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**Service Director – Legal, Governance and
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Wednesday 13 June 2018

Notice of Meeting

Dear Member

Planning Sub-Committee (Huddersfield Area)

The **Planning Sub-Committee (Huddersfield Area)** will meet in the **Council Chamber - Town Hall, Huddersfield** at **1.00 pm** on **Thursday 21 June 2018**.

(A coach will depart the Town Hall, at 10.10am to undertake Site Visits. The consideration of Planning Applications will commence at 1.00 pm in the Council Chamber, Huddersfield Town Hall.)

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

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

A handwritten signature in black ink, appearing to read 'Julie Muscroft', on a light-colored background.

Julie Muscroft

Service Director – Legal, Governance and Commissioning

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

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

Member

Councillor Terry Lyons (Chair)
Councillor Donna Bellamy
Councillor Richard Eastwood
Councillor Nell Griffiths
Councillor James Homewood
Councillor Nigel Patrick
Councillor Mohammad Sarwar
Councillor Ken Sims
Councillor Mohan Sokhal
Councillor Sheikh Ullah
Councillor Harpreet Uppal

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

Substitutes Panel

Conservative

B Armer
V Lees-Hamilton
M Thompson

Green

K Allison
A Cooper

Independent

C Greaves

Labour

E Firth
S Hall
N Mather
H Richards
R Walker

Liberal Democrat

C Iredale
A Munro
A Pinnock

Agenda

Reports or Explanatory Notes Attached

Pages

1: Appointment of the Chair

The Committee will appoint the Chair for the meeting.

2: Membership of the Committee

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

3: Minutes of previous meeting

1 - 12

To approve the Minutes of the meeting of the Committee held on 17 May 2018.

4: Interests and Lobbying

13 - 14

The Councillors will be asked to say if there are any items on the Agenda about which they might have been lobbied. The Councillors will be asked to say if there are any items on the Agenda in which they have disclosable pecuniary interests, which would prevent them from participating in any discussion of the item or participating in any vote upon the item, or any other interests.

5: 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.

6: 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.

7: Public Question Time

The Committee will hear any questions from the general public.

8: Site Visit - Application No: 2018/90413

Change of use from dwellinghouse to mixed use dwellinghouse and training centre (within a Conservation Area) Thorpe Grange Manor, Thorpe Lane, Almondbury, Huddersfield.

(Estimated time of arrival at site – 10:20 am)

Contact Officer: Nick Hirst, Planning Services

Wards Affected: Almondbury

9: Site Visit - Application No: 2016/91200

Erection of single storey rear extension, dormer window to rear and porch to front, formation of gabion wall and associated works. 23, Spa Wood Top, Whitehead Lane, Lockwood, Huddersfield,

(Estimated time of arrival at site – 10:40 am)

Contact Officer: William Simcock, Planning Services

Wards Affected: Newsome

10: Site Visit - Application No: 2018/91198

Outline application for erection of residential development Land at, Westcroft, Honley, Holmfirth

(Estimated time of arrival at site – 11:05 am)

Contact Officer: Bill Topping, Planning Services

Wards Affected: Holme Valley North

11: Site Visit - Application No: 2018/90021

Erection of studio/store for domestic use 4 Delves Cottage, The White House, Delves Gate, Slaithwaite, Huddersfield.

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

Contact Officer: Olivia Roberts, Planning Services

Wards Affected: Colne Valley

12: Local Planning Authority Appeals

15 - 34

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: Almondbury; Golcar; Crosland Moor and Netherton; Holme Valley North.

Planning Applications

35 - 38

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

Please note that any members of the public who wish to speak at the meeting must register no later than 5.00pm (for phone requests) or 11:59pm (for email requests) on Monday 18 June 2018.

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

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

- 13: Applications for a definitive map modification order to add public footpaths to the definitive map and statement, Clayton Fields, Edgerton. (Application references 30, 31, 184, 185 & 186). Application for a definitive map modification order to vary the recorded width of recorded public footpath Huddersfield 345 (part) (Application reference 187)** 39 - 58

The Planning Sub-Committee will consider:

- 1) A number of applications to record public footpaths to the definitive map and statement, Clayton Fields, Edgerton.
- 2) An application for a definitive map modification order to vary the recorded width of recorded public footpath Huddersfield 345 (part).

Contact Officer: Giles Cheetham, Definitive Map Officer

Wards Affected: Greenhead

- 14: Amendments to the authority given by sub-committee in October 2017 for the extinguishment of claimed public footpaths at Clayton Fields, Edgerton Road, and provision of alternative routes. Town & Country Planning Act 1990, section 257.** 59 - 68

The Planning Sub-Committee will consider amendments to the authorisation issued in October 2017 for an order to extinguish claimed Public Footpath rights over land at Clayton Fields and to provide alternative pedestrian routes.

Contact Officer: Giles Cheetham, Definitive Map Officer

Wards Affected: Greenhead

- 15: Planning Application - Application No: 2018/90151** 69 - 86

Outline application for erection of residential development adj, 208, Yew Tree Road, Birchencliffe, Huddersfield.

Contact Officer: Adam Walker, Planning Services

Wards Affected: Lindley

- 16: Planning Application - Application No: 2018/91198** 87 - 96
- Outline application for erection of residential development Land at, Westcroft, Honley, Holmfirth
- Contact Officer: Bill Topping, Planning Services
- Wards Affected: Holme Valley North
-
- 17: Planning Application - Application No: 2018/90413** 97 - 110
- Change of use from dwellinghouse to mixed use dwellinghouse and training centre (within a Conservation Area) Thorpe Grange Manor, Thorpe Lane, Almondbury, Huddersfield.
- Contact Officer: Nick Hirst, Planning Services
- Wards Affected: Almondbury
-
- 18: Planning Application - Application No: 2016/91200** 111 - 122
- Erection of single storey rear extension, dormer window to rear and porch to front, formation of gabion wall and associated works. 23, Spa Wood Top, Whitehead Lane, Lockwood, Huddersfield,
- Contact Officer: William Simcock, Planning Services
- Wards Affected: Newsome
-
- 19: Planning Application - Application No: 2018/91045** 123 - 130
- Erection of fence and alterations to driveway 47, Meltham Road, Honley.
- Contact Officer: Olivia Roberts, Planning Services
- Wards Affected: Holme Valley North
-
- 20: Planning Application - Application No: 2018/90021** 131 - 140
- Erection of studio/store for domestic use 4 Delves Cottage, The White House, Delves Gate, Slaithwaite, Huddersfield.
- Contact Officer: Olivia Roberts, Planning Services
- Wards Affected: Colne Valley
-

Planning Update

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

Contact Officer: Richard Dunne

KIRKLEES COUNCIL

PLANNING SUB-COMMITTEE (HUDDERSFIELD AREA)

Thursday 17th May 2018

Present: Councillor Terry Lyons (Chair)
Councillor Donna Bellamy
Councillor James Homewood
Councillor Mohammad Sarwar
Councillor Ken Sims
Councillor Mohan Sokhal
Councillor Rob Walker
Councillor Andrew Pinnock
Councillor Donald Firth

Apologies: Councillor Bernard McGuin
Councillor Sheikh Ullah

1 Membership of the Committee

Councillor Andrew Pinnock took the position of one of the Liberal Democrat Group Vacancies.

Cllr D Firth substituted for Cllr McGuin

2 Minutes of previous meeting

The Minutes of the meeting held on 29 March 2018 were approved as a correct record.

3 Interests and Lobbying

Councillors Bellamy and D Firth declared an 'other interest' in applications 2018/90192, 2017/94319 and 2018/90713 on the grounds that they were members of Holme Valley Parish Council.

Councillors D Firth and Sims declared that they had been lobbied on application 2018/90192.

Councillor Sims declared he had been lobbied on applications 2017/94319 and 2018/90713.

In relation to items 14 and 15 Councillor Sokhal declared he had previously commented on and supported local residents to maintain the public rights of way footpaths at Clayton Fields and would not participate in the Committee discussions.

Councillor Homewood declared he had been lobbied on applications 2017/91286 and 2018/90827.

Planning Sub-Committee (Huddersfield Area) - 17 May 2018

4 **Admission of the Public**

All items on the agenda were taken in public session.

5 **Deputations/Petitions**

No deputations or petitions were received.

6 **Public Question Time**

The Committee received a question from Cllr Nigel Patrick on why the local planning authority was allowing developers to start work on site before planning conditions had been discharged.

The Development Management Group Leader responded on behalf of the Committee to the question.

7 **Site Visit - Application No: 2017/91286**

Site visit undertaken.

8 **Site Visit - Application No: 2018/90827**

Site visit undertaken.

9 **Site Visit - Application No: 2017/94302**

Site visit undertaken.

10 **Site Visit - Application No: 2017/93009**

Site visit undertaken.

11 **Site Visit - Application No: 2018/90713**

Site visit undertaken.

12 **Site Visit - Application No: 2018/90192**

Site visit undertaken.

13 **Local Planning Authority Appeals**

That the report be noted.

14 **Applications for a definitive map modification order to add public footpaths to the definitive map and statement, Clayton Fields, Edgerton. (Application references 30, 31, 184, 185 & 186). Application for a definitive map modification order to vary the recorded width of recorded public footpath Huddersfield 345 (part) (Application reference 187)**

The Committee considered a report that sought a decision on a number of applications for a definitive map modification order to add public footpaths to the definitive map and statement, Clayton Fields, Edgerton and an application for a definitive map modification order to vary the recorded width of recorded public footpath Huddersfield 345 (part).

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

Planning Sub-Committee (Huddersfield Area) - 17 May 2018

Under the provisions of Council Procedure Rule 37 the Committee received representations from Jonathan Adamson and Mike Woodward (Chair of the Marsh Community Forum).

RESOLVED – That consideration of the item be deferred to provide an opportunity for the Committee to receive a private briefing from officers to clarify matters relating to the applications prior to determination at a formal meeting of the Committee.

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

For: Councillors Bellamy, D Firth, Homewood, Lyons, A Pinnock, Sarwar, Sims and Walker. (8 votes).

Against: (0 votes).

Abstained: Councillor Sokhal

15 Amendments to the authority given by sub-committee in October 2017 for the extinguishment of claimed public footpaths at Clayton Fields, Edgerton Road, and provision of alternative routes. Town & Country Planning Act 1990, section 257

The Committee considered a report that sought a decision on amendments to the authorisation issued in October 2017 for an order to extinguish claimed Public Footpath rights over land at Clayton Fields and to provide alternative pedestrian routes

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

RESOLVED – That consideration of the item be deferred to provide an opportunity for the Committee to receive a private briefing from officers to clarify matters relating to the amendments prior to determination at a formal meeting of the Committee.

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

For: Councillors Bellamy, D Firth, Homewood, Lyons, A Pinnock, Sarwar, Sims and Walker. (8 votes).

Against: (0 votes).

Abstained: Councillor Sokhal

16 Planning Application - Application No: 2017/93459

The Sub Committee gave consideration to Planning Application 2017/93459 Erection of 19 dwellings, formation of associated access and erection of protective post and mesh cricket fencing (minimum 12m in height) Land south of, Swallow Lane, Golcar, Huddersfield.

Planning Sub-Committee (Huddersfield Area) - 17 May 2018

Under the provisions of Council Procedure Rule 37 the Committee received representations from Andrew Marchington (objector) and Jonathan Ainley (Agent).

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

- 1) complete the list of conditions contained within the considered report including:
 1. 3 years to commence development
 2. Approved plans
 3. Materials for external walls
 4. Render colour
 5. Roofing materials
 6. Boundary treatment Plan
 7. Remove PD rights for extensions and outbuildings
 8. Remove PD rights for openings in the eastern side elevation of Plot 1 and northern side elevation of Plot 19
 9. Scheme for adoptable internal estate roads
 10. Areas to be surfaced and drained
 11. Works to the site access
 12. Construction access
 13. Surface water drainage scheme
 14. Overland flow routing to be maintained
 15. Scheme for surface water disposal during the construction phase
 16. Details of SuDS features
 17. As-built drawings of SuDS features
 18. Provision of cricket fencing (including specification of the netting)
 19. Ecological Design Strategy
 20. Submission of Remediation Strategy
 21. Implementation of Remediation Strategy
 22. Submission of Validation Report
 23. Provision of charging points
 24. Undertaken in accordance with soft Landscaping Plan
- 2) An additional condition that plots 1 and 2 be faced in natural stone.
- 3) Secure a S106 agreement to cover the following matters:
 - i) The provision of affordable housing on-site (3 'Starter Homes')
 - ii) The provision and management of Public Open Space (POS) and natural play facility on-site
 - iii) Management/maintenance of the proposed cricket fencing
- 4) That, pursuant to (3) above, in the circumstances where the S106 agreement has not been completed within 3 months of the date of the Committee's resolution then the Head of Strategic Investment shall consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the benefits being secured; if so, the Head of

Planning Sub-Committee (Huddersfield Area) - 17 May 2018

Strategic Investment is authorised to determine the application and impose appropriate reasons for refusal under Delegated Powers.

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

For: Councillors Homewood, Lyons, Sarwar and Walker (4 votes).

Against: Bellamy and D Firth (2 votes).

Abstained: Councillors A Pinnock, Sims and Sokhal

17 **Planning Application - Application No: 2017/93015**

The Sub Committee gave consideration to Planning Application 2017/93015 Erection of 19 dwellings (C3) with associated parking with vehicular access Rough Nook Farm, 112, Mill Moor Road, Meltham, Holmfirth.

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

- 1) complete the list of conditions contained within the considered report including:
 1. 3 year time limit to commence development
 2. Development in accordance with approved plans
 3. Approval of samples of materials
 4. Details of retaining walls including facing materials
 5. Detailed drainage scheme
 6. Assessment of adjacent watercourses and imposition of appropriate standoff distances
 7. Temporary drainage scheme
 8. Design of surface water outfall
 9. Details of access road
 10. Surfacing of parking areas
 11. Contaminated land investigation and site remediation as necessary
 12. Electric vehicle charging points
 13. Construction management plan
- 2) Ensure that the applicant provides information to demonstrate the presence or absence of breeding birds that are qualifying features of the South Pennine Moors Special Protection Area and; for the LPA to subsequently undertake a Habitat Regulations Assessment and consult with Natural England
- 3) Secure a S106 agreement to cover the following matters:
 - i) Future maintenance responsibilities for drainage infrastructure
 - ii) An easement over the land edged blue on the location plan where it is adjacent to Meltham Dike in order to facilitate the provision of a continuous footpath (riverside walk) in the future.

- 4) That, pursuant to (3) above, in the circumstances where the S106 agreement has not been completed within 3 months of the date of the Committee's resolution then the Head of Strategic Investment shall consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the benefits being secured; if so, the Head of Strategic Investment is authorised to determine the application and impose appropriate reasons for refusal under Delegated Powers.

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

For: Councillors Homewood, A Pinnock, Sarwar, Sokhal and Walker. (5 votes).

Against: (3 votes). Bellamy, D Firth and Sims

Abstained: Councillor Lyons

18 Planning Application - Application No: 2017/94302

The Sub Committee gave consideration to Planning Application 2017/94302
Erection of veterinary hospital Land at, Somerset Road, Almondbury, Huddersfield.

Under the provisions of Council Procedure Rule 37 the Committee received a representation from Martin Patterson (on behalf of the applicant).

RESOLVED – Delegate approval of the application and the issuing of the decision notice to the Head of Strategic Investment to:

- 1) ensure that the surface water drainage scheme (soakaways) are acceptable to the Environment Agency. In the event that soakaways are not acceptable to the Environment Agency, then secure an alternative method of surface water disposal.
- 2) complete the list of conditions including those contained within the considered report including:
 1. 3 year time limit for commencement
 2. Development in accordance with approved plans
 3. Approval of samples of materials
 4. Site remediation and validation report (includes asbestos and Japanese knotweed)
 5. Detailed drainage design
 6. Restriction on hours of use to those set out within the considered report
 7. Details of fixed plant
 8. Restriction on outdoor animal exercise area (no unsupervised animals)
 9. Details of external lighting to protect residential amenity and biodiversity
 10. Electric vehicle charging scheme
 11. Arboricultural method statement
 12. Landscaping scheme to be provided
 13. Provision of visibility splay

Planning Sub-Committee (Huddersfield Area) - 17 May 2018

14. Surfacing of car park
15. Car park and servicing management plan
16. Construction management plan
17. Detailed scheme for improvement works to Kidroyd Lane (PROW HUD/115/20)
18. Detailed design for proposed access off the mini roundabout

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

For: Councillors Bellamy, D Firth, Homewood, Lyons, A Pinnock, Sarwar, Sims, Sokhal and Walker. (9 votes).

Against: (0 votes).

19 **Planning Application - Application No: 2018/90192**

The Sub Committee gave consideration to Planning Application 2018/90192 Erection of 21 dwellings Land adjacent to 8 Miry Lane, Netherthong, Holmfirth.

Under the provisions of Council Procedure Rule 37 the Committee received a representation from Stewart Brown (applicant) and Claire Parker-Hugill (agent).

Under the provisions of Council Procedure Rule 36 (1) the Committee received a representation from Councillor Nigel Patrick (Local Ward Member).

RESOLVED – Delegate approval of the application and the issuing of the decision notice to the Head of Strategic Investment to:

- 1) complete the list of conditions contained within the considered report and update list including:
 1. Three years to commence development
 2. Approved plans and documents
 3. Details and samples of materials
 4. Car and cycle parking to be provided prior to occupation
 5. Landscaping details (incorporating Ecological Design Strategy, ecological management plan and works around/to footpaths) to be provided and implemented. Planting to be replaced if any trees or shrubs fail within five years
 6. Tree planting
 7. Boundary treatments, retaining walls and gabions
 8. Lighting strategy
 9. Crime prevention (including details of windows overlooking footpaths)
 10. Removal of permitted development rights
 11. Site contamination
 12. Construction method statement (including controls on vehicle sizes and routes, times of movements (to avoid the start and end of the school day), signage, temporary drainage arrangements and road conditions surveys
 13. Structures adjacent to highways

Planning Sub-Committee (Huddersfield Area) - 17 May 2018

14. Retaining walls
15. Construction access
16. Sight lines / visibility splays
17. Road widening to Miry Lane
18. Internal adoptable roads
19. Provision of refuse collection arrangements prior to occupation
20. Electric/hybrid vehicle charging points
21. Surfacing and drainage of parking areas
22. Construction Management Plan
23. Flood risk / drainage

2) Secure a S106 agreement to cover the following matters:

- i) Provision and maintenance of on-site Public Open Space.
- ii) Two Affordable Rent and two Intermediate units, or an alternative tenure mix including Starter Homes (subject to evidence and negotiation with officers).
- iii) Contribution of £10,000 towards road safety and sustainable travel initiatives for Netherthong, to be paid in phases.

3) That, pursuant to (2) above, in the circumstances where the S106 agreement has not been completed within 3 months of the date of the Committee's resolution then the Head of Strategic Investment shall consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the benefits being secured; if so, the Head of Strategic Investment is authorised to determine the application and impose appropriate reasons for refusal under Delegated Powers.

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

For: Councillors Bellamy, D Firth, Homewood, Lyons, A Pinnock, Sarwar, Sims, Sokhal and Walker. (9 votes).

Against: (0 votes).

20 **Planning Application - Application No: 2017/94319**

The Sub Committee gave consideration to Planning Application 2017/94319
Erection of 3 dwellings Three Valleys, Cold Hill Lane, New Mill, Holmfirth.

RESOLVED – Delegate approval of the application and the issuing of the decision notice to the Head of Strategic Investment to:

- 1) complete the list of conditions contained within the considered report including:
 1. year time limit for commencement of the development
 2. In accordance with plans
 3. Material samples to be provided
 4. Visibility splays kept clear (Highways)

Planning Sub-Committee (Huddersfield Area) - 17 May 2018

5. Parking areas to be surfaced, drained and implemented (Highways)
6. Bin storage area to be provided prior to occupation (Highways)
7. Construction details for access (Highways)
8. Construction details for retaining walls next to HW (Highways)
9. Details on access for construction traffic (Highways)
10. Remove PD for garage conversions (Highways)
11. Charging Points (Environmental Health)
12. Boundary fence to be implemented and retained
13. Plot 1 gable side window obscure glazed
14. Arboricultural Method Statement to be provided and done in accordance with (Trees)
15. Remove PD for extensions and outbuildings
16. Works to be done in accordance with Biodiversity Mitigation and Enhancement Plan
17. Reporting of unexpected contamination
18. Drainage details

- 2) Await the expiration of the period of publicity and take into account any representations received during that period and if new material planning considerations are raised that the application to be brought back to the sub-committee for reconsideration.

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

For: Councillors Homewood, Lyons, A Pinnock, Sarwar, Sokhal and Walker. (6 votes).

Against: Councillors Bellamy, D Firth and Sims (3 votes).

21 **Planning Application - Application No: 2018/90713**

The Sub Committee gave consideration to Planning Application 2018/90713 Prior approval for change of use from office (B1) to 11 apartments (C3) Green Lane Mill, Green Lane, Holmfirth.

Under the provisions of Council Procedure Rule 37 the Committee received a representation from David Smith (on behalf of the applicant).

Under the provisions of Council Procedure Rule 36 (1) the Committee received a representation from Councillor Nigel Patrick (Local Ward Member).

RESOLVED – That contrary to the officers recommendations that the application be refused.

The Committee considered that due to the location of the site that residents of the development would be reliant on motor vehicles and the number of on-site car parking spaces was insufficient to meet the needs of residents. The Committee concluded that the inadequacy of the parking provision would not be in the best interests of highway safety.

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

For: Councillors Bellamy, D Firth, A Pinnock, Sarwar, Sims and Sokhal. (6 votes).

Against: Councillors Homewood, Lyons and Walker (3 votes).

22 Planning Application - Application No: 2018/90827

The Sub Committee gave consideration to Planning Application 2018/90827 Erection of detached dwelling adj 14, The Fairway, Fixby, Huddersfield.

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

RESOLVED – That consideration of the application be deferred to allow the applicants an opportunity to consider a redesign of the proposed dwelling that would be in keeping with the surrounding area.

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

For: Councillors Bellamy, D Firth, Homewood, Lyons, A Pinnock, Sarwar, Sims, Sokhal and Walker. (9 votes).

Against: (0 votes).

23 Planning Application - Application No: 2017/91286

The Sub Committee gave consideration to Planning Application 2017/91286 Change of use of land to domestic garden with formation of driveway adj to, 46, The Fairway, Fixby, Huddersfield.

Under the provisions of Council Procedure Rule 37 the Committee received a representation from Mohammad Anwar (on behalf of the applicant).

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

The proposed change of use of an area of established protected woodland to domestic curtilage associated with no. 46 The Fairway, would cause harm to an important open green buffer along the rear of properties on The Fairway stretching down to Jilley Royd Lane. This would adversely impact on how the woodland functions at its eastern end and lessen its function as a green corridor. This would also be detrimental to visual amenity. Such a change to its operation is considered to be to the detriment of the local area and the local area's sense of place. To permit such a development would be contrary to Policies D2 (vi & vii), BE1 (i & ii) and BE2 (i) of the Kirklees Unitary Development Plan, Policy PLP24 (a) of the Kirklees Publication Draft Local Plan and Policies in Chapter 7 and the Core Planning Principles of the National Planning Policy Framework.

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

For: Councillors D Firth, Homewood, Lyons, A Pinnock, Sarwar, Sims and Walker. (7 votes).

Against: Councillor Sokhal (1 votes).

Abstained: Councillor Bellamy

24 **Planning Application - Application No: 2017/93009**

The Sub Committee gave consideration to Planning Application 2017/93009 Listed Building Consent to remove fire-damaged debris from interior of mill building and weaving shed Newsome Mills, Ruth Street, Newsome, Huddersfield.

Under the provisions of Council Procedure Rule 37 the Committee received a representation from Diane Sims (Newsome Mills Campaign).

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

1)

- i) Time Limit for the commencement of the works
- ii) Development shall be implemented in accordance with the plans and details
- iii) No development to take place until a method statement for the removal of the debris, the creation of openings and the retention of material has been submitted and approved.

2) The discharge of the condition relating to the method statement be submitted to the Committee for determination.

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

For: Councillors Bellamy, D Firth, Homewood, Lyons, A Pinnock, Sarwar, Sims, Sokhal and Walker. (9 votes).

Against: (0 votes).

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KIRKLEES COUNCIL

DECLARATION OF INTERESTS AND LOBBYING

Planning Sub-Committee/Strategic Planning Committee

Name of Councillor

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

LOBBYING

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

Signed:

Dated:

NOTES

Disclosable Pecuniary Interests

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

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

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

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

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

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

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

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

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

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

(b) either -

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

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

Lobbying

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

Name of meeting: PLANNING SUB-COMMITTEE (HUDDERSFIELD)

Date: 21 JUNE 2018

Title of report: LOCAL PLANNING AUTHORITY APPEALS

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

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports)?	No
The Decision - Is it eligible for "call in" by Scrutiny?	No
Date signed off by Service Director - Economy, Regeneration & Culture	Paul Kemp 12 June 2018
Is it also signed off by the Assistant Director for Financial Management, IT, Risk and Performance?	No financial implications
Is it also signed off by the Assistant Director - Legal Governance and Monitoring?	No legal implications
Cabinet member portfolio	Economy (Strategic Planning, Regeneration & Transport) (Councillor P McBride)

**Electoral wards affected: Almondbury; Golcar; Crosland Moor and Netherton; Holme Valley North;
 Ward councillors consulted: No**

Public or private:

1. Summary

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

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

- 2.1 2016/62/93871/W - Erection of detached dwelling (within the curtilage of a Listed Building) at Fenay Lodge, Thorpe Lane, Almondbury, Huddersfield, HD5 8TA. (Sub-Committee in accordance with officer recommendation) (Appeal dismissed and application for award of costs refused)

- 2.2 2017/44/93861/W - Discharge condition 10 (surface water) on previous permission 94/93648 for formation of roads, footpath, sewers and ground works for phase II of residential development at Land off, Vicarage Road, Longwood, Huddersfield. (Officer) (Appeal against non determination of application dismissed)
- 2.3 2017/62/92057/W - Alterations to convert basement to apartment at 36, May Street, Crosland Moor, Huddersfield, HD4 5DG. (Officer) (Dismissed)
- 2.4 2017/62/93833/W - Erection of single storey front extension at 8 The Barn, Copley House Barn, Deer Hill End Road, Meltham, Holmfirth, HD9 5PU. (Officer) (Dismissed)
- 2.5 2017/62/92941/W - Erection of first floor extension over existing porch to front at 19, Yew Green Avenue, Lockwood, Huddersfield, HD4 5EW. (Officer) (Allowed)

3. Implications for the Council

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

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

4. Consultees and their opinions

Not applicable, the report is for information only

5. Next steps

Not applicable, the report is for information only

6. Officer recommendations and reasons

To note

7. Cabinet portfolio holder recommendation

Not applicable

8. Contact officer

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

9. Background Papers and History of Decisions

Not applicable

10. Service Director responsible

Paul Kemp



Appeal Decision

Site visit made on 16 January 2018

by **I Jenkins BSc CEng MICE MCIWEM**

an Inspector appointed by the Secretary of State

Decision date: 14 May 2018

Appeal Ref: APP/Z4718/W/17/3183517

Fenay Lodge, Thorpe Lane, Almondbury, Huddersfield, HD5 8TA

- 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 Jim Harris against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2016/62/93871/W, dated 8 December 2016, was refused by notice dated 27 March 2017.
 - The development proposed is the erection of a single-storey 3 bed dwelling.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by the appellant against Kirklees Metropolitan Borough Council. This application is the subject of a separate Decision.

