

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: 2026/NM/92328/E

Site Address: Land at, Penistone Road, Fenay Bridge, Huddersfield,
HD8 0AW

Description: Non material amendment to previous permission
2022/93154 for erection of 68 dwellings with
associated access, parking, open space, landscaping
and infrastructure works (including installation of
surface water attenuation tank)

Recommending Officer: Louise Bearcroft

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.**

Jillian Rann

AUTHORISED OFFICER

Date: 24-Sep-2026

Application: 2026/NMA/92328/E

Application Site; Land at, Penistone Road, Fenay Bridge, Huddersfield, HD8 0AW

Proposal Non material amendment to previous permission 2022/93154 for erection of 68 dwellings with associated access, parking, open space, landscaping and infrastructure works (including installation of surface water attenuation tank)

Overview

The application seeks a non-material amendment for the substitution of house types, together with associated amendments to levels, plot positions, parking and bin storage arrangements, as well as a new area of open space along the southern boundary.

The scheme for 68 dwellings pursuant to application ref 2022/93154 has been previously amended pursuant to NMA ref 2025/91468. This approved amendments to house types to 19 plots (45-46, 48-50, 53-64 and 67-68) and associated changes to layout and parking arrangements.

This application seeks further changes to house types for plots 57-68 to the eastern boundary (including some plots previously amended) together with changes to the site layout, landscaping, and parking to accommodate the changes to house types. In summary the proposal house type changes are detailed in the table below:

Plot Numbers	Approved House Type (via original planning application and NMA)	Proposed House Type
57 and 58 (pair of semi-detached properties)	Fewston - 3 bed - Spilt level over 3 floors - Integral garage	Dalton - 3 bed - 2 Storey
59 and 60 (pair of semi- detached properties) 63 and 64 (pair of semi- detached properties)	Fewston - 3 bed - Spilt level over three floors - Integral Garage	Ripponden - 2 bed - 2 storey
61 and 62 and 67 and 68 (approved detached properties proposed to be replaced by a pair of semi-detached properties)	Middleham - 4 bed detached - Spilt level over three floors - Integral garage	Dalton - 3 bed semi- detached - 2 Storey
65 and 66 (pair of semi-detached properties)	Rowan - 3 bed - Spilt level over	Dalton - 3 bed - 2 Storey

	three floors - Integral garage	
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The applicant has confirmed the reason for the proposed amendments are to remove split-level plots due to a lack of market interest.

The proposal also seeks to make changes to the wording of conditions pursuant to application ref 2022/93154 to reflect changes to the plans. The following is proposed:

Condition 2 (development in accordance with approved plans)

The applicant does not propose to amend the wording of condition 2, however they note the corresponding plans table would be amended as a consequence of the proposal.

Condition 28 (External materials and finishes)

The applicant proposes to update the wording to reflect an updated Materials Plan.

Existing Wording

28. Prior to their use, details of all the external materials and finishes, in accordance with the initial details contained in plan ref. Z078-006 Rev. C, shall be submitted to and approved in writing by the Local Planning Authority. The finishes details shall include plans at a minimum 1:50 scale of the following:

- a) Windows*
- b) Window reveals (minimum 75mm)*
- c) Cills and lintels*
- d) Eaves and verges*
- e) Entrance canopies*

The dwellings shall thereafter be constructed in accordance with the approved details.

Reason: *In the interests of the visual amenity and to accord with Policy LP24 of the Kirklees Local Plan.*

Proposed Wording

28. Prior to their use, details of all the external materials and finishes, in accordance with the initial details contained in plan ref. Z078 – 006 Rev. E shall be submitted to and approved in writing by the Local Planning Authority. The finishes details shall include plans at a minimum 1:50 scale of the following:

- a) Windows*
- b) Window reveals (minimum 75mm)*
- c) Cills and lintels*
- d) Eaves and verges*
- e) Entrance canopies*

The dwellings shall thereafter be constructed in accordance with the approved details

Reason: *In the interests of the visual amenity and to accord with Policy LP24 of the Kirklees Local Plan.*

Condition 37 (Boundary Treatment)

The applicant proposes to update the wording to reflect an updated Layout Plan.

