

# Public Document Pack



**Service Director – Legal, Governance and  
Commissioning**

**Julie Muscroft**

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Wednesday 14 February 2018

## 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 22 February 2018**.

(A coach will depart the Town Hall, at 9.00am to undertake Site Visits. The consideration of Planning Applications will commence at 1.00 pm in the Council Chamber at Huddersfield Town Hall).

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  
S Pandor

#### **Liberal Democrat**

J Lawson  
A Pinnock

# Agenda

## Reports or Explanatory Notes Attached

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**Pages**

**1: Membership of the Committee**

This is where Councillors who are attending as substitutes will say for whom they are attending.

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**2: Minutes of previous meeting**

1 - 8

To approve the Minutes of the meeting of the Committee held on 4 January 2018.

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**3: Interests and Lobbying**

9 - 10

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.

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**4: Admission of the Public**

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.

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**5: Deputations/Petitions**

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.

In accordance with Council Procedure Rule 10 (2), Members of the Public should provide at least 24 hours' notice of presenting a deputation.

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**6: Public Question Time**

The Committee will hear any questions from the general public.

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**7: Site Visit - Application No: 2017/93399**

Change of use and alterations, including erection of boundary fence, to former mill (B1 Business) to 30 student bedrooms (C4) Office, Britannia Mills, Colne Road, Huddersfield.

(Estimated time of arrival at site – 09.05am)

Contact Officer: Nick Hirst

**Wards**

**Affected:** Newsome

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**8: Site Visit - Application No: 2017/93444**

Replacement roof (within a Conservation Area) Almondbury Methodist Church, Westgate, Almondbury, Huddersfield.

(Estimated time of arrival at site – 09.20am)

Contact Officer: Francis Davies, Planning Services

**Wards**

**Affected:** Almondbury

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**9: Site Visit - Application No: 2017/91618**

Change of use and erection of extension and alterations to former club/pub to form 7 apartments 14, New Road, Kirkheaton, Huddersfield.

(Estimated time of arrival at site – 09.35am)

Contact Officer :Farzana Tabasum, Planning Services

**Wards**

**Affected:** Dalton

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## **10: Site Visit - Clayton Fields, Edgerton**

Application for a definitive map modification order to add a public footpath to the definitive map and statement, Clayton Fields, Edgerton. (Application reference 183).

(Estimated time of arrival at site – 10.00am)

Contact Officer: Giles Cheetham, Definitive Map Officer

### **Wards**

**Affected:** Greenhead

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## **11: Site Visit - Application No: 2016/92466**

Erection of two dwellings adj 2, Romsey Close, Lindley, Huddersfield.

(Estimated time of arrival at site – 10.20am)

Contact Officer: Farzana Tabasum, Planning Services

### **Wards**

**Affected:** Lindley

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## **12: Site Visit - Application No: 2017/93515**

Erection of 16 dwellings with associated access and parking facilities. Land adj, Lower Gate, Paddock, Huddersfield.

(Estimated time of arrival at site – 10.35am)

Contact Officer: Victor Grayson, Planning Services

### **Wards**

**Affected:** Golcar

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## **13: Site Visit - Application No: 2017/93638**

Outline application for residential development with details of point of access only (within a Conservation Area) Land off Fullwood Drive (West site), Golcar, Huddersfield.

(Estimated time of arrival at site – 10.55am)

Contact Officer: Victor Grayson, Planning Services

### **Wards**

**Affected:** Golcar

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**14: Site Visit - Application No: 2017/93719**

Outline application for residential development with details of access only (within a Conservation Area) Land off Fullwood Drive (East site), Golcar, Huddersfield.

(Estimated time of arrival at site – 10.55am)

Contact Officer: Victor Grayson, Planning Services

**Wards**

**Affected:** Golcar

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**15: Site Visit - Application No: 2017/94242**

Erection of side extensions and dormer windows, raise roof and alterations Crow Wood, 17, Broad Lane, Upperthong, Holmfirth.

(Estimated time of arrival at site – 11.45am)

Contact Officer: Aimee Proctor, Planning Services

**Wards**

**Affected:** Holme Valley South

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**16: Local Planning Authority Appeals**

11 - 42

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: Mathias Franklin –Development Management Group Leader

**Wards**

**Affected:** Colne Valley; Crosland Moor and Netherton; Greenhead

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**Planning Applications**

43 - 46

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 19 February 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.

**17: Application for a definitive map modification order to add a public footpath to the definitive map and statement, Clayton Fields, Edgerton. (Application reference 183)** 47 - 62

The Planning Sub-Committee will consider an application to record a public footpath to the definitive map and statement, Clayton Fields, Edgerton.

Contact Officer: Giles Cheetham, Definitive Map Officer

**Wards**

**Affected:** Greenhead

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**18: Application for a definitive map modification order to add a public footpath to the definitive map and statement, Cellars Clough, Marsden** 63 - 76

The Planning Sub-Committee will consider an application to record a public footpath to the definitive map and statement, Cellars Clough, Marsden.

Contact Officer: Giles Cheetham, Definitive Map Officer

**Wards**

**Affected:** Colne Valley

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**19: Clarification of decision on item 13 of Planning sub-committee (Huddersfield area) of 4 January 2018. Bridge Lane to Sands recreation, Holmfirth. Application for a definitive map modification order to add a public bridleway to the definitive map and statement. (Application reference 169)** 77 - 80

The Planning Sub-Committee will be asked to note a clarification of the sub-committee's previous decision and to reaffirm the decision that was made.

Contact Officer: Giles Cheetham, Definitive Map Officer

**Wards**

**Affected:** Holme Valley South

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**20: Planning Application - Application No: 2017/93483** 81 - 90

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

Contact Officer : Francis Davies

**Wards**

**Affected:** Almondbury

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**21: Planning Application - Application No: 2017/93444** 91 - 98

Replacement roof (within a Conservation Area) Almondbury  
Methodist Church, Westgate, Almondbury, Huddersfield.

Contact Officer: Francis Davies, Planning Services

**Wards**

**Affected:** Almondbury

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**22: Planning Application - Application No: 2017/93399** 99 - 114

Change of use and alterations, including erection of boundary fence,  
to former mill (B1 Business) to 30 student bedrooms (C4) Office,  
Britannia Mills, Colne Road, Huddersfield.

Contact Officer: Nick Hirst

**Wards**

**Affected:** Newsome

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**23: Planning Application - Application No: 2017/91618** 115 -  
126

Change of use and erection of extension and alterations to former  
club/pub to form 7 apartments 14, New Road, Kirkheaton,  
Huddersfield.

Contact Officer :Farzana Tabasum, Planning Services

**Wards**

**Affected:** Dalton

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- 24: Planning Application - Application No: 2016/92466** 127 - 136
- Erection of two dwellings adj 2, Romsey Close, Lindley, Huddersfield.
- Contact Officer: Farzana Tabasum, Planning Services
- Wards**  
**Affected:** Lindley
- 
- 25: Planning Application - Application No: 2017/93515** 137 - 160
- Erection of 16 dwellings with associated access and parking facilities. Land adj, Lower Gate, Paddock, Huddersfield.
- Contact Officer: Victor Grayson, Planning Services
- Wards**  
**Affected:** Golcar
- 
- 26: Planning Application - Application No: 2017/93638** 161 - 182
- Outline application for residential development with details of point of access only (within a Conservation Area) Land off Fullwood Drive (West site), Golcar, Huddersfield.
- Contact Officer: Victor Grayson, Planning Services
- Wards**  
**Affected:** Golcar
- 
- 27: Planning Application - Application No: 2017/93719** 183 - 204
- Outline application for residential development with details of access only (within a Conservation Area) Land off Fullwood Drive (East site), Golcar, Huddersfield.
- Contact Officer: Victor Grayson, Planning Services
- Wards**  
**Affected:** Golcar
-

- 28: Planning Application - Application No: 2017/94242** 205 -  
214
- Erection of side extensions and dormer windows, raise roof and alterations Crow Wood, 17, Broad Lane, Upperthong, Holmfirth.
- Contact Officer: Aimee Proctor, Planning Services
- Wards**  
**Affected:** Holme Valley South
- 
- 29: Planning Application - Application No: 2017/93846** 215 -  
232
- Demolition of existing public house and erection of 32 residential dwellings Land Adjacent to Spotted Cow Public House, New Hey Road, Salendine Nook, Huddersfield.
- Contact Officer: Bill Topping, Planning Services
- Wards**  
**Affected:** Lindley
- 
- 30: Planning Application - Application No: 2016/90524** 233 -  
250
- 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, Planning Services
- Wards**  
**Affected:** Lindley
- 

### **Planning Update**

251 -  
260

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 4th January 2018**

Present: Councillor Terry Lyons (Chair)  
Councillor Donna Bellamy  
Councillor James Homewood  
Councillor Bernard McGuin  
Councillor Ken Sims  
Councillor Mohan Sokhal  
Councillor Sheikh Ullah  
Councillor Linda Wilkinson  
Councillor Eric Firth  
Councillor John Lawson

Apologies: Councillor Mohammad Sarwar  
Councillor Rob Walker  
Councillor Andrew Marchington

**1 Membership of the Committee**

Cllr E Firth substituted for Cllr Walker  
Cllr Lawson substituted for Cllr Marchington

**2 Minutes of previous meeting**

The Minutes of the meeting held on 23 November 2017 were approved as a correct record.

**3 Interests and Lobbying**

Members declared interests and identified planning applications in which they had been lobbied.

Cllr McGuin declared he had been lobbied on application 2017/93483.

Cllr Bellamy declared an 'other interest' in item 13 application definitive map modification order to add a public bridleway to the definitive map and statement – Bridge Lane to Sands, Holmfirth on the grounds that she was a member of the Holme Valley Parish Council.

Cllr Bellamy declared an 'other interest' in applications 2017/93341, 2017/93386 and 2017/93834 on the grounds that she was a member of the Holme Valley Parish Council.

Cllr Sims declared that he had been lobbied on applications 2017/93341 and 2017/93386.

Cllr Homewood declared that he had been lobbied on application 2017/93288.

## Planning Sub-Committee (Huddersfield Area) - 4 January 2018

### 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 Public Question Time

No questions were asked.

### 7 Site Visit - Application No: 2016/91560

Site visit undertaken.

### 8 Site Visit - Application 2017/93288

Site visit undertaken.

### 9 Site Visit - Application 2017/93483

Site visit undertaken.

### 10 Site Visit - Application 2017/93341

Site visit undertaken.

### 11 Site Visit - Application 2017/93386

Site visit undertaken.

### 12 Local Planning Authority Appeals

That the report be noted.

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

The Committee considered a report that sought a decision on an application for a definitive map modification order to add a public bridleway to the definitive map and statement, Bridge Lane to Sands, Holmfirth.

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

Under the provisions of Council Procedure Rule 37, the Committee received representations from Dan Thomson, Bruce Jakeman and Andy Dunlop (Public Rights of Way Consultant) all of whom objected to the application and Nick Charlton (applicant).

**RESOLVED** – That the Service Director, Legal, Governance and Commissioning be authorised to:

- (1) 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 of the considered report, under section 53 (3) c (ii) of the Wildlife & Countryside Act 1981.

## **Planning Sub-Committee (Huddersfield Area) - 4 January 2018**

(2) Confirm the order or if opposed, to submit it to the Secretary of State at DEFRA to determine.

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

For: Councillors Bellamy, E Firth, Homewood, Lawson, Lyons, McGuin, Sims, Sokhal, Ullah and Wilkinson (10 votes).

Against: (0 votes).

### **14 Planning Application - Application No: 2016/91560**

The Sub Committee gave consideration to Planning Application 2016/91560 Alterations to convert lower ground floor to two flats (Listed Building within a Conservation Area) 33-35, Queensgate, Huddersfield.

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

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.

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

A vote to defer the application:

For: Councillor Sokhal (1 vote)

Against: Councillors Bellamy, E Firth, Homewood, Lawson, Lyons, McGuin, Sims, Ullah and Wilkinson (9 votes).

A vote to support the officer recommendation:

For: Councillors Bellamy, E Firth, Homewood, Lawson, Lyons, McGuin, Sims, Sokhal, Ullah and Wilkinson (10 votes).

Against (0 votes)

### **15 Planning Application - Application No: 2017/93288**

The Sub Committee gave consideration to Planning Application 2017/93288 Erection of single storey front and rear extensions 15A, Whitacre Street, Deighton, Huddersfield.

## Planning Sub-Committee (Huddersfield Area) - 4 January 2018

### 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:
  - (a) Development to be in accordance with approved plans.
  - (b) No new windows in the side elevation of the rear extension facing no. 15 Whitacre Street.
  - (c) Obscure glazing to the side elevation of the porch facing no. 15 Whitacre Street.

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

For: Councillors E Firth, Homewood, Lawson, Lyons, Sokhal, Ullah and Wilkinson (7 votes).

Against: Councillors Bellamy and Sims (2 votes).

Abstained Councillor McGuin

### 16 **Planning Application - Application No: 2017/93483**

The Sub Committee gave consideration to Planning Application 2017/93483 Erection of single storey rear extension and rear dormer windows 152, Ravensknowle Road, Dalton, Huddersfield.

Under the provisions of Council Procedure Rule 37 the Committee received a representation from Anthony Mahon (Objector).

**RESOLVED –** That consideration of the application be deferred to allow officers time to bring back a revised report to the Committee outlining potential planning reasons to refuse the application on the grounds of overdevelopment, residential amenity and visual amenity.

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

A vote to accept the officer recommendation (approval)

For: Councillors Homewood, Lawson and Wilkinson (3 votes).

Against: Councillors Lyons, Sokhal and Ullah (3 votes).

Abstained : Councillors Bellamy, E Firth, McGuin and Sims

The Chair used his casting vote to defeat the motion.

A vote to defer consideration of the application.

For: Councillors Bellamy, E Firth, Homewood, Lyons, McGuin and Sims (6 votes).

## **Planning Sub-Committee (Huddersfield Area) - 4 January 2018**

Against: Councillors Sokhal and Ullah (2 votes)

Abstained: Councillors Lawson and Wilkinson

### **17 Planning Application - Application No: 2017/93341**

The Sub Committee gave consideration to 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.

Under the provisions of Council Procedure Rule 37 the Committee received representations from Clive Nowell (objector) and Simon Hough (applicant)

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

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.

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

For: Councillors E Firth, Homewood, Lawson, Lyons, Sokhal and Wilkinson (6 votes).

Against: Councillors Bellamy, McGuin, Sims and Ullah (4 votes)

### **18 Planning Application - Application No: 2017/93386**

The Sub Committee gave consideration to Planning Application 2017/93386 Erection of first floor extension with balcony Tara, Scholes Moor Road, Scholes, Holmfirth.

Under the provisions of Council Procedure Rule 37 the Committee received representations from Sarah Dixon, Richard Dixon (applicants) and Andy Rushby (on behalf of the applicant).

**RESOLVED** – That the application be delegated to the Head of Strategic Investment for conditional full permission.

Contrary to the officer's recommendation, the Committee considered that the scheme was not harmful to visual amenity and did not constitute an overdevelopment of the site.

## **Planning Sub-Committee (Huddersfield Area) - 4 January 2018**

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

For: Councillors Bellamy, E Firth, Homewood, McGuin, Sims, Sokhal and Ullah (7 votes).

Against: Councillor Wilkinson (1 vote)

Abstained: Councillors Lawson and Lyons.

### **19 Planning Application - Application No: 2016/90524**

Application withdrawn due to an error in the certificate of ownership.

### **20 Planning Application - Application No: 2017/93777**

The Sub Committee gave consideration to Planning Application 2017/93777 Change of use from light industry / storage to martial arts gymnasium (D2) Springfield Mills, Dale Street, Longwood, Huddersfield.

#### **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:
  - (a) 3 year time limit to commence development.
  - (b) Development to be undertaken in accordance with the submitted plans and information.
  - (c) No windows within the south-western wall of the premises shall be open at any time when the facility is in use.
  - (d) No amplified music or speech on the premises at any time.
  - (e) No activities carried out on the premises outside the hours of 0800 to 2200 on any day.
  
2. An additional condition to prevent the use of the access to the first floor gym from Botham Hall Road being used for access or egress except in emergencies.

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

For: Councillors Bellamy, E Firth, Homewood, Lawson, Lyons, McGuin, Sims, Sokhal, Ullah and Wilkinson (10 votes).

Against: (0 votes).

### **21 Planning Application - Application No: 2017/93834**

The Sub Committee gave consideration Planning Application 2017/93834 Erection of single storey side and rear extension Lansdowne House, Lane Bottom, Wooldale, Holmfirth.

**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:



### **Planning Sub-Committee (Huddersfield Area) - 4 January 2018**

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

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

For: Councillors Bellamy, E Firth, Homewood, Lawson, Lyons, McGuin, Sims, Sokhal, Ullah and Wilkinson (10 votes).

Against: (0 votes).

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## 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: 22 FEBRUARY 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.

|   |  |
|---|--|
| <b>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?</b> | <b>Not applicable</b>  |
| <b>Key Decision - Is it in the <a href="#">Council's Forward Plan (key decisions and private reports)</a>?</b>                                    | <b>No</b>  |
| <b>The Decision - Is it eligible for "call in" by Scrutiny?</b>   | <b>No</b>  |
| <b>Date signed off by Service Director - Economy, Regeneration &amp; Culture</b>  | <b>Paul Kemp<br/>13 February 2018</b>  |
| <b>Is it also signed off by the Assistant Director for Financial Management, IT, Risk and Performance?</b>  | <b>No financial implications</b>   |
| <b>Is it also signed off by the Assistant Director - Legal Governance and Monitoring?</b>   | <b>No legal implications</b>   |
| <b>Cabinet member portfolio</b>   | <b>Economy (Strategic Planning, Regeneration &amp; Transport)<br/>(Councillor P McBride)</b> |

**Electoral wards affected: Colne Valley; Crosland Moor and Netherton; Greenhead;**

**Ward councillors consulted: No**

**Public or private:**

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## 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 Decision for 3 joint appeals (2 enforcement notices and 1 refused application) heard at an informal hearing concerning land at New Hey Road, Scammonden, all delegated officer decisions.

1. Enforcement Notice (COMP/14/0171) requiring removal of a hard surface and restoration of the land to its previous condition. Appeal allowed and enforcement notice quashed. Temporary planning permission granted for 3 years on deemed application 2017/91180.

2. Enforcement Notice (COMP/14/0171) requiring cessation of use of land as a caravan site. Appeal allowed and enforcement notice quashed. Temporary planning permission granted for 3 years on deemed application 2017/92860.

3. Application number 2017/90562 for change of use of land for residential caravan/mobile home site and amenity building. Appeal allowed and temporary planning permission granted for 3 years.

All three of the appeal decisions are subject to conditions. If some of those conditions are not discharged, the temporary permission is reduced to 6 months from the date of the discharge of condition deadline. Conditions are listed in paragraphs 79 – 81 of the decision. The permission is personal to a listed number of people and their resident dependants, limited to no more than 8 caravans.

2.2 2017/62/90078/W - Erection of attached dwelling adj, 1, Yew Green Avenue, Lockwood, Huddersfield, HD4 5EW. (Officer) (Dismissed)

2.3 2017/62/90463/W - Demolition of existing garage and erection of one dwelling (within a Conservation Area) at 3, Grange Avenue, Birkby, Huddersfield, HD2 2XJ. (Officer) (Dismissed)

2.4 2017/57/91755/W - Deemed application via Enforcement Appeal for erection of extension at 220, Manchester Road, Thornton Lodge, Huddersfield, HD1 3JF. (Officer) (The appeal was dismissed and the enforcement notice upheld. Planning permission was refused for the deemed planning application. The period of compliance to remove the extension was varied to 6 months.)

## **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](mailto:mathias.franklin@kirklees.gov.uk)
- 9. Background Papers and History of Decisions**  
Not applicable
- 10. Service Director responsible**  
Paul Kemp

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## Appeal Decisions

Hearing Held on 10 October 2017

Site visit made on 10 October 2017

**by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor**

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

**Decision date: 15 December 2017**

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### **Appeal A: APP/Z4718/C/17/3170386**

**Land to the South Side of New Hey Road, Scammonden, Huddersfield, West Yorkshire, HD3 3FT**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Thomas Ward against an enforcement notice issued by Kirklees Metropolitan Borough Council.
- The enforcement notice, numbered COMP/14/0171, was issued on 12 January 2017.
- The breach of planning control as alleged in the notice is without planning permission engineering operations consisting of the excavation of land and deposit of crushed rock/stone and road planings to create a hard surface and access.
- The requirements of the notice are within four weeks from the date this notice takes effect remove all crushed rock/stone and road planings from the site and restore the land to its previous condition.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and temporary planning permission is granted in the terms set out below in the Formal Decision.**

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### **Appeal B: APP/Z4718/C/17/3179961**

**Land to the South Side of New Hey Road, Scammonden, Huddersfield, West Yorkshire, HD3 3FT**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr John Ward against an enforcement notice issued by Kirklees Metropolitan Borough Council.
- The enforcement notice, numbered COMP/14/0171, was issued on 1 June 2017.
- The breach of planning control as alleged in the notice is without planning permission: The material change of use of land from agriculture to caravan site.
- The requirements of the notice are within six months from the date that this Notice takes effect cease the use of the land as a caravan site and remove from the site all caravans and other vehicles associated with the use of the land.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended

**Summary of Decision: The appeal is allowed, the enforcement notice corrected and quashed and temporary planning permission is granted in the terms set out in the Formal Decision.**

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### **Appeal C: APP/Z4718/W/17/3176204**

**Land to the South Side of New Hey Road, Scammonden, Huddersfield,**

### **West Yorkshire, HD3 3FT**

- 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 Thomas Ward against the decision of Kirklees Metropolitan Borough Council.
- The application Ref 2017/62/90562/W, dated 17 February 2017, was refused by notice dated 26 April 2017.
- The development proposed is described in the application as the “change of use of land for use as a residential caravan site for 4 gypsy households, each with two caravans including one static caravan and an amenity building. Retention of hardstanding and earth embankment.”

**Summary of Decision: The appeal is allowed, and temporary planning permission is granted in the terms set out below in the Formal Decision.**

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### **Procedural and preliminary matters**

1. The Council’s letter to notify interested parties of the hearing arrangements was sent on 4 October 2017, just 6 days before the hearing, although the Regulations indicate that not less than 2 weeks’ notice should be given. Nonetheless, some interested parties attended the hearing and others who had previously made representations were given a further opportunity to make written comments after it closed.
2. Those representations received after the hearing closed are referred to in the list of documents at the end of this decision. For the avoidance of doubt, I have taken account of all of the oral and written evidence. I am satisfied that interested parties were not prejudiced by the late notification of the hearing.
3. The notice the subject of appeal B simply alleges a change to use as a “caravan site.” However, it is clear that the use is as a residential caravan site and the appeals have been argued on that basis. I will therefore correct the allegation to insert the word “residential” and this will necessitate a consequential variation of the requirement. No injustice will result from this.
4. The description of the development in the planning application included: “Retention of hardstanding and earth embankment.” As retention is not an act of development, I shall treat the application as being for “the change of use of land for use as a residential caravan site for 4 gypsy households, each with two caravans including one static caravan and an amenity building and the laying of hardstanding and construction of an earth embankment.”

### **APPEALS A and B on ground (a)/the deemed applications for planning permission and APPEAL C**

#### ***Main Issues***

5. The appeal site lies within the Green Belt (GB), as allocated in the Kirklees Unitary Development Plan (UDP), adopted March 1999. No saved UDP policies controlling development in the GB have been drawn to my attention but it was common ground that, under paragraph 16 of Planning Policy for Traveller Sites (PPTS), the change of use to a traveller site constitutes inappropriate development in the GB.
6. Furthermore, having regard to the National Planning Policy Framework (The Framework), it is clear that a material change of use to any residential caravan site will constitute inappropriate development. It was further agreed that the

engineering operations the subject of appeals A and C are inappropriate development, given that they involve some loss of openness and encroachment on the countryside. The construction of the proposed amenity buildings would also be inappropriate development.

7. The Framework states that inappropriate development is, by definition, harmful to the GB and that substantial weight should be given to that harm.
8. Accordingly, the main issues are:
  - Whether there is any additional harm, over and above the harm by reason of inappropriateness, in terms of:
    - The impact on openness and the purposes of including land in the GB;
    - The impact on the character and appearance of the area;
    - The accessibility of the site; and
    - The impact of the development on the South Pennine Moors Special Area of Conservation (SAC)/Special Protection Area (SPA);
  - Whether the development amounts to intentional unauthorised development, having regard to the Written Ministerial Statement (WMS) of 17 December 2015 and, if so, what weight should attach to this;
  - 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 required to justify the development, with regard to the case for temporary and/or personal planning permission; Human Rights and the best interests of the children; and the Public Sector Equality Duty. (Considerations put forward in favour of the appeals include: the need for and supply of gypsy and traveller sites; economic, social and environment benefits of the appeal traveller site; and the personal needs and circumstances of the appellants and their families).

## **Reasons**

### ***Openness and GB purposes***

9. The operational development the subject of appeal A has been completed, and the material change of use subject to appeals B and C has taken place. The only element of the overall scheme which has not been undertaken is the erection of 4 proposed amenity buildings.
10. The laying of some 3000 m<sup>2</sup> of hard surface on what was previously an open, undeveloped grass field on rising land has reduced the openness of the GB, in its own right and by facilitating the residential use of the land. The 2 – 3 m high earth embankment hides much of that surface from public view, but that does not alter the physical reality of openness being diminished. Moreover, given its square formation, short steep slopes and uniform height, the embankment is itself clearly a man-made feature which reduces openness.
11. The existing operational development was undertaken by the previous owner, rather than the current occupiers, but there is no indication that it was carried out for any agricultural purpose suitable to the location. Its purpose is now simply to serve and enclose the caravan site.
12. The residential use of the site is facilitated by the stationing of 4 static caravans. Caravans are moveable by definition, even if they cannot be towed, and so such structures can have less impact on openness than permanent buildings. However, in practice under this scheme, static caravans are always likely to be present on the site. It could also be expected that 4 touring

caravans and vehicles such as transit-sized vans would be there for much of the time. The residential use itself therefore also reduces openness and the amenity buildings would add to this impact, along with general residential paraphernalia and activity.

13. As confirmed in *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466, openness has a visual dimension. The embankment and access road are visible from the A640 New Hey Road. Whilst the impact could be softened by native tree planting on the slopes of the embankment and the area between it and the road, this would not prevent roadside views of the caravans and other structures within the site; indeed it would not be intended to hide them. The existence of development on previously undeveloped and open land would remain apparent.
14. There are longer views of the site from higher levels on the A640 and close views from the public footpath which leads up the hill, immediately to the west and south of the appeal site. Even if it were entirely hidden from view, the development would reduce openness as a matter of fact, but that impact is also experienced visually in this case. I also find that development in this area is sparse and the appeal scheme extends into the rising open land comprising mixed grazing fields and moorland to the south of New Hey Road. It therefore conflicts with one of the purposes of GB, namely to assist in safeguarding the countryside from encroachment.
15. The area is not entirely free from development. Immediately to the north-east of the appeal site are the rubble remains of a dwelling which was destroyed by fire. Planning permission Ref 16/91327 has been granted to reconstruct the building as 2 dwellings. There are farm buildings and a farm house further to the east and, immediately to the west of the appeal site, there is a hard-surfaced car park, with a wide frontage to New Hey Road. This served the former Nont Sarahs public house opposite, which is now being converted to a dwelling, with the benefit of planning permission granted in April 2017. To the west of that car park, but separated from it by a field, lies the Moorland Lodge restaurant, which also has a sizeable car park on its west side.
16. In this context, I conclude that the loss of openness and encroachment into the countryside caused by the development is moderate. Nevertheless, there is still harm to the GB, and the Framework is clear that any harm to the GB carries substantial weight.

### ***Character and appearance***

17. Notwithstanding the impact of the A640 and the other nearby development, the site does lie in a picturesque, predominantly open moorland landscape and caravans are by their nature highly visible. Notwithstanding, the earth embankment, the upper sections of the appellants' caravans are visible from the road when passing the site. They can also be seen in longer views from higher ground on the road. Of course the man-made earth embankment itself is apparent and the proposed amenity buildings would add to the impact. From the nearby footpath, there are more significant views into the site, such that all of the structures, hard surface, residential paraphernalia and activity are apparent.
18. All of these elements result in some detrimental intrusion into the open countryside. However, PPTS accepts that gypsy and traveller sites may be

located in the countryside and they should not be hidden from view by hard landscaping, high fences or walls; a degree of visibility is therefore to be expected.

19. The appellant suggests that planting could create the impression of a copse and that, without trying to hide the development, this would enable it to blend into the landscape. PPTS acknowledges that soft landscaping can positively enhance the environment and increase openness. Landscaping could soften the appearance of this development to a degree, but it would still constitute an intrusion onto the formerly open hillside. In any event, whilst other buildings in the vicinity have some limited and often non-native tree and shrub planting around them, copses are not especially characteristic of this particular location, compared to lower down the valley slopes. I am not persuaded that the proposed landscaping, on and in front of the earth embankment, would positively enhance the environment and increase openness in this case; it could even reinforce the prominence of the site.
20. I conclude on this issue that the development causes moderate harm to the character and appearance of the area, contrary to saved UDP policies BE1, BE2 and D2. In broad terms, these policies together seek to safeguard visual amenity and the character of the surroundings.

### ***The accessibility of the site***

21. The Council's reasons for refusing the application included that the site was considered to be in an unsustainable location due to remote access to public transport, amenities and services, contrary to saved UDP Policy T1 and PPTS.
22. The site is in the open countryside outside any existing settlement. On a day-to-day basis, the occupants have to travel: some 2 miles to the nearest shop on New Hey Road; about 4 miles to the nearest large supermarket; 6 miles to the children's primary school; 4 miles to the GP surgery; 6 miles to the hospital; and 7 miles into the centre of Huddersfield. There is no easily accessible bus service and they are inevitably dependant on the private car.
23. Policy T1 seeks to minimise the need to travel and to locate new development where it can best be served by public transport, while Paragraph 17 of the Framework looks to focus significant development in locations which are or can be made sustainable. Paragraph 34 states that developments which generate significant movement should be located in areas where travel can be minimised and the use of sustainable modes maximised, taking account of the rural context where necessary. However, I find that a gypsy and traveller site with 4 pitches could not be said to constitute significant development or generate significant movement.
24. More importantly, and notwithstanding the presumption against such development in the GB and the very strict limit advocated by PPTS on development in the open countryside, PPTS accepts that gypsy and traveller sites can be in rural locations. In this context, it is relevant that paragraph 29 of the Framework acknowledges that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. Daily travel of the kind undertaken by the site occupiers is common in rural areas.
25. Paragraph 13 of PPTS also seeks to ensure that traveller sites are sustainable economically, socially and environmentally and, in respect of transport issues,

this means developing policies to provide settled bases which reduce the need for long-distance travelling. By definition, gypsies and travellers are nomadic and travel is part of their way of life. However, a settled base would reduce the need for frequent long distance travel, not least in order to find places to stay.

26. During the hearing, the Council accepted that, having regard to Government policy, the location of the site did not harm the objectives of sustainable development, so as to form a separate justification for refusal of permission. However, it contended that the distance from the school meant that access to it should not contribute to the existence of very special circumstances. I share that view, but will return to the other aspects of sustainability set out in PPTS later in this decision.
27. I conclude that the development would be liable to generate travel by private vehicle on a day-to-day basis, in conflict with UDP Policy T1. However, it would not result in greater harm in this respect than another rural development of the same size permitted by PPTS or the Framework, and so the location of the site in relation to shops and services would not count against or for the appeals.

### ***The impact on the South Pennine Moors SAC/SPA***

28. Though this was not a reason for refusal of the planning application or for issuing either enforcement notice, the Council says the site lies about 1.2 km from the South Pennine Moors SAC/SPA. This was also a concern raised by local people and, in commenting on the planning application, a Halifax resident referred to the South Pennine Moors' designation as a Site of Special Scientific Interest (SSSI).
29. Whilst the Council's Conservation and Design (Biodiversity) Officer did not attend the hearing, he did comment on the planning application. He said that, though the level of additional human activity was not considered sufficient to result in impacts to the habitats for which the SAC is designated, it has "the potential to disturb foraging birds and result in a detrimental effect on the SPA." At the hearing, the Council's officers said, having consulted with the Biodiversity Officer, the SPA was classified because it provides a habitat for an important assemblage of moorland breeding birds, particularly golden plover, which can travel up to 7 km to forage.
30. Before deciding to give permission for any plan which is "likely to have a significant effect" on a European Site, such as an SPA, a competent authority, must make an "appropriate assessment" of the implications for that site. The Council's evidence is that the development "has the potential to disturb foraging birds" and it says the first stage is to screen the project for "likely significant effects." For this, it is said that an ecological consultant should provide a statement. However, the applicant was not requested to provide one with the application.
31. The Framework says local planning authorities should set criteria based policies against which proposals for any development on or affecting protected wildlife areas will be judged. Furthermore, development in or outside a SSSI which is likely to have an adverse effect on it should normally be refused. The Council did not dispute the appellant's planning consultant's evidence that increases in residential activity will often be prevented within 400m of the designated area and, beyond that, policies may require contributions to the provision of Suitable Alternative Natural Greenspace. However, no criteria based policies

are in place. Furthermore, the Council also did not dispute the appellants' evidence that, where they do exist, the aim of policies is to prevent use of the protected areas as recreational areas and avoid disturbance from pets.

32. Golden plover may forage in the vicinity of the appeal site and indeed much further afield, so there is the potential for human activity on the appeal site to disturb foraging birds. However, the evidence before me does not indicate that this development on this site, some 1.2 km from the designated area, is "likely to have a significant effect" on it. I am therefore satisfied that an appropriate assessment is not required and that any impact on the SAC/SPA/SSSI would not require refusal of planning permission under the Framework.

### ***Intentional unauthorised development***

33. I have had regard to the WMS, which indicates that intentional unauthorised development is a material consideration. However, the Council did not urge me to attach significant weight to it. In any event, I note that in this case, the operational development was not carried out by the current occupiers. Whilst they were aware that they did not have planning permission for the use of the site, they submitted a planning application soon after occupying it and before the change of use enforcement notice was issued.
34. Furthermore, I find below that there is not only a general shortage of traveller sites in this borough, but also that the occupiers have personal needs for such a site. It is also common ground that there are no available authorised sites in the area. In all the circumstances, the fact that the unauthorised change of use was deliberate carries very limited weight against the appeals.

### ***Other considerations***

#### *General need for and supply of gypsy and traveller sites*

35. The planning application the subject of appeal C was for a gypsy site and the appellants' cases on appeals A and B ground (a) also depend on this being a gypsy site. PPTS paragraph 10 requires local planning authorities to identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against locally set targets.
36. The Council's targets are derived from the Kirklees Gypsy and Traveller and Travelling Showperson Accommodation Assessment, August 2015 (GTAA). This indicates that 10 pitches are needed for the first 5 years, which includes provision for travellers who currently live in conventional housing, but might be expected to require a site from which to pursue their traditional way of life.
37. There is clearly an unmet need for gypsy and traveller sites. The Council concedes that it cannot identify any pitches to meet the need identified in the GTAA or demonstrate that it has a 5 year supply of specific deliverable sites. It follows that the Council has an immediate need for at least 10 pitches to meet the needs of the traveller community and has failed to identify a supply of sites to meet its 5 year needs as required by PPTS. I am satisfied that these factors carry moderate weight in the balance in favour of the appeals.

### Alternative accommodation

38. The Council did not dispute the appellants' claims that the availability of caravan sites in West Yorkshire as a whole is very low and that sites in Barnsley are full, as is the only public site in Leeds (Cottingley Fields).
39. The appellants also said that Barnsley and Wakefield Councils have approved sites in the GB, at Royston and Pineapple Farm respectively, as they were the only sites available. However, I was not provided with any other information regarding the background or circumstances and I do not attach significant weight to those particular decisions.
40. Nevertheless, that there is a lack of any suitable and available alternative sites also adds moderate weight to the case for the appeals.

### Policy

41. The 1999 UDP did not allocate any gypsy and traveller sites. Furthermore, since UDP Policy H14 was not saved in 2007, there have been no criteria-based development plan policies to facilitate the provision of such sites, as now required by PPTS paragraph 11. The development plan fails to include any mechanism by which the shortage of traveller sites could be redressed, or a 5 year supply of sites could be identified, in conflict with Government policy.
42. On the day of my hearing, the Examination in Public opened into the Kirklees Local Plan. The appellants noted that the Publication Draft Local Plan again contains no criteria based policies, contrary to PPTS, but it is not for me to make a judgement on the soundness of the plan. The Publication Draft proposes to allocate 12 permanent pitches and 8 transit pitches at a site in Bankwood Way. The appellants expressed some concerns about the suitability of that site, but again that matter is outside my remit.
43. I am satisfied that there is a reasonable prospect of a Local Plan being adopted with an allocation for sufficient sites to meet the Council's current 5 year land supply needs. However, the Council accepted that it could be some 2 years or more before a site is available. I conclude that there is no existing development plan policy to equip the Council to meet its needs for traveller sites and that problem will not be redressed in the short term. I also attach moderate weight to this policy failure as a consideration in favour of the appeals.

### Economic, social and environmental benefits

44. I have already alluded to PPTS paragraph 13. The appeal development provides pitches for 4 traveller households to have a settled base. It could thereby reduce not only the need for long-distance travelling, but also possible environmental damage caused by unauthorised camping by 4 households. With a registered address on the site, its occupiers could also have better access to health services and school attendance is facilitated for children.
45. In terms of both paragraphs 13 and 25 of PPTS, there is no suggestion that the site is of sufficient scale to dominate the settled community and there is no evidence that it is placing undue pressure on local infrastructure.
46. However, there are no site specific benefits of the appeal development in economic, social or environmental terms and so the lack of conflict with PPTS paragraph 13 carries little weight in favour of the appeals.



Personal circumstances

47. The appellants said that the family are Irish Travellers and they are now, and always have been, of nomadic habit of life. Although, because of difficulties with others on a gypsy and traveller site in Bolton, they were forced to live in houses in Leigh, West Manchester for about 18 months before coming to this site, the men have continued to travel for work. They typically travel for 6 – 8 months of the year, and the wives and children have travelled with them during school holidays. Their work includes: property maintenance and construction; block paving; laying tarmac; painting and decorating; buying and selling vans and caravans; and horse trading.
48. Over the last year, they have travelled throughout the UK to Birmingham, London, Coventry, Cardiff and Glasgow, as well as to Holland, Belgium, France, Italy and Ireland. Thomas Ward went to the Appleby Horse Fair in June and, whilst the appeal hearing prevented him going this year, in October 2016, he attended the Ballinasloe Horse Fair in Galway. Having heard the evidence at the hearing the Council was content that the appellants meet the definition of gypsies and travellers in PPTS. I am also satisfied of this.
49. Seven adults live on the site, namely Thomas Ward, his 3 adult sons and their wives. At the time of the hearing, there were 10 children living there, ranging in age from about 1 to 13 years. At such young ages, all of the children would patently benefit from the stability derived from living on a settled base and would be likely to experience acute disruption if they are required to leave the site with their parents, in accordance with Notice B.
50. The eldest child is not currently in school, but 4 of the children are. Two of them attend a Catholic Primary School, some 6 miles away. The extended family regularly attends the associated Church, where the parish priest is helping to get more of the children enrolled at the primary school. No special educational needs were drawn to my attention. However, when living in Leigh, the children went to a Church of England Primary School, because there were no spaces at the Catholic School, and the family felt this did not provide a suitable education for Catholic children. I am satisfied that living on the site enables and has improved school attendance.
51. There is no evidence that any occupier of the site has specific health problems, but again the children could be expected to particularly need ready access to medical services. Indeed, a health visitor regularly comes to the site to check on the youngest children and, very significantly, 2 more babies are due over the course of the next few months. Their mothers are receiving antenatal care at Huddersfield Hospital, some 6 miles from the site; they and their babies will be at vulnerable stages of life in the immediate future.
52. Aside from providing a settled base from which to travel and enabling access to education and health services, the appellants value the opportunity this site provides for the extended family to live together, offering mutual support. This is very much part of the traditional way of life of Irish Travellers. They have also engaged in other ways with the community, including commitment to a local amateur boxing club.
53. The Council indicated in its statement that, since the family had recently lived in conventional housing, it would not be unreasonable to expect them to revert to that lifestyle. However, this was before it heard and accepted the evidence

of the family's gypsy status. PPTS paragraph 3 expects local authorities to facilitate the traditional and nomadic way of life of travellers. That follows the ruling in *Chapman v UK* [2001] concerning the interpretation of the right to respect for private and family life under Article 8 of the European Convention on Human Rights (ECHR).

54. Since there is a lack of available, alternative sites, it is likely that dismissing these appeals would force the family to resort to roadside camping. With 10 young children and 2 more babies on the way, I attach significant weight to the appellants' and their family's personal circumstances.

*Other matters and the planning balance*

55. The appellants drew my attention to a July 2015 appeal decision under Ref APP/G4240/A/13/2208161, in which a 4 year temporary and personal planning permission was granted for a site for two gypsy families in the GB in Denton, Tameside. However, I attach little weight to that decision as it predates the current version of PPTS.
56. The Framework indicates that inappropriate development in the GB is harmful by definition. In accordance with the Framework, I attach substantial weight to the harm caused to the GB through inappropriateness, detriment to openness and encroachment into the countryside. I also attach moderate weight to the harm caused by the development to the character and appearance of the area.
57. My findings that the development does not cause unacceptable harm in relation to accessibility or the SAC/SPA, or by being intentional unauthorised development do not count for or against the appeals in the overall balance.
58. In favour of the appeals, I attach moderate weight to the general need for and lack of a 5 year supply of traveller sites, moderate weight to the lack of any available alternative sites and moderate weight to the failure of the Council to provide for traveller sites in the development plan. I attach little weight to the economic, social and environmental benefits of the development, but substantial weight to the personal circumstances of the site occupiers.
59. Paragraph 16 of PPTS states that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the GB and any other harm, so as to establish very special circumstances. There are additional factors in favour of these appeals but, even when taken together, they do not clearly outweigh the harm caused by the development so as to justify a grant of permanent planning permission.
60. Paragraph 27 of PPTS states that, where a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration when considering an application for a grant of temporary permission. That provision does not apply in the GB, but other considerations beyond the lack of a 5 year site supply weigh in favour of these appeals and, although the application was not specifically for temporary permission, the appellants invited me to consider this as an option.
61. In this case, I find that the personal circumstances of the site occupiers taken with the overall need for sites and the absence of any suitable alternative accommodation would justify a grant of temporary and personal planning permission. The Council agreed that, if I were to grant a temporary permission, a period of 2 – 3 years would be appropriate. Given the difficulties involved in

- delivering gypsy and traveller sites and a degree of uncertainty over the draft Local Plan allocation, it would be appropriate to grant permission on a 3 year basis.
62. If the development were only to continue for a temporary period of 3 years, this would reduce the harm by way of encroachment on the countryside and the impact on both openness and the character and appearance of the area. It would also remove the imminent risk of this family having to resort to roadside camping with 10 children and 2 more on the way. Looking at the case as a whole, in accordance with the Framework and PPTS, and with regard to all other matters raised, I conclude that other considerations clearly outweigh the harm identified so as to constitute very special circumstances justifying a grant of temporary and personal planning permission and to override the conflict with UDP Policies BE1, BE2, D2 and T1.
63. It is necessary to have regard to the appellants' and the site occupiers' rights under the *Human Rights Act 1998* (HRA). Article 8 affords the right to respect for private and family life, including the traditions and culture associated with the gypsy way of life. This is a qualified right, and interference may be justified where in the public interest. The concept of proportionality is crucial.
64. A decision which will lead to the appellants having to leave their home base will constitute a serious interference with their human rights under Article 8 of the ECHR. However, these are qualified rights. So long as it is proportionate, interference with those rights may be justified if it is in accordance with the law and is necessary in a democratic society in the interests of, for example, the economic well-being of the country, or for the protection of the rights and freedoms of others. The interference would be in accordance with the law and pursuance of a well-established and legitimate aim: the protection of the GB.
65. The human rights assessment must involve regard to the best interests of any children on the site. *ZH (Tanzania) v Secretary of State for the Home Department* [2011] and *Elizabeth Collins v SSCLG* [2013] EWCA Civ 1193 establish that the need to safeguard and promote the welfare of children is a primary consideration<sup>1</sup>. Where, as here, rights under Article 8 of the ECHR include those of children, they must be viewed in this context. The best interests of the child are not determinative, but no other consideration must be regarded as more important, or given greater weight, merely by virtue of its inherent nature, apart from the context of the individual case.
66. If the appeals were dismissed, and notwithstanding that I would have some discretion under ground (g) to extend the periods for compliance with the notices, the appellant and other site occupiers would be required to leave the site shortly before or after two babies were born. They and their mothers would experience considerable upheaval and impaired access to health services at crucial and highly vulnerable times.
67. In relation to the older children on the site, access to the Catholic Primary School, some 6 miles away, is not necessarily dependant on continued residence at the appeal site. However, there appears to be no readily available suitable alternative site or accommodation and a settled base clearly eases access to education, as well as health care facilities. It would also be in the

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<sup>1</sup> The appellant's statement had referred to *AZ v secretary of State and South Gloucestershire DC* on this point, but it was accepted during the hearing that the 2 cases to which I refer are more apt.

- best interests of the children to live on a settled base, instead of the roadside, and to enjoy the mutual support of the extended family, in accordance with the gypsy way of life, facilitated by a grant of planning permission.
68. Given the circumstances overall, I find that a grant of temporary and personal permission would be proportionate and necessary. It would protect the Green Belt in the long term whilst meeting the best interests of the children and avoiding a violation of the occupiers' rights under the HRA. The protection of the public interest cannot be achieved by means that are less interfering of their rights.
69. The Public Sector Equality Duty (PSED) as set out under the Equality Act 2010 concerns the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Since the appellants and other occupiers are Irish Travellers, they have a protected characteristic for the purposes of the PSED.
70. Whilst the Equality Act 2010 does not demand a particular outcome, I find in this case that a refusal of temporary permission for the development when it is acceptable in planning terms, on the basis of very special circumstances, would fail to foster good relations between the site occupants and the settled community. It could also lead, when there are no alternative sites, to the occupiers suffering continued disadvantages in terms of access to education and health services.
71. Thus, the PSED adds weight to my conclusion that Appeals A and B should succeed on ground (a), and the deemed planning applications should be granted and Appeal C should be allowed, all on a temporary and personal basis. The ground (g) appeals against the enforcement notices do not therefore fall to be considered.

### **Conditions**

72. The Council's list of suggested conditions related only to landscaping, land contamination and drainage. A requirement for a full landscaping scheme is unreasonable in the context of temporary permissions. The Council was concerned that material imported to create the hard surface could have been contaminated, but I was satisfied with the appellants' evidence that this is unlikely, because of the regulatory framework in place governing the disposal and recovery of road planings. This was not actively disputed by the Council. Accordingly, I consider the suggested condition unnecessary.
73. The proposed drainage condition would require the submission of a scheme for connection to the main sewer, whereas the application envisaged cess tanks. During the hearing, the appellants said connection to the main sewer would actually be easier. However, given that I am only granting temporary permissions, it would be more reasonable simply to require the submission of a scheme for the disposal of foul water.
74. Other conditions were discussed during the hearing. Given that, apart from the amenity blocks, the development has been carried out, it is not necessary to specify a time limit for commencement or general compliance with the submitted plans. However, to safeguard the character and appearance of the area and minimise the impact on the openness of the GB, the amenity

- buildings would need to be constructed in accordance with the submitted plans and any caravans should be sited within the area indicated on those plans.
75. I have found that permission should only be granted for a 3 year temporary period and so conditions will need to provide for that as well as for the submission of a site restoration scheme. Gypsy policies apply so occupancy should be limited to persons who satisfy the planning definition. Furthermore, the appellants' and their families' particular personal circumstances form a major part of the justification for the development. The permissions should therefore be personal to them.
76. In the interests of visual amenity, caravans should be limited to the number and type applied for, commercial activities should be prohibited, the size of vehicles should be limited to 3.5 tonnes and a scheme for lighting should be submitted.
77. As the development has already been undertaken, the requirement for the submission of an overall scheme will need to provide for the use to cease if it is not submitted or ultimately implemented as approved. Having regard to the terms of the enforcement notice the subject of appeal B, 6 months is a reasonable period for this, bearing in mind that further enforcement action will be required if the conditions are not complied with.
78. Even the operational development the subject of appeal A is only justified to facilitate the appellants' occupation. A condition on that permission should therefore require its removal at the end of that occupation and restoration of the land in accordance with an approved scheme. The conditions in all 3 permissions will need to be consistent, such that a single overall scheme can satisfy the requirements of each. Given the range of matters to be covered in the overall scheme, 3 months is a reasonable period for its initial submission.

