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**Service Director – Legal, Governance and
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Wednesday 27 December 2017

Notice of Meeting

Dear Member

Planning Sub-Committee (Huddersfield Area)

The **Planning Sub-Committee (Huddersfield Area)** will meet in the **Council Chamber - Town Hall, Huddersfield** at **1.00 pm** on **Thursday 4 January 2018**.

(A coach will depart the Town Hall, at 10.00am to undertake Site Visits. The consideration of Planning Applications will commence at 1.00 pm in the Council Chamber.)

This meeting will be webcast live and will be available to view via the Council's website.

The items which will be discussed are described in the agenda and there are reports attached which give more details.

A handwritten signature in black ink, appearing to read "Julie Muscroft".

Julie Muscroft

Service Director – Legal, Governance and Commissioning

Kirklees Council advocates openness and transparency as part of its democratic processes. Anyone wishing to record (film or audio) the public parts of the meeting should inform the Chair/Clerk of their intentions prior to the meeting.

The Planning Sub-Committee (Huddersfield Area) members are:-

Member

Councillor Terry Lyons (Chair)
Councillor Donna Bellamy
Councillor James Homewood
Councillor Bernard McGuin
Councillor Mohammad Sarwar
Councillor Ken Sims
Councillor Mohan Sokhal
Councillor Sheikh Ullah
Councillor Rob Walker
Councillor Linda Wilkinson
Councillor Andrew Marchington

When a Planning Sub-Committee (Huddersfield Area) member cannot be at the meeting another member can attend in their place from the list below:-

Substitutes Panel

Conservative

B Armer
N Patrick
G Wilson
J Taylor
D Firth

Green

K Allison
A Cooper

Independent

C Greaves

Labour

E Firth
S Hall
C Scott

Liberal Democrat

J Lawson
A Pinnock

Agenda

Reports or Explanatory Notes Attached

	Pages
1: Membership of the Committee	
<p>This is where Councillors who are attending as substitutes will say for whom they are attending.</p>	
2: Minutes of previous meeting	1 - 10
<p>To approve the Minutes of the meeting of the Committee held on 23 November 2017.</p>	
3: Interests and Lobbying	11 - 12
<p>The Councillors will be asked to say if there are any items on the Agenda about which they might have been lobbied. The Councillors will be asked to say if there are any items on the Agenda in which they have disclosable pecuniary interests, which would prevent them from participating in any discussion of the item or participating in any vote upon the item, or any other interests.</p>	
4: Admission of the Public	
<p>Most debates take place in public. This only changes when there is a need to consider certain issues, for instance, commercially sensitive information or details concerning an individual. You will be told at this point whether there are any items on the Agenda which are to be discussed in private.</p>	
5: Deputations/Petitions	
<p>The Committee will receive any petitions and hear any deputations from members of the public. A deputation is where up to five people can attend the meeting and make a presentation on some particular issue of concern. A member of the public can also hand in a petition at the meeting but that petition should relate to something on which the body has powers and responsibilities.</p> <p>In accordance with Council Procedure Rule 10 (2), Members of the Public should provide at least 24 hours' notice of presenting a deputation.</p>	

6: Public Question Time

The Committee will hear any questions from the general public.

7: Site Visit - Application No: 2016/91560

Alterations to convert lower ground floor to two flats (Listed Building within a Conservation Area) 33-35, Queensgate, Huddersfield.

(Estimated time of arrival at site – 10.05 am)

Contact Officer: Farzana Tabasum

Wards Affected: Newsome

8: Site Visit - Application 2017/93288

Erection of single storey front and rear extensions 15A, Whitacre Street, Deighton, Huddersfield.

(Estimated time of arrival at site – 10.25 am)

Contact Officer: Neil Bearcroft, Planning Services

Wards Affected: Ashbrow

9: Site Visit - Application 2017/93483

Erection of single storey rear extension and rear dormer windows 152, Ravensknowle Road, Dalton, Huddersfield.

(Estimated time of arrival at site – 10.50 am)

Contact Officer : Francis Davies

Wards Affected: Almondbury

10: Site Visit - Application 2017/93341

Erection of extensions and alterations to existing detached garage to form dwelling with associated access, parking and curtilage areas Adj, 10, Cherry Tree Walk, Scholes, Holmfirth.

(Estimated time of arrival at site – 11:20 am)

Contact Officer: Nick Hirst

Wards Affected: Holme Valley South

11: Site Visit - Application 2017/93386

Erection of first floor extension with balcony, Tara, Scholes Moor Road, Scholes, Holmfirth.

(Estimated time of arrival at site – 11:30 am)

Contact Officer: Nick Hirst

Wards Affected: Holme Valley South

12: Local Planning Authority Appeals

13 - 38

The Sub Committee will receive a report detailing the outcome of appeals against decisions of the Local Planning Authority, as submitted to the Secretary of State.

Contact: Teresa Harlow, Planning Services

Wards Affected: Colne Valley; Holme Valley South; Newsome

Planning Applications

39 - 42

The Planning Sub Committee will consider the attached schedule of Planning Applications.

Please note that any members of the public who wish to speak at the meeting must register no later than 5.00pm (for phone requests) or 11:59pm (for email requests) by no later than 3 January 2018.

To pre-register, please contact richard.dunne@kirklees.gov.uk or phone Richard Dunne on 01484 221000 (Extension 74995)

An update, providing further information on applications on matters raised after the publication of the Agenda, will be added to the web Agenda.

13: Application for a definitive map modification order to add a public bridleway to the definitive map and statement - Bridge Lane to Sands, Holmfirth 43 - 66

The Planning Sub-Committee will consider an application to record a public bridleway to the definitive map and statement, Bridge Lane to Sands, Holmfirth.

Contact Officer: Giles Cheetham

Wards Affected: Holme Valley South

14: Planning Application - Application No: 2016/91560 67 - 78

Alterations to convert lower ground floor to two flats (Listed Building within a Conservation Area) 33-35, Queensgate, Huddersfield.

Contact Officer: Farzana Tabasum

Wards Affected: Newsome

15: Planning Application - Application No: 2017/93288 79 - 86

Erection of single storey front and rear extensions 15A, Whitacre Street, Deighton, Huddersfield.

Contact Officer: Neil Bearcroft, Planning Services

Wards Affected: Ashbrow

16: Planning Application - Application No: 2017/93483 87 - 94

Erection of single storey rear extension and rear dormer windows 152, Ravensknowle Road, Dalton, Huddersfield.

Contact Officer : Francis Davies

Wards Affected: Almondbury

17:	Planning Application - Application No: 2017/93341	95 - 106
	Erection of extensions and alterations to existing detached garage to form dwelling with associated access, parking and curtilage areas Adj, 10, Cherry Tree Walk, Scholes, Holmfirth.	
	Contact Officer: Nick Hirst	
	Wards Affected: Holme Valley South	
18:	Planning Application - Application No: 2017/93386	107 - 116
	Erection of first floor extension with balcony, Tara, Scholes Moor Road, Scholes, Holmfirth.	
	Contact Officer: Nick Hirst	
	Wards Affected: Holme Valley South	
19:	Planning Application - Application No: 2016/90524	117 - 132
	Outline application for erection of three dwellings (Within the curtilage of a Listed Building) Middle Burn Farm, Burn Road, Birchencliffe, Huddersfield.	
	Contact Officer: Adam Walker	
	Wards Affected: Lindley	
20:	Planning Application - Application No: 2017/93777	133 - 142
	Change of use from light industry / storage to martial arts gymnasium (D2) Springfield Mills, Dale Street, Longwood, Huddersfield.	
	Contact Officer: William Simcock	
	Wards Affected: Golcar	
21:	Planning Application - Application No: 2017/93834	143 - 150
	Erection of single storey side and rear extension Lansdowne House, Lane Bottom, Wooldale, Holmfirth.	
	Contact Officer: Aimee Procter	
	Wards Affected: Holme Valley South	

Planning Update

The update report on applications under consideration will be added to the web agenda prior to the meeting.

Contact Officer: Richard Dunne

KIRKLEES COUNCIL

PLANNING SUB-COMMITTEE (HUDDERSFIELD AREA)

Thursday 23rd November 2017

Present: Councillor Terry Lyons (Chair)
Councillor James Homewood
Councillor Bernard McGuin
Councillor Mohammad Sarwar
Councillor Ken Sims
Councillor Mohan Sokhal
Councillor Sheikh Ullah
Councillor Rob Walker
Councillor Linda Wilkinson
Councillor Andrew Marchington
Councillor John Taylor

Apologies: Councillor Donna Bellamy

1 Membership of the Committee

Cllr Taylor substituted for Cllr Bellamy.

2 Minutes of previous meeting

The Minutes of the meeting held on 12 October 2017 were approved as a correct record.

3 Interests and Lobbying

Members declared interests and identified planning applications on which they had been lobbied as follows:

Councillor Sims declared that he had been lobbied on application 2017/92605.

Councillors Marchington, Wilkinson, Sokhal, Ullah and Homewood declared that they had been lobbied on item 1- Modification of the definitive map and statement. Determination of Public rights of way and their status at Huddersfield 231, Nether Moor, South Crosland, Huddersfield. Definitive Map Modification Order Application to Record a Public Footpath (Add Footpath and Vary Particulars).

Councillor Rob Walker declared that he had been lobbied on application 2017/92274.

Councillor Ullah declared an 'other interest' in application 2017/91132 on the grounds that applicant was a friend.

Planning Sub-Committee (Huddersfield Area) - 23 November 2017

Councillor Lyons declared an 'other interest' in application 2017/91505 on the grounds that he was a member of Meltham Town Council.

4 Admission of the Public

All items on the agenda were taken in public session.

5 Deputations/Petitions

No deputations or petitions were received.

6 Site Visit - Application No: 2017/91505

Site visit undertaken.

7 Site Visit - Application 2017/92605

Site visit undertaken.

8 Site Visit - Application 2017/92825

Site visit undertaken.

9 Site Visit - Application 2017/92274

Site visit undertaken.

10 Site Visit - Application 2017/92422

Site visit undertaken.

11 Site Visit - Application 2017/91132

Site visit undertaken.

12 Local Planning Authority Appeals

That the report be noted.

13 Modification of the definitive map and statement. Determination of Public rights of way and their status at Huddersfield 231, Nether moor, South Crosland, Huddersfield. Definitive Map Modification Order Application to Record a Public Footpath (Add Footpath and Vary Particulars).

The Committee considered a report that sought a decision on the modification of the definitive map and statement of public rights of way relating to Huddersfield 231, Nether Moor, South Crosland, Huddersfield.

The report outlined the context and background to the matter, information required to take a decision, next steps and officer recommendations and reasons.

Under the provisions of Council Procedure Rule 37, the Committee received representations from Mark Weston (on behalf of the British Horse Society), Susan Carter, Christine Senior, Mark Corrigan (on behalf of Kirklees Bridleways Group), Sue Chadwick (all supported the officer recommendations) and Jonathan Bradley and Andy Dunlop (Public Rights of Way Consultant) (both of whom objected to the officer recommendations)

Planning Sub-Committee (Huddersfield Area) - 23 November 2017

Under the provisions of Council Procedure Rule 36 (1) the Committee received a representation from Cllr Edgar Holroyd-Doveton (ward member for Holme Valley North).

RESOLVED – That the Service Director, Legal, Governance and Commissioning be authorised to make and seek confirmation of a definitive map modification order (“DMMO”) to record Huddersfield 231 as a public bridleway under section 53 (3) c (ii) of the Wildlife & Countryside Act 1981, in accordance with the conclusions in the considered report

A Recorded Vote was taken in accordance with Council Procedure Rule 42 (5) as follows:

For: Councillors Homewood, Lyons, Marchington, McGuin, Sawar, Sims, Sokhal, J Taylor, Ullah, Walker and Wilkinson (11 votes).

Against: (0 votes).

14 Planning Application - Application No: 2015/91664

The Sub Committee gave consideration to Planning Application 2015/91664 Outline application for residential development with details of access and provision of car parking and bin storage for previously approved adjacent apartments under application no. 17/90375 rear of 1A, St Johns Avenue, Newsome, Huddersfield.

Under the provisions of Council Procedure Rule 37, the Committee received representations from Jacqui Sullivan (objector) and Stewart Smith (applicant).

Under the provisions of Council Procedure Rule 36 (1) the Committee received a representation from Cllr Julie Stewart-Turner (Local ward member).

RESOLVED – Delegate approval of the application and the issuing of the decision notice to the Head of Strategic Investment in order to complete the list of conditions contained within the considered report including:

1. Approval of the details of the appearance, layout, scale and landscaping of the site (hereinafter called ‘the reserved matters’) to be obtained from the Local Planning Authority in writing before any development is commenced.
2. Plans and particulars of the reserved matters referred to in Condition 1 above, relating to the appearance, layout, scale and landscaping of the site, to be submitted in writing to the Local Planning Authority and carried out in full accordance with the approved plans.
3. Application for approval of any reserved matter to be made to the Local Planning Authority before the expiration of three years from the date of this permission.
4. The development hereby permitted to begin 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.

5. The access road to be widened to achieve a road width of 4.5m with 0.6m margins to either side and completed in accordance with the approved details prior to the occupation of any approved dwellings.
6. Biodiversity mitigation/enhancement measures for bats and birds integral to new buildings or trees (if appropriate to species).
7. Reserved matter of 'landscape' to include native species of trees and/or shrubs to replace lost vegetation and enhance habitat networks.
8. Landscape management plan to detail how the landscaping will be managed to encourage biodiversity interest.
9. A scheme detailing the proposed internal adoptable estate roads to include full sections, drainage works, street lighting, signing, surface finishes and the treatment of sight lines, together with an independent safety audit covering all aspects of work.
10. The approved vehicle parking areas to be surfaced in accordance with Guidance on the permeable surfacing of front gardens' published 13th May 2009.
11. Details for storage and collection of bins.
12. Electric vehicle charging points.

A Recorded Vote was taken in accordance with Council Procedure Rule 42 (5) as follows:

For: Councillors Homewood, Lyons, McGuin, Sawar, Sims, Sokhal, Ullah and Walker (8 votes).

Against: Councillors Marchington and Wilkinson (2 votes)

Abstained: Councillor J Taylor

15 Planning Application - Application No: 2017/92605

The Sub Committee gave consideration to Planning Application 2017/92605 change of use and alterations to wc to form revised public toilets, A1 (shops/retail), A2 (professional services) , A3 (cafe/restaurant) and A5 (hot food and takeaway) (within a Conservation Area) Public Conveniences, Station Road, Holmfirth.

Under the provisions of Council Procedure Rule 37 the Committee received representations from Greg Cropper and Tom Dixon (both on behalf of the applicant Holme Valley Parish Council).

Under the provisions of Council Procedure Rule 36 (1) the Committee received a representation from Cllr Nigel Patrick (Local ward member)

RESOLVED – Delegate approval of the application and the issuing of the decision notice to the Head of Strategic Investment in order to complete the list of conditions contained within the considered report including:

1. The standard 3-year deadline for commencement of development
2. Development to be in accordance with approved plans.
3. Materials for door blocking up to match.
4. A3/A5 hours of use.

5. A1/A2 hours of use.
6. Extract ventilation.

A Recorded Vote was taken in accordance with Council Procedure Rule 42 (5) as follows:

For: Councillors Homewood, Marchington, Sawar, Sokhal, Ullah and Wilkinson (6 votes).

Against: Councillors McGuin, Sims, J Taylor and Walker (4 votes)

Abstained: Councillor Lyons

16 Planning Application - Application No: 2017/92230

The Sub Committee gave consideration to Planning Application 2017/92230 Outline application for residential development Rodgers Plant Hire, Riverside Works, Woodhead Road, Honley, Holmfirth.

Under the provisions of Council Procedure Rule 37 the Committee received a representation from Andrew Keeling (agent).

RESOLVED –

1. Delegate approval of the application and the issuing of the decision notice to the Head of Strategic Investment in order to complete the list of conditions contained within the considered report including:
 1. The standard outline condition regarding the submission of reserved matters.
 2. The standard outline condition regarding the implementation of reserved matters.
 3. The standard outline condition regarding the reserved matters submission time limit.
 4. The standard outline condition regarding the reserved matters implementation time limit.
 5. Ecology (lighting strategy)
 6. Ecology (design strategy)
 7. Contaminated land
 8. Affordable Housing (speculative)
 9. Public Open Space (speculative)
 10. Education (speculative)
 11. Noise mitigation report
 12. Ventilation Report
 13. Air Quality (Charging point)
 14. Drainage (scheme details)
 15. Drainage (separate foul/surface)
 16. Drainage (discharge rates)
 17. Drainage (storm event assessment)
 18. Drainage (ongoing maintenance)
 19. Highways (site access details)

- 20. Highways (visibility splays)
- 21. Highways (provision of frontage footpath)
- 22. Highways (metro cards + details)

2. Secure a Section 106 agreement to cover the following matter:
 - The payment of a bond to cover the cost of constructing a section of footpath alongside the riverside from the site at a future date. Cost to be confirmed.
3. That, pursuant to (2) above, in the circumstances where the S106 agreement has not been completed within 3 months of the date of the Committee's resolution then the Head of Strategic Investment shall consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the benefits being secured; if so, the Head of Strategic Investment is authorised to determine the application and impose appropriate reasons for refusal under Delegated Powers

A Recorded Vote was taken in accordance with Council Procedure Rule 42 (5) as follows:

For: Councillors Homewood, Lyons, Marchington, McGuin, Sawar, Sims, Sokhal, J Taylor, Walker and Wilkinson (10 votes).

Against: (0 votes).

17 Planning Application - Application No: 2017/92825

The Sub Committee gave consideration to Planning Application 2017/92825 Change of use of part of bakery to gymnasium 1, Ruth Street, Newsome, Newsome, Huddersfield.

Under the provisions of Council Procedure Rule 37 the Committee received a representation from Jade Robshaw (applicant).

RESOLVED – Delegate approval of the application and the issuing of the decision notice to the Head of Strategic Investment in order to complete the list of conditions contained within the considered report including:

1. Hours of use
2. Noise mitigation plan
3. Obscure Glazing
4. Limiting the number of visitors

A Recorded Vote was taken in accordance with Council Procedure Rule 42 (5) as follows:

For: Councillors Homewood, Lyons, Marchington, McGuin, Sawar, Sims, Sokhal, J Taylor, Ullah, Walker and Wilkinson (11 votes).

Against: (0 votes).

18 Planning Application - Application No: 2017/93282

The Sub Committee gave consideration to Planning Application 2017/93282 outline application for erection of one dwelling 80, Cliff Road, Holmfirth.

Under the provisions of Council Procedure Rule 37 the Committee received representations from Andrew Keeling (agent) and Ailsa Stott (on behalf of the applicant).

RESOLVED – That consideration of the application be deferred to allow the applicant to:

1. Investigate alterations and extensions to original dwelling house and to demonstrate that a larger extension in Green Belt may be acceptable due to the medical special circumstance of the applicant.
2. Provide details of proposed alterations and extensions to original dwelling house.
3. Consult with Adult Social Care to undertake a needs assessment and provide a statement of need.

A Recorded Vote was taken in accordance with Council Procedure Rule 42 (5) as follows:

For: Councillors Homewood, Lyons, Marchington, McGuin, Sawar, Sims, Sokhal, J Taylor, Ullah, Walker and Wilkinson (11 votes).

Against: (0 votes).

19 Planning Application - Application No: 2017/91505

The Sub Committee gave consideration to Planning Application 2017/91505 outline application for erection of residential development Land off, Huddersfield Road, Meltham, Holmfirth.

Under the provisions of Council Procedure Rule 37 the Committee received a representation from Andrew Keeling (agent).

RESOLVED –

1. Delegate approval of the application and the issuing of the decision notice to the Head of Strategic Investment in order to complete the list of conditions contained within the considered report and the update list including:
 1. 3 year time limit condition to implement the permission.
 2. Development to be in accordance with approved plans.
 3. Reserved matters to comprise natural stone and slate roofs
 4. Full drainage details to be submitted with reserved matters including percolation tests
 5. Foul water drainage details to be submitted with reserved matters.
 6. Flood routing
 7. Badger survey prior to commencement.
 8. Ecological enhancement plan and implementation to be submitted with reserved matters

9. Dwellings to be no more than 2 storeys in height
 10. Removal of permitted development rights
 11. Construction method statement
 12. Electric charging points with reserved matters.
 13. Contaminated land conditions
 14. Noise report to be submitted with reserved matters.
 15. Provision of Affordable Housing
 16. Provision of Public Open Space
 17. Access sightlines to be provided
 18. Scheme for street lighting
 19. Details of junction of estate road to be submitted
2. The inclusion of the following additional conditions:
 1. A Traffic Regulation Order in order to reduce the speed limit in front of the development site;
 2. A requirement for the developer to provide a new footpath connection from or near to the proposed development site to the Greenway.
 3. Secure a Section 106 agreement to cover the following matters:
 1. Contribution of £20,000 towards bus stop improvements;
 2. The provision of subsidised Metro Travel Cards for the benefit of future occupiers.
 4. That, pursuant to (3) above, in the circumstances where the S106 agreement has not been completed within 3 months of the date of the Committee's resolution then the Head of Strategic Investment shall consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the benefits being secured; if so, the Head of Strategic Investment is authorised to determine the application and impose appropriate reasons for refusal under Delegated Powers

A Recorded Vote was taken in accordance with Council Procedure Rule 42 (5) as follows:

For: Councillors Lyons, McGuin, Sims, J Taylor and Walker (5 votes).

Against: Councillors Homewood, Sawar Sokhal and Ullah (4 votes).

Abstained: Councillors Marchington and Wilkinson

20 Planning Application - Application No: 2017/92274

The Sub Committee gave consideration to Planning Application 2017/92274 Formation of off street parking 90 A, Radcliffe Road, Wellhouse, Huddersfield.

Under the provisions of Council Procedure Rule 37 the Committee received a representation from Alison Hadden (applicant).

RESOLVED – That consideration of the application be deferred to allow the applicant to try and achieve the visibility splays that will be required through a reduction in the height of the front garden.

A Recorded Vote was taken in accordance with Council Procedure Rule 42 (5) as follows:

For: Councillors Homewood, Lyons, Marchington, McGuin, Sawar, Sims, Sokhal, J Taylor, Ullah, Walker and Wilkinson (11 votes).

Against: (0 votes).

21 Planning Application - Application No: 2017/92422

The Sub Committee gave consideration to Planning Application 2017/92422 Erection of single storey side and rear extensions to dwelling, erection of machinery store and engineering operations 9, Clough Head, Slaithwaite Gate, Bolster Moor, Huddersfield.

Under the provisions of Council Procedure Rule 37 the Committee received representations from Nick Willock (on behalf of the applicant) and Chris Friend (applicant).

RESOLVED – That the application be refused in line with the following reasons that were included in the considered report:

1. The site lies within an area of designated Green Belt. The proposed side and rear extensions to the dwelling house would result in disproportionate additions over and above the size of the original building. The extensions therefore constitute inappropriate development that would be harmful to the openness of the Green Belt. The application is contrary to Policy D11 of the Unitary Development Plan, PLP 57 of the emerging Local Plan and paragraph 89 of the National Planning Policy Framework.

A Recorded Vote was taken in accordance with Council Procedure Rule 42 (5) as follows:

For: Councillors Homewood, Lyons, Marchington, McGuin, Sims, Sokhal, J Taylor, Ullah and Wilkinson (9 votes).

Against: (0 votes).

Abstained: Councillor Walker

22 Planning Application - Application No: 2017/91132

The Sub Committee gave consideration to Planning Application 2017/91132 Erection of two storey side extension to form enlarged Class A1 shop at ground floor with A2 office unit and residential flat above Fix It Supplies, 12b, Hillhouse Lane, Fartown, Huddersfield.

Under the provisions of Council Procedure Rule 37 the Committee received representations from Malcolm Sizer (on behalf of the applicant).

RESOLVED – Contrary to the Officer's recommendation that the application be delegated to the Head of Strategic for approval subject to the inclusion of a condition requiring that any elevations of the building that are visible from Bradford Road or Hillhouse Lane be constructed from natural stone.

A Recorded Vote was taken in accordance with Council Procedure Rule 42 (5) as follows:

For: Councillors Homewood, Lyons, McGuin, Sims, Sokhal, J Taylor, Walker and Wilkinson (8 votes).

Against: (0 votes).

KIRKLEES COUNCIL

DECLARATION OF INTERESTS AND LOBBYING

Planning Sub-Committee/Strategic Planning Committee

Name of Councillor

Item in which you have an interest	Type of interest (eg a disclosable pecuniary interest or an “Other Interest”)	Does the nature of the interest require you to withdraw from the meeting while the item in which you have an interest is under consideration? [Y/N]	Brief description of your interest

LOBBYING

Date	Application/Page No.	Lobbied By (Name of person)	Applicant	Objector	Supporter	Action taken / Advice given

Signed:

Dated:

NOTES

Disclosable Pecuniary Interests

If you have any of the following pecuniary interests, they are your disclosable pecuniary interests under the new national rules. Any reference to spouse or civil partner includes any person with whom you are living as husband or wife, or as if they were your civil partner.

Any employment, office, trade, profession or vocation carried on for profit or gain, which you, or your spouse or civil partner, undertakes.

Any payment or provision of any other financial benefit (other than from your council or authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses.

Any contract which is made between you, or your spouse or your civil partner (or a body in which you, or your spouse or your civil partner, has a beneficial interest) and your council or authority -

- under which goods or services are to be provided or works are to be executed; and
- which has not been fully discharged.

Any beneficial interest in land which you, or your spouse or your civil partner, have and which is within the area of your council or authority.

Any licence (alone or jointly with others) which you, or your spouse or your civil partner, holds to occupy land in the area of your council or authority for a month or longer.

Any tenancy where (to your knowledge) - the landlord is your council or authority; and the tenant is a body in which you, or your spouse or your civil partner, has a beneficial interest.

Any beneficial interest which you, or your spouse or your civil partner has in securities of a body where -

(a) that body (to your knowledge) has a place of business or land in the area of your council or authority; and

(b) either -

the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you, or your spouse or your civil partner, has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

Lobbying

If you are approached by any Member of the public in respect of an application on the agenda you must declare that you have been lobbied. A declaration of lobbying does not affect your ability to participate in the consideration or determination of the application.

Name of meeting: PLANNING SUB-COMMITTEE (HUDDERSFIELD)

Date: 4 JANUARY 2018

Title of report: LOCAL PLANNING AUTHORITY APPEALS

The purpose of the report is to inform Members of planning appeal decisions received in the Huddersfield area since the last Sub-Committee meeting.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports)?	No
The Decision - Is it eligible for "call in" by Scrutiny?	No
Date signed off by Service Director - Economy, Regeneration & Culture	Paul Kemp 19 December 2017
Is it also signed off by the Assistant Director for Financial Management, IT, Risk and Performance?	No financial implications
Is it also signed off by the Assistant Director - Legal Governance and Monitoring?	No legal implications
Cabinet member portfolio	Economy (Strategic Planning, Regeneration & Transport) (Councillor P McBride)

**Electoral wards affected: Newsome; Colne Valley; Holme Valley South;
Ward councillors consulted: No**

Public or private:

1. Summary

This report is for information only. It summarises the decisions of the Planning Inspectorate, in respect of appeals submitted against the decision of the Local Planning Authority. Appended to this Item are the Inspector's decision letters. These set out detailed reasoning to justify the decisions taken.

2. Information to note: The appeal decision received are as follows:-

- 2.1 2016/62/91454W - Erection of rear extensions (Listed Building) at 31, Hall Bower, Hall Bower, Huddersfield, HD4 6RR. (Officer) (Dismissed)

- 2.2 2016/65/91455/W - Listed Building Consent for erection of rear extensions at 31, Hall Bower, Hall Bower, Huddersfield, HD4 6RR. (Officer) (Dismissed)
- 2.3 2016//191/92452/W - Certificate of lawfulness for use of garage as a single dwelling house at Laverock, Heath House Lane, Bolster Moor, Huddersfield, HD7 4JP. (Officer) (Dismissed)
- 2.4 2016/60/94074/W - Outline application for erection of one dwelling at Land Between 48-52, Greenhill Bank Road, New Mill, Holmfirth, HD9 1ER. (Officer) (Dismissed)
- 2.5 2017/62/90778/W - Erection of detached dwelling at 1, Oastler Avenue, Springwood, Huddersfield, HD1 4EU. (Officer) (Dismissed)
- 2.6 2015/62/92476/W - Erection of three detached dwellings at Land at Old Lane /Taylor Lane, Scapegoat Hill, Huddersfield, HD7. (Officer) (Appeal allowed and Award of Costs refused)
- 2.7 2016/62/94061/W - Erection of two dwellings at Land at Old Lane/ Taylor Lane, Scapegoat, Huddersfield, HD7. (Sub-Committee contrary to Officer recommendation) (Appeal allowed and Award of Costs refused)

3. Implications for the Council

3.1 There will be no impact on the four main priority areas listed below

- Early Intervention and Prevention (EIP)
- Economic Resilience (ER)
- Improving outcomes for Children
- Reducing demand of services

4. Consultees and their opinions

Not applicable, the report is for information only

5. Next steps

Not applicable, the report is for information only

6. Officer recommendations and reasons

To note

7. Cabinet portfolio holder recommendation

Not applicable

8. Contact officer

Mathias Franklin –Development Management Group Leader (01484 221000) mathias.franklin@kirklees.gov.uk

9. Background Papers and History of Decisions

Not applicable

10. Service Director responsible

Paul Kemp

Appeal Decisions

Site visit made on 13 November 2017

by Susan Ashworth BA (Hons) BPL MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21st November 2017

Appeal Ref: APP/Z4718/W/16/3166105

31 Hall Bower, Hall Bower, Huddersfield HD4 6RR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Miss Faye Birkenshaw against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2016/62/91454/W, dated 29 April 2016, was refused by notice dated 17 October 2016.
 - The development proposed is rear extension.
-

Appeal Ref: APP/Z4718/Y/16/3166108

31 Hall Bower, Hall Bower, Huddersfield HD4 6RR

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Miss Faye Birkenshaw against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2016/65/91455/W, dated 29 April 2016, was refused by notice dated 17 October 2016.
 - The works proposed are rear extension.
-

Decisions

1. Appeal A: The appeal is dismissed.
2. Appeal B: The appeal is dismissed.

Main Issue

3. The main issues in this case are:
 1. The effect of the development on the special architectural and historic interest of the listed building.
 2. The effect of the development on the living conditions of neighbouring residents, with particular regard to outlook.