Existing Wording

37. Prior to the occupation of plots 36 – 42, further to the details approved pursuant to condition 25, the approved boundary treatment to all of the southern landscaped area as identified by green chequers between plots 42 and 43 on plan ref. Z078-002 Rev. P shall be fully installed. Thereafter the southern landscaped area's boundary treatment so installed shall be retained.

Reason: *In the interest of residential amenity, to preserve the privacy of existing residents, in accordance with Policy LP24 of the Kirklees Local Plan.*

Proposed Wording

Prior to the occupation of plots 36 – 42, further to the details approved pursuant to condition 25, the approved boundary treatment to all of the southern landscaped area as identified by green chequers between plots 42 and 43 on plan ref Z078 – 001 Rev. R shall be fully installed. Thereafter the southern landscaped area's boundary treatment so installed shall be retained.

Reason: *In the interest of residential amenity, to preserve the privacy of existing residents, in accordance with Policy LP24 of the Kirklees Local Plan.*

The proposed amendments are illustrated in the following:

- Planning Layout, drawing ref Z078-001, rev R
- Landscape Masterplan, drawing ref H22-0016_003G
- Materials Plan, drawing ref Z078-006 Rev E
- Boundary Treatments Plan, ref Z078-003 Rev I
- House Type Pack received 19/08/2026
- External Works Layout Plots 57-68 NMA, drawing ref Z098-5001, Rev P02, received 04/09/2026.

Publicity/representations

As an application for a non-material amendment (NMA), this application is not subject to statutory publicity. One representation has however been received and a summary of the concerns raised is included below:

- There has been a constant re submission of different plans in relation to Plot 43, situated close to neighbouring property and in clear vision of habitable room windows. Plot 43 was originally approved at a FFL of 92.2. The developer resubmitted to build this at a FFL of 93.150. The approved original level would be overbearing and cause loss of amenity and privacy due to the proximity in relation to distance and height. Newett were contacted and agreed verbally that the FFL would revert back to the original plan. Cannot see the FFL has been confirmed, so strongly object to anything higher than the original approved height of 92.2.
- Plot 42 is built and occupied, there is breach of the FFL by at least half a meter higher to the approved plan.
- The parking for Plot 43 was originally intended in front of plot 43 at the top of the Cul de sac, however on the developers latest submission it is showing as tandem parking spaces between Plots 43 and 44.
- Plot 43 looks to be at least two metres forward than the original approved siting and therefore closer to neighbouring property causing overlooking and loss of privacy. Another consequence is that the back garden is going to expand across more of the part of the garden where it adjoins neighbouring property, which will affect enjoyment and lack of privacy of the neighbouring garden.

The Kirkburton Parish Council has made no comment.

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”

In addition, regard is given to 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?

If so, the three further tests need to be applied 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?
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?

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

The NMA protocol also identifies that, in considering these tests, the following factors will be 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 e.g. by seeking to add a pitched roof to an extension described on the Notice as a 'flat roof' extension.
- The proposed change must not contravene any condition attached to the original permission.
- The proposed change should not require a further restriction to make it acceptable (e.g. an amendment seeking to introduce a window which would only be acceptable if it is kept obscurely glazed.)
- The proposed change would not result in any material increase in height, scale, width or depth of a building.
- The proposed change would have been likely to have been approved had it formed part of the original application.

Assessment

Is the proposed change inconsequential in terms of its scale (magnitude, degree etc) in relation to the original approval?

The proposed change in house types would result in amendments to the positioning of the plots, this would be most significant where previously approved detached properties (Middleham) are to be replaced by a pair of semi-detached properties, this applies to plots 61 and 62, and 67 and 68. The road layout which serves the plots is retained in its approved position, although the scheme includes an amendment to extend a private road section closer to the southern boundary.