## **Formal Decisions**

### ***Appeal A: APP/Z4718/C/17/3170386***

79. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely engineering operations consisting of the excavation of land and deposit of crushed rock/stone and road planings to create a hard surface and access on land to the South Side of New Hey Road, Scammonden, Huddersfield, West Yorkshire, HD3 3FT referred to in the notice and edged in red on the plan attached to that notice, subject to the following conditions:
- 1) The hard surface and access hereby permitted shall only be retained as long as the site is occupied by no one other than Thomas Ward, John Ward, Margaret Ward, Michael Ward, Donna Ward, Anthony Ward and Ellen Ward and their resident dependants and as long as they are gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy) and in any event for a maximum of 3 years from the date of this decision and thereafter they shall be removed and the land restored to its former condition in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority in accordance with condition 2) hereof.

- 2) The hard surface and access hereby permitted shall be removed within 6 months of the date of failure to meet any one of the requirements set out in i) to iii) below:
  - i) Within 3 months of the date of this decision, a scheme for the restoration of the site to its condition before the development took place, (or as otherwise agreed in writing by the local planning authority) at the end of the period of 3 years from the date of this decision, or at the end of the period during which the site is occupied only by those specified in condition 1) hereof, whichever is the shorter, (hereafter referred to as the restoration scheme) shall have been submitted for the written approval of the local planning authority and the restoration scheme shall include a timetable for its implementation.
  - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the restoration scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted site restoration scheme shall have been approved by the Secretary of State.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

**Appeal B: APP/Z4718/C/17/3179961**

80. It is directed that the enforcement notice be corrected in sections 3 and 5 by insertion of the word "residential" before "caravan." Subject to these corrections the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the use as a residential caravan site of the land to the South Side of New Hey Road, Scammonden, Huddersfield, West Yorkshire, HD3 3FT and edged in red on the plan attached to that notice, subject to the following conditions:

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
- 2) The use hereby permitted shall be carried on only by the following: Thomas Ward, John Ward, Margaret Ward, Michael Ward, Donna Ward, Anthony Ward and Ellen Ward and their resident dependants, and shall be for a limited period being the period of 3 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.
- 3) No more than 8 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than 4 shall be static caravans) shall be stationed on the site at any time.

- 4) The caravans shall be sited in accordance with plan no. PBA2 submitted with planning application Ref 2017/62/90562/W, dated 17 February 2017.
- 5) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 6) No commercial activities shall take place on the land, including the storage of materials.
- 7) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 6 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
  - i) Within 3 months of the date of this decision, a scheme for: the means of foul water drainage of the site; proposed and existing external lighting on the boundary of and within the site (which shall provide for the removal of any existing lighting which is not approved pursuant to this condition); and the restoration of the site to its condition before the development took place, (or as otherwise agreed in writing by the local planning authority) at the end of the period for which planning permission is granted for the use, or at the end of the period during which the site is occupied by those permitted to do so, as appropriate (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the site development scheme shall include a timetable for its implementation.
  - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the site development scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
  - iv) The approved site development scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved site development scheme specified in this condition, the approved foul drainage and external lighting shall be maintained throughout the life of the permission.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

***Appeal C: APP/Z4718/W/17/3176204***

81. The appeal is allowed and planning permission is granted for the change of use of land for use as a residential caravan site for 4 gypsy households, each with two caravans including one static caravan and an amenity building and the laying of hardstanding and construction of an earth embankment at land to the South Side of New Hey Road, Scammonden, Huddersfield, West Yorkshire, HD3 3FT in accordance with the terms of the application,

Ref 2017/62/90562/W, dated 17 February 2017, and the plans submitted with it, subject to the following conditions:

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
- 2) The use hereby permitted shall be carried on only by the following: Thomas Ward, John Ward, Margaret Ward, Michael Ward, Donna Ward, Anthony Ward and Ellen Ward and their resident dependants, and shall be for a limited period being the period of 3 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.
- 3) The hardstanding and earth embankment hereby permitted shall only be retained as long as the site is occupied by no one other than Thomas Ward, John Ward, Margaret Ward, Michael Ward, Donna Ward, Anthony Ward and Ellen Ward and their resident dependants and as long as they are gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy) and in any event for a maximum of 3 years from the date of this decision and thereafter they shall be removed and the land restored to its former condition in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority in accordance with condition 9) hereof.
- 4) No more than 8 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than 4 shall be static caravans) shall be stationed on the site at any time.
- 5) The caravans shall be sited in accordance with plan no. PBA2.
- 6) The amenity buildings hereby permitted shall be constructed in accordance with the following approved plans: PBA2 and PBA4.
- 7) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 8) No commercial activities shall take place on the land, including the storage of materials.
- 9) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed together with the hardstanding and earth embankment hereby approved within 6 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
  - i) Within 3 months of the date of this decision and notwithstanding any details shown on the submitted plans, a scheme for: the means of foul water drainage of the site; proposed and existing external lighting on the boundary of and within the site (which shall provide for the removal of any existing lighting which is not approved pursuant to this condition); and the restoration of the site to its condition before the development took place, (or as otherwise agreed in writing by the local planning authority) at the end of the period for which planning permission is granted for the use, or the site is occupied by those permitted to do so, as appropriate



(hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the site development scheme shall include a timetable for its implementation.

- ii) If within 11 months of the date of this decision the local planning authority refuse to approve the site development scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
- iv) The approved site development scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved site development scheme specified in this condition, the approved foul drainage and external lighting shall be maintained throughout the life of the permission.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

*J A Murray*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Philp Brown BA(Hons) MRTPI  
Michael Ward  
Donna Ward  
Ellen Ward  
Anthony Ward  
Tom Ward  
John Ward  
Margaret Ward

### FOR THE LOCAL PLANNING AUTHORITY:

Julia Steadman, Team Leader (Development Management), Kirklees Council  
Paul Wood, Planning Enforcement Officer, Kirklees Council

### INTERESTED PERSONS:

Mr S Kaye  
Mr A Crowe

### DOCUMENTS SUBMITTED AT AND AFTER THE HEARING

- 1 The Council's notice of the hearing in relation to the enforcement appeals dated 15 September 2015
- 2 Bundle of correspondence comprising letters from: the children's primary school; a local amateur boxing club; the occupiers of Watermans House, Scammonden; friends and family of the occupiers of Watermans House
- 3 Kirklees Unitary Development Plan Policies BE1, BE2, D2, G6, T1, and EP11
- 4 Officer's report concerning application Ref 16/91327 to rebuild the fire damaged building on land adjacent to the appeal site as 2 dwellings
- 5 Correspondence received from interested parties after the close of the hearing in response to the Council's further notice, comprising emails from Nicola Black and Mark Jordan, both dated 10 October 2017.



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# Appeal Decision

Site visit made on 16 January 2018

by **I Jenkins BSc CEng MICE MCIWEM**

an Inspector appointed by the Secretary of State

Decision date: 7 February 2018

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**Appeal Ref: APP/Z4718/W/17/3185051**

**1 Yew Green Avenue, Lockwood, Huddersfield, HD4 5EW**

- 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 Inderpaul Singh Birk against the decision of Kirklees Metropolitan Borough Council.
  - The application Ref 2017/62/90078/W, dated 16 December 2016, was refused by notice dated 23 March 2017.
  - The development proposed is construction of an end of terrace dwelling.
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## Decision

1. The appeal is dismissed.

## Main Issue

2. I consider that the main issue in this case is the effect of the proposal on the living conditions of neighbouring residents, with particular reference to outlook and light.

## Reasons

3. The Council has confirmed that it is unable to demonstrate a 5-year supply of deliverable housing sites, contrary to the requirements of the *National Planning Policy Framework* (the Framework). In such circumstances, the Framework indicates that relevant policies for the supply of housing should not be considered up-to-date and planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.

### *Living conditions*

4. No. 1 is a semi-detached house, the northern side elevation of which faces towards the rear elevation of a row of terraced dwellings. The terrace includes Nos. 23, 25 and 27, each of which has habitable room windows that face towards the appeal site. The gap between No. 1 and that neighbouring terrace comprises part of the side garden of the appeal property, which includes a pitch roofed single garage, and the adjoining gardens/yards of a number of the terraced properties.
5. The appellant has indicated that the appeal scheme has been designed to overcome the reasons for refusal that led to the dismissal in 2016 of appeal Ref. APP/Z4718/W/15/3133875, which involved a proposal to erect a detached

- dwelling adjacent to No. 1. Whilst I have had regard to the findings of my colleague, the current appeal scheme differs from the previous proposal in a number of respects and I have considered it on its own merits. The scheme involves the construction of a new dwelling, which would adjoin the northern 2-storey sidewall of No. 1 and would have a hipped main roof. A single-storey annexe, with a mono-pitch roof, would project from the 2-storey rear wall of the proposed house and would be set back from the alignment of 2-storey northern sidewall of the proposed building.
6. Policy BE12 of the *Kirklees Unitary Development Plan, 1999* (UDP) indicates that new dwellings should be designed to provide physical separation from adjacent property and the minimum acceptable distance between a habitable room window of a dwelling and a blank wall will normally be 12 metres. Whilst the appellant has indicated that the majority of the proposal would meet this requirement, part would not. The 2-storey rear corner of the development would be closest to the neighbouring terrace.
  7. I understand that No. 23 is a back-to-back dwelling with a single aspect, facing towards the appeal site. Whilst it appears, from the evidence presented, that the ground floor habitable room window of No. 23 would face more directly towards the proposed single-storey rear annexe, views from that window of the proposed 2-storey building would not be oblique. Notwithstanding that the separation distance may slightly exceed the 12 metre guideline, I consider that, due to its proximity and scale, the proposed dwelling would dominate the outlook from the room served by that neighbouring window. I regard it as overdominant and unneighbourly.
  8. The proposal would be sited to the south of Nos. 23, 25 and 27 and the appellant has provided a solar shading diagram to indicate the likely impact on the sunlight those properties receive. I agree with the Council, it appears to indicate that whilst the neighbouring garden/yard areas of Nos. 23, 25 and 27 are already overshadowed to some extent by No. 1, the adverse impact of the proposal would be even greater. Given the limited size of those neighbouring external amenity areas, I regard the adverse impact as significant.
  9. In my judgement, neither the planting within the garden of No. 23, which appears to be limited in height and density, nor existing boundary fencing is likely to overshadow the garden/yard areas of Nos. 23, 25 and 27 to as great an extent as the proposal. I give little weight to the appellant's contention that those neighbouring external amenity areas were overshadowed in the past by trees within the appeal site, given that the trees referred to were apparently removed a number of years ago.
  10. The appellant has indicated that he discussed his proposal with neighbouring residents and they do not object to the scheme. However, I have not received any correspondence in support of the scheme from the residents of the neighbouring terrace. I consider that the propensity of local residents to object to a proposal can be influenced by a number of factors and a lack of objection cannot automatically be interpreted as a sign of support. Furthermore, even if the existing occupiers of the neighbouring terrace do not object, it is also important to have regard to the interests of future residents. Under the circumstances, the lack of objections from neighbouring residents does not weigh heavily in favour of the proposal.

11. I conclude overall, that the proposed development would cause substantial harm to the living conditions of occupants of neighbouring dwellings, with particular reference to outlook and light. In this regard it would conflict with UDP Policies D2 and BE12, which are consistent with the aim of the Framework to secure a good standard of amenity for all existing and future occupants of land and buildings, and so I give those conflicts significant weight.

*Other matters*

12. Given that the Council is unable to demonstrate a 5-year supply of deliverable housing sites, I give the small contribution that the proposal would make to housing land supply and the housing stock in the area moderate weight.
13. Whilst I note the appellant's concerns regarding the manner in which the Council has handled the planning application subject of this appeal, they do not alter the planning merits of the proposed development upon which my decision is based.

*Conclusions*

14. I conclude on balance that the likely adverse impacts of the appeal scheme would significantly and demonstrably outweigh the benefits and it would conflict with the Development Plan taken as a whole. Furthermore, it would not amount to sustainable development under the terms of the Framework. For the reasons given above, I conclude that the appeal should be dismissed.

*I Jenkins*

INSPECTOR



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## Appeal Decision

Site visit made on 11 December 2017

by **Andrew McGlone BSc MCD MRTPI**

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

Decision date: 20 December 2017

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**Appeal Ref: APP/Z4718/W/17/3183266**

**3 Grange Avenue, Birkby, Huddersfield HD2 2XJ**

- 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 Ghulam Rasool against the decision of Kirklees Metropolitan Borough Council.
  - The application Ref 2017/62/90463/W, dated 31 January 2017, was refused by notice dated 12 June 2017.
  - The development proposed is the demolition of existing single storey garage and erection of one detached dwelling.
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. I understand that the Council has submitted its Local Plan to the Secretary of State on 25 April 2017 for Examination in Public. However, the Council do not rely upon any policies in the Local Plan. While the Council suggest that the Local Plan policies do not vary from those saved in the Kirklees Unitary Development Plan (UDP), I do not know if there are any unresolved objections to the policies or whether they are consistent with the policies in the National Planning Policy Framework (the Framework). Thus, I give them little weight.

### Main Issues

3. The main issues are whether the proposed development would: (i) preserve or enhance the character or appearance of the Birkby Conservation Area (BCA), with particular regard to its siting, scale and relationship with nearby properties; and (ii) result in an overbearing impact on the living conditions of occupants of 174 and 176 Birkby Hall Road.

### Reasons

#### *Character or appearance*

4. The appeal site is part of the side and rear garden that forms one half of a semi-detached pairing in a residential area. A detached timber garage is in the side garden. The driveway in front of the garage is next to the driveway of No 174 and a path to No 176. They form a visual and physical break between the two storey dwellings on Grange Avenue and Birkby Hall Road.
5. Ground levels rise to the rear of the site which shares common boundaries with the rear gardens of properties on Birkby Hall Road and Elmfield Road. Timber

fences line the boundaries at the rear, while a low wall extends from the garage to Grange Avenue. Dwellings in Grange Avenue typify the varied design, style and form that characterises the BCA. There are detached and semi-detached dwellings as well as terraced properties. Each property is two storeys high with a gable or hipped roof. They are finished in brick, smooth render or pebble dash or a combination of them.

6. The proposed two storey dwelling would change the semi-detached pairing into a terrace resulting in an interface distance of about 10 metres between the rear elevations of Nos 174 and 176 and their habitable rooms. Thus, the proposal would not accord with the minimum standard in saved UDP Policy BE12. Although the existing garage is closer than the proposal, it is single storey in height and thus the two forms of development are not the same.
7. Despite the high density form of development on the opposite side of Grange Avenue, the proposal would reduce the physical separation between Nos 3 and 174 and 176; a characteristic on the south-west side of Grange Avenue. Even though suitable materials would be used, and the appellant has sought to respond to the comments of the Council's Conservation and Design Officer, the proposal would not be a sympathetic addition to Grange Avenue or the BCA due to its size and layout. It would result in a cramped form of development.
8. While saved UDP Policy BE12 does indicate that the separation distance can be lowered, the proposed dwelling is not an innovative design nor would landscaping along the boundary mitigate for the loss of the physical separation. In fact, if the landscaping was particularly high, it would compound the harm.
9. Despite the proposed layout, building line and dormer window, the harm to the BCA would be less than substantial, with regards to Framework paragraph 134. This still amounts to a harmful impact which adversely affects the significance of the BCA as a heritage asset. Public benefits would arise from: the efficient use of a sustainable site for a new dwelling that would help tackle climate change and make a modest contribution to the supply of housing in the area; an internal and external layout that would benefit the occupants' wellbeing; off-street car parking provision that would reduce reliance on-street car parking; and short-term economic benefits through skilled construction jobs for local people and the purchase of building materials in the area. I accept different design options have been looked at and the appellant tried to engage with local ward councillors. However, the harm to the BCA and the site would, to which I attach considerable importance and weight, in my view, clearly outweigh these modest public benefits.
10. I conclude, on this issue, that the proposed development would not preserve or enhance the character or appearance of the BCA, with particular regard to its siting, scale and relationship with nearby properties. The proposal would not accord with saved UDP Policies D2 (ii, vi and vii), BE1 (i, ii and iv), BE5 and BE12 (ii) and paragraph 134 of the Framework. Together, among other things, these seek good quality design that is in keeping with the identity of the surrounding built environment in respect of physical separation, design and layout so that schemes are visually attractive; in character with their surroundings and avoid being an over-development.
11. While the appellant refers to Planning Policy Statement 5: Planning for the Historic Environment, this document was revoked by the Framework.

### *Living conditions*

12. The north facing rear elevations of Nos 174 and 176 are side on to the appeal site. They have windows at ground and first floor serving habitable and non-habitable rooms. Of the habitable rooms, there is a dining/activity room in the ground floor of No 174. At first floor there is a bedroom. In No 176 there is a kitchen/diner at ground floor and a bedroom at first floor.
13. The purpose behind saved UDP Policy BE12 (ii) is to ensure privacy and open space for neighbouring occupants. The physical separation between No 3 and Nos 174 and 176 ensures that the built form does not have an overbearing or oppressive effect on residents living conditions. The proposed blank two storey gable elevation would be far closer to the habitable windows in Nos 174 and 176. This would be a dominate form of development.
14. Although the appellant refers to criterion iii) of saved UDP Policy BE12, the appeal site is not undeveloped land. Furthermore, the existing distance between Nos 174 and 176 exceeds the standards sought by the UDP. The respective houses also pre-date the UDP. I recognise the distance can be reduced if there would be no detriment caused to existing occupiers through permanent screening. Evergreen conifer trees would help screen the proposal. However, very tall trees would shorten the interface distance further and amplify the overbearing nature of the proposal. I am also not certain that the trees would stay in place in perpetuity.
15. I note the relationship to the rear of 180 Birkby Hall Road, but as I do not have any details of whether the properties were built after the UDP was adopted or what rooms the windows serve, I attach this example little weight. In terms of privacy, given the proposed front and rear outlook and the proposed use of obscure glazing for the bathroom and attic, no harm would be created.
16. I conclude, on this issue, that the proposed development would result in a significant overbearing impact on the occupants of Nos 174 and 176. The proposal would not accord with saved UDP Policy D2(v) and BE12(ii) and paragraph 17 of the Framework. Jointly, among other things, these seek to secure a good standard of residential amenity for all existing and future occupants of land and buildings.

### **Conclusion**

17. The Council are currently unable to demonstrate a five-year supply of deliverable housing sites as required by Framework paragraph 47. Even so, footnote 9 to the fourth bullet point of Framework paragraph 14 indicates that specific policies include those relating to designated heritage assets such as the BCA. This means that the tilted balance of paragraph 14 does not apply as there are specific policies in the Framework that indicate development should be restricted and planning permission refused.
18. For the reasons set out above, I conclude that the appeal should be dismissed.

*Andrew McGlone*

INSPECTOR



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## Appeal Decision

Site visit made on 28 November 2017

**by Susan Wraith Dip URP MRTPI**

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

**Decision date: 04 January 2018**

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**Appeal Ref: APP/Z4718/C/17/3171811**

**220 Manchester Road, Thornton Lodge, Huddersfield, West Yorkshire HD1 3JF**

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Paul Cooper [hereafter "the appellant"] against an enforcement notice issued by Kirklees Council [hereafter "the Council"].
  - The notice was issued on 27 February 2017.
  - The breach of planning control as alleged in the notice is: Without planning permission:- The erection of a front and side extension.
  - The requirements of the notice are: Within 3 months of the date that this notice takes effect demolish the side and front extension, remove the resultant debris from the land and reinstate the land and building to its condition prior to the unauthorised development.
  - The period for compliance with the requirements is three months.
  - The appeal is proceeding on the grounds set out in s174(2)(a) and (g) of the Act. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.
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### Decision

1. It is directed that the enforcement notice be varied, in paragraph 5, by the deletion of "Within 3 months" and the substitution of "Within 6 months". Subject to this variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under s177(5) of the Act.

### The appeal on ground (a) and the deemed application

#### *Planning policy*

2. I have been referred to policies D2, BE1, BE2 and T10 of the Kirklees Unitary Development Plan. Taken together these policies seek to ensure that development is of good quality design that is in keeping with its surroundings and which provides for (amongst other things) safe highway conditions.
3. Planning law requires that planning decisions are made in accordance with the development plan unless material considerations indicate otherwise.<sup>1</sup>
4. The National Planning Policy Framework ["the Framework"] sets out Government's national planning policy for England and how it expects planning

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<sup>1</sup> S38(1) and (6) of the Planning and Compulsory Purchase Act 2004 and s70(2) of the Town and Country Planning Act 1990.

to be delivered at the local level. Section 7 provides advice on requiring good design. Whilst the cited development plan policies pre-date the Framework they are in general conformity with it and, therefore, carry substantial weight.

#### *Main issues*

5. When having regard to the planning policies and submissions made by the parties I consider the main issues in the appeal are:
  - i. Effect upon the character and appearance of the area.
  - ii. Effect upon the interests of highway safety.

#### *Character and appearance of the area*

6. There is a mix of development within the surroundings of the appeal site including large industrial buildings along the valley bottom and the ribbons of development which front Manchester Road to both sides. The character area within which the appeal site is located is contained by the viaduct which crosses Manchester Road immediately to the west of the appeal property.
7. To its south side Manchester Road is fronted by flat faced, stone built residential terraces. Its north side is more commercial in character ranging from rows of shops to larger business premises.
8. Whilst there is some variation in style and design, a prevailing characteristic of the surrounding architecture is its robust simplicity reflecting the local distinctiveness of this industrial Pennine town.
9. The appeal property is at the end of a small terrace and appears as a flat roofed side addition to an earlier pitched roof property. Its stone built front elevation is to the same plane, having similar aligned window openings with stone cills and its parapet feature aligning with the eaves of the adjoining property. In these respects it reinforces the strong, simple character of the buildings which line Manchester Road.
10. The appeal extension, whilst of matching stonework to the front, does not respect these characteristics. It has a variety of roof slopes and form, the roof to the side rising steeply to almost eaves level and being particularly prominent. The extension projects forwards, detracting from the distinct building line, and wraps around the corner of the building thus losing the integrity of the building form at this part. Being located at the end of the terrace and at the edge of the character area, and being set back only a short distance from the public realm, it is clearly seen in a range of views from Manchester Road from where it appears as a contrived and unnatural addition.
11. For these reasons I consider the development to be harmful to the character and appearance of the area and to detract from the sense of local identity. It is, in these respects, contrary to the aims of policies D2, BE1 and BE2.

#### *Highway safety*

12. There is no clear demarcation between what might be considered to be the curtilage of the property and the access road. However, at its point of access to Manchester Road the width of the access road is constrained by the railway viaduct and street lamp to the west and a substantial stone pillar to the east. There is insufficient width for two vehicles to pass.

13. The access road serves a number of business premises including a vehicle repair garage. I have no doubt that, on occasions, vehicles turning into the access (which could include large commercial vehicles) will have to wait on Manchester Road for a departing vehicle(s) to egress. This gives rise to unsatisfactory highway conditions in Manchester Road which is a busy "A" classified road connecting Manchester and Huddersfield. However, that is the pre-existing situation.
14. As to whether the appeal development has made matters worse, there was already an external stairway in the position of the extension. A raised manhole to the rear of the extension also constrains the space available for vehicles using the access as do the protruding vehicles that are parked/stored under the railway arches.
15. The extension takes up a little more space than the external stairway. However I cannot see that it has added materially to the difficulties that would have already existed for vehicles using the access road. There may be a little less manoeuvring space but, even so, there would only have been sufficient width for one vehicle to pass through at this pinch point along the access road. At its junction with Manchester Road the situation remains unchanged.
16. The Land Registry plan indicates that the appellant's title extends to the centre, or thereabouts, of the access road. The appellant says he could enclose the land with a fence thus making the access road even narrower. However, it is not for the planning system to be involved in an individual's rights concerning land which he owns against the rights of others (should they exist) to pass over it. These are private legal matters. My assessment is made, therefore, on the situation on the ground as it presently subsists and as I saw it at my site visit.
17. I conclude, on the matter of highway safety, that the development does not materially change the situation for the worse. I do not find the development to offend policies D2, BE1, BE2 and T10 insofar as they concern highway safety.

*Other matters*

18. The development is adjacent to and, thus, within the setting of the Paddock Railway Viaduct which is a grade II listed building. Under s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) there is a statutory duty upon me to have special regard to the desirability of preserving the setting of this listed building. The viaduct is of historic significance to the development of the railway being a fine example of C19th engineering with its tall pillars and arches constructed in rock faced stone. It spans the valley and is particularly appreciated in mid to longer distance views. The appeal development, which sits alongside it, when seen against the enormity of the viaduct and in the context all the other surrounding development in the valley bottom, does not in my view impact either negatively or positively upon setting of this listed building. Its effect is neutral and, thus, this consideration weighs neither for nor against the proposal in the overall planning balance.
19. I acknowledge that the extension has provided for improved living conditions for the residents of the property. However, there is nothing to suggest that the extension is the only way to achieve satisfactory living conditions. This consideration does not weigh heavily in the development's favour.

20. I note that, on its removal, it is likely the extension will be replaced with an external stairway as before<sup>2</sup>. On balance I consider this would be preferable in terms of effect upon the character and appearance of the area. Whilst being of utilitarian appearance and not, in itself, contributing positively the built form and integrity of the building would be more clearly detectable than with the extension in situ. This is not, therefore, a consideration which I weigh in favour of the development.
21. I have taken into account all other matters raised but none outweigh the harm I have identified arising from the effect of the development upon the character and appearance of the area.

*Conclusions on ground (a) and the deemed application*

22. Whilst I do not find that the development is materially detrimental to highway safety I find that it has a harmful effect upon the character and appearance of the area. For that reason the appeal on ground (a) fails and the deemed application will be refused.

**The appeal on ground (g)**

23. On ground (g) it is argued that the works to remove the extension will impact upon existing tenants and give rise to the need to terminate their tenancies. A period of twelve months is requested.
24. I acknowledge that there may be arrangements the appellant will need to make with his tenants and that a longer time period would be helpful in that respect. An appellant is entitled to assume success of an appeal whilst ever it is pending. It would not be right to take into account the appeal timescale when considering a reasonable time period for compliance.
25. On the other hand, I must consider the wider public interests arising from this enforcement action which are best met through timely compliance with the notice.
26. When weighing these conflicting public and private interests I consider a period of six months would strike a reasonable balance and would be an appropriate timescale for remedying the identified harm without placing a disproportionate burden upon the appellant and his tenants.
27. I shall, therefore, vary the notice accordingly. To this limited extent the appeal on ground (g) succeeds.

**Conclusion**

28. For the reasons given above I conclude that, except to the limited extent identified under ground (g), the appeal should not succeed. I shall uphold the enforcement notice with variation and refuse to grant planning permission on the deemed application.

*Susan Wraith*

Inspector

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<sup>2</sup> The enforcement notice, at paragraph 5, makes it a requirement that the land and building is reinstated to its condition prior to the unauthorised development.

**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 27<sup>th</sup> March 2012, the Planning Practice Guidance Suite (PPGS) launched 6<sup>th</sup> 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:** Planning sub-committee (Huddersfield Area)

**Date:** 22 February 2018

**Title of report:** Application for a definitive map modification order to add a public footpath to the definitive map and statement, Clayton Fields, Edgerton. (Application reference 183).

**Purpose of report:** **Members are asked to consider** the evidence and decide on any 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 footpath.

**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 <a href="#">Council's Forward Plan (key decisions and private reports?)</a>                                    | Not applicable<br>If yes also give date it was registered |
| The Decision - Is it eligible for call in by Scrutiny?   | No – council committee                                    |
| Date signed off by <u>Director</u> & name  | Karl Battersby 12 February 2018                           |
| Is it also signed off by the Assistant Director for Financial Management, IT, Risk and Performance?  | James Anderson on behalf of Debbie Hogg 12 February 2018  |
| Is it also signed off by the Service Director (Legal Governance and Commissioning)?  | Julie Muscroft 9 February 2018                            |
| Cabinet member <a href="#">portfolio</a>   | N/A   |

**Electoral wards affected:** Greenhead

**Ward councillors consulted:** Cllrs. Patterson, Sokhal, Ullah.

**Public or private:** Public

## 1. Summary

- 1.1 The council has received seven applications under the Wildlife & Countryside Act 1981 to modify the definitive map and statement of public rights of way (“DMS”) by order, affecting land at Clayton Fields. There are six applications to add a public footpath to the formal record and one to record a greater width for a footpath that is already formally recorded. Changes to the definitive map and statement of this kind are called definitive map modification orders (“DMMO”). App E shows the seven DMMO application plans and a composite of these routes.
- 1.2 The existence of these seven DMMO applications was brought to sub-committee’s attention at the August and October 2017 meetings, when an application to stop up the claimed footpaths and create alternative routes was reported for a decision on making an order under section 257 of the Town & Country Planning Act 1990 (“TCPA”), in line with the planning consents for residential development of the Clayton Fields site.
- 1.3 Mr Adamson, who is the applicant for five of the seven DMMO applications including the one before members, and who, with numerous others locally, recently opposed the proposal to make the s257 order, had made representations to the Secretary of State at DEFRA (“SoS”) asking him to direct the council to determine one of his five DMMO applications (KC file reference DMMO 183 subject of this report).
- 1.4 Since members authorised officers to make a section 257 order regarding routes at Clayton Fields, the council has been directed to determine DMMO application 183 within 3 months of the DEFRA decision letter of 22 November 2017.
- 1.5 Officers have now received legal advice that the council determine the seven DMMO applications before proceeding with a s257 order. i.e. that the council decides whether or not the making of a DMMO order is warranted or not, in the case of each DMMO application claiming public rights of way.
- 1.6 Officers bring DMMO application 183 to sub-committee at this time, when a decision would comply with the SoS direction, with reports on the other 6 outstanding Clayton Fields DMMO applications to follow.
- 1.7 The claimed routes lie within land at Clayton Fields that was registered as a town and village green (“TVG”) in April 1997, further to an application to Kirklees council. Two of the seven outstanding DMMO applications were received in 1996, but were not progressed. The TVG registration was quashed by decision of the Supreme Court in February 2014, a press summary issued by the court is appended at App B.
- 1.8 The 1996 DMMO applications and the TVG application were prompted by a

Haigh & Co Ltd. Mr Hardy (joint DMMO applicant in 1996, now deceased) described this in a telephone conversation with the PROW officer on 5 August 2011. This appears to have set in motion a train of events and public awareness leading to applications affecting the land.

- 1.9 The council received DMMO application 183 (at App A, with application plan) on 23 September 2014 for an order to modify the definitive map and statement of public rights of way to record a public footpath from point A on Huddersfield public footpath 345 to point B on Queens Road, as shown on the application plan at App A.
- 1.10 The Clayton Fields land is north of Edgerton Road.
- 1.11 The council has also received user evidence forms. These forms are generally used by witnesses to describe their personal knowledge and experience of routes. This user evidence is appended as a summary and time line at App C. Further submissions are also at App C.
- 1.12 The council has received 89 witness (user evidence) forms relating to this application. (“UEF”). These describe use, predominantly on foot, variously between 1950 and 2014, as at the time of the application. The timeline of user witness evidence and their plans are at App C.
- 1.13 The applicant has since identified to officers that his application plan 183 is indicative and that the route he wishes to claim as a public footpath in this application runs within the field, above the top line of the banking adjacent to Clayton Fields.
- 1.14 The council has sought comment and evidence from the landowner Paddico (267) Ltd, which is also the joint applicant for the s257 order.
- 1.15 A Land Registry title plan and register record showing current ownership is at App D.
- 1.16 The council is yet to receive any written evidential submissions from the landowner, but will update sub-committee members.
- 1.17 Officer photos of the claimed routes taken in 2011 & 2014 are appended at App G.
- 1.18 At the time of the earlier DMMO applications (ref 30 & 31), the land was owned by George Haigh & Co Ltd, who subsequently sold it to Paddico (267) in 2004. Mr Haigh opposed the TVG registration of his land at the time of the council’s consideration of the TVG application. The company’s completed landowner evidence form WCA10 of 27 September 1996 is appended at App H. It notes little except denying the existence of the rights of way claimed, and stating that investigations continue. Land Registry titles for Haigh are also appended at App H.
- 1.19 There is significant and lengthy debate and dispute about the land and its use and the meaning of this use in the KC local land charges TVG file, listed as a **Page 49** background document. George Haigh & Co Ltd disputed the public use in various

ways and submissions, including statutory declarations; the council's relevant committee decided to register the land as a TVG after considering the evidence and arguments.

- 1.20 The DMMO 183 applicant has submitted montages of claimed routes (App F), as well as user and other personal evidence.
- 1.21 The council should identify a date when the use of the route was brought into question.
- 1.22 Officers understand that the potential development of the site led to the application to register a TVG and two applications to record footpaths across the site (not the same alignment as application 183).
- 1.23 It may be considered that some earlier action prior to the 2014 application brought the use of the way by the public into question, and choosing an earlier date may be appropriate regarding any section 31 consideration of the date from which to work out the relevant user period for consideration of statutory presumption. It may be that this would be clarified only after more detailed examination of the evidence, such as in cross-examination at public inquiry, were one to take place.
- 1.24 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.
- 1.25 Even though the application is for a public footpath 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.
- 1.26 The evidence, whether for or against the application and any recording of any public right of way, is to be noted and considered.
- 1.27 When considering additions to the definitive map and statement of public rights of way, the council must make an order
  - 1.27.1 If a public right of way is shown to subsist on the balance of probabilities, or
  - 1.27.2 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 determine whether to 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 *“that 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 to consider is taken to run back 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.

- 2.11 The Committee must consider whether there is sufficient evidence to raise the presumption of dedication. The standard of proof for a final decision is the civil one, that is, the balance of probabilities. If disputed, an order confirmation decision by the SoS would be made solely on the balance of probabilities. Members must initially weigh up the evidence and decide if, on balance, it is reasonable to allege that there is a public right of way. If 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.
- 2.12 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.
- 2.13 “Intention to dedicate” was considered in Godmanchester, R (on the application of Godmanchester Town Council) (Appellants) v. Secretary of State for the Environment, Food and Rural Affairs (Respondent) [2007] UKHL 28, which is the authoritative case dealing with the proviso to HA80 s31. In his leading judgment, Lord Hoffmann approved the obiter dicta in the ruling 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*”.
- 2.14 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*”.
- 2.15 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”.

- 2.16 Dedication of a public path at Common Law should also be considered. The main principles of establishing a highway under common law are:
- 2.16.1 Use by the public should be as of right; without force, secrecy or permission.
  - 2.16.2 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).
  - 2.16.3 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.
  - 2.16.4 Each case is judged on the facts available.
  - 2.16.5 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.
- 2.17 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.
- 2.17.1 Test A: Does a right of way subsist? This requires clear evidence in favour of public rights and no credible evidence to the contrary.
  - 2.17.2 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.
- 2.18 If the council resolved 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.
- 2.19 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.

- 2.20 Government guidance to local authorities is contained in DEFRA'S Rights of Way Circular 1/09, version 2
- 2.21 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69304/pb13553-rowcircular1-09-091103.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69304/pb13553-rowcircular1-09-091103.pdf)
- 2.22 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
- 2.23 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/517495/Full\\_version\\_February\\_2016\\_consistency\\_guides\\_2\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/517495/Full_version_February_2016_consistency_guides_2_.pdf)
- 2.24 DMMO application 183 was received by the council in September 2014. Clayton Fields had been de-registered as a TVG and there were concerns about loss of the land to the public and development of the site.
- 2.25 As well as the TVG application, local residents Mr Magee and Mr Hardy (deceased) had also made two applications to the council for orders to record public footpaths across Clayton Fields. These applications (refs 30 & 31) were held in abeyance, although there appears to be some dispute or confusion over whether this was at the behest of the applicant(s) or the council at the time. (KC legal note and PROW note at App W).
- 2.26 The user evidence for this application identifies use by 85 witnesses over Clayton Fields land. (see App C).
- 2.27 Users noted seeing others and described use on foot, for the purposes of walking, recreation, photography, jogging, dog walking, shopping, dentists, travel to school etc. Such use would be appear open, notorious and of a nature similar to that expected of public rights of way. Some cycle use is also described.
- 2.28 The submitted user evidence overall demonstrates regular and frequent use over many years by the public. App C shows summarised WCA8 user evidence.
- 2.29 During the years that the land was registered as a TVG, 1997 – 2014, the public would have had the right to access the land and use it for recreation purposes.



This is sometimes referred to as there being an implied permission. In other words, the public use during those years of registration is not “without permission” (i.e. the use is not “*nec precario*” to use the Latin legal term). This public recreational use, prior to and since TVG registration, included walking across the site as shown in the evidence forms across the seven DMMO applications and within the TVG application.

2.30 The Newhaven and Barkas Supreme Court decisions linked above relate and refer to the questions of ‘as of right’, ‘by right’, and ‘implied permission’ .

2.31 <http://www.bailii.org/uk/cases/UKSC/2015/7.html> Newhaven [2015] UKSC 7

2.32 <http://www.bailii.org/cgi-bin/markup.cgi?doc=/uk/cases/UKSC/2014/31.html> Barkas [2014] UKSC 31

2.33 If the public was accessing the land by right and if their use of the land as a TVG was indistinguishable from their use walking from A to B, (and potentially along other claimed footpaths in the other DMMO applications affecting this land) then the use during the period of TVG registration would not be as of right (without force, secrecy or permission, or *nec clam, nec vi, nec precario*) and such use during that period would not lead to the establishment of a public right of way.

2.34 The registration of the TVG was effectively quashed by the Supreme Court due to an administrative technicality regarding the application form and the definition of certain words; it did not question the use of the land by the public which led to the application and registration as a TVG.

2.35 Such use of the land by the public, including walking across it on various routes, may be considered to have been brought into question at the time of the 1996 Haigh outline planning application, concern about the land and its use was subsequently apparent across a significant number of people, and the TVG application and the DMMO applications 30 & 31 were made. Although it is noted that the earlier DMMO applications (ref 30 & 31) were not for the same route as application 183 before sub-committee, they all refer to access to and across the same site within the same ownership, and the threat to the public continuing such use, and identify a recognition by a significant number of people that there was a question of their use of the land.

2.36 If the right of the public to use the claimed footpath was brought into question as a result of the planning application, TVG process and/or the concerns about the land

that gave rise to the earlier DMMO applications, then the relevant 20 year period to be considered under section 31 of the Highways Act 1980 may be considered to be 1976 – 1996. If so, use of the route and blockage of the land by Paddico (267) Ltd in the recent years before the application 183 was made would not affect the date when use of the way was brought into question.

2.37 The 89 user evidence forms completed for application ref 183 include 50 witnesses who give evidence of use within that timeframe 1976 - 1996.

2.38 User of less than twenty years by individuals may also be considered, as it provides evidence of public use, which may support and corroborate evidence of longer user, and/or be added to user by other people over other years.

2.39 A summary of the TVG witness evidence is appended at App K. This evidence, although not specific to the application route 183, is indicative of the use by the public of land at Clayton Fields for walking up to 1996 – a majority describing walking under the “use of land” column.

2.40 A statutory declaration by George Haigh & Co’s solicitor (App L) during the TVG process noted at paragraph 15.5: *“Furthermore the rights claimed by local residents in support of this application are more consistent with public rights of way, i.e. rights to pass and repass along a footpath, than ‘as of right’ use of the land as a town or village green.”*

2.41 During the survey process undertaken by County Borough of Huddersfield for the preparation of the ‘1966’ definitive map and statement, the walking survey notes (at App J) describe surveyed route 124 (now public footpath Hud/345) and cite a field path joining from the right (travelling north) just before the footbridge. No such path was formally recorded in that DMS process, but the survey papers identify the physical existence of a path leaving definitive path 345 in a location consistent with application 183 route.

2.42 Since the direction to the council from the SoS, a PROW officer met the applicant, Mr Magee and several other residents on site to discuss the indicative alignment in submitted plans and the situation on the ground, both historically and currently. The UEF witness plans are at App C. A route was identified to officers away from the top of the banking at the side of Clayton Dike, while the applicant and others also identified that a route on the banking would have been impassable and not in accordance with aerial photographs and other evidence submitted. (e.g. at App F). Additionally this clarification would appear to be supported by appended photos

taken by Kirklees officers (e.g. in 2011 and 2014 at App G), before more recent groundworks disturbed the surface over much of the site.

- 2.43 Members of the public are not expected to be cartographic experts when completing applications or evidence forms, and when marking up the routes they describe on provided template plans. It appears reasonable to take the clarification on the alignment of the claimed route 183 into account, when considering the alignment for any route that may satisfy the tests for making an order to record a public footpath.
- 2.44 The current landowner, Paddico (267) Ltd has not accepted that public rights subsist across the land, and has not submitted any evidence relating to the existence of any alleged public rights. As previously reported to sub-committee, Paddico submitted an application under section 257 TCPA 1990 to extinguish any public rights claimed to subsist over the land (and provide alternative routes) to enable them to progress with sale and development of the site, along with the joint s257 applicant, the proposed developer Seddon Developments, which is looking to purchase and develop the site in accordance with planning consent for the site.
- 2.45 Members are reminded of the test described at 2.17.2 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.
- 2.46 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.
- 2.47 A 2017 Planning Inspectorate DMMO decision (ref: FPS/E2001/7/30) on this point, subsequent to Whitworth and of interest is at this link:
- 2.48 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/608941/fps\\_e2001\\_7\\_30\\_od.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/608941/fps_e2001_7_30_od.pdf)

- 2.49 None of the user evidence forms describes equestrian use by witnesses. Of the pre-1997 evidence, six mention their own bicycle use (UEF 2,38,42,74,77 & 89), one of which mentions seeing other cyclists. Analysis of this use shows no witness with bicycle user witness for the period 1976-78, and only one for 1978-82. The routes shown on all six of those witness plans end at Huddersfield 345 (a recorded footpath), with one not reaching Queens Road. This would appear insufficient to be indicative of the existence of public bridleway or restrictive byway rights.
- 2.50 No evidence has been submitted describing motor vehicular use.
- 2.51 Ordnance Survey plans showing the land over the years are appended at App X (1893 - 2014). These are not demonstrative of public rights of way but indicate the physical nature of the site over the years. The physical existence of any particular route through the site is not clear from these OS plans, however this does not mean that a route did not exist or that a public right of way could not exist. It is worth noting that there used to be a house at Queens Road between numbers 12 and 15, which appears on some OS mapping but is not on the 1972 and subsequent maps.
- 2.52 After considering the evidence and the relevant criteria members have a number of options.
- 2.53 The first option for members is to refuse the application and to decide that the council should not make any order.
- 2.54 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 footpath claims and have been informed of the report being brought to sub-committee.

4.2 Officers have contacted the landowner, statutory and local user groups.

4.3 Officers have contacted the council's PRP and allotments teams as land managers for the council's land.

4.4 Officers would update members on further relevant evidence, before sub-committee decision.

## **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.

- 5.4 In this case, legal advice has been received that suggests the council determine the DMMO applications before progressing a s257 order, already authorised by sub-committee decision, and perhaps subject to further report for appropriate amendment. Officers intend to return to sub-committee to report on the outstanding Clayton Fields DMMO applications and any resultant effect on the authority to make a s257 order.

## 6. **Officer recommendations**

- 6.1 **Officers recommend that** members decide that the evidence is sufficient to authorise the Service Director, Legal, Governance and Commissioning to make a definitive map modification order (“DMMO”) to record a public footpath between points A and B on appended plan App Y, under section 53 (3) c (i) of the Wildlife & Countryside Act 1981.
- 6.2 **Officers further recommend that** if further to the recommendation at 6.1 above, an order 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 over a period of some decades.
- 6.4 There appears to be sufficient evidence to raise a reasonable allegation that a public right of way subsists over the route identified and clarified over the land at Clayton Fields.
- 6.5 There has been no submission by the current landowner in this investigation to the council to dispute the existence of public rights over the land relating to the evidence from users.
- 6.6 There is clearly a conflict of evidence in the council’s possession. The history of Clayton Fields is lengthy, complex and has been subject to test in the Supreme Court already. There is no incontrovertible evidence adduced that a public right of way cannot be reasonably alleged to subsist in relation to the application 183. If an order is made and opposed then the Secretary of State may consider it appropriate to call for a public inquiry to assess the evidence, with witnesses giving evidence in

person and open to cross examination, allowing for a more detailed examination if required. Although taking the matter of TVG to the Supreme Court in 2014, the current landowner has yet to offer evidence or legal argument during this investigation to dispute the existence of public rights of way.

- 6.7 In the circumstances it appears reasonable to conclude that a reasonable allegation has been made that a public right of way subsists. The appropriate status should be reflected in any order made.
- 6.8 In conclusion, officers consider that there is sufficient evidence to consider that an Order to modify the Definitive Map and Statement should be made to record a public footpath under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 over the Clayton Fields land as shown in appended plan at App Y between points A - B.
- 6.9 If an order is made and objections made which are not withdrawn, it must be forwarded to the Secretary of State to make a decision. In that event, a public inquiry may be considered 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.
- 6.10 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;”*. Officers consider that this test is satisfied.

## 7. **Cabinet portfolio holder’s recommendations**

7.1 Not applicable

## 8. **Contact officer**

Giles Cheetham, Definitive Map Officer

01484 221000

[giles.cheetham@kirklees.gov.uk](mailto:giles.cheetham@kirklees.gov.uk)

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

9.1 872/1/MOD/183

9.2 KC Land Charges TVG file (KMC-VG2) (2 files)

9.3 Appendices

<https://democracy.kirklees.gov.uk/ecSDDisplay.aspx?NAME=SD1460&ID=1460&RPID=504772627>

9.3.1 Appendix 1 – guidance for members.

9.3.2 App A – DMMO application form plan (2)

9.3.3 App B – Supreme Court press summaries (2)

9.3.4 App C – User evidence summary & plans (13)

9.3.5 App D – Land ownership plans. (2)

9.3.6 App E – application plans for the seven DMMO applications. (2)

9.3.7 App F – Aerial photos 2000-2009 and applicant’s montage submissions (8)

9.3.8 App G - Officer ‘claimed routes’ photos 2011 and 2014

9.3.9 App H – George Haigh & Co Ltd documents including LR title (3)

9.3.10 App J – 1966 CBH survey path Hud/345 (“124” at the time)

9.3.11 App K - TVG witness evidence summary (describes walking)

9.3.12 App L – Stat Dec of G Haigh & Co’s solicitor

9.3.13 App W – Legal service and PROW file note on application s 30 & 31.  
(2)

9.3.14 App X – Ordnance Survey plans 1893-2014 (6)

9.3.15 App Y – Proposed addition plan for the recommendation

## 10. **Assistant Director responsible**

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



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

**Date:** 22 February 2018

**Title of report:** Application for a definitive map modification order to add a public footpath to the definitive map and statement, Cellars Clough, Marsden.

**Purpose of report:** **Members are asked to consider** the evidence and decide on any 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 footpath.

**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 <a href="#">Council's Forward Plan (key decisions and private reports?)</a>                                    | Not applicable<br>If yes also give date it was registered |
| The Decision - Is it eligible for call in by Scrutiny?   | No – council committee                                    |
| Date signed off by <u>Director</u> & name  | Karl Battersby 12 February 2018                           |
| Is it also signed off by the Assistant Director for Financial Management, IT, Risk and Performance?  | James Anderson on behalf of Debbie Hogg 12 February 2018  |
| Is it also signed off by the Service Director (Legal Governance and Commissioning)?  | Julie Muscroft 9 February 2018                            |
| Cabinet member <a href="#">portfolio</a>   | N/A   |

**Electoral wards affected:** Colne Valley

**Ward councillors consulted:** Cllrs. Bellamy, Turner, Walker.

**Public or private:** Public

## 1. Summary

- 1.1 The council received an application (at App A, with KC identifying plan App A1) from Peak & Northern Footpath Society (“PNFS”) on 15 April 2009 for an order to modify the definitive map and statement of public rights of way to record a public footpath from both points A and B at the Huddersfield Narrow Canal, via point C to point D at public footpath Colne Valley 181 at Cellars Clough, as shown on the plan at App A and App A1.
- 1.2 The area is located around Ordnance Survey grid reference SE 054123.
- 1.3 The council has received 34 user evidence forms. These forms are generally used by witnesses to describe their personal knowledge and experience of routes. This user evidence is appended as a summary and time line at App C, along with a plan indicating the various path points identified by witnesses. Please note that the location points in the evidence are described as A-G and are not the same shown in the Plan appended at App A1.
- 1.4 The council has received 34 witness (user evidence) forms relating to this application. (“UEF”). These describe use on foot, variously between prior to 1950 and 2009 at the time of the application. The majority of those user witnesses describe their individual use over decades. The council has also received a statutory declaration about public user / access at the site along the application routes from the former Cellars Clough mill manager (from 1980) who was employed there originally in 1955 and whose father was mill manager before him.
- 1.5 The council has received written representations from the landowner Cellars Clough Properties Ltd. (“CCPL”) via its solicitor, denying the existence of public footpath rights over the land and opposing the application (at App B).
- 1.6 A plan showing ownership is at App D.
- 1.7 Officers were also contacted by CCPL, indicating that fishing takes place at mill ponds on the land, previously through a fishing club (Cellars Clough Fishery) and now, via day licence use from CCPL. The landowner has indicated that public access, and access with dogs would affect this use of the site. CCPL stated that gates had been locked at the site and notices displayed that the land was private.
- 1.8 The council is yet to receive any written evidential submissions from the landowner, but will update sub-committee members if this changes.
- 1.9 The Public Rights of Way unit was contacted on 12 May 2009 by the council’s Marsden Information Point staff regarding a number of signs that had been erected stating, *“the fishermen have put up private property, no public access, no public right of way signs all along the path - these are red metal signs.”*
- 1.10 That 2009 report about signs was after the DMMO application date.