Reasons

Effect on the special interest of the listed building

4. 31 Hall Bower is a modest two-storey, mid-terraced property dating from the C18 or early C19. The building, along with others in the terrace, is a Grade II listed building. The building is faced in hammer-dressed stone and has two, three-light mullioned windows to the front elevation. To the rear is a modern

- two storey extension which is similar in terms of its design and appearance to that adjoining it at No 29.
5. The proposal seeks to alter the property by extending the existing two-storey element across the full width of the building and adding a single-storey, full-width lean-to. The proposal would enable the existing kitchen to be enlarged to form a kitchen/dining room with an enlarged third bedroom and en-suite bathroom above.
 6. The starting point for the consideration of the proposal is Sections 16 (2) and 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) which require that special regard is had to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest it possesses.
 7. Whilst the notable architectural details of the building are set out in the list description, the list entry should not be regarded as a comprehensive statement of all the components of the listed building or an assessment of its significance. It seems to me that part of the significance of the building lies in its modest, simple form and scale. The original rear elevation, still partly visible, is of a simpler design than the front but nevertheless contributes to, and reflects, the modest character of the dwelling.
 8. The proposed extension would obscure what remains of the original fabric of the rear elevation. Moreover, it would reduce the legibility of the building such that from the rear its original scale and form would no longer be appreciated. In addition to its scale, the complexity and form of the proposed extension would be at odds with the simple form of the original dwelling. Whilst I note that natural materials are proposed, this in itself would not effectively mitigate against the harm the proposal would cause.
 9. I noted on site that the rear of the terrace is considerably less uniform than the front and that there are rear extensions to a number of the properties, including a substantial gabled extension further along the row. However, whilst not all of the extensions are sympathetic additions, or good examples of development to follow, it is unclear from the evidence before me whether the extensions were constructed before or after they were listed in 1978 or whether there were any particular circumstances that led to their approval. The appellant has advised that in addition an extension similar to the appeal proposal has recently been granted consent at a property close to the site. However, there are no details of the proposal or the circumstances that led to its approval before me. As such I cannot be sure that the developments indicated are entirely comparable to the appeal proposal.
 10. For the reasons set out above, the proposal would detract from the architectural and historic interest of the building. As such, it would not comply with the weighty statutory requirements of the Act, as set out above. For the same reasons, the proposal would not comply with Policy BE13 of the Kirklees Unitary Development Plan which requires, in terms of extensions to listed buildings, that the intrinsic value of the host building is retained and the original building remains the dominant element.
 11. The approach in the National Planning Policy Framework is that where the harm to the significance of the building would be less than substantial, as in this

case, it should be weighed against the public benefit of the proposal including securing its optimum viable use.

12. I acknowledge that the proposal would be of benefit to the appellant in providing enhanced living space to meet the appellant's personal circumstances as set out in the appeal documents. I am not persuaded therefore that this consideration equates to a public benefit including securing its optimum viable use, sufficient to outweigh the harm that I have identified.

Effect on the living conditions of neighbouring residents

13. The two-storey element of the proposed extension would project some 3.1m from the building adjacent to the common boundary with No 33. The additional single storey element would project a further 1.5m. I noted at my site visit that windows on the rear elevation of No 33 lie some distance away from the common boundary. As such I am satisfied that the proposal would not harm the outlook or be unduly overbearing from within the house. For the same reasons, the development would not unduly compromise light within the property.
14. The extension would be very prominent when viewed from within the garden of No 33. At present there is a degree of openness between the gardens as a result of the nature and height of the boundary treatment between properties in the terrace. However, as they are relatively long gardens that extend well beyond the line of the proposed extension, openness would not be unduly compromised by the scale of the development.
15. Consequently, whilst I acknowledge that the extension would project more than the 3m set out in Policy BE14 of the Kirklees Unitary Development Plan, I am satisfied that the proposal would not result in undue harm to the living conditions of the adjoining residents.

Conclusion

16. Whilst I have found no harm to the living conditions of the adjoining residents, for the reasons set out above, and taking into account all other matters raised including a letter from a neighbouring occupier raising no objections to the proposal, the appeal is dismissed.

S Ashworth

INSPECTOR

Appeal Decision

Site visit made on 14 November 2017

by D H Brier BA MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 November 2017

Appeal Ref: APP/Z4718/X/17/3170793

Laverock, Heath House Lane, Bolster Moor, Golcar, Huddersfield HD7 4JP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr S Beeby against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2016/CL/92452/W, dated 18 July 2016, was refused by notice dated 29 September 2016.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is a dwelling with integral garaging.
-

Decision

1. I dismiss the appeal.

Preamble

2. In order for the appeal to succeed it has to be shown that the use in question commenced more than 4 years before the date of the LDC application and has continued actively throughout the subsequent 4 year period. The LDC application form is dated 18 July 2016, whereas the date given on the notice of refusal is 4 August 2016. It may be that the apparent discrepancy is down to when the application was formally registered, but my view is that the 4 year period prior to and up to 18 July 2016, as indicated on the application form, is the appropriate one for assessing lawfulness in this instance. The test for the evidence is the balance of probability, and the Courts have held that in cases such as this, the onus on proving it lies with the appellant.
3. Section 171B of the 1990 Act is silent insofar as 'continuous' use is concerned, as the appellant points out. However, the Courts have held that in cases where a residential use has not become established, continuity is a key factor. Indeed, the issue of continuous residential use lies at the heart of the judgement in *Swale BC v FSS & Lee [2005] EWCA Civ 1568*.

Appeal

4. The use in question is accommodated in what, from the outside, looks like a detached 3 bay garage in the grounds of 'Laverock'. The western bay has been partitioned off, and another partition has been installed behind the external garage door. Inside, there is an equipped kitchen and a bathroom and hallway. From the latter, a staircase leads up to a single large room that occupies the

whole of the first floor of the building. At the time of my site inspection, the accommodation did not appear to be occupied. For instance, apart from the kitchen units and associated appliances, and a very small table in the upstairs room, no items of furniture were discernible.

5. According to the appellant, the accommodation was installed in the garage so that the owner of the property could live in it whilst a previous dwelling on the site was demolished and construction of a new house took place. It is stated that the appellant and his family moved into the building in July 2011 and lived in the property as a dwelling for more than 18 months until they moved into the new house in early 2013. The accommodation remained as a dwelling, with friends and family staying in it from time to time. The appellant has continued to receive and pay Council Tax bills since July 2011.
6. The Council acknowledge that the appellant has been liable for Council Tax since the latter date. However, liability for Council Tax does not necessarily demonstrate that the accommodation has actually been lived in continuously. Furthermore, while the July 2011 date is consistent with what the appellant says about the initial occupancy of the building, the information from the Council's revenues and benefits department also indicates that the building became empty and unfurnished from 15 December 2012.
7. The December 2012 date roughly coincides with when the appellant indicates he moved into his new house. However, from then onwards, evidence about the precise nature and duration of any occupancy of the accommodation is very sparse. Indeed, the appellant acknowledges that there have been times when the building has been empty. It may be that friends and relatives have stayed in the building on occasions, but no indication of when these stays occurred, or for how long they lasted, has been given. Nor is it clear whether occupancy during these periods was independent of the appellant's home, or whether the property merely functioned as overspill accommodation for it.
8. In *Gravesham v Secretary of State for the Environment and O'Brien [1983] JPL 306* it was held that the distinctive quality of a dwellinghouse was its ability to afford to those who used it the facilities for day-to-day private domestic existence. It may be that the nature of the accommodation and the facilities contained therein are such that the appeal property meets this 'test'. However, mindful of the onus that lies with the appellant, I am not satisfied that the evidence is sufficiently clear or unambiguous to demonstrate on the balance of probability that the use in question has continued actively throughout the relevant 4 year period.
9. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a dwelling with integral garaging was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.
10. I have taken into account all the other matters raised. None, however, are sufficient to outweigh the considerations that have led me to my conclusions.

D H Brier

Inspector



Appeal Decision

Site visit made on 19 October 2017

by D Guiver LLB(Hons) Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 November 2017

Appeal Ref: APP/Z4718/W/17/3179055

Land between 48 and 52 Greenhill Bank Road, New Mill, Holmfirth HD9 1ER

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mrs Pamela Taylor and Margaret Hayes against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2016/60/94074/W, dated 1 December 2016, was refused by notice dated 1 February 2017.
 - The development proposed is the erection of one dwelling.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The application is made in outline form with all detailed matters reserved for future approval.

Main Issues

3. The main issues are:
 - whether the proposal would be inappropriate development for the purposes of the National Planning Policy Framework (the Framework) and Development Plan Policy;
 - the effect of the proposal on the openness of the Green Belt, and on the character and appearance of the area; and
 - if found to be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Inappropriate Development

4. Paragraph 87 of the Framework makes it clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. There are exceptions to this general restriction and paragraph 89 provides, amongst other things, that the construction of new buildings should not be considered inappropriate development in the Green Belt if it comprises limited infilling in villages.

5. Greenhill Bank Road is a largely undeveloped stretch of road situated within the Green Belt and linking New Mill with the village of Totties to the south. To the east of the road, the land is largely open countryside. On the western side there are a few houses, either detached or in short terraces, with large open spaces between and open countryside behind.
6. The appeal site is a steeply sloping plot of land sitting between Nos 48 and 52 Greenhill Bank Road. No 48 sits to the north of the site and is at the end of a short terrace of three or so traditional stone-built cottages fronting the road. To the south, No 52 is the first of a small number of modern detached properties sitting in large plots.
7. Policy D13 of the Kirklees Unitary Development Plan 2007 (the UDP) states that infill development will normally be permitted within existing settlements in the Green Belt if the site is small, is largely surrounded by development or within an otherwise continuously built-up frontage, and it would not be detrimental to the living conditions of the occupiers of neighbouring land or to the character of the area.
8. In referencing 'settlements' rather than 'villages', the Policy differs from the language in paragraph 89 of the Framework. However, I disagree with the appellants that these terms are subjective, and given their ordinary meanings both implicitly require more than the mere presence of housing. A settlement is a community, like a village or a town. Outlying dwellings that are not clearly attached to the community I would consider to be outside a settlement. Policy D13 is consistent with paragraph 89 of the Framework and, for the purposes of this appeal, settlements should be treated as being synonymous with villages.
9. I take account of the appellants' family history with the appeal site and surrounding area. However, I consider the historical association with the land, where individual parcels were occupied by members of the same family for housing, demonstrates a deliberate distancing of the dwellings from the main built form of the nearby villages.
10. The houses on this part of Greenhill Bank Road are characteristic of *ad hoc* ribbon development constructed away from a settlement's main built form. In this case the open nature of the ribbon development relates more to the surrounding countryside than to the developed footprint of New Mills or the village of Totties, and is not part of either settlement. It follows, therefore, that the proposal does not comprise limited infilling in a village as described in the Framework and is neither part of a continuously developed frontage or surrounded by development.
11. I conclude that the appeal site is not within the exceptional category of a village infill for the purposes of paragraph 89 of the Framework and policy D13 of the UDP. Therefore the proposed scheme would be inappropriate development and thus harmful to the Green Belt. Pursuant to paragraph 88 of the Framework, I attach substantial weight to this harm.

Openness

12. Openness is one of the essential characteristics of the Green Belt and a number of factors are relevant to determining whether this openness is harmed, including the purpose of development, its duration and remediability. The likely visual impact arising from the proposed construction of a dwelling would also have an effect on openness.

13. The presence of buildings on either side of the site, the vehicular access for No 52 and the dry-stone wall do not alter the undeveloped nature of the majority of the site. The fact that a large portion of the surrounding area sits on the other side of a ridge does not separate it from the site when determining openness. It is the setting that defines the quality of openness rather than merely the conditions on the narrow confines of the site.
14. I have been referred to a previous appeal decision in respect of a proposed development of the site (APP/Z4718/W/15/3005427) where the Inspector found the scheme to be inappropriate development. This decision is a material consideration to which I attach significant weight and on the evidence before me I see no reason to disagree with the Inspector's conclusions.
15. Although the proposal is in outline and the design of any dwelling is a reserved matter, I consider that any building constructed on the site is likely to cause a significant reduction in the openness of the Green Belt in this location.
16. The proposal would also have an urbanising impact on the site by creating a developed connection between New Mill and Totties. This would be contrary to one the purposes of Green Belt identified in paragraph 80 of the Framework, namely to safeguard the countryside from encroachment.
17. Therefore, the proposed development would not be consistent with paragraph 89 of the Framework, or, insofar as it is relevant, accord with Policy D13 of the UDP.

Character and Appearance

18. The area surrounding the appeal site is rural in character. While there is some housing development along Greenhill Bank Road, it is not continuous and large gaps exist between properties. The proposed development would eradicate one such gap and would result in a more developed and less rural character to the area. I consider that such a development would be harmful to the character and appearance of the area. Therefore, for similar reasons to above, the proposal would not accord with Policy D13 of the UDP.

Other Considerations

19. The appellants referred to the addition of needed housing stock, which is a material consideration. However, the modest addition of a single unit is not sufficient to outweigh the harm to the Green Belt, and I give the matter very limited weight.
20. I therefore conclude that there is nothing in the evidence before me that amounts to very special circumstances that are required to enable me to grant planning permission. Despite the modest social and economic benefits that would accrue from the proposal, it would not accord with the environmental role of sustainable development because of the harm to the Green Belt.

Other Matters

21. The appellants have had the opportunity to comment on interested parties' representations and I have taken these into account and I have taken those comments into account in reaching my decision.

Conclusion

22. I have found that the proposal would be inappropriate development in the Green Belt; that it would lead to a significant loss of openness; and that it would

undermine one of the purposes of including land in the Green Belt. Moreover, it would cause harm to the character and appearance of the area. The other considerations do not clearly outweigh this harm, and the very special circumstances necessary to justify the development do not therefore exist. For the reasons given above, and taking into account all other matters, I therefore conclude that the appeal should be dismissed.

D Guiver

INSPECTOR

Appeal Decision

Site visit made on 21 November 2017

by Daniel Hartley BA Hons MTP MBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 November 2017

Appeal Ref: APP/Z4718/W/17/3183023

1 Oastler Avenue, Springwood, Huddersfield HD1 4EU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr M Rafiq against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2017/62/90778/W, dated 6 March 2017, was refused by notice dated 5 May 2017.
 - The development proposed is the formation of a two bedroom detached dwelling.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal upon (i) the character and appearance of the area and (ii) the living conditions of the occupiers of No 3 Oastler Avenue in respect of outlook.

Reasons

Site and proposal

3. The appeal site comprises a driveway and detached garage associated with No 1 Oastler Avenue which is a detached dwelling occupying a corner plot at the junction of Lynton Avenue with Oastler Avenue. It is proposed to erect a two bedroom detached house with access from Lynton Avenue and including two car parking spaces. The property would be built in reconstituted stone with a concrete tile roof and would be positioned between No 33 Lynton Avenue, which is a semi-detached house, and the host dwelling. The front wall of the proposed dwelling would be in line with the side elevation wall of No 1 Oastler Avenue and it would project forward of the front elevation building line of No 33 Lynton Avenue.

Character and appearance

4. The area is mainly characterised by semi-detached stone built dwellings which are positioned within spacious plots and where generally there is a regularity and rhythm of gaps between buildings. In Lynton Avenue such properties are very similar in terms of design and include similarly proportioned and aligned windows and imposing pitched roof front gables. The host property occupies a large corner plot and is detached. There is a greater sense of space around the

- host property. The house type and sense of space is essentially mirrored on the corner plot on the other side of Lynton Avenue.
5. The appeal property would be built in very close proximity to the boundaries of the proposed plot and would have a relatively small rear garden. The overall sense of space around the property would not reflect the prevailing pattern of development in the locality. The gap between the proposed dwelling and the host property would be particularly narrow and this would have the effect of significantly detracting from the regularity and rhythm of open gaps between buildings in Lynton Avenue.
 6. My above concerns are compounded by the fact that owing to the proposed three floors the window alignment and proportions would be materially at odds with those that exist in the rest of the street, and in particular those to the neighbouring dwelling at No 33 Lynton Avenue. Furthermore, the window in the pitched roof part of the front roof slope would appear contrived and discordant in the immediate environment.
 7. The host corner plot property is dominant in the street-scene and the semi-detached dwellings appear deliberately subservient given that they are set back further from Lynton Avenue and are smaller in scale. Whilst the front of the dwelling would align with the side elevation building line of No 1 Oastler Avenue, it would nonetheless be positioned forward of the front elevation building line of No 33 Lynton Avenue. Consequently, when travelling in an east-west direction the proposed dwelling would appear dominant and intrusive detracting from the very deliberate building line of semi-detached dwellings in Lynton Avenue.
 8. I acknowledge that the locality does include a small number of properties which have been constructed using brick and render. However, the predominant building material in this part of Lynton Avenue is natural stone. In order to ensure that the development assimilated well into the immediate environment, I agree with the Council that it would be necessary for the dwelling to be built in natural stone (including matching coursing). As it is proposed to construct the dwelling in reconstituted stone, this adds to my aforementioned concerns. There would be direct conflict with saved Policy BE11 of the Kirklees Unitary Development Plan 1999 (UDP) which states that in areas within which stone has been the predominant material of construction "*new development should be constructed in natural stone*".
 9. For the collective reasons outlined above, I conclude that the proposed dwelling would have a significantly detrimental impact upon the character and appearance of the area. Therefore, it would not accord with the design aims of saved Policies D2, BE1, BE2, BE11 and BE12 of the UDP and Chapter 7 of the National Planning Policy Framework (the Framework).

Living Conditions

10. The proposed dwelling would be positioned in close proximity to the rear/side boundary of the garden belonging to No 3 Oastler Avenue. I acknowledge that there is a single storey flat roofed garage which belongs to No 3 Oastler Avenue which is located along this boundary. However, the proposed dwelling would be two storeys in height and would be sited relatively closely to the common boundary. It would be much taller than the existing detached garage associated with the host property.

11. I note that obscure glazing to the first floor rear windows are proposed for the office and bathroom and hence there would not be a material loss of privacy for the occupiers of No 3 Oastler Avenue. However, owing to the position and height of the proposed dwelling, I consider that it would have a significantly overbearing and dominant impact when viewed from the rear garden of No 3 Oastler Avenue. Furthermore, this negative impact would be evident from the rear windows of No 3 Oastler Avenue albeit at an oblique angle.
12. For the collective reasons outlined above, I consider that in terms of outlook the proposal would have a significant detrimental impact upon the living conditions of the existing and future occupiers of No 3 Oastler Avenue. Therefore, the proposal would not accord with the amenity aims of saved Policies D2 and BE12 of the UDP and Chapter 7 of the Framework.

Other Matters

13. I note that the local planning authority cannot currently demonstrate a deliverable five year supply of housing sites. Consequently, the proposal would make a positive contribution towards the supply of houses in the Borough. However, the contribution from one dwelling would be relatively limited.
14. I acknowledge that the site is within close proximity of a number of day to day facilities and services and public transport provision. However, these are not matters which overcome my identified environmental concerns relating to the effect of the proposal upon the character and appearance of the area and the living conditions of the occupiers of No 3 Oastler Avenue.
15. I have taken into account representations made by the occupier of No 30 Lynton Avenue who comments that the proposal would lead to a loss of view and house value. The courts have held that the loss of a view or reduction in house values are not material planning considerations. In any event, I do not have any direct evidence that the proposal would have a material impact upon views or house values. Given the scale and position of the proposed development, I do not consider that it would lead to a material loss of privacy or light for the occupiers of No 30 Lynton Avenue. I do not have any objective evidence relating to subsidence or cracking to existing properties in the area. In any event, structural matters would need to be considered as part of the submission of a separate Building Regulations application. Proposed car parking arrangements would be acceptable.
16. None of the other matters raised outweigh or alter my conclusions on the main issues.

Conclusion

17. For the reasons outlined above, and taking into account all other matters raised, I conclude that the proposal would not deliver a sustainable form of development. Therefore, the appeal should be dismissed.

Daniel Hartley

INSPECTOR

Appeal Decisions

Site visit made on 31 October 2017

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 November 2017

Appeal A - Ref: APP/Z4718/W/17/3180494

Land at Old Lane / Taylor Lane, Scapegoat Hill, Huddersfield

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by the Yorkshire Baptist Association (Scapegoat Hill Baptist Chapel) against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2015/62/92476/W, dated 4 August 2015, was refused by notice dated 10 May 2017.
 - The development proposed is the erection of four detached dwellings.
-

Appeal B - Ref: APP/Z4718/W/17/3178805

Land at Old Lane / Taylor Lane, Scapegoat Hill, Huddersfield

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Brierstone Limited against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2016/62/94061/W, dated 30 November 2016, was refused by notice dated 9 May 2017.
 - The development proposed is the erection of two dwellings.
-

Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for the erection of three detached dwellings on land at Old Lane / Taylor Lane, Scapegoat Hill, Huddersfield in accordance with the terms of the application, Ref 2015/62/92476/W, dated 4 August 2015, subject to the conditions in the schedule at the end of this decision.

Appeal B

2. The appeal is allowed and planning permission is granted for the erection of two dwellings on land at Old Lane / Taylor Lane, Scapegoat Hill, Huddersfield in accordance with the terms of the application, Ref 2016/62/94061/W, dated 30 November 2016, subject to the conditions in the schedule at the end of this decision.

Procedural matters

3. In Appeal A, following submission of the application the scheme was amended reducing the number of proposed detached dwellings from four to three. I have dealt with the appeal on this basis.
4. As set out above, Appeals A and B relate to land at Old Lane / Taylor Lane. They materially differ only in that Appeal A also includes land on the northern

side of the existing grassed access road to the burial ground and is for three houses rather than two. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.

Application for costs

5. In both appeals an application for costs was made by the appellant against Kirklees Metropolitan Borough Council. These applications will be the subject of separate Decisions.

Main Issues

Appeal A

6. The main issues in this appeal are;
 - the effect of the proposed development on the character and appearance of the area; and,
 - the effect of the proposed development on highway safety.

Appeal B

7. The main issue in this appeal is the effect of the proposed development on highway safety.

Reasons

Appeals A and B

8. The appeal site is located within the village of Scapegoat Hill. It lies next to the burial ground associated with the Scapegoat Hill Baptist Chapel. In both appeals the extent of the appeal site is small and the land is unallocated for development by the Kirklees Unitary Development Plan (UDP). The site comprises steeply sloping open grassland bounded by drystone walls with a few shrubs and trees towards its south eastern corner where a single domestic garage is located.
9. Policy D1 of the UDP protects valuable open land from development. The land in question is privately owned and does not provide opportunities for recreation or outdoor sport. The land is also not of significant ecological value. Therefore whilst its openness and greenness has some value in contributing to the character of Scapegoat Hill, this land does not constitute valuable open land that policy D1 of the UDP seeks to protect. As a result, the proposed schemes would not be contrary to this policy and development of the site would be acceptable in principle.

Appeal A

Character and appearance

10. Development in the vicinity of the appeal site is characterised by linear development along the lanes within the village, with some development in depth. Housing is a mixture of older mature houses and more recent stone built dwellings from the latter half of the twentieth century. The older housing is detached or terraced, traditionally designed with a narrow rectangular plan form set close to the highway. More recent housing is larger, detached and positioned on bigger plots set further back from the road.
11. In this context, in terms of the pattern of development and use of natural stone and slate, the houses proposed on plots 1 and 2 along the front of the site

would complement surrounding development. The houses respectively at four and three storeys in height would be taller than other houses in the area. However, as they would be set into the slope of this steep site they would not appear unduly large or prominent in public views. The varied features of each house would help to break up their mass and provide visual interest.

12. The proposed dwelling on plot 3 would be located on the highest part of the site which is to the rear. In public views from lower down in the village plot 3 is a gap between the row of houses that form the northern skyline. Although the proposed house would be set forward of the houses on either side it would be set down into the slope of the site. As a result, the proposed three storey dwelling would nestle between neighbouring dwellings and would not appear incongruous or unduly prominent. The two storey front gable to the house would be subservient and well proportioned. In addition, the parapets to the ends of the roof and clearly defined headers and cills to window openings are traditional features that would help detail and define the building.
13. Other than to create accesses to the houses the drystone walls would be kept and the leaning sections of the walls rebuilt. Taking all these matters into account, I therefore conclude that the proposed development would be well designed and would complement the character and appearance of the area. As a result, it would comply with policies D2, BE1 and BE2 of the UDP which require the protection of the character and appearance of a locality through high quality design that respects local design features. It would therefore also comply with section 7 of the National Planning Policy Framework ('the Framework') which requires good design.

Appeals A & B

Highway safety

14. Roads in Scapegoat Hill reflect the historic pattern of development in the area which has been heavily influenced by its steep topography. The appeal site is located by the crossroads of Old Lane and Taylor Lane. Grand Stand also joins Old Lane opposite the appeal site just before the junction. Whilst at its junction with Taylor Lane, Old Lane widens considerably along much of the front of the appeal site Old Lane is particularly steep, does not have a footway and is only wide enough to accommodate one vehicle. Taylor Lane, which passes along the remainder of the front of the appeal site, is less steep and is wide enough to allow two cars to pass, but also does not have a footway. As a result, drivers, other road users and pedestrians on both lanes share the same surface. In the last ten years though there have only been two minor accidents recorded in the vicinity of the appeal site. This is a low accident rate. Based upon the submitted highway evidence this appears to be due to the low levels of traffic and the need to drive slowly given the nature of the lanes.
15. Adequate on-site parking provision would be made for each of the proposed dwellings together with sufficient turning space so that vehicles would not need to reverse on to the highway. Suitable visibility splays for exiting vehicles would be provided to the houses on plots 1 and 2 on Old Lane. Similarly, in Appeal A, with the widening of the existing access track that serves plot 3 and the burial ground adequate visibility would be provided for exiting vehicles.
16. As part of the proposed schemes in the vicinity of the appeal site Old Lane and Taylor Lane would be widened respectively to 4.8m and 5m in width. This would be wide enough to allow vehicles such as a car and lorry, or other road users to safely pass by each other. In Appeal A, a passing bay would also be

created on the access track to plot 3 together with a turning head. As a result, the likelihood of a vehicle having to reverse out onto Old Lane because it meets another vehicle travelling in the opposite direction, or because it cannot easily turn, would effectively be avoided. Whilst no separate footway would be provided, traffic speeds are constrained by the steepness of the lanes. As a result, use of the lanes as a shared surface by pedestrians would not harm highway safety.

17. The question which therefore remains is whether the proposed development would intensify use of the adjacent lanes, which would remain narrow beyond the appeal site, to the extent that vehicles would be significantly more likely to come into conflict with each other and harm highway safety. It is to this matter that I now turn.
18. During the site visit Taylor Lane was closed due to road works. However, as part of highway evidence of the appellants at appeal stage a traffic survey has been carried out. Such surveys provide a more accurate assessment of traffic activity than can be gleaned from a site visit. During the morning peak hour (8am to 9am) 60 two way vehicle movements were recorded in the vicinity of the appeal site with only a small number using Old Lane. In terms of pedestrians, three used the junction of Taylor lane and Old Lane during this period. These findings are similar to a survey that has been carried out by a local resident at appeal stage.
19. The traffic that would be generated by the development in each appeal has been assessed by the appellant using TRICS¹ data which is a recognised data source. 85th percentile figures have also been used to provide a higher figure than the average. The three proposed dwellings in Appeal A would intensify use of the local highway network in the vicinity of the appeal site by 3 two way movements during the morning peak hour and by 3 two way movements in the afternoon peak hour. The two dwellings proposed in Appeal B would intensify vehicle use by 2 two way movements in each of the same hours. In addition, in each scheme during the morning peak hour a pedestrian and cyclist are likely to complete a two way movement, with a sole pedestrian likely to do so during the afternoon peak hour. These figures have not been challenged by the Council. The proposed developments in both appeals therefore would not result in significant levels of traffic using Old Lane or Taylor Lane.
20. Reference has been made to a planning application dismissed on appeal for a house at 9 Taylor Lane². However, the Inspector in that appeal did not find that the development would harm highway safety. As a result, this is a consideration of little weight against the proposed developments in the appeals before me and it has not altered my findings in relation to this issue.
21. Concerns have been expressed that widening the lanes would attract more on road parking, negating the benefit of widening. However, in my judgement, outside of evenings and weekends, when most people are likely to be at home, the extent of on road parking is unlikely to have this effect. Even if it did, if highway safety was compromised I agree with the appellant that if the highway authority thought it appropriate it could take steps to introduce parking restrictions.
22. For all of these reasons, I therefore conclude that the proposed development would not harm highway safety. As a result, it would comply with policies D2

¹ Trip Rate Information Computer System

² Ref APP/Z4718/W/15/3012823

and T10 of the UDP which seek to prevent such harm. As the highway improvements would significantly widen sections of the highway it would reduce the likelihood of conflict between road users in compliance with paragraph 35 of the Framework.

Other matters

Appeals A & B

23. The Council states that it has less than a 5 year housing land supply. The proposed developments in both appeals therefore would make a small contribution to helping address this shortfall.
24. The rear elevations of houses along Grand Stand face the front of the appeal site and are set below the level of Old Lane. The proposed houses on plots 1 and 2 would not be so near as to reduce levels of natural light entering the rear of the houses along Grand Stand or for them to be overbearing. The low number of vehicle movements generated by the proposed development would mean that light from the headlights of vehicles leaving the dwellings on plots 1 and 2 would not harm the living conditions within the houses along Grand Stand. Similarly, in the event that cars are parked on Old Lane once it is widened, the frequency with which cars park along the lane is unlikely to result in noise or vehicle emissions that would adversely affect living conditions.
25. With regard to noise, dust and dirt during construction, should problems occur the Council has statutory powers to abate any nuisance caused. Reference has been made to the sighting of bats and owls on the appeal sites. However, whilst such wildlife may forage on the appeal sites no substantive evidence has been brought to my attention that they reside there. The Council's ecology officer is satisfied that given the location of the appeal sites and the nature of its habitats the effects of development can be mitigated by condition and appropriate planting. I have no reason to disagree with that assessment.
26. The sites are not large and their steep slope means that rain water is likely to run off fairly quickly. Subject to the adequate drainage provision required by Building Regulations development of the sites is unlikely to increase rates of surface water drainage to the extent that the risk of flooding off site is materially increased.
27. Concerns have been raised regarding the structural stability of retaining walls next to the highway should the development go ahead. However, this is a matter that can be dealt with by the developer through appropriate design and construction which can be secured by condition.

Appeal A

28. In terms of living conditions, although the proposed house on plot 3 would be set forward of the houses on either side as it would be set into the slope it would be markedly lower in height than its neighbours. As a result, it would not unduly enclose the outlook from either dwelling. Subject to a condition requiring that all windows in the side elevations of the house on plot 3 are obscurely glazed no material overlooking would occur. Given the steep slope of the ground there would be no material overlooking between the dwelling in plot 3 and the houses on plot 1 and 2.

Appeal B

29. In relation to character and appearance, for the reasons that I have given earlier in relation to Appeal A, which proposes the same houses on plots 1 and

2 as in Appeal B, the proposed development would be well designed and complement the area.

Conclusions – Appeals A and B

30. I have found that the proposed developments would accord with the development plan as they would not involve the loss of valuable open space, they would complement the character and appearance of the area and highway safety would not be harmed.
31. The Council has less than a 5 year housing land supply. In such circumstances, the tilted balance in paragraph 14 of the Framework applies. I have not identified any material adverse impacts of the developments. The adverse impacts that would occur therefore would clearly fall considerably short of significantly and demonstrably outweighing the benefits that these well designed schemes would make to addressing the shortfall in housing that exists.
32. I therefore conclude that the appeals should be allowed. In reaching this decision the views of local residents and councillors have been taken into account.

Conditions common to both Appeals

33. In the interests of certainty, I have imposed a condition specifying the relevant drawings that the development is to be carried out in accordance with. In order to ensure that the development complements its surroundings further details on materials and landscaping are required. For the same reason the highway retaining walls need to be finished in local stone and a landscaped buffer created to separate the site from the neighbouring burial ground.
34. In the interests of highway safety during construction, arrangements for access and management of the site need to be made. In relation to highway safety more generally, suitable visibility splays need to be provided, road widening needs to occur, the gradient of access ramps needs to be controlled and details of highway retaining structures need to be provided. For the same reason areas for vehicle access, on-site parking (including garages) and turning need to be provided and retained.
35. To protect birds and enhance biodiversity, site clearance needs to be carried out at an appropriate time of year and an Ecological Design Strategy implemented. In the interests of minimising pollution, electric vehicle recharging points need to be provided.
36. I have required all these matters by condition, revising the conditions suggested by the Council where necessary to reflect the advice contained within Planning Practice Guidance.

