage. Unless otherwise agreed in writing by the Local Planning Authority, all the agreed works shall be completed before any of the dwellings hereby approved are brought into use and shall be thereafter retained.
Reason: *This pre-commencement condition is necessary to ensure that a safe and suitable access is provided at an appropriate stage of the development process, in the interests of highway safety and to achieve a satisfactory layout and to accord with Chapter 9 of the National Planning Policy Framework and Policy LP21 of the Kirklees Local Plan.*

The submitted information sets out that, although the applicant retains a right of access over the land edged blue on the submitted plan (ref. 2491 01), they do not own the land and are therefore unable to undertake any improvements to the access. The supporting statement sets out the applicant has been unable to reach an agreement with the landowner to facilitate such improvements. Consequently, the development would retain the existing access, which measures 4.7 metres in width and would retain its existing surfacing, as shown edged blue on the submitted plan.

PLANNING HISTORY

The most relevant planning history for the site relates to the following:-

- 2023/90956: Erection of 4 dwellings – Conditional full permission.

NEGOTIATIONS / AMENDMENTS

The Case Officer contacted the Applicant's Agent to outline the concerns raised by Highways Development Management. In response, the Agent submitted a further supporting statement addressing the Highway Authority's comments however, no amendments to the submitted scheme were

proposed. Accordingly, the application has been progressed to determination on the basis of the plans and information submitted.

REPRESENTATIONS

Publication of the application has been undertaken in accordance with the Council's Development Management Charter

The application has been publicised in the same way the original application was publicised with the expiry of publicity being 11 September 2026.

One representation has been received:

Letters of comment (1)

- The supporting statement does not accurately reflect the application, there has never been any legal agreement in place.
- Concerns regarding the applicant's ability to undertake access improvements on third-party land were raised during the determination of the original application, 2023/62/90956/W. At that time, it was highlighted that the proposed access improvements, widening works, footways, tactile paving and visitor parking areas were shown on land that was not within the applicant's ownership or control, and that the necessary rights to undertake those works had not been granted.
- Condition 5 was imposed following consultation with the Highway Authority, which considered it necessary for the access to be widened and for pedestrian provision to be made due to the shared use of the access by residential properties and commercial premises. If those improvements can no longer be delivered, I would ask the Council to consider whether the resulting development remains materially the same as that originally approved, and whether the proposed changes are appropriate to be dealt with through a Section 73 application rather than through a fresh planning application based on the access arrangements that can actually be delivered.
  Officer response: The above comments are noted. Matters relating to legal agreements and land ownership fall outside the remit of planning and are beyond the scope of this application.

CONSULTATIONS

The following consultations have been undertaken for this application with the summarised responses listed below.

KC Highways Development Management: objection. The lack of a safe access would discourage the use of sustainable and active travel by the occupants of the dwellings, and this would go against current Kirklees transport policy.

The responses of the above consultees are discussed in greater length within the 'Assessment' section of this report.

ALLOCATION AND POLICIES

The allocations and policies relevant for the site and development are set out in the case officer report for the original application and it is not considered necessary to repeat them here.

Insofar as they are relevant to the consideration of this application the following Assessment makes reference to the applicable policy / legislation.

ASSESSMENT

This Section 73 application seeks minor material variations to the originally approved plans which have come about by a change in the design and layout of the site.

It is considered that the key determining issue/s in the consideration of this application are:

- Principle matters
- Visual amenity
- Access and highway safety

The National Planning Policy Framework has been updated since the determination of the previous application. It is not considered the update of the NPPF has a significant impact upon the determining issues considered applicable in this case.

Principle of development

This Section 73 application seeks the variation and removal of originally imposed conditions which was required to ensure the proposal did not result in an impact on the highway network or result in visual implications for the development.

The National Planning Policy Framework has been updated since the determination of the previous application.

The principle of development for erection of 4 dwellings was established under permission 2023/90956. The development has commenced. The principle of the development remains established by way of this permission. This assessment considers the merits of the proposed variations only.

Visual Amenity

Policy LP24 of Kirklees Local Plan seeks to ensure development is of a suitable design. Chapter 14 of the NPPF sets out the objective to promote high quality, healthy, inclusive and sustainable places, through setting clear expectations about design outcomes and the use of relevant tools and processes.

Policy DP3(1) of the NPPF details that development proposals should respond to their context (the history, character and features of their site and its setting), so that they integrate with and enhance their surroundings; such as through the arrangement of development plots and buildings, the use of materials and architectural features, and the restoration, reuse and integration of heritage assets.

The proposed variation would have a limited visual impact. The development would retain the width of the access point as existing and would retain the existing surfacing materials. Therefore, it is not considered the development would change the conclusions drawn upon the original application in terms of visual amenity.

Highways

Policies LP21 and LP22 of the Kirklees Local Plan and Chapter 15 of the NPPF relate to access and highway safety and are considered to be relevant to the consideration of this application.

Principle 12 of the Housebuilders Design Guide sets out, amongst other things, that parking to serve dwellings should not dominate streets and should be to the side / rear.

The submitted supporting information identifies that the existing access serves 1 and 1a Sparkes Road, together with a B8 haulage yard. The Applicant’s Transport Statement indicates that the existing residential and commercial uses generate approximately 39 vehicle movements per day. In comparison, the proposed four semi-detached dwellings are anticipated to

generate an additional 26 vehicle movements per day, resulting in a total of approximately 65 movements per day. This equates to an average increase of one vehicle movement through the site access every 30 minutes.