- 1.11 The applicant wrote to the council stating that gates had been locked across the way in March 2016, asking for the application's priority score to be reviewed as a result of the claimed way now being obstructed to prevent public access. PNFS 2016 photos and letter at App E.
- 1.12 This is also after the application date.
- 1.13 Officer photos of the claimed routes taken in 2015 are appended at App G.
- 1.14 At the time of the application, the land was owned by Smith Developments Ltd, which went into receivership. Before going into receivership, Smith Developments' solicitor wrote to the council, upon being served notice of the application by the applicant in April 2009, to note their client's objection to the modification of the definitive map. (App B)
- 1.15 The land was subsequently owned by Richmond Residential and Commercial PLC, whose ownership appears to be common with CCPL.
- 1.16 The applicant, PNFS, has submitted a statutory declaration from the former manager of the site, which is appended at App F, as well as user and other personal evidence.
- 1.17 The council should identify a date when the use of the route was brought into question. There appears to be some dispute demonstrated by the conflicting evidence regarding this, which may not be settled until after a public inquiry, but it appears that heightened concerns regarding the erection of signs and conflict between some anglers and some walkers in early 2009 prompted PNFS's application in April 2009, along with some local concern, which may lead to consideration of a period of 1989-2009 for the purposes of assessing any potential statutory presumption of dedication of a public right of way. If it is shown that use of the way brought into question before that date then an earlier 20 year period would apply.
- 1.18 Locked gates in two locations blocking pedestrian access across the width of the route, with no bypass (e.g. by squeeze stile) were reported to the council by the applicant in 2016. This would be after the date of application.
- 1.19 It may be considered that some earlier action prior to 2009 brought the use of the way by the public into question, and choosing an earlier date may be appropriate regarding any section 31 consideration of the date from which to work out the relevant user. It may be that this would be clarified only after more detailed examination of the evidence, such as in cross-examination at public inquiry, were one to take place.
- 1.20 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.

- 1.21 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.
- 1.22 Even though the application is for a public footpath 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.
- 1.23 The evidence and comments of the landholders and anyone 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.
- 1.24 When considering additions to the definitive map and statement of public rights of way, the council must make an order
  - 1.24.1 If a public right of way is shown to subsist on the balance of probabilities, or
  - 1.24.2 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 and 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 *"that 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.L. 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-](http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2012/1976.html&query=kotegaonkar&method=boolean)

[bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2012/1976.html&query=kotegaonkar&method=boolean](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, R (on the application of Godmanchester Town Council) (Appellants) v. Secretary of State for the Environment, Food and Rural Affairs (Respondent) [2007] UKHL 28, which is the authoritative case dealing with the proviso to HA80 s31. In his leading judgment, Lord Hoffmann approved the obiter dicta in the ruling 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 For information and clarity, officers would note that 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. These provisions are not currently in force.

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](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, 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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/517495/Full_version_February_2016_consistency_guides_2_.pdf)
- 2.27 PNFS made the application in April 2009, after concerns about access through the Cellars Clough land and reports of incidents and conflict involving some of the anglers.
- 2.28 The canal towpath is owned by the Canal & Rivers Trust. It is land that is accessible and regularly used by the public.
- 2.29 The user evidence identifies use by 34 witnesses identifying use over Cellar's Clough land between the mill and the canal. Of these, over two thirds give evidence of use for the whole period 1989 – 2009, with others' evidence including time within that period. (see App C).
- 2.30 Users noted seeing others and described use on foot, countryside walking, recreation, photography, dog walking etc. Such use would appear to be open, notorious and of a nature similar to that expected of public rights of way.



- 2.31 The submitted user evidence demonstrates regular and frequent use over many years by the public. App C shows summarised WCA8 user evidence.
- 2.32 A number of witnesses have mentioned incidents such as challenge by some fishermen and the existence of gates and signs at various points in time. Many mention, at the time of completing evidence forms in 2009, that the signs and conflict have been recent, and that passage was available around the side of gates etc. if present. It is open to question whether the anglers would have sufficient authority to challenge the public user, not being the landowner.
- 2.33 The current landowner CCPL states that the way has been subject to gates and signage. CCPL also claims that relevant notices have been posted regarding access by the public.
- 2.34 The former site manager, in his statutory declaration, reports that the site was open and available to the public for passage over the application routes and was well-used by the public over many years, and that this was quite normal and the ways being public footpaths was accepted by management of the mill.
- 2.35 The 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.
- 2.36 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 a lack of evidence of equestrian user or sufficient bicycle user (1 user witness).
- 2.37 None of the user evidence forms describes equestrian use by witnesses, one describes their own bicycle use (1), whilst two witnesses (11 & 16) describe seeing cycling and horse-riding by others. This would appear insufficient to be indicative of the existence of public bridleway rights.
- 2.38 No evidence has been submitted describing motor vehicular use.

2.39 Ordnance Survey plans showing the land over the years are appended at App X (1893 - 2018). 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 site is clear from these plans. Such plans sometimes indicate the presence of gates at certain years, but this is not evidence that any gate may have been or was locked, nor that it precluded access all of the width of the way.

2.40 After considering the evidence and the relevant criteria members have a number of options.

2.41 The first option for members is to refuse the application and to decide that the council should not make any order.

2.42 The second option for members is for the council to make an order to record a public right of way, and confirm it if unopposed 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 to determine.

- 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 should 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 footpath claims and have been informed of the report being brought to sub-committee.
- 4.2 Officers have contacted the landowner, statutory and local user groups, the former landowner, the receiver and the former fishery club.
- 4.3 Evidence is described above, including from the landowner, CCPL, which disputes the existence of any public right of way across its land. Officers would update members as appropriate, before committee sub-decision.

#### **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 public footpath between points A and D via point C, and from points C – B shown on appended plan App A1, 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 and is not opposed, members authorise the Service Director, Legal, Governance and Commissioning to confirm the order or in the event the order is 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 over a period of some decades, there appears to be some conflict regarding the nature and date of challenge, signs on site and physical blockage of the ways to pedestrians.

6.4 It has been established that a public right of way may have only one point on the public highway network (e.g. Colne Valley public footpath 181 before it crosses the mill reservoir near the buildings), if the other terminal point(s) lead(s) to a place of popular resort. (Moser v Ambleside U.D.C. (1925) 89 J.P.L. 118 - as described at paragraphs 2.11 – 2.12 above.

6.5 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.*”

6.6 It appears reasonable to consider that the canal land and its towpath form a place of popular resort.

6.7 There is available evidence of public user of the application routes over some decades and it would be reasonable to suggest that public rights may be inferred at common law. The statutory declaration by the former mill manager does not support any argument that it is incontrovertible that the ways are not public footpaths.

6.8 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.

- 6.9 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 public footpath under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 over the Cellars Clough land as shown by bold dashed lines A-C-D and B-C in appended Plan at App A1.
- 6.10 If an order is made and objections are made and which are 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.
- 6.11 Section 53 (3) c (i) requires the council to make an order to modify the definitive map when evidence is discovered which shows *“that 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**

6.12 Officers recommend that:

6.12.1 an Order to modify the Definitive Map and Statement should be made to record a public footpath under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 between points A-C-D and B-C on the appended Plan at App A1 **and that**

6.12.2 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**

Giles Cheetham, Definitive Map Officer 01484 221000 [giles.cheetham@kirklees.gov.uk](mailto:giles.cheetham@kirklees.gov.uk)

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

9.1 872/1/MOD/151

9.2 Appendices

<https://democracy.kirklees.gov.uk/ecSDDisplay.aspx?NAME=SD1466&ID=1466&RPID=504772925>

9.2.1 Appendix 1 – guidance for members.

9.2.2 App A – DMMO application form and plan

9.2.3 App A1 - KC plan showing claimed footpath and definitive footpaths

9.2.4 App B – Representations from Cellars Clough Property Ltd & Smith Developments

9.2.5 App C – User evidence summary.

9.2.6 App D – Land ownership plans.

9.2.7 App E – April 2016 PNFS letter and photos

9.2.8 App F – Applicant’s submission – statutory declaration from mill site manager.

9.2.9 App G - Officer claimed route photos 2015

9.2.10 App H – Supplementary questions for witnesses

9.2.11 App J - Land ownership plans.

9.2.12 App X – Ordnance Survey plans

## 10. **Assistant Director responsible**

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

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

**Date:** 22 February 2018

**Title of report:** Clarification of decision on item 13 of Planning sub-committee (Huddersfield area) of 4 January 2018. Bridge Lane to Sands recreation, Holmfirth. Application for a definitive map modification order to add a public bridleway to the definitive map and statement. (Application reference 169).

**Purpose of report:** Members are asked to note a clarification of the sub-committee's previous decision and to reaffirm the decision that was made.

|  |   |
|--|---|
| 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 <a href="#">Council's Forward Plan (key decisions and private reports?)</a>                                    | Not applicable<br>If yes also give date it was registered |
| The Decision - Is it eligible for call in by Scrutiny?   | No – council committee                                    |
| Date signed off by <u>Director</u> & name  | Karl Battersby 12 February 2018                           |
| Is it also signed off by the Assistant Director for Financial Management, IT, Risk and Performance?  | James Anderson on behalf of Debbie Hogg 12 February 2018  |
| Is it also signed off by the Service Director (Legal Governance and Commissioning)?  | Julie Muscroft 9 February 2018                            |
| Cabinet member <a href="#">portfolio</a>   | N/A   |

**Electoral wards affected:** Holme Valley South

**Ward councillors consulted:** Cllrs. Firth, Patrick and Sims.

**Public or private:** Public

## 1. Summary

- 1.1 At the meeting of 4 January 2018 members of sub-committee voted on agenda item 13 to support the officer recommendation, as noted at paragraph 6.1, to make an order under section **53 3 c (i)** of the Wildlife & Countryside Act 1981 to add a restricted byway to the definitive map and statement. Website Link to item:
- 1.2 <https://democracy.kirklees.gov.uk/ieListDocuments.aspx?CId=149&MId=5289>
- 1.3 Unfortunately the report erroneously referred to section **53 3 c (ii)** (at paragraph 6.15.1) and the separate summary report also erroneously referred to **section 53 3 c (ii)** at Part 4
- 1.4 Elsewhere in the report the subsection references were correct.
- 1.5 Officers do not consider that anyone would be disadvantaged by this typographical error, but wish to clarify and reaffirm the decision made by sub-committee.
- 1.6 After identifying the typographical error, advice was taken from both legal and governance officers, with a recommendation to report back to members for clarity prior to the order being made.
- 1.7 Additionally, it may help limit any potential for the council's formal decision to be misunderstood or queried in future proceedings.
- 1.8 Officers apologise for the inconvenience and ask members to recognise their previous decision by reaffirming that the order to be made under section 53 3 c (i).

## 2. Information required to take a decision

- 2.1 Members are asked to consider the report, and reaffirm the previous decision that an order is to be made under section 53 3 c (i).

## 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 None.
- 4.2 Officers have informed ward members.

### **5 Next steps**

- 5.1 The order will be 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.

### **6. Officer recommendations**

- 6.1 **Officers recommend that** members note the typographic errors, and confirm the 4 January 2018 sub-committee decision to make and seek confirmation of an order under section **53 (3) c (i)** of the Wildlife & Countryside Act 1981.

#### **Reasons**

- 6.2 To clarify the decision and limit the potential of challenge and confusion.

**7. Cabinet portfolio holder's recommendations**

7.1 Not applicable

**8. Contact officer**

Giles Cheetham, Definitive Map Officer

01484 221000

[giles.cheetham@kirklees.gov.uk](mailto:giles.cheetham@kirklees.gov.uk)

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

9.1 872/1/MOD/169

9.2 Item 13 – planning sub-committee (Huddersfield area) 4 January 2018.

<https://democracy.kirklees.gov.uk/ecSDDisplay.aspx?NAME=SD1464&ID=1464&RPID=504772864>

**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: 22-Feb-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

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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

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**Electoral Wards Affected: Almondbury**

No

Ward Members consulted

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## **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 was originally brought to Sub-Committee on 4<sup>th</sup> January 2018 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 Members undertook a site visit to the property and resolved to defer the application at the meeting. This was in order for officers to provide further information as to whether the development was materially harmful in terms of residential amenity, visual amenity or would result in a harmful overdevelopment of the site such as to warrant the refusal of the application. These matters have been further explored in detail by Planning Officers and the application is brought back to members for consideration.

### **Points of Deferment**

#### Over Development

1.3 No.152 Ravensknowle Road occupies a modest plot, offering 93m<sup>2</sup> private amenity space. In terms of the rear extension it would occupy an area of approximately 8.5m<sup>2</sup>, 9% of the total curtilage of the property. As such, given the minimal footprint of the ground floor extension it is not believed to constitute over-development.

1.4 With regard to the rear dormer extension it is noted in paragraphs 10.6 and 10.10 that a dormer extension of this size could have been constructed under permitted development rights. As such, Planning Officers do not considered this enlargement as an over development even when assessed in the context of the rear in-fill extension.

- 1.5 Notwithstanding the above and as noted in paragraph 10.11 a condition would be attached to any permission, removing permitted development rights. This would guard against any further development, which might constitute an over development of the site.
- 1.6 Given the above the scheme is considered to comply with Policy D2 (Criteria ii) of the Unitary Development Plan (UDP), Policy PLP1 of the publication Draft Local Plan and guidance contained within the NPPF. As such planning officers consider that the cumulative impact of the development would not result in an overdevelopment of the site.

#### Visual Amenity

- 1.7 As noted in paragraphs 10.3 to 10.7 the impact of the scheme has been assessed with regard to visual amenity and is considered acceptable. Assessment of visual amenity is subjective. Considering:
- the siting of the extensions to the rear of the property and their design;
  - external facing and roofing materials;
  - the fallback position in respect of the dormer,
- Planning officers, upon further review of the scheme, would maintain that the development would not result in material harm to the visual amenity of the host dwelling or the wider character of the surrounding area.
- 1.8 As such the scheme is believed to comply with Policies D2, BE1, BE2, BE13 and BE14 of the UDP, Policies PLP1 and PLP24 of the PDLP and guidance contained within Chapter 7 of the NPPF.

#### Impact on Residential Amenity

- 1.9 The impact of the proposed scheme on residential amenity has been assessed and is considered acceptable as outlined in paragraphs 10.8 to 10.12.
- 1.10 Following a further review of the scheme planning officers have concluded that there is no further considerations to add to the items already assessed. It is acknowledged that any development will have an impact on the amenities of surrounding residents; the assessment of whether this is materially harmful is, once again, subjective. Indeed 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. A core planning principle of the NPPF is to secure a 'good standard' of amenity for all existing occupants of land and buildings. For the reasons set out in paragraphs 10.8-10.12 it is considered this would be achieved and that the impact on surrounding properties would be proportionate.
- 1.12 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.

#### Conclusion

- 1.13 Given the above assessment the original recommendation that the application be approved is maintained. The report to the meeting of 4<sup>th</sup> January 2018 is set out below.

## **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 26<sup>th</sup> 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
- Over Development
- 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 24.8m<sup>3</sup> (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 1.7 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

- 10.18 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.
- 10.19 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

10.20 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.

10.21 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

10.22 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

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## Report of the Head of Strategic Investment

### HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 22-Feb-2018

Subject: Planning Application 2017/93444 Replacement roof (within a Conservation Area) Almondbury Methodist Church, Westgate, Almondbury, Huddersfield, HD5 8XJ

#### APPLICANT

T Francis

#### DATE VALID

13-Oct-2017

#### TARGET DATE

08-Dec-2017

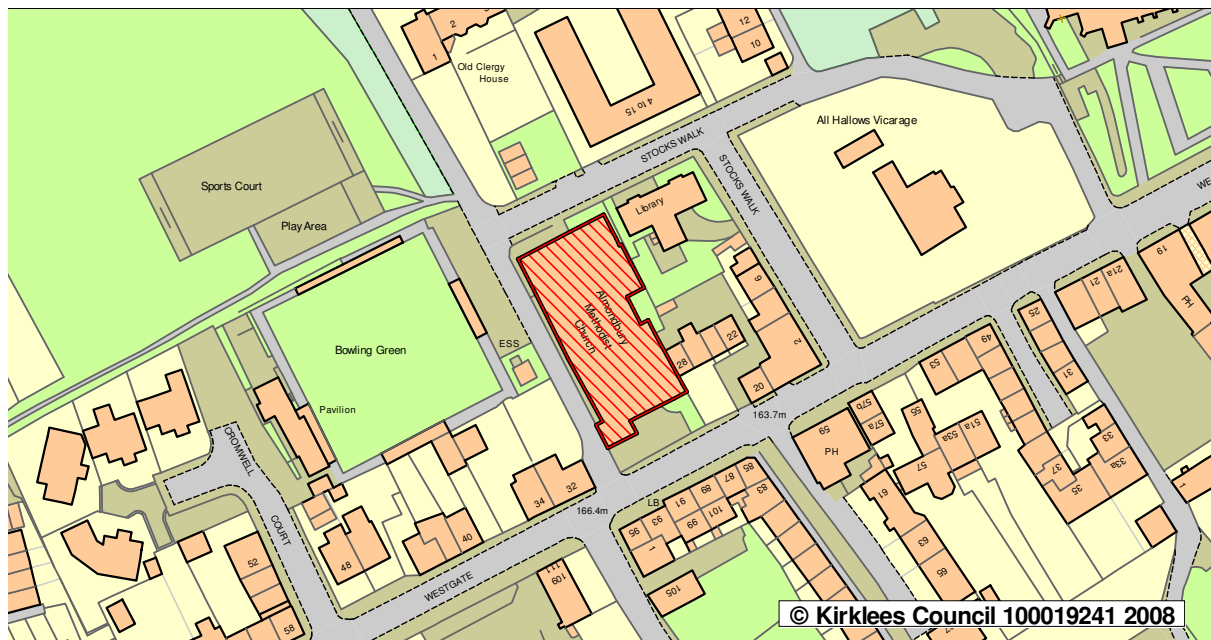
#### EXTENSION EXPIRY DATE

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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

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**Electoral Wards Affected: Almondbury**

N

Ward Members consulted

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**RECOMMENDATION: REFUSE**

The proposed replacement roof covering, by reason of its design and appearance, would represent an incongruous feature on a prominent building within the Almondbury Conservation Area which would not respect the architectural qualities of the host building or the materials of construction. The proposal would therefore fail preserve the appearance of the Conservation Area and would cause less than substantial harm to this designated heritage asset. The considerations put forward by the applicant do not equate to a public benefit sufficient to outweigh the harm caused. The development would be contrary to Policies D2 (Criteria vi), BE1 (ii) and BE5 of the Unitary Development Plan, Policies PLP24(a) and PLP35 3 (e) of the publication draft Local Plan and guidance contained in Chapter 7 and Chapter 12 of the National Planning Policy Framework.

**1.0 INTRODUCTION:**

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

*‘...An assessment of the materials and appearance by members would assist in the decision on whether the proposal would be in keeping with the area’*

1.2 The chair of the 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 Almondbury Methodist church is a large building occupying a prominent location on Westgate. Architecturally, the church building has a number of prominent features including large, floor to ceiling stained glass windows, a cross gable roof, finished in copper with a verdigris patina and high elevations which give the building a dominating appearance. Consequently, views of the church building can be taken at vantage points up and down Westgate.

2.2 It is noted that a number of other buildings adjoin the main church building although these appear as subservient, void of any significant architectural features so as to distinguish them individually. Boundary features which delineate the church grounds, located to the front (southwest), consist of a low rise natural stone wall approximately 1m at the highest point.

2.3 The church is surrounded by other, unrelated buildings of a commercial, residential and community use of varying architectural styles. It is noted however, that the area is designated as part of the Almondbury conservation area and as such building within the vicinity are constructed predominately from natural stone and slate roof tiles.

### **3.0 PROPOSAL:**

3.1 The proposal relates to the replacement of the existing copper roof with a black Firestone rubber covering. No other works are proposed as part of this application. A planning application is required as this would materially change the external appearance of the building.

### **4.0 RELEVANT PLANNING HISTORY (including enforcement history):**

4.1 2004/92333 – Conservation area consent for demolition of entrance building (Conservation Area Consent Granted)

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

5.1 Detailed negotiations have been held between the applicant and planning officer regarding the appearance of the proposed roof upon completion. Planning officers recommended a textured finish to the Firestone rubber covering so as to soften the appearance of the roof upon completion. The applicants wished the application to be determined in its submitted form.

### **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. It is noted however, that the site is designated within the Almondbury conservation area. The site is also designated within Almondbury conservation area within the Publication Draft Local Plan.

Kirklees Unitary Development Plan (UDP) Saved Policies 2007:

- D2 – Unallocated Land
- BE1 – Design Principles
- BE2 – Quality of Design
- BE5 – Conservation Areas

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

- PLP1 – Achieving Sustainable Development
- PLP24 – Design
- PLP35 – Historic Environment

National Planning Guidance:

- Paragraph 17 – Core Planning Principles
- Chapter 7 – Requiring Good Design
- Chapter 12 – Conserving and enhancing the historic environment

**7.0 PUBLIC/LOCAL RESPONSE:**

- 7.1 The application has been advertised via site notice, press notice and through neighbour letters to addresses bordering the site. This is in line with the Councils adopted Statement of Community Involvement. The end date for publicity was the 17<sup>th</sup> of November, 2017, no public representations were received.

**8.0 CONSULTATION RESPONSES:**

**8.1 Statutory:**

**KC Conservation and Design** – On-balance the Firestone rubber covering is acceptable providing that a textured finish could be achieved to resemble the existing roof.

**8.2 Non-statutory:** None

**9.0 MAIN ISSUES**

- Principle of development
- Urban design issues
- Residential amenity
- Highway issues
- Other matters



## 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 site is however located within the Almondbury Conservation Area, therefore section 72 of the Planning (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 area.
- 10.3 The general principle of making alterations to a property are in this instance assessed against policies BE1, BE2 and BE5 of the Unitary Development Plan and advice within Chapters 7 and 12 of the National Planning Policy Framework (NPPF) regarding design. These policies require in general a balanced consideration of visual and residential amenity, the impact on the Conservation Area, highway safety and other relevant material considerations.
- 10.4 In addition Policies PLP24 and PLP35 of the publication draft Local Plan set out a variety of 'design' considerations to take into account in the assessment of a planning application.

### Urban Design and Heritage Issues

- 10.5 Almondbury Methodist church is located in the Almondbury conservation area, occupying a prominent position adjacent to Westgate. As such particular attention should be given to the design of any proposal and its impact on the surrounding area. Paragraph 131 of the NPPF sets out criteria that should be taken into account including, the desirability of sustaining and enhancing the significance of the heritage asset and putting them into viable uses consistent with their conservation, the positive contribution that conservation of heritage assets make, and the desirability of new development making a positive contribution to a local area. When there is harm to the heritage asset it needs to be determined if the harm is substantial or less than substantial and whether there would be any public benefit brought about by the development that would clearly outweigh the harm caused.
- 10.6 In terms of guidance set out in the NPPF the harm caused by the development be would be less than substantial. As such consideration needs to be given to paragraphs 138 & 134 of the NPPF. Paragraphs 134 of the NPPF cites "that where a proposed development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal".

- 10.7 Owing to incidences of vandalism and processes of weathering the application seeks to replace the existing copper roof, with a black rubber roof. As stated within the submitted heritage statement, this material has been favoured over a like-for-like replacement on the basis of an anticipated life expectancy of approximately 50 years (although the manufacturers only guarantees the roof for 20 years), reduction in the attractiveness to vandals or thieves and assessed low environmental impact.
- 10.8 Notwithstanding the reasoning in para 10.7, upon completion the proposed rubber roofing would appear as a continuous smooth black mass. Given that the Methodist church occupies a prominent position within the conservation area and that views of the church, in particular its roof, are accessible from the surrounding area it is considered that the proposed would fail to preserve or enhance the character or appearance of the area. The existing roof in comparison is an attractive prominent feature of the building and surrounding area.
- 10.9 Supporting information submitted alongside this application and subsequent negotiations have failed to satisfy officers that due consideration have been given to alternative roofing materials. Furthermore, no information has been provided specifying why other considered materials, including the use of the same material but with a textured finish or ribbing to match that in the existing roof, are not suitable. It is noted that the building provides a public benefit to the local community by the work of the church and it is reiterated that there are no objections to a replacement roof to the building. Indeed this would secure the optimum viable use of the building into the future. The point of contention is the specific finished appearance of the rubber roofing material proposed. The replacement roof material, without any texture, is considered unacceptable and detrimental to the Conservation Area.
- 10.10 Given the above it is considered that the appearance of the rubber covering would cause less than substantial harm to the appearance of the Almondbury conservation area and that there is no public benefit that would clearly outweigh the harm caused. As such the development is contrary to Policies D2 (Criteria vi), BE1 (ii) and BE5 of the Unitary Development Plan, Policies PLP24(a) and PLP35 3 (e) of the publication draft Local Plan and guidance contained in Chapter 7 and Chapter 12 of the National Planning Policy Framework.

#### Residential Amenity

- 10.11 The impact of the proposed development on residential amenity has been assessed and is considered acceptable. The proposal relates to the replacement of an existing roof and does not propose any other alterations or extension to the existing building. As such the proposal is not anticipated to have an impact on the residential amenity currently enjoyed by the residents of neighbouring properties.
- 10.12 Consequently, given the above the proposal is considered to comply with Policies D2 (Criteria v) of the Unitary Development Plan, Policies PLP1 and PLP24 of the publication draft Local Plan (PDLP) and guidance contained within the NPPF.

## Highways Issues

- 10.13 The considered application does not propose any alteration to the existing access or parking arrangement of the building. As such it is not anticipated that the development would give rise to any highway safety concerns thereby complying in policy T10 of the UDP.

## Other Matters

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

*'... an assessment of the materials and appearance by members would assist in this decision on whether the proposal would be in keeping with the area.'*

**Response:** Planning officers do not object to the principle of development nor do they object to the proposed material and its impact on the wider conservation area. Rather planning officers and the conservation and design officer object to the appearance of the roof upon completion which would be un-textured, appearing as a large black mass. Consequently, this application is recommended for refusal for reasons set out in the appraisal above.

## **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.
- 11.1 The design of the proposed replacement roof is considered to represent an incongruous feature on a prominent building within the Almondbury Conservation Area which does not respect the architectural qualities of the host building and the materials of construction. The proposal would therefore not preserve or enhance the appearance of the Conservation Area.
- 11.2 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 circumstance of this application, the material considerations considered above do not justify making a decisions other than in accordance with the development plan which require the application to be refused.

### **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%2f93444>

Certificate B completed. Notice served on The Methodist Church of Great Britain  
3<sup>rd</sup> August 2017.

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## Report of the Head of Strategic Investment

### HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 22-Feb-2018

**Subject: Planning Application 2017/93399 Change of use and alterations, including erection of boundary fence, to former mill (B1 Business) to 30 student bedrooms (C4) Office, Britannia Mills, Colne Road, Huddersfield, HD1 3ER**

#### APPLICANT

Qamar Anwar,  
First4lawyers Ltd

#### DATE VALID

02-Nov-2017

#### TARGET DATE

28-Dec-2017

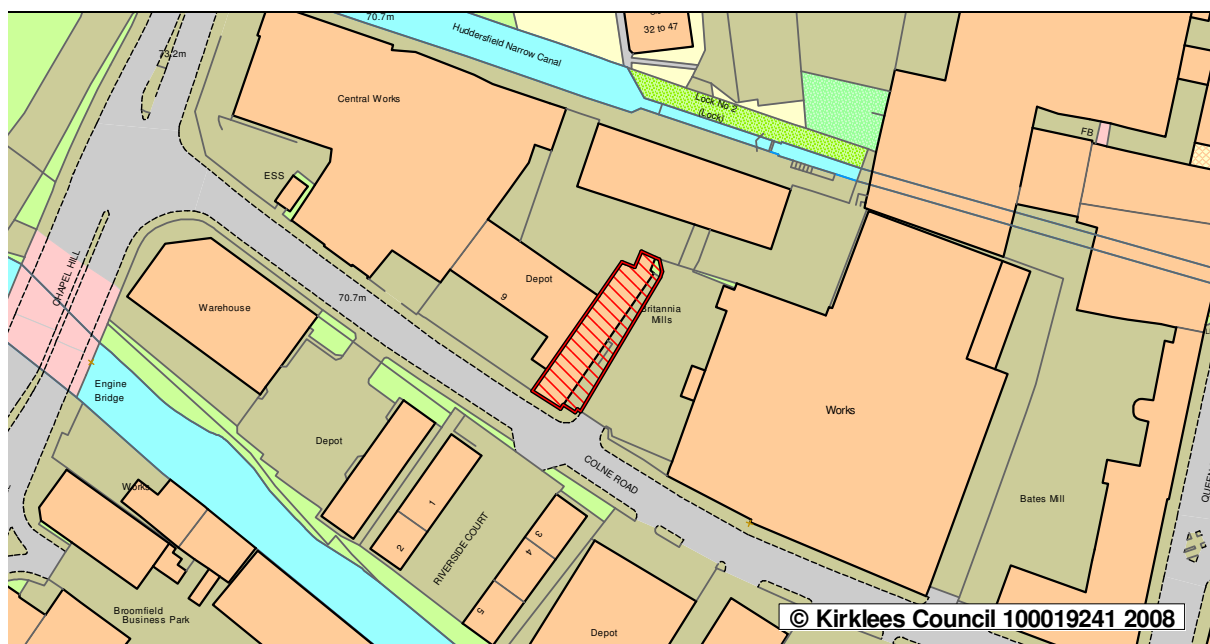
#### EXTENSION EXPIRY DATE

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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

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**Electoral Wards Affected: Newsome**

No

Ward Members consulted

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## **RECOMMENDATION**

Delegate approval of the application and the issuing of the decision notice to the Head of Strategic Investment in order to:

Finalise negotiations on outstanding technical matters relating to the Environment Agency, specifically their recommended conditions.

Complete the list of conditions including those contained within this report (and any added by the Committee).

In the circumstances where outstanding Environment Agency concerns have not been addressed within 3 months of the date of the Committee's resolution then the Head of Strategic Investment shall consider whether planning permission should be refused on the grounds that the proposals are unacceptable on the grounds of flood risk; if so, the Head of Strategic Investment is authorised to determine the application and impose appropriate reasons for refusal under Delegated Powers.

### **1.0 INTRODUCTION**

- 1.1 The application has been brought to committee at the request of Councillor Julie Stewart-Turner. The request is because of concerns over the proposal's lack of parking, and the impact on local highway safety.
- 1.2 The Chair of Sub-Committee confirmed that Cllr Stewart-Turner's reason for making this request was valid having regard to the Councillors' Protocol for Planning Committees. Cllr Stewart-Turner also requested a site visit, which was likewise accepted by the Chair of Sub-Committee.

### **2.0 SITE AND SURROUNDINGS**

- 2.1 The Britannia Mills site is located on Colne Road within a key industry hub to the south of Huddersfield Town Centre, with a large number of industrial/commercial buildings located in close proximity to the site. The site and surrounding area forms part of Kirklees Council's 'Priority Employment Area'.
- 2.2 The building and site is bounded on all sides with existing industrial units, with a large Auto-parts supplier to the East and North, and the Council's document printing facility abutting the building to the West. Adjacent the building opposite Colne Road is a clothing distribution centre and a number of electrical wholesalers.

- 2.3 The main vehicular and pedestrian entrance to the site is accessed off Colne Road to the South-east, with the access to the site shared between Britannia Mills and the adjacent industrial units. A large car park is situated to the East of the site but this does not form part of the application site. Space is currently provided for four vehicle parking spaces directly in front of the building. The main vehicular site entrance can be secured with large metal security gates.
- 2.4 The building itself is a traditional 3-storey mill building constructed around 1860. It is faced in stone with a pitched slate roof. The first and second floor have principally UPVC framed windows whilst openings on the ground floor have been blocked up. It is confined to a very limited curtilage with the building on an east/west axis. The main entrance is located on the east elevation. There is an access ramp outside the main entrance and a fire escape along the eastern elevation of the building.

### **3.0 PROPOSAL**

- 3.1 The proposal seeks to convert the unused Britannia Mills office building into a development of 30 student bedrooms in a cluster format of 6 flats. The flats are to be formed in clusters of 5 bedrooms per unit, with communal kitchen and lounge facilities provided to each. Bedroom units will be provided with; private en-suite bathrooms, three quarter size beds, study and storage space.
- 3.2 On the Colne Road elevation former door openings are to be blocked up to form windows. All new and replacement windows are to be double glazed and match the design of the existing windows, bar three feature openings, including the main access, which are to be aluminium framed with aluminium extruded feature window frame. Signage is proposed, to state 'Britannia Mills', written vertically on the main elevation.
- 3.3 The existing boundary wall with Colne Road is to have a pedestrian gateway formed. The stone 'Britannia Mills' is to be repaired and moved to facilitate this. A 2.1m steel fence is to be erected along the boundary with the adjacent works (Wood Auto Supplies Ltd) forming a confined area. A bin storage area with a footprint of 4.035m x 2.7m is to be constructed adjacent to the access to Wood Auto Supplies Ltd, with gate facing the access. No parking spaces would be retained on site but space for 20 cycles provided.

### **4.0 RELEVANT PLANNING HISTORY**

#### *4.1 Application Site*

The application site has no planning or planning enforcement history.

#### *4.2 Surrounding area*

There are numerous planning applications for neighbouring sites relating to their commercial uses. None are considered directly relevant to the current proposal.

## 5.0 HISTORY OF NEGOTIATIONS

- 5.1 Officers expressed initial concerns relating to the highways impact of the proposal and the proposed noise mitigation. Following discussions a highways statement was provided and, on balance, deemed acceptable given the nature and scale of the development. Additional information was added to the proposal's acoustic survey which addressed the noise mitigation concerns.
- 5.2 Further to this the Environment Agency initially raised concerns regarding flood risk. The applicant, officers and the Environment Agency have negotiated together and reached an agreed outcome. The formal Flood Risk Assessment has been updated and sent onto the EA for comment. Their response has not been received to date.

## 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, within an area designated for Industry and Warehousing (TC12) and also within identified derelict land (DL1/DL2/DL3).
- 6.3 The site is allocated as Priority Employment Accept on the PDLP Proposals Map.
- 6.4 Kirklees Unitary Development Plan (UDP) Saved Policies 2007
- **G6** – Contaminated land
  - **D2** – Unallocated Land
  - **BE1** – Design Principles
  - **BE2** – Quality of Design
  - **BE12** – Space about buildings
  - **EP4** – Development and Noise
  - **T10** – Highway safety
  - **T19** – Parking standards
  - **DL1** – Derelict and neglected land (strategy)
  - **DL2** – Reclamation of derelict land
  - **DL3** – Derelict land



- **B4** – Premises and sites with established use, or last used for, business and industry
- **H1** – Housing (Strategy)
- **H8** – Conversion to residential use
- **TC1** – Huddersfield Town Centre
- **TC12** – Industry and Warehousing

#### 6.5 Kirklees Publication Draft Local Plan (submitted for examination April 2017).

- **PLP 1** – Presumption in favour of sustainable development
- **PLP 2** – Place shaping
- **PLP 3** – Location of new development
- **PLP 8** – Safeguarding employment land and premises
- **PLP 21** – Highway safety and access
- **PLP 24** – Design
- **PLP 27** – Flood risk
- **PLP 28** – Drainage
- **PLP 30** – Biodiversity and geodiversity
- **PLP 51** – Protection and improvement of local air quality
- **PLP 52** – Protection and improvement of environmental quality
- **PLP 53** – Contaminated and unstable land

#### 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 10** – Meeting the challenge of climate change, flooding and coastal change
- **Chapter 11** – Conserving and enhancing the natural environment

#### 6.7 Other

- KMC: Guidelines for Regeneration – Firth Street Area (2002)

### 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 15th of November, 2017.

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

- A gate shown accesses onto neighbouring land, where there is no right of access.
- Concerns over the proposal's impact on operational flexibility of adjacent business, Woods Auto Supplies Ltd. The business is manned most days from 0730 – 2000 (with no hours of use restrictions). Deliveries happen throughout the day via vans, HGVs and Lorries. Residential uses are not compatible adjacent to the business and industries ongoing, and future noise complaints may put undue pressure on the adjacent business. Thus the proposal fails B4 of the UDP.

- Student will be required to cross Woods Auto Supplies Ltd site's entrance. Because of limited turning availability within the site, Lorries are required to either reverse in or out of Woods Auto Supplies Ltd's site. Students crossing the site would therefore form an additional hazard that does not currently exist.

7.3 Councillor Julie Stewart-Turner requested that the application be brought to committee due to concerns of lack of parking and the impact on the local highway network.

## **8.0 CONSULTATION RESPONSES**

### **8.1 Statutory**

The Environment Agency: Initially objected due to flood risk concerns. Following discussions between the applicant, agent and EA a resolution has been agreed. The EA has been provide with the updated FRA, and their response is pending.

The Canal and Rivers Trust: No comment.

K.C. Highways: No objection subject to condition limiting use to student accommodation.

### **8.2 Non-statutory**

K.C. Ecology: No objection subject to conditions.

K.C. Lead Local Flood Authority: No objection subject to condition.

K.C. Environmental Health: Initially raised concerns and requested clarification. This has been provided. Conditions requested relating to noise mitigation and contamination, if minded to approve.

Crime Prevention (PALO): No objection subject to condition.

## **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).
- 10.2 The dimensions of sustainable development will be considered throughout the proposal. Further to the above the Council are unable to demonstrate a 5 year supply of housing land. Therefore relevant policies for the supply of housing should not be considered up to date. Notwithstanding this the site is not subject to policies which restrict the supply of housing. Conversely 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 Huddersfield sub-area. The listed qualities will be considered where relevant later in this assessment.

#### *Conversion from office to residential*

- 10.5 The proposal would result in the loss of an employment site. Therefore Policy B4 of the UDP falls to be considered. B4 outlines a range of considerations to be taken into account in proposed changes of use of premises last used for business and industry. Additionally the site is allocated as being within a Priority Employment Zone. Policy PLP8 states;

*2. Within Priority Employment Areas, proposals for redevelopment resulting in a non-employment end use, or for the conversion or change of use of sites and premises in use or last used for employment, will only be supported where:*

*a. it can be demonstrated that the site or premises are no longer capable of employment use; and*

*b. the proposed use is compatible with neighbouring uses and where applicable, would not prejudice the continued use of neighbouring land for employment.*

10.6 In accordance with the above policies consideration must be given to the suitability of the site for continued employment use. The following considerations have been raised;

- **Age of the building**

10.7 Built circa 1860, the building is dated and not optimum for modern office use. Prior to its sale it was occupied by the council for a number of years. To bring the building up to modern standards would require a significant investment, however as outlined below local economic factors make this unlikely to occur. For example the site has no lift access and poor internal layout and circulation.

- **Lack of Parking**

10.8 As an office the site has 4 parking spaces. Based off the site's floor space 45 members of staff can be anticipated. While in a sustainable location, where a lower level of parking can be acceptable, the provision of parking is deemed poor. The lack of parking forms a detriment to the site's attractiveness to office business.

- **Economic factors**

10.9 The applicant has provided a Marketing Report from Walker Singleton which details local office trends. Demand for office properties is low, with the limited demand for town centre offices being supplied by more modern, larger and flexible facilities elsewhere, with parking provision.

10.10 Occupation would require a substantial void period, below market low rent and likely be on a short term lease, along with an initial cost to update the building. These considerations conclude it not to be financially viable, and officers have no cause to dispute this.

- **No other appropriate commercial use**

10.11 Given the layout of the building, its age and lack of appropriate vehicular access arrangements, the building does not lend itself to other commercial uses, such as manufacturing. Because of its location officers would express concern over a retail use.

- 10.12 The site is surrounded by more modern facilities. It is noted that other historic buildings are nearby, such as Thomas Broadbent and Sons on Queen Street South. Nonetheless these buildings differ in character, with Thomas Broadbent and Sons being principally manufacturing, with a floor area numerous times larger than the site.
- 10.13 Weighing the above officers are satisfied that the proposal has demonstrated that the premises are no longer reasonably capable of reasonably accommodating an office use, and no alternative viable employment use is considered appropriate. Both B4 and PLP8 require consideration of a proposal's impact on the operation flexibility of neighbouring uses.
- 10.14 To the rear (west) of the site are offices. No windows face towards the offices and there is anticipated to be limited scope for interaction between residents and these officers. To the south, cross Colne Road, is a wholesaler. With the intervening road, interactions will be limited.
- 10.15 To the immediate east are Wood Auto Supplies Ltd who have provided representation expressing concerns over the impact on their business. The business is manned most days from 0730 – 2000 (with no hours of use restrictions). Deliveries happen throughout the day via vans, HGVs and Lorries. Residential uses are not compatible adjacent to the business and industries ongoing, and future noise complaints may put undue pressure on the adjacent business.
- 10.16 The concerns relate principally to noise generation and how this will impact on future occupiers. The impact on future residents, including noise generation from adjacent business, is fully considered within sections 10.27 – 10.32 in this report. In summary officers are satisfied with the level of noise mitigation proposed will satisfactorily dampen incoming noise from the adjacent business. The proposed fencing will ensure the two uses are separate, and while other concern has been expressed over students crossing Wood Auto Supplies Ltd's, it is an existing pedestrian route. It is concluded that the proposal will not unduly impact upon the operation flexibility of Wood Auto Supplies Ltd, subject to the noise mitigation measures being implemented.
- 10.17 While Policies B4 and PLP8 are noted, Policy PLP7 states that the efficient and effective use of land and buildings includes '*the reuse or adaptation of vacant or underused properties*' and '*giving priority to despoiled, degraded, derelict and contaminated land provided that it is not of high environmental value*'. The NPPF adds weight in favour of this, stating;

*Planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Land allocations should be regularly reviewed. Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities.*

- 10.18 Some limited weight is also given to the 'Guidelines for Regeneration – Firth Street Area' document, which outlines the council's strategy for the area dating from 2002, although this is now post dated by the publication draft Local Plan. In summary the document supports the continuous regeneration of the area, so as to revitalise the Firth Street Area, with a particular focus on former textile mills being suitable for residential conversion.
- 10.19 In summary, it is concluded that the property is unlikely to be economically viable for B1 use in the near future with there being more appropriate modern facilities available. Furthermore the site does not lend itself to other commercial uses, such as warehousing or manufacturing. Officers are satisfied that it can be demonstrated that the premises is no longer reasonably capable of employment use. Therefore the proposal is not considered detrimental to the employment viability of the wider Priority Employment Zone.
- 10.20 In regards to a change of use to residential, planning policies, including H1 and H8 of the UDP, PLP7 and PLP11 of the PDLP and Chapter 6 of the NPPF, establish a general principle in favour of residential development. This is subject to various considerations which will be outlined below.
- 10.21 It is therefore concluded that the change of use from B1 to C3 is acceptable in principle, subject to the local impact, to be assessed below.

#### Urban Design issues

- 10.22 No extensions to the building are proposed. Alterations principally including around changing existing openings from doors to windows, or re-opening currently bricked up openings.
- 10.23 All replacement windows are to match those existing, ensuring a uniform appearance. The exception to this are three feature windows, to be aluminium and include extruding aluminium frames. As the majority of windows will match those existing, with the feature windows are set within being kept to aluminium and set within the site, officers are satisfied that the fenestration will respect the original character of the building
- 10.24 In regards to external works, the proposed fencing separating the site from the adjacent business will have a utilitarian design in keeping with nearby fencing, therefore conforming to the character of the wider area. This is considered the case too for the bin store; while located towards the front of the site it is not anticipated to appear incongruous within its setting. From public views it will principally be behind the section of original stone walling, which is to remain.
- 10.25 The inclusion of signage is typical for student accommodation and will reflect that used elsewhere in the area. The amount proposed is considered reasonable and the retention of the site's original name-stones will assist in retaining the building's heritage.
- 10.26 The proposed works are considered to respect the building's original character, while reflecting its new use in an appropriate manner. The proposal is deemed to comply with Policies D2, BE1 and BE2 of the UDP, PLP24 of the PDLP and Chapter 7 of the NPPF in regards to design.

### Residential Amenity

- 10.27 There are no neighbouring residential dwellings in the area that would be impacted by the proposal. Notwithstanding this consideration must be given to the amenity of future residents.
- 10.28 The internal sizes of the proposed flats and individual rooms are considered acceptable, being in keeping with the space standards of nearby student accommodation. Each flat provides all necessary amenities, with each bedroom being en-suite and served by a communal kitchen/living room. While it is noted outdoor space is limited, this is not atypical for student accommodation. Furthermore, given the site's proximity to the town centre and university campus future occupiers will be able to use open spaces and other leisure facilities within the town.
- 10.29 Each habitable room would be served by a well proportionated window. The closest window separation distance from the application site to the adjacent works building is 19.6m, increasing to a maximum of 27.5m given the buildings' splayed layout. Given these distances it is not considered that the adjacent building would cause harmful overbearing or overshadowing upon residents. It is noted that ground floor residents would face the site's boundary fence at a closest distance of 1.6m, however as hit and miss fencing it is not anticipated, on balance, to cause harmful overbearing.
- 10.30 In regards to noise pollution from the adjacent works and road, the application is supported by an acoustic survey. This was reviewed by K.C. Environmental Health, who raised several questions. These were addressed and the applicant has confirmed that all windows are to be replaced and will meet the noise report's standard of sound insulation performance recommended within the survey, with additional noise mitigation measures being implemented at the units adjacent to Colne Road. This can be secured via condition.
- 10.31 In regards to outlook, residents will overlook the adjacent businesses. Taking into account other conversions in the area, it is not out of keeping for residents to overlook commercial businesses although the close relationship between the two uses is noted. As set out above officers are satisfied with the noise mitigation measures proposed and it is not considered that the proximity to the adjacent business would materially impact upon the amenity of future residents. Furthermore any future resident will be aware of the site's layout and outlook before occupation.
- 10.32 Considering the above, officers are satisfied that future residents would have an acceptable level of amenity. This is for student accommodation only as this would ensure that the accommodation would not form occupier's principal residence. It is concluded that on this basis the proposal complies with Policy D2 of the UDP, PLP24 of the PDLP and Paragraph 17 of the NPPF.

### Highway issues

- 10.33 The proposed development, for 30 residents, has no vehicle parking spaces and no dedicated drop off point. 20 cycle parking spaces are proposed, which can be secured via condition. The proposal is actively seeking student accommodation, as opposed to open market units.

- 10.34 The proposed development is on the edge of Huddersfield town centre and has good access links to its facilities and transport hubs, the majority of which are within appropriate walking distances and all are within cycling distance. There are a number of pedestrian crossing facilities between the development site and the town centre to promote ease of access. The site is therefore considered a sustainable location.
- 10.35 In addition to its sustainable location student accommodation has a low traffic generation rate, with students having typically low car ownership. Further Colne Road benefits from double yellow TRO (however loading/unloading is allowed), preventing residents parking on the road. As the site has no parking, and on-street parking is prevented via TRO, students will be actively discouraged to bring vehicles. Any occasional short term parking, such as visitors or family members, can be accommodated at the nearby car parks on Colne Road, approx.100.0m away.
- 10.36 Inevitably during moving in/out day traffic will peak. Nonetheless loading/unloading is permitted on Colne Road, or the car park 100.0m away can be utilised. All whitegoods are to be provided, preventing the need for future residents to bring large bulky goods with them. Additionally the applicant has confirmed that moving in / out will take place during weekends. Therefore the majority of adjacent businesses will be closed, limiting local highway usage. Two days of peak traffic a year is not considered materially harmful to the safe and efficient operation of the Highway Network.
- 10.37 Consideration must also be given to the site's current use. The site's current office use can be anticipated to accommodate 45 members of staff. Applying T19's parking standards, a 735sqm office building would be expected to accommodate a maximum of 29 parking spaces while it is only able to provide 4. While the figure of 29 may be reduced due to the site's proximity to the town centre, officers conclude that the existing B1 use has a higher demand for parking than the proposed student accommodation.
- 10.38 It is noted that objection has been raised to students crossing the access of Wood Auto Supplies Ltd. While the proposal will bring more footfall into the area it will not be a materially significant increase. The access already crosses a public pavement, therefore being an established pedestrian route, and is wide with good sightlines. It is not considered the arrangement would impact on the safe or efficient operation of the highway and would not form a justifiable reason for refusal.
- 10.39 Weighing the above consideration, subject to the site being occupied by student residents (securable via condition), officers are satisfied that the development will not cause material harm to either the safe or efficient operation of the local highway network. Therefore officers conclude that the proposal complies with Policy T10 of the UDP and Policy PLP21 of the PDLF.