Further conditions particular to Appeal A

37. In order to protect the living conditions of neighbours, windows within the side elevation of the house on plot 3 need to be obscurely glazed and permitted development rights allowing the creation of new openings, the extension of the house and outbuildings removed.
38. It was suggested that Class D permitted development rights that relate to porches on the proposed house on plot 3 should be removed. However, as such development would not harm the living conditions of neighbours this is unnecessary.

Ian Radcliffe

Inspector

Schedule – Appeal A

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans except as may be specified in the conditions attached to this permission, which shall in all cases take precedence: Site Location Plan ref SGH02/0715/01, Proposed site plan ref SGH02/0117/31, Plot 1 Basement and Ground ref SGH02/0716/14, Plot 1 First Floor and Roof Space ref SGH02/0716/15, Plot 1 Elevations 1 ref SGH02/0716/16, Plot 1 Elevations 2 ref SGH02/0716/17, Plot 2 Basement Plan ref SGH02/0716/18A revised, Plot 2 Ground and First floor plans ref SGH02/0716/19A revised, Plot 2 Elevations 1 ref SGH02/0716/20A revised, Plot 2 Elevations 2 ref SGH02/0716/21A revised, Plot 3 Basement Plan ref SGH02/0716/22A revised, Plot 3 Ground floor plan ref SGH02/0716/23, Plot 3 First floor plan ref SGH02/0716/24, Plot 3 Elevations 1 ref SGH02/0716/25, Plot 3 Elevations 2 ref SGH02/0716/26
- 3) No development shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. Development shall be carried out in accordance with the approved details.
- 4) Prior to development commencing, a detailed scheme for the provision of a road widening scheme to Old Lane and Taylor Lane and all associated works as shown on indicative plan reference SGH02/0117/31 shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include construction specifications, white lining, signing, surface finishes together with an independent Safety Audit covering all aspects of the work. Unless otherwise agreed in writing by the Local Planning Authority all of the agreed works shall be implemented before any part of the development is first brought into use.
- 5) Prior to construction commencing, a schedule of the means of access to the site for construction traffic shall be submitted to and approved in writing by the Local Planning Authority. The schedule shall include the point of access for construction traffic, details of the times of use of the access, the routing of construction traffic to and from the site, construction workers parking facilities and the provision, use and retention of adequate wheel washing facilities within the site. All construction arrangements shall be carried out in accordance with the approved schedule throughout the period of construction.
- 6) Prior to the commencement of development the design and construction details of all temporary and permanent highway retaining structures, including any modifications to the existing highway retaining wall to Old Lane and Taylor Lane, shall be submitted to and approved in writing by the Local Planning Authority; such details shall incorporate a design statement, all necessary ground investigations on which design

assumptions are based, method statements for both temporary and permanent works and removal of any bulk excavations, structural calculations and all associated safety measures for the protection of adjacent public highways, footpaths, culverts, adjoining land and areas of public access. The development shall be constructed in accordance with the approved details before the development is occupied and shall be retained as such thereafter.

- 7) No development shall take place until an Ecological Design Strategy (EDS) addressing impact avoidance measures for reptiles and biodiversity enhancement (including planting schemes) has been submitted to and approved in writing by the local planning authority.

The EDS shall include the following;

- a. Purpose and conservation objectives for the proposed works;
- b. Review of site potential and constraints;
- c. Detailed design(s) and/or working method(s) achieve stated objectives;
- d. Extent and location/area of proposed works on appropriate scale maps and plans;
- e. Type and source of materials to be used where appropriate, e.g. native species of local provenance;
- f. Timetable for implementation demonstrating that works are aligned with the proposed phasing of development;
- g. Persons responsible for implementing the works;
- h. Details of initial aftercare and long-term maintenance;
- i. Details for monitoring and remedial measures;
- j. Details for disposal of any wastes arising from works.

The EDS shall be implemented in accordance with the approved details pre, during and post construction.

- 8) Prior to first occupation of the dwellings hereby approved all areas indicated to be used for vehicular access, parking and turning on the approved plans shall have been laid out with a hardened and drained surface in accordance with the Department for Communities and Local Government and Environment Agency's 'Guidance on the permeable surfacing of front gardens (parking areas)' published 13th May 2009 as amended or replaced by any successor guidance; Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 as amended (or any Order revoking or re-enacting that Order with or without modification) these areas shall be so retained, free of obstructions and available for the use specified on the submitted plans.
- 9) Walls along both Old Lane and Taylor Lane to be repositioned shall be faced in local stone towards to the highway and completed prior to first occupation of the dwellings.

- 10) Notwithstanding details shown on drawing no. SGH02/0117/31, prior to the development being brought into use, sightlines of 2.4m x site frontage from Old Lane onto Taylor Lane and 2.4 x 43 metre sight lines from the driveways of plots 1, 2 and 3 onto Old Lane shall be cleared of all obstructions to visibility exceeding 1 m in height and these shall thereafter be retained free of any such obstruction.
- 11) An electric vehicle recharging point shall be installed within the garage serving each house in the development hereby approved or in a location accessible from the dedicated parking area to each house before first occupation of the dwelling. The cable and circuitry ratings shall be of adequate size to ensure a minimum continuous current demand of 16 Amps and a maximum demand of 32Amps. The electric vehicle charging points so installed shall thereafter be retained.
- 12) A scheme detailing soft landscaping, tree/shrub planting, to form a buffer from the adjacent graveyard shall be submitted to and approved in writing by the Local Planning Authority before the hereby approved dwellings are brought into use. The scheme shall include a timetable for the phasing of the landscaping and planting. The works comprising the approved scheme shall be implemented in accordance with the approved timetable and phasing.
- 13) The openings in the side elevations of dwelling on plot 3 at ground and first floor level to serve the lounge, family kitchen, master bedroom with associated dressing area and en-suite shall be obscurely glazed (minimum grade 4) before the dwelling is first brought into use. Thereafter notwithstanding the provisions of section 55(2)(a)(ii) of the Town and Country Planning Act 1990 (or anything revoking or re-enacting that Act with or without modification) the obscure glazing shall be retained.
- 14) No removal of trees, shrubs or brambles shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of the vegetation for active bird's nests immediately before the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that appropriate measures can be put in place to protect any birds, their nests, eggs or young. Any such written confirmation shall be submitted to the Local Planning Authority before removal begins.
- 15) Notwithstanding the provisions of section 55(2)(a)(ii) of the Town and Country Planning Act 1990 and the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that Act or Order with or without modification) no new openings other than those expressly authorised by this permission shall be constructed in the external walls of the dwelling on plot 3.
- 16) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 as amended (or any Order revoking or re-enacting that Order with or without modification) no development included within Classes A, B, C or E of Part 1 of Schedule 2 to that Order shall be carried out to the dwelling on plot 3.
- 17) The maximum gradient of the access ramp to the car park areas of the development hereby permitted shall not exceed 1 in 8.

- 18) Notwithstanding the provisions of section 55(2)(a)(i) of the Town and Country Planning Act 1990 the garages serving the houses in the development hereby approved shall be used for the garaging of motor vehicles and shall not be converted to habitable accommodation.

Schedule - Appeal B

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans except as may be specified in the conditions attached to this permission, which shall in all cases take precedence: Proposed site plan ref SGH04/017/30B, Proposed street scene and site section ref SGH02/0716/31A revised, Plot 1 Elevations 1 ref SGH02/0716/16B, Plot 1 Elevations 2 ref SGH02/016/17A, Plot 1 Basement and Ground level as proposed ref SGH03/0716/14, Plot 1 First floor and roof space as proposed ref SGH03/0716/15, Plot 2 Elevations 1 ref SGH02/0716/20B revised, Plot 2 Elevations 2 ref SGH02/0716/21A revised, Plot 2 Basement Plan ref SGH02/0716/18B, Plot 2 Ground and first floor plans ref SGH02/0716/19B revised ,
- 3) No development shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. Development shall be carried out in accordance with the approved details.
- 4) Prior to development commencing, a detailed scheme for the provision of a road widening scheme to Old Lane and Taylor Lane and all associated works as shown on indicative plan reference SGH04/017/30B shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include construction specifications, white lining, signing, surface finishes together with an independent Safety Audit covering all aspects of the work. Unless otherwise agreed in writing by the LPA, all of the agreed works shall be implemented before any part of the development is first brought into use.
- 5) Prior to construction commencing, a schedule of the means of access to the site for construction traffic shall be submitted to and approved in writing by the Local Planning Authority. The schedule shall include the point of access for construction traffic, details of the times of use of the access, the routing of construction traffic to and from the site, construction workers parking facilities and the provision, use and retention of adequate wheel washing facilities within the site. All construction arrangements shall be carried out in accordance with the approved schedule throughout the period of construction.
- 6) Prior to the commencement of development the design and construction details of all temporary and permanent highway retaining structures including any modifications to the existing highway retaining wall to Old Lane and Taylor Lane shall be submitted to and approved in writing by the Local Planning Authority; such details shall incorporate a design statement, all necessary ground investigations on which design assumptions are based, method statements for both temporary and permanent works and removal of any bulk excavations, structural

calculations and all associated safety measures for the protection of adjacent public highways, footpaths, culverts, adjoining land and areas of public access. The development shall be constructed in accordance with the approved details before the development is occupied and shall be retained as such thereafter.

- 7) No development shall take place until an Ecological Design Strategy (EDS) addressing impact avoidance measures for reptiles and biodiversity enhancement (including planting schemes) has been submitted to and approved in writing by the local planning authority.

The EDS shall include the following.

- a. Purpose and conservation objectives for the proposed works.
- b. Review of site potential and constraints.
- c. Detailed design(s) and/or working method(s) achieve stated objectives.
- d. Extent and location/area of proposed works on appropriate scale maps and plans.
- e. Type and source of materials to be used where appropriate, e.g. native species of local provenance.
- f. Timetable for implementation demonstrating that works are aligned with the proposed phasing of development.
- g. Persons responsible for implementing the works.
- h. Details of initial aftercare and long-term maintenance.
- i. Details for monitoring and remedial measures.
- j. Details for disposal of any wastes arising from works.

The EDS shall be implemented in accordance with the approved details pre, during and post construction.

- 8) Prior to first occupation of the dwellings hereby approved all areas indicated to be used for vehicular access, parking and turning on the approved plans shall have been laid out with a hardened and drained surface in accordance with the Department of Communities and Local Government and Environment Agency's 'Guidance on the permeable surfacing of front gardens (parking areas)' published 13th May 2009 as amended or replaced by any successor guidance; Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 as amended (or any Order revoking or re-enacting that Order with or without modification) these areas shall be so retained, free of obstructions and available for the use specified on the submitted plans.
- 9) Walls along both Old Lane and Taylor Lane to be repositioned shall be faced in local stone towards the highway and completed prior to first occupation of both dwellings.
- 10) Notwithstanding details shown on drawing no. SGH04/017/30 B, prior to the development being brought into use, sightlines of 2.4m x site frontage from Old Lane onto Taylor Lane and 2.4 x 43 metre sight lines

from the driveways of plots 1 and 2 onto Old Lane shall be cleared of all obstructions to visibility exceeding 1 m in height and these shall be retained free of any such obstruction.

- 11) An electric vehicle recharging point shall be installed within the garage serving each house in the development hereby permitted or in a location readily accessible from the dedicated parking area to each house before first occupation of the dwelling. The cable and circuitry ratings shall be of adequate size to ensure a minimum continuous current demand of 16 Amps and a maximum demand of 32Amps. The electric vehicle charging points so installed shall thereafter be retained.
- 12) A scheme detailing soft landscaping, tree/shrub planting, to form a buffer from the adjacent graveyard shall be submitted to and approved in writing by the Local Planning Authority before the hereby approved dwellings are brought into use. The scheme shall include a timetable for the phasing of the landscaping and planting. The works comprising the approved scheme shall be implemented in accordance with the approved timetable and phasing.
- 13) No removal of trees, shrubs or brambles shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of the vegetation for active bird's nests immediately before the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that appropriate measures can be put in place to protect any birds, their nests, eggs or young. Any such written confirmation shall be submitted to the Local Planning Authority before removal begins.
- 14) The maximum gradient of the access ramp to the car park areas of the development hereby permitted shall not exceed 1 in 8.
- 15) Notwithstanding the provisions of section 55(2)(a)(i) of the Town and Country Planning Act 1990 the garages serving the houses in the development hereby approved shall be used for the garaging of motor vehicles and shall not be converted to habitable accommodation.

-----End of Conditions Schedules-----

In respect of the consideration of all the planning applications on this Agenda the following information applies:

PLANNING POLICY

The statutory development plan comprises the Kirklees Unitary Development Plan (saved Policies 2007).

The statutory development plan is the starting point in the consideration of planning applications for the development or use of land unless material considerations indicate otherwise (Section 38(6) Planning and Compulsory Purchase Act 2004).

The Council is currently in the process of reviewing its development plan through the production of a Local Plan. The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

National Policy/ Guidelines

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 27th March 2012, the Planning Practice Guidance Suite (PPGS) launched 6th March 2014 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.

REPRESENTATIONS

Cabinet agreed the Development Management Charter in July 2015. This sets out how people and organisations will be enabled and encouraged to be involved in the development management process relating to planning applications.

The applications have been publicised by way of press notice, site notice and neighbour letters (as appropriate) in accordance with the Development Management Charter and in full accordance with the requirements of regulation, statute and national guidance.

EQUALITY ISSUES

The Council has a general duty under section 149 Equality Act 2010 to have due regard to eliminating conduct that is prohibited by the Act, advancing equality of opportunity and fostering good relations between people who share a protected characteristic and people who do not share that characteristic. The relevant protected characteristics are:

- age;
- disability;
- gender reassignment;
- pregnancy and maternity;
- religion or belief;
- sex;
- sexual orientation.

In the event that a specific development proposal has particular equality implications, the report will detail how the duty to have “due regard” to them has been discharged.

HUMAN RIGHTS

The Council has had regard to the Human Rights Act 1998, and in particular:-

- Article 8 - Right to respect for private and family life.
- Article 1 of the First Protocol - Right to peaceful enjoyment of property and possessions.

The Council considers that the recommendations within the reports are in accordance with the law, proportionate and both necessary to protect the rights and freedoms of others and in the public interest.

PLANNING CONDITIONS AND OBLIGATIONS

Paragraph 203 of The National Planning Policy Framework (NPPF) requires that Local Planning Authorities consider whether otherwise unacceptable development could be made acceptable through the use of planning condition or obligations.

The Community Infrastructure Levy Regulations 2010 stipulates that planning obligations (also known as section 106 agreements – of the Town and Country Planning Act 1990) should only be sought where they meet all of the following tests:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

The NPPF and further guidance in the PPGS launched on 6th March 2014 require that planning conditions should only be imposed where they meet a series of key tests; these are in summary:

1. necessary;
2. relevant to planning and;
3. to the development to be permitted;
4. enforceable;
5. precise and;
6. reasonable in all other respects

Recommendations made with respect to the applications brought before the Planning sub-committee have been made in accordance with the above requirements.

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**Name of meeting and date:**

Planning sub-committee (Huddersfield area) 4 January 2018

Title of report:

Application for a definitive map modification order to add a public bridleway to the definitive map and statement, Bridge Lane to Sands, Holmfirth.

1. Purpose of report

Members are asked to consider an application made under the Wildlife & Countryside Act 1981 and decide whether to make a definitive map modification order ("DMMO") to add a public bridleway to the definitive map & statement, or some other requisite order, or not to make an order.

2. Summary of Report

Mr Charlton of Holmfirth has made an application to the council for an order and claims that a public bridleway should be in the definitive map and statement across land owned by the Bridge Foundry, Holmfirth Cricket club, Holmfirth Bowling club and Kirklees Council.

Evidence and other submissions have been received from the public as well as from the landowners, which have been followed by an investigation by council officers.

Members are asked to consider the evidence against the relevant legal criteria, noting the relevant guidance, before deciding whether to make the order to record a bridleway, or to record some other public right of way or not to make an order.

Officers report to sub-committee for a decision.

3. Ward Councillor comments

No comments to date on the existence of public rights.

4. Officer recommendations and reasons

That sub-committee resolves to make an Order to modify the Definitive Map and Statement to record a restricted byway under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 between points A-B and C-D shown on appendix Plan 1

and that

the said Order should be forwarded to the Secretary of State for determination if opposed, or otherwise confirmed as unopposed by the council because the evidence is sufficient to show that either a public right of way (i) subsists or (ii) is reasonably alleged to subsist.

Note: If an order is made, it must be advertised and notice given. If objections are received and not withdrawn it must be forwarded to the Secretary of State at DEFRA to determine.

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Name of meeting: Planning sub-committee (Huddersfield Area)

Date: 4 January 2018

Title of report: Application for a definitive map modification order to add a public bridleway to the definitive map and statement, Bridge Lane to Sands, Holmfirth.

Purpose of report: Members are asked to consider the evidence and decide on the requisite modification of the definitive map and statement of public rights of way. An application has been received for a definitive map modification order to record a public bridleway. Members are asked to make a decision on making an order and forwarding any order made to the Secretary of State, if opposed.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports?)	Not applicable
The Decision - Is it eligible for call in by Scrutiny?	If yes also give date it was registered No – council committee
Date signed off by <u>Director</u> & name	Naz Parkar 19 December 2017
Is it also signed off by the Assistant Director for Financial Management, IT, Risk and Performance?	James Anderson on behalf of Debbie Hogg 19 December
Is it also signed off by the Service Director (Legal Governance and Commissioning)?	Deborah Wilkes on behalf of Julie Muscroft 18 December 2017
Cabinet member portfolio	N/A

Electoral wards affected: Holme Valley South

Ward councillors consulted: Cllrs. Patrick, Sims & Firth.

Public or private: Public

1. Summary

- 1.1 The council received an application (at App A, with plan) from Mr N Charlton in April 2011 for an order to modify the definitive map and statement of public rights of way to record a public bridleway between point A at Bridge Lane and point B on the south side of the bridge crossing the River Holme at Sands (Ordnance Survey grid reference SE 1451 0893. (DMMO file ref: 169). The witnesses writing the emails mentioned in the application form were sent the council's form WCA8, which is a user evidence form. If they did not subsequently complete a form, their email comments are included at the foot of the WCA8 evidence summary at App J.
- 1.2 The council has received 118 user evidence forms. These forms are generally used by witnesses to describe their personal knowledge and experience of routes.
- 1.3 A small number of these witnesses do not consider the route to be public.
- 1.4 The council has received representations from landowners, "Holmfirth Cricket Club" "Holmfirth Bowling Club" and "J & JW Longbottom Ltd (Bridge Foundry)" opposing the application.
- 1.5 Yorkshire Electric has a caution registered against the land, within the 'J & JW Longbottom' Foundry ownership. The majority of the Foundry land is not registered with Land Registry. Longbottom granted a 60-year lease in 2005 concerning land for use associated with an electricity sub-station.
- 1.6 Submissions have been received from the Physical Resources and Procurement (PRP) service, on behalf of the council ("KC") as landowner of Sands Recreation Ground, and from Holmfirth Bowling Club, which owns land near the application route. KC land ownership plans are appended at App B.
- 1.7 Holmfirth Cricket club and Bridge Foundry dispute the existence of public rights over their landholdings and oppose the making of any order. Their submissions are at App C. They have both engaged Mr Andy Dunlop as their representative. Holmfirth Cricket Club contend that public rights could not have been established as public use has been interrupted, physically prevented and/or has been by permission. The Cricket Club also contends that it has communicated an intention not to dedicate public rights over its land. The contentions raised in Mr dunlop's correspondence was repeated in a letter from a long-term committee member of the Cricket Club.
- 1.8 Mr Dunlop's correspondence and the cricket club submissions at App C cite a number of witnesses and proposed declarations; the council has received evidence (the letter) from the one mentioned above.

- 1.9 Mr Dunlop states: *"Having been brought into this late and time pressing for the Councils determination I'll mainly restrict myself to the application as made, whilst recognising that your investigation may cover other areas not within the evidence relied upon by the applicant.*

With that in mind, this highlights the issue raised already with the Councils current policy in that it does not permit the applicant or potential objector to review evidence obtained by the process or the report until a few days before it goes to Committee for determination. The applicant and potential objectors then only get three minutes to plead their case. This process was challenged successfully as far back as the 1980s and led to most Counties or Authorities changing their practices to take account of natural justice and prevent unnecessary orders being made. A review of Anna O'keefes first case against the Isle of Wight may assist your policy makers. Her first challenge against the decision making body as to the process they used, which is almost exactly as Kirklees do now, was wholly successful, causing the made Order to be quashed and started again. (Her later "assault" on the subsequent Order and the WCA process was not ultimately successful)

Turning to the application; Which appears to be based wholly upon "user" evidence dating back a number of years.

The objectors have been consulted on these matters and are in the process of creating sworn affidavits from two of the cricket clubs longest members, [names redacted] with first hand direct knowledge from 1963 and 1966 to date. These members can and will attest the following:

In 1963 the Cricket club used the now roadway as a seating area. It was not passable except on foot. The current lower seating area was then a grass bank only. Whilst it eventually led to a gate into an enclosed area, that was initially overgrown, that area had a fence across it on the northern side and no access out of that area to the field beyond (now a football field). This fact is separately confirmed by [redacted] , the retired President of Huddersfield and District Football League, who can state that the field was a rough field they used in the 1940s for games and again later in the late 70s or early 80s when they formed a football field on it. He confirms there was no way through initially until he formed the way in the 80s.

The Bowls Club members historically only had foot access to the end of the now road but usually used the private foot bridge (after parking on Huddersfield Road as there was none at their site) to walk across the western end of the field and enter via a (now blocked but still visible) gateway in their southern wall.

There was a gate across the entrance to the now road at a point where a metal post now exists by the club house. This was used to control access on match days, events and also as a security measure. It was locked shut when the club was not in use or groundsmen were not present. It was also used to controls access to private events.

Circa 1977 the Council constructed Sands Swimming Pool and formed a road to the bridge that leads to the area now used as a football pitch and recreation ground. Bowls Club members made use of this and then started to drive that way, parking adjacent their wall and hopping over. This practice was curtailed by the formation of the football pitch by Laurie Platt and others when they constructed the pitch. Posts were constructed to prevent unlawful use asnd are still partially extant.

Later, after the construction of the pitch and as there were no changing rooms, Mr [name redacted, of the Huddersfield football league] negotiated with the Cricket club to allow use of clubs changing rooms (for a fee) and an opening was made in the dividing fence for this purpose.

It is acknowledged that people other than football users started to use the route occasionally at this time but a sign was erected stating that the route was private and the gate was locked when the club was not in use. There was one notable occasion in the 80s when the gate was closed because of a private event at the cricket club. To gain access one had to pay an entrance fee, at the gate.

[redacted], one of the committee members was in charge of the gate and takings, and he prevented a man from "Power Tool Trades" from coming through. This man claimed he didn't want to go to the function but just to walk through. He was denied access and attempted to climb the gate. He was pushed back and a ruckus ensued. He was informed, in front of many witnesses that the route was not a public right of way. The man said he would report the assault to the Police but nothing came of it.

In 1986 the Bowls club could no longer use the Sands Football Pitch route so they and the Cricket Club constructed the current car park and opened up the now road. The sloping sides of the ground were remodelled to permit seating and the upper seating was removed. The boundary wall and gate were removed but the old line is still visible.

In 1989 the club removed the old gate across their entrance and replaced it with a lockable swing barrier. This was mostly locked shut when the club was not in use or groundsmen were not in attendance. It was also used as a pay line for private events.

The swing barrier was demolished by a Dray Wagon in the middle 90s. This was immediately replaced with a lockable chain across the now road, in the position it still remains. This was locked whenever the club was not occupied or when groundsmen were not present. The payment of entrance fees to private events was replaced by a temporary desk when appropriate.

This chain drew complaints from Mr Nick Charlton repeatedly as it prevented use by many users who were not able to climb over it. He was rebuffed and the chain remained. He was pointed to a sign on the exterior wall that said that the road was private. This has been in existence for many years.

In around 2005 the Club replaced the chain with sturdy metal gates in the position they are now as there had been a number of incidents of vandalism. Mr Charlton came across the club members when they were installing these and he questioned what was going on. He was told in no uncertain terms that it had nothing to do with him, it was a private path and to be on his way.

These metal gates allow access on foot with the clubs permission but are locked completely over the Christmas period when the club is unoccupied and no groundsmen are present, unless there is a paid private event then they are manned.

Over the years, the Cricket Club have specifically granted permissive access outside normal hours to organisers of special events so that access can be gained to their events on Sands Field. This includes Rotary events and similar. Evidence of this permission is being obtained and is supported by the Councils own records

that will show that when they sought to extend the path from the playing field along the application route in the last 20 years the club, not wishing to create a public right of way, refused.

The objectors believe that there is no case for a claim of statutory or common law dedication. We say that there is not even a reasonable allegation of public rights on the claimed route or any other. We will resist any such claim.

Your offer of sight of the user evidence maps and claims is acknowledged and welcomed but serves no purpose in light of the above, in particular at such short notice to yourselves as it creates more work for the Council to provide and it is apparent that the claimed route is not the trodden path. It would however be appreciated if the Officers report could be made available to us, for the reasons outlined at the start of this report, so that we may respond fully in writing, if necessary, to the Committee.

I recognise the Councils policy on sharing information and consultation is restrictive. Perhaps it should be brought to the attention of policy makers that the policy is ultra vires as it goes against Judgement set out in O'Keefe (1). Indeed, KMBCs policy seems to cause additional officer time, fails to uncover available facts and restricts land owners to a three minute response (which in turn is likely to lead to wasteful and unnecessary public enquiries).

I sought to meet with you to discuss the application and clarify the "user" claims as on the available paper they make no sense;

- 1. The claimed route is clearly not the trodden path.*
- 2. Mr Charlton refers to it as a footpath but makes a claim for a bridleway. Whilst it is recognised that there have been some users on foot and bicycle, the only horse ever seen was once, recently and ridden by an on duty Police Officer.*

As for fundamentally flawed and without hope, the route has been gated for as many years as it has been in existence. The route was and is closed multiple times per year during sporting events and access is restricted to those with express permission from the bowls club or upon payment. Although I would not be surprised if the claimed users don't mention it, as the Council will be aware that such an acknowledgement or arrangement destroys the claim. To that end, I am obtaining statements from those that have memory back to the 1950s and before. I also

hope to provide financial accounts that run from before earliest claimed public user, up to modern times.

I am also interested in the Councils ownership or occupation of the eastern part of the claimed route, along with restrictions attached thereto. If you feel you can share information that would be most useful.

I have received instructions to represent Holmfirth cricket club and their neighbours in relation to the claim across their land. You will receive written confirmation shortly. Initial investigations suggest that the claim is fundamentally flawed and without hope but I would like to see the application, evidence adduced and to discuss anything you may have turned up.”

- 1.10 The Foundry opposes the recording of any public rights over its land and states that public user would be contrary to their safe operations.
- 1.11 Further to matters raised by the Cricket Club in objection and during a site meeting with the Club and Mr Dunlop, officers have contacted users who had submitted witness evidence, sending out a form of supplementary questions to try to clarify various points.
- 1.12 The supplementary form is appended at App G. It was sent by email to 47 witnesses and 3 ward councillors, and by letter to 37 witnesses. 45 had been returned by 15 December 2017.
- 1.13 PRP’s submissions, on behalf of the council as landowner, are at App D. Sands Recreation Ground is vested in the Streetscene & Housing (Parks & Open Spaces, under deed reference number 1722). The council made deposits in 2012 under s31(6) of the Highways Act 1980 regarding establishment of public rights of way – the deposits were made after the date of the DMMO application and do not have retrospective effect on this application.
- 1.14 Holmfirth Bowling Club submissions are at App E and it considers that “this route has been used as a public right of way for many years.” (WCA 10 landowner evidence form.) The Bowling Club identify a “roadway” 15’6” wide over the council land to the east of the bowling club land, as shown in their property deeds. In 2011 the Bowling club wrote to the council of its objection to the recording of the way as a public right of way.
- 1.15 The applicant, Mr Charlton, has submitted documentary evidence which is appended at App F., as well as user and other personal evidence.
- 1.16 Mr Charlton & family have property at Summervale, and land between Summervale and the council’s landholdings. Some of Mr Charlton’s evidence may relate to the existence and use of potential private rights of way. Even though Mr

Charlton is the applicant, the council must consider the available evidence as a whole in reaching its conclusion on the existence of public rights.

- 1.17 The council should identify a date when the use of the route was brought into question. There is a dispute demonstrated by the conflicting evidence regarding this, which may not be settled until after a public inquiry, but it is clear that the erection of a chain in March 2011 prompted Mr Charlton's application in April 2011, some local concern and media attention, which would lead to consideration of a period of 1991-2011 for the purposes of assessing any potential statutory presumption of dedication of a public right of way. Security gates were reported in the local press in 2012, but this would be after the date of challenge. (App Y)
- 1.18 The council has to determine the definitive map modification order application. The council must consider the available evidence, before reaching a decision on making any requisite order to modify the definitive map and statement. If the council makes an order, it must be advertised and notice given, with a period for formal objections to be made. If opposed, it would have to be submitted to the Secretary of State at DEFRA to determine.
- 1.19 Even though the application is for a bridleway to be recorded, the council must decide what, if any, rights have been shown to satisfy the relevant test(s). This means that the council may make a different order or none at all, after appropriate consideration of the available evidence.
- 1.20 For example, if there is sufficient evidence only to record public footpath rights, then an order should be made for a public footpath. If bicycle user is sufficient for an order to be made to record those rights, then it would be appropriate to record a bridleway or a restricted byway, depending on the circumstances.
- 1.21 The evidence and comments of the landholders objecting to the application and any recording of any public right of way are to be noted as well as those describing use and wishing to see a way recorded.
- 1.22 When considering additions to the definitive map and statement of public rights of way, the council must make an order
 - 1.22.1 If a public right of way is shown to subsist on the balance of probabilities,
or
 - 1.22.2 if the right of way is shown to be reasonably alleged to subsist.

2. Information required to take a decision

- 2.1 Members are asked to consider the report, the available evidence for and against the recording of public rights, and decide what order, if any, to make.