One impact arising from the proposed change from spilt level dwellings over three storeys to two storey dwellings, is the impact on approved levels. The site is steeply sloping and officers note the compliance condition on the parent application requiring adherence to previously approved groundworks, retaining works and finished floor levels (condition 3 pursuant to application 2022/93154) which reads:

3.The hereby approved development's groundworks, retaining works, and dwelling Finished Floor Levels shall be undertaken in accordance with the level details shown upon plan ref. 22/491/EXT/001 Rev. B.

Reason: *For the avoidance of doubt as to what is being permitted and in the interest of visual and residential amenity, in accordance with LP24 of the Kirklees Local Plan.*

The covering letter is silent on both the issue of levels and the requirements of condition 3, and officers requested further details of how the proposed amendments will impact on approved levels, as well as compliance with condition 3 which the applicant has not proposed to vary.

In response the applicant has provided a finished floor levels plan for the plots affected by this proposal (57-68). The changes necessitate a new requirement for stepped access to these plots from the level of the access road/off-street parking areas. This could have implications in terms of the accessibility of those plots for future occupiers, which are thus considered to give rise to a material new issue which is beyond the scope of this non-material amendment application to assess.

The finished floor levels of the amended plots would now sit higher than street level, however whilst the Finished Floor heights are now higher, the overall ridge heights would be lower due to the proposed change from three to two storey properties. The layout shows changes to the layout, positions and heights of retaining structures in their rear gardens, including the addition of further retaining structures in some rear gardens, compared with the originally submitted proposals. The scale and extent of changes proposed could have implications for the size and configuration of those rear gardens and thus could have material implications for the amenity of their future occupants.

The site layout plan and external works layout plan now submitted also now appear to indicate a strip of land to the rear (east) of plots 57-68, and to the rear of other plots within the site further to the north, whereas the originally approved plans showed the rear gardens extending to the site's eastern boundary. It is not clear whether that land is intended to be within the rear gardens of those plots. Consequently, it is not clear what maintenance arrangements there would be for this area of land, for example whether it is proposed as residential curtilage with maintenance access for residents. If this area is proposed to be outside of the curtilage, it is not included in the areas defined in the Section 106 agreement as incidental landscaping and it is not therefore confirmed whether this to be managed by a management company. This raises further material issues that would need to be addressed by further information, and the possibility of potential amendments to the Section 106 agreement, which is outside of the scope of this application.

It also potentially results in a reduction to the size of the previously approved curtilage areas which has a potential material impact on future occupiers.

The submission also has discrepancies between drawings with regard to this strip of land. Whilst the external works layout plan shows a separate strip of land extending to the rear of all of the plots 57-68, the other submitted drawings (layout and landscaping) show that the rear garden boundaries of

plots 60-68 still extend to the eastern boundary. It is not clear from the submission therefore precisely what is being proposed.

A new area of open space is now proposed to the southern boundary, an area previously approved as residential garden to serve plot 68. There appears to be limited accessibility to utilising this area as open space, as access appears to require traversing over/around a private drive with no clear demarcation for those areas which are public and which are private. The maintenance arrangements are also not clear, as this is not part of the area defined in the S106 as incidental landscaping that would be managed by a management company. There are also potential security and/or anti-social behaviour matters to consider which are material and need to be assessed, taking into account that the open space is to the side of Plot 68 with potentially limited/no natural surveillance to that area.

The proposal also results in more frontage parking which alters the balance between hard landscaping/parked vehicles and soft landscaped front gardens compared with the originally approved scheme. This represents a material change in terms of visual amenity, the merits of which would need to be considered and are therefore outside the scope of this NMA application

Amendments are also proposed to bin storage areas, relocating them from the front of the plots to the side. The arrangement shown appears relatively tight to facilitate bin storage for two properties as well as access to rear gardens for future occupiers. This may have material implications for access, as if the bins are not aligned precisely as per the plan, there is potentially insufficient room to pass which may lead to possible future disputes between occupiers, and may lead to occupiers placing bins elsewhere and potentially obstructing the footway or parking spaces.