## Other Matters

### *Drainage issues*

- 10.40 The site is within Flood Zone 3, however as the proposal only seeks a change of use within the same vulnerability classification neither the sequential or exceptions test are required. The proposal has been reviewed by the Lead Local Flood Authority, who raised concerns regarding flood risk. However, subject to a condition requiring details of a flood evacuation plan being provided, they offer no substantive objection to the proposal.
- 10.41 The Environment Agency raised concerns over the ground floor self-contained flats, because of anticipated floor levels. While the applicant amended the plans to raise the ground floor level, this did not overcome the concerns. Following this discussed have taken place between officers, the Environment Agency and the applicant's Flood Risk Consultant. The applicant has agreed to further mitigation measures, as requested by the EA, and the FRA assessment is being updated. Subject to the updated FRA complying with the EAs advise, it will overcome the concerns expressed.
- 10.42 The updated FRA has been received and sent onto the EA for final comment. So as to work proactively with the applicant and in the interest of a prompt decision officer's request that members delegate power back to the Planning Authority to await the formal response and wording of conditions from the Environment Agency.

### *Contaminated land*

- 10.43 Given the history use of the site concern is held over ground based contamination. If minded to approve it is considered necessary to condition the investigation and remediation, along with other appropriate measures, to ensure the site is safe for habitation. This is to comply with the guidance of Policy G6 of the UDP and PLP53 of the PDLP.

### *Impact on local ecology*

- 10.44 The site is within the council's bat alert layer and is adjacent to a habitat network and the application is supported by a Bat Survey. In summary no evidence of bat usage or roosting was found and the nature of works is not considered detrimental to local bat population. It is however suggested that a second nocturnal survey be undertaken prior to works being undertaken.
- 10.45 The report and its recommendations have been reviewed by K.C. Ecology. They concur with the findings, subject to the recommendations (including the additional survey work) be secured via condition. Subject to this officers are satisfied that the proposal complies with Policy PLP30 and Chapter 11 of the NPPF.

### *Crime prevention*

- 10.46 The plan has been reviewed by the council's Police Architectural Liaison Officer. No objection to the principle of development is held, however it is requested that details on the proposal's specific crime prevention measures be submitted to, and approved by, the Local Planning Authority. In the interest of crime prevention, in accordance with BE1 of the UDP and PLP24 of the PDLP this is deemed a reasonable condition to impose.

## Representations

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

- A gate shown accesses onto neighbouring land, where there is no right of access.

**Response:** This was raised with the applicant and the gate in question has been removed.

- Councillor Julie Stewart-Turner requested that the application be brought to committee due to concerns of lack of parking and the impact on the local highway network.

**Response:** The impact on the local highway impact has been considered in detail within sections 10.33 – 10.39 of this assessment.

## **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. This application has been assessed against relevant policies in the development plan and other material considerations.

11.2 Officers concluded while the proposal would include the loss of an employment site, which is within a priority employment area as identified by the PDLP, the building is no longer appropriate for its historic office use. Furthermore there is no reasonable other commercial use for the site. At a time of general shortage, the provision of residential is supported in principle. The proposal is not anticipated to impact upon the flexibility and operations of adjacent businesses.

11.3 The proposal would be visually attractive and future residents would have an acceptable level of amenity. Subject to the site being occupied by students, officers are satisfied that the proposal will not result in a materially harmful impact upon the safe and efficient operation of the Highway.

11.4 It is noted that there are standing objections from the Environment Agency, however this has informally been addressed with minor agreed alterations to the Flood Risk Assessment being undertaken. Therefore officers are seeking delegation to the Head of Strategic Investment to resolve these outstanding matters in a timely manner.

11.5 Subject to technical confirmation from the Environment Agency it is considered that the development would constitute sustainable development and is therefore recommended for approval.

## **12.0 CONDITIONS**

1. Time Limit
2. In accordance with plans
3. In accordance with Traffic Statement
4. Student accommodation
5. Flood evacuation plan
6. Flood mitigation measures
7. Crime prevention
8. Cycle spaces provided
9. In accordance with noise plan
10. Ecology information
11. Contaminated land (Investigation Phase 1)
12. Contaminated land (Investigation Phase 2)
13. Contaminated land (Phase 2 Implemented)
14. Contaminated land (Remediation Strategy)
15. Contaminated land (Validation)

### **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=2017/93399>

Certificate of Ownership: Certificate A signed.

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## Report of the Head of Strategic Investment

### HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 22-Feb-2018

**Subject: Planning Application 2017/91618 Change of use and erection of extension and alterations to former club/pub to form 7 apartments 14, New Road, Kirkheaton, Huddersfield, HD5 0HP**

#### APPLICANT

A Knapton

#### DATE VALID

11-May-2017

#### TARGET DATE

06-Jul-2017

#### EXTENSION EXPIRY DATE

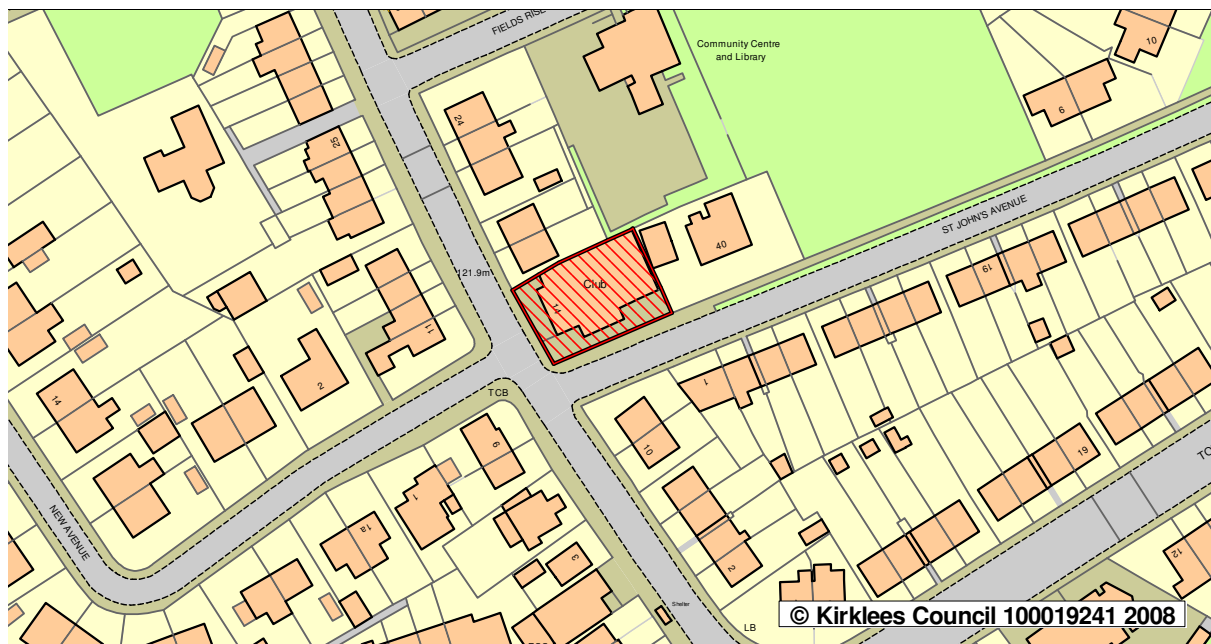
03-Oct-2017

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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

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**Electoral Wards Affected: Dalton**

N

Ward Members consulted  
(referred to in report)

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**RECOMMENDATION: REFUSE**

1. The proposals, due to the scale, mass, height and overall projection of the two storey rear extension and its siting in close proximity to no. 16 New Road, would have an overbearing impact and cause undue overshadowing of the external private amenity areas of this property, resulting in an adverse loss of amenity to the existing and future occupiers of this property. This is contrary Policy D2 (v) of the Kirklees Unitary Development Plan and the fourth Core Planning Principle of the National Planning Policy Framework which seeks to secure a good standard of amenity for all existing occupiers of land and buildings as well as Policy PLP24 (b) of the Publication Draft Local Plan.

2. The proposals, by reason of their location in proximity to a major hazard installation, is such that potentially there would be a risk of harm to people on safety grounds. The information submitted with the application does not demonstrate how this harm can be outweighed. The proposal would therefore fail to comply with paragraph 109 of the National Planning Policy Framework.

**1.0 INTRODUCTION:**

1.1 The application is brought to Huddersfield Sub Committee at the request of Councillor Peter McBride who states:

*“given the dilemma that although I would welcome the housing provision that this might provide although the scale of development may have an adverse affect on neighbours. I would also welcome the views of the Kirkheaton Group currently developing the Neighbourhood Plan”.*

The Chair of Sub-Committee confirmed that Councillor Peter McBride’s reason for making this request is valid having regard to the Councillors’ Protocol for Planning Committees. Chair agreed for a site visit to be carried out.

## **2.0 SITE AND SURROUNDINGS:**

- 2.1 The application site relates to a corner plot which lies at the junction of New Road and St John's Avenue in Kirkheaton. The site accommodates a two storey stone building facing New Road with a small amenity area bound by a stone wall along this road frontage. To the side (south east), along St John's Avenue, is an open forecourt area, currently used for parking of vehicles and storage of bins. The single storey rendered extension on this side provides entrance to the host building and large single storey flat roofed extension to the rear. The last known use of the building was as the Kirkheaton Liberal club.
- 2.2 The site adjoins residential garden areas beyond the north and east boundaries and lies in a predominately residential area.

## **3.0 PROPOSAL:**

- 3.1 The application seeks permission to demolish the existing single storey rear and side (rendered) extensions, erection of two storey rear extension, alterations and change of use to form 7 apartments. The revised plans now indicate the cellar areas to be used as storage areas. At ground floor the proposals would provide 3 apartments. At first floor a further 3 x one bed apartments and a one bed apartment is proposed in the roof space of the proposed two storey extension. This would be served wholly by roof lights.
- 3.2 Externally, the proposals would provide eight car park spaces along the southern boundary, bin storage and communal garden areas for the proposed apartments. A two metre fence is also proposed on the northern boundary shared with no. 16 New Road.

## **4.0 RELEVANT PLANNING HISTORY (including enforcement history):**

- 4.1 2011/90623 – erection of canopy shelter over disabled ramp access – refused  
28.Jun 2011
- 2003/91037 – formation of access ramp – granted May 2003

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

- 5.1 7<sup>th</sup> November 2017 – revised plans omitting living accommodation in cellar areas and amendments to fenestration to include high cill openings.

11<sup>th</sup> September 2017 - agreement to a further extension of time to address concerns in relation to basement apartments and to consider reducing the height of the two storey extension to avoid adverse impact on the amenities of no. 16 New Road

23<sup>rd</sup> July 2017- agreement to extension of time

## 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 and on the publication draft local plan. The site lies in close proximity of the local centre of Kirkheaton.
- 6.3 Kirklees Unitary Development Plan (UDP) Saved Policies 2007:  
D2 – Unallocated land  
BE1 – Design principles  
BE2 – Quality of design  
BE11 – materials  
BE12 – Space about buildings  
EP4 – Noise sensitive development  
H8 – Change of use to residential  
T10 – highway considerations  
T19 – parking provision
- 6.4 PLP1 Presumption in favour of sustainable development  
PLP2 Place shaping  
PLP7 Efficient and effective use of land and buildings  
PLP 20 Sustainable travel  
PLP21 Highway safety and access  
PLP22 Parking  
PLP24 Design  
PLP48 Community facilities and services  
PLP51 Protection and improvement of air quality
- 6.5 National Planning Guidance:  
Chapter 6 – delivering a wide choice of high quality homes  
Chapter 7 – Requiring good design  
Chapter 8 – Promoting Healthy Communities  
Chapter 11 – conserving and enhancing the natural environment.  
Core Planning Principles
- 6.6 Other Documents  
West Yorkshire Low Emission Strategy Planning Guidance (WYLES)



## **7.0 PUBLIC/LOCAL RESPONSE:**

- 7.1 The application was advertised by site notice and neighbour letters. Two representations have been received in response to the publicity. One is in support from the adjacent occupier of no. 40 St John's Avenue. The other is from occupier of no. 16 New Road, who sought for an explanation of the proposals to assess whether it would have an impact on no. 16 New Road and the amenities currently enjoyed by the occupiers of this property. Clarity was also sought on the position of window openings to avoid overlooking into private amenity areas.

Kirkburton Parish Council – none received to date

## **8.0 CONSULTATION RESPONSES:**

### **8.1 Statutory:**

K.C. Highways Development Management – support subject to conditions

Health and Safety Executive (HSE) - advice is that there are sufficient reasons on safety grounds, for advising against the granting of planning permission in this case – see assessment below.

### **8.2 Non-statutory:**

K.C. Environmental Services - – support subject to conditions

## **9.0 MAIN ISSUES**

- Principle of development (including housing issues)
- Urban design issues
- Residential amenity (including Health & safety)
- Highway issues
- Representations
- Other matters

## **10.0 APPRAISAL**

### Principle of development

- 10.1 The site is located within an area unallocated on the UDP and draft Local Plan. Policy D2 is appropriate and stipulates that development should protect the visual and residential amenity of neighbouring properties. The application site adjoins residential properties to the north-west off New Road and towards the east on St John's Avenue. The assessment below will consider the visual and residential amenity.
- 10.2 The proposal seeks the change of use of an existing building and the principal policy to consider in the UDP is Policy H8. This sets out that the change of use of buildings to residential use will normally be permitted subject to employment, environmental, amenity and traffic considerations. Post-dating this is advice in Chapter 6 of the NPPF which states that LPAs should...bring back into residential use empty housing and buildings and 'approve planning applications for change to residential use and any associated development from commercial buildings...'

- 10.3 There are two specific elements to the proposed development, first the loss of the community facility (employment - Policy H8 of UDP) and secondly the alterations and extensions of this building to convert the existing building into seven apartments (environmental, amenity and traffic considerations – Policy H8 of UDP).
- 10.4 Considering the first element, section 8 of the NPPF relates specifically to delivering social, recreational and cultural facilities and states planning decisions should guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the communities ability to meet its day to day needs. Policy PLP48 of the publication draft Local Plan is also considered relevant given the potential loss of a community facility which reiterates the points made above.
- 10.5 The site lies in close proximity to the local centre of Kirkheaton. The property is stated to have been vacant since September 2016 according to the information submitted. With respect to the loss of a community facility the property is empty and it is considered that it does not currently serve the needs of the local community. Furthermore, there are public houses located south east and west of the application site on Town Road (Yeaton Cask) and Bankfield Lane (The Spangled Bull), all in close proximity of the application site. It is considered therefore that even with the loss of this facility there would remain sufficient provision to serve the needs of the local community.
- 10.6 Furthermore subject to assessment of all other material considerations, the conversion of the existing building, on this prominent site on two road frontages would provide a wider benefit to the character and appearance of the local area by bringing the building in to a long term viable use, where it is more likely the building would be maintained on a regular basis over time. The principle of the loss of this community facility is therefore in accordance with the requirements of Section 8 of the NPPF and policy 48 of the draft Local Plan.

#### *Housing issues- Five Year Land Supply*

- 10.7 Currently the Council is unable to demonstrate a five year supply of deliverable housing sites. In these circumstances, in accordance with NPPF paragraph 49, “relevant policies for the supply of housing should not be considered up to date”. Consequently planning applications for housing are required to be determined on the basis of the guidance in NPPF paragraph 14. This requires proposals which accord with UDP to be approved without delay or where the UDP is silent or out-of-date to grant planning permission unless the adverse impacts of doing so would ‘significantly and demonstrably’ outweigh the benefits in the NPPF.

#### Urban Design issues

- 10.8 UDP Policies BE1 and BE2 are considerations in relation to design, materials and layout. In principle development should respect the scale, height and design of adjoining buildings/land levels and be in keeping with the predominant character of the area.

- 10.9 The existing building has been extended previously with the addition of single storey extensions to the sides and rear. The rear extension extends up to the northern and eastern boundary which are shared with the adjoining plots accommodating residential dwellings, namely no. 16 New Road and 40 St John's Avenue. It is considered the design, scale and appearance of these existing extensions adds little value to the character of the host building and street scene.
- 10.10 The proposals are to:
- largely demolish the existing extensions including ramp access to southern elevation,
  - retaining a small section of the side extension adjoin the boundary with no. 16 New Road,
  - erect a new two storey extension to the rear with hipped roof,
  - provide a new ramp access to proposed two storey extension provide new external steps to side (south elevation) of host building
  - provide a secure bin storage area adjacent to the boundary of no. 40 St John's Avenue
  - retain 8 car park spaces along the southern elevation and
  - erect a 2m high fence on party boundary with no. 16 New Road.
- 10.11 The proposed extension would be set in 1.7m from the southern (side) elevation of the host property. It would be replacing the existing single storey extensions which comprise of a render and stone finish with a substantial two storey stone extension. Given the siting, design and external facing materials to match the host building, officers are of the opinion the proposals would be more in keeping with the characteristics of the host building and not detract from the visual amenity of the street scene.
- 10.12 The demolition of the existing structures, in particular the single storey rendered side extension would ensure a more usable and practical area, to provide off street parking for the proposed development. In addition the secure gated bin store to be sited adjacent to the proposed extension and eastern boundary would provide adequate visual screening of bins and would be an improvement to the current situation where bins are left on the side of the building in full view. In terms of visual amenity, the proposals are considered to accord with Policies D2, BE1 and BE2 of the UDP, as well as the aims of Chapter 7 of the NPPF as well as PDLP Policy PLP24, and would ensure the visual amenity of the host property and area is not compromised.

#### Residential Amenity

- 10.13 It is considered the use of the premises as residential use would result in less noise and disturbance than what would have been experienced from the club when it was in operation. The apartments would have minimal external amenity area. Environmental Services raise no objections and it is considered the proposal would not have a detrimental impact on residential amenity of existing or future occupiers in regard to either noise or air pollution, and would accord with policy EP4 of the UDP, PLP52 of the PDLP and chapter 11 of the NPPF.

- 10.14 Turning to space about building distances, Policy BE12 of the UDP sets out the normally recommended minimum distances between habitable and non-habitable room windows for new dwellings. New dwellings should be designed to provide privacy and open space for their occupants and physical separation from adjacent property and land. Distances less than those specified will be acceptable if it can be shown that by reason of permanent screening, changes in level or innovative design no detriment would be caused to existing or future occupiers of the dwellings or to any adjacent premises. Physical separation of this building from adjacent land and property is a key consideration.
- 10.15 The proposals on the whole would accord with Policy BE12 and would to a certain extent, in particular adjacent to the northern and eastern shared boundaries, increase the current distances to the neighbouring sites by reduction of the overall footprint of the building. However there are concerns related to the resultant impact on the adjoining neighbouring plot of no. 16 New Road, from the overbearing and oppressive impact of the scale of the two storey extension. This would have a projection of 9m from the rear wall of the host building.
- 10.16 In the main, the proposals would provide an adequate level of privacy for the existing and future residents of the proposed apartments. However, officers are concerned with the potential loss of light and overbearing impact to the neighbouring residential plot to the north no.16 New Road. The proposals in the siting, scale and mass are considered to cause an adverse impact to the amenities currently enjoyed by the occupiers of this neighbouring property, contrary to Policy D2 of the UDP which seeks to ensure that new development does not prejudice residential amenity. This policy is consistent with one of the core planning principles of the National Planning Policy Framework (the Framework), which seeks to provide a good standard of amenity for all existing and future occupants of land and buildings. This is reflected in Policy PLP 24b of the emerging local plan.

*Health & Safety:*

- 10.17 Turning to matters of Health and Safety, the site is located within a Consultation Zone for a major hazard site. The Health and Safety Executive (HSE) has therefore assessed the application through its planning advice web app, based on details input by officers. The HSE have advised that:

*the risk of harm to people at the proposed development site is such that HSE's advice is that there are sufficient reasons on safety grounds, for advising against the granting of planning permission in this case.*

- 10.18 The Planning Practice Guidance on Hazardous Substances notes that the decision on whether or not to grant planning permission rests with the Local Planning Authority. Nevertheless *"In view of its acknowledged expertise in assessing the off-site risks presented by the use of hazardous substances, any advice from Health & Safety Executive that planning permission should be refused for development for, at or near to a hazardous installation or pipeline should not be overridden without the most careful consideration."*

- 10.19 Major hazard sites/pipelines are subject to the requirements of the Health and Safety at Work etc. Act 1974, which specifically includes provisions for the protection of the public. However, the possibility remains that a major accident could occur at an installation and that this could have serious consequences for people in the vicinity. Although the likelihood of a major accident occurring is small, it is felt prudent for planning purposes to consider the risks to people in the vicinity of the hazardous installation. Where hazardous substances consent has been granted (by the Hazardous Substances Authority), then the maximum quantity of hazardous substance that is permitted to be on site is used as the basis of HSE's assessment.
- 10.20 Officer's opinion is that provision of housing on this site does not outweigh the level of risk identified by the HSE. No information has been submitted which sufficiently demonstrates that the risk of harm to people at the proposed development site could be adequately addressed. The proposals as such would be contrary to paragraph 109 of the NPPF, which promotes enhancement of the natural and local environment by preventing new development being put to unacceptable risk by 'unacceptable levels of...pollution'.
- 10.21 Should Members be minded to grant permission against HSE advice, the Executive requires 21 days' notice to give further consideration to the proposal before a decision is issued and determine whether or not to request the Secretary of State to call-in the application. In light of this the application would need to be delegated back to Officers to allow further consideration by the HSE before issuing of the decision.

#### Highway issues

- 10.22 UDP Policy T10 states that "New development will not normally be permitted if it will create or materially add to highway safety or environmental problems or/in the case of development which will attract or generate a significant number of journeys, it cannot be served adequately by the existing highway network ...". Policy T19 addresses car parking in relation to the maximum standards set out in Appendix 2 to the UDP. Guidance in the NPPF states under paragraph 32 that plans and decisions should take account of whether, amongst other things, "safe and suitable access to the site can be achieved for all people".
- 10.23 The proposals would provide adequate parking provision to serve the seven proposed apartments, six of which are shown to be one bed and apartment no. 1 with two bedrooms. The provision of secure waste storage will also be provided along the eastern boundary. Highway Officers advise secure and safe storage for cycles should be considered. This can be conditioned to be provided as the cellar storage areas could accommodate this.
- 10.24 To summarise, the proposals which include alterations to the car park layout would be a more practical layout than the existing car park layout and provide a secure waste storage area. Should members be minded to approve the application, highway issues can be addressed through the imposition of appropriate conditions to include details of cycle storage and proposed car park layout to be made laid out and made operational prior to the occupation of the apartments. As such from a highway safety aspect, the proposals would not give rise to highway safety concerns nor considered to create or materially add to highway safety issues, in accordance with UDP Policies T10 and T19 as well as DPLP Policy PLP 21 and guidance in the NPPF.

## Representations

- 10.25 Two representations have been received, 1 in support and one objecting from the occupier of no. 16 New Road, who sought for an explanation of the proposals to assess whether it would have an impact on no. 16 New Road and the amenities currently enjoyed by the occupiers of this property. Clarity was also sought on the position of window openings to avoid overlooking into private amenity areas.

**Response:** The plans have been revised to incorporate high cill openings in the north and east elevations to avoid direct overlooking into the private amenity areas of the neighbouring properties. The proposed two metre fence along the northern boundary can also be conditioned to extend along the full length of this boundary to avoid any direct overlooking and loss of privacy to the rear garden area of no. 16 New Road. However, as assessed above concerns remain in relation to the potential loss of light which would be caused from the scale, bulk, mass and height of the proposed two storey extension with a projection of 9m.

- 10.26 Cllr McBride requested the application be brought to committee for determination *given the dilemma that although I would welcome the housing provision that this might provide although the scale of development may have an adverse affect on neighbours. I would also welcome the views of the Kirkheaton Group currently developing the Neighbourhood Plan.* The issues related to housing provision versus residential amenity has been considered in the assessment above. In addition the Kirkheaton Group developing the Neighbourhood Plan has been contacted and asked if there are any views on the proposal. Any response will be reported to committee in the update.

## Other Matters

### *Air Quality:*

- 10.27 In the interests of air quality, and to comply with West Yorkshire Low emissions Strategy, Policy PLP24 of the emerging local plan and Chapter 11 of the NPPF, it is recommended that a planning condition be imposed requiring the installation of an electric vehicle charging points be incorporated into the proposals on the granting of permissions in accordance with the standard procedure. This would be conditioned should Members be minded to approve the proposals.

### *Contamination:*

- 10.28 To ensure that any unexpected contamination is dealt with appropriately and to protect the future occupants of the development would not be at risk of contamination Environmental Service officers have recommended standard conditions in the event of unexpected contamination. Again the recommended condition will be included on the decision notice to accord with Policy G6 of the UDP and Chapter 11 of the NPPF, should the application be supported by Members.

## 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.

This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development would not constitute sustainable development and in light of the above assessment recommended for refusal.

### **Background Papers:**

Application and history files as noted in report.

Website link to be inserted here

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2017%2f91618>

Certificate of Ownership –Certificate A signed by agent

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## Report of the Head of Strategic Investment

### HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 22-Feb-2018

Subject: Planning Application 2016/92466 Erection of two dwellings adj 2, Romsey Close, Lindley, Huddersfield, HD3 3GU

#### APPLICANT

Mr & Mrs Polzin

#### DATE VALID

26-Jul-2016

#### TARGET DATE

20-Sep-2016

#### EXTENSION EXPIRY DATE

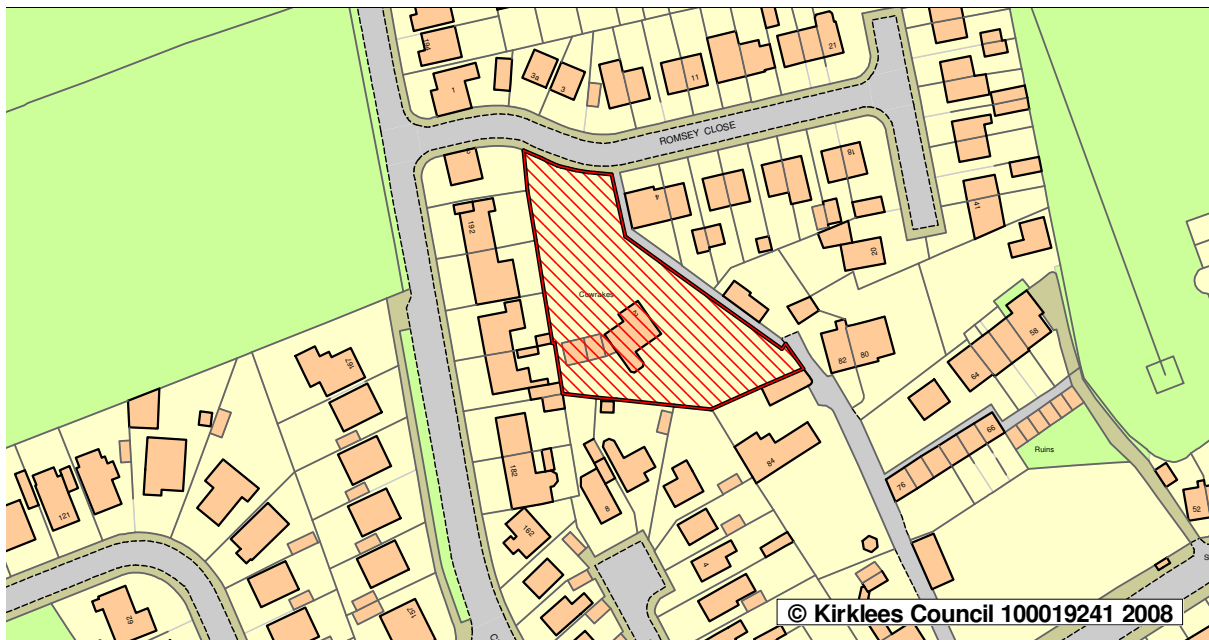
15-Dec-2016

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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

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**Electoral Wards Affected: Lindley**

Y

Ward Members consulted  
(referred to in report)

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## **RECOMMENDATION: REFUSE**

1. The proposed scheme would result in a cramped form of development through the inclusion of dwelling no. 2 by reason of its plot size; the very limited amount of private amenity space that would be provided for this plot, its siting to the front of the existing dwelling and proximity to the public right of way to the east of the site. The proposals as such would fail to respect the character of surrounding development which consists of dwellings with reasonably sized private amenity areas. It would be harmful to visual amenity and contrary to the aims of Policies D2 (ii, vi & vii), BE1 (i) and BE2 (i) of the Kirklees Unitary Development Plan as well as the Core Planning Principles and Chapter 7 of the National Planning Policy Framework and Policy PLP24 (a) of the Kirklees Publication draft Local Plan.

2. The proposed dwelling no.2 to the front (north) of the site, by reason of its close relationship with the existing dwelling of no. 2 Romsey Close would adversely affect the outlook from this property, give rise to an overbearing impact upon it and would result in loss of privacy for occupiers of the existing property and proposed dwelling no. 2. To permit such a development would be contrary to the aims of Policies D2 (v) and BE12 (i & iv) of the Kirklees Unitary Development Plan as well as the Core Planning Principles and Chapter 7 of the National Planning Policy Framework and Policy PLP24 (b) of the Kirklees Publication draft Local Plan.

### **1.0 INTRODUCTION:**

1.1 The application is brought to Huddersfield Sub Committee at the request of Councillor Cahal Burke along with a site visit. The reason for the request is:

*“The application has been amended on a number occasions to accommodate planning concerns, the development does not represent overdevelopment when considered against similar applications that have been recommended for approval”.*

1.2 The Chair of Sub-Committee confirmed that Cllr Cahal Burke’s reason for making this request along with the site visit is valid having regard to the Councillors’ Protocol for Planning Committees.

## **2.0 SITE AND SURROUNDINGS:**

- 2.1 The application red line relates to a modest irregular shaped plot, currently accommodating a detached dwelling, set back into the site from Romsey Close. The site is surrounded predominantly by detached and semi detached properties. There is a public right of way running parallel with the eastern boundary of the site from Romsey Close to Cowrakes Road. The site is bound by a dense hedge along the north and eastern boundary and landscaping to the west and southern boundaries with the gardens of neighbouring residential properties beyond. Levels within the site are gently sloping down in the south easterly direction and consist of manicured lawns

## **3.0 PROPOSAL:**

- 3.1 The proposals are for the erection of two detached dwellings. One dwelling is shown in the south east corner of the site (plot no 1). This is shown to be two storey with a detached garage to the front of it. The proposals would include the creation of a new vehicular access and drive to serve plot no. 1 and the existing dwelling on site, resulting in the removal of the full length of the existing lawn adjacent to the western boundary. External amenity areas are shown to the side and rear of the proposed property in the south east corner of the site.
- 3.2 With regards to plot no. 2, revised plans indicate the siting of the dwelling in the north east part of the site. The eastern side elevation is shown to run parallel with the public right of way, beyond this boundary. This dwelling would also be two storey with an integral garage. The proposals would involve the construction of an area of hard standing and new vehicular access point to the front of the dwelling to be served from Romsey Close.
- 3.3 Dwelling no. 1 is intended to be faced in stone to match the existing dwelling on site and dwelling no. 2 to be faced in brick with stone quins.

## **4.0 RELEVANT PLANNING HISTORY (including enforcement history):**

- 4.1 2015/91428 – erection of detached dwelling – granted Jan 2016  
2004/92789 – erection of conservatory - granted Aug 2004  
1994/91959 – erection of extension and front dormer window - granted Aug 1994

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

- 5.1 Discussions and on-going negotiations have been continuing with the agent which resulted in a number of options being put forward for a dwelling to the front of the plot, despite Planning Officer's initial advice on the concerns and unacceptability of the principle of developing this plot to the front. The assessment below is in relation to the final revised, accurate and complete set of drawings received on 9<sup>th</sup> February 2018.

06/07/17 – received revised plans  
25/04/17 – received revised plans  
28/11/16 – received revised plans

## **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 Kirklees Publication Draft Local Plan.

### **Kirklees Unitary Development Plan (UDP) Saved Policies 2007:**

D2 – Unallocated Land  
BE1 – Design principles  
BE2 – Quality of design  
BE12 – Space about buildings  
T10 – Highway safety  
T19 – parking provision  
R13 – Public Rights of Way

### **Kirklees Publication Draft Local Plan (PDLP):**

PLP 1 – Presumption in favour of sustainable development  
PLP 2 – Place shaping  
PLP24 – Design  
PLP21 – Highway safety and access  
PLP22 – Parking

### **National Planning Guidance:**

Delivering a wide choice of high quality homes (Section 6)  
Requiring good design (Section 7)  
Conserving and enhancing the natural environment (Section 11)  
Conserving and enhancing the historic environment (Section 12)

## **7.0 PUBLIC/LOCAL RESPONSE:**

7.1 Final publicity expired on 11<sup>th</sup> May 2017. Seven representations have been received as a result of publicity on the original plans and amended plans received in April 2017, the concerns of which are summarised below:

- Too close to and would result in loss of privacy, light, shadowing and over bearing to nos. 190 and 192 Crosland Road. Doesn't meet space about buildings policy BE12.
- Outlook, sunlight and privacy of no. 188 will be compromised & be overly dominant.
- Loss of trees.
- Highway safety concerns on Romsey Close and Crosland Road
- Noise and pollution.
- Cramped form of development which would adversely impact on the neighbouring bungalow.
- Increase in air pollution concerns.
- Concerns in relation to overlooking remain to occupiers of no. 188 Crosland Road following revised proposals.

7.2 Further amended plans were received in February 2018 but were not publicised as these were considered to overcome the objections originally raised by re-siting plot 2.

## **8.0 CONSULTATION RESPONSES:**

8.1 **Statutory:**

8.2 **Non-statutory:**

Conservation & Design – concerns in relation to plot no. 1

Coal Authority – comments taken from previous application

Public Right of Way Officers (PROW) comments made.

## **9.0 MAIN ISSUES**

- Principle of development
- Urban design and amenity issues
- Highway issues
- Representations
- Other matters

## **10.0 APPRAISAL**

10.1 Principle of development

The site is unallocated on the Unitary Development Plan (UDP) proposals map and draft Local Plan, on such sites there is a presumption in favour of development unless it would have a detrimental impact on residential or visual amenity, highway safety or the character of the area. At the heart of the NPPF is also a presumption in favour of sustainable development.

10.2 One of the core principles of the NPPF are 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;

- 10.3 As the Council cannot currently demonstrate a 5-year supply of housing land, in accordance with NPPF paragraph 49, “relevant policies for the supply of housing should not be considered up to date”. Consequently planning applications for housing are required to be determined on the basis of the guidance in NPPF paragraph 14. In this context there should be no discrimination against greenfield proposals per se.
- 10.4 The site is located within a predominantly built up area. The proposals would be making an efficient use of land in principle subject to an assessment of amenity, environmental and highways issues, to be examined in detail below.

Of particular relevance within the NPPF are:

- Core Planning Principles – in particular that planning decisions should seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;
  - Requiring good design – planning decisions should aim to ensure that developments will function well, add to the overall quality of the area, optimise the potential of the site to accommodate development and create safe and accessible environments;
  - Conserving and enhancing the natural environment
- 10.5 Extant planning permission exists for one dwelling in the south east part of the site granted via application 2015/91428 which forms ‘House 1’ on the currently submitted proposal. The current proposals would include the addition of a further dwelling on this site to the front, along the northern boundary. The proposals also seek to vary the design and scale of the dwelling proposed to be sited in the south east part of the site. Providing that the proposals would not cause harm to highway safety, residential and visual amenity or any other relevant considerations the principle of development is considered acceptable and would accord with the above relevant policies and guidance contained within the NPPF.

Urban Design and amenity issues:

- 10.6 Policy D2, BE1 and BE2 of the UDP need to be considered with the development which highlight the importance of achieving good design which is also a main objective set out in chapter 7 of the NPPF, entitled “requiring good design”. Paragraph 56 states that “the Government attaches great importance to the design of the built environment”. Design guidance in the draft Local Plan is set out in Policy PLP24 which will also be considered.
- 10.7 With regards to plot no. 1, whilst the design of the dwelling varies from the extant permission in that it detaches the garage from the dwelling, it would be in a similar siting and scale to that previously approved. On balance and given the extant permission, the proposals to accommodate this dwelling with a detached garage to the front (which would have a separation distance of 11m from the proposed dwelling) is considered not to adversely affect the amenities of the future residents of this dwelling. Furthermore, the footprint and massing of the dwelling on this plot would be a reduction in comparison to the extant permission and in the siting shown would not detract from the character of the surrounding development nor the street scene.

- 10.8 Turning to plot no. 2, in the siting shown the dwelling would be off set from the eastern boundary which runs parallel to the public right of way. Policy BE12 of the UDP sets out the normally recommended minimum distances between habitable and non-habitable room windows for new dwellings. New dwellings should be designed to provide privacy and open space for their occupants and physical separation from adjacent property and land. Distances less than those specified will be acceptable if it can be shown that by reason of permanent screening, changes in level or innovative design no detriment would be caused to existing or future occupiers of the dwellings or to any adjacent premises.
- 10.9 A separation distance of 1.5 metres should be achieved to the site boundary from a dwelling, and whilst some distances less than 1.5 metres may be acceptable the siting of this plot would not achieve this distance to the eastern boundary adjacent the public footpath. The proposed siting of this dwelling is considered out of keeping with the character of the local area, where most other properties along Romsey Close maintain a driveway width or at least a gap from the boundaries. As such the proposals due to the inclusion of plot no. 2 to the front of the existing dwelling together with a dwelling in the south east part of the site and detached garage, as shown on the revised site block plan would result in a cramped form of development on this site.
- 10.10 With regards to the privacy and overlooking, due to the cramped layout the proposals would fail to achieve the minimum distance of 21m between habitable rooms on the south elevation of dwelling on plot no. 2 and the existing dwelling. The short fall would be approximately 3m between habitable room openings of these two dwellings. Furthermore, the future residents of plot no. 2 would have very limited external areas which would be directly overlooked from the existing dwelling.
- 10.11 The proposals with the inclusion of a dwelling to the northern part of the site would fail to respect the character of surrounding development and would be harmful to visual and residential amenities of the occupiers of the existing dwelling as well as the future residents of plot no. 2. In light of this the principle of developing the front part of the site is not acceptable. Negotiations have taken place to see if these concerns could be overcome by changes in design but this has not proved possible. It would therefore be contrary to the aims of Policies D2, BE1, BE2 and BE12 of the Kirklees UDP and the core planning principles of the NPPF as well as Policy PLP24 of the PDLP

Heritage Issues:

- 10.12 Given the proximity of the site to listed buildings (nos. 80 and 82 Cowrakes Road) south east of the site, the application was advertised as affecting the setting of the listed buildings. The NPPF at para 132 states “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” 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.

10.13 From a heritage impact, in relation to dwelling on plot no. 2 the Conservation & Design Officer raises no concerns as this would be sited a considerable distance away from the neighbouring Grade II listed cottages. However, they raise concerns in relation to the siting of dwelling on plot no.1 which is closer to the listed building. Nevertheless, given the siting of this dwelling would be similar to that previously approved under the 2015 permission, Planning Officers are of the opinion the proposals would have a negligible impact on the heritage asset and lead to less than substantial harm on the significance of the neighbouring listed buildings. This less than substantial harm is outweighed by the public benefit the proposals would provide in the form of additional housing at a time when the Council cannot demonstrate an adequate supply of housing land, in accordance with paragraph 134 of the NPPF and the duty set out in the Listed Buildings and Conservation Areas Act 1990 and Chapter 12 of the NPPF.

#### Highway issues

10.14 Policy T10 of the UDP states that new development should not materially add to any highway safety implications. Policy R13 of the UDP highlights the importance of safeguarding users of public right of way and public access areas. Policy PLP21 of the draft Local Plan requires development proposals to be accessed effectively and safely by all users, and states that new development will not be permitted if it adds to highway safety problems.

10.15 The proposals would result in two vehicular access points onto Romsey Close from this plot. Given the nature of traffic associated on this cul de sac, where it is accepted that drivers would be driving at a low speed in close proximity of this junction, Officers are supportive of the proposals from a highway safety aspect. The revised proposals also indicate adequate parking and areas for turning on site to accommodate the existing and proposed dwellings as such would accord with the above policies and guidance.

10.16 With regards to the public right of way, the gable of proposed dwelling no. 2 would be only just off set from the eastern boundary adjacent to the public right of way. The existing hedge and fence would be removed. However, it is considered the proposals would not adversely impact on the users of the right of way nor public access to it and accord with Policy R13 of the UDP.

#### Other Matters

##### *High risk coal area and assessment:*

10.17 The site lies in an area within a 'high risk' coal area. This relates to the potential impact of coal mining legacy. The application is accompanied with coal mining risk assessment and consultation has taken place with the Coal Authority. No formal comments have been received from the coal authority on this application. The Coal Authority did however make comments on the previous application which are still relevant as the assessment and investigations related to the same site area.

10.18 The Coal Authority concurs with the recommendations of the Coal Mining Risk Assessment Report; that coal mining legacy potentially poses a risk to the proposed development and that intrusive site investigation works should be undertaken prior to development in order to establish the exact situation regarding coal mining legacy issues on the site.



10.19 On the basis of the above, it is recommended by the Coal Authority that a pre commencement condition be imposed requiring the above stated site investigation works and in the event that the site investigations confirm the need for remedial works to treat any areas of shallow mine workings to ensure the safety and stability of the proposed development, these should also be conditioned to be undertaken prior to commencement of the development.

10.20 The Coal Authority considers that the content and conclusions of the Coal Mining Risk Assessment Report are sufficient for the purposes of the planning system and meets the requirements of the NPPF in demonstrating that the application site is, or can be made, safe and stable for the proposed development. Should Members be minded to approve the application the recommended pre commencement conditions along with any condition requiring remedial works will need to be included on the decision.

*Drainage:*

10.21 Given there is no significant flood risk issues for this development it is considered that for a development of this scale drainage matters can be adequately dealt with through an allied Building Regulations regime.

*Air Quality:*

10.22 In the interests of air quality, and to comply with West Yorkshire Low emissions Strategy, Policy PLP24 of the emerging local plan and Chapter 11 of the NPPF, it is recommended that a planning condition be imposed requiring the installation of an electric vehicle charging point for each new dwelling should permission be granted..

Representations

10.23 Below is a response to the objections not addressed in the assessment:

- Too close to and would result in loss of privacy, light, shadowing and over bearing to nos. 190 and 192 Crosland Road. Doesn't meet space about buildings policy BE12.
- Outlook, sunlight and privacy of no. 188 will be compromised & be overly dominant.
- Concerns in relation to overlooking remain to occupiers of no. 188 Crosland Road following revised proposals.

**Response:** The proposals have been revised with the siting of dwelling no. 2 shown to be sited away from the boundary of these neighbouring dwellings. In the revised siting, officers consider there would not be a detrimental impact on the amenities of these neighbouring properties.

- Loss of trees.

**Response:** These were not protected and could be removed at any time.

- Noise and pollution.

**Response:** It is accepted there would be some disruption during the construction phase. However, this does not warrant a refusal on proposals.

10.24 Ward Cllr Cahal Burke requested the application be determined by sub-committee for the following reasons: *“the application has been amended on a number occasions to accommodate planning concerns, the development does not represent overdevelopment when considered against similar applications that have been recommended for approval”*. In response, the submitted scheme has been amended on a number of occasions as we have looked to work proactively with the applicants to secure a sustainable development on the site. However, the application has been recommended for refusal as it would not improve the environmental conditions of the area.

## **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.

This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development would not constitute sustainable development and in light of the above assessment recommended for refusal.

### **Background Papers:**

Application and history files.

Website link:

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2016%2f92466>

Certificate of Ownership – Notice served on Kirklees Council on 22<sup>nd</sup> July 2016.

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## Report of the Head of Strategic Investment

### HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 22-Feb-2018

**Subject: Planning Application 2017/93515 Erection of 16 dwellings with associated access and parking facilities. Land adj, Lower Gate, Paddock, Huddersfield**

#### APPLICANT

David Rasche, D2M3  
Yorkshire Ltd & Diocese  
of Leeds

#### DATE VALID

11-Oct-2017

#### TARGET DATE

10-Jan-2018

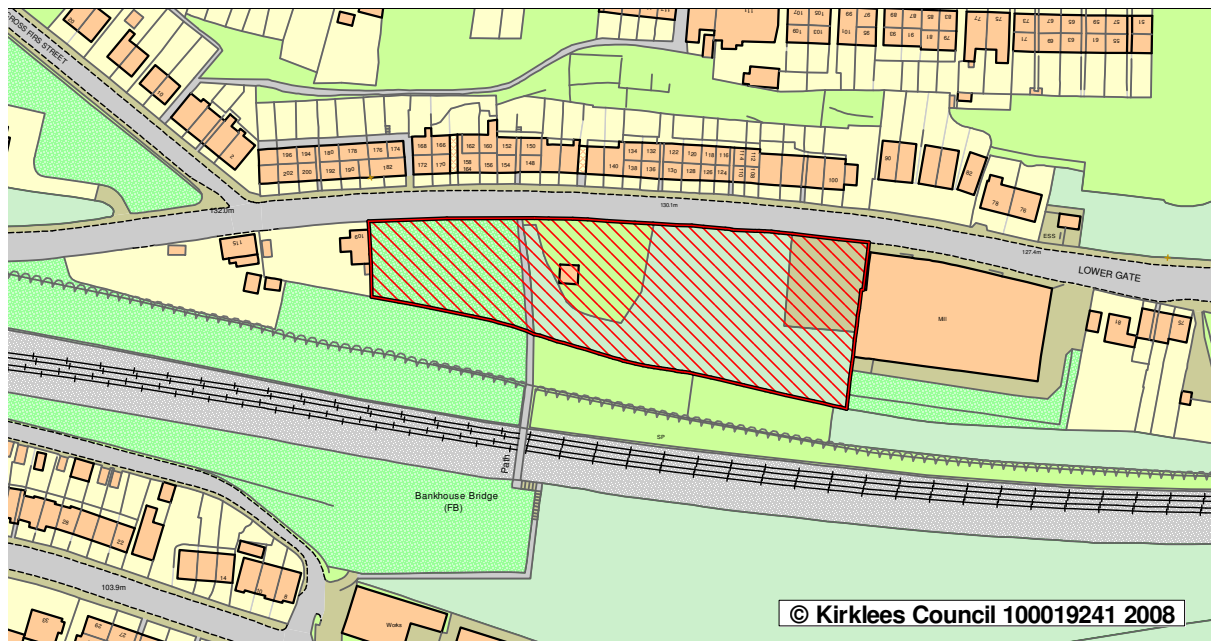
#### EXTENSION EXPIRY DATE

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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

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**Electoral Wards Affected: Golcar**

Yes

Ward Members consulted  
(referred to in report)

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**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 and to secure a S106 agreement to cover the following matters:

1. Public open space off site commuted sum of £84,350.
2. Two affordable rent and two intermediate units in the 2-bedroom maisonette block.
3. Provision of Metro cards for residents to a value of £8,349.55.

In the circumstances where the S106 agreement has not been completed within three 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 that would have been secured; if so, the Head of Strategic Investment is authorised to determine the application and impose appropriate reasons for refusal under Delegated Powers.

**1.0 INTRODUCTION:**

- 1.1 This is an application for full planning permission for residential development.
- 1.2 The application is presented to the Huddersfield Sub-Committee as the proposed development relates to a site larger than 0.5 hectares, and involves fewer than 60 units.

**2.0 SITE AND SURROUNDINGS:**

- 2.1 The application site is 0.54 hectares in size, is trapezoid-shaped, and slopes downhill from north to south towards the Huddersfield-Manchester railway line, although parts of the site have been made up and levelled.
- 2.2 The site has been cleared of most buildings – a church (St Brigid's) and presbytery once stood on the site, however there are extensive hard surfaces and a double garage still exists at the centre of the site. Most of the site is previously-developed (brownfield) land. Parts of the site are overgrown with self-seeded trees and shrubs, however no trees on the site are the subjects of Tree Preservation Orders (TPOs).
- 2.3 A public footpath (HUD/316/10) runs through the site, connecting Lower Gate with a footbridge (Bankhouse Bridge) over the railway line. The footpath continues south to meet Armitage Road.

