

KIRKLEES METROPOLITAN COUNCIL

PLANNING SERVICE

UPDATE OF LIST OF PLANNING APPLICATIONS TO BE DECIDED BY STRATEGIC PLANNING COMMITTEE

5 OCTOBER 2023

Planning Application 2022/93154

Item 10 – Page 7

Erection of 68 dwellings with associated access, parking, open space, landscaping and infrastructure works (including installation of surface water attenuation tank)

Land at, Penistone Road, Fenay Bridge, Huddersfield, HD8 0AW

Retaining walls and the residential amenity of plots 7 – 16

The following is stated in the committee report:

10.72 Garden sizes for all the proposed units are, in terms of square meterage, considered acceptable and commensurate to the scale of their respective dwellings. However, by virtue of the site's difficult topography, retaining walls are to be in many unit's gardens. This has the impact of limiting the outlook of rear windows of several properties and creating tiers that subdivides the gardens and reduces their effective size.

10.73 Tiered gardens are not unusual across Kirklees, nor in Lepton itself, due to the steep topography typical for parts of the region. Officers consider that most of the retaining walls proposed in rear gardens would not result in material harm to the amenity of future occupiers. Most gardens would be split into two tiers of good sizes each, and the retaining walls are well spaced from rear windows to avoid causing materially harmful overbearing and/or overshadowing. The exception to this is the proposed retaining works for plots 7 – 16. The current retaining wall plan show these units having their gardens split between 3 or 4 tiers, with the retaining walls that would be up to 2.3m in height at the extreme while being closely spaced to the rear windows. This is considered by officers to result in unacceptable gardens that would prejudice the amenity of future occupiers.

10.74 In response to the above concerns, the applicant has demonstrated via section plans that the retaining walls for plot 7 – 16 could be simplified. This would result in larger individual walls, but which would be further from the dwellings and result in less tiers and larger usable areas. On balance officers consider this arrangement, which would be like that approved via the previous application on the site ref. 2020/90725, to be acceptable. A final technical plan showing this is pending but expected shortly after this report is to be published; confirmation of receipt and officers' assessment shall be provided within the update.

The applicant has since updated the technical External Works Plan to conform to the previously accepted sections plan regarding the rear gardens of Plots 7 – 16. Officers confirm that the above matter has been adequately resolved and, while the gardens for plots 7 – 16 would remain tiered, the extent of the tiers has been reduced. The amended arrangement's impacts would not be unreasonable and would not unduly harm the amenity of future occupiers.

Update on Electric Vehicle Charging Point

The following is stated in the committee report:

Policies LP5, LP24 and LP51 state that all new developments should be served by Electric Vehicle Charging Points. Conversely, since the Local Plan was adopted Building Regulations S 2021 edition (came into effect June 2022). This building regulations makes the installation of a minimum of 1 EVCP per dwellings mandatory. Planning conditions should not repeat separate legislation and therefore conditions for the delivery of EVCP are no longer considered reasonable or necessary.

Following discussions with K.C. Building Control, it has been clarified that Building Regulations only required that the EVCP units are installed at the time of certification. Thereafter, there is no obligation that they be retained.

In the interest of promoting sustainable benefits in perpetuity and to ensure continued compliance with the abovementioned policies, officers consider it reasonable and necessary that EVCPs be required to be retained. Therefore, it is once again proposed to impose a condition requiring that EVCPs be installed and retained.

Response to a representation missed in the committee report

Paragraph 10.140 of the committee report considers the public representations received in the initial public representation periods along with officers' responses. The final query / comment (repeated below) does not have a response. Officers' apologies for this oversight, and respond as follows:

- *The plans are inconsistent, with discrepancies and are presumably wrong in places.*

Response: Inconsistencies were noted following amendments to certain plans. These were addressed and the latest plans are deemed correct.

Response to Cllr Munro's outstanding question detailed in the committee report

In paragraph 10.141 officers responded to comments from local ward Councillor Munro. Officers were unable at the time to answer one question, repeated below. Following discussions with the applicant, the response is now available:

- *It is unclear whether the developer owns the neighbouring site where the tank would be sited. If they have, when was this? If not, has the cost been factored into the viability assessment?*

Response: The above relates to private land arrangements. The applicant has commented as follows:

Newett has secured rights on the land to the west of Peniston Road to incorporate the drainage infrastructure as per the details submitted (including an outfall to the existing watercourse – which was also required on the previously approved scheme) to enable the residential development. It is always the preference to discharge to watercourse where soakaways are not possible (they are not) and this is our proposal. Benchmark Land values are all dealt with in the EVA submitted by Newett and the Align report on behalf of the council.