Main Issue

3. I consider that the main issue in this case is the effect of the proposal on the setting of Fenay Lodge and its significance as a designated heritage asset.

Reasons

4. The appellant's Heritage Assessment (HA) confirms that Fenay Lodge, which is a substantial two-storey stone built dwelling, was built in the 17th Century and is a Grade II Listed Building. Furthermore, when it was built, the lodge, which is situated close to the southern side of Thorpe Lane, sat in extensive grounds extending to the southwest, south and northeast. Those grounds are now limited, for the most part, to a gravelled driveway and a broadly circular parking area to the northeast as well as a rear garden area, bounded to the west, south and east by more recent residential development. Nonetheless, the HA indicates that the dwelling still retains its '*original grandness*'. I consider that, in addition to the lawn area of the rear garden, which is identified by the HA, aspects of the setting of Fenay Lodge that contribute to the significance of the heritage asset, include the gravel parking area and planting to the rear of the garden. The HA acknowledges that the quality of the building is '*offset nicely by the gravel parking area and framed by landscaping of varying heights in the foreground and beyond*'.

5. The *National Planning Policy Framework* (the Framework) indicates that the significance of a designated heritage asset can be harmed through development within the setting of the asset. Section 66(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990, (as amended)* requires that in considering whether to grant planning permission for development which affects the setting of a Listed Building, special regard shall be had to the desirability of preserving its setting.
6. I understand that appeal Ref. APP/Z4718/W/16/3149647, involving the construction of a new dwelling within the curtilage of Fenay Lodge, was dismissed in 2016. However, it involved 2-storey development and so is materially different from the case before me, which I have considered on its own merits.
7. The current proposal includes the erection of a detached, single-storey dwelling of contemporary design, with flat, predominantly grassed roof areas. The building would be situated towards the back of the site, where the ground level is significantly lower than that of the lawn and it would be set partially below adjacent ground levels, which would limit the visual impact of the building. I also understand that the proposal would utilise materials which are representative of local vernacular. In these respects it would be in keeping with the requirements of Policies BE2 and BE11 of the *Kirklees Unitary Development Plan, 2007* (UDP). There would be a courtyard to the southwest of the dwelling and a parking area to the northeast, with a new driveway routed along the eastern side of the garden up to the main entrance of Fenay Lodge, off Thorpe Lane.
8. The appeal development, including the proposed building, courtyard and parking area/driveway would take up almost half the depth of the existing back garden, between the main building and its rear boundary. The construction of the dwelling and courtyard would also necessitate the removal of most, if not all, of the planting along the southeastern side of the lawn. The northwestern edge of the footprint of the dwelling would encroach on the lawn, as would the proposed Ha-ha retaining wall, alongside the building. Furthermore, the new informal planting along the southeastern edge of the retained area of lawn, whilst necessary to soften the visual impact of the development, would be likely to reduce the extent of the lawn and the sense of space to the rear of the lodge, materially reducing its positive contribution to the setting of the property.
9. In addition, the existing driveway and parking area to the northeast of the lodge would be sub-divided with planting and the eastern section would be used as part of the new separate driveway leading along the eastern side of the garden to the proposed dwelling. This would also diminish the quality of the approach to the lodge off Thorpe Lane.
10. It is likely that the adverse impacts of the proposal would be appreciated not only from Thorpe Lane, which is the principal public vantage point from where the property can be seen, but also from first floor windows of neighbouring properties to the rear, from where the elevated vantage points would be likely to allow some views over the proposed planting. Although more restricted, due to the proposed planting, views of the development would also be likely to be available from the lodge itself. I consider that the proposed development would cause considerable harm to the setting of Fenay Lodge.

11. The appellant has identified that there is an extant planning permission for the construction of a 3 car garage adjacent to the section of the rear boundary of the site shared with Nos. 23 and 25 Dartmouth Avenue. I understand that the planning permission was granted in 1996 and whilst a kitchen extension, which was also subject of that planning permission, was implemented, the garage was not. In the event of this appeal being dismissed, the appellant has suggested that the garage element of the planning permission would be implemented. Even if this were the case, based on the limited details provided by the appellant, I consider it likely that the approved development would have a much smaller footprint than the current appeal scheme and its impact on the existing shrubbery and driveway/parking area would be less. Its effect on the setting of the lodge would be far less than that of the appeal scheme. Therefore, I give the previously approved development little weight as a fallback position. Furthermore, the considerable period of time that has passed since the grant of planning permission casts considerable doubt over the likelihood of implementation and this reinforces my finding.
12. I conclude that the proposal would be likely to harm to the setting of Fenay Lodge and thereby, the significance of the designated heritage asset, contrary to the aims of UDP Policy BE1 and the Framework, as regards securing good quality design as well as UDP Policy D2, which seeks to avoid over-development and prejudicing the character of the surroundings . In my judgement, the proposal would lead to less than substantial harm to the significance of a designated heritage asset, which the Framework indicates should be weighed against the public benefits of the proposal.

Public benefits

13. The aims of the Framework include boosting significantly the supply of housing and, to that end, it seeks to ensure that local planning authorities are able to demonstrate a 5 year supply of deliverable housing sites. The Council has confirmed that it is currently unable to do so. Under these circumstances, the contribution which would be made by the proposal towards meeting the shortfall in supply attracts more weight than would otherwise be the case. However, as it involves only a single dwelling, the contribution would be small and I give it only moderate weight.
14. The inclusion of energy saving features within the design of the proposed dwelling would be in keeping with the aims of UDP Policy BE1 and the Framework as regards energy efficiency. However, whilst I understand that the dwelling would be constructed to Passivhaus standards, I have not been provided with any compelling evidence to show that either in this or some other respect the design can be properly regarded as innovative. In my judgement, it is not, not least as this is not the first appeal that I have determined involving construction of a dwelling to such standards in Yorkshire. I give these matters only moderate weight.
15. The Framework identifies that heritage assets are an irreplaceable resource and when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. I consider on balance, that the harm the proposal would cause to the significance of Fenay Lodge as a designated heritage asset would outweigh any public benefits of the proposal.

Other matters

16. The appeal site shares its rear boundary with a number of properties that front onto Dartmouth Avenue. The ground level within those neighbouring back gardens slopes down gently from the appeal site towards the rear elevations of the dwellings, which contain a number of rear facing habitable room windows. The southeastern sidewall of the proposed dwelling, which would be set back from the shared boundary by around 2.1 metres, would extend across the full width of the back garden of No. 21. However, the ground floor level of the proposed dwelling would be set well below the level of the adjacent section of the garden of No. 21 and given the single-storey, flat roofed design of the building as well as the separation distance between it and the rear elevation of that neighbouring dwelling, the proposal would not appear overdominant when seen from the rear facing windows of No. 21. Other neighbouring properties would be further away and would not face directly towards the proposed building. Furthermore, the visual impact of the proposal could be softened to some extent through the establishment of planting alongside the boundary, which could be secured by condition, although, given the limited space available, this would be unlikely to be so dense as to screen the building from view.
17. The potential for overlooking of neighbouring properties from glazed openings in the southeastern side wall of the proposed building could be satisfactorily limited through the use of obscured glazing, secured by condition. It would also be possible, through the imposition of a suitable condition, to secure the provision of a boundary treatment along the rear boundary shared with Nos. 23 and 25 which would satisfactorily limit light pollution from cars pulling into the proposed parking spaces. Given the proposal involves the addition of a single dwelling to an existing residential area, I consider that activity likely to be associated with future occupants would be unlikely to result in a significant increase in the levels of noise and disturbance experienced by neighbouring residents.
18. I conclude that, subject to conditions, it is likely that the effect of the proposal on the living conditions of neighbouring residents would be acceptable and in this respect the proposal would not conflict with UDP Policy BE12.
19. I share the view of the Council that the proposal, which would make use of an existing vehicular access point onto Thorpe Lane, would be unlikely to cause any material harm to highway safety and in that respect it would not conflict with UDP Policies T10 or D2. This is also consistent with the view reached by my colleague who dealt with the previous appeal referred to above.
20. I understand that the proposed dwelling would be occupied by the appellant, satisfying his desire to downsize from Fenay Lodge and to continue living in the same area. However, I have not been provided with any evidence to support his contention that there is unlikely to be anything comparable available in the area and in my judgement, his personal circumstances do not outweigh the planning considerations in this case. I also note that whilst the proposal was supported by the Council's Conservation and Design Officer, it was not by the Planning Officer, who recommended refusal of planning permission. I have also had regard to the correspondence from interested parties both in support of the proposal and objecting to it. However, neither the views expressed, nor

any other matters raised are sufficient to outweigh the considerations which have led to my conclusions on the main issue.

Conclusions

21. The Framework indicates that where the local planning authority is unable to demonstrate a 5 year supply of deliverable housing sites, relevant policies for the supply of housing should not be considered up to date. In such circumstances, planning permission should be granted unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or, specific policies in the Framework indicate that development should be restricted. In this case, the second limb applies, with particular reference to policies related to designated heritage assets, as set out above. However, even if that were not the case, I consider that the harm the proposal would cause to the setting of Fenay Lodge and therefore its significance as a designated heritage asset would be likely to significantly and demonstrably outweigh any benefits of the scheme.
22. I conclude on balance, that the appeal proposal would conflict with the Development Plan taken as a whole and it would not amount to sustainable development under the terms of national policy. For the reasons given above, I conclude that the appeal should be dismissed.

I Jenkins

INSPECTOR



Appeal Decision

Site visit made on 30 April 2018

by Elaine Worthington BA (Hons) MTP MUED MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd May 2018

Appeal Ref: APP/Z4718/W/18/3195819

Land at Vicarage Road, Longwood, Huddersfield, HD3 4HJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Mr Anthony Dann, IES Management Ltd against Kirklees Metropolitan Borough Council.
 - The application Ref 2017/93861, dated 9 November 2017, sought approval of details pursuant to condition No 10 of a planning permission Ref 94/62/93648/W1 granted on 4 September 1995.
 - The development proposed is the formation of roads, footpath, sewers and ground works for Phase II of residential development.
 - The details for which approval is sought are: a scheme for the provision and implementation of a surface water regulation system.
-

Decision

1. The appeal is dismissed.

Background

2. The appeal site forms part of a wider area of land with outline planning permission for residential development that was granted in 1993. The appellant indicates that Phase I of that development has been approved and constructed under a separate detailed planning permission. Planning permission was granted under reference 94/93648 for the formation of roads, footpath, sewers and ground works for Phase II of that residential development.
3. That permission was subject to a number of conditions including condition 10 which requires a scheme for the provision and implementation of a surface water regulation system to be submitted to and implemented and agreed in writing by the local planning authority. It was imposed in the interests of proper drainage and flood prevention.
4. The Council failed to determine an application seeking the approval of those details within the statutory time period. However, it has provided an officer's report and a putative reason as to why it would have refused the application had it been empowered to do so. This overall background has led to my identification of the main issue below.

Main Issue

5. The main issue is whether the submitted details with regard to condition 10 concerning a scheme for the provision and implementation of a surface water regulation system would provide adequate drainage and flood prevention.

Reasons

6. The 1994 approval has been partially implemented and includes the installation of both foul and surface water drainage. Nevertheless it excludes the surface water regulation system, which is the specific subject of condition 10. In this regard the appellant proposes to construct a concrete holding or balancing tank with a hydro brake outlet which is intended to accommodate the waters generated from a 1 in 100 year flood event (plus a 30% climate change value). It would be located at the site's lowest point in order to be gravity fed and would be adjacent to a stream and a number of public mains services which cross the site.
7. The appellant advises that an additional area of land in his ownership adjoining the appeal site is identified in the emerging development plan for residential development. As such, the proposed tank has been positioned and designed to accommodate the run off associated with the future development of that site too. With this in mind, the tank shown on the plans is split into three sections. Phase 1 would serve the appeal site and Phases 2 and 3 would serve the additional adjacent land as and when required via an extension to the tank. The tank that would serve the appeal site would be 400 cubic metres in volume. Its size has been calculated on the basis of 1.66 acres (0.7672 hectares) of the appeal site being hard-surfaced and using a discharge rate of 5L/Sec/Ha.
8. Paragraph 100 of the National Planning Policy Framework (the Framework) states that local planning authorities should take advice from the Environment Agency and other relevant flood risk management bodies such as the lead local flood authorities. Lead local flood authorities are responsible for managing local flood risk, including from surface water. Accordingly the Council has sought comments from its Flood Management Officer (FMO) who advises that the calculations developed in 2014 (and provided by the appellant to support the application) should be re-calculated using the latest rainfall guidance for the area and a drainage simulation provided to ensure that the surface water regulation system proposed provides sufficient storage.
9. The Council is also concerned about the accuracy of the submitted hand drawn plans and their in part indicative nature. It considers that these should be produced using topographic survey data to show existing and proposed cross sections and long sections along with pipe sections to show pipe dimensions, depth of infrastructure and gradients. The FMO also notes that the plan submitted of the flow control is indicative only and should have a design that can be incorporated into a simulation.
10. In response, the appellant explains that the appeal site is not to be developed comprehensively. It will be prepared such that ground levels, roads and drainage are ready to receive one off individual house designs to individual customer requirements. As such, a site layout has not been produced. This being so, the appellant argues that he is unable to finalise the surface water run off figures required by the Council or to provide details of a drainage

simulation until the various houses have been designed. As an alternative, the appellant suggests that as each dwelling (or group of dwellings) is submitted for planning approval it should be accompanied by calculations of run off requirement. A running total of the surface water outfall approved (and the remaining capacity of the tank) would thus dictate at what stage the later phased extensions to the tank are triggered.

11. Whilst I appreciate that the tank would be capable of being extended to accommodate the development of the adjoining land, the future drainage of that site is not before me for consideration. In determining this appeal, I must consider whether the submitted surface water regulation system details are adequate to serve the permitted development at the appeal site.
12. The Council maintains that a drainage simulation is essential to identify the feasibility of the proposed drainage strategy. In practical terms drainage simulation models or programmes are used to analyse the suitability and performance of water management systems and to, amongst other things, ensure they have sufficient capacity. The FMO advises that to provide a simulation is not a difficult exercise and is clear that they are expected of all major developments. Taking into account the site's planning history and the plot by plot approach to development envisaged, the FMO suggests that where the finished plot hard standing is known, it is computed as such in supporting calculations. Where there is less confidence, he indicates that the hard standing contribution to flows entering specific legs of the proposed sewerage design should be based on that of the original permission (I understand that the approved plans for the 1993 permission show 45 dwellings).
13. On this basis I see no reason why the proposed housing development needs to be completely designed up front to provide the information required by the Council. The appellant confirms that he has calculated the run off (and resultant tank requirements) using the approved scheme layout upon which the 1994 permission (for the roads, footpaths and sewers) was based. The submitted letter from the appellant's engineer recognises that the discharge rate is approximate and advises that the only way of determining the final size of the storage tank is to run the proposed surface water network through a simulation. The engineer also recognises that a detailed design of the drainage network would be required. Whilst I appreciate that the structural detailed design for the tank would be submitted prior to its construction, as things stand I share the Council's view that the submitted drawings are not accurate or detailed enough to adequately describe the drainage network anticipated, or to show the precise nature of the tank's design or the pipework that would be provided.
14. Although some of the calculations necessary for the simulation may be superseded by the detailed submissions made with the individual houses, I am not persuaded that this is a reason not to provide them in the first instance. Even accepting that any simulation in this instance would be based on the best information available, rather than on the as yet to be determined detailed individual plot designs, and may need to be refined, in the absence of any simulation at all there is no evidence before me to demonstrate that the drainage would operate as required. Nor have I seen any information to justify the use of the calculations developed in 2014 rather than the latest rainfall data guidance suggested by the Council.

15. Bringing matters together, in the absence of detailed drawings and a simulation using the latest rainfall guidance, I have seen insufficient evidence to persuade me as to the feasibility of the proposed drainage strategy or to demonstrate how surface water would be adequately regulated (such that the site would not flood in the 1 in 30 return period storm event, or that any flooding in the 1 in 100 year return period event would be stored on site).
16. I understand that the ground works at the appeal site were completed 15 years ago and that the levels are ready to receive the roads and drainage in readiness for the houses. The only element of site preparations not approved is the design of the balancing facility and the lack of agreement on this outstanding matter is hampering the progress of the development of the site which has been held up since 2014. However, this is not a reason to accept unsatisfactory details in relation to the treatment of surface water. Although the design of the roads and drainage construction were included in the approval granted in 1994, it remains that the details of the surface water regulation system were not approved at that time. They are required by Condition 10. Thus, I am not persuaded that in resisting the details submitted as inadequate, the Council has in any way reversed the existing approval.
17. I have had regard to the appellant's view that the Council's approach is driven by a desire to include conditions which were imposed on an approval for four houses on plots 34-37 in 2013. Whilst the appellant refers to an appeal against the imposition of those conditions, I note that although not specifically referring to a surface water regulation system, the Inspector in that case re-imposed a condition requiring means of surface water disposal to be approved prior to the commencement of development. As such, I cannot see that is argument lends any support to the appeal scheme.
18. I therefore conclude on the main issue that the submitted details with regard to condition 10 concerning a scheme for the provision and implementation of a surface water regulation system would fail to provide adequate drainage and flood prevention. This would be contrary to the advice in the Framework which requires local planning authorities to adopt proactive strategies to mitigate and adapt to climate change taking full account of flood risk, and expects new development to be planned to avoid increased vulnerability to the range of impacts arising from climate change.

Conclusion

19. For the reasons set out above, I conclude that the appeal should be dismissed.

Elaine Worthington

INSPECTOR



Appeal Decision

Site visit made on 23 April 2018

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th May 2018

Appeal Ref: APP/Z4718/W/18/3194077

36 May Street, Crosland Moor, Huddersfield, West Yorkshire HD4 5DG

- 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 Mambir Bains against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2017/62/92057/W, dated 12 June 2017, was refused by notice dated 17 August 2017.
 - The development proposed is the conversion of the basement to form self-contained apartment.
-

Decision

1. The appeal is dismissed.

Procedural matter

2. I observed at my site visit that a separate external access to the basement had already been created but it was unclear whether all the internal work to create the flat in the basement had also taken place. Whilst doors and windows had been inserted at basement level these did not accord with the submitted plans. For the avoidance of doubt I confirm that my determination of the appeal is based on the drawings as submitted, and not on what currently exists on the site.

Main Issue

3. The main issue in the appeal is whether or not the proposed development would provide adequate living conditions for future occupiers with particular regard to light, outlook and space.

Reasons

4. The appeal property is a back to back end terrace house. The proposal would create a studio flat in the basement, with a combined living/kitchen/sleeping area, and a separate shower room. The flat would have a separate access across the front yard with a small flagged area at the bottom of the steps.
5. The front elevation would contain the only windows for the accommodation. These would all be at lower ground level and would only maintain a very limited distance to the retaining wall. The plans indicate that although one of the two windows would be quite small, the other would be a full length window, and that there would be some glazing in the door too. Notwithstanding this, their

- position below ground level, and the limited depth of the light well, would result in the flat having unsatisfactory levels of natural light and a poor outlook.
6. Furthermore, given that the windows would be directly overlooked from the front yard, which is the only external space for the occupiers of the upper floors of the property, in order to provide a satisfactory level of privacy, it is likely that future occupiers would want to provide some form of screening to these windows. This would further reduce the light entering the flat and the outlook from it.
 7. The appellant has suggested that a poor outlook is often accepted by the occupiers of basement accommodation. Nevertheless, in this case, as these would be the only windows serving the flat I am not satisfied that adequate living conditions would be provided.
 8. Although the main room would be a regular shape, its floor area for a combined living and sleeping area is very limited. As such, I am not satisfied that it would allow a satisfactory arrangement of furniture and circulation space, or adequate storage space. Consequently, it would result in cramped living conditions. This would be exacerbated by the very limited provision of external space for the flat.
 9. In support of the appeal my attention has been drawn to the fact that the floor space provided is similar to other student accommodation recently granted permission in the town centre. It is suggested that the scheme could provide similar accommodation for a student who would prefer a non-town centre location. I do not know the full circumstances of these other cases, such as what communal facilities, or external space, were also provided for occupiers, and so cannot be sure that they represent a direct parallel to the appeal scheme. In any case, I have determined the appeal on its own merits, and the existence of other accommodation with limited floor space does not justify the provision of sub-standard accommodation in this scheme.
 10. Overall, I consider that the proposed development would not provide adequate living conditions for future occupiers with particular regard to light, outlook and space. It would therefore conflict with Policies D2 (ii and v), BE1(iv) and BE12 (ii) of the *Kirklees Unitary Development Plan (adopted March 1999 and revised September 2007)* which seek a high quality of design in new developments that provide adequate residential amenity and avoid the over-development of sites.
 11. For the reasons set out above, I conclude the appeal should be dismissed.

Alison Partington

INSPECTOR



Appeal Decision

Site visit made on 24 April 2018

by **Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE**

an Inspector appointed by the Secretary of State

Decision date: 11 May 2018

Appeal Ref: APP/Z4718/D/18/3195047

8 The Barn, Copley House Barn, Deer Hill End Road, Meltham, Holmfirth HD9 5PU

- 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 Mrs Jane Cook against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2017/62/93833/W, dated 6 November 2017, was refused by notice dated 27 December 2017.
 - The development proposed is described as a proposed sun room.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposal is inappropriate development in the Green Belt.
 - The effect on the openness of the Green Belt.
 - The effect on the character and appearance of the host property and the surrounding area.

Procedural Matter

3. The Council has referred to the policies contained within the emerging Kirklees Local Plan. Although the Publication Draft of this plan has been subject to examination it has not yet been adopted by the Council. I have no evidence of the extent to which the policies referred to in this emerging plan may be subject to any unresolved objections. Consequently, I have attached limited weight to the policies in this emerging plan in the determination of this appeal.

Reasons

Whether or not inappropriate development

4. The appeal property is located within the designated Green Belt. Paragraph 89 of the National Planning Policy Framework sets out that the construction of new buildings should be regarded as inappropriate in the Green Belt. One exception is the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building.

5. The appeal property is a two storey dwelling which forms part of a barn conversion of four dwellings. None of these have any extensions to the properties and, as such, the converted dwellings have a regular appearance and a simplistic form which provides for a degree of unity that enables the former linear appearance of the barn to be recognised. As the north elevation abuts Deer Hill End Road, the southern elevation forms the principal elevation for amenity and access. The Council indicates that a planning condition was imposed to the permission for the conversion of the barns that removed permitted development rights for construction of extensions to the dwellings.
6. The proposed development would involve the construction of a single storey extension, with lean-to roof, to the south elevation of the property. The Council indicate that this would extend from the south elevation by approximately 3.5m and have a width of approximately 6.2m, thereby occupying over half of the existing elevation at ground floor level.
7. Saved Policy D11 of the Kirklees Unitary Development Plan 2007 (UDP) sets out the Council's approach regarding the consideration of proposals for the extension of buildings within the Green Belt. This policy indicates that the size of the extension should ensure that the existing building should remain the dominant element. However, it contains no other guidance to enable any determination of what volume or floorspace may be considered to be proportionate in relation to size of the existing dwelling. Although the policy also refers to the consideration of the effect of extensions on the character of the existing building, assessing proportionality is primarily an objective test based on size.
8. Whilst I have no evidence of the volume or floorspace that would be occupied by the proposed extension in comparison to the existing building, I do not consider that its modest size would constitute a disproportionate addition to the property when compared to the form, bulk and height of the host dwelling. Moreover, in the context of Saved Policy D11, the existing building would be retained as the dominant element.
9. Taking these factors into consideration, the proposal would not be inappropriate within the Green Belt. Consequently, it would comply with Saved Policy D11 of the UDP in this regard.

The effect on Openness

10. A fundamental aim of Green Belts is to keep land permanently open. An essential characteristic is their permanence. The proposed extension would occupy part of the existing enclosed garden to the property. Owing to the hillside location of the property with a steep bank immediately to the rear, the majority of the proposed development would not be discernible in wider views of the Green Belt. Moreover, although occupying an undeveloped area, an extension of this size would not materially detract from the openness of the Green Belt. Consequently, I consider that the proposed development would have a broadly neutral effect on the openness of the Green Belt.

Character and appearance

11. The proposed extension would comprise of an oak frame constructed on a small stone plinth with oak panelling to the western side elevation with No 6. The

- southern and eastern elevations would have substantial glazing panels that would almost occupy the full height of these facades.
12. The existing dwellings forming the converted barn have relatively modest sized window and door openings with an expanse of natural stone being the dominant feature of the south and north elevations. As such, the key components that contribute to the former character of the barn have been retained and are reflected in the combined appearance of the four dwellings.
 13. Owing to the proposed depth of the extension on this principal elevation it would appear as a prominent projecting feature that would erode the linear character and simplistic form of the converted barn. In addition, the expanse of glazing proposed would appear at odds with the predominance of stone and modest fenestration which forms a key characteristic of the existing southern elevation of the host dwelling and those of the properties in the immediate building group.
 14. As such, the combination of its design and use of materials would result in the proposed extension appearing as an intrusive feature that visually competes with the appearance of the host dwelling and the adjoining dwellings comprising the converted barn. The proposal would therefore erode the visual unity and simplistic form of the converted barn.
 15. Taking these factors into account, I consider that the proposed extension would have a detrimental effect on the character and appearance of the host property and the surrounding area and would be contrary to Saved Policies BE1, BE2, BE13 and BE14 of the UDP. These policies, amongst other things, require that developments should be of good design that is in keeping with the design features of the existing house and adjacent buildings.

Other considerations

16. I have taken into account the personal circumstances of the appellant and the need to provide additional and quiet living space for a family member. Whilst I have some sympathy with the appellant in this regard, such personal circumstances do not outweigh the harm that I have identified above.
17. I note that only the northern elevation of the property, which would be unchanged as a consequence of the appeal proposal, is visible from the road. As such, the public views of the proposed extension would be limited. However, the lack of public views does not constitute a good reason for accepting poor design particularly in circumstances where the existing appearance of the southern elevation of the dwelling contributes to the unity of the converted barn.
18. My attention has also been drawn to the competed extension at Swallows Nest Farm. However, I do not have full details of the nature of the proposals or the circumstances relating to the granting of planning permission. Consequently, I cannot be sure that this is wholly representative of the circumstance in this appeal and, in any case, I have determined this appeal on its own merits.

Conclusion

19. I have found that the proposed extension would not be inappropriate development within the Green Belt. In addition, it would not materially detract from the openness of the Green Belt. However, these matters do not

outweigh the harm that would be caused to the character and appearance of the host property and the surrounding area.

20. For the above reasons, taking into account the development plan as a whole based on the evidence before me and all other matters raised, I conclude that the appeal should be dismissed.