Matter raised by neighbour

Although not specifically referred to in the details of proposed changes set out in the supporting details submitted with this application, the submitted plans indicate that the position of the garden boundary of Plot 43 has moved further west, into an area which is shown as open space on the originally approved plans. There are potential impacts from this change for the amenity of the neighbouring property. In addition, this change could have potential impacts in respect of the amount of on-site Public Open Space that is to be provided compared with the originally approved scheme, and for the Section 106 agreement in terms of the extent of this area of open space. These are material changes which would need to be assessed.

Conclusion

Overall, the proposal results in changes to house types and positioning of plots, finished floor levels, retaining structures, new stepped access, a new

area of open space, changes to the boundary of another area of open space, and car parking and bin storage layout revisions. The proposed amendments may also necessitate a change to the Section 106 agreement which is not non-material. When considered cumulatively, the revisions are not considered to be inconsequential to the original permission and are considered to represent a material change to the original permission (as amended by the previously approved NMA). As such, it is concluded that they are required to be assessed through the submission of a Section 73 application.

In the Authority's view would the proposed change result in a detrimental impact either visually or in terms of living conditions?

There is a potential impact on the residential amenity of occupiers of neighbouring properties, including from the location/use of the proposed new area of public open space (previously shown as private garden) to the south of Plot 68 and the extension of the access drive to the south west of Plot 68 closer to the southern boundary, and the resultant changes to levels, and also from the indicated change to the position of Plot 43's garden boundary, moving it further to the west.

Cumulatively the revisions are not considered to be inconsequential to the original permission, and further information to be submitted under a Section 73 application would be required to assess the impact, including updated cross sections, and further details on the intended use of the open space.

In terms of the impact on visual amenity, officers note the proposed revised house types have previously been approved on the site and would be sufficiently in keeping with the character and appearance of the development. The introduction of stepped access, and the changes in finished floor levels, and the proposed inclusion of a greater extent of hard surfacing and frontage parking to front gardens at the expense of soft landscaping, would however alter the appearance of the proposed street scene. This would be a material change when compared to the original previously approved scheme and would need to be further assessed.

In the Authority's view would the interests of a third party or body who participated in or were informed of the original decision be disadvantaged in any way?

As noted above there is a potential impact on the residential amenity of occupiers of neighbouring properties arising from the proposed changes, including from the introduction of open space adjacent to the southern boundary where a residential garden was approved previously, the extension of the access drive in that part of the site closer to the southern boundary than was originally approved, and the change to the boundary of Plot 43's garden, moving it further to the west. As such the interests of third parties, such as the occupants of the properties to the south, could be disadvantaged by them not having had the opportunity to review or comment on those changes.

The application is not subject to statutory publicity however one representation has been received, which is summarised above. Officers note the comments relate to Plots 42 and 43 on the southern boundary.

Matters relating to the indicated change to the boundary of the rear garden of Plot 43 to move it further west are discussed above.

In other regards, the comments include references to the finished floor levels of Plots 42 and 43, and to the position of the parking spaces for Plot 43.

Officers note the comments. However, no changes are proposed to the finished floor levels of Plot 42 or 43 or to the ground levels around those plots as part of this application, and those matters remain subject to relevant requirements in the aforementioned Condition 3 with regard to levels. Furthermore, no changes are proposed to the position of Plot 43's drive/parking area compared with the originally approved plans. Therefore, those further comments relate to matters which sit outside of the scope of this application. In circumstances where a development does not accord with previously approved plans, this would be a matter for the compliance team.

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

The proposed house type changes would not result in an increase in overall height or scale to the physical buildings, although it is necessary to consider that the proposal to accommodate two storey dwellings does require amendments to site levels to create the required level plateau. These changes to levels are not considered to be inconsequential to the approved scheme.

