

# Public Document Pack



**Service Director – Legal, Governance and  
Commissioning  
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Tuesday 21 July 2020

## Notice of Meeting

Dear Member

### Strategic Planning Committee

The **Strategic Planning Committee** meeting will take place remotely at **1.00 pm** on **Wednesday 29 July 2020**.

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

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

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

**Julie Muscroft**

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

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

## **The Strategic Planning Committee members are:-**

### **Member**

Councillor Steve Hall (Chair)  
Councillor Donna Bellamy  
Councillor Donald Firth  
Councillor Carole Pattison  
Councillor Andrew Pinnock  
Councillor Cathy Scott  
Councillor Mohan Sokhal

When a Strategic Planning Committee 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  
N Patrick  
R Smith  
J Taylor  
M Thompson

#### **Green**

K Allison  
S Lee-Richards

#### **Independent**

C Greaves  
T Lyons

#### **Labour**

M Akhtar  
M Kaushik  
W Simpson  
H Uppal

#### **Liberal Democrat**

J Lawson  
A Marchington  
A Munro

# Agenda

## Reports or Explanatory Notes Attached

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Pages

**1: Membership of the Committee**

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

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**2: Interests and Lobbying**

1 - 2

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 items or participating in any vote upon the items, or any other interests.

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**3: Admission of the Public**

Most debates take place in public. This only changes when there is a need to consider certain issues, for instance, commercially sensitive information or details concerning an individual. You will be told at this point whether there are any items on the Agenda which are to be discussed in private.

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**4: Public Question Time**

Due to current covid-19 restrictions, Members of the Public may submit written questions to the Committee.

Questions should be emailed to [governance.planning@kirklees.gov.uk](mailto:governance.planning@kirklees.gov.uk) no later than 10.00 am on 28 July 2020.

In accordance with Council Procedure Rule 51(10) each person may submit a maximum of 4 written questions.

In accordance with Council Procedure Rule 11(5), the period allowed for the asking and answering of public questions will not exceed 15 minutes.

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## 5: Deputations/Petitions

The Committee will receive any petitions and hear any deputations from members of the public. A deputation is where up to five people can attend the meeting and make a presentation on some particular issue of concern. A member of the public can also hand in a petition at the meeting but that petition should relate to something on which the body has powers and responsibilities.

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

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### Planning Applications

3 - 4

The Planning 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 to speak by 5.00pm (for phone requests) or 11:59pm (for email requests) by no later than Monday 27 July 2020.

To pre-register, please email [governance.planning@kirklees.gov.uk](mailto:governance.planning@kirklees.gov.uk) or phone Richard Dunne on 01484 221000 (Extension 74995).

As this is a virtual meeting please include in your email the telephone number that you intend to use when addressing the Committee. You will receive details on how to speak at the meeting in your acknowledgement email.

We would encourage members of the public who do not wish to use the telephone option to email their written submissions to [governance.planning@kirklees.gov.uk](mailto:governance.planning@kirklees.gov.uk) to be received no later than 12:00 pm Tuesday 28 July 2020.

Written submissions will be read out at the meeting and are subject to a maximum of 500 words.

Please note that in accordance with the council's public speaking protocols at planning committee meetings verbal representations will be limited to three minutes.

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

**6: Definitive Map and Statement of Public Rights of Way. Re-assessment of legal status of Huddersfield 231, Nether Moor Farm, South Crosland.** 5 - 24

Definitive Map and Statement of Public Rights of Way. Re-assessment of legal status of Huddersfield 231, Nether Moor Farm, South Crosland. Re-consideration of evidence following quashing of Kirklees Council (Huddersfield Public Bridleway 231- Sandy Lane to Nether Moor Road, South Crosland) Public Path Modification Order 2018.

Contact Officer: Phil Champion, Definitive Map Officer, Public Rights of Way

Ward(s) affected: Crosland Moor & Netherton

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**7: Planning Application - Application no: 2019/94051** 25 - 48

Outline application of up to 39 dwellings and associated works at Land off Burn Road, Huddersfield.

Contact Officer: Nick Hirst, Planning Services

Ward(s) affected: Lindley

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**8: Planning Application - Application no: 2020/90348** 49 - 62

Erection of warehouse unit (B8) and alterations to Chapel Street land at, Chapel Street, Taylor Hill, Huddersfield.

Contact Officer: Nick Hirst, Planning Services

Ward(s) affected: Newsome

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**9: Planning Application - Application no: 2019/93246** 63 - 74

Installation of 2 fibre cabins, twelve air conditioning units, two generators and perimeter fence Land to the south of Jacks Lane, Dewsbury.

Contact Officer: Liz Chippendale, Planning Services

Ward(s) affected: Batley East

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- 10: Planning Application - Application no: 2019/93237** 75 - 82
- Erection of stable block Springfield Farm, 15, Moorside, Cleckheaton.
- Contact Officer: Liz Chippendale, Planning Services
- Ward(s) affected: Cleckheaton
- 
- 11: Planning Application - Application no: 2020/90020** 83 - 96
- Erection of two storey side extension and external alterations 9, Kirkstone Drive, Gomersal, Cleckheaton.
- Contact Officer: Olivia Roberts, Planning Services
- Ward(s) affected: Liversedge and Gomersal
- 
- 12: Planning Application - Application no: 2020/91191** 97 - 104
- Installation of incline platform lift and associated works 65, Banks Road, Linthwaite, Huddersfield.
- Contact Officer: Katie Chew, Planning Services
- Ward(s) affected: Colne Valley
- 
- 13: Planning Application - Application no: 2018/92309** 105 - 130
- Reserved Matters application (pursuant to outline application 2016/93411) for residential development of 41 dwellings Land to rear of 125 Helme Lane, Meltham, Holmfirth.
- Contact Officer: Victor Grayson, Planning Services
- Ward(s) affected: Holme Valley North
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### **Planning Update**

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

<p><b>KIRKLEES COUNCIL</b></p> <p><b>DECLARATION OF INTERESTS AND LOBBYING</b></p> <p>Strategic Planning Committee</p>			
<b>Name of Councillor</b>			
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.



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

## **PLANNING POLICY**

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 statutory Development Plan for Kirklees is the Local Plan (adopted 27<sup>th</sup> February 2019).

### **National Policy/ Guidelines**

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 19<sup>th</sup> February 2019, the Planning Practice Guidance Suite (PPGS) first launched 6<sup>th</sup> March 2014 together with Circulars, Ministerial Statements and associated technical guidance.

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

## **REPRESENTATIONS**

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

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

## **EQUALITY ISSUES**

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

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

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

## **HUMAN RIGHTS**

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

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

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

## **PLANNING CONDITIONS AND OBLIGATIONS**

Paragraph 54 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.**



**Name of meeting and date:** Strategic Planning Committee – 29 July 2020

**Title of report:** Definitive Map and Statement of Public Rights of Way. Re-assessment of legal status of Huddersfield 231, Nether Moor Farm, South Crosland. Re-consideration of evidence following quashing of Kirklees Council (Huddersfield Public Bridleway 231 - Sandy Lane to Nether Moor Road, South Crosland) Public Path Modification Order 2018.

## 1. Purpose of Report

- 1.1. **Members are asked** to re-consider the evidence regarding the status of Byway Open to All Traffic (BOAT) Huddersfield 231 and decide on the requisite modification of the Definitive Map and Statement of public rights of way under s.53 Wildlife and Countryside Act 1981.
- 1.2. On 23 Nov 2017 the Huddersfield area Planning Sub-Committee resolved to make a Definitive Map Modification Order (DMMO) to downgrade the status recorded in the Definitive Map and Statement (DMS) from BOAT to bridleway. This was as a result of investigation of applications for DMMOs from the owners of Nether Moor Farm ('the landowners' and 'the applicants') alleging the way was wrongly recorded as a BOAT. The landowners subsequently objected to the Order, but it was subsequently Confirmed by the Secretary of State following a Public Inquiry.
- 1.3. Following advertising of the Confirmation of the Order, the Order was challenged by application to the High Court. The Secretary of State and Kirklees Council accepted that there was an error regarding a particular aspect of the Inspector's reasoning in his Decision. Had the error not been made the Inspector might have reached a different conclusion. As the law does not currently provide for only an Inspector's Decision to confirm it to be quashed the Order itself has been quashed. The matter has been returned to the Council. Members should make a further decision, based on all the evidence now available, on making a new Order and seeking its confirmation.

## 2. Summary of Report

- 2.1. Huddersfield 231 was recorded on the first Definitive Map and Statement (the 'first DMS' in 1975 as a Road Used as a Public Path (RUPP). Following review of the DMS, it became recorded on the West Yorkshire Modified Definitive Map and statement (the 'current DMS') in October 1985 as a Byway Open to All Traffic (BOAT).
- 2.2. In 2012 Mrs & Bradley of Nether Moor Farm applied for a DMMO to instead record Huddersfield 231 as a public footpath. The way is shown on a plan at item 2 in appendix A. Briefly, the route comprises an enclosed track between Sandy Lane and Nether Moor Road, passing through a dairy farm. The farm had been occupied by the Bradley family since the late 19<sup>th</sup> century and owned by members of the family since 1954.
- 2.3. An earlier application in 2009 to downgrade the recorded status to footpath had been returned to the applicants at their request. In 2014 a further application was made to instead record part Huddersfield 231 only as a footpath, to its junction with FP Huddersfield 233, with support for the 2012 application being subsequently withdrawn.
- 2.4. The 2014 application was made on the premise that the applicant by then considered there was a technical flaw in the depiction of 231 on the Definitive Map, being shown with incorrect notation for a BOAT (a solid black line). This is in spite of the route being described as a BOAT in the Statement. It was argued that this meant that the DMS did not in fact record a BOAT at all. Further, that there was a failure to include the reclassification of Huddersfield 231 to BOAT in an Order made preparatory to the publication of the current DMS.

- 2.5. Officers do not agree with the argument regarding the incorrect notation on the map; the Map and Statement *taken together* do record a BOAT. However it is accepted that a procedural error was made regarding the failure to formally reclassify Huddersfield 231 as a BOAT in an Order modifying the Map and Statement in 1985, but subsequently including the route in the Modified Map and Statement with that status.
- 2.6. The landowners' current position is that no public right of way exists over any part of the way in question, that it was recorded in error, and *any* use of the way was with permission. This is at odds with the earlier position which had not challenged the existence of lower rights in general but had focussed refuting vehicular use, following an increase in use by recreational off-road vehicles. It is also at odds with their position in 2013/14, when it was accepted that there was a public right of way on foot from Sandy Lane to the junction with footpath Huddersfield 233.
- 2.7. The evidence adduced in support of the 2012 and 2014 applications was broadly the same, including historical documentary evidence, and evidence forms, letters and statements from people associated with the farm. Investigation of the applications led to user evidence being received from equestrians and other who claimed to have used the way over a number of decades. The evidence was investigated in depth in 2017 by officers from Leeds City Council on behalf of Kirklees. Evidence was also considered in detail and witnesses cross examined at the Public Inquiry in 2019.
- 2.8. Officers have now taken into account *all* the evidence now available, including evidence and legal arguments presented at the Public Inquiry, along with the Order Decision and the High Court challenge. A detailed analysis of the evidence submitted, and other evidence considered is found in the 'Discussion of Evidence' at item 1 Appendix A to the report. A report detailing investigation of the evidence available as of 2017 is also of relevance, as are the conclusion reached by the Inspector having heard all the evidence. Re-investigation has focused on a re-analysis of documents relating to the development of the DMS from the early 1950s onwards to 1975 and its review in the 1970s / 1980s, evidence from people associated with Nether Moor Farm, and evidence from people who claimed to have used the way up to 1975 when the way was recorded as a RUPP on the first DMS.
- 2.9. There is a legal presumption that public rights of way shown on the Definitive Map actually exist. The evidence needed to remove (including to downgrade the recorded status of) what is shown as a public right from such an authoritative record will need to fulfil certain stringent requirements:
  - (a) the evidence must be new – an order to remove a right of way (or downgrade) cannot be founded simply on the re-examination of evidence known at the time the Definitive Map was surveyed and made.
  - (b) the evidence must be of sufficient substance to displace the presumption that the Definitive Map is correct.
  - (c) the evidence must be cogent.
- 2.10. Members are asked to decide whether the evidence as a whole demonstrates that any DMMO is requisite. An Order to delete or downgrade the recorded status of a public right of way would be requisite only if the evidence meets the requirements described at paragraph 2.9
- 2.11. Should the evidence be considered to show that the way has been recorded as a BOAT in error, the legal presumption that the way is correctly recorded in the DMS will no longer apply. Members should then also consider whether evidence has been discovered that demonstrates that a public right of way of another type, e.g. a public footpath or bridleway, has been dedicated. Members should also consider whether the evidence shows that a public right of way has been dedicated subject to limitations or conditions (e.g. the existence at the time of dedication of gates or stiles).
- 2.12. The relevant statutory provision is found in s.31 Highways Act 1980 ("the 1980 Act"). This requires consideration of whether there has been use of a way by the public, 'as of right' (without force, secrecy or permission) and without interruption, for a full period of twenty years prior to its status being brought into question and, if so, whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.