- 2.2 It is the council's statutory duty to maintain the definitive map and statement and make any requisite orders.
- 2.3 Guidance for members is appended (Appendix 1).
- 2.4 The application is made under the Wildlife & Countryside Act 1981.
- 2.5 The council should consider the available evidence and make an order to modify the record of public rights of way when it is requisite in accordance with section 53 of the Wildlife & Countryside Act 1981.
- 2.6 The statutory provision in Section 53(3)(b) (WCA81), requires the Surveying Authority (Kirklees Council) to modify the Definitive Map and Statement following: *"the expiration in relation to any way in the area to which the map relates of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or restricted byway."*
- 2.7 Section 53 (3) c (i) requires the council to make an order to modify the definitive map when evidence is discovered which shows *"a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic;"*.
- 2.8 Unrecorded public rights of way may come into being in a number of different ways, such as a result of a legal event such as a creation or diversion. Further, Section 53(3)(b) of the 1981 Act requires the Council to modify the Definitive Map and Statement on expiration of any period of public use if it can be shown that the public have used the path for a sufficient length of time to raise a presumption that the path has been dedicated as a public path. This presumption, detailed in the Highways Act 1980 section 31, states *"where a way over any land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption for a full period of 20 years the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it"*. In identifying a relevant 20 year period for the purpose of section 31, we have to work retrospectively from this date of challenge.
- 2.9 The 20 year period is taken to run backwards from the date when the use of the path was first "brought into question", whether by a notice or otherwise (HA Section 31 (2)). Section 69 of The Natural Environment and Rural Communities Act 2006 (NERC) clarified that the submission of an application to modify the

Definitive Map was sufficient to call the use of the route into question by inserting subsections 7A and 7B into Section 31 HA 1980.

- 2.10 Section 31 states that only ways that are capable of being public highways are able to be considered under the statutory test. In the case of *Moser v. Ambleside U.D.C.* (1925) 89 J.P. 118, it was determined by Lord Justice Atkins that:
- 2.11 *“One of the first questions that one always has to enquire into in such a case as this is from whence does the highway come and whither does it lead? It has been suggested that you cannot have a highway except in so far as it connects two other highways. That seems to me to be too large a proposition. I think you can have a highway leading to a place of popular resort even though when you have got to the place of popular resort which you wish to see you have to return on your tracks by the same highway”.*
- 2.12 In *Kotegaonkar v SSEFRA* (2012) EWHC 1976 (Admin), Mr Justice Hickinbottom looked at the establishment of public rights of way, particularly regarding a route not connecting to an existing highway. At paragraph 72 he concluded *“In my judgment, to be a highway, it is insufficient for a way to be linked to a place to which “the public would have a reasonable expectation to go” or “a place to which the public may resort”, as the Inspector considered to be the case: a highway, by definition, requires to be linked to a highway or to other land to which the public have a right of access.”* That decision described the consideration of the existence and establishment of *cul-de-sac* public highways
- 2.13 <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2012/1976.html&query=kotegaonkar&method=boolean>
- 2.14 The Committee must consider whether there is sufficient evidence to raise the presumption of dedication. The standard of proof is the civil one that is the balance of probabilities. Members must weigh up the evidence and if, on balance, it is reasonable to allege that there is a public right of way, then the presumption is raised. The onus is then on the landowner to show evidence that there was no intention on his/her part to dedicate. This must be by some overt act on the part of the landowner to show the public at large that there was no such intention.
- 2.15 Such evidence relied upon may consist of notices or barriers, or by locking of the way on one day in the year, and drawing this to the attention of the public, or by the deposit of a Statutory Declaration under HA Section 31 (6) to the effect that no additional ways (other than any specifically indicated in the Declaration) have been dedicated as highways since the date of the deposit.

- 2.16 “Intention to dedicate” was considered in *Godmanchester*, which is the authoritative case dealing with the proviso to HA80 s31. In his leading judgment, Lord Hoffmann approved the obiter dicta of Denning LJ in *Fairey v Southampton County Council* [1956] who held *“in order for there to be ‘sufficient evidence there was no intention’ to dedicate the way, there must be evidence of some overt acts on the part of the landowner such as to show the public at large – the people who use the path....that he had no intention to dedicate”*.
- 2.17 Lord Hoffmann held that *“upon the true construction of Section 31(1), ‘intention’ means what the relevant audience, namely the users of the way, would reasonably have understood the owner’s intention to be. The test is...objective: not what the owner subjectively intended nor what particular users of the way subjectively assumed, but whether a reasonable user would have understood that the owner was intending, as Lord Blackburn put it in Mann v Brodie (1885), to ‘disabuse’ [him] of the notion that the way was a public highway”*.
- 2.18 For a landowner to benefit from the proviso to s31(1) there must be ‘sufficient evidence’ that there was no intention to dedicate. The evidence must be inconsistent with an intention to dedicate, it must be contemporaneous and it must have been brought to the attention of those people concerned with using the way. Although s31 ss (3), (5) and (6) specify action which will be regarded as “sufficient evidence”, they are not exhaustive; s31 (2) speaks of the right being brought into question by notice “or otherwise”.
- 2.19 Dedication of a public path at Common Law should also be considered. The main principles of establishing a highway under common law are:
- 2.19.1 Use by the public should be as of right; without force, secrecy or permission.
 - 2.19.2 The landowner should know of the use but do nothing to prevent it. No minimum period of use is required (unlike the statutory process where a minimum of 20 years is required).
 - 2.19.3 The more intensive and open the use and the greater the evidence of owners knowledge and acquiescence the shorter the period required to raise a presumption that the way has been dedicated.
 - 2.19.4 Each case is judged on the facts available.
 - 2.19.5 The onus of proof lies with the person making the claim to show that there was use and that the owner knew of it and did nothing to stop it.

- 2.20 In considering the addition of unrecorded footpaths, there are two tests to be applied, as identified in the case of *R v Secretary of State for the Environment ex parte Mrs J Norton and Mr R Bagshaw*, and clarified in the case of *R v Secretary of State for Wales ex parte Emery*.
- 2.20.1 Test A: Does a right of way subsist? This requires clear evidence in favour of public rights and no credible evidence to the contrary.
- 2.20.2 Test B: Is it reasonable to allege that a right of way subsists? If there is a conflict of credible evidence but no incontrovertible evidence that a right of way cannot be reasonably alleged to subsist, then a public right of way has been reasonably alleged.
- 2.21 If the council were to make a decision to make an order adding a public right of way only on the basis of Test B, members may note that the public rights of way provisions of the Deregulation Act 2015, which are yet to come into force, will remove Test B, so any such authorised order could only be made prior to commencement of any such relevant provisions.
- 2.22 Section 32 of the Highways Act 1980 states “*A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.*” Whether determination is by the Inspectors appointed by the Secretary of state, the highest courts or the council as surveying authority for public rights of way, it is appropriate and correct for those deciding such matters to consider documents that form part of the available evidence, and to decide the weight of that evidence in reaching a decision.
- 2.23 Government guidance to local authorities is contained in DEFRA’S Rights of Way Circular 1/09, version 2
- 2.24 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69304/pb13553-rowcircular1-09-091103.pdf
- 2.25 Members are advised that if a definitive map modification order is made, which then attracts objections which are not withdrawn, then the council would have to forward it to the Secretary of State at DEFRA for determination. The DMMO

consistency guidelines, are issued to the Secretary of State's inspectors in the planning inspectorate

- 2.26 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/517495/Full_version_February_2016_consistency_guides_2_.pdf
- 2.27 Mr Charlton made the application in April 2011, after he reported his concerns about access through the cricket club land.
- 2.28 The council's land at Sands, identified in App B, was acquired by the predecessor urban district council in the 1960s under the Physical Training and Recreation Act 1937.
- 2.29 <https://www.legislation.gov.uk/ukpga/Edw8and1Geo6/1/46/section/4/enacted>
- 2.30 Papers relating to the acquisition of the land by the district council, and now owned by Kirklees Council, are shown at App M. The council's land includes a spur of land to the east of the Bowling Club land which connects to a common boundary with the Cricket Club's land.
- 2.31 The council's land at Sands has been laid out for the use of the public, the public are entitled to use it, so use of this council land is not use "as of right" and public rights of way could not be acquired across it. The council's land managers (Corporate Facilities Manager, Jonathan Quarmby) identify in form WCA 10 form that the land was acquired in September 1969 and is "*retained and managed by the Council as public open space*". The public user of council land described in evidence is user by deemed permission or by right in accordance with that designation from the acquisition by the district council.
- 2.32 Use of the way by those taking a linear route could not be distinguished by the landowner from use of the land for recreation. Only 8 of the 118 witnesses identify their use towards the north as reaching the public highway (e.g. Huddersfield Road). For the large majority, witnesses identify the bridge across the river or other points within the council's Sands landholdings not on the public highway.
- 2.33 This aspect is explored in the Planning Inspectorate order decision of July 2017 (ref: FPS/X1355/7/4M), which considers relevant case law, including *Barkas*, and is of interest.
- 2.34 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/636720/fps_x1355_7_4m_final_od.pdf

- 2.35 The route in question has been raised in some council correspondence in the past. This is appended at App H.
- 2.36 The spur of land identified in paragraph 2.30 above has been identified by the Bowling Club as carrying a right of way, but is not currently all available for public passage, as after entering the council's land from the south, most of the spur has been left under a pile of earth and stone, which the Cricket Club states is the scrapings from the groundworks preparing for the Bowling Club car park in the mid-1980s. This appears likely to have caused deviation from the line of the KC spur onto the Bowling Club land via the car park to the Sands council land. The spur of land does not appear to have been enclosed or maintained, since the deposit of materials.
- 2.37 The matter of the old spur and the currently available route over the Bowling Club car park was raised in the council's supplementary questions form sent out to witnesses. As identified above, it is possible for a public right of way to have been gained connecting to the council's recreational landholdings. This could be at the southern end of the spur and/or to the main body of the council's land further north across the bowling club car park.
- 2.38 The user evidence identifies use by 118 witnesses nearly all identifying a route from Bridge Lane to the northern extent of the Cricket Club land. Of these, over 60 give evidence of use for the whole period 1991-2011, with many others' evidence including time within that period. (see App J).
- 2.39 Evidence submitted includes 12 witnesses claiming use by bicycle including the whole period 1991-201, with 10 others' evidence including use within that period.. (App J).
- 2.40 Users noted seeing others and described use on foot, dog walking, accessing play area, running, going to doctor's, visiting recreation ground, cycling. Such use would be appear open, notorious and of a nature similar to that expected of public rights of way.
- 2.41 The submitted user evidence demonstrates substantial and frequent use over many years by the public. App J shows WCA8 user evidence, and App K shows responses to the council's supplementary questions.

- 2.42 As well as the Cricket Club's evidence, a small number of witnesses have mentioned incidents such as a table being laid out by the Cricket Club and bonfire night.
- 2.43 The Cricket Club claims that the way has been blocked and that access was not allowed without payment for access to watch cricket matches, and that controls on access occurred in relation to other events. It also claims that relevant notices have been posted regarding access by the public.
- 2.44 The various evidence discovered is contradictory and unclear, and members are reminded of the test described at 2.20.2 above for making an order where the two sides may have credible evidence but there is not incontrovertible evidence to show that no public way subsists.
- 2.45 A decision on the appropriate status of any route alleged to subsist here would have regard to the user evidence. For this route, there is bicycle as well as pedestrian user. If sufficient, the bicycle user would lead to a question of whether to record the route as a bridleway or as a restricted byway. Generally, following the decision in *Whitworth v Secretary of State for Environment, Food and Rural Affairs* [2010], it would be appropriate to record the less burdensome status to the landowner. However in this case, the route is not an historic bridleway, and there is an absence of evidence of equestrian user, so there is no basis from which a less burdensome bridleway can be inferred. If sufficient to satisfy the relevant criteria, the bicycle use would suggest a status of restricted byway in the order.
- 2.46 A 2017 Planning Inspectorate DMMO decision (ref: FPS/E2001/7/30) on this point, subsequent to *Whitworth* and of interest is at this link:
- 2.47 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/608941/fps_e2001_7_30_od.pdf
- 2.48 None of the user evidence forms describe equestrian use by witnesses.
- 2.49 Motor vehicular use in user evidence forms – 4 witnesses describe motor vehicular use (2002-17 and 2004-17 and 2005-11 and 1976-11). This would appear insufficient to be indicative of the existence of public motor vehicular rights.
- 2.50 Ordnance Survey plans showing the land over the years are appended at App X (1893, 1906, 1931, 1967). These are not demonstrative of public rights of way but indicate the physical nature of the site over the years. The physical existence of a route through the Foundry, Cricket club and KC spur of land is clear from these

plans. They may indicate the presence of gates at certain years, but this is not evidence that any gate may have been or was locked.

- 2.51 After considering the evidence and the relevant criteria members have a number of options.
- 2.52 The first option for members is to refuse the application and to decide that the council should not make any order.
- 2.53 The second option for members is for the council to make an order to record a public right of way, and either confirm it or forward it to the Secretary of State if it is opposed.

3. Implications for the Council

3.1 Early Intervention and Prevention (EIP)

- 3.1.1 Providing better facilities for physical activity works towards local and national aims of healthy living.

3.2 Economic Resilience (ER)

- 3.2.1 There is an indirect impact of a welcoming environment which helps promote and retain inward investment

3.3 Improving Outcomes for Children

- 3.3.1 See 3.1.1

3.4 Reducing demand of services

- 3.4.1 See 3.5.

3.5 Other (e.g. Legal/Financial or Human Resources)

- 3.5.1 The Council has a statutory duty to maintain the formal record of public rights of way and to respond to applications and discovery of evidence of unrecorded and mistakenly recorded public rights of way.
- 3.5.2 The Council must make a decision regarding the order application and any appropriate PROW status of this route, making any order that is requisite further to Wildlife & Countryside Act 1981, e.g. section 53. In accordance with the Council's delegation scheme, this is a decision for the sub-committee.
- 3.5.3 Any person may make an objection or representation to an order modifying the definitive map and statement. If objections are not withdrawn, any order made would be forwarded to the Secretary of state at DEFRA and

likely considered by an inspector appointed by the Secretary of State, who may or may not confirm the order.

4 Consultees and their opinions

- 4.1 Ward members have been informed about the public bridleway claims and have been informed of the report being brought to sub-committee.
- 4.2 Officers have contacted landowners, statutory and local user groups and the Parish council.
- 4.3 The Parish council response was *“Although the Council has no specific evidence, my Members are aware that the bridleway has been used as a public right of way for at least 50 years.”*
- 4.4 Some individual witness evidence was subsequently received, and is as described elsewhere in this report.
- 4.5 Kirklees Bridleways group (“KBG”) submitted some historic documents in connection with the setting up of the railway serving Holmfirth, which includes the land of the route from Bridge Lane route under reference 104. (App L).
- 4.6 KBG wrote *“photos from the Railway Plan and book of reference. This shows an occupation road up to a field which he informs me belongs to him and it also has an old gateway at the start of his field. The plan and book of reference is available to view at the Parliamentary Archives document reference HL/PO/PB/3/plan1845/H2. The Huddersfield and Sheffield Junction Railway was incorporated with the Manchester and Leeds Railway in an Act of 1846 and the Manchester and Leeds Railway became the Lancashire and Yorkshire Railway”*

5 Next steps

- 5.1 If an order is made, it will be advertised on site and in the local newspaper. All owners and occupiers will receive a copy of the order as well as other statutory consultees. Anyone may submit written objections to the order during the relevant notice period.
- 5.2 If no one makes an objection the Council could confirm the order. If objections are made, and not withdrawn, the order has to be referred to Secretary of State DEFRA, who will decide if the order should be confirmed. This usually involves appointing an inspector to consider the evidence from all parties at a public inquiry, hearing or by exchange of correspondence.

- 5.3 If the Council does not make any order, then the applicant may appeal by way of representations to the Secretary of State who may direct the Council to make an order. [WCA 1981, Schedule 14, 3 (4)]. The applicant has 28 days to appeal after notice is served by the council of its refusal decision.

6. **Officer recommendations**

- 6.1 **Officers recommend that** members authorise the Service Director, Legal, Governance and Commissioning to make a definitive map modification order (“DMMO”) to record a restricted byway between points A & B and between points C & D shown on appended plan 1, under section 53 (3) c (i) of the Wildlife & Countryside Act 1981.
- 6.2 **Officers further recommend that** if the order recommended at 6.1 above is made, members authorise the Service Director, Legal, Governance and Commissioning to confirm the order or if opposed, to submit it to the Secretary of State at DEFRA to determine.

Reasons

- 6.3 There is significant evidence regarding public use of the route from Bridge Lane to the northern extent of the Cricket club land and then across the Bowling Club car park land towards Sands.
- 6.4 Public user over routes within the council’s landholdings would not appear to have resulted in the establishment of a public right of way. This is because such user would be by right (or potentially by deemed permission) in accordance with that designation from the acquisition.
- 6.5 Use over the council land described in the evidence has been to varying terminal points, over various routes, with a small proportion of witnesses identifying any northern end point of the journey on the public highway network. This suggests that the user has not been as a public highway and additionally in this case it would appear difficult to distinguish from the usual activity of people walking throughout the public access land held by the council.
- 6.6 It has been established that a public right of way may have only one point on the public highway network (e.g. Bridge Lane), if the other terminal point leads to a place of popular resort. (Moser v Ambleside U.D.C. (1925) 89 J.P. 118).

- 6.7 In *Moser v. Ambleside U.D.C.* (1925) 89 J.P. 118, it was determined by Lord Justice Atkins that: *“One of the first questions that one always has to enquire into in such a case as this is from whence does the highway come and whither does it lead? It has been suggested that you cannot have a highway except in so far as it connects two other highways. That seems to me to be too large a proposition. I think you can have a highway leading to a place of popular resort even though when you have got to the place of popular resort which you wish to see you have to return on your tracks by the same highway”.*
- 6.8 Officers have considered whether it could be appear reasonable to allege that a public highway may subsist between two places of popular resort, such as in a case of a cliff-top path between two busy beaches, or in this case at Holmfirth. Sands recreation ground is considered to be a place of popular resort and a public right of way could therefore be reasonably alleged to subsist between Bridge Lane and the Sands council-owned land.
- 6.9 Considering *Kotegaonkar*, and noting that the particular circumstances of this matter differ – e.g. the council as landholder states that its land is maintained as a public open space – then one can consider Sands Rec to be land that is not only a place of popular resort, but is also land to which the public have a right of access where, (unlike the health centre and shopping arcade land in *Kotegaonkar*), the public access is not trespass and also it cannot be prevented by the owner. In such circumstances, a public right of way could be reasonably alleged to subsist between two points of this ‘public access’ land, over other land. This is reflected in the officer recommendation to include route C-D over the bowling Club land in Plan 1 in the order, linking two parts of the council land.
- 6.10 At paragraph 2.36 of the Planning Inspectorate’s consistency guidelines for DEFRA inspectors, it states: *“The courts have long recognised that, in certain circumstances, culs-de-sac in rural areas can be highways. (e.g. Eyre v New Forest Highways Board 1892, Moser v Ambleside 1925, A-G and Newton Abbott v Dyer 1947 and Roberts v Webster 1967). Most frequently, such a situation arises where a cul-de-sac is the only way to or from a place of public interest or where changes to the highways network have turned what was part of a through road into a cul-de-sac. Before recognising a cul-de-sac as a highway, Inspectors will need to be persuaded that special circumstances exist.”*

- 6.11 In this case, when considered by the criteria in paragraph 2.20.2 above, there is a conflict of evidence provided, but there is no incontrovertible evidence that a right of way cannot be reasonably alleged to subsist. The appropriate status should be reflected in any order made.
- 6.12 In conclusion, as there is credible evidence on both sides in this case and no incontrovertible evidence that no public right of way subsists then officers consider that an Order to modify the Definitive Map and Statement should be made to record a restricted byway under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 over the Bridge Foundry, Cricket Club and Bowling club lands as shown in appended Plan 1.
- 6.13 If an order is made and objections made and not withdrawn, it must be forwarded to the Secretary of State to make a decision. In that event, a public inquiry may be considered by his inspector to be the preferred process to assist in a final determination of this matter, allowing for evidence to be given in person, where it would be open to cross-examination.
- 6.14 Section 53 (3) c (i) requires the council to make an order to modify the definitive map when evidence is discovered which shows *“a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic;”*.

Summary of officer recommendation

- 6.15 Officers recommend that:
- 6.15.1 an Order to modify the Definitive Map and Statement should be made to record a restricted byway under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 between points A-B and C-D on Plan 1 **and that**
- 6.15.2 the said Order should be forwarded to the Secretary of State for determination if opposed, or otherwise confirmed as unopposed by the council.

7. Cabinet portfolio holder's recommendations

- 7.1 Not applicable

8. Contact officer

9. **Background Papers and History of Decisions**

9.1 872/1/MOD/169

9.1.1 Appendices -

<https://democracy.kirklees.gov.uk/ecCatDisplay.aspx?sch=doc&cat=13500>

9.1.2 Appendix 1 – guidance for members.

9.1.3 Plan 1 – showing recommended addition

9.1.4 App A – DMMO application form and plan

9.1.5 App B – Land ownership plans

9.1.6 App C – Representations from Holmfirth Cricket Club

9.1.7 App C – Representations from Bridge Foundry

9.1.8 App D – Submissions from PRP service for Kirklees Council as landowner.

9.1.9 App E – Submissions from Holmfirth Bowling Club

9.1.10 App F – Applicant submissions – documentary papers.

9.1.11 App G – Supplementary questions for witnesses

9.1.12 App H – Kirklees council “PROW general” file records

9.1.13 App J - User evidence summary

9.1.14 App K - Supplementary form evidence.

9.1.15 App L – KBG railway documents

9.1.16 App M – Sands council acquisition documents

9.1.17 App X – Ordnance Survey plans

9.1.18 App Y – Press cutting

9.1.19 1937 Act extract

10. **Assistant Director responsible**

10.1 Joanne Bartholomew, Service Director, Commercial, Regulatory & Operational Services

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Report of the Head of Strategic Investment

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 04-Jan-2018

Subject: Planning Application 2016/91560 Alterations to convert lower ground floor to two flats (Listed Building within a Conservation Area) 33-35, Queensgate, Huddersfield, HD1 2RD

APPLICANT

Mr Mohammad Sajjid, MS
Investment

DATE VALID

14-Jun-2016

TARGET DATE

09-Aug-2016

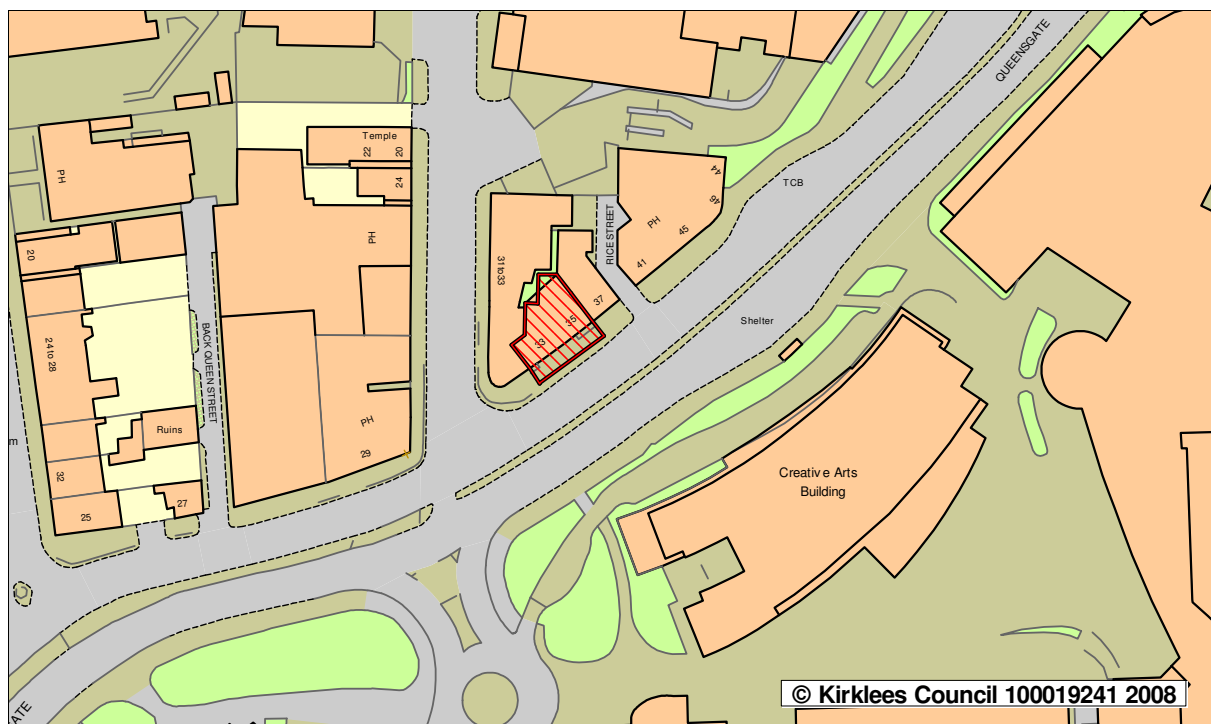
EXTENSION EXPIRY DATE

21-Apr-2017

Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

<http://www.kirklees.gov.uk/beta/planning-applications/pdf/public-speaking-committee.pdf>

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral Wards Affected: Newsome

No

Ward Members consulted

RECOMMENDATION: REFUSE

The flats would be served by windows predominantly below pavement level providing inadequate outlook towards retaining walls and limited access to natural light. In addition the impact from external activity in connection with the adjacent businesses, as well as unacceptable levels of noise and air pollution from the adjacent ring road would further compromise the amenities of the future residents. The proposals as such would result in a poor level of amenity for future occupants and fail to comply with the requirements of Policies D2 (v), BE1(iv), BE12, EP4 of the UDP, conflict with the paragraphs 17 (4th bullet point), 120 and 124 the National Planning Policy Framework and with Policies PLP24(b), PLP 51(3) and PLP52 of the Publication Draft Local Plan.

1.0 INTRODUCTION:

- 1.1 The application is brought to Committee at the request of Ward Councillor Andrew Cooper who states:

“I understand you have turned it down on grounds of lack of natural light. I’ve had a look at photos of the flats and while they are subterranean there is natural light provided by windows.

As this is definitely for student accommodation and not families or young children it will be suitable for short term letting.

Other examples exist around the Town Centre of similar accommodation.”

- 1.2 The chair of the committee has confirmed that Cllr Cooper’s reason is valid having regard to the Councillors’ Protocol for Planning Sub-Committees.

2.0 SITE AND SURROUNDINGS:

- 2.1 The application relates to the basement level of nos. 33 -35 Queensgate and a small area to the front of the building which provides access from an external staircase to the basement directly from the pavement above. The ground floor was in use for offices and a takeaway (panini shop) at the time of the case officer’s site visit. The site lies opposite the Queensgate campus of Huddersfield University, with the ring road separating the two sites. The basement accommodates two windows which are mainly set below pavement level.

- 2.2 The property is a Grade II listed building within the Huddersfield Town Centre Conservation Area.

3.0 PROPOSAL:

- 3.1 The application seeks permission for the conversion of the basement to two open plan residential flats. These would be accessed by the existing external staircase to the front of the building and set below pavement level. Flat no. 1 would be below the existing office use at ground floor level. One opening would serve this flat, the majority of which is set below ground level. Flat no. 2 would be directly below the takeaway use and would be served by the window opening adjacent to the staircase.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

- 4.1 2017/91351 – change of use of basement from office to café – granted June 2017 and implemented. No allied application for listed building consent for works to the building has been submitted or approved.

2016/91561 – listed building consent to convert lower ground floor to two flats, allied application to the application reported to sub-committee: undetermined.

2015/91493 - erection of rear extensions to form additional student accommodation at first and second floor level, alterations to the front elevation of the takeaway unit, which would consist of lowering the cill height of the window – granted February 2016. Alterations to front carried out.

2015/91491 – listed building consent for rear extensions at first and second floor level, alterations to the front elevation of the takeaway unit, which would consist of lowering the cill height of the window – granted

2011/92996 - alterations to cellar and new access, formation of new doorway and internal alterations – granted Sept 2012

2011/92997 - listed building consent for alterations to cellar and new access, formation of new doorway and internal alterations.

2009/91946 – conversion of ground floor into 2 separate units and associated external alterations comprising of the installation of new door and window openings - granted Dec 2009

2009/91947 – LB consent for conversion of ground floor into 2 separate units and associated external alterations comprising of the installation of new door and window openings - granted Dec 2009

Enforcement History

EN950 – Listed Building Enforcement notice served in respect of a timber shelter and staircase erected above the flat roof section to the rear of the building in 2012. . A subsequent appeal was dismissed and the listed building enforcement notice upheld. A period of three months was given by the Inspector to remedy the contravention, to remove the timber frame and staircase and restore the building to its previous condition.

5.0 HISTORY OF NEGOTIATIONS (including revisions to the scheme):

- 5.1 14th June 2016 - The applicant submitted acoustic, air quality and odour reports. These were not requested by Officers as the applicant had been advised, given officers concerns in relation to amenity of future residents, the proposals could not be supported.

22nd December 2016 – agent advised concerns raised by Env. Health following assessment of additional information submitted, which was not satisfactory.

24th February 2017 – applicant advised concerns remain despite a site meeting with Cllr Naheed Mather to inspect the basement internally.

17th March 2017 – applicant requested decision on application be delayed to allow applicant to approach a ward Councillor for a committee decision.

20th March 2017 – Officers request for accurate existing floor plans

24th March 2017 – Cllr Andrew Cooper requested the application be determined by sub-committee.

7th April 2017 – receipt of accurate existing floor plans.

19th June 2017- confirmation of new agent

6.0 PLANNING POLICY:

- 6.1 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 Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

The site is within the Huddersfield Town Centre Conservation Area and this is a Grade II listed building. The following Policies are of relevance when considering the proposed development.

6.2 Kirklees Unitary Development Plan (UDP) Saved Policies 2007:

D2 - residential & visual amenity
BE1 – Design principles
BE2 – Quality of design
BE12 – Space about dwellings
BE5 – Preservation/enhancement of conservation areas.
EP4 – Noise sensitive development

6.3 National Planning Guidance:

4th Core Planning Principles of the NPPF
Ensuring vitality of town centres (Section 2)
Delivering a wide choice of high quality homes (Section 6)
Conserving and enhancing the natural environment (Section 11)
Conserving and enhancing the historic environment (Section 12)

6.4 Kirklees Publication Draft Local Plan (PDLP):

PLP 24 – Design
PLP35 – Development in conservation areas
PLP51 – protection and improvement of local air quality
PLP52 – protection and improvement of environmental quality (noise including traffic noise)

Other relevant guidance:

West Yorkshire Low Emission Strategy (WYLES)
Kirklees Council Local Air Quality Plan.

7.0 PUBLIC/LOCAL RESPONSE:

7.1 Final publicity date Expired 12th July 2016. No representations received.

8.0 CONSULTATION RESPONSES:

8.1 Statutory:

K.C. Conservation and Design officer raises no objections on the allied listed building application subject to the internal staircase being retained.

8.2 Non-statutory:

K.C Environmental Health – cannot support the application raising concerns regarding noise, air quality and ventilation.