Given the above, it is not considered that there would be an impact on the recommended S106 planning obligations.

Additional public representations (regarding the south of the site)

In paragraph 7.6 of the committee report it is stated that following receipt of plans that provided minor updates / clarifications on the southern boundary, a focused representation period of 7 days for the engaged properties on the south boundary had been undertaken that was due to expire on the 28th of September (the day the report was published).

In total two representations were received (with eleven emails covering different matters sent from one address being counted as a single representation). The following are the comments received and officers' commentary:

- *The buffer zone separating no. 9 Woodsome Drive, which is located circa 1m from the site, from the development / dwellings is insufficient. The properties to the north and east of the site have much more substantial buffer zones at circa 50m.*

Response: The property to the north is separated from the development by the northern POS, which was informed by the trees which benefit from TPOs, and Whitegates Grove road. The properties to the east are separated by the former railway line and either Whitegates Grove or Clough Way. These are not 'buffer zones' intended to preserve residential amenity, being either land outside of the applicant's control or undevelopable for other reasons.

A designed buffer zone is not typically required between new and existing residential dwellings.

Notwithstanding the above, no. 9 Woodsome Drive is unusual in how close it is to the applicant site and therefore a dedicated buffer zone is deemed necessary in this case. Officers have worked with the applicant and resident to progress the buffer zone's design. As finally designed, officers consider the proposed buffer arrangements to be acceptable to preserve the amenity of no. 9's residents.

As detailed in paragraph 10.57 of the report, the buffer arrangements consist of a non-publicly accessible natural space covering circa 390sqm. There would also be a direct separation distances between plot 9's north facing habitable rooms and plots 37 – 40 of over 35m, which is well in excess of the Council's Housebuilder's Design Guide recommended distance of 21m. Plots 42 and 43 are nearer than 35m, but are set at oblique angles and would not result in materially harmful overlooking, overbearing, or overshadowing, as set out in paragraphs 10.59 and 10.60 of the committee report (and further addressed below).

- *Loss of privacy, visual amenity, noise pollution and overlooking Plot 42. No. 9 Woodsome Drive has a balcony to its rear that would be only 14 – 15m away from plot 42. Currently substantial conifers are sited on the boundary that offer some screening; however they are stated to be in poor health. Should they be removed there would be overlooking between no. 9 and plot 42. Plot 42 would therefore harm the privacy through overlooking, and other amenity impacts due to noise, smells and visual amenity.*

Response: These matters are addressed within paragraph 10.59 of the committee report. Officers' assessment is not predicated on the conifers being retained and it is concluded that the arrangement would not materially prejudice the amenity of no.9's occupiers. It is accepted that the balcony could lead to a level of overlooking upon plot 42's garden, but the impact of this would be limited and not amount to material harm.

- *Objection to the positioning and lack of level details relating to Plot 43 and no. 9 Woodsome Drive. The nearest existing property to this plot, no. 9 Woodsome Drive, is split level and plot 43 would be near its single storey section. A plan showing the relationship between plot 43 and properties on the south boundary have been repeatedly requested by residents and not provided by the planning officer (although a plan showing plot 68 and no. 12 Woodsome Drive has been provided). Dispute the officer's report where it was stated that the level diagram is not necessary, due to the property being private. Ground levels are varied at the moment, and it is unclear how this will be addressed by the development. Dispute the claims and assessment made by the officer in their report, where it is stated that plot 43 would only be 1.2m higher than no. 9 Woodsome Drive and the report fails to acknowledge that plot 43 would be two storeys to no. 9's single storey. Furthermore, plot 43 would be set above its own garden. These concerns are substantiated by the officer's report (paragraph 10.94) which states that the steepness of the land prevents a pedestrian ramp being feasible, indicating the degree of level difference.*

Response: The relationship between plot 43 and no. 9 is considered in paragraph 10.60 of the committee report. Officers did request for sections between the southern plots and neighbouring dwellings but did not receive one for plot 43 and no. 9. However, a detailed external works plan was provided. This document was considered sufficient to enable an assessment of the impacts as detailed in paragraph 10.60. The applicant stated that they were unable to measure the exact ground level of no. 9 as it was private land they

could not access, as noted within the report. However, given the minimal separation distance between the site and no. 9's dwelling, an informed assessment may be made as set out in paragraph 10.60.

How the applicant gathered the levels data for no. 12 is unknown and is a private matter.