2.13. Dedication at common law requires consideration of three main issues: whether the owner of the land had the capacity to dedicate a highway, whether there was express or implied dedication by the landowner and whether there has been acceptance of the dedication by the public. Evidence of the use of a way by the public 'as of right' may support an inference of dedication and may also show acceptance of the dedication by the public.

### **3. Ward Councillor comments**

3.1. Ward members have been informed about matters regarding the disputed status of Huddersfield 231 at various times since at least 2017. They have been offered an opportunity to provide additional evidence and have been informed of the report being brought to committee. No further comments have been received.

### **4. Officer recommendations and reasons**

4.1. That the Strategic Planning Committee authorises the Service Director, Legal, Governance and Commissioning to make and support confirmation of a Definitive Map Modification Order to downgrade the recorded status of Huddersfield 231 from Byway Open to All Traffic to public bridleway under sections 53(2)(b) and 53(3)(c)(ii) of the 1981 Act.

4.2. Additionally, officers recommend that any Order vary the particulars shown in the Statement accompanying the Definitive Map to record limitations including a gate and stile at point B on the plan at item 2 in appendix A and two removable bars, poles or rails at points D and E.

#### **Reasons**

4.3. Section 53 (3)(c)(ii) states that an Order to modify the Definitive Map and Statement should be made upon "(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows... (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description".

4.4. In accordance with the conclusions in the 'Discussion of Evidence' appended at item 1 in appendix A to this report, (in particular paragraphs 9.1 to 9.17 in the Discussion), it is considered that there is sufficient cogent evidence to show that Huddersfield 231 was recorded on the West Yorkshire Modified Definitive Map and Statement in error and to outweigh any presumption that it is correctly recorded. Further, the evidence shows, on the balance of probabilities, that the way should instead be recorded as a public bridleway, with the addition of limitations described at paragraph 4.2 above.

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**Name of meeting:** Strategic Planning Committee

**Date:** 29 July 2020

**Title of report:** Definitive Map and Statement of Public Rights of Way. Re-assessment of legal status of Huddersfield 231, Nether Moor Farm, South Crosland. Re-consideration of evidence following quashing of Kirklees Council (Huddersfield Public Bridleway 231- Sandy Lane to Nether Moor Road, South Crosland) Public Path Modification Order 2018.

**Purpose of report:** **Members are asked to re-consider** the evidence and decide on the requisite modification of the Definitive Map and Statement of public rights of way under s.53 Wildlife and Countryside Act 1981 in respect of Byway Open to All Traffic (BOAT) Huddersfield 231  
 An Order made following a decision of the Planning Sub-Committee (Huddersfield) on 23 Nov 2017 was Confirmed by the Secretary of State following a Public Inquiry.  
 The Order was challenged by application to the High Court and was subsequently quashed due to an error in the Secretary of State's Decision.  
**Members are asked to make a further decision** on making a new 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 <u>Council's Forward Plan (key decisions and private reports)?</u>	Not applicable
The Decision - Is it eligible for call in by Scrutiny?	No – non-executive power rests with Council committee
Date signed off by <u>Strategic Director</u> & name	Karl Battersby – 08/07/2020
Is it also signed off by the Service Director for Finance?	Yes - Eamonn Croston 06/07/2020
Is it also signed off by the Service Director for Legal Governance and Commissioning?	Yes - Sandra Haigh on behalf of Julie Muscroft 06/07/2020
Cabinet member <a href="#">portfolio</a>	N/A

**Electoral wards affected:** Crosland Moor & Netherton

**Ward councillors consulted:** Cllrs. E Hill, M Kaushik & M Sarwar

**Public or private:** **Public**

**Has GDPR been considered?** Yes. Evidential material associated with the report contains personal data. Signatures and personal contact details have been redacted. As a public local inquiry has already been held to consider the same evidence, the names and addresses of witnesses and other personal data have already been released into the public domain. In light of this, such personal data has not been redacted in this report.

## **1. Summary**

- 1.1. In summer 2012 the Council received an application from Mrs & Bradley of Nether Moor Farm ('the landowners' and 'the applicants') for a Definitive Map Modification Order (DMMO) to change the recorded status of Huddersfield 231 on the Definitive Map and Statement (DMS) from Byway Open to All Traffic (BOAT) to public footpath. The application had originally been submitted in 2009, as an application to change the recorded status from BOAT to bridleway but had been returned to the applicant at their request and re-submitted to the Council in 2012 (DMMO file ref: 159). Support for DMMO application 159 was withdrawn by the landowner applicants in December 2016.
- 1.2. In February 2014 the Council received a further DMMO application from the landowners to add to the DMS a public footpath over the western part of Huddersfield 231. I.e. for that part from Sandy Lane to its junction with public footpath Huddersfield 233 ('path 233'). (DMMO file ref: 182). That application was made on the premise that the applicants by then considered that a technical flaw in the depiction of Huddersfield 231 on the Definitive Map (see paragraph 1.8 below) meant that a BOAT was not in fact recorded on the Definitive Map at all, and that only part of the route carried public rights, as a public footpath.
- 1.3. The evidence adduced in support of applications 159 and 182 was fundamentally the same in both cases.
- 1.4. The routes to which these applications relate are shown on a plan at item 2 in appendix A to this report. Briefly, the route comprises an enclosed track between



Sandy Lane and Nether Moor Road, passing through farm premises, being a working dairy farm.

- 1.5. Subsequent to the making of these application, the applicants' stance regarding the status of the route changed. The applicants support for application 159 was formally withdrawn in December 2016. This did not remove the Council's standalone duty to keep the DMS under continuous review and make any Orders as appear requisite as a result of the discovery of evidence that the DMS requires modification).
- 1.6. The applicants have since strongly argued that no part of Huddersfield 231 is a public right of way of any type and no longer stand by their earlier assertions (supported by evidence) that the whole route is a bridleway or footpath, or that the part from Sandy Lane to its junction with footpath Huddersfield 233 only is a public footpath.
- 1.7. The evidence considered in preparation of this report includes submissions relating to both these applications as well as other available evidence. This includes documentary evidence, as well as user and other personal evidence, including evidence given at a public inquiry in 2019. The relevant evidence now available is considered in detail in the detailed 'Discussion of Evidence' at item 1 appendix A to this report.
- 1.8. The depiction of Huddersfield 231 on the current Definitive Map is as a solid line, which is not a notation recognised in the key or the regulations<sup>1</sup> governing the notation to be used on Definitive Maps. The Statement accompanying the Map describes Huddersfield 231 as a "Byway Open to All Traffic" (BOAT). (Extracts from the current Definitive Map and Statement are included at items EEE and FFF in the background papers to the Leeds Report). The correct notation for a BOAT is a bold solid line with 'v' markings either side along its length. Officers recognise this anomaly but consider that the Map and Statement taken together collectively show that the way is recorded as a BOAT.
- 1.9. The applicants allege that an additional error was made in the recording of Huddersfield 231 as a BOAT by West Yorkshire Metropolitan County Council

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<sup>1</sup> Described in Schedule 1 to the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993, available at <https://www.legislation.gov.uk/ukksi/1993/12/schedule/1/made>

(“WYMCC”) when the current DMS was produced in 1985. Specifically, omission of formal reclassification of Huddersfield 231 from “a Road Used as a Public Path” (RUPP) to BOAT from the Omnibus Order made immediately prior to the publication of notice of preparation of the Modified DMS.

- 1.10. Huddersfield 231 was first recorded in the Definitive Map and Statement for the Huddersfield area prepared and published by WYMCC in 1975. (The ‘first DMS’). It was shown as a “Road Used as a Public Path” (RUPP) in the first Definitive Map and described as a “Footpath (CRF)” in the accompanying Statement. (Items QQ and RR in the background papers to the Leeds Report).
- 1.11. The applicants allege that there were errors in the recording of Huddersfield 231 by WYMCC (and its predecessor authority Huddersfield County Borough Council (‘Huddersfield CBC’)) in the preparation / production of the first DMS.
- 1.12. The Council has a duty to determine DMMO applications and a standalone duty to keep the DMS under continuous review. The Council must consider the available evidence, before reaching a decision on making any requisite Order to modify the DMS to show a correct record of public rights of way.
- 1.13. The applications were investigated by officers from Leeds City Council on behalf of Kirklees Council and a report with recommendations produced in 2017. (The ‘Leeds Report’). That report was appended to a brief cover report presented to this committee in November 2017, endorsing its recommendations.<sup>2</sup>
- 1.14. In November 2017, the Council determined the DMMO applications and resolved to make an Order to vary the particulars contained in the DMS to record Huddersfield 231 as a public bridleway rather than a BOAT.

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<sup>2</sup> The 2017 Report to the Huddersfield Planning Sub-Committee is available at <https://democracy.kirklees.gov.uk/documents/s20661/Hud231%20DMMO%20Kirklees%20committee%20report%2023%20Nov%202017%203.pdf>

The ‘Leeds Report’ is available at <https://democracy.kirklees.gov.uk/documents/s20663/Leeds%20DMMO%20report%20Hud231.pdf>

Published background documents to the Leeds Report are available at <https://democracy.kirklees.gov.uk/ecSDDisplay.aspx?ID=1411&RPID=507337344>

- 1.15. A DMMO was made and advertised in January 2018. This is included at item 1 in Appendix B. A single objection was received, from the applicants (now also the 'objectors'). The principal ground stated was that there was not sufficient evidence of dedication and use (as a bridleway) to confirm the order as made. The Order was referred to the Secretary of State.
- 1.16. A Public Inquiry was held in January / February 2019. The objectors maintained that Huddersfield 231 had been recorded on the first DMS in error, no public rights of way of any description existed historically, and no public rights of way have subsequently been dedicated.
- 1.17. Following the Public Inquiry, the Inspector appointed by the Secretary of State confirmed the Order, with minor modifications in respect of limitations and conditions regarding existence of gates and rails across the route. The Order Decision, setting out the Inspector's findings, is found at item 2 in Appendix B.
- 1.18. The Inspector's Decision was challenged by application to the High Court. A copy of the application is found at item 3 in Appendix B.
- 1.19. The Secretary of State (and the Council) conceded one of the grounds cited by the applicants, in that there was a flaw in the reasoning of the appointed Inspector regarding dedication of a bridleway at common law. The Inspector found that use of the route by equestrians after the present 1985 DMS was "by right" and thus not use "as of right" so that a statutory presumption of dedication could not apply. However, in concluding that there had been dedication of a bridleway at common law, he failed to consider the implications of the route having been recorded as a RUPP on the first DMS for the question of whether use of the route had been "by right" rather than "as of right". The Inspector did not take account of this when considering common law dedication and, had he done so, he may have reached a different conclusion.
- 1.20. As a result, the Order was quashed by the High Court by means of a Consent Order (item 4 in Appendix B). Regrettably, the Court did not have the legal power to quash simply the Inspector's decision itself rather than the Order.
- 1.21. Only one of the grounds of challenge was conceded. Many of the Inspectors' other conclusions appear to be valid, particularly with regard to his consideration of historic

documentary evidence up to the development of the first Definitive Map and Statement.

- 1.22. In consequence of the above, jurisdiction over this matter has now returned to the Council as the Surveying Authority and Order Making Authority. The Council had already discharged its statutory duty to determine the DMMO applications and decided that an Order should be made to vary the particulars to downgrade the recorded status from BOAT to bridleway. However, this position should now be revisited, and further consideration given as to whether the available evidence as a *whole* still supports the making of a DMMO, and the nature of any such Order.
- 1.23. Officers have now taken into account *all* the evidence now available, including evidence and legal arguments presented at the Public Inquiry, along with the Order Decision and the High Court challenge.
- 1.24. As the Surveying Authority the Council has a duty to keep the DMS under continuous review, and, following the discovery of evidence that shows that the DMS requires modification, make any Orders as appear requisite.
- 1.25. A detailed analysis of the evidence submitted, and other evidence considered is found in the 'Discussion of Evidence' at item 1 Appendix A.

## **2. Information required to take a decision**

- 2.1. Members are asked to consider the report, the available evidence for and against the downgrading of recorded public rights and the discussion of evidence found in appendix A, and decide what Order, if any, to make.
- 2.2. It is the council's statutory duty to maintain the Definitive Map and Statement and make any requisite Orders.
- 2.3. General guidance for members is included at Appendix 1.
- 2.4. The applications were made under the Wildlife & Countryside Act 1981 ('the 1981 Act').

- 2.5. The Council should consider the available evidence, including evidence heard at the public inquiry, and make an Order to modify the record of public rights of way when it is requisite in accordance with section 53 of the 1981 Act.
- 2.6. Section 53(3)(c) of the 1981 Act provides that an Order to modify the DMS should be made following the discovery of evidence which (when considered with all other relevant evidence available) shows
- (i) 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;
  - (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description; or
  - (iii) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.