9.0 MAIN ISSUES

- Principle of development
- Impact on visual amenity including designated heritage assets
- Impact on amenity of future residents
- Impact on highway safety
- Other matters (bin storage and coal mining legacy)
- Representations
- Conclusion

10.0 APPRAISAL

Principle of development:

- 10.1 The site is a Grade II listed building within the Huddersfield Town Centre Conservation Area. Sections 66 and 72 of the Listed Buildings & Conservation Areas Act (1990) requires that special attention shall be paid in the exercise of planning functions to the desirability of preserving or enhancing the appearance or character of the Conservation Areas and to preserving the setting of a listed building or any features of special architectural or historic interest which it possesses. This is mirrored in Policy BE5 of the Unitary Development Plan together with guidance in Chapter 12 of the National Planning Policy Framework and emerging PLP35 of the Publication Draft Local Plan.
- 10.2 The principle of providing two additional residential flats would normally be considered acceptable providing that: the resultant alterations do not have a detrimental impact on the setting of the host building and any special architectural interest it possesses; the Conservation Area; visual and residential amenity; highway safety and other relevant material considerations. The general principle of making alterations to a property are assessed against Policies BE1 and BE2 of the Unitary Development Plan, Policy PLP24 of the PDLP and advice within Chapter 7 of the National Planning Policy Framework regarding design.
- 10.3 Significant weight is given to the fact that the application would result in a further two units of accommodation being provided at a time of local and national shortage. Kirklees cannot currently demonstrate a 5-year supply of housing land and this site is within a sustainable location within close distance of the town centre and other amenities. Paragraph 51 of the NPPF states that LPAs should 'normally approve planning applications for change of use to residential...'
- 10.4 **Impact on visual amenity including the designated heritage assets:**
- 10.5 No external physical alterations are proposed. Both flats are shown to be served from the external staircase from the front of the building and to be served by the existing openings which are predominantly positioned below pavement level.
- 10.6 With regards to Policy BE5, as there are no external alterations proposed it would ensure the historic interest of this building and character of this part of the Conservation area is not compromised. Similarly as there are no external works proposed the setting of the listed building would be unaffected.
- 10.7 Turning to the internal alterations, following a site inspection it was clear the historic fabric/interests of the listed building have previously been stripped and there is little value in what remains due to alterations that have been carried out in the past. However, the submitted plans indicate the retention of the internal staircase and the small section of internal walls to be provided would be of stud construction, which is easily reversible. In view of this Officers are of the opinion the proposals would not detract from any remaining significance of this building at basement level nor detract from the character of this part of the Conservation Area, in accordance with Policy BE5 of the UDP, Policy

PLP35 of the Publication Draft Local Plan as well as guidance in the Listed Buildings & Conservation Areas Act (1990) and Chapter 12 of the National Planning Policy Framework.

10.8 Impact on amenity of future residents:

- 10.9 The assessment of amenity relates to the impact of the proposal on the future occupiers of the property, considered in relation to Policies D2, BE1 and BE12 of the UDP. Relevant Policies of the Publication Draft Local Plan are PLP51 and PLP52 as the proposals would result in a sensitive use (residential) adjacent to a ring road.
- 10.10 Also of relevance is the NPPF which advises in the fourth bullet point of the core planning principles that planning should “*always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.*”
- 10.11 In terms of outlook and natural light to the proposed flats, the main open plan living area of flat no. 1 would be served by a single, existing light well. This is approximately 0.5 metre in depth and the full width of the window with only the top opening section above pavement level. This light well was covered with a metal grille at the time of the site visit and sited below and adjacent to the platform/entrance of the adjoining premises.
- 10.12 With regards to flat No. 2 the only source of light and outlook to the main open plan living area will be from the single window adjacent to the external steps which would serve both flats. The depth of the steps is approximately 1m and the width extends the full length of the external staircase. At ground floor level, to the left hand side of the light well, is the entrance to the takeaway/panini hut and to the right hand side is a café. At the time of my site visit the adjoining café had an external seating area with tables and chairs in association with the café use on the pavement.
- 10.13 The light wells are small, with one covered by a metal grille, and would only allow limited light penetration into the flats and very little towards the rear of the living space. It is considered that the future occupiers of the flats would not have an appropriate level of outlook or a satisfactory level of daylight from the existing windows which are 0.5 metres deep and approximately 1m away from the retaining walls. This is significantly short of the 12 metres as advised in Policy BE12 for habitable room windows to blank walls for ‘new dwellings’.
- 10.14 The amenities of the future residents would be further compromised with the noise and activities associated to the ground floor uses, in particular to flat no. 2 which is in close proximity to the adjacent cafe and the area used for external activities in association with the café. Occupiers of flat no. 2 would be of more dis-advantage and would have minimal privacy as the only opening to serve this flat is sited on the wall of the external staircase, which would be utilised by future residents and visitors to the flats as the only entrance and exit point.

- 10.15 As well as the adjacent commercial activities, it is also acknowledged that traffic noise and poor air quality from the adjacent four lane ring road would be a further contributory factor which would cause harm to the amenities of the future residents of the proposed apartments. Furthermore the whole town centre of Huddersfield was declared as an Air Quality Management Area (AQMA) in November this year.
- 10.16 Policy EP4 of the UDP relates to noise sensitive development. National guidance in the NPPF, paragraphs 123 and 124 relates to pollution, including air quality and is relevant when assessing the proposals in this location in close proximity to the Town Centre Ring road. Emerging Policy PLP51 of the PDLP states that the introduction of new receptors into AQMA will not be permitted where 'sustainable mitigation measures cannot be introduced which prevent receptors from being exposed to unsafe levels of air pollution'. PLP52 states that development will not be permitted where environmentally sensitive development would be subject to significant levels of pollution (including noise and vibration) and no 'sustainable' mitigation measures can be introduced to protect the quality of life and well-being of people.
- 10.17 In light of the recent declaration of an AQMA and the Local Air Quality Management Plan, Environmental Health colleagues have reassessed the proposed development and provided the following comments:

"This application seeks to place residential accommodation in a primarily commercial district, within an area of known poor air quality (now a declared Air Quality Management Area – AQMA) and high noise (and likely vibration) levels from the adjacent 4 lane road and the commercial activities immediately above.

This is not a suitable location to recommend approval of residential accommodation as it will be too difficult to ensure that the future residents have as quiet an environment as possible with clean odour free air in which to live, and approval would be contrary to guidance/policies.

Having reviewed this application and the accompanying documentation/reports, I am not satisfied with the information presented and based on this I cannot support the granting of this consent. I outline my reasons for this below:

Noise:

The Spire Environmental Report (03-May 2016) does not contain sufficient information in order to assess the noise environment future residents will be exposed to. It concentrates mainly on noise at the back of the building (and appears to have been produced to support a previous and different application). No measurements have been taken at the Queensgate side of the building, which is the side where the future residents will have their windows and door. Without measurements at this façade, it is only a guess as to what is suitable glazing/insulation design. Another concern with this report is that it makes no reference to the commercial uses immediately above the proposed flats. These are currently office (A1) and hot food takeaway (A5) use. No assessment has been made of the actual/likely noise from these (through the party floor/ceiling), or of the party floor itself.

Air Quality/Ventilation

In November 2017 the whole town centre of Huddersfield was declared as an Air Quality Management Area (AQMA). This site is within that area and immediately adjacent to a primary emission source (Road Traffic on the 4 lane Ring Road).

Whilst it is possible that a carefully designed combined air filtration/ventilation system could provide clean fresh air, it would be contrary to the following guidance to allow residential development on this site:

*West Yorkshire Low Emission Strategy (WYLES)
Kirklees Council Local Air Quality Plan.*

To allow residential accommodation here would be contrary to paragraph 120 & 124 of the NPPF”.

- 10.18 To summarise, introducing a new receptor which will be exposed to identified unsafe levels of air pollution and noise would not be in the best interests of the future residents of these apartments who would have an unacceptable level of quality of life. This, together with the minimal level of outlook, would not represent good design and provide inadequate levels of amenity for any occupants of the future proposed basement flats.
- 10.19 Whilst the proposed flats would provide new dwelling units and would increase the supply of housing in line with the NPPF, this does not outweigh the harm and unacceptable levels from noise and air pollution that the future residents would be exposed to. The proposals as such would fail to comply with the requirements of Policies D2, BE1, BE12, EP4 of the UDP and fail to meet the fourth bullet point of the NPPFs Core Planning Principles, paragraphs 120 and 124 as well as Policies PLP24, PLP 51 and PLP52 of the Publication Draft Local Plan.
- 10.20 Members are asked to note that an application was received for the change of use of the basement to a café, following Officers concern on the current proposals. This was granted in June 2017. Officers were of the opinion the café use would not only bring back into use the basement but more importantly be more compatible with the existing ground floor uses and contribute to the viability of the Huddersfield Town Centre, in accordance with the three strands of sustainable development as set out in the NPPF. The café use has since been implemented. It is also noted that works to the external fabric of the building (cladding) has also been carried out which did not form part of the application for the change of use to a café and that no listed building consent application for such works has been received.
- 10.21 **Highway issues:**
No parking provision is required due to the site's town centre location which is well served by public transport and within easy walking distance of both bus and train stations.

10.22 Representations:

No public representation was received but the application is brought to committee at the request of Ward Cllr Cooper for the following reason:

"I understand you have turned it down on grounds of lack of natural light. I've had a look at photos of the flats and while they are subterranean there is natural light provided by windows. As this is definitely for student accommodation and not families or young children it will be suitable for short term letting. Other examples exist around the Town Centre of similar accommodation."

A comprehensive assessment of the poor standard of amenity any future occupiers of the proposed flats would endure is set out in paragraphs 10.8-10.20 of the appraisal. For those reasons, and as set out in the recommendation, the development cannot be supported.

10.23 Other Matters (bin storage):

10.24 The submitted plans do not include the provision of bin storage. Nevertheless, during the case officers site visit it was evident an adequate area at the bottom of the external steps could be allocated to store bins for both flats, should the proposals be supported.

10.25 Coal mining legacy:

The application site falls within the defined Development High Risk Area. The Coal Authority's general approach in such cases is to require the applicant to submit a Coal Mining Risk Assessment to address coal mining legacy as part of the development. However, certain types of development are exempt from this, including changes of use where no ground works are proposed. The nature of the proposals would not include any ground works and as such in this instance exempt from providing a Coal Mining Risk Assessment.

10.26 CONCLUSION:

10.27 The proposal would not represent good design and would result in a poor standard of amenity for any future occupiers of the flats whether these be for students or open market flats and fail to comply with Policies D2, BE1, BE12 and EP4 of the Kirklees UDP and DPLP Policies PLP24, PLP50 and PLP51 and guidance in the NPPF.

10.28 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.

10.29 This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development proposals do not accord with the development plan and the adverse impacts of granting permission would significantly and demonstrably outweigh any benefits of the development when assessed against policies in the NPPF and other material consideration.

Background Papers:

Application and history files.

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2016%2f91560>

Certificate of Ownership –Certificate A signed 10th May 2016.

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Report of the Head of Strategic Investment

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 04-Jan-2018

Subject: Planning Application 2017/93288 Erection of single storey front and rear extensions 15A, Whitacre Street, Deighton, Huddersfield, HD2 1LX

APPLICANT

Leah Patrice

DATE VALID

22-Sep-2017

TARGET DATE

17-Nov-2017

EXTENSION EXPIRY DATE

Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

<http://www.kirklees.gov.uk/beta/planning-applications/pdf/public-speaking-committee.pdf>

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral Wards Affected: Ashbrow

No

Ward Members consulted

RECOMMENDATION: APROVE

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

1.0 INTRODUCTION:

- 1.1 This application is brought to Committee at the request of Cllr Jean Calvert for the following reason:

'It is on the scale of the development and the impact it would have on the neighbouring properties.'

- 1.2 The Chair of Committee has confirmed that Cllr Calvert's reason for making this request is valid having regard to the Councillors' Protocol for Planning Committees.

2.0 SITE AND SURROUNDINGS:

- 2.1 15a Whitacre Street is a two-storey end terrace in a block of three dwellings. It is constructed in brick and render with a pitched roof covered in concrete roof tiles. The application dwelling is set at a lower ground level than the highway with pedestrian access directly from Whitacre Street. It has good sized front and rear gardens.
- 2.2 The topography in the local area rises towards the North and East such that the adjacent property, no.17, is set at a higher ground level, as is the adjacent highway. To the rear of the site is a large area of open land designated as Urban Greenspace; to the south is an active railway line and Deighton Train Station.

3.0 PROPOSAL:

- 3.1 The proposal is for single storey front and rear extensions.
- 3.2 The front extension is for a porch. The extension will project from the front elevation wall by approx. 1.5m and extend in width towards the neighbouring attached dwelling by approx. 1.9m. The porch will have a lean-to roof with an eaves height of 2.5m and a ridge height of 3.4m. The porch will be constructed in brick and concrete roof tiles to match the existing dwelling. The extension will include the addition of an entrance door and window opening to the front elevation and a window opening to the southern side elevation.

- 3.3 The rear extension will be set in approx. 0.3m from the boundary with the adjoining dwelling, no. 15. The extension will project from the rear elevation by 4.15m and extend across almost the full width of the dwelling by 4.45m. The extension will have a lean-to roof and have an eaves height of 2.5m and a ridge height of 3.7m. The rear extension will be constructed in blockwork with a rendered finish and concrete tiles to the roof. It would include 1no. roof light and a set of double doors and one window opening to the rear elevation.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

- 4.1 2011/92588: Erection of single storey extension to rear and storm porch to front – Conditional full permission.

Enforcement history

- 4.2 COMP/17/0162. Complaint received in June 2017 alleging the building works taking place on site were not in accordance with the previous planning permission. An Enforcement Officer visited the site and wrote to the site owners in July 2017 stating that the rear extension did not correspond with the plans previously approved. The letter also set out that there was no permission for a front extension to the property.

An application seeking retrospective planning permission for the development was submitted in September 2017 and is the subject of this report.

5.0 HISTORY OF NEGOTIATIONS (including revisions to the scheme):

- 5.1 Amendments have been sought from the applicant to address concerns regarding the scale of the front extension. This was to achieve a size more related to a front porch which could be seen as 'small in scale'. This resulted in the submission of an amended scheme which is explained in para. 3.2 of the report.

6.0 PLANNING POLICY:

- 6.1 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 Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

The site is unallocated on the UDP Proposals Map and on the publication draft local plan.

Kirklees Unitary Development Plan (UDP) Saved Policies 2007:

- 6.2 **BE1** – Design principles
 BE2 – Quality of design
 BE13 – Extensions to dwellings (design principles)
 BE14 – Extensions to dwellings (scale)
 D2 – Unallocated land

6.3 Kirklees Publication Draft Local Plan

PLP1 - Presumption in favour of sustainable development
PLP24 – design
PLP22 - Parking

National Planning Guidance:

- 6.4 **Paragraph 17** – Core planning principles
 Chapter 7 – Requiring good design

7.0 PUBLIC/LOCAL RESPONSE:

- 7.1 Two representations have been received and are both in objection of the proposal. The objections raised can be summarised as follows;
- It has not been built to the original planning permission granted
 - It is not a nice site visually and has taken away some scenic view
 - It is not visually in keeping as nothing on the entire street has anything like the front extension
 - The window in the front extension looks directly onto my front doorstep violating my privacy
 - The rear extension blocks daylight

8.0 CONSULTATION RESPONSES:

8.1 **Non-statutory:**

KC Accessible Homes: The team have no current involvement with the owner of this property in regard to adaptations therefore cannot make any comments on the scheme.

9.0 MAIN ISSUES

- Principle of development
- Visual amenity
- Residential amenity
- Highway safety
- Other matters
- Representations
- Conclusion

10.0 APPRAISAL

Principle of development

- 10.1 The site is without notation on the UDP Proposals Map and Policy D2 (development of land without notation) of the UDP states “planning permission for the development ... of land and buildings without specific notation on the proposals map, and not subject to specific policies in the plan, will be granted provided that the proposals do not prejudice [a specific set of considerations]”. All these considerations are addressed later in this assessment.
- 10.2 Furthermore the site is without notation on the Publication Draft Local Plan. Policy PLP1 states that when considering development proposals, the council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF. The assessment below takes into account the aims of PLP1.

Visual Amenity

- 10.3 The proposal seeks planning permission for the erection of single storey front and rear extensions. The proposal would allow the occupiers more habitable space including the installation of a ground floor bathroom and large open plan kitchen. The extensions will be constructed using a mixture of brick, blockwork, render and concrete roof tiles to match the existing dwelling, which is acceptable.
- 10.4 In the context of the site and its surrounding area, the scheme as now amended would not create a visually intrusive feature in the local area in terms of its size and design. This takes into account the proposed palette of materials and the variety of styles and sizes of dwellings in the immediate vicinity. The front porch is now relatively small in scale and of a simple design that is subservient to the front elevation of the host dwelling and the wider terrace. It would not over dominate the street scene. The rear extension is set in a large rear garden and is set in from the boundary with the adjoining dwelling. It is again of a simple mono-pitch design and is only single storey in height. Whilst it projects from the rear elevation by over 4 metres this would not over-dominate the rear of the property or have any material impact on the wider visual amenity of the area.
- 10.5 Given the above, the proposal is considered to comply with policies D2, BE1, BE13 and BE14 of the Unitary Development Plan, policies PLP1, PLP2 and PLP24 of the Publication Draft Local Plan and chapter 7 of the NPPF.

Residential Amenity

- 10.6 The impact of the development on residential amenity needs to be considered in relation to policies D2 and BE14 of the UDP, Policy PLP24 of the PDLP and a core planning principle of the NPPF. The host dwelling is part of a terrace of three dwellings with another property, no. 17 Whitacre Street lying within close proximity to the north of the site.

- 10.7 The original scheme included a large front extension to be built close to the boundary with no. 15 to the south. This would have been unneighbourly. This has now been substantially reduced to a true porch which is some 3.2m away from the boundary with no.15 and with a limited projection of around 1.5m. This would not create overshadowing of neighbouring properties. The southern elevation would be almost entirely glazed and this looks towards the front garden of no. 15. To mitigate any loss of privacy it is recommended this elevation be obscurely glazed. This can be controlled by condition.
- 10.8 The rear extension will be set in by 0.3m from the boundary with the adjoining dwelling of no.15 Whitacre Street and projects just over 4 metres from the rear of the original property. Policy BE14 of the UDP states that, subject to an assessment of visual amenity and the impact on surrounding dwellings, rear extensions will normally be permitted where they do not exceed 3m in overall projection. The proposed extension is contrary to this policy and as such the potential harm of the scale of the development on residential amenity has been assessed in more detail.
- 10.9 The rear of this terraced block faces south west. The properties all enjoy an open outlook from rear windows across extensive garden areas and the open land beyond (urban greenspace) The closest affected property, no 15, has a kitchen door closest to the proposed extension. Although the extension is only 300mm from the boundary of the site the closest habitable window is around 2.8m from the side wall of the extension. The orientation of the extension to this neighbour would mean that there would be very little overshadowing. The neighbouring property would retain an open aspect to the south west and a good standard of sunlight. The height of the extension, being single storey, is not considered to have an overbearing impact on this property. The side elevation is blank but to retain the privacy of the neighbouring property it would be appropriate to condition control over any side elevation openings. Given the separation of the extension to the mutual boundary with no.17 to the north and the difference in ground levels the extension would result in no material harm to the occupiers of this property.
- 10.10 Given the above, it is considered that the overall impact of the proposal on residential amenity is acceptable, and as such, complies with the requirements of policies D2, BE1 and BE2 of the UDP, policy PLP24 of the PDLP and a core planning principle of the NPPF.

Highway safety

- 10.11 The proposed extensions are within the gardens of the dwelling and will not impact upon the highway safety for the site.

Other matters

- 10.12 None.

Representations

10.13 Two representations have been received and are both in objection of the proposal. The objections raised can be summarised as follows;

- It hasn't been built to the original planning permission granted
Response: The application submitted is for a revised scheme which is to be assessed on its own merits. Although this, in part, seeks retrospective planning permission this is not a material consideration in the assessment of the application.
- It is not visually in keeping as nothing on the entire street has anything like the front extension/ It is not a nice site visually and has taken away some scenic view
Response: Amendments have been sought to reduce the scale of the front extension to a more acceptable porch size. The loss of a view is not a material planning consideration.
- The window in the front extension looks directly onto my front doorstep violating my privacy
Response: The proposed front porch is approximately 3.2m away from the boundary with the neighbour and has a small projection of 1.5m therefore it is considered that no unacceptable overlooking would occur, subject to obscure glazing in this elevation. This can be conditioned.
- The rear extension blocks daylight
Response: The extension is set in by 0.3m from the boundary with the adjoining dwelling, no 15, and is single storey. The orientation of these dwellings to the rear is south west, the adjoining dwelling would see some overshadowing during the late evening in summer months although given the orientation the dwelling would still benefit from a good level of direct sunlight and an open aspect along the rear garden and the urban greenspace beyond the application site.

10.14 Councillor Calvert requested the application be determined by Sub-Committee *"due to the scale of the development and the impact it would have on the neighbouring properties"*. Since this request the proposed front extension has been substantially reduced in scale. The impact of this, and that of the rear extension on the amenity of neighbouring properties, is assessed in paragraphs 10.5-10.9 above.

11.0 CONCLUSION

11.1 The planning application has been assessed against the relevant policies in the Unitary Development Plan, the emerging Publication Draft Local Plan and core planning principles of the NPPF. It has been considered that the application meets the requirements set out within the relevant policies and is therefore recommended approval.

11.2 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 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.

12.0 CONDITIONS (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Strategic Investment)

1. Development in accordance with approved plans
2. No new windows in the side elevation of the rear extension facing no. 15 Whitacre Street.
3. Obscure glazing to the side elevation of the porch facing no. 15 Whitacre Street.

Background Papers

Application web page:

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2017%2F93288>

Certificate of Ownership – Certificate A signed

Report of the Head of Strategic Investment

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 04-Jan-2018

Subject: Planning Application 2017/93483 Erection of single storey rear extension and rear dormer windows 152, Ravensknowle Road, Dalton, Huddersfield, HD5 8DL

APPLICANT

N & M Donaghey

DATE VALID

12-Oct-2017

TARGET DATE

07-Dec-2017

EXTENSION EXPIRY DATE

Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

<http://www.kirklees.gov.uk/beta/planning-applications/pdf/public-speaking-committee.pdf>

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral Wards Affected: Almondbury

No

Ward Members consulted

RECOMMENDATION

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

1.0 INTRODUCTION

- 1.1 This application is brought to Sub-Committee at the request of Cllr Bernard McGuin for the following reason:

‘The reasons are that the structure has been put up without permission, that it was put up without conditions having been imposed on it and so that the residents can see clearly that a democratic voice has been heard in this process.’

- 1.2 The Chair of Sub-Committee has confirmed that Cllr McGuin’s reason for making this request is valid having regard to the Councillors’ Protocol for Planning Committees.

2.0 SITE AND SURROUNDINGS

- 2.1 No.152 Ravensknowle Road refers to a double fronted, semi-detached bungalow, constructed from brick and with the front and rear elevations faced in natural stone. The dwelling has been designed with a gable roof which hosts roof lights in the northwest facing plane, and is finished in concrete tiles. The dwelling benefits from private amenity space to both the front (northwest) and the rear (southeast) while a shared access path between no.152 and no.150 runs along the southwest elevation of the property.
- 2.2 The application dwelling is surrounded to the south, east and west by other residential properties of the same architectural style and construction materials. To the north the application dwelling faces onto Ravensknowle park. The application site does not benefit from any specific planning related designation.

3.0 PROPOSAL

- 3.1 The proposal relates to a single storey rear extension and a rear dormer window extension. This is a retrospective application.
- 3.2 The proposed single storey rear extension would project from the rear elevation by approximately 1.7m and have a total width of approximately 5.2m, forming a 'L' shape, infilling a rear section of the original dwelling. Given the relatively steep pitch of the roof slope, the eaves to the rear of the dwelling have been raised above that of the original dwelling.
- 3.3 The rear dormer would have a total width of approximately 8.2m spanning the width of the roof, save for 200mm adjacent the gable, and when measured in the vertical plane would have a height of approximately 1.7m. The base of the dormer adjoins the ridge of the single storey rear extension. The top of the dormer would project directly from the ridge of the main roof.
- 3.4 Walling and roofing materials of the rear extension would match those of the host dwelling while the dormer has been faced in dark grey upvc weather boarding.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

4.1 Enforcement History:

COMP/17/0259 – a complaint was received in July 2017 alleging that unauthorised building operations were taking place on site. This was investigated and resulted in the submission of the planning application now reported to sub-committee.

5.0 HISTORY OF NEGOTIATIONS (including revisions to the scheme):

- 5.1 Discussions were held between the agent and planning officer regarding the accuracy of the plans as original submitted. As such, revised plans which accurately reflected the roof form of the extension were received.

6.0 PLANNING POLICY:

- 6.1 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 Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

6.2 The site is unallocated on the UDP Proposals Map.

6.3 Kirklees Unitary Development Plan (UDP) Saved Policies 2007:

- D2 – Unallocated Land
- BE1 – Design Principles
- BE2 – Quality of Design
- BE13 – Extensions to dwellings (design principles)
- BE14 – Extensions to dwellings (scale)

6.4 Kirklees Publication Draft Local Plan (PDLP): Submitted for examination April 2017

The site is without allocation or designation in the publication draft local plan.

Policies

- PLP1 – Achieving Sustainable Development
- PLP24 - Design

6.5 National Planning Guidance:

- Paragraph 17 – Core Planning Principles
- Chapter 7 – Requiring good design

7.0 PUBLIC/LOCAL RESPONSE:

7.1 The application was advertised by site notice and letters to the occupants of neighbouring dwellings. The public consultation period expired on 26th November 2017.

7.2 No representations have been received in support of the application.

7.3 Objections

One representation in opposition to the development has been received to date. Below is a summary of concerns raised:

- The dormer has not been designed in accordance with Kirklees Council Planning Services 'Householders guide to dormer and other roof extensions'
- The construction materials used are not in keeping with the construction materials of surrounding dwellings
- Dormer extensions are not a common design in the area
- The dormer overlooks the private amenity space of neighbouring dwellings resulting in the loss of privacy.
- The positioning of the first floor bathroom to the front of the dwelling resulting in a soil pipe travelling along the southwest elevation rather than the rear elevation.
- An increase in the number of pipes on the south west elevation, protruding into a communal passageway
- The location of a new manhole cover in the shared passageway
- The position of the boiler outlet on the south west elevation which emits steam in the direction of the neighbouring dwelling no.150

8.0 CONSULTATION RESPONSES

No consultations were sought regarding this application

9.0 MAIN ISSUES

- Principle of development
- Urban design issues
- Residential amenity
- Representations

10.0 APPRAISAL

Principle of development

- 10.1 The site is without notation in the UDP Proposals Map and Policy D2 (development of land without notation) of the UDP states:

‘Planning permission for the development ... of land and buildings without specific notation on the proposals map, and not subject to specific policies in the plan, will be granted provided that the proposals do not prejudice [a specific set of considerations]’. All these considerations are addressed latter in this assessment.

- 10.2 The general principle of making alterations to a property are assessed against Policies BE1, BE2, BE13 and BE14 of the Unitary Development Plan and advice within Chapter 7 of the National Planning Policy Framework regarding design. These require, in general, balanced considerations of visual and residential amenity, highway safety and other relevant material considerations. In addition Policy PLP24 of the Publication Draft Local Plan sets out a variety of ‘design’ considerations to take into account in the assessment of a planning application.

Urban Design issues

- 10.3 The walls of the ground floor extension have been constructed from natural stone, save for the side elevation which is faced in render, so as to match that of the original dwelling. Equally, the single storey extension has been roofed in dark red double roman tiles again matching the host dwelling. As such this aspect of the scheme is considered to harmonises with that of the parent property.
- 10.4 In addition to the above, the single storey extension is small in scale, projecting by approximately 1.7m from the rear elevation of the original dwelling and having a total width of approximately 5.2m. As such the extension is considered to be modest in scale thereby complying with guidance contained with Policy BE14 of the UDP and Policy PLP24 of the publication draft Local Plan. As the extension is located to the rear of the dwelling it would not create a prominent feature in the streetscape. This assessment has taken into account that the ridge of the extension extends above the eaves of the original building to meet the base of the dormer extension above.

- 10.5 Alternatively the dormer extension is considered a large addition, spanning the width of the roof space and projecting from the ridge, forgoing a separating distance between the ridge and the top of the dormer. It is also noted that the dormer is clad in dark grey upvc, a construction material not common to this dwelling or others within the immediate vicinity. Equally, it is also noted that dormer extensions are not a common architectural design within the area.
- 10.6 Notwithstanding the preceding paragraph, the proposed dormer is located the rear of the dwelling and as such is not readily visible. Equally, owing to the siting of the dormer, it does not create a prominent feature within the streetscape. As such the departure from the architectural style of the surrounding area and alternative construction materials, in this instance, are considered acceptable. Policy BE15 of the UDP regarding dormer extensions only relates to dormers on the 'front or main elevations' of dwellings. As such it is not a material consideration in the assessment of this application. It is also identified that a dormer extension of this size could be constructed under permitted development rights, contributing a cubic content to the original roof space of approximately 24.8m³ (subject to meeting the conditions with the General Permitted Development Order 2015) (GPDO). Given the above considerations it is considered that the design of the proposed scheme is acceptable.
- 10.7 The dormer and the rear extension combined would substantially increase the size of the dwelling within a limited plot. However, the majority of the amenity space would be retained and from public viewpoints the appearance of the dwelling would be largely unchanged. It is considered that the development would not result in an overdevelopment of the site and that to conclude it would comply with Policies D2, BE1, BE2, BE13 and BE14 of the UDP, Policies PLP1 and PLP24 of the PDLP and guidance contained within the NPPF.

Residential Amenity

- 10.8 The single storey rear extension and rear dormer extension have been assessed with regard to residential amenity and is considered acceptable. Although the development would be built up from a shared wall with no.154 and would be visible from a communal passageway with no.150 it would not bring the considered dwelling any closer to neighbouring properties.
- 10.9 However, it is noted that the extension has the potential to create a 'tunnelling effect', shadowing the rear window no.154. As such, particular attention has been paid to this aspect of the development. Owing to the fact that the garden is south east facing and that the extension projects by only 1.6 metres it is not anticipated that the development would contribute significant levels of shading. Equally, it is not believed that the extension would have a greater impact on the rear window of no.154 than its existing garden conservatory,
- 10.10 It is also noted that the rear dormer contains two habitable room windows. However, owing to their orientation,, perpendicular to the private amenity space of no.150 and no.154, they do not offer direct views. Furthermore, neighbouring dwellings to the rear of the application site, nos. 13 and 15 Oak Avenue are bungalows and as such the dormer does not face directly toward

any habitable room windows. Notwithstanding the above it is identified that a dormer of this scale and containing windows in the rear elevation could be constructed under permitted development rights (subject to meeting relevant criteria).

- 10.11 Although the above development is considered acceptable in terms of residential amenity any further development to the dwelling may result in an overdevelopment of the site which would result in harm to the amenities of nearby residents. As such a condition will be attached to any permission advising the removal of permitted development rights for extensions and outbuildings.
- 10.12 Give the above it is concluded that the proposal would not result in any material harm to the amenity enjoyed by the occupiers of neighbouring dwellings. The proposal is therefore deemed to comply with Policies D2 and BE14 of the UDP, Policy PLP24 of the PDLP and paragraph 17 of the NPPF

Highway issues

- 10.13 Although the proposed scheme provides the dwelling with an additional two bedrooms, due to the overall size of the dwelling, it is not anticipated that this will give rise to greater vehicular traffic or the need for additional parking provision.
- 10.14 In addition to the above it is noted that the scheme does not propose any alteration to the existing parking and access arrangements of the dwelling. As such the proposal is not considered to give rise to any highway safety concerns, thereby complying with guidance contained within Policy T10 of the UDP.

