

# Public Document Pack



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

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Wednesday 7 March 2018

## Notice of Meeting

Dear Member

### **Planning Sub-Committee (Heavy Woollen Area)**

The **Planning Sub-Committee (Heavy Woollen Area)** will meet in the **Council Chamber , Town Hall, Dewsbury** at **1.00 pm** on **Thursday 15 March 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 Dewsbury 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 (Heavy Woollen Area) members are:-**

### **Member**

Councillor Paul Kane (Chair)  
Councillor Mahmood Akhtar  
Councillor Michelle Grainger-Mead  
Councillor John Lawson  
Councillor Mussarat Pervaiz  
Councillor Andrew Pinnock  
Councillor Cathy Scott  
Councillor Kath Taylor  
Councillor Graham Turner  
Councillor John Taylor

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

### **Substitutes Panel**

#### **Conservative**

B Armer  
D Bellamy  
N Patrick  
G Wilson  
D Firth

#### **Green**

K Allison  
A Cooper

#### **Independent**

C Greaves  
T Lyons

#### **Labour**

E Firth  
S Hall  
M Sokhal  
S Ullah  
S Pandor

#### **Liberal Democrat**

A Marchington  
L Wilkinson

# 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 - 6

To approve the Minutes of the meeting of the Committee held on 25 January 2018.

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**3: Interests and Lobbying**

7 - 8

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 also 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: 2016/93882**

Erection of extensions and alterations 48, Latham Lane, Gomersal, Cleckheaton.

(Estimated time of arrival at site – 09.20am)

Contact Officer: Sarah Longbottom, Planning Services

**Wards**

**Affected:** Liversedge and Gomersal

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**8: Site Visit - Application No: 2017/90312**

Erection of 3 dwellings 49, Brooke Street, Cleckheaton

(Estimated time of arrival at site – 09.40am)

Contact Officer: Sarah Longbottom, Planning Services

**Wards**

**Affected:** Cleckheaton

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**9: Site Visit - Application No: 2017/92504**

Erection of 5 dwellings with associated site road, parking and landscaping Land to rear of, 49/51, Huddersfield Road, Skelmanthorpe, Huddersfield.

(Estimated time of arrival at site – 10.30am)

Contact Officer: Louise Bearcroft, Planning Services

**Wards**

**Affected:** Denby Dale

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**10: Site Visit - Application No: 2016/93658**

Formation of access road to serve existing quarry operations  
Bromley Farm Quarry, Barnsley Road, Upper Cumberworth,  
Huddersfield.

(Estimated time of arrival at site – 10.45am)

Contact Officer: Glenn Wakefield, Planning Services

**Wards**

**Affected:** Denby Dale

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**11: Site Visit - Application No: 2017/93217**

Conversion of redundant former storage building to form one  
dwelling Emley Lodge Farm, Off Langley Lane, Emley, Huddersfield.

(Estimated time of arrival at site – 11.10am)

Contact Officer: Julia Steadman, Planning Services

**Wards**

**Affected:** Denby Dale

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**12: Local Planning Authority Appeals**

9 - 28

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:** Batley East; Cleckheaton; Dewsbury East; Kirkburton

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**13: Tree Work Application 2017/94287**

29 - 34

To seek committee approval for tree works at 3 Birdsedge Hill,  
Penistone Road, Birds Edge, Huddersfield.

Contact: Nick Goddard - Arboricultural Officer

**Wards**

**Affected:** Denby Dale

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**14: Application No: 2018/90714**

35 - 60

Request for modification to Section 106 at Connection Seating Limited, Dogley Mills, off Penistone Road, Fenay Bridge.

Contact : Louise Bearcroft, Planning Services

**Wards**

**Affected:** Kirkburton

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**Planning Applications**

61 - 64

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 have registered no later than 5.00pm (via telephone), or 11.59pm (via email) on Monday 12 March 2018.

To pre-register, please contact [andrea.woodside@kirklees.gov.uk](mailto:andrea.woodside@kirklees.gov.uk) or phone Andrea Woodside on 01484 221000 (Extension 74993)

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

**15: Planning Application - Application No: 2017/93674**

65 - 76

Erection of class A1/A3 coffee shop with external seating area Land at, Northgate Retail Park, Albion Street, Heckmondwike.

Contact Officer: Sarah Longbottom, Planning Services

**Wards**

**Affected:** Heckmondwike

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**16: Planning Application - Application No: 2017/93714**

77 - 86

Change of use of hairdressers to self-contained flat and alterations 114, Brewery Lane, Thornhill Lees, Dewsbury.

Contact Officer: Nia Thomas, Planning Services

**Wards**

**Affected:** Dewsbury South

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- 17: Planning Application - Application No: 2017/92504** 87 - 106
- Erection of 5 dwellings with associated site road, parking and landscaping Land to rear of, 49/51, Huddersfield Road, Skelmanthorpe, Huddersfield.
- Contact Officer :Louise Bearcroft, Planning Services
- Wards**  
**Affected:** Denby Dale
- 
- 18: Planning Application - Application No: 2016/93658** 107 - 122
- Formation of access road to serve existing quarry operations Bromley Farm Quarry, Barnsley Road, Upper Cumberworth, Huddersfield.
- Contact Officer: Glenn Wakefield, Planning Services
- Wards**  
**Affected:** Denby Dale
- 
- 19: Planning Application - Application No: 2017/90312** 123 - 134
- Erection of 3 dwellings 49, Brooke Street, Cleckheaton
- Contact Officer: Sarah Longbottom, Planning Services
- Wards**  
**Affected:** Cleckheaton
- 
- 20: Planning Application - Application No: 2016/93882** 135 - 148
- Erection of extensions and alterations 48, Latham Lane, Gomersal, Cleckheaton.
- Contact Officer: Nia Thomas, Planning Services
- Wards**  
**Affected:** Liversedge and Gomersal
-

**21: Planning Application - Application No: 2017/93217**

149 -  
166

Conversion of redundant former storage building to form one dwelling Emley Lodge Farm, Off Langley Lane, Emley, Huddersfield.

Contact Officer: Emma Thompson, Planning Services

**Wards**

**Affected:** Denby Dale

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### **Planning Update**

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



Contact Officer: Andrea Woodside

## KIRKLEES COUNCIL

### PLANNING SUB-COMMITTEE (HEAVY WOOLLEN AREA)

Thursday 25th January 2018

Present: Councillor Paul Kane (Chair)  
Councillor Michelle Grainger-Mead  
Councillor John Lawson  
Councillor Mussarat Pervaiz  
Councillor Andrew Pinnock  
Councillor Kath Taylor  
Councillor Eric Firth  
Councillor Steve Hall

Apologies: Councillor Mahmood Akhtar  
Councillor John Taylor

#### 1 Membership of the Committee

Councillor S Hall substituted for Councillor G Turner.  
Councillor E Firth substituted for Councillor C Scott.

Apologies for absence were received on behalf of Councillors Akhtar and J Taylor.

#### 2 Minutes of Previous Meeting

**RESOLVED** - That the minutes of the meeting held on 14 December 2017 be approved as a correct record.

#### 3 Interests and Lobbying

All Members present declared that they had been lobbied on Application 2017/93714.

Councillors Lawson and Kane declared that they had been lobbied on Application 2017/93222.

Councillors K Taylor and Grainger-Mead declared that they have been lobbied on Application 2017/93319.

Councillor S Hall declared that he had been lobbied on Application 2017/93674.

#### 4 Admission of the Public

It was noted that all Agenda Items would be considered in public session.

#### 5 Deputations/Petitions

None received.

## Planning Sub-Committee (Heavy Woollen Area) - 25 January 2018

### 6 Public Question Time

Councillor Bolt, speaking on behalf of a relative, declared an 'other' interest and asked questions with regards to (i) the description of applications in relation to registered use and (ii) regulations regarding amendments to the application following the advertisement period.

The Chair advised that a written response would be provided to Councillor Bolt, and also circulated to all Members of the Sub-Committee.

### 7 Site Visit - Application No: 2017/93932

Site visit undertaken.

### 8 Site Visit - Application No: 2017/93890

Site visit undertaken.

### 9 Site Visit - Application No: 2017/93674

Site visit undertaken.

### 10 Site Visit - Application No: 2017/93222

Site visit undertaken.

### 11 Site Visit - Application No: 2017/93470

Site visit undertaken.

### 12 Site Visit - Application No: 2017/93805

Site visit undertaken.

### 13 Site Visit - Application No: 2017/93714

Site visit undertaken.

### 14 Local Planning Authority Appeals

That the report be noted.

### 15 Planning Application - Application No: 2017/93319

The Committee gave consideration to Application 2017/93932 – Erection of 6 apartments at rear of 8 Crowlees Road, Mirfield.

Under the provisions of Council Procedure Rule 37, the Sub-Committee received representations from Leonie Barrett, John Hellewell, Anthony Sowden, Martin Jones, Andrew Parker and Chris Todd (local residents), David Storrie (applicant's agent) and Carl Pickering (agent).

**RESOLVED** – That authority be delegated to the Head of Strategic Investment to await the expiry of the amended plans publicity period (19 January 2018), and provided that there are no new material considerations raised, refuse the application on the grounds that;

- (i) the proposed apartment block would be out of character along Crowlees Road being substantially larger in scale and massing than neighbouring properties which flank the site. The building would dominate the site and

surrounding area, and the difference in land levels between the highway and the garden area is not sufficient to mitigate against the visual impact. Likewise the use of a dual pitch roof and dormers on the front elevation does not sufficiently alleviate the dominating height and mass of the building. The requirement for a proposed parking court to the front of the building would also be out of character with neighbouring properties which have extensive undeveloped garden areas. The proposed building in respect of its scale and massing would be incongruous as infill development, failing to retain a sense of local identity or be keeping with surrounding development. As such, the development would not achieve good design because it does not seek to promote or reinforce local distinctiveness, or respond to the local character of the area. To permit the development would be contrary to Policies D2, BE1, and BE2 of the Kirklees Unitary Development Plan, Policy PLP24 of the Publication Draft Local Plan, as well as the aims of the National Planning Policy Framework.

- (ii) the proposal would lead to an intensification of use of the access for both vehicular and pedestrian traffic and the application fails to illustrate adequate vehicular visibility splays for the safe and efficient use of the proposed access. To permit the development without providing adequate visibility, taking into account the increase in traffic movements which would occur, would not be in the interest of highway safety. As such, the proposal would be contrary to Policies D2 and T10 of the Kirklees Unitary Development Plan which states that highway safety should not be prejudiced and that new development will not normally be permitted if it will create or materially add to highway safety.
- (iii) the proposed apartment block by reason of its footprint and height would have a detrimental impact on the residential amenity of occupiers of neighbouring properties which flank the site. The proposed apartment block would be overbearing leading to a detrimental loss of outlook to neighbouring occupants to the north and north-west of the site, and would result in a detrimental loss of privacy to their garden areas. To approve the application would be contrary to policy D2 of the Kirklees Unitary Development Plan which stipulates development should protect the residential amenity of neighbouring residential properties.

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

For: Councillors S Hall, Grainger-Mead, Kane, Lawson, Pervaiz, A Pinnock and K Taylor (7 votes)

Against: Councillor E Firth (1 vote)

**16 Planning Application - Application No: 2017/93932**

The Committee gave consideration to Application 2017/93932 – Erection of single storey rear extension and ramp (within a conservation area) at 15 Talbot Street, Batley.

**RESOLVED** – That authority be delegated to the Head of Strategic Investment to approve the application, issue the decision notice and complete the list of conditions including matters relating to;

## Planning Sub-Committee (Heavy Woollen Area) - 25 January 2018

- three year time period for commencement
- development to be in accordance with approved plans and specifications
- materials to match those on host dwelling
- conservation style roof lights
- no new window openings in the rear elevation of the proposed extension

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

For: Councillors E Firth, S Hall, Grainger-Mead, Kane, Lawson, Pervaiz, A Pinnock and K Taylor (8 votes)

Against: (no votes)

### 17 **Planning Application - Application No: 2017/93890**

The Committee gave consideration to Application 2017/93890 – Erection of single storey rear extension (within a conservation area) at 17 Talbot Street, Batley.

Under the provisions of Council Procedure Rule 37, the Sub-Committee received representations from Fazila Loonat (local resident), Fatima Karolia (on behalf of the applicant) and Shoyeb Nana (agent).

**RESOLVED** - That authority be delegated to the Head of Strategic Investment to approve the application, subject to the negotiation of a revised design to support the canopy, issue the decision notice and complete the list of conditions including matters relating to;

- standard time limit for commencement of development
- development to be carried out in accordance with the submitted plans and information
- the columns of the canopy to match those used in the construction of the existing building

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

For: Councillors E Firth, S Hall, Grainger-Mead, Kane, Lawson, Pervaiz, A Pinnock and K Taylor (8 votes)

Against: (no votes)

### 18 **Planning Application - Application No: 2017/93674**

The Committee gave consideration to Application 2017/93674 – Erection of class A1/A3 coffee shop with external seating area at land at Northgate Retail Park, Albion Street, Heckmondwike.

Under the provisions of Council Procedure Rule 37, the Sub-Committee received a representation from Qadeer Ahmed (local resident).

**RESOLVED** – That the application be deferred in order to enable further detail to be submitted regarding (i) proximity to nearby dwelling (ii) glazing options of proposed development and (iii) traffic movement/layout within the retail park.

## **Planning Sub-Committee (Heavy Woollen Area) - 25 January 2018**

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

For: Councillors E Firth, S Hall, Kane, Lawson, Pervaiz, A Pinnock and K Taylor (7 votes)

Against: Councillor Grainger-Mead (1 vote)

### **19 Planning Application - Application No: 2017/93222**

The Committee gave consideration to Application 2017/93222 – Installation of a sugar silo and associated concrete base at Tangerine Confectionary Limited at Westgate, Cleckheaton.

Under the provisions of Council Procedure Rule 37, the Sub-Committee received a representation from Simon Hodgson (local resident).

**RESOLVED** – That, contrary to the officer's recommendation, the application be refused on the grounds that the proposed development would have a detrimental impact upon residential amenity by virtue of its position, scale and height, and be contrary to Policy D2.

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

For: Councillors S Hall, Grainger-Mead, Lawson, Pervaiz, A Pinnock and K Taylor (6 votes)

Against: Councillors E Firth and Kane (2 votes)

### **20 Planning Application - Application No: 2017/93470**

The Committee gave consideration to Application 2017/93470 – Demolition of existing garage and erection of detached dwelling with integral garage and associated site works adjacent to 93 Stocks Bank Road, Mirfield.

Under the provisions of Council Procedure Rule 37, the Sub-Committee received representations from Robin Lawrence (local resident) and David Storrie (applicant's agent).

**RESOLVED** – That, contrary to the officer's recommendation, the application be refused on the grounds that the proposed development by virtue of its scale and proximity to surrounding dwellings, would result in the overdevelopment of the site and have an overbearing impact upon residential amenity, contrary to Policy D2.

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

For: Councillors E Firth, S Hall, Lawson, A Pinnock and K Taylor (5 votes)

Against: Councillors Kane and Pervaiz (2 votes)

Abstained: Councillor Grainger-Mead

### **21 Planning Application - Application No: 2017/93805**

The Committee gave consideration to Application 2017/93805 – Change of use of ground floor flat to hairdressers (A1) (within a conservation area) at 95-99 Lane Head Road, Shepley.

## **Planning Sub-Committee (Heavy Woollen Area) - 25 January 2018**

**RESOLVED** – That authority be delegated to the Head of Strategic Investment to approve the application, issue the decision notice and complete the list of conditions including matters relating to;

- three year time limit to commence development
- development to be carried out in accordance with approved plans
- hours of opening

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

For: Councillors E Firth, S Hall, Grainger-Mead, Kane, Lawson, Pervaiz, A Pinnock and K Taylor (8 votes)

Against: (no votes)

### **22 Planning Application - Application No: 2017/93714**

The Committee considered a request to defer the determination of Application 2017/93714 – Change of use of hairdressers to self-contained flat and alterations at 114 Brewery Lane, Thornhill Lees, Dewsbury.

**RESOLVED** – That the application be deferred.

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

For: Councillors E Firth, S Hall, Grainger-Mead, Kane, Lawson, Pervaiz, A Pinnock and K Taylor (8 votes)

Against: (no votes)

**KIRKLEES COUNCIL**

**DECLARATION OF INTERESTS AND LOBBYING**

Planning Sub-Committee/Strategic Planning Committee

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

**LOBBYING**

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

Signed: ..... Dated: .....

## **NOTES**

### **Disclosable Pecuniary Interests**

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

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

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

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

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

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

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

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

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

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

- the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
- if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you, or your spouse or your civil partner, has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

### **Lobbying**

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



**Name of meeting: PLANNING SUB-COMMITTEE (HEAVY WOOLLEN AREA)**

**Date: 15 MARCH 2018**

**Title of report: LOCAL PLANNING AUTHORITY APPEALS**

The purpose of the report is to inform Members of planning appeal decisions received in the Heavy Woollen 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 6 March 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) (Councillor P McBride)</b>

**Electoral wards affected: Kirkburton; Batley East; Cleckheaton; Dewsbury East;**

**Ward councillors consulted: No**

**Public or private:**

**1. Summary**

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

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

- 2.1 COMP/16/0109 - Alleged breach of condition (listed building) at 2 & 4, Haigh Lane, Flockton, Huddersfield, WF4 4BZ. (Officer) (Appeal Dismissed and Listed Building Enforcement Notice Upheld)

- 2.2 2016/62/92449E - Erection of shop and extension to existing dwelling to form link to shop at 85, Dark Lane, Batley, WF17 7PW. (Officer) (Dismissed)
- 2.3 2016/62/94312/E - Erection of one dwelling and demolition of workshop/garage at Corn Mill Bottom, Shelley, Huddersfield, HD8 8JJ. (Officer) (Dismissed)
- 2.4 2016/60/92862/E - Outline application for erection of detached bungalow at Land to rear of, 2-5, The Crescent, Hightown. (Officer) (Dismissed)
- 2.5 2017/62/92993/E - Erection of ground floor extension with basement below at 33, Walker Street, Earlsheaton, Dewsbury, WF12 8LB. (Officer) (Dismissed)

### **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 Decision

Site visit made on 11 December 2017

**by Anthony J Wharton BArch RIBA RIAS MRTPI**

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

**Decision date: 13 December 2017**

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## **Appeal Ref: APP/Z4718/F/17/3171173**

### **2 and 4 Haigh Lane, Flockton, Wakefield WF4 4BZ**

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Chris Martin against a listed building enforcement notice issued by Kirklees Metropolitan Council.
  - The enforcement notice was issued on 27 January 2017.
  - The contravention of listed building control alleged in the notice is as follows:  
The breach of a condition attached to listed building consent 2013/90166 granted by the Council 14 March 2013 for internal and external alterations: namely *Condition 8. The replacement of roof slates on the existing building shall be confined to those incapable of repair and re-use. The roof slates shall not be turned and any replacement slates shall match those on the original building in terms of size, colour and texture. The slates shall be re-laid in diminishing courses.*
  - The requirements of the notice are as follows:  
Remove all of the concrete tiles and replace them with natural stone tiles matching those on the original building in terms of size, colour and texture. The slates shall be re-laid in diminishing courses
  - The period for compliance with the requirements is 6 months.
  - The appeal is made on grounds (a), (d) and (g), as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
- 

## **Decision**

1. The appeal is dismissed. See formal decision below.

## **Background information**

2. The appeal properties were listed, along with the adjoining two other cottages, at numbers 6 and 8 Haigh Lane, on 16 May 1984. They are close to the junction of the lane with Barnsley Road, in an open rural setting on the western outskirts of the village of Flockton. The two storey cottages date back to the late 18<sup>th</sup>/early 19<sup>th</sup> centuries and were constructed of hammer dressed, coursed, local stone with stone slated roofs and brick stacks. The appeal cottages have one three-light mullioned window and entrance at the ground floor and one three-light mullioned window to the first floor. There is a continuous first floor stone sill band and square-profiled stone surrounds to the windows and doors.

3. Listed Building Consent (LBC) was granted for structural works to the appeal buildings in 2012 (2012/918590) and in 2013 a further LBC was granted for internal and external alterations (2013/90166). The external alterations included works to the stone slate roof. Condition 8 of this LBC roof was as follows:  
*'The replacement of roof slates on the existing buildings shall be confined to those incapable of repair and re-use. The roof slates shall not be turned and any replacement slates shall match those on the original building in terms of size,*

*colour and texture. The slates shall be re-laid in diminishing courses'*. For the reasons set out in the appeal statement, instead of complying with the condition, the Appellant re-tiled the roofs with grey concrete tiles. The roofs to numbers 6 and 8 have retained their original stone slates.

4. There is no appeal under ground (e) which would be on the basis that listed building consent should be granted for the works as carried out; that is, the retention of the concrete tiles.

#### **The appeal on ground (a)**

5. An appeal on this ground challenges the listing and is made on the basis that the listed buildings are no longer of special architectural or historic interest and that they should be removed from the list. I do not agree with the view that they are not of special architectural interest, or that the cottages should be removed from the list. These are two cottages in the group of 4 and all are still recognisable from the list description. Despite their simplicity the cottages are sound examples of workers' (miners' or weavers') dwellings in this part of Wakefield.

6. It is contended by the Appellant that the cottages have been renovated to be '*in keeping*' with the era. With regard to the roofs I totally disagree. Whilst accepting that all of the other external works are satisfactory and that a stone staircase may have been retained, the concrete tiles are anything but '*in keeping*'. It is also stated that the two former one-bedroomed cottages do not have any ornate building works/details and that, before they were renovated, they were in a very poor state of repair. That might well be the case but they were listed in the first place because of their simple vernacular detailing which (even following renovation) is still noticeable with the mullioned windows, first floor stone sill and basic natural stone materials.

7. Other than simply saying that '*they are not of special architectural interest*' the Appellant has not provided any firm evidence to justify removing the appeal buildings from the statutory list. Nos 2 and 4 were listed as part of the group of 4 and, having seen all of the properties in context, I consider that they are all still worthy of their listed status. The appeal fails, therefore, on ground (a).

#### **The appeal on ground (d)**

8. This ground of appeal addresses situations where essential and urgent works were needed to preserve the listed building. The emphasis is on the words '*essential*' and '*urgent*'. This ground of appeal comprises three tests. The first test is whether the works were urgently necessary in the interests of safety or health; the second test is that it was not practicable to achieve the aims of safety, health or preservation of the building by repair or temporary support and the third test is that the works carried out were the minimum measures immediately necessary to achieve the aims of safety, health or preservation. For an appeal to succeed on ground (d) all three tests must be met and the onus is on an appellant to conclusively show that this is the case.

9. On the first test it is stated that urgent action was required because the walls of both properties were bowed and that this was causing what was left of the roofs to fall into the houses. It is also indicated that the roofing materials had previously been stolen and that there was no alternative other than to replace the roof tiles with concrete tiles. The cost of stone slates is also put forward as a reason for not complying with the condition of the LBC.

10. From the photographic evidence, I accept that the buildings were in very poor condition prior to the works commencing. However, LBC had been granted for the

renovation works subject to the roof being recovered with stone slates laid to diminishing courses. Instead concrete tiles were used and I do not accept that these were used as an alternative to stone slates because the works were so '*urgently necessary in the interests of health and safety.*' Stone slates would have equally resolved any health or safety issue. The concrete tiles were used because they were a cheaper alternative. Clearly the re-roofing works were urgently '*necessary and essential.*' But it was not '*essential*' to replace the stone slates with concrete tiles. On the contrary, it was a requirement of the LBC in condition 8 that the roof was to be re-covered using stone slates.

11. It cannot be claimed to have been '*necessary*' to use concrete tiles in the interests of health and safety and nor can the fitting of concrete tiles be considered to be the '*minimum measures which were immediately necessary*'. The appeal also fails, therefore, on ground (d).

### **The appeal on ground (g)**

12. An appeal on this ground requires it to be shown that the requirements of the LBEN exceed what is necessary to restore the building to its condition before the works were carried out. Clearly, immediately before the concrete tiles were fitted the buildings were in a semi-derelict state and the stone roof slates were partly tarred over with many broken. However, the notice is not aimed at returning the building to this state. It is aimed at ensuring that the roof works comply with the condition attached to the LBC which was granted for the renovation works.

13. In effect, the arguments and situation under this ground relate to an appeal under ground (k). This would usually be made on the basis that the steps required exceed what is necessary to bring the buildings to the state that they would have been in if the terms and conditions of the listed building consent had been complied with. I have, therefore, taken into account all of the arguments put forward in support of the appeal, including the photographic evidence which indicates the condition of the roofs and walls before restoration works and the uninhabitable condition of the cottages before works commenced.

14. On the appeal form, under ground (g), it is stated that '*had the buildings not been restored over the past 12 months their conservational value would be diminished as they were collapsing on themselves and the roof was falling through, without slates on it.*' It is further added that stone slates had been stolen.

15. I acknowledge these points and also appreciate the difficulties and costs involved in sourcing and providing replacement stone slates. It is also evident that the historic and architecturally interesting features had deteriorated over at least a 10 year period prior to renovation. Having seen the cottages it is clear that significant and commendable restoration works have been carried out. It is also clear that attempts were made to match the colour of the original roof covering.

16. However, these arguments do not overcome the fact that inappropriate concrete tiles have been fitted. In the Council's Report, requesting authority to issue the LBEN, it is contended that the tiles do not conserve the architectural or historic merits of the listed buildings. Reference is made to the condition attached to the LBC. It is indicated that the condition it meets all of the necessary tests including that of being '*reasonable*' in that it follows advice published by Historic England for such works to listed buildings.

17. Although there is no ground (e) appeal (and thus I cannot consider whether or not LBC should be granted for the concrete tiles), I agree with the Council with regard to the effect that the concrete tiles have had on the listed cottages. They

are not appropriate and detract from the integrity, the character, the settings and the architectural and historic features of the buildings (Nos 2 to 8).

18. During my site visit I was able to view the roofs of the 4 cottages from Barnsley Road itself and from the field behind the cottages. Because the lane is narrow and on a slope, it was difficult to get a full view of the roofs from the front of the properties. However, from a point on the opposite side of the road and at a higher level on the lane (close to the bend), it was still possible to get an angled view of the roofs. The contrast between the stone slates and the concrete tiles was most noticeable from all of these viewpoints and a slight dusting of snow emphasised the differences in finish and the depths or thicknesses of components.

19. The concrete tiles also contrast markedly with the stone slates on the adjacent outbuilding to No 2. What was most noticeable in this respect was the difference in the appearance of the verges to the outbuilding and the main gable end to No 2. The architectural and historic feature of the stone tiles has been lost on Nos 2 and 4 and thus the works carried out have harmed this original feature which is referred to in the list description. The unauthorised works detract from the simple vernacular detail which is obvious in the rest of the properties.

20. For these reasons, I do not consider that the requirements of the LBEN are unreasonable or excessive. The requirement is to comply with the condition which was attached to the LBC granted for the renovation works. If the requirement is carried out there can be no argument that the buildings would not be brought into the state which they would have been in, if the terms of the LBC had been complied with. The appeal also fails, therefore, on the arguments put forward on ground (g) and the implied ground (k) points.

### **Other Matters**

21. In reaching my decision I have taken into account all of the other matters raised in support of the appeal. These include the planning history; the other commendable repair and alteration works carried out (externally and internally); the initial grounds of appeal set out in the appeal form (including the issues with stolen tiles and the urgent need to repair the properties); the photographic evidence; the documents submitted for the appeal and the initial LBC application and the Appellant's final comments dated 18 August 2017.

22. With regard to these latter comments, I note that the occupant at No 6 has been fully aware of the works and might well have been complimentary about the other restoration works generally. I also note that the neighbour achieved his result by turning the tiles which were said not to be an option in the case of Nos 2 and 4.

23. However, none of these other matters outweighs my conclusions on the grounds of appeal and nor is any other factor of such significance so as to change my decision that the appeal should fail on all grounds.

### **Formal decision**

24. The appeal is dismissed and the Listed Building Enforcement Notice is upheld.

*Anthony J Wharton*

Inspector





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## Appeal Decision

Site visit made on 3 January 2018

**by Darren Hendley BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29<sup>th</sup> January 2018**

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**Appeal Ref: APP/Z4718/W/17/3184897**

**85 Dark Lane, Batley WF17 7PW**

- 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 and Mrs Rajah against the decision of Kirklees Metropolitan Borough Council.
  - The application Ref 2016/62/92449/E, dated 22 July 2016, was refused by notice dated 23 May 2017.
  - The development proposed is a single storey side and shop extension.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are (i) the effect of the proposal on the character and appearance of the area; (ii) the effect of the proposal on highways safety, including on the free flow of traffic on Dark Lane and Oxford Street; and (iii) the effect of the proposed retail use on the vitality and viability of centres, in particular the Mount Pleasant local centre and Batley town centre.

### Reasons

#### *Character and Appearance*

3. The appeal property comprises a detached house which is located at the corner of Dark Lane and Oxford Street. The side elevation of the house faces towards Oxford Street and is set back from this frontage. The side of the rear garden also abuts Oxford Street, as does the access to the property's garage. The rear garden area, along with those on other properties on Dark Lane, provides a visual break between buildings. Beyond the rear boundary of the site is a service road. The area comprises a mix of property types, with a predominance of terraced properties on Oxford Street, where the proposal would primarily be visible from.
4. The proposal would infill the gap along the Oxford Street frontage, presenting an elongated single storey projection of some length from the side and rear of the house. It would also be markedly apparent in the streetscene with its proximity to Oxford Street and the property's location on a street corner. With its scale, contrast in the design with the house and its prominence, it would not sit comfortably in its surroundings, but would appear as a discordant feature. With its length, the visual break that the rear garden provides along the more

densely formed pattern of development along Oxford Street would be substantially reduced, and so this element of character would also be lost.

5. I have noted the extensions to properties in Dark Lane as referred to by the appellant, and I agree that the proposal would to a limited degree screen them from view from Oxford Street. However, any benefits this would bring would in my judgement be considerably outweighed by the harm that I have identified from the proposed development. The removal of an existing garage on the appeal site does not alter my view.
6. I conclude the proposal would have an unacceptable effect on the character and appearance of the area and, as such, it would not comply with 'Saved' Policies D2, BE1 and BE2 of the Kirklees Council, Kirklees Unitary Development Plan (1999) (UDP) which, collectively, state that all development should be of good quality design such that it contributes to a built environment which creates or retains a sense of local identity, and that new development should be in keeping with its surrounding development. It would also not accord with the relevant parts of the Framework.

#### *Highways Safety*

7. Oxford Street operates as a one way road nearest the site and up to the junction with Dark Lane. There is a reliance on on-street parking, in particular on Oxford Street from local residents as well as the commercial uses in proximity to the appeal site. I observed a high level of on-street car parking on both sides of Oxford Street, as well as around the Dark Lane junction. I also noted the difficulties for vehicles accessing the service road at the rear of the appeal site and delays for vehicles attempting to reach the Dark Lane junction.
8. While I appreciate that some customers of the proposed shop unit may be local and would travel on foot, little evidence is before me which dissuades me that there would be an inevitable additional demand, and competition for on-street car parking. With the limited on-street space availability, little evidence is before me which demonstrates that further demand for these spaces would not create additional difficulties for the manoeuvring of traffic along Oxford Street and the Dark Lane junction, which is already I find readily apparent.
9. Whilst other uses in the area clearly already contribute to the existing high demand for on-street car parking, I find that this demonstrates the sensitivity of this location to accommodate the proposal, as it is likely to attract further demand for on-street car parking.
10. I conclude on the evidence before me that the proposal would have an unacceptable effect on highways safety, including on the free flow of traffic on Dark Lane and Oxford Street. It would, therefore, not comply with 'Saved' Policy T10 of the UDP which states that development will not normally be permitted if it will create or materially add to highway safety, 'Saved' Policy T19 as regards the parking standards that it refers to, or with the relevant parts of the Framework.

#### *Vitality and Viability of Centres*

11. The proposal would result in the provision of a modest area of retail floorspace. The Council consider it would be located outside of a defined centre under the UDP, the nearest of which is the Mount Pleasant local centre, which is located close to the site. This centre contains a small number of shops and services,



- aimed at a local catchment. Batley town centre contains a larger number of shops and services, and is located approximately 1 km from the site.
12. The rationale for the sequential test is for supporting the viability and vitality of town centres by placing existing town centres foremost in both plan-making and decision-taking. I accept that the Appellant has submitted limited information in this regard. However, the appeal site is, I find, effectively an edge of centre location because of its proximity to Mount Pleasant. Having regard to the modest scale of the proposal in respect of the floorspace and its edge of centre location, and that paragraph 24 of the Framework does state that applicants and local planning authorities should demonstrate flexibility on scale, I consider the proposal does not fail the sequential test.
  13. The Mount Pleasant local centre, at the time of my site visit, was relatively busy with consumer trade and footfall, and I did not observe any particular high level of shop unit vacancy. I am therefore not persuaded that the modest amount of floorspace that would be created from the proposed development would significantly draw trade away from this centre. Moreover, because of its relative closeness to the centre, I find no obvious reason why there would not be the potential for some linked trips, and it would provide further retail services for the local community. I am also satisfied that the proposed retail unit would be sufficiently distant from Batley town centre not to undermine its viability and vitality.
  14. 'Saved' Policy S1 of the UDP does not provide a locally set threshold for the submission of an impact assessment of main town centre uses that are not in an existing centre. Paragraph 26 of the Framework does, however, state that if there is no locally set threshold, the default threshold is 2,500 sq m. The proposal would therefore be substantially lower in floorspace than the default threshold with regard to the need to provide such an assessment, based on more up to date national policy. This further reflects the small scale nature of the proposal as regards its likely limited effect on existing centres.
  15. I consider there is sufficient evidence to conclude that the likely effect of the proposed retail use would not unduly affect the vitality and viability of the Mount Pleasant local centre and Batley town centre. I consider it would, therefore, comply with 'Saved' Policy S1 of the UDP, and paragraphs 23 to 27 of the Framework which seek, amongst other things, to ensure the vitality of town centres is maintained.

## **Conclusion**

16. The proposal would have an unacceptable effect on the character and appearance of the area, and on highways safety, including on the free flow of traffic on Dark Lane and Oxford Street. The effect on the vitality and viability of existing centres would be acceptable, although this is neutral. The provision of a further shop for the local community would be of a moderate benefit. I have considered all matters that have been raised, but the benefits that would arise would not outweigh the harm. For these reasons, the appeal should be dismissed.

*Darren Hendley*

INSPECTOR



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## Appeal Decision

Site visit made on 3 January 2018

**by Darren Hendley BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29<sup>th</sup> January 2018**

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**Appeal Ref: APP/Z4718/W/17/3184077**

**Corn Mill Bottom, Long Lane, Shelley, Huddersfield HD8 8JJ**

- 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 Chris Walker against the decision of Kirklees Metropolitan Borough Council.
  - The application Ref 2016/62/94312/E, dated 23 December 2016, was refused by notice dated 30 March 2017.
  - The development proposed is a new house to replace workshop buildings.
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. At the application stage a Flood Risk Assessment (FRA) was submitted and a revised FRA was submitted as part of the appeal submission. The appellant then submitted amended plans and a further revised Flood Risk Assessment (rFRA) at the final comments stage in response to the appeal representation made by the Environment Agency (EA). The Procedural Guide, Planning Appeals - England (August 2016) makes it clear, however, that no new evidence is allowed to be submitted at this stage of the appeal and that the appeal process should not be used to evolve a scheme, and I appreciate that the Local Planning Authority and the EA have not had the opportunity to comment on the rFRA's contents. Notwithstanding this, I have taken the rFRA into account as it does not change the appellant's position in relation to my concerns over flooding, so there is no possible prejudice to interested parties.