Officers reiterate the assessment outlined in paragraph 10.60 and, notwithstanding the concerns of the resident, conclude the arrangements to be acceptable and would not result in material harm to the residents of no. 9 Woodsome Drive.

- *Security to the area of natural / semi natural set aside space under 9 Woodsome Drive. Detailed plans of the boundary treatment and plans showing it in situ should be provided. The proposal's details are lacking, and it is unclear what height fencing is proposed where. It is unclear how the public open space to the south of the site, intended not to be publicly accessible will be kept secure. The fencing along the boundary shared between the development should be acoustic fencing, not just standard fencing.*
- *Unsuitable border height and materials to be used, specifically 1.5m high black metal railing, which is not in keeping with local characteristics. Concerns that it would appear industrial / commercial and harmful to visual amenity. The report requiring natural stone on the frontage of the development, but accepting black railing, is contradictory.*

Response: Officers consider the submitted plans to be clear, specifically the boundary detail plan. This document proposed a 1.8m high close boarded fence upon the site boundary and no. 9's land. There is considered no reasonable justification to require this to be an acoustic fence.

The buffer zone adjacent to no. 9's land, which is to be kept publicly inaccessible, would be separated from the highway by 1.5m high metal fencing. This would be complemented by planting as per the indicative landscaping plan, although a condition is proposed requiring fully detailed landscaping arrangements to be provided later. The use of 1.5m high metal fencing was considered a reasonable compromise between security and design, with a 1.8 or 2.0m close boarded fence expected to appear unduly prominent and harsh in the streetscene. The use of stone was likewise deemed unreasonable and unnecessary. The fencing is proposed as estate fencing, as opposed to mesh or palisade fencing. Estate metal fencing is not unusual on modern estates and officers do not expect it to appear 'industrial', particularly when complemented with landscaping.

In terms of whether this approach is inconsistent given the desire for natural stone, the fencing in question will be low level and visible from limited vistas within the site and from no. 9 Woodsome Drive. Officers maintain that it would be visually attractive. On the other hand, 18 dwellings front directly onto Penistone Road and using natural stone on these units, to complement the prominent material in the area, would ensure a harmonise design from various public vistas.

- *Withheld detail in regard to public steps into Cul de sac near buffer zone, which has been added to the proposal very late (21/09/2023). Thos has not been properly consulted on. These stairs will lead to overlooking of neighbouring properties and will cause a substantial increase in people using the cul-de-sac. This will cause noise pollution and disruption, and exacerbation parking issues (detailed below).*

Response: In paragraph 10.94 officers' detail a proposed staircase connecting the southern access cul-de-sac to the main body of the new estate. This would have the public benefits of improving connectivity in and through the site, such as for residents of the cul-de-sac accessing the proposed LEAP more directly and for residents in the main body of the estate in accessing the bus stops on Penistone Road. Improving pedestrian connectivity are core principles of Policies LP20 and LP21.

While officers note the concern of the resident, fundamentally a staircase and pedestrian areas in general are not considered to generate crime, anti-social behaviour, nor general noise nuisance implications. It should also be noted that under the previously approved plan, ref. 2020/90725 there was a single road within the site that would have allowed a similar level of connectivity between Penistone Road, the south-western corner, and the remainder of the site.

It is accepted that the stairs were added into the proposal late, on the identified date (21/09/2023). This was following officers requesting its inclusion for a prolonged period and negotiations with the applicant. Nonetheless, the addition is considered minimal in scale and its inclusion does not materially amend the scheme to necessitate a dedicated publicity period.

- *Concern about damage to health of tree TP21, with K.C. Trees expressing concerns that if works are undertaken inappropriately could cause harm.*

Response: Officers note the concerns raised by K.C. Trees, however, reiterate the commentary provided in paragraph 10.34 and the proposed conditions to ensure the works are undertaken appropriately.

- *17 visitor car parking spaces - 15 of which located in north end of site. The visitor parking spaces are poorly spread through the site, focused in the north and will therefore lead to visitors parking on the road to the south. The southern cul-de-sac only has two visitor parking bays, which is insufficient, particularly when linked by the pedestrian stairs.*

Response: This comment is noted, and it is acknowledged that the visitor parking is focused within the northern portion of the site. However, on balance the proposed arrangement is deemed acceptable by officers and K.C. Highways. Sufficient visitor parking has been provided and, while less dedicated bays are provided in the southern section of the main part of the proposed estate, there are opportunities for on-road parking that would not block the effective use of the highway or turning heads.

For the southern cul-de-sac, two visitor parking spaces is acceptable for the seven dwellings of the area. While the proposed staircase could in practice allow for them to be used by dwellings outside of this seven, such a criticism could be levelled at any visitor parking spaces and design can only go so far to manage visitor parking habits.