2.7. In *Trevelyan*<sup>3</sup> Lord Phillips MR held that:

*“Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof required to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists.”*

2.8. The approach described in *Trevelyan* should also be followed by the committee when considering whether there is sufficient evidence for the Council to make an order to

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<sup>3</sup> *Trevelyan v Secretary of State for Environment, Transport and the Regions* [2001] EWCA Civ 266.

delete a way or to downgrade a way with “higher” rights to a way with “lower rights”, e.g. a from BOAT to footpath or bridleway.

2.9. Government guidance to local authorities in England is contained in Defra’s Rights of Way Circular 1/09, version 2. A copy is included at item 2 in Appendix H.

2.10. Circular 01/09 states at paragraph 4.33:

*“The evidence needed to remove what is shown as a public right from such an authoritative record as the definitive map and statement... will need to fulfil certain stringent requirements. These are that:*

- *the evidence must be new – an order to remove a right of way cannot be founded simply on the re-examination of evidence known at the time the definitive map was surveyed and made.*
- *the evidence must be of sufficient substance to displace the presumption that the definitive map is correct.*
- *the evidence must be cogent.*

*While all three conditions must be met they will be assessed in the order listed.”*

2.11. In summary, the Committee must consider whether there is new evidence of sufficient substance to displace and outweigh the initial presumption that Byway Open to All Traffic (BOAT) Huddersfield 231 is correctly recorded in the Definitive Map and Statement. Any such evidence must be cogent, i.e. clear, logical and convincing. A simple re-examination of the evidence known at the time the Definitive Map was surveyed and made would not be sufficient for an Order to be made.

2.12. Should the evidence be considered to show that the way has been recorded as a BOAT in error, i.e. the evidence meets the requirements described at paragraphs 2.7 to 2.12 above, the legal presumption that the way is correctly recorded in the DMS will no longer apply.

2.13. Members should then also consider whether evidence has been discovered that demonstrates that a public right of way of another type, e.g. a public footpath or bridleway, has been dedicated. Members should also consider whether there is evidence to show that a public right of way has been dedicated subject to any

limitations or conditions (such as the existence at the time of dedication of gates or stiles).

- 2.14. In terms of the dedication of a public right of way, the relevant statutory provision is found in Section 31 of the Highways Act 1980 (“the 1980 Act”). This requires consideration of whether there has been use of a way by the public, ‘as of right’<sup>4</sup> and without interruption, for a full period of twenty years prior to its status being brought into question and, if so, whether there is evidence that any landowner demonstrated a lack of intention during this period to dedicate a public right of way.
- 2.15. Dedication at common law requires consideration of three main issues: whether the owner of the land had the capacity to dedicate a highway, whether there was express or implied dedication by the landowner and whether there has been acceptance of the dedication by the public. Evidence of the use of a way by the public ‘as of right’ may support an inference of dedication and may also show acceptance of the dedication by the public.
- 2.16. Members are advised that if a DMMO is made, which then attracts objections which are not subsequently withdrawn, then the Council would not be able to formally confirm its own Order but would be obliged to forward it to the Secretary of State at Defra for determination.
- 2.17. After considering the evidence and the relevant criteria members have a number of options, of which those below are the most likely:
- 2.18. The first option for members is to decide that the Council should make an Order to downgrade the recorded status of Huddersfield 231 from BOAT to public bridleway.
- 2.19. The second option for members is to decide that the Council should make an Order to downgrade the recorded status of Huddersfield 231 from BOAT to public footpath.
- 2.20. The third option is for the Council to make an Order to delete from the Definitive Map and Statement the whole length of BOAT Huddersfield 231, on the basis that in the view of members the evidence demonstrates it is recorded in error, also that the

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<sup>4</sup> ‘As of right’ means without force, secrecy or permission.

evidence shows that no part of the way recorded as Huddersfield 231 is a public footpath or bridleway.

- 2.21. The fourth option is for the Council to decline to make an Order to downgrade the recorded status of Huddersfield 231 from BOAT, but instead make an Order to vary the particulars shown on the map to show Huddersfield 231 by the correct notation for a BOAT as per Schedule 1 to the Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993.
- 2.22. The fifth option would be for the Council to make an Order to downgrade to footpath the part of Huddersfield 231 from Sandy Lane to its junction with footpath Huddersfield 233, and delete from the Definitive Map and Statement the continuation of Huddersfield 231 to Nether Moor Road on the grounds that that part is not a public right of way.
- 2.23. It is requested that members also consider the Council's stance regarding confirmation of any opposed Order. It may actively support confirmation of its Order (the usual position) take a neutral stance, or (rarely) oppose confirmation of an Order.

### **3. Implications for the Council**

#### **3.1. Working with People**

- 3.1.1. Not applicable.

#### **3.2. Working with Partners**

- 3.2.1. Officers have engaged with landowners and user groups when gathering and investigating the evidence connected with this matter.

#### **3.3. Place Based Working**

- 3.3.1. N/A.

#### **3.4. Climate Change and Air Quality**

- 3.4.1. Work to ensure that the public rights of way network is correctly recorded on the Definitive Map and Statement and is available for use may encourage a modal shift towards use of more sustainable forms of transport. This is consistent with the



Council's response to the declared Climate Emergency, the Kirklees Walking and Cycling Strategic Framework, and Council commitments to action on air quality.

3.4.2. However, the Council has statutory duties with regards to maintenance of the Definitive Map and Statement of public rights of way. Stated commitments in respect of climate change and sustainable travel should not be taken into account when considering the legal status of the route, which may or may not be legally available for public use with mechanically propelled vehicles.

### **3.5. Improving outcomes for children**

3.5.1. Not applicable.

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

3.6.1. 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.

3.6.2. As the original Order has been quashed the Council should make a further decision as to the status of Huddersfield 231, taking into account all evidence now available following consideration of the matter by the Secretary of State's Inspector, making any Order that is requisite further to section 53 of the Wildlife & Countryside Act 1981. In accordance with the Council's delegation scheme, this is a decision for the Planning Committee.

3.6.3. Any person may make an objection or representation to an Order modifying the Definitive Map and Statement. If objections are made and not withdrawn, any Order made would be forwarded to the Secretary of State and most likely be considered by an Inspector appointed by the Secretary of State, who may or may not confirm the Order.

3.6.4. The financial costs associated with the making or confirmation of an Order, or associated with referral of an opposed Order to the Secretary of State, would be met from existing budgets and should not be taken into account when considering the evidence regarding the status of the way in question.

#### **4. Consultees and their opinions.**

- 4.1. No statutory consultations with prescribed bodies are required prior to making a Modification Order decision. Ward members have been informed about matters regarding the disputed status of Huddersfield 231 at various times since at least 2017, have been offered an opportunity to provide additional evidence and have been informed of the report being brought to committee. No further evidence or comments have been received.
- 4.2. User groups and statutory consultees were also formally consulted following the making of the DMMO in 2018. This resulted in a formal objection from the landowners who argued that no public right of way of any description existed over Huddersfield 231. The matter was heard at a public inquiry in 2019. No further consultations have been carried out as part of the current re-investigation of the evidence.

#### **5. Next steps and timelines**

- 5.1. If an Order is made, it will be advertised in the local newspaper and notices placed on site. Copies of the notice and Order would be sent to landowners and various statutory consultees. Anyone may submit a written objection to the Order during the relevant notice period (minimum 42 days).
- 5.2. If no duly made objections are received, or if any objections made are withdrawn, the Council could confirm its own Order.
- 5.3. If objections to an Order are received and not withdrawn an Order must be referred to the Secretary of State for Environment, Food and Rural Affairs who will make a decision as to whether or not an Order should be confirmed. That would normally involve the appointing of an Inspector and the holding of a public local inquiry to hear the evidence. Alternatively, a case may be considered through an exchange of written representations or at an informal public hearing.

#### **6. Officer recommendations and reasons**

- 6.1 **Officers recommend that** members chose option 1 at paragraph 2.18 and authorise the Service Director, Legal, Governance and Commissioning to make and seek confirmation of a Definitive Map Modification Order to downgrade the recorded status

of Huddersfield 231 from Byway Open to All Traffic to public bridleway under sections 53(2)(b) and 53(3)(c)(ii) of the Wildlife and Countryside Act 1981.

- 6.2 **Additionally, officers recommend** that any Order vary the particulars shown in the Statement accompanying the Definitive Map to record limitations including a gate and stile at point B on the plan at item 2 in appendix A to this report, and two removable bars, poles or rails at points D and E.

## **Reasons**

- 6.3 Section 53 (3)(c)(ii) states that an order to modify the Definitive Map and Statement should be made upon “(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows... (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description”.
- 6.4 In accordance with the conclusions in the ‘Discussion of Evidence’ appended at item 1 in Appendix A to this report, (in particular paragraphs 9.1 to 9.17 in the Discussion), it is considered that there is sufficient cogent evidence to show that Huddersfield 231 was recorded on the West Yorkshire Modified Definitive Map and Statement in error and to outweigh any presumption that it is correctly recorded. Further, the evidence shows, on the balance of probabilities, that the way should instead be recorded as a public bridleway, with the addition of limitations described at paragraph 6.2 above.

## **7. Cabinet Portfolio Holder’s recommendations**

Not applicable

## **8. Contact officer**

Phil Champion, Definitive Map Officer. 01484 221000

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

9.1. 872/1/MOD/159 & 182

### **9.2. Appendices**

- Appendix 1 – Guidance for Members

The following appendices are available at

<https://democracy.kirklees.gov.uk/ecCatDisplay.aspx?sch=doc&cat=13668>

- Appendix A – Discussion of Evidence and plan of route
- Appendix B – DMMO, Order Decision, High Court Claim and Consent Order
- Appendix C – Additional evidence not included in appendices to Leeds Report
- Appendix D – User Evidence Forms (WCA8 forms) from equestrians etc. (Evidence to 1975 only)
- Appendix E – Proofs of Evidence and Statutory Declarations (Supporters, evidence to 1975 only)
- Appendix F – Evidence from persons associated with Nether Moor Farm (User Evidence Forms, letters and Proofs of Evidence – evidence to 1975 only)
- G – Additional documents included with Objectors Statement of Case
- Appendix H – Circulars, guidance and regulations.

### 9.3. Previous Decisions

- 23 November 2017: Sub-committee decision to authorise the making of an order to record Huddersfield public right of way 231 at Nether Moor farm as a public bridleway.
- October 2018: Interim emergency delegated powers exercised by Karl Battersby to submit to the Secretary of State a Statement of Case seeking recording of Huddersfield 231 as a public footpath.
- 13 December 2018: Sub-committee decision to endorse original stance that way ought to be recorded as a public bridleway.

9.4. The Leeds City Council Report is available at

<https://democracy.kirklees.gov.uk/documents/s20663/Leeds%20DMMO%20report%20Hud231.pdf>

9.5. Published background documents to the Leeds Report are available at

<https://democracy.kirklees.gov.uk/ecSDDisplay.aspx?ID=1411&RPID=507337344>

## 10. Service Director responsible

10.1. Sue Procter - Service Director, Environment Economy & Infrastructure Directorate.

**KIRKLEES METROPOLITAN COUNCIL (Appendix 1)**  
**AMENDMENTS (MODIFICATIONS) TO THE DEFINITIVE MAP**  
**GUIDANCE NOTES FOR MEMBERS**

## **Introduction**

The Council is responsible for maintaining the Definitive Map and Statement of public rights of way. These are legal documents.

From time to time applications are made to amend the Definitive Map and Statement by adding previously unrecorded rights of way or deleting or altering the status of the public rights of way shown on the Definitive Map. Such applications must be accompanied by evidence. The process is often referred to as the “modification order procedure”. These notes outline the key principles which apply to this procedure.

## **The Legal Tests**

Any decision must be based on evidence. The process is about giving official recognition to what actually already exists. It is not a question of convenience (i.e. is the application a good idea?)

If the applicant is claiming that a right of way should be added then the Council has to be satisfied that the claimed right of way subsists or is reasonably alleged to subsist.

If the applicant is claiming that a right of way should be upgraded then the Council has to be satisfied on the balance of probabilities that the right of way subsists in its upgraded form.

The test in respect of a claim for a deletion or downgrade is more onerous. The applicant has to produce clear and cogent evidence to satisfy the Council that a mistake was made when the right of way was recorded in the Definitive Map and Statement

A right of way can come into existence by being expressly dedicated by the landowner. If this is the case, then (unless there is a dispute over the dedication or its terms) there is no need for claims or evidence to be considered.

The starting point is the test set out in the Highways Act 1980 (Section 31) that the way has been used in its claimed form without let or hindrance, for a period in excess of 20 years.

In effect this means that the public has used the path or way without the landowners express permission and without having to overcome barriers. The use must also be open and not in secret. Therefore it is presumed that the landowner does not object and has accepted public use. The erection of a notice by the owner in terms that the way is private can defeat the creation of a right of way by these means, as can certain other actions by the owner (see below).