### Main Issues

3. The main issues are a) whether the proposal would constitute inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (Framework) and the development plan policy, b) its effect on the openness of the Green Belt c) the effect on the character and appearance of the area, d) the effect on flood risk, and e) if it is inappropriate development, whether the harm by reason of inappropriateness and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

### Reasons

4. The appeal site comprises of a number of buildings, a grassed area and a vehicular access which is taken from Long Lane. The nearest building to this

access is a double garage, directly beyond which is a workshop type building with an elongated appearance and is of a modest height. To its rear is a more substantial building which is of a barn-like appearance and which is timber clad and partly open-fronted. Directly adjacent to the site is the Shepley Dike watercourse. The site is at the bottom of a steep sided valley, where there is a small cluster of attractive period stone cottages or more substantial dwellings that make up Corn Mill Bottom. These extend for a short distance away from the appeal site up the side of the valley towards the end of Long Lane. The backdrop of woodland to the dwellings gives the small settlement a sylvan quality.

#### *Inappropriate Development*

5. Paragraph 89 of the Framework states that the construction of new buildings is inappropriate in the Green Belt unless, amongst other exceptions, it involves limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development. The definition of previously developed land under the Framework excludes land that is occupied by agricultural buildings.
6. The building to the rear of the site has been used historically for agricultural purposes and, based on the evidence before me, has not subsequently changed use. Although there is not a physical boundary between buildings across the site, the agricultural unit is clearly distinguishable from other buildings on the appeal site.
7. The appellant considers the agricultural building should fall within the definition of previously developed land because of a planning permission<sup>1</sup> for the change of use of the existing garage and workshop to one dwelling (the approved scheme). I disagree. While I acknowledge that the Council opined that the removal of the agricultural building was viewed as a benefit to the Green Belt, this was, however, in the context of the effect on openness, not whether or not the building would fall under the definition of previously developed land. Moreover, that development concerned a different exception related to the extension or alteration of a building and, therefore, a different policy test was applied.
8. I find that the proposal would extend into the part of the site which contains the agricultural building, and as such it would involve land that is not previously developed. The exception therefore does not apply, and neither do any of the other exceptions. When judged against the Framework, the proposal would therefore be inappropriate development in the Green Belt. Paragraph 87 of the Framework states that inappropriate development is by definition harmful to the Green Belt. I attach considerable weight to this harm.

#### *Openness*

9. Openness is an essential characteristic of the Green Belt. The proposal would alter the area of the land on which it would be sited by removing the buildings, including the substantial form of the agricultural building, to one with a smaller footprint size compared to the existing buildings and a slightly larger volume

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<sup>1</sup> Council ref: 2013/92121.

size. The proposal would, though, be of a considerably greater height than the workshop building, whose footprint it would be largely sited on.

10. With regards to the visual component of openness, the proposed building would be more prominent towards Long Lane than the existing buildings, although with the location of the site at the bottom of the valley and, with the proximity of trees and woodland, broader views would be of a limited nature.
11. Overall, I consider the effect on the openness of the Green Belt would be limited.

#### *Character and Appearance*

12. The form of the proposal with its extensive areas of flat roof and distinctly contemporary design would be in stark contrast to the existing properties in Corn Mill Bottom. These properties are of historical significance as far as they represent the traditional form of a rural hamlet sitting alongside Shepley Dike, with the landscape backdrop of the woodland. They do present a pleasing and cohesive arrangement within this setting, despite variations in the design of individual properties. Flat roofs are not a feature, and this is not a rural context where the extent of the flat roofed areas, as proposed, would be in keeping. Even though stone would be used to construct the external walls, with its form and design, I find that the proposal would sit uncomfortably in these surroundings.
13. Furthermore, the proposal would also lie in a sensitive and prominent position, as Corn Mill Bottom is approached down Long Lane. With its positioning towards the site frontage, it would appear markedly discordant in its form despite the fact that it would be set down in overall height compared to rising land and a boundary wall beyond the site.
14. The existing garage and workshop, whilst they are simple in design and not reflective of the buildings in the rest of the settlement, are unobtrusive due to their height and scale. The agricultural building appears largely in keeping with its surroundings. With its overall size and design, the proposed dwelling, in contrast, would be considerably more dominant when viewed from Long Lane. I find that whilst its appearance would offer some improvements compared to the garage and workshop, this would not address or outweigh the broader harm that would arise to the character and appearance of the area.
15. I conclude the proposal would have an unacceptable effect on the character and appearance of the area and, as such, it would not comply with 'Saved' Policies BE1 and BE2 of the Kirklees Council, Kirklees Unitary Development Plan (1999) which state that all development should be of good quality design such that it contributes to a built environment which creates or retains a sense of local identity, and that new development should be in keeping with its surrounding development.
16. I also conclude the proposal would not comply with paragraph 60 of the Framework because whilst planning decisions should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles, it is, however, proper to seek to promote or reinforce local distinctiveness.

### *Flood Risk*

17. The site lies partly within flood zone 3, which the Planning Practice Guidance (PPG) section on Flood Risk and Coastal Change considers is an area at risk of flooding, for the purposes of the Framework. The PPG also states that the type of use proposed is 'more vulnerable' to flooding under the Flood Risk Vulnerability Classification. With its location partly in Flood Zone 3 and the proposed use, for the proposal to comply with paragraph 101 of the Framework and the PPG, the proposal must pass the Sequential Test which seeks to steer new development into flood zone 1.
18. The appellant has responded to the Sequential Tests in the various submitted FRAs. However, the sequential test information in the Flood Risk Assessments that formed part of the original appeal submission, though, does not provide evidence which concerns whether or not there are reasonably available sites in flood zone 1 and, failing that, whether there are sites in flood zone 2. The rFRA does not provide further substantive information in relation to the sequential test. This does not constitute information which enables me to be able to come to a view that the sequential test is passed. This weighs against the proposal.
19. I have noted the information submitted about the specific flood risk concerning the proposal. However, as I find the appellant has not demonstrated under the sequential test that it is not possible to locate the development in zones with a lower probability of flooding, I am not, therefore, required to apply the exception test, including whether or not the rFRA, would demonstrate the proposal would be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible would reduce flood risk overall.
20. I am, therefore, unable to conclude that the proposal would not cause an unacceptable level of flood risk. As such, the proposal would not comply with paragraph 100 of the Framework which states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. It would also not comply with paragraphs 100 and 101 of the Framework, as well as the PPG, with regards to the application of the sequential test.

### *Other Considerations*

21. The appellant considers that the approved scheme for a dwelling represents a 'fallback' in respect of design and flood risk. I accept it is of relevance to consider the architectural qualities of the proposal compared to the approved scheme, with reference to the approach in the Honley appeal decision<sup>2</sup> which the appellant has referred me to. Although there would be benefit arising from the proposal's appearance compared to the approved scheme, as well as the construction and energy efficiency credentials, this would not outweigh the broader harm to the character and appearance of the area that I have identified. Concerning flood risk, as I have set out above, national planning policy requires that the sequential test must be passed first, which the proposal has failed to achieve, before the exception test is considered, including the rFRA and associated flood resilience and protection measures. This also limits the weight I can give to such measures in the proposal as a betterment

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<sup>2</sup> Appeal Ref: APP/Z4718/W/15/3138243.

compared to the approved scheme. I therefore, overall, give limited weight to the fallback position.

22. The proposal would make a contribution to the supply of housing as one additional dwelling would be provided. Consequently, this would be a benefit of the scheme that must be given weight, albeit a moderate one.

### **Conclusion**

23. The proposal would be inappropriate development in the Green Belt and, in addition, there would be a limited loss of openness. I find that further harm would arise with regard to both the effect on the character and appearance of the area, and flood risk. The contribution to the supply of housing would be of a moderate benefit. Other considerations which arise do not clearly outweigh the totality of the harm. Consequently, very special circumstances do not exist. The proposal would not, thus, comply with the Framework in respect of Green Belt national policy.

24. For these reasons, I conclude the appeal should be dismissed.

*Darren Hendley*

INSPECTOR



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## Appeal Decision

Site visit made on 29 January 2018

by **Caroline Mulloy BSc (Hons) DipTP MRTPI**

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

Decision date: 5<sup>th</sup> February 2018

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**Appeal Ref: APP/Z4718/W/17/3184016**

**Land to rear of 2-5 The Crescent, Hightown, West Yorkshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mrs Marilyn Grummitt against the decision of Kirklees Metropolitan Borough Council.
  - The application Ref 2016/60/92862/E, dated 18 August 2016, was refused by notice dated 17 March 2017.
  - The development proposed is detached bungalow.
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. The appeal is in outline with details of access, but with all other matters reserved and I have dealt with the appeal on this basis treating the site layout plan as illustrative, with the exception of the access.

### Main Issue

3. The main issue in this case is the effect of the proposal on the character and appearance of the area.

### Reasons

4. The appeal site is a patch of elevated open land bounded in the main by the rear gardens of properties and Quarry Lane, with further rear gardens beyond that. An existing access track serves both the appeal site and the adjacent garages.
5. Development around the site is suburban in character, predominately of two storeys and sitting within, in the main, generous plots. Properties are mainly semi-detached on The Crescent and St Barnabas Road, although some short terraces exist on the latter. To the north of the site Hightown View comprises mainly of detached properties. Properties are set back from the road behind modest front gardens with low boundary walls and hedges and relatively large gardens to the rear. Although the majority of properties are set back they, nevertheless, address the road.
6. The appeal site previously comprised mature trees which have now been cleared and I noted on my site visit that the site is significantly overgrown. Nonetheless, the site provides relief from the built development and contributes to the spacious character of the area.



7. The plans indicate that the proposed development has been reduced in scale from two dwellings in the previous appeal proposal<sup>1</sup> to one dwelling in the current proposal. This would address the previous Inspector's concerns regarding the development appearing cramped and the intimacy of the proposed dwellings. Depending on the location of the dwelling within the plot it may also reduce the potential for overlooking.
8. Nonetheless, the proposal would result in a dwelling situated on land enclosed predominately by the rear gardens of surrounding properties. Unlike the surrounding properties, the dwelling would relate to an un-adopted access track serving garages rather than an established road. Consequently, I agree with the previous Inspector that the site has a strong back land character. I saw no evidence of other backland development in the immediate vicinity on my site visit. Although the plot size would not be inconsistent with surrounding properties, the proposed dwelling would sit in isolation with no relationship to the predominant pattern of frontage development. Consequently, I do not consider that the concerns of the previous Inspector have been overcome in this regard.
9. Furthermore, although only illustrative in terms of the position of the proposed dwelling, the submitted plan shows the details of turning and parking facilities to support the application for the access. Due to the position of the access and the need to accommodate the turning area it is likely that the proposed dwelling would be situated towards the rear of the site. The application form indicates that the development would be a detached bungalow as opposed to a two storey development. Nevertheless, due to its elevated position, the proposal would be highly visible to occupiers of surrounding properties and users of Quarry Lane. Taking these factors in combination, I consider that the proposal would result in an incongruous form of development at odds with the predominant form of development. It would, therefore, harm the character and appearance of the area.
10. The appellant draws attention to the fact that the Council does not have a five year supply of housing land. Whilst there is limited evidence before me relating to housing land supply, this is not disputed by the Council.
11. Paragraph 49 of the National Planning Policy Framework (the Framework) states 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 housing sites. Paragraph 59 of the recent Supreme Court judgment<sup>2</sup> of 11 May 2017 makes it clear that the primary purpose of paragraph 49 is to trigger the operation of the tilted balance in paragraph 14 where the Local Planning Authority cannot demonstrate a five year supply of deliverable housing sites.
12. On the one hand, the proposal would make a contribution, albeit limited, to housing supply. It would also have some economic benefits in the short term during the construction phase and in the longer term as occupiers would support local businesses. Furthermore, the proposal would make use of a vacant site. These factors weigh in favour of the proposal.
13. On the other hand, I have concluded that the proposal would result in significant harm to the character and appearance of the area and it would, therefore, be contrary to paragraphs 17 and 56 of the Framework which seek to secure high quality design which contributes positively to making places better for people. Furthermore, conflict arises with paragraph 64 of the Framework which states that

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<sup>1</sup> Appeal reference: APP/Z4718/W/15/3137035

<sup>2</sup> Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG, Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council



permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. Consequently, having regard to the Framework as a whole, I conclude that the adverse impacts of granting permission for this scheme would significantly and demonstrably outweigh the benefits. The proposal would not, therefore, constitute sustainable development.

14. For the reasons stated, I conclude that the proposal would harm the character and appearance of the area. It would, therefore, be contrary to saved Policies BE1, BE2 and criterion vii of Policy D2 of the Kirklees Unitary Development Plan 1999 which collectively seek to ensure that new development is of a high quality design which is in keeping the character of surrounding development.
15. I have had regard to the indicative plans of the proposal in reaching this conclusion. Moreover, it appears to me that it would not be possible to develop the site for one dwelling in any other way without causing similar harmful effects on the character and appearance of the area.

### **Conclusion**

16. For the reasons stated and taking all other considerations into account, the appeal should be dismissed.

*Caroline Mulloy*

Inspector



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## Appeal Decision

Site visit made on 30 January 2018

**by Sarah Housden BA (Hons) BPI MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 05 February 2018**

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**Appeal Ref: APP/Z4718/D/17/3189897**

**33 Walker Street, Earlsheaton, Dewsbury West Yorkshire WF12 8LB**

- 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 James Wilby against the decision of Kirklees Metropolitan Council.
  - The application Ref 2017/62/92993/E, dated 30 August 2017, was refused by notice dated 2 November 2017.
  - The development proposed is 'proposed alterations and extensions to front of house'.
- 

### Decision

1. The appeal is dismissed.

### Procedural Matter

2. The Kirklees Publication Draft Local Plan (KPDLP) was submitted to the Secretary of State on 25 April 2017 and the Examination is underway. The reason for refusal refers to KPDLP Policy PLP 24. Although the plan is at an advanced stage of preparation, there is no further evidence of the extent of any unresolved objections to that policy. Therefore in accordance with Paragraph 216 of the National Planning Policy Framework (the Framework), only limited weight can be attached to Policy PLP 24 in coming to my decision.

### Main Issue

3. The main issue in this case is the effect of the proposed development on the character and appearance of the host dwelling and the street scene in Walker Street.

### Reasons

4. The appeal property is a two storey semi-detached back-to-back house located in a residential area to the south-east of Dewsbury town centre. Walker Street comprises a mixture of semi-detached and terraced dwellings set back from the road and enclosed by low stone walls and fences. The regular building line, traditional materials and detailing and regular pattern of door and window openings contribute to the similarity in the appearance of the dwellings along the road. This creates a pleasing character and appearance and a sense of uniformity in the street scene.
5. Ground levels fall sharply from west to east from the junction of Walker Street with Long Lane. Ground levels also fall across the appeal site. The extension

would incorporate and extend the dwelling's existing basement level with a kitchen extension above. The eaves level of the proposed extension would be approximately 4.2 metres above the level of the access drive between the appeal property and No 39 Walker Street. The ground floor level of the extension would be between 1 metre and 1.5 metres above the ground level of the front outdoor area.

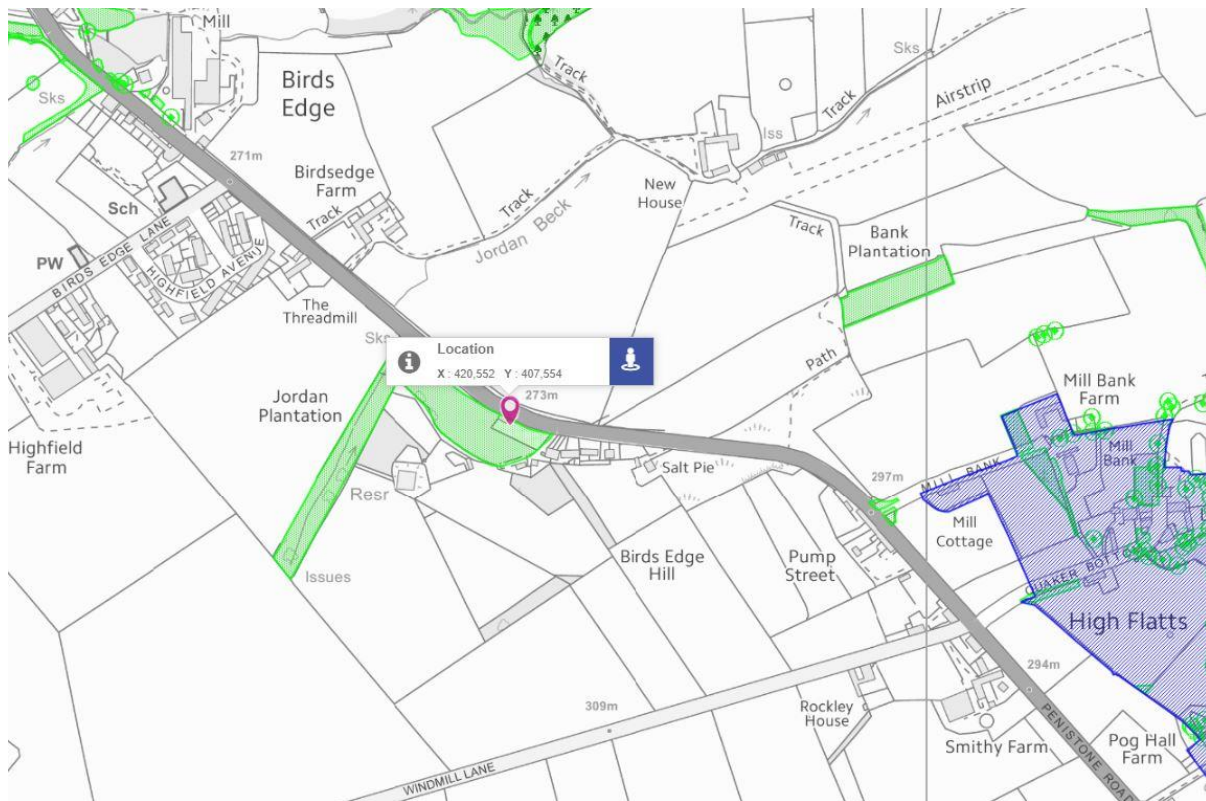
6. Although the extension would be constructed in matching materials, the difference in ground levels would result in a large expanse of walling which would have a dominant appearance within the front elevation. The existing door and window openings and their stone lintels would also be obscured, undermining the traditional features which contribute to the dwelling's character and appearance. It would have a conspicuous and prominent appearance within the street scene which would draw the eye. The forward projection from the front wall would disrupt the regular position of the dwelling frontages which contributes to the uniformity and character of the street scene.
7. The appellant indicates that the development on the north side of Walker Street is more mixed in terms of dwelling styles and materials and by way of an example refers to No 45 Walker St. However, that property is orientated with its side gable facing onto Walker Street rather than its front elevation. The circumstances of that dwelling are therefore not comparable with the appeal property. Furthermore, No 45's side lean-to extension is subordinate in form and appearance to the host dwelling whereas the appeal proposal would appear as a dominant addition to the property. There are no other front extensions in the street that are comparable to the appeal proposal.
8. My conclusion in relation to the main issue in this case is that the proposed extension by virtue of its scale and dominant appearance would cause material harm to the character and appearance of the host dwelling and would disrupt the similarity between the dwellings on the road which contributes to the uniformity of the street scene. As such, it would be contrary to Policies BE1, BE13 and BE14 of the Kirklees Unitary Development Plan 2007 (UDP) which indicate that front extensions should be of an appropriate scale, respect the design features of the host dwelling and should not be harmful to visual amenity.
9. The development would also be at odds with the provisions of the Framework to require good design as a key aspect of sustainable development.
10. I have considered that the options for extending the property are limited due to its layout and that the proposal would provide additional accommodation for the appellant's family and enable them to continue living in the local community. However, these are personal circumstances which can change over time and the development would remain long after such circumstances have ceased to be relevant. Accordingly, I do not consider that the personal circumstances in this case are sufficient to outweigh the conflict with the policies in the UDP and the harm that would be caused to the character and appearance of the host dwelling and street scene.

11. For the reasons given above and having had regard to all of the matters raised in this case, I conclude that the appeal should be dismissed.

*Sarah Housden*

INSPECTOR

## LOCATION PLAN



Map not to scale – for identification purposes only

**Electoral Wards Affected: Denby Dale**

### RECOMMENDATION:

DELEGATE approval for consent to tree works as specified in Tree Work Application 2017/94287.

## **1.0 INTRODUCTION:**

- 1.1 The purpose of this report is to provide Members with the information required to make a decision regarding this Tree Work Application.
- 1.2 Members are required to make this decision as it is stipulated within the Delegation agreement for Investment and Regeneration, “all applications submitted by or on behalf of... any Head of Service or any member of their family.”

## **2.0 SITE AND SURROUNDINGS:**

- 2.1 The application relates to trees in the garden of 3 Birdsedge Hill, Penistone Road, Birds Edge, Huddersfield, HD8 8XP. All the trees in the garden and adjacent woodland are protected by Tree Preservation Order Denby Dale No.2 1951 as woodland W42.

## **3.0 PROPOSAL:**

- 3.1 The application is to fell and replant four trees within the garden of the property, 3 Birdsedge Hill, see photograph A and B.
- 3.2 The applicant is a Mrs Toni Traynor, who has indicated in the application that she works for Kirklees Council as Head of Service – Assessment and Intervention. As a result this application must be decided at committee according to the Delegation Agreement.

## **4.0 RELEVANT PLANNING HISTORY:**

- 4.1 None

## **5.0 HISTORY OF NEGOTIATIONS:**

- 5.1 N/A

## **6.0 PLANNING POLICY:**

- 6.1 N/A

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

- 7.1 None

## **8.0 CONSULTATION RESPONSES:**

- 8.1 N/A

## **9.0 MAIN ISSUES**

9.1 The works applied for are as follows:

- i. Cut down the Leylandii and Willow so they can plant native trees and shrubs

Reasons given:

- i. The Leylandii are so large that they have grown into and through the low voltage power cables

## **10.0 APPRAISAL**

10.1 In making a decision regarding a Tree Work Application for the removal of protected trees. The Council firstly needs to assess whether the tree's still warrant a Tree Preservation Order and secondly whether the removal of the trees require replacement planting to mitigate their loss.

10.2 In this case the trees detailed were 3 Leylandii Cypress trees and 1 ornamental Willow. The trees were growing close to the properties boundary wall and immediately next to low voltage power lines.

10.3 The Cypress trees have all been pruned in the past in order to keep them clear of the power lines. This pruning has left the trees with uneven and lopsided crowns as can be seen in photograph B.

10.4 The Willow was a small tree which would be difficult to see from the road due to the other trees on this boundary and has developed its crown in the shadow of the Cypress trees which has left it with a poorly formed crown with limited development of side branches.

10.5 The four trees would not warrant a TPO due to their defects, position and poorly developed crowns. Retaining these trees will not preserve any significant amenity value and will likely cause further issues with the power lines as their crowns continue to grow requiring regular ongoing maintenance.

10.6 The proposal is to replace the trees with native trees and shrubs and would be welcome to preserve this edge of the protected area however considering the proximity to the power lines it would be recommended that sufficient clearance be given between any replacement trees and the overhead lines.

## **11.0 CONCLUSION**

11.1 The trees, not being worthy of a TPO, should be allowed to be felled and replaced with more suitable trees in a better position given the proximity of the current trees to overhead power lines.



## 12.0 RECOMMENDED CONDITIONS

12.1 The following conditions are standard conditions issued with all permissions for removing and replacing trees from a TPO:

- 1) That ALL tree operations outlined in this notice be carried out within ONE year of the date of this notice. If for any reason such works are not completed within this period a new application must be made to the Council.
- 2) That all tree work shall be carried out in accordance with British Standard 3998: 2010 Tree Work- Recommendations
- 3) That branchwood shall not be burned on site.
- 4) That the felled tree(s) be replaced by four native trees, 1.5-2 metres in height, planted in the near vicinity but not as close to the boundary wall as the original tree(s).
- 5) That all replacement tree(s) described in condition (4) be planted in the first planting season (November to March inclusive) following the felling of existing tree(s).
- 6) That all replacement tree(s) described in condition (4) which suffer damage or die within 5 years of planting be replaced to the satisfaction of this Council.

**Photograph A** - showing view from Penistone Road





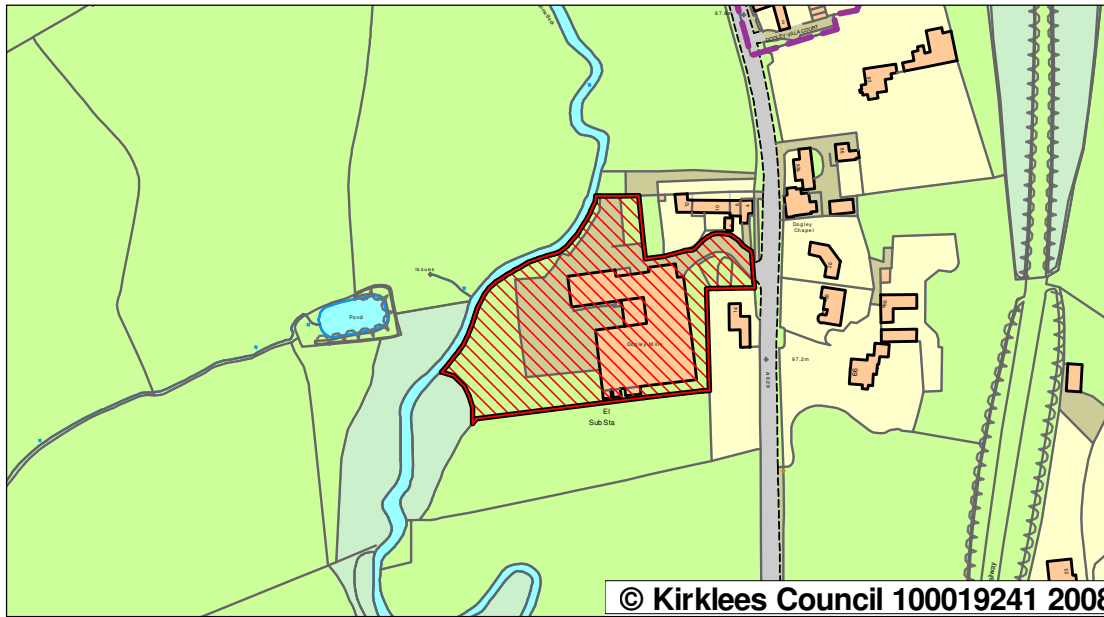
**Photograph B** - showing view from end of private drive



**Background Papers:**  
Copy of the Application

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## LOCATION PLAN



Map not to scale – for identification purposes only

Electoral Wards Affected: Kirkburton

No

Ward Members consulted  
(referred to in report)

## RECOMMENDATION:

**Members are asked to accept the applicants request to release them from the obligation that they must remain within the District in light of their supporting case set out within this report.**

### 1.0 INTRODUCTION:

- 1.1 The applicant has requested to be released from Unilateral Obligation in connection with planning application 2015/93261 for demolition of existing buildings and erection of 14 dwellings at Dogley Mills, off Penistone Road, Fenay Bridge.

- 1.2 The Heavy Woollen Planning Committee granted outline consent on 15<sup>th</sup> December 2016 for demolition of existing buildings and the erection of 14 dwellings at Dogley Mills, off Penistone Road at Fenay Bridge Ref 2015/93261.
- 1.3 The applicant offered to enter into a Unilateral Undertaking to reinvest the proceeds of the sale of the site in new high quality business premises within Kirklees. The applicant stated during the application they did not want to market the site for sale to employment operators as they wanted to maximise the value of the site to use to reinvest in high quality modern employment facilities. The UU was proposed by the applicant because they had not marketed the existing property for continued business use, and had provided no evidence that there was a continued demand for this existing employment site in accordance with the requirements of UDP policy B4.
- 1.4 The Local Planning Authority have now received a request that the applicant Connection Seating Limited be released from the requirements of a Unilateral Undertaking so that they can relocate outside of the District. They have supplied information showing which sites in Kirklees they have looked at relocating to and why they are not considered suitable.

## **2.0 SITE AND SURROUNDINGS:**

- 2.1 The site comprises Dogley Mills, located off Penistone Road at Fenay Bridge. Within the site is a mill building located centrally, with areas of hardstanding and off-street parking to the rear and side of the building. The site is currently occupied by Connection Seating Limited and two other smaller businesses. The site is flanked by undeveloped green belt land to the south, west northwest, by existing dwellings to the north-east and by Penistone Road to the east. The site is located within the Green Belt on the Unitary Development Plan.
- 2.2 Dogley Mills is owned and occupied by Connections Seating Limited. Two other companies lease space on part of the site; Scofield and Sims and Labtex. Connection Seating Limited operates from 32,000 square feet of floor space and rents a further 21,000 in Dewsbury.

## **3.0 PROPOSAL:**

- 3.1 Outline planning permission has been granted at the Dogley Mills site for the demolition of the existing buildings and the erection of 14 dwellings application Ref 2015/93261.
- 3.1 Layout and access were approved at outline stage. The layout comprises of a mix of detached, semi-detached and terraced dwellings, some of which include detached garages accessed off a central access road. An area of public open space was proposed in the western portion of the site.
- 3.2 The existing access point off Penistone Road was proposed to be improved and would serve the development.

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

- 4.1 92/02644 – Formation of 10 additional car parking spaces – Permitted Development

2000/90638 – Change of use from storage and distribution to assembly and manufacture of office chairs and sofas with associated offices – Conditional Full Permission

2001/91392 – Erection of despatch department extension – Conditional Full Permission

2004/94664 – Erection of open loading bay – Conditional Full Permission

2006/92301 – Renewal of unimplemented permission for erection of dispatch department extension – Withdrawn

2006/93151 – Renewal of unimplemented permission for erection of dispatch department extension – Conditional Full Permission

**2015/93261 – Demolition of existing buildings and outline application for the erection of residential development for 14 dwellings.**

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

- 5.1 Additional information in respect of any marketing exercise for the site that has taken place since the original planning permission was granted has been requested.
- 5.2 The applicant has discussed with officers which sites they have looked at within Kirklees and why they have been discounted. They have also considered two additional sites recommended by the Council's Business support team.

#### **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
- BE1 – Design principles
- BE2 – Quality of design
- BE12 – Space about buildings
- BE23 – Crime prevention
- NE9 – Retention of mature trees
- T10 – Highway safety
- H10 – Affordable housing
- H12 – Arrangements for securing affordable housing
- G6 – Land contamination
- H18 – Provision of open space
- B4 – Change of use of land and buildings last used for business or industry
- EP11 – Ecological landscaping

Supplementary Planning Guidance / Documents:

- 6.3 Kirklees Interim Affordable Housing Policy

National Planning Guidance:

- 6.4 Chapter 1 – Building a strong, competitive economy
- Chapter 6 – Delivering a wide choice of high quality homes
- Chapter 7 – Requiring Good Design
- 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

Kirklees Publication Draft Local Plan:

- 6.5 PLP1 – Presumption in favour of sustainable development
- PLP2 – Place shaping
- PLP8 – Safeguarding employment land and premises
- PLP21 – Highway safety and access
- PLP22 – Parking
- PLP24 – Design
- PLP27 – Flood Risk
- PLP28 – Drainage
- PLP53 – Contaminated and unstable land

**7.0 PUBLIC/LOCAL RESPONSE:**

- 7.1 None required

**8.0 CONSULTATION RESPONSES:**

**8.1 Statutory:**

None

**8.2 Non-statutory:**

None

**9.0 MAIN ISSUES**

- Background
- Key points
- Sites considered
- Alternative opportunity
- Urgency
- Implications to the Council

**10.0 APPRAISAL**

- 10.1 Dogley Mills, located off Penistone Road at Fenay Bridge is owned and occupied by Connections Seating Limited. Two other companies lease space on part of the site; Scofield and Sims and Labtex. Connection Seating Limited operates from 32,000 square feet of floor space and rents a further 21,000 in Dewsbury.
- 10.2 Outline planning permission has been granted at the Dogley Mills site for the demolition of the existing buildings and the erection of 14 dwellings application Ref 2015/93261.
- 10.3 Where planning proposals would result in the loss of an employment site, applicants are required to present evidence as to why the site is not suitable for continued employment use, usually through evidence acquired from marketing the property for employment use, prior to submitting a planning application. This is in accordance with policy B4 of the Kirklees Unitary Development Plan.
- 10.4 In this case, the applicant put forward an argument that no marketing of the property had taken place because the funds from a re-development of the site are necessary to relocate and expand the business, and the current buildings would not generate sufficient revenue to allow the company to fund a re-location and expand.
- 10.5 In a supporting statement submitted with the planning application. Connection Seating Limited stated that operating from two sites is inefficient, coupled with the main site at Dogley Mills having an outdated layout which is a constraint to the company's development. Looking for a third site would add to operating inefficiencies and would not be a feasible option. It was their opinion that the age and condition of the buildings and the fact that they are spilt level is not conducive to modern day requirements. Furthermore, the inefficiency of the access road to accommodate modern day vehicles hinders the opportunity for

continued expansion. They considered the site would require significant financial investment and physical alteration to overcome the operational shortcomings, and that this is not viable given the Company's aspirations to operate from a single site and to grow.

- 10.6 In this case of this planning application therefore the property was not offered to the market for continued employment use and no evidence was presented to confirm whether or not there is a demand for a continued employment use of the building. Taking into account the aims of the National Planning Policy Framework; the presumption in favour of sustainable development, that planning should operate to encourage and not act as an impediment to sustainable growth, and that significant weight should be placed on the need to support economic growth, support was given to the loss of this business site in order to fund the expansion and re-location of the business elsewhere within the District. However, as this was a speculative proposal for Connection Seating Limited who had yet to find a site for re-location the applicant proposed a unilateral agreement to confirm the company would use the proceeds from the sale of the site to re-locate within the District.
- 10.7 The applicant now requests to be released from this obligation so they can relocate the company outside of the District as they have been unable to find suitable sites within Kirklees.

### **Key Points**

- 10.8 The application has provided the following information:
- 10.9 Although the planning permission was granted in October 2017, Connection Seating were proactive pre-decision in searching for a replacement site within Kirklees to meet their needs. They have worked with a number of professionals over the last two years searching for existing and new build opportunities.

### Requirements

- 10.10 Given the amount of growth the company is experiencing, they are looking to consolidate on one site (they currently operate from the Dogley Mills site and a site in Dewsbury).
- They need to be able to rack their product to 8.5m.
  - A building sized between 40,000 sq ft and 50,000 sq ft with the option to put in a part mezzanine is required.
  - Parking for 50 cars.
  - Office and showroom space is required to occupy 25 people.
  - A building which would allow for an efficient layout and flow allowing for dock level loading and floor level loading for both goods in and goods out.



- A long-term lease of 10 to 15 years at an affordable rent of £3.50 to £4.50 per sq ft.
- A site with no operating restrictions in terms of working hours and transport.