- *The resident has stated they are unable to attend the committee meeting. Due to the above concerns, the resident has request for the meeting to be adjourned or for the application not to considered as they are unable to attend.*

Response: The Council must use its resources effectively which includes the efficient use of committee time and processes. The timetable, room booking and interested parties are all set up for the 5th and it would be unreasonable to cancel the meeting for a single individual to attend. However, the representative's comments have been outlined in this update and they have been notified there are other routes to make representations to the committee. This may include remotely, via ward member, or via letter read by the clerk, or an appointed representative etc.

- *From the latest plans, is disappointing to see that the garden levels between plot 68 and no. 12 Woodsome Road are similar, as opposed to having a retaining wall, with landscaped buffer zone and acoustic fencing atop, and plot 68's garden being lower. This will result in harm to the amenity of no. 12's residents through the introduction of a garden at the same level as their adjacent their property. Question why a retaining wall cannot be installed.*

Response: This matter is addressed in paragraph 10.64 of the committee report. Officers reiterate that it is not unusual for gardens that share a ground level to be adjacent to each other and there is no justification to require an acoustic barrier between domestic gardens. For these reasons a retaining wall and/or buffer zone is not deemed necessary between plot 68 and no. 12 Woodsome Drive and could not be reasonably required of the development.

Additional public representation (general)

The public representation period expired on Friday the 22nd of September. Nonetheless, one additional representation has been received from local community group GAIL (Green Alert in Lepton). The following matters are raised:

- *The site is within the 'Huddersfield South' sub-area (as defined by the Affordable Housing and Housing Mixture SPD). This sub-zone is identified as being in the most need for affordable / social housing. Therefore, developer profits should not be put before community need and should be refused without the 14 affordable dwellings required by policy. Anything below 14 would be a 'disappointment and we are of the opinion that should members be minded to approve this application with a watered down provision for affordable housing it will be setting a very dangerous precedent as well as seriously undermining the objectives of the Local Plan and the objectives of Council Policies and National Legislation'*

- On the viability, what is the process if the applicant makes a higher-than-expected profit level? It would be too late for the Council to secure more contributions. What would the Council do with such windfalls?
- The Council's viability assessment should undertake more testing of different scenarios before concluding, such as:
 - Full S106 contributions and full affordable housing requirement
 - Reduced S106 contributions and full affordable housing requirements
 - Full S106 contributions and reduced affordable housing requirement
 - Reduced S106 contributions and reduced affordable housing requirements
 - No S106 contributions and full affordable housing requirements.

Response: The viability review process is well established in the planning process. Paragraph 58 of the NPPF states:

Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.

The submitted viability report and the Council's viability assessment, undertaken by a viability assessor, has been undertaken in accordance with both national guidance set out in the National Planning Practice Guide and industry standard, as well as the expectations of the Council's Viability Guidance note. Undertaking numerous tests and scenarios was not concluded to be reasonable or necessary as adequate information was secured to reach a conclusion.

Regarding if the developer makes a windfall profit, the recommendation for approval includes the following element to be secured within the S106:

h) Viability Review Mechanism: An updated viability report to be provided to the LPA, with additional Section 106 obligation to be provided if a higher-than-expected profit is achieved.

This will require the developer to submit an updated viability report, to be reviewed by the Council, after X number dwellings have been constructed. This will allow actual profit / costs to be identified and, should a windfall profit be found, proportionate additional contributions may be secured.

- *GAIL dispute that the attenuation tank would be an engineering operation and consider it to be inappropriate development within the Green Belt. Caselaw is cited, specifically appeal decision APP/P2935/W/21/3285884 Whitehouse Farm, Hexham, Northumberland. In this case (summarised by the author of GAIL's comments) an appeal was dismissed 'on the grounds that the developments would have a clear and demonstrable effect on the openness of green belt land by introducing development to land that is permanently open'. Committee should therefore not decide on the application without officers explaining why they support the proposal further.*

Response: The proposals impact upon the Green Belt is considered in paragraphs 10.12 – 10.20 of the main report. Officers remain of the view that an attenuation tank, consisting of excavation and formation of a void, would be an engineering operation (as would the access road). Such an interpretation is considered well established and an authorities planning decisions should be consistent. Similar arrangements (attenuation tanks, deemed to be engineering operations, in the Green Belt) being supported in various applications, including 2020/93954 (42 dwellings at Lingards Road, Slaithwaite) and 2021/92086 (277 dwellings at Bradley Vill Farm, Bradley).