A public right of way might arise at Common Law as a result of public user for a period of less than 20 years, but the tests for the establishment of a way by this means are more onerous than those stipulated by the Highways Act 1980.

The use must also be by the general public. Use of a route to visit the landowner is not public use. Thus people cannot claim a public right over the private drive where the use was for visiting the owner, delivering post or buying produce etc.

If, however the landowner has erected notices, gates or can produce evidence that it has never been their intention that a public right be created, then this is a hindrance or evidence of contrary intention. For instance, they may have turned back all the people seen using the way or locked a gate across the way on a certain date every year. There is also a procedure for registering with the local Highways Authority, documentation stating that there is no intention to create a new way.

### **Making the Order**

If the Council does not make an order, then the Applicant has the right of appeal to the Secretary of State. This is usually done on written representations. The Secretary of State decides whether a basic case exists. If he/she agrees with the Applicant then the Council will be directed to make an Order.

If an Order is made by the Council (whether by direction or not) then any person aggrieved by that Order can appeal. This usually leads to a Hearing or a Public Inquiry.

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## Report of the Head of Planning and Development

### STRATEGIC PLANNING COMMITTEE

Date: 29-Jul-2020

Subject: Planning Application 2019/94051 Outline application of up to 39 dwellings and associated works Land off Burn Road, Huddersfield, HD3 3BT

#### APPLICANT

Mrs Carter

#### DATE VALID

13-Dec-2019

#### TARGET DATE

13-Mar-2020

#### EXTENSION EXPIRY DATE

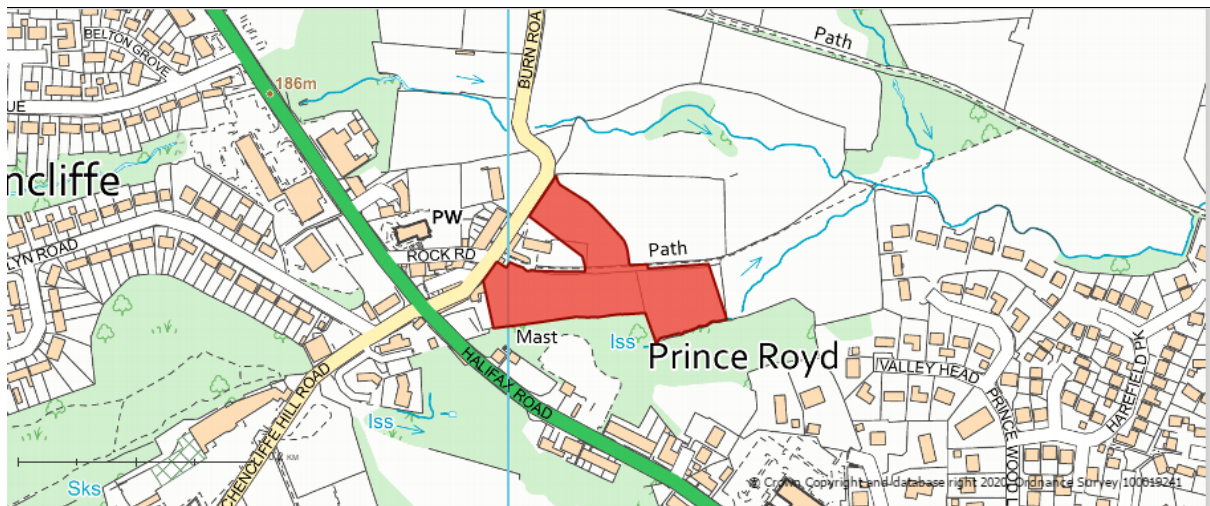
07-May-2020

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

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

#### LOCATION PLAN



Map not to scale – for identification purposes only

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**Electoral wards affected: Lindley**

**Ward Councillors consulted: Yes**

**Public or private: Public**

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## **RECOMMENDATION**

DELEGATE approval of the application and the issuing of the decision notice to the Head of Planning and Development in order to complete the list of conditions including those contained within this report and to secure a S106 agreement to cover the following matters:

1. Financial contribution towards off-site improvement works along the Halifax Road
2. Management and maintenance of surface water features, prior to adoption.

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

## **1.0 INTRODUCTION**

- 1.1 The application seeks outline permission, with access as a consideration, for residential development. The site is a greenfield site allocated for housing (HS35) within the Kirklees Local Plan.
- 1.2 The application is brought to the Planning Sub-Committee (Huddersfield Area) because the site area exceeds 0.5ha (but less than 61 units), in accordance with the requirements of the Scheme of Delegation to Officers.

## **2.0 SITE AND SURROUNDINGS**

- 2.1 The site is a field to the east of Burn Road. The site is level to the north half and slopes steeply downwards to the south. PROW HUD/399/10, part of the Kirklees Way, runs through the site.
- 2.2 To the site's south and east is woodland. A watercourse runs through the southern woodland. To the north is a former field which is being developed for residential use (95 units, approved June 2018), with other residential developments ongoing further north (see planning history). Burn Road connects to Halifax Road to the south (beyond the woodland).

## **3.0 PROPOSAL**

- 3.1 Outline application for the erection of up to 39 dwellings.



3.2 Access is the only matter that has been applied for. The proposed priority junction access is from Burn Road. It has already been part implemented, as the access is shared with the development of 2017/90180 which is being implemented at the time of writing.

3.2 Layout is a reserved matter however an indicative site layout plan has been submitted showing how the site could be developed. Notwithstanding the description, the indicative layout shows how 35 dwellings could be accommodated on site. All would be accessed from the proposed new road.

#### 4.0 RELEVANT PLANNING HISTORY

##### 4.1 Application Site

2014/93039: Outline application for residential development – S106 Outline Permission

**Note:** This application included other land outside of the current application's boundary.

##### 4.2 Surrounding Area

*Land at, Ainley Top/, Yew Tree Road and Burn Road\**

2020/90942: Erection of 30 dwellings and associated works – Ongoing

*Land off, Burn Road\**

2018/91838: Outline application for erection of residential development – S106 Outline Permission

*adj, 208, Yew Tree Road\**

2018/90151: Outline application for erection of residential development – S106 Outline Permission

*Land at, Yew Tree Road/Burn Road\**

2018/90776: Outline application for erection of up to 10 dwellings – Ongoing

*Land at Ainley Top/Yew Tree Road/Burn Road\**

2017/90180: Erection of 95 dwellings with access from Yew Tree Road and Burn Road – S106 Full Permission

*98, Burn Road\**

2016/90073: Outline application for erection of residential development – S106 Outline Permission

*Middle Burn Farm\**

2016/90524: Outline application for erection of three dwellings (Within the curtilage of a Listed Building) – Conditional Outline Permission

2018/93944: Demolition of link and conservatory, erection of extension and alterations to convert existing leisure annex into separate dwelling (Listed Building) – Conditional Full Permission (2018/93945 allied LBC)

**Note:** the addresses marked by \* either fully or partly fall within housing allocation HS35.

2020/90942: Erection of 30 dwellings and associated works – Ongoing

**Note:** re-plan seeking an increase of 10 units on part of the development approved via 2017/90180.

#### 4.3 Planning Enforcement

Nonrelevant to the current application.

### 5.0 HISTORY OF NEGOTIATIONS

5.1 The application initially sought outline permission for 29 units. Officers did not consider this compliant with density policy. Discussions took place regarding increasing the density, which cumulated in an agreement of a new description of 'up to 39 units', which is policy compliant. This secures the potential for policy compliance at reserved matters stage, but also fixability should sufficient justification be given for a lesser density.

5.2 Further information regarding drainage, ecology and highways was requested. This was provided and assessed to be acceptable. Amendments were also secured to remove direct access for several units (on the indicative plan) directly onto Burn Road.

### 6.0 PLANNING POLICY

#### Kirklees Local Plan (2019)

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 statutory Development Plan for Kirklees is the Local Plan (adopted 27<sup>th</sup> February 2019).

6.2 The site is part (1.2ha) of a housing allocation HS35 (16.8ha) on the LP Policies Map.

- **LP1** – Presumption in favour of sustainable development
- **LP2** – Place shaping
- **LP3** – Location of new development
- **LP7** – Efficient and effective use of land and buildings
- **LP11** – Housing mix and affordable housing
- **LP21** – Highway safety and access
- **LP22** – Parking
- **LP24** – Design
- **LP27** – Flood risk
- **LP28** – Drainage
- **LP30** – Biodiversity and geodiversity

- **LP32** – Landscape
- **LP33** – Trees
- **LP35** – Historic environment
- **LP51** – Protection and improvement of local air quality
- **LP52** – Protection and improvement of environmental air quality
- **LP53** – Contaminated and unstable land
- **LP63** – New open space

#### Supplementary Planning Guidance / Documents

6.3 The following are relevant Supplementary Planning Guidance / Documents published by Kirklees Council or national government.

- MHCLG: National Design Guide
- MHCLG: Technical Housing Standards
- Kirklees Local Plan Supplementary Planning Document – Highways Design Guide

#### National Planning Guidance

6.4 National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF), published 19<sup>th</sup> February 2019, and the Planning Practice Guidance Suite (PPGS), first launched 6<sup>th</sup> March 2014, together with Circulars, Ministerial Statements and associated technical guidance. The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

- **Chapter 2** – Achieving sustainable development
- **Chapter 4** – Decision-making
- **Chapter 5** – Delivering a sufficient supply of homes
- **Chapter 9** – Promoting sustainable transport
- **Chapter 11** – Making effective use of land
- **Chapter 12** – Achieving well-designed places
- **Chapter 14** – Meeting the challenge of climate change, flooding and coastal change
- **Chapter 15** – Conserving and enhancing the natural environment
- **Chapter 16** – Conserving and enhancing the historic environment

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

#### *Statement of community involvement*

7.1 The application is supported by a Statement of Community Involvement. Their process included sending letters to the closest neighbouring dwellings (83 premises) as well as forwarding the letter onto local ward members. The letter detailed that the site was allocated for residential development, however they welcomed feedback regarding the indicative layout (then 29 units).

7.2 15 responses were received. No comments from Ward Councillors were received.

- 7.3 A summary of the comments received is available in the Statement of Community Involvement. Subjects included, but were not limited to; residential amenity, the density being too much, technical issues including drainage, flooding and pollution.
- 7.4 The applicant notes these concerns, however considers that their final submission addresses all points raised.

#### *Public representation*

- 7.5 The application has been advertised via site notice and through neighbour letters to addresses bordering the site, along with being advertised within a local newspaper. This is in line with the Council's adopted Statement of Community Involvement.
- 7.6 Following the amendment to the scheme's description to 'up to 39 dwellings', the application was re-advertised via neighbour notification letter. These were sent to all neighbouring residents as well as to those who provided comments to the original.
- 7.7 The 2<sup>nd</sup> public representation period for the application expired on Wednesday the 15<sup>th</sup> of April, 2020. Nineteen public representations have been received in response to the public representation period. The following is a summary of the comments made:

- Insufficient infrastructure within the local area (i.e. schools and doctors) to support the increase in dwellings. Improvements are needed to local recreation areas.
- Traffic in the area is an issue; the proposal will exacerbate this. Improvements previously required have not been made yet. Several dwellings are fronting onto Burn Road and will result in the loss of parking.
- Loss of open rural fields which contribute to the character of the area, as well as the traditional form of nearby dwellings. Loss of natural stone wall on Burn Road, which is an attractive feature.
- The proposal is too close to other developments and will have cumulative effects.
- Noise and air pollution will be caused.
- Loss of amenity to neighbouring residents, including privacy.
- Concerns over access of waste service vehicles.
- Trees on site have been felled prior to the application.
- The proposal will cause flooding elsewhere.
- No. 10 Burn Road is a beautician and will be negatively impacted upon via the development.
- The PROW running through the site is popular and often used. Concerns it may be lost or blocked. It should be improved.

#### *Local ward member interest*

- 7.8 Due to the scale of the development, representing a major proposal, the local ward members were notified of the proposed development. The site falls within Lindley Ward, with the members being Cllr Cahal Burke, Cllr Richard Eastwood and Cllr Anthony Smith. No comments were initially received.

7.9 Councillors were re-notified following the plans being amended. Each Cllr responded, with their comments being summarised as being unsupportive of the proposal as, they consider, the area cannot support the increase number of houses, as the proposal is an overdevelopment. The cumulative impact of this site and neighbouring developments would harm local infrastructure.

## **8.0 CONSULTATION RESPONSES**

### **8.1 Statutory**

K.C. Highways: No objection subject to condition.

The Environment Agency: On drainage, refer to their standing advise. On ground contamination, advised consultation with the council's Environmental health group. Other non-planning related advisory notes suggested.

### **8.2 Non-statutory**

K.C. Crime Prevention: Advice provided.

K.C. Ecology (and Yorkshire Wildlife Trust): No objection subject to conditions.

K.C. Education: Confirmed an education contribution will likely be required.

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

K.C. Landscape: Confirmed that landscaping and Local Area of Play contributions will likely be required.