The Transport Statement acknowledges the shared nature of the existing access but considers that, given the relatively modest increase in traffic generation, the existing access width and the statistical probability of two vehicles meeting at the access, the likelihood of a pedestrian encountering two opposing vehicles simultaneously is low. On this basis, the Applicant considers that the access can continue to operate safely as a shared vehicular and pedestrian access without the need for the previously required improvements.

However, having reviewed the submitted plans and supporting documentation, the Council's Highways Development Management team do not agree with this assessment. Officers consider that Conditions 2 and 3, together with Condition 5, were imposed as part of the original permission to secure appropriate access arrangements and ensure the safety of all users, including pedestrians and vehicle users. The existing access connects directly to the A640 New Hey Road and is shared with an established transport and haulage business. Consequently, it is reasonably anticipated that the access will continue to accommodate HGVs and other commercial goods vehicles, in addition to vehicles associated with the existing residential properties and the proposed dwellings.

In this context, the absence of a suitably defined and safe pedestrian access would result in pedestrians, including future occupiers of the proposed dwellings, having to share the access with potentially large commercial vehicles. Officers consider that this would give rise to an unacceptable highway safety risk. The relatively low level of additional traffic generation does not, in itself, satisfactorily address the potential conflict between pedestrians and vehicles, particularly given the nature of the commercial use served by the access.

Furthermore, the absence of safe and convenient pedestrian access would be likely to discourage future occupiers from undertaking journeys on foot and using other forms of sustainable and active travel. This would be contrary to the Council's objectives of promoting sustainable transport choices and ensuring that development provides safe and appropriate access for all users.

Accordingly, Highways Development Management cannot support the proposed variation of Conditions 2 and 3 or the removal of Condition 5 in their submitted form. Officers consider that some form of access improvement remains necessary to provide a safe and suitable pedestrian route to the

development and to adequately address the potential conflict between pedestrians and vehicles using the shared access.

The Applicant has sought to place considerable weight on the benefits of delivering four additional dwellings within what is considered to be a highly sustainable location. Whilst the provision of additional housing is acknowledged as a material consideration, these benefits must be balanced against the potential harm arising from the proposed amendments to the existing planning conditions. In this instance, the removal of the previously secured highway improvements would result in an inadequately addressed pedestrian safety concern, to the detriment of the amenity and safety of future occupants and other users of the access.

Condition 3 is considered necessary to ensure that the areas used by vehicles and pedestrians are suitably surfaced and drained. Removing the condition would remove the requirement for these areas to be finished to an appropriate standard, which could result in an unsatisfactory surface for both pedestrians and vehicles. The condition therefore remains necessary in the interests of highway safety and to ensure appropriate surface water drainage.

The proposal would therefore fail to demonstrate that safe and suitable access can be achieved for all users, particularly pedestrians, and would not adequately safeguard highway safety. As such, the proposed variation and removal of conditions would be contrary to the objectives of Policies LP21 and LP22 of the Kirklees Local Plan, particularly Policy LP21a in relation to the safe and efficient movement of traffic within the development and on the surrounding highway network, Principle 12 of the Council's adopted Housebuilders Design Guide Supplementary Planning Document, and the relevant objectives of Chapters 5 and 15 of the National Planning Policy Framework.

For the reasons set out above, the proposed variation of Conditions 2 and 3 and removal of Condition 5 are considered unacceptable, as they would undermine the highway safety measures secured through the original planning permission and fail to provide a safe and suitable access for pedestrians and vehicles.

Review of conditions

In the instance of any grant of approval of a S73 application a new consent is issued by the LPA, as such all conditions upon the original permission are required to be reviewed and where necessary re applied or amended.

As the application is recommended for refusal, it is not necessary to consider or review the conditions attached to the original planning permission.

CONCLUSION & RECOMMENDATION

There have been alterations to national planning policy and guidance since the 2023 application however it is not considered the updates to the NPPF would impact the determination of this application.

It is therefore concluded that the variations to the approved plans proposed under this Section 73 application are unacceptable and would alter the conclusions reached and the recommendation made for application 2023/90956.

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. For the reasons set out above, it is considered that the development would not constitute sustainable development and is therefore recommended for refusal.

Recommendation - VARIATION OF CONDITIONS REFUSED

Decision Authorisation - Delegated Powers

Application Number: 2026/92066

Officer Recommendation: REFUSE

Reason

1. The proposed variation of Conditions 2 and 3 and removal of Condition 5 would fail to secure safe and suitable pedestrian and vehicle access to the development, resulting in an unacceptable risk of conflict between pedestrians and vehicles, including HGVs using the shared access, to the detriment of highway safety. The proposal is therefore contrary to Policies LP21 and LP22 of the Kirklees Local Plan, Principle 12 of the Council's Housebuilders Design Guide Supplementary Planning Document and Chapters 5 and 15 of the National Planning Policy Framework.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Location Plan	-	-	24/07/2026
Proposed Site Plan	2491 01	-	24/07/2026
Section 73 Planning Statement dated July 2026 by Road Safety Audits Ltd.	-	-	29/07/2026
Application Form	-	-	24/07/2026

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 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. The Case Officer contacted the Applicant's Agent to outline the concerns raised by Highways Development Management. In response, the Agent submitted a further supporting statement addressing the Highway Authority's comments however, no amendments to the submitted scheme were proposed. Accordingly, the application has been progressed to determination on the basis of the plans and information submitted.