On the matter of the appeal decision, each application must be assessed on its own merits. For the reasons given in 10.12 – 10.20 of the main report, officers consider the impacts to be acceptable in this case. Officers would also dispute the author's interpretation of the appeal decision, which includes a sewerage drainage / treatment system, not an attenuation tank, which the inspector nonetheless concludes to have a neutral impact on the Green Belt by virtue of being subterranean and does not oppose. The main harm the inspector identifies and bases his decision on, is due to a car park, access track, and footpaths (which run over 200m in length) and the installation of two huts in the Green Belt. The current proposal includes no new buildings in the Green Belt and the access works are materially different. Overall, the identified appeal decision is not deemed applicable or relevant.

Additional comments from Cllr Munro

Local ward Councillor Munro has provided the following additional comments following the closure of the public representation period on the 22nd of September:

- *I would like noting by the committee is the access to the opposite field which is proposed to hold the attenuation tank and associated works. Initially construction vehicles would be accessing and egressing from this field followed by service vehicles, but the access to the field is tight and vehicles travel at speed along this stretch of road making it highly dangerous, both to access and egress.*
- *In addition, for a vehicle egressing from the field, turning right across Penistone Rd, that danger is even higher. There is a slight curve in the road just after the current point of access to the field. The speed limit is 40mph.*

Response: Construction traffic to the adjacent field, to install the attenuation tank and access route, would be limited and managed via the proposed Constriction Management Plan condition. Once operational access to the attenuation tank will be infrequent, expected to be once or twice a year during normal operation and would therefore not represent a material intensification over the access' existing use.

Planning Application 2022/90858

Item 11 – Page 57

Construction of 3G pitch with 4.5m perimeter fencing and 15m floodlighting

Shelley College, Huddersfield Road, Shelley, Huddersfield, HD8 8NL

Drainage

In sections 10.17-10.20 of the committee report, officers reported that the proposed drainage scheme for the new pitch accords with the principles of the hierarchy of sustainable drainage. Notwithstanding the details submitted with the application however, and to ensure the final scheme is to the satisfaction of the Lead Local Flood Authority a condition to secure a drainage scheme was recommended. Since this time the Lead Local Flood Authority have confirmed that the details previously submitted are acceptable, and that they raise no objections subject to the inclusion of a condition to secure a scheme for ongoing maintenance of the drainage system. Officers therefore propose a revision to the wording of Condition 15 to secure details of a maintenance strategy only.

Revised Wording of Condition 15:

15. A Drainage Maintenance Strategy for the ongoing maintenance of the drainage system (including the hydrobrake and silt trap), to include a Maintenance Schedule, and details of which organisation will be responsible for long term maintenance.

Biodiversity Net Gain

The Biodiversity Net Gain Assessment dated June 2023 has been assessed by the Council's Ecologist. The proposals detail that 2ha of modified grassland will be enhanced from moderate to good condition under a management regime that will create varied sward height and increased species richness. 0.1ha of modified grassland will be enhanced to woodland through the planting of native tree and shrub species. These changes will result in 10.05% net gain in Area Habitat Units. The planting of 53m of native species hedgerow will result in 24.64% net gain in Hedgerow Units. Habitat creation and management recommendations have been made, and the Council's ecologist is satisfied that the proposals are able to be delivered in line with Policy LP30 of the Kirklees Local Plan and the adopted Biodiversity Net Gain Technical Advice Note.

'Figure 4 – Proposed Habitat Enhancement and Creation On-Site' on page 17 of The Biodiversity Net Gain Assessment shows the proposed location of the enhancements and habitat creation, however it is not clear whether the proposals, in particular the enhancements to the modified grassland, would have an impact on existing playing field provision. Therefore, whilst the proposals are acceptable in respect of achieving a 10% net gain, it is considered necessary to impose a condition to secure a Biodiversity Enhancement and Management Plan. This will facilitate a scheme to be brought forward which will ensure that the net gain targets are achieved at the site without any loss of playing fields provision. Officers therefore propose an amendment to the recommendation as there is no longer a requirement to delegate back to officers to addresses Biodiversity Net Gain. This is subject to the inclusion of an additional condition to secure a Biodiversity Enhancement and Management Plan.

Revised Recommendation:

DELEGATE approval of the application and the issuing of the decision notice to the Head of Planning and Development in order to complete the list of conditions including those contained within this report.

Additional condition suggested:

16. Notwithstanding the details submitted a Biodiversity Enhancement and Management Plan (BEMP) shall be submitted to and approved in writing by the Local Planning Authority.

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