K.C. Lead Local Flood Authority: Initially objected. Based on their feedback more details were provided which were reviewed and found to be acceptable. No objection subject to condition.

K.C. PROW: Noted the presence of PROW HUD/399 through the site and provided advise.

K.C. Strategic Housing: Advised provided on desired house type and tenure for affordable housing contribution.

K.C. Strategic Waste: Provided commentary on nearby contamination sources.

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

WYCA Metro: Provided advise on sustainable transport funding.

Yorkshire Water: No objection subject to condition.

## **9.0 MAIN ISSUES**

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

## 10.0 APPRAISAL

### Principle of development

#### *Sustainable development*

- 10.1 NPPF Paragraph 11 and LP1 outline a presumption in favour of sustainable development. Paragraph 8 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. The dimensions of sustainable development will be considered throughout the proposal. Paragraph 11 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 allocated as Housing on the Local Plan proposal's map, falling within the larger allocation HS35. Accordingly, the proposed residential use is acceptable. This is supported by LP1 of the Local Plan and Chapters 1 and 5 of the NPPF which establish a general principle in favour of residential development and the need to allocate and develop out appropriate land for it.
- 10.3 Nonetheless local and national policy require additional tests to ensure the proposed residential development is appropriate. LP7 of the LP and Chapter 11 of the NPPF establish a need to provide appropriate densities of dwellings. LP11 of the Local Plan and Chapter 5 of the NPPF seek to ensure an appropriate mixture of dwelling types and sizes.
- 10.4 First considering density, LP7 establishes an expected minimum density for allocated housing sites of 35 dwellings per ha, where appropriate. The application originally sought permission for 29 dwellings. At a site area of 1.2ha the site would be expected to accommodate 42 dwellings to comply with LP7's 35 dwellings per ha. Therefore, the original proposal did not comply with policy. However, LP7 includes a test of 'where appropriate'.
- 10.5 The application is outline, with all matters that would establish density reserved (i.e. layout, scale, appearance). Without these details for consideration, it is not considered reasonable to discount the site as being able to secure the policy compliant density. An indicative layout plan has been provided demonstrating how 35 units could be accommodated, however it is layout only, without elevations or sections. The applicant considers that 35 is the appropriate maximum density for the site, highlighting the steep topography and shape of the site as being constraints. Officers do note these comments, however as no formal or detailed layout, scale or appearance plans have been provided as justification for assessment by the LPA, the applicant's comments are not considered satisfactorily evidenced to justify a departure from LP7 at this time.

- 10.6 The neighbouring woodland to the site is protected by an area Tree Preservation Order. Part of the trees' root protection areas (RPA) encroach into the site. It is considered reasonable to remove the RPAs from the developable area. This leaves the site with a developable area of 1.11ha, which at 35 dwellings per ha would require 39 dwellings.
- 10.7 It was therefore agreed with the applicant that the application be amended to 'up to 39 dwellings', to secure policy compliance at outline stage. Should the applicant demonstrate, through the detailed submission of layout, scale and appearance details at reserved matters that the 35 dwellings per ha density of LP7 is not 'appropriate' on design grounds the description allows for flexibility on the number of units.
- 10.8 It is accepted that the density, and whether it is 'appropriate', has relevance for other material considerations. This notably includes amenity. These will be considered where relevant below.
- 10.9 Turning to housing mixture, the Local Plan seeks for a considered mixture of housing sizes (bedrooms) and type (detached, semi etc..). No details on bedroom provision per unit has been provided. This will be established at reserved matter stage. Regarding type, the indicative scheme shows the majority of units as semi-detached, with some detached and terraced properties. More terraced properties than indicated may be necessary at reserved matters stage, to comply with density targets. A higher proportion of semi-detached or terraced properties on this site is not opposed in principle, given that neighbouring developments (which predate the Local Plan) have a notably high proportion of detached properties. Officers are satisfied that at this time there is no evidence to suggest that an appropriate housing mixture could be achieved on the site.

*Master-planning and an overview of planned development within the area*

- 10.10 The site forms part of a large housing allocation within the Local Plan: allocated HS35. The gross site area is 16.8 hectares but the net site area is reduced to 12.91 hectares because the developable area is constrained. The indicative capacity of the allocation is 243 dwellings: this is below the Local Plan's standard 35 dwellings per ha as developments approved within the allocation prior to the local plan that were below the density were included in the calculation.
- 10.11 Planning permission for 95 dwellings (2017/90180) has been approved on a significant proportion of the allocation: the development is currently under construction. Outline consent for 4 dwellings has also been approved on a separate part of the allocation to the north east of the site (2016/90073). A cluster of three fields in the allocation's west each have outline permission for residential development. These are unnumbered, but with an anticipated cumulative capacity of 40 – 50 units (with the exception of 2018/90776, which is 'up to ten dwellings (2018/90776 was approved via committee, but not yet determined as S106 matters are concluding). Elsewhere an outline application for 3 dwellings on another part of the allocation to the north east of the site (2016/90524) has been approved.
- 10.12 Finally, a full planning application is under consideration for 30 dwellings on a site within the centre of the allocation, although it is an amended proposal.

- 10.13 The proposed development and those elsewhere within the allocation total 12.7ha. This leaves 4.1ha of HS35 remaining for potential development. All of these areas are however constrained because of the presence of protected woodland or the proximity of listed buildings. It is to be noted as well that parts of the allocation already take in a small number of existing dwellinghouses as well as the road network which further reduces the amount of the developable part of the allocation that is left over.
- 10.14 Policy LP5 of the Local Plan relates to master-planning sites. Master-planning seeks to ensure that development is properly integrated with existing settlements and that local infrastructure and facilities for the wider area are expanded and enhanced. The policy sets out the objectives of masterplans and the policy justification sets out circumstances when a masterplan will normally be required. This includes multi-plot developments where there may be multiple landowners and it is important to co-ordinate the delivery of infrastructure and ensuring the place shaping principles and other policy requirements are met as set out in the plan.
- 10.15 It is appropriate to consider the site in the context of master-planning, as it represents an example of multi-plotting and is a substantial area of the overall allocation. However, there has not been a masterplan prepared for Housing Allocation HS35 because a vast amount of the site benefited from planning permission prior to the Local Plan (and therefore the master planning requirements of LP5). Almost half of the allocation has already been taken up with a single development of 95 dwellings across two large parcels of land.
- 10.16 Conversely, the site is to share an access with part of the 95-dwelling application. This provides opportunities for improved connection and harmonious design. The protected woodland to the south and east limits the site's interaction with the neighbouring plots in the allocation in these directions, but consideration has been given to their connection (i.e. the southern pedestrian bridge). Ensuring that the site can achieve these objectives, or would be able to at reserved matters stage, will be considered below. Furthermore, the planning contributions will be considered with the view of master planning. This is also considered later within this assessment.
- 10.17 To conclude on the above, officers consider the principle of an outline residential development, with all matters reserved for up to 39 dwellings, to be acceptable and compliant with the policies of the Local Plan. While at outline stage, with the majority of the submitted plans being indicative, consideration must be given to the local impact and whether there are any prohibitive reasons why appropriate details could not be provided at Reserved Matters stage.

#### Urban Design

- 10.18 The site lies towards the edge of the built-up part of Birchenclyffe. To the south is woodland, with woodland and field to the east. The land to the north is however currently being developed as part of a development of 95 dwellings that also includes a further area of open land towards the north-west. This approved development will therefore substantially alter the semi-rural character of the area. In this context, along with other committed development in the area, it is considered that additional residential development on the site would not significantly harm the landscape's character.



- 10.19 Turning to the specifics of the indicative plan, officers hold concerns over the indicative layout details as shown. The indicative proposal puts a heavy emphasis on vehicle parking to the front of dwellings. This, plus the linear road serving the southern plots, would result in a sterile environment of hard surfacing that would not create a visually pleasant and welcoming environment.
- 10.20 Notwithstanding this, the application is outline with access the only matter applied for. Consideration of landscape, layout, scale and appearance – which will determine the proposal’s impact on visual amenity – are also reserved for future approval. The site’s topography is acknowledged to be a constraint to development which a prospective developer would need to be addressed. Regardless, officers are satisfied that no prohibitive issues have been identified which would prevent a residential scheme being brought forward that would not cause undue harm to the built environment or wider landscape.
- 10.21 As referenced within paragraph 10.4 and 10.8, should it be demonstrated through detailed plans that the density of 35 dwellings per hectare is not appropriate from an urban design perspective (or other material consideration), there is scope for reduction at Reserved Matters stage.
- 10.22 Given the above considerations, officers are satisfied that there are no probative reasons why appropriate details could not be provided at reserved matters stage. Accordingly, based on the details held at this time, officers are satisfied that subject to appropriate details being provided at reserved matters the proposal would not cause harm to visual amenity or conflict with the aims and objectives of LP24 or the KLP or Chapter 12 of the NPPF.
- 10.23 Due west of the site is a cluster of Grade 2 listed buildings. This includes St Philip’s Church. Given the separation distance and built development between the site and the listed building, officers consider that the proposal would not impact upon these buildings. This is giving due regards to the requirements of S66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, LP35 of the Kirklees Local Plan and Chapter 16 of the NPPF.

#### Residential Amenity

- 10.24 LP24 seeks to protect the amenity of residents, stating proposals should ‘provide a high standard of amenity for future and neighbouring occupiers; including maintaining appropriate distances between buildings’. This reflects the guidance of Chapter 12 of the NPPF.
- 10.25 There are no closely spaced residential properties to the south or east of the site. The dwellings that are sited in these directions are separated from the site by thick and mature woodland.
- 10.26 Cliffe Farm would be enveloped to its north, east and south by the proposed development. Based on the indicative separation distances, officers are satisfied that the site may be developed without causing overbearing, overshadowing or overlooking upon Cliffe Farm’s dwellinghouse. Appropriate boundary treatment will be needed to prevent harm to Cliffe Farm’s garden space, which backs onto the new dwellings’ gardens. Nonetheless this would be a consideration of landscape: no probative reason why appropriate details could not be provided at reserved matters stage have been identified.

- 10.27 Other neighbouring dwellings are on Burn Road, to the site's west. The majority of the new units would be removed from Burn Road and would not impact upon the existing properties upon it. Plots 1 and 33-35 are however adjacent to Burn Road. Plot 1 is well separated from properties on Burn Road and does not raise concerns. Plots 33-35 are shown as a terrace row and, on the indicative plan, are close to 3 properties; nos. 6, 10 and 29 Burn Road. Nos. 6 and 10 have blank side walls facing the new units and whereas no. 29 faces the (assumed) blank wall of plot 35. This arrangement does not raise immediate concerns, however careful consideration will be required of the further details at Reserved Matters stage to ensure the proximity does not result in harm.
- 10.28 2017/90180 approved dwellings along the north-side of the proposed access, while the proposed indicative plan shows dwellings along the south side. The separation distance typically varies between 19.5m to in excess of 21m. For new dwellings facing one another across a road, this is deemed acceptable. Plot 10's separation falls to 18m, which is a potential cause for concern. Nonetheless, given that the plan is indicative and the size of the site allows flexibility, this is not considered prohibitive at this time.
- 10.29 Dust, artificial light, noise and vibration associated with the construction phase of the development will have the potential to cause a significant impact on nearby residents. It is therefore necessary for the applicant to provide a construction environmental management plan that provided details of the mitigation measures that will be taken to minimise any adverse impact.
- 10.30 Consideration must also be given to the amenity of future occupiers. Layout and scale are reserved matters: based on the details held officers are satisfied that suitably sized dwellings, with commensurate garden spaces, can be accommodated on the site. The exemption to this is the indicative gardens for plots 34 and 35, which have relatively small gardens. However, the shortfall is not considered so great that it could not be addressed at reserved matters stage.
- 10.31 It is presumed that primary habitable room windows would be aligned front/rear. For the majority of units this presumption would prevent concerns of overbearing, overshadowing or overlooking. Based on the indicative details, plots 33 – 35 face the side elevation of plot 32 at a minimum of 10.8m. Topographical differences or screening may prevent concerns regarding overbearing, as would an increase in the size of these units' gardens (as considered above). The other exemption is plot 10, which faces plots 22 and 23 at 16.3m. As above, this shortfall is a cause for concern but will be addressed at outline stage: the concern is not so great to suggest that the site could not be reasonably developed at reserved matters stage.
- 10.32 The proposed development is close to busy highways. Noise from the highway will have the potential to have an adverse impact on the future occupiers of the site. The application is supported by a Noise Impact Assessment which identifies that noise mitigation measures will be necessary for certain plots. A condition requiring details of necessary noise mitigation measures is therefore necessary, to comply with the aims and objectives of LP52 of the KLP.

- 10.33 It is acknowledged that greater density, as discussed within paragraphs 10.4 – 10.8 may impact upon the assessment undertaken on the indicative plans (which shows 35 dwellings). Nonetheless, this will form a consideration for the reserved matters application. Based on the details held at this time, for the reasons given above and subject to condition, the proposal in principle is capable of complying with Policies LP24 and LP52 of the LP and Chapters 12 and 15 the NPPF in relation to residential amenity.