### Sites considered

10.11 Since planning permission was granted, the following sites have been considered but discounted as follows:-

#### **Summit 24, Lindley Moor (50,000 sq ft new build opportunity)**

- This opportunity fell away as the developer agreed to sell it to an owner occupier
- Price at £6 per sq ft for a basic industrial unit was not affordable

#### **Moor Park 25, Mirfield (40,000 to 60,000 sq ft new build opportunity)**

- Priced at £6 per sq ft for a basic industrial unit was not affordable
- Basic build is not expected to be complete until the summer of 2019 – this is too late for Connection Seating.

#### **Confidential opportunity Grange Moor area (50,000 sq ft new build opportunity)**

- Eliminated due to no planning permission in place
- Green Belt site-no support from Kirklees planning
- Possible operating hours restrictions
- Priced at £5.75 per sq ft was not affordable

#### **Chiquita UK Ltd, Low Mills Lane, Ravensthorpe (66730 sq ft)**

- Building was inspected
- Building was rejected as it was too big, and the offices were poor. The building was still full of heavy equipment, so it was difficult to assess any flows for production.
- The building was offered for sale (with short notice sealed bids) and is now under offer

#### **SKA Textiles, Graham Street, Huddersfield (80,000 sq ft across multiple units)**

- The main building was on the smaller side with a maze of multiple units – some attached and some detached
- The production floor was very poor for fork lifts to operate in
- The offices were a large proportion of the site and in a poor state of repair
- No onsite parking for staff

#### **Little Royd Mills, Huddersfield (45,418 sq ft)**

- A series of units consolidated as one with some detached

- A single storey building - so very low eaves and not suitable for warehousing/racking
- No onsite parking for staff

**Unit E8 Meltham Mills Industrial Estate, Meltham (47,222 sq ft)**

- The building condition is not reflective of the Connection brand and there are no offices
- The building has low eaves so not suitable for warehousing/racking
- There is no onsite parking for staff

**Mineral Water Works, Willow Lane, Huddersfield (48,404 sq ft)**

- The main building is on the smaller side with a maze of multiple units – some attached and some detached
- The building has low eaves not suitable for warehousing/racking
- No onsite parking for staff

At our meeting you drew reference to two new industrial buildings at Honley. These have been reviewed. They were too small and now have end users.

**Summary**

- 10.12 Although multiple formal searches have been carried out on sites within Kirklees, there is a clear lack of existing viable opportunities that would meet Connection Seating's requirements. Added to this is the lack of industrial land in Kirklees that has resulted in demand outstripping supply and pushing prices up to such an extent that any new build is unaffordable.

Alternative opportunity

- 10.13 Dove Haigh Phillips have introduced a site a mile outside the Kirklees boundary at Lowfields, Elland.
- 10.14 The site is 125,444 sq ft but the landlord is willing to split and share the building, providing Connection Seating with 55,000 sq ft. Connection have inspected the building and it is the only one by far that would meet the needs of Connection Seating and support their growth plans and help retain the existing workforce.
- 10.15 The building, in terms of its shape, condition meets the requirements of Connection Seating to consolidate on one site with minimal investment required to bring it in line with their company brand.
- 10.16 In looking at the residential postcodes of their employees, the majority live the north side of Huddersfield such that the Lowfields opportunity offers a more local commute for them.

Urgency

- 10.17 Time is of the essence for the company. Their turnover is growing at over 12% per year and they simply cannot continue to operate from their existing buildings.
- 10.18 The other challenge for them is they have a break clause on the lease on their Dewsbury premises which needs to be activated by the 1st February 2018 for them to be out by 1st August 2018 otherwise they would be committed for another 2.5 years.
- 10.19 Given all the above, they would like Council to agree that they be released from the requirements of the Unilateral Undertaking so that the company can secure the premises at Elland and secure their future operations.

### **Implications for the Council**

- 10.20 To release Connection Seating Limited from the requirements of the Unilateral Undertaking would result in the loss of an employment site at Dogley Mills without its re-development facilitating the retention and growth of the business elsewhere within the district.

## **11.0 CONCLUSION**

- 11.1 The main issues here is whether the applicant has acted reasonably in seeking alternative business premises within Kirklees and whether the search undertaken is sufficient to demonstrate that not suitable alternative exist, within the timeframes necessary for relocation and taken account of the need to retain the existing workforce. In the assessment of the planning application the unilateral agreement was considered necessary to make the development acceptable in planning terms to seek to accord with Policy B4 of the UDP which seeks to have regard to the suitability of the land and premises for continued business or industrial use amongst 8 other criteria which the application broadly satisfied. It is noted that this policy is not been taken forward in the emerging Local Plan which seeks to protect Priority Employment Areas rather than marketing every existing employment for continued use in employment Uses. The emerging Local Plan therefore would offer greater flexibility to the reuse of existing brownfield employment sites outside of Priority Employment Areas, as in this case. In light of this emerging policy it is possible to consider a scenario whereby the applicant has demonstrated they have made best endeavours to remain in the District as being equally acceptable in planning terms.
- 11.2 As noted above, to release Connection Seating Limited from the requirements of the Unilateral Undertaking would result in the loss of an employment site without its redevelopment facilitating the retention and growth of the business elsewhere within the district, which although not a UDP policy requirement would be desirable.
- 11.3 The applicant has submitted information in a letter on their search for alternative sites within the District. The applicant was asked to expand further on the justification as to why they should be released from the legal agreement, however no additional information has been received. In light of the fact the

applicant has reviewed multiple sites within Kirklees it is considered that the applicant has acted within the spirit of the Unilateral Undertaking albeit without success. In this instance therefore it is accepted by Officers that releasing the applicant from the obligation to reinvest the District would be reasonable and the continuation of the business and the retention of the existing workforce ameliorates the loss of the business within the district boundary of Kirklees.

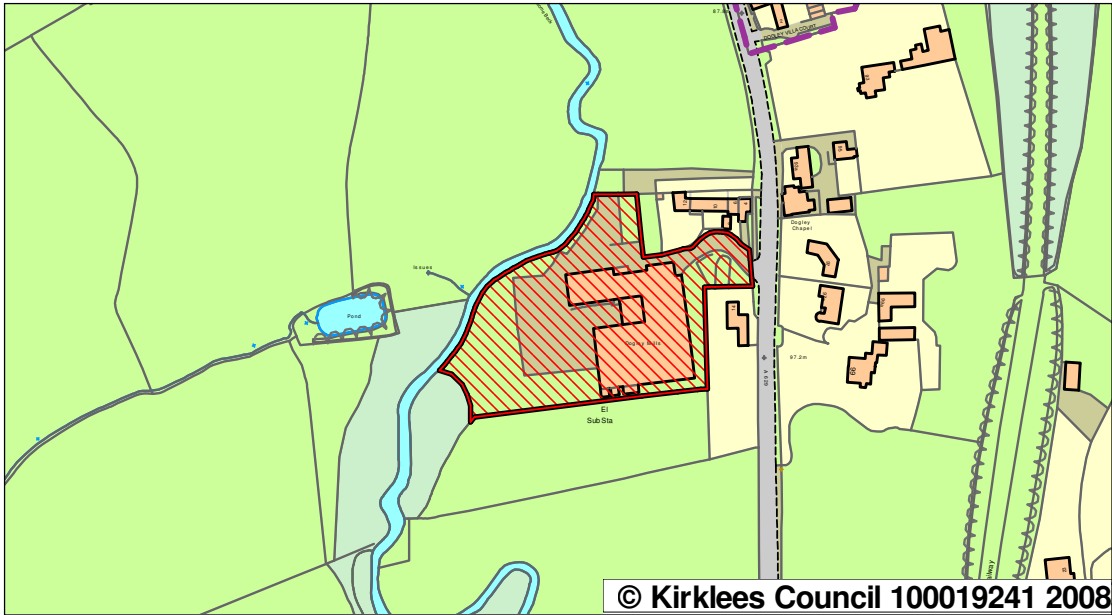
### **Background Papers:**

**2015/60/93261/E** - Demolition of existing buildings and outline application for erection of residential development (14 dwellings) at Connection Seating Limited, Dogley Mills, Penistone Road, Fenay Bridge, Huddersfield, HD8 0NQ  
<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2015%2f93261>

**The officer report (appendix A) and extract from the update (appendix B) in relation to the original planning application (2015/93261) included within the Heavy Woollen Planning Sub-Committee agenda of 15 December 2016 is appended to this report for information.**

**APPENDIX A:- OFFICER REPORT IN RELATION TO THE ORIGINAL PLANNING APPLICATION, 2015/93261, WHICH WAS INCLUDED IN THE HEAVY WOOLLEN PLANNING SUB-COMMITTEE AGENDA OF 15 DECEMBER 2016.**

**LOCATION PLAN**



Map not to scale – for identification purposes only

**Electoral Wards Affected:**

**Kirkburton**

**NO**

Ward Members consulted  
(referred to in report)

**RECOMMENDATION:** Grant conditional Outline Permission subject to the delegation of approval to the Head of Development Management in order to complete the list of conditions contained within this report (and any added by the Committee) and to secure a S106 agreement to cover the following matter:

**1. The Relocation of Connection Seating within the District.**

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 Development Management shall consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the benefits that would be secured; if so, the Head of Development Management is authorised to determine the application and impose appropriate reasons for refusal under Delegated Powers.

**1.0 INTRODUCTION:**

- 1.1 The application is brought before the Heavy Woollen Planning Committee because of the size of the site, which exceeds 0.5 hectares in area (but proposes less than 60 dwellings). This is in accordance with the council's scheme of delegation.

## **2.0 SITE AND SURROUNDINGS:**

- 2.1 The site comprises Dogley Mills, located off Penistone Road at Fenay Bridge. Within the site is a mill building located centrally, with areas of hardstanding and off-street parking to the rear and side of the building. The site is currently occupied by Connection Seating Limited and two other smaller businesses. The site is flanked by undeveloped green belt land to the south, west north-west, by existing dwellings to the north-east and by Penistone Road to the east. The site is located within the Green Belt on the Unitary Development Plan.

## **3.0 PROPOSAL:**

- 3.1 The application seeks permission for the demolition of the existing buildings and outline application for the erection of a residential development for 15 dwellings. The matters to be considered as part of this application are details of access and layout.
- 3.2 The existing access off Penistone Road would be used to serve the development.
- 3.3 The layout proposed comprises a mix of detached, semi-detached and terraced dwellings, some of which have detached garages accessed off a central access road. An area of public open space is proposed in the western portion of the site.

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

- 4.1 92/02644 – Formation of 10 additional car parking spaces – Permitted Development

2000/90638 – Change of use from storage and distribution to assembly and manufacture of office chairs and sofas with associated offices – Conditional Full Permission

2001/91392 – Erection of despatch department extension – Conditional Full Permission

2004/94664 – Erection of open loading bay – Conditional Full Permission

2006/92301 – Renewal of unimplemented permission for erection of dispatch department extension – Withdrawn

2006/93151 – Renewal of unimplemented permission for erection of dispatch department extension – Conditional Full Permission

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

- 5.1 Discussions have taken place during the course of the application between officers and the applicant. This resulted in the submission of:
- A layout plan to be considered as part of the application (the application was originally submitted with all matters reserved, apart from access).
- A revised Design & Access Statement and Planning Policy Statement (to address the above).
  - Revised access details to address highway concerns.
  - Further information in relation to drainage to address comments raised by Yorkshire Water.

## **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).

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

D2 – Unallocated Land  
BE1 – Design principles  
BE2 – Quality of design  
BE12 – Space about buildings  
BE23 – Crime prevention  
NE9 – Retention of mature trees  
T10 – Highway safety  
H10 – Affordable housing  
H12 – Arrangements for securing affordable housing  
G6 – Land contamination  
H18 – Provision of open space  
B4 – Change of use of land and buildings last used for business or industry  
EP11 – Ecological landscaping

### **6.3 Supplementary Planning Guidance / Documents:**

SPD2 – Affordable Housing

### **6.4 National Planning Guidance:**

Chapter 1 – Building a strong, competitive economy  
Chapter 6 – Delivering a wide choice of high quality homes  
Chapter 7 – Requiring Good Design  
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

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

7.1 As a result of publicity, one representation has been received.

7.2 A summary of the comments received is set out below:

- The map in appendix A of the FRA and map 1 of the Geo-environmental report include part of the garden of Dogley Cottage, 12 Penistone Road.
- Who will maintain the access?
- Snow and ice make the slope treacherous, the garden wall of 12 Penistone Road has been damaged by vehicles. Query about perpetuity insurance against future damage given the increased risk to third party property. In winter residents park on Penistone Road. Additional residents would mean more on-road parking and congestion.
- The issue of traffic queuing to exit the site has not been addressed. Shift patterns and deliveries mean vehicular activity is staggered. Residential development would lead to congestion and queuing at peak times. The gradient at the top is steeper than the 1 in 8 quoted in the Geo-environmental Report and is unsuitable.
- Concern about lack of provision for pedestrians.
- Visibility for drivers exiting Penistone Road from Kirkburton is limited.
- Heavier rainfall and snow melt result in Woodsome Beck becoming a torrent. Concern about children safety.
- Dogley is a wildlife haven, reflected in the 'site of wildlife significance' status awarded by West Yorkshire Ecology Service. The area is largely undisturbed in the evening and weekend which would be put at risk. Site pollution reaching Woodsome would be detrimental to wildlife.
- Unclear what the improvements would be to the quality of the local environment as stated in Point 5.14 of the Supporting Statement.
- Point 3.3 says that it is 'envisaged' properties would be built of stone. However, the Design and Access Statement says the dwellings 'will' reflect the vernacular of surrounding dwellings.

## **8.0 CONSULTATION RESPONSES:**

### **8.1 Statutory:**

**The Environment Agency** – No objections

**Yorkshire Water** – No objection following receipt of further information. Conditions are recommended.

**K.C Highways Development Management** – No objection following receipt of amended plans.

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



**K.C Environmental Services** – No objections

**K.C Arboricultural Officer** – No objections

**K.C Ecologist** – No objections

**K.C Flood Management** – No objections

**Kirkburton Parish Council** – No comments received.

## **9.0 MAIN ISSUES**

- General Principle
- Loss of the site for business use
- Principle of Development within the Green Belt
- Proposed Housing Development
- Access considerations
- Layout considerations
- Ecology matters
- Flood risk and Drainage
- Contributions
- Representations
- Conclusion

## **10.0 APPRAISAL**

### General Principle:

- 10.1 The site is located in the Green Belt where in accordance with paragraph 87 of the National Planning Policy Framework (NPPF) inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 89 of the NPPF stipulates a local planning authority should regard the construction of new buildings as inappropriate in Green Belt, with exceptions to this including limited infilling or the partial or complete redevelopment of a previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.
- 10.2 The application site is an existing industrial / employment site and satisfies the definition of previously developed land in the NPPF. In this case new development should not be regarded as inappropriate development in the Green Belt in line with paragraph 89 of the NPPF provided that it would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.
- 10.3 There are two key issues to be considered;

- The acceptability of the loss of the employment site
- The extent to which the proposal for re-development of the employment site for residential purposes would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.

Loss of the site for Business Use:

- 10.4 With respect to the loss of the site for business purposes, the proposal is assessed against policy B4 of the UDP. Policy B4 states that proposals involving the change of use of premises and sites with established use, or last used for business and industry will be considered having regard to the suitability of the land and premises for continued business and industrial use, the availability of business and industrial premises of equivalent quality, the number of jobs likely to be created or maintained, the compatibility of use proposed use with surrounding uses, the effect on local amenity and on the local highway network.
- 10.5 The site is owned and occupied by Connections Seating Limited. Two other companies lease space on part of the site; Scofield and Sims and Labtex. Connections Seating Limited operates from 32,000 square feet of floor space and rents a further 21,000 in Dewsbury. Within the supporting statement it is noted that operating from two sites is inefficient, coupled with the main site at Dogley Mills having an outdated layout which is a constraint to the company's development. Looking for a third site would add to operating inefficiencies and is not a feasible option. The applicant advises that the age and condition of the buildings and the fact that they are spilt level is not conducive to modern day requirements. The inefficiency of the access road to accommodate modern day vehicles hinders the opportunity for continued expansion. The applicant considers that the site would require significant financial investment and physical alteration to overcome the operational shortcomings, and that this is not viable given the Company's aspirations to operate from a single site and to grow.
- 10.6 The property has not been offered to the market for continued employment use and no evidence is presented to confirm whether or not there is a demand for a continued employment use of the building. The applicant has put forward an argument that no marketing of the property has taken place because the funds from a re-development of the site are necessary to relocate and expand the business, and the current buildings would not generate sufficient revenue to allow the company to fund a re-location and expand.
- 10.7 At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development where local planning authorities should positively seek opportunities to meet the development needs of the area. Chapter 1 stipulates planning should operate to encourage and not act as an impediment to sustainable growth and significant weight should be placed on the need to support economic growth through the planning system.

- 10.8 The justification to support the loss of the business site is to fund the expansion and re-location of the business elsewhere within the District. However, this is a speculative proposal for Connection Seating who has yet to find a site for re-location. The applicant is therefore required to submit a unilateral agreement that confirms the company will use the proceeds from the sale of the site to re-locate within the District.
- 10.9 It is considered that facilitating the retention and expansion of this established business within the District should be afforded weight in determining the application.

Principle of Development within the Green Belt:

- 10.10 The proposal development is not regarded as inappropriate development in the Green Belt in line with paragraph 89 of the NPPF. This is provided the development would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.

The purposes of including land within the Green Belt:

- 10.11 Paragraph 79 of the NPPF stipulates that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts being their openness and permanence.
- 10.12 Paragraph 80 sets out the five purposes of Green Belt:
- To check the unrestricted sprawl of large built up areas
  - To prevent neighbouring towns merging into one another
  - To assist in safeguarding the countryside from encroachment
  - To preserve the setting and special character of historic towns; and
  - To assist in urban regeneration by encouraging the recycling of derelict and other urban land
- 10.13 The main purpose of the Green Belt is to prevent urban sprawl. The containment of the residential development to the central part of the site, within the development footprint of the existing industrial building would not result in urban sprawl.
- 10.14 The proposed development similarly does not have any adverse impact on the remaining four purposes or functions of the Green Belt in this area. There is no incremental development beyond that existing which would lead to the merging of towns or smaller settlements. The countryside is safeguarded from encroachment as the development does not go beyond the existing built envelope, indeed the development would make a positive contribution by recycling land.

The impact on openness:

- 10.15 The impact of the existing site within the Green Belt is dominated by the bulk of the building at the front of the site, while the character of the rear of the site is open. The proposal is for 15 dwellings which would be clustered around the footprint of the existing buildings and areas of hardstanding in the front and middle portion of the site. The proposal would reduce the footprint of development by approximately 45%:
- Existing footprint is 42,000 sq ft
  - Proposed footprint is 23,18 sq ft
- 10.16 The proposal would not expand the footprint of development beyond the existing hard standing areas and it is considered the proposal would not have a detrimental impact on openness.
- 10.17 The proposal is not considered to be of harm to the purposes of including land within Green Belt, nor would it have a detrimental impact on openness. The proposal is considered to be appropriate development within the Green Belt.

Proposed Housing Development:

- 10.18 Turning to the proposal for housing development, the NPPF states that the purpose of the planning system “is to contribute to the achievement of sustainable development” (para 6). NPPF notes that pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in peoples’ quality of life (para 9). NPPF identifies the dimensions of sustainable development as economic, social and environmental roles (para 7). It states that these roles are mutually dependent and should not be undertaken in isolation. “Economic, social and environmental gains should be sought jointly and simultaneously through the planning system” (para 8). NPPF stresses the presumption in favour of sustainable development.
- 10.19 The proposal would provide some economic gains by providing business opportunities for contractors and local suppliers. In accordance with the NPPF, new houses will support growth and satisfy housing needs thereby contribute to the building of a strong economy. There would be a social gain through the provision of new housing at a time of general shortage and the proposal will be subject to a requirement to provide an element of affordable housing which will be a positive component of the social role of the development. The proposal would not extend beyond the footprint of the areas of hardstanding and a subject to a biodiversity mitigation plan, there would not be an environmental loss.
- 10.20 A further matter for consideration is that the Council is currently unable to demonstrate a five year supply of deliverable homes. It is a material consideration in the assessment of the principle of housing development and the delivery of new housing at a time of general shortage is considered to weigh in favour of the development. The principle of development is therefore considered to be acceptable.

### Access Considerations:

- 10.21 Policy T10 of the UDP sets out the matters against which new development will be assessed in terms of highway safety. Concerns have been raised in the representations received that visibility for drivers exiting Penistone Road from Kirkburton is limited, that there is a lack of provision of pedestrians, and that the issue of traffic queuing to exit the site has not been addressed. There is also concern that the gradient at the top is steeper than 1 in 8.
- 10.22 The applicant's highways consultants PAH have provided a Transport Statement. Penistone Road forms part of the A629 which is a primary route linking Huddersfield Town Centre to the north, with the town of Penistone to the south. Given the status of the road it is subject to relatively heavy traffic volumes throughout the day.
- 10.23 The site is currently occupied by a mix of B1, B2 and B8 uses. It contains a combined gross floor area of 3800 sqm and is mostly occupied by the Company Connection UK Ltd that manufacture commercial furniture. However, there are also two other tenants that occupy the site.
- 10.24 Connections UK Ltd occupy approximately 2970 sqm within the site, of which 1680 sq m is used for general industrial use (B2 use class), 840 sq m is used as offices (B1 use class) and the remaining area is used for storage / distribution (B8 use class). The remaining sections of the site are used for general industrial use. This provides a total of around 2575 sqm of general industrial use at the site.
- 10.25 The site contains an access road along its north side that leads to the north and west elevations of the existing buildings, and to the car parking, turning, and HGV loading areas. The main car parking, turning and loading areas are located along the west side of the site. The large Dogley Mills buildings are located along the east side of the site.
- 10.26 The site contains an unmarked priority junction with kerbed radii to both sides and dropped kerbs for the adjacent footways. The access then leads into the site to the car parking and turning areas. The access road is subject to a steep gradient, and ranges in width between 5.5 m and 10m, with a width approximately 7.3m at the access with Penistone Road. Visibility at the site access is acknowledged to be sub-standard.
- 10.27 Highways Development Management (HDM) have raised concerns about the sight lines, the gradient of the access road, access arrangements to adjacent properties and detailed matters in respect of the internal layout.
- 10.28 Amended details have been submitted and are under consideration. The details comprise of two options in relation to the access into the site.
- Option 1: The proposed access would closely align with the existing levels. This would necessitate a stepped arrangement within the footway.

- Option 2: This proposal would be considered more acceptable in terms of gradients and would achieve better visibility onto Wakefield Road. However, due to the change in gradients, this would necessitate the raising of ground levels of between 2m – 2.5m.

10.29 Option 2, as referred to above, is considered by officers to be acceptable and would address previous concerns raised by HDM in relation to the access.

### **Layout Considerations:**

#### Visual Amenity

10.30 The proposed density of development is considered to represent an efficient use of the site, and the proposal would achieve the recommended distances to neighbouring dwellings as set out in policy BE12 of the UDP. The character of the immediate surrounding area is characterised by a mix of property types, including detached and terraced properties, with the predominate scale being two storey, and constructed of natural stone and stone slates.

10.31 The proposed layout of detached, semi-detached and detached dwellings would be in-keeping with the prevailing character of the site and a full assessment of the scale and appearance of the dwellings would be made upon the receipt of reserved matters should outline permission be granted. In all, it is considered that there is scope to secure details which would not harm the character of the surroundings and which would accord with policies BE1 and BE2 of the UDP as well as the aims of the NPPF. This would be addressed through a subsequent reserved matters application.

#### Residential Amenity

10.32 UDP Policy D2 requires the effect on residential amenity to be considered and policy BE12 sets out the normally recommended minimum distances between habitable and non-habitable room windows of existing and proposed dwellings. The nearest neighbouring properties to the site are located to the north-east and east of the site.

10.33 A full assessment of the scale and appearance of the dwellings, to include the positioning of windows would be assessed at the reserved matters stage. However, it is considered an acceptable scheme could be brought forward at reserved matters stage which would meet the requirements of distances between dwellings as set out in policy BE12 of the UDP, and would ensure there would not be a detrimental loss of privacy or amenity to neighbouring properties, their habitable room windows, or private amenity spaces. As such, it is considered that residential amenity would be safeguarded in accordance with Policies D2 and BE12 of the UDP.

### **Ecology Matters:**

- 10.34 UDP Policy EP11 requests that applications for planning permission should incorporate landscaping which protects/enhances the ecology of the site. The application is supported by two ecological reports.
- 10.35 The Council's ecologist notes that both reports are succinct yet detailed and fulfilled their intended purpose. The second of the two reports also describes proposed detailed mitigation in respect of European Protected Species. It is however noted that the Ecological Appraisal recommended the production of a Biodiversity Management Plan to ensure the mitigation and enhancement measures described in the report are incorporated into the development proposals, which has not been provided.
- 10.36 Roosting bats were recorded (low conservation status) therefore a European Protected Species Mitigation (EPSM) licence is required to undertake the development proposals. Therefore the Council has a duty to ensure that the three 'derogation tests' can be met in determining the planning application, and therefore that a licence is likely to be granted by Natural England.
- 10.37 The derogation tests are set out in Regulation 53 of The Conservation of Habitats and Species Regulations 2010, and are:
1. A licence can be granted for the purposes of "preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment".
  2. The appropriate authority shall not grant a licence unless they are satisfied "that there is no satisfactory alternative".
  3. The appropriate authority shall not grant a licence unless they are satisfied "that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range."
- 10.38 In respect of the third test officers are satisfied that the favourable conservation status of common pipistrelle bats can be maintained, provided the measures described in the Bat Method Statement (Section 3 of the report titled Additional Ecological Information) are implemented. A document providing the details required of a Landscape and Ecological Management Plan (LEMP) as set out in BS42020 (BSI, 2013) is required which will be addressed through condition. Subject to the inclusion of suitable conditions, ecological matters are addressed.

### **Flood Risk and Drainage:**

- 10.39 The NPPF sets out the responsibilities for Local Planning Authorities in determining planning applications, including flood risk assessments taking climate change into account and the application of the sequential approach. The application is supported by a Flood Risk Assessment (FRA) by Haigh Huddleston & Associates.

### Flood Risk

- 10.40 The majority of the site is within flood zone 1, with a portion of the western part of the site falling within flood zone 2. The Environment Agency raise no objections, subject to the development being carried out in accordance with the accompanying Flood Risk Assessment and appropriate mitigation measures. These include that finished floor levels in Flood Zone 2 shall be set at least 300mm above ground level.

#### Drainage

- 10.41 Part 4 of the FRA states that in the first instance the use of soakaways and infiltration will be investigated, and if these appear to be unsuitable based on the infiltration tests then alternative systems can be investigated.
- 10.42 Flood management raises no objections to the principle of development. This is subject to the inclusion of a condition for a scheme restricting the rate of surface water discharge from the site to a maximum of 70% of existing pre-development flow rate.
- 10.43 Yorkshire Water notes that the site layout proposes new buildings and trees over the public sewer within the site. Following discussions with Yorkshire Water, they have confirmed that, subject to the inclusion of suggested conditions, they have no objection.

#### Foul Sewage

- 10.44 Pollution and Noise Control requested information regarding the means of foul sewage disposal, and note that it is expected that a development of this size to be connected to the mains sewage system. The agent was asked to clarify this, but no further information has been submitted. This matter will be addressed through condition.

#### **Contributions:**

#### Affordable Housing

- 10.45 UDP Policies H10 and H12 set out the requirements for the provision of affordable housing. For sites of 5 dwellings or more an affordable housing contribution should be sought. As this is a brownfield site, the contribution would be 15% of the total floor space of the development. As the current buildings are occupied, the scheme will not benefit from Vacant Building Credit.

#### Metro Cards

- 10.46 To encourage use of public transport services and establish sustainable travel patterns, the developer will be required to enter into Metro's Residential MetroCard (RMC) to provide discounted annual Bus MetroCards and public transport information. The cost is anticipated as  $15 \times \text{£}475.75 = \text{£}7,136,25$ .



- 10.47 The developer has put forward an argument that the funds from re-developing the site are necessary to locate and expand the business. The ability of the scheme to provide the above contributions will therefore have to be assessed when further information is known about costs. It is therefore appropriate in this particular case to address the contributions through conditions.

#### Public Open Space

- 10.48 In accordance with policy H18 of the UDP the applicant would be required to include measures within the site for the provision of public open space at a minimum rate of 30 sqm per dwelling. The layout proposes an area of public open space in the western portion of the site which amounts to 3399 sqm and is policy compliant. This includes land within the red line application site and land within a blue line also in control of the applicant.
- 10.49 This is a speculative proposal and there is no end developer identified. Accordingly, it is considered that the provision and the long term maintenance arrangements of the area of public open space can appropriately be conditioned.

#### **Representations:**

- 10.50 Four representations have been received. In so far as they have not been addressed above:
- 10.51 The map in appendix A of the FRA and map 1 of the Geo-environmental report include part of the garden of Dogley Cottage, 12 Penistone Road.  
**Response:** The supporting maps in these documents do include a part of the garden area of Dogley Cottage, however, the red line boundary submitted is correct.
- 10.52 Who will maintain the access?  
**Response:** It is proposed that the access would be adopted, and therefore maintained by the Council. Further comments from Highway Services on the revised access proposals are awaited at the time of writing.
- 10.53 Snow and ice make the slope treacherous, the garden wall of 12 Penistone Road has been damaged by vehicles. Query about perpetuity insurance against future damage given the increased risk to third party property.  
**Response:** The Transport Statement references that the existing site has the potential to generate a combined total of 211 trips per day, of which 24 could be goods vehicles entering the site. The proposal which now proposes four less dwellings than is referenced in the TS estimates a daily trip of around 120 vehicles. It is considered therefore that post development, the risk would be reduced.
- 10.54 In winter residents park on Penistone Road. Additional residents would mean more on-road parking and congestion.  
**Response:** Sufficient parking is provided within the site to accommodate the proposed development. The possibility of residents parking on Penistone

Road in severe winter conditions is acknowledged as a possible consequence of the gradient of the access. Cars parked along Penistone Road would narrow the width of the road and could cause possible delays to vehicles waiting for an opportunity to pass parked cars when traffic is coming in the other direction. This would however be a temporary impact, and it is unlikely residents would park here on a recurrent basis due to the distance from the proposed dwellings and the gradient.

- 10.55 Heavier rainfall and snow melt result in Woodsome Beck becoming a torrent. Concern about children safety.

**Response:** This is not a material planning consideration.

- 10.56 Dogley is a wildlife haven, reflected in the 'site of wildlife significance' status awarded by West Yorkshire Ecology Service. The area is largely undisturbed in the evening and weekend which would be put at risk. Site pollution reaching Woodsome would be detrimental to wildlife.

**Response:** An ecological report has been submitted which has been assessed by the Officers. No objections are raised subject to a Biodiversity and Mitigation Plan being developed for the site. This will be addressed through condition. The existing occupiers operate between 3am and 7:30pm Monday to Friday, and there will be some additional impact arising from the development an artificial lighting / activity in the evening. However, the built development would not extend beyond the existing hard surfaced footprint of the site, and it is not considered there would be a detrimental impact on wildlife, subject to the submission of a Biodiversity and Mitigation Plan.

- 10.57 Point 3.3 says that it is 'envisaged' properties would be built of stone. However, the Design and Access Statement says the dwellings 'will' reflect the vernacular of surrounding dwellings.

**Response:** The details of the appearance of the dwellings, including the proposed construction materials would form part of any future reserved matters application.

## **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 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 Development Management)**

**It is proposed that the following planning conditions would be included should planning permission be granted:**

- 1-4. Standard Reserved Matters conditions.
5. Development to be in accordance with the Flood Risk Assessment.
6. A scheme to restrict the rate of surface water discharge.
7. A scheme retailing foul, surface water, and land drainage.
8. Phase II Intrusive Site Investigation Report.
9. Site Remediation Strategy.
10. Site Remediation to be carried out.
11. Validation Report.
12. Affordable housing.
13. Public Open Space.
14. Metro card provision.
15. Surfacing of vehicle parking areas.
16. Biodiversity Mitigation and Enhancement Plan.
17. Provision of electric vehicle recharging point(s).

### **Background Papers:**

Application and history files

Website link to the application details:

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2015%2f93261>

Certificate of Ownership – Certificate A signed

**APPENDIX B:- UPDATE REPORT IN RELATION TO THE ORIGINAL PLANNING APPLICATION, 2015/93261, WHICH WAS INCLUDED IN THE HEAVY WOOLLEN PLANNING SUB-COMMITTEE AGENDA OF 15 DECEMBER 2016.**

**Demolition of existing buildings and outline application for erection of residential development (15 dwellings)**

**Connection Seating Limited, Dogley Mills, Penistone Road, Fenay Bridge, Huddersfield, HD8 0NQ**

## **10.0 APPRAISAL**

### **Layout Considerations (Page 69)**

As set out in paragraph 10.29 on page 68 of the agenda, option 2 for the improvements to the access into the site was considered to be acceptable by officers.

The change to the access would affect the layout proposed. A final plan showing the position of the proposed access and the layout of the site is awaiting submission.

This is an outline application however officers consider that it is appropriate to agree the layout at this stage because of the Green Belt allocation. Whilst it is acknowledged that the final layout scheme has not yet been submitted, and will need to be re-advertised, it is not anticipated that it would be fundamentally different than that indicated on the previously submitted plan i.e. it will relate to 15 dwellings, comprising a mix of detached and semi-detached dwellings.