Representations

- 10.15 One public representation was received regarding this application. Below are the issues raised within representations that have not been addressed within the above assessment.
- The dormer has not been designed in accordance with Kirklees Council Planning Services 'Householders guide to dormer and other roof extensions'
Response: While it is acknowledged that the considered dormer extension has not been constructed with regard for the above document it is noted that the location of the dormer is to the rear and as such views of the dormer are limited. Consequently, the departure from the design guide is considered acceptable. The dormer policy in the UDP, BE15, does not relate to dormers to the rear of dwellings.
 - The positioning of the first floor bathroom to the front of the dwelling resulting in a soil pipe travelling along the southwest elevation rather than the rear elevation.
 - An increase in the number of pipes on the south west elevation, protruding into a communal passageway.
 - The position of the boiler outlet on the south west elevation which emits steam in the direction of the neighbouring dwelling no.150

Response: Flues, soil and vent pipes on a dwellinghouse constitute permitted development under Part 1 of the GPDO. This would not negate the requirement to comply with any other legislation regarding these forms of development beyond the remit of planning legislation.

- The location of a new manhole cover in the shared passageway

Response: This is not a material planning consideration but would not negate the requirement to comply with any other legislation regarding this work contained within other legislation.

- 10.16 Cllr McGuin requested the application be determined by sub-committee for the following reasons:

The structure has been put up without permission, that it was put up without conditions having been imposed on it and so that the residents can see clearly that a democratic voice has been heard in this process.

Response: although the application before sub-committee seeks retrospective planning permission this is not a material planning consideration in the assessment of the scheme. The proposal is considered on its own merits as if no development had taken place. The details set out in the application form and the submitted plans are considered acceptable for the reasons set out in the appraisal above.

Other Matters

- 10.17 No other matters to consider.

11.0 CONCLUSION

- 11.1 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.

- 11.2 This application has been assessed against relevant policies in the development plan and other material considerations and it is considered that the development would constitute sustainable development and is therefore recommended for approval.

12.0 CONDITIONS (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Strategic Investment)

1. Development carried out in accordance of approved plans
2. Removal of PD rights for extensions and outbuildings.

Background Papers:

Application and history files can be assessed at:

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2017%2f93483>

Certificate of Ownership –Certificate A signed

Report of the Head of Strategic Investment

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 04-Jan-2018

Subject: Planning Application 2017/93341 Erection of extensions and alterations to existing detached garage to form dwelling with associated access, parking and curtilage areas Adj, 10, Cherry Tree Walk, Scholes, Holmfirth, HD9 1XG

APPLICANT

S Hough

DATE VALID

29-Sep-2017

TARGET DATE

24-Nov-2017

EXTENSION EXPIRY DATE

Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

<http://www.kirklees.gov.uk/beta/planning-applications/pdf/public-speaking-committee.pdf>

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral Wards Affected: Holme Valley South

No

Ward Members consulted

RECOMMENDATION

Refuse, on the following grounds;

1. The proposed dwelling by reason of its: scale, massing, siting within very close proximity to the highway and northern site boundary; design with a predominantly blank gable facing onto the Cherry Tree Walk and large dormers, would result in an incongruous form of development in a prominent location that would fail to integrate into or improve the established character of the area. The development is therefore contrary to Policies D2 (vi, vii), BE1 (i, ii), BE2 (i) and of the Kirklees Unitary Development Policy, PLP24 (a) of the Publication Draft Local Plan and the overarching aims and objections of Chapter 7 National Planning Policy Framework (2012) with particular reference to paragraph 64.

1.0 INTRODUCTION

- 1.1 The application is brought to committee at the request of Cllr Kenneth Sims. The following reason has been given;

'it is important that we're possibilities small infill plots should be used which fits on with the character of the area and helps with housing numbers'

- 1.2 The Chair of Sub-Committee confirmed that Cllr Kenneth Sims' reason for making this request was valid having regard to the Councillors' Protocol for Planning Committees.

2.0 SITE AND SURROUNDINGS

- 2.1 The application relates to land within the curtilage of the dwelling at no. 10 Cherry Tree Walk Scholes that comprises a detached garage (with accommodation in the roof space) and a detached timber shed. The garage is constructed in natural stone and is designed with a gable roof that is finished in concrete tiles. It is accessed via a vehicular drive taken off Cherry Tree Walk. The host dwelling is situated to the south of the site. The site is within a predominantly residential area with dwellings of various designs and style. The predominant material of construction is stone.

- 2.2 Cherry Tree Walk is characterised by dwellings which are set back from the road by generous and well-landscaped front gardens. The area has a spacious and open feel to it with the principal elevation of the houses facing directly onto the street.

3.0 PROPOSAL

- 3.1 The application seeks planning permission for the erection of extensions and alterations to the existing detached garage to form a two bedroomed dwelling with associated access, parking and curtilage areas. These would comprise increasing the footprint and height of the garage, changing the roof pitch, constructing two dormers windows within the roof and other alterations. The extension and alterations proposed would completely redevelop the existing garage to result in a rectangular dwelling measuring approximately 6.0 metres in length and 8.6 metres in width with a height to ridge of approximately 6.2 metres and eaves of 2.8 metres. The ensuing dwelling would be faced in natural stone and designed with a gable roof that would be finished in concrete tiles.
- 3.2 A new access off Cherry Tree Walk would be formed to serve the dwelling leading onto a tandem parking area for two cars to the south of the property. The access would also serve and lead to a parking area for the host property which would accommodate two cars.

4.0 RELEVANT PLANNING HISTORY

4.1 Application site

2000/90426: Erection of two storey extension – Conditional Full Permission

2003/90194: Erection of detached double garage – Conditional Full Permission

2016/92406: Erection of extensions and alterations to existing detached garage to form dwelling with associated access, parking and curtilage areas – Refused and subsequently dismissed at appeal. The reason it was dismissed was ‘due to the environmental harm that would arise as a result of the development’.

4.2 Surrounding area

Adjacent to 16A, Cherry Tree Walk

95/91720: Outline application for the erection of one dwelling – Refused

Reason for refusal: *It is considered that the site is of insufficient size to accommodate the proposed dwelling in accordance with the Council's approved residential standards, UDP Policy BE12. Furthermore, in the position intended, the proposal would detract from the residential amenity of adjacent properties and it would not satisfactorily relate to the surroundings to the detriment of the visual amenities of the area.*

5.0 HISTORY OF NEGOTIATIONS

- 5.1 During the public representation period an error in the plans was brought to the attention of officers. This was discussed with the applicant who corrected the proposal accordingly.
- 5.2 The applicant was informed of officer concerns with the proposal and, as no amendments are considered to overcome the concerns expressed, the intention to recommend the application for refusal.

6.0 PLANNING POLICY

- 6.1 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 Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

- 6.2 On the UDP Proposals Map the site is unallocated.

- 6.3 The site is unallocated on the PDLP Proposals Map.

- 6.4 Kirklees Unitary Development Plan (UDP) Saved Policies 2007

- **D2** – Unallocated Land
- **BE1** – Design Principles
- **BE2** – Quality of Design
- **BE12** – Space about buildings
- **EP4** – Development and Noise
- **T10** – Highway safety
- **T19** – Parking standards

- 6.5 Kirklees Publication Draft Local Plan

- **PLP1** – Presumption in favour of sustainable development
- **PLP2** – Place shaping
- **PLP3** – Location of new development
- **PLP21** – Highway safety and access
- **PLP24** – Design
- **PLP51** – Protection and improvement of local air quality

6.6 National Planning Guidance

- **Paragraph 17** – Core planning principles
- **Chapter 1** – Building a strong, competitive economy
- **Chapter 6** – Delivering a wide choice of high quality homes
- **Chapter 7** – Requiring good design
- **Chapter 11** – Conserving and enhancing the natural environment

7.0 **PUBLIC/LOCAL RESPONSE**

7.1 The application has been advertised via site notice and through neighbour letters to addresses bordering the site. The end date for publicity was the 27th of November, 2017.

7.2 Five representations have been received, each in objection to the proposal. The following is a summary of the concerns raised;

- Certificate of ownership declaration has not been signed.
- Claims that the applicant was previously employed by Kirklees Council.
- Complaint that they did not receive a letter, despite objecting to the site's previous application and no site notice has been posted.
- Object to the design and prominent appearance of the dwelling.
- Objection that the proposal is being done for financial gain and the proposed dwelling will quickly be for sale.
- Comments that the garage, when approved in 2003, was built taller than approved.
- The amended parking layout is outside of the application's red line.
- Because of the sloping nature of the site the side elevation of the proposed dwelling adjacent to no.6 Cherry Tree Walk will be greater in height and therefore more intrusive
- The inspector's comments were clear and the proposal does not overcome the previous reasons for refusal. The supporting design documents are of dwellings not on Cherry Tree Walk and thus are not appropriate.
- Initial comments to the proposal raised concerns that the parking layout measurements were wrong. (These were investigated by officers and indeed proven to be wrong. Amended plans have been provided with correct dimensions). Subsequent comments question whether other measurements are wrong. Other inaccuracies are pointed out between the written statement and plans.
- Question K.C. Highway's requested condition for the parking to be surfaced and drained, such as where the water will go. The area has been prone to torrential rain which has flooded dwellings, and the proposal may exacerbate this.
- The proposed dropped kerbs and driveway accesses will remove on-street parking. There is a high demand for parking in the area.
- The windows of no.10 and the proposed dwelling face either other well below BE12's guideline distance of 21.0m.
- Concerns of overlooking and loss of privacy from the dormer and French doors, and harm through overbearing/overshadowing upon neighbouring.

7.3 Holme Valley Parish Council: 'Support the application'.

8.0 CONSULTATION RESPONSES

8.1 Statutory

K.C. Highways: Initially requested further details. Confirmed that amended plans are acceptable, subject to condition.

8.2 Non-statutory

None

9.0 MAIN ISSUES

- Principle of development
- Urban Design issues
- Residential Amenity
- Highway issues
- Other Matters
- Representations

10.0 APPRAISAL

Principle of development

Sustainable Development

- 10.1 NPPF Paragraph 14 and PLP1 outline a presumption in favour of sustainable development. Paragraph 7 of the NPPF identifies the dimensions of sustainable development as economic, social and environmental (which includes design considerations). It states that these facets are mutually dependent and should not be undertaken in isolation (Para.8). The dimensions of sustainable development will be considered throughout the proposal.

- 10.2 Paragraph 14 concludes that the presumption in favour of sustainable development does not apply where specific policies in the NPPF indicate development should be restricted. This too will be explored.

Land allocation

- 10.3 The site is without notation on the UDP Proposals Map and Policy D2 (development of land without notation) of the UDP states;

'Planning permission for the development ... of land and buildings without specific notation on the proposals map, and not subject to specific policies in the plan, will be granted provided that the proposals do not prejudice [a specific set of considerations]'

All these considerations are addressed later in this assessment.

- 10.4 Consideration must also be given to the emerging local plan. The site is without notation on the PDLP Policies Map. PLP2 states that;

All development proposals should seek to build on the strengths, opportunities and help address challenges identified in the local plan, in order to protect and enhance the qualities which contribute to the character of these places, as set out in the four sub-area statement boxes below...

The site is within the Kirklees Rural sub-area. The listed qualities will be considered where relevant later in this assessment.

Urban Design issues

- 10.5 The application is a modified proposal to 2016/92406 which was refused and dismissed at appeal because of concerns related to visual amenity. The current application is a revised proposal for a dormer bungalow, with the previous design seeking a true two storey dwelling. Other changes include an additional planting feature and a decorative gable vent feature to the road-facing elevation.
- 10.6 The dwellings within the vicinity of the area (along Cherry Tree Walk) are generally set back from the edge of the road. The existing garage appears to be the only building that is located within 2.0m of the highway. However, its impact on the street scene is minimal as it has an active road frontage (garage door) and is small in scale. Thus it is subservient within the street scene and in the context to dwellings within the vicinity.
- 10.7 The application proposes extensions and alterations to this garage which would increase its scale and massing in order to create a new residential property. This includes raising the roof, an extension and the construction of two dormer windows in the northern roof slope. This would notably change the visual characteristics of the building, forming a structure clearly identifiable as an individual dwelling, as opposed to an outbuilding subservient to no. 10. The appearance of this dwelling would be at odds with the wider character of the area.
- 10.8 The proposed dwelling would be located 2.0m from the edge of the highway, with a height of 6.2m to ridge. This is out of keeping with neighbouring dwellings, which are well set back from the highway with open garden areas between the front elevations and the highway edge. This is exacerbated by the gable being blank, bar a small decorative vent feature and planting to the front of the gable. These features would not overcome the prominence of the blank gable and its impact on the wider streetscene resulting in the structure appearing obtrusive and incongruous within the established character of Cherry Tree Walk. The proposed use of traditional materials and the land level being slightly lower than the land level of the houses on the opposite side of Cherry Tree Walk does not alter this view.

- 10.9 The applicant has provided examples of other gable elevations facing the highway in Scholes. This is not in dispute but they are not typical within Cherry Tree Walk. This matter was raised at the appeal for 2016/92406, with the inspector stating;

I note the appellants' reference to other dwellings in the area which have gables close to the road, but these are on different sites with different visual characteristics to that of the appeal site.

- 10.10 Other aspects of the design, including the extension, dormers and associated works, contribute to dominant and incongruous nature of the development. The dormers in particular are large features in the northern roof slope and are located close to the boundary of the site. Indeed the proposed dwelling does not comply with Policy BE12 of the UDP as it does not achieve 1.5m between the wall of the dwelling and the boundary of the site (to the north). Due to this the ground floor windows are shown to be high level and the prominence of the dormers is exacerbated. They would be very prominent in the streetscene, again at odds with the urban grain of Cherry Tree Walk.
- 10.11 Paragraph 64 of the NPPF stipulates that permission should be refused for development of poor design that fails to improve the character and quality of an area and the way it functions. By reason of the scale, massing, design and siting of the proposed development, officers conclude that the proposal would harm the visual amenity of the streetscene. The proposal is therefore considered to be in conflict with Policies D2 (vi, vii), BE1 (i, ii) and BE2 (i) of the UDP, PLP24 (a) of the PDL and Chapter 7 of the NPPF.

Residential Amenity

- 10.12 To the north of the site is an area of open land not associated with any of the neighbouring dwellings and access to no. 8 Cheery Tree Walk. To the east is curtilage of no.8 Cherry Tree Walk and to the west is no.1 Cherry Tree Walk. To the south is no.10 Cherry Tree Walk, the host dwelling.
- 10.13 No. 8 Cherry Tree Walk is located to the south-east of the application site. The side elevation of the proposed dwelling includes French windows facing the curtilage of this property. Thus there is potential for overlooking of no.8's garden space. There is no direct overlooking to the dwellinghouse, due to the orientation of the dwellings. As no.8's garden space is to the front of the dwelling, with no privacy screening, the impact of the proposed window is not considered significant so as to unreasonably harm the living conditions of the occupants. The distance the proposed dwelling would retain, approximately 9.0 metres, to this neighbour, along with its siting to the northwest, would also ensure that there will not be any overbearing or overshadowing issues.
- 10.14 No. 1 Cherry Tree Walk is located to the west of the application site. The side elevation of the proposed dwelling to face no.1 has no windows, preventing concerns of overlooking. The increase in the building's height of 0.8m is not considered detrimental to the amenity of no.1's residents, with the separation distance being 17.0m.

- 10.15 The proposed dwelling would face the host property no. 10 Cherry Trees Walk, with the proposed rear extension and a new window being in the line of a window of no.10. The window in question serves a playroom/office. Within the supporting document the applicant states *'it is noted from correspondence within the previous application these windows to the playroom present no issue to siting and at worst can be made opaque'*. It is confirmed that the window is secondary for the room. As a secondary window it is not considered that the arrangement would result in overbearing that would cause material harm to occupiers of no.10. However, at a distance of 8.4m there are concerns of overlooking. Thus, if minded to approve, a condition can be imposed requiring that the office/playroom window of no.10 be obscurely glazed (no.10 is within the applicant's control)
- 10.16 Consideration must be given to the amenity of future occupiers. Officers note that the dwelling would have a limited provision of amenity space. This is however considered commensurate to the size of the proposed dwelling. To ensure that the amount of amenity space provided is maintained a condition can be imposed restricting permitted development rights if this application is approved. The internal floor area of the dwelling, compared to the number of bedrooms proposed, it is considered to be acceptable to provide an acceptable standard of amenity for the occupants.
- 10.17 In summary, subject to condition, officers are satisfied that the development would not cause material harm to the amenity of nearby residents and that future occupiers would benefit from a suitable standard of amenity. As such the development is deemed to comply with Policies D2, PLP24 and Paragraph 14 of the NPPF.

Highway issues

- 10.18 It is noted that the plans initially showed the driveways incorrectly. This was discussed with the applicant, and the plans amended. The correct plans show two parking spaces being proposed per dwelling. This provision is acceptable for the scale of the associated host dwellings.
- 10.19 Taking into account that the proposed driveways are to be immediately adjacent to the existing driveway, and that it leads onto an unclassified residential road, officers are satisfied that the proposed access arrangements are acceptable.
- 10.20 If minded to approve Highways have requested a condition be imposed requiring the driveway to be surfaced and drained. Officers consider this reasonable to impose.
- 10.21 In summary the proposal is not anticipated to harm the safe and efficient operation of the Highway and complies with the objectives of Policies T10 and PLP21.

Other Matters

Impact on local ecology

- 10.22 The site is within the council's bat alert layer, with the development having the potential to harm the local bat population. Nonetheless the garage is a modern structure that appears to be well sealed and unlikely to have any bat roost potential.
- 10.23 Notwithstanding this PLP30 and Chapter 11 of the NPPF seek for planning applications to enhance local ecology. If minded to approve a condition can be imposed requiring bat and/or bird boxes to be provided, along with an advisory note of what to do should bats be found.

Considering the lack of a housing land supply

- 10.24 Paragraph 49 of the NPPF states that housing applications should be considered in the context of presumption of sustainable development and that relevant policies for the supply of housing should not be considered up to date if the LPA are unable to demonstrate a five-year supply of deliverable housing. At this time Kirklees Council do not have a five year supply of housing.
- 10.25 Nonetheless the proposed development is not considered to be sustainable. A key tenet of sustainable development is the 'environmental role', which includes the built environment. As addressed in paragraphs 10.5 – 10.11 officers conclude that the proposal would cause material harm to the built environment.
- 10.26 Paragraph 14 of the NPPF states that where the relevant policies of the development plan are out of date, permission should be granted unless the specific policies in the framework indicate development should be restricted. Paragraph 64 of the NPPF states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. Thus officers conclude the development does not amount to sustainable development.
- 10.27 This view was shared in the Inspector's appeal decision letter, ref. 2016/92406, which stated;

I appreciate that the proposal would provide a dwelling in a sustainable location and that the Council cannot demonstrate an up to date five year housing land supply. However, the tiny contribution of one dwelling to the supply of housing would not outweigh the demonstrable harm to the character and appearance of the area, and the consequent conflict with development plan policies.

Representations

10.28 Five representations have been received raising concern with the proposal. Below are the issues that have not been addressed within this assessment.

- Certificate of ownership declaration has not been signed.
- Complaint that they did not receive a letter, despite objecting to the site's previous application and no site notice has been posted.

Response: Signatures are redacted from the public webpage. Officers confirm that the original document contained a signature. Neighbour letters are sent to dwellings which share a boundary with the site. The representation was received prior to the officer's site visit, when the site notice was posted.

- Claims that the applicant was previously employed by Kirklees Council.
- Objection that the proposal is being done for financial gain and the proposed dwelling will quickly be for sale.

Response: These are not material planning considerations.

- Comments that the garage, when approved in 2003, was built taller than approved.
- The amended parking layout is outside of the application's red line.

Response: Officer's acknowledge that the garage was not built in accordance with the approved plans. Given the age of the structure it is now immune from enforcement action.

- Initial comments to the proposal raised concerns that the parking layout measurements were wrong. These were investigated by officers and indeed proven to be wrong. Amended plans have been provided with correct dimensions. Subsequent applications question whether other measurements are wrong. Other inaccuracies are pointed out between the written statement and plans.

Response: Officers are satisfied that the amended plans are accurate and correctly convey the proposed development.

- Question K.C. Highway's requested condition for the parking to be surfaced and drained, such as where the water will go. The area has been prone to torrential rain which has flooded dwellings, and the proposal may exacerbate this.

Response: The referenced condition requires works to be undertaken in accordance with the Communities and Local Government; and Environment Agency's '*Guidance on the permeable surfacing of front gardens*'. Various options are available, including the water being taken to a soakaway, drained into vegetation or the ground.

- Holme Valley Parish Council: 'Support the application'.

Response: Comments in support are noted.

- 10.29 Councillor Sims requested the application be determined by the sub-committee for the following reason: *'it is important that we're possibilities small infill plots should be used which fits on with the character of the area and helps with housing numbers'*.

Response: Officers would concur with this viewpoint but for the reasons set out in paras 10.5 to 10.11 above this development would not fit in with the character of the area and cannot be supported.

11.0 CONCLUSION

- 11.1 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.
- 11.2 a combination of the scale, massing, siting and design of the dwelling proposed is considered to result in an incongruous form of development that would fail to complement or enhance the established character of the area in respect of street layout. The proposal for the development of this land would result in significant harm to the character of the local area which would outweigh any benefits. For this reason the proposal is contrary to Policy BE1, BE2 and D2 of the UDP, PLP2 and PLP24 and the NPPF, paragraphs 14 and 64.
- 11.3 As a result, the application of paragraph 14 of the Framework does not indicate that permission should be granted and the proposal would not represent sustainable development. In the circumstances of this application, the material considerations considered above do not justify making a decision other than in accordance with the development plan which require the application to be refused.

Background Papers

Application and history files can be accessed at:

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2017%2f93341>

Certificate of Ownership: Certificate A signed.

Report of the Head of Strategic Investment

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 04-Jan-2018

Subject: Planning Application 2017/93386 Erection of first floor extension with balcony Tara, Scholes Moor Road, Scholes, Holmfirth, HD9 1SJ

APPLICANT

S Dixon

DATE VALID

26-Oct-2017

TARGET DATE

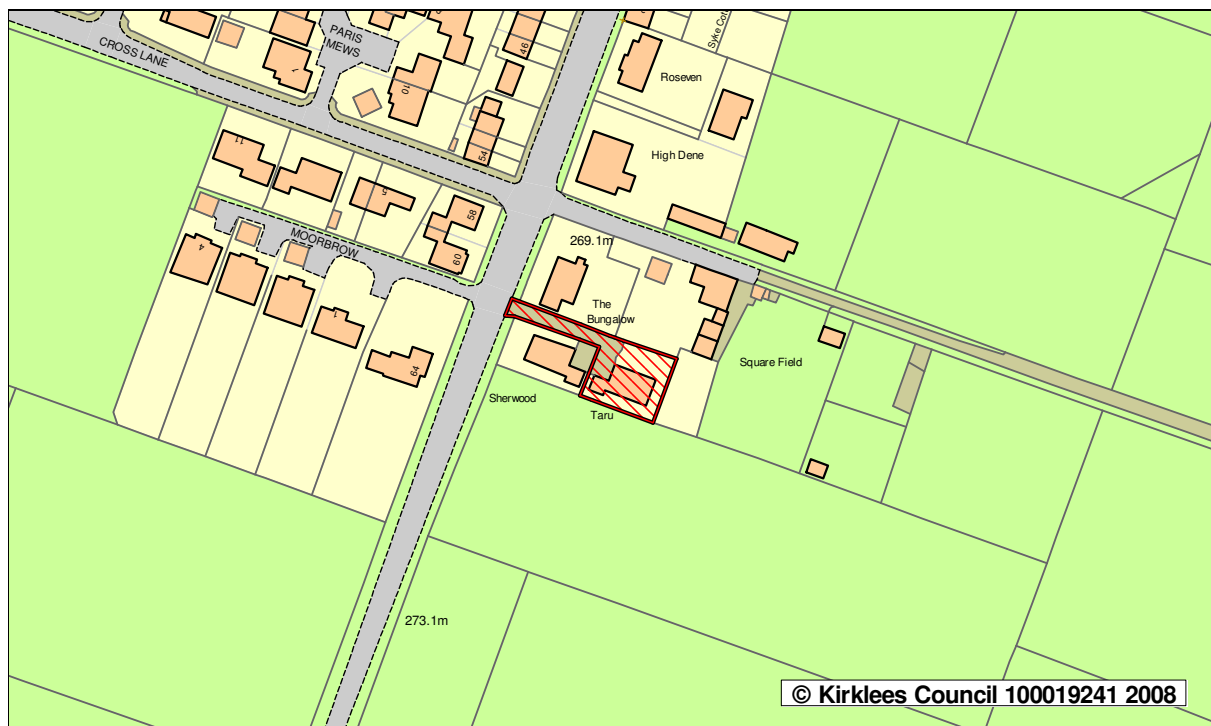
21-Dec-2017

EXTENSION EXPIRY DATE

Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

<http://www.kirklees.gov.uk/beta/planning-applications/pdf/public-speaking-committee.pdf>

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral Wards Affected: **Holme Valley South**

No

Ward Members consulted

RECOMMENDATION

Refuse, for the following reason:

1. The proposed extension, due to its height, scale, massing, external cladding and the prominent position of the dwelling on the edge of Scholes, would result in a development that would be discordant and incongruous in the street scene and to the character of the area. Furthermore due to its scale in comparison to the size of the dwelling and limited curtilage it would result in an overdevelopment of the site. The application would therefore be harmful to the visual amenity of the area contrary to Policies D2 (ii, vi, vii), BE1(i, ii), BE2(i), BE13(i, iv) and BE14 of the Kirklees Unitary Development Plan, PLP24(a, c) of the Kirklees Publication Draft Local Plan, as well as Chapter 7 of the National Planning Policy Framework, which asserts the importance of planning in securing visually attractive development that aid in the creation of better places.

1.0 INTRODUCTION

- 1.1 The application is brought to Sub-Committee as it has been submitted by a close relative of a member of staff of the Investment and Regeneration Service. This is in accordance with the Council's Scheme of Delegation.

2.0 SITE AND SURROUNDINGS

- 2.1 Tara is a detached bungalow faced in random stone with concrete tiles. There is an attached garage, with a flat roof, which can accommodate a single typical car. The dwelling has garden space to the front, with a narrow patio to the rear. The rear elevation is in close proximity to an open field.
- 2.2 The dwelling is accessed from a driveway off Scholes Moor Road. The driveway also serves Sherwood, a detached bungalow with a similar design and appearance to Tara. The site is on the edge of Scholes with, as noted, open fields to the south.

3.0 PROPOSAL

- 3.1 A first floor is proposed to be erected over the west side of the bungalow covering an area of 88sqm (compared to the building's footprint of 142sqm). The proposal includes a slight overhang at first floor level to the front of the garage, and a balcony is to be formed to the rear.

- 3.2 The extension is to be faced in black stained timber. Roof tiles are to be concrete slates to match those existing. Openings are proposed on the front and rear elevations only. Changes to the ground floor include the double garage door being replaced by a single garage door.
- 3.3 The application is supported by a Design and Access Statement. This states that the design has been done sympathetically to minimize the impact on neighbouring dwellings and to attempt to replicate the design features of other dwellings within the area. The following justification is given for the proposal;

'We are proposing these works to provide for our growing family. We have considered several options of extension before coming to this outcome. We feel this extension is sympathetic to its surroundings and has the least impact whilst still providing the room we need'.

4.0 RELEVANT PLANNING HISTORY

4.1 Application site

The application site has no relevant planning history.

4.2 Surrounding area

6, Square Field

2009/91347: Erection of first floor extension to existing garage – Conditional Full Permission (Implemented)

The Bungalow, Square Field

2001/93557: Erection of two storey and lounge extensions – Conditional Full Permission (Implemented)

2008/91147: Erection of lounge/sun lounge extension – Refused (Dismissed at appeal)

2008/92262: Retention of side lounge extension – Conditional Full Permission (Implemented)

2009/93270: Removal of variations 3 & 4 on previous app 2008/92262 for retention of side lounge – Refused (Upheld at appeal)

5.0 HISTORY OF NEGOTIATIONS

- 5.1 Clarification was sought on the access, which led to an amended certificate of ownership being submitted.
- 5.2 Officers contacted the applicant to express their concerns and, as officers were unable to suggest amendments, that they would be required to recommend the application for refusal.

6.0 PLANNING POLICY

6.1 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 Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

6.2 On the UDP Proposals Map the site is unallocated.

6.3 The site is unallocated on the PDLP Proposals Map.

6.4 Kirklees Unitary Development Plan (UDP) Saved Policies 2007

- **D2** – Unallocated land
- **BE1** – Design principles
- **BE2** – Quality of design
- **BE13** – Extensions to dwellings (design principles)
- **BE14** – Extensions to dwellings (scale)
- **T10** – Highways accessibility considerations in new development

6.5 Kirklees Publication Draft Local Plan: Submitted for examination April 2017

- **PLP1** – Presumption in favour of sustainable development
- **PLP2** – Place shaping
- **PLP3** – Location of new development
- **PLP21** – Highway safety and access
- **PLP24** – Design

6.6 National Planning Guidance

- **Paragraph 17** – Core planning principles
- **Chapter 7** – Requiring good design

7.0 PUBLIC/LOCAL RESPONSE

7.1 The application has been advertised via site notice and through neighbour letters to addresses bordering the site. The end date for publicity was the 11th November, 2017.

7.2 No public representations have been received.

7.3 *Holme Valley Parish Council*: 'Support the application subject to no overlooking'.

8.0 CONSULTATION RESPONSES

8.1 No consultations, statutory or otherwise, were required.

9.0 MAIN ISSUES

- Principle of development
- Urban Design issues
- Residential Amenity
- Highway issues
- Other Matters
- Representations

10.0 APPRAISAL

Principle of development

Sustainable Development

10.1 NPPF Paragraph 14 and PLP1 outline a presumption in favour of sustainable development. Paragraph 7 of the NPPF identifies the dimensions of sustainable development as economic, social and environmental (which includes design considerations). It states that these facets are mutually dependent and should not be undertaken in isolation (Para.8). The dimensions of sustainable development will be considered throughout the proposal.

10.2 Paragraph 14 concludes that the presumption in favour of sustainable development does not apply where specific policies in the NPPF indicate development should be restricted. This too will be explored.

Land allocation

10.3 The site is without notation on the UDP Proposals Map and Policy D2 (development of land without notation) of the UDP states;

'Planning permission for the development ... of land and buildings without specific notation on the proposals map, and not subject to specific policies in the plan, will be granted provided that the proposals do not prejudice [a specific set of considerations]'

All these considerations are addressed later in this assessment.

- 10.4 Consideration must also be given to the emerging local plan. The site is without notation on the PDLP Policies Map. PLP2 states that;

All development proposals should seek to build on the strengths, opportunities and help address challenges identified in the local plan, in order to protect and enhance the qualities which contribute to the character of these places, as set out in the four sub-area statement boxes below...

The site is within the Kirklees Rural sub-area. The listed qualities will be considered where relevant later in this assessment.