Stephen Normington

INSPECTOR



Appeal Decision

Site visit made on 14 May 2018

by A J Mageean BA (Hons) BPI PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th June 2018

Appeal Ref: APP/Z4718/W/17/3190683

19 Yew Green Avenue, Lockwood, Huddersfield HD4 5EW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Parvez Akhtar against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2017/62/92941/W, dated 21 July 2017, was refused by notice dated 9 October 2017.
 - The development proposed is erection of first floor extension over existing porch to front.
-

Decision

1. The appeal is allowed and planning permission is granted for erection of first floor extension over existing porch to front at 19 Yew Green Avenue, Lockwood, Huddersfield HD4 5EW in accordance with the terms of the application, Ref 2017/62/92941/W, dated 21 July 2017, and the plans submitted with it.

Procedural Matters

2. I have used the shorter version of the description of the proposal provided on the appeal form which removes superfluous description.
3. At the time of my site visit the construction of the first floor extension over the porch had been completed in accordance with plan 6083 02. Whilst I observed that other elements of the design of this dwelling varied somewhat from this plan, I have focused my attention on the first floor extension over the existing porch only.

Main Issue

4. The main issue is the effect of the proposal on the character and appearance of the area.

Reasons

5. The appeal site is located at the head of a short cul-de-sac of traditional two storey semi-detached dwellings. In contrast, the appeal property is a recently constructed and substantial detached property, with additional basement and attic accommodation which fills much of the width and depth of this irregularly shaped plot. When viewed directly from the road frontage, the substantial bulk and mass of this property stands in contrast with its surroundings. However, it is sited at a considerably lower level than other houses, and behind the main

building line. The dwelling is mostly hidden in other views along Yew Green Avenue, though towards its southern end the side profile of this dwelling is visible and appears modestly proportioned.

6. The first floor extension over the existing porch is positioned to the south of and inset from the projecting front gable. In design terms this addition to some degree balances with the two storey element on the northern side of the gable. Furthermore, the use of matching materials means that it appears as an integral part of the overall built composition.
7. The development of this plot has clearly been maximised. However, because of the discrete position of this dwelling relative to the street and the modest size and position of the extension, this addition does not appear overly intrusive or incongruous. For the same reason, when considered in combination with previous alterations this does not amount to an overdevelopment of the site.
8. As a result I therefore conclude that the proposal does not have a harmful effect on the character and appearance of the area. In this regard it would comply with the Kirklees Unitary Development Plan (Written Statement Revised with effect from 2007) Policies D2, BE1 and BE2 which taken together, require good quality design which is in keeping with its surroundings and does not result in overdevelopment.
9. Therefore, for the reasons given, I conclude that the appeal should be allowed.

AJ Mageean

INSPECTOR

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

PLANNING POLICY

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

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

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

National Policy/ Guidelines

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

The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

REPRESENTATIONS

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

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

EQUALITY ISSUES

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

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

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

HUMAN RIGHTS

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

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

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

PLANNING CONDITIONS AND OBLIGATIONS

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

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

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

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

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

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

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

Date: 21 June 2018 (deferred from 17 May 2018 for briefing)

Title of report: Applications for a definitive map modification order to add public footpaths to the definitive map and statement, Clayton Fields, Edgerton. (Application references 30, 31, 184, 185 & 186). Application for a definitive map modification order to vary the recorded width of recorded public footpath Huddersfield 345 (part) (Application reference 187)

Purpose of report: Members are asked to consider the evidence and decide on any requisite modification of the definitive map and statement of public rights of way. Applications have been received for definitive map modification orders to record public footpaths and to amend the width recorded for part of an existing recorded public footpath.

Members are asked to make a decision on making an order and forwarding any order made to the Secretary of State, if opposed.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports?)	Not applicable If yes also give date it was registered
The Decision - Is it eligible for call in by Scrutiny?	No – council committee
Date signed off by <u>Director</u> & name	Karl Battersby 8 May 2018
Is it also signed off by the Acting Service Director for Financial Management, IT, Risk and Performance?	James Anderson on behalf of Eamonn Croston 4 May 2018
Is it also signed off by the Service Director (Legal Governance and Commissioning)?	Julie Muscroft 8 May 2018
Cabinet member portfolio	N/A

Electoral wards affected: Greenhead

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

Public or private: Public

1. Summary

- 1.1 The council has received seven applications under the Wildlife & Countryside Act 1981 to modify the definitive map and statement of public rights of way (“DMS”) by order, affecting land at Clayton Fields. There are six applications to add a public footpath to the formal record and one to record a greater width for a footpath that is already formally recorded. Changes to the definitive map and statement of this kind are called definitive map modification orders (“DMMO”). App E shows the seven DMMO application plans and a composite of these routes.
- 1.2 The existence of the seven Clayton Fields DMMO applications was brought to sub-committee’s attention at the August and October 2017 meetings, when an application to stop up the claimed footpaths and create alternative routes was reported for a decision on making an order under section 257 of the Town & Country Planning Act 1990 (“TCPA”), in line with the planning consents for residential development of the Clayton Fields site.
- 1.3 The sub-committee has also already made a decision on one of the DMMO applications (DMMO ref: 183) in February 2018. Mr Magee, who is the applicant for two of the DMMO applications (ref 30 & 31), has made representations to the Secretary of State at DEFRA (“SoS”) asking him to direct the council to determine those two DMMO applications (No decision on direction from the SoS to date, decision on these applications).
- 1.4 Sub-committee authorised officers to make an order to extinguish routes at Clayton Fields and provide alternatives under section 257 of the Town & Country Planning Act 1990. The detail of that authority was affected by the sub-committee decision on DMMO 183 and may be further affected by the decision on the other 6 DMMO applications at Clayton Fields further to this report.
- 1.5 Officers have now received legal advice that the council determine the seven DMMO applications before proceeding with a s257 order. i.e. that the council decides whether or not the making of a DMMO order would be warranted or not, in the case of each DMMO application claiming public rights of way.
- 1.6 As noted in the report to February 2018 sub-committee, officers bring DMMO applications to sub-committee at this time, for the 6 outstanding Clayton Fields DMMO applications.
- 1.7 The claimed routes lie within land at Clayton Fields that was registered as a town and village green (“TVG”) in April 1997, further to an application to Kirklees council. Two of the six DMMO applications were received in 1996, but were not

- progressed. The TVG registration was quashed by decision of the Supreme Court in February 2014, a press summary issued by the court is appended at App B.
- 1.8 The 1996 DMMO applications and the TVG application were prompted by a planning application in 1996 for development of the land from the owner George Haigh & Co Ltd. Mr Hardy (joint DMMO applicant in 1996, now deceased) described this in a telephone conversation with the PROW officer on 5 August 2011. This appears to have set in motion a train of events and public awareness leading to applications affecting the land.
 - 1.9 The council received DMMO application 30 (at App A, with application plan) dated 14 September 1996 for an order to modify the definitive map and statement of public rights of way to record a public footpath from Edgerton Road to Huddersfield footpath 345 behind 55 George Avenue, also shown on plans at App E.
 - 1.10 The council received DMMO application 31 (at App A, with application plan) dated 22 September 1996 for an order to modify the definitive map and statement of public rights of way to record a public footpath from Edgerton Road towards Queens Drive, also shown on plans at App E.
 - 1.11 The council received DMMO application 184 (at App A, with application plan) dated 21 October 2014 for an order to modify the definitive map and statement of public rights of way to record a public footpath from point D on Edgerton Road to point B on Queens Road, also shown on plans at App E.
 - 1.12 The council received DMMO application 185 (at App A, with application plan) dated 21 October 2014 for an order to modify the definitive map and statement of public rights of way to record a public footpath from point D on Edgerton Road to point C on Huddersfield footpath 345 behind 55 George Avenue, also shown on plans at App E.
 - 1.13 The council received DMMO application 186 (at App A, with application plan) dated 17 November 2014 for an order to modify the definitive map and statement of public rights of way to record a public footpath from point A on Huddersfield public footpath 345 by the footbridge over the Clayton Dike to point E on Deveron Grove, also shown on plans at App E.
 - 1.14 The council received DMMO application 187 (at App A, with application plan) dated 28 November 2014 for an order to modify the definitive map and statement of public rights of way to vary the particulars (seeking recording of a greater width) for Huddersfield public footpath 345 from point F at the junction of Huddersfield public footpath 345 with Edgerton Road to point G at the junction of Huddersfield public footpath 345 with St Patrick's School access behind 69 George Avenue, also shown on plans at App E.

- 1.15 The Clayton Fields land is north of Edgerton Road.
- 1.16 The council has also received user evidence forms. These forms are generally used by witnesses to describe their personal knowledge and experience of routes. This user evidence is appended as a summary and time line at App C. Further submissions are also at App C.
- 1.17 The council has received witness (user evidence) forms relating to these applications (“UEF”). These describe use, predominantly on foot, variously between 1950 and 2014, as at the time of the application. The timeline of user witness evidence and their plans are at App C.
- 1.18 The council as surveying authority for public rights of way has sought comment and evidence from the landowner Paddico (267) Ltd, which is also the joint applicant for the s257 order, as well as from the council as landowner (application routes north of Clayton Dike).
- 1.19 A Land Registry title plan and register record showing current ownership is at App D.
- 1.20 The council’s landholding is shown at App D.
- 1.21 The council is yet to receive any written evidential submissions from landowner Paddico (267).
- 1.22 Officer photos taken in 2011 & 2014 are appended at App G.
- 1.23 At the time of the earlier DMMO applications (ref 30 & 31), the land was owned by George Haigh & Co Ltd, who subsequently sold it to Paddico (267) in 2004. Mr Haigh opposed the TVG registration of his land at the time of the council’s consideration of the TVG application. The company’s completed landowner evidence form WCA10 of 27 September 1996 is appended at App H. It notes little except denying the existence of the rights of way claimed, and stating that investigations continue. Land Registry titles for Haigh are also appended at App H.
- 1.24 There is significant and lengthy debate and dispute about the land and its use and the meaning of this use in the KC local land charges TVG file, listed as a background document. George Haigh & Co Ltd disputed the public use in various ways and submissions, including statutory declarations; the council’s relevant committee decided to register the land as a TVG after considering the evidence and arguments.
- 1.25 The DMMO 184, 185, 186 & 187 applicant has submitted montages of claimed routes (App F), as well as user and other personal evidence. He has stated that some application routes are indicative. Other aerial photos are also appended at App F. Officers highlight that these colour aerial photos are all after 1996.

- 1.26 The council should identify a date when the use of the route was brought into question.
- 1.27 Officers understand that the potential development of the site led to the application to register a TVG and two applications to record footpaths across the site (refs 30 & 31).
- 1.28 It may be considered that some earlier action prior to the 1996 and 2014 applications brought the use of the way by the public into question, and choosing an earlier date may be appropriate regarding any section 31 consideration of the date from which to work out the relevant user period for consideration of statutory presumption. It may be that this would be clarified only after more detailed examination of the evidence, such as in cross-examination at public inquiry, were one to take place.
- 1.29 The council has to determine the definitive map modification order applications. The council must consider the available evidence, before reaching a decision on making any requisite order(s) to modify the definitive map and statement. If the council makes an order, it must be advertised and notice given, with a period for formal objections to be made. If opposed, it would have to be submitted to the Secretary of State at DEFRA to determine.
- 1.30 Whatever the nature of the application, the council must decide what, if any, rights have been shown to satisfy the relevant test(s). This means that the council may make a different order or none at all, after appropriate consideration of the available evidence.
- 1.31 The evidence, whether for or against the application and any recording of any public right of way, is to be noted and considered.
- 1.32 When considering additions to the definitive map and statement of public rights of way, the council must make an order
 - 1.32.1 If a public right of way is shown to subsist on the balance of probabilities, or
 - 1.32.2 if the right of way is shown to be reasonably alleged to subsist.
- 1.33 When considering a modification of the width recorded, the council must make a decision on order-making on the balance of probabilities.

2. Information required to take a decision

- 2.1 Members are asked to consider the report, the available evidence for and against the recording of public rights, and decide what order(s), if any, to make.
- 2.2 It is the council's statutory duty to maintain the definitive map and statement and make any requisite orders.

- 2.3 Guidance for members is appended (Appendix 1).
- 2.4 The application is made under the Wildlife & Countryside Act 1981.
- 2.5 The council should consider the available evidence and determine whether to make an order to modify the record of public rights of way when it is requisite in accordance with section 53 of the Wildlife & Countryside Act 1981.
- 2.6 The statutory provision in Section 53(3)(b) (WCA81), requires the Surveying Authority (Kirklees Council) to modify the Definitive Map and Statement following: *“the expiration in relation to any way in the area to which the map relates of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or restricted byway.”*
- 2.7 Section 53 (3) c (i) requires the council to make an order to modify the definitive map when evidence is discovered which shows *“that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic;”*.
- 2.8 Unrecorded public rights of way may come into being in a number of different ways, such as a result of a legal event such as a creation or diversion. Further, Section 53(3)(b) of the 1981 Act requires the Council to modify the Definitive Map and Statement on expiration of any period of public use if it can be shown that the public have used the path for a sufficient length of time to raise a presumption that the path has been dedicated as a public path. This presumption, detailed in the Highways Act 1980 section 31, states *“where a way over any land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption for a full period of 20 years the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it”*. In identifying a relevant 20 year period for the purpose of section 31, we have to work retrospectively from this date of challenge.
- 2.9 The 20 year period to consider is taken to run back from the date when the use of the path was first “brought into question”, whether by a notice or otherwise (HA Section 31 (2)). Section 69 of The Natural Environment and Rural Communities Act 2006 (NERC) clarified that the submission of an application to modify the Definitive Map was sufficient to call the use of the route into question by inserting subsections 7A and 7B into Section 31 HA 1980.

- 2.10 Section 31 states that only ways that are capable of being public highways are able to be considered under the statutory test.
- 2.11 The Committee must consider whether there is sufficient evidence to raise the presumption of dedication. The standard of proof for a final decision is the civil one, that is, the balance of probabilities. If disputed, an order confirmation decision by the SoS would be made solely on the balance of probabilities. Members must initially weigh up the evidence and decide if, on balance, it is reasonable to allege that there is a public right of way. If the presumption is raised, the onus is then on the landowner to show evidence that there was no intention on his/her part to dedicate. This must be by some overt act on the part of the landowner to show the public at large that there was no such intention.
- 2.12 Such evidence relied upon may consist of notices or barriers, or by locking of the way on one day in the year, and drawing this to the attention of the public, or by the deposit of a Statutory Declaration under HA Section 31 (6) to the effect that no additional ways (other than any specifically indicated in the Declaration) have been dedicated as highways since the date of the deposit.
- 2.13 “Intention to dedicate” was considered in Godmanchester, R (on the application of Godmanchester Town Council) (Appellants) v. Secretary of State for the Environment, Food and Rural Affairs (Respondent) [2007] UKHL 28, which is the authoritative case dealing with the proviso to HA80 s31. In his leading judgment, Lord Hoffmann approved the obiter dicta in the ruling of Denning LJ in Fairey v Southampton County Council [1956] who held “*in order for there to be ‘sufficient evidence there was no intention’ to dedicate the way, there must be evidence of some overt acts on the part of the landowner such as to show the public at large – the people who use the path....that he had no intention to dedicate*”.
- 2.14 Lord Hoffmann held that “*upon the true construction of Section 31(1), ‘intention’ means what the relevant audience, namely the users of the way, would reasonably have understood the owner’s intention to be. The test is...objective: not what the owner subjectively intended nor what particular users of the way subjectively assumed, but whether a reasonable user would have understood that the owner was intending, as Lord Blackburn put it in Mann v Brodie (1885), to ‘disabuse’ [him] of the notion that the way was a public highway*”.
- 2.15 For a landowner to benefit from the proviso to s31(1) there must be ‘sufficient evidence’ that there was no intention to dedicate. The evidence must be inconsistent with an intention to dedicate, it must be contemporaneous and it must

have been brought to the attention of those people concerned with using the way. Although s31 ss (3), (5) and (6) specify action which will be regarded as “sufficient evidence”, they are not exhaustive; s31 (2) speaks of the right being brought into question by notice “or otherwise”.

- 2.16 Dedication of a public path at Common Law should also be considered. The main principles of establishing a highway under common law are:
- 2.16.1 Use by the public should be as of right; without force, secrecy or permission.
 - 2.16.2 The landowner should know of the use but do nothing to prevent it. No minimum period of use is required (unlike the statutory process where a minimum of 20 years is required).
 - 2.16.3 The more intensive and open the use and the greater the evidence of owners knowledge and acquiescence the shorter the period required to raise a presumption that the way has been dedicated.
 - 2.16.4 Each case is judged on the facts available.
 - 2.16.5 The onus of proof lies with the person making the claim to show that there was use and that the owner knew of it and did nothing to stop it.
- 2.17 In considering the addition of unrecorded footpaths, there are two tests to be applied, as identified in the case of R v Secretary of State for the Environment ex parte Mrs J Norton and Mr R Bagshaw, and clarified in the case of R v Secretary of State for Wales ex parte Emery.
- 2.17.1 Test A: Does a right of way subsist? This requires clear evidence in favour of public rights and no credible evidence to the contrary.
 - 2.17.2 Test B: Is it reasonable to allege that a right of way subsists? If there is a conflict of credible evidence but no incontrovertible evidence that a right of way cannot be reasonably alleged to subsist, then a public right of way has been reasonably alleged.
- 2.18 If the council resolved to make an order adding a public right of way only on the basis of Test B, members may note that the public rights of way provisions of the Deregulation Act 2015, which are yet to come into force, will remove Test B, so any such authorised order could only be made prior to commencement of any such relevant provisions.
- 2.19 The test for varying the statement to record a different width is on the balance of probabilities.

- 2.20 Section 32 of the Highways Act 1980 states “*A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.*” Whether determination is by the Inspectors appointed by the Secretary of state, the highest courts or the council as surveying authority for public rights of way, it is appropriate and correct for those deciding such matters to consider documents that form part of the available evidence, and to decide the weight of that evidence in reaching a decision.
- 2.21 Government guidance to local authorities is contained in DEFRA’S Rights of Way Circular 1/09, version 2
- 2.22 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69304/pb13553-rowcircular1-09-091103.pdf
- 2.23 Members are advised that if a definitive map modification order is made, which then attracts objections which are not withdrawn, then the council would have to forward it to the Secretary of State at DEFRA for determination. The DMMO consistency guidelines, are issued to the Secretary of State’s inspectors in the planning inspectorate
- 2.24 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/517495/Full_version_February_2016_consistency_guides_2_.pdf
- 2.25 DMMO applications 184, 185, 186 & 187 were received by the council in 2014. Clayton Fields had been de-registered as a TVG and there were concerns about loss of the land to the public and development of the site.
- 2.26 As well as the TVG application, local residents Mr Magee and Mr Hardy (deceased) had also made two applications to the council for orders to record public footpaths across Clayton Fields. These applications (refs 30 & 31) were held in abeyance, although there appears to be some dispute or confusion over whether this was at the behest of the applicant(s) or the council at the time. (KC legal note and PROW note at App W).

- 2.27 The user evidence for application 30 identifies use by 8 witnesses over Clayton Fields land. (see App C).
- 2.28 The user evidence for application 31 identifies use by 10 witnesses over Clayton Fields land. (see App C).
- 2.29 The user evidence for application 184 identifies use by 8 witnesses over Clayton Fields land. (see App C).
- 2.30 The user evidence for application 185 identifies use by 30 witnesses over Clayton Fields land. (see App C).
- 2.31 The user evidence for application 186 identifies use by 17 witnesses over Clayton Fields land. (see App C).
- 2.32 The user evidence for application 187 identifies use by 2 witnesses over land at the western edge of Clayton Fields land. (see App C).
- 2.33 Users noted seeing others and described use on foot, for the purposes of walking, recreation, photography, jogging, dog walking, shopping, dentists, travel to school etc. Such use would be appear open, notorious and of a nature similar to that expected of public rights of way. Some limited cycle use is also described.
- 2.34 The submitted user evidence overall demonstrates regular and frequent use over the land over many years by the public. App C shows summarised WCA8 user evidence.
- 2.35 During the years that the land was registered as a TVG, 1997 – 2014, the public would have had the right to access the land and use it for recreation purposes. This is sometimes referred to as there being an implied permission. In other words, the public use during those years of registration is not “without permission” (i.e. the use is not “*nec precario*” to use the Latin legal term). This public recreational use, prior to and since TVG registration, included walking across the site as shown in the evidence forms across the seven DMMO applications and within the TVG application.
- 2.36 The Newhaven and Barkas Supreme Court decisions linked above relate and refer to the questions of ‘as of right’, ‘by right’, and ‘implied permission’ .
- 2.37 <http://www.bailii.org/uk/cases/UKSC/2015/7.html> Newhaven [2015] UKSC 7

- 2.38 <http://www.bailii.org/cgi-bin/markup.cgi?doc=/uk/cases/UKSC/2014/31.html> Barkas [2014] UKSC 31
- 2.39 If the public was accessing the land by right and if their use of the land as a TVG was indistinguishable from their use walking from A to B, (and potentially along other claimed footpaths in the other DMMO applications affecting this land) then the use during the period of TVG registration would not be as of right (without force, secrecy or permission, or *nec clam, nec vi, nec precario*) and such use during that period would not lead to the establishment of a public right of way.
- 2.40 The registration of the TVG was effectively quashed by the Supreme Court due to an administrative technicality regarding the application form and the definition of certain words; it did not question the use of the land by the public which led to the application and registration as a TVG.
- 2.41 Such use of the land by the public, including walking across it on various routes, may be considered to have been brought into question at the time of the 1996 Haigh outline planning application, concern about the land and its use was subsequently apparent across a significant number of people, and the TVG application and the DMMO applications 30 & 31 were made.
- 2.42 Although it is noted that the earlier DMMO applications (ref 30 & 31) were not for the same route as the 2014 applications also before sub-committee, they all refer to access to and across the same site within the same ownership, and the threat to the public continuing such use, and identify a recognition by a significant number of people that there was a question of their use of the land.
- 2.43 If the right of the public to use the claimed footpaths was brought into question as a result of the planning application, TVG process and/or the concerns about the land that gave rise to the earlier DMMO applications, then the relevant 20 year period to be considered under section 31 of the Highways Act 1980 may be considered to be 1976 – 1996. If so, use of the route and blockage of the land by Paddico (267) Ltd in the recent years before the 2014 applications were made would not affect the date when use of the way was brought into question.
- 2.44 The 8 user evidence forms completed for application ref 30 include 8 witnesses who give evidence of use within that timeframe 1976 - 1996.
- 2.45 The 10 user evidence forms completed for application ref 31 include 10 witnesses who give evidence of use within that timeframe 1976 - 1996.

- 2.46 The 8 user evidence forms completed for application ref 184 include 7 witnesses who give evidence of use within that timeframe 1976 - 1996.
- 2.47 The 30 user evidence forms completed for application ref 185 include 19 witnesses who give evidence of use within that timeframe 1976 - 1996.
- 2.48 The 17 user evidence forms completed for application ref 186 include 6 witnesses who give evidence of use within that timeframe 1976 - 1996.
- 2.49 The 2 user evidence forms completed for application ref 187 include 1 witness who give evidence of use within that timeframe 1976 - 1996.
- 2.50 User of less than twenty years by individuals may also be considered, as it provides evidence of public use, which may support and corroborate evidence of longer user, and/or be added to user by other people over other years.
- 2.51 A summary of the TVG witness evidence is appended at App K. This evidence, although not specific to specific application routes, is indicative of the use by the public of land at Clayton Fields for walking up to 1996 – a majority describing walking under the “use of land” column.
- 2.52 A statutory declaration by George Haigh & Co’s solicitor (App L) during the TVG process noted at paragraph 15.5: *“Furthermore the rights claimed by local residents in support of this application are more consistent with public rights of way, i.e. rights to pass and repass along a footpath, than ‘as of right’ use of the land as a town or village green.”*
- 2.53 Clarification would appear to be supported by appended photos taken by Kirklees officers (e.g. in 2011 and 2014 at App G), before more recent groundworks disturbed the surface over much of the site.
- 2.54 Members of the public are not expected to be cartographic experts when completing applications or evidence forms, and when marking up the routes they describe on provided template plans. It appears reasonable to take the clarification on the alignment of the claimed routes into account, when considering the alignment for any route that may satisfy the tests for making an order to record a public footpath.
- 2.55 The current landowner, Paddico (267) Ltd has not accepted that public rights subsist across the land, and has not submitted any evidence relating to the

existence of any alleged public rights. As previously reported to sub-committee, Paddico submitted an application under section 257 TCPA 1990 to extinguish any public rights claimed to subsist over the land (and provide alternative routes) to enable them to progress with sale and development of the site, along with the joint s257 applicant, the proposed developer Seddon Developments, which is looking to purchase and develop the site in accordance with planning consent for the site.

- 2.56 Members are reminded of the test described at 2.17.2 above for making an order where the two sides may have credible evidence but there is not incontrovertible evidence to show that no public way subsists.
- 2.57 None of the user evidence forms describes equestrian use by witnesses. For the pre-1997 period, there is negligible evidence of bicycle use of the routes. This would appear insufficient to be indicative of the existence of public bridleway or restrictive byway rights.
- 2.58 No evidence has been submitted describing motor vehicular use.
- 2.59 Ordnance Survey plans showing the land over the years are appended at App X (1893 - 2014). These are not demonstrative of public rights of way but indicate the physical nature of the site over the years. The physical existence of any particular route through the site is not clear from these OS plans, however this does not mean that a route did not exist or that a public right of way could not exist. It is worth noting that there used to be a house at Queens Road between numbers 12 and 15, which appears on some OS mapping but is not on the 1972 and subsequent maps.
- 2.60 After considering the evidence and the relevant criteria members have a number of options.
- 2.61 The first option for members is to refuse the applications and to decide that the council should not make any order.
- 2.62 The second option for members is to conclude the evidence is sufficient for the council to make an order, or orders, to modify the definitive map and statement, to reflect unrecorded rights, and either confirm it or forward it to the Secretary of State if it is opposed.

3. Implications for the Council

3.1 Early Intervention and Prevention (EIP)

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

3.2 Economic Resilience (ER)

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

3.3 Improving Outcomes for Children

3.3.1 See 3.1.1

3.4 Reducing demand of services

3.4.1 See 3.5.

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

3.5.1 The Council has a statutory duty to maintain the formal record of public rights of way and to respond to applications and discovery of evidence of unrecorded and mistakenly recorded public rights of way.

3.5.2 The Council must make a decision regarding the order application and any appropriate PROW status of this route, making any order that is requisite further to Wildlife & Countryside Act 1981, e.g. section 53. In accordance with the Council's delegation scheme, this is a decision for the sub-committee.

3.5.3 Any person may make an objection or representation to an order modifying the definitive map and statement. If objections are not withdrawn, any order made would be forwarded to the Secretary of state at DEFRA, and likely considered by an inspector appointed by the Secretary of State, who may or may not confirm the order.

4 Consultees and their opinions

4.1 Ward members have been informed about the public footpath claims and have been informed of the report being brought to sub-committee.

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

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

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

5 Next steps

- 5.1 If an order is made, it will be advertised on site and in the local newspaper. All owners and occupiers will receive a copy of the order as well as other statutory consultees. Anyone may submit written objections to the order during the relevant notice period.
- 5.2 If no one makes an objection the Council could confirm the order. If objections are made, and not withdrawn, the order has to be referred to Secretary of State DEFRA, who will decide if the order should be confirmed. This usually involves appointing an inspector to consider the evidence from all parties at a public inquiry, hearing or by exchange of correspondence.
- 5.3 If the Council decides that there is no order to be made, then the applicant may appeal by way of representations to the Secretary of State who may direct the Council to make an order. [WCA 1981, Schedule 14, 3 (4)]. The applicant has 28 days to appeal after notice is served by the council of its refusal decision.
- 5.4 In this case, legal advice has been received that suggests the council determine the DMMO applications before progressing a s257 order, already authorised by sub-committee decision, which is the subject of a further report for any appropriate amendment. Officers' report to sub-committee on the Clayton Fields authority to make a s257 order under the Town & Country Planning Act 1990 is to follow consideration of this report.