### **RECOMMENDATION (Page 60)**

In light of the above, the recommendation is as follows:-

**Grant Conditional Outline Permission subject to the delegation of approval to the Head of Development Management in order to complete the list of conditions contained within this report (and any added by Committee) and to:-**

- 1. Following receipt of the revised layout, re-advertise for 7 days, and provided that no new material considerations are raised that have not already been addressed;**
- 2. Secure a S106 agreement to cover the matter of the relocation of Connection Seating within the District.**

**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 Development Management shall consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the benefits that would be secured; if so, the Head of Development Management is authorised to determine the application and impose appropriate reasons for refusal under Delegated Powers.**

**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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## Report of the Head of Strategic Investment

### HEAVY WOOLLEN PLANNING SUB-COMMITTEE

Date: 15-Mar-2018

**Subject: Planning Application 2017/93674 Erection of class A1/A3 coffee shop with external seating area Land at, Northgate Retail Park, Albion Street, Heckmondwike, WF16 9RL**

#### APPLICANT

London & Cambridge  
Properties Ltd

#### DATE VALID

24-Oct-2017

#### TARGET DATE

19-Dec-2017

#### EXTENSION EXPIRY DATE

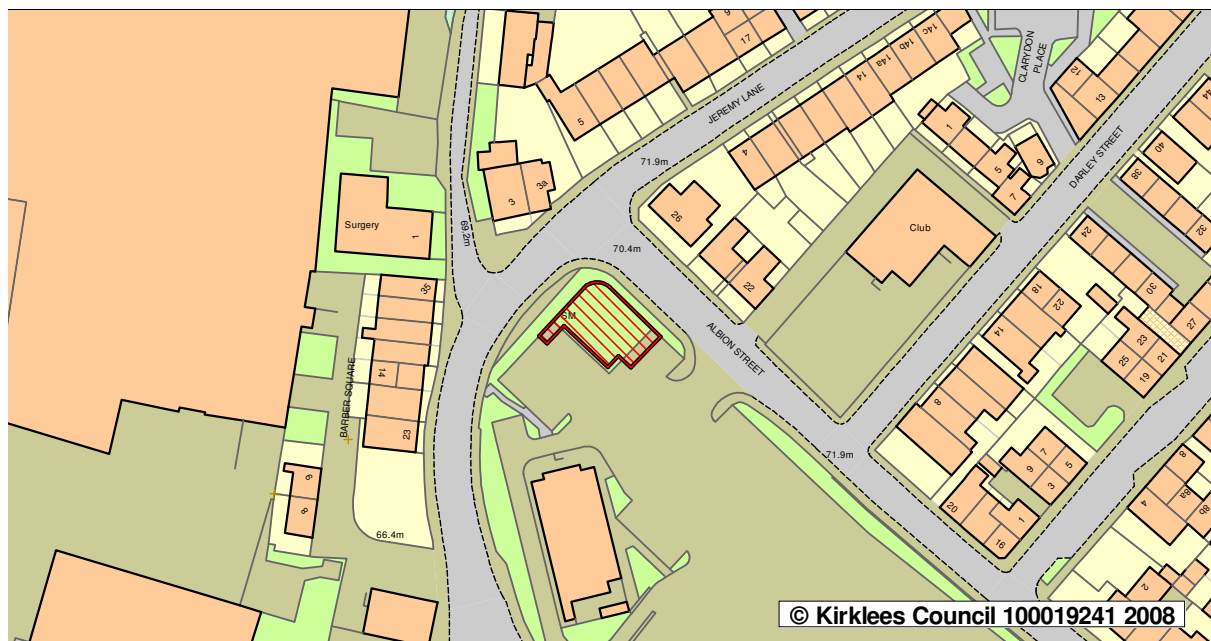
29-Jan-2018

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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: Heckmondwike**

No

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:**

- await the expiration of the additional site publicity
- Assess additional highways statement which will be reported in the Committee update.

**Provided that there are no new material considerations raised as a result of the publicity or highways assessment, complete the list of conditions including those contained within the report.**

**1.0 INTRODUCTION:**

- 1.1 The application was originally brought to the Heavy Woollen Planning Sub-Committee in accordance with the Council's scheme of delegation at the request of Ward Councillor Steve Hall for the following reasons:
- 1.2 "While I welcome the application having a big name like Costa coffee coming to Heckmondwike is good news I am concerned about traffic. The junction of Albion Street and Jeremy Lane regularly comes to a standstill due to the entrance / exit into the retail park. What would work is one road in and another road out but I am doubtful of that happening. I would like this application to go to Committee and also have a site visit due to traffic concerns on the highway and the entrance/ exit."
- 1.3 The Chair of the Sub-Committee has previously confirmed that Councillor Steve Hall's reason for making the above request is valid having regard to the Councillor's Protocol for Planning Committees.
- 1.4 The application was subsequently considered by members of the Heavy Woollen Planning Sub-Committee on 25<sup>th</sup> January 2018 following their site visit, which was carried out on the same date.
- 1.5 Members resolved to defer the application in order to provide the applicant with an opportunity to submit additional information relating to highway safety issues, distances to neighbouring properties and to demonstrate how they are to mitigate against any invasion of privacy.

## **2.0 SITE AND SURROUNDINGS:**

- 2.1 The application site relates to a roughly rectangular grassed area of land in the northern corner of Northgate Retail Park, Heckmondwike. The retail park is within the town centre of Heckmondwike and consists of ten modern retail units including a drive through restaurant and Lidl supermarket, with large shared car park.
- 2.2 The site is relatively flat and approximately 191 square metres. It also contains a signage post which would be removed.
- 2.3 Access is from the existing entrance / exit to Northgate Retail Park.
- 2.4 On the opposite side of Albion Street, Jeremy Lane and Greenside are predominantly two-storey, stone built houses, whilst the remainder of the site is adjacent to much larger car park serving the retail park.

## **3.0 PROPOSAL:**

- 3.1 Planning permission is sought for the erection of class A1/A3 coffee shop with external seating area.
- 3.2 The building would have a predominantly rectangular footprint with one curved corner in glazing panels. It would be single storey designed with a flat roof and facing masonry to match existing retail units and the immediate context. There would be a detached bin storage area to the south west side of the building occupying one car parking space, and an area of hard standing adjacent to the south eastern side, suitable for outdoor eating. The south eastern side also contains the main entrance to the proposed A1 / A3 coffee shop.
- 3.3 New signage is also indicated on the north eastern and south western elevations (which would be subject to a separate advertisement consent application).

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

- 4.1 99/92275 – Erection of food retail and non food retail units with fast food unit and car parking. Conditional full permission.
- 00/93673 – Outline application for the erection of buildings with A1 (food and retail) and A3 (Restaurant /take away) use. Conditional outline permission.
- 01/93103 – Erection of building for A3 use (Restaurant / takeaway). Refused because the proposed parking arrangements would require vehicles to either reverse into or out of the spaces directly onto the main access to the car park, very close to the junction with Albion Street to the detriment to the free and safe flow of traffic.

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

- 5.1 The scheme under consideration at the previous committee meeting had been amended, in that the Design and Access Statement was amended to remove reference to drive-through customer hatch and also set out that service deliveries and refuse collection would take place outside of operational hours.

- 5.2 In addition, the ground floor and elevation drawings together with artist's impressions and roof plan were also amended to show additional bin storage area (dwg nos. P006 rev A 12<sup>th</sup> Jan 2018, P008 rev A 12<sup>th</sup> Jan 2018, P009 rev A 12<sup>th</sup> Jan 2018, and P007 rev A 12<sup>th</sup> Jan 2018). Furthermore, the red line boundary of the site enlarged slightly to encompass the bin storage area (shown on dwgs. P001 rev A 12 Jan 2018 and B P004 rev A 12th Jan 2018). The amended plans were re-advertised and the recommendation worded to reflect the amended plan publicity end date.
- 5.3 Some additional traffic generation information was received and reported in the committee update. It gave information about total traffic generation from the proposed coffee shop, linked trips, and additional traffic generated by the proposed coffee shop. Highways development management officers assessed it and found it acceptable and had no further comments.
- 5.4 Since the application was deferred at the previous committee, further information has been submitted in the form of a block plan showing the distances to the neighbouring properties at Jermyn House, 3, Jeremy Lane, and 26, Albion Street, (which the agent has advised were measured on site), together with two site section drawings, one between 26, Albion Street and the proposed retail unit, and the other between Jermyn House, 3, Jeremy Lane and the proposed coffee shop.
- 5.5 Details of screening measures from the curved window to the neighbouring properties to prevent invasion of privacy issues are shown on the amended elevation drawing P008 rev B indicating the use of obscure glazing between 500mm – 1800mm. It is recommended that this is controlled by condition.
- 5.6 Details from the applicant's Highway specialists relating to the following are awaited. Carrying out a 7 day survey on the vehicle queuing movements from the existing Mcdonald's drive-thru entrance into the car park (vehicle numbers queuing) between the hours of 12.00 to 14.00 and 16.00 to 18.00. (survey not to be carried out during school hols). If the findings of the survey suggest there is an existing issue remedial measures have been requested to be suggested.

## **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** – land without notation on the UDP
- BE1** – Design principles
- BE2** – Quality of design
- BE16** – Shop fronts
- BE20** – Access for disabled people
- S1** – Shopping and Service Strategy
- T10** – Highway safety
- T19** – Parking standards
- EP4** – Noise sensitive development

Kirklees Publication Draft Local Plan (PDLP):

- 6.3 **PLP1** – Presumption in favour of development
- PLP2** – Place shaping
- PLP7** – Efficient use of land and buildings
- PLP13** – Town centre uses
- PLP16** – Food and drink uses and the evening economy
- PLP21** – Highway safety and access
- PLP22** – Parking
- PLP24** – Design
- PLP25** – Advertisement and shop fronts
- PLP51** – Protection and improvement of environmental quality

National Planning Policy Framework (NPPF):

- 6.4 Core Principles
- Chapter 2** – Ensuring the vitality of town centres
- Chapter 4** – Promoting sustainable transport
- Chapter 7** – Requiring good design
- Chapter 11** – Conserving and enhancing the natural environment

**7.0 PUBLIC/LOCAL RESPONSE:**

- 7.1 As a result of the original publicity, no representations have been received by any surrounding occupants.
- 7.2 Ward Councillor Steve Hall has requested that the planning application be referred to the Heavy Woollen Planning Sub-Committee for determination for the reasons set out in paragraph 1.2 of this report (above).
- 7.3 Following receipt of amended plans, a further round of publicity has been undertaken with the expiration date being 23<sup>rd</sup> January 2018. Should any comments be received, they shall be reported to members in the Update. Furthermore, the recommendation has been worded to reflect the additional publicity.

## 8.0 CONSULTATION RESPONSES:

### 8.1 Statutory:

**K C Highways (Development Management)** – Following receipt of additional information the application is considered acceptable from a highway safety point of view. Further information relating to traffic movements has been requested to support the application and will be reported to members in the update.

**K C Environmental Health** – Have concerns about night time deliveries having an adverse impact upon amenity of neighbouring properties. Recommend the imposition of conditions relating to hours of use and delivery times

### 8.2 Non-statutory:

None

## 9.0 MAIN ISSUES

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

## 10.0 APPRAISAL

### Principle of development

- 10.1 The application site comprises a roughly rectangular area which is turfed and located in the northern corner of car park serving Northgate Retail Park.
- 10.2 The proposal is to erect a Class A1 / A3 coffee shop with external seating area.
- 10.3 The land is without notation on the Unitary Development Plan and policy D2 is relevant. It states that “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]”.
- 10.4 The development is also within an existing retail park on the edge of Heckmondwike Town Centre on the UDP and on the Kirklees Draft Local Plan it is now within the town centre boundary. Given these circumstances it is considered that policy S1 of the UDP is also relevant, which seeks to ensure that town centres remain the focus of shopping and social activities. As such, it is considered that the proposal would be compliant with the aims of policy S1 of the UDP.
- 10.5 Chapter 2 of the NPPF also seeks to ensure the vitality of town centres. Given the policy context outlined above and that the proposal is suitable for a town centre use, it is considered that the proposal would be compliant with the aims of chapter 2 of the NPPF.

- 10.6 Overall, it is considered that the principle of a coffee shop in this location is acceptable, subject to compliance with detailed policies relating to visual and residential amenity, and highway safety.

#### Urban Design issues

- 10.7 The site is in the northern corner of Northgate Retail Park, with the existing car park and retail units to the south, and more of Heckmondwike town centre beyond. The site is also in quite a prominent position adjacent to the junction of Albion Street, Jeremy Lane and Greenside, from where it is clearly visible. These roads are lined with two-storey, stone-built and predominantly terraced houses thought to date from the Victorian and Edwardian era. Beyond the immediate area is more housing to the north and east, and a mill complex to the north-west.
- 10.8 The existing retail park contains relatively modern purpose-built retail units which are single storey and constructed with a mixture of materials including natural stone and modern, smooth roof sheets.
- 10.9 The proposed building would also be single storey and smaller than those already at the retail park. It would have a flat roof and a curved corner with floor to ceiling windows forming a feature when viewed from the road junction.
- 10.10 Whilst the proposed elevations indicate that the external walls would be to match the existing shopping centre and immediate context, given its prominent position and closer proximity to natural stone houses, it is considered appropriate to use natural stone walling materials.
- 10.11 It is noted that advertisements are shown on the proposed elevation drawings however these would be subject to separate advertisement consent.
- 10.12 It is acknowledged that when the application was under consideration at the previous committee, an amended plan was submitted which incorporated a detached bin storage area adjacent to the south western frontage. This is a visible elevation however, the storage area has been designed with a perimeter wall which would be faced in matching material to that used on the main building and would, in the opinion of officers, adequately screen the bin storage area.
- 10.13 Details of obscure glazing to the curved window of the proposed building to mitigate an invasion of privacy to neighbouring properties have been submitted and shown on proposed elevation drawing P008 rev B. It indicates the use of obscure glazing between 500mm – 1800mm. In officers' opinion this is satisfactory from a visual amenity point of view and it is recommended that this is controlled by condition.
- 10.14 With the inclusion of appropriate conditions, all aspects of the design are considered acceptable within the context of the surrounding development and as such the visual amenity of the proposal would be in accordance with Policies D2, BE1, BE2 and BE16 of the UDP, Policy PLP24 of the PLDP, as well as chapter 7 of the NPPF.

## Residential Amenity

- 10.15 When the application was previously being considered by Committee Members, they resolved to defer the decision in order to (amongst other things) obtain accurate measurement of the distance between the proposed coffee shop and the nearest neighbouring properties as a speaker from one of the neighbouring properties reported that distances from boundary walls of neighbouring properties were less than reported in the committee report. These neighbouring properties are Jermyn House, 3, Jeremy Lane and 26, Albion Street.
- 10.16 The agent has supplied an additional information plan (P010- dated 23<sup>rd</sup> February 2018) on which there is a block plan entitled distance to neighbouring properties It shows distances of 17.8m and 16.4m from the middle of the curved window and a parallel section respectively to the mid-point of the facing front elevation of 26, Albion Street.  
It also shows distances of 17.6m and 19.7m from the middle of the curved window to the nearest window and mid-point of the front elevation of Jermyn House, 3, Jeremy Lane. In addition it indicates a distance of 18.4m between the mid-point of Jermyn House, 3, Jeremy Lane and the nearest part of the curved window.  
These distances are similar to those reported at the previous committee of approximately 17m from the proposed coffee shop to the nearest houses on the opposite side of Albion Street and Jeremy Lane.  
In relation to the speakers query, distances of less than those given above are possible from the boundary walls of these neighbouring properties as the boundary walls are closer to the proposed coffee shop.
- 10.17 The agent was asked to confirm that these distances were measured on site and said that he was advised that is the case.
- 10.18 Two site sectional drawings showing the proposed coffee shop in relation to 26, Albion Street and Jermyn House, 3, Jeremy Lane, have also been submitted (P010 – dated 23<sup>rd</sup> February 2018). They illustrate that the proposed coffee shop would be subservient, in terms of overall height in relation to these neighbouring properties with significant separation distances.
- 10.19 Given the separation distances to neighbouring properties described above and the subservient scale of the proposed coffee shop relative to the neighbouring properties it is considered that the overbearing and overshadowing effect would be relatively restricted.
- 10.20 In terms of overlooking, details of obscure / frosted glazing for the curved window have been submitted and shown on proposed elevation drawing P008 rev B. It indicates the use of obscure glazing between 500mm – 1800mm. In officers' opinion this provide mitigation to prevent invasion of privacy, and can be conditioned accordingly.
- 10.21 In terms of noise pollution, Environmental Health officers expressed concerns about noise from customers and deliveries at unsocial times that may impact upon the amenities of nearby residents at nos.22, 24 and 26, Albion Street, Heckmondwike. However if service deliveries take place during operational hours this would mitigate such noise, and they recommend conditions to control the hours of use to customers (to between 06:00 and 23:00), and the



hours for deliveries to or dispatches from the premises (to correspond with the hours of use to customers), in order to comply with the aims of Policy EP4 of the UDP and chapter 11 of the NPPF.

- 10.22 The amended Design and Access Statement (paragraph 4.14) states that the proposed opening hours are between 5:00am and 10:00pm daily and (paragraph 4.16) service deliveries – generally 1 per day – together with refuse collection will take place within the site and outside operational hours.
- 10.23 The submitted parking statement (paragraph 4.1) also states that the proposed coffee shop will be serviced out of hours from the car park by box vans.
- 10.24 Given that the position of the proposed coffee shop is relatively close to residential properties and the relatively long hours of operation proposed, it is considered that there would be potential for an adverse impact upon the residential amenities of these neighbouring properties from noise disturbance and therefore, whilst acknowledging the comments from Environmental Services and those set out in the applicant's supporting information, officers recommend that the hours of operation are conditioned to be between 07:00 and 20:00. As the proposed development is for a relatively small coffee shop and service deliveries would be by box vans, generally one per day, on balance it is considered that it would be reasonable to restrict service deliveries to within the hours of operation (as specified above) and by box vans, a maximum of 2 per day.
- 10.25 Whilst service deliveries during operational hours may have an impact upon the use of the car park by customers, as the proposal is relatively modest in scale, and a box delivery van is quite small, visiting the site infrequently, it is considered that the impact upon highway safety and efficiency would be relatively limited. This approach is supported by Highways Development Management officers.
- 10.26 As such, with the inclusion of the recommended conditions, it is considered by officers that the proposed development will not result in any material detriment to the residential amenities of the occupants of nearby houses, in accordance with Policies D2, BE1, BE2 and EP4 of the UDP as well as chapter 11 of the NPPF.

#### Highway issues

- 10.27 The application site is in the northern corner of Northgate retail park near the entrance from Albion Street and adjacent to a large car park serving the retail complex.
- 10.28 As previously set out, the application was deferred at the planning sub-committee meeting held on 25<sup>th</sup> January 2018 in order for the applicant to (amongst other things) address highway safety concerns. This is in the form of carrying out a 7 day survey on the vehicle queuing movements from the existing Macdonalds drive through entrance into the car park (vehicle numbers queuing) between the hours of 12.00 to 14.00 and 16.00 to 18.00. (survey not to be carried out during school hols). In addition, if the findings of the survey suggest there is an existing issue, remedial measures should be suggested.

- 10.29 The above information in the form of a highways statement is awaited. An assessment will be reported in the Committee update.

### Representations

- 10.30 No representations were received during the original advertisement period for the application. A further round of advertisement of the amended plans took place prior to the previous committee and expired on 23<sup>rd</sup> January 2018. Five letters of representations and one petition with 43 signatures were received and reported in the Committee update.
- 10.31 The issues raised and addressed were related to highway safety, noise nuisance, littering, invasion of privacy to nearest neighbouring properties, blocking views, and other empty buildings in Heckmondwike town centre could be used.
- 10.32 Since deferring the application, some amended plans have been received and further highways information is awaited. When it is received they will be subject to a further round of advertisement.
- 10.33 Cllr S Hall raised concerns about traffic on the highway and the entrance/ exit. Since the application was deferred at the previous committee, details from their highway specialists relating to the following have been requested and are awaited. Carrying out a 7 day survey on the vehicle queuing movements from the existing Macdonalds drive through entrance into the car park (vehicle numbers queuing) between the hours of 12.00 to 14.00 and 16.00 to 18.00. (survey not to be carried out during school hols).  
If the findings of the survey suggest there is an existing issue, then remedial measures should be suggested.
- 10.34 The above information in the form of a transport statement is awaited. An assessment of it will be provided in the committee update.

### Other Matters

#### *Access for disabled people:*

- 10.34 Policy BE20 of the UDP seeks to ensure new shop fronts should incorporate provision for access to the premises via the main entrance for people with disabilities.
- 10.35 In this instance, the main entrance to the proposed building would be on the east facing elevation of the proposed building which is directly accessible from the associated car park where there is disabled parking nearby. There would also be level access at the entrance and facilities for people with disabilities inside. As such the proposal would satisfy policy BE20 of the UDP.
- 10.36 There are no other matters considered relevant to the determination of this application.

## 11.0 CONCLUSION

- 11.1 To conclude since the application was deferred at Heavy Woollen Planning Committee on 25<sup>th</sup> January 2018, additional information regarding the distances to neighbouring properties, sectional drawing to neighbouring properties indicating scale of the proposed building relative to neighbouring properties, and mitigation against any invasion of privacy in the form of a deep band of obscure glazing to the curved window have been submitted. These have been carefully assessed and officers are of the opinion that the proposal would not result in any significant detriment to the visual or residential amenities of nearby residential properties or to the wider street-scene.
- 11.2 With regard to highway safety, a Transport Statement is awaited and will be assessed and reported in the Committee update.
- 11.3 Furthermore it is anticipated that the proposal would generate 15 full-time jobs which would comply with the aims of the NPPF which sets out under paragraph 18 that *'the Government is committed to securing economic growth in order to create jobs and prosperity...'*
- 11.4 Subject to the provision of satisfactory additional highways information and no new material planning consideration are raised as a result of a further round of publicity, approval of the application is recommended.
- 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 This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development would constitute sustainable development and is therefore recommended for approval.

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

1. 3 year time limit
2. Development to be carried out in accordance with the approved plans
3. Materials
4. Limit to hours of operation to between 07:00 and 20:00
5. Use of box delivery van and frequency of delivery / collection
6. Details of obscure glazing to prevent over looking

### Background Papers:

Application and history files

Website link to application:

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2017%2f93674>

Certificate of Ownership – Certificate A signed and dated 20/10/2017.

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## Report of the Head of Strategic Investment

### HEAVY WOOLLEN PLANNING SUB-COMMITTEE

Date: 15-Mar-2018

**Subject: Planning Application 2017/93714 Change of use of hairdressers to self contained flat and alterations 114, Brewery Lane, Thornhill Lees, Dewsbury, WF12 9HG**

#### APPLICANT

B Mohyuddin

#### DATE VALID

27-Oct-2017

#### TARGET DATE

22-Dec-2017

#### EXTENSION EXPIRY DATE

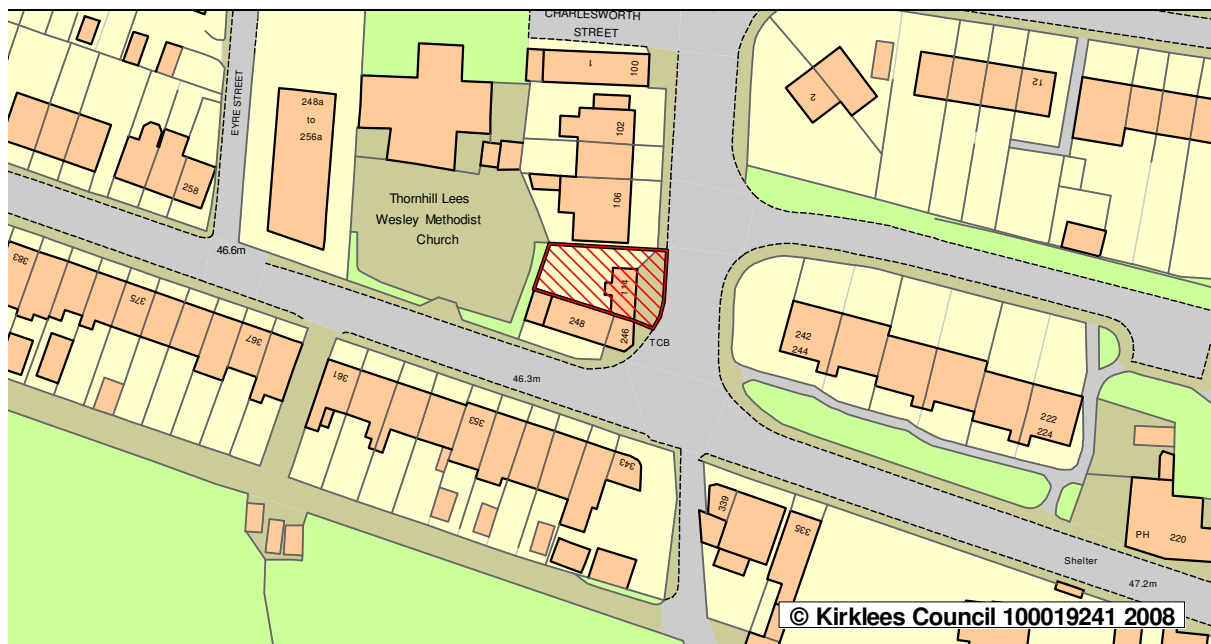
19-Mar-2018

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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: Dewsbury South**

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.**

**1.0 INTRODUCTION:**

1.1 This application was initially reported to the Heavy Woollen Planning Sub-Committee following a request by Councillor Gulfam Asif who stated:

*“The reasons for this application be referred to the planning committee is lack of parking on site and highway safety”.*

1.2 Following deferral of the application at the Heavy Woollen Planning Sub Committee held on 25 January 2018, Cllr Asif has withdrawn his objections to the planning application but it is still appropriate for committee to continue to determine this application.

1.3 Members of the Heavy Woollen Planning Sub-Committee carried out a site visit on 25 January 2018, prior to deferring the application.

**2.0 SITE AND SURROUNDINGS:**

2.1 No. 114 Brewery Lane, Thornhill Lees is a single storey building constructed of natural stone with pitched slate roof, located close to the junction of Brewery Lane with Lees Hall Road, Thornhill Lees. The property has a surfaced parking area to the rear of the building, accessed off Brewery Lane. The site of the proposed flat is located within an area of mixed uses, incorporating both commercial and residential uses, approximately 400m from the local centre of Thornhill Lees.

2.2 Surrounding the site is predominantly residential with a mixture of residential properties within the immediate area. These include properties constructed of a mixture of materials, some of which have been extended (see planning history section of this report). To the rear of the site is Thornhill Lees Wesley Methodist Church which is now an Education Centre.

### **3.0 PROPOSAL:**

3.1 Planning permission is sought for the change of use of hairdressers' salon to flat. Each element of the proposal will be discussed below.

#### **3.2 Change of use**

The use of the building is proposed to change from a hairdressers' salon to a one bedroom flat. The flat would consist of a living kitchen area, a bedroom, and a shower room.

#### **3.3 External changes**

To the front elevation, there will be no changes. To the rear elevation of the building, the existing door opening will be blocked up and replaced by a window opening serving the proposed shower room.

### **4.0 RELEVANT PLANNING HISTORY:**

4.1 2015/91461 – Change of use from a hairdressing salon (class A1) to taxi booking office (class B1) with associated parking at Lock Street. APPROVED (decision at committee) at no. 114 Brewery Lane.

4.2 2017/93013 – Alterations to convert hairdressers to flat INVALID (incorrect certificate and red line boundary) at no. 114 Brewery Lane.

4.3 2008/92802 – Erection of two storey extension APPROVED (no. 106 Brewery Lane)

4.4 2014/93706 – Erection of an internal first floor mezzanine, two entrances and fire escape, erection of ground floor extensions, alterations to the building and car park layout and conversion of outbuilding to body wash room APPROVED (Education Centre, Lees Hall Road).

### **5.0 HISTORY OF NEGOTIATIONS:**

5.1 No amendments to the scheme have been secured as officers consider that the proposal is acceptable in its current form. This is following a previously withdrawn application as the red line boundary and certificates were incorrect.

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

**D2** – Unallocated land  
**BE1** - Design principles  
**BE2** – Quality of design  
**BE12** – Space about dwellings  
**T10** – Highways Safety  
**T19** – Parking Provision  
**EP4** – Noise sensitive and noise generating development  
**G6** – Contaminated Land  
**H8** – Conversion to residential  
**B4** – Premises and sites with established use, or last used, for business and industry

## 6.3 National Planning Policy Framework (NPPF):

**Chapter 6** – Delivering a wide choice of high quality homes  
**Chapter 7** – Requiring good design  
**Chapter 11** – Conserving and enhancing the natural environment

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

**PLP2** – Place Shaping  
**PLP21** – Highway Safety and Access  
**PLP22** - Parking  
**PLP24** – Design  
**PLP51** – Protection and improvement of local air quality  
**PLP53** – Contaminated and unstable land

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

7.1 Two representations have been received as a result of the initial publicity period. No further representations have been received as a result of the extended publicity. Representations are summarised below and are addressed in section 10.0 of this report.

- Why does he need parking space for 4 vehicles? There is only a small space at the back (there is a back door there).
- Enough vehicles parked around here as it is – people going to the mosque and the barbers. Our visitors cannot find anywhere to park – where is the applicant going to park 4 cars.
- Son had car scratched all the way down one side
- Query relating to applicant demonstrating that notice has been served.



- Why should anyone be put to expense/inconvenience to prove right of access?
- Original claim untrue/ red line remains visible
- Highways safety schemes proposed in the area but officers approving further residential development/ parking concerns relating to visitors parking close to the junction.

## 8.0 CONSULTATION RESPONSES:

### 8.1 Statutory:

**K.C Environmental Health (pollution and noise)** – no objection subject to conditions relating to contaminated land and electric charging points.

*Officer comment: There will be no parking on the site and therefore the electric charging point is not required.*

**K.C Highways Development Management** – no objection.

### 8.2 Non-statutory:

None

## 9.0 MAIN ISSUES

- Principle of development
- Visual amenity/local character
- Residential amenity
- Highway issues
- Representations
- Other matters

## 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]”. Subject to other material considerations being addressed, the proposed change of use would be acceptable in principle in relation to policy D2.

10.2 The general principle of changing the use of a building from a hairdressing salon to a flat is considered acceptable by officers. Policy H8 of the UDP sets out that ‘*the change of use of buildings to residential use will normally be permitted subject to employment, environmental, amenity and traffic considerations*’. With Policy B4 of the UDP relating to premises last used for business use. In this instance, the application site is located within a sustainable location in close proximity to the Thornhill Lees local centre. The application site is also in close proximity to other residential properties and therefore its proposed use is compatible with the surrounding uses. Therefore compliant with the aims of policies D2, H8, and B4 of the UDP, as well as paragraph 49

of the NPPF which sets out that 'housing applications should be considered in the context of the presumption in favour of sustainable development'. As well as paragraph 51 of the NPPF which sets out that '*local planning authorities should . . . bring back into residential use empty . . . buildings*' and that '*they should normally approve planning applications for change to residential use and any associated development from commercial buildings . . .*'

### **Visual amenity/local character:**

- 10.3 The impact on visual amenity is acceptable. The external alterations to the property would be concentrated on the rear elevation. The replacement of the door to a window is considered to be a very minor change to its appearance and, given its materials, scale and design, which matches the existing openings, would not be an incongruous feature that would detract from the character of the building. It would not be visible in the streetscene and would not change the appearance of the building very significantly.

### **Summary**

- 10.4 In all, given that the main component of this application relates to the change of use and there are not many external changes required to facilitate this, the proposal is acceptable in terms of visual amenity. The proposal is considered to comply with the aims of policies D2, BE1, BE2 and Chapter 7 of the NPPF as well as policy PLP24 of the Kirklees Draft Publication Local Plan.

### **Residential Amenity:**

- 10.5 The impact on residential amenity is acceptable. One objection has been received as a result of the statutory publicity.
- 10.6 Following a formal consultation with K.C Environmental Health, there is no objection relating to noise/pollution.
- 10.7 Given that there are no external extensions, there would be no overbearing impact on neighbouring dwellings.
- 10.8 Policy BE12 relates to space about dwellings. In this case, there are two habitable room windows in the front elevation which face onto Brewery Lane, with the closest neighbouring property being no. 242/244 Lees Hall Road. There is an indirect relationship with these properties which do not have openings in their side elevation. Given that there is no window-window relationship, 12 metres is required to comply with UDP policy BE12. In this case, there is a distance of 25 metres between the sites, officers consider that there will be no overlooking/loss of privacy and the proposal complies in this regard.
- 10.9 With regards to the openings to the rear of the site, there is a living kitchen and shower room area. A condition has been recommended to ensure that the shower room is obscurely glazed. The living kitchen window will not overlook residential properties. Instead, it faces the hardstanding area of the building which is used as an education centre. This area of hardstanding is visible from the streetscene (not private amenity space) and there is a stone wall between the sites. Officers consider that there will be no overlooking/loss of privacy. There is a distance of at least 1.5 metres which is the distance stipulated in UDP policy BE12.

### Summary

10.10 To conclude, officers consider that the proposal complies with UDP policy BE12 and D2, as well as policy PLP24 of the PDLP, and would not cause harm to residential amenity to surrounding properties by virtue of overbearing or an overlooking impact.

### **Highway issues:**

10.11 Following a formal consultation with Highways Development Management (HDM), there is no objection to the proposal.

10.12 In order to allow the development to strictly comply with the standards set out in UDP Policy T19 and policy PLP22 of the Kirklees Publication Draft Local Plan, one parking space would be recommended to serve the proposed development.

10.13 During the course of the application, concern was raised through the representations about the ability of the applicant to park on land solely within his ownership and in the position shown on the originally submitted plan. A further Officer site visit was undertaken and officers were also of the opinion that the dimensions shown on plan were not adequate to allow a car to park efficiently without encroaching onto third party land.

10.14 HDM reviewed the application further and it was noted that the application site had previously been granted planning permission for a taxi booking office and the site's previous use was as a hairdressers' salon. Officers consider that the existing A1 use of the site would be more intense in terms of the number of vehicles coming and going at the site. As such, the proposal to change the use of the premises to a one bedroom residential unit would represent a less intensive use than what could be lawfully implemented (e.g. Uses falling within Class A1 of the Use Classes Order) as well as previously permitted on the site (e.g. the taxi booking office).

10.15 Furthermore, the site is in a sustainable location approximately 400 metres away from Thornhill Lees town centre. Officers take the view that, due to the small scale of the development and its sustainable location, the requirement for a car parking space within the site is not entirely necessary to allow the development to be acceptable.

10.16 However, if parking on the site is considered necessary by members, one car parking space could be accommodated within the rear yard by removing the lean-to outbuilding, with the possibility of further car parking provision within the wider red line boundary, albeit on land outside of the applicants ownership.

10.17 In summary, the officers are of the opinion that the proposal, without off-street car parking, would not materially add to any undue highway safety implications and will comply with UDP policy T10 and policy PLP21 of the PDLP.

10.18 The Council's Highway Safety team has also been consulted on the application and they have no objection to the proposal. It is noted that there are highway safety schemes proposed on Lees Hall Road but this change of use proposal is not considered to compromise this.

## Summary

- 10.19 For the above reasons, there will be no highways safety issues over and above the existing situation. Taking into account the above information, the proposal is considered to comply with UDP policy T10 as well as PLP21 of the Kirklees Publication Draft Local Plan.

## Other matters

- 10.20 The following sets out clarification for members in relation to various procedural matters in respect to the description of development and regulations regarding amendments to an application following the advertisement period.

10.21 **(i) The description of applications in relation to registered use.**

**Response:** With regard to planning law, this relates to the last 'lawful use'. A use can be lawful through the approval and lawful implementation of a planning application; through a permitted change of use (via the Town & Country Planning (Use Classes) Order; or through immunity e.g. if the use has taken place for 10 years or more. With regard to the lawful implementation of a planning application; this means that any conditions attached to a planning permission should be discharged and complied with too. In this instance, a 12 month temporary permission for the taxi booking office was granted on 7 March 2016 (thus ended on 6 March 2017). In relation to temporary permissions, Section 57(2) of the Town & Country Planning Act sets out "where planning permission to develop land has been granted for a limited period, planning permission is not required for the resumption, at the end of that period, of its use for the purpose for which it was normally used before the permission was granted". The lawful use of this site is therefore as a hairdressers, or any use falling within Class A1 of the Town and Country Planning (Use Classes) Order.

10.22 **(ii) Regulations regarding amendments to the application following the advertisement period.**

**Response:** The Local Planning Authority should be satisfied that the description of development provided by the applicant is accurate. The Local Planning Authority should not amend the description of development without first discussing any revised wording with the applicant or their agent. Checking the accuracy of the description should not delay validation of an application. (*Planning Practise Guidance*).