Urban Design issues

- 10.5 Tara is a true bungalow which is visually closely associated with the adjacent Sherwood, with these dwellings having mirrored designs. Due to the close relationship between the host property and the adjacent Sherwood, the dwellings are read as a pair.
- 10.6 The proposed development would cause Tara to be out of keeping in regards to scale, density and building height when compared to Sherwood, to the detriment of the area's established character. There are wider views of the pair of properties, particularly from Scholes Moor Road, a principal access into Scholes, and along the access road. Because of these prominent views the visual impact of the proposed change would be exaggerated.
- 10.7 Officers acknowledge that the wider area includes both bungalows and two storey dwellings, including bungalows which have had two storey extensions and that overall the area does have a mixed design of dwellings. Nevertheless, because of the close visual relationship between Tara and Sherwood, significant weight is given to the harm outlined above in paragraph 10.6.
- 10.8 Additional concern is held over the proposal being overdevelopment of the site. The dwelling has a limited curtilage, with a distance of approx.3.5m between the site's rear wall and the open field, which is the Green Belt boundary. The proposed scale and height of the dwelling, in such close proximity to the open land and within this confined plot would serve to emphasise its large size relative to the small plot. Two storey dwellings in the area that border the Green Belt boundary are within significantly larger plots. This would result in the proposed mass and scale of development being out of keeping with the mass and scale of other development in the area. Thus officers conclude that the development would be an overdevelopment of the site.
- 10.9 Regarding the use of timber, policy BE2, BE13 and PLP24 require domestic extensions to respect the design features of the original building, which includes materials of construction. Timber is not featured on the original building and it is not an existing feature of the streetscene of Scholes Moor Road, which is predominantly stone. The proposed inclusion would introduce an alien element that would not respect the design of the host building, detracting from its visual amenity, while also introducing an incongruous feature within the area. As noted within the Design and Access Statement

timber is used on dwellings on Windmill View, an estate built in the early 90s that is 150.0m away from the site. However the timber is a secondary material, subservient to the principal stone, which is used solely at ground floor level. Given that the use of timber is contained to Windmill View, which is not close enough to the site to be visually associated with the proposed development, and that the timber would be a primary material of construction, it is concluded its use would be unacceptable.

- 10.10 To conclude the proposed alterations to the bungalow would so significantly alter the materials, bulk, scale and mass of the original property that the resulting dwelling would unacceptably harm the visual appearance of Tara and Sherwood as well as the character and appearance of the area. As such the development is considered in breach of policies D2, BE1, BE2, BE13 and BE14 of the UDP, PLP24 of the PDLP and Chapter 7 of the NPPF.

Residential Amenity

- 10.11 Other than the overhang to the front of the garage the proposal will not increase the footprint of the host building. As Tara and Sherwood are in line with one another the addition of a first floor will not be visible from Sherwood's habitable room windows on the front and rear elevations. Sherwood has no windows on the side elevation facing towards Tara. As such the proposal is not anticipated to cause harmful overbearing, overshadowing or overlooking upon Sherwood.
- 10.12 The first floor will introduce habitable room windows facing towards the garden areas of nos.10 and 12 Square Fields at a minimum distance of 7.5m. Given the separation distance between the dwellinghouses and that they are at right angles to one another, there is no concern of window to window overlooking or harm through overbearing or overshadowing upon the dwellinghouses of nos.10 and 12. However there is potential harm through loss of amenity because of overlooking and overbearing upon the garden spaces.
- 10.13 In assessing the impact on nos.10 and 12 Square Fields it must be acknowledged that most planning approvals are likely to interfere to some extent with an adjoining occupier's enjoyment of their property. However the test is whether this is proportionate balancing the rights of the developer to develop and the rights of those affected by the development.
- 10.14 Officers acknowledge that the first floor has been consciously designed to minimise the impact upon the residents of dwellings on Square Fields through the first floor being erection to the dwelling's west side while leaving the east side single storey. Being built over the existing structure it will not block currently views of open land. While the extension will be evident from the garden spaces in question, it will not be unduly prominent so as to be considered harmfully overbearing. Regarding overlooking, a degree of overlooking between dwellings and neighbouring garden spaces is not atypical and Tara will not overlook the garden spaces more so than neighbour The Bungalow or nos.10 overlooks no.12 or vice versa.
- 10.15 Given the circumstances of the proposal, officers consider that the development would not cause undue harm to the amenity of nos.10 and 12's residents.

- 10.16 It is noted that the proposal includes a balcony on the rear elevation. This overlooks the field to the rear and would not allow an invasive view of neighbouring dwellings. As such it does not raise concerns of overlooking. As the field is designated Green Belt, there are no concerns of the balcony prohibiting or prejudicing the future development of the field.
- 10.17 Officers conclude that the development would not cause material harm to the amenity of neighbouring residents. As such the development is deemed to comply with Policies D2, PLP24 and Paragraph 17 of the NPPF in regards to residential amenity.

Highway issues

- 10.18 The site access would be unchanged. However the dwelling would increase from two bedrooms to four bedrooms. This increases the required level of off-road parking from two to three.
- 10.19 The site's garage, existing and proposed, is small in scale, being 4.8m at its deepest. It is not considered to be a parking space. Regardless the site's driveway is considered a sufficient size to host up to three vehicles, which is sufficient for the dwelling as proposed.
- 10.20 The proposal would not cause a detrimental impact to Highway safety and efficiently and is considered to comply with T10 of the UDP and PLP21 of the PDLP.

Other Matters

- 10.21 There are considered no other relevant planning considerations for the proposal.

Representations

- 10.22 No public representations have been received.
- 10.23 *Holme Valley Parish Council*: 'Support the application subject to no overlooking'.

Response: This is noted, and officers confirm there are no concerns relating to overlooking. Nonetheless, for the reasons detailed previously, officers are unable to support the proposal.

11.0 CONCLUSION

- 11.1 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.
- 11.2 The design of the extension, due to its scale, siting and mass would not be in keeping with surrounding development, causing the host building to appear incongruous within its setting and harming the surrounding area's visual amenity. Officers therefore conclude that the development would fail to comply with policies D2, BE1, BE2, BE13 and BE14 of the UDP and PLP24 of the PDLP. Paragraph 64 of the NPPF states;

Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

- 11.3 As a result, the application of paragraph 14 of the Framework does not indicate that permission should be granted and the proposal would not represent sustainable development. In the circumstances of this application, the material considerations considered above do not justify making a decision other than in accordance with the development plan which require the application to be refused.

Background Papers

Application and history files can be accessed at:

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2017/93386>

Certificate of Ownership: Certificate B signed. Notice served on Mr and Mrs Easton 'Sherwood, Scholes Moor Road HD9 1SJ on 26th October 2017.

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Report of the Head of Strategic Investment

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 04-Jan-2018

Subject: Planning Application 2016/90524 Outline application for erection of three dwellings (Within the curtilage of a Listed Building) Middle Burn Farm, Burn Road, Birchencliffe, Huddersfield, HD2 2EG

APPLICANT

J Clegg

DATE VALID

01-Mar-2016

TARGET DATE

26-Apr-2016

EXTENSION EXPIRY DATE

Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

<http://www.kirklees.gov.uk/beta/planning-applications/pdf/public-speaking-committee.pdf>

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral Wards Affected: **Lindley**

No

Ward Members consulted

RECOMMENDATION:

DELEGATE approval of the application and the issuing of the decision notice to the Head of Strategic Investment subject to the resolution of issues related to the assessment of a recorded mine entry close to the site to the satisfaction of The Coal Authority and in order to complete the list of conditions including those contained within this report (and any added by the committee).

1.0 INTRODUCTION:

- 1.1 The application is brought forward to the Sub Committee in accordance with the Scheme of Delegation because the proposal is for residential development on Provisional Open Land and therefore represents a departure from Policy D5 of the development plan.

2.0 SITE AND SURROUNDINGS:

- 2.1 The application site forms part of the grounds of Middle Burn Farm which is a Grade II listed farmhouse building. The site lies to the front of Middle Burn Farm adjacent to Burn Road. The land comprises part of a substantial lawn with stone walling on two sides. There is a small group of semi-mature trees within the south east corner of the site.
- 2.2 The site lies within a semi-rural location with sporadic farm buildings nearby. There are open fields to the south which have planning permission for the erection of a substantial residential development. Outline planning permission for four dwellings has also been approved on land to the west which forms part of the garden of 98 Burn Road.
- 2.3 There have been a series of planning and listed building consent applications to extend and convert an existing leisure annex connected to Middle Barn Farm into a separate dwellinghouse, the most recent permission being 2014.
- 2.4 The access to the site carries Byway HUD/396/40 which is part of the Kirklees Way.
- 2.5 Middle Burn Farm lies within the Green Belt but a large proportion of its front garden, including the application site, is allocated as Provisional Open Land within the Unitary Development Plan.

3.0 PROPOSAL:

- 3.1 This is an outline application for the erection of three dwellings. Matters of access, appearance, layout and scale are being considered. The landscaping of the site is reserved for future approval.
- 3.2 The scheme is for a row of three adjoining properties fronting onto Burn Road. Each of the dwellings is two storeys in height with a pitched roof. Proposed facing materials are coursed stone and artificial stone slates.
- 3.3 Two of the dwellings would be accessed off Burn Road and the third would be accessed via an existing access track that runs along the eastern boundary of the site.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

4.1 Middle Burn Farm:

2014/91432 – Erection of single storey dwelling – Refused and appeal dismissed (further details contained within appraisal)

2014/91117 - Demolition of link and conservatory, erection of extension and alterations to convert existing leisure annex into dwelling – Approved

2014/91118 – Listed Building Consent for Demolition of link and conservatory, erection of extension and alterations to convert existing leisure annex into dwelling – Granted

4.2 Adjacent to the application site:

2016/90073 – Outline application for erection of residential development (at 98 Burn Road) – Approved

2017/90180 – Erection of 95 dwellings with access from Yew Tree Road and Burn Road (includes fields to the south of the application site) – Approved

5.0 HISTORY OF NEGOTIATIONS (including revisions to the scheme):

- 5.1 The scheme has been reduced from four dwellings down to three and the layout, scale and appearance of the dwellings has been amended. This was in order to achieve a form of development that better respected the character of the surrounding area.

6.0 PLANNING POLICY:

- 6.1 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 Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in

paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

- 6.2 The site is allocated as Provisional Open Land (POL) on the Unitary Development Plan Proposals Map and also adjoins a Green Corridor. The site is part of Housing Allocation H706 within the Publication Draft Local Plan.

6.3 Kirklees Unitary Development Plan (UDP) Saved Policies 2007:

D5 – Provisional Open Land
D6 – Land adjoining green corridor
BE1 – Design principles
BE2 – Quality of design
BE11 – Materials
BE12 – Space about dwellings
T10 – Highway safety
T19 – Parking standards
R13 – Public Rights of Way
G6 – Land contamination

6.4 Kirklees Publication Draft Local Plan (submitted for examination 25th April 2017):

PLP3 – Location of New Development
PLP6 – Safeguarded Land
PLP21 – Highway safety and access
PLP22 – Parking
PLP24 – Design
PLP28 – Drainage
PLP30 – Biodiversity and Geodiversity
PLP32 – Landscape
PLP35 – Historic Environment
PLP51 – Protection and improvement of local air quality
PLP53 – Contaminated and unstable land.

6.5 Supplementary Planning Guidance / Documents:

N/A

6.6 National Planning Guidance:

NPPF Chapter 6 – Delivering a wide choice of quality homes
NPPF Chapter 7 – Requiring good design
NPPF Chapter 11 - Conserving and enhancing the natural environment
NPPF Chapter 12 - Conserving and enhancing the historic environment

7.0 PUBLIC/LOCAL RESPONSE:

- 7.1 Original scheme advertised by site notice, press advert and neighbour letters. Four representations have been received in response to that publicity. The amended plans have been advertised by neighbour notification letter and the period of publicity ends 2nd January 2018. Any further representations will be reported to members in the update.
- 7.2 The representations received in response to the original publicity are summarised as follows:

Visual amenity/character of the area:

- Detrimental impact on visual amenity of the surrounding area
- First development of its type on this side of the byway
- Visual intrusion
- Siting of dwellings is beyond existing line of dwellings
- Loss of open land

Highway matters:

- Unsuitable location
- Inadequate access and turning facilities provided
- Intensification in the use of a public byway to the detriment of the safety and convenience of users of the byway
- The byway currently serves four dwellings and the proposal would double this number
- Restricted width along the byway limits passing and turning
- Lack of visitor parking

Other issues:

- Impact on a listed building (Middle Burn Farm)
- Will set a precedent for further development
- Impact of construction traffic on safety of users of the public byway
- Development will exacerbate issues associated with other approved development nearby

8.0 CONSULTATION RESPONSES:

8.1 Statutory:

The Coal Authority – Objects until such time that it can be demonstrated that no significant risks to the development are posed by an identified mine entry.

KC Highways – No objections, including to the use of the byway for access.

8.2 Non-statutory:

KC Conservation & Design – No objections raised

KC PROW Section - Would prefer additional vehicle movements and access routes to be within the site in the interests of highway users. This may require the parking areas and drives to be set back or for the properties to be served by improvement of existing access off Hud/396. Query how many properties are being served off the byway.

KC Lead Local Flood Authority – No objections

9.0 MAIN ISSUES

- Principle of development
- Landscape character
- Heritage issues
- Residential amenity
- Highway issues
- Coal issues
- Ecology issues
- Drainage issues
- Representations
- Other matters

10.0 APPRAISAL

Principle of development

- 10.1 The site is part of a much larger area of land which is allocated as Provisional Open Land (POL) on the Unitary Development Plan (UDP) Proposals Map. Planning permission for 95 dwellings has been approved on a significant proportion of the allocation (2017/90180) and outline consent for four dwellings has also been approved on a small part of the allocation just to the west of the site (2016/90073).
- 10.2 The National Planning Policy Framework (NPPF) outlines the government's definition of sustainable development and paragraph 14 of the Framework sets out a presumption in favour of sustainable development.
- 10.3 The proposal is for new houses and paragraph 49 states that "*housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites*".
- 10.4 As evidenced in recent appeal decisions (eg. APP/Z4718/W/16/3147937 - Land off New Lane, Cleckheaton), the Council is failing to meet its requirement to ensure a five year housing land supply by a substantial margin. This is important in the context of paragraph 14 of the NPPF.
- 10.5 As the Council is unable to demonstrate a 5 year housing land supply as required by paragraph 49 of the NPPF, relevant policies relating to housing are considered to be out-of-date. Indeed, the housing land supply shortfall is substantial and falls below 3 years. Whilst the Council have submitted the emerging Local Plan for examination which, for housing purposes, is predicated on the basis of a five year housing land supply, the Local Plan has not been through examination and nor has it been adopted. Therefore, it is

currently the case that the Council are unable to identify a five year supply of specific deliverable housing sites against the requirement.

- 10.6 Based on the above, there is a presumption in favour of sustainable development and planning permission should only be refused where there are adverse impacts which would significantly and demonstrably outweigh the benefits.

- 10.7 Policy D5 of the UDP relates to development on POL. It states:

On sites designated as provisional open land planning permission will not be granted other than for development required in connection with established uses, changes of use to alternative open land uses or temporary uses which would not prejudice the contribution of the site to the character of its surroundings and the possibility of development in the long term.

- 10.8 It is considered that policy D5 is not a policy for the supply of housing in respect of the way in which it relates to paragraph 49 of the NPPF. Therefore, policy D5 is considered to be up to date.

- 10.9 The proposed development is clearly at odds with policy D5 of the UDP partly because the scheme of housing development fails to maintain the character of the land as it stands and fails to retain the open character. The proposed development therefore constitutes a departure from the development plan.

Emerging Local Plan

- 10.10 In respect of the emerging Local Plan, the Publication Draft Local Plan (PDLP) was submitted to the Secretary of State on 25th April 2017 for examination in public. The Examination in Public began in October 2017. The site forms a housing allocation (H706) within the PDLP. Given that the PDLP has now been submitted and is undergoing examination consideration needs to be given to the weight afforded to the site's allocation in the PDLP.

- 10.11 The NPPF provides guidance in relation to the weight afforded to emerging local plans. Paragraph 216 states:

From the day of publication, decision-takers may also give weight to relevant policies in emerging plans according to:

- *the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);*
- *the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*
- *the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).*

10.12 The above is further supplemented by guidance in the Planning Practice Guidance (PPG). The PPG states that *“arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both:*

a. the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or neighbourhood planning; and

b. the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.

10.13 Given the scale of the development proposed when assessed against the wider context of the PDLP the application could not be deemed to be premature.

10.14 Given the advanced stage at which the Local Plan has progressed considerable weight should be afforded to the policies and allocations within the emerging Local Plan. There are however two unresolved objections to the proposed housing allocation (H706), one from Historic England and one from a member of the public. The objection from Historic England relates to the impact on the significance and/or setting of Middle Burn Farm and Lower Burn Farm. As the site is within the grounds of Middle Burn Farm and is also close to Lower Burn Farm this objection is of direct relevance to the application and as such the weight that can be afforded to the application site's allocation in the emerging plan is substantially reduced.

10.15 If the emerging Local Plan was to be adopted in its current form, the Council would be able to demonstrate a five year housing land supply. However, the PDLP has not been through examination and as it stands the Council is a substantial way off being able to demonstrate a five year housing land supply and housing delivery has persistently fallen short of the emerging Local Plan requirement. This triggers the presumption in favour of sustainable development as advocated by paragraph 14 of the NPPF.

10.16 Planning permission should therefore be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted. In this case that would include policies relating to the protection of heritage assets.

Planning appeal decision

10.17 An application for a single storey dwelling within the front garden of Middle Burn Farm was refused in 2014 and a subsequent appeal dismissed (application reference 2014/91432). This application related to the western part of the front garden whereas the current application relates to the eastern part. The application was refused on the following grounds:

“The proposed development would form a prominent and incongruous feature in close proximity to a public byway in an area which has an open and rural character. This would be out of keeping with the established pattern of development in the locale and would be harmful to the visual amenity and character of the area, contrary to policy BE2 of the Kirklees Unitary Development Plan and guidance within chapter 7 of the National Planning Policy Framework”.

- 10.18 The Planning Inspectorate dismissed the appeal on the grounds of the effect of the proposal on the character and appearance of the surrounding area and the setting of Middle Burn Farm. The Inspector considered that the provision of a single dwelling (in the context of the Council's lack of a 5 year housing land supply) did not outweigh the harm identified. The findings of the Inspector are considered within the relevant sections of this appraisal.

Landscape character

- 10.19 The site lies within the Grimescar Valley and is situated in a rural location characterised by sporadic detached dwellings set within generous sized plots. The nearby properties are all set well back from the access track that serves them and the site. While the site and the surrounding area is visible from the built-up urban edge of Huddersfield and vice versa, it has an open, rural character and appearance because of the space around the dwellings, their sporadic siting, the design of the buildings and the proximity to open fields. The site is currently bounded by open fields to the east and on the opposite side of Burn Road.
- 10.20 Middle Burn Farm comprises a single dwelling which was formerly a row of cottages and a barn. On the western side of the dwelling is a leisure annex which has been built on the footprint of a former outbuilding. This is separated from the house, but connected via a glazed link; planning permission has previously been granted to demolish this link and extend and alter the annex to form a dwellinghouse. The proposed dwellings would be sited in part of the front garden area of the dwelling.
- 10.21 Whilst the proposal would introduce a modern form of development that would change the existing character of the area, the proposal needs to be viewed in the context of planning permission 2017/90180 for the erection of 95 dwellings. This recently approved development involves the erection of 30 houses within the fields on the opposite side of Burn Road, including dwellings quite close to the boundary with Middle Burn Farm. The remainder of the 95 houses are to be built on fields slightly further to the south and on a separate parcel of open land to the northwest.
- 10.22 The 30 dwellings to be built on the opposite side of Burn Road will significantly alter the character and appearance of the land surrounding the application site and in this context it is considered that the erection of 3 dwellings on the application site would have a relatively limited impact on the overall character of the area. Furthermore, outline consent has also been granted for a row of four detached dwellings within the grounds of 98 Burn Road which would lie on the same side of Burn Road as the proposal; if built these dwellings would further alter the character of the area.

- 10.23 Planning permission for either of these aforementioned developments had not been approved at the time application 2014/91432 for the erection of a single storey dwelling within the front garden of Middle Burn Farm was considered by both the Council and the Planning Inspectorate. These permissions therefore represent a material change in circumstances.
- 10.24 The appeal decision made reference to a potential large scale residential development in part of the POL allocation but because there was not an application for such development at that time and no guarantee that planning permission would be granted the Inspector assessed the appeal on the basis of the surrounding area as it existed at the time. The Inspector commented that large scale development on this part of the POL (the indicative scheme the Inspector had seen was for about 200 houses) would significantly alter the character and appearance of the land near to the application site.
- 10.25 Whilst the previous proposal within the front garden of Middle Burn Farm was for a lesser quantum and scale of development than that proposed, the principle of introducing some form of development within this particular location fundamentally remains the same when assessing the impact on the character of the surrounding area as it *currently* exists. In other words any new building within the front lawn of Middle Burn Farm would have a perceptible impact on the open rural character of the landscape. However, once the 30 dwellings to be built on the opposite side of Burn Road are taken into account it does not make a significant difference whether there is one dwelling or three dwellings in this location when considering the impact on the character of the area.
- 10.26 The proposed scheme has been amended to mitigate the visual impact of the development within the landscape and particularly when viewed from public byway HUD/396/40. The number of dwellings has been reduced from four to three and only two of the dwellings will be served directly off Burn Road with the third taking its point of access via a track to the eastern site boundary. Each dwelling has also been given a garage. The effect of this has been to significantly reduce the prominence of parking within the development.
- 10.27 The original proposal was for a row of four terraced dwellings with the end properties having a single storey projecting element at the rear resulting in large asymmetrical gable ends. The layout and scale of the dwellings has been amended to break up the mass of the buildings by varying the position, depth, and height of the respective dwellings. This provides deviation within the building line and roofline. For example, a single storey garage has been added between plots 1 and 2, the ridgeline of plot 2 is set above that of plot 3 and the end plots (1 and 3) have a reduced depth to lessen the prominence of the gable ends of the development on the approaches to the site. A single storey lean-to garage has also been added to the side of plot 1 which provides some horizontal emphasis to this elevation.
- 10.28 The proposed facing materials are coursed stone and artificial stone slates. These are considered to be acceptable subject to the approval of samples.
- 10.29 Whilst landscaping is a reserved matter the site plan shows a 900mm wall around the development to delineate it from the remainder of the Middle Burn Farm site. There is also scope for a large proportion of the existing stone wall to the site frontage and eastern boundary to be retained.

- 10.30 The scale, appearance and layout of the site are considered to be acceptable within the context of existing and approved development within the surrounding area. The application is therefore considered to comply with Policies BE1, BE2 and BE11 of the UDP, PLP24 and PLP32 of the emerging Local Plan and guidance in the NPPF.

Heritage issues

- 10.31 Middleburn Farm is a grade II listed building. It was originally a barn, dating from the 18th century. The two storey building is rendered and has a pitched stone slate roof. Extensions and additions have been added to the property which has affected its setting to an extent. The significance of the building, amongst other things, is derived from its age, historic associations and architectural style. Lower Burn Farm, Lower Burn Farm Cottage and Lower Burn area also grade II listed buildings and lie over 75m to the north east of the site. Lower Burn Farm Cottage is listed by virtue of its attachment to Lower Burn Farm.
- 10.32 Paragraph 131 of the NPPF states that “in determining planning applications, local planning authorities should take account of:
- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
 - the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
 - the desirability of new development making a positive contribution to local character and distinctiveness”.
- 10.33 “When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation” (NPPF paragraph 132). The setting of a designated heritage asset is an important aspect of its significance. Preserving the special architectural and historic interest of a listed building is required by section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and considerable importance and weight is to be attached to this.
- 10.34 At present the large front garden of Middle Burn Farm provides a very open aspect to views of this listed building from numerous directions and the proposal would therefore erode some of this openness. Any new buildings on the site would become part of the building’s setting and influence how it is experienced.
- 10.35 Advice has been sought from the Conservation and Design section. It is considered that development in this part of the site (i.e. the eastern part of the front garden) would have the least impact on the setting of Middle Burn Farm by allowing a reasonable amount of the open aspect provided by the front garden to be retained. Conversely, the site of application 2014/91432 was located much more to the front of the listed building and despite being for a lesser quantum and scale of development would have had a greater impact on its setting in officers’ view. It is also considered that the setting of the listed buildings to the north east of the site would not be significantly harmed given the separation distances involved.

- 10.36 A linear form of development that fronts onto Burn Road is considered to be the most appropriate form of development in order to respect the established rural character of the surrounding area that Middle Burn Farm, Lower Burn Farm and Lower Burn contribute to. The design is considered to be acceptable and details such as corbels, dentils and timber windows (as proposed) enhance the overall appearance. The proposed facing materials would harmonise with Middle Burn Farm. A condition requiring the approval of samples would be necessary.
- 10.37 The effect of the proposal on the significance of Middle Burn Farm (and the other identified nearby listed buildings) is considered to be less than substantial having regards to paragraph 134 of the NPPF. In such circumstances this harm should be weighed against the public benefits of the proposal. The proposal would provide additional housing, albeit at a modest level, at a time when the Council is unable to demonstrate a 5 year supply of housing land. Considering the relatively limited impact on the setting of Middle Burn Farm as identified within this appraisal it is considered that the harm is outweighed by the delivery of new housing in this instance.

Residential Amenity

- 10.38 Policy BE12 of the UDP is the Council's space about buildings Policy. This seeks to provide acceptable separation distances between new and existing dwellings.
- 10.37 The nearest existing dwellinghouse is Middle Burn Farm which is over 40m from the site boundary. Lower Burn Farm, Lower Burn Farm Cottage and Lower Burn lie over 75m away to the north east of the site. 98 Burn Road is a similar distance away to the northwest. These distances are sufficient to prevent any significant residential amenity issues.
- 10.39 New dwellings are planned on the field to the opposite side of Burn Road. There are two plots that have a direct relationship with the application site, both of which have a side elevation onto the site. One of the plots has a habitable window at ground floor level which is a secondary bay window and is around 15m from the front wall of plot 1. A degree of screening would be provided by a stone wall along the boundary with Burn Road that is to be retained as part of the approved development to the south. The separation distance is considered to be acceptable considering the nature of the window (secondary) and screening to be retained.
- 10.40 The boundary of the approved outline development to the west at 98 Burn Road is around 27m away from the application site with some boundary screening in between. This does not give rise to any particular concerns.
- 10.41 Issues of noise and air quality impacts on future residents were considered as part of application 2017/90180 for the erection of 95 dwellings and found to be acceptable. This conclusion holds for the proposal.
- 10.42 The application satisfies Policies BE12 and BE1 of the UDP and PLP24 of the emerging Local Plan and guidance in the NPPF.

Highway issues

- 10.43 Access to the proposed dwellings would be gained via an unrestricted public byway HUD 396 which forms a junction with Burn Road to the west. The byway currently serves four dwellings. The surface is typical of its type and has different types of hard surfacing in most areas.
- 10.44 The application seeks permission for the erection of three additional dwellings with associated parking provision. Two of the dwellings have their own direct access from the public byway to garages and driveways and the third dwelling takes its access from a private track off the byway that runs to the east of the site and provides an additional means of access to Middle Burn Farm and serves as the access for Lower Burn Farm, Lower Burn Farm Cottage and Lower Burn.
- 10.45 The site plan indicates that a new passing area will be formed along the frontage of Middle Burn Farm and the surface of the byway will be made good between the site and the junction with Burn Road to the west. Details of the improvements would need to be conditioned. It is also considered necessary for the existing stone all along the frontage of Middle Burn Farm to be re-built around the passing place in the interests of the visual amenity of the area and the setting of Middle Burn Farm.
- 10.46 The width of the byway adjacent to the parking for plots 1 and 2 is around 5.5m but ideally this distance would be 6m. Alterations to the surface of the byway will be required in order to achieve this distance, details of which could be required by condition.
- 10.47 The number of dwellings and associated traffic generation is unlikely to have any material impact on the local highway network. The route is registered as a Byway Open to All Traffic and therefore public highway rights exist along the access to the development for vehicles.
- 10.48 Some concerns have been raised by the Council's PROW section around the use of the byway for access and associated vehicle manoeuvres on the byway. However the level of traffic generated by this (now reduced) number of dwellings is likely to be fairly insignificant and subject to details of alterations/improvements to the byway as mentioned above it is considered that the proposals are acceptable in terms of the safety of users of the byway.
- 10.49 The application is considered to comply with Policies T10, R13 and T19 of the UDP and PLP21 and 22 of the emerging Local Plan.

Coal mining issues:

- 10.50 The Coal Authority records indicate that there is a recorded mine entry just outside the eastern boundary of the site with a zone of influence which extends into the site. The Coal Authority holds no treatment details for this mine entry and it has a potential departure distance which means it could potentially be located within the application site itself.
- 10.51 The planning application is supported by a Coal Mining Risk Assessment. The report acknowledges the presence of the mine entry just outside the application site and the risk that this poses to the development on the site.

The report recommends that intrusive site investigations to locate the shaft, or at least discount its presence on the application site, should be carried out. The report also recommends that any development within 20m of the shaft is relocated.

- 10.52 The Coal Authority objects to the application at this current time because the exact location of the mine entry has not been confirmed and it is therefore unable to fully assess the impact of the proposals.
- 10.53 The applicant recognises the need to provide this information however such intrusive site investigations would involve a considerable financial cost and the applicant is reluctant to commission the works without any firm prospect that planning permission will be granted. In the circumstances officers consider that it is reasonable for the application to be brought before the committee to make a resolution on the proposals and if the development is deemed to be acceptable then the applicant will then have sufficient comfort to carry out the intrusive site investigations.
- 10.54 In the event that the proposals could not be carried out because of constraints imposed by the location of the mine entry following and the scheme consequently needed to be significantly amended, the application would then be brought back before the committee for a new resolution.
- 10.55 Subject to members accepting this approach and the carrying out of the necessary investigations to the satisfaction of The Coal Authority the development would comply with Policy G6 of the UDP, emerging Policy PLP53 of the PDLP and Chapter 11 of the NPPF.

Ecology and trees:

- 10.56 The site is adjacent to a Green Corridor within the UDP and therefore Policy D6 of the UDP is relevant. The corridor broadly runs between the site and Middle Burn Farm (following the boundary between the POL and the Green Belt to the north).
- 10.57 The site itself is considered to be of limited ecological value given that it is predominantly lawned garden. There is a small group of semi-mature trees within the south east corner of the site but their loss would not significantly affect the overall function of the Green Corridor. None of the trees are worthy of a preservation order.
- 10.58 It is considered that the development would not result in any significant harm to the Green Corridor or any other ecological impacts. Biodiversity mitigation and enhancement can nevertheless be provided as part of the development such as bird nest boxes and an appropriate landscaping scheme at reserved matters. The development complies with chapter 11 of the NPPF.

Drainage issues

- 10.59 The Lead Local Flood Authority has been consulted and no objections raised.

Representations

- 10.60 Four representations have been received to date. The main issues raised relate to the impact on the character of the area and highway safety. Concerns have also been raised with the impact on the setting of Middle Burn Farm. All these matters have been addressed within this appraisal.
- 10.61 Of the other issues raised it has been suggested that the proposal will set a precedent for future development. Any further applications on the remainder of this part of the POL will be assessed on their own merits having regard to relevant local and national policies and all other material considerations.
- 10.62 There are also concerns with the impact of the physical construction of the development on users of the public byway. A condition requiring a construction management plan could be imposed to help alleviate the impacts during the construction phase.
- 10.63 It has been suggested that the development will exacerbate issues associated with other approved development nearby. Officers consider that the scale of development is such that it would not materially add to any impacts associated with other local developments, including the 95 houses recently approved on part of the POL allocation.