- 2.4 Surrounding uses include residential to the north and west and manufacturing to the east.
- 2.5 The Milnsbridge Conservation Area covers parts of the public footpath, footbridge, railway line and embankments to the southwest of the application site. There are no listed buildings immediately adjacent to the application site, however undesignated heritage assets in the area include the terraced properties opposite the application site to the north, the dry stone wall that runs along much of the site's street frontage, the dry stone wall at the rear of the site (adjacent to the railway embankment), and the surviving presbytery gate and stone gate posts.
- 2.6 There is a pavement on the north side, but not the south side, of this part of Lower Gate. A bus stop exists directly outside the site.
- 2.7 In the Kirklees Unitary Development Plan the site is within a Regeneration Area, and is adjacent to a Green Corridor. In the emerging Local Plan parts of the site fall within a Wildlife Habitat Network and all of the site is within a Biodiversity Opportunity Zone.

### **3.0 PROPOSAL:**

- 3.1 Full planning permission is sought for residential development of the site. The proposed 16 residential units would comprise:
- 4x 4-bedroom (type A) detached dwellings.
  - 2x 4-bedroom (type A) semi-detached dwellings.
  - 6x 4-bedroom (type B) detached dwellings.
  - 4x 2-bedroom (type C) maisonettes in a single block.
- 3.2 The type A and type B dwellings would have 2-storey front and 3-storey rear elevations, while the block of maisonettes would have a 2-storey front and 4-storey rear elevation. Pitched roofs are proposed.
- 3.3 Land regrading and levelling, and the provision of gabions to the rear of the site, is proposed. Levels would be altered either side of the public footpath, and these and other areas would be soft landscaped. All trees would be removed from the site to accommodate the proposed development, and replacement treeplanting is proposed. Proposed boundary treatments include dry stone walls along the new pavement and around bin stores, and 1.8m high close-boarded fencing to rear gardens.
- 3.4 48 car parking spaces are proposed. The applicant proposes two vehicular access points from Lower Gate. A new pavement would be created along the entire length of the site.
- 3.5 Four affordable housing units (the 2-bedroom maisonettes) are proposed.

### **4.0 RELEVANT PLANNING HISTORY (including enforcement history):**

- 4.1 2017/90856 – Planning application for the erection of 23 dwellings withdrawn 12/05/2017.

4.2 2004/95070 – Outline planning permission for demolition of existing presbytery and residential development granted 02/02/2005 (smaller site).

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

5.1 During the life of the application, the applicant reduced the number of residential units from 17 to 16, increased on-site parking provision, and submitted amended drawings to reflect these changes. Revised proposals for refuse collection and storage, and an amended site layout plan showing refuse collection points, were also submitted. Supporting information relating to flood risk and drainage, and to the public footpath, was submitted in response to comments from officers.

## **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.

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

6.2 The site is within a Regeneration Area, is adjacent to a Green Corridor, and is close to the Milnsbridge Conservation Area.

6.3 Relevant policies are:

Paragraph 1.14 – Regeneration Area

G4 – High standard of design

G5 – Equality of opportunity

G6 – Land contamination

D6 – Green corridors

NE9 – Mature trees

BE1 – Design principles

BE2 – Quality of design

BE5 – Conservation areas

BE11 – Building materials

BE12 – Space about buildings

BE21 – Open space accessibility

BE22 – Accessible parking

BE23 – Crime prevention

EP3A – Culverting and canalisation  
EP4 – Noise sensitive development  
EP10 – Energy efficiency  
EP11 – Landscaping and ecology  
EP30 – Prolonged construction work  
T1 – Transport priorities  
T2 – Highway improvements  
T10 – Highway safety  
T14 – Pedestrian safety  
T16 – Pedestrian routes  
T17 – Cycling  
T18 – Strategic pedestrian and cyclist routes  
T19 – Parking standards  
DL1 – Derelict and neglected land  
DL2 – Derelict land reclamation  
H1 – Housing needs  
H10 – Affordable housing  
H12 – Affordable housing arrangements  
H18 – Open space provision  
R6 – Public open space  
R9 – Allotments  
R13 – Rights of way

Kirklees Draft Local Plan Strategies and Policies (2017):

The site is partly designated as Wildlife Habitat Network

6.4 Relevant policies are:

PLP1 – Presumption in favour of sustainable development  
PLP2 – Place shaping  
PLP3 – Location of new development  
PLP7 – Efficient and effective use of land and buildings  
PLP11 – Housing mix and affordable housing  
PLP20 – Sustainable travel  
PLP21 – Highway safety and access  
PLP22 – Parking  
PLP24 – Design  
PLP27 – Flood risk  
PLP28 – Drainage  
PLP30 – Biodiversity and geodiversity  
PLP32 – Landscape  
PLP33 – Trees  
PLP35 – Historic environment  
PLP47 – Healthy, active and safe lifestyles  
PLP48 – Community facilities and services  
PLP51 – Protection and improvement of local air quality  
PLP52 – Protection and improvement of environmental quality  
PLP63 – New open space

## Supplementary Planning Guidance / Documents:

6.5 Relevant guidance and documents are:

- Providing for Educational Needs Generated by New Housing
- Kirklees Interim Affordable Housing Policy (2016)
- West Yorkshire Air Quality and Emissions Technical Planning Guidance
- Kirklees District Landscape Character Assessment (2015)
- Kirklees Housing Topic Paper (2017)
- Kirklees Council Housing Allocations Policy (2017)
- Accessibility Assessment (2015)
- Milnsbridge Conservation Area Character Appraisal

## National Planning Policy and Guidance:

6.6 The National Planning Policy Framework (2012) seeks to secure positive growth in a way that effectively balances economic, environmental and social progress for this and future generations. The NPPF is a material consideration and has been taken into account as part of the assessment of the proposal. Relevant paragraphs/chapters are:

- Paragraph 17 – Core Planning Principles
- Chapter 4 – Promoting sustainable transport
- Chapter 6 – Delivering a wide choice of high quality homes
- Chapter 7 – Requiring a good design
- Chapter 8 – Promoting healthy communities
- Chapter 10 – Meeting the challenge of climate change, flooding and coastal change
- Chapter 11 – Conserving and enhancing the natural environment
- Chapter 12 – Conserving and enhancing the historic environment

6.7 Since March 2014 Planning Practice Guidance for England has been published online.

## **7.0 PUBLIC/LOCAL RESPONSE:**

7.1 The application has been advertised via a site notice posted on 31/10/2017, a press notice published on 27/10/2017, and letters delivered to addresses abutting the application site. This is in line with the council's adopted Statement of Community Involvement. The end date for publicity was 21/11/2017.

7.2 To date, representations from occupants of 4 properties. The following is a summary of the concerns raised:

- Excessive density. Overdevelopment.
- Proposed dwelling sizes would not match local demand.
- Artificial stone and concrete roof tiles inappropriate to the area.
- Proposed dwellings too tall and without precedent.
- Lower Gate is heavily trafficked, experiences accidents, and effectively narrowed to 1.5 lanes due to on-street parking. Additional traffic and access to and from the development would be dangerous.
- Impacts on traffic flow during construction.



- Inadequate parking provision, including for visitors and tradespeople. Existing parking problem on Lower Gate would be exacerbated.
- New pavement would narrow the carriageway.
- New pavement would terminate without a crossing to the opposite pavement, however a crossing would further affect traffic flow.
- Objection to road closures to accommodate sewer connection works and releveling works to site.
- More detailed traffic survey required.
- Waste collection vehicles would not be able to swing into the development from the opposite side of the road, as existing residents park along the north kerb.
- Existing pollution problem would be exacerbated, and dispersal of pollution would be prevented.
- Loss of trees and vegetation which capture carbon dioxide and pollution and provide a sound barrier.
- Impacts on wildlife.
- Loss of light to neighbouring properties.
- Loss of views of the Colne Valley.
- Noise survey inadequate.
- Noise during construction works including piling.
- Dust and disruption during works.
- Increased flood risk.
- Site is filled ground, is unstable and may be contaminated.
- Issues raised by Network Rail have not been responded to.
- Dwellings should not be built so close to railway.
- Foul water would need to be pumped uphill from the lower ground floor kitchens, which may affect the development's financial viability, and would put pressure on existing infrastructure.
- Vibration caused by piling and compacting land would damage properties and infrastructure.

7.3 Cllr Hilary Richards has commented, noting the proposed new pavement as a positive aspect of the development, but suggesting that single or double yellow lines may be needed along the south kerb due to the levels of traffic currently using Lower Gate.

7.4 Responses to these comments are set out later in this report.

7.5 As the proposed development has been amended since initial consultation was carried out, reconsultation letters were issued on 06/02/2018, with the end date for publicity set as 16/02/2018. To date, one further objection to the proposed development has been received, with the following points made:

- Revised plans do not address concerns previously raised.
- Likely loss of life caused by proposed access arrangements.
- Existing on-street parking would prohibit construction and access/egress for larger vehicles.
- Traffic calming required along Lower Gate.
- Proposed materials do not reflect those of existing buildings.
- Works needed to connect to sewer would impact upon traffic.

7.6 Any further responses received following the publication of this report will be reported to the Sub-Committee in an update or verbally.

## 8.0 CONSULTATION RESPONSES:

### 8.1 Statutory:

KC Highways – Proposed parking now acceptable, with sufficient provision for each dwelling including visitor parking. Adoption of the internal road is not necessary, and only the new pavement would be adopted. Access to the site would not be necessary for refuse collection vehicles, with bin collection points provided. £8,349.55 contribution towards bus-only residential Metro cards required. Conditions recommended regarding surfacing and drainage of parking areas, sight lines, and provision of new pavement prior to occupation. Informatives provided regarding works to the highway and approval for works near or abutting the highway and retaining structures.

KC Highways Structures – Conditions recommended relating to structures adjacent to existing and adoptable highways, and to all new surface water attenuation culverts and tanks.

KC Lead Local Flood Authority – Further work should be done to ascertain the feasibility of an off-site drainage connection that makes use of gravity. The provision and risk associated with a pumped surface water disposal solution would have greater costs than the initial costs of a longer connection route. If the case officer is minded to approve, conditions are recommended regarding surface water drainage, flood routing, management and maintenance and drawings of as-built drainage solutions.

Network Rail – No objection in principle, subject to details of excavations, earthworks being agreed with Network Rail, surface water and foul water drainage being directed away from Network Rail's land, no encroachment onto Network Rail land, soundproofing of new dwellings, selection of species in accordance with Network Rail advice, and other requirements relevant to the protection of Network Rail assets. Asset Protection Project Manager must be contacted (if planning permission is granted) at least six weeks prior to works commencing on site.

### 8.2 Non-statutory:

KC Trees – Many of the site's trees are scrub material grown since the site became disused. Established trees at the rear of the site are not significant or prominent enough to warrant a new Tree Preservation Order. No objection to proposed development. Proposed tree planting scheme and programme of aftercare maintenance is sufficient to mitigate for the loss of existing trees. Condition recommended.

KC Parks and Greenspace (Allotments Manager) – No evidence of the application site being a council-owned allotment site. Nearest council-owned allotment site is at Luck Lane, where there are currently three vacant plots and no waiting list. Broomfield Road and Jim Lane allotment sites also have vacant plots. Branch Street site has a waiting list of four.

KC Environmental Health – Submitted Geoenvironmental Appraisal is old and a new report is required. Conditions recommended regarding site contamination. Condition recommended regarding noise, requiring evidence that acceptable noise levels have been achieved prior to occupation. Regarding air quality, applicant has assessed the development in accordance with the West Yorkshire Low Emission Strategy Planning Guidance, and condition is recommended. Advice provided regarding hours of construction.

KC Landscape – Public open space contribution would be triggered, and a Local Area of Play would be required. Planting plan is acceptable, however native replacement planting area would need to be an appropriate distance from boundary walls to ensure no long-term problems. Details of management and maintenance of planting required. Landscape and ecological plan required. Details of monitoring and remedial measures required for planting that fails or becomes diseased within five years of completion. Details required of disposal of waste arising from works.

Police Architectural Liaison Officer – Footpath already experiences problems – it is secluded, suffers from poor overlooking, and there is evidence of anti-social behaviour (graffiti) on the footbridge. Development of this site provides an opportunity to improve part of the footpath. Proposed opening up of land either side of the footpath at its north end (section H-H), and improving visibility, is welcomed, subject to details of the soft landscaping either side. Further along the path (southward), however, the proposals are problematic. At section G-G the footpath would be enclosed either side by largely blank elevations – windows (ideally serving kitchens and living rooms) should be introduced/enlarged to improve natural surveillance. At section F-F ground levels would be raised either side of the footpath, and 1.8m fences would be added, creating a heavily enclosed trench. This would lack natural surveillance, would be vulnerable to anti-social behaviour, and is unacceptable. Fewer changes to levels here, and different proposals for boundary treatments, would be necessary. Lighting of the footpath is also needed.

KC Strategic Housing – Application welcomed. Within Kirklees Rural (West) there is a significant need for affordable 1- and 2-bedroom units, as well as a need for affordable 1- and 2-bedroom housing specifically for older people. Kirklees Rural (West) is a popular location, with 15% of households planning to move home within Kirklees within the next 5 years citing it as their first choice destination. Kirklees's interim affordable housing policy seeks 20% affordable housing provision on sites where 11 units or more are proposed. On-site provision is preferred, however a financial contribution in lieu of on-site provision can be acceptable where appropriate. Applicant has stated that four 1- or 2-bedroom affordable rent units would be provided – this would best suit the affordable housing needs of the local area, and is suitable for an area with one of the lowest rates of affordable housing in Kirklees. Advice provided regarding Vacant Building Credit.

KC Ecology – Compared with previous scheme, proposed development provides much greater capacity to deliver a biodiversity net gain and retain the functions of the Wildlife Habitat Network. The recommendations in the applicant's report, however, are not sufficient to ensure that adequate biodiversity enhancement is provided at the site, post-development. Conditions are therefore recommended to secure appropriate detail of landscape design and future management, in addition to a condition relating to nesting birds. A

single tree (T22) with bat roost potential would be felled, but the presence or absence of bats has not been determined. This information should be submitted at application stage, alternatively a condition is recommended.

KC Public Rights of Way – Close-boarded fencing adjacent to the public footpath is problematic. Cross-sections through the footpath are needed, to clarify what works are proposed either side. The proposed steps (where the footpath would meet the new pavement) would need to be dedicated as public highway if the applicant intends to deviate from the footpath's current route. Queried if resurfacing to the footpath is proposed. A scheme for the protection of the footpath and users would be appropriate. Advice can be relayed to the applicant regarding obstruction of and interference with the footpath, and regarding the process for temporary closure through the use of a temporary Traffic Regulation Order.

West Yorkshire Archaeology Advisory Service – Site is close to the location of a Roman altar found on Lower Gate in 1881. Site may have been attractive to settlement in the Roman and other periods. Proposed development may uncover important archaeological evidence of past settlement from the Prehistoric, Roman and later periods. Site should be subject to archaeological observation and recording (an archaeological watching brief) during excavation of footings, access tracks, service runs and landscaping. This work can be secured by condition.

Yorkshire Water – Drainage / Foul Sewerage Assessment is acceptable. It states that foul water would discharge to the public combined sewer, and that in relation to surface water, sub-soil conditions do not support the use of soakaways and no watercourse is available. Surface water would therefore discharge to the public sewer via storage, with a restricted discharge of 6 litres/second (two connections of 3 litres/second each). Condition recommended requiring implementation in accordance with the submitted Drainage / Foul Sewerage Assessment.

## 9.0 MAIN ISSUES

- Principle of development
- Urban design and conservation issues
- Residential amenity
- Highway issues
- Flood risk and drainage issues
- Ecological considerations
- Trees and landscaping
- Representations
- Planning obligations
- Other matters

## 10.0 APPRAISAL

### Principle of development

- 10.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.

- 10.2 The NPPF is a material consideration in planning decisions. The current situation regarding housing land supply in Kirklees (discussed below) is a material consideration relevant to applications for residential development. Weight can also be attached to the draft policies of the emerging Local Plan.
- 10.3 Outline planning permission for residential development on part of the site was granted in 2005 under application ref: 2004/95070. Officers are not aware of any evidence of implementation, therefore that permission is understood to have expired, however it remains a material consideration relevant to the consideration of the current application.
- 10.4 The starting point in assessing this planning application is to ascertain whether or not the proposal accords with the relevant provisions of the development plan, which in this case comprises the saved policies of the Kirklees UDP (1999). If a proposal does not accord with the development plan, regard should be had as to whether there are other material considerations, including the NPPF, which indicate that planning permission should be granted.
- 10.5 Paragraph 14 of the NPPF states that development proposals that accord with the development plan should be approved without delay. It also states that where the development plan is absent, silent or relevant policies are out-of-date, permission should be granted for development proposals unless i) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits (when assessed against NPPF policies taken as a whole), or ii) specific policies in the NPPF indicate development should be restricted.
- 10.6 The NPPF seeks to boost significantly the supply of housing. Paragraph 47 of the NPPF sets out how local planning authorities should meet the full objectively-assessed needs for market and affordable housing. This requires a range of measures including identifying a deliverable five-year supply of land for housing. Paragraph 49 adds that housing applications should be considered in the context of the presumption in favour of sustainable development, and that 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.
- 10.7 As noted in recent appeal decisions, Kirklees is not currently meeting – by a substantial margin – the requirement to identify a five-year supply of housing land.
- 10.8 As the council is unable to demonstrate a five-year housing land supply as required by paragraph 49 of the NPPF, relevant UDP policies relating to housing are considered to be out-of-date. The housing land supply shortfall is not marginal – it falls below three years and is therefore considered substantial. Whilst the council has prepared a Local Plan that, for housing purposes, is predicated on the basis of a five-year housing land supply, it is currently undergoing examination, and has not been adopted. Therefore, it remains the case that the council is unable to identify a five-year supply of specific deliverable housing sites against the relevant NPPF requirement.
- 10.9 The borough's housing supply record of recent years is also a relevant consideration. This is set out in the council's Housing Supply Topic Paper (2017), where Kirklees's persistent under-delivery is detailed.

- 10.10 The emerging Local Plan is a material consideration. It sets out a housing requirement of 31,140 homes between 2013 and 2031 to meet identified needs. This equates to 1,730 homes per annum.
- 10.11 Given Kirklees's situation regarding housing land supply, with regard to this application and the presumption in favour of sustainable development, the NPPF states that planning permission should only be refused where there are adverse impacts which would significantly and demonstrably outweigh the benefits.
- 10.12 No relevant adopted or emerging policies or allocations prohibit residential development at this site.
- 10.13 Ordnance Survey maps from 1955 onwards annotate part of the site as "Allotment Gardens", however that use appears to have now ceased. UDP policy R9 states that proposals involving development on allotments, or land last used as allotments, will not be permitted unless replacement allotments of equivalent community benefit are provided or it can be demonstrated that there is no unsatisfied local demand for allotments. The council's Allotments Manager has confirmed that the nearest council-owned allotment site is at Luck Lane, where there are currently three vacant plots and no waiting list. Given that local demand for allotments appears to be satisfied, and given that the site is not council-owned, it is not considered necessary to withhold permission on the grounds that a previous allotment site would be lost. It is also noted that, if planning permission was refused, the council would have no authority to insist that allotments be reopened at this site.
- 10.14 There is similarly no reason to withhold planning permission on planning policy and land use grounds in relation to the site's other previous uses (a place of worship and presbytery).
- 10.15 In conclusion regarding the principle of development, given the pressing need for housing, the current situation regarding housing land supply in Kirklees, the relevant paragraphs of the NPPF detailed above, and the absence of any relevant and prohibitive adopted or emerging policies or allocations, it is considered that the principle of residential development at this site can be accepted.
- 10.16 With reference to NPPF paragraph 14, the adverse impacts and benefits of the proposed development are assessed throughout this report, and further conclusions on the balance of planning considerations are drawn in its closing paragraphs.
- 10.17 The above conclusion is supported by the fact that the application site is a suitable location for residential development in relation to sustainability, being located at the edge of an existing settlement, relatively close to sustainable transport options and other facilities. The site is not isolated and inaccessible.

#### Urban design and conservation issues

- 10.18 Relevant design and conservation policies include Chapters 7 and 12 of the NPPF, UDP policies G4, BE2 and BE5, and emerging Local Plan policies PLP2, PLP24 and PLP35.

- 10.19 The application site is located on the edge of a relatively densely built-up part of the borough, adjacent to a heavily vegetated stretch of railway line corridor. The long terrace of 2-storey residential properties on the north side of Lower Gate, set back approximately 3.5m behind the back of the pavement and front garden walls, provide a consistent and clear definition to this part of the road.
- 10.20 The proposed development responds positively to this context with mostly 2-storey front elevations. Although the new dwellings would be set significantly further back from the pavement than existing properties opposite (and those at 109 and 115 Lower Gate), this would not appear incongruous in the site's context, given that other properties further to the east are similarly set further back. The proposed layout would result in large hard surfaced areas and parked vehicles being visible from the public realm (rather than located discreetly behind the new buildings), however with appropriate landscaping the adverse visual impacts of this upon the street scene can be minimised. It is also noted that locating the new dwellings away from the pavement would provide new residents with a greater level of residential amenity in some respects.
- 10.21 Spacing between the proposed dwellings would not reflect the continuous terrace opposite, however other nearby properties are detached and/or well-spaced, therefore this aspect of the proposed layout is not considered problematic. The proposed spaces between the dwellings, and the variations in their front building lines, would in fact assist in breaking up the proposed development's massing, and would provide glimpsed views of the dense vegetation behind the site to the south.
- 10.22 With 16 residential units proposed in a site of 0.54 hectares, a density of 30 units per hectare would be achieved. While this would be significantly below the 35 units per hectare minimum set out in draft policy PLP7, and below the densities of parts of Paddock, it is noted that this minimum is applied "where appropriate", and it is considered that, in order to provide an adequate quality of residential amenity and to accommodate off-street parking, the proposed quantum of development is acceptable.
- 10.23 The elevational treatments and proportions of the proposed blocks are considered acceptable. Although the type B and C blocks would have front elevations, string courses and window apertures that would give much of the development a horizontal emphasis, the front elevations and window apertures of the type A blocks, and other elevational details of the proposed development, would provide a vertical emphasis that appropriately reflects the existing buildings opposite.
- 10.24 The submitted drawings indicate that artificial stone would be used in the external walls of the new dwellings. This is considered unacceptable in the site's context and having regard to UDP policy BE11. Natural stone should be used at this site. This, and the submission of details and samples of all other materials, is required by a recommended condition.
- 10.25 Section 72 of the of the Planning (Listed Buildings and Conservation Areas) Act places a duty on the council to pay special attention to the desirability of preserving or enhancing the character and appearance of the nearby Milnsbridge Conservation Area when determining this application.

- 10.26 The relevant Conservation Area character appraisal defines Milnsbridge as a valley floor settlement tightly defined by the Huddersfield-Manchester railway line. This definition is enhanced by the greenery and topography around the railway line, and the green corridor helps to prevent the settlements of Milnsbridge and Paddock from merging. Loss or erosion of this green corridor could undermine the character and definition of Milnsbridge as a valley floor settlement, however the proposed development would not result in buildings reaching the railway lines (or even the site's southern boundary), and substantial greenery would be maintained between Milnsbridge and Paddock. It is therefore considered that the positive and defining characteristics of the Milnsbridge Conservation Area would not be adversely affected by the proposed development. It is also noted that the application site is not readily visible in street-level views from public vantagepoints within the conservation area.
- 10.27 The West Yorkshire Archaeology Advisory Service has advised that the application site is close to the location of a Roman altar found on Lower Gate in 1881, and that the site may have been attractive to settlement in the Roman and other periods. Given that the proposed development may uncover important archaeological evidence of past settlement from the Prehistoric, Roman and later periods, it is considered appropriate to require the implementation of an archaeological watching brief during works, and an appropriate condition is recommended.
- 10.28 The dry stone wall that runs along much of the site's street frontage is an undesignated heritage asset, but it is in a poor condition in places, and its reconstruction in a new location (to accommodate the new pavement) is acceptable. The site's rear dry stone wall would be retained in its current position, and a stepped line of gabions (approximately 2m high) is proposed along approximately half the width of the site at its rear. Other proposed boundary treatments include dry stone walls around bin stores (these would need to be of natural stone), and 1.8m high close-boarded fencing to rear gardens. A condition is recommended requiring details of these boundary treatments for consideration alongside details of hard and soft landscaping. The surviving presbytery gate and stone gate posts should be reused in the development's new boundary treatments, if their condition allows. Any fencing to rear gardens would need to be carefully designed and located, given the surrounding topography and the potential visibility of a fence line that would extend some 130m across the rear of the site. Similarly, fencing adjacent to the public footpath would need to be designed to ensure visual enhancement to and natural surveillance of the footpath. At conditions stage details of alternative boundary treatments to the rear gardens of units 10 and 11 (where they abut the public footpath) would be necessary to help address the concerns of the Police Architectural Liaison Officer.
- 10.29 Some regrading of, and changing levels within, the application site is considered acceptable in design and conservation terms, provided that appropriate soft landscaping is implemented, and subject to details of the gabions proposed along the rear of part of the site. Some amendments to the levels proposed at the south edge of the site (around the point where the public footpath meets the site boundary) would be necessary to help address the concerns of the Police Architectural Liaison Officer. Appropriate conditions are recommended.



## Residential amenity

- 10.30 The minimum distances set out under UDP policy BE12 would be achieved. Of particular note, more than the required 21m would be maintained between the habitable room windows of existing properties on the north side of Lower Gate and those of the proposed new dwellings, thereby protecting the privacy of those existing residents.
- 10.31 The proposed blocks would be positioned far enough away from neighbouring properties to not adversely affect the outlook or natural light currently enjoyed by existing residents.
- 10.32 Private views of a particular landmark or feature of interest, and long views over land not in the ownership of the viewer, are not protected under planning.
- 10.33 In terms of noise, although residential development would introduce (or increase) activity and movements to and from the site, given the scale of development proposed, and existing levels of activity and traffic noise, it is not considered that neighbouring residents would be significantly impacted. The proposed residential use is not inherently problematic in terms of noise, and is not considered incompatible with existing surrounding uses.
- 10.34 The proposed development would involve the removal of trees and an increase in vehicle movements to and from the site, however air quality is not expected to be significantly affected. To encourage the use of low-emission modes of transport, electric/hybrid vehicle charging points would need to be provided in accordance with a recommended condition. 16 charging points are shown on the applicant's drawings, however one charging point per unit (where dedicated parking is provided), and one point per 10 spaces (in unallocated parking) would be required in accordance with relevant guidance on air quality mitigation, draft policies PLP21, PLP24 and PLP51 of the emerging Local Plan, the West Yorkshire Low Emissions Strategy (and its technical planning guidance), the NPPF, and Planning Practice Guidance.
- 10.35 The quality of the proposed residential accommodation must also be considered.
- 10.36 Sizes of the proposed residential units, and the habitable rooms within them, are considered adequate.
- 10.37 The proposed type A and B dwellings, and two of the type C maisonettes, would have bedrooms and bathrooms at entrance level, providing flexible accommodation and ensuring that a household member with certain disabilities could live in these units. All ground floor entrance doors would have level access. Although not annotated as such, spaces adjacent to some of the proposed parking bays indicate provision has been made for residents and visitors with disabilities.
- 10.38 Each of the type A and B dwellings would be provided with adequate outdoor private amenity space, bearing in mind the size of the units (all would be family-sized) and garden sizes typically found in the area. For the maisonettes in the type C block, two communal outdoor amenity spaces (each shared by two households) are proposed. The amenity space proposed for units 15 and 16 is small, however given that an off-site public open space contribution is also required (as detailed later in this report), it is recommended that this provision be accepted.

- 10.39 All units would benefit from dual aspect, and would have adequate outlook. The proposed fenestration would ensure habitable rooms would receive adequate natural light, and although lower ground floor kitchens in the type A units would not have north windows (as this floor would be set into the hillside), this is not a reason for refusal of permission.
- 10.40 All units would benefit from adequate privacy. Where side windows are proposed, these would be small, would serve bathrooms or would be secondary kitchen windows in the type A units. The additional or enlarged side windows (required by a recommended condition to improve overlooking of the public footpath) can be designed to ensure the private spaces of adjacent residential properties are not overlooked.
- 10.41 As confirmed by the applicant's noise survey (Druk, June 2017), the site is exposed to noise mainly from road traffic, but also from other sources including the nearby railway. The applicant has, however, concluded that acceptable internal noise levels would be achieved within the new residential units without the need for additional sound attenuation measures, and that the noise climate in the proposed outdoor amenity spaces would also be acceptable. To ensure that this proves correct, a condition is recommended, requiring evidence that acceptable noise levels have been achieved prior to occupation.

#### Highway issues

- 10.42 UDP policy T10 states that new development will not normally be permitted if it will create or materially add to highways safety problems. Policy PLP21 of the emerging Local Plan requires development proposals to be accessed effectively and safely by all users, and states that new development will not be permitted if it adds to highway safety problems. Paragraph 32 of the NPPF states that decisions on planning applications should take account of opportunities for sustainable transport modes, and the safety of site access.
- 10.43 It is noted that significant volumes of traffic make use of Lower Gate, particularly at peak times, and that on-street parking along the street's north kerb effectively limits the width of the carriageway. The site currently generates little or no traffic.
- 10.44 The applicant proposes two vehicular access points from Lower Gate. Both would be appropriately located away from the northeast and northwest corners of the site, and would have adequate visibility splays, ensuring that highways safety would not be unacceptably affected. A condition, requiring provision and maintenance of sightlines at these entrances, is recommended. The proposed new pavement would be formed from part of the application site along its entire length, and would not reduce the width of the carriageway. A condition, requiring the provision of the new pavement prior to occupation, is recommended.
- 10.45 The applicant's Transport Statement, although written for a development of 17 units, predicts a total of 10 additional vehicle movements in the a.m. peak, and eight in the p.m. peak. The statement refers to the predicted traffic generation as "minimal", and states that the proposed development would not have a material adverse impact on the local highway network in terms of capacity or safety. Existing residents' comments regarding congestion and highways

safety are noted, particularly in relation to the number of vehicles already using Lower Gate. The proposed development, however, has not attracted objections from the council's Highways Development Management officers on safety or congestion grounds, and does not trigger the need for any highways improvement works, other than the proposed new pavement.

- 10.46 48 car parking spaces are proposed. 14 of these would be accessed from the western vehicular access point and would serve two houses and four maisonettes. The other 34 would be accessed from the eastern vehicular access point and would serve 10 houses. This total provision would meet the council's current car parking standards of two spaces per 2- or 3-bedroom unit, three spaces per 4-bedroom unit, and one visitor space per four residential units. With this provision, existing pressure for on-street spaces along this part of Lower Gate is not expected to increase.
- 10.47 Cllr Hilary Richards has suggested that single or double yellow lines be provided along the new south kerb of Lower Gate in connection with the proposed development, however given that on-site parking provision would be adequate, and given the width and two-way traffic of Lower Gate, it is not considered likely that drivers would begin parking on this side of the road, post-development. It is therefore not considered necessary to require the applicant to provide single or double yellow lines outside the site.
- 10.48 One cycle parking space per residential unit would be required, and an appropriate condition is recommended to secure this.
- 10.49 In relation to refuse collection, the refuse vehicle swept path diagrams shown on now-superseded drawing 1071-01-01 rev A would not have been achievable due to the presence of parked vehicles along the north kerb of Lower Gate. The applicant therefore now proposes bin collection points, enclosed by dry stone walls, adjacent to the new pavement. Most of the new residential units would be provided with their own bin storage points close to their homes, and the applicant has suggested that residents would move their bins to the collection points on collection days. Refuse vehicles would not enter the site, and would instead pull up against the south kerb of Lower Gate to collect refuse.
- 10.50 Although it is considered unlikely that all residents would move their bins to and from the bin collection points every week, the proposed arrangement is considered acceptable. The dry stone walls to the bin collection points would provide adequate visual screening of the bins when viewed from the public realm.
- 10.51 The proposed new pavement would not connect to existing, adopted or formal pavements to the east or west, but is nonetheless of public benefit, not least as it would give bus passengers a safer waiting area on the south side of Lower Gate.
- 10.52 Some of the proposed improvements to the public footpath that bisects the site would also be of public benefit. Although steps (rather than an accessible ramp) are proposed where the path would meet the new pavement, this is considered acceptable given that there are damaged steps in this location already, and given that steps outside the site to the south already render the footpath inaccessible to people using wheelchairs and buggies. Subject to details

submitted at conditions stage, the proposed lowering of levels and soft landscaping at the north end of the footpath could improve its attractiveness and safety, making it more likely to be used. Natural surveillance of the footpath from the front and rear windows of units 10 and 11 could also improve its safety, and conditions are recommended to ensure this surveillance would be achieved. This aspect of the proposed development is considered compliant with UDP policies T16 (which requires new development to make provision for convenient pedestrian routes) and R13 (which promotes the development of new links in the public right of way network).

#### Drainage issues

- 10.53 The site is within Flood Zone 1, but is less than 1 hectare in size, therefore a site-specific Flood Risk Assessment did not need to be submitted. A Drainage / Foul Sewerage Assessment (Furness Partnership, October 2017) was, however, submitted.
- 10.54 The applicant does not propose to dispose of surface water through the use of soakaways and infiltration, and this is accepted given the risk of water re-merging further down the hillside and possibly affecting railway infrastructure. Discharge to the River Colne is also considered unfeasible, given the distance involved, and the intervening third party land and railway infrastructure. It is therefore accepted that discharge into the combined sewer of Lower Gate would be the appropriate surface water drainage solution for the proposed development. The applicant, however, proposes to pump water up to this sewer, and this proposal has attracted an objection from the Lead Local Flood Authority (LLFA), who have argued that a gravity solution is preferable and possible. This would involve laying pipework that would chase the sewer as it descends along Lower Gate to a point where a connection can be made without the need for pumping. The applicant has argued that this is unreasonable, as a lengthy section of pipework would need to be installed beneath the public highway. The LLFA, however, have stated that further work should be done to ascertain the feasibility of such a solution, and have added that the provision and risk associated with a pumped surface water disposal solution would have greater costs than the initial costs of a longer connection route. As such a solution has not yet been fully explored and costed by the applicant, the advice of the LLFA is considered valid, however it is not considered necessary to withhold planning permission until this further information is provided by the applicant. A condition, requiring the submission of the necessary information, is recommended. If, at conditions stage, the applicant demonstrates (with complete and convincing evidence) that a gravity solution is genuinely not feasible, a pumped solution could be accepted, however this would not be the preferred solution.
- 10.55 Other conditions referred to by the LLFA regarding flood routing, management and maintenance, and the submission of drawings of as-built drainage solutions, are recommended.
- 10.56 Yorkshire Water have raised no objection to the proposed development, subject to a condition being applied.

### Ecological considerations

- 10.57 The application site is adjacent to a Green Corridor. In the emerging Local Plan parts of the site fall within a Wildlife Habitat Network and all of the site is within a Biodiversity Opportunity Zone. The proposed Wildlife Habitat Network connects designated sites of biodiversity and geological importance and notable habitat links, and any development within or close to the network will need to support and enhance these links.
- 10.58 Planning policies relevant to ecological considerations include UDP policy EP11, policy PLP30 of the emerging Local Plan and chapter 11 of the NPPF.
- 10.59 Some residents have objected to the proposed development on wildlife impact grounds.
- 10.60 The applicant's Ecological Impact Assessment (JCA, August 2017) found habitats of low to moderate ecological value, notes that overgrowth has increased the site's biodiversity, but that the site's hardstanding has prevented growth, and that the double garage on the site is unsuitable for supporting any protected species, including bats.
- 10.61 The council's Biodiversity Officer has noted that, compared with development previously proposed at this site, the development currently proposed provides much greater capacity to deliver a biodiversity net gain and retain the functions of the Wildlife Habitat Network. It is noted, however, that the recommendations in the applicant's Ecological Impact Assessment are not sufficient to ensure that adequate biodiversity enhancement would be provided at the site, post-development. Conditions are therefore recommended to secure appropriate detail of landscape design and future management, in addition to a condition relating to the avoidance of criminal offences in respect of nesting birds.
- 10.62 A single tree (T22) with bat roost potential would be felled, however the presence or absence of bats has not been determined. Although this information should have been submitted during the life of the application, it can be required by a condition (interrelated with other conditions) which would ensure the proposed development has the capacity to mitigate against the loss of any roost.

### Trees and landscaping

- 10.63 No Tree Preservation Orders or conservation area designations protect existing trees within the site. UDP policy NE9, however, states that mature trees should normally be retained, while policy PLP33 in the emerging Local Plan states that the council will not grant planning permission for development which directly or indirectly threaten trees or woodlands of significant amenity, and that development proposals should normally retain any valuable or important trees where they make a contribution to public amenity, the distinctiveness of a specific location or contribute to the environment.

- 10.64 Much of the site has tree and shrub cover, which is apparently self-seeded, and is dense in places. Many of the site's trees and shrubs are young, although three trees are identified by the applicant (in the submitted Arboricultural Report, ref: 13293/AJB) as mature. No trees were found by the applicant to be of good individual value, however the applicant noted that the trees on site collectively contribute to the surrounding area's visual amenity.
- 10.65 All of the site's trees and shrubs would be removed to accommodate the proposed development.
- 10.66 Objections have been raised by local residents in relation to the loss of trees, however the council's Tree Officer has raised no objection, noting that the site's trees are not worthy of TPO protection, and noting that the applicant's proposed tree planting scheme and programme of aftercare maintenance is sufficient to mitigate for the loss of the site's existing trees. This conclusion, however, is subject to a recommended condition relating to treeplanting, which is considered necessary to ensure compliance with UDP policy NE9 and policy PLP33 of the emerging Local Plan.
- 10.67 The proposed landscaping measures are considered acceptable in principle, however full details, including details of maintenance, monitoring and remedial measures (required in the event of failure or planting becoming diseased), and species (in accordance with guidance from Network Rail) are required by recommended condition.
- 10.68 A further condition is recommended, requiring details of the disposal of any waste arising from works.

#### Representations

- 10.69 To date, representations from occupants of 4 properties. Issues raised in these representations have been addressed earlier in this report.

#### Planning obligations

- 10.70 In accordance with paragraph 204 of the NPPF, planning obligations should only be sought where they are:
- 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.
- 10.71 To accord with policy H10 of the UDP, emerging Local Plan policy PLP11 and the Kirklees Interim Affordable Housing Policy (which requires that 20% of residential units are secured as affordable housing), an on-site affordable housing provision is required. The applicant's Design and Access Statement states that the proposed development includes a block of four 1- or 2-bedroom affordable housing units would be provided. In a development of 16 units, this would represent a 25% provision based on unit numbers. The tenure of these units has not been confirmed by the applicant, however the Kirklees Interim Affordable Housing Policy sets out a preferred 54% affordable rent / 46% intermediate tenure split, therefore it is considered appropriate to require two units of each of these tenures. The applicant has submitted no financial viability or Vacant Building Credit evidence, and has not asked if the required affordable housing could be provided off-site.

- 10.72 Under policy H18 of the UDP sites of 0.4ha require public open space to be provided on-site. This requirement is normally applied at a minimum rate of 30sqm per dwelling. The application site is 0.54 hectares in size, therefore the public open space requirement is triggered. With 12x 4-bed houses and 4x 2-bed maisonettes proposed, with the reduced rates for maisonettes taken into account, an on-site provision of 450sqm (including playspace) would be required. Given the dimensions and topography of the site, however, it is considered that a contribution towards an off-site provision can instead be accepted in this particular case. The 450sqm public open space requirement would be equivalent to a commuted sum of £40,250. Within the 450sqm provision a Local Area of Play would normally be required, with its own commuted sum of £44,100. The total public open space contribution would therefore be £84,350. This would most likely be spent locally at the Douglas Avenue recreation and play space.
- 10.73 The submitted Design and Access Statement confirms that the applicant agrees to make a contribution towards sustainable transport initiatives. A £8,349.55 contribution towards the provision of Metro cards for residents of the proposed development is considered appropriate in this case. This provision would enable and encourage residents to make use of sustainable modes of transport.
- 10.74 Given the number of units proposed, no contribution towards education would be triggered.
- 10.75 No contributions towards local transport infrastructure mitigation and improvements are required.

#### Other planning matters

- 10.76 With regard to ground contamination, the applicant's Geoenvironmental Appraisal (Sirius, April 2004) is somewhat dated, therefore appropriate conditions have been recommended by officers to ensure compliance with UDP policy G6 policy and PLP53 in the emerging Local Plan.
- 10.77 Some residents have stated that the site comprises filled ground and is unstable. The applicant's Geoenvironmental Appraisal found made ground at depths of between 0.3 metres and 2.8 metres (deepest along the southern edge of the site) beneath tarmac surfaces, but found competent bedrock at depths of 3.5m and 4.7m. Section 10.2 of the Geoenvironmental Appraisal makes recommendations regarding foundation depths and design.
- 10.78 The site is not within a Coal Authority referral or advice area.
- 10.79 Matters raised by Network Rail in relation to their nearby assets are to be resolved between the applicant/developer and Network Rail. The comments of Network Rail have been relayed to the applicant.
- 10.80 A condition removing permitted development rights from the new dwellinghouses is recommended, to ensure that changes to boundary treatments, and extensions and alterations (which may adversely affect neighbour and visual amenity) cannot be carried out without the need for planning permission.

## 11.0 CONCLUSION

- 11.1 The application site is not subject to any adopted or emerging policies or allocations that would prohibit residential development in this location. Given the pressing need for housing, the current situation regarding housing land supply in Kirklees, and the relevant paragraphs of the NPPF, it is considered that the principle of residential development at this site can be accepted.
- 11.2 The proposed development is of an acceptable design, and would not adversely affect the character or appearance of the nearby Milnsbridge Conservation Area. Other heritage assets would not be unacceptably affected.
- 11.3 The impacts of the proposed development upon the local highway network, including in terms of highways safety and congestion, are considered acceptable. The proposed car parking provision is adequate and policy-compliant. The proposed new pavement and improvements to a public footpath weigh positively in the balance of planning considerations.
- 11.4 Other matters relevant to planning have been successfully addressed by the applicant, and/or would be secured or controlled via the recommended conditions.
- 11.5 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.
- 11.6 The proposed development has been assessed against relevant policies in the development plan and other material considerations. It is considered that the proposed development would constitute sustainable development (with reference to paragraph 14 of the NPPF) 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. Three years to commence development.
2. Approved plans and documents.
3. Details and samples of materials (natural stone to be used).
4. Archaeology.
5. Car and cycle parking to be provided prior to occupation.
6. Bats.
7. Nesting birds.
8. Landscaping details (incorporating ecological design strategy, ecological management plan and works around/to public footpath) to be provided and implemented. Planting to be replaced if any trees or shrubs fail within five years.
9. Tree planting.
10. Boundary treatments and gabions.
11. Lighting strategy.
12. Crime prevention (including details of windows overlooking public footpath).
13. Removal of permitted development rights.
14. Evidence of noise levels.



15. Site contamination.
16. Waste arisings.
17. Construction method statement.
18. Structures adjacent to highways.
19. Sight lines.
20. Provision of new pavement prior to occupation.
21. Provision of refuse collection arrangements prior to occupation.
22. Electric/hybrid vehicle charging points.
23. Surfacing and drainage of parking areas.
24. Flood risk / drainage (four conditions).
25. Yorkshire Water condition re: surface water discharge rate and compliance with drainage strategy.

**Background Papers:**

Application and history files.

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2017%2f93515>

Certificate of Ownership – Certificate A signed

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## Report of the Head of Strategic Investment

### HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 22-Feb-2018

**Subject: Planning Application 2017/93638 Outline application for residential development with details of point of access only (within a Conservation Area) Land off Fullwood Drive (West site), Golcar, Huddersfield, HD7 4JH**

#### APPLICANT

Mr K and Mr R Fielding

#### DATE VALID

20-Oct-2017

#### TARGET DATE

19-Jan-2018

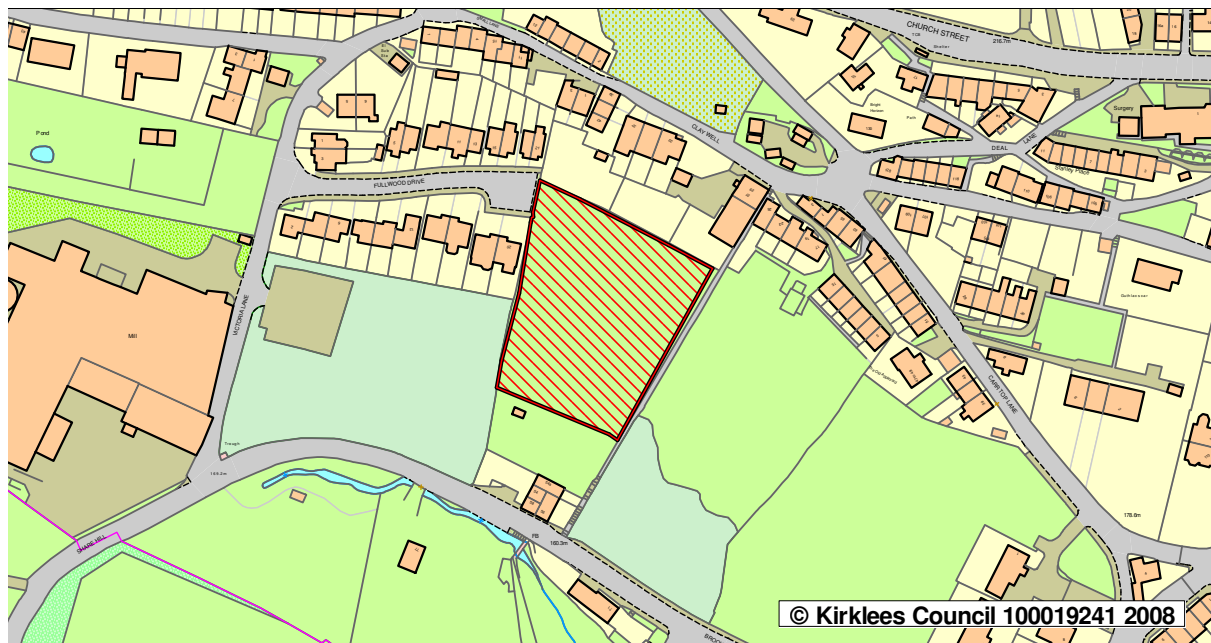
#### EXTENSION EXPIRY DATE

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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

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**Electoral Wards Affected: Golcar**

Yes

Ward Members consulted

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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 is an outline planning application for residential development, with all matters reserved other than access.
- 1.2 The application is presented to the Huddersfield Sub-Committee as the proposed development relates to Provisional Open Land (Policy D5 of the UDP), and is likely to include fewer than 60 residential units.
- 1.3 This site is referred to in this report as the “West” site.
- 1.4 A separate application (ref: 2017/93719) for outline planning permission for the adjacent (“East”) site is also to be considered at the same meeting of the Huddersfield Sub-Committee. Although submitted by different applicants, the two applications are linked in many respects.

## **2.0 SITE AND SURROUNDINGS:**

- 2.1 The application site is 0.39 hectares in size, is trapezoid-shaped, and slopes downhill from north (190m AOD approx.) to south (175m AOD approx.).
- 2.2 No buildings exist within the site’s boundaries, and the site is not previously-developed (brownfield) land. Parts of the site are overgrown with self-seeded trees and shrubs, giving the site a ruderal character. No trees on the site are the subjects of Tree Preservation Orders (TPOs), however a TPO covers trees to the southeast.
- 2.3 A public footpath (COL/56/40) runs along the site’s southeast boundary.
- 2.4 The site is within the Golcar Conservation Area. To the northeast of the site is a terrace of five Grade II listed cottages at 17-25 Clay Well, and the Grade II listed former factory/warehouse and dwellings at 27-29 Clay Well. To the south is a Grade II listed group of back-to-back buildings at 54, 54A, 56 and 58 Brook Lane. Undesignated heritage assets within and close to the site include the abovementioned footpath, dry stone walls and field patterns.

- 2.5 A Provisional Open Land designation in the Kirklees Unitary Development Plan covers the site and adjacent land. The site is allocated for housing in the emerging Local Plan.
- 3.0 PROPOSAL:**
- 3.1 Permission is sought for residential development of the site. The application is submitted in outline, except in relation to access. All other matters (scale, layout, appearance and landscaping) are reserved.
- 3.2 The applicant proposes to provide access from the turning area at the east end of Fullwood Drive. This access, for pedestrians, cyclists and vehicles, would run from the northwest corner of the site to a new turning area, from which new driveways would provide access to the proposed dwellings.
- 3.3 An indicative site layout plan has been submitted, showing 10 residential units arranged in four pairs of semis and two detached dwellings. The applicant has, however, requested that the number of units be not specified in the development description or the council's decision letter. The submitted drawings are, in any case, indicative, and the number of units would be determined at reserved matters stage, should outline planning permission be granted.
- 3.4 Three trees (identified by the applicant as defective) would be removed. In addition, an unspecified number of other trees would need to be removed to accommodate the proposed development.
- 4.0 RELEVANT PLANNING HISTORY (including enforcement history):**
- 4.1 2014/90450 – Outline planning permission granted 21/08/2014 for eight residential dwellings.
- 4.2 95/90501 – Outline planning permission refused 31/03/1995 for approx. 23 residential dwellings (larger site).
- 4.3 94/93595 – Outline planning permission refused 10/01/1995 for approx. 23 residential dwellings (larger site).
- 5.0 HISTORY OF NEGOTIATIONS (including revisions to the scheme):**
- 5.1 A Planning and Heritage Statement, a Preliminary Ecological Appraisal and an initial pond habitat suitability assessment were submitted during the life of the application. The applicant also confirmed that the indicative proposed layout showing 10 units should be referred to, rather than a plan that had shown eight units.
- 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.