It is possible for an applicant to suggest changes to an application before the Local Planning Authority has determined the proposal. It is equally possible after the consultation period for the Local Planning Authority to ask the applicant if it would be possible to revise the application to overcome a possible objection. It is at the discretion of the Local Planning Authority whether to accept such changes, and to determine if the changes need to be re-consulted upon. (*Planning Practise Guidance*). The Council's Development Management Charter is consistent with the above and can be viewed using the following link:- <http://www.kirklees.gov.uk/beta/planning-applications/pdf/developmentmanagement-charter.pdf>.

10.23 In this instance, the agent has provided amended plans and a revised application form which remove any reference to parking on the site. The amended details have been re-advertised with the closing date for comments being 27 February 2018. To date, no further representation has been received.

### **Representations**

10.24 Two representations have been received as a result of the initial publicity period. Officers respond to the issues raised as follows:

- Why does he need parking space for 4 vehicles? There is only a small space at the back (there is a back door there).  
**Officer response:** *See highway safety section of this report. Following the receipt of amended plans, the applicant is not showing any parking within the site.*
- Enough vehicles parked around here as it is – people going to the mosque and the barbers. Our visitors cannot find anywhere to park – where is the applicant going to park 4 cars.  
**Officer response:** *parking provision is assessed in the highway safety section of this report. No parking is shown to be provided on site following the receipt of amended plans.*
- Son had car scratched all the way down one side  
**Officer response:** *this is not a material planning consideration.*
- Query relating to applicant demonstrating that notice has been served.  
**Officer response:** *there is no demand on a developer to provide confirmation of this.*
- Why should anyone be put to expense/inconvenience to prove right of access?  
**Officer response:** *matters relating to land ownership are not a material planning consideration.*
- Original claim untrue/ red line remains visible  
**Officer response:** *ownership certificate B has been signed and therefore the application is now valid.*
- Highways safety schemes proposed in the area but officers approving further residential development/ parking concerns relating to visitors parking close to the junction.  
**Officer response:** *this is covered in the highway safety section of this report.*

No further representations have been received as a result of the extended publicity period.

## **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. 3 year time limit to commence development
2. Development carried out in accordance of approved plans
3. Reporting of unexpected contamination
4. Footnote re hours of construction
5. Shower room window obscurely glazed
6. Footnote re ownership/ legal issues

**Background Papers:**

Link to the application details:-

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2017/93714>

Certificate of Ownership – Certificate B signed and dated 28<sup>th</sup> September 2017. Notice was served on Mrs M Newall of 248 Lees Hall Road, Thornhill Lees.

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## Report of the Head of Strategic Investment

### HEAVY WOOLLEN PLANNING SUB-COMMITTEE

Date: 15-Mar-2018

**Subject: Planning Application 2017/92504 Erection of 5 dwellings with associated site road, parking and landscaping Land to rear of, 49/51, Huddersfield Road, Skelmanthorpe, Huddersfield, HD8 9AR**

#### APPLICANT

Chris Noble, D Noble Ltd

#### DATE VALID

12-Dec-2017

#### TARGET DATE

06-Feb-2018

#### EXTENSION EXPIRY DATE

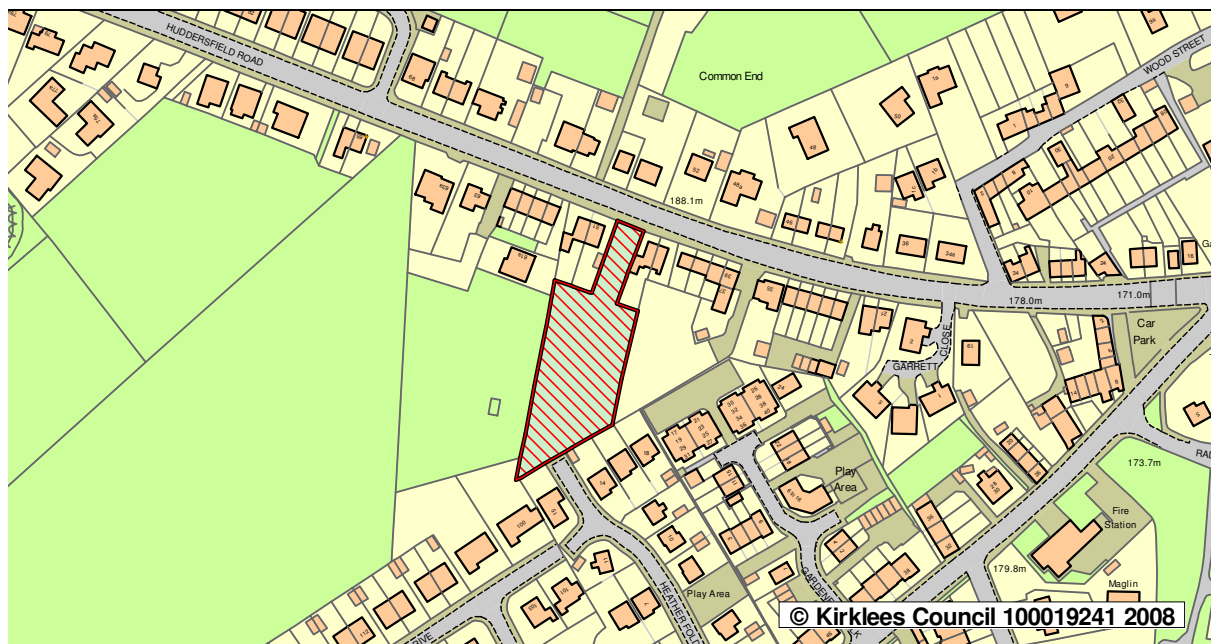
22-Mar-2018

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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: Denby Dale Ward**

No

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 the report.**

**1.0 INTRODUCTION:**

- 1.1 The application seeks full planning permission for the erection of five dwellings on land to the rear of 49/51 Huddersfield Road, Skelmanthorpe. The site is allocated as Provisional Open Land (POL) on the Kirklees Unitary Development Plan.
- 1.2 The application represents a Departure from the Development Plan and under the Council's Scheme of Delegation it is referred to the Heavy Woollen Planning Sub-Committee for a decision.
- 1.3 The principle of housing development is considered to be acceptable, and has previously been established following the granting of a previous planning application, reference 2014/92889. As a result of this proposal, it is considered by officers that there would be no detrimental impact on highway safety, visual amenity, and residential amenity.

**2.0 SITE AND SURROUNDINGS:**

- 2.1 The application site is an overgrown green field to the rear of No.49 and No.51 Huddersfield Road at Skelmanthorpe. The site is part of a wider allocation of Provisional Open Land (POL) on the Kirklees Unitary Development Plan which extends to the east and west of the site.
- 2.2 There is an existing vehicular access point off Huddersfield Road, and some works have taken place on site to clear the vegetation with crushed stone laid to form an temporary access into the site. The site is bounded by residential properties off Huddersfield Road to the north, open land to the east and west (also allocated as Provisional Open Land), and by properties off Heather Fold to the south.



### **3.0 PROPOSAL:**

- 3.1 The application seeks full planning permission for the erection of five dwellings, with associated site road, parking, and landscaping.
- 3.2 It is proposed plots 1-4 would be accessed via Heather Fold; a residential cul-de-sac to the south of the site. It is proposed to create a new access road into the site to include a turning head to facilitate the turning and access of a refuse vehicle to the proposed bin collection point. Beyond this turning head, the access is proposed to be a private drive. Plot 5 would be accessed directly off Huddersfield Road via a private drive.
- 3.3 The proposed dwellings would be two storey in height and relatively substantial in scale. The proposed construction materials are Marshalls Cromwell pitched stone with artstone heads and cills, and Grey Marley Modern roof tiles.

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

- 4.1 2014/92889 – Outline application for residential development – Conditional Outline Permission
- 2002/93375 – Outline application for residential development – Refused
- 89/00154 – Outline application for residential development – Refused

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

- 5.1 Officers have negotiated with the applicant to secure:
- An investigation of the culvert which runs through the site and its condition, and revisions to the plan to address drainage issues.
  - A revised House Type for Plot 5 and a street scene drawing along Huddersfield Road.
  - A revised layout to address residential amenity issues.
  - Confirmation of existing and proposed boundary treatment.
  - Revisions to the proposed access off Heather Fold to increase the width and secure 1.8m wide footways.
  - Inclusion of the approved dwellings to the east on the block plan to demonstrate the impact on residential amenity.

### **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 UDP proposals map and indicated as part of a wider Housing Allocation on the PDLP (this excludes the area of land between nos.49 and 51 Huddersfield Road, which is unallocated on both the UDP proposals map and on the PDLP).

Kirklees Unitary Development Plan (UDP) Saved Policies 2007:

- 6.2 **D5** – Provisional open land  
**BE1** – Design principles  
**BE2** – Quality of design  
**BE12** – Space about buildings  
**T10** – Highway Safety  
**T16** – Pedestrians Safety  
**D2** – Unallocated Land  
**NE9** – Retention of mature trees  
**G6** – Contaminated Land  
**H1** – Meeting housing needs in the district  
**EP11** – Integral landscaping scheme to protect / enhance ecology

6.3 Kirklees Publication Draft Local Plan

- PLP1** – Presumption in favour of sustainable development  
**PLP2** – Place shaping  
**PLP21** – Highway safety and parking  
**PLP 24** – Design  
**PLP25** – Highway safety and access  
**PLP 28** – Drainage  
**PLP 30** – Biodiversity and Geodiversity  
**PLP53** – Contaminated and unstable land

National Planning Policy Framework:

- 6.4 **Chapter 4** - Promoting sustainable transport  
**Chapter 6** - Delivering a wide choice of high quality homes  
**Chapter 7** - Requiring good design  
**Chapter 10** - Meeting the challenge of climate change, flooding  
**Chapter 11**- Conserving and enhancing the natural environment

**7.0 PUBLIC/LOCAL RESPONSE:**

- 7.1 The application was advertised by neighbour letters and site notice with the publicity expiring 29<sup>th</sup> January 2018.
- 7.2 As a result of this publicity, 29 objections were received. The concerns raised have been précised below as follows:

## Highway Safety

- The site falls within the boundaries of H502 a housing designation in the Publication Draft Local Plan. In the "Accepted Site Options" document, (page 103, Technical Appraisal it states "Access via Cumberworth Road unlikely because of required visibility splays. Access should be provided from Bedale Drive. Huddersfield Road offers access for part of the site" There is no reference to access via Heather Fold. There have been no objections that Heather Fold has not been included as a possible access route. Planning Decisions should comply with the LDP. Access to H502 via Heather Fold goes against the Local Plan.
- Cumberworth Road is hazardous when trying to get out of Heather Fold, with "blind spots" created by parked vehicles, and vehicles speeding. The Fire Station is not far from Heather Fold. Concern Heather Fold will be used as a short cut from Cumberworth Road to Commercial Road, for students and parents and a drop off/pickup point. There is also a public play area on Heather Fold, so additional traffic could jeopardise child safety.
- Huddersfield Road is the logical choice for access, it is a major road that takes traffic to Huddersfield, the motorway, Leeds or Wakefield. Traffic wanting to access Huddersfield would have to travel in to the village centre and use the difficult junction to access the road network.
- There also doesn't appear to be a turning area adequate for commercial vehicles.
- 'Round Hill Close' has access from Huddersfield Road, a safer approach.
- Leaving Heather Fold, onto Cumberworth Road is difficult in manoeuvring around parked cars due to local residents having no off road parking.
- Children play in the play area on Heather Fold and in the road. Children are relatively safe with a full view of oncoming traffic. The extended road veers to the right and drivers will not have a full view until they turn the corner. With parking for 14 cars, there is going to be significant increase in traffic.
- The exit from Heather Fold onto Cumberworth Road is hazardous. Since the building of developments off Cumberworth Road there has been a significant increase in parked cars, oncoming traffic is forced to the middle of the road.
- The entrance of Heather Fold onto Cumberworth is hard to joint due to on street parking and speeding motorists. In wintery conditions, on-street parking put an increase risk at the junction with Heather Fold.
- Concern how emergency services can access the site and how bin lorries and delivery vans will turn.
- Huddersfield Road provides the safest access and best servicing. There is insufficient turning space for waste collection lorries.
- D. Noble Ltd has written to residents of Heather Fold stating they "initially made enquiries with the Highways Officer to service the whole of the development from Huddersfield Road, but the Highways Officer insisted they use Heather Fold. As the developers preferred wish is to use Huddersfield Road, that request should be made available.
- The plans include a "spur road" for the purpose of servicing "further development". Concern about Heather Fold being utilised for a larger development and the effect on volume of through traffic.
- The development will increase traffic by 25%. Exit from Heather Fold onto Cumberworth Road is hazardous. This is due to cars parking on Cumberworth Road narrowing the carriageway and restricting the view. On-street parking results in traffic breaching central line markings. 12 additional cars significantly increasing the likely hood of an accident. Cumberworth Road joins Huddersfield and this junction is hazardous. As well as food

vending shops and a veterinary clinic there are 3 bus stops located within 200 metres radius of the junction. They cause traffic congestion and obstruction which impacts the exit / entry to Cumberworth Road. The new development will add to traffic at the junction.

- Concern about risk to children who use the playground on Heather Fold. Noble Ltd states 'it is understood that the site road was designed and constructed with spare capacity and is comfortably capable of being utilised to access this new development', but that was 20 years ago, and traffic in Skelmanthorpe has increased. Heather Fold, where residents and visitors already have to park on the road as off-road parking is insufficient.
- The site layout includes no turning for delivery vehicles who will have to turn in driveways or navigate in reverse back to the turning bay in Heather Fold.
- Heather Fold is an established cul de sac. Additional traffic will compromise the safety of children using the playground.
- Details within the submission by highways contains factual inaccuracies. *"Heather Fold is an existing traditional estate road off Cumberworth Road which is 5.5m wide with standard width 1.8 metre wide footways to both sides. Sight lines from this road along Cumberworth Road are good in both directions. Indicative proposals show the extension of Heather Fold into adjacent Public Open Land (POL). This is considered to be a potentially acceptable access to the POL site and preferable to an access from Huddersfield Road which provides less width and has existing driveways located to either side."* Heather Fold is 5.5metres wide with 1.8metre footpaths. A total width of 9.1metres. Cumberworth Road is 8 metres wide and the foot path width as it enters Heather Fold is 2.8 metres. This tapers back to standard width. The opening off Huddersfield Road, the distance between the two adjacent boundary fences is 11 metres. The footpath at the entrance, from the existing property boundaries to the kerb edge is 3 metres and runs at that width to the extent of line of sight. Huddersfield road is 8.4 metres wide. The statement that "Huddersfield road provides less width and has exiting driveways" is incorrect and misleading.
- The spur road is a road extension onto allocation H502, with a spur off to access the site. It is not a turning circle for HGV's. The direction, shape and size of the circle is contradictory to best practice turning area design.
- Concern how residents safely negotiate the area when HGV's are operating. Require 1.8m footpath access around the road perimeter to segregate vehicular movement from pedestrians. If the development were independent a turning circle with standard 1.8m footpaths should be provided.
- Dispute Highways comments regarding safety and congestion. In the process of considering application 2014/92889, we identified safety concerns and congestion issues on Cumberworth Road. The outline plan to provide access via Huddersfield Road was a vindication of these concerns. The Highways quote of no complaints in the last 12 months sidesteps previous submissions to committee. In segregating congestion from safety, the statement hides the full picture. Complaints have been made to the police in the last 12 months, with regard to safety and speed of traffic using Cumberworth Road. The Police referred the issue to Highways safety who responded stating no suitable lampposts were available to allow traffic calming installations. There are two suitable lampposts at the junction with Heather Fold. The fatality involved a motorcycle accelerating beyond 60mph.
- With reference to the LDP, building on the potential access to Huddersfield Road, denies vehicular and pedestrian segregation. It blocks a direct access

from H502 to the village centre. This leaves a convoluted route for pedestrians and cyclists and encourages vehicular travel to amenities, in contrast to the objectives of planning policy in the LDP.

- Concern about disruption during the building process. Request consent be conditional with the requirement that construction access is via Huddersfield Road. Access from Heather Fold should only occur when the four houses are signed off by building control. The fifth house accessed from Huddersfield Road, should be constructed last and with construction access from Huddersfield Road.
- Concerned about the impact on traffic flow on Cumberworth Road.
- The plan submitted contains an extension to Heather Fold, notionally as a turning circle. This is proposed as a road to be adopted. Given that the bin collection area is within the service area of the existing adopted road, Heather Fold, all the new extension should be treated as a part of the private driveways of the proposed new development. There is no reason to adopt the extension because it will terminate and not be used to facilitate any access to any other potential future developments.

### **Drainage**

- A culvert runs through Heather Fold, has this been investigated?
- The gardens of 14, 16 and 18 Heather Fold already suffer from water-logged gardens. This has worsened since the removal of trees (identified on the proposed plans as remaining) whose canopies provided shelter and whose roots absorbed rainfall. The gardens will be completely unusable.
- The driveway has sunk over the drain area despite being rectified by Noble Homes.
- Major concerns regarding drainage issues and the impact it might have on already waterlogged back gardens at Heather Fold.

### **Ecology / Trees**

- Concern trees and bushes have been cut down with no consideration given for wildlife.
- Over 7 months Nobles have been clearing the site of all habitation including several large trees. The previous Ecology Survey clearly states that the trees should not be removed between the months of March to September, to avoid causing harm or disturbance to nesting birds. Tree surgeons, instructed by Nobles, removing trees on 10th August 2017. The tree surgeons even tried to access the site through heather fold and were informed permission had not been granted and were turned away.
- The site layout is inaccurate as it shows trees in situ both now and after construction which have actually being felled. The majority of the trees shown no longer exist.

### **Residential Amenity**

- Concern about the orientation of the two closes properties to 18 Heather Fold. Both directly look over and into two bedrooms at the rear of our property causing an invasion of privacy.
- Concern about security and privacy to the rear of properties off heather Fold. Retaining a low dry stone wall would leave back gardens exposed to being overlooked and accessed. Concern about car headlights shining into the rear of properties.

## **Other**

- The development is now for fewer dwellings larger in proportion, this is not the best use of available building land.
- Object to the stub road from Heather Fold which has no purposes other than to seek to pre-determine future application on land adjacent.
- D. Noble Ltd have erected a billboard stating 5 dwellings is to be built. This is a presumption which shows scant respect for the planning process.
- Query why a Phase 2 Contamination Land report is required.
- Significant disturbance to residents on Heather Fold from construction traffic, noise and pollution.
- The materials to be used appear to be inconsistent with properties on Heather Fold. It would be better to continue the existing style, rather than make one style of house more desirable and affecting values.
- The current application is not legal. It gives the ordnance survey grid reference that would place the development on the entrance to Shelley High School and not the site of the proposed development. A new application with the correct ordnance survey grid reference be submitted.
- Disagree the application can be re-validated, the application has been incorrectly validated and proceeded through two consultation processes taking over 6 months. It is the applicant's responsibility to ensure all relevant documents pertinent to the application are completed correctly. A new application with fees and costs should have been applied.
- The application is now a full seven months from the original application date, the various reports from council officers are no longer valid and new reports should be submitted. There should be a proper examination of the application.
- The new application carries the same number as the original. This is not correct procedure. It is impossible for anyone to properly catalogue the documentation between the old and the new application, this is neither a fair or reasonable approach and would be open to statutory challenge.

Denby Dale Parish Council - Objections due to highways and access issues. This application is part of Site H502 in the Local Plan which is now subject Government Inspection. We note that the access points in the Local Plan do not include Heather Fold but show a larger south/west onto Cumberworth Road/Ponker Lane and a further access point between 63a/65 Huddersfield Road. This application would open Heather Fold to a larger amount of vehicles than the five dwellings shown.

Councillor Jim Dodds - I would like to make known my objections to using Heather Fold for access to the above planning application. I believe that if this is allowed Heather Fold will become a rat run for parents getting their children to Shelley College. Am I correct in assuming that in the original application access was not via Heather Fold?

## **8.0 CONSULTATION RESPONSES:**

### **8.1 Statutory:**

**K.C Highways Development Management** – No objections

**K.C Flood Management** – No objections

## 8.2 **Non-statutory:**

**K.C Environmental Services** – No objections

**K.C Ecology Unit** – No objections

## 9.0 **MAIN ISSUES**

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

## 10.0 **APPRAISAL**

### Principle of development

10.1 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).

10.2 The site is allocated as Provisional Open Land (POL) on the Unitary Development Plan. As such the proposal is considered against Policy D5. Policy D5 states that:

*“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”*

10.3 Policy D5 is considered to be up to date and must be weighed in the balance. Paragraph 14 of the National Planning Policy Framework (NPPF) states however, that there is a presumption in favour of sustainable development. Where Local Planning Authorities cannot demonstrate a five year deliverable supply of housing, this titled balance applies.

10.4 Consideration must therefore be given as to whether the proposal is sustainable development. The NPPF identifies the dimensions of sustainable development as economic, social, and environmental (Para.7). It states that these facets are mutually dependent and should not be undertaken in isolation (Para.8). The proposal has been assessed against each role as follows. A proposal for 5 dwellings provides economic gains by providing business opportunities for contractors and local suppliers. There will be a social gain through the provision of new housing at a time of general shortage. The development of a greenfield site represents an environmental loss. However, whilst national policy encourages the use of brownfield land for development it also makes clear that no significant weight can be given to the loss of greenfield sites to housing when there is a national priority to increase housing supply.

- 10.5 In terms of more detailed issues within the site, NPPF paragraph 58 sets out the requirement for developments to “*optimise the potential of the site to accommodate development*”. As this proposal only covers part of the POL allocation, the proposal would need to demonstrate that it does not prevent the remainder of the POL site being developed. The POL allocation includes undeveloped land to both the west and east of the site. Planning permission has previously been granted for two dwellings on land to the east to be accessed off Huddersfield Road, and therefore this application needs to consider future access to the remainder of the POL allocation to the west. In this case the proposed turning head within the site adjacent to Heather Fold would not prevent access to the rest of the POL allocation.

*Kirklees Publication Draft Local Plan*

- 10.6 The Publication Draft Local Plan (PDLP) was submitted to the Secretary of State on 25<sup>th</sup> April 2017 for examination in public, which began in October 2017. The site forms a housing allocation (H502) within the PDLP. 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.
- 10.7 The NPPF provides guidance in relation to the weight afforded to emerging local plans, paragraph 216 which states:

*216. 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).*

- 10.8 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.*



- 10.9 Given the scale of the development when assessed against the wider context of the Local Plan the application could not be deemed to be premature as it is not considered to be central to the delivery of the Local Plan. Whilst Officers do not consider that the application is premature in terms of the PDLP, it has been confirmed that given the advanced stage at which the Local Plan has progressed considerable weight should be afforded to the policies within the PDLP. An assessment of the relevant local plan policies is therefore undertaken throughout this report.

#### *The Planning Balance*

- 10.10 In assessing the planning balance of the application consideration has been given in relation to social, economic and environmental factors. The social and economic benefits the proposal would provide through the provision 5 dwellings would make a contribution to the housing land supply. In conclusion the planning judgement on the proposal is that the benefits of housing provision weigh heavily in favour of the proposal and the adverse impacts of the loss of this green field and POL site do not demonstrably outweigh the benefits of developing the site, when considered as a whole along with all other relevant material considerations. The proposal would accord with the Core Planning Principles of the NPPF.

#### Urban Design issues

- 10.11 The core planning principles in the NPPF provide guidance on design and state that new development should “*always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.*” Paragraph 56 states, “*The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.*” Paragraph 58 states that decisions should aim to ensure that developments establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work, and visit. These policies are further supported by Policies BE1 and BE2 of the UDP which state that new development should create or retain a sense of local identity and is in keeping with surrounding development in respect of design and layout. Policy PLP24 of the PDLP states that good design should be at the core of all proposals such that the form, scale, layout, and details of all development respects and enhances the character of the landscape.
- 10.12 The proposed dwellings would be relatively substantial in their footprint and would be two storey in height. It is considered their design and scale would be satisfactorily in-keeping with the character of the area where dwellings are predominately two storey in height. Revised plans were secured for Plot 5, along with a street scene drawing as Plot 5 was originally considered to be out of character with the street scene and failed to meet the relevant distances to neighbouring properties. Plot 5 has now been reduced in scale and its design revised so that it will sit comfortably between existing dwellings on Huddersfield Road without harming the visual amenity of the street scene.

- 10.13 The proposed construction materials are Marshalls Cromwell pitched stone with artstone heads and cills, and Grey Marley Modern roof tiles. Concerns have been raised in the representations received that the materials are inconsistent with properties on Heather Fold and should continue the existing style. Neighbouring properties which flank the site comprise a mix of stone, brick and render, and it is considered artificial stone and concrete tiles may be satisfactorily in keeping with neighbouring properties subject to samples being inspected. The stone is however light in colour in comparison to older properties along Huddersfield Road and further consideration needs to be given to how Plot 5 can be assimilated satisfactorily into the street scene. A condition requesting samples of facing and roofing materials is therefore appropriate.
- 10.14 The number of dwellings would amount to approximately 20 dwellings per hectare. This is considered to be an acceptable response to the site which is flanked by existing housing which proposes a constraint to where dwellings can be sited without unduly impacting on residential amenity.

#### Residential Amenity

- 10.15 Policy BE12 of the UDP sets out the normally recommended minimum distances between habitable and non-habitable room windows. The nearest neighbouring properties which would be affected by the proposed development include Nos. 49, 51 and 61a Huddersfield Road, the two approved dwellings to the east of the site, and Nos. 14, 15, 16 and 18 Heather Fold to the south. Concerns have been raised in the representations received that the proposal would result in a loss of privacy to neighbouring properties.
- 10.16 In respect of the impact on No.49, this is a semi-detached two storey dwelling which has habitable room windows in the rear elevation overlooking the site. There would be a distance of 21 metres from Plot 4 to this neighbouring property. It is considered due to this distance there would be no detrimental overbearing impact or loss of privacy.
- 10.17 In respect of the impact on No.51, this is a semi-detached two storey dwelling, also with habitable room windows in the rear elevation overlooking the site. There would be a distance of over 29 metres from Plot 3 to this neighbouring property. It is considered due to this distance there would be no detrimental overbearing impact or loss of privacy.
- 10.18 In respect of the impact on No.61a, this is a single storey property with habitable room windows fronting onto the site. The nearest proposed dwelling, plot 3, would sit to the south-east of this property and would not have a direct relationship. No windows are proposed in the side elevation of Plot 3 and there would be no overlooking of this neighbouring property.
- 10.19 In respect of the impact on the approved dwellings to the east of the site, the block plan now shows the proposed relationship to these properties. There would be a distance of between 8 and 12 metres from the proposed rear elevation of Plot 1 of this adjoining development to the proposed Plot 4. The design of Plot 4 however includes a single storey garage and study adjacent to the shared boundary, and due to the retention of the existing hedge it is considered there would be no detrimental loss of privacy or overbearing impact.

10.20 In respect of the impact on neighbouring properties off Heather Fold, the relationship from Plots 1 and 2 has been considered in response to concerns that these properties would directly face into bedrooms on the rear elevation of No.18 Heather Fold causing an invasion of privacy. On the revised plan there would be a distance of 25 metres from the front elevation of Plot 1 to No.18 Heather Fold, and a distance of 21 metres to No.16 and no.14. This meets the recommended distance set out in policy BE12 of the UDP. The dwellings are not directly facing and it is considered there would not be a detrimental overlooking or overbearing impact. Along the shared boundary with properties off Heather Fold it is proposed to erect a 2m high close boarded fence to avoid car headlights shining into ground floor windows. This will also secure the rear garden areas of these properties and avoid a detrimental loss of privacy.

#### Ecology Issues

10.21 UDP Policy EP11 requests that applications for planning permission should incorporate landscaping which protects/enhances the ecology of the site. A Great Crested Newt Survey supports the application.

10.22 The Council's Ecologist is satisfied that the risk of killing and injuring Great Crested Newts as a result of the proposed development works is low. However, due to the legal protection of this species, specific measures are required during construction. This can be addressed by condition. In addition information is required on how the development will provide an ecological enhancement. A condition is therefore suggested to secure an Ecological Design Strategy. It is noted that during the course of the application, the applicant has submitted a Mitigation Strategy and Site Enhancement report, however the Ecologist has raised concerns about the content of this document and therefore the suggested conditions remain appropriate to include. Subject to conditions, ecological matters are addressed and the proposal is considered to comply with the aims of chapter 11 of the NPPF.

#### Highway issues

10.23 Policy T10 of the UDP sets out the matters against which new development will be assessed in terms of highway safety. A significant number of objections have been raised by residents of Heather Fold regarding the highway safety aspects of accessing four of the dwellings via this cul-de-sac. There is also significant concern about the possibility of future access to the wider housing allocation in the Publication Draft Local Plan via Heather Fold.

10.24 In respect of the proposed application for five dwellings, each property includes either an internal or detached garage along with off-street parking in line with Kirklees UDP parking standards. Bin storage and collection points are shown. Heather Fold is an existing traditional estate road off Cumberworth Road which is 5.5m wide with standard width 1.8 metre wide footways to both sides. Sight lines from this road along Cumberworth Road are good in both directions. Highways Development Management (HDM) have secured revisions to secure adequate carriageway and footway widths for the proposed adoptable section of the access, the remainder of the access would be a private drive. There are no highway objections to the proposed development.

10.25 HDM has also considered the objections raised by local residents. These include concerns that access from Heather Fold to serve the development would be dangerous, and that the inclusion of a turning head at the top of Heather Fold may facilitate future access to a housing allocation identified in the PDLP, where no access from Heather Fold has been identified. HDM have provided the following comments:

- *It is apparent that this application has a long history, and this was looked into before Highways DM submitted comments in this specific application.*
- *The outline application from 2014 sought and received approval for access from Huddersfield Road, however, this does not mean that Heather Fold is deemed an unsuitable route of access to this pocket of land. This application has been considered on its individual merits.*
- *In term of access to the POL site, it would be regarded as good practice to “future-proof” developments against prospective or potential development. An adequate estate road of 5.5m with 2.0 footways is required so as not to preclude this access from possible, but not granted, future use.*
- *The committee notes submitted by Highways DM for application 2014/92889 (for six properties) estimated traffic generation to be in the region of 3 two-way movements in both the morning and evening peaks. If the same estimate is used for the four properties gaining access from Heather Fold in this instance, the highway network should be able to take this additional traffic without issue.*
- *Cumberworth Road has an excellent safety record. The fatal accident in May 2017 was the first reported injury accident on the full length of Cumberworth Road and Ponker Lane since 2007. According to police reports, this particular collision occurred within the rural, 60mph section of Ponker Lane some 600m from the junction of Heather Fold and Cumberworth Road where the nature of the highway is very different to the built-up section between Dene Road and Huddersfield Road.*
- *With regard to this proposal, Highways DM has no wish to resist the granting of planning permission on highway capacity or specific road safety grounds.*

10.26 The width of the access road has been widened in accordance with the comments from Highways DM and is now considered acceptable. A 1.8m wide footway is now shown around the turning head, in response to safety concerns, including concerns raised by residents regarding segregation for vehicles and pedestrians. The issue of future access to a proposed housing allocation in the PDLP is not a matter for this application, however the application has demonstrated through the provision of the turning head that the proposal would not prevent the remainder of the POL site being developed.

10.27 With the inclusion of appropriate conditions, the proposals are considered acceptable from a highway safety and efficiency perspective, complying with the aims of Policy T10 of the UDP and Policy PLP21 of the PDLP.

### Drainage issues

- 10.28 The NPPF sets out the responsibilities for Local Planning Authorities in determining planning applications, including Flood Risk Assessments, taking climate change into account and the application of the sequential approach. Concerns have been raised about drainage, as to whether a culvert which runs through the site has been investigated, and that the gardens of nos.14, 16, and 18, Heather Fold already suffer from water-logged gardens.
- 10.29 The applicant was asked to investigate where a culvert runs through the site and its condition. There are known flood incidents downstream, so this is a sensitive area and the culvert has potential to cause a significant issue.
- 10.30 The applicant has carried out an investigation and has established the location of a French drain in poor condition which is shown on the submitted layout plan. The applicant has also submitted a drainage plan for consideration. It is proposed the existing French drain would be diverted via a new drainage pipe located further away from the proposed dwellings. Revisions have also been made to the layout to move plot 4 further away from the existing drain. Proposed floor levels for buildings and roads have also been included as well as approximate levels of the existing French drain, in locations as it crosses the site. The Lead Local Flood Authority (LLFA) has assessed this additional information and is satisfied that the proposed measures to renew this system are reasonably practical, with flows to be restricted and attenuation provided. It is noted the French drain, including new drainage pipe diversion, will not pick up any of the new surface water drainage from the site which is considered to be acceptable as the area is served by combined sewers and the ground has been observed as consisting of cohesive soils and not suitable for soakaways. The relocation of Plot 4 will minimise the risk of waterlogging. The LLFA raises no objections and no particular conditions are required. The proposal is considered to comply with the aims of chapter 10 of the NPPF.

### Other Matters

- 10.31 Environmental Services have reviewed the Phase I Contaminated Land report and agree with its conclusions. They therefore recommend the submission of a Phase II report and associated remediation strategy, in accordance with Policy G6 of the UDP, Policy PLP53 of the PDLP, and chapter 11 of the NPPF.
- 10.32 In respect of air quality, the development has been assessed in accordance with the West Yorkshire Low Emission Strategy Planning Guidance. The development is considered to be a minor development and requires the provision of one charging point per dwelling. This is recommended to be conditioned and would comply with the aims of chapter 11 of the NPPF.

### Representations

- 10.33 In so far as the concerns raised have not been addressed above:

- 10.34 Concern trees and bushes have been cut down with no consideration given for wildlife / Nobles have been clearing the site of all habitation including several large trees. The previous Ecology Survey clearly states that the trees should not be removed between the months of March to September, to avoid causing harm or disturbance to nesting birds.  
**Officer Response:** It is noted the developer has already cleared vegetation and felled trees. The Council's Ecologist has suggested conditions to secure an Ecological Design Strategy to include how the development will provide an ecological enhancement.
- 10.35 The site layout is inaccurate as it shows trees in situ both now and after construction which have actually being felled. The majority of the trees shown no longer exist.  
**Officer Response:** The applicant was asked to provide an up to date existing block plan to address this issue, along with details of proposed boundary treatment.
- 10.36 Concern about security and privacy to the rear of properties off heather Fold. Retaining a low dry stone wall would leave back gardens exposed to being overlooked and accessed. Concern about car headlights shining into the rear of properties.  
**Officer Response:** A boundary detail plan has been secured which shows that along the shared boundary with properties off Heather Fold, a 2m high close boarded fence would be erected to avoid car headlights shining into ground floor windows. This will also secure the rear garden areas of these properties and avoid a detrimental loss of privacy.
- 10.37 The development is now for fewer dwellings larger in proportion, this is not the best use of available building land.  
**Officer Response:** The number of dwellings would amount to approximately 20 dwellings per hectare. This is considered to be an acceptable response to the site which is flanked by existing housing which proposes a constraint to where dwellings could be sited without impacting on residential amenity.
- 10.38 D. Noble Ltd have erected a billboard stating 5 dwellings is to be built. This is a presumption which shows scant respect for the planning process.  
**Officer Response:** This is not a material planning consideration.
- 10.39 Query why a Phase 2 Contamination Land report is required  
**Officer Response:** Environmental Services recommend a Phase II report as the submitted Phase I report recommends sampling is carried out to ascertain ground conditions.
- 10.40 Concern about significant disturbance to residents on Heather Fold from construction traffic, noise and pollution.  
**Officer Response:** Temporary disruption is a normal part of the construction process and is not a reason to refuse an application.
- 10.41 Denby Dale Parish Council raised objections due to highways and access issues. They note the application is part of site H502 in the current Draft Local Plan and the access sites in the Local Plan do not include Heather Fold but does include a larger area South/West onto Cumberworth Road/Ponker Lane and a further access point between 63a/65 Huddersfield Road.  
**Officer Response:** This matter has been addressed in the highways section above.