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

Further information would be required to make an informed assessment, to include updated sections, street scene and further details on the intended use of the open space to the south of Plot 68, its accessibility and layout, as well as clarifications and consistent plans showing the levels and retaining structures proposed along the site's eastern boundary.

The proposed change would likely require a further restriction (condition) to make it acceptable, in respect of the note attached to the boundary plan that the gable windows on landing are proposed to be omitted from plot 68.

The proposed changes to levels would also contravene condition 3 attached to the original permission that the approved development's groundworks, retaining works, and dwelling Finished Floor Levels shall be undertaken in accordance with level details on a previous approved plan (ref. 22/491/EXT/001 Rev. B).

The proposal changes would also contravene condition 37 (Boundary Treatment). The applicant has applied to update the wording of this condition to reflect an updated Layout Plan. However, the condition makes reference to approved boundary treatment to all of the southern landscaped area as identified by green chequers between plots 42 and 43. The submitted plan Z078-001 Rev A doesn't have green chequers on as referred to in the condition, and proposes a change to the location of the western boundary of Plot 43, the implications of which are discussed above. Therefore, this proposed amendment to Condition 43 also cannot be considered as a non-material amendment.

Conclusion

Officers consider the alterations, when assessed cumulatively, are not inconsequential to the permitted development and would represent material changes to the proposed development which would give rise to new material matters compared with the originally approved scheme, including with regard to visual and residential amenity. In accordance with Section 96A of the Town and Country Planning Act 1990 and the Council's adopted protocol for dealing with Non-Material Amendments, the proposed changes are not considered to be non-material in their scale and effect. They potentially prejudice the interests of third parties and conflict with existing conditions. They may also necessitate changes to the Section 106 agreement for the development. Officers conclude that the proposed amendments are not acceptable under the Non-Material Amendment procedure.

Recommendation: Refuse NMA

Report Dated: 23/09/2026

Decision Authorisation: Delegated Decision

Recommended Decision Letter Text

The application seeks a non-material amendment for the substitution of house types, together with associated amendments to site levels, plot positions, parking and bin storage arrangements, as well as the introduction of a new area of open space along the southern boundary. The pertinent changes are summarised as follows:

- Replacement of three storey split level house types with two storey house types
- Revised plot positions/layout
- Revised finished Floor Levels
- Introduction of stepped access arrangements to plots
- New retaining structures
- New area of open space in the southern area of the site
- Extension of private driveway towards southern boundary
- Amendments to parking arrangements /removal of integral garage
- Revised Bin Storage arrangements

Whilst not specifically referred to in the details provided as part of the application which set out the changes proposed, the submitted plans also indicate a change to the garden boundary of Plot 43.

The proposed amendments are illustrated in the following:

- Planning Layout, drawing ref Z078-001, rev R
- Landscape Masterplan, drawing ref H22-0016_003G
- Materials Plan, drawing ref Z078-006 Rev E
- Boundary Treatments Plan, ref Z078-003 Rev I
- House Type Pack received 19/08/2026
- External Works Layout Plots 57-68 NMA, drawing ref Z098-5001, Rev P02, received 04/09/2026.

Officers consider the alterations, when assessed cumulatively, are not inconsequential to the permitted development, and would represent material changes to the proposed development which would give rise to new material matters compared with the originally approved scheme, including with regard to visual and residential amenity. In accordance with Section 96A of the Town and Country Planning Act 1990 and the Council's adopted protocol for dealing with Non-Material Amendments, the proposed changes are not considered to be non-material in their scale and effect. They would potentially prejudice the interests of third parties who have not had the opportunity to comment on those changes as part of the non-material amendment procedure, and would conflict with existing conditions. They may also necessitate changes to the Section 106 agreement for the development. Officers conclude that the proposed amendments are not acceptable under the Non-Material Amendment procedure.

Therefore, this application for a Non-Material Amendment is hereby REFUSED.