Kirklees Unitary Development Plan (UDP) Saved Policies 2007:

- 6.2 The site is Provisional Open Land. The site was designated within an extended Golcar Conservation Area post adoption of the plan.
- 6.3 Adjacent land to the southwest and east is also Provisional Open Land and was also designated within an extended Golcar Conservation Area post adoption of the plan. Land to the south (on the other side of Brook Lane) is green belt.
- 6.4 Relevant policies are:
- G4 – High standard of design
  - G5 – Equality of opportunity
  - G6 – Land contamination
  - D5 – Provisional Open Land
  - NE9 – Mature trees
  - BE1 – Design principles
  - BE2 – Quality of design
  - BE5 – Conservation areas
  - BE11 – Building materials
  - BE12 – Space about buildings
  - BE21 – Open space accessibility
  - BE22 – Accessible parking
  - BE23 – Crime prevention
  - EP3A – Culverting and canalisation
  - EP4 – Noise sensitive development
  - EP10 – Energy efficiency
  - EP11 – Landscaping and ecology
  - EP30 – Prolonged construction work
  - T1 – Transport priorities
  - T2 – Highway improvements
  - T10 – Highway safety
  - T14 – Pedestrian safety
  - T16 – Pedestrian routes
  - T17 – Cycling
  - T18 – Strategic pedestrian and cyclist routes
  - T19 – Parking standards
  - DL1 – Derelict and neglected land
  - H1 – Housing needs
  - H10 – Affordable housing
  - H12 – Affordable housing arrangements

H18 – Open space provision  
R6 – Public open space  
R9 – Allotments  
R13 – Rights of way

Kirklees Draft Local Plan Strategies and Policies (2017):

6.5 Relevant policies are:

PLP1 – Presumption in favour of sustainable development  
PLP2 – Place shaping  
PLP3 – Location of new development  
PLP7 – Efficient and effective use of land and buildings  
PLP11 – Housing mix and affordable housing  
PLP20 – Sustainable travel  
PLP21 – Highway safety and access  
PLP22 – Parking  
PLP24 – Design  
PLP27 – Flood risk  
PLP28 – Drainage  
PLP30 – Biodiversity and geodiversity  
PLP32 – Landscape  
PLP33 – Trees  
PLP35 – Historic environment  
PLP47 – Healthy, active and safe lifestyles  
PLP48 – Community facilities and services  
PLP51 – Protection and improvement of local air quality  
PLP52 – Protection and improvement of environmental quality  
PLP63 – New open space

Supplementary Planning Guidance / Documents:

6.6 Relevant guidance and documents are:

- Providing for Educational Needs Generated by New Housing
- Kirklees Interim Affordable Housing Policy (2016)
- West Yorkshire Air Quality and Emissions Technical Planning Guidance
- Kirklees District Landscape Character Assessment (2015)
- Kirklees Housing Topic Paper (2017)
- Kirklees Council Housing Allocations Policy (2017)
- Accessibility Assessment (2015)
- Golcar Conservation Area Character Appraisal

National Planning Policy and Guidance:

6.7 The National Planning Policy Framework (2012) seeks to secure positive growth in a way that effectively balances economic, environmental and social progress for this and future generations. The NPPF is a material consideration and has been taken into account as part of the assessment of the proposal. Relevant paragraphs/chapters are:

- Paragraph 17 – Core Planning Principles
- Chapter 4 – Promoting sustainable transport
- Chapter 6 – Delivering a wide choice of high quality homes

- Chapter 7 – Requiring a good design
- Chapter 8 – Promoting healthy communities
- Chapter 9 – Protecting green belt land
- Chapter 10 – Meeting the challenge of climate change, flooding and coastal change
- Chapter 11 – Conserving and enhancing the natural environment
- Chapter 12 – Conserving and enhancing the historic environment

6.8 Since March 2014 Planning Practice Guidance for England has been published online.

## **7.0 PUBLIC/LOCAL RESPONSE:**

7.1 The application has been advertised via four site notices, a press notice, and letters delivered to addresses abutting the application site. This is in line with the council's adopted Statement of Community Involvement. The end date for publicity was 14/12/2017.

7.2 The four site notices were posted on 23/11/2017, and were still in place on 03/12/2017. By 08/01/2018 two of the site notices had been removed – it is not known when (after 03/12/2017) these site notices were removed, or by whom, however notwithstanding their removal, the council has met and exceeded statutory consultation requirements, and the number of responses from residents indicates that local knowledge of the application is extensive.

7.3 To date, representations from occupants of 29 properties. The following is a summary of the concerns raised:

- Site is safeguarded land and should be protected from development. Brownfield sites should be developed instead.
- Loss of allotments.
- Much additional housing has recently been built in Golcar ward, yet some new properties remain empty.
- Adverse impact upon Golcar Conservation Area.
- Adverse impact upon adjacent listed buildings.
- Local roads and pavements inadequate for increased traffic and pedestrians, including children, older people and people with disabilities.
- Traffic and speeds would increase along Fullwood Drive.
- Displaced vehicles parking at the Fullwood Drive / Victoria Lane junction may compromise sight lines.
- Vehicle access should be provided from Brook Lane.
- Vehicle conflicts, damage, noise, dirt and disruption during construction.
- Inadequate parking for visitors proposed.
- Queried if there would be space for a refuse vehicle to turn.
- Loss of privacy.
- Loss of views.
- Loss of trees.
- Impacts on wildlife, including deer, birds and bats.
- Hillside may not tolerate weight of development, causing damage to existing properties.
- Adverse impact upon drainage of site.



- Lack of affordable housing.
- Development does not cater for first-time buyers.
- Increase in local population has not been matched with increased provision of schools, GP services, road links, shops and post offices. Services would become further stretched.
- Impact on existing property values.
- Overall effects of three adjacent developments should be considered.
- Proposal does not comply with planning policies.
- Inadequate public consultation.

7.4 A letter was also received from Thelma Walker MP, relaying the concerns of local residents relating to traffic, the adequacy of local roads, impacts during construction, and access to local services.

7.5 Responses to these comments are set out later in this report.

## 8.0 CONSULTATION RESPONSES:

### 8.1 Statutory:

KC Highways – Point of access is considered adequate. Amendments to, and further information to support, indicative layout would be needed.

KC Conservation and Design – Previous permission noted, however applicant's supporting information is lacking and fails to meet NPPF paragraph 128. Design and Access Statement ignores NPPF section 12. Some reference is given to the conservation area, and the applicant notes that the site is not a key gateway, but the applicant fails to indicate how the overall development would affect the conservation area. A Heritage Impact Assessment is required.

KC Strategic Drainage – No objection, provided the approved document (Drainage Assessment Report, Avie Consulting, March 2014) and site specific and standard conditions are adhered to. Areas of hardstanding must have permeable surfaces, and developer should consider diverting gutter downpipes into rainwater harvesting and water butts, with overflow into rainwater gardens/ponds.

Yorkshire Water – Conditions recommended regarding drainage for foul and surface water. The submitted Drainage Assessment Report is acceptable, and states that the foul water would discharge to the public combined sewer and surface water would drain to a watercourse. An off-site foul water sewer may be required.

### 8.2 Non-statutory:

KC Trees – No objection. The site's trees are offered protection under the conservation area designation, however the indicative plan shows the better quality trees to be retained. A tree survey and method statement (in accordance with BS 5837) will be required at reserved matters stage.

KC Parks and Greenspace (Allotments Manager) – Aerial photographs indicate this site was active (as allotments) in 2012 and possibly later. Within Golcar there is one council-managed allotment site at Moorcroft Avenue. This site has 17 plots that are fully let, and a waiting list of 10 people. The council's next nearest allotment sites are in Slaithwaite, Salendine Nook, Paddock and Crosland Moor.

KC Environmental Health – Recommend conditions regarding site contamination and provision of electric vehicle charging points. Construction noise should be limited to specified hours.

Police Architectural Liaison Officer – No objections to principle of proposed development. Detailed advice provided for reserved matters stage.

KC Strategic Housing – Application welcomed. Within Kirklees Rural (West) there is a significant need for affordable 1- and 2-bedroom units, as well as a need for affordable 1- and 2-bedroom housing specifically for older people. Kirklees Rural (West) is a popular location, with 15% of households planning to move home within Kirklees within the next 5 years citing it as their first choice destination. Kirklees's interim affordable housing policy seeks 20% affordable housing provision on sites where 11 units or more are proposed. On-site provision is preferred, however a financial contribution in lieu of on-site provision can be acceptable where appropriate. Borough-wide, a split of 54% Affordable Rent / 46% Intermediate is appropriate within affordable housing provisions.

KC Ecology – Given the scale of the proposals and given that they are in outline only, the submitted Preliminary Ecological Appraisal (PEA) is sufficient to support the application. In principle it is possible to develop the site for housing while providing a biodiversity net gain and so complying with relevant policy. A full ecological impact assessment (incorporating further surveys as specified in the PEA) would be required at reserved matters stage. Condition recommended regarding landscaping and ecology.

KC Public Rights of Way – Applicant's red line boundary does not include the adjacent public footpath, however the public footpath is within the same parcel of land ownership as the application site.

## **9.0 MAIN ISSUES**

- Assessment of applications
- Principle of development
- Urban design and conservation issues
- Residential amenity
- Highway issues
- Drainage issues
- Ecological considerations
- Trees
- Representations
- Planning obligations
- Other matters

## 10.0 APPRAISAL

### Assessment of applications

- 10.1 As noted above, a separate application (ref: 2017/93719) for outline planning permission has been submitted in relation to the site immediately to the east (the East site), where outline planning permission for residential development is also sought. The two applications have been submitted by different applicants, however the submitted application forms indicate there are persons with interests in both sites, and the two sites and proposals are linked in other respects. Access to the East site is proposed across the West site, meaning any owner/developer of the East site is reliant on the co-operation of the adjacent owner/developer to the west. Any owner/developer of the West site would most likely seek to benefit from agreeing to such co-operation. It may also be the case that, should outline permission for both developments be granted, the sites would be developed simultaneously, possibly following their purchase by a single developer.
- 10.2 The council's assessment of the two applications should address the combined and cumulative potential impacts of both developments being implemented. This is particularly relevant to matters such as traffic and highways safety impacts, and the impact of both developments upon the character and appearance of the Golcar Conservation Area.
- 10.3 Given the above, it is appropriate for the council to consider both applications together. Such a comprehensive, holistic assessment would include consideration of the need for affordable housing and public open space across all of the land affected by the applications. Consideration of the applications only in isolation would result in the impacts of the developments (and their potential public benefits) not being fully or properly assessed, and necessary mitigation not being secured. Separate consideration could result in piecemeal development that, while of a significant quantum in total, would not deliver the benefits and mitigation normally required of such a quantum.

### Principle of development

- 10.4 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.
- 10.5 The NPPF is a material consideration in planning decisions. The current situation regarding housing land supply in Kirklees (discussed below) is a material consideration relevant to applications for residential development. Weight can also be attached to the draft policies of the emerging Local Plan.
- 10.6 Outline planning permission for eight residential units at the West site was granted in 2014 under application ref: 2014/90450. Officers are not aware of any evidence of implementation, therefore that permission is understood to have expired in August 2017. The applicant therefore has no fallback position in the form of an extant permission that can be implemented, however the council's previous decision is a material consideration relevant to the consideration of the current application. Of note, in 2014 the council was unable to identify a five-year supply of housing land, and this partly informed the council's decision to grant outline planning permission for residential development at this Provisional Open Land site.

- 10.7 The starting point in assessing this planning application is to ascertain whether or not the proposal accords with the relevant provision of the development plan, which in this case comprises the saved policies of the Kirklees UDP (1999). If a proposal does not accord with the development plan, regard should be had as to whether there are other material considerations, including the NPPF, which indicate that planning permission should be granted.
- 10.8 The NPPF is a Government-issued statement of national planning policy, and is therefore considered an important material consideration, particularly in cases where there are UDP policies that are out-of-date or inconsistent with the NPPF. Paragraph 215 emphasises that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).
- 10.9 The NPPF seeks to boost significantly the supply of housing. Paragraph 47 of the NPPF sets out how local planning authorities should meet the full objectively-assessed needs for market and affordable housing. This requires a range of measures including identifying a deliverable five-year supply of land for housing. Paragraph 49 adds that housing applications should be considered in the context of the presumption in favour of sustainable development, and that 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.
- 10.10 As noted in recent appeal decisions, Kirklees is not currently meeting (by a substantial margin) the requirement to identify a five-year supply of housing land. This is important in the context of paragraph 14 of the NPPF which states that, in relation to decision-taking, the presumption in favour of sustainable development means approving development proposals that accord with the development plan without delay, and where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless i) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits (when assessed against NPPF policies taken as a whole), or ii) specific policies in the NPPF indicate development should be restricted.
- 10.11 As the council is unable to demonstrate a five-year housing land supply as required by paragraph 49 of the NPPF, relevant UDP policies relating to housing are considered to be out-of-date. The housing land supply shortfall is not marginal – it falls below three years and is therefore considered substantial. Whilst the council has prepared a Local Plan that, for housing purposes, is predicated on the basis of a five-year housing land supply, it is currently undergoing examination, and has not been adopted. Therefore, it remains the case that the council is unable to identify a five-year supply of specific deliverable housing sites against the relevant NPPF requirement.
- 10.12 The borough's housing supply record of recent years is also a relevant consideration. This is set out in the council's Housing Supply Topic Paper (2017), where Kirklees's persistent under-delivery is detailed.

- 10.13 Given this situation regarding housing land supply, with regard to this application and the presumption in favour of sustainable development, the NPPF states that planning permission should only be refused where there are adverse impacts which would significantly and demonstrably outweigh the benefits.
- 10.14 The site was designated as Provisional Open Land (POL) in the UDP in 1999, and this designation was retained (saved) by the Secretary of State for Communities and Local Government in 2007. Policy D5 of the UDP 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 longer term.*
- 10.15 With regard to the designation of the site as POL, UDP policy D5 is not considered to be a policy for the supply of housing (with reference to NPPF paragraph 49), and is considered to be up-to-date. The proposed development does not comply with UDP policy D5 as it does not comprise development required in connection with established uses, or the alternative open land uses or temporary uses referred to in the policy. The proposed development constitutes a departure from the development plan.
- 10.16 As noted above, the emerging Local Plan is a material consideration. It sets out a housing requirement of 31,140 homes between 2013 and 2031 to meet identified needs. This equates to 1,730 homes per annum. 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. The site is allocated for housing in the emerging Local Plan (site reference: H550). Given that the examination in public of the Local Plan is underway, consideration needs to be given to the weight to be afforded to draft policies, and in particular draft site allocation H550.
- 10.17 Paragraph 216 of the NPPF sets out what weight can be given to 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 the NPPF (the closer the policies in the emerging plan to the policies in the NPPF, the greater the weight that may be given).
- 10.18 The above is further supplemented by paragraph 014 (reference ID: 21b-014-20140306) of the Government's Planning Practice Guidance, which 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 NPPF and any other material considerations

into account. Paragraph 014 adds that 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.*

- 10.19 Given the scale of the development proposed (when assessed against the wider context of the emerging Local Plan), it is considered that the application could not be deemed to be premature as the proposed development, by virtue of its relatively small scale and limited strategic importance (in terms of housing delivery), is not considered to be central to the delivery of the Local Plan. With regard to the current stage of preparation of Local Plan, it is noted that an advanced stage has been reached, which would suggest considerable weight can be afforded to its policies. However, it is also noted that there are two unresolved objections to site allocation H550, which reduces the weight than can be afforded to it. Given these considerations, it is considered that limited weight can be afforded to the draft site allocation in this case.
- 10.20 Ordnance Survey maps from 1955 onwards annotate the site as “Allotment Gardens”, however that use appears to have now ceased, and appears to have been intermittent in recent years – aerial photographs show some cultivation in 2012, but not in 2000 to 2009. UDP policy R9 states that proposals involving development on allotments, or land last used as allotments, will not be permitted unless replacement allotments of equivalent community benefit are provided or it can be demonstrated that there is no unsatisfied local demand for allotments. The council’s Allotments Manager has confirmed that there is currently only one council-managed allotment site in Golcar, at Moorcroft Avenue, where all 17 plots are fully let, with a waiting list of 10 people. Given this unsatisfied demand, and the previous use of the application site, the proposed development is contrary to UDP policy R9, although the weight to be attached to this shortcoming is limited by the fact that the site is privately owned, and that refusal of planning permission would not result in local demand being met (the council has no authority to allocate private allotments to people on the council’s waiting list).
- 10.21 In conclusion regarding the principle of development, given the pressing need for housing, the current situation regarding housing land supply in Kirklees, the relevant paragraphs of the NPPF detailed above, the draft site allocation, and the previous approval of outline planning permission at this site, there clearly are material considerations that – together – carry significant weight, and that justify approval of planning permission. With reference to NPPF paragraph 14, the adverse impacts and benefits of the proposed development are assessed throughout this report, and further conclusions on the balance of planning considerations are drawn in its closing paragraphs.
- 10.22 The above conclusion is supported by the fact that the application site is a suitable location for residential development in relation to sustainability, being located at the edge of an existing settlement, relatively close to sustainable transport options and other facilities. The site is not isolated and inaccessible.

- 10.23 Officers' recommendation to accept the principle of development at this greenfield site, however, is not given lightly. If this site is to be released for development, public benefit must be clearly demonstrated, and high quality development will be expected. These matters are addressed later in this report, and would require further consideration at reserved matters stage, should outline permission be granted.

#### Urban design and conservation issues

- 10.24 Section 72 of the of the Planning (Listed Buildings and Conservation Areas) Act places a duty on the council to pay special attention to the desirability of preserving or enhancing the character and appearance of the Golcar Conservation Area when determining this application.
- 10.25 The Planning and Heritage Statement (Acumen, November 2017), submitted during the life of the application, does not adequately address the comments of the council's Conservation and Design Group Leader and paragraph 128 of the NPPF, however officers are nonetheless able to assess the proposal with regard to Section 72.
- 10.26 The relevant conservation area character appraisal defines Golcar as a large, closely-knit hillside village of picturesque quality and special architectural and historic interest. The appraisal notes that the settlement's location on the steep hillside above the valley of the River Colne (and the subsidiary valley that runs northwest-southeast between Golcar and Wellhouse) gives it a highly dramatic setting, reminiscent of an Italian hill village. The subsidiary valley is identified as a defining influence on the character of the village, as is the village's organic form and limited formal planning. Important vistas northeastwards from the bottom of the subsidiary valley and Albion Mill are also noted, and the appraisal suggests that when Golcar is viewed from here the natural landscape appears to frame the village. The hillside's green space is identified as a buffer that prevents the settlements of Golcar and Wellhouse from merging, thus protecting the character and setting of both areas. Tree coverage is identified as quintessential to Golcar's character, and panoramic views of the settlement reiterate the importance of trees to Golcar, creating extra interest, depth and character in the area. The surrounding landscape makes a vital contribution to the character and setting of Golcar, the topography creating a panorama not apparent in other areas. Steep slopes and footpaths, stone steps and narrow lanes with homogeneous vernacular stone architecture characterise the settlement. Golcar has several dry stone walls defining fields, open spaces and earlier boundaries, all of which impart character. Golcar's early settlement pattern is still visible, the urban grain of the conservation area is characterised by small linear plots, and there are few detached properties.
- 10.27 Although a major urban extension southwards down the hillside towards Brook Lane could reduce the buffer that separates Golcar and Wellhouse, and could undermine the character and definition of Golcar as a hillside village framed by the natural landscape, it is noted that the application site does not extend all the way down to the bottom of the subsidiary valley, and that a substantial green space would be maintained between the two settlements. It is therefore considered that the positive and defining characteristics of the Golcar Conservation Area, and views and appreciation of it, would not be adversely affected by a sensitively-designed residential development at the application

site. Layout, materials and other aspects of design, as well as landscaping, would need to be carefully considered at reserved matters stage, to ensure the more detailed aspects of a residential development similarly do not harm the character and appearance of the conservation area.

- 10.28 The application site is visible from public vantagepoints including along Copley Bank Road, is visible from private properties, and may be visible from public vantagepoints to the south and east on the opposite side of the Colne Valley. The visibility of the site has been taken into account in the above assessment.
- 10.29 There also is a requirement under Section 66 of the Act that “special regard” should be had to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess.
- 10.30 The primary interest of the Grade II listed buildings at 17-25 and 27-29 Clay Well is not derived from spacious settings, and the grouping of these buildings (and their relationships with other nearby buildings) is characteristically dense. Given this existing arrangement of buildings, the tightly-packed street frontage of Clay Well, and the topography of the application site (which falls away significantly behind the listed buildings), it is considered that residential development can be carried out at the application site without crowding and adversely affecting the setting of these heritage assets when viewed from the north.
- 10.31 When viewed from the south, the undeveloped application site is of more importance to the setting of the listed buildings, as it reveals their edge-of-settlement location, reveals their contribution to the close-knit hillside character of Golcar, and enables their appreciation in longer views from Copley Bank Road. Development at the application site has the potential to limit this appreciation and diminish the positive contribution these buildings make to the character of the settlement, however any such impact would be limited by the topography of the application site which would ensure new buildings would not obstruct views of these buildings (particularly the tall gable end of 27-29 Clay Well), and careful detailed design of such development could ensure these nearby heritage assets are not crowded or otherwise harmed.
- 10.32 The above assessments relate to the proposed development at the West site in isolation, but are also applicable to the cumulative impacts of both the proposed developments (at the East and West sites), and indeed the cumulative impacts of the four hillside sites (Fullwood Drive, the East and West sites, and the site accessed from Carr Top Lane) upon the conservation area.
- 10.33 Conservation matters would be given the necessary further consideration at detailed (reserved matters) stage, however given the above assessments there are considered to be no reasons to withhold outline planning permission on conservation grounds.
- 10.34 Conservation considerations aside, some consideration needs to be given to other design matters, although it is noted that the submitted layout is indicative.
- 10.35 With 10 units proposed in a site of 0.39 hectares, a density of 26 units per hectare would be achieved, significantly below the 35 units per hectare minimum set out in draft policy PLP7, and below the densities of much of Golcar’s historic core. Noting that this minimum is applied “where appropriate”,



and that the same policy requires densities to be in keeping with the character of the area, there may be scope for a greater number of units at this site, should highways, amenity and other considerations be adequately addressed. The indicative quantum of development currently suggested by the applicant would not be approved under this application for outline permission, and the site's constraints and opportunities would determine what number of units would be possible at detailed (reserved matters) stage. This number may be significantly different to the suggested 10.

- 10.36 The proposed indicative layout has a very suburban character, and appears to have been designed with regard to highways and engineering constraints and considerations, with no apparent regard to the character, layout and grain of the historic buildings to the north. An improved design, with a layout that responded positively to the buildings to the north (including the predominant east-west orientation of buildings along the village's hillside lanes, variations in heights, and irregular and unplanned appearance and character) would need to be secured at reserved matters stage, should outline permission be granted.
- 10.37 Inappropriate timber fencing is shown on the applicant's indicative sections. Better boundary treatments, appropriate to the conservation area and designed to improve the setting, appearance and natural surveillance of the adjacent footpath, would need to be secured at reserved matters stage, should outline permission be granted.
- 10.38 No further consideration is necessary at this outline stage in relation to townscape, landscaping and other design matters.

#### Residential amenity

- 10.39 The principal of residential development at this site is considered acceptable in relation to the amenities of neighbouring residential properties. It is considered that residential development can be carried out at the site without unacceptably harming the outlook, privacy and natural light currently enjoyed by neighbouring residents. The minimum distances set out under UDP policy BE12 can be achieved.
- 10.40 Private views of a particular landmark or feature of interest, and long views over land not in the ownership of the viewer, are not protected under planning.
- 10.41 In terms of noise, although residential development would introduce (or increase) activity and movements to and from the site, given the scale of development that is likely to be acceptable at this site, it is not considered that neighbouring residents would be significantly impacted. The proposed residential use is not inherently problematic in terms of noise, and is not considered incompatible with existing surrounding uses.

#### Highway issues

- 10.42 The applicant proposes to provide access for pedestrians, cyclists and vehicles from the turning area at the east end of Fullwood Drive. The applicant's indicative sections show a continuous timber fence with no gate along the site's southeast boundary, suggesting that no access is proposed from the adjacent public footpath under this application.

- 10.43 The proposed point of access is considered acceptable. Although this would prevent or limit parking at the end of Fullwood Drive (all existing properties are provided with garages and driveways, however residents currently make use of the turning area for parking, which one resident has stated is due to the existing garages being too small and driveways being too steep), no designated parking spaces in Fullwood Road would be lost.
- 10.44 Existing residents' comments regarding congestion and highways safety are noted, particularly in relation to the number of vehicles passing through Fullwood Drive and using the Fullwood Drive / Victoria Lane junction and other local junctions. Furthermore, the cumulative impacts of the additional traffic generated by residential developments at the East and West sites (both of which would be accessed via Fullwood Drive) must be considered.
- 10.45 With 21 existing dwellings at Fullwood Drive, 10 indicatively proposed at the West site, and 14 indicatively proposed at the East site, a potential total of 45 households would move their vehicles along Fullwood Drive and would rely on the Fullwood Drive / Victoria Lane junction for vehicular access. This potential level of vehicle movement, although twice the current level, is not unusual for a residential street of this size and design. Planning permission cannot be withheld on congestion grounds if the street's existing problem is a result of existing residents not making use of garages and drives. The Fullwood Drive / Victoria Lane junction is of an adequate size to accommodate the likely volume of traffic, should both developments be implemented. At the junction of Victoria Lane and Share Hill / Brook Lane there have been no injury accidents in five years. The last accidents recorded along Victoria Lane (including the above-mentioned junctions) were in 2008 and 2010, and neither accident was associated with access or egress from a junction.
- 10.46 The proposed development has not attracted objections from the council's Highways Development Management officers on safety or congestion grounds.
- 10.47 One resident has suggested that vehicular access to the proposed development (and to the East site) should be provided from Brook Lane. This has been considered, however potential for a vehicular access here is limited by the trees along the north side of Brook Lane (some of which are protected by a Tree Preservation Order), and the need to maintain the character and retain green framing to Golcar and its conservation area. Furthermore, the topography of the sites would result in a problematic and possibly unsafe access – given the level difference of approximately 20m (from Brook Lane to the top of the two sites) across a distance of approximately 100m, a road gradient of 1:5 (and possibly steeper) would be necessary, which would not comply with Government guidance, would affect stopping distances of vehicles approaching the new junction, and would make adoption of the developments' new road unlikely.
- 10.48 Other comments made by Highways Development Management officers relate to the layout and detailed design of the proposed development, which is currently only indicative, and which would be considered further at reserved matters stage, should outline planning permission be granted. An approval of outline permission would not undermine the need for proper consideration of highways safety at reserved matters stage. Later, detailed consideration would determine what number of units this site could accommodate, and this number may be different to the suggested 10.

- 10.49 Although part of the adjacent public footpath along the site's southeastern boundary appears to be within the same parcel of land ownership as the application site, the applicant's red line site boundary does not include any part of the public footpath, nor does the applicant propose a pedestrian connect to it. Such a connection, if carefully designed, could be of public benefit, as it would improve neighbourhood permeability and access to the bus stop on Brook Lane, and would be compliant with UDP policies T16 (which requires new development to make provision for convenient pedestrian routes) and R13 (which promotes the development of new links in the public right of way network). A further connection eastwards, through the East site and the site under development at Carr Top Lane, would also be beneficial, providing an alternative east-west pedestrian route avoiding Clay Well which lacks pavements. These matters can be considered further at reserved matters stage, should outline permission be granted.

#### Drainage issues

- 10.50 The site is within Flood Zone 1, but is less than 1 hectare in size, therefore a site-specific Flood Risk Assessment did not need to be submitted. A Drainage Assessment Report (Avie Consulting, March 2014) was, however, submitted.
- 10.51 The Lead Local Flood Authority has raised no objection to the proposed development in relation to drainage and flood risk, provided that the Drainage Assessment Report and site specific and standard conditions are adhered to. The LLFA are of the view that the applicant has established that adequate drainage is achievable throughout the development, but that the drainage proposals are not sufficiently developed to receive a full approval, and that further detail will be required at reserved matters stage. Details of permeable surfaces, rainwater harvesting, water butts, and rainwater gardens and ponds would also be required at reserved matters stage, should outline permission be granted.

#### Ecological considerations

- 10.52 The application site is not subject to any adopted designations or allocations in relation to ecology, however trees and shrubs, and the relative lack of human activity on the site, may mean the site provides, or has the potential to provide, habitats for wildlife. Some neighbouring residents have stated that bats, deer and many species of bird have been seen at this and the East site. In addition, two ponds exist within 500m of the site. To the south of the site, on the other side of Brook Lane, is land forming part of the proposed Wildlife Habitat Network as set out in the emerging Local Plan. This network connects designated sites of biodiversity and geological importance and notable habitat links, and any development within or close to the network will need to support and enhance these links.
- 10.53 The applicant has submitted a Preliminary Ecological Appraisal (PEA), and during the life of the application additionally submitted an initial habitat suitability assessment of the pond to the west of Fullwood Drive and Victoria Lane (to the north of Victoria Mills).

- 10.54 The council's Biodiversity Officer advised that the submitted PEA is sufficient to support the application, and that it is possible to develop the site for housing while providing a biodiversity net gain and so complying with relevant policies (including policy PLP30 of the emerging Local Plan and chapter 11 of the NPPF).
- 10.55 In subsequent comments in response to the applicant's pond assessment (which was required as the application site is relatively close to the above-mentioned pond, and may itself provide refugia for great crested newts during the terrestrial phases of their lives), the Biodiversity Officer advised that a full survey of the pond will be required, but that this can be deferred to reserved matters stage, as no site layout would be formerly approved at outline stage. The applicant, however, will need to understand that, notwithstanding any outline approval, development at this site (and in particular site layout) may prove to be constrained by great crested newts.

### Trees

- 10.56 No Tree Preservation Orders cover the application site, however trees within the site are afforded protection by the site's conservation area designation. UDP policy NE9 states that mature trees should normally be retained, while policy PLP33 in the emerging Local Plan states that the council will not grant planning permission for development which directly or indirectly threaten trees or woodlands of significant amenity, and that development proposals should normally retain any valuable or important trees where they make a contribution to public amenity, the distinctiveness of a specific location or contribute to the environment.
- 10.57 The site has scattered, self-seeded tree cover. Many of the site's trees and shrubs are young, and the site has a ruderal character. There are, however, good quality trees on the site, including a mature sycamore identified by the applicant as T25.
- 10.58 The applicant's Arboricultural Report recommends the removal of only three trees, however in addition, an unspecified number of other trees would need to be removed to accommodate the proposed development.
- 10.59 Objections have been raised by local residents in relation to the loss of trees, however the council's Tree Officer has raised no objection, noting that the site's better quality trees would be retained. The applicant's site layout plan suggests the above-mentioned sycamore (T25) would be retained, while an off-site mature sessile oak (T33) has the annotation "retention desirable" in the applicant's Arboricultural Report. It is, however, again noted that the applicant's site layout plan is indicative, that the granting of outline permission would not secure approval of the removal of any specific tree, and that these matters would require further, detailed consideration at reserved matters stage (when an updated tree survey, arboricultural impact assessment and method statement would be required), should outline permission be granted. The applicant will need to be aware that, notwithstanding any outline approval, development at this site may prove to be constrained by the site's trees. An approval of outline permission would not undermine the need for proper consideration of impacts upon trees at reserved matters stage.

10.60 At this stage there are considered to be no reasons relating to trees that would prohibit any residential development, or the principle of residential development, at this site. The outline proposal is considered compliant with UDP policy NE9 and policy PLP33 of the emerging Local Plan.

### Representations

10.61 To date, representations from occupants of 29 properties. Below are the issues which have been raised which have not been addressed earlier in this report, and the case officer's response.

- Queried affordability of dwellings, and suitability for first-time buyers – the development's affordable housing provision and dwelling sizes would be determined at reserved matters stage.
- Impacts upon schools, doctors and other local services – impacts upon local services (other than schools) would be considered at reserved matters stage.
- Impacts upon the values of existing neighbouring properties – this is not a material planning consideration relevant to this application.
- Adjacent land ownership – some neighbouring residents have stated that a ransom strip exists at the east end of Fullwood Drive, and that this land is within the same parcels of land ownership as 20 and 21 Fullwood Drive. This is not, however, a material planning consideration relevant to this application, and any approval of outline planning permission would not obviate the need for a developer to obtain the agreement of adjacent landowners to provide access across their land.

### Planning obligations

10.62 The applicant seeks outline permission with all matters reserved (other than access), and does not seek approval of a specific number of residential units. To accord with policy H10 of the UDP, emerging Local Plan policy PLP11 and the Kirklees Interim Affordable Housing Policy, if the council is minded to grant outline permission, a condition can be imposed requiring the provision of affordable housing.

10.63 Under policy H18 of the UDP sites of 0.4ha require public open space to be provided on-site. Although the site is 0.39ha in size, given that the two applications and the impacts of the proposed developments are being considered together, it is appropriate to apply this requirement to both sites. It is possible, however, that, due to the shapes and topographies of the sites, a contribution towards off-site provision can be accepted. An appropriate condition is recommended.

10.64 Given the number of units indicatively proposed, no contribution towards education would be triggered (for either site, or when both sites are considered together). Following further design work, however, the total unit number proposed at reserved matters stage may trigger the need for a contribution, and an appropriate condition is recommended.

### Other planning matters

- 10.65 With regard to ground contamination, the applicant's Phase I desktop study concluded that there are no active pollutant linkages at the site, but recommends precautionary contamination testing. Appropriate conditions have been recommended by officers to ensure compliance with UDP policy G6 policy and PLP53 in the emerging Local Plan.
- 10.66 The proposed development would involve the removal of trees and an increase in vehicle movements to and from the site, however air quality is not expected to be significantly affected. To encourage the use of low-emission modes of transport, electric/hybrid vehicle charging points would need to be provided in accordance with relevant guidance on air quality mitigation, draft policies PLP21, PLP24 and PLP51 of the emerging Local Plan, the West Yorkshire Low Emissions Strategy (and its technical planning guidance), the NPPF, and Planning Practice Guidance.
- 10.67 Crime prevention would be a relevant consideration at reserved matters stage, not least given that the site (and, possibly, the rear garden fences of some of the new dwellings) would abut a public footpath. These matters are not, however, reasons to withhold outline planning permission.
- 10.68 The applicant has submitted a Coal Mining Search Report (David Bellis, January 2014), however the site is not within a Coal Authority referral or advice area.

### **11.0 CONCLUSION**

- 11.1 The application site is allocated as Provisional Open Land in the UDP (saved policies), but is allocated for housing in the emerging Local Plan. Residential development of the site would be contrary to UDP policy D5 (and, additionally, policy R9, due to the site's past use as allotments), however having regard to a range of considerations (including the pressing need for housing, the current situation regarding housing land supply in Kirklees, the draft site allocation, the council's previous approval of residential development at this site, and the council having no authority to allocate private allotments to people on the council's waiting list), it is considered that the principle of residential development at this site can be accepted.
- 11.2 The site is constrained by the Golcar Conservation Area designation, tree and ecological considerations, existing residential properties and listed buildings nearby, drainage and topography. While these constraints would necessitate careful and detailed consideration at reserved matters stage, none are considered to be prohibitive to any residential development (or to the principle of residential development) at this site, therefore it is recommended that outline permission be granted.
- 11.3 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.

11.4 The proposed development has been assessed against relevant policies in the development plan and other material considerations. It is considered that the proposed development would constitute sustainable development (with reference to paragraph 14 of the NPPF) 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. Standard OL cond (submission of reserved matters)
2. Standard OL cond (implementation of reserved matters)
3. Standard OL cond (reserved matters submission time limit)
4. Standard OL cond (reserved matters implementation time limit)
5. Highways
6. Ecology
7. Drainage (site specific and standard development conditions)
8. Affordable Housing
9. Public Open Space
10. Education
11. Noise Report
12. Contamination Reports

**Background Papers:**

Application and history files.

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2017%2f93638>

Certificate of Ownership – Certificate B signed

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**Report of the Head of Strategic Investment**

**HUDDERSFIELD PLANNING SUB-COMMITTEE**

**Date: 22-Feb-2018**

**Subject: Planning Application 2017/93719 Outline application for residential development with details of point of access only (within a Conservation Area) Land off Fullwood Drive (East site), Golcar, Huddersfield, HD7 4JH**

**APPLICANT**

C Ainley, C/O Agent

**DATE VALID**

07-Nov-2017

**TARGET DATE**

06-Feb-2018

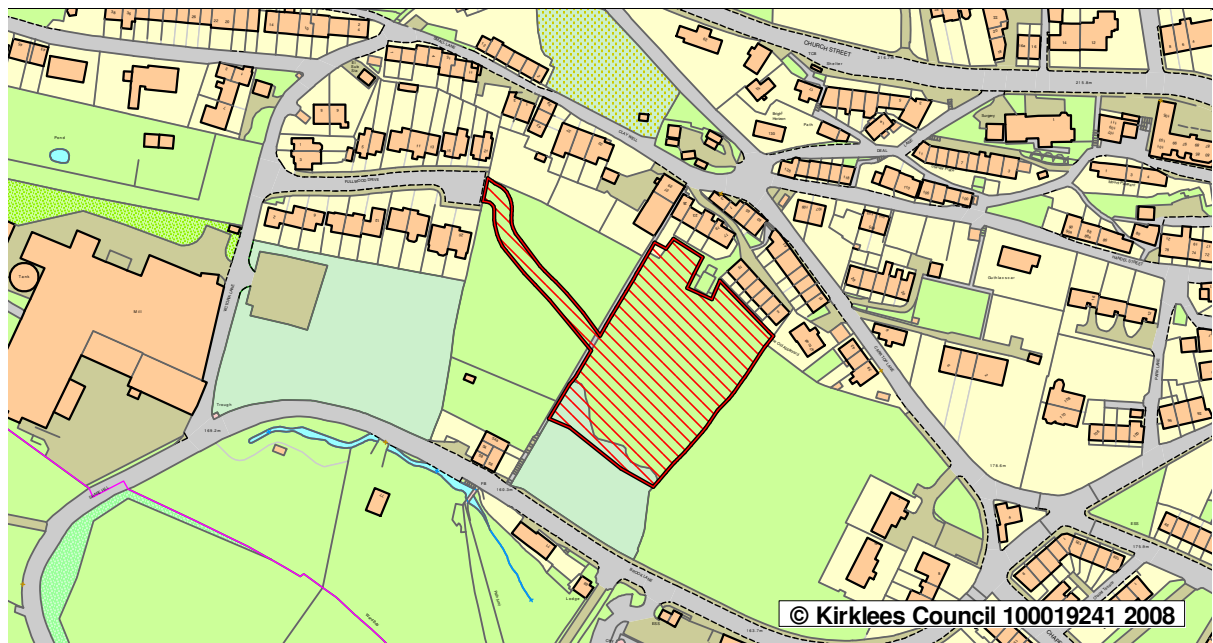
**EXTENSION EXPIRY DATE**

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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**

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**Electoral Wards Affected: Golcar**

Yes

Ward Members consulted

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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 is an outline planning application for residential development, with all matters reserved other than access.
- 1.2 The application is presented to the Huddersfield Sub-Committee as the proposed development relates to Provisional Open Land, and is likely to include fewer than 60 residential units.
- 1.3 This site is referred to in this report as the “East” site.
- 1.4 A separate application (ref: 2017/93638) for outline planning permission for the adjacent (“West”) site is also to be considered at the same meeting of the Huddersfield Sub-Committee. Although submitted by different applicants, the two applications are linked in many respects.

## **2.0 SITE AND SURROUNDINGS:**

- 2.1 The application site is 0.52 hectares in size, has an irregular shape, includes a narrow passage of land across the adjacent West site, and slopes downhill from north (190m AOD approx.) to south (175m approx.).
- 2.2 No buildings exist within the site’s boundaries, and the site is not previously-developed (brownfield) land. Parts of the site are overgrown with self-seeded trees and shrubs, giving the site a ruderal character. No trees on the site are the subjects of Tree Preservation Orders (TPOs), however a TPO covers trees directly to the southwest.
- 2.3 A public footpath (COL/56/40) runs along the site’s northwest boundary.
- 2.4 The site is within the Golcar Conservation Area. To the north of the site is a terrace of five Grade II listed cottages at 17-25 Clay Well, and the Grade II listed former factory/warehouse and dwellings at 27-29 Clay Well. To the southwest is a Grade II listed group of back-to-back buildings at 54, 54A, 56 and 58 Brook Lane. Undesignated heritage assets within and close to the site include the abovementioned footpath, dry stone walls and field patterns.

2.5 A Provisional Open Land designation in the Kirklees Unitary Development Plan covers the site and adjacent land. The site is allocated as safeguarded land in the emerging Local Plan.

### **3.0 PROPOSAL:**

3.1 Permission is sought for residential development of the site. The application is submitted in outline, except in relation to access. All other matters (scale, layout, appearance and landscaping) are reserved.

3.2 The applicant proposes to provide access across the West site from the turning area at the east end of Fullwood Drive. This access, for pedestrians, cyclists and vehicles, would run from the northwest corner of the West site to a new turning area close to the centre of the East site.

3.3 An indicative site layout plan has been submitted, showing 14 residential units arranged in four pairs of semis and two short terraces of dwellings. The applicant has, however, requested that the number of units be not specified in the development description or the council's decision letter. The submitted drawings are, in any case, indicative, and the number of units would be determined at reserved matters stage, should outline planning permission be granted.

3.4 Two trees (identified by the applicant as defective) would be removed. In addition, an unspecified number of other trees would need to be removed to accommodate the proposed development.

### **4.0 RELEVANT PLANNING HISTORY (including enforcement history):**

4.1 95/90501 – Outline planning permission refused 31/03/1995 for approx. 23 residential dwellings (larger site).

4.2 94/93595 – Outline planning permission refused 10/01/1995 for approx. 23 residential dwellings (larger site).

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

5.1 A Planning and Heritage Statement, a Preliminary Ecological Appraisal, initial pond habitat suitability assessment, and additional drainage information was submitted during the life of the application.

### **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.

Kirklees Unitary Development Plan (UDP) Saved Policies 2007:

6.2 The site is Provisional Open Land. The site was designated within an extended Golcar Conservation Area post adoption of the plan.

6.3 Adjacent land to the east and west is also Provisional Open Land and was also designated within an extended Golcar Conservation Area post adoption of the plan. Land to the south (on the other side of Brook Lane) is green belt.

6.4 Relevant policies are:

- G4 – High standard of design
- G5 – Equality of opportunity
- G6 – Land contamination
- D5 – Provisional Open Land
- NE9 – Mature trees
- BE1 – Design principles
- BE2 – Quality of design
- BE5 – Conservation areas
- BE11 – Building materials
- BE12 – Space about buildings
- BE21 – Open space accessibility
- BE22 – Accessible parking
- BE23 – Crime prevention
- EP3A – Culverting and canalisation
- EP4 – Noise sensitive development
- EP10 – Energy efficiency
- EP11 – Landscaping and ecology
- EP30 – Prolonged construction work
- T1 – Transport priorities
- T2 – Highway improvements
- T10 – Highway safety
- T14 – Pedestrian safety
- T16 – Pedestrian routes
- T17 – Cycling
- T18 – Strategic pedestrian and cyclist routes
- T19 – Parking standards
- DL1 – Derelict and neglected land
- H1 – Housing needs
- H10 – Affordable housing
- H12 – Affordable housing arrangements
- H18 – Open space provision
- R6 – Public open space
- R9 – Allotments
- R13 – Rights of way

## Kirklees Draft Local Plan Strategies and Policies (2017):

### 6.5 Relevant policies are:

- PLP1 – Presumption in favour of sustainable development
- PLP2 – Place shaping
- PLP3 – Location of new development
- PLP6 – Safeguarded land
- PLP7 – Efficient and effective use of land and buildings
- PLP11 – Housing mix and affordable housing
- PLP20 – Sustainable travel
- PLP21 – Highway safety and access
- PLP22 – Parking
- PLP24 – Design
- PLP27 – Flood risk
- PLP28 – Drainage
- PLP30 – Biodiversity and geodiversity
- PLP32 – Landscape
- PLP33 – Trees
- PLP35 – Historic environment
- PLP47 – Healthy, active and safe lifestyles
- PLP48 – Community facilities and services
- PLP51 – Protection and improvement of local air quality
- PLP52 – Protection and improvement of environmental quality
- PLP63 – New open space

### Supplementary Planning Guidance / Documents:

### 6.6 Relevant guidance and documents are:

- Providing for Educational Needs Generated by New Housing
- Kirklees Interim Affordable Housing Policy (2016)
- West Yorkshire Air Quality and Emissions Technical Planning Guidance
- Kirklees District Landscape Character Assessment (2015)
- Kirklees Housing Topic Paper (2017)
- Kirklees Council Housing Allocations Policy (2017)
- Accessibility Assessment (2015)
- Golcar Conservation Area Character Appraisal

### National Planning Policy and Guidance:

### 6.7 The National Planning Policy Framework (2012) seeks to secure positive growth in a way that effectively balances economic, environmental and social progress for this and future generations. The NPPF is a material consideration and has been taken into account as part of the assessment of the proposal. Relevant paragraphs/chapters are:

- Paragraph 17 – Core Planning Principles
- Chapter 4 – Promoting sustainable transport
- Chapter 6 – Delivering a wide choice of high quality homes
- Chapter 7 – Requiring a good design
- Chapter 8 – Promoting healthy communities
- Chapter 9 – Protecting green belt land

- Chapter 10 – Meeting the challenge of climate change, flooding and coastal change
- Chapter 11 – Conserving and enhancing the natural environment
- Chapter 12 – Conserving and enhancing the historic environment

6.8 Since March 2014 Planning Practice Guidance for England has been published online.

## **7.0 PUBLIC/LOCAL RESPONSE:**

7.1 The application has been advertised via four site notices, a press notice, and letters delivered to addresses abutting the application site. This is in line with the council's adopted Statement of Community Involvement. The end date for publicity was 14/12/2017.

7.2 The four site notices were posted on 23/11/2017, and were still in place on 03/12/2017. By 08/01/2018 two of the site notices had been removed – it is not known when (after 03/12/2017) these site notices were removed, or by whom, however notwithstanding their removal, the council has met and exceeded statutory consultation requirements, and the number of responses from residents indicates that local knowledge of the application is extensive.

7.3 To date, representations from occupants of 30 properties. The following is a summary of the concerns raised:

- Site is safeguarded land and should be protected from development. Brownfield sites should be developed instead.
- Loss of allotments.
- Much additional housing has recently been built in Golcar ward, yet some new properties remain empty.
- Adverse impact upon Golcar Conservation Area.
- Adverse impact upon adjacent listed buildings.
- Local roads and pavements inadequate for increased traffic and pedestrians, including children, older people and people with disabilities.
- Traffic and speeds would increase along Fullwood Drive.
- Displaced vehicles parking at the Fullwood Drive / Victoria Lane junction may compromise sight lines.
- Vehicle access should be provided from Brook Lane.
- Vehicle conflicts, damage, noise, dirt and disruption during construction.
- Inadequate parking for visitors proposed.
- Queried if there would be space for a refuse vehicle to turn.
- Loss of privacy.
- Loss of views.
- Loss of trees.
- Impacts on wildlife, including deer, birds and bats.
- Hillside may not tolerate weight of development, causing damage to existing properties.
- Adverse impact upon drainage of site.
- Lack of affordable housing.
- Development does not cater for first-time buyers.

- Increase in local population has not been matched with increased provision of schools, GP services, road links, shops and post offices. Services would become further stretched.
- Impact on existing property values.
- Overall effects of three adjacent developments should be considered.
- Proposal does not comply with planning policies.
- Inadequate public consultation.

7.4 A letter was also received from Thelma Walker MP, relaying the concerns of local residents relating to traffic, the adequacy of local roads, impacts during construction, and access to local services.

7.5 Responses to these comments are set out later in this report.

## 8.0 CONSULTATION RESPONSES:

### 8.1 Statutory:

KC Highways – Amendments to indicative layout would be needed before adoption of the proposed road could be considered, as per advice given in relation to application 2017/93638.

KC Conservation and Design – No objection to proposed access way, given that site's previous planning history. Design, layout and landscaping would need to be carefully considered at reserved matters stage to ensure that the character of the Golcar Conservation Area is preserved or enhanced by the development.