6. Officer recommendations

- 6.1 **Officers recommend that** members choose option 2 at paragraph 2.62 and decide that the evidence is sufficient to authorise the Service Director, Legal, Governance and Commissioning to make a definitive map modification order ("DMMO") to record public footpaths as shown on appended, amended and clarified plan App Z, under section 53 (3) c (i) of the Wildlife & Countryside Act 1981, but not to make any modification under s 53 (3) c (iii) regarding the recorded width of Huddersfield footpath 345.
- 6.2 **Officers further recommend that** if further to the recommendation at 6.1 above, an order is made, members authorise the Service Director, Legal, Governance and Commissioning to confirm the order or if opposed, to submit it to the Secretary of State at DEFRA to determine.

Reasons

- 6.3 There is significant evidence regarding public use of the route over a period of some decades.

- 6.4 There appears to be sufficient evidence to raise a reasonable allegation that public rights of way subsist over the routes identified and clarified over the land at Clayton Fields shown in the plan at App Z. A digitized amended version of this appendix has been provided for clarity further to review of the information after the May committee and member briefing.
- 6.5 There has been no submission by the current landowners in this investigation to the council to dispute the existence of public rights over the land relating to the evidence from users.
- 6.6 There is clearly a conflict of evidence in the council's possession. The history of Clayton Fields is lengthy, complex and has been subject to test in the Supreme Court already. There is no incontrovertible evidence adduced that a public right of way cannot be reasonably alleged to subsist in relation to the application 183. If an order is made and opposed then the Secretary of State may consider it appropriate to call for a public inquiry to assess the evidence, with witnesses giving evidence in person and open to cross examination, allowing for a more detailed examination if required. Although taking the matter of TVG to the Supreme Court in 2014, the current landowner has yet to offer evidence or legal argument during this investigation to dispute the existence of public rights of way.
- 6.7 In the circumstances it appears reasonable to conclude that a reasonable allegation has been made that public rights of way subsist. The appropriate status should be reflected in any order made.
- 6.8 In conclusion, officers consider that there is sufficient evidence to consider that an Order to modify the Definitive Map and Statement should be made to record public footpaths under Section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 over the Clayton Fields land as shown in appended plan at App Z.
- 6.9 Officers consider that there is insufficient evidence to support the making of an order for the increased width of footpath Huddersfield 345.
- 6.10 If an order is made and objections made which are not withdrawn, it must be forwarded to the Secretary of State to make a decision. In that event, a public inquiry may be considered to be the preferred process to assist in a final

determination of this matter, allowing for evidence to be given in person, where it would be open to cross-examination.

6.11 Section 53 (3) c (i) requires the council to make an order to modify the definitive map when evidence is discovered which shows “*that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic;*”. Officers consider that this test is satisfied.

6.12 Officers consider that there is insufficient evidence before the council to merit recording a greater width for the 187 application route of footpath 345, under section 53 (3) c (iii) of the 1981 Act. Although members of the public may have enjoyed a greater width, there is a paucity of evidence before members. Although not relevant to consideration of this matter, officers would note that the intention of the landholder is to dedicate additional width as part of a public path order for the site, as already subject to the sub-committee’s decision of October 2017. Such inclusion would improve protection of route Huddersfield 345.

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

7.1 Not applicable

8. **Contact officer**

Giles Cheetham, Definitive Map Officer

01484 221000

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

9.1 872/1/MOD/30 & 31 & 184 & 185 & 186 & 187

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

9.3 Appendices

<https://democracy.kirklees.gov.uk/ecSDDisplay.aspx?NAME=SD1603&ID=1603&RPID=505515706>

9.3.1 Appendix 1 – guidance for members.

9.3.2 App A – DMMO application form & plan (12)

9.3.3 App B – Supreme Court press summaries (2)

9.3.4 App C – User evidence summary & plans (16)

9.3.5 App D – Land ownership plans. (3)

- 9.3.6 App E – application plans for the seven DMMO applications. (3)
- 9.3.7 App F – Aerial photos 1949 and 2000-2009 and applicant’s montage submissions (10)
- 9.3.8 App G - Officer ‘claimed routes’ photos 2011 and 2014
- 9.3.9 App H – George Haigh & Co Ltd documents including LR title (3)
- 9.3.10 App K - TVG witness evidence summary (describes walking) and plan
- 9.3.11 App L – Stat Dec of G Haigh & Co’s solicitor
- 9.3.12 App W – Legal service and PROW file note on application s 30 & 31.
(2)
- 9.3.13 App X – Ordnance Survey plans 1893-2014 (6)
- 9.3.14 App Y – Route of previous DMMO decision for application 183
- 9.3.15 App Z – Proposed addition plan for the officer recommendation
(amended, digitised version for additional clarity after review of evidence further to May sub-committee and member briefing).

10. Service Director responsible

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

Name of meeting and date:

Planning sub-committee (Huddersfield area) – 21 June 2018
(deferred from 17 May 2018 for a member briefing, which took place on 11 June 2018)

Title of report:

Applications for a definitive map modification order to add public footpaths to the definitive map and statement, Clayton Fields, Edgerton. (Application references 30, 31, 184, 185 & 186). Application for a definitive map modification order (“DMMO”) to vary the recorded width of recorded public footpath Huddersfield 345 (part) (Application reference 187).

1. Purpose of report

Members are asked to consider the evidence and decide on any requisite modification of the definitive map and statement of public rights of way. Six applications have been received for definitive map modification orders to record (x5) public footpaths and to amend (x1) the width recorded for part of an existing recorded public footpath.

2. Summary of Report

In February 2018 sub-committee determined one of the DMMO applications at Clayton Fields and members are now asked to consider and determine the six others received by the council.

Members are asked whether the evidence demonstrates that any DMMO is warranted. Six applications made in 1996 (x2) and 2014 (x4) have been submitted with evidence relating to public use and the physical nature of the route. Evidence of public use of the land relating to the 1997 recording of Clayton Fields land as a town/village green is also included. The green was de-registered in 2014 further to a Supreme Court decision, and questions of public use in the years up to 1996 potentially giving rise to the establishment of public rights of way are covered.

3. Ward Councillor comments

No comments on the existence of public rights to date.

4. Officer recommendations and reasons

That sub-committee decides (i) that the evidence supports the making of an order to add footpath routes as shown in Appendix Z*, and (ii) to refuse the application to vary the recorded width of definitive public footpath 345 (part). Reasons: The evidence is sufficient to show that either public rights of way subsist or are reasonably alleged to subsist, but on the balance of probability the evidence is insufficient to require the variation of the width in the definitive statement.

*A clearer, digitised, amended version of report appendix Z has been provided for members to consider further to a review of information following the May meeting and the subsequent member briefing.

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

Date: 21 June 2018 (deferred from 17 May 2018)

Title of report: Amendments to the authority given by sub-committee in October 2017 for the extinguishment of claimed public footpaths at Clayton Fields, Edgerton Road, and provision of alternative routes. Town & Country Planning Act 1990, section 257.

Purpose of report: Members are asked to consider amendments to the authorisation of October 2017 given for an order to extinguish claimed public footpath rights over land at Clayton Fields and to provide alternative pedestrian routes. The footpath routes to be extinguished would be those resulting from the sub-committee decisions on the seven Clayton Fields definitive map modification order applications, and the alternative routes would be as authorised in October 2017 and as shown in relevant planning consents. **Members are asked to make a decision** on amending the authorisation in relation to the routes to be extinguished, so that they are correctly shown in making the s257 order and seeking its confirmation.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports?)	Not applicable If yes also give date it was registered
The Decision - Is it eligible for call in by Scrutiny?	No – council committee
Date signed off by <u>Director</u> & name	Karl Battersby 8 May 2018
Is it also signed off by the Acting Service Director for Financial Management, IT, Risk and Performance?	James Anderson on behalf of Eamonn Croston 4 May 2018
Is it also signed off by the Service Director (Legal Governance and Commissioning)?	Julie Muscroft 8 May 2018
Cabinet member portfolio	N/A

Electoral wards affected: Greenhead

Ward councillors consulted: Cllrs. M Sokhal, C Pattison & S Ullah

Public or private: Public

1. Summary

- 1.1 The council received an application from Seddon Homes Limited and Paddico (267) Limited for an order, to extinguish the claimed public rights of way and to provide alternative pedestrian routes, under section 257, Town & Country Planning Act 1990.
- 1.2 The proposals in the application for the order would be in accordance with planning consent for residential development. Outline planning consent has been granted under 2014/93014 and reserved matters consent granted under 2017/90190.
- 1.3 The land at Clayton Fields off Edgerton Road is subject to seven applications for definitive map modification orders to be made by the council. Six of these DMMO applications seek the recording of public footpaths across the site and the seventh concerns the increase in recorded width of recorded public footpath Hud/345. Sub-committee made a decision on one of the DMMO applications in February 2018 and a report for sub-committee decision on the other six precedes this report.
- 1.4 To facilitate the development in accordance with the above planning consents, an application for an order to be made under section 257 was received. The joint applicants are the current landowner and prospective owner/developer. If an order is made, confirmed and brought into force in accordance with this section 257 application, the routes considered by the council to be at least reasonably alleged to subsist would be dealt with and the routes shown in the planning consent layout would be provided and recorded as public footpaths. These routes would be in accordance with the sub-committee's decisions on the seven DMMO applications, which are all expected to precede members' consideration of this report. A decision in relation to application 183 has already been made and the other six applications are expected to be considered prior to this report being considered. Appended Plan 3 shows the site layout in the relevant planning consent. Plan 2 shows the alternative routes to be provided.
- 1.5 Parts of DMMO claimed paths 30 and 185 lie outside the site, linking points L & D on Plan 1 to the public footpath 345 to the north, over council-owned land. Treatment of these parts would be separate to the s257 process. The Council could dedicate public rights over those parts within the Council's ownership, currently vested in Streetscene & Housing.
- 1.6 The s257 applicants note in their application papers, "*The applicants are ready to start construction of the consented scheme on the Site but are aware of a number of alleged footpaths which cross the Site. The purpose of this application is to stop up any alleged pedestrian public rights of way that exist on the site to enable construction of the development to start. This will secure the delivery of much needed new homes for the area. These new footpaths will connect into the local footpath and highway network, and will provide links to local schools, bus routes and the town centre. The new routes*

will improve local pedestrian links for both residents of the new development, and existing local people.”

- 1.7 The informal preliminary consultation on the section 257 application attracted numerous objections, reported in October 2017, where sub-committee authorised the making of an order to extinguish the DMMO application routes and provide alternative routes.
- 1.8 Prior to considering this report and agenda item, sub-committee would likely have made determinations regarding all the seven Clayton Fields DMMO applications and this report concerns any amendments that ought to be recognised in the s257 authority to reflect those DMMO application decisions by sub-committee.
- 1.9 If the section 257 application and order are successful, this would address the routes resulting from the council’s decisions on the seven DMMO applications as far as they affect the development site.
- 1.10 If members approve amendments to the s257 order-making authority given in October 2017, the order under section 257 of the Town & Country Planning Act 1990 would be made and advertised and if any objections are made and not withdrawn, the council could not confirm the order. Opposed orders could only be confirmed by the Secretary of State at DEFRA, which may involve a public inquiry.

2. Information required to take a decision

- 2.1 Section 257 of the Town & Country Planning Act 1990 gives an authority the power to divert or extinguish footpaths, bridleways or restricted byways if it is satisfied that it is necessary to do so in order to enable development be carried out in accordance with planning permission granted under Part III (of the Act).
- 2.2 Account must be taken of the effect of the order on those entitled to rights which would be extinguished.
- 2.3 Circular 1/09 is guidance published by DEFRA for local authorities regarding PROW matters. Section 7 deals with planning and PROWs.
- 2.4 Paragraph 7.15 states: *“The local planning authority should not question the merits of planning permission when considering whether to make or confirm an order, but nor should they make an order purely on the grounds that planning permission has been granted. That planning permission has been granted does not mean that the public right of way will therefore automatically be diverted or stopped up. Having granted planning permission for a development affecting a right of way however, an authority must have good reasons to justify a decision either not to make or not to confirm an order. The disadvantages or loss likely to arise as a result of the stopping up or diversion of the way to members of the public generally or to persons whose properties*

adjoin or are near the existing highway should be weighed against the advantages of the proposed order.”

- 2.5 The section 257 application is a proposal put forward by the applicants in accordance with, and based on, the planning consents granted for the site. The amendments described in this report are those which would match the decisions made by sub-committee regarding the existence of public rights of way over the Clayton Fields site, including decision made at the 17 May 2018 sub-committee meeting on an earlier DMMO agenda item. The joint applicants wish the council to proceed with determining what rights are considered to satisfy the DMMO criteria, so that the appropriate routes are subject to the s257 order.
- 2.6 Option 1 is to refuse to amend the authority already given for a section 257 order.
- 2.7 Option 2 is to authorise the Service Director of Legal, Governance & Commissioning **to make and seek confirmation** an order under section 257 of the Town & Country Planning Act 1990 in accordance with the sub-committee public rights of way decisions on the seven DMMO applications at Clayton Fields. This would authorise confirmation of the order by the council if unopposed, or seeking confirmation of an opposed order by forwarding it to the Secretary of State at DEFRA to confirm.

3. **Implications for the Council**

3.1 **Early Intervention and Prevention (EIP)**

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

3.2 **Economic Resilience (ER)**

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

3.3 **Improving Outcomes for Children**

- 3.3.1 See 3.1.1

3.4 **Reducing demand of services**

- 3.4.1 See 3.5.

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

- 3.5.1 The Council receives applications to change public rights of way, in this case to facilitate development already granted planning consent.

- 3.5.2 The Council may make orders which propose to change public rights of way and may recharge its costs of dealing with applications and making orders, as appropriate.
- 3.5.3 Any person may make an objection or representation to the order.
- 3.5.4 The council may choose to forward an opposed order to the Secretary of State at DEFRA (“SoS”) to determine or may abandon it. If an order is forwarded, any such objection would be considered by an inspector appointed by the Secretary of State, who may or may not confirm the order. The council recharges the costs of applications to the applicant as appropriate, but the council may not recharge the costs incurred by it in the process of determination of an opposed order by DEFRA. The council would have to cover its own costs of forwarding the order to DEFRA and its costs associated with that decision process, potentially including a public inquiry.
- 3.5.5 If the council confirms its own orders, or after an order has been confirmed by the SoS, the council may recharge its costs of concluding the order process, including bringing an order into force.
- 3.5.6 Development proposals, including those given planning consent, may depend on the making and coming into force of public path orders, such as those changing or extinguishing public rights of way. Without such PROW orders, development may well be delayed, prevented or rendered unviable, with the subsequent effects on matters such as the local economy and provision of homes.

4 Consultees and their opinions

- 4.1 The principle of extinguishing the DMMO routes and providing alternative routes by way of an order under section 257 and the detail of that change has already been authorised by sub-committee in October 2017, further to previous officer report.
- 4.2 Once sub-committee has made a decision regarding all the seven DMMO applications at Clayton Fields, members are asked to amend the detail of the proposed changes to paths in that previous s257 decision to reflect their subsequent DMMO decisions.
- 4.3 Officers consider that it is evident that any order made under section 257 should reflect the council’s decisions on the existence of public routes on the site.
- 4.4 **Officers would note** that the here proposed section 257 order applied for would deal with all the routes recognised by the council within the site that are subject of the seven DMMO applications. It would extinguish those routes recognised by sub-committee, as well as creating numerous alternative pedestrian routes. A small length of claimed footpath, outside the development site on council land, would still be outstanding and

is subject of two of the DMMO applications – the parts north of point L & D on Plan 3. Those DMMO short lengths of claimed path parts would still need to be dealt with even if the section 257 order is made, confirmed and brought into force. The council as landowner may choose to dedicate a link path over its land if required at a later stage.

4.5 An additional plan has been appended at Plan 6 further to the member briefing. This shows the development layout overlaid with the February decision 183 route and the recommendation routes in the preceding DMMO report.

5 Next steps

5.1 If an order is made, it would be advertised and notice served.

5.2 If the order is unopposed the council may confirm it.

5.3 If any objections are duly made and not withdrawn, the council may forward the order to the Secretary of State at DEFRA seeking its confirmation. Alternatively, the council may decide to abandon the order.

5.4 If sub-committee refuses the application, the order is not made. There is no appeal right for the applicant against a refusal.

6. Officer recommendations and reasons

6.1 Officers recommend that members:

6.1.1 choose option 2 at 2.7 above and give authority to the Service Director, Legal, Governance and Commissioning to make and seek confirmation of an order under s257 of the Town & Country Planning Act 1990 to reflect the routes determined to subsist, or to be reasonably alleged to subsist in relation to the seven Clayton Fields DMMO applications and to reflect the routes proposed in the implementable planning consents, including the widening of part of Huddersfield 345 lying to the west of the site and

6.1.2 delegate authority to the Service Director, Legal, Governance and Commissioning to determine the routes to be extinguished (routes in the DMMO report recommendations are indicatively shown in Plan 5/AppZ, along with the DMMO ref 183 route determined by sub-committee in February). The intention is for the s257 order to reflect the decisions by sub-committee.

6.2 Sub-committee has already given authority in October 2017 for an order to be made to extinguish routes at Clayton Fields and provide alternative routes to match those in planning consents already granted. This report concerns amendments to reflect DMMO decisions subsequently made by this sub-committee when detailing the routes to be extinguished.

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

7.1 Not applicable

8. **Contact officer**

Giles Cheetham, Definitive Map Officer

9. **Background Papers**

872/6/EXT/Clayton Fields

DMMO applications 30, 31, 183, 184, 185, 186 & 187.

Planning files e.g. 2014/93014 & 2017/90190

Appendices:

<https://democracy.kirklees.gov.uk/ecSDDisplay.aspx?NAME=SD1602&ID=1602&RPID=505515714>

Plan 1 Routes as shown in DMMO applications

Plan 2 Routes to be created and provided as part of the development

Plan 3 DMMO application routes over site layout (A3 at 1:1250 scale)

Plan 4 – proposals at definitive footpath Hud/345 – Extra width to be dedicated.

Plan 5/App Z – digitised amended routes in the recommendation in preceding sub-committee DMMO report and previous decision on route 183

Plan 6 Development site layout overlaid with routes in the officer recommendation in preceding sub-committee DMMO report and previous decision on route 183 application. (Requested by members)

10. **Service Director responsible**

Joanne Bartholomew, Service Director: Commercial, Regulatory & Operational Services, Place Directorate

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Name of meeting and date:

Planning sub-committee (Huddersfield area) – 21 June 2018
Deferred from 17 May 2018 for member briefing which took place on 11 June 2018.

Title of report:

Amendments to the authority given by sub-committee in October 2017 for the extinguishment of claimed public footpaths at Clayton Fields, Edgerton Road, and provision of alternative routes. Town & Country Planning Act 1990, section 257

1. Purpose of report

Members are asked to consider amendments to the detail of the authority given by sub-committee in October 2017. The detail of some routes to be included in the proposed section 257 order would be different, and this report looks to ensure a decision that the sub-committee's DMMO determinations are reflected in the proposed section 257 order.

2. Summary of Report

Authority was given in October 2017 by sub-committee for an order to be made to extinguish claimed routes at Clayton Fields and provide alternative footpath routes in accordance with planning consents already granted. This report seeks authority to amend the details of that October decision to reflect the determinations of sub-committee on the seven definitive map modification order applications. DMMO application 183 was determined in February 2018 and DMMO applications 30, 31, 184, 185, 186 & 187 are due to be reported before this item is considered.

3. Ward Councillor comments

No further comments on the proposed amendments.

4. Officer recommendations and reasons

That sub-committee decides to authorise the Service Director, legal governance and commissioning to make and seek confirmation of a section 257 order to reflect the routes to be extinguished and provided, in accordance with the sub-committee's determination of the seven Clayton Fields DMMO applications and the planning process respectively.

As clarified at the member briefing, members may conclude that the routes to be extinguished may include the alignments shown in the DMMO application plans submitted by the DMMO applicants, giving authority to officers for the final details of alignments to be extinguished as described in report paragraph 6.1.2.

Note: At the request of members at the briefing, an additional plan (Plan 6) has been provided of the consented development proposal layout and the recommendation routes contained in the preceding DMMO report to sub-committee.

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Report of the Head of Strategic Investment

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 21-Jun-2018

Subject: Planning Application 2018/90151 Outline application for erection of residential development adj, 208, Yew Tree Road, Birchencliffe, Huddersfield, HD2 2EQ

APPLICANT

N G Lee, c/o Agent

DATE VALID

22-Jan-2018

TARGET DATE

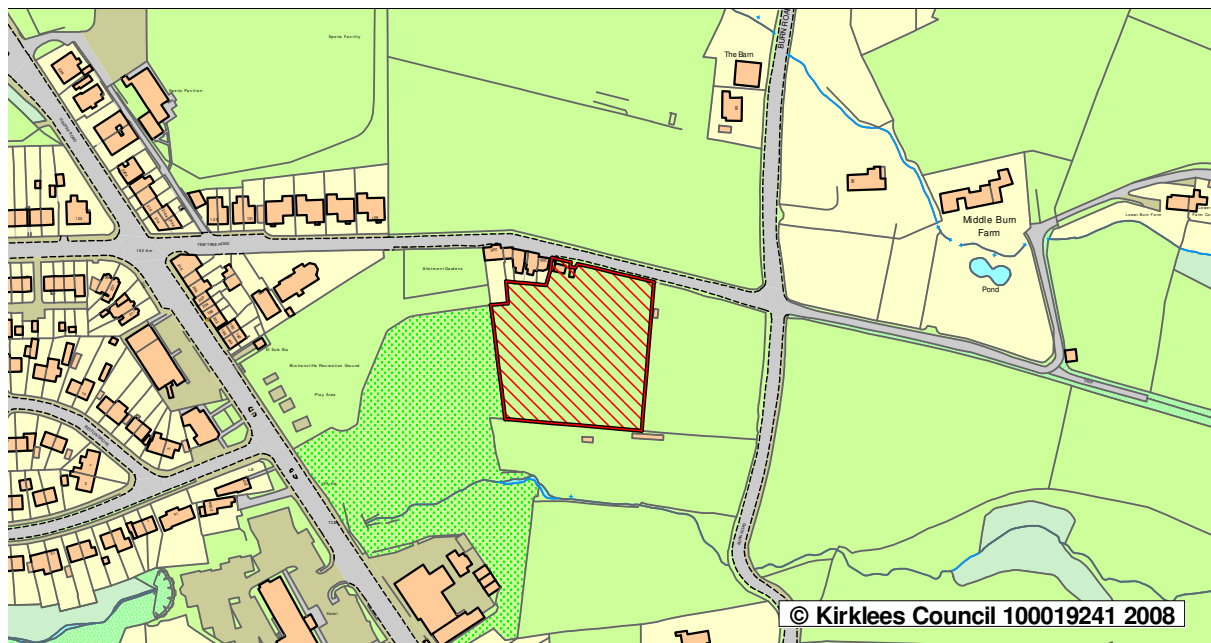
23-Apr-2018

EXTENSION EXPIRY DATE

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

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

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral Wards Affected: LINDLEY

Yes

Ward Members consulted

RECOMMENDATION:

DELEGATE approval of the application and the issuing of the decision notice to the Head of Strategic Investment in order to complete the list of conditions including those contained within this report and to secure a S106 obligation covering the following matter:

1. Contribution towards off-site improvement works at the Halifax Road/East Street (Cavalry Arms) junction.

1.0 INTRODUCTION:

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

2.0 SITE AND SURROUNDINGS:

- 2.1 The application site is a field that lies to the southern side of Yew Tree Road, Birchencliffe. The field is largely flat and the western and southern boundaries have been planted with conifers and some deciduous trees. There is an area of protected woodland to the south west which marginally extends into the site. The site includes a garage and outbuilding adjacent to 208 Yew Tree Road.
- 2.2 To the north west of the site is a row of cottages (200-208 Yew Tree Road). The open land to the north of the site is currently being developed as part of a scheme for 95 dwellings. There are fields to the south and east; the field to the east slopes down from the site where it then meets a watercourse. The field to the west is the subject of a separate outline application for residential development.

3.0 PROPOSAL:

- 3.1 Outline application for the erection of residential development. Access is the only matter that has been applied for. The proposed access is a simple priority junction on Yew Tree Road. The layout, scale, appearance and landscaping of the site are reserved for future approval.

4.0 RELEVANT PLANNING HISTORY:

- 4.1 The following application for the erection of 95 dwellings relates to land immediately to the north of the site and land off Burn Road to the east and south east of the site:

2017/90180 – Erection of 95 dwellings with access from Yew Tree Road and Burn Road – Approved and site currently under construction

- 4.2 The following application relates to the adjoining field to the east of the site:

2018/90776 – Outline application for erection of up to 10 dwellings – Undetermined (to be reported to the Huddersfield Sub Committee at a later date)

- 4.3 The following application relates to the adjoining land to the rear of the site:

2018/91838 – Outline application for erection of residential development - Undetermined (to be reported to the Huddersfield Sub Committee at a later date)

- 4.4 The following applications relate to land off Burn Road that form part of the same POL allocation as the application site:

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

2016/90524 - Outline application for erection of three dwellings (at Middle Burn Farm) – Approved by Sub Committee earlier this year (decision notice not yet issued)

- 4.5 There are also two historic applications for residential development on part of the application site. These are:

1990/06034 – Outline application for erection of detached dwelling – Refused

1993/01890 - Outline application for erection of detached dwelling – Refused

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

- 5.1 Pre-application advice was sought from the council for residential development on the site. No concerns were raised with the principle of development. Officers advised the applicant that the access to the site on Yew Tree Road should be provided directly opposite a recently approved access on the opposite side of Yew Tree Road (Harron Homes development) and with the same junction design. Officers also advised that speed readings should be undertaken to the east of the proposed access at the extent of the practical visibility splay within the applicant's control. It was also advised that the site layout should make provision for access to the adjacent land.

- 5.2 There have been negotiations with the agent in relation to the proposed point of access. The access plan submitted with the application shows two different options; one is directly opposite the approved access for the Harron Homes site and one is slightly to the west of it. The applicant sought consent for the latter. Officers considered however that the most appropriate access is directly opposite the approved Harron Homes access to the north and requested that this is the one that was applied for. The applicant has confirmed that this is the access for which consent is now sought. The proposed access is consistent with the advice given at pre-application stage.