- 10.42 The spur road is a road extension onto allocation H502, with a spur off to access the site. It is not a turning circle for HGV's. The direction, shape and size of the circle is contradictory to best practice turning area design.  
**Officer Response:** The issue of future access to a proposed housing allocation in the PDLP is not a matter for this application, however the applicant has demonstrated through the provision of the turning head that the proposal would not prevent the remainder of the POL site being developed. Highway Services raise no highway safety objections to the design of the turning head.
- 10.43 Concern how residents safely negotiate the area when HGV's are operating. Require 1.8m footpath access around the road perimeter to segregate vehicular movement from pedestrians. If the development were independent a turning circle with standard 1.8m footpaths should be provided.  
**Officer Response:** This matter has been addressed through the provision of 1.8m footways to each side of the turning head.
- 10.44 Dispute Highways comments regarding safety and congestion. In the process of considering application 2014/92889, we identified safety concerns and congestion issues on Cumberworth Road. The outline plan to provide access via Huddersfield Road was a vindication of these concerns. The Highways quote of no complaints in the last 12 months sidesteps previous submissions to committee. In segregating congestion from safety, the statement hides the full picture. Complaints have been made to the police in the last 12 months, with regard to safety and speed of traffic using Cumberworth Road. The Police referred the issue to Highways safety who responded stating no suitable lampposts were available to allow traffic calming installations. There are two suitable lampposts at the junction with Heather Fold. The fatality involved a motorcycle accelerating beyond 60mph.  
**Officer Response:** Highway Services have assessed the proposal and considered the comments received, however they raise no objections.
- 10.45 The revised plans change the footprint of two types of houses, both enlarging the size of properties without increasing occupancy. The outline plan allowed for 6 dwellings, the application reduced that to five, the revision provides a more lucrative opportunity for the developer.  
**Officer Response:** The revised house types have been assessed and it is considered there would be no detrimental impact on visual or residential amenity.
- 10.46 With reference to the LDP, building on the potential access to Huddersfield Road, denies vehicular and pedestrian segregation. It blocks a direct access from H502 to the village centre. This leaves a convoluted route for pedestrians and cyclists and encourages vehicular travel to amenities, in contrast to the objectives of planning policy in the LDP.  
**Officer Response:** The future layout of the housing allocation identified in the Draft Publication Local Plan including pedestrian routes to amenities is not a matter for this application.

- 10.47 Concern about disruption during the building process. Request consent be conditional with the requirement that construction access is via Huddersfield Road. Access from Heather Fold should only occur when the four houses are signed off by building control. The fifth house accessed from Huddersfield Road, should be constructed last and with construction access from Huddersfield Road.  
**Officer Response:** Disruption is a normal part of the construction process. A condition to restrict access to Huddersfield Road only or to phase the development would be unduly onerous. It is noted however that a temporary access has been created into the site from Huddersfield Road, indicating that access is likely to be from Huddersfield Road in any case.
- 10.48 Major concerns regarding drainage issues raised by Flood Management and the impact it might have on already waterlogged back gardens at Heather Fold.  
**Officer Response:** This matter is being addressed.
- 10.49 Details within the submission by Highways contains factual inaccuracies. The statement that “Huddersfield road provides less width and has existing driveways” is incorrect and misleading.  
**Officer Response:** Whilst Huddersfield Road itself is wider than Cumberworth Road, the gap between nos.49 and 51 Huddersfield Road would not allow for such a wide access as that which already exists at the Cumberworth Road/Heather Fold junction without the use of third party land to provide tapered kerbs and footways. This was the intended implication of this statement and in this respect it remains correct.
- 10.50 The current application is not legal. It gives the ordnance survey grid reference that would place the development on the entrance to Shelley High School and not the site of the proposed development. A new application with the correct ordnance survey grid reference be submitted.  
**Response:** This is noted, however the red boundary clearly details the application site.
- 10.51 Disagree the application can be re-validated, the application has been incorrectly validated and proceeded through two consultation processes taking over 6 months. It is the applicant’s responsibility to ensure all relevant documents pertinent to the application are completed correctly. A new application with fees and costs should have been applied.  
**Response:** The application was originally submitted with the incorrect ownership certificate. This matter was brought to the attention of the Local Authority and raised with the applicant who confirmed the incorrect ownership certificate had been submitted. A correct certificate was provided and the application re-validated. No new fee is required.
- 10.52 The application is now a full seven months from the original application date, the various reports from council officers are no longer valid and new reports should be submitted. There should be a proper examination of the application.  
**Response:** A new 25 day period of publicity has been undertaken, and all relevant consultees have been consulted following the re-validation of the application.



10.53 The new application carries the same number as the original. This is not correct procedure. It is impossible for anyone to properly catalogue the documentation between the old and the new application, this is neither a fair or reasonable approach and would be open to statutory challenge.

**Response:** This is the same application for the same development, it has been re-validated to address a technical issue that the incorrect ownership certificate had been originally submitted. All publicity and consultations have been carried out following the re-validation of the application and no third party has been prejudiced.

10.54 Denby Dale Parish Council has raised objections due to highways and access issues. This application is part of Site H502 in the Local Plan which is now subject Government Inspection. We note that the access points in the Local Plan do not include Heather Fold but show a larger south/west onto Cumberworth Road/Ponker Lane and a further access point between 63a/65 Huddersfield Road. This application would open Heather Fold to a larger amount of vehicles than the five dwellings shown.

**Response:** In the MIQs (Matters, Issues and Questions) in the Stage 4 hearings of the Kirklees Rural Sub-Area, the Inspector has raised the question of whether housing allocation site H502 can be developed without accessing a southern strip which is within the green belt. The Inspector has noted the site has potential access points at Heather Fold, Bedale Drive and Cumberworth Road. Of these, there is potential to have two access points (off Heather Fold and Bedale Drive), which together would have the potential to serve the bulk of the site although access to Bedale Drive would include using the southern strip of this site. Alternatively, the site access off Cumberworth Road and Heather Fold would facilitate the potential to develop full site. This is an unresolved matter, relevant to this application in so far as it is necessary to ensure this proposal does not stymie future development of H502.

## 11.0 CONCLUSION

11.1 The principle of development is accepted on this site which is allocated as POL on the UDP proposals map following the granting of a previous application for outline permission by members of the Heavy Woollen Planning Sub-Committee (in accordance with officer recommendation) under application reference 2014/92889. The proposal, comprising of five dwellings, is considered to represent an appropriate response to the site and its surroundings. The benefits of housing provision weigh heavily in favour of the proposal given the councils lack of a 5 year housing supply and the adverse impacts of the loss of this green field site do not demonstrably outweigh the benefits of developing the site, when considered as a whole along with all other relevant material considerations. The proposal is considered to accord with the Core Planning Principles of the NPPF and would not adversely impact visual and residential amenity and highway safety.

11.2 The recommendation is to 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 the report.

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

1. 3 year time limit
2. Development shall be implemented in accordance with the plans
3. Samples of all construction materials
4. Scheme for the part of the adoptable estate road
5. Surfacing and draining of vehicle parking areas
6. Phase II Report
7. Provision of electric charge points
8. No development to take place until a method statement for the avoidance of direct impacts to great crested newts has been submitted and approved.
9. No development to take place until an ecological design strategy addressing ecological enhancement has been submitted and approved.
10. Boundary treatment to be provided in accordance with the block plan
11. Removal of permitted development rights for new openings
12. Removal of permitted development rights for extensions

### **Background Papers:**

Website link to the application details:

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2017%2f92504>

Certificate of Ownership –Certificate A signed and dated 13/07/2017.

Website link to the previously approved outline application reference 2014/92889:

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2014%2f92889>

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## Report of the Head of Strategic Investment

### HEAVY WOOLLEN PLANNING SUB-COMMITTEE

Date: 15-Mar-2018

**Subject: Planning Application 2016/93658 Formation of access road to serve existing quarry operations Bromley Farm Quarry, Barnsley Road, Upper Cumberworth, Huddersfield, HD8 8PD**

#### APPLICANT

Andy Manning

#### DATE VALID

31-Oct-2016

#### TARGET DATE

26-Dec-2016

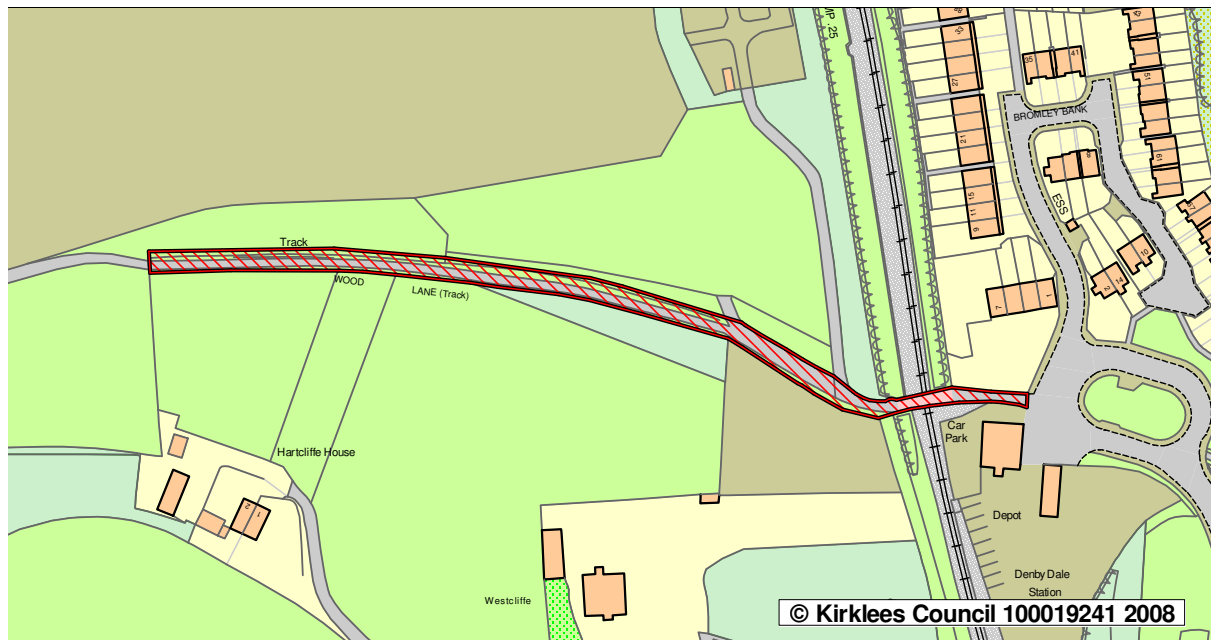
#### EXTENSION EXPIRY DATE

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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: Denby Dale**

No

Ward Members consulted

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**RECOMMENDATION: Approval**

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

**1.0 INTRODUCTION:**

1.1 This application is brought to the sub-committee for determination following a request from Cllr G Turner which states:

*"...I would like to request that the application for the new access to the Bromley quarry using wood lane and the bridge over the Penistone line be referred to the heavy woollen planning committee for decision and that prior to the committee meeting a site visit is undertaken.*

*I believe that the high levels of representation from interested parties and residents warrant a committee decision and a relevant site visit."*

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

**2.0 SITE AND SURROUNDINGS:**

2.1 The application site is on the Western periphery of Denby Dale Town Centre immediately adjacent to and north of Denby Dale Railway Station. The site comprises an existing access track (Wood Lane) and bridge over the Huddersfield to Sheffield railway line. The track currently provides agricultural access and occasional access to Bromley Farm Quarry and a nearby gas distribution station. A public right of way (DEN/119/10) runs through the application site.

**3.0 PROPOSAL:**

3.1 The applicant currently operates Bromley Farm Quarry which is immediately north of the application site. The quarry has operated in various forms since the 1940's but in more recent years has been accessed from a purpose built haul road adjoining the A635 which also serves the Council's Household Waste recycling facility and another quarry to the north-west which is now under restoration. However, the applicant has indicated that they do not own this road and agreement to use it has elapsed. Consequently, at present, the site operator has no means to export the remaining reserves.

- 3.2 The applicant therefore proposes to use an alternative access to the site which has been used in the past but, other than for emergency access, is precluded from being used to export mineral under the current planning permission.
- 3.3 The applicant has indicated that this would be a temporary arrangement for up to 5 years which will enable the remaining reserve of mineral on site to be extracted and allow the subsequent restoration and aftercare of the site to be carried out. Although the applicant has indicated that mineral extraction is only expected to last a further 12 months, a time period of 5 years is requested to allow flexibility with seasonal start dates, restoration and aftercare of the site. Following the 5 year period, the access would revert back to its use as an agricultural access to the site.
- 3.4 The applicant proposes to use ridged axel tipper vehicles to export the extracted mineral. The applicant estimates that this would involve a maximum of 38 two way HGV movements per day during the period mineral is being exported from the site. Once all the reserves have been removed the level of HGV traffic is likely to reduce significantly during the restoration and aftercare phases.

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

IDO 421 – Opencast clay mining (03.04.47)

DD 43 – Continue clay mining (Granted 06.12.49)

IDO/421/PR1 – First Periodic Review for proposed opencast clay mining (approval of scheme of conditions 21.05.10)

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

- 5.1 Following discussions with Officers the applicant provided the following additional information to support this application:
- A stage 1 road safety Audit
  - A full Transport Assessment
  - A supplementary planning statement addressing concerns raised by consultees
  - A Noise Assessment which considers the likely impact on the nearest noise sensitive receptors

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

**EP4** – Noise sensitive development  
**EP6** – Noise generating development  
**M3** – Proposals for Mineral Extraction  
**R13** – Development affecting public rights of way  
**T10** – Highway safety  
**T19** – Parking

6.2 Kirklees Publication Draft Local Plan (KPDLP): Submitted for examination April 2017

**PLP21** - Highway safety and access  
**PLP22** – Parking  
**PLP 28** - Drainage  
**PLP30** - Biodiversity and geo diversity  
**PLP 32** - Landscape  
**PLP36** – Proposals for mineral extraction  
**PLP52** - Protection and improvement of environmental quality

6.4 Supplementary Planning Guidance / Documents:

None of relevance

6.5 National Planning Guidance:

**Chapter 1** - Building a strong, competitive economy  
**Chapter 11** - Conserving and enhancing the natural environment.  
**Chapter 13** - Facilitating the sustainable use of minerals  
**Chapter 9** - Protecting Green Belt land  
**Chapter 10** - Meeting the challenge of climate change, flooding and coastal change

**7.0 PUBLIC/LOCAL RESPONSE:**

7.1 This application was publicised by the erection of 4 site notices in the vicinity of the site the mailing of 30 neighbourhood notification letters and an advertisement in the local press. 30 representations from members of the public have been received in connection with this proposal, 29 objections and 1 in support and the issues raised can be summarised as follows:

## Objections

- The proposal would have a detrimental impact on highway safety in the vicinity of the site due to the increase in HGVs
- A public right of way runs along Wood Lane and users of that route will be put at risk
- The bridge will not be able to support lorries of the size required
- The quarry causes problems with noise and dust and should now be prevented from operating further
- The proposed access will lead to noise nuisance being experienced by the nearest residential properties
- This proposal is likely to reduce house values in the area
- Heavy Vehicles are likely to cause damage to the bridge leading to debris falling onto the railway line
- The proposal would have a detrimental impact on local ecology
- Visibility at the junction of Wakefield Road and Wood Lane is poor and slow moving lorries will cause problems
- A high pressure gas pipe crosses the site and may be damaged by heavy vehicles
- The proposal will result in the deposit of debris on the highway
- The proposal will result in the generation of dust which will cause nuisance to local residents
- The surface of the access road is poor and constant use by HGVs would cause the surface to break up causing problems with drainage

## Support

- This proposal is good for the economy of the area and provides opportunities for continued local employment

Denby Dale Parish Council was consulted on this proposal and commented as follows:

*“No objections subject to Public Rights of Way approval.”*

## 8.0 CONSULTATION RESPONSES:

### 8.1 Statutory:

K.C Highways DM – No Objection subject to planning conditions which require;

- The submission and agreement of a traffic management plan
- A scheme detailing the provision of carriageway markings and signage which separates the site access from the railway station carpark and builder's merchants
- Details of the proposed fencing to separate pedestrians from vehicles

Health and Safety Executive – No Objections

Railway Infrastructure Manager - No objection subject to the implementation of:

- Parapet protection measures
- The imposition and monitoring of traffic control measures
- Restrictions on the weight limit for HGVs using the bridge

### 8.2 Non-statutory:

K.C Environmental Services – Initially raised no objections subject to planning conditions which require:

- All works vehicles using this access to be fitted with white noise reversing alarm systems
- Within 3 months of a permission being granted the submission of a scheme detailing how any noise complaints will be resolved
- Prior to development commencing the submission and approval of a dust suppression scheme
- Deliveries and dispatches to be restricted to 09:30 to 16:30

However, following further discussions have agreed that, bearing in mind the proposed level of traffic movements associated with this proposal, a start time of 08:30 would not lead to significant additional nuisance being caused.

K.C. PROW - No objection following the submission of additional information clarifying how vehicles and pedestrians would be managed and subject to appropriately worded warning signage being erected. PROW advise that:

- Signage would be required for both drivers and pedestrians
- Signage should inform pedestrians of the presence of vehicles and the banksmen operations



## 9.0 MAIN ISSUES

- Principle of development
- Residential amenity
- Landscape issues
- Highway issues
- Drainage issues
- Representations
- Other matters

## 10.0 APPRAISAL

### 10.1 Principle of development

The NPPF advocates that the purpose of the planning system is to contribute to the achievement of sustainable development and indicates that there are three dimensions to sustainable development (economic, social and environmental). Para. 7 of the NPPF goes on to indicate that these dimensions give rise to the need for the planning system to perform the following roles:

- 10.2 Economic role – contributing to a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements; including the provision of infrastructure;
- 10.3 Social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well being
- 10.4 Environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to low carbon economy.
- 10.5 Guidance in the NPPF also indicates that there is a presumption in favour of sustainable development and that in decision making, applications that accord with the development plan should be approved without delay. Furthermore the NPPF provides a positive approach to strong economic development. Paragraphs 19 and 20 state that: ‘...significant weight should be placed on the need to support economic growth through the planning system. To help economic growth, local planning authorities should plan proactively to meet the development needs of business and support an economy fit for the 21<sup>st</sup> century.’
- 10.6 Paragraph 142 of the NPPF states that minerals are essential to support economic growth and our quality of life. It is therefore important that there is a sufficient supply of material to provide the infrastructure, building, energy and goods that the country needs. However, since minerals are a finite natural resource, and can only be worked where they are found it is important to make the best use of them to secure their long-term conservation.

- 10.7 Annex 2 of the NPPF includes a definition of the term ‘minerals of local and national importance’. This lists a series of ‘minerals which are necessary to meet society’s needs’ and includes fire clay – the clay which is extracted from Bromley Farm Quarry is used by one of the country’s main manufacturers of clay pipes at their plant at Cawthorne and it is therefore seen as an extremely important local mineral.
- 10.8 This site is located within the Green Belt and it is therefore considered that the key consideration is first whether the proposed development is appropriate development within the Green Belt and, if not, whether there are any very special circumstances which clearly outweigh the harm that would be caused to the Green Belt by reason of inappropriateness or by any other harm.
- 10.9 Paragraph 79 of the NPPF states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and permanence.
- 10.10 Paragraph 87 of the NPPF confirms that inappropriate development within Green Belt is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 goes on to say that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very Special Circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm is clearly outweighed by other considerations.
- 10.11 Paragraph 89 of the NPPF lists a number of exemptions which are not considered to be inappropriate development and paragraph 90 lists forms of development which can be considered to be appropriate subject to the openness of the Green Belt being preserved and there being no conflict with the purposes of including land within the Green Belt. Mineral extraction is included as a form of development which is potentially appropriate in the Green Belt as stipulated paragraph 90. As this proposal would be directly associated with the transport of mineral from an active mineral site it is considered that it should be assessed in terms of minerals development for the purposes of the NPPF.
- 10.12 The site is immediately adjacent to an active mineral working allocation in the Kirklees Unitary Development Plan and minerals extraction area ME224b in 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.

In respect of the emerging Local Plan, the site remains within the Green Belt and has not been allocated for any specific purpose. 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.

- 10.13 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).*

10.14 As this proposal would facilitate the extraction of minerals from a site which is allocated as a mineral extraction site, it is considered that it would not conflict with the emerging local plan.

10.15 Whilst it is acknowledged that this proposal would have an impact on the local area (see sections below), on balance it is considered that the principle of temporarily using this access in connection with mineral extraction is acceptable subject to there being no conflict with local or national policy documents with regard to its associated impacts.

#### 10.16 Residential amenity

10.17 The eastern section of this site is immediately adjacent to the gardens of a number of residential properties which are likely to be the most affected by this proposal. It is considered that the principle effects on residential amenity associated with this development would be in respect of noise, dust/air quality and visual impact.

10.18 Noise – The applicant has provided a noise assessment to support this proposal which compares the existing noise climate with the predicted impact associated with the use of this access route by quarry traffic. The assessment considers 19 sensitive receptors located within the Bromley Park residential development which are considered to be the sites most likely to be affected by this proposal. The assessment concludes that this proposal would result in a potential impact of between negligible and moderate adverse. However, the absolute level of sound from road traffic and the quarry access is low and is within internal and external guideline levels at existing dwellings. Officers have reviewed this assessment and are in agreement with its conclusions.

10.19 Dust – this proposal has the potential to generate dust during dry periods as a result of HGV movements agitating material on the surface of the access. This is not uncommon during mineral extraction operations. However, measures can be implemented that can mitigate against such impact. These measures can include:

- dampening of materials for dust suppression as required to avoid re-circulating fine material
- self-sheeting lorries being employed to ensure vehicles entering and leaving the site are covered to prevent escape of materials during transport
- on site vehicle speeds being limited to reduce dust emissions
- wheel washing and water assisted road sweeping facilities to minimise the impact of trackout

- effective staff training in respect to the causes and prevention of dust including the provision of a method for visual dust monitoring across the Site
- 10.20 It is therefore proposed to require the submission and approval of a dust suppression scheme prior to the export of mineral to ensure dust generation resulting from this proposal is minimised.
- 10.21 Visual Impact – The visual impact associated with this proposal would relate to that associated with an increased number of HGVs passing residential properties in this vicinity. Having said this the majority of these residential properties are screened by existing mature vegetation which would act to screen HGV movements to a significant degree, particularly in the summer months. Bearing in mind the current level of HGV traffic associated with the building supply yard and existing bus movements, it is considered that, whilst this proposal will have an impact on visual amenity, this will be limited and for a temporary period. Consequently it is considered that this proposal will not have a significant additional detrimental impact on the visual amenity of the area.
- 10.22 It is therefore considered that this proposal would accord with Kirklees UDP policies EP4, EP6 and M3, KPDLP policies PLP36, PLP 52 and chapter 11 of the NPPF with regards to this proposals potential impact on residential amenity.
- 10.23 Landscape issues
- 10.24 Although the site lies within the Green Belt it carries no statutory designations and is considered to have a landscape character which can be described as Rural Fringe. Such landscapes are settled and intensively farmed creating a small scale, complex landscape of more varied landform and vegetation cover.
- 10.25 This proposal would see no significant alterations to the existing track and the only real impact on the landscape would result from an increase in HGV movements to this area. However, as previously outlined the area already sees such vehicle movements associated with existing activities in the vicinity. The site is well screened by existing mature vegetation which would prevent long distance views from the surrounding landscape. Consequently only near distance views from the PROW which crosses this site and the railway station would be possible. It is therefore considered that the character of this part of the landscape would only see a very limited change which would be intermittent.
- 10.26 It is therefore considered that this proposal would not result in a significant adverse impact on the area's landscape character and therefore accords with Kirklees UDP policy M3, PDLP policies PLP 32 and PLP36, and chapter 11 of the NPPF with regard to this proposal's potential impact on the local landscape.
- 10.27 Highway issues
- 10.28 The proposed access would be via a private road over rail bridge which is in the ownership of the applicant. The route has been used in the past to access quarry activities at Bromley farm and is currently used by non-quarry traffic to access agricultural land and a gas distribution station to the west of the railway line. The current planning permission for the adjacent quarry allows the use of this route to gain access to the quarry in an emergency only.

- 10.29 There is an uphill gradient as the track rises from the metalled part of Wood Lane and crosses the railway. The track itself is hard surfaced but materials vary comprising brick, stone concrete and tarmacadam. The narrowest point on the bridge measures approximately 3.6m and the geometry of the track at this point is such that it will not allow two way traffic or vehicular traffic and pedestrians together.
- 10.30 However, the applicant has produced a tracking assessment and swept analysis which indicates that a large tipper truck with dimensions of 10.9m x 2.5m can suitably negotiate the access junction and the road over rail bridge in order to access the quarry site.
- 10.31 This proposal would involve a maximum of 44 two way vehicle movements along this track to facilitate the staff and haulage operations. 38 of these vehicle movements would involve HGVs. The applicant has indicated that the HGVs would operate in tandem arriving and leaving the site together which would equate to one arrival slot and one departure slot every hour. The applicant has provided a transport assessment to support this application which indicates that the traffic generated by this proposal is not significant bearing in mind the current levels of traffic and as a consequence the existing highway network would not be adversely affected.
- 10.32 As the track is a PROW (DEN/119/10), there is the potential for conflict between pedestrians and the proposed vehicle movements. However, the applicant has put forward measures to reduce the risk to pedestrians using this route which can be summarised as:
- Warning signs alerting drivers to the possibility of pedestrians using the track and that pedestrians have the right of way at all times
  - HGV movements on the track to only take place when the banksman is present
  - The erection of a fence to the west of the bridge to provide a 2m wide route along the southern side of the access track to separate pedestrians from the vehicular route.
  - The regular management of vegetation and the upgrade of the ground to ensure pedestrians have a safe and suitable surface to use.
  - Signage to alert pedestrians to the potential presence of vehicles on the track and what procedures to follow.
- 10.33 The applicant has confirmed that a Traffic Management Plan (TMP) would be introduced to ensure that any adverse impacts associated with this development would be satisfactorily mitigated. The plan would include the following measures:
- All HGV traffic to be routed to and from the site from the east along Wakefield Road
  - All HGV movements across the bridge to be managed by an appropriately trained, qualified and certified banksman

- The site banksman to be notified of arrival time of incoming HGVs by processing plant
- Banksman to have radio communications with HGV drivers
- HGV movements to give-way to pedestrian movements when accessing/egressing the site
- Wheel washing facilities to be located on an area of hard surfacing west of the road over rail bridge

It is proposed to secure the submission and agreement of such a TMP prior to the export of mineral from the adjacent quarry via a planning condition.

10.34 Officers consider that subject to the measures indicated above, this proposal would not have a significant additional adverse impact on highway safety in the vicinity of the site and would therefore accord with Kirklees UDP policies M3, R13, T10, T19 and PDLP policies PLP 21 and PLP22.

#### 10.35 Drainage issues

10.36 The use of significant quantities of water to clean vehicles before exiting the site has the potential to cause problems as a result of inadequate drainage. This could be exacerbated by the deterioration of the surface of the access track as a result of HGV movements.

10.37 However it is considered that measures such as cut off ditches and lagoons could be implemented to mitigate against this impact. Should planning permission be granted it is proposed to include a planning condition requiring the submission and implementation of a scheme to address the issue of site drainage. Furthermore the applicant has confirmed that prior to development commencing a conditions survey would be carried out and the surface of the track repaired as required and subsequently maintained for the duration of operations.

10.38 This proposal would therefore accord with KPDLP policy PLP 28 and chapter 10 of the NPPF with regard to the provision of sustainable drainage.

#### 10.39 Representations

10.40 As previously indicated 29 letters of objection have been received in connection with this application, the relevant issues raised and associated responses can be summarised as follows:

The proposal would have a detrimental impact on highway safety in the vicinity of the site due to the increase in HGVs.

**Response:** This matter has been considered in the section of this report titled "Highway issues".

A public right of way runs along Wood Lane and users of that route will be put at risk.

**Response:** This matter has been considered in the section of this report titled "Highway issues".

The bridge will not be able to support lorries of the size required.

**Response:** The applicant has provided a structural survey in support of the application which indicates that the load bearing capacity of the bridge is sufficient to support the loads generated by this development.

The quarry causes problems with noise and dust and should now be prevented from operating further.

**Response:** the quarry has planning permission to continue operating until 2042 if required. This proposal would potentially see the removal of the remaining viable mineral and the site restored much earlier than this date.

The proposed access will lead to noise nuisance being experienced by the nearest residential properties.

**Response:** This matter has been considered in the section of this report titled "Residential amenity."

This proposal is likely to reduce house values in the area.

**Response:** The effect this development may have on the value of property in the area is not a material planning consideration and cannot therefore be considered in the assessment this or any planning application.

Heavy Vehicles are likely to cause damage to the bridge leading to debris falling onto the railway line.

**Response:** It is proposed to include a planning condition in a subsequent grant of planning permission which would require the installation of bridge parapet protection measures and that following an incident causing damage operations to cease until such time it is deemed safe to continue. Network rail must be notified of any damage caused to the bridge in order that adequate measures are taken to deal with such an incident.

The proposal would have a detrimental impact on local ecology.

**Response:** Whilst the site lies close to land forming part of the wildlife habitat network, the proposal would not involve any significant physical works being carried out on the access track and the works within the quarry site will only affect a relatively small area of land which is not ecologically sensitive.

Visibility at the junction of Wakefield Road and Wood Lane is poor and slow moving lorries will cause problems.

**Response:** Whilst it is acknowledged that visibility at this junction is not ideal, the applicant proposes that all HGVs leaving the site will turn left only and will not therefore have to pull out across the whole carriageway. Furthermore, the transport assessment carried out to support this application indicates that the 22 outbound movements per day associated with this proposal is well within the daily variation of traffic numbers travelling south along Wakefield Road. It is therefore considered that the additional traffic generated at this junction will have a negligible impact.

A high pressure gas pipe crosses the site and may be damaged by heavy vehicles.

**Response:** A high pressure gas pipe is in close proximity to this site and HGVs would need to cross over it once they enter the quarry area. Should planning permission be granted for this development it would be the developer's responsibility to ensure that any gas infrastructure is adequately protected. The HSE has been consulted with regard to the proposal and raised no objection and the pipeline operator has indicated that subject to adequate measures such as a reinforced crossing point this development would not detrimentally effect the existing gas infrastructure.

The proposal will result in the deposit of debris on the highway which could present a risk to highway safety.

**Response:** The applicant has indicated that a wheel wash facility would be provided for vehicles leaving the site and it is proposed to include a planning condition requiring the provision of such a facility and that all vehicle chassis and wheels are cleaned before they enter the public highway. Furthermore, the traffic management plan required, should planning permission be granted, would include the use of a mechanical road sweeper if required on the local highway network.

The proposal will result in the generation of dust which will cause nuisance to local residents.

**Response:** This matter has been dealt considered in the Section of this report titled "Residential amenity".

The surface of the access road is poor and constant use by HGVs would cause the surface to break up causing problems with drainage.

**Response:** This matter has been considered in this report in the section titled "Drainage issues".

## 11.0 CONCLUSION

- 11.1 Whilst historically the quarry associated with this proposal has been accessed via a purpose built haul road which enters the site from the north west, the applicant no longer has an agreement with the owner to use this route. As a consequence, there is a significant quantity of mineral of local and national importance remaining within an operational quarry and currently no means to transport the mineral from the site or complete site restoration. This proposal would allow the mineral to be exported and the site restored in advance of the planning permission deadline which allows mineral extraction from this site until 2042. The applicant has indicated that the most intensive period involving the transport of mineral is estimated to take 12 months and site restoration would be completed within 5 years of the commencement of this development.
- 11.2 It is considered that, although this proposal will have an impact on the immediate locality and it not an ideal access solution, this impact would be limited and for a temporary period only and measures could be implemented which would satisfactorily mitigate the effects of the development to an acceptable level, however this remains a balanced recommendation.
- 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 This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development would constitute sustainable development and is therefore recommended for approval.

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

1. Standard condition requiring implementation within 3 years
2. Condition requiring that the use of the access to cease within 5 years of the date of commencement of the development
3. The submission of a traffic management plan prior to development commencing.
4. The submission, agreement and implementation of a scheme detailing road markings, warning signage and safety fencing prior to development commencing.
5. The surface of the access road to be repaired to a satisfactory standard prior to the export of mineral from the adjacent quarry and a requirement that the surface is maintained for the duration of operations.
6. The submission, agreement and implementation of a drainage scheme prior to the export of mineral from the adjacent quarry.
7. The submission, agreement and implementation of a drainage scheme prior to the export of mineral from the adjacent quarry.
8. The submission, agreement and implementation of wheel washing arrangements prior to the export of mineral from the adjacent quarry.
9. The submission, agreement and implementation of a noise management plan prior to the export of mineral from the adjacent quarry.
10. The submission, agreement and implementation of a dust suppression scheme prior to the export of mineral from the adjacent quarry.
11. The operation of the access track to be limited to 08:30 to 16:30 Monday to Friday.
12. All HGVs using this route to be fitted with white noise reversing beepers
13. The submission, agreement and implementation of parapet protection measures prior to the use of the access.
14. A requirement to suspend operations if the bridge is damaged until it is deemed safe to continue
15. The implementation of a 5 mph speed limit for all vehicles on the access track.
16. The maximum gross weight of vehicles using the track not to exceed 24 tonnes.

**Background Papers:**

Application and history files.

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2016%2f93658>

Certificate of Ownership – Notice served on Mr J G Senior (agricultural tenant) on 20 October 2016.