### Highways

- 10.34 Consideration is first given to the proposals impact upon the local highway network. The anticipated traffic generation from this development based on 39 dwellings is 27 two-way movements in the AM peak and 28 in the PM peak periods. However, the site formed part of the land included within 2014/93039's outline consent for 190 dwellings. As part of 2014/93039's approval, a set of highway improvement works were required, including:
- a. Capacity and safety improvement of the Burn Road / Grimescar Road junction: Increase visibility along Grimescar Road.
  - b. Capacity and safety improvement of the Grimescar Road / Brighouse Road junction: Increase entry junction radii and width to Grimescar Road
  - c. Capacity and safety improvement of the A629 Halifax Road / Yew Tree Road junction; Increase visibility along Halifax Road.
  - d. Widen Yew Tree Road along site frontage and provide footway.
  - e. Change Burn Road priorities making 'one way' from Halifax Road for approximately 150m.
- 10.35 In addition to the above, financial contributions towards improvements to the A629 Halifax Road and a residential travel plan (including Metro Cards) were required.
- 10.36 The constraints of the site subject to 2014/93039 prevented a reserved matter coming forward for the whole site. A separate full planning application, ref 2017/90180 was submitted for the majority of the site approved by 2014/93039, excluding that under consideration currently. As part of 2017/90180's approval, the developer was required to provide all of the highway improvements that were necessary for the 190-dwelling scheme, (as listed within a) to e) above), along with commensurate financial contributions towards improvements to the A629 Halifax Road and a residential travel plan (including Metro Cards).
- 10.37 The development approved under application 2017/90180 is under construction. The current position in relation to the abovementioned secured highway works is that S278 agreements with the Council for the delivery of the highway works is in place and are/will be constructed as 2017/90180 is being built out.
- 10.38 Accordingly, the local area highway network has already been enhanced (or shall be enhanced via secured improvements) to accommodate an increase of 190 dwellings. Subtracting the 95 units approved via 2017/90180, there essentially remains a residual of 95 dwellings which was assessed within the initial highway modelling. There are also a number of permissions/proposals for much smaller residential developments on other parts of the housing allocated and adjacent land. These are:

2016/90073 – Outline consent for 4 dwellings on land at the junction of Yew Tree Road/Burn Road (access and layout approved). The site would be accessed off Burn Road via an existing private shared driveway.

2016/90524 – Outline consent for 3 dwellings on land to the north east of the site. The site would be accessed off Yew Tree Road (Bridleway) east of its junction with Burn Road.

2018/90151 – Outline application for residential development on an adjoining field to the north of the site. The Sub Committee has previously resolved to approve this application. Access was the only matter considered with the access being a single point of access off Yew Tree Road. Officers estimate the capacity of the site to be circa 10 dwellings. A financial contribution to the A629 Halifax Road improvement scheme is to be provided.

2018/90776 - Outline application for up to 10 dwellings on an adjoining field to the north of the site. The Sub Committee has previously resolved to approve this application. Access was the only matter considered with the access being a single point of access off Yew Tree Road. A financial contribution to the A629 Halifax Road improvement scheme is to be provided.

2018/91838 – Outline application for circa 20 units. Access was the only matter considered with the access being a single point of access off Burn Road. A financial contribution to the A629 Halifax Road improvement scheme was secured.

10.39 Adding the above approved units to those proposed (up to 39) gives a figure of 86. This, plus the 95 of 2017/90180, falls below the original 190 dwellings analysis that led to the secured improvements.

10.40 In addition to the above, a 'West Yorkshire Local Transport' funded scheme is being promoted for the extensive improvements along the A629 Halifax Road corridor at the following locations:

- Blacker Road / New North Road / Edgerton Road / Edgerton Grove Road junction (Blacker Road Jct): Widening will be carried out along New North Road, Edgerton Road and Blacker Road to provide more traffic lanes approaching the junction.
- Halifax Road / Birkby Road / East Street junction (Cavalry Arms Jct): Birkby Road will be re-aligned to remove the wide stagger.
- Between Cavalry Arms Jct and Birchencliffe Hill Road: Propose to remove parking from both sides of the road to improve traffic flow and enable footways to be used safely.
- Yew Tree Road to Ainley Top roundabout (Ainley Top):
  - Lengthening the approach lanes to the roundabout from Yew Tree Road
  - A new signal controlled left slip to bypass the roundabout for traffic travelling to the M62
  - Dedicated northbound cycle lane (Yew Tree Road to roundabout)

- 10.41 The proposed development will provide a contribution towards the improvements to this main arterial route. A metro sustainable travel contribution will also be sought (considered further below). A Travel Plan shall also be sought via condition, to minimise vehicle movements.
- 10.42 Based on this assessment and provisions to be secured via condition and S106, planning officers and K.C. Highways are satisfied that the proposal development would not cause harm to the safe and efficient operation of the highway through increased traffic movements.
- 10.43 Looking beyond traffic generation to the specific details of the proposal, access has been applied for. However, the proposed access is the same as that approved via 2017/90180 and has been construction. The access is considered acceptable to serve the proposed development cumulative with 2017/90180.
- 10.44 Other factors relating to highways, including parking, serving and internal turning, fall under consideration of the Reserved Matters. The indicative details provided at this time suggests that acceptable parking, serving and internal turning arrangements could be secured and do not raise concerns. Additionally, conditions are to be imposed requiring technical details of the internal adoptable roads, any retaining walls adjacent to the highway and a construction management plan, along with relevant informative notes.
- 10.45 PROW HUD/399/10, part of the Kirklees Way, runs through the site. KC PROW welcomes the separation of the public footpath Huddersfield 399 from the proposed estate road, but would ask for further details of the surface, separation, boundary treatment and details of the estate road crossing the footpath. Public footpaths are not footways and KC PROW would not look to support the public footpath being subsumed into an adjacent tarmac surfaced footway. Officers proposed that the above be addressed via condition, with technical details of the proposed works to the PROW and its relationship to the development to be provided at Reserved Matters stage.
- 10.46 In conclusion, subject to the detailed conditions and S106 agreement provisions, officers and K.C. Highways are satisfied that the proposed development would not harm the safe and efficient operation of the Highway, in accordance with LP21 of the KLP and Chapter 9 of the NPPF.

#### Planning contributions

##### *Affordable Housing*

- 10.47 In accordance with Policy LP11 of the LP and the Interim Affordable Housing Policy 2016 the provision of affordable housing is a material planning consideration. These policies seek a contribution of 20% of built units is sought.
- 10.49 As the application is made at outline with the number of units and their size not detailed, in order to secure this requirement a standard condition securing this provision can be imposed for when further details are available.

### *Education*

- 10.50 In line with the requirements of 'Providing for Education Needs Generated by New Housing' (KMC Policy Guidance), depending on the number of units sought at Reserved Matters stage (25+), the proposed development is likely to attract a contribution towards additional School Places it generates.
- 10.51 Given that the number of dwellings proposed is indeterminate at this stage, it is considered that a standard education contribution condition should be imposed and the matter examined at Reserved Matters stage, when the number of dwellings proposed is put forward.

### *Highways*

- 10.52 It has been previously mentioned WYCAS Metro seek a contribution for sustainable travel, suggested as bus passes. The aim of this is to support sustainable transport measures. Another potential option is for the contribution to be used to enhance the Kirklees Way, which goes through the site. The need for such provisions would be determined at reserved matters stage, where the number of dwellings is confirmed, and a relevant condition is proposed.

### *Public Open Space*

- 10.53 LP63 requires the provision of Public Open Space and Local Areas of Play for residential developments. The amount requires depends on the number of units proposed, which is unknown at this time. In order to secure this provision at this time, a condition can be imposed. The layout of the POS and LAP, if an on-site contribution is proposed, will need to be considered at Reserved Matters stage (layout / landscape), or alternatively an off-site financial contribution, if found to be appropriate.

### Other Matters

#### *Air pollution*

- 10.54 In accordance with government guidance on air quality mitigation, outlined within the NPPG and Chapters 9 and 15 of the NPPF, local policy contained within policies LP24 and LP51 and the West Yorkshire Low Emission Strategy Planning Guidance seeks to mitigate Air Quality harm.
- 10.55 Considering the site from a master-planning perspective, an air quality impact assessment was submitted for application 2014/93039 for the erection of 190 dwellings on the majority of the former POL site (now a housing allocation) and an update to this assessment was carried out for a subsequent full planning application for 95 dwellings on the same part of the POL (2017/90180), with the development for 95 houses currently being built out. Under both assessments the air quality impacts were found to be imperceptible having regard to national guidance.
- 10.56 Progressing from the above, given the scale and nature of the development officers seek the provision of electric vehicle charging points, one per dwelling. The purpose of this is to promote modes of transport with low impact on air quality, in accordance with the aforementioned conditions.

### *Climate change*

- 10.57 On 12th November 2019, the Council adopted a target for achieving 'net zero' carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan pre-dates the declaration of a climate emergency and the net zero carbon target, however it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications, the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda.
- 10.58 The application is supported by a climate change statement. It highlights the site's close proximity to local stores, which will reduce car dependence. Other amenities, including restaurants, communities' centres and nearby bus routes, are also raised. At reserved matters, it is intended to include details for bike storage and charging points. Consideration has been given, and continues to be given, to minimising flood risk and maximising solar gain. Finally, they reference the strict requirements of building regulations which will be complied with, and the additional expectations of the NHBC (National House Building Council) who they seek certification from.
- 10.59 The application is at outline stage. Therefore, confirmation of the above will need to be secured at Reserved Matters stage. Nonetheless, officers are satisfied that the proposal has demonstrated that the site has the capability to be developed without harming the climate change agenda.

### *Contamination and Contaminated land*

- 10.60 The proposed development is adjacent to a historic landfill site and because of that together with the size of the proposed development contaminated land issues need to be considered. The applicant has submitted a Preliminary Geoenvironmental Investigation by Lythos dated April 2014 (ref: 1841/1). However, the submitted report (which has been previously assessed and accepted in connection with a previous application on site) is now 6 years old. Over the intervening years, there may have been potentially contaminative events on the site and adjacent land that the submitted report will not have considered. Therefore, notwithstanding the submitted details, a new Phase 1 report, or an update addendum to the submitted report is necessary.
- 10.61 The contaminated land conditions would have to be pre-commencement. This is necessary to ensure that adequate information pertaining to ground conditions and coal mining legacy is available to enable appropriate remedial and mitigation measures to be identified and carried out at the appropriate stage of the development process. Officers support the implementation of these conditions, to comply with policy LP53 of the LP and Chapter 15 of the NPPF.

- 10.62 Further to the above, the site is 170m from a former landfill site. This separation is considered sufficient to prevent reasonable harm to the site from the former landfill (i.e. gas generated) and will be considered in the conditioned contaminated land survey. Nonetheless, the Council's Minerals Planning Officer advises an informative note be placed on the decision notice relating to the site's proximity to the landfill. This is deemed reasonable.

#### *Crime mitigation*

- 10.63 K.C. Crime Prevention have reviewed the proposal. They have no objection however have provided a set of advice on crime mitigation and prevention measures. These principally relate to finer details of the proposal. Where relevant these will be considered at Reserved Matters stage however a note, drawing the application to the attention of the advice provided, is to be placed on the decision notice. Subject to this, officers are satisfied that LP24 has been complied with at this stage.

#### *Drainage and flood risk*

- 10.64 The site is within Flood Zone 1. Therefore, neither a sequential test (flood risk) nor exemption test is required. However, as the site area exceeds 1ha a site-specific flood risk assessment is required. As major development a drainage strategy is also required.
- 10.65 Considering flood risk, consultation has been undertaken with the Environment Agency, who request that the application be considered against their standing advice. This includes the LPA satisfying itself that surface water management, access and evacuation and floor levels have been appropriately considered. Surface water management is considered below. Regarding access and evacuation and floor levels, officers are satisfied that this has been appropriately considered and will be enforced via a suitably worded condition.
- 10.66 Progressing to surface water management, as an outline application with most matters reserved, only early details may be provided. The submitted details have been reviewed by the Lead Local Flood Authority, who consider them to be acceptable subject to conditions requiring further full details. A condition is also sought for details on temporary surface water, during construction. The S106 is to include a clause regarding the management and maintenance of the surface water drainage system, prior to its formal adoption. Accordingly, officers are satisfied that the proposal complies with Policies LP27 and LP28 of the KLP and Chapter 14 of the NPPF.

#### *Ecology*

- 10.67 The application is supported by an Ecological Impact Assessment. This has been reviewed by K.C. Ecology. The site is predominantly lowland acid grass and offers limited ecological value, the loss of which may be offset through appropriate mitigation. However, as detailed design has not taken place yet, the mitigation cannot be detailed until Reserved Matters stage. Local and National Policy seeks for development to result in a net increase, in this case 10%, to local ecological value. A condition is sought requiring the reserved matters to be supported by a further Ecological Impact Assessment, to detail the 10% enhancement. Subject to this condition, officers are satisfied that the proposal complies with the aims of LP33 of the KLP and Chapter 15 of the NPPF.