6.0 PLANNING POLICY:

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

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

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

D5 – Provisional Open Land
BE1 – Design principles
BE2 – Quality of design
BE12 – Space about dwellings
T10 – Highway safety
G6 – Land contamination
NE9 – Retention of mature trees
H18 – Provision of open space for new housing

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

Spatial Development Strategy
PLP3 – Location of New Development
PLP7 – Efficient and effective use of land and buildings
PLP11 – Housing mix and affordable housing
PLP21 – Highway safety and access
PLP24 – Design

PLP28 – Drainage
PLP30 – Biodiversity and Geodiversity
PLP32 – Landscape
PLP33 – Trees
PLP51 – Protection and improvement of local air quality
PLP53 – Contaminated and unstable land
PLP63 – New open space

6.5 Supplementary Planning Guidance / Documents:

N/A

6.6 National Planning Guidance:

NPPF Core Planning Principles
NPPF Chapter 4 – Sustainable travel
NPPF Chapter 6 – Delivering a wide choice of quality homes
NPPF Chapter 7 – Requiring good design
NPPF Chapter 11 - Conserving and enhancing the natural environment

7.0 PUBLIC/LOCAL RESPONSE:

7.1 Application was advertised by site notices and neighbour letters. In response to the publicity 14 representations have been received, the majority of which are duplicates of the same representation.

Transport issues:

- Proposed access does not take into account the access for the development site to the north. In effect a cross roads will be created.
- Local roads already congested; this development combined with other approved developments in the vicinity will exacerbate this situation
- Increased risk of accidents
- Development should be refused pending improvement works to A629 Halifax Road
- A contribution towards the improvement of pedestrian and cycle routes in the vicinity should be sought
- Detrimental impact on amenity value and public enjoyment of public footpath 405.

Visual amenity/landscape character:

- Detail of scale required
- Visually intrusive

Residential amenity/health:

- Detrimental impact on air quality
- Air Quality Management Area in place at Birchencliffe/Ainley Top

Ecology:

- Disruption to wildlife

Other matters:

- Pressure on local schools and medical services

7.2 Ward members were notified of the application. No specific comments on the proposal have been received.

8.0 **CONSULTATION RESPONSES:**

8.1 **Statutory:**

KC Highways Development Management – The most appropriate point of access is directly opposite the approved access on the other side of Yew Tree Road that forms part of planning permission 2017/90180. A footway should be provided along the site frontage. Contribution towards off-site highway works required (Cavalry Arms junction on Halifax Road).

KC Lead Local Flood Authority – Object to the indicative drainage strategy submitted in support of the application.

The Coal Authority – No objections subject to conditions

8.2 **Non-statutory:**

KC Environmental Services – No objection subject to conditions relating to land contamination, noise and electric vehicle charging points.

KC Ecology Unit – The majority of the site has limited ecological value however about one fifth of it is marshy grassland/rush pasture which is likely to support biodiversity. It would be desirable for this habitat to be retained or alternatively compensated for within any future layout. No objections subject to a condition requiring an Ecological Design Strategy that addresses this particular habitat and provides ecological enhancement.

KC Landscaping Section – Site area exceeds 0.4ha and therefore Public Open Space (POS) should be provided. Any development over 5 dwellings would also require a Local Area of Play (LAP). If not provided on site then a financial contribution towards off-site provision should be provided. Advice provided in respect of future hard and soft landscaping proposals.

KC Arboricultural Officer – No objections. Trees on the site do not meet the criteria for a new Tree Preservation Order (TPO) to be served and future landscaping proposals can mitigate any tree loss. The existing protected trees to the west and south west of the site will need to be taken into account when layout is considered at reserved matters stage.

KC Strategic Waste Officer – Landfill gas data provided [this indicates that the site is unlikely to be affected by landfill gas].

9.0 MAIN ISSUES

- Principle of development
- Landscape character and urban design issues
- Residential amenity
- Landscape issues
- Housing issues
- Highway issues
- Drainage and flood risk issues
- Planning obligations
- Representations
- Other matters

10.0 APPRAISAL

Principle of development

- 10.1 The site forms part of a much larger area of land which is allocated as Provisional Open Land (POL) on the Unitary Development Plan (UDP) Proposals Map. Planning permission for 95 dwellings has been approved on a significant proportion of the allocation under application reference 2017/90180 and this development is currently under construction. Outline consent for seven dwellings has also been approved on two separate parts of the POL allocation to the west of the site under applications 2016/90073 and 2016/90524.
- 10.2 The National Planning Policy Framework (NPPF) outlines the government's definition of sustainable development and paragraph 14 of the Framework sets out a presumption in favour of sustainable development.
- 10.3 The proposal is for new houses and paragraph 49 states that "*housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites*".
- 10.4 As evidenced in recent appeal decisions (e.g. APP/Z4718/W/16/3147937 - Land off New Lane, Cleckheaton), the Council is failing to meet its requirement to ensure a five year housing land supply by a substantial margin. This is important in the context of paragraph 14 of the NPPF.
- 10.5 As the Council is unable to demonstrate a 5 year housing land supply as required by paragraph 49 of the NPPF, relevant policies relating to housing are considered to be out-of-date. Indeed, the housing land supply shortfall is substantial and falls below 3 years. Whilst the Council have submitted the emerging Local Plan for examination which, for housing purposes, is predicated on the basis of a five year housing land supply, the Local Plan has not been through examination and nor has it been adopted. Therefore, it is currently the case that the Council are unable to identify a five year supply of specific deliverable housing sites against the requirement.
- 10.6 Based on the above, there is a presumption in favour of sustainable development and planning permission should only be refused where there are adverse impacts which would significantly and demonstrably outweigh the benefits.

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

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

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

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

Emerging Local Plan

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

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

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

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

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

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

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

- 10.13 Given the scale of the development proposed when assessed against the wider context of the PDLP the application could not be deemed to be premature.
- 10.14 Given the advanced stage at which the Local Plan has progressed considerable weight should be afforded to the policies and allocations within the emerging Local Plan. There are two unresolved objections to proposed housing allocation H706, one from Historic England and one from a member of the public. The objection from Historic England relates to the impact on the significance and/or setting of Middle Burn Farm and Lower Burn Farm, which lie around 150m and 250m from the application site. As the site is well separated from Middle Burn Farm and Lower Burn Farm, with 7 new dwellings also planned in between, it is considered that Historic England's unresolved objection does not significantly reduce the weight that can be afforded to the application site's allocation in the emerging plan.
- 10.15 If the emerging Local Plan was to be adopted in its current form, the Council would be able to demonstrate a five year housing land supply. However, the PDLP has not been through examination and as it stands the Council is a substantial way off being able to demonstrate a five year housing land supply and housing delivery has persistently fallen short of the emerging Local Plan requirement. This triggers the presumption in favour of sustainable development as advocated by paragraph 14 of the NPPF.
- 10.16 Planning permission should therefore be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted.

Landscape character and urban design issues

- 10.17 The site lies towards the edge of the built-up part of Birchencliffe with open fields to the south and east. The land to the north is currently being developed as part of a development of 95 dwellings that also includes other areas of open land further to the east of the site off Burn Road. This approved development will therefore substantially alter the semi-rural character of the area and in this context it is considered that additional residential development on the site would not significantly harm the landscape character.
- 10.18 The application is in outline form with all matters reserved. The number of dwellings is therefore to be agreed as a reserved matter (layout). Within the emerging Local Plan Policy PLP7 seeks to achieve a net density of at least 35 dwellings per hectare, where appropriate. The site is just over half a hectare in size and so it could be expected that the site could accommodate in the region of 18 dwellings. However, any development will need to respect the character of the area, including that of the development currently being built under application 2017/90180. As such, a much lower density of development is likely to be appropriate in this case.

- 10.19 Consideration of scale and appearance are also reserved for future approval but officers are satisfied that a scheme can be brought forward that respects existing and planned development within the immediate vicinity of the site. The Planning Statement submitted in support of the application states that it is envisaged that the dwellings would be two storeys in height; this would be compatible with the surrounding area.
- 10.20 In principle the application is in accordance with Policies BE1 and BE2 of the UDP, PLP24 of the emerging Local Plan and guidance in the NPPF.

Residential Amenity

- 10.21 The nearest existing dwellings to the site are 200-208 Yew Tree Road which lie to the northwest on the same side of Yew Tree Road. There are dwellings approved to the north of the site on the opposite side of Yew Tree Road that front onto the site. The land to the east is subject to a separate application for residential development and it is possible that the field to the rear, which slopes down away from the site, is developed at some point in the future because it is part of the same housing allocation in the emerging Local Plan.
- 10.22 Policy BE12 of the UDP is the council's space about buildings policy and policy PLP24 of the emerging Local Plan seeks to provide a high standard of amenity for future and neighbouring occupiers, including maintaining appropriate distances between buildings.
- 10.23 A detailed assessment of the separation distances between existing and new dwellings in respect of potential overlooking, overshadowing and overbearing impacts will be necessary when matters of layout and scale are considered as reserved matters. This assessment will need to take into account potential future development on the land to the east and south which form part of the same housing allocation in the emerging Local Plan and are subject to separate outline applications for residential development.
- 10.24 This is considered to be a suitable location for residential development. Environmental Services have recommended that a condition is imposed to address any potential noise nuisance caused from road traffic noise, including from the M62 motorway. The application site is further away from the motorway than the approved houses to the north and so there are unlikely to be any significant noise issues.
- 10.25 Issues of air quality impacts on future residents were considered as part of application 2017/90180 for the erection of 95 dwellings and found to be acceptable. This conclusion holds for the proposal.
- 10.26 In principle the application satisfies Policies BE12 and BE1 of the UDP and PLP24 of the emerging Local Plan and guidance in the NPPF.

Landscape issues

- 10.27 The landscaping of the site is a reserved matter. It is nevertheless considered that external boundary treatment should respect the established character of the area which includes drystone walling to field boundaries. Drystone walling has been retained to the boundaries of approved developments on other parts of the POL allocation.
- 10.28 The size of the site triggers a requirement for public open space provision (POS); this could be incorporated into the site layout or alternatively an off-site sum in lieu of on-site provision may be more appropriate.
- 10.29 The submitted ecological appraisal recommends that landscaping could include an area of marshy grassland or a permanent water body with a wide belt of marginal vegetation. The inclusion of such an area would help to provide a sense of openness to the site and respect the existing character of the land.

Housing issues

- 10.30 The development would contribute towards the supply of housing in the district at a time when the council is currently unable to demonstrate a 5 year housing land supply. Should the number of dwellings on the site exceed 10 then the council's interim affordable housing policy requires that 20% of the units are affordable.
- 10.31 The site is allocated for housing in the emerging Local Plan.

Highway issues

- 10.32 The application seeks approval of the main point of access to the site. The proposed access is a simple priority junction along the site frontage off Yew Tree Road. The proposed access is located immediately opposite an access serving the approved housing development on the opposite side of Yew Tree Road (currently being developed by Harron Homes).
- 10.33 Officers consider the proposed access to be the most appropriate location. This is because it would enable drivers exiting the application site and the development site to the north to have a clear and direct sight of one another. Officers are satisfied that acceptable sightlines are achieved in both directions having regard to traffic speeds on Yew Tree Road. Detailed design of the junction can be secured by condition although the radii of the access should match that of the approved junction opposite and an amended plan is to be provided showing a 6m radii.
- 10.33 Officers have assessed the proposed access in light of the proposed residential development on the land to the east of the site which also proposes a new access onto Yew Tree Road (ref: 2018/90776). Officers are satisfied that the proposed access would not conflict with any potential new access serving this adjacent land. Furthermore, the access arrangement, being opposite the Harron Homes access, would help to avoid there being three staggered junctions within a relatively short stretch.

- 10.34 At pre-application stage it was suggested that the site layout should make provision for access to the adjacent POL (emerging housing allocation). Two separate planning applications have subsequently been submitted for development on the fields to the east and south of the site and these propose to have their own separate points of access. All three parcels of land are within different ownership. Layout is a reserved matter but it is likely that the proposed access will be serving the application site only. Officers raise no objections to this.
- 10.35 As part of the approved development of 95 houses under application reference 2017/90180 a suite of highway mitigation works were approved. These works include the widening of Yew Tree Road and a footway to the northern side of the road. It is considered that a footway to the application site frontage should be provided as part of the proposed scheme; this can be secured by condition and incorporated into the site layout to be approved as a reserved matter.
- 10.36 The application is considered to comply with Policies T10 and BE1 of the UDP and PLP21 of the emerging Local Plan.

Drainage and flood risk issues

- 10.37 An indicative drainage scheme has been submitted with the application. This shows how the site could be drained and includes a surface water attenuation tank within the site and a connection to an existing watercourse further to the south of the site.
- 10.38 Kirklees Lead Local Flood Authority (LLFA) has assessed the indicative drainage scheme and has raised concerns with the proposed discharge rate and the location of the surface water storage facility. They have also commented that arrangements will need to be put in place for the future maintenance and management of any surface water drainage infrastructure.
- 10.39 The applicant is not seeking approval of the drainage scheme at this stage and officers are satisfied that in principle a suitable drainage scheme can be agreed. It is appropriate for this to be secured by condition.
- 10.40 The site lies within Flood Zone 1 and there are not considered to be any significant flood risk issues associated with this site.

Ecology and trees

- 10.41 The application is supported by an ecological appraisal. This confirms that the habitats present on the site are generally of limited botanical diversity. However, the marshy grassland/rush pasture habitat that occupies approximately 20% of the site is a relatively uncommon habitat and as such contributes to the biodiversity of the site and surrounding area. This habitat is likely to support common amphibians and a diversity of invertebrate species. Although not specifically protected, retention of this particular feature is desirable, in accordance with the mitigation hierarchy described in policy PLP 30 of the emerging Local Plan and guidance in Chapter 11 of the NPPF. If it is not practical to retain this feature then it should be compensated for within any future layout. The ecological appraisal recommends that an area of marshy grassland or a permanent water body with a wide belt of marginal vegetation is provided as part of the development. This can be addressed through a condition and consideration of layout and landscaping at reserved matters.

10.42 There are a number of trees within the site which are concentrated to the western and southern site boundaries. These trees do not meet the criteria for a new Tree Preservation Order (TPO) to be served and future landscaping proposals can mitigate any tree loss. There is an area of protected woodland to the south west of the site and a single protected tree close to the western site boundary. These features will need to be taken into account when layout is considered at reserved matters stage.

Air quality:

10.43 NPPF Paragraph 109 states that “ the planning system should contribute to and enhance the natural and local environment by..... preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability.....”

10.44 This development is in close proximity to Halifax Road and the Ainley Top roundabout, where monitored air quality levels have exceeded the health related annual objective for NO₂.

10.45 An air quality impact assessment was submitted for the recently approved development of 95 dwellings adjacent to the site (application reference 2017/90180). Under that application it was accepted that the air quality impacts would be imperceptible having regard to national guidance. Given the limited size of the proposal site it is considered that there would also be an imperceptible impact on air quality. The provision of electric vehicle charging points within the development and a contribution towards sustainable travel would also help to mitigate the limited air quality impacts of the development.

Planning obligations

10.46 The council's interim affordable housing policy requires 20% of units to be affordable on developments of more than 10 dwellings. The number of dwellings is not known at this stage and so it is considered appropriate for a condition to be imposed to secure affordable housing provision in the event that the development meets the threshold.

10.47 Policy H18 of the UDP requires public open space to be provided on sites that exceed 0.4ha. The site exceeds 0.4ha and therefore triggers a requirement for POS. Any development over 5 dwellings would also require a Local Area of Play (LAP) to be provided. It may not be practical for publicly accessible open space and a LAP to be provided on the site in which case a financial contribution in lieu of on-site provision would be necessary. Given that the layout is not under consideration at this stage it is considered that a condition securing POS and a LAP is necessary.

10.48 The trigger for an education contribution is 25 dwellings. This number of dwellings is highly unlikely to be appropriate on the site in which case an education contribution would not apply. A condition can nevertheless be imposed to cover an education contribution given that the number of dwellings is not known at this stage.

- 10.49 Given the number of units that the site could potentially accommodate it would be appropriate to consider a contribution towards sustainable travel. This would normally be towards Metro Cards or other highway/transport improvements in the vicinity of the site. The level of contribution would need to reflect the number of houses and so an exact figure could not be calculated at this stage. One Metro Card costs around £491. This can be secured by condition.
- 10.50 A contribution is also sought towards planned highway improvement works at the Halifax Road/East Street (Cavalry Arms) junction. These works include road widening, resurfacing, repositioned pedestrian crossings and repositioned footways. The scheme is being funded by the West Yorkshire plus Transport Fund. A contribution towards works at this junction was secured as part of the Harron Homes development (2017/90180) and it is considered reasonable for the proposed development to deliver a proportionate contribution. This would be based on the number of houses on the site which is to be agreed as reserved matter (layout). The contribution would be approximately £790 per dwelling.

Representations

- 10.51 14 representations have been received, including a number of duplicate representations. An officer response to the issues raised is provided below.

- Proposed access does not take into account the access for the development site to the north. In effect a cross roads will be created.

Officer response: Officers consider that the location of the proposed access is the most suitable location for the reasons set out in this report. It is unlikely that traffic will be moving across Yew Tree Road between the application site and the development site to the north and vice versa.

- Local roads already congested; this development combined with other approved developments in the vicinity will exacerbate this situation

Officer response: Officers consider that the modest increase in vehicle movements that this development would generate can be accommodated on the highway network. This is supported by the site's allocation for housing in the emerging Local Plan. Localised highway improvement works are also to be delivered within the vicinity of the site under planning permission 2017/90180 which is under construction.

- Increased risk of accidents

Officer response: Officers consider that a safe access to the site can be delivered.

- Development should be refused pending improvement works to A629 Halifax Road

Officer response: A contribution towards planned improvement works to the A629 is sought as part of this application.

- A contribution towards the improvement of pedestrian and cycle routes in the vicinity should be sought

Officer response: A contribution towards sustainable travel is considered to be appropriate. This could be used towards improvements to the local public footpath network.

- Detrimental impact on amenity value and public enjoyment of public footpath 405.

Officer response: This footpath lies to the west of the site and is reasonably well separated from it (circa 25m). As such officers do not consider that the proposal would have any significant detrimental impact on the footpath.

- Detail of scale required

Officer response: Scale is a reserved matter. The site is largely flat and officers are satisfied that an acceptable scale of development can be agreed that reflects existing and planned development within the surrounding area.

- Visually intrusive

Officer response: Matters of scale, layout and appearance are reserved for future approval.

- Detrimental impact on air quality
- Air Quality Management Area in place at Birchencliffe/Ainley Top

Officer response: Air quality has been addressed at paragraphs 10.43-10.45 of this report.

- Disruption to wildlife

Officer response: The ecological impacts have already been addressed within this report.

- Pressure on local schools and medical services

Officer response: A contribution towards education would only be required if the scheme that comes forward at reserved matters is for 25 dwellings or more, which is likely.

There is no policy or supplementary planning guidance requiring a proposed development to contribute to local health services. However, PDLP policy PLP49 identifies Educational and Health impacts are an important consideration and that the impact on health services is a material consideration. As part of the Local Plan Evidence base, a study into infrastructure has been undertaken (Kirklees Local Plan, Infrastructure Delivery Plan 2015). It acknowledges that funding for GP provision is based on the number of patients registered at a particular practice and is also weighted based on levels of deprivation and aging population. Therefore, additional funding would be provided for health care is based on any increase in registrations at a practice. Long-term funding of health facilities is being considered as part of the Local Plan and Community Infrastructure Levy (CIL).

Other Matters

- 10.52 The application is supported by a preliminary geoenvironmental appraisal. This has been assessed by Environmental Services who recommend that conditions are imposed requiring intrusive site investigations and a remediation strategy, as may be necessary, to address potential land contaminated issues.
- 10.53 The site lies within a high risk area for coal mining activity. The preliminary geoenvironmental appraisal identifies that the application site is likely to have been subject to past coal mining activity. The Coal Authority records indicate that the site is likely to have been subject to historic unrecorded underground coal mining at shallow depth and that a thick coal seam outcropped across the site. The Coal Authority records also indicate the presence of a recorded mine entry (shaft) within 20m of the site boundary however the shaft would not impact on any development layout. The Coal Authority raises no objections to the application subject to conditions requiring intrusive site investigations (including gas monitoring) to determine any necessary remedial measures.

11.0 CONCLUSION

- 11.1 The application is seeking approval of the principle of residential development on the land and the main point of access.
- 11.2 Officers consider the principle of development on this part of the POL allocation to be acceptable; there are not any specific constraints to developing the site and applications for residential development have recently been approved on other parts of the POL allocation, including a scheme for 95 houses. Furthermore the land is allocated for housing in the emerging Local Plan and significant weight can be afforded to this.
- 11.3 The proposed point of access is considered to be acceptable to Highways Development Management.
- 11.4 The development will contribute towards the delivery of new housing in the district and subject to the number of units could deliver a proportion of affordable houses. The scheme will also deliver POS provision and a contribution towards off-site highway improvement works.
- 11.5 Officers are satisfied that an appropriate scheme can be brought forward that respects the character and visual amenity of the area and protects residential amenity. Ecological and drainage considerations can be dealt with by conditions.
- 11.6 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.
- 11.7 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 conditions for outline consents (including submission of reserved matters and time limit)
2. Intrusive site investigations and remediation to address coal mining legacy issues and contaminated land issues
3. Detailed drainage design including future maintenance and management of surface water infrastructure
4. Provision of footway to site frontage
5. Noise report and mitigation
6. Ecological Design Strategy (including retention/provision of wetland area and biodiversity enhancement)
7. Electric vehicle charging points to be provided
8. Affordable housing
9. POS
10. Education
11. Sustainable travel contribution
12. Construction management plan
13. Detailed road junction design

Background Papers:

Application and history files.

Website link:

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2018%2f90151>

Certificate of Ownership – Notice served on Kirklees Council

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Report of the Head of Strategic Investment

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 21-Jun-2018

Subject: Planning Application 2018/91198 Outline application for erection of residential development Land at, Westcroft, Honley, Holmfirth, HD9

APPLICANT

Worth Homes (Holmfirth)
Ltd, M H Mitchell, R H
Mitchell, J S Mitchell

DATE VALID

11-Apr-2018

TARGET DATE

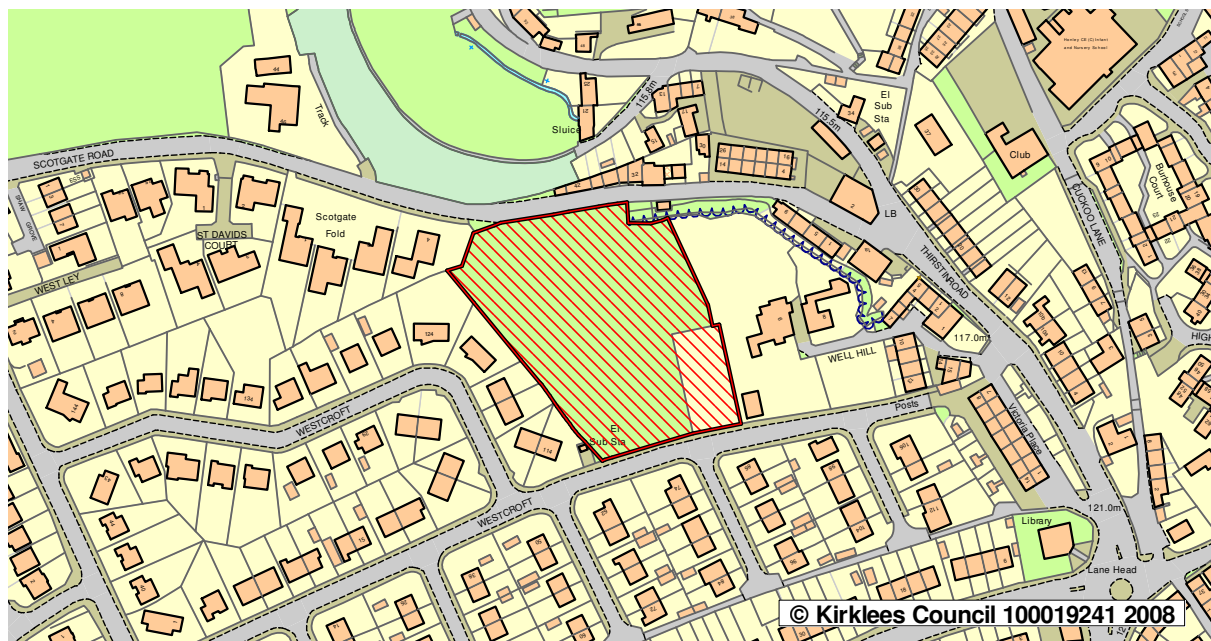
11-Jul-2018

EXTENSION EXPIRY DATE

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

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

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral Wards Affected: Holme Valley North

Yes

Ward Members consulted
(referred to in report)

RECOMMENDATION: Outline approval subject to conditions.

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

1.0 INTRODUCTION:

- 1.1 This application is brought to Committee as the site is in excess of 0.5ha.
- 1.2 Ward Cllr Charles Greave has requested that Committee undertake a site visit, and this has been agreed by the Chair.

2.0 SITE AND SURROUNDINGS:

- 2.1 The application site comprises an area of 0.72 ha, located off Westcroft in Honley, the site is flanked by dwellings to the west, with dwellings on the opposite side of the road. To the east is a substantial detached property, which is of a more traditional design.
- 2.2 The site is located adjacent to the Honley Conservation Area that is located to the east of the site.
- 2.3 The site extends northwards to Scotgate Road, which is located at a significantly lower level, to the majority of the site, with a well wooded embankment adjacent the road. The site is greenfield and contains a significant number of mature trees, and has clearly been used for recreation purposes informally for some time, there are desire lines across the site including one that extends down to Scotgate Road.
- 2.4 There is an existing dropped crossing in front of the site, and currently the boundary is marked with a breeze block wall, which is in part a retaining structure.
- 2.5 The site is allocated for housing on the Unitary Development Plan, and also in the Emerging Local Plan

3.0 PROPOSAL:

- 3.1 Outline planning permission is sought for the principle of residential development. All matters are reserved for subsequent approval. An indicative layout and point of access has been submitted for illustrative purposes which show a total of 20 dwellings and an access off Westcroft via the existing dropped crossing and the removal of a number of trees, in particular a mature Sycamore tree located centrally within the site.
- 3.2 Separate to this planning application a tree works application has been submitted to fell the aforementioned Sycamore. This was granted as the tree is in a diseased state. This approval requires the replanting of an oak tree in the same location.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

- 4.1 93//60/00826 Outline application for residential – Refused, and subsequent appeal dismissed. At this time the site was unallocated on the Holmfirth Town Map and the relevant development plan was the Holmfirth –Meltham Local Plan. The current Development Plan is the Kirklees Unitary Development Plan on which the site is allocated for residential use.
- 4.2 2006/95398. Outline application for 17 no dwellings. Refused as a greenfield site, when other brownfield sites were available and a 5 year supply of deliverable housing sites was deemed to be available. This was in accordance with guidance within PPG3 (Housing 2006). This has been superseded by the NPPF.

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

- 5.1 None.

6.0 PLANNING POLICY:

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

6.2 Land is a housing allocation in the Unitary Development Plan.

BE1 Design principles
BE2 Quality of design
BE5 Preservation and enhancement of conservation areas.
T10 Highways safety
T19 Parking
NE9 Mature trees
EP11 Ecological landscaping
G6 Contaminated land
BE23 Crime prevention
H10 Affordable housing
H18 Provision of public open space.