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## Report of the Head of Strategic Investment

### HEAVY WOOLLEN PLANNING SUB-COMMITTEE

Date: 15-Mar-2018

Subject: Planning Application 2017/90312 Erection of 3 dwellings 49, Brooke Street, Cleckheaton, BD19 3RY

#### APPLICANT

M Hinchliffe

#### DATE VALID

07-Feb-2017

#### TARGET DATE

04-Apr-2017

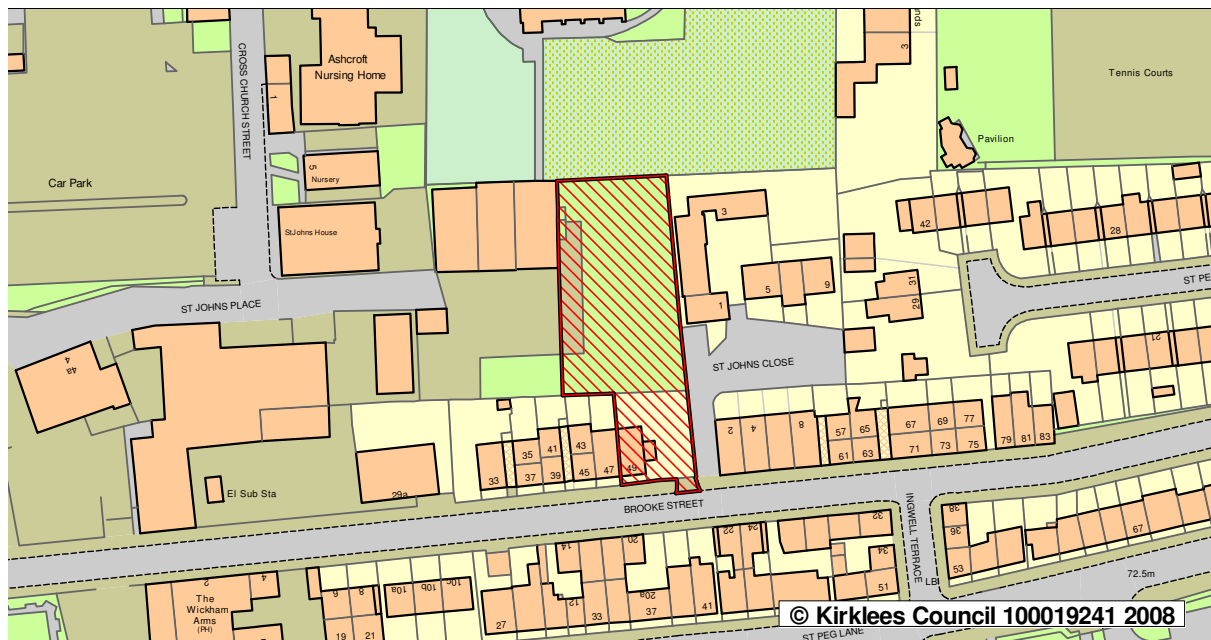
#### EXTENSION EXPIRY DATE

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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: Cleckheaton**

No

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.**

**1.0 INTRODUCTION:**

1.1 The application is brought to the Heavy Woollen Planning Sub Committee due to the significant number of representations received. This is in accordance with the Council's Scheme of Delegation.

**2.0 SITE AND SURROUNDINGS:**

2.1 The application site comprises an overgrown area of land to the rear (north) of Brooke Street, to the south of the Grade II listed St John's Church, and located between several industrial units and residential properties on St. John's Close to the east.

2.2 The site is located to the east of Cleckheaton Town Centre. The land slopes down from west to east. A row of protected trees runs along the northern boundary of the site.

**3.0 PROPOSAL:**

3.1 Permission is sought for the erection of three dwellings. These would be located within a two storey block, with Plot 3 stepped down in order to take account of the land topography. The proposed dwellings would be externally faced in artificial stone with concrete tiled, pitched roofs.

3.2 Access to the site would be taken from Brooke Street, between No.49 and 2 St John's Close, with two parking spaces to serve each dwelling, No.49 and a recently approved dwelling attached to No.49, in addition to a visitor parking space.

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

4.1 2016/91631 – Erection of one dwelling (attached to No.49) – approved (not yet implemented)

- 4.2 Several refused and withdrawn applications for erection of commercial buildings/use to the west of the application site

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

- 5.1 Through the course of the application, the applicant's agent was requested to make a number of amendments with regard to the design of the plots (taking into account the topography of the site) and number of units due to their proximity to No. 3 St John's Close. As such, the amended plan which is now under consideration shows the provision of 3 residential units in a terraced layout located on the north western part of the site

## **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 Site  
**BE1** – Design principles  
**BE2** – Quality of design  
**BE12** – Space about buildings  
**T10** – Highway Safety  
**G6** – Land contamination  
**EP4** – Noise sensitive uses  
**NE9** – Retention of mature trees

### Kirklees Publication Draft Local Plan:

- 6.3 **PLP 21** – Highway Safety and access  
**PLP 22** – Parking  
**PLP 24** – Design  
**PLP 28** – Drainage  
**PLP 30** – Biodiversity and geodiversity  
**PLP 33** – Trees  
**PLP 51** – Protection and improvement of local air quality

## National Planning Policy Framework

- 6.4 **Chapter 6** – Delivering a wide choice of high quality homes  
**Chapter 7** – Requiring good design  
**Chapter 11** – Conserving and Enhancing the Natural Environment  
**Chapter 12** – Conserving and enhancing the Historic Environment

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

- 7.1 The application was publicised by site notice and neighbour notification letter. As a result of the initial site publicity, four individual letters and two petitions of 6 and 35 signatures respectively were received. The concerns raised are summarised as follows:

#### **Submitted Documents**

- Application consists of a few documents only; would expect to see additional plans to show relationship of dwellings to nearby properties, in particular 3 St John's Close
- No.49 and approved terraced dwelling should be outline in blue and proposed parking areas to serve these shown in red
- Given nature of historic use of site, a Contamination Survey should have been submitted especially due to highly sensitive nature of proposed use
- There is no ecological report which is considered appropriate given the overgrown current state of the site

#### **Contamination**

- One of the historic uses of the site was as Bennetts Haulage and client is informed that there is still a commercial sized fuel tank buried under the site. This is not mentioned in the submitted documentation
- The site also appears to have been historically used for the tipping of waste and rubble which has raised the land level and whilst some of this has now been removed from site, it appears as though some remains and there is a potential issue caused by leaching of the waste.
- The Council's Environmental Health Team have had dealings with the site

#### **Highways**

- Brook Street is characterised by terraced houses with no provision for parking, leading to cars being parked on street. This is further exacerbated by parents parking on Brook Street for the nearby school
- The submitted plan indicates 13 parking spaces, including provision for the existing house and new end terraced house not yet built. In effect there will be 6 dwellings accessed by the private driveway. This exceeds the threshold of 5 dwellings and is contrary to guidance.
- Concern that proposals do include provision for a pedestrian footpath and proposed driveway is only 4.5m in width when it needs to be 4.8m wide to satisfy Highways requirements
- Position of bin store would result in wheelie bins being located close to entrance of private driveway on collection day, which are considered to reduce visibility for vehicles accessing and egressing the site, contrary to highway safety
- Concerned that Highways have responded to a scheme for 4 dwellings when the development requires the relocation of parking for Nos. 49 and 49A (therefore 6 dwellings)

- St John's Close is a privately owned driveway and the owner will not give permission for it to be used by emergency vehicles etc
- Do not consider that the access is to current standards. Would also expect to see plans submitted showing the proposed visibility splays and it as appears as though there are no details regarding this

### **Principle of Residential Development**

- Accept that the principle of development is acceptable in this location, the finer detail of design, scale and layout are not.

### **Grain of Existing Development**

- The proposal would result in a development which is uncharacteristic of the building line, providing a cramped appearance which is considered to have a detrimental impact upon the locality and upon the setting and appearance of the Grade II listed church to the rear.
- The substantial mass of the proposal is considered to result in unacceptable impact upon the open characteristic of the dwellings to the rear of Brooke Street and unacceptable levels of overshadowing and overbearing to the private areas and living accommodation of No.3 St John's Close.

### **Massing and Form**

- No plans show the finished ridge heights of the scheme nor any street scenes showing the gable end of No.3 St John's Close.
- Proposals will create a dominant solid mass of development resulting in a cramped infill giving the impression of a continuous built boundary around the boundary of the church grounds. This is considered to have a detrimental impact upon both the street scene and the setting and appearance of the Listed Building.

### **Overshadowing and Overbearing**

- The scale and proximity of the proposal to No. 3 St John's Close will lead to significant overshadowing to the internal living accommodation and garden/patio

### **External Appearance**

- the proposed development will utilise materials such as concrete tiles and art stone which are considered of fairly low quality – would expect to see materials more akin to the locality

### **Impact upon St Johns Church (Grade II listed)**

- Current scale and mass of the development in the location proposed would result in loss of views in and out of the church and considered to have a detrimental impact upon the appearance and setting of the listed building

### **Planning permission for 49 A Brooke Street**

- This approval will need an application for the variation of condition submitting to address the change to the parking provision for this new dwelling

### **Other Matters**

- Gable end of Plot 3 will be within 2 metres of wall of No.3 – concerns regarding the foundations of the development and impact this may have
- Access for emergency vehicles will not be given from St John's Close
- The applicant has previously removed trees at the entrance to the site
- The applicant has not consulted with the people that will be affected by this development
- Query where bins will be stored and impact of additional bins on pedestrian safety

7.2 The amended plans were re-advertised by neighbour notification letter. As a result, 2 further representations were received. The concerns set out above were re-iterated, in addition to the following:

- If permission is granted, request that restrictive covenants are put in place for additional extensions and outbuildings adjacent to boundary with Nos. 1 and 3 St Johns Close and to north of dwellings adjacent to boundary with church.
- If permission is granted, request that a restrictive covenant is put in place to restrict openings in side elevation of development to obscurely glazed.
- Advise that Laurel hedge between site and St Johns Close is not within the ownership of the applicant and request confirmation that this will be retained, in addition to request for confirmation as to proposed boundary treatment.

7.3 Councillor Andrew Pinnock has been in contact regarding the application after being approached by an objector. He was updated on the progress of the application following receipt of amended plans, however no further correspondence has been received.

## **8.0 CONSULTATION RESPONSES:**

### **8.1 Statutory:**

**KC Highways Development Management:** No objections subject to conditions

**The Coal Authority:** No objections subject to conditions

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

**KC Environmental Services:** No objections subject to conditions

**KC Arboricultural Officer:** Following receipt of further information, no objections

**KC Ecology Officer: (informal):** No objections subject to imposition of condition requiring bat boxes and footnote relating to nesting birds

**KC Conservation and Design: (informal):** No objections



## 9.0 MAIN ISSUES

- Principle of development
- Urban design issues
- Impact on setting of Listed Building (St. John's Church)
- Residential amenity
- Highway issues
- Planning obligations
- Representations
- Other matters

## 10.0 APPRAISAL

### Principle of development

- 10.1 The site is unallocated on the UDP and on the Draft Local Plan. Policy D2 of the Unitary Development Plan (UDP) states "planning permission for the development (including change of use) 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]". The relevant considerations are addressed later in this assessment. Subject to these not being prejudiced the proposal would be acceptable in principle in relation to policy D2.
- 10.2 The Council cannot currently demonstrate a five year supply of deliverable housing land. Consequently planning applications for housing are required to be determined on the basis of the guidance in NPPF paragraph 14. The NPPF states that the purpose of the planning system "is to contribute to the achievement of sustainable development" (para 6). NPPF notes that pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in peoples' quality of life (para 9). NPPF identifies the dimensions of sustainable development as economic, social and environmental roles (para 7). It states that these roles are mutually dependent and should not be undertaken in isolation. "Economic, social and environmental gains should be sought jointly and simultaneously through the planning system" (para 8). NPPF stresses the presumption in favour of sustainable development.
- 10.3 The site is located within a sustainable location in proximity to the local centre of Cleckheaton. A proposal for three dwellings provides economic gains by providing business opportunities for contractors and local suppliers. In accordance with the NPPF, new houses will support growth and satisfy housing needs thereby contribute to the building of a strong economy. There would be social gain through the provision of new housing at a time of general shortage. The principle of housing development is considered to be acceptable, in accordance with the aims of the NPPF.

### Urban Design issues

- 10.4 Policies BE1 and BE2 of the UDP are considerations in relation to design, materials and layout. Paragraph 60 of the National Planning Policy Framework (NPPF) stipulates that planning policies and decisions should not attempt to impose architectural styles or particular tastes and should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It is however, proper to seek to promote or reinforce local distinctiveness.

- 10.5 Since submission of the original application, the design and number of proposed residential units has been amended. The proposed units would take into account the topography of the site, with Plot 3 stepped down in relation to Plots 1 and 2. The dwellings would have pitched roofs with lean-to porches to the front and constructed of artificial stone with concrete tiled roofs. The section included within the submitted plans indicates the ridge height of the dwellings in relation to the existing industrial units to the west, and No.3 St John's Close to the east which demonstrates that the development would not appear out of scale relative to these buildings.
- 10.6 The proposals would represent a lower density of development than that which exists immediately adjacent the site to the south and east, however taking into account the context of the church to the north, this is considered to be appropriate.
- 10.7 The development would include adequate areas of private amenity space to the rear to serve each plot, providing a good standard of amenity for future occupiers, and the viability of the trees along the northern boundary would be ensured. On this basis, the proposals are considered to accord with Policies D2, BE1, BE2 and BE5 of the UDP and government guidance contained within Chapters 7 and 11 of the NPPF

#### Impact on setting of Listed Building

- 10.8 The siting of the development is such that the setting of the listed St John's Church is not considered to be harmed, and the proposed materials of construction are considered to be acceptable, also given the separation of the development from the church. It would be reasonable to impose a condition requiring samples of materials to be submitted prior to commencement of development on the superstructure of the dwellings, to ensure the use of a good quality product.

#### Residential Amenity

- 10.9 UDP Policy BE12 recommends that new dwellings should be designed to provide privacy and open space for their future occupants and physical separation from adjacent property and land. Policy BE12 recommends minimum acceptable distances
- 10.10 The proposed development would be orientated with principal elevations, and therefore habitable windows, facing north and south. One bathroom and one en-suite window would be located in the west gable of Plot 1, whilst a landing window would be located within the east gable of Plot 3.
- 10.11 Adequate separation distances would be achieved between the development and the existing dwellings on Brooke Street to the south, whilst the church grounds are located to the north. There would be no adverse impact upon adjacent occupiers to the west since the adjacent site is in commercial, and not residential use.

- 10.12 Through the course of the application amendments were requested to address concerns over the close proximity of the development to No.3 St John's Close. The amendments received removed one of the plots and relocated the units further south within the site in order to eliminate the direct relationship between the eastern gable of the development and a bedroom window within the facing elevation of No. 3. The east elevation of Plot 3 would now be located approximately 8.2m from the facing elevation of No.3 St John's Close, although due to the re-siting of the development, this would avoid a direct relationship with habitable room windows of No.3. It is also noted that separation distances less than those set out in Policy BE12 do exist within the immediate locality which does provide a context for the character of existing surrounding development.
- 10.13 On the basis of the above, it is considered that the proposals would not have an adverse impact upon residential amenity and would accord with the aims of the relevant policies.

#### Highway issues

- 10.14 UDP Policy T10 sets out the matters against which new development will be assessed in terms of highway safety.
- 10.15 The application site is located to the north of Brooke Street, which connects St Peg Close to Central Parade and is subject to a 30 mph speed limit with street lighting along its length.
- 10.16 A new access and private driveway is proposed of an acceptable width from Brooke Street with two off-street parking spaces located to the front of each new residential unit, in addition to two off-street parking spaces to serve No.49 and the recently approved attached dwelling (2016/91631). One visitor parking space would also be provided, in addition to a bin collection point to the western side of the access.
- 10.17 Internal turning for a car is provided within the site, and as the development is within 45m of Brooke Street, emergency vehicle access is adequate in this respect.
- 10.18 Visibility onto Brooke Street is good in both directions and sightlines of 2.4m x 43m are achievable.
- 10.19 Subject to the inclusion of conditions to secure the above, the proposals are considered to be acceptable from a highway safety and efficiency perspective, in accordance with Policies D2 and T10 of the UDP, as well as policy PLP21 of the PDLP.

#### Representations

- 10.20 The concerns raised in representations are addressed as follows:

#### Submitted Documents

**Response:** Through the course of the application, the applicant submitted a section showing the development in relation to adjacent buildings.

KC Environmental Services were consulted on the application and requested the imposition of conditions requiring the submission of further site intrusive investigations and any subsequent details.

The red line boundary includes the relevant land which is the subject of this application and this is considered to be acceptable.

#### Contamination

**Response:** There are no objections from KC Environmental Services to the application, subject to the imposition of conditions requiring site investigations and remediation to be carried out, and relevant details to be submitted to the Local Planning Authority for approval. KC Environmental Services hold no records of this site regarding tipping or the presence of a fuel tank, however the imposition of conditions set out above would address the concerns raised by objectors and require the developer to fully assess the site and deal with any risks to human health.

#### Highways

**Response:** The proposals have been assessed by KC Highways DM and considered to be acceptable from a Highways perspective.

#### Principle of Residential Development

Accept that principle of development is acceptable, but finer detail is not.

**Response:** This is addressed in the residential amenity section of the Officer Report.

#### Grain of Existing Development

**Response:** The proposals have been amended since original submission to reduce the number of plots and re-site them away from the northern and eastern boundaries. The density of the development is lower than the majority of existing surrounding development.

#### Massing and Form

**Response:** The proposals have been amended since original submission to reduce the number of plots and re-site them away from the northern and eastern boundaries. The density of the development is lower than the majority of existing surrounding development.

Section drawings were submitted through the course of the application to demonstrate its relationship with adjacent buildings.

#### Overshadowing and Overbearing

**Response:** This is addressed in the residential amenity section of the report.

#### External Appearance

**Response:** This is addressed in the visual amenity section of the report.

### Impact upon St Johns Church (Grade II listed

**Response:** The development is considered to have an acceptable impact upon the setting of the listed church, by virtue of its layout/siting and separation from the church.

Planning permission for 49 A Brooke Street

**Response:** Parking provision to serve the new dwelling approved under application ref 2016/19631 is shown to be included within the red line boundary of this application site, which amounts to a change to the approved plans. However, this does not prevent determination of the current application ref 2017/90312.

### Other Matters – Impact on foundations:

**Response:** The proposals have been amended to remove one of the plots and increase the distance between the development and No.3.

### Access for emergency vehicles will not be given from St John's Close

**Response:** The agent has confirmed that this is not intended to be the case.

### Planning obligations

- 10.21 This application falls below the threshold for which any contributions would be sought.

### Other Matters

#### **Air Quality**

- 10.22 In an application of this nature it is expected that facilities for charging electric vehicles and other ultra-low emission vehicles is provided in accordance with the Air Quality & Emissions Technical Planning Guidance from the West Yorkshire Low Emissions Strategy Group (WYLES). This can be conditioned.

#### ***Contaminated Land and Coal Mining Legacy***

- 10.23 The site is located within 125m of a site that has been identified as potentially contaminated land due to its previous use as a landfill site. In addition, the site falls within the Development High Risk Area as defined by the Coal Authority. Coal Authority records indicate that part of the site is within an area of likely historic underground coal mine workings at shallow depth.
- 10.24 The application is accompanied by a Coal Mining Risk Assessment which concludes that there is a potential risk to the development from past coal mining activity. This recommends that intrusive site investigation works are carried out in order to establish the exact situation in respect of coal mining legacy issues on the site. Subject to the imposition of conditions requiring these investigations and any subsequent remedial works, KC Environmental Services and the Coal Authority raise no objections to the proposals with respect to the above matters.

## 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. 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. Time limit for implementing permission
2. Development to be carried out in accordance with approved plans
3. Samples of materials
4. Surfacing of hardstanding areas
5. Electric vehicle charging points
6. Provision of turning facilities
7. Protective fencing (trees)
8. Site investigation and remediation
9. Noise Report
10. Removal of permitted development rights for extensions and outbuildings to all plots
11. Removal of permitted development rights for windows and openings within gable of Plot 3

### Background Papers:

#### Application and history files.

Link to the application details:-

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2017%2f90312>

Certificate of Ownership – Certificate B completed with Notice served Streetscene and Housing, Huddersfield on 6.2.2017

Link in relation to previously approved application 2016/91631:

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2016%2f91631+>

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## Report of the Head of Strategic Investment

### HEAVY WOOLLEN PLANNING SUB-COMMITTEE

Date: 15-Mar-2018

**Subject: Planning Application 2016/93882 Erection of extensions and alterations 48, Latham Lane, Gomersal, Cleckheaton, BD19 4AP**

#### APPLICANT

Mr & Mrs Barrett

#### DATE VALID

22-Nov-2016

#### TARGET DATE

17-Jan-2017

#### EXTENSION EXPIRY DATE

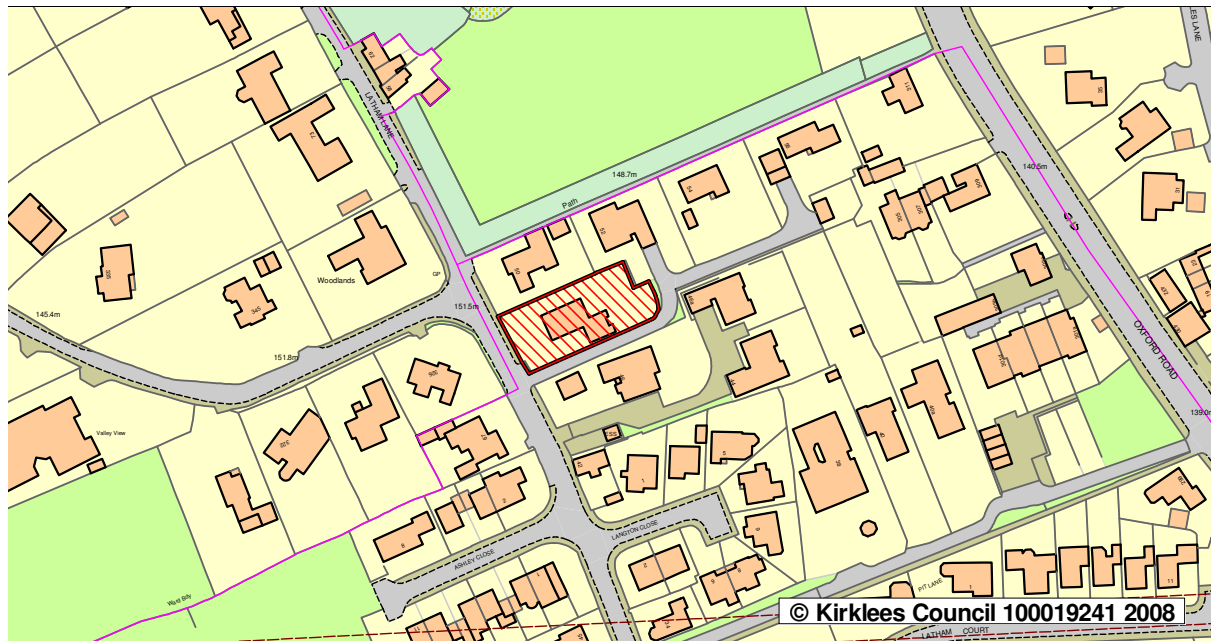
19-Mar-2018

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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: Liversedge and Gomersal Ward**

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.**

**1.0 INTRODUCTION:**

1.1 This application is reported to Heavy Woollen Sub-Committee following a request by Councillor David Hall who states:

“I have two main reasons for requesting this:

I feel the application is overbearing on neighbouring properties and too large on the site.

That the application is not in keeping with the surroundings and affects the visual amenity of the area”.

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

**2.0 SITE AND SURROUNDINGS:**

2.1 The site relates to a detached chalet style bungalow which is constructed from brick and render for the external walls, tiles for the roof and upvc for the openings. The site has a small area of amenity space to the front and side of the site and a larger area of amenity space to the rear. There is an existing conservatory and enclosed patio area to the rear of the site and a car port to the side. There are protected trees and hardstanding to the front of the site.

2.2 Surrounding the site is predominantly residential and the dwellings are of different appearances (see planning history of the site). There is a new dwelling to the south of the site with a contemporary design. To the north of the site, no. 50 is a traditional bungalow.



2.3 The site is unallocated on the Kirklees Unitary Development Plan and is not located in the Conservation Area. The allocation of the land is the same on the Kirklees Publication Draft Local Plan. To the northwest of the site, there is a Grade II listed building.

### **3.0 PROPOSAL:**

3.1 Planning permission is sought for the erection of extensions and alterations to the dwelling as can be seen on the amended plans:

3.2 The proposals include the following extensions and alterations:

- Demolition of existing outbuildings and conservatory
- Two storey side extension to the north-western elevation of the existing dwelling by 1 metre
- A front hip-to-gable extension
- 2.5 storey and single storey rear/side extension
- Hip to gable extension to rear of existing dwelling
- Increase in the overall ridge height of the original dwelling

3.3 The remodelled dwelling would have the following dimensions and includes a projecting chimney:

- A maximum overall ridge height of 8.2 metres
- 15 metres in width
- 21 metres in length

3.4 The extensions will be constructed from natural stone at ground floor with a light-coloured render finish to the first floor. There would be openings in all elevations which would be constructed from uPVC. The roof would be constructed from tiles to match the existing and there would be rooflights in the front and rear roofslopes. There would also be a glazed element to the front.

3.5 The extension would accommodate 4 bedrooms (with en suites), a kitchen/dining space, a dressing room, a games room, storage, entrance lobby and integral garage.

### **4.0 RELEVANT PLANNING HISTORY:**

4.1 2011/92811 – Demolition of existing bungalow and erection of detached dwelling and detached garage APPROVED (no. 46 Latham Lane)

4.2 93/03783 – Erection of extensions, pitched roof and detached garage APPROVED (no. 50 Latham Lane)

4.3 2006/93818 – Erection of extension to form garden shed and alteration to existing single garage to form guest room APPROVED (no. 48)

## **5.0 HISTORY OF NEGOTIATIONS:**

- 5.1 Officers have been in negotiations with the agent to provide amended plans to significantly reduce the bulk of the remodelled dwelling to reduce the impact on the occupiers of no. 50 Latham Lane – the amendments are acceptable. Through the application process, the design of the remodelled dwelling was also amended to address initial concerns raised by the design officer. The design is now considered to be in-keeping with the surroundings and satisfies the relevant design policies.

## **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 Nation Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not carry from those within the UDP, do not attract significant unresolved objections and are consistent with the Nation Planning Policy Frameworks (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 Kirklees Unitary Development Plan (UDP) Saved Policies 2007:

**D2** – Unallocated land

**BE1** - Design principles

**BE2** – Quality of design

**BE13** - Extensions to dwellings (design principles)

**BE14** – Extensions to dwellings (scale)

**T10** – Highway Safety

**T19** – Parking Provision

**NE9** – Retention of mature trees

### 6.3 National Planning Policy Framework (NPPF):

**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

**Chapter 12** – Conserving and enhancing the historic environment

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

**PLP1** – Achieving sustainable development

**PLP2** – Place Shaping

**PLP3** – Location of new development

**PLP21** – Highway Safety and Access

**PLP22** - Parking

**PLP24** – Design

**PLP28** - Drainage

**PLP30** – Biodiversity and geodiversity

**PLP33** – Trees

**PLP35** – Historic environment

**7.0 PUBLIC/LOCAL RESPONSE:**

7.1 Two representations have been received as a result of the recent amended plans consultation period raising the following points:

- Loss of light and overshadowing
- Overlooking/loss of privacy
- Visual amenity- design and layout/scale not in keeping with existing single storey properties
- Adequacy of parking/loading/turning during building work – giving rise to possible traffic accidents (on an already dangerous bend).
- Noise and disturbance from building work
- Hazardous materials emitted from site in dust form – both have asthma
- Access to private road could be impeded by building work
- Small change to original proposal and does not change impact on neighbouring properties.
- Overbearing impact on full length of the property and rear garden
- All 5 properties built on private drive are bungalows
- Affect resident who cannot see in low light conditions (degenerative eye condition) – this is the reason bought the bungalow.

3 comments were raised in response to the original plans and first set of amendments. The comments raise the following points:

- Conservatory faces south and is the only room that benefits from direct sunlight through the year.
- Should a demolition order be obtained first?
- Surface water drainage is by soakaway – is this adequate given the increased hard surfaces?
- Presence of the clay on the land's surface can quickly become saturated.
- Ground gets waterlogged and does not drain very well
- Proposed building appears to be obtrusive
- Reduced privacy from upper elevation (previous app at no. 38 Latham Lane condition regarding obscure glazed was not enforced)
- Apparent misinformation in design and access statement

Officer comments will be made in section 6 of this report.

7.2 Ward Councillor David Hall has requested that the application be referred to committee for determination for the reasons set out in paragraph 1.1 of the report above.

7.3 Parish/Town Council comments are not applicable.

## **8.0 CONSULTATION RESPONSES:**

### **8.1 Statutory:**

**K.C Highways Development Management** – no objection.

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

**K.C Arboricultural Officer** – no objection subject to protective fencing condition.

## **9.0 MAIN ISSUES**

- Principle of development
- Visual amenity/local character
- Residential amenity
- Highway issues
- Representations
- Other matters

## **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].

10.2 A full assessment in respect of the impact on visual amenity, residential amenity and highways safety is set out below.

### **Visual amenity/local character:**

10.7 Following the receipt of amended plans, the proposal is considered to have an acceptable impact on visual amenity. Concerns were raised by the design officer in response to the initial contemporary design. It was considered that the design was an inharmonious combination of several contemporary design elements. The design was considered by officers to be overly prominent and incongruous in this location.

10.8 The existing application property is a traditionally built dwelling with no modern elements of design currently incorporated. The amended plans significantly change the character of dwelling itself and the site as a whole, including its impact on the streetscene.

- 10.9 Paragraph 60 of the NPPF states that planning decisions should not attempt to impose architectural styles or particular tastes (and therefore stifle innovation). However, it also states that it is proper to seek to promote or reinforce local distinctiveness.
- 10.10 Following a discussion with the design officer, the principle of a contemporary design in this location, where there are no specific design features and the character of the dwellings is mixed, is acceptable. The below assessment will give consideration to the character of the area and the site itself.
- 10.11 At no. 46 Latham Lane, there is a modern dwelling with a contemporary design (approved under 2011/92811). There is also a very prominent outbuilding to the front of the site. There are more traditional bungalows surrounding the site to the northwest and rear, and on the opposite side of the highway there are two storey dwellings of different appearances. The streetscene context in which the remodelled dwelling would be read is varied.
- 10.12 The materials of the remodelled dwelling incorporate traditional coursed natural stone and light coloured render which are considered acceptable in this context. The natural stone will retain an element of the traditional appearance whilst the render will match that of the modern neighbouring dwelling, capturing a sense of the local identity. The materials that are proposed will not introduce these materials for the first time in this area and will complement one another. The remodelled dwelling, when viewed in context with the neighbouring dwelling at no. 46, would be read sympathetically by virtue of its scale, roof form, contemporary openings, glazing, and materials.
- 10.13 The front element of the proposal which is set back from the highway on a higher level and is set down, thus ensuring that this contemporary dwelling will remain subservient within the site/wider streetscene whilst also providing a sense of entrance to the dwelling. The entrance features on the neighbouring dwelling are considered more contemporary and prominent than the proposed. The plot can accommodate an enlarged dwelling given its reasonably sized plot.
- 10.13 The large amounts of glazing are considered to tie in with the contemporary design and materials and would not be overly dominant. The remodelled dwelling is considered to tie in harmoniously to the neighbouring dwelling at no. 46. The modern openings and rooflights are also comparable to this approved dwelling.
- 10.14 The scale of the remodelled dwelling including its increased overall ridge height has the potential to make the site appear incongruous in the streetscene. However, the sympathetic design in which the main area of bulk and massing is to the rear of the site along with the reduced levels to the rear of the site means that the proposed development would not be overly visible in the streetscene. The dwelling is considered to contribute positively to the character of the area and would, for the reasons set out above, be sympathetic in scale and character to the site and area in which it is located.

## Summary

- 10.15 Officers consider that, for the reasons set out above, the proposal will comply with Kirklees Unitary Development Plan Policies BE1 and BE2, Policy PLP24 of the Kirklees Publication Draft Local Plan, and Chapter 7 of the National Planning Policy Framework.

### **Residential Amenity:**

- 10.16 The impact on residential amenity is considered by officers to be, on balance, acceptable. Two objections have been received. The impact on each of the surrounding residential properties will be assessed below.

Impact on no. 50 Latham Lane:

- 10.17 The proposed remodelled dwelling will project closer to this neighbouring site by approximately 1 metre which is on a lower level. Given the close proximity and levels differences (in which no. 50 is on a lower level), and the fact that this neighbouring dwelling has an inset conservatory and main amenity space facing this site, there is the potential for overbearing. However, the remodelled dwelling will be 1.5 stories in height for the element directly in line with no. 50.
- 10.18 In order to achieve the required accommodation, the majority of the bulk of the dwelling will be to the rear of the site (away from the main dwelling and its amenity space) and there is a distance of 3.5 metres to the boundary with the neighbouring site.
- 10.19 Although the extensions will lead to the dwelling being a higher structure than the existing – with an increase in overall ridge height of 0.35 metres for the element closest to this neighbouring dwelling) - for the reasons discussed below, there will be, on balance, no overbearing impact on the occupiers of this dwelling in terms of effect on their amenity space and inset conservatory. The remodelled dwelling will have the same eaves height as the existing bungalow and the existing hedging – which screens the development to, what officers consider, an acceptable level of impact. Additionally, the roof will be hipped away from this boundary, further reducing bulk and massing to a level that officers consider is acceptable.
- 10.20 In terms of overlooking/loss of privacy, there will be no harm. There are habitable room windows at ground floor level – two serving a kitchen/dining room and two serving a living room. These openings will be screened by dense hedging on the side boundary and therefore a condition has been recommended to ensure its retention. This will mean that there would be no overlooking from these windows. There are openings at first level serving a dressing room and en suite. Given that these are small openings and serve non habitable rooms, there will be no overlooking from these. Any future openings in this side elevation are controlled by the Town and Country Planning (General Permitted Development) Order. A condition has also been recommended to ensure that the en suite opening is obscurely glazed.

## Impact on no. 46 Latham Lane

- 10.21 The siting of no. 46 means that the two storey element of the proposal relates most directly to the neighbouring dwelling. There is a distance of approximately 7 metres between the sites (driveway acting as a separation distance) in which the side elevation of no. 46 does not have any habitable room windows. The levels differences (in which no. 46 is a larger structure on a higher level) along with this distance means that officers consider there will be overbearing impact on the occupiers of this dwelling. There is no objection to the proposal from the occupiers of this dwelling.
- 10.22 In terms of overlooking/loss of privacy, there will be no harm to residential amenity. The separation distance between the dwellings (driveway area) and the fact that the dwelling does not have amenity space and habitable room windows in close proximity to the site means that that there would be no overlooking or a loss of privacy. There are openings serving the kitchen and hallway at ground floor level and bathrooms (to be obscurely glazed) at first floor. Given the non-habitable nature of these rooms, these would be no harmful overlooking or a loss of privacy and officers consider that the impact on residential amenity is acceptable. Further side openings would be controlled by the General Permitted Development Order.

## Impact on dwellings to the rear (no. 52 Latham Lane and 46a Latham Lane)

- 10.23 The application site does not have a direct relationship with no. 52, with this dwelling being located to the northeast of the site. There is a distance of 9 metres between the sites. Given the distance along with the indirect relationship between the dwellings (in which no elevations directly face each other), the impact on the occupiers of this dwelling is acceptable despite the main bulk of the remodelled dwelling being to the rear and this application site being on a lower level.
- 10.24 In terms of overlooking/loss of privacy, there will be no direct views from openings in the side or rear elevations of the dwelling given the relationship. Ground floor openings will be screened by the hedging and first floor openings to the rear will face onto a driveway/public hardstanding area. The front amenity space of no. 52 may be overlooked to an extent – however, this is visible from the private driveway and is not used as private amenity space.
- 10.25 There is an acceptable distance between no. 46a Latham Lane and the application site (at least 10 metres to the rear boundary), despite this projection to the rear which will add bulk and massing in close proximity to this neighbouring dwelling. Given this distance and the indirect relationship (the remodelled dwelling will not face directly onto these properties that have habitable room windows in the rear elevation), there is not considered to be an overbearing impact.
- 10.26 In terms of overlooking/loss of privacy, ground floor habitable room openings are facing this site. However, given the screening on the boundary and the fact that there is a driveway between the sites (which could look at views into the site), there will be no undue overlooking.