KC Strategic Drainage – No consideration has been given to flood risk to or from the site. No drainage strategy or proposals have been submitted. A drainage strategy should include a proposal for a discharge point using the hierarchy of preferred solutions, a discharge rate to the proposed discharge point (if not via infiltration), and attenuation requirements to meet this discharge rate. Areas of hardstanding must have permeable surfaces, and developer should consider diverting gutter downpipes into rainwater harvesting and water butts, with overflow into rainwater gardens/ponds.

Yorkshire Water – Condition recommended regarding disposal of surface water. Separate systems needed for foul and surface water drainage. Sustainable development requires appropriate surface water disposal. The developer must provide evidence to demonstrate that surface water via infiltration or watercourse is not reasonably practical before considering disposal to a public sewer. The watercourse to the south of the site appears to be the obvious place for surface water disposal. Landowners consent would be required for the construction of a new outfall structure. It is also noted that the adjacent development would discharge to this watercourse. Further advice should be sought from other parties regarding surface water disposal.

## 8.2 **Non-statutory:**

KC Trees – No objection in principle, however based on the indicative layout provided, proposed dwellings along the southern part of the site may be adversely affected by shade from the adjacent TPO-protected woodland. This includes possible shade directly impacting the new dwellings and shade dominating the outside amenity space. This would lead to long term pressure to fell or excessively prune the trees. The current indicative design has not taken shade into account, however a redesign could be achieved to move the new dwellings away from the trees. This may require the access road to be moved further north and the loss of lower quality trees elsewhere in the site. If permission is to be granted, applicant should be advised that the layout is indicative and that any design at reserved matters stage would need to take into account the protected trees and the shade they cast. This information should be included in an arboricultural impact assessment and method statement, written in accordance with BS 5837.

KC Parks and Greenspace (Allotments Manager) – Aerial photographs indicate this site was active (as allotments) in 2012 and possibly later. Within Golcar there is one council-managed allotment site at Moorcroft Avenue. This site has 17 plots that are fully let, and a waiting list of 10 people. The council's next nearest allotment sites are in Slaithwaite, Salendine Nook, Paddock and Crosland Moor.

KC Environmental Health – Recommend conditions regarding site contamination and provision of electric vehicle charging points. Construction noise should be limited to specified hours.

Police Architectural Liaison Officer – No objections to principle of proposed development. Detailed advice provided for reserved matters stage.

KC Strategic Housing – Application welcomed. Within Kirklees Rural (West) there is a significant need for affordable 1- and 2-bedroom units, as well as a need for affordable 1- and 2-bedroom housing specifically for older people. Kirklees Rural (West) is a popular location, with 15% of households planning to move home within Kirklees within the next 5 years citing it as their first choice destination. Kirklees's interim affordable housing policy seeks 20% affordable housing provision on sites where 11 units or more are proposed. On-site provision is preferred, however a financial contribution in lieu of on-site provision can be acceptable where appropriate. Borough-wide, a split of 54% Affordable Rent / 46% Intermediate is appropriate within affordable housing provisions.

KC Ecology – Full biodiversity data has not been obtained in compiling the submitted Preliminary Ecological Appraisal. Further information needed regarding the suitability of nearby pond for supporting breeding great crested newts. Agree that any great crested newts using the other neighbourhood pond would be unlikely to use the terrestrial habitats at the East site.

KC Public Rights of Way – Applicant's red line boundary includes part of the adjacent public footpath, where the proposed access route would cross it.



## 9.0 MAIN ISSUES

- Assessment of applications
- Principle of development
- Urban design and conservation issues
- Residential amenity
- Highway issues
- Drainage issues
- Ecological considerations
- Trees
- Representations
- Planning obligations
- Other matters

## 10.0 APPRAISAL

### Assessment of applications

- 10.1 As noted above, a separate application (ref: 2017/93638) for outline planning permission has been submitted in relation to the site immediately to the west (the West site), where outline planning permission for residential development is also sought. The two applications have been submitted by different applicants, however the submitted application forms indicate there are persons with interests in both sites, and the two sites and proposals are linked in other respects. Access to the East site is proposed across the West site, meaning any owner/developer of the East site is reliant on the co-operation of the adjacent owner/developer to the west. Any owner/developer of the West site would most likely seek to benefit from agreeing to such co-operation. It may also be the case that, should outline permission for both developments be granted, the sites would be developed simultaneously, possibly following their purchase by a single developer.
- 10.2 The council's assessment of the two applications should address the combined and cumulative potential impacts of both developments being implemented. This is particularly relevant to matters such as traffic and highways safety impacts, and the impact of both developments upon the character and appearance of the Golcar Conservation Area.
- 10.3 Given the above, it is appropriate for the council to consider both applications together. Such a comprehensive, holistic assessment would include consideration of the need for affordable housing and public open space across all of the land affected by the applications. Consideration of the applications only in isolation would result in the impacts of the developments (and their potential public benefits) not being fully or properly assessed, and necessary mitigation not being secured. Separate consideration could result in piecemeal development that, while of a significant quantum in total, would not deliver the benefits and mitigation normally required of such a quantum.

### Principle of development

- 10.4 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.

- 10.5 The NPPF is a material consideration in planning decisions. The current situation regarding housing land supply in Kirklees (discussed below) is a material consideration relevant to applications for residential development. Weight can also be attached to the draft policies of the emerging Local Plan.
- 10.6 The application site has no history of previous approvals of planning permission for residential development. At the adjacent West site, however, outline planning permission for eight residential units was granted in 2014 under application ref: 2014/90450, and approval of current application 2017/93638 (application for outline permission for residential development) is recommended. Further to the east, the site to the south of 39 to 49 Carr Top Lane has full planning permission for a residential development of 16 units (ref: 2017/91173) and development has commenced at that site. These applications and permissions are material considerations relevant to the application for the East site.
- 10.7 Of note, in 2014 the council was unable to identify a five-year supply of housing land, and this partly informed the council's decision to grant outline planning permission for residential development at the West site, which is within a Provisional Open Land designation. Similarly, the current situation regarding housing land supply in Kirklees has partly informed the recommendation to approve the current application for the West site (ref: 2017/93638).
- 10.8 The starting point in assessing this planning application for the East site is to ascertain whether or not the proposal accords with the relevant provision of the development plan, which in this case comprises the saved policies of the Kirklees UDP (1999). If a proposal does not accord with the development plan, regard should be had as to whether there are other material considerations, including the NPPF, which indicate that planning permission should be granted.
- 10.9 The NPPF is a Government-issued statement of national planning policy, and is therefore considered an important material consideration, particularly in cases where there are UDP policies that are out-of-date or inconsistent with the NPPF. Paragraph 215 emphasises that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).
- 10.10 The NPPF seeks to boost significantly the supply of housing. Paragraph 47 of the NPPF sets out how local planning authorities should meet the full objectively-assessed needs for market and affordable housing. This requires a range of measures including identifying a deliverable five-year supply of land for housing. Paragraph 49 adds that housing applications should be considered in the context of the presumption in favour of sustainable development, and that 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.
- 10.11 As noted in recent appeal decisions, Kirklees is not currently meeting (by a substantial margin) the requirement to identify a five-year supply of housing land. This is important in the context of paragraph 14 of the NPPF which states that, in relation to decision-taking, the presumption in favour of sustainable development means approving development proposals that accord with the development plan without delay, and where the development plan is absent,

silent or relevant policies are out-of-date, granting permission unless i) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits (when assessed against NPPF policies taken as a whole), or ii) specific policies in the NPPF indicate development should be restricted.

- 10.12 As the council is unable to demonstrate a five-year housing land supply as required by paragraph 49 of the NPPF, relevant UDP policies relating to housing are considered to be out-of-date. The housing land supply shortfall is not marginal – it falls below three years and is therefore considered substantial. Whilst the council has prepared a Local Plan that, for housing purposes, is predicated on the basis of a five-year housing land supply, it is currently undergoing examination, and has not been adopted. Therefore, it remains the case that the council is unable to identify a five-year supply of specific deliverable housing sites against the relevant NPPF requirement.
- 10.13 The borough's housing supply record of recent years is also a relevant consideration. This is set out in the council's Housing Supply Topic Paper (2017), where Kirklees's persistent under-delivery is detailed.
- 10.14 Given this situation regarding housing land supply, with regard to this application and the presumption in favour of sustainable development, the NPPF states that planning permission should only be refused where there are adverse impacts which would significantly and demonstrably outweigh the benefits.
- 10.15 The site was designated as Provisional Open Land (POL) in the UDP in 1999, and this designation was retained (saved) by the Secretary of State for Communities and Local Government in 2007. Policy D5 of the UDP 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 longer term.*
- 10.16 With regard to the designation of the site as POL, UDP policy D5 is not considered to be a policy for the supply of housing (with reference to NPPF paragraph 49), and is considered to be up-to-date. The proposed development does not comply with UDP policy D5 as it does not comprise development required in connection with established uses, or the alternative open land uses or temporary uses referred to in the policy. The proposed development constitutes a departure from the development plan.
- 10.17 As noted above, the emerging Local Plan is a material consideration. It sets out a housing requirement of 31,140 homes between 2013 and 2031 to meet identified needs. This equates to 1,730 homes per annum. 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.
- 10.18 The site is allocated as safeguarded land in the emerging Local Plan. Given that the examination in public of the Local Plan is underway, consideration needs to be given to the weight to be afforded to draft policies, and in particular allocation SL3396 and policy PLP6.

- 10.19 Paragraph 216 of the NPPF sets out what weight can be given to 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 the NPPF (the closer the policies in the emerging plan to the policies in the NPPF, the greater the weight that may be given).
- 10.20 With regard to the current stage of preparation of Local Plan, it is noted that an advanced stage has been reached, which would suggest considerable weight can be afforded to its policies. However, it is also noted that there are unresolved objections to the proposed allocation as safeguarded land (allocation SL3396 and draft policy PLP6), which reduces the weight than can be afforded to it. It is considered that limited weight can be afforded to the draft policy in this case.
- 10.21 Ordnance Survey maps from 1955 onwards annotate the site as “Allotment Gardens”, however that use appears to have now ceased, and aerial photographs do not show any cultivation in recent years (unlike at the West site, where some cultivation was evident in 2012). UDP policy R9 states that proposals involving development on allotments, or land last used as allotments, will not be permitted unless replacement allotments of equivalent community benefit are provided or it can be demonstrated that there is no unsatisfied local demand for allotments. The council’s Allotments Manager has confirmed that there is currently only one council-managed allotment site in Golcar, at Moorcroft Avenue, where all 17 plots are fully let, with a waiting list of 10 people. Given this unsatisfied demand, and the previous use of the application site, the proposed development is contrary to UDP policy R9, although the weight to be attached to this shortcoming is limited by the fact that the site is privately owned, and that refusal of planning permission would not result in local demand being met (the council has no authority to allocate private allotments to people on the council’s waiting list).
- 10.22 In conclusion regarding the principle of development, given the pressing need for housing, the current situation regarding housing land supply in Kirklees, the relevant paragraphs of the NPPF detailed above, the limited weight that can be attached to policy PLP6 and the proposed allocation as safeguarded land, and the previous and recommended approvals of planning permission at the sites to the east and west, there clearly are material considerations that – together – carry significant weight, and that justify approval of planning permission. With reference to NPPF paragraph 14, the adverse impacts and benefits of the proposed development are assessed throughout this report, and further conclusions on the balance of planning considerations are drawn in its closing paragraphs.
- 10.23 The above conclusion is supported by the fact that the application site is a suitable location for residential development in relation to sustainability, being located at the edge of an existing settlement, relatively close to sustainable transport options and other facilities. The site is not isolated and inaccessible.

- 10.24 Officers' recommendation to accept the principle of development at this greenfield site, however, is not given lightly. If this site is to be released for development, public benefit must be clearly demonstrated, and high quality development will be expected. These matters are addressed later in this report, and would require further consideration at reserved matters stage, should outline permission be granted.

#### Urban design and conservation issues

- 10.25 Section 72 of the of the Planning (Listed Buildings and Conservation Areas) Act places a duty on the council to pay special attention to the desirability of preserving or enhancing the character and appearance of the Golcar Conservation Area when determining this application.
- 10.26 The Planning and Heritage Statement (Acumen, November 2017), submitted during the life of the application, does not adequately address paragraph 128 of the NPPF, however officers are nonetheless able to assess the proposal with regard to Section 72.
- 10.27 The relevant conservation area character appraisal defines Golcar as a large, closely-knit hillside village of picturesque quality and special architectural and historic interest. The appraisal notes that the settlement's location on the steep hillside above the valley of the River Colne (and the subsidiary valley that runs northwest-southeast between Golcar and Wellhouse) gives it a highly dramatic setting, reminiscent of an Italian hill village. The subsidiary valley is identified as a defining influence on the character of the village, as is the village's organic form and limited formal planning. Important vistas northeastwards from the bottom of the subsidiary valley and Albion Mill are also noted, and the appraisal suggests that when Golcar is viewed from here the natural landscape appears to frame the village. The hillside's green space is identified as a buffer that prevents the settlements of Golcar and Wellhouse from merging, thus protecting the character and setting of both areas. Tree coverage is identified as quintessential to Golcar's character, and panoramic views of the settlement reiterate the importance of trees to Golcar, creating extra interest, depth and character in the area. The surrounding landscape makes a vital contribution to the character and setting of Golcar, the topography creating a panorama not apparent in other areas. Steep slopes and footpaths, stone steps and narrow lanes with homogeneous vernacular stone architecture characterise the settlement. Golcar has several dry stone walls defining fields, open spaces and earlier boundaries, all of which impart character. Golcar's early settlement pattern is still visible, the urban grain of the conservation area is characterised by small linear plots, and there are few detached properties.
- 10.28 Although a major urban extension southwards down the hillside towards Brook Lane could reduce the buffer that separates Golcar and Wellhouse, and could undermine the character and definition of Golcar as a hillside village framed by the natural landscape, it is noted that the application site does not extend all the way down to the bottom of the subsidiary valley, and that a substantial green space would be maintained between the two settlements. It is therefore considered that the positive and defining characteristics of the Golcar Conservation Area, and views and appreciation of it, would not be adversely affected by a sensitively-designed residential development at the application site. Layout, materials and other aspects of design, as well as landscaping,

would need to be carefully considered at reserved matters stage, to ensure the more detailed aspects of a residential development similarly do not harm the character and appearance of the conservation area.

- 10.29 The application site is visible from public vantagepoints including along Copley Bank Road, is visible from private properties, and may be visible from public vantagepoints to the south and east on the opposite side of the Colne Valley. The visibility of the site has been taken into account in the above assessment.
- 10.30 There also is a requirement under Section 66 of the Act that “special regard” should be had to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess.
- 10.31 The primary interest of the Grade II listed buildings at 17-25 and 27-29 Clay Well is not derived from spacious settings, and the grouping of these buildings (and their relationships with other nearby buildings) is characteristically dense. Given this existing arrangement of buildings, the tightly-packed street frontage of Clay Well, and the topography of the application site (which falls away significantly behind the listed buildings), it is considered that residential development can be carried out at the application site without crowding and adversely affecting the setting of these heritage assets when viewed from the north.
- 10.32 When viewed from the south, the undeveloped application site is of more importance to the setting of the listed buildings, as it reveals their edge-of-settlement location, reveals their contribution to the close-knit hillside character of Golcar, and enables their appreciation in longer views from Copley Bank Road. Development at the application site has the potential to limit this appreciation and diminish the positive contribution these buildings make to the character of the settlement, however any such impact would be limited by the topography of the application site which would ensure new buildings would not obstruct views of these buildings (particularly the tall gable end of 27-29 Clay Well), and careful detailed design of such development could ensure these nearby heritage assets are not crowded or otherwise harmed.
- 10.33 The above assessments relate to the proposed development at the East site in isolation, but are also applicable to the cumulative impacts of both the proposed developments (at the East and West sites), and indeed the cumulative impacts of the four hillside sites (Fullwood Drive, the East and West sites, and the site accessed from Carr Top Lane) upon the conservation area.
- 10.34 Conservation matters would be given the necessary further consideration at detailed (reserved matters) stage, however given the above assessments there are considered to be no reasons to withhold outline planning permission on conservation grounds.
- 10.35 Conservation considerations aside, some consideration needs to be given to other design matters, although it is noted that the submitted layout is indicative.

- 10.36 With 14 units proposed in a site of 0.52 hectares, a density 27 units per hectare would be achieved, significantly below the 35 units per hectare minimum set out in draft policy PLP7, and below the densities of much of Golcar's historic core. Noting that this minimum is applied "where appropriate", and that the same policy requires densities to be in keeping with the character of the area, there may be scope for a greater number of units at this site, should highways, amenity and other considerations be adequately addressed. The indicative quantum of development currently suggested by the applicant would not be approved under this application for outline permission, and the site's constraints and opportunities would determine what number of units would be possible at detailed (reserved matters) stage. This number may be significantly different to the suggested 14.
- 10.37 The proposed indicative layout has a very suburban character and regimented layout, and appears to have been designed with regard to highways and engineering constraints and considerations, with no apparent regard to the character, layout and grain of the historic buildings to the north. An improved design, with a layout that responded positively to the buildings to the north (including the predominant east-west orientation of buildings along the village's hillside lanes, variations in heights, and irregular and unplanned appearance and character) would need to be secured at reserved matters stage, should outline permission be granted.
- 10.38 Boundary treatments, appropriate to the conservation area and designed to improve the setting, appearance and natural surveillance of the adjacent public footpath, would need to be secured at reserved matters stage, should outline permission be granted.
- 10.39 No further consideration is necessary at this outline stage in relation to townscape, landscaping and other design matters.

#### Residential amenity

- 10.40 The principal of residential development at this site is considered acceptable in relation to the amenities of neighbouring residential properties. It is considered that residential development can be carried out at the site without unacceptably harming the outlook, privacy and natural light currently enjoyed by neighbouring residents. The minimum distances set out under UDP policy BE12 can be achieved.
- 10.41 Private views of a particular landmark or feature of interest, and long views over land not in the ownership of the viewer, are not protected under planning.
- 10.42 In terms of noise, although residential development would introduce (or increase) activity and movements to and from the site, given the scale of development that is likely to be acceptable at this site, it is not considered that neighbouring residents would be significantly impacted. The proposed residential use is not inherently problematic in terms of noise, and is not considered incompatible with existing surrounding uses.

## Highway issues

- 10.43 The applicant proposes to provide access for pedestrians, cyclists and vehicles from the turning area at the east end of Fullwood Drive, and across the West site.
- 10.44 The proposed point of access is considered acceptable. Although this would prevent or limit parking at the end of Fullwood Drive (all existing properties are provided with garages and driveways, however residents currently make use of the turning area for parking, which one resident has stated is due to the existing garages being too small and driveways being too steep), no designated parking spaces in Fullwood Road would be lost.
- 10.45 Existing residents' comments regarding congestion and highways safety are noted, particularly in relation to the number of vehicles passing through Fullwood Drive and using the Fullwood Drive / Victoria Lane junction and other local junctions. Furthermore, the cumulative impacts of the additional traffic generated by residential developments at the East and West sites (both of which would be accessed via Fullwood Drive) must be considered.
- 10.46 With 21 existing dwellings at Fullwood Drive, 10 indicatively proposed at the West site, and 14 indicatively proposed at the East site, a potential total of 45 households would move their vehicles along Fullwood Drive and would rely on the Fullwood Drive / Victoria Lane junction for vehicular access. This potential level of vehicle movement, although twice the current level, is not unusual for a residential street of this size and design. Planning permission cannot be withheld on congestion grounds if the street's existing problem is a result of existing residents not making use of garages and drives. The Fullwood Drive / Victoria Lane junction is of an adequate size to accommodate the likely volume of traffic, should both developments be implemented. At the junction of Victoria Lane and Share Hill / Brook Lane there have been no injury accidents in five years. The last accidents recorded along Victoria Lane (including the above-mentioned junctions) were in 2008 and 2010, and neither accident was associated with access or egress from a junction.
- 10.47 The proposed development has not attracted objections from the council's Highways Development Management officers on safety or congestion grounds.
- 10.48 One resident has suggested that vehicular access to the proposed developments should be provided from Brook Lane. This has been considered, however potential for a vehicular access here is limited by the trees along the north side of Brook Lane (some of which are protected by a Tree Preservation Order), and the need to maintain the character and retain green framing to Golcar and its conservation area. Furthermore, the topography of the sites would result in a problematic and possibly unsafe access – given the level difference of approximately 20m (from Brook Lane to the top of the two sites) across a distance of approximately 100m, a road gradient of 1:5 (and possibly steeper) would be necessary, which would not comply with Government guidance, would affect stopping distances of vehicles approaching the new junction, and would make adoption of the developments' new road unlikely.



- 10.49 Other comments made by Highways Development Management officers relate to the layout and detailed design of the proposed development, which is currently only indicative, and which would be considered further at reserved matters stage, should outline planning permission be granted. An approval of outline permission would not undermine the need for proper consideration of highways safety at reserved matters stage. Later, detailed consideration would determine what number of units this site could accommodate, and this number may be different to the suggested 14.
- 10.50 The proposed access route would cross the public footpath that runs between the East and West sites, providing a north-south connection for pedestrians, improving neighbourhood permeability and access to the bus stop on Brook Lane. If carefully designed, this could be of public benefit and compliant with UDP policies T16 (which requires new development to make provision for convenient pedestrian routes) and R13 (which promotes the development of new links in the public right of way network). A further connection eastwards, to the site under development at Carr Top Lane, would also be beneficial, providing an alternative east-west pedestrian route avoiding Clay Well which lacks pavements. These matters can be considered further at reserved matters stage, should outline permission be granted.

#### Drainage issues

- 10.51 The site is within Flood Zone 1, but is less than 1 hectare in size, therefore a site-specific Flood Risk Assessment did not need to be submitted. Although a Drainage Assessment Report was submitted in relation to the West site, no such report was submitted in relation to the East site, and the applicant has made the following points by email:
- A detailed drainage scheme and Flood Risk Assessment will be submitted with a reserved matters planning application.
  - The main risk of flooding is from overland water and groundwater. This can be mitigated against with overland flows from the land above the site being directed around the site, or through the site so as not to affect the new properties.
  - Finished floor levels can be raised above ground levels to mitigate against localised flooding caused by heavy rainfall.
  - Based on planning applications for neighbouring developments it is known that the site is not suitable for soakaways due to its topography. A direct connection to the watercourse adjacent to Brook Lane is the most appropriate way to dispose of surface water. Attenuation systems can be used to manage the discharge of the water into the water course.
  - Foul water can be disposed of through connection to the combined sewer in Brook Lane.
- 10.52 The above points have not allayed the concerns of the Lead Local Flood Authority, who have reiterated that outline drainage details (including locations and details of sizings of drainage solutions) are required at outline application stage.

- 10.53 It is considered, however, that further, more detailed information regarding drainage and flood risk need not be pursued at this stage, given that details of the number of units, and their locations in relation to water courses and potential sources of flood risk, would not be secured should outline permission be granted. Although the Drainage Assessment Report submitted in relation to the West site specifically and only relates to that site, its findings suggest that adequate drainage is likely to be achievable at the adjacent East site, given that the two sites have many common characteristics. Much more detailed information would, however, be required at reserved matters stage, as would details of permeable surfaces, rainwater harvesting, water butts, and rainwater gardens and ponds, should outline permission be granted.

#### Ecological considerations

- 10.54 The application site is not subject to any adopted designations or allocations in relation to ecology, however trees and shrubs, and the relative lack of human activity on the site, may mean the site provides, or has the potential to provide, habitats for wildlife. Some neighbouring residents have stated that bats, deer and many species of bird have been seen at this and the West site. In addition, two ponds exist within 500m of the site. To the south of the site, on the other side of Brook Lane, is land forming part of the proposed Wildlife Habitat Network as set out in the emerging Local Plan. This network connects designated sites of biodiversity and geological importance and notable habitat links, and any development within or close to the network will need to support and enhance these links.
- 10.55 The applicant has submitted a Preliminary Ecological Appraisal (PEA), and during the life of the application additionally submitted an initial habitat suitability assessment of the pond to the west of Fullwood Drive and Victoria Lane (to the north of Victoria Mills).
- 10.56 The council's Biodiversity Officer, commenting in response to the applicant's pond assessment (which was required as the application site is relatively close to the above-mentioned pond, and may itself provide refugia for great crested newts during the terrestrial phases of their lives), advised that a full survey of the pond will be required, but that this can be deferred to reserved matters stage, as no site layout would be formerly approved at outline stage. The applicant, however, will need to understand that, notwithstanding any outline approval, development at this site (and in particular site layout) may prove to be constrained by great crested newts.

#### Trees

- 10.57 No Tree Preservation Orders cover the application site, however trees within the site are afforded protection by the site's conservation area designation. UDP policy NE9 states that mature trees should normally be retained, while policy PLP33 in the emerging Local Plan states that the council will not grant planning permission for development which directly or indirectly threaten trees or woodlands of significant amenity, and that development proposals should normally retain any valuable or important trees where they make a contribution to public amenity, the distinctiveness of a specific location or contribute to the environment.

- 10.58 The site has scattered, self-seeded tree cover. Many of the site's trees and shrubs are young, and the site has a ruderal character. There are, however, good quality trees on the site, including a mature sessile oak identified by the applicant as T12.
- 10.59 The applicant's Arboricultural Report recommends the removal of only two trees, however in addition, an unspecified number of other trees would need to be removed to accommodate the proposed development.
- 10.60 Objections have been raised by local residents in relation to the loss of trees. The applicant's site layout plan has not been cross-referenced with the Arboricultural Report, therefore it is unclear which trees would be removed (other than the two recommended for removal as noted above), although some trees have the annotation "retention desirable" in the report. The council's Tree Officer, while not raising an objection in principle to residential development at this site, has expressed concerns that, based on the indicative layout provided, the proposed dwellings along the southern part of the site may be adversely affected by shade from the adjacent TPO-protected woodland.
- 10.61 It is, however, again noted that the applicant's site layout plan is indicative, that the granting of outline permission would not secure approval of the removal of any specific tree, and that these matters would require further, detailed consideration at reserved matters stage (when an updated tree survey, arboricultural impact assessment and method statement would be required), should outline permission be granted. The applicant will need to be aware that, notwithstanding any outline approval, development at this site may prove to be constrained by the site's trees, adjacent TPO-protected trees to the south, and the shade provided by them. An approval of outline permission would not undermine the need for proper consideration of impacts upon trees at reserved matters stage. As noted by the Tree Officer, a redesign of the proposed development would be necessary to avoid conflicts with, and pressure on, trees. An arboricultural impact assessment and method statement, written in accordance with BS 5837, would be required at reserved matters stage.
- 10.62 With the above noted, at this stage there are considered to be no reasons relating to trees that would prohibit any residential development, or the principle of residential development, at this site. The outline proposal is considered compliant with UDP policy NE9 and policy PLP33 of the emerging Local Plan.

### Representations

- 10.63 To date, representations from occupants of 30 properties. Below are the issues which have been raised which have not been addressed earlier in this report, and the case officer's response.
- Queried affordability of dwellings, and suitability for first-time buyers – the development's affordable housing provision and dwelling sizes would be determined at reserved matters stage.
  - Impacts upon schools, doctors and other local services – impacts upon local services (other than schools) would be considered at reserved matters stage.
  - Impacts upon the values of existing neighbouring properties – this is not a material planning consideration relevant to this application.

- Adjacent land ownership – some neighbouring residents have stated that a ransom strip exists at the east end of Fullwood Drive, and that this land is within the same parcels of land ownership as 20 and 21 Fullwood Drive. This is not, however, a material planning consideration relevant to this application, and any approval of outline planning permission would not obviate the need for a developer to obtain the agreement of adjacent landowners to provide access across their land.

#### Planning obligations

- 10.64 The applicant seeks outline permission with all matters reserved (other than access), and does not seek approval of a specific number of residential units. To accord with policy H10 of the UDP, emerging Local Plan policy PLP11 and the Kirklees Interim Affordable Housing Policy, if the council is minded to grant outline permission, a condition can be imposed requiring the provision of affordable housing.
- 10.65 Under policy H18 of the UDP sites of 0.4ha require public open space to be provided on-site. The application site is 0.52ha in size, and this requirement therefore applies. It is possible, however, that, due to the shapes and topographies of the sites, a contribution towards off-site provision can be accepted. An appropriate condition is recommended.
- 10.66 Given the number of units indicatively proposed, no contribution towards education would be triggered (for either site, or when both sites are considered together). Following further design work, however, the total unit number proposed at reserved matters stage may trigger the need for a contribution, and an appropriate condition is recommended.

#### Other planning matters

- 10.67 With regard to ground contamination, the applicant's Phase I Geoenvironmental Study concluded that there is a medium to low environmental risk, and recommends further investigation and assessment. Appropriate conditions have been recommended by officers to ensure compliance with UDP policy G6 policy and PLP53 in the emerging Local Plan.
- 10.68 The proposed development would involve the removal of trees and an increase in vehicle movements to and from the site, however air quality is not expected to be significantly affected. To encourage the use of low-emission modes of transport, electric/hybrid vehicle charging points would need to be provided in accordance with relevant guidance on air quality mitigation, draft policies PLP21, PLP24 and PLP51 of the emerging Local Plan, the West Yorkshire Low Emissions Strategy (and its technical planning guidance), the NPPF, and Planning Practice Guidance.
- 10.69 Crime prevention would be a relevant consideration at reserved matters stage, not least given that the site (and, possibly, the garden fences of some of the new dwellings) would abut a public footpath. These matters are not, however, reasons to withhold outline planning permission.

## 11.0 CONCLUSION

- 11.1 The application site is allocated as Provisional Open Land in the UDP (saved policies), and allocated as safeguarded land in the emerging Local Plan. Residential development of the site would be contrary to UDP policy D5 (and, additionally, policy R9, due to the site's past use as allotments), however having regard to a range of considerations (including the pressing need for housing, the current situation regarding housing land supply in Kirklees, the limited weight to be attached to draft policy PLP6, the council's previous approval of residential developments at adjacent sites, and the council having no authority to allocate private allotments to people on the council's waiting list), it is considered that the principle of residential development at this site can be accepted.
- 11.2 The site is constrained by the Golcar Conservation Area designation, tree and ecological considerations, existing residential properties and listed buildings nearby, drainage and topography. While these constraints would necessitate careful and detailed consideration at reserved matters stage, none are considered to be prohibitive to any residential development (or to the principle of residential development) at this site, therefore it is recommended that outline permission be granted.
- 11.3 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.
- 11.4 The proposed development has been assessed against relevant policies in the development plan and other material considerations. It is considered that the proposed development would constitute sustainable development (with reference to paragraph 14 of the NPPF) 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. Standard OL cond (submission of reserved matters)
2. Standard OL cond (implementation of reserved matters)
3. Standard OL cond (reserved matters submission time limit)
4. Standard OL cond (reserved matters implementation time limit)
5. Highways
6. Ecology
7. Drainage (site specific and standard development conditions)
8. Affordable Housing
9. Public Open Space
10. Education
11. Noise Report
12. Contamination Reports

**Background Papers:**

Application and history files.

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2017%2f93719>

Certificate of Ownership – Certificate B signed

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## Report of the Head of Strategic Investment

### HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 22-Feb-2018

**Subject: Planning Application 2017/94242 Erection of side extensions and dormer windows, raise roof and alterations Crow Wood, 17, Broad Lane, Upperthong, Holmfirth, HD9 3JS**

#### APPLICANT

C Hudson

#### DATE VALID

15-Dec-2017

#### TARGET DATE

09-Feb-2018

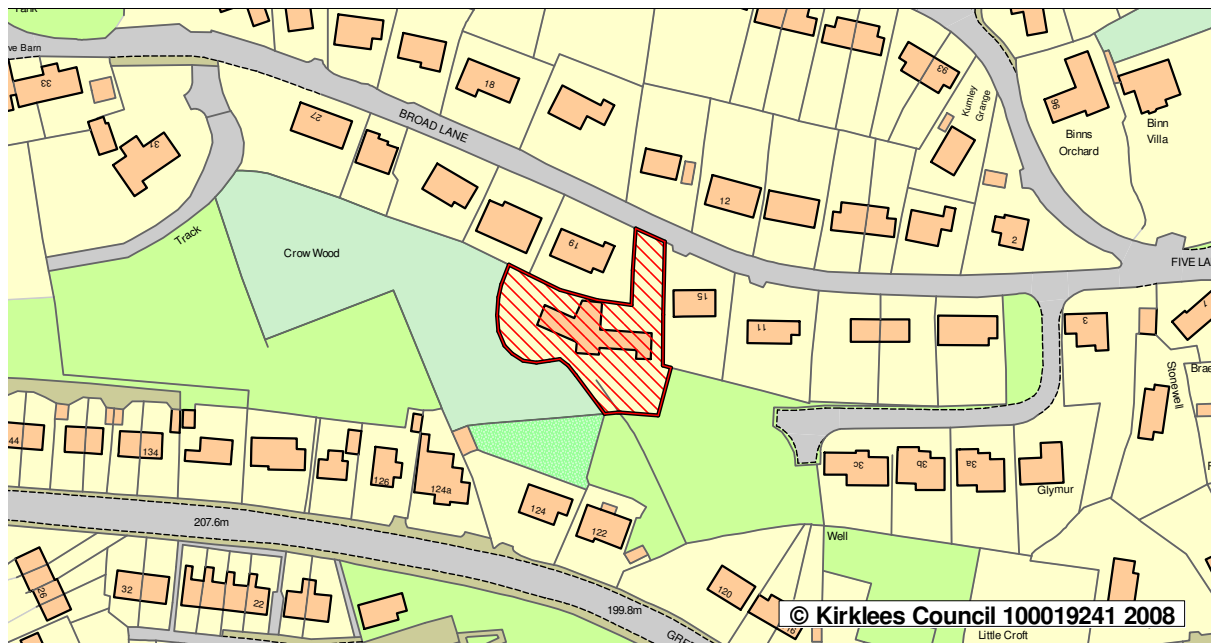
#### EXTENSION EXPIRY DATE

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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

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**Electoral Wards Affected: Holme Valley South**

No

Ward Members consulted

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**RECOMMENDATION: APPROVE**

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 Nigel Patrick for the following reason:

*'The reason will be as per the complaints, massing and overbearing and loss of light.'*

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

**2.0 SITE AND SURROUNDINGS:**

2.1 17 Broad Lane 'Crow Wood', is a principally single storey detached dwelling. It is constructed in natural stone with pitched roofs covered in concrete roof tiles. The dwelling is unique in its design, it comprises of a central part with two wings, one to the west and one to the east. The central section includes an upper floor with doors leading to a small balcony to the southern elevation. Above this there is a feature lantern/tower within the roof. The dwelling benefits from good sized gardens to the side and rear. It is set back from the highway, and its neighbouring dwellings, and access to the dwelling is via a private driveway off Broad Lane.

2.2 The topography in the local area rises towards the north such that the adjacent properties nos.15 and 19 Broad Lane are set at a higher ground level, as is the adjacent highway. To the west and south of the site is an area of woodland covered by a Tree Protection Order, known as 'Crow Wood'. To the south east of the site is the recently constructed 3D Broad Lane. To the south of the site, at a significantly lower ground level, are nos. 122 and 124 Greenfield Road.

**3.0 PROPOSAL:**

3.1 The proposal is for the erection of two side extensions, two dormer windows, raising the roof and alterations.



3.2 The extensions comprise of:

- An extension to the central part of the dwelling (facing south) with a projection of approx. 3.6m, with the addition of large glazed windows.
- An extension to the side elevation of the 'east wing' (facing south) with a projection of approx. 1.8m and a width of approx. 2.8m to incorporate a new staircase, with the addition of large floor to ceiling windows.
- The extensions will be constructed using stone and concrete roof tiles to match the existing dwelling, with the addition of a small section of cladding to the side elevation of the east wing (facing south), and UPVC windows.

3.3 The alterations/additions to the roof comprise of:

- The raising of the 'east wing' roof by approx. 1.7m to a height of 5.9m.
- The addition of two dormer windows to the side elevation (facing south) which measure approx. 2.2m in width and 2.2m in height, stopping approx. 100mm below the ridge height of the roof.
- The installation of three obscure glazed roof-lights, two to the north elevation west wing, and one to the main body of the dwelling facing west.
- The proposal will include the removal of the roof lantern feature.

3.4 The proposed development would allow the dwelling to have three double bedrooms with en-suites to the first floor, one double bedroom to the ground floor, and an open-plan kitchen and living space to the ground floor.

#### **4.0 RELEVANT PLANNING HISTORY (including enforcement history):**

4.1 None.

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

5.1 Amendments were requested to the scheme to reduce the ridge height to minimise the impact of the development on the amenities of adjacent properties. The applicant wished the scheme to be considered in its original form and provided further information in support of the proposal; in particular in respect of this upon neighbouring dwellings.

#### **6.0 PLANNING POLICY:**

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 required 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 25<sup>th</sup> 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  
**NE9** - Trees

Supplementary Planning Guidance / Documents:

- 6.3 **PLP1** – Presumption in favour of sustainable development  
**PLP2** – Place shaping  
**PLP24** – Design  
**PLP30** – Biodiversity and Geodiversity  
**PLP33** - Trees

National Planning Guidance:

- 6.4 **Paragraph 17** – Core planning principles  
**Chapter 7** – Requiring good design  
**Chapter 11** - Conserving and enhancing the natural environment.

**7.0 PUBLIC/LOCAL RESPONSE:**

- 7.1 Three representations have been received and are all in objection of the proposal. The objections raised can be summarised as follows;
- The house (the applicant dwelling) was originally built 18 inches higher than the approved plans in 1985.
  - The proposed side extension will impinge on a bat colony.
  - The applicant site is close to a Tree Protection Order area.
  - The enlargement of 21 Broad Lane had a planning condition imposed on it, that the roof height remain the same as the existing ridge height.
  - The point of access into the driveway of no.17 is only 5.5m wide and access and egress will be affected at times.
  - Obstruction of sunlight and overshadowing of neighbouring dwellings.
  - The proposal will significantly affect the amenity and outlook of neighbouring dwellings by presenting a clear visible large roof expansion.

**8.0 CONSULTATION RESPONSES:**

- 8.1 Holme Valley Parish Council – ‘*Object to the application on the grounds of loss of light. Raising the roof would take away light from nearby houses higher up on Broad Lane because of the topography of the site.*’
- 8.2 Kirklees Council – Tree Officer – ‘*In relation to the proposed extensions, I have no objection as they will not impact on the adjacent protected woodland.*’

## 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 two side extensions, two dormer windows, raising the roof and alterations. The proposal would allow the occupiers more habitable space including three double bedrooms with en-suites to the first floor, one double bedroom to the ground floor with family bathroom, and an open-plan kitchen and living space to the ground floor. The extension would be constructed using a stone and concrete roof tiles to match the existing dwelling, which is acceptable.
- 10.4 In the context of the site and surrounding area, the scheme would not create a visually intrusive feature in the local area in terms of size and design, given that the dwelling’s ridge height would still be lower than that of its neighbouring dwellings on Broad Lane, and given the construction materials are to match the existing dwelling. The original dwelling is of a bespoke design set behind properties on Broad Lane. From Broad Lane the only part of the existing dwelling that is immediately apparent is the feature tower; this would be removed as part of the development proposed. Furthermore there is a varied appearance to dwellings along Broad Lane with a mix of scale, materials, age and siting. In this context the proposed development would not be incongruous with the wider character of the area.
- 10.5 The two proposed extensions are to the central and eastern sections of the dwelling, facing south, and are subservient to the existing dwelling. Given the topography of the site and the positioning of the proposed works, the proposal would not over dominate the street scene. As the dwelling is set back from the highway and is set at a lower ground level, it is considered that no material

impact would occur on the wider visual amenity of the area. Although the property is set above Greenfield Road the presence of dwellings between the application site and Greenfield Road, and the sharp increase in land levels, mean that the property would not be an over prominent structure.

- 10.6 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

- 10.7 The impact of the development on residential amenity needs to be considered in relation to policies D2 and BE14 of the Unitary Development Plan, Policy PLP24 of the Publication Draft Local Plan and core planning principles of the National Planning Policy Framework. The dwellings along Broad Lane are of predominantly detached dwellings of varying sizes. The closest neighbouring dwellings to the applicant site are no.19 to the north, no.15 to the north east and a newly built detached dwelling to the south east.
- 10.8 The proposed extensions are to the side elevation of the dwelling facing south, therefore will not impact upon any neighbouring dwelling in terms of overbearing, overshadowing or loss of outlook. The dwellings to the south of the applicant site are on Greenfield Road, in particular nos. 124 and 122, which are set at a considerably lower ground level and are approx. 40 metres away.
- 10.9 No.19 Broad Lane is a detached dwelling to the north of the applicant site. Although the applicant dwelling is built close to the boundary with this neighbour, there is an approx. 8m distance between the two dwellings. This proposal would not project the applicant dwelling any closer to this neighbouring property. This neighbouring dwelling faces south west at the rear; this proposal includes raising the roof height of the east wing of the dwelling, which is set to the south east of this neighbouring dwelling. The proposal would increase the ridge height of the east wing by approx. 1.7m, which would still remain lower than the existing ridge height of the main part of the dwelling. The proposal also includes the removal of the 'tower' feature which would provide this neighbouring dwelling with more perceived privacy and a greater outlook from the rear of their dwelling. It is considered that no undue overbearing, overshadowing or loss of outlook would occur on this neighbouring dwelling, as it faces south west at the rear therefore benefitting from a good level of direct sunlight, and because the ridge height of the applicant dwelling would be no greater than the existing roof height of the main part of the dwelling, and would still remain lower than no. 19. The neighbouring occupiers may lose some view to the south east, although this is not a material planning consideration, and given that the ridge height is not to exceed the existing, it is considered that a good level of amenity would remain.
- 10.10 No.15 Broad Lane is a detached dwelling to the north east of the applicant site. There is an approx. 7m distance between this neighbouring dwelling and the applicant dwelling. This neighbouring dwelling faces south at the rear, this proposal includes raising the roof of the east wing of the dwelling, which is approx. 7m to the west of this neighbouring dwelling. It is considered that no undue overbearing, overshadowing or loss of outlook would occur on this neighbouring dwelling either, as it faces south at the rear therefore benefitting from a good level of direct sunlight, that the applicant dwelling would still be

lower than this neighbouring dwelling, and given the distance of approx. 7m between the dwellings. The neighbouring occupiers may lose some view to the south west, although this is not a material planning consideration. The increase in roof height would result in more shading of the amenity space (in particular) in mid/late afternoons but this is not considered to be materially harmful. As the applicant dwelling is set to the south-west of this neighbouring dwelling therefore not in a direct view, and given the distance between the dwellings and difference in levels, it is considered that a good level of amenity would remain.

- 10.11 Other dwellings which share a boundary with the application site; nos 3D and 21 Broad Lane and nos. 122 and 124 Greenfield Road, are well separated from the site and it is considered that the proposed development would not cause material harm to the amenities the occupiers of these properties currently enjoy.
- 10.12 For the reasons set out 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 issues

- 10.13 The proposed extensions, raising of the roof and alterations will not impact upon the ability to host off road parking, nor will it interfere with the access to the site, therefore the proposal is considered to have no impact upon the highway safety for the site.

#### Other matters

- 10.14 The Council's GIS system indicates that the property is within a Bat Alert Area. Bats are a European protected species under regulation 41 of the Conservation of Habitats and Species Regulations 2010. As the proposal impacts on an existing roof, a bat survey has been requested. The Minimum Standards for Bat Surveys in West Yorkshire states that bat surveys are required during dawn or dusk between May and August. As the proposal has not been submitted between these times, a day time only inspection survey has been requested. The day time bat survey has been received and states that the proposal has a Low/Moderate bat roost potential. The survey states that it is recommended that a full bat survey during the peak season (May to August) takes place before the proposed works are to commence. This will be conditioned within the decision notice. This would comply with Policy PLP30 of the PDLP and Chapter 11 of the NPPF.
- 10.15 There is an area covered by a Tree Protection Order to the west of the applicant dwelling. There are also a number of mature trees within the applicant site, mainly to the south and west boundaries. It is considered that as the proposed extensions and alterations to the roof would not be built directly underneath the crown spread of any trees, the proposal would not affect the trees viability and would accord with policy NE9 of the Unitary Development Plan and Policy PLP33 of the Publication Draft Local Plan. The Council's Trees Officer concurs with this assessment.

## Representations

10.16 Three representations have been received and are all in objection of the proposal. The objections raised are summarised and responded to as follows;

- The house (the applicant dwelling) was originally built 18 inches higher than the approved plans.

**Response:** The application submitted is to be assessed on its own merits. There are no enforcement cases related to the information provided, and given the dwelling was built in 1985, it would now be immune from enforcement action.

- The proposed side extension will impinge on a bat colony.

**Response:** Noted. A bat survey has been requested and received.

- The applicant site is close to a Tree Protection Order area.

**Response:** Noted. The application has no impact upon the TPO area although the comments were passed to the Arboricultural officer regarding works on site. The Arboricultural officer has attended the site and confirmed that no protected trees were removed, therefore no offence has been committed.

- The enlargement of 21 Broad Lane had a planning condition imposed on it, that the roof height remain the same as the existing ridge height.

**Response:** The application submitted at no.17 Broad Lane is to be assessed on its own merits. It is noted that the applications differ given the difference in levels between no.17 and no.21.

- The point of access into the driveway of no.17 is only 5.5m wide and access and egress will be affected at times.

**Response:** It is considered that there is sufficient space for the development of the proposal without having a detrimental impact on the local area. It is also noted that drivers of any vehicles should abide by the Highway Code and any obstructions of the highway would be a matter for the Police.

- Obstruction of sunlight and overshadowing of neighbouring dwellings.

**Response:** This proposal has been carefully considered. Due to the roof being raised no higher than the main part of the existing dwelling, and given that the dwelling is set at a lower ground level than neighbouring dwellings fronting Broad Lane, it is considered that no unacceptable overshadowing would occur. It is also noted that the immediate neighbours to the applicant site are south facing at the rear therefore benefitting from a good level of direct sunlight.

- The proposal will significantly affect the amenity and outlook of neighbouring dwellings by presenting a clear visible large roof expansion.

**Response:** This proposal has been carefully considered, the expansion of the roof will reach a height no greater than the main part of the existing dwelling and will still remain lower than its immediate neighbours. It will be more visible as it will be higher than the existing roof form but not to the extent that it is considered overbearing. There is potential for loss of view, particularly to neighbours no.15 and no.19, although this is not a material planning consideration. Given the topography of the site and surrounding dwellings, and the orientation facing south at the rear, a good level of amenity would remain.

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 competing interests. In this case the impact is considered to be reasonable and that a recommendation to approve the application is proportional.

10.17 The application is brought to committee at the request of Cllr Patrick for the following reason: "*the reason will be as per the complaints, massing and overbearing and loss of light.*" These issues have been carefully assessed in the report with the conclusion that the scheme would have an acceptable impact on the amenities of neighbouring dwellings.

## **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**

1. Time limit to commence development
2. Development in accordance with the approved plans
3. Full bat survey during the peak season (May to August) to take place before the proposed development commences.

## **Background Papers**

Application web page:

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2017%2f94242>

Certificate of Ownership – Certificate A signed.