Supplementary Planning Guidance / Documents:

6.3 Kirklees Interim Affordable housing policy.

Emerging Local Plan

Housing allocation- H786
PLP3 Location of new development
PLP7 Efficient and effective use of land
PLP11 Housing mix and affordable housing
PLP21 Highways safety and access
PLP22 Parking
PLP24 Design
PLP 28 Drainage
PLP30 Biodiversity and geo-diversity
PLP 33 Trees
PLP35 Historic environment.
PLP51 Protection and improvement of local air quality
PLP53 Contaminated and unstable land

National Planning Policy Framework

6.4 Part 4. Promoting sustainable transport
Part 6. Delivering a wide choice of high quality homes.
Part 7 Good design
Part 8 Promoting healthy communities
Part 10 Meeting the challenge of climate change, flooding and coastal change
Part 11 Conserving and enhancing the natural environment
Part 12. Conserving and enhancing the historic environment.

7.0 PUBLIC/LOCAL RESPONSE:

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

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

- The proposal will result in the loss of some of the last pieces of green space in the Honley area;

- The green space is an important buffer zone adjacent to the Conservation Area, the best use of this site would be as a community/ village facility.
- Westcroft is essentially an elongated cul-de-sac, and the extra traffic associated with an additional 20 houses will cause congestion and traffic hazards ,especially for children walking to school
- The scheme proposes the loss of an attractive protected sycamore central to the site, and this is not justified;
- The scheme will put extra pressure on local facilities ie doctors dentists, and schools that are already over stretched;
- The proposal will put pressure on the existing drainage systems.
- To approve this development would be inconsistent with previous decisions in the area (mention is made of a refusal of a single house on Scotgate Road).

7.2 2 letters have been received which support the application in principle subject to appropriate conditions to minimise disturbance during construction, and that proper justification is received for the removal, of the TPO'd tree. Any future scheme should retain/ improve the footpath link across the site between Westcroft and Scotgate, and this should avoid any steps being incorporated.

7.3 Cllr Charles Greaves opposes the development and requested the Committee undertake a site visit. Concerned at the loss of the greenspace and the removal of valuable trees; the density on the indicative layout is excessive, and Westcroft is already heavily used and additional traffic will exacerbate an already unacceptable situation.
If permission is granted a new development should incorporate a footpath link between Westcroft and Scotgate.

7.4 Holme Valley Parish Council- Object to the scheme which they believe to have an excessive density; more than is indicate in the emerging local plan. Have concerns about highways and the impact extra dwellings will have on Westcroft and the residents.

8.0 CONSULTATION RESPONSES:

8.1 Statutory:

KC Highways DM- No objection in principle, recommend conditions

KC Lead Local Flood Authority Object to the scheme as the as detailed drainage and surface water attenuation scheme has not been submitted but it is noted this is an Outline application not a detailed layout consideration.

8.2 Non-statutory:

KC Environmental Health- No objections recommend conditions.

KC Trees. Permission has been granted for the felling of the centrally sited sycamore, this is subject to the replanting of an oak tree in the same location. As such any layout in the future will need to accommodate this tree and give it space to grow.

KC Strategic Housing- There is a demonstrable need for affordable housing in this area, and the council's Interim Affordable Housing policy is applicable

KC Environment Unit- No objections to an outline for residential subject to the imposition of appropriate conditions to ensure a Reserved Matters scheme would comply with Policy PLP30 (Biodiversity and Geodiversity) in the Emerging Local Plan.

9.0 MAIN ISSUES

- Principle of development
- Urban design issues
- Tree/ Bio-diversity Issues
- Highway issues
- Drainage issues
- Environmental Issues (Remediation and Air Quality)
- Representations

10.0 APPRAISAL

Principle of development

- 10.1 The application site is a current housing allocation on the Unitary Development Plan, and this designation is also proposed within the Emerging Local Plan. The site is considered to be in a sustainable location, well connected to the Honley village centre.
- 10.2 Guidance contained in the NPPF paragraph 14 indicates that development that accords with the development plan should be approved without delay.
- 10.3 In addition the Council is currently unable to demonstrate a 5 year supply of deliverable housing sites, and in this under the terms of para 49 of the NPPF there is a presumption in favour of sustainable housing schemes.
- 10.4 Given the size of the site the Council's policies on Affordable Housing, and the provision of POS are relevant. As this is an outline application with all matters reserved, these matters will be the subject to conditions.

Urban Design issues

- 10.5 All that is being considered at this stage is the principle of residential development. Should outline planning permission be approved, any future applications for approval of reserved matters - including layout, scale and appearance of dwellings - will be the subject of a separate consultation, publicity and assessment.
- 10.6 The site is adjacent to the Honley Conservation Area, and there are a number of trees within the site, and on the periphery, that are protected (or are to be replaced) that contribute to the character of the site, and the setting of the Conservation Area at this point. If outline permission is granted subsequent reserved matters would also include the assessment of 'landscape'.
- 10.7 By conditioning the replacement of the centrally located tree in a similar location, this requires any future scheme to be designed with the retention of existing trees in mind and this is likely to impact significantly upon the layout. As stated above, in addition to the layout, access, scale, appearance and landscaping of the site would all to be the subject of a future Reserved Matters submissions.

Tree/Biodiversity Issues

- 10.8 An approval for the removal of the centrally located Sycamore, has been approved due to the tree's condition, however it is to be replaced in approx. the same location ie centrally to the site. There are number other mature trees on this site, including on the southern boundary with the conservation area, and the banking next to Scotgate. Any future layout will need to indicate which trees are to be retained and/or replaced, together with other landscaping on the site, and this will be the subject of public consultation.
- 10.9 A Preliminary Ecological Report has been prepared for this site. The report states:

The habitats on site have been evaluated as being of site value in relation to local surroundings and a regional context. The site was dominated by low value scrub, poor semi-improved grassland and tall ruderal herbs. No notable species were recorded, and habitat types are locally dominant and frequent in the wider environment. The majority of development will pertain to this area and as such there are no ecological constraints associated with the development. Mature trees located to the northern boundary will be retained as part of the development, and the loss of over mature Lombardy poplars can be compensated for through onsite landscaping proposals and boundary enhancements. The scrub vegetation on site was considered to provide suitable nesting habitat for a number of common bird species and has the potential to support populations of birds of local and national interest such as house sparrow, wren and dunnock. The scattered trees, scrub, and rough grassland have the potential to support breeding bird populations. Any clearance works proposed on site should be undertaken following the recommendations outlined in Chapter 7 to reduce the associated impacts to birds. The majority of scattered trees on site and adjacent to the application boundary were not considered suitable to support roosting bats. A single mature sycamore and the line of Lombardy poplars were assessed to support low suitability for roosting bats. The linear features provided by scattered trees and mature vegetation along the northern and eastern boundary could act as important commuting lines for bat species. The majority of the vegetation was recorded outside of the application boundary resulting in the retention of these features, despite vegetation removal onsite. The removal of scattered trees and the line of lombardy poplars is not considered a significant constraint due to the presence of mature boundary vegetation to the east and north retaining the connectivity to optimal woodland and wetland habitat to the north of the site. There is however, the likelihood of disturbance from indirect factors such as construction lighting, and post development security lighting. There was no evidence such as setts, mammal runs, snuffle holes or latrines to suggest that badgers are currently active on site. The site and surrounding environment presented suitable habitat for badgers, and as such it is feasible to suggest that scrub and grassland could be utilised by foraging and commuting badger on an episodic basis. Potential impacts to badgers as a consequence of the development proposals would be in the form of direct or indirect harm, injury or death to individuals during the construction phase.

- 10.10 As the application is outline only, with suitable conditions to secure submission of the necessary detail at reserved matters stage, the submitted report is sufficient to support the application. A condition will also be included to ensure the reserved matters application is supported by an EcIA (Ecological Impact Assessment) with updated survey if necessary.
- 10.11 The outline mitigation measures discussed in the submitted report are likely to be sufficient, given the value of the habitats on site, to ensure no significant residual ecological effects. To ensure this, a condition has been included below in respect of avoidance measures relating to birds, roosting bats and badgers. A condition also recommended to ensure the site retains its value for foraging bats and that foraging bats will be able to make use of any suitable habitats created as part of the landscape scheme.
- 10.12 The proposals do not currently demonstrate a net biodiversity gain. Therefore a condition to secure an Ecological Design Strategy as part of the reserved matters is also recommended

Highway issues

- 10.13 This application seeks outline approval for the erection of a residential development at land off Westcroft, Honley. The indicative layout, which is submitted for illustrative purposes only, shows twenty dwellings, three of two bedrooms, eleven of three bedrooms, and six of four or more bedrooms. An indicative plan has been supplied by the applicant (2338-02) showing the proposed layout and access onto Westcroft.
- 10.14 At this outline stage, Highways DM made a number of comments which would inform the precise access and layout arrangements at reserved matters stage – should outline planning permission be granted. No objections have been raised to the principle of access from Westcroft or to the quantum of development proposed on the indicative layout. This, however, does not indicate that this density of development would be acceptable on the site taking into account all material considerations. The matters raised by highways can be imposed as conditions should outline planning permission be granted.

Drainage issues

- 10.15 The site is located within Flood zone 1 ie an area least likely to flood, and is less than 1ha in size, thus not requiring the submission of a Flood Risk Assessment.
- 10.16 All that is being considered at this stage is the principle of residential development, on a site that has been allocated for that use since 1999. The Lead Local Flood Authority have objected to the scheme until an estimate of the storage required and where attenuation would be located is provided. Also they have indicated an appropriate run off rate of 3 l/s (ie a stricter run-off than the existing greenfield run off which is 5l/s.
- 10.17 Any siting of attenuation needs to be considered relative to a layout and any roads within that layout. There is no layout being applied for, and the indicative layout has been withdrawn from consideration. As such it is appropriate on an allocated site to condition drainage. It is considered necessary to word the condition such that a surface water drainage scheme is submitted alongside any subsequent submission for the approval of layout however. This would be to demonstrate that drainage and attenuation have been properly considered in the formulation of a detailed scheme.

Environmental Issues (Contaminated Land/Remediation and Air Quality)

- 10.18 The applicant has submitted a Phase 1 Desk Top Report, which is accepted as satisfactory at this stage by Environmental Health. As such the site can be remediated and made fit to receive a new residential use, and this would be the subject of condition.
- 10.19 Given the scale of the development (ie 0.72, and indicatively shown as 20 dwellings), this development should be regarded a small scale development under the West Yorkshire Low Emissions Strategy, and it would be appropriate to condition the provision of electric charging points for low emission vehicles, as part of any future scheme.

Representations

- 10.20 The representation received against this scheme have been summarised above, however they fall broadly into the following areas.
- 10.21 Objection to the loss of green space, damage to trees, that is inconsistent with previous decisions including an appeal that was dismissed
Response. The application site is allocated for housing in both the UDP and the Emerging Local Plan. The previous appeal dismissal was in 1994, and has effectively been superseded by the adoption of the UDP, and now the proposed local plan.
The trees work that was undertaken was in accordance with the TPO Regulations as the tree removed was in an advance state of decay. A replacement tree has been required in the same location,
- 10.22. The development will result in additional traffic on Westcroft that will be hazardous for existing residents, and additional dwellings puts undue pressure on existing schools, doctors surgeries and dentists.
Response: The site is allocated within the UDP, and Emerging Local Plan for housing and Highways DM are satisfied that the scheme can be satisfactorily accessed and this is indicate within the assessment.
The size of the site means that the council's policy on education provision is not applicable and the other issues relating to doctors and dentists are not a material consideration for a planning authority, rather a local health authority
- 10.23 The site is adjacent the Conservation Area and should be retained as open space to afford a buffer between the Conservation Area, and the rest of Westcroft. And should be used as a village facility
Response. This issue of a buffer zone for the Conservation Area, was raised in the Appeal decision in 1994. As stated above, since then the site has been allocated for housing. This does not mean that at any Reserved Matters stage a scheme should be designed to respect the character of the Conservation Area, and deliver new tree planting across the site, that constitutes a large part of the character of the Conservation Area, and this part of Westcroft. It is not feasible nor a policy requirement to require the remain undeveloped or for public use.

11.0 CONCLUSION

- 11.1 This application seeks consent for the principle of residential development on a site already allocated for such a use in the UDP, and also within the emerging Local Plan. The guidance within para 14 of the NPPF indicates that developments which accord with the Development Plan should be approved without delay. The site is within a sustainable location, the Council is still unable to demonstrate a 5 year supply of deliverable housing site resulting in a presumption in favour of sustainable housing sites being developed.
- 11.2 The scheme is in outline with all matters reserved. Issues of layout, scale, access, landscape and appearance are all the subject of reserved matters application that will in itself be the subject of publicity and consultation.
- 11.3 Technical issues such as remediation, air quality and drainage, can all be satisfactorily dealt with by the imposition of conditions.

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

1. 3 years to commence development
2. Reserved matters (access, layout, appearance, scale and landscape)
3. Provision of affordable housing
4. Provision of public open space
5. Remediation and decontamination
6. Provision of electric charging points for low emission vehicles
7. Habitat enhancement
8. Ecological Development Strategy
9. Construction Environmental Management plan,
10. Highways conditions
11. Drainage, to be submitted with details of layout
12. Tree protection.
13. Construction management plan

Background Papers:

Application and history files.

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2018%2f91198>

Certificate of Ownership –Certificate B completed 9th April 2018

Notice served on Carter Jonas, 9 Bond Street, Leeds.

Report of the Head of Strategic Investment

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 21-Jun-2018

Subject: Planning Application 2018/90413 Change of use from dwellinghouse to mixed use dwellinghouse and training centre (within a Conservation Area) Thorpe Grange Manor, Thorpe Lane, Almondbury, Huddersfield, HD5 8TA

APPLICANT

A and J Dyson

DATE VALID

28-Feb-2018

TARGET DATE

25-Apr-2018

EXTENSION EXPIRY DATE

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

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

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral Wards Affected: Almondbury

No

Ward Members consulted

RECOMMENDATION

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

1.0 INTRODUCTION

- 1.1 The application seeks a change of use from dwellinghouse to mixed use dwellinghouse and training centre.
- 1.2 The application is brought to committee at the request of Local Ward Councillor Judith Hughes. Cllr Hughes has expressed concerns over the proposal's impact on the local highway network.
- 1.3 The Chair of Sub-Committee confirmed that Cllr Hughes's reason for making this request was valid having regard to the Councillors' Protocol for Planning Committees.

2.0 SITE AND SURROUNDINGS

- 2.1 Thorpe Grange Manor is a detached two storey dwelling faced in stone with natural slate roof tiles. The dwelling has a large garden to the front, hosting several protected trees. The site is accessed to the rear, along a driveway from Thorpe Lane via Thorpe Grange Manor Gardens. To the rear of the dwelling is a detached outbuilding and a separate dwellinghouse, assumed to previously be associated to the main house. The outbuilding is that part of the dwelling proposed for the training centre.
- 2.2 Thorpe Grange Manor previously had larger associated grounds. Some of these now form the residential scheme, Thorpe Grange Gardens. Prior to its current residential use, Thorpe Grange Manor has had various uses approved, including a care home, training centre and restaurant.
- 2.3 The site is within the Almondbury Conservation Area. The surrounding area is principally residential, although Thorpe Lane connects to the village centre of Almondbury.

3.0 PROPOSAL

3.1 The detached outbuilding is to be converted into a workshop, to operate as a training centre (D1 Non-residential institution). External physical works are limited to changing the two garage doors into a wall with windows. The main dwellinghouse, Thorpe Grange Manor, is to remain in a residential use.

3.2 The training centre is to be targeted at mature students and is to teach various vocational skills. These include upholstery, sewing, blind and curtain making. A maximum of 13 students is sought.

3.3 The proposed hours of use are;

Monday / Tuesday: 0930 – 2100

Wednesday / Thursday / Friday: 0930 – 1600

Saturday: 1000 – 1600 (reduced class numbers)

Sunday: Not in use

Classes would operate in two and a half hour sessions, as follows;

0930 – 1200, 1230 – 1500, 1830 – 2100 (Monday/Tuesday)

3.4 Car Parking is to be provided for 17 vehicles. 6 of these are to be within existing surfaced areas of the site. The remaining 11 are to be formed within the front lawn area of the dwellinghouse. The new lawn parking spaces are to be 'tech-turfed', forming a solid base which vehicles can park on that also allows grass to grow through.

3.5 The physical works to the garage and change of use has been implemented, being in operation since 19.09.2017. Currently the hours of use are less than that outlined below, with the following being operated;

Tuesday: 0930 – 2100

Wednesday / Thursday: 0930 – 1500

Monday / Friday / Saturday / Sunday: Not currently in use

4.0 Relevant Planning History (Including Enforcement History)

4.1 Application Site

86/04121: Change of use of existing residential aged persons home to a central training unit – Granted Conditionally

94/90035: Change of use of training centre to residential (one dwelling) – Granted under Reg.4 General Regulations

94/90036: Change of use of training centre to residential institution (class c2) (alternative proposal) – Granted under Reg.4 General Regulations

94/90048: Change of use of training centre to offices (class b1) – Granted under Reg.4 General Regulations

94/91008: Change of use from aged persons home to training centre – Granted under Reg.4 General Regulations

95/92079: Change of use from training centre to restaurant – Conditional Full Permission

2004/93898: Erection of 12 no. Houses and 4 no. Apartments and change of use of restaurant to 1 dwelling (within a conservation area) – Conditional Full Permission

Enforcement

COMP/17/0320: Alleged unauthorised change of use to training centre and retail – Ongoing

Note: This application has been invited to regularise the above breach.

4.2 Surrounding Area

The surrounding area has no relevant planning history.

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

5.1 The parking layout plan was not to an acceptable standard. Officers requested that a technical version be provided. This has been done and now includes details such as swept paths.

5.2 Officers and the applicant have discussed hours of use, as the applicant sought additional hours to those initially proposed to ensure the site remains flexible. Following discussions the hours of use detailed within 3.3 were reached as a compromise.

6.0 **PLANNING POLICY**

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

6.2 On the UDP Proposals Map the site is Unallocated.

6.3 The site is Unallocated on the PDLP Proposals Map.

6.4 The site is within the Almondbury Conservation Area.

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

- **D2** – Unallocated land
- **NE9** – Development and mature trees
- **BE1** – Design principles
- **BE5** – Conservation areas
- **EP4** – Noise (sensitive locations)
- **T10** – highways and accessibility considerations in new development
- **H4** – Conversion of residential property to other uses

6.6 Kirklees Publication Draft Local Plan:

- **PLP1** – Presumption in favour of sustainable development
- **PLP2** – Place shaping
- **PLP3** – Location of new development
- **PLP11** – Housing mix and affordable housing
- **PLP21** – Highway safety and access
- **PLP24** – Design
- **PLP33** – Trees
- **PLP35** – Historic environment
- **PLP51** – Protection and improvement of local air quality
- **PLP52** – Protection and improvement of environmental quality

6.7 National Planning Guidance:

- **Paragraph 14** – Presumption in favour of sustainable development
- **Paragraph 17** – Core planning principles
- **Chapter 1** – Building a strong, competitive economy
- **Chapter 7** – Requiring good design
- **Chapter 8** – Promoting healthy communities
- **Chapter 12** – Conserving and enhancing the historic environment

7.0 PUBLIC/LOCAL RESPONSE

7.1 The application has been advertised via site notice, press notice and through neighbour letters to addresses bordering the site. This is in line with the Council's adopted Statement of Community Involvement. The end date for publicity was the 3rd of April, 2018.

7.2 Eight representations were received in objection to the proposal. The following is a summary of the concerns raised;

- There is not enough parking on the site for the use proposed. Vehicles parking close to the junction between Thorpe Lane and Thorpe Grange Gardens would create even more difficulty.
- The proposal would increase traffic on both Thorpe Lane and Thorpe Grange Gardens. There is already an issue of parking on Thorpe Lane, which the proposal would exacerbate.
- Thorpe Lane is narrow and does not have a footpath; visibility is limited in places.
- Thorpe Lane is used by school children.

- Thorpe Lane is used as a 'rat run' to avoid Southgate and by Taxis / Private Hire Cars.
- The training centre will increase noise pollution in the area.
- 17 parking spaces seems 'ambitious' and would make it difficult for emergency vehicles or council Lorries to access the site.
- Thorpe Grange Manor is a lovely house and should remain so.
- The applicant has planted trees along the boundary which have caused overshadowing over neighbouring dwellings.
- The site has been in use for several months, and cars have parked on Thorpe Lane causing the road to be narrowed and impact on safety.
- The area is residential, not business. Operating hours and work should reflect this.

Local Member Interest

- 7.3 Local Ward Member Councillor Judith Hughes expressed concerns with the proposal and requested that the application be determined by committee. Cllr Hughes' concerns principally revolve around highways, due to the restrictive nature of Thorpe Lane. Of particular concern to Cllr Hughes was the use of Thorpe Lane by school children and the potential conflict with drivers.
- 7.4 Local Ward Member Councillor Alison Munro also expressed an interest in the proposal. Cllr Munro provided the following summary;

I am happy with the application for the daytime hours, provided no one parks on Thorpe Lane or in nearby Thorpe Grange Gardens.

There must be a condition that the Gates are kept open during operational hours and are opened at least half an hour earlier than the due start time in a morning.

Finally I have reservations about opening later in the evenings, due to the comments made by a resident who lives down Thorpe Lane.

8.0 CONSULTATION RESPONSES

8.1 Statutory

None required.

8.2 Non-statutory

K.C. Highways: Provided feedback, comments and advise through process. No objection subject to condition.

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

K.C. Trees: No objection, subject to condition.

9.0 MAIN ISSUES

- Principle of development
- Urban Design issues, including the Almondbury Conservation Area
- Residential Amenity
- Highway issues
- Other Matters
- Representations

10.0 APPRAISAL

Principle of development

Sustainable development

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

Land allocation

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

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

All these considerations are addressed later in this assessment.

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

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

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

Change of use

- 10.4 Policy H4 establishes a principle against the conversion of residential units, due to the loss of housing stock. However the proposal is to convert a residential outbuilding, with the principal dwelling being retained. Therefore the proposal is not considered to be in breach of H4.
- 10.5 Chapter 1 of the NPPF, B1 of the UDP and PLP1 of the PDLP establish a general principle in favour of economic development and for flexible business practises. Chapter 8 of the NPPF states that '*the planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities*'. The proposal is deemed to include a social and educational element, providing training and education facilities for adults.
- 10.6 Weighing the above, the principle of development is considered acceptable. Consideration must be given to the local impact, outlined below.

Urban Design issues, including the Almondbury Conservation Area

- 10.7 Physical works are limited to changing the front elevation of the garage, previously garage doors, to a wall with windows. This could be achieved via 'permitted development rights', and has limited impact on the visual amenity of the area. No works are proposed to the host building.
- 10.8 Car parking includes using existing tarmacked areas around the site. Additional parking is to be located on the lawn to the front of the dwelling. It is to be formed using surfacing that allows grass to grow through, limiting its visual impact. The main visual impact would be the parking of vehicles to the front of the property whilst the training centre is in use. Given, the temporary nature of the parking and the fact that this is not particularly visible from public viewpoints this is not considered harmful.
- 10.9 Officers are satisfied that the proposal would not harm visual amenity or the heritage significance of the Conservation Area. This is giving weight to Section 72 of the Planning (Listed Buildings & Conservation Areas) Act 1990. The proposal is deemed to comply with Policies D2, BE1 and BE5 of the UDP, PLP24 and PLP35 of the PDLP and Chapters 7 and 12 of the NPPF.

Residential Amenity

- 10.10 The physical alterations to the garage, replacing a pair of garage doors to windows, will not result in harm to neighbouring residents. The windows face the rear elevation of Thorpe Manor, not 3rd party land. No physical works within the proposal raise no concerns of overbearing, overshadowing or overlooking upon neighbours.
- 10.11 A training facility is not, typically, considered a noise pollutant. However the site is to be used to teach vocational skills and will include machinery (e.g. sewing machines). Thus there is the potential for noise pollution.

- 10.12 Only a single 3rd party dwelling is within close proximity of the site. This is no.20 Thorpe Lane. The site has been in use for over six months, and K.C. Environmental Health have received no noise complaints. Furthermore no objections have been raised from the occupier of no.20. Conversely the proposal seeks greater hours of use to that currently operating. To protect the amenity of no.20 Thorpe Lane's residents, if minded to approve, it is considered reasonable to condition the need for noise mitigation details to be provided and implemented. As the site is in use, it is considered reasonable to require these details to be submitted within 1 month of any approval.
- 10.13 The next closest dwelling, no.3a, is approx. 20.0m from the building, with Thorpe Lane in between. The distance of the site from no.3a, and other neighbouring dwellings, is considered sufficient to negate concerns of noise pollution.
- 10.14 Because of the aforementioned hours of use, and limited number of students which is likewise to be secured via conditions, officers are satisfied that the infrequent coming and goings of users and their vehicular movements would not cause undue harm to the amenity of neighbouring residents.
- 10.15 Consideration must also be given to the amenity of residents of Thorpe Grange Manor. The proposal would introduce students on site, have a business close to the dwelling and replace a garden space very close to the dwelling's front elevation with a car park. A large area of garden would be retained however. Currently the occupier is to operate the business, and in this scenario officers are satisfied that the business would not harm the amenity of the resident. However should the business, or house, be sold on separately to the other, resulting in having an occupier of the dwelling un-associated with the business, this would result in an unacceptable standard of amenity. As such officers proposed a condition tying the business use to the occupation of Thorpe Grange Manor.
- 10.16 Weighing the above, subject to the conditions, officers are satisfied that the proposal would not harm the amenity of neighbouring residents. Therefore the proposal complies with Policies D2 and EP4 of the UDP, PLP24 and PLP52 of the PDLP and Paragraph 17 and Chapter 11 of the NPPF.

Highway issues

- 10.17 The proposal is not to change the site's access arrangements, which are to remain via Thorpe Grange Gardens. No physical development would be situated close to the highway to impact upon driver sightlines or cause distraction to passing drivers.
- 10.18 17 parking spaces are to be laid out within the site. This is to accommodate 13 spaces for students, 3 for residents of Thorpe Grange Manor and 1 additional space. It is proposed to limit the number of students to a maximum of 13 via condition. One parking space per student is considered reasonable, despite the site being a close distance to Almondbury local centre (with public transport links) due to concerns of parking on Thorpe Lane. Subject to 17 parking spaces being provided and a maximum number of 13 students being imposed, securable via condition, officers are satisfied that the site can accommodate all parking and the development will not result in any parking on Thorpe Lane. It is also important to limit class times as proposed by the

applicant. The space between sessions allows time for students of one class to leave before the next students arrive. This would limit the likelihood of congestion within the grounds or along Thorpe Lane.