- 10.27 At first floor level, given the positioning of the bedroom window, this would face directly onto the access track and not directly into habitable room windows of this dwelling or its rear amenity space. In order to avoid harmful overlooking or loss of privacy in the future, a condition has been recommended to remove permitted development rights for new openings in this rear elevation.
- 10.28 Additionally, no. 46 is existing, set closer to these dwellings, has a similar relationship and therefore the principle of a structure in close proximity to these dwellings has been established.

Summary:

- 10.29 The impact on residential amenity is considered acceptable by officers for the reasons set out above and complies with Kirklees Unitary Development Plan Policy D2, the aims of the National Planning Policy Framework which sets out that planning decisions seek to ensure a good standard of amenity for all existing and future occupants of land and buildings, and Policy PLP24 of the Kirklees Publication Draft Local Plan.

**Highway issues:**

- 10.30 The site is located in close proximity to the corner with Drub Lane. The access to the site will remain unchanged and the proposal is not considered to be a significant intensification of the use of the site given that the site will remain in residential use. Highways Development Management do not have any objection on highway safety grounds. It is noted that adjacent dwellings have similar access arrangements.
- 10.31 The parking provision at the site is acceptable. A 4 bedroom house recommends 3 parking spaces on site, as set out in Policy T19 of the UDP. In this case, there is an integral garage which can accommodate 2 vehicles and there is adequate space to the front of the site to accommodate a further vehicle.
- 10.32 The proposal complies with Kirklees Unitary Development Plan policies T10 and T19 as well as policies PLP21 and PLP22 of the Kirklees Publication Draft Local Plan.

**Other matters**

- 10.33 Trees – There are protected trees to the front of the site. Following an informal consultation response with the K.C Arboricultural Officer, there is no objection to the proposal. The remodelled dwelling will not project closer to these trees and therefore it is noted that extension itself would not harm the trees or their roots.
- 10.34 However, it is considered important to note that the storage of materials and tracking of construction machinery could damage the roots or branches during construction. For this reason, a pre-commencement condition has been recommended to ensure that protective fencing details are submitted prior to construction works beginning.



- 10.35 Subject to this condition, the proposal is considered to comply with Kirklees Unitary Development Plan Policy NE9, Chapter 11 of the National Planning Policy Framework, and Policy PLP22 of the Kirklees Publication Draft Local Plan.
- 10.36 Ecology – The site is in the bat alert layer and therefore consideration has been given as to whether the proposed development would impact on the habitat of bats or impact on bat roost potential. In this case, the Council's Ecology Officer does not have an objection to the proposal as the building is well sealed and there was no evidence of bats or bat roosts on site.
- 10.37 Should planning permission be granted, a footnote would be added to the decision notice to provide the applicant with advice should bats or evidence of bats be found during construction
- 10.38 The proposal complies with Kirklees Publication Draft Local Plan policy PLP30 and Chapter 11 of the National Planning Policy Framework.
- 10.39 Proximity to curtilage listed building to the northeast- To the northeast of the site, there is a listed building. Given the distance between the sites (at least 25 metres to the boundary) and the small scale of the extensions, there will be no harm to the setting of the listed building and the proposal complies with Kirklees Publication Draft Local Plan policy PLP35 and Chapter 12 of the National Planning Policy Framework.

### **Representations**

Two representations have been received raising the following comments (following the amended plan publicity):

- Loss of light and overshadowing  
*Officer comments: see residential amenity section of this report.*
- Overlooking/loss of privacy  
*Officer comments: see residential amenity section of this report.*
- Visual amenity- design and layout/scale not in keeping with existing single storey properties  
*Officer comments: see visual amenity section of this report.*
- Adequacy of parking/loading/turning during building work – giving rise to possible traffic accidents (on an already dangerous bend).  
*Officer comments: see highway safety section of this report.*
- Noise and disturbance from building work  
*Officer comment: not a material planning consideration.*
- Hazardous materials emitted from site in dust form – both have asthma  
*Officer comment: not a material planning consideration.*
- Access to private road could be impeded by building work  
*Officer comment: not a material planning consideration.*

- Small change to original proposal and does not change impact on neighbouring properties.  
*Officer comment: see residential amenity section of this report.*
- Overbearing impact on full length of the property and rear garden  
*Officer comment: see residential amenity section of this report.*
- All 5 properties built on private drive are bungalows  
*Officer comment: see visual amenity section of this report.*
- Affect resident who cannot see in low light conditions (degenerative eye condition) - this is the reason bought the bungalow.  
*Officer comment: personal circumstances are not a material planning consideration.*

3 comments were raised in response to the original plans and first set of amendments. The comments raise the following points:

- Conservatory faces south and is the only room that benefits from direct sunlight through the year.  
*Officer comments: see residential amenity section of this report.*
- Should a demolition order be obtained first?  
*Officer comments: the proposal is not for the demolition of the existing dwelling – it is for extensions to the original building.*
- Surface water drainage is by soakaway – is this adequate given the increased hard surfaces?  
*Officer comments: a condition is recommended that all new hard surfaces are constructed of a permeable material and sub base in the interests of flood risk.*
- Presence of the clay on the land's surface can quickly become saturated / ground gets waterlogged and does not drain very well  
*Officer comments: see other matters section of this report.*
- Proposed building appears to be obtrusive  
*Officer comment: see comments in the visual amenity section of this report.*
- Reduced privacy from upper elevation (previous app at no. 38 Latham Lane condition regarding obscure glazed was not enforced)  
*Officer comment: Each application is assessed on its own merits. Any conditions that are recommended as part of this permission must be adhered to (and are liable to possible enforcement action if not).*
- Apparent misinformation in design and access statement  
*Officer comment: The proposal is being assessed on the basis of the revised plans, not the originally submitted design and access statement.*

Councillor Hall's reasons for committee request:

- I feel the application is overbearing on neighbouring properties and too large on the site.  
*Officer comment: this is considered in the residential amenity section of this report.*
  
- That the application is not in keeping with the surroundings and affects the visual amenity of the area.  
*Officer comment: this is considered in the visual amenity section of this report.*

## **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.

11.3 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. 3 year time limit to commence development
2. Development carried out in accordance of approved plans
3. Obscurely glazed en suite openings
4. Hedging (north western boundary) to be retained
5. Ecology footnote
6. Pre commencement condition for tree protection plan (to show protective fencing).
7. Removal of Permitted Development Rights for new openings at first floor level in rear elevation.

### **Background Papers:**

Link to the application details:-

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2016/93882>

Certificate of Ownership – Certificate A signed and dated 15/11/2016.

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## Report of the Head of Strategic Investment

### HEAVY WOOLLEN PLANNING SUB-COMMITTEE

Date: 15-Mar-2018

**Subject: Planning Application 2017/93217 Conversion of redundant former storage building to form one dwelling Emley Lodge Farm, Off Langley Lane, Emley, Huddersfield, HD8 9QS**

#### APPLICANT

Matthew Asquith

#### DATE VALID

19-Sep-2017

#### TARGET DATE

14-Nov-2017

#### EXTENSION EXPIRY DATE

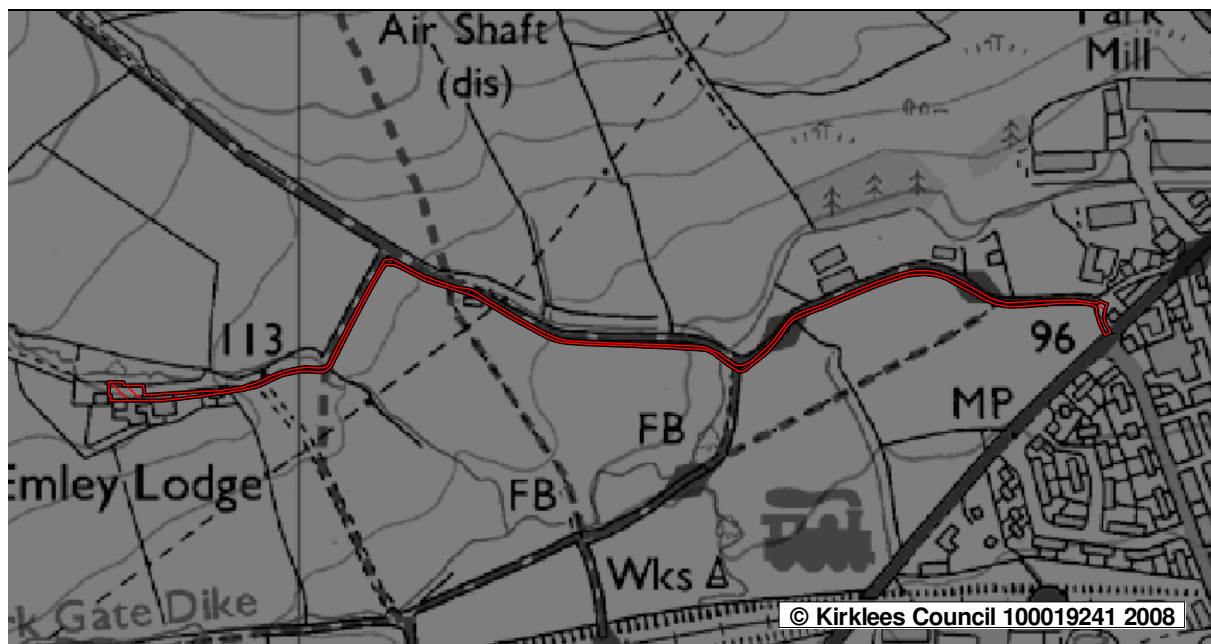
19-Mar-2018

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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: Denby Dale

No

Ward Members consulted

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**RECOMMENDATION: REFUSE**

1. The proposed dwelling is sited in a rural location, outside the settlement boundary and is inaccessible to local shops and amenities thus being reliant on the private car. The applicant has failed to demonstrate any special circumstances as identified within Paragraph 55 of the National Planning Policy Framework which would outweigh the unsustainable location of the proposed dwelling. The proposal is therefore contrary to the National Planning Policy Framework in addition to Policies PLP1 and PLP20 of the Kirklees Publication Draft Local Plan.

2. The existing buildings are not of permanent and substantial construction and as such cannot be reused. The redevelopment of the site would be inappropriate development for which no special circumstance have been submitted and as such is contrary to Paragraph 90 of the National Planning Policy Framework in addition to Policy PLP60 of the Kirklees Publication Draft Local Plan.

3. The existing building is sited in a prominent location which is open to 3 sides to the countryside. The works required in order to create an acceptable level of outdoor amenity area for future occupiers would involve engineering operations and a change of use of adjoining land. The subsequent use of this land as a domestic garden, along with associated domestic paraphernalia, would be a form of encroachment which would fail to preserve the openness of the Green Belt. The application is therefore, considered to constitute inappropriate development in the Green Belt. There are no very special circumstances that would clearly outweigh the harm identified and the proposal is therefore contrary to the National Planning Policy Framework in addition to Kirklees Publication Draft Local Plan Policies PLP1, PLP3 and PLP57.

4. The access and egress would involve utilising an existing track which is also a Public Right of Way. The use of the building as a dwelling, coupled with the lack of adequate provision of access would lead to a conflict of users. The development is therefore, contrary to policies R13 and T10 of the Kirklees Unitary Development Plan and the National Planning Policy Framework in addition to Kirklees Publication Draft Local Plan Policy PLP21.

5. The development proposed provides insufficient parking and suitable access for a fire tender and refuse collection contrary to Policies T10 and T19 of the Kirklees Unitary Development Plan in addition to Policy PLP21 of the Kirklees Publication Draft Local Plan.

**6. The applicant has submitted ecological information that relates to bats and breeding birds only. The supporting evidence does not address the potential for impacts to Great Crested Newts, which are known to inhabit several ponds located to the south of the site. It has not been demonstrated that development could be carried out without impact to the local ecology and as such the development proposed is contrary to Chapter 11 of the National Planning Policy Framework as the Local Planning Authority is not able to discharge its duty, under regulation 9(3) of the Conservation of Habitats and Species Regulations 2017, to have regard to the requirements of the Habitats Directive.**

## **1.0 INTRODUCTION:**

1.1 This application is brought to the Heavy Woollen Sub Committee for determination in accordance with the Council's scheme of delegation at the request of Councillor Michael Watson the following reason(s):

- The comments are not a representation as to the merits of the application.
- Suggestion that there will be further applications in due course in relation to what might ultimately be a significant residential development some distance from the highway in green belt land. These are likely to be sufficiently significant to start off the process in relation to the development of the site by consideration by Committee
- Validity of objectors as the rights of landowners need to be considered.
- Significance of highway issues such that a decision should be taken by elected Members.
- The observations of Denby Dale Parish Council are noted and having regard to these comments it would seem prudent to have these matters tested before, and determined by, the Heavy woollen sub-committee.
- Green belt issues are important to local residents and, therefore, it seems sensible that where matters of such significance are to be decided the responsibility should lie with the elected Members.
- Consideration of the specific provisions of the council's constitution in relation to referral by members the application satisfies a number of material considerations.
- It would be in the interests of everyone involved that it should be determined by the sub-committee having regard to the possibility of further applications in the future, interest in terms of consultation responses and also the decision of a potentially controversial application should be taken by elected members.

1.2 The Chair of Sub-Committee has confirmed that Councillor Watson's reasons for making this request are valid having regard to the Councillor's Protocol for Planning Committees.

1.3 It is the opinion of Officers that the development proposed is not considered to be acceptable and there are no special circumstances that would outweigh the inappropriateness of the development and harm caused to the character of the area contrary to Kirklees Unitary Development Plan Policies and the National Planning Policy Framework.

## **2.0 SITE AND SURROUNDINGS:**

- 2.1 The application site forms part of a collection of buildings known as Emley Lodge Farm which is located in the allocated Green Belt on the Kirklees Unitary Development Plan proposals map. The application includes an elongated single storey stone cart shed which adjoins an agricultural shed. The stone building is predominantly open fronted with the rear elevation being supported by stone buttresses. The land slopes away to the rear and is overgrown with tall grass and bushes. The unit located to the western end of the site is a typical farm structure constructed of metal and breeze block shed.
- 2.2 Access extends in excess of 1km (0.7mile) via a track known as Langley Lane which is an unmade route taken from the A636 at Clayton West. The access is also a bridleway.

## **3.0 PROPOSAL:**

- 3.1 The application is described as conversion of redundant former storage building to form one dwelling.
- 3.2 The application includes works to two farm buildings to facilitate residential accommodation comprising of 4 double bedrooms, lounge and dining/living. The new buildings are shown to retain the same footprint.
- 3.3 Access is proposed via the existing track which extends to the main adopted highway.
- 3.4 The application form states that 2 parking spaces would be included as part of the scheme but it is not clear where these are located.
- 3.5 The application includes the installation of a septic system.

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

- 4.1 2009/93519 – Reuse and adaptation of existing barns to 4 no. dwellings - Withdrawn

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

- 5.1 The agent has been advised on a number of occasions that the details submitted are insufficient with the absence of structural evidence to show that the building/s are sound enough to be converted. The agent was also requested to remove the shed from the development proposals as this is clearly not convertible. No information has been forthcoming regarding the insufficient information to support the proposals.
- 5.2 The agent has, at the request of officers, reduced the site red line and curtilage to the building.



## 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 **D11** – Extensions to buildings in the Green Belt  
**BE1** – Design principles  
**BE2** – Quality of design  
**BE11** – Materials  
**BE12** – Space about buildings  
**T10** – Highway safety  
**R13** – Right of Way and Public Access Areas

### Supplementary Planning Guidance / Documents:

- 6.3 None considered relevant

### National Planning Guidance:

- 6.4 **Chapter 6** – Delivering a wide choice of high quality homes  
**Chapter 7** – Requiring good design  
**Chapter 9** – Protecting Green Belt Land

- 6.5 Kirklees Publication Draft Local Plan (PDLP)

**PLP1** – Presumption in favour of sustainable development  
**PLP2** – Place shaping  
**PLP3** – Location of new development  
**PLP21** – Highway safety and access  
**PLP22** – Parking  
**PLP24** – Design  
**PLP30** – Biodiversity and geodiversity  
**PLP60** – The re-use and conversion of buildings

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

7.1 The applications was advertised by site notice and neighbour notification letters which have expired. A summary of the comments received are summarised below:

- Increased traffic
- Support the reuse of redundant farm buildings
- Farmhouse is not listed
- Conflict of riders and vehicles (unsafe)
- Access is a bridleway and footpath
- Loss of pleasant leisure facility/loss of amenity
- Bats/Owls

7.2 Denby Dale Parish Council – Objects due to the effect on the bridleway and that it is unsustainable within the Green Belt.

7.3 Kirklees Bridleways Group – Bridleway should remain unmade, single track therefore result in conflict between vehicles and riders, lack of safety.

## **8.0 CONSULTATION RESPONSES:**

### **8.1 Statutory:**

**KC Highways Development Management:** Object

**Coal Authority:** No objections

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

**KC Public Rights of Way:** Object

**KC Biodiversity Officer:** Concerns

**KC Conservation & Design:** Comments not received

**KC Environmental Services:** No objections subject to conditions

**KC Lead Local Flood Authority:** Comments not received

## **9.0 MAIN ISSUES**

- Principle of development
- Urban design issues
- Residential amenity
- Landscape issues
- Housing issues
- Highway issues
- Drainage issues
- Planning obligations
- Representations
- Other matters

## 10.0 APPRAISAL

### Principle of development

- 10.1 As the application site is located within the Green Belt, the starting point for consideration of the change of use is the guidance contained within Chapter 9 of the National Planning Policy Framework.
- 10.2 Paragraph 79 of the National Planning Policy Framework says that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 90 states that the re-use of buildings is not inappropriate - provided that the buildings are of permanent and substantial construction and the development would preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt.
- 10.3 The application is not supported by any structural survey that demonstrates that the building/s could be reused as a dwelling without significant or complete reconstruction. The inclusion of the agricultural shed is wholly unsuitable and the agent has been advised to omit this from the scheme. It is not clear what the single storey shed has been used for but is described as a cart shed under the 2009 submission. This is an open fronted building with stone piers to the rear elevation to support the structure from collapse. A structural report submitted in 2009 examined the cart shed and concluded that parts of the building would require demolition and rebuilding to provide garage accommodation. The building is almost 10 years older and is likely to be in a worse state of repair. The extent of works outlined in the report at the time demonstrates that conversion to residential accommodation would not be achievable without substantial rebuilding and it is more than likely that the building is in worse condition thereby requiring more significant works and as such is unlikely to be considered able of conversion thereby contrary to Paragraph 90 of the NPPF.
- 10.4 Whilst further information has been sought regarding the principle of development, no additional justification has been received. A Kirklees Senior Building Surveyor has examined the building and referred to it as a "failing structure" with "substantial movement". The cause of the movement is likely to be that the foundation has failed or is insufficient to transmit the loads from structure to ground. It was also noted that buttresses have been erected to support the rear wall with the slope being constructed to form further support. The conclusions of the report confirm that major works would be required to resolve the issues evident. In order to provide the restraint and support needed the majority of the building would be lost. As such it is considered that the development is contrary to Paragraph 90 of the NPPF in so far as the buildings are not considered to be of permanent and substantial construction.
- 10.5 Additionally, Paragraph 89 states that the extension or alteration of a building is not inappropriate development *"provided that it does not result in disproportionate additions over and above the size of the original building."* The application has been revised removing unacceptable excavation works to the rear of the stone building. The development does not include extension explicitly however, the application includes redevelopment of the framed agricultural building for which there is no planning policy to support conversion, and as such could be considered as an extension to the cart shed. The impact of which would significantly impact on the openness and character of the Green

Belt in addition to dominating the single storey stone building. As such it is considered that the proposed development would not be sympathetic to the open character of the area and nor would it respect the traditional character of the existing buildings.

- 10.6 Furthermore, the application is reliant on the introduction of domestic curtilage where none currently exists. The proposed garden area has been reduced at the request of Officers and, whilst it has proved a compromise to gain garden whilst minimising impact on the Green Belt, any intrusion would have a visual impact on the character of the Green Belt. This would be as a result of the introduction of steps and likelihood of other domestic paraphernalia being introduced although it is acknowledged that limited space for such equipment would exist.
- 10.7 The NPPF sets out at paragraph 49 that ‘housing applications should be considered in the context of the presumption in favour of sustainable development.’ The location of the site is one that cannot be considered as sustainable being located more than 500 metres off a highway with no connection to any agricultural function in the locality. Paragraph 55 of the NPPF reiterates that “to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities” and goes on to state “that authorities should avoid isolated homes in the countryside unless there are special circumstances”. There are no special circumstances to justify the development and the provision of a dwelling in the location proposed would be very much isolated.
- 10.8 *Locational Sustainability:*  
The application site is some 1100 metres from an adopted road and as such is isolated from day to day services due to a lack of facilities within walking distance. The proposal would conflict with paragraphs 17 and 55 of the Framework which say that planning should actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling and to avoid isolated homes in the countryside.
- 10.9 The proposed development would be contrary to these fundamental aims of the NPPF and as such cannot be supported.

#### Urban Design issues

- 10.10 Paragraph 58 of the NPPF states that planning decisions should ensure that developments respond to local character and history and reflects the identity of local surroundings and materials.
- 10.11 Policies BE1 and BE2 of the UDP are considerations in relation to design, materials and layout. The layout of buildings should respect any traditional character the area may have. New development should also respect the scale, height and design of adjoining buildings and be in keeping with the predominant character of the area. Chapter 7 of the NPPF emphasises the importance of good design. Policy PLP24 regarding design is also of relevance.

- 10.12 The application lacks information to justify the development and in the absence of any supporting statements regarding the structural stability of the buildings it is apparent from the site visit that excessive rebuilding would be required to facilitate any development. The extent of the works required would result in an unacceptable impact on the openness and character of the Green Belt. In addition, the associated changes required to make the buildings suitable for habitation would be detrimental to the character of the Green Belt, eroding the rural character, and increasing the domestic/residential character.
- 10.13 Furthermore the introduction of domestic curtilage would introduce an alien character into an area that is currently rural in character.
- 10.14 Whilst the more contemporary design of development may provide interest in visual terms this has to be weighed up against the location of the site and character of the rural environment. The buildings in the locality are very much rural with the main Lodge being the most domestic in character. Officers do not object to the more contemporary character of the design and whilst the principle remains unacceptable the simplicity of the design and openings is not considered to detract from the character of the area.
- 10.15 The materials proposed include stone slate roof and a combination of stone and timber walling. The permanent buildings in the vicinity of the site and some of the existing farm buildings are constructed of natural materials. The use of natural stone and slate is considered appropriate for the development proposed. Depending on the balance of the timber boarding to natural stone the use of it may be acceptable. It is not clear from the submitted details to what extent timber will be incorporated into the scheme. Subject to conditions the materials proposed would be acceptable.

#### Residential Amenity

- 10.16 Given the open and rural character of the surrounding area, there are very few residential properties close by. Emley Lodge is located to the south west of the site with other farm buildings directly to the south.
- 10.17 Policy BE12 of the UDP normally requires separation distances of 21 metres between existing and proposed habitable room windows. There is no direct relationship between the development proposed and existing residential accommodation. Notwithstanding the fact that the principle is not acceptable the angles between existing habitable accommodation and that proposed are considered sufficient so as to avoid any concerns regarding loss of privacy.
- 10.18 No buildings are present to the north of the application site and therefore the aims of UDP Policy BE12 are met.
- 10.19 Given the separation distances present and the fact that the building/structure is already in place it is considered that there will be no detriment to residential amenity in terms of overbearing impact or overshadowing.

10.20 The application site boundary has been reduced retaining a small area to the rear of the buildings which would provide an area of curtilage for proposed occupants. There is currently no access to this area and its character is that of an overgrown field. Any encroachment into this area would not be supported in principle due to the character change as raised previously. The area is quite small, when considered in context, to provide outdoor space for the occupants of a large 4 bedroom property but it is a compromise to reduce the impact on the Green Belt. Policy BE1 of the UDP states that development should promote a healthy environment, including space and landscaping about buildings. The development would provide limited space that is disproportionate to the scale of the dwelling but balancing this up against the impact on the Green Belt it is considered to be adequate.

#### Housing issues

10.21 The development of the site would not contribute sustainably to the housing stock of the area.

#### Highway issues

10.22 The application has been assessed by KC Highways Development Management and, despite the submission of further information, concerns remain. Due to the scale of the development proposed the provision for parking of 3 vehicles should be shown on the details.

10.23 The application states that that turning for a 6.0m refuse collection vehicle should be accommodated in addition to an arrangement for the collection of refuse however no evidence of such an agreement has been submitted to accompany the application.

10.24 As the site is in excess of 500 metres from Wakefield Road a suitable access for a fire tender is required and turning to be kept clear from obstruction should be provided within 40 metres of the proposed dwelling.

10.25 The matters raised have not been addressed and as such the development is contrary to Policies T10 and T19 of the Kirklees Unitary Development Plan in addition to PDLP Policies PLP20, PLP21, PLP22 and PLP1.

#### *Public Right of Way (PROW):*

10.26 The effect upon the PROW is a separate issue to highway safety and comments received from members of the public highlight the conflict between vehicles and those using the PROW. The application has failed to demonstrate that the development would not result in an unacceptable risk to other users of the track. The Council's PROW Officers have raised concerns regarding the development that have not been addressed. These include pedestrian improvements, use of specific materials for vehicle access and introduction of passing places. The application lacks recognition and information in respect of the effect on the public bridleway and its users, on the route being proposed for access to the property, it largely ignores this material consideration. Officers also object to the tarmacing of any of the public bridleway, as it is undesirable both in terms of surfacing and expected increased vehicle speeds. The application does not include any supporting traffic figures to support the applicant's claims that the development would be offset by a decrease in agricultural movements. The buildings have been vacant for some time and as such it is not likely that there is any material trade off.

10.27 Officers therefore conclude that the proposed development would have a harmful effect on the PROW contrary to Policy R13 of the Kirklees Unitary Development Plan.

### Representations

10.28 Officers comments in relation to the concerns raised in the representations received are as follows:-

- Increased traffic  
**Reason:** It is recognised that there would be an increase in traffic associated with the development which could potentially conflict between vehicles associated with the development and users of the bridleway and these concerns have not been addressed in the submitted information.
- Support the reuse of redundant farm buildings  
**Reason:** The reuse of buildings need not be inappropriate subject to them being of permanent and substantial construction
- Farmhouse is not listed  
**Reason:** It is recognised that the buildings are not listed.
- Conflict of riders and vehicles (unsafe)  
**Reason:** It is recognised that there could be potential conflict between vehicles associated with the development and users of the bridleway and these concerns have not been addressed.
- Access is a bridleway and footpath  
**Reason:** It is recognised that there could be potential conflict between vehicles associated with the development and users of the bridleway and these concerns have not been addressed.
- Loss of pleasant leisure facility/loss of amenity  
**Reason:** It is recognised that there could be potential conflict between vehicles associated with the development and users of the bridleway to the point that amenity may be compromised.
- Bats/Owls  
**Reason:** The application has been assessed with regards to matters of ecology and biodiversity and there are matters that require addressing.

10.29 The matters raised by Councillor Watson are addressed by officers as follows:-

- The comments are not a representation as to the merits of the application.  
**Officer response:** *Noted.*
- Suggestion that there will be further applications in due course in relation to what might ultimately be a significant residential development some distance from the highway in green belt land. These are likely to be sufficiently significant to start off the process in relation to the development of the site by consideration by Committee.

**Officer response:** An application should be considered on its own merits and in accordance with the development plan unless there are material considerations that indicate otherwise. It is not considered relevant to consider future development at the site in this instance. The location of the site is isolated and paragraph 55 of the NPPF states that Local Planning Authorities should avoid new isolated homes in the countryside.

- Validity of objectors and the rights of landowners need to be considered.  
**Officer response:** The comments received from objectors are consistent with the concerns raised by officers. It is understood the buildings are currently for sale and therefore any potential purchaser should be aware of the significance of planning concerns.
- Significance of highway issues such that a decision should be taken by elected Members.  
**Officer response:** Professional Highway and PROW Officers have raised significant concerns to the development proposed and these are considered justifiable to support refusal of the development.
- The observations of Denby Dale Parish Council are noted and having regard to these comments it would seem prudent to have these matters tested before, and determined by, the Heavy woollen sub-committee.  
**Officer response:** The Parish Council concur with the concerns raised by members of the public in addition to professional Officers.
- Green belt issues are important to local residents and, therefore, it seems sensible that where matters of such significance are to be decided the responsibility should lie with the elected Members.  
**Officer response:** Local residents, in addition to the Parish Council, concur with the concerns raised by members of the public in addition to professional Officers and as such there is no reason to refer the matter to Members.
- Consideration of the specific provisions of the council's constitution in relation to referral by members the application satisfies a number of material considerations.  
**Officer response:** Noted.
- It would be in the interests of everyone involved that it should be determined by the sub-committee having regard to the possibility of further applications in the future, interest in terms of consultation responses and also the decision of a potentially controversial application should be taken by elected members.  
**Officer response:** The application should be considered in light of material planning considerations. The development proposed raises significant concerns. The principle of the development is unacceptable and as such its refusal is not considered controversial.



## Other Matters

### *Ecology*

- 10.30 Survey information has been submitted that relates to bats and breeding birds. While this survey is to a high standard, this location is subject to a number of other potential ecological constraints that have not been identified. In particular, a large proportion of the site is identified as part of the Kirklees Wildlife Habitat Network (KWHN), and as such is likely to be within an important habitat corridor, and breeding great crested newts have been recorded within 500 m of the site.
- 10.31 Although no breeding birds or roosting bats were recorded in the buildings subject to this application, the wider site supports both breeding birds, including Schedule 1 species, and roosting bats. Development in the area proposed therefore has the potential to result in indirect ecological impacts if appropriate controls are not implemented.
- 10.32 Development of the wider site, if this is to be undertaken in future, will certainly result in significant ecological impacts unless appropriate mitigation is provided. This mitigation may well require works within the present application area, and it would therefore be sensible and more likely effective to design this mitigation for the site as a whole.
- 10.33 Due to the location and the nature of the site, there are significant opportunities for ecological enhancement, which are required under national and emerging local policy.

### *Foul Sewage*

- 10.34 In consultation with Environmental Service it is recommended that the applicants submit a report giving details of the packaged sewage treatment plant to be installed, and that it be agreed in writing with the Local Planning Authority, before development commences. In particular the following information should be included:

1 Location of the tank. If the location is near to any well, stream or river it is recommended that the Environment Agency be consulted about the application.

2 The capacity of the tank and number of persons using the tank.

3 Adequate means of vehicular access should be provided to allow the tank to be emptied.

The installation shall be installed and maintained in accordance with the agreed details.

- 10.35 Subject to compliance with the above the development is considered in accordance with Kirklees Unitary Development and the National Planning Policy Framework.

### *Sustainable Transport*

- 10.36 This development has been assessed in accordance with the West Yorkshire Low Emission Strategy Planning Guidance. The size of the development is less than that of prescribed values set out in this document, which is why it is regarded as a minor development.
- 10.37 Sustainable transport Paragraph 35 of the national Planning Policy guidance states that “Plans should protect and exploit opportunities for the use of sustainable transport modes for the movement of goods or people. Therefore, developments should be located and designed where practical to...incorporate facilities for charging plug-in and other ultra-low emission vehicles.” As such, this development should encourage the use of ultra-low emission vehicles such as electric vehicles. Should the recommendation have been to approve the application, a condition can be imposed in relation to the provision of facilities for charging plug-in electric vehicles.

### *Coal Mining Legacy:*

- 10.38 A Coal Mining Risk Assessment has been submitted with the application and comments received from the Coal Authority. There are no objections to the proposals providing conditions are imposed to ensure there is no risk as a consequence of development. The inclusion of such conditions would ensure that the proposals comply with the aims of chapter 11 of the NPPF.

### *Drainage issues*

- 10.39 The NPPF sets out the responsibilities for Local Planning Authorities in determining planning applications, including flood risk assessments taking climate change into account and the application of the sequential approach. Due to the size of the site and development proposed, the application does not require referring to the Environment Agency. The Lead Local Flood Authority has been consulted but have not provided any comment. It is considered that measures could be undertaken to ensure the development meets responsibilities outlined in the National planning Policy

## **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. It is considered that the development proposals do not accord with the development plan and the adverse impacts of granting permission would significantly and demonstrably outweigh any benefits of the development when assessed against policies in the NPPF and other material consideration. It is therefore recommended that the application be refused.

## 12.0 Reasons for refusal:

1. The proposed dwelling is sited in a rural location, outside the settlement boundary and is inaccessible to local shops and amenities thus being reliant on the private car. The applicant has failed to demonstrate any special circumstances as identified within Paragraph 55 of the National Planning Policy Framework which would outweigh the unsustainable location of the proposed dwelling. The proposal is therefore contrary to the National Planning Policy Framework in addition to Policies PLP1 and PLP20 of the Kirklees Publication Draft Local Plan.

2. The existing buildings are not of permanent and substantial construction and as such cannot be reused. The redevelopment of the site would be inappropriate development for which no special circumstance have been submitted and as such is contrary to Paragraph 90 of the National Planning Policy Framework in addition to Policy PLP60 of the Kirklees Publication Draft Local Plan.

3. The existing building is sited in a prominent location which is open to 3 sides to the countryside. The works required in order to create an acceptable level of outdoor amenity area for future occupiers would involve engineering operations and a change of use of adjoining land. The subsequent use of this land as a domestic garden, along with associated domestic paraphernalia, would be a form of encroachment which would fail to preserve the openness of the Green Belt. The application is therefore, considered to constitute inappropriate development in the Green Belt. There are no very special circumstances that would clearly outweigh the harm identified and the proposal is therefore contrary to the National Planning Policy Framework in addition to Kirklees Publication Draft Local Plan Policies PLP1, PLP3 and PLP57.

4. The access and egress would involve utilising an existing track which is also a Public Right of Way. The use of the building as a dwelling, coupled with the lack of adequate provision of access would lead to a conflict of users. The development is therefore, contrary to policies R13 and T10 of the Kirklees Unitary Development Plan and the National Planning Policy Framework in addition to Kirklees Publication Draft Local Plan Policy PLP21.

5. The development proposed provides insufficient parking and suitable access for a fire tender and refuse collection contrary to Policies T10 and T19 of the Kirklees Unitary Development Plan in addition to Policy PLP21 of the Kirklees Publication Draft Local Plan.

6. The applicant has submitted ecological information that relates to bats and breeding birds only. The supporting evidence does not address the potential for impacts to Great Crested Newts, which are known to inhabit several ponds located to the south of the site. It has not been demonstrated that development could be carried out without impact to the local ecology and as such the development proposed is contrary to Chapter 11 of the National Planning Policy Framework as the Local Planning Authority is not able to discharge its duty, under regulation 9(3) of the Conservation of Habitats and Species Regulations 2017, to have regard to the requirements of the Habitats Directive.

## **Background Papers:**

Application and history files.

Website link to the application details:-

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2017%2f93217>

Certificate of Ownership –Certificate A signed and dated 02/09/2017.

Website link for previous application reference 2009/93519 for the reuse and adaptation of existing barns to 4 no. dwellings which was withdrawn:-

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2009%2f93519>



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