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## Report of the Head of Strategic Investment

### HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 22-Feb-2018

**Subject: Planning Application 2017/93846 Demolition of existing public house and erection of 32 residential dwellings Land Adjacent to Spotted Cow Public House, New Hey Road, Salendine Nook, Huddersfield, HD3 3FG**

#### APPLICANT

Newett Homes

#### DATE VALID

08-Nov-2017

#### TARGET DATE

07-Feb-2018

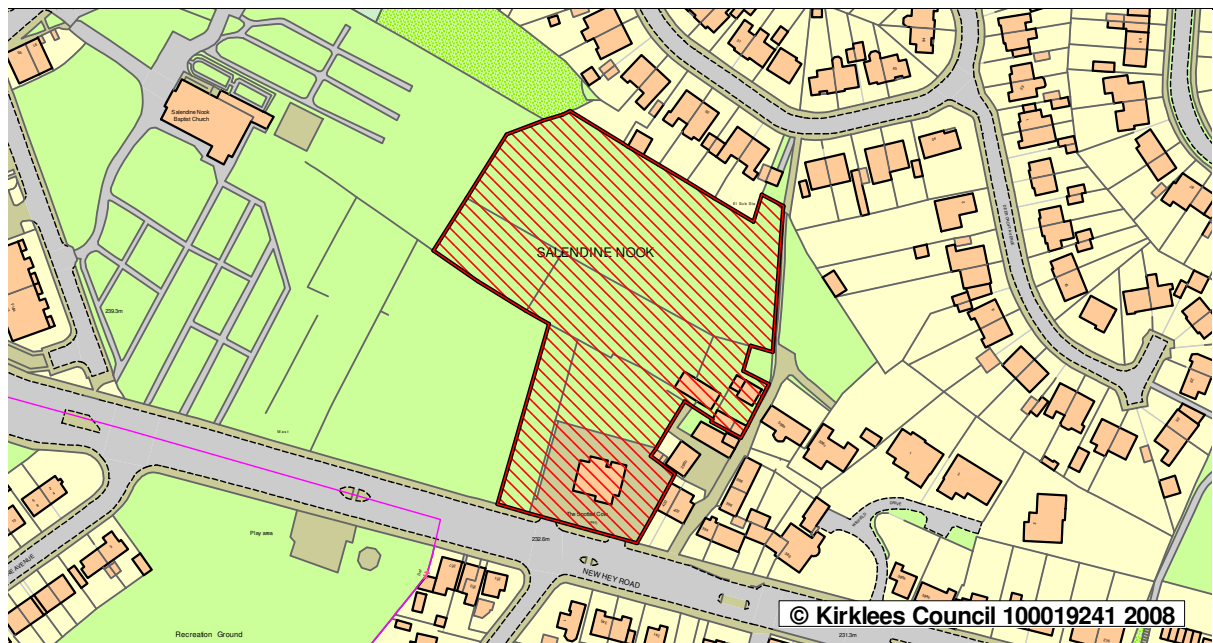
#### EXTENSION EXPIRY DATE

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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

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**Electoral Wards Affected: Lindley**

Yes

Ward Members consulted  
(referred to in report)

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**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 and to secure a S106 agreement to cover the following matters:**

- **The provision of affordable housing (five units); and**
- **The provision of an off-site contribution towards Public Open Space of £85,100,**
- **Education contribution of £79,074**
- **Bus stop improvements £10,000 ;and**
- **METRO Card contribution of £15,840 (bus only cards).**

**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 that would have been secured; if so, the Head of Strategic Investment is authorised to determine the application and impose appropriate reasons for refusal under Delegated Powers.**

**1.0 INTRODUCTION:**

- 1.1. This proposal is brought to Committee as the site is in excess of 0.5ha, and in part, represents a departure from Policy D5 of the development plan.

**2.0 SITE AND SURROUNDINGS**

- 2.1. The application site comprises an area of 1.18 ha, located on the northern side of New Hey Road, Salendine Nook. The site includes the former public house “The Spotted Cow”, and its curtilage. The pub has been vacant for a number of years and is in a neglected state. To the west and north are parcels of informal grassed open space. As such the site is part brown field and part greenfield.
- 2.2 The site is flanked on the west by undeveloped greenfield land. This land is allocated for housing on the UDP, and has the benefit of an outline application for housing. To the east there is a group of dwellings set around a narrow road off New Hey Road.

- 2.3 The greenfield element of the site extends up to the rear gardens of properties on Deercroft Crescent to the north of the site, and to the west flanks the graveyard of Salendine Nook Baptist Church. The site becomes significantly steeper up to the rear of Deercroft Crescent.
- 2.4 The site is flanked by a significant number of mature trees, which are covered by a Tree Preservation Order, and there is a public footpath alongside the eastern boundary linking New Hey Road with Deercroft Crescent.
- 2.5 The Spotted Cow, and its immediate curtilage are unallocated on the UDP, and the open space to the rear are allocated as Provisional Open Land and Safeguarded land in the Emerging Local Plan

### **3.0 PROPOSAL**

- 3.1 Full permission is sought for the erection of 32 no dwellings, a mixture of detached, semi-detached properties and a single terrace of three dwellings. These would comprise: 15 no 4 bed; 14 no 3 bed and 3 no 2 bed units.
- 3.2 Vehicular access is taken off New Hey Road with alterations proposed to the existing accesses to the pub car park. The initial stretch of road into the site would be an estate road which then alters to a shared carriage way, serving an extended cul-de-sac.
- 3.3 Given the site's topography extensive engineering works would be required to undertake the development, including retaining walls to the rear of Deercroft Crescent and on the western parts of the site. On a previous scheme that has been presented to and agreed by this Committee for 26 no dwellings (2017/90602), the retaining wall is approx. 9m in height, with garden areas at ground floor levels. The current scheme has a different rear garden arrangement for the properties backing onto Deercroft Crescent. The extent of the retaining structure is reduced significantly with rear garden access being provided to a small patio area, then steps to first floor garden level, with deck access from the first floor into the garden area. The garden areas are still at a significantly lower level than those on Deercroft Crescent. The altered retaining wall structure has a reduced impact on public footpath to the east of the site.
- 3.4 The number of dwellings proposed has been increased from 26 to 32. The accompanying design and access statement sets out that this is due to changes in house types allowing more space for additional units; principally to the rear of the site. This would also increase the number of affordable units from 4 to 5 to address this increase. The overall density of development would increase to 27 dwellings per hectare from 22 dwellings per hectare.
- 3.4 There is an area of greenspace indicated adjacent the access point, and fronting onto New Hey Road, resulting in the scheme being set back from New Hey Road.

#### **4.0. RELEVANT PLANNING HISTORY.**

- 4.1 2017/90602. Erection of 26 no dwellings- resolution to approve at Sub-Committee on 31<sup>st</sup> August 2017 subject to a Section 106 to provide 4 no affordable houses; Education contribution and off site payment for POS. - Decision not yet issued.
- 4.2 Adjacent site, 2015/90452, Outline application for erection of 22 dwellings and garages, and formation of associated car parking, access and landscaping. Allowed at appeal 3<sup>rd</sup> May 2016.

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

- 5.1 Additional clarification on parking arrangements has been requested and received.
- 5.2 Provision of cross section drawing to demonstrate the relationship of dwellings and garden areas to properties on Deercroft Crescent.
- 5.3 Amendments to front garden and parking areas of plots 10-22, increasing the amount of garden and landscaped areas in front of those dwellings.

#### **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.

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

- 6.2 D2 Unallocated land  
D5 Provisional Open Land  
BE1 Design principles  
BE12 Space about buildings  
BE23 Crime Prevention  
G6 Contaminate land  
NE9 Retention of mature trees  
T10 Highways safety  
T19 Parking standards  
H10 Affordable housing

H18 Provision of open space  
EP4 Noise sensitive development

Supplementary Planning Guidance / Documents:

- 6.3 Councils Interim Affordable Housing Policy.  
Education needs generated by development.  
West Yorkshire Low Emissions Strategy

Publication Draft Local Plan (submitted for examination April 2017)

PLP1 Achieving Sustainable Development  
PLP2 Place Shaping  
PLP3 Location of new development  
PLP 6 Safeguarded land  
PLP11 Housing mix and affordable housing  
PLP22 Parking  
PLP24 Design  
PLP28 Drainage  
PLP33 Trees  
PLP Education and health care needs  
PLP52 Protection and improvement of environmental quality  
PLP63 new open space

6.4

National Planning Policy Framework

Part 4. Promoting sustainable transport  
Part 6. Delivering a wide choice of high quality homes;  
Part 7 Requiring good design  
Part 8 Promoting healthy communities  
Part 10 Meeting the challenge of climate change  
Part 11 Conserving and enhancing the natural environment

National Planning Practice Guidance- Vacant Building Credit

**7.0 PUBLIC/LOCAL RESPONSE:**

- 7.1 This application has been publicised by site notice and neighbour letters.

2 letters of objection have been received, the main points of concern being:

- The loss of the field will have a negative effect on the wildlife in the area, including bats, foxes, owls and hawk.
- The dwelling to the rear and above the site have drainage problems in the rear gardens. New dwellings at a lower level could experience problems when built and occupied.
- The previous scheme contained a large 8m retaining wall, this scheme has a considerably smaller retaining structure, The finished height of the units behind properties on Deercroft Crescent will be 6 feet higher than previously.

- The extra dwellings will result in additional traffic movements on an already busy road and junction.
- Concern at the increase in traffic at the new entrance close to the school
- The Doctors Surgeries in the area are oversubscribed.

Cllr Cahal Burke

“I am concerned about the existing planning proposal. I am concerned about the over-development of the site, and the increase in density from the previous planning application. I am also concerned about the lack of affordable provision as part of the proposal. While the scheme may be 'policy compliant', it has done so by utilising the Vacant Building Credit, as a result of the demolition of the former Spotted Cow pub. I am also concerned that the scheme will result in increased traffic in the area. While the highway network is considered as 'capable of accommodating the likely vehicular movements associated with the site', the reality for residents living in the area is that the scheme will result in more cars on the road and more congestion. There has been significant development in Lindley in recent years, and I share concerns with other residents that Lindley does not have the facilities and infrastructure to accommodate the increase in population. Finally, I am concerned that a number of trees on site will need to be removed, including trees with TPOs. I am concerned about the negative local impact of the scheme, and for the reasons outlined”.

**8.0 CONSULTATION RESPONSES:**

**8.1 Statutory:**

**KC Highways-** Amended plans have been received addressing issues regarding parking/ visitor parking issues surrounding plots 23-25, and identifiable bin collection areas. Recommend conditions.

Consultation has been undertaken with the West Yorkshire Combined Authority, and a request for contributions towards

- METRO Cards (bus only)-£15,840; and
- provision of bus shelter for stop 22484-£10,000

**KC Lead Local Flood Authority –** Recommend conditions.

**8.2 Non Statutory**

**KC Trees-** No objections recommend conditions and an Arboricultural Method Statement.

**KC Environmental Health-** Recommend conditions covering unexpected remediation; noise attenuation; and the provision of electric charging points

**KC Education Services.** A financial contribution of £79,074 is required in this case. This should be secured through a Section 106 Agreement.

**KC Strategic Housing-** There is a demonstrable need for affordable housing in the area. The Councils Interim Affordable Housing policy requires 20% of numbers of units. Affordable Housing should be secured through a Section 106 Agreement.



**KC Environment Unit-** The scheme has included an Ecological Survey. The trees on the boundary of this site are protected and have potential for bat foraging, and there is a potential bat roost on the adjoining site. As such mitigation measures would be appropriate which in addition to safeguarding the trees,

**KC Landscape and Parks-** Express concern at the potential loss of the greenspace. However in the event of an approval policy H18 would be applicable. In this case an off-site contribution of £85,100 towards upgrading neighbouring play facilities would be acceptable.

**Police Architectural Liaison Officer-** No objections to this application.

**Yorkshire Water:** recommend conditions regarding foul and surface water disposal. Make reference to surface water disposal hierarchy before proposing connection to public sewer.

## 9.0 MAIN ISSUES

- Principle of development
- Urban design issues
- Residential amenity
- Highways Issues
- Drainage Issues
- Bio diversity
- Environmental Issues (Noise; Air Quality and Remediation).
- Crime Prevention
- Representations not covered in the report

## 10.0 APPRAISAL

### Principle of development

- 10.1 Planning law requires applications to be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) is one such material consideration. The starting point in assessing any planning application is therefore, to ascertain whether or not a proposal accords with the relevant provisions of the development plan, in this case, the saved policies in the Kirklees Unitary Development Plan, 1999 (UDP). If a planning application does not accord with the development plan, then regard should be had as to whether there are other material considerations, including the NPPF, which indicate that planning permission should be granted.
- 10.2 The NPPF is a Government statement of policy and is therefore, considered an important material consideration especially in the event that there are policies in the UDP which are out-of-date or inconsistent with the NPPF. Paragraph 215 of the NPPF reinforces that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF.



- 10.3 It is clear that the NPPF seeks to “*boost significantly the supply of housing...*” (para 47). Para 47 then goes on to describe how local authorities should meet the full objectively assessed need for market and affordable housing. This requires a range of measures including ensuring a deliverable five year supply of housing. Para 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 are falling foul of their 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 Para 14 of the NPPF states that for decision-taking, the presumption in favour of sustainable development means:
- Approving development proposals that accord with the development plan without delay, and
  - Where the development plan is silent, or relevant policies are out-of-date, granting planning permission unless:  
*Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework when taken as a whole; or*  
*Specific policies in the Framework indicate development should be restricted.*
- 10.6 As the Council are unable to demonstrate a 5 year housing land supply as required by para 49 of the NPPF, relevant policies relating to housing are considered to be out-of-date. Indeed, the housing land supply shortfall is substantial. Whilst the Council have submitted the Publication Draft Local Plan (PDLP) 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, 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.
- 10.7 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.
- 10.8 The application site comprises 2 parts. The front part of the site comprising the vacant public house and its curtilage is a brownfield site, and unallocated on both the Unitary Development Plan and the Emerging Local Plan, and residential use accords with policy and as such the presumption in favour of sustainable development in paragraph 14 of the NPPF applies, and development that accords with the development plan should be approved without delay.

- 10.9 The rear part of the site comprising some fields on a sloping site, and is allocated as Provisional Open Land (POL) on the UDP. Therefore, policy D5 is applicable in this case:

*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.*

- 10.10 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 and given full weight.

- 10.11 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 constitutes a departure from the development plan.

#### *Emerging Local Plan*

- 10.12. The rear part of the site ie the sloping fields is allocated as Safeguarded land on the Emerging Local Plan, the relevant policy being PLP6 which states:

PLP6. Safeguarded land (Land to be safeguarded for potential future development)

*Areas identified as safeguarded land will be protected from development other than that which is necessary in relation to the operation of existing uses, change of use to open land uses or temporary uses. All proposals must not prejudice the delivery of long term development on safeguarded sites*

- 10.13 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 commenced in October 2017 and is proceeding. Given that the PDLP has now been submitted consideration needs to be given to the weight afforded to the site's allocation in the PDLP.

- 10.14 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).*

10.15 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.*

10.16. The overall development comprises 32 dwellings, with only 22 of them being within the Safeguarded area, ie not so significant as to undermine the plan making process by pre-determining decisions about scale, location or phasing of new development. Whilst the PDLP has been submitted to the Secretary of State, and should be afforded considerable weight, it has not been through examination, and as it stands the Council is a substantial way off being able to demonstrate a 5 year housing land supply, and housing delivery has persistently fallen short of the emerging Local Plan requirement.

10.17. As such limited weight can be attributed to policy PLP6 as a basis for refusing the application, and the lack of a 5 year housing land supply, triggers the presumption in favour of sustainable development as advocate in paragraph 14 of the NPPF.

Other relevant policies

10.18 The council’s policies on Affordable Housing, Public Open Space and Education contributions are all relevant, given the size of the site and the number of dwellings proposed.

10.19 The scheme provides 32 no dwellings and, in accordance with the Interim Affordable Housing Policy, 20% of the units would be required to be affordable. This equates to 6 no. units. However the site contains the former Spotted Cow PH building, which is now abandoned, and as an existing empty building on a brown field site it qualifies for consideration against the Vacant Building Credit criteria detailed in National Planning Practice Guidance. In applying the guidance procedure credit for 1 no unit is accepted, and as such the policy compliant level of affordable housing would be 5 units. The applicants have offered 5 no affordable units, which is a policy compliant offer.

10.20 An off-site contribution of towards improvement of £85,100 is required towards existing open space area and an Education contribution of £79,074 is also required.

10.21 The applicants have accepted this, and as such in the event of an approval a Section 106 delivering affordable housing, off site POS and Education contributions will be secured. This is set out in the recommendation.

### Urban Design issues

- 10.22 The proposal delivers 32 no dwellings at a density of just over 27 per ha. Given the on-site constraints, particularly the numbers of mature trees, and steep slope to the rear, this is considered to be an efficient use of the land. The surrounding housing is a mixture of house types, with semi-detached to the rear on Deercroft Crescent and the opposite side of New Hey Road, and a tight knit courtyard development immediately to the east of the site around an unmade track. As such it is considered the density is appropriate for this area which enables the retention of the protected trees on the western edge of the site that are an integral part of the character of this area.
- 10.23 The frontage onto New Hey Road includes the retention of the stone boundary wall, and the first plot is set back approx. 10m from the wall, respecting the prevailing building line, with a considerable landscaped area adjacent the protected trees that run along the length of the neighbouring site on the New Hey Road frontage. This approach respects and enhances the character of New Hey Road, which also benefits from the removal of an abandoned and neglected pub building.
- 10.24 The dwellings proposed are a mixture of detached and semi-detached, 2 no storeys in height, which is an appropriate scale. The dwellings on the rear part of the site are to be constructed on excavated development platforms. Given the steepness of the slope and the rear gardens enclosed by a retaining structure wall this is an appropriate design solution for the site. The ridge height of these dwellings will be a similar height to the rear gardens of properties on Deercroft Crescent. As such the retaining structure will not be visible from New Hey Road and within the site.
- 10.25. The site fronts onto New Hey Road and the surrounding dwellings are predominantly built of stone. As such it is appropriate that the dwellings within the scheme nearest dwellings to New Hey Road and those that are visible from the road are built of natural stone and it is proposed to condition this.

### Residential Amenity

- 10.26 The internal layout, and distances between dwellings and proposed garden areas, is in accordance with the Council's space about building standards, as such the residential amenity and privacy of the new dwellings is safeguarded.
- 10.27 With respect to the relationship to the nearest dwellings,(ie those to the east of the site in particular numbers 398b and 400 New Hey Road, there are no dwellings proposed to the side of no 400, with a distance of over 29 m to the gable of plot 1. No 398b New Hey Road is a detached property with an elevation that face the unmade track and also towards the site with a small yard area. The nearest new dwelling is plot 32, and this has a gable facing no 398b. As such the privacy of the 2 dwellings and their garden areas can be safeguarded with appropriate fencing and the bulk of the dwelling is not considered to have an adverse effect on the residential amenities of 398b that could justify a refusal, especially given the siting and bulk of the existing Spotted Cow PH. The relationship of Plot 23 to no. 398a New Hey Road is gable to gable with the unmade track/PROW separating them. This is considered acceptable.

- 10.28 The dwellings to the north on Deercroft Crescent are at a considerably higher level than the application site with the garden areas being level or above the ridge heights of the new dwellings. The scale, design and layout of the proposed dwelling would not lead to a material loss of amenity for occupiers of these dwellings. The finished ridge height if the proposed dwellings is only marginally higher than the rear gardens on Deecroft Crescent but lower than the garden fencing at the end of those gardens. All habitable windows and garden areas are significantly below this and no overlooking issues occur.
- 10.29 The dwellings proposed nearest to New Hey Road are to be provided with appropriate noise attenuation to protect the future residents from road traffic noise. Noise attenuation measures will be subject to condition.

#### Highway Issues

- 10.30 The proposed residential development of 32 no dwellings on land adjacent to Former Spotted Cow public house would be served off the A640 New Hey Road. The 32 Dwellings are a mixture of 15 no 4 bedroom 14 no 3 bedroom and 3 no 2 bedroom units both detached, semi-detached and terraced properties.
- 10.31 The proposed site access would be located at one existing eastern entrance with the other being stopped up accordingly. This access is directly onto A640 New Hey Road. The current layout on New Hey Road has been redesigned to accommodate the proposed access which includes junction radius and footways returned into the site and relocation of the existing traffic island.
- 10.32. The number of dwelling has been increased for this application with the internal layout to remain comparative of the previous approved application (2017/90602).
- 10.33. West Yorkshire Combined Authority have been consulted on part of the proposals and have the following comments.
- 10.34 The site is located within the recommended 400m from the nearest bus routes that operate on New Hey Road. A pragmatic approach is taken to walk distances to take the size and location of development sites into account. When doing so, we also have to consider the development type and the level and quality of service (frequency and destinations served) at the destination bus stop. Bus services which operate on New Hey Road include the 537 which operates between Huddersfield and Halifax at a 60 minute frequency. The bus availability for the site is therefore considered to be acceptable. The size of the development is unlikely to change the bus route of frequency.
- 10.35 The closest bus stop on this corridor 22485 does not have a shelter. As part of this scheme, a bus shelter could be provided at the above named stop at a cost of £10,000 to the developer to improve the public transport offer. In addition a Real Time Information display could be provided at the above named bus stop at a cost to the developer of £10,000. These issues will be discussed with the applicant and any outcome reported to committee in the update. At the present time the cost of the bus stop improvement (not Real Time Information display) is proposed to be achieved as part of the Section 106 Obligation.

- 10.36 To encourage the use of sustainable transport as a realistic alternative to the car, the developer needs to fund a package of sustainable travel measures. We recommend that the developer contributes towards sustainable travel incentives to encourage the use of sustainable modes of transport. Leeds City Council have recently introduced a sustainable travel fund. The fund can be used to purchase a range of sustainable travel measures including discounted Metro Cards (Residential MetroCard Scheme-RMC) for all or part of the site. This model could be used at this site. The payment schedule, mechanism and administration of the fund would have to be agreed with Kirklees Council and WYCA and detailed in a planning condition or S106 agreement. As an indication of the cost should the normal RMC scheme be applied based on a bus only ticket, the contribution appropriate for this development would be £15,840.00. This equates to bus only Residential METRO Cards. This issue will be discussed with the applicant and any outcome reported to committee in the update. At the present time the cost of Residential METRO cards is proposed to be achieved as part of the Section 106 Obligation.
- 10.37 The proposed internal layout and parking provision (dwg no 1640.01 rev L) is considered acceptable in principle, subject to minor amendments for the parking provision of the 2 bedroom dwellings (2 spaces per unit) and detailed design including approval of gradients and landscaping (both to be subject to conditions)
- 10.38. There is currently a public right of way (PROW ref HUD/367/10) running adjacent to the north east of the site, detailed design and for its retention will need to be considered along with the proposed retaining wall to support this. Both these will require approval in writing at the detailed design stage and will be subject to conditions.

#### Drainage Issues

- 10.39 The site is within Flood Zone 1 (ie the area least likely to flood). Given the site exceeds 1ha, a Flood Risk Assessment has been provided to cover the issue of surface water drainage.
- 10.40 In addition to the Flood Risk Assessment the applicants have produced a Drainage Strategy that is largely welcomed by the Lead Local Flood Authority. Surface water flood routing throughout the site can be satisfactorily achieved, but will necessitate a marginal increase in floor levels for plots 4-10 and methodology of protecting plots 2-3 and 25-26 which will be conditioned.
- 10.41 Additional information about the line/route of the watercourse has been requested, although this has been addressed as part of the previous submission on the site and this will inform the drainage solution and eventual discharge rates. Clearly for the brownfield element of the site a reduction in run off rates by at least 30% should be sought and on the brown field element of the site be deliverable.
- 10.42 The drainage issues on this site can be satisfactorily addressed, and can be secured by the imposition of appropriate conditions.

### Bio-diversity

- 10.43 The site itself is of no particular biodiversity value, with a derelict building and semi improved grassland. The trees on the site, and on the neighbouring site, are of value as a bat foraging area, and on the neighbouring site there is a bat roost. The retention of the trees is welcome as that foraging potential is retained. Also given the new dwellings provided on the site it is proposed to condition biodiversity enhancement opportunities for both bat and bird roosts

### Environmental Issues

- 10.44 Noise. The dwellings nearest to New Hey Road will be the subject to road traffic noise and it is proposed to condition the submission of noise attenuation measures for the 5 no dwellings nearest to New Hey Road.
- 10.45 Remediation. The applicants have submitted a Phase 1 Survey with the application, and it is acceptable that the site can be remediated and made fit to receive new residential development. Standard conditions to this effect are recommended.
- 10.46 Air Quality. Given the scale of the development, in accordance with the guidance contained in the West Yorkshire Low Emissions Strategy and emerging Policy PLP24, a condition requiring the provision of electric charging points is recommended.
- 10.47 The Police Architectural Liaison Officer is supportive of the scheme. The layout provides for dedicated parking spaces for each dwelling and logical and defensible areas of space for each dwelling. Recommend robust boundary treatments, particularly those adjacent to the public footpath.
- 10.48 As such it is considered that the proposal satisfies the requirements of Policy BE23, of the UDP (Crime Prevention). And the guidance contained in part 8 of the NPPF "Promoting healthy communities".

### Representations

- 10.49 Two public representations have been received regarding this application. Below are responses to these representations:
- The dwelling to the rear and above the site have drainage problems in the rear gardens. New dwellings at a lower level could experience problems when built and occupied.  
*Response: the application is accompanied by a flood risk assessment which includes a section to assess whether the proposals will increase the risk of flooding elsewhere. This considers that the development would not displace flood water and that surface water flow from the site can be managed to an acceptable level. No objections to the principle of development have been raised by the Lead Local Flood Authority, but this is subject to the imposition of planning conditions.*

- The loss of the field will have a negative effect on the wildlife in the area, including bats, foxes, owls and hawk.  
Response: *the trees on this site have been retained as part of the development and bio diversity enhancement measures are also recommended.*
- The previous scheme contained a large 8m retaining wall, this scheme has a considerably smaller retaining structure, the finished height of the units behind properties on Deercroft Crescent will be 6 feet higher than previously.  
Response: *as set out in the design and access statement, despite the alterations to the rear gardens of plots 10-22 this will not result in changes to the height or levels of dwellings. The change is principally achieved by level garden areas being accessed from the first floor of the dwellings.*
- The extra dwellings will result in additional traffic movements on an already busy road and junction.
- Concern at the increase in traffic at the new entrance close to the school;  
Response: *An amended transport statement has been submitted with this proposal, and amendments to the proposed access have been previously agreed as part of the previous planning application for 26 dwellings. It is considered the increase in traffic movements from 6 additional dwellings on the site would not have a material impact on highway safety issues on New Hey Road.*
- The Doctors Surgeries in the area are oversubscribed.  
Response: *As part of the Local Plan Evidence base, a study into infrastructure has been undertaken (Kirklees Local Plan, Infrastructure Delivery Plan 2015). It acknowledges that funding for GP provision is based on the number of patients registered at a particular practice and is also weighted based on levels of deprivation and aging population. Therefore, additional funding would be provided for the health centre based on any increasing in registrations at the practice. Long-term funding of health facilities is being considered as part of the Local Plan and Community Infrastructure Levy (CIL)*

10.50 Ward Cllr Cahal Burke has objected to the application. The reasons for this are set out in paragraph 7.1 above. The matters raised have been addressed in the appraisal.

## 11.0 CONCLUSION

11.1 The scheme delivers new housing on a part brown field / part green field site. Given the lack of a 5 year housing supply, the presumption within the NPPF is in favour of sustainable housing developments, and this site is considered to be within a sustainable location.



- 11.2 Policy compliant contributions towards affordable housing, POS, Education and Sustainable Travel are all offered and will be secured via a Section 106 Agreement.
- 11.3 The layout and density are compatible with the area, and the site can be safely accessed from New Hey Road. Other material considerations such as drainage, noise, biodiversity and air quality, are all covered by the imposition of appropriate conditions.
- 11.4 Approval of this scheme subject to a Section 106 and appropriate conditions.

**12.0 CONDITIONS (summary list. Full wording of conditions including any amendments/ additions to be delegated to the Head of Development Management)**

1. 3 year time limit for commencing conditions.
2. Development to be in accordance approved plans
3. Landscape Scheme and maintenance (include scheme and future maintenance responsibility for the area between Plot 1 and New Hey Road).
4. Protection of trees during development
5. Submission of arboricultural method statement
6. Samples of materials ( natural stone for some dwellings fronting New Hey Road);
7. Boundary Treatments, including retaining walls
8. Drainage conditions:-
  - a- In accordance with the FRA and Drainage strategy (subject to course of watercourse)
  - b- Run off rates
  - c- Surface water flood routing
  - d- Finished floor levels
9. Environmental Health :-
  - a-Noise attenuation
  - b-Remediation/ decontamination
  - c-provision of electric charging points
10. Highways conditions
  - a- Right turn lane;
  - b- Areas to be surfaced and drained
  - c- Internal adoptable road
  - d- Closure of existing access
  - e- Retention of PROW and retaining wall
  - f- Method of storage and access to waste

11. Construction Management Plan

12. Bio- diversity enhancement measures

**Background Papers:**

Application and history files.

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2017%2f93846>

Certificate of Ownership, Certificate B – Notice served on Mr Simon Rowel, Alexander Development Ltd, 44 Spinners Hollow Ripponden on 27<sup>th</sup> October 2017.

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## Report of the Head of Strategic Investment

### HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 22-Feb-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

19-Jan-2018

#### TARGET DATE

16-Mar-2018

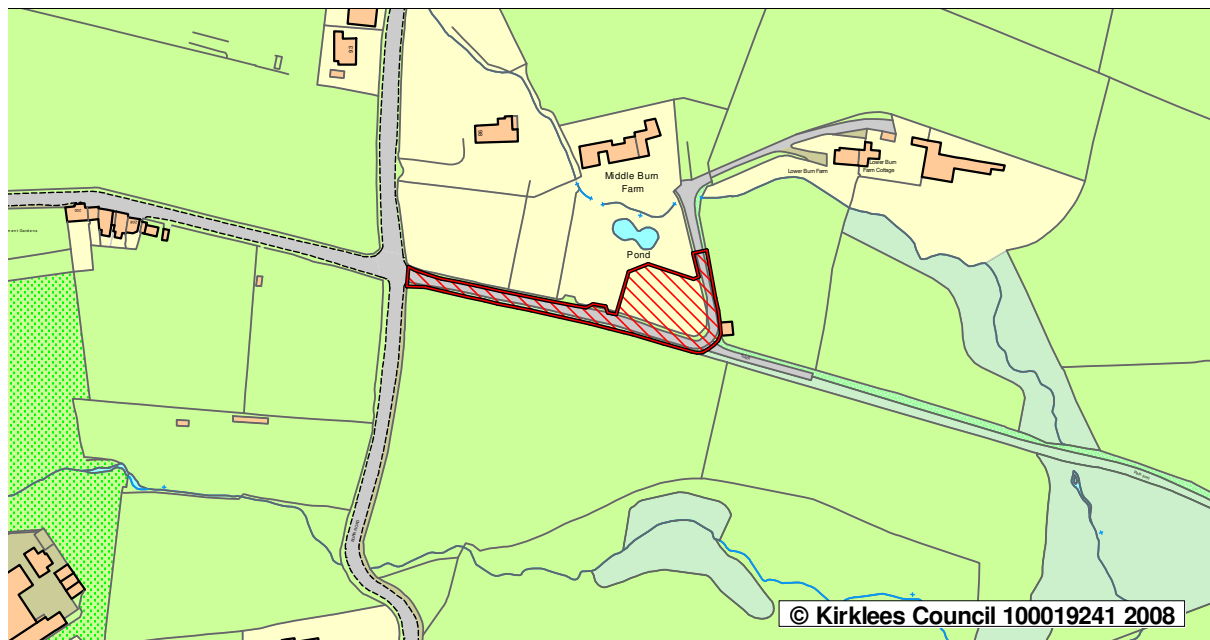
#### EXTENSION EXPIRY DATE

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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

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**Electoral Wards Affected: Lindley**

No

Ward Members consulted

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**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 was withdrawn from the agenda for Sub Committee meeting of 4<sup>th</sup> January 2018 because it became apparent that the applicant did not own the entirety of the application site and therefore an incorrect ownership certificate had been supplied which invalidated the application. The applicant has now resolved this matter by serving notice within a local newspaper and submitting the requisite ownership certificate.
- 1.2 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:**

- 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.
- 5.2 Details of bin storage and collection were requested and have been provided.

## 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 25<sup>th</sup> 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 25<sup>th</sup> 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 representations received in response to this 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

7.2 The amended plans were advertised by neighbour notification letter. In response two representations were received. A summary of the comments raised is provided as follows:

- Insufficient information provided in relation to the impact on designated heritage assets

- Scheme not in keeping with guidelines that not more than 5 properties should be served off from a public byway
- Access to neighbouring properties will be blocked during construction and limited turning space on the byway
- Limited space outside of plots 1 and 2 for parking. Visitor parking could cause obstructions
- What turning arrangements are there for deliveries etc?
- Parking spaces for plot 3 look awkward. Manoeuvring would be tight and there is no scope to widen the private drive off which plot 3 would be served.
- Bin storage/collection space may also cause an obstacle on the byway

7.3 Following the submission of a new ownership certificate a further round of neighbour notification publicity has been carried out. This expired on 14<sup>th</sup> February.

7.4 One comment has been received in response to this publicity. It has been suggested that the applicant does know who owns the shared private access drive [contrary to the declaration in the ownership certificate].

## **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.
- 10.39 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.
- 10.40 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.
- 10.41 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.
- 10.42 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.
- 10.43 The application satisfies Policies BE12 and BE1 of the UDP and PLP24 of the emerging Local Plan and guidance in the NPPF.

### Highway issues

- 10.44 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.
- 10.45 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.
- 10.46 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 wall 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.

- 10.47 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.
- 10.48 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.
- 10.49 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.
- 10.50 The four properties currently served off the byway are serviced by a refuse vehicle that is able to turn around using the shared access to the east of Middle Burn Farm. This would continue to be the case for the proposed development. In terms of bin storage and collection arrangements for the three dwellings acceptable details have been provided.
- 10.51 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:

- 10.52 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.
- 10.53 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.
- 10.54 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.
- 10.55 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.



- 10.56 In the event that the proposals could not be carried out because of constraints imposed by the location of the mine entry and the scheme consequently needed to be significantly amended, the application would then be brought back before the committee for a new resolution.
- 10.57 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:

- 10.58 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).
- 10.59 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.
- 10.60 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

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

#### Representations

- 10.62 Seven representations have been received to date. One of the main issues raised relates to the impact on the character of the area and this has been fully considered within this appraisal. Concerns have also been raised with the impact on the setting of Middle Burn Farm and this issue has also already been addressed.
- 10.63 Highway safety is another main concern. In particular the number of dwellings being served off the byway (exceeding 5), visitor parking and bins obstructing the byway, the practicalities of manoeuvring in/out of the parking spaces for plot 3 and turning provision for larger vehicles such as delivery vans have been cited as specific areas of concern. A response is provided below.
- 10.64 There would be a total of seven properties being served off the existing byway. There would be some improvements made to the surfacing and some limited widening opposite plots 1 and 2. There is no specific policy that restricts the number of properties that can be served off a byway; published guidance suggests a maximum of 5 properties being served off a private drive although this is only guidance and all applications are to be assessed on their own merits. Having considered the merits of this application the proposals are acceptable to officers.

- 10.65 It is considered that the widening of the byway opposite plots 1 and 2 to 6m improves the ability for visitors to park here whilst enabling other vehicles to pass. Details of bin storage facilities that would not impede the byway can be secured by condition. Details of turning facilities for larger vehicles are to be provided. Highways have not raised any objections to the access to plot 3.
- 10.66 Of the other issues raised it has been suggested that the proposal will set a precedent for future development along this side of the byway. 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.
- 10.67 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.
- 10.68 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.
- 10.69 Comments have been made in relation to land ownership and specifically the shared access track to the east of Middle Burn Farm that would serve plot 3. The applicant has stated that they do not know who owns the access track to the east of Middle Burn Farm and therefore formal notice was served in a local newspaper, in accordance with relevant legislation. A representation has however suggested that the applicant does in fact know who owns the access track. Officers are unable to substantiate either assertion and consider that land ownership issues have been satisfactorily addressed for the purposes of the planning application.

#### Other matters

- 10.70 Given that the proposal seeks the erection of 3 new dwellings 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 C signed: 16<sup>th</sup> January 2018

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## KIRKLEES METROPOLITAN COUNCIL

### PLANNING SERVICE

#### UPDATE OF LIST OF PLANNING APPLICATIONS TO BE DECIDED BY PLANNING SUB-COMMITTEE (HUDDERSFIELD AREA)

22 FEBRUARY 2018

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**Application for a definitive map modification order to add a public footpath to the definitive map and statement, Cellars Clough, Marsden** **Item 18 – Page 63**

Letter received from Solicitor acting for Cellar Clough Properties Ltd.

Please see Appendix A at the end of this document.

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**Planning Application 2017/93483** **Item 20 – Page 81**

**Erection of single storey rear extension and rear dormer windows**

**152, Ravensknowle Road, Dalton, Huddersfield, HD5 8DL**

#### **REPRESENTATIONS**

A representation has been received in support of the application. Contained within this are examples of 6 dormer extensions within the immediate area. The correspondence also provides a copy of a Certificate of Completion of work under Building Regulations dated 5<sup>th</sup> December 2017, and other documents regarding the works undertaken.

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**Planning Application 2017/93399** **Item 22 – Page 99**

**Change of use and alterations, including erection of boundary fence, to former mill (B1 Business) to 30 student bedrooms (C4) Office**

**Britannia Mills, Colne Road, Huddersfield, HD1 3ER**

#### *Highways*

The Parking Statement has been updated to include the following provision;

*The client has advised they are to introduce a permit and timeslot system on busy move days to reduce potential congestion on site. This will provide residents with specific time slots for moving in and moving out during weekends ensuring only 1 vehicle can be on site for loading and unloading at any one time.*

As outlined within the Committee Report list of conditions (page 113), if minded to approve condition 3 headed 'Traffic Statement' would be worded to include reference to these arrangements on move days.

## *Drainage*

Within the committee report (paras 10.40-10.42) it was outlined that officers were awaiting formal support from the Environment Agency of the updated FRA. This was following negotiations between officers, the applicant and the Environment Agency. The formal response has been received, and confirms that the Environment Agency's objections have been addressed, subject to condition.

### **RECOMMENDATION**

As the Environment Agency no longer objects to the development the recommendation has been amended to:

DELEGATE approval of the application and the issuing of the decision notice to the Head of Development Management in order to complete the list of conditions including those contained within this report (and any added by the Committee).

#### Additional condition

16. Works to be undertaken in accordance with updated Flood Risk Assessment

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**Planning Application 2017/91618**

**Item 23 – Page 115**

**Change of use and erection of extension and alterations to former club/pub to form 7 apartments**

**New Road, Kirkheaton, Huddersfield, HD5 0HP**

**The Agent has requested the following text be included in the update to committee.**

"I am acting on behalf of the applicant in respect of the above application.

Members will be visiting the site on Thursday morning when the Officers concern re impact on the neighbour will be considered. I intend to address Members at the meeting itself on Thursday afternoon when I hope to persuade them that Officers concern in that respect is not justified.

My reason for writing is in respect of the second reason for refusal as recommended- I consider that the safety concern raised by the Health and Safety Executive (of which I was advised only after the Officers Report was finalised) is not justified- essentially I consider that, overall, there would have been and still could be a greater risk to people with the premises in use as a pub/club with concert hall than as a development of seven apartments.

I would ask that whether the Members are minded to approve or reject the application on other grounds that a decision is deferred and delegated to Officers so that the Health and Safety issue can be further discussed with them and then resolved one way or another”

**Response:** HSE is a statutory consultee. Notwithstanding this the decision to grant or refuse a planning application ultimately rests with the local planning authority (LPA) taking in to account all relevant planning considerations, and not just the advice from one consultee. The recommendation to refuse the application has afforded significant weight to the objection from the HSE.

For members information the HSE have guidance where an objection will be made to development which exceeds 40 dwellings per hectare on a development of more than 3 units (within the prescribed ‘middle’ consultation zone). In its current form the development would result in a density of over 100 dwellings per hectare. To address their objection, the scale of development would have to be such that the density level does not exceed 40 per hectare.

Should sub-committee, taking into account all relevant planning considerations, consider that this reason for refusal is unreasonable then it would be necessary for officers to notify the HSE of this and allow 21-days from that notice for them to give further consideration to the matter. This will enable them to consider whether to request the Secretary of State to call-in the application.

#### **Comments received from Kirkheaton Group:**

In paragraph 10.26 of the report, responding to the reasons Cllr McBride requested the application by determined by sub-committee, it was stated that comments were awaited from the Kirkheaton Group developing the Neighbourhood Plan. These have now be received and are set out below:

*“The proposal to convert the former liberal Club in Kirkheaton into apartments fully conforms with the principles outlined in the draft neighbourhood plan. This states strong support for housing policy that utilises sites or premises within the existing built-up area in preference to greenfield sites out with the existing built up area”*

Whilst there is no objection in principle, the Group offer the following advice and questions:

*“The provision of 7 apartments is pushing the limits of what could be squeezed on to this site. Apartment 7 is a poor cramped layout in the roof space and would not work properly. The provision of 6 apartments would be a more practical scheme.*

*The proposed extension could then be reduced in length by approx 1 metre, saving costs and allowing more external amenity space for bins a bike shed and clothes drying areas. The car parking requirement could also be reduced to 6 + 1 visitor space.*

Question posed:

*Are the apartments are to be let or sold, and would there be any restrictions on the tenants or occupants or how the external spaces are to be managed”*

Response: officers are not aware of the proposed tenure or management arrangements for the apartments. This is not considered material in the assessment of this application.

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**Planning Application 2017/93515**

**Item 25 – Page 137**

**Erection of 16 dwellings with associated access and parking facilities.**

**Land adj, Lower Gate, Paddock, Huddersfield**

*Representations*

In response to the council’s re-consultation (which ended on 16/02/2018), in addition to the further objection noted at paragraph 7.5 of the committee report, two objections have been received with the following points made:

- Plans and supporting documents do not fully address implications of additional parking and traffic along Lower Gate.
- Traffic during construction may cause accidents, given limited visibility, and speeds of vehicles using Lower Gate. Serious accident occurred on 20/12/2017.
- Insufficient on-site parking.
- Double yellow lines required.
- Proposal doesn’t adequately address impacts on local habitat and archaeology.
- Negative visual impact of development.
- Questioned findings of noise survey, given train noise.
- Overdevelopment of site.

The above points have been addressed in the committee report.

*Public footpath*

KC Public Rights of Way have provided further comments, noting that the overall effect of the proposed development upon the public footpath would be negative, as the proposal offers little or no overlooking or inclusion of this public amenity. Proposed section F-F looks narrow, unpleasant and `intimidating, forming an undesirable canyon-like route. Clarification needed regarding boundary treatments at section G-G. Queried if proposed steps (where footpath meets new pavement) could instead be a slope. Measures needed to ensure no blind spot is created at the turn in the footpath. Any retaining structure for the new pavement would require separate agreement. Retention of walls to sides of footpath may not be possible given their condition. Details of steps (or slope) design and construction need to be agreed by condition, then implemented and retained. Close-boarded fencing is inferior to hit-and-miss fencing, and fencing detail in applicant’s drawing is contradictory. Footpath’s existing surface is generally in reasonable condition. Formal highway dedication and/or legal order would be required to implement this development. Temporary closure of the footpath may be necessary during construction, which would involve a separate process.

The above points have been addressed in the committee report.

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**Outline application for residential development with details of point of access only (within a Conservation Area)****Land off Fullwood Drive (West site), Golcar, Huddersfield, HD7 4JH***Representations*

No further representations from neighbouring residents have been received. The representations received to date have been recounted – a total of 31 objections from the occupants of 27 properties have been received in relation to the West site.

*Education*

Given that a different total number of residential units may be proposed at reserved matters stage (should outline permissions be granted), and given that this number may be greater than the 24 indicatively proposed at outline stage, the council's School Organisation and Planning team were consulted. They have advised that, in a hypothetical development of 25x 2-bedroom units across the two sites, a contribution of £61,777 towards education would be necessary. This advice further demonstrates the need for conditions (securing education contributions) to be applied to any outline permissions granted for either site.

*Local services*

Although paragraph 10.61 of the committee report suggests impacts upon local GP services would be considered at reserved matters stage, and while health impacts are a material consideration, there is no policy or supplementary planning guidance requiring a proposed development to contribute specifically to local health services. Furthermore, it is noted that funding for GP provision is based on the number of patients registered at a particular practice, and is also weighted based on levels of deprivation and aging population. Direct funding is provided by the NHS for GP practices and health centres based on an increase in registrations.

**Outline application for residential development with details of point of access only (within a Conservation Area)****Land off Fullwood Drive (East site), Golcar, Huddersfield, HD7 4JH***Representations*

No further representations from neighbouring residents have been received. The representations received to date have been recounted – a total of 35 objections from the occupants of 32 properties have been received in relation to the East site.

### *Education*

Given that a different total number of residential units may be proposed at reserved matters stage (should outline permissions be granted), and given that this number may be greater than the 24 indicatively proposed at outline stage, the council's School Organisation and Planning team were consulted. They have advised that, in a hypothetical development of 25x 2-bedroom units across the two sites, a contribution of £61,777 towards education would be necessary. This advice further demonstrates the need for conditions (securing education contributions) to be applied to any outline permissions granted for either site.

### *Local services*

Although paragraph 10.63 of the committee report suggests impacts upon local GP services would be considered at reserved matters stage, and while health impacts are a material consideration, there is no policy or supplementary planning guidance requiring a proposed development to contribute specifically to local health services. Furthermore, it is noted that funding for GP provision is based on the number of patients registered at a particular practice, and is also weighted based on levels of deprivation and aging population. Direct funding is provided by the NHS for GP practices and health centres based on an increase in registrations.

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## **Planning Application 2017/93846**

**Item 29 – Page 215**

### **Demolition of existing public house and erection of 32 residential dwellings**

#### **Land Adjacent to Spotted Cow Public House, New Hey Road, Salendine Nook, Huddersfield, HD3 3FG**

A letter from the applicant has been received regarding the affordable housing provision. A total of 5 units (3 no. 2 bed and 2 no. 3 bed) are being provided in accordance with Council's policy. The applicants have requested that starter homes be considered ie 20% discount for first time buyers under 40 years old.

The 5 units are to be secured via a Section 106 Obligation, which is to be delegated back to Officers. The tenure mix needs to reflect the local need and be deliverable. It is recommended that the starter home offer be considered in consultation with Strategic Housing and, if justified and matching a local need, be accepted as part of the Section 106 negotiation process.

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**Outline application for erection of three dwellings (Within the curtilage of a Listed Building)****Middle Burn Farm, Burn Road, Birchencliffe, Huddersfield, HD2 2EG****Representations:**

A further representation has been received from a neighbouring property. The neighbour questions whether plot 3 will have a legal right to use the track to the east of Middle Burn Farm in order to access this dwelling.

**Officer response:** Officers consider rights of access over the track to be a legal matter for the applicant to address which falls outside of the planning process. For the purposes of the application land ownership issues are considered to have been satisfied.

The neighbour also comments that the scheme would be far better served from the existing driveway to the frontage of Middle Burn Farm which lies to the west of the site, as suggested within the PROW consultation response.

**Officer response:** As set out within the main report, officers consider that the level of traffic generated by 3 dwellings would be relatively insignificant and the proposed access arrangements are deemed to be acceptable subject to conditions.



It is worth noting that since the PROW officer commented on the application the scheme has been reduced from 4 dwellings to 3 and only 2 of the properties have an access directly off the public byway whereas all of the properties on the original 4 dwelling scheme were to be accessed directly off the byway. As a result the level of vehicle movements on the public byway has been reduced.

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# Ramsdens Solicitors

incorporating  BAXTER CAULFIELD

Our Ref :   
Your Ref : 

20 February 2018

Mr Giles Cheetham  
Definitive Map Officer  
Kirklees Council  
Flint Street  
Fartown  
Huddersfield  
HD1 6LG

Dear Sir

## **Our client: Cellars Clough Properties Ltd**

As you know, we act for Cellars Clough Properties Ltd, which opposes the making of a modification order of which our client was given notice by the Council by its letter dated 12 January 2018.

On 22 January 2018, we informed you that our client opposed the making of a modification order and that we are in the course of preparing our client's evidence in this respect. We asked, in the meantime, to be provided with a copy of the application to which you refer together with the evidence in support of it.

In response, we were provided with what is said to be a copy of the application which, it appears, is dated as long ago as 7 April 2009. You have refused to provide, or to allow us to inspect, the evidence allegedly in support of the application on the grounds that such evidence and information is predominantly personal data. This is notwithstanding the fact that such would require to be disclosed under schedule 15(8) of the Wildlife and Countryside Act 1981 if a modification order were to be made and a request made by our client.

As you agree, the investigation of the application by the Council is quasi-judicial, and as such the Council needs to act fairly. It is not fair that the Council:-

- (1) Writes to our client on 12 January 2018 to notify our client that, "the Council are in receipt of an application to record a public footpath as shown on the attached map", when, in fact, the application appears to have been made to the Council (which was presumably in receipt thereof) since 2009.
- (2) Affords our client less than 28 days to consider and prepare its response and detailed grounds of objection.

Oakley House  
1 Hungerford Road  
Edgerton  
Huddersfield  
HD3 3AL

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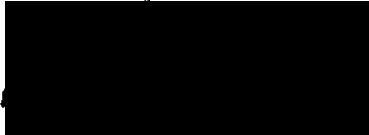
Doc Ref: 2173453021

- (3) Does not provide, even in summary and/or anonymised form, details of the evidence supposedly in support of the application.
- (4) Proceeds to refer the matter to the Committee notwithstanding the above and the fact that our client has not had time to consider or respond to the evidence.

In the circumstances, the Committee is requested to agree to postpone further consideration of the application for 3 months to enable our client's case to be properly put for consideration by the Council.

Otherwise, further significant costs are likely to be incurred by reason of the inevitable objection of our client to the making of the modification order and the consequent reference to the Secretary of State. We reserve our client's position entirely in relation to the question of such costs.

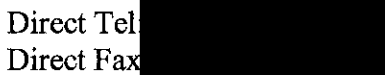
Yours faithfully



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