- 10.19 In terms of layout, the parking spaces are appropriately spaced with swept path analysis demonstrating the practicability of use. Parking spaces within the grassed area are to be formed using 'tech-turf', therefore maintain the greenery while providing acceptable surfacing.
- 10.20 The proposal would represent an intensification of use with increased traffic movements in and out of the site when compared to the residential use. This is a particular concern due to the narrow nature of Thorpe Lane and that it lacks pavements in places.
- 10.21 While 13 parking spaces are to be provided to ensure no parking on Thorpe Lane, given the site's proximity to Almondbury centre public transport is a viable alternative for attendees. The applicant has also stated that 13 students is a maximum number, with classes typically being less. Therefore 13 vehicles in use is not anticipated to be common.
- 10.22 Furthermore vehicle movements will be limited to four peak times per day, with six on Monday / Tuesday. Each peak time would be an approximate 15 minute window where students would either arrive or leave. It is noted that these sessions start and finish outside peak travel times, when roads are anticipated to be less busy. These are;
- 0930 – 1200, 1230 – 1500, 1830 – 2100 (Monday/Tuesday)
- 10.23 The exception to the above is the afternoon session ending at 1500, which is close to school closing time. Almondbury Community School and Almondbury SEN School are within the area. Nonetheless 13 additional vehicle movements circa 400m away from the closest school are not considered to represent a risk to highway safety.
- 10.24 While the proposal would represent an intensification of use, given the limited number of students and the proposed hours of class sessions being outside of peak travel times, on balance officers are satisfied that the development would not cause harm to the safe and efficient operation of the Highway. Therefore the proposal is deemed to comply with Policies T10 and PLP21.

Other Matters

Impact on adjacent protected trees

- 10.25 The site is within a Conservation Area. Therefore mature trees are afforded protection. Further to this there are specific TPOs within the site. Most notably for the proposal, this includes a mature Holly tree within the dwelling's front garden. The proposed parking area is to be close to this tree. No trees are to be lost via the proposal, however consideration must be given to development's impact upon closely spaced trees.

- 10.26 Parking spaces are primarily outside the crown spread of the tree with minimal encroachment. Furthermore the parking spaces are to be formed using 'tech-turf', a grass overlay that is intended to form a usable parking space with no impact upon the tree's roots.
- 10.27 K.C. Trees do not object to the proposal, or the use of 'tech-turf', however they request that an Arboricultural Method Statement be secured via condition. This is to allow for more details on 'tech-turf', and other methods to protect the Holly tree and others potentially impacted upon via the development, to be provided. Subject to this condition the officers are satisfied that the development will comply with the objectives of Policies NE9 and PLP33.

Representations

10.28 *Object*

- There is not enough parking on the site for the use proposed. Vehicles parking close to the junction between Thorpe Lane and Thorpe Grange Gardens would create even more difficulty.
- The proposal would increase traffic on both Thorpe Lane and Thorpe Grange Gardens. There is already an issue of parking on Thorpe Lane, which the proposal would exacerbate.
- Thorpe Lane is narrow and does not have a footpath; visibility is limited in places.
- Thorpe Lane is used by school children.
- Thorpe Lane is used as a 'rat run' to avoid Southgate and by Taxis / Private Hire Cars.

Response: Parking provision is to be improved in site, to be secured via condition to be brought into use within one month. Concerns regarding the use of Thorpe Lane are considered in detail within paragraphs 10.17 to 10.24. While officers acknowledge the proposal would increase traffic movements, given the specifics of the proposal on balance officers conclude the development would not harm the safe and efficient use of the highway.

- The site has been in use for several months, and cars have parked on Thorpe Lane causing the road to be narrowed and impact on safety.

Response: This is noted, however the site has been operating within the benefit of the car park. As detailed previously, if minded to approve, a condition is impose requiring the car parking area to be provided within one month.

- 17 parking spaces seems 'ambitious' and would make it difficult for emergency vehicles or council Lorries to access the site.

Response: officers shared concerns over the initial layout, which was not done to a technical standard. The subsequent technical layout shows that 17 vehicles can be accommodated.

- Thorpe Grange Manor is a lovely house and should remain so.

Response: Thorpe Grange Manor itself will not be impacted upon via the development, and will remain as a dwelling.

- The applicant has planted trees along the boundary which have caused overshadowing over neighbouring dwellings.

Response: This does not form a material planning consideration.

- The training centre will increase noise pollution in the area.

Response: the site has been in use for several months and Environmental Health have received no noise complaints. However the proposal seeks permission for longer hours. As such officers proposed a condition requiring noise mitigation details to be provided.

- The area is residential, not business. Operating hours and work should reflect this.

Response: Hours of use are principally within core working hours. Two days, Monday and Tuesday, seek an 1830 – 2100 session. It is noted that the education centre is to target adults, and therefore some flexibility outside of core working hours is considered reasonable. Subject to appropriate noise mitigation, to be secured via condition, officers considered two evening sessions reasonable.

10.29 *Councillor Comments*

- Local Ward Member Councillor Judith Hughes expressed concerns with the proposal and ultimately requested that the application be brought to committee. Cllr Hughes' concerns principally revolve around Highways, due to the restrictive nature of Thorpe Lane. Of particular concern to Cllr Hughes was the use of Thorpe Lane by school children and the potential conflict with drivers.

Response: These points have been addressed in the appraisal above.

- Cllr Munro: *'I am happy with the application for the daytime hours, provided no one parks on Thorpe Lane or in nearby Thorpe Grange Gardens.*

There must be a condition that the Gates are kept open during operational hours and are opened at least half an hour earlier than the due start time in a morning.

Finally I have reservations about opening later in the evenings, due to the comments made by a resident who lives down Thorpe Lane'.

Response: officers note the comments regarding day time and evening uses. For the reasons detailed in the report above, two evening classes per week is deemed reasonable. Officers concur with Cllr Munro's concerns regarding the gate and such a condition is to be sought.

11.0 **CONCLUSION**

- 11.1 The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice.

- 11.2 The proposal would provide training facilities for adults, and is anticipated to contribute to a healthy and inclusive community. While making use of a domestic outbuilding, the proposal would not result in the loss of a residential unit. Considering the local impact, officers are satisfied that the development would not harm the character of Almondbury Conservation Area, including protected trees. Subject to appropriate conditions, there are also no concerns relating to the proposal's Highway's impact and impact upon adjacent residents.
- 11.3 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. In accordance with plans
 3. Hours of use and class times
 4. Training centre (D1 use) to be only used as described in the application and no other use within Class D1.
 5. Parking spaces to be provided and retained (within 2 months, or use to stop)
 6. Arboricultural Method Statement (prior to parking spaces being provided)
 7. Noise mitigation measures (within 1 month)
 8. Maximum numbers of students
 9. Tied use to occupier/owner of Thorpe Grange Manor and only whilst occupying Thorpe Grange Manor
 10. Gate to be open allowing access to car parking spaces during hours of business/open for the arrival and exit of students.

Background Papers

Application and history files can be accessed at:

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2018%2f90413>

Certificate of Ownership: Certificate B signed

Notice served on 'the occupier' of nos. 1 – 16 Thorpe Grange Gardens

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Report of the Head of Strategic Investment

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 21-Jun-2018

Subject: Planning Application 2016/91200 Erection of single storey rear extension, dormer window to rear and porch to front, formation of retaining wall and associated works 23, Spa Wood Top, Whitehead Lane, Lockwood, Huddersfield, HD4 6AY

APPLICANT

Mr A Patel

DATE VALID

13-Apr-2018

TARGET DATE

08-Jun-2018

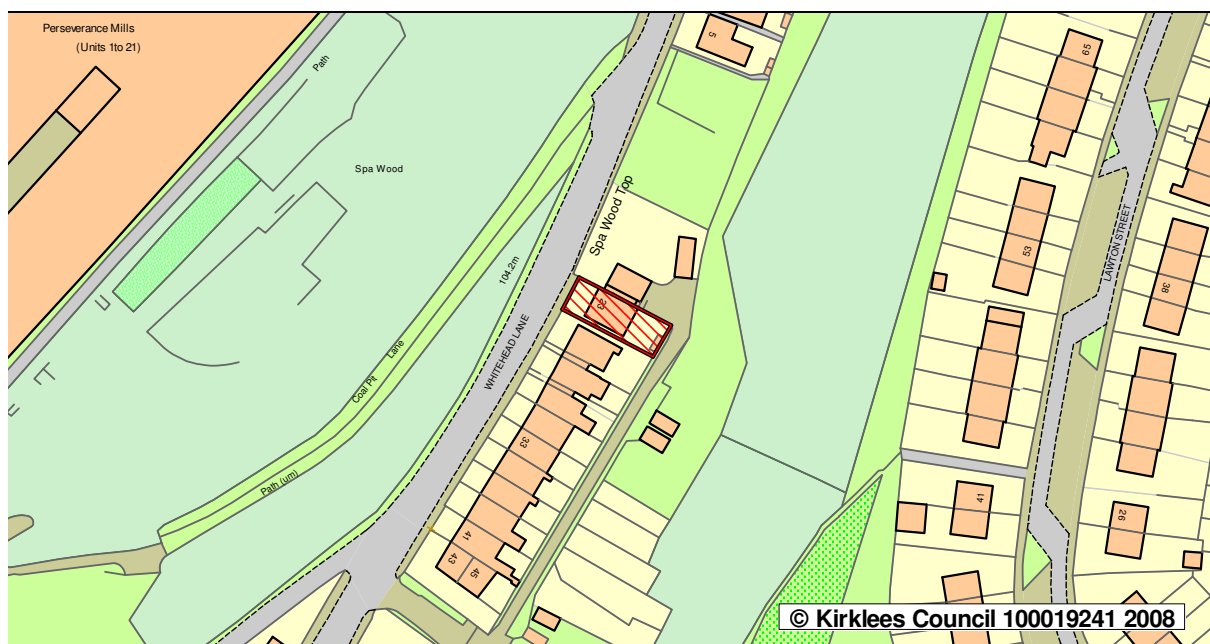
EXTENSION EXPIRY DATE

15-Aug-2018

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

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

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral Wards Affected: Newsome

N

Ward Members consulted
(referred to in report)

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 sub-committee for determination following a request from Ward Councillor Julie –Turner Stewart which states:

“My reasons for referring the decision to the Planning Sub-Committee are as follows:

- The negative impact the proposal will have on the visual amenity – it dominates the environment to the rear of the property.
- The design, appearance and materials – the proposal, particularly the materials of the roof extension, are out of keeping with the lovely terrace houses along the street. The owner doesn’t hide the large crack at the side of the building, which should be underpinned, and could be dangerous.
- The loss of trees should be a valid reason for objection, but as they’ve already been lost, I assume you wouldn’t want to take that into consideration?”

1.2 The Chair of the Sub Committee has confirmed that Councillor Stuart-Turner’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 23 Spa Wood Top is a two-storey detached dwelling built mainly in stone, with the right-hand side elevation rendered, and a stone slate roof. It is situated at the northern end of a row of traditional terraced houses, with the main elevation facing west. It is elevated above the highway and has a small amount of amenity space at the rear. To the left or north side is a single-storey outbuilding (described as a former bakehouse on the plans) that has recently been renovated and is now attached to the main dwelling.

2.2 The garden is bounded by a recently rebuilt blockwork retaining wall, behind which is an unsurfaced track giving shared vehicular and pedestrian access to no. 23 and the other properties in the row (25-45 Spa Wood Top). The wall also extends around the back of the former bakehouse.

2.3 The property is currently vacant and undergoing renovation, improvement and extension works including the erection of a rear dormer and rear single-storey extension. There is a narrow belt of woodland to the rear of the site on the other side of the shared access track. The wider area is mainly residential.

3.0 PROPOSAL:

3.1 The application is for:

1. The erection of a single-storey rear extension projecting 4m and set in 1.2m from the existing south side wall, with a very gently sloping monopitch roof, in artificial stone;
2. The erection of a front porch measuring 2m by 1.3m, total height 3.2m;
3. The formation of a rear roof extension, 5.5m in width and 2.1m high, with a flat roof and clad with horizontal mid-brown artificial boarding;
4. The formation of a retaining wall to the rear of the site, forming a boundary between the existing rear garden and the green lane above, and forming a new side boundary to the land rear of the bakehouse. This is to be the same height as the original retaining wall but constructed in blockwork;
5. Alterations to the existing building consisting of the formation of 2 no. rooflights to the front elevation, and the insertion of 2 no. high level windows to the south side elevation at ground floor and 2 no. landing windows to the north elevation at first and second floor.

3.2 Most of these works had already been commenced at the time of the case officer's most recent site visit on 21st September 2017 and the extension and dormer appeared to be complete externally although the porch had not been commenced. At the time of the case officer's original site visit on 10th May 2016 however the only operations that had been done were some groundworks and the demolition of the original rear retaining wall.

3.3 The plans indicate that the existing rear roof extension is to be modified by having a new eaves overhang constructed so that the dormer would no longer give the appearance of having been built directly on top of the original rear wall.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

4.1 COMP/16/0304: Alleged unauthorised material change of use of outbuilding to dwellinghouse. Investigation ongoing. This outbuilding forms part of the application site. The applicant acknowledges that the outbuilding is being used as a dwelling and is in principle prepared to put in an application for its change of use. The outcome of this enforcement complaint is not considered to be relevant to the current application.

- 4.2 2018/91830 – 21 The Bakehouse, Spa Wood Top (adjacent) Certificate of lawfulness for existing use of building as a single dwellinghouse. Pending

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

- 5.1 19-Jul-2016: Amended plans received showing formation of new retaining wall which was omitted from the original plans, removing the land within the access lane above from the red line boundary and deleting the reference to it as “garden”.
- 5.2 03-Nov, 11-Dec-2017: Further amended plans making changes to the dormer and extension, and showing the extent of the retaining wall as built.

6.0 PLANNING POLICY:

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). The Council’s Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

Kirklees Unitary Development Plan (UDP) Saved Policies 2007:

6.2

The site is part-unallocated, part within Urban Greenspace on the UDP Proposals Map.

- **BE1** – Design principles
- **BE2** – Quality of design
- **BE13** – Extensions: design principle
- **BE14** – Extensions: scale
- **T10** – Highway safety

6.3 The site is without designation on the Draft Local Plan.

- **PLP 1** – Presumption in favour of sustainable development.
- **PLP 2** – Place shaping.
- **PLP21** – Highway safety and access.
- **PLP24** – Design.

National Planning Guidance:

6.4 National Planning Policy Framework (NPPF)

- Core Planning Principles
- Section 7 – Requiring good design
- Section 11 – Conserving and enhancing the natural environment

7.0 PUBLIC/LOCAL RESPONSE:

7.1 The application has been advertised by site notice and neighbour notification, both in respect of the original plans and further neighbour notification letters when the amended plans were received in July 2016. The publicity period ended 25-Jul-2016. Later amendments were not re-publicised as these did not significantly alter the plan or the development applied for.

13 representations have been received from local residents (6 separate addresses). The concerns raised can be summarised as follows:

1. Single-storey extension would block natural light to rear of our property;
2. The land next to No 23 Spa Wood Top has been sectioned off and several mature trees on council land are in danger of being removed
3. Part of a dry stone wall removed to make way for a driveway both of these are not on the planning application.
4. The planning application notice has also been removed from the lamp-post outside the property and it was also noted that a hand written date had been added to the planning notice prior to it being removed.
5. Bakehouse should be preserved for its historical value. Bakehouse has recently been re-tiled and re-battened, which seems confusingly at variance with the architect's plans to demolish, and it may become an extra room;
6. There is a crack up the side wall of the house caused by subsidence, with no attempt to underpin or shore up, leading to safety risks. Other Building Regulation compliance issues raise, including building over drains and quality of workmanship.
7. Land at side of house belongs to Kirklees Council and spoil has been dumped there;
8. The Freeholder, Estates & Management Ltd, have very strict rules about construction and alterations;
9. Possible impact on unadopted grassy lane at rear over which other local residents have a right of access;
10. If it is going to be a house in multiple occupation more parking will be required and the road safety, parking and access problems made worse.

Councillor Julie Stewart-Turner – See “information” above. Additional comments made:

“From the feedback I’m receiving from residents, it seems that the work on the ground doesn’t match with the planning application. It seems that the owner is aiming to build a second house on land which is more in keeping for a garden tenancy. I’m also told that the owner wishes to make the house an HMO, and that does raise concerns about vehicles, as this road has several complications. If you are minded to approve this application, I would like to refer it to committee please? I think there are several issues that need further investigating.”

8.0 CONSULTATION RESPONSES:

8.1 **Statutory: There are in this instance no statutory consultees.**

8.2 **Non-statutory:**

KC Arboricultural Officer – No objections

KC Planning Conservation & Design – No objections (informal response only)

9.0 MAIN ISSUES

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

10.0 APPRAISAL

Principle of development

- 10.1 The dwelling itself is without notation on the UDP Proposals Map. Some of the associated land is within Urban Greenspace – this designation has not, however, been continued on the Draft Local Plan, which shows the site wholly without designation.
- 10.2 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 including the avoidance of overdevelopment, visual and residential amenity, and highway safety]”.
- 10.3 The boundary with Urban Greenspace, as shown on the UDP Proposals Map, cuts across the rear yard of the dwelling and includes at least some of the land to the rear of the bakehouse. Since the urban greenspace designation is not to be carried forward in the Local Plan, only limited weight will be placed on this factor. Furthermore the land within the application site to the rear of the dwelling and bakehouse does not provide any opportunities for public

recreation, public access, or other benefits to the local community. Given the scale and nature of the proposal, it is considered that it would not conflict with the aims of Policy D3 (urban greenspace) or those of Chapter 8, paragraphs 74-78 of the NPPF. It is appropriate in principle subject to an assessment of design, amenity and highway safety issues, and any other material considerations, to be assessed in detail later in the report.

- 10.4 Other policies of relevance in the UDP are Policy BE1 (development should be visually attractive and retain a sense of local identity), BE2 (development should be in keeping with its surroundings and take into account the topography of the site), and T10 (development should not create or materially add to highway safety problems). Policies PLP21, PLP24 and PLP30 within the PDLP can in principle be given considerable weight. All these considerations are addressed later in this assessment.

Urban Design issues

- 10.5 Each element of the proposal will be considered individually.

10.6 *Rear extension:*

The design of the rear extension is considered not very sympathetic to the existing dwelling by reason of its massing and roof style. It is however noted that the erection of a single-storey extension projecting up to 4.0m with a flat or monopitch roof could, in principle, be permitted development under the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) Schedule 2 Part 1 Class A, subject to a number of other restrictions, including that it does not exceed 4.0m in height and (if within 2m of the boundary) the eaves height does not exceed 3.0m. The extension would comply with these restrictions. The walling materials used (coursed artificial stone) are not a perfect match for the existing dwelling but are considered to be of similar appearance. It is considered in summary that the extension would not have a materially different impact to what would be possible under permitted development rights and using this as a potential 'fallback' position is therefore acceptable in terms of its impact on visual amenity and no serious concerns are expressed with this element of the application.

10.7 *Porch:*

The porch would be a very modest addition, which would require planning permission on account of its height (3.2m) but it is considered that it has been appropriately designed and would complement the appearance of the dwelling, subject to the condition that the external materials match those on the existing dwelling.

10.8 *Rear roof extension:*

This is rather a large structure in relation to the existing rear roof slope and most of the properties in this row do not have dormers or second-floor extensions. It is noted that under the GPDO, a dormer can be constructed to the rear elevation of a detached property if it does not exceed the height of the highest part of the original roof or exceed the cubic content of the original roof space by 50 cubic metres, subject to certain other restrictions. In this instance, it would be approximately 18 cubic metres, but still needs planning permission because it fails to comply with the condition in GPDO part 1 class B that the face of the extension must be set back 200mm from the external face of the rear wall, which in this case has not been done. The current plans, however, show a new

eaves overhang constructed so that the dormer would no longer give the appearance of having been built directly on top of the original rear wall. It is considered on balance that this is an acceptable solution – it can be conditioned that this is done within a specified timescale. Dormers or other roof extensions built under permitted development rights are subject to the condition that materials used are of similar appearance to those used on the existing building. In this instance the facing materials (mid-brown horizontal boarding) do not match the host building but are not considered inappropriate or harmful to amenity in themselves, and it would be difficult to find facing materials that would closely match the stone slates of the existing roof.

10.9 *Retaining wall and associated works:*

It is considered that the demolition of the original stone retaining wall and its replacement, the additional walling adjacent the former bakehouse, and the excavation carried out, do not in themselves have a significant impact on the visual character of the property and would not harm visual amenity. This is provided that the blockwork is finished in stone coloured render and not left as plain blockwork. It can be conditioned that this is done within a specified timescale.

10.10 In conclusion, it is considered that the extensions and other works shown on the plans would not have a significant impact on visual amenity, subject to conditions.

Residential Amenity

10.11 *Rear extension:* The proposed rear extension would exceed the recommended 3m projection set out in Policy BE14 by 1m. Given that it would be single-storey with a flat roof and would be approximately 2.0m from the boundary wall with the neighbouring property, it is considered that it would not cause undue overbearing impact or loss of light. It is noted that the original version of the plans showed it coming closer to the boundary. It is noted that under Permitted Development Rights, it is in principle possible to build a single-storey rear extension projecting up to 4.0m to a detached house, even if it is on the common boundary. It should be conditioned that no windows should be formed in the side elevation facing no. 25 as these would not be fully screened and could be intrusive.

10.12 *Rear roof extension:* It is considered that the roof extension would not cause significant obstruction to light or overbearing impact upon the neighbouring properties and it would not have any windows in the side elevations. This element is, again, similar to what could be done under permitted development rights, except for the materials.

10.13 *Porch:* The porch would be a very small structure and would be approximately 5m from the boundary with no. 25, so it would not have a material impact on the amenities of neighbouring residents.

10.14 *Retaining wall:* It is considered that the formation of the new retaining wall and associated works are not harmful to residential amenity.

- 10.15 *Other works*: The landing windows would face what is currently undeveloped land, to the north, but it should be conditioned that they are obscurely glazed and non-opening so that they do not affect possible future development on the land to the north of the site, which is not in the applicant's ownership. The ground floor windows to the lounge are 1.5m above ground level and therefore not high enough to prevent a view out, but they would only overlook a blank wall and the side passageway and in any case they could be formed without planning permission. The rooflights would not have any impact on neighbouring properties.
- 10.16 In conclusion, it is considered that the proposed development would not result in an unacceptable loss of amenity to any other residential properties or adjacent land.

Landscape issues

- 10.17 There are no trees on the application site itself. There is a block of trees covered by a Tree Preservation Order located within a north-south belt further uphill to the east of the application site, on the other side of the shared access track, and on a plot of land about 20m to the north of the site boundary. This is identified as 9A/16/w1 and was registered 26-Jul-2016, approximately 2 months after this planning application was first made. It is considered that none of the protected trees are affected by the development. The alleged felling of two protected trees on the land to the north of the site by the applicant is not considered to be a material consideration in determining this proposal. It is considered that the development has no impact on the wider landscape.

Highway issues

- 10.18 Most of the properties in this row lack off-street parking and so a certain amount of on-street parking already occurs. It is considered that whilst the increase in the size of the dwelling from 2 to 3 bedrooms could conceivably give rise to additional parking demand, it is very unlikely that any resultant increase in on-street parking could materially affect highway safety. Again, it should be noted that in principle a single-storey rear extension and dormer could be built without planning permission in any case. It is therefore considered to comply with the aims of Policy T10, and those of PLP21.

Representations

- 10.19 Concerns relating to residential amenity, highway safety and trees have been addressed previously in the report but are highlighted here together with other issues raised, and officer responses:

1. Single-storey extension would block natural light to rear of our property;
Response: A single-storey extension of up to 4m can in principle be built to the rear of a detached property without needing prior planning permission. The proposed extension has been moved further away from the side boundary line by having the WC deleted, so it would have less impact than the plans as originally submitted.

2. The land next to No 23 Spa Wood Top has been sectioned off and several mature trees on council land are in danger of being removed. Land at side of house belongs to Kirklees Council and spoil has been dumped there;

Response: The land in question does not form part of the application site. The alleged felling of trees and tipping of spoil on Council-owned land can be addressed under other legal powers. It would appear that at least some of the spoil has been removed from the land since the initial phase of development works. It is the subject of an ongoing court case and negotiation involving Physical Resources and Procurement, Legal Services and the developer.
3. Part of a dry stone wall removed to make way for a driveway both of these are not on the planning application.

Response: When the case officer visited the site there was any sign of any new driveway or access being formed. In the event of such works being undertaken without planning permission, enforcement action could be considered.
4. The planning application notice has also been removed from the lamp-post outside the property and it was also noted that a hand written date had been added to the planning notice prior to it being removed.

Response: It is considered that the publicity carried out is satisfactory and has allowed anyone who considers themselves affected by the development to make representations. The case officer adds the hand written date to the site notice when this is posted.
5. The bakehouse should be preserved for its historical value. Bakehouse has recently been re-tiled and re-battened, which seems confusingly at variance with the architect's plans to demolish, and it may become an extra room;

Response: It appears that the bakehouse is to be retained although the plans as originally submitted show it being demolished. The alleged unauthorised use of the bakehouse is the subject of an ongoing enforcement case and, more recently, an application for a lawful development certificate has been submitted in respect of this building. It is not considered to be material to the current application.
6. There is a crack up the side wall of the house caused by subsidence, with no attempt to underpin or shore up, leading to safety risks. Other Building Regulation compliance issues raise, including building over drains and quality of workmanship.

Response: Issues relating to the structural soundness of a building and other compliance issues are generally considered to be within the remit of the Building Regulations, not the planning system.
7. The Freeholder, Estates & Management Ltd, have very strict rules about construction and alterations;

Response: On the basis of the evidence available it has not been established conclusively that this is a leasehold property. Certificate A was filled in on the application form to indicate that the applicant is the sole owner of the land and on this basis it is assumed that the applicant is the sole owner of the house and its curtilage. In any case in terms of the ownership certificate, an owner is deemed to be a person with a freehold interest or leasehold interest with at least 7 years left to run.

8. Possible impact on unadopted grassy lane at rear over which other local residents have a right of access;

Response: The demolition of the rear boundary wall and its replacement by a new, and longer, retaining wall, has been carried out without any apparent effect on the stability of land to the rear. It should be noted however that the stability of neighbouring land is normally treated as a private civil matter unless it would affect land within the adopted highway.

9. If it is going to be a house in multiple occupation;

Response: Under Schedule 2, Part 3, Class L GPDO, a dwellinghouse (C3) can be changed to a small HMO (C4) without the need to seek planning permission.

10. More parking will be required and the road safety, parking and access problems made worse.

Response: It is considered unlikely that the extensions would give rise to an increase in on-street parking, and since there is a general lack of private parking on this part of Whitehead Lane it would be difficult to justify a refusal on these grounds.

Ward Councillor Julie Stewart-Turner's comments:

11. The negative impact the proposal will have on the visual amenity – it dominates the environment to the rear of the property. The design, appearance and materials – the proposal, particularly the materials of the roof extension, are out of keeping with the lovely terrace houses along the street. The owner doesn't hide the large crack at the side of the building, which should be underpinned, and could be dangerous.

Response: These issues have been examined in depth in paragraphs 10.5-10.10 of the assessment above. It is considered that the development is acceptable in terms of visual amenity subject to conditions. Any structural problems with the building would be under the remit of Building Regulations, not the planning system.

12. The loss of trees should be a valid reason for objection, but as they've already been lost, I assume you wouldn't want to take that into consideration?"

Response: The trees allegedly felled by the applicant are on Council-owned land. This means that effective action can be taken under legal powers other than the planning system and this could include a compensatory replanting scheme.

13. From the feedback I'm receiving from residents, it seems that the work on the ground doesn't match with the planning application. It seems that the owner is aiming to build a second house on land which is more in keeping for a garden tenancy. I'm also told that the owner wishes to make the house an HMO, and that does raise concerns about vehicles, as this road has several complications.