Other matters

- 10.64 Given that the proposal seeks the erection of 3 new dwelling and in line with the West Yorkshire Low Emissions Strategy (WYLES) and Policy PLP24 of the PDLP a condition would be appropriate requiring the provision of an electric charging point at each of the proposed properties. This would help to mitigate the impact of the development on air quality.

11.0 CONCLUSION

- 11.1 The principle of the development on the land is accepted considering nearby approved development and the proposals have been designed so as to mitigate the impact on the visual amenity of the landscape and the setting of Middle Burn Farm as well as Lower Burn Farm, Lower Burn Farm Cottage and Lower Burn which are grade II listed buildings. The development would not materially harm residential amenity, highway safety or biodiversity. Coal mining legacy issues are to be resolved as detailed within this appraisal.

12.0 CONDITIONS (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Strategic Investment)

1. Standard conditions for outline applications including time limits for submission of reserved matters and commencement of development
2. Approval of samples of materials
3. Surfacing of parking places
4. Details of improvements to public byway HUD 396 including details to widen the byway to 6m opposite the points of access for plots 1 and 2 and formation of passing place
5. Re-use existing stone wall around proposed passing place
6. Electric vehicle charging points
7. Construction management plan
8. Any conditions to be imposed at the recommendation of The Coal Authority following intrusive site investigations
9. Biodiversity mitigation/enhancement measures.

Background Papers:

Application and history files.

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2016%2f90524>

Certificate of Ownership – Certificate A signed: 19th January 2016

Report of the Head of Strategic Investment

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 04-Jan-2018

Subject: Planning Application 2017/93777 Change of use from light industry / storage to martial arts gymnasium (D2) Springfield Mills, Dale Street, Longwood, Huddersfield, HD3 4TG

APPLICANT

Nick Bentley, Phantom
Tiger Taekwondo

DATE VALID

03-Nov-2017

TARGET DATE

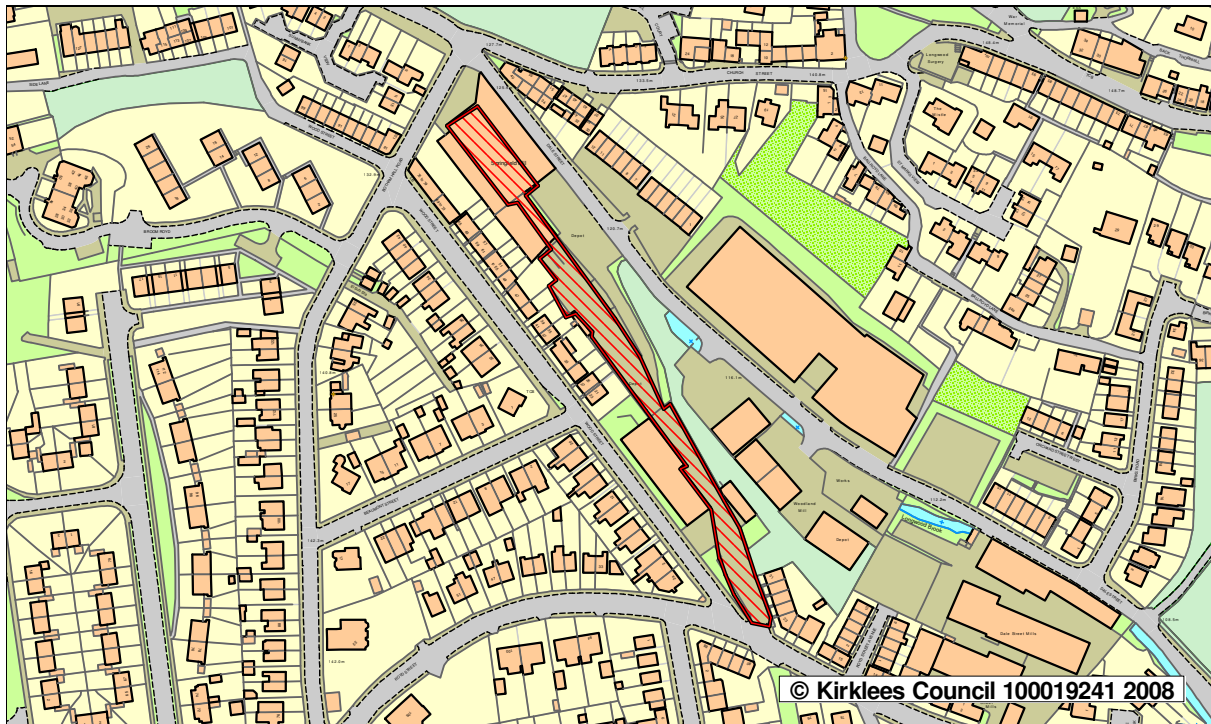
29-Dec-2017

EXTENSION EXPIRY DATE

Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

<http://www.kirklees.gov.uk/beta/planning-applications/pdf/public-speaking-committee.pdf>

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral Wards Affected: **Golcar**

No

Ward Members consulted

RECOMMENDATION:

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

1.0 INTRODUCTION:

- 1.1 This application is brought before Huddersfield Sub-Committee for determination under the terms of the Delegation Agreement as a member of staff within Investment and Regeneration is closely associated with the proposed business.

2.0 SITE AND SURROUNDINGS:

- 2.1 Springfield Mills is old mill complex located on land bordering Dale Street to the north-east, and the rears of 21-79 Wood Street to the south-west. It is accessed off Royd Street near the junction with Wood Street. The surrounding area is mainly residential.
- 2.2 The access serves two businesses near the south-eastern end of the site a short distance in from the site entrance, these being a kitchen workshop / showroom and an automobile paint supplier. Towards the north-western end of the site is a shared car park and beyond this the main mill buildings. These consists of a three-storey mill building with some more recent single-storey extensions in front of it, and a smaller building attached at the north-east side. The premises that are the subject of this application are on the first floor of the main mill building.

3.0 PROPOSAL:

- 3.1 The proposal is for the change of use of Unit 10, located on the first floor of the premises, from light industry and storage (B1 / B8), to a martial arts gymnasium (D2). It is intended that this would be used for running taekwondo classes. The change of use would apply to 700 square metres. The applicant has proposed that the hours of opening would be between 8am and 10pm, 7 days a week. It is anticipated that the classes would be held on Wednesday evenings and Sunday afternoons but the longer hours would give other groups offering similar types of leisure activities the opportunity to use the premises on other days. No external physical alterations are proposed.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

- 4.1 2016/90466 – Change of use of Unit 2 to a gymnasium. Approved, not implemented.

5.0 HISTORY OF NEGOTIATIONS (including revisions to the scheme):

- 5.1 Case officer requested a statement to demonstrate compatibility with Policy B4 of the UDP. This was submitted on 4th December 2017.

6.0 PLANNING POLICY:

- 6.1 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 Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). The Council is currently in the process of reviewing its development plan through the production of a Local Plan. The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

Kirklees Unitary Development Plan (UDP) Saved Policies 2007:

6.2

D2 – Unallocated land.
B4 – Change of use of land last used for business and industry.
EP4 – Noise-sensitive and noise-generating development.
T10 – Highway safety.
S1 – Shopping and Service Uses.

Publication Draft Local Plan:

6.3

PLP 8 – Safeguarding employment land and premises
PLP 22 – Parking
PLP 50 – Sport and physical activity

National Planning Guidance:

6.4

- Core Planning Principles
- Chapter 1 – Building a strong, competitive economy

- Chapter 2 – Ensuring the vitality of town centres
- Chapter 10 – Meeting the challenges of climate change, flooding and coastal change
- Chapter 11 – Conserving and enhancing the natural environment.

7.0 PUBLIC/LOCAL RESPONSE:

7.1 Publicity period expired 06-Dec-2017. One representation was received from a neighbour who does not object in principle but raises the following concerns:

- Windows will need to be opened to allow fresh air to circulate;
- Double glazing is not effective at dampening noise;
- Coming and going during drop-off or pick-up times may cause additional disturbance;
- Where activities are popular, youths tend to hang out in groups and can become rowdy;
- Can we be assured that the fire exit at the Botham Hall end of the building will only be used for emergencies, since use as an alternative entrance could cause parking problems?

8.0 CONSULTATION RESPONSES:

8.1 Statutory:

K.C. Highways Development Management: No objections.

8.2 Non-statutory:

K.C. Environmental Health: No objection subject to condition.

9.0 MAIN ISSUES

- Principle of development
- Impact on local economy
- Residential amenity
- Highway issues
- Drainage issues
- Representations
- Other matters

10.0 APPRAISAL

Principle of development

10.1 The land is unallocated in the UDP. Within the NPPF it will be assessed having regard to the following NPPF Policies:

- “Core planning principles” – Local Planning Authorities should promote mixed use developments and make use of sustainable modes of transport.

- “Building a strong competitive economy” significant weight should be placed on the need to secure sustainable economic growth through the planning system.
- “Ensuring the vitality of town centres” – planning decisions should promote of the vitality and viability of town centres.
- “Meeting the challenges of climate change, flood risk and coastal change” – Development should avoid creating or materially adding to flood risk.
- “Conserving and enhancing the natural environment” – advises that planning policies and decisions should aim to prevent noise giving rise to significant adverse impacts on health and quality of life, while not placing unreasonable restrictions on businesses.

10.2 The application will further be assessed having regard to the aims of the following UDP Policies:

D2: Development on unallocated land will be granted provided that the proposals do not prejudice [a specific set of considerations];

B4: Sets out a range of criteria to be applied where the application is for the change of use of premises last used for business and industry, including their continued suitability for business and industrial use;

S1: primacy of town and local centres

EP4: The impact of noise-generating on noise-sensitive uses should be considered at the planning stage;

T10: Development should not create or materially add to highway safety problems;

T19: Development should provide adequate parking having regard to Appendix 2 standards.

10.3 The following PDL policies are considered to be relevant as they do not attract significant unresolved objections:

PLP 8 – Safeguarding employment land and premises

PLP 22 – Parking

PLP 50 – Sport and physical activity

Of these, PLP 8 and 22 cover similar concerns to UDP Policies B4 and T19; PLP 50 states that the Council will seek to protect, enhance and support new outdoor and indoor sport and leisure facilities where appropriate. PLP13 of the PDL attracts substantial unresolved objections and it is therefore considered that not much weight can be placed on it, although it covers broadly similar concerns to Policy S1 and some NPPF Policies already mentioned.

Impact on local economy

Loss of premises used for business and industry:

- 10.4 The applicant has submitted a statement to demonstrate that the aims of B4 (change of use of premises last used for business and industry) have been complied with.
- 10.5 According to the applicant's statement, Springfield Mills comprises approximately 6/7 units on the ground floor, 1 unit on the first floor and 1 unit on the 2nd floor, with approximately 3 units in an adjoining building. Only 3 units on the ground floor are currently occupied. It is understood that the units in the adjoining building are let for storage purposes only. The landlord has explained that his rental prices are low due to the mill not being in a prime business location. Unit 10 is situated on the first floor with no loading bay access and so is not suitable for many industrial uses.
- 10.6 In considering application 2016/90466 for change of use of Unit 2 to a gymnasium, the Council accepted that there had been no market interest in the premises during the preceding year, that such premises are unsuitable for most modern forms of business, other than low grade storage, which has little employment potential, and that there is no shortage of such premises in the local area.
- 10.7 Officers' observations are that the mill complex is not optimal for continued business or industrial use owing to its layout and location, that there is under-occupation of the units, as is the case at many other industrial sites of similar age, and that a first-floor unit is less likely to be attractive to a potential business or industrial occupier than a ground floor one. The proposed use would not directly create jobs but would be compatible with the existing uses on the site and would be unlikely to affect their future operational flexibility. It would allow the building to be retained in economic use and generate rental income. It is considered that the change of use would comply with the aims of Policy B4.

Sequential test for main town centre use:

- 10.8 The proposed use represents a main town centre use as defined by Annex 2 of the NPPF. The application site is located in an out of centre location, the closest centres being that of Milnsbridge to the south east, Golcar and James Street to the south west. The site is therefore located in an out of centre location and a sequential test is required to accord with paragraph 24 of the NPPF. Policy S1 of the UDP further supports that town and local centres should remain the focus for a mix of uses which the proposed gym is considered to fall under.
- 10.9 According to the applicant's statement, the club used to rent space at All Saints School in Bradley. This arrangement will come to an end on 08-Dec-2017 as the school will no longer allow the club to rent the space. The club has considered alternative rooms at a number of schools, churches and other public buildings around Kirklees. These were found to be unavailable because of existing bookings or not big enough to house the club. The club has also tried to find other premises it could rent solely rather than as a time-shared slot. These were rejected because they were either not large enough for the needs of the club, lacked adequate parking, were too expensive, or too close to existing housing.

- 10.10 The proposed use is one that by its nature requires considerable space, which inevitably makes it harder to find suitable affordable premises within town, district, or local centres, where there are other uses competing for floorspace that have a higher turnover per square metre and are therefore able to afford higher rents. At least 5 of the rejected alternative sites are on the edge of existing commercial centres as defined in the Draft Local Plan, including Milnsbridge, Lockwood, Aspley, Mount Street and Huddersfield Town Centre.
- 10.11 Paragraph 24 of the NPPF states that when considering out of centre proposals, preference should be given to accessible sites that are well-connected to the Town Centre. This site is not particularly well-connected as it not on a bus route, the nearest bus stop being about 5-10 minutes' walk away, but better-connected premises have been examined by the applicant and rejected as unsuitable for the reasons already stated.
- 10.12 It is considered on balance that the sequential test has been passed. It would therefore support the aims of the NPPF – Ensuring the vitality of town centres and of UDP Policy S1.

Residential Amenity

- 10.13 The unit is in an area that is mainly residential in character. The nearest inhabited dwellings are approximately 16m away to the south-west, 17m away to the north-east and 23m away to the north-west.
- 10.14 The applicant has submitted a noise management plan. This recognises that uses of this nature can be a source of noise, and states that a condition can be accepted preventing the opening of windows facing the backs of 63-79 Wood Street to the south-west. In the case of the north-east elevation, facing Dale Street, the applicant considers such a condition to be unnecessary because the roof of one of the other Springfield Mills units shields the dwellings on Dale Street from noise.
- 10.15 The Environmental Health Officer has recommended that a condition is applied that all doors and windows shall be kept closed at all times when the gym is in use, except in emergency. This condition could make it difficult for the club to operate satisfactorily during warm weather since there is no air conditioning. It is considered that 63-79 Wood Street are likely to be more sensitive to noise from the proposed gym as it backs on to their rear gardens where they would normally expect a degree of peace and quiet; adjacent properties on Dale Street and Botham Hall Road are considered to be less sensitive as they face the highway. It is recommended that a condition is imposed to prevent windows in the south-west elevation being opened whilst the gym is in use and that there shall be no amplified music or speech on the premises. The applicant has confirmed by telephone that there will be no requirement for amplified music and so compliance will not present any difficulties.
- 10.16 The permission would grant D2 use which in addition to other indoor leisure uses could in principle encompass a range of uses including cinemas, music and concert halls and bingo halls. It is considered on balance that there is no need to impose further restrictions on the type of use, as long as the hours stated on the application form (between 0800 and 2200) are not exceeded.

Subject to this being imposed as a condition along with the other conditions on window opening and amplified sound, it is considered that the gym would operate without harm to residential amenity and would accord with the aims of Policies D2 and EP4.

Highway issues

- 10.17 There is a large shared parking area adjacent to the mill building which the applicant estimates to provide 20 spaces. The access arrangements are considered safe and satisfactory to serve the existing uses within the mill complex in addition to the proposed one.
- 10.18 The applicant has requested opening hours of 8am until 10pm, 7 days a week. They propose to hold classes on Wednesday evening and Sunday afternoon, but there is a possibility that clubs offering other sports and activities such as yoga and tai chi (also within the D2 use class) may wish to use the premises as well and so the applicant has requested these hours to give provide more flexibility.
- 10.19 It is anticipated that most students at the club would be dropped off by their parents and picked up later, although again this could be different if other clubs use the same premises. It is however expected that the peak operating times of the premises would still be in the evenings and on weekends when the established businesses on the mill complex are not operational and so there is unlikely to be any conflict. The car park is very large in any event, so regardless of the number of users of the gym it is very unlikely that parking will overspill onto the highway.
- 10.20 It is considered that the proposed use would be able to operate without giving rise to highway safety problems and would accord with the aims of Policies T10 and T19 of the UDP, and PLP22 of the PDLP.

Representations

- 10.21 One representation has been made. Concerns relating to residential amenity have been examined in detail in the main part of the assessment but are highlighted here together with other issues raised:
- Windows will need to be opened to allow fresh air to circulate;
Response: This issue has been examined in paragraph 10.15 above. As long as windows facing south-west towards Wood Street are not allowed to open, which can be conditioned, this should retain a good standard of amenity for adjacent residents.
 - Double glazing (referred to in the applicant's statement) is not effective at dampening noise;
Response: Double glazing might not be sufficient if this was a use likely to generate very high levels of noise but as a martial arts gym will only generate modest levels of noise, the measures already referred to in paragraphs 10.15-10.16 will be sufficient.

- Coming and going during drop-off or pick-up times may cause additional disturbance;

Response: The car park is at a lower level than neighbouring residential gardens which would limit intrusive noise, and it is considered that as long as the closing time of 2200 hours is adhered to, the use would not give rise to undue noise disturbance.

- Where activities are popular, youths tend to hang out in groups and can become rowdy;

Response: It unlikely that the car park could ever become a popular place for young people to socialise as it is remote from the street and the premises would presumably be locked after closing time anyway. In the unlikely event of anti-social behaviour occurring, this can be dealt with under other legislation.

- Can we be assured that the fire exit at the Botham Hall end of the building will only be used for emergencies, since use as an alternative entrance could cause parking problems?

Response: There is door at the Botham Hall Road (north-western) end of the building and a gate giving access to the highway at the junction of Botham Hall Road and Dale Street. But the door is designed for loading and unloading and is clearly not the main way into the building. It is considered that the possibility of people choosing to park on the highway near the north-western end of the building is very remote, and that the overall level of parking provision within the site is such that the development would not give rise to increased parking on the highway.

Other Matters

10.22 Drainage. The site is in Flood Zone 1 but is in a Critical Drainage Area. The proposal involves the partial change of use of an existing building without any new build. The change is not from a less vulnerable to a more vulnerable use, in terms of the Environment Agency's classifications, as both the existing and proposed uses have the same vulnerability classification (category 3 – "least vulnerable"). Furthermore the unit is on the first floor so it would not be affected by any floods that may occur. It would therefore be disproportionate to require the applicant to submit a flood risk assessment or mitigation measures.

10.23 Ecology: The site is within the Bat Alert Layer but as the proposal is for change of use only and would not affect the roof structure, it will be sufficient to add the standard precautionary note.

11.0 CONCLUSION

11.1 It is considered that the proposed change of use would be compatible with the aims of sustainable economic development. It would not give rise to highway safety problems and subject to suitable conditions it would avoid giving rise to any adverse impacts on residential amenity. It would also support the aims of and PLP50 of the PDLP which states that the Council will support new indoor sport and leisure facilities where appropriate.

12.0 CONDITIONS (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Strategic Investment)

- 1. Time limit to commence development**
- 2. Development to be undertaken in accordance with the submitted plans and information**
- 3. No windows within the south-western wall of the premises shall be open at any time when the facility is in use.**
- 4. No amplified music or speech on the premises at any time.**
- 5. No activities carried out on the premises outside the hours of 0800 to 2200 on any day.**

Background Papers:

Application and history files.

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2017%2f93777>

Certificate of Ownership – Notice served on Mr Ulfat Sattar 11th October 2017.

Report of the Head of Strategic Investment

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 04-Jan-2018

Subject: Planning Application 2017/93834 Erection of single storey side and rear extension Lansdowne House, Lane Bottom, Wooldale, Holmfirth, HD9 1QA

APPLICANT

J Booth

DATE VALID

10-Nov-2017

TARGET DATE

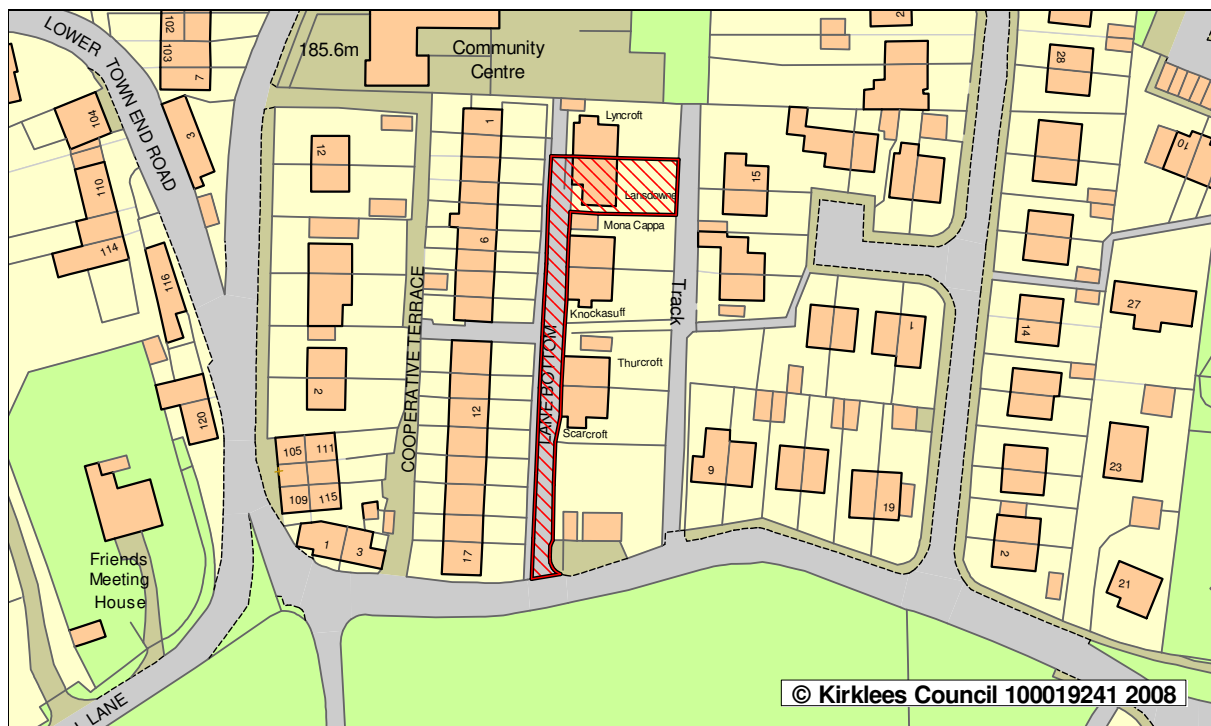
05-Jan-2018

EXTENSION EXPIRY DATE

Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

<http://www.kirklees.gov.uk/beta/planning-applications/pdf/public-speaking-committee.pdf>

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral Wards Affected: Holme Valley South

No

Ward Members consulted

RECOMMENDATION:

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

1.0 INTRODUCTION:

- 1.1 This application is brought to the sub-committee for determination as the applicant works within the Investment and Regeneration Service of the Council. This is in accordance with the delegation agreement.

2.0 SITE AND SURROUNDINGS:

- 2.1 The application relates to a two storey semi-detached dwelling in Wooldale, Holmfirth. The dwelling is constructed with a combination of stone, brick and render with a pitched gable roof covered in concrete roof tiles. The dwelling benefits from a single garage to the south of the dwelling. It has a sizeable rear garden area to the east of the dwelling which, due to local topography, is at a lower level than the dwelling.

To the north of the application site is the adjoining semi-detached dwelling of 'Lyncroft'. These dwellings share a boundary at the rear consisting of timber fence panels. To the south of the site is the adjacent semi-detached dwelling of 'Mona Cappa', this neighbouring dwelling has a detached garage built up to the boundary which obscuring the view of one another. To the west of the site, on the opposite side of Lane Bottom is the boundary with Wooldale Conservation Area. Lane Bottom itself is a private road served off Kirkroyds Lane.

3.0 PROPOSAL:

- 3.1 The proposal is for the erection of a single storey side and rear extension.
- 3.2 The extension would require the demolition of the existing garage. The extension would project 4m from the side of the dwelling and extend 7.8m in length projecting 1.5m beyond the rear elevation. The extension would then wrap around the rear of the dwelling by 2m (a maximum width of 6.3m). The extension would have a gable roof reaching a height of 2.3m to the eaves and 4.1m to the ridge. It would be faced in a combination of stone, brick, render

and concrete roof tiles to match the existing dwelling. The proposal would provide accessible ground floor accommodation comprising a bed/living area, wet room and a new entrance hall to the main dwelling. It would have one single door to the front elevation, one window to the side elevation and a set of double doors and a single door to the rear elevation. An access ramp of 1.05m in width would be formed between the side elevation of the extension and the boundary of the site. This would provide access between the front and rear of the property.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

4.1 None

5.0 HISTORY OF NEGOTIATIONS (including revisions to the scheme):

5.1 None

6.0 PLANNING POLICY:

6.1 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 Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

The site is unallocated on the UDP Proposals map and the emerging PDLP.

Kirklees Unitary Development Plan (UDP) Saved Policies 2007:

6.2 **D2** – Unallocated land
BE1 – Design principles
BE2 – Quality of design
BE13 – Extensions to dwellings (design principles)
BE14 – Extensions to dwellings (scale)
T19 - parking

6.3 **Kirklees Publication Draft Local Plan**
PLP 1 – Achieving sustainable development
PLP 2 – Place shaping
PLP 22 - parking
PLP 24 – Design

6.4 Chapter 7 – Requiring good design

7.0 PUBLIC/LOCAL RESPONSE:

7.1 The application has been advertised by neighbour letter and site notice. The expiration date for public representations was 19th December 2017. No public representations have been received.

7.2 Holme Valley Parish Council supports the application.

8.0 CONSULTATION RESPONSES:

8.1 Non-statutory:

KC Accessible Homes - The scheme under consideration is the best available option for the client's present and future needs and is fully supported by the Accessible Homes Team.

9.0 MAIN ISSUES

- Principle of development
- Impact on visual amenity
- Impact on residential amenity
- Impact on highway safety
- Other matters
- Representations
- Conclusion

10.0 APPRAISAL

Principle of development

10.1 The site is without notation on the UDP Proposals Map and Policy D2 (development of land without notation) of the UDP states "planning permission for the development ... of land and buildings without specific notation on the proposals map, and not subject to specific policies in the plan, will be granted provided that the proposals do not prejudice [a specific set of considerations]". All these considerations are addressed later in this assessment.

10.2 Furthermore the site is without notation on the Publication Draft Local Plan. Policy PLP1 states that when considering development proposals, the council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF. The assessment below takes into account the aims of PLP1.

Impact on visual amenity

10.3 The proposal seeks planning permission for the erection of a single storey side and rear extension. The proposal will allow the occupiers more habitable space to the ground floor of the dwelling. The extension will be constructed in combination of stone, brick, render and concrete roof tiles to match the existing dwelling, which is acceptable.

- 10.4 In the context of the site and its surrounding area, the proposed development would not create a visually intrusive feature in the local area in terms of its size and design, given this would harmonise with the existing dwelling in terms of construction materials, and given it would be situated within a good sized plot largely re-using the footprint currently taken up by the existing garage. As it would be sited to the side and rear it would be visible from the highway, although as it is replacing an existing garage and remains a single storey structure it would not result in an overdevelopment of the site or introduce an incongruous feature into the street scene.
- 10.5 Given the above, the proposal complies with policies D2, BE1, BE13 and BE14 of the Unitary Development Plan, policies PLP1, PLP2 and PLP24 of the Publication Draft Local Plan and chapter 7 of the NPPF.

Impact on residential amenity

- 10.6 The impact of the development on residential amenity needs to be considered in relation to policies D2 and BE14 of the UDP and emerging Policy PLP24 of the PDLP. The host dwelling is surrounded by a number of dwellings, the closest of which being 'Lyncroft' and 'Mona Cappa' to the north and south of the site respectively.
- 10.7 Lyncroft: this is the adjoining semi-detached dwelling. The dwellings share a boundary at the rear consisting of timber fence panels, the gardens of this pair of dwellings are at a lower ground level than the dwellings themselves. The proposed extension will project from the rear elevation wall by 1.5m and will wrap around the rear of the dwelling by 2m (a maximum width of 6.3m). The extension will be approx. 3.5m away from the boundary with this neighbour and approx. 4.5m away from the neighbour's ground floor window. Given the orientation of these dwellings faces east at the rear, and given the small scale projection to the rear, it is considered that no unacceptable overshadowing would occur on the occupiers of 'Lyncroft'. As the occupiers of the neighbouring property will only see a small projection to the rear and given the extension is for a single storey, it is considered that no unacceptable overbearing or loss of outlook would occur. It is. However, recommended that the window in the side elevation facing this neighbouring property is obscurely glazed which can be controlled by condition.
- 10.8 Mona Cappa: this is the adjacent semi-detached dwelling which has a detached garage built up to the boundary obscuring the view between neighbouring amenity spaces. The extension will project approx. 0.4m closer to this neighbouring dwelling than the footprint of the existing garage, leaving an approx. distance of 5m between the two dwellings. It is considered that given the distance between the two dwellings, the presence of the garage and boundary treatment no unacceptable overshadowing, overbearing or loss of outlook would occur.
- 10.9 To the east of the site are nos. 13 and 15 Daleside Avenue, a pair of semi-detached properties. These properties are at a lower ground level than the application property. The extension would result in the built form extending 1.5m closer to these dwellings but as it is single storey and of limited projection, together with existing close boarded boundary treatment between

the site and these properties, it is considered that no adverse impact to the occupiers would occur.

- 10.10 Given the above, it is considered that the overall impact of the proposal on residential amenity is acceptable, and as such, complies with the requirements of policies D2, BE1, BE2 and BE14 of the Unitary Development Plan, policy PLP24 of the Publication Draft Local Plan and core planning principles of the NPPF.

Impact on highway safety

- 10.11 The development would result in the loss of a garage but as this is only 2.6m in width it is unsuitable for modern cars. There are no opportunities to provide alternative arrangements for car parking but this would not materially change the existing situation on site. The extension would not increase the demand for parking on the site and the dwelling is accessed from a quiet private road which terminates a short distance north of the site. It is considered that the development would not have a material effect on highway safety and would comply with Policy T10 of the UDP and policies PLP21 and PLP24 of the PDLP.

Other matters

- 10.12 None

Representations

- 10.13 None.

Holme Valley Parish Council supports the application.

11.0 CONCLUSION

- 11.1 The planning application has been assessed against the relevant policies in the Unitary Development Plan, the emerging Publication Draft Local Plan and core planning principles of the NPPF. It has been considered that the application meets the requirements set out within the relevant policies and is therefore recommended approval.
- 11.2 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 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.

12.0 CONDITIONS (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Strategic Investment)

1. Development to commence within 3 years of the date of the permission
2. Development in accordance with the approved plans.
3. Window in side elevation facing Lyncroft to be obscurely glazed.

Background Papers:

Website link to the application

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2017%2F93834>

Certificate of Ownership – Notice served October 2017 on

Scarcroft, Lane Bottom
Thurcroft, Lane Bottom
Knocknastuff, Lane Bottom
Mona Cappa, Lane Bottom
Lyncroft, Lane Bottom

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