### *Mineral safeguarding*

- 10.68 The site falls within a mineral safeguarded area. LP38 requires all such developments, bar certain exemptions, to demonstrate that:
- a. the mineral concerned is proven to be of no economic value as a result of the undertaking of a Mineral Resource Assessment; or
  - b. the development will not inhibit mineral extraction if required in the future; or
  - c. there is an overriding need for the development; or
  - d. the mineral can be extracted prior to the development taking place
- 10.69 The applicant has provided a mineral note in response. They highlight that the site is a housing allocation. Therefore *'there is a requirement for this site to come forwards for residential development in the near future to ensure that the requisite new housing numbers are delivered in the Plan Period and Kirklees are able to deliver their supply of housing in accordance with their 5-year supply position.'* It is also stated that the cost of extraction and remediation prior to development would be extensive and not economically viable. Finally, the presence of close residential properties would make mineral extraction compatible with the area.
- 10.70 Officers do not dispute the applicant's assessment and consider the proposal compliant with LP38.

### *Trees*

- 10.71 There are several unprotected mature trees within the site. There is also protected woodland, via an area TPO, around the south and east boundaries.
- 10.72 The proposal is outline with all matters reserved. Therefore, the proposal's impact upon the identified trees cannot be fully established. However, officers and K.C. Trees are satisfied that the indicative layout demonstrates that the site can be developed without causing undue harm to the protected trees. Any subsequent reserved matters application (layout, landscape specifically) should be supported by full arboricultural reports (securable via condition) to demonstrate there would be no materially detrimental impact upon the trees caused.
- 10.73 Based on the details held at this time, officers are satisfied that the proposal complies with the tree-based objectives of LP33 and Chapter 15 of the NPPF.

### Representations

- Insufficient infrastructure within the local area (i.e. schools and doctors) to support the increase in dwellings. Improvements are needed to local recreation areas.

**Response:** There is no policy or supplementary planning guidance requiring a proposed development to contribute to local health services. However, policy LP49 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).

With regards to school spaces, should the Reserved Matters proposed seek 25 or more units, an education contribution will be required. This is to be secured via condition. Regarding Public Open Space and Local Areas of Play, a contribution will be required unless they are provided on site. Their provision on site is not currently desired and therefore a contribution is expected. This will be used to enhance local areas, however as the value of the contribution is depended on the number of properties at Reserved Matters stage, a condition is sought.

- Traffic in the area is an issue; the proposal will exacerbate this. Improvements previously required have not been made yet. Several dwellings are fronting onto Burn Road and will result in the loss of parking.
- Concerns over access of waste service vehicles.

**Response:** A detailed assessment of the proposal's impact upon the local highway network has been undertaken within paragraphs 10.34 – 10.42. In summary, the previously required highway improvement works are considered sufficient to accommodate the proposed development. While not complete, they are secured via the build of app 2017/90180, which has commenced.

The dwellings initially shown fronting onto Burn Road on the indicative plan have been rotated and now are accessed from within the site. No new dwellings would be accessed from Burn Road.

Based on the details held, there is no prohibitive reason why satisfactory waste arrangement details could not be accommodated.

- Loss of open rural fields which contribute to the character of the area, as well as the traditional form of nearby dwellings. Loss of natural stone wall on Burn Road, which is an attractive feature.

**Response:** the visual impact of the proposal has been considered and found to be acceptable. While the proposal would remove the site as an open field, subject to good quality details being provided at Reserved Matters stage, it is not the site's development is not considered detrimental to visual amenity. The stone wall is shown on the indicative plans to be retained. Its retention will be considered at Reserved Matters stage.

- The proposal is too close to other developments and will have cumulative effects.

**Response:** Where relevant the cumulative impacts of the proposal have been considered within this report. Elsewhere, each application must be assessed on its own merits, giving due weight to planning history.

- Noise and air pollution will be caused.

**Response:** Residential units are not considered noise pollutants and residential users next to one another is not a cause for concern. Consideration on air pollution has been undertaken in paragraph 10.54 – 10.56 and is to be addressed via EV Charging Points.

- Loss of amenity to neighbouring residents, including privacy.

**Response:** Consideration on the impact upon neighbouring residents has been given within paragraphs 10.25 – 10.28. based on the indicative details held, officers are satisfied that satisfactory details may be provided at Reserved Matters stage.

- Trees on site have been felled prior to the application.

**Response:** Numerous trees along the site's south and east boundaries benefit from a TPO. However, officers currently have no evidence that any TPO trees have been felled.

- The proposal will cause flooding elsewhere.

**Response:** A flood risk assessment and surface water drainage strategy have been provided with the application. These have been reviewed by the LLFA (detailed in paragraphs 10.64 – 10.66) and found to be acceptable, subject to conditions.

- No. 10 Burn Road is a beautician and will be negatively impacted upon via the development.

**Response:** Following the amendments to remove direct access onto Burn Road, the existing parking arrangements on Burn Street shall be retained. Officers are satisfied that there will be no undue impact upon the business.

- The PROW running through the site is popular and often used. Concerns it may be lost or blocked. It should be improved.

**Response:** The PROW through the site is to be retained. A condition is to be imposed requiring the developer to detail what works are proposed to it. It will be kept separate from the highway footway.

## 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 seeks residential development on a housing allocated, with the development having the potential at reserved matters stage to achieve an acceptable density of dwellings. Therefore, the principle of development is considered to be acceptable. This is with a caveat that site specific constraints may prevent a density of 35 dwellings per ha, although will require detailed justification and demonstration from the applicant.

- 11.3 Considering the local impact, the proposal is outline with all matters reserved but access. The proposed access has already been approved via a neighbouring development and is considered suitable to serve the cumulative traffic demands of the proposals. Turning to the reserved matters of landscape, scale, appearance and layout, based on the indicative details provided, officers are satisfied that there are no prohibitive reason why appropriate details may not be provided at reserved matters stage.
- 11.4 This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development would constitute sustainable development and is therefore recommended for approval.

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

1. Standard OL condition 1 (submission of reserved matters)
2. Standard OL condition 2 (implementation of reserved matters)
3. Standard OL condition 3 (reserved matters submission time limit)
4. Standard OL condition 4 (reserved matters implementation time limit)
5. Contaminated land investigation and appropriate remediation pre-commencement conditions
6. Full drainage scheme to be provided prior to commencement
7. Overland flow routing plan to be provided prior to commencement
8. Temporary surface water drainage plan to be provided prior to commencement
9. Noise mitigation
10. Construction environmental management plan
11. EV Charging Points
12. Layout to include Arboricultural Impact and Methodology assessments
13. Affordable housing contribution
14. Education contribution
15. Public open space and local area of play contribution
16. Metro contribution
17. Ecological Impact Assessment, to include 10% net gain
18. Done in accordance with FRA.
19. PROW works to be detailed at Reserved Matters stage
20. Internal adoptable roads details to be provided prior to development commencing
21. Construction management plan to be provided prior to determination
22. Private parking areas to be provided
23. Travel Plan to be provided
24. Structural details provided for retaining walls adjacent to the highway

Note: Standard PROW advise

Note: Informative regarding Crime mitigation notes

Note: Advisory note on proximity to former landfill site

Note(s): Highway informative

## **Background Papers**

### Application and history

Files accessible at;

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019/94051>

### Certificate of Ownership

Certificate B signed. Notice served on Harron Homes, Colton House, Temple Pint, Leeds, LS15 9LJ

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## Report of the Head of Planning and Development

### STRATEGIC PLANNING COMMITTEE

Date: 29-Jul-2020

**Subject: Planning Application 2020/90348 Erection of warehouse unit (B8) and alterations to Chapel Street land at, Chapel Street, Taylor Hill, Huddersfield**

### APPLICANT

Stuart Developments

### DATE VALID

27-Feb-2020

### TARGET DATE

23-Apr-2020

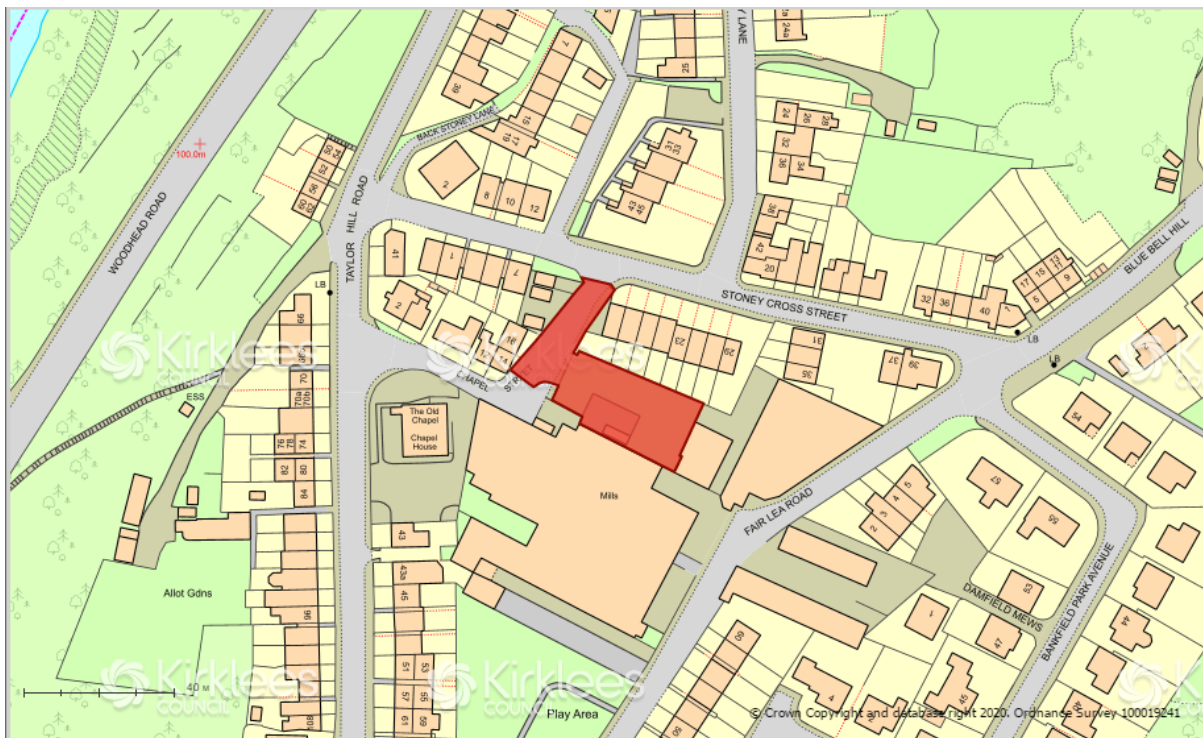
### EXTENSION EXPIRY DATE

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

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

### LOCATION PLAN



Map not to scale – for identification purposes only

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**Electoral wards affected: Newsome Ward**

**Ward Councillors consulted: No**

**Public or private: Public**

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## **RECOMMENDATION**

DELEGATE approval of the application and the issuing of the decision notice to the Head of Planning and Development in order to complete the list of conditions including those contained within this report and to secure a S106 agreement to cover the following matters:

1. Secure the management and maintenance arrangement covenant for the access

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

## **1.0 INTRODUCTION**

- 1.1 This application seeks the erection of a warehouse unit (B8) and alterations to the access street, Chapel Street.
- 1.2 The application is brought to Committee on the request of Cllr Andrew Cooper. This is due to concerns over the poor access and state of the current highway network, which will result in difficulty with loading and unloading. Furthermore, Cllr Cooper considers that the proposal would reduce parking on an already congested street.
- 1.3 The Chair of committee has confirmed that for the above reasons for making the request are valid having regard to the Councillors' Protocol for Planning Committees.

## **2.0 SITE AND SURROUNDINGS**

- 2.1 The site is vacant overgrown land historically occupied by mill buildings. Concrete pads cover much of the site. The site is within a mix commercial and residential area.
- 2.2 An artificial earth bund has been made on the west boundary, separating the site from Chapel Street. Chapel Street is an unadopted lane, with no pavement, giving access to several dwellings and commercial properties. The south and east boundaries of the site are large blank stone walls of an adjacent mills. To the immediate north are residential properties, on a higher ground level, with their gardens backing onto the site.



### 3.0 PROPOSAL

- 3.1 A B8 storage building is to be erected, offering 230sqm of storage space and 100sqm of ancillary space (canteen, office, lobby etc.). The footprint is to be roughly rectangular, however the north elevation is to be stepped. The roof is to be an a-symmetrical double pitch, with a ridge height of 9.1m and lower eaves of 3.75m.
- 3.2 Walls are to be faced in grey cladding over a brick dwarf wall. Feature glazing is proposed over the entrance on the west facing elevation. The roof is to be grey panels, with rooflights.
- 3.3 Six parking spaces are to be provided, along with a waste store area and a secure compound. A 2m high mesh fencing and gate is to be erected along the west boundary. A 2m wide footway is to be provided along a 20m length of Chapel Street's east.