Response: The plans have undergone multiple revisions and now accurately reflect the works carried out, except for the roof extension which the applicant has agreed to alter. The change of use from a dwelling house to a small HMO (House in Multiple Occupancy) does not need planning permission in itself. The condition of the site does not indicate that the applicant intends to build another house, although any future application would be assessed on its own merits.

Ecology

10.20 The site is in the bat alert layer. Based on observations on the first site visit by the case officer, the dwelling does not contain any obvious high-level gaps or cavities that would be likely to provide bat roost potential. It is noted also that the formation of a dormer and the conversion of the attic could, subject to the requirements of the GPDO part 1 Class B, have been undertaken without planning permission. Furthermore it is probable that the noise and disturbance caused by the renovation and improvement works carried out so far would have resulted in the loss of any bat roost potential, if the building ever had any. There do not appear to be any other structures on site that are likely to have the potential to support bat roosts – it is remotely possible that the old retaining wall may have done although this is unlikely as it would have been only just above head height and subject to frequent disturbance from people using the garden. It is considered, in summary, that the development would not have any significant impact on ecology or biodiversity and that in the circumstances it will be sufficient to add the standard precautionary footnote.

Other Matters

10.21 The application is not considered to raise any further material planning issues.

11.0 CONCLUSION

11.1 It is considered that the proposal is in principle appropriate development in this location. It is considered that the extensions and other works shown would, subject to suitable conditions, conserve the character of the area and visual amenity, and would avoid harm to the residential amenity of neighbouring property. The works would not affect highway safety or ecology. It is therefore recommended that conditional planning permission is granted.

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

- 1. Roof extension to be modified by formation of new roof overhang within 2 months of permission**
- 2. New retaining wall to be rendered in a stone coloured finish within 1 month of permission**
- 3. Porch materials to match host building**
- 4. Landing window to be obscurely glazed and non-opening**
- 5. No new side-facing windows formed in side elevation facing no. 25.**

Background Papers:

Application and history files.

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2016%2f91200>

Certificate of Ownership – Certificate A signed.

Report of the Head of Strategic Investment

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 21-Jun-2018

Subject: Planning Application 2018/91045 Erection of fence and alterations to driveway 47, Meltham Road, Honley, HD9 6HW

APPLICANT

Charles Greaves

DATE VALID

13-Apr-2018

TARGET DATE

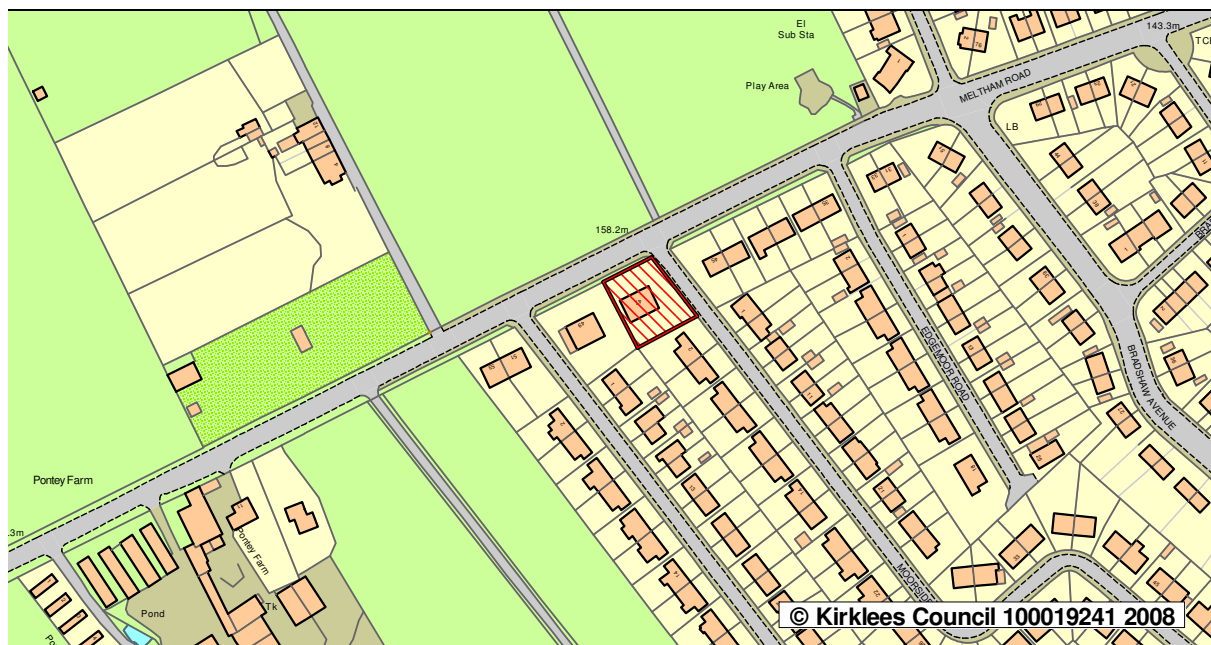
08-Jun-2018

EXTENSION EXPIRY DATE

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

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

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral Wards Affected: Holme Valley North

No

Ward Members consulted

RECOMMENDATION: APPROVE

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

1.0 INTRODUCTION:

1.1 This application is brought to the Huddersfield Sub-Committee for determination due to the application being submitted by an elected member of Kirklees Council. This is in accordance with the Council's Scheme of Delegation.

2.0 SITE AND SURROUNDINGS:

2.1 47 Meltham Road is a two storey detached dwelling which occupies a corner plot along Meltham Road and Moorside Road in Honley. It is constructed in stone to the front and brick to the side and rear and is designed with a gable roof form which is finished in concrete roof tiles. Due to the design of the dwelling, the first floor level is located within the roof space of the property. Planning permission was approved under application reference 2016/91062 for the erection of a two storey side extension and alterations which will be located to the north east of the site. It was noted whilst visiting the site that this is currently being constructed. The dwelling benefits from a single storey extension which is located to the rear of the property. It is constructed in brick and is finished with a flat roof form. An integral garage is located to the south west of the site. It is accessed via a driveway which leads off Meltham Road.

2.2 The front of the dwelling is set back from the access road with a driveway to the front and a large garden to the rear. Current boundary treatment comprises a stone wall which runs along the boundary to the front of the site. A concrete wall forms the boundary to the north east.

2.3 The site is located in a residential area with the vicinity comprising properties of a range of characters, styles and designs. To the north east of the site, Meltham Road and Moorside Road include mainly semi-detached properties. To the south west of Moorside Road, the properties are similar in character and appearance to the application site. The predominant material of construction within the vicinity is stone to the front and brick to the side and rear.

3.0 PROPOSAL:

3.1 The application seeks planning permission for the erection of a fence and alterations to the existing driveway.

3.2 The proposed fencing will be located along the north eastern boundary of the site and will screen the rear garden from Moorside Road. From the rear of the site to the front elevation of the dwelling, the fencing will measure 2.00 metres in height. From the front elevation of the property to the front of the site, the proposed fencing will measure 1.00 metre in height. Due to the site being at a higher level than Moorside Road, the fencing will be erected on top of the existing concrete wall which runs along Moorside Road. The top of the existing wall sits at the ground level of the site. The fencing will comprise featheredge fence panels which will be constructed in timber. The fencing will be located along the north eastern boundary of the site and will not impact the current boundary treatment which is located to the front and rear of the site.

3.3 The entrance to the existing driveway which currently measures 3.20 metres in width will be increased by 3.00 metres to have a width of 6.20 metres. The entrance will be finished in tarmac and concrete to match existing. The existing dropped kerb which is located along Meltham Road will be extended to suit the extended entrance. The existing stone wall which forms the boundary to the front of the site will be retained following development.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

4.1 **88/03236:** Erection of garage. Granted Conditionally.

4.2 **88/04880:** Formation of vehicular access. Granted Conditionally.

4.3 **2016/91062:** Erection of two storey side extension and alterations. Conditional Full Permission.

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

5.1 Clarification was sought from the applicant regarding the location of the proposed fencing. The applicant confirmed in an email received 30/05/2018 that the fencing will be located only along the north eastern side elevation of the dwelling which faces onto Moorside Road.

6.0 PLANNING POLICY:

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

6.2 The site is unallocated on the UDP Proposals Map and on the Publication Draft Local Plan.

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

- **D2** – Unallocated land
- **BE1** – Design principles
- **T10** – Highway Safety
- **T19** – Parking

6.4 Supplementary Planning Guidance / Documents:

None relevant.

6.5 Kirklees Publication Draft Local Plan (PDLP)

- **PLP1** – Achieving sustainable development
- **PLP2** – Place shaping
- **PLP21** – Highway safety
- **PLP22** - Parking
- **PLP24** - Design

6.6 National Planning Policy Framework (NPPF):

- **Chapter 7** – Requiring good design

7.0 PUBLIC/LOCAL RESPONSE:

- 7.1 The application was publicised by letters and site notice. To date, no representations have been received as a result of the statutory publicity.
- 7.2 Holme Valley Parish Council – support the application.

8.0 CONSULTATION RESPONSES:

9.0 MAIN ISSUES

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

10.0 APPRAISAL

Principle of development

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

Visual amenity

- 10.3 The proposal seeks planning permission for the erection of a fence and alterations to the existing driveway. Due to the level difference between Moorside Road and the application site, the proposed fencing will be located on top of the existing concrete boundary wall. Due to the height, design and materials of construction of the proposed fencing, it is not considered that this element of the proposal will have a significant impact on the appearance of the host dwelling. It is noted that the height of the fencing along Moorside Road which will be located to the front of the dwelling will be reduced from 2.00 metres to 1.00 metre which will further reduce its impact on the host property. The widened entrance to the existing driveway will be finished in materials to

match existing. It is therefore not considered that the development will significantly impact the visual amenity of the host dwelling.

- 10.4 In the context of the site and the surrounding area, the scheme would not create a visually intrusive feature within the local area in terms of its scale and design. The proposed fencing by virtue of its height and materials of construction will not look out of place within the street scene. It is noted that the neighbouring property no. 45 Meltham Road benefits from timber fencing of a similar scale to that proposed at the application site which is located along the south western boundary of the site which faces onto Moorside Road. The widening of the existing driveway entrance will be finished in materials to match existing. Furthermore, it is noted that the existing stone wall which forms the boundary to the front of the site will be retained following development which will reduce the impacts that the proposal will have on the visual amenity of both the host property and the surrounding area. In this context the proposed development would not be incongruous with the wider character of the area.
- 10.5 Given the above, the proposal is considered acceptable from a visual amenity perspective and in accordance with the aims of Policies D2 and BE1 of the UDP, Policies PLP1, PLP2 and PLP24 of the PDLP and chapter 7 of the NPPF.

Residential Amenity

10.6 *Impact on 45 Meltham Road*

Sections of the proposed fencing will sit 2.00 metres above the ground level of the site which is approximately 2.30 metres above Moorside Road due to the topography of the surrounding area. Due to the distance retained between the application site and the property due to the location of Moorside Road, it is unlikely that the development will have an overbearing or overshadowing impact on the property. The fencing will prevent overlooking from the rear amenity space of the application site into the property.

10.7 *Impact on 2 Moorside Road*

Due to the height of the proposed fencing and its location to the north west of the property, it is not considered that the development will have an overshadowing or overbearing impact. It is therefore not considered that the proposal will significantly impact on the residential amenity of the occupiers of the property.

10.8 *Impact on 49 Meltham Road*

Due to the distance that will be retained between the extended driveway and the property, it is not considered that the development will have a significant impact on the residential amenity of the property. Furthermore, it is noted that the driveway is existing which will further reduce the impact of the proposal on the property.

10.9 Overall

Having considered the above factors, the proposal is not considered to result in any adverse impact upon the residential amenity of any surrounding neighbouring occupants, complying with Policies D2 and BE1 of the UDP as well as Policy PLP24 of the PDLP.

Highway issues

- 10.10 The proposed development will result in an increase in the width of the entrance to the existing driveway and will not reduce the amount of parking which is currently available at the site. As the dwelling already benefits from an existing driveway and given that the development will not result in an increase in the amount of vehicles at the property, it is not considered that the extension of the existing dropped kerb will rise to any significant highways issues. The footpath and grass verge which will be retained following development will ensure sufficient visibility when existing the driveway. In addition, the current stone wall boundary treatment which is located to the front of the site and will be retained following development will further ensure that the visibility from the driveway is not effected as a result of the proposed development. The proposed extension does not give rise to the requirement for additional parking and would not affect the existing parking and access arrangements on site. Accordingly, it would not raise any highway safety issues and thus complies with Policies D2 and T10 of the UDP and Policy PLP21 of the PDLP.

A note will be attached to advise that the applicant will be required to seek Highways consent to carry out work within the highway as detailed on the submitted plans.

Representations

- 10.11 No representations have been received as a result of the statutory publicity period and Holme Valley Parish Council note that they support the application.

Other Matters

- 10.12 There are no other material considerations relevant to the determination of this application.

11.0 CONCLUSION

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

11.2 The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice. This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development would constitute sustainable development and is therefore recommended for approval.

12.0 CONDITIONS

1. Time limit to commence development
2. Development in accordance with approved plans

Background Papers

Application web page:

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2018/91045>

Certificate of Ownership – Certificate A signed and dated 30 January 2018.

Report of the Head of Strategic Investment

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 21-Jun-2018

Subject: Planning Application 2018/90021 Erection of studio/store for domestic use 4 Delves Cottage, The White House, Delves Gate, Slaithwaite, Huddersfield, HD7 5FA

APPLICANT

Helen Berry

DATE VALID

08-Jan-2018

TARGET DATE

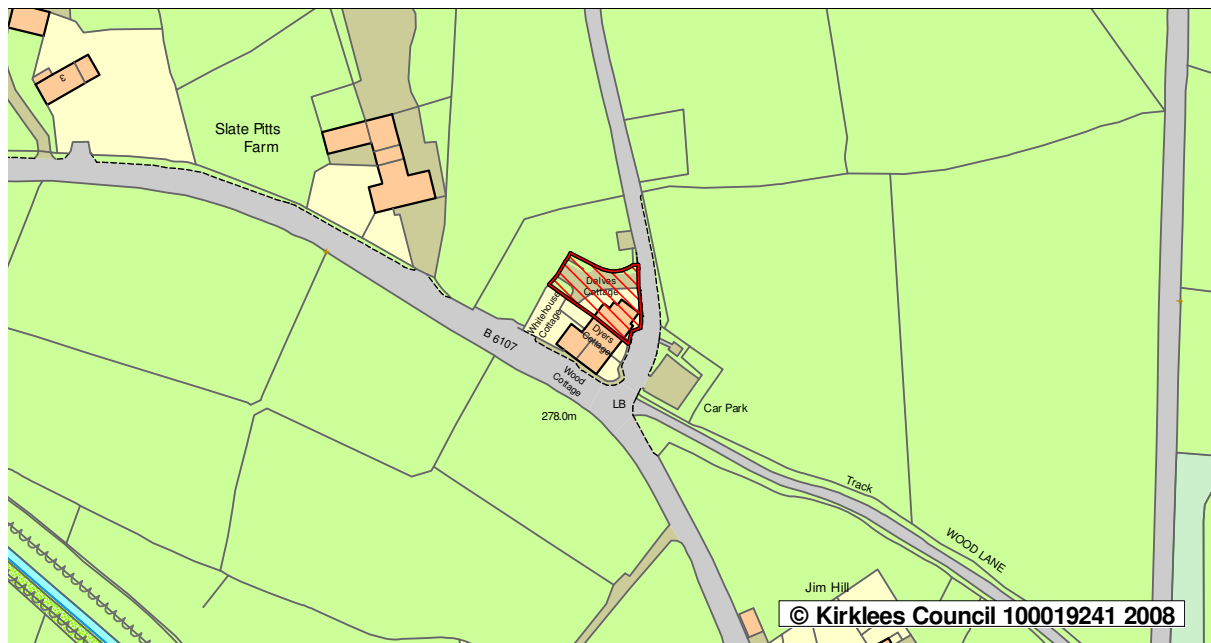
05-Mar-2018

EXTENSION EXPIRY DATE

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

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

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral Wards Affected: Colne Valley

No

Ward Members consulted

RECOMMENDATION: REFUSE

Refuse planning permission for the following reasons:

1. The site lies within an area of designated Green Belt. The proposed studio/store by virtue of its scale and massing when viewed cumulatively with the other extension to Delves Cottage, and within the context of its limited curtilage would constitute a disproportionate addition to the original building and would have a harmful impact on the character and openness of the Green Belt. The extension therefore constitutes inappropriate development that would be harmful to the Green Belt. No very special circumstances exist to outweigh the harm caused by reason of inappropriate or other harm. The application is contrary to Policy D11 of the Kirklees Unitary Development Plan, Policy PLP57 of the Publication Draft Local Plan and paragraph 89 of the National Planning Policy Framework.

2. The proposed extension by virtue of its scale and massing will constitute overdevelopment of the site which benefits from limited amenity space. The application is contrary to Policy BE1 and D2 of the Kirklees Unitary Development Plan, Policy PLP24 of the Publication Draft Local Plan and guidance set out within the National Planning Policy Framework.

1.0 INTRODUCTION:

1.1 This application is brought to Committee at the request of Cllr Donna Bellamy for the following reason:

‘So that Members of the Planning sub-committee can consider whether the proposal will lead to over-development of the site and have an adverse impact on the character and openness of the Green Belt.’

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

2.0 SITE AND SURROUNDINGS:

- 2.1 4 Delves Cottage is a two storey end terrace dwelling in Slaithwaite. It is constructed in stone which is finished in render and is designed with gable roof forms. The property, which previously served as part of The White House Public House, benefits from a first floor side extension and entrance porch which is located to the front of the property. The rear of the dwelling is located along the access road with a large driveway and small garden area to the front. Boundary treatment comprises fencing which runs along the north western and northern boundaries of the site. A stone wall forms the boundary between the site and the adjoining property.
- 2.2 The site is located in the Green Belt and therefore there are few properties within the vicinity. However, the majority of the properties within the local area appear to be residential. The row of terrace properties on which the application site is located are of a similar character, style and design to the application site and are constructed in a mix of stone and render.

3.0 PROPOSAL:

- 3.1 The application is seeking planning permission for the erection of a studio/store for domestic use.
- 3.2 The proposed studio/store will project 3.10 metres from the rear elevation of the existing garage which is located at Whitehouse Cottage, The White House, Chain Road. The studio/store will have a length of 5.45 metres and will be set in from the north western side elevation of the garage by 0.30 metres and the south eastern side elevation by 0.40 metres.
- 3.3 The extension will be constructed in painted rendered walls to match the existing garage and will include Ashlar stone surround on the front and south eastern side elevations and Ashlar quoins on the north western side elevation. It will be designed with a gable roof form which will be finished in imitation stone slates to match the existing garage. The building will have an overall height of 3.8 metres to sit 0.15 metres below the ridge height of the garage.
- 3.4 A vertical panelled door which will serve the proposed store will be located on the front elevation of the extension along with powder coated aluminium doors with timber truss and powder coated windows above which will serve the proposed studio. Powder coated aluminium doors with ashlar stone surrounds are proposed for the south eastern elevation of the extension. No openings are proposed for the north western side elevation of the extension.
- 3.5 The studio and store will provide additional storage for the dwelling and will accommodate equipment such as road bikes, gym and garden equipment which cannot be stored within the dwelling.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

- 4.1 **2011/92727:** Conversion/extension and alteration of the White House Pub to four residential properties, erection of a detached garage and extension and refurbishment of detailed outbuildings, revised access to Wood Lane and Delves Gate. Conditional Full Permission.
- 4.2 **86/03653:** Erection and alterations to form bed and breakfast accommodation. Granted Conditionally.
- 4.3 **86/00936:** Erection of two storey extension to form bed and breakfast accommodation. Refused.

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

- 5.1 Amended plans were sought from the applicant to reduce the scale of the proposed studio/store to reduce the impact that the development was deemed to have on the character and openness of the Green Belt. The amendments were also requested as it was considered that the proposed extension would amount to overdevelopment of the site which benefits from limited amenity space. A statement of support was submitted on behalf of the applicant to address the concerns raised. As the information provided did not alleviate the concerns regarding the impact that the development would have on the surrounding area, amended plans were again requested. A lean-to roof form was suggested in place of the proposed gable roof form to remove some of the bulk of the proposed extension and to reduce its visibility from the street scene and subsequently reduce the harm it was considered that the development could have on the character and openness of the surrounding Green Belt. The applicant did not consider the changes to be appropriate and requested the application to be determined based on the original plans.

6.0 PLANNING POLICY:

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

6.2 The site is located within the Green Belt in the Kirklees Unitary Development Plan and the emerging Local Plan.

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

- **D11** – Extensions in the Green Belt
- **D2** – land without notation
- **BE1** – Design principles
- **BE13** – Extensions to dwellings (design principles)
- **BE14** – Extensions to dwellings (scale)
- **T10** – Highway Safety
- **T19** – Parking

6.4 Supplementary Planning Guidance / Documents:

None relevant.

6.5 National Planning Guidance:

- **PLP1** – Achieving sustainable development
- **PLP2** – Place shaping
- **PLP21** – Highway safety
- **PLP22** - Parking
- **PLP24** – Design
- **PLP57** – Extensions within the Green Belt

6.6 National Planning Policy Framework (NPPF):

- **Chapter 7** – Requiring good design
- **Chapter 9** – Protecting Green Belt Land

7.0 PUBLIC/LOCAL RESPONSE:

7.1 The application was publicised by letters and site notice. No representations have been received as a result of the statutory publicity.

8.0 CONSULTATION RESPONSES:

8.1 None.

9.0 MAIN ISSUES

- Principle of development
- Impact on the Green Belt and visual amenity
- Residential amenity
- Highway issues
- Representations
- Other matters
- Conclusion

10.0 APPRAISAL

Principle of development

10.1 The site lies within the Green Belt and the main issue is the impact of the proposed development on the openness and visual amenity of the Green Belt.

10.2 Paragraph 89 of the NPPF states that a local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Exceptions to this include the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building.

10.3 Policy D11 of the UDP relates to extensions to buildings within the Green Belt and states that:

Proposals for the extension of buildings within the green belt will be considered having regard to:

- i the impact on the openness and character of the green belt;
- ii the size of the extension in relation to the existing building which should remain the dominant element;

and, in the case of traditional buildings,

- iii the effect on the character of the existing building.

in the case of proposals to extend buildings which have already been extended the proposal should have regard to the scale and character of the original part of the building.

10.4 Policy PLP 57 of the emerging Local Plan relates to the extension, alteration or replacement of existing buildings within the Green Belt. It states:

Proposals for the extension, alteration or replacement of buildings in the green belt will normally be acceptable provided that (amongst other things):

- In the case of extensions the host building remains the dominant element both in terms of size and overall appearance. The cumulative impact of previous extensions and of other associated buildings will be taken into account. Proposals to extend buildings which have already been extended should have regard to the scale and character of the original part of the building;
- The design and materials used should be sensitive to the character of the green belt setting.

- 10.5 The principle of the development is accepted subject to an assessment of the above policies.

Impact on the Green Belt and visual amenity

- 10.6 The proposal seeks planning permission for the erection of a studio/store for domestic use. The studio/store will form an extension of an existing garage which is located at the neighbouring property Whitehouse Cottage and will be constructed in materials to match existing which are considered sensitive to its green belt setting.
- 10.7 In the case of this application, Delves Cottage is taken to be the original building, despite this originally forming part of the larger White House public house. Delves Cottage has been previously extended. Although the proposed studio/store is not physically attached to Delves Cottage it is close to the host building and is considered to constitute an extension to it. As an extension, when this is considered cumulatively with the existing extension, it is considered to form a disproportionate addition to the original building. This is inappropriate development in the Green Belt.
- 10.8 The outbuilding would introduce additional built footprint and volume onto land that is currently open. The gable roof form adds a significant amount of bulk to the structure and would be particularly visible from the surrounding area due to its open and rural nature. It is noted that the site is visible from a distance along Chain Road which will further increase the harm to the openness of the surrounding Green Belt. The NPPF at para. 79 advises that openness is an essential characteristic of Green Belts and the proposal would therefore cause harm in this regard. Furthermore, given the limited amenity space which is located at the site and the massing of the proposed studio/store, it is considered that the proposed studio/store would result in overdevelopment of the site. This would cause further harm to the visual amenity of the area.
- 10.9 The applicant has provided some details regarding the proposed studio/store and states that it will be used to store road bikes, gym and garden equipment which cannot be stored in the host dwelling. The applicant has also stated that the extension has been designed to be similar in design and appearance to existing garage. It is considered that the need for the extension for these purposes does not constitute a very special circumstance which would mitigate the impact that the development could have on the surrounding area. It is considered that the extension, by virtue of its design would clearly outweigh the harm to the Green Belt.
- 10.10 The proposal would constitute inappropriate development in the Green Belt and would reduce openness in this location. Whilst the materials of construction of the proposed extension would correspond well with those of the existing garage, it is considered that the proposal, by virtue of its scale and massing could have a significant impact on the surrounding area which is located within the Green Belt. Whilst the applicant has provided some

information regarding the need for the proposed studio/store, these considerations in this case do not clearly outweigh the harm to the Green Belt. The development is contrary to Policy D11 of the UDP, Policy PLP 57 of the emerging Local Plan and guidance in chapter 9 of the NPPF. Furthermore the design and bulk of the structure would constitute an overdevelopment of the site which would cause visual harm and would be contrary to Policies D2 and BE1 of the UDP and PLP24 of the PDLP.

Residential Amenity

10.11 *Impact on Dyers Cottage*

The proposed studio/store will not project any closer to the property than the garage which is located at Whitehouse Cottage and will not project beyond the side elevation of the property. Taking this into consideration along with the fact that the extension will be located to the north west of the property, it is not considered that the development will have a significant impact on the residential amenity of the occupiers of the property. Given the fact that the extension will serve a studio and taking into account that the extension will not extend beyond the side elevation of the dwelling, it is not considered that the extension will offer a significant amount of overlooking into the property.

10.12 *Impact on Whitehouse Cottage*

The proposed development will project from the rear elevation of the garage which is located at the property. Due to the location of the extension to the rear of the existing outbuilding, it is unlikely that the development will have a significant impact on the residential amenity of the occupiers of the property.

Overall

- 10.13 Having considered the above factors, the proposal is not considered to result in any adverse impact upon the residential amenity of any surrounding neighbouring occupants, complying with Policies D2 and BE1 of the UDP as well as Policy PLP24 of the PDLP.

Highway issues

- 10.14 The proposed studio/store will be located in part of the amenity space which located to the front of the property and will not significantly impact on the existing driveway. The proposed extension does not give rise to the requirement for additional parking and would not affect the existing parking and access arrangements on site. Accordingly, it would not raise any highway safety issues and thus complies with Policies D2 and T10 of the UDP and Policy PLP21 of the PDLP.

Representations

- 10.15 No representations have been received as a result of the statutory publicity. The reasons Cllr Bellamy requested the application be determined by sub-committee have been addressed in the appraisal.

Other Matters

- 10.16 There are no other material considerations relevant to the determination of this 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.
- 11.2 This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development proposal does not accord with the development plan and that there are specific policies in the NPPF that indicate development should be restricted. It is therefore recommended that the application be refused.

Background Papers:

Application web page:

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2018/90021>

Certificate of Ownership – Certificate B signed and dated 08 January 2018.
Notice served on J Booth, Whitehouse Cottage, Chain Road.

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