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

#### 4.1 Application Site

96/92165: Erection of 12 no. 2/3-bedroom townhouses – Conditional Full Permission

**Note:** included neighbouring land.

2000/92994: Erection of 5 terraced dwellings with ancillary car park and external works – Refused

2006/91487: Erection of six 2-bedroom apartments – Conditional Full Permission

2014/91457: Erection of three dwellings – Deemed Withdrawn

2018/91710: Erection of three dwellings – Withdrawn

#### 4.2 Surrounding Area

*Plots 1-8 Stoney Cross Street*

98/90646: Erection of 8 no town houses with integral garages (amended house type and siting) – Conditional Full Permission

**Note:** associated with 96/92165

*Deanhouse Interiors Ltd*

2016/91763: Erection of over-cladding of existing roof, removal of parapet wall to front and rear of building – Conditional Full Permission

#### 4.3 Planning Enforcement

None on the site or relevant within the area.

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

- 5.1 Officers sought further plans to establish the impact upon neighbouring residents. These were provided and evidenced that the proposal would not cause material harm. Further details were also requested by Highways and Ecology, provided and found to be acceptable.

## 6.0 PLANNING POLICY

### Kirklees Local Plan (2019)

- 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 statutory Development Plan for Kirklees is the Local Plan (adopted 27<sup>th</sup> February 2019).

- 6.2 The site is unallocated on the LP Policies Map.

- **LP1** – Presumption in favour of sustainable development
- **LP3** – Location of new development
- **LP7** – Efficient and effective use of land and buildings
- **LP21** – Highway safety and access
- **LP22** – Parking standards
- **LP24** – Design
- **LP28** – Drainage
- **LP30** – Biodiversity and geodiversity
- **LP51** – Protection and improvement of air quality
- **LP52** – Protection and improvement of environmental quality
- **LP53** – Contaminated and unstable land

### Supplementary Planning Guidance / Documents

- 6.3 The following are relevant Supplementary Planning Guidance / Documents published by Kirklees Council or national government.

- MHCLG: National Design Guide
- Kirklees Local Plan Supplementary Planning Document – Highways Design Guide

### National Planning Guidance

- 6.4 National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF), published 19<sup>th</sup> February 2019, and the Planning Practice Guidance Suite (PPGS), first launched 6<sup>th</sup> March 2014, together with Circulars, Ministerial Statements and associated technical guidance. The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

- **Chapter 2** – Achieving sustainable development
- **Chapter 4** – Decision-making
- **Chapter 6** – Building a strong, competitive economy
- **Chapter 11** – Making effective use of land

- **Chapter 12** – Achieving well-designed places
- **Chapter 14** – Meeting the challenge of climate change, flooding and coastal change
- **Chapter 15** – Conserving and enhancing the natural environment

## 7.0 PUBLIC/LOCAL RESPONSE

7.1 The application has been advertised via site notice and through neighbour letters to addresses bordering the site. This is in line with the Council's adopted Statement of Community Involvement.

7.3 The public representation period expired on the 2<sup>nd</sup> of April, 2020. Sixteen representations have been received in response to the application. The following is a summary of the comments made;

- Concerns over safety of people, including local children, walking on Chapel Street.
- Concerns that neighbour letters were not sent to all nearby properties.
- Insufficient details in regards operation of the site, including hours of use, safety, noise and odour pollution.
- Concerns over the impact upon local bats.
- Concerns over access to the adjacent mill for remedial works.
- Unwilling to share their right of access over the land for industrial / commercial premises.
- Concerns over the type of vehicle that will access the site, which are presumed to be HGVs.
- Chapel Street and others in the area are already congested, which the proposal will exacerbate.
- Concerns over accuracy of the plans, which are claimed to not include neighbouring dwellings or garages.
- The street is used for parking by local residents on an evening. The pavement would reduce the area for parking.
- Chapel Street is a residential street used by families. Commercial vehicles using it have in the past caused damage to vehicles parked upon it.
- The shown turning circle is impractical and will conflict with the other business adjacent to the site.
- Concerns over the impact upon local air quality.
- No consideration has been given to emergency vehicles accessing the site.
- The proposal will harm residential amenity through overshadowing
- The proposal will harm the view out of neighbouring properties.
- The proposed structure is visually unattractive.

### *Local ward member interest*

7.? As a minor development, local ward members were not notified of the proposal. However, Cllr Andrew Cooper contacted the case officer to express concerns. These related to the poor access and concerns over loading and turning at the site. Furthermore, the proposal would reduce parking on an already congested street. Due to these concerns, Cllr Cooper requested that the application be brought to committee if officers were minded to approve.

## 8.0 CONSULTATION RESPONSES

### 8.1 Statutory

K.C. Highways: No objection subject to condition and securing the management / maintenance of the access.

### 8.2 Non-statutory

K.C. Environmental Health: No objections subject to conditions.

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

## 9.0 MAIN ISSUES

- Principle of development
- Urban design
- Residential amenity
- Highways
- Other matters
- Representations

## 10.0 APPRAISAL

### Principle of development

#### *Sustainable development*

- 10.1 NPPF Paragraph 11 and LP1 outline a presumption in favour of sustainable development. Paragraph 8 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. The dimensions of sustainable development will be considered throughout the proposal. Paragraph 11 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 KLP Policies Map. LP2 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.

### *Commercial development*

- 10.3 The proposal seeks the commercial development of a brownfield site historically associated with a neighbouring mill. While the site is unallocated, both the Local Plan and NPPF establish a principle in favour of economic development. Furthermore, each have policies seeking the 'effective and efficient' use of land. This site is a brownfield site in an urban area that has become overgrown. Based on the site area, the application anticipates the development to accommodate 5 full time equivariant jobs. An office and canteen are shown, but are clearly ancillary to the main B8 use. Accordingly, the re-development of the site for a commercial use is welcomed in principle.
- 10.4 Notwithstanding the principle being acceptable consideration must be given to the impact upon the local environment. This shall be assessed below.

### Urban Design

- 10.5 LP24 requires that development promotes '*good design by ensuring: a. the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape*'. This complies with the guidance of Chapter 12 of the NPPF.
- 10.6 The site historically hosted mill buildings, evident by the concrete pads on site. It has become overgrown and attracts waste and tipping. Even if cleared, the site is not considered to contribute to the character of the area at present.
- 10.7 The site is between two forms of development; the large utilitarian mill buildings and modern vernacular dwellinghouses. To harmonise with the area, the structure must suitably transition between the two.
- 10.8 The proposed design is modern and does not directly replicate either the dwellings or mill in terms of scale, form or appearance. Through various design choices the evident scale of the building has been reduced. It has been set back into the site and adjoins the existing towering walls of the neighbouring mills. This allows the structure to appear visually distinct without appearing unduly prominent within the area. Other welcomed design features include the asymmetrical roof, with the ridge set adjacent to the larger mill, the use of glazing and the stepped north elevation. Furthermore, lightweight cladding is sought atop a brick plinth; the full use of traditional building materials (stone, brick) would notably increase the prominence of the building. Notwithstanding this, a condition is to be sought requiring material samples, to ensure suitable end products are used.
- 10.9 Externally a parking and loading area is to be sited to the front. This is reasonable. A dedicate waste storage area is shown, however details of its appearance are to be sought via condition. A 2m profiled mesh fence and gate is to be sited along the west / front elevation of the site. Such a feature is common and reasonable for a commercial development and will not look out of place.

- 10.10 Landscaping is shown to be to located along the north boundary. This is welcomed in principle, through the addition of greenery that would soften the appearance of the building. However, a formal landscaping strategy is sought to ensure appropriate native species are used and managed appropriately for a reasonable time period.
- 10.11 Subject to the proposed conditions, officers consider the building to be visually attractive and would suitably harmonise into the established character of the built environment, so as not to appear incongruous. The proposal is deemed to comply with LP24 of the KLP and chapter 12 of the NPPF.

#### Residential Amenity

- 10.12 LP24 seeks to protect the amenity of residents, stating proposals should 'provide a high standard of amenity for future and neighbouring occupiers; including maintaining appropriate distances between buildings'. This reflects the guidance of Chapter 12 of the NPPF.
- 10.13 The proposed building will be prominently visible from the rear windows and garden spaces of nos. 15 – 27 Stoney Cross Street. There is no right to a view in planning, with the principle consideration being whether the development will lead to material harm through overbearing and overshadowing through its proximity.
- 10.14 Due to the layout of the dwellings and the proposed building, the separation distances vary. At its closest point the structure would be located 12.05m from the nearest neighbouring dwelling, with the maximum distance being 13.8m. However, it should be noted that the roof falls towards the dwellings. Therefore, at the closest point, the structure is at its lowest, with an eaves height of 3.6m. The impact of this is mitigated by the application site being on a ground level 1.4m below the rear levels of nos. 15 – 27. As a result, the evident height would be 2.4m, further reduced in prominence by the 2.0m high boundary fence. As the height of the building slopes to its maximum height of 9.1m (still on a ground level 1.4m lower, for an evident height of 7.7m), the separation distance increases to 25m. Additionally, the new building would be attached to the existing mill. The existing mill is large in size, with an eaves height of 7.9m and ridge in excess of 10.9m. The new building would be sited within the silhouette of the mill. Finally, the applicant is proposing a soft landscaping scheme along the shared boundary to soften the appearance of the structure. This is to be secured via condition.
- 10.15 It is acknowledged that the new building would be prominently visible from the rear windows and garden spaces of 15 – 27 Stoney Cross Street. Nonetheless, based on the above factors and the established characteristic of the area of dwellings backing onto commercial buildings, on balance officers are satisfied that the proposal would not represent materially harmful overbearing upon the residents.
- 10.16 Progressing to overshadowing, the new building is due south of nos. 15 – 27 Stoney Cross Street. Nonetheless, the applicant has provided a plan showing winter and summer sun. This demonstrates that overshadowing would not be caused by the building, with any overshadowing that would be caused upon the domestic gardens would be lesser than that shown by the existing 2m tall timber fence.

- 10.17 No windows are facing 15 – 27 Stoney Cross Street and the external areas are below the 2m boundary fence, preventing overlooking concerns. A lighting strategy is to be requested, to ensure no harmful light pollution upon neighbouring dwellings.
- 10.18 Other residential units in the area, excluding nos. 15 – 27 Stoney Cross Street, are considered a sufficient distance from the proposed building to not be materially impacted upon by it. This includes nos. 14 and 16 Chapel Street: while facing the site, they are in excess of 28m from the building. They would overlook the front car park, loading area, and perimeter fence (2.0m profiled mesh) but none of these features being visible raise material amenity concerns.
- 10.19 Turning to noise pollution, warehouses are not typically considered a high noise pollutant, with noise typically associated with external comings and goings more so than internal processes. K.C. Environmental Health have requested that the hours of goods vehicle movements and forklift trucks (including unload and load of vehicles, as well as deliveries to and from the site) outside the site be limited to:
- Monday to Friday: 0730 – 1800  
Saturday: 0800 – 1300  
Sunday and Bank Holidays: None
- 10.20 Given their age, the hours of use of the neighbouring commercial businesses are unknown. Nonetheless, given the site's proximity to the neighbouring properties, officers consider the above reasonable to prevent material harm to the amenity of neighbouring residents through noise pollution.
- 10.21 The above assessment has considered the proposals impact upon the residential amenity of neighbouring residents. Subject to the conditions which have been proposed, on balance officers are satisfied that the development would not result in material harm to the amenity of neighbouring residents, in accordance with LP24 and LP52 of the KLP and Chapters 12 and 15 of the NPPF.

### Highways

- 10.22 First considering access, it is proposed to use Chapel Street, an unadopted road in a poor state of repair. Chapel Street is used by several residential and commercial premises. The applicant has proposed a 2m wide footway along Chapel Street's east, from Stoney Cross Street to the site. This would leave the road 5.5m. It is also stated that part of the road, used for turning, would be made to an adoptable standard. It is highly unlikely that Chapel Street could be made to an adoptable standard, given its constraints. Nonetheless, officers are to impose a condition that requires details of the provision of the footway and details of the improvement of Chapel Street (within the red-line) be provided and implemented. The applicant has also stated that the area within the red-line would then be managed and maintained by the occupier of the unit, or if vacant the land owner, via a covenant. This covenant is to be secured via a S106 agreement. With the provision of a footway, improvements to the road and long-term management / maintenance secured, on balance the use of Chapel Street is considered acceptable and would represent a net enhancement.

- 10.23 Turning to traffic generation, the applicant has provided a Highways technical note. As no end user has been identified TRICs data has been used, although it is highlighted that the database does not hold records for B8 units of this size. Considering the smallest size available on TRICs against available data of comparable sites, it is concluded that traffic movements associated with the site would be classify it as a 'low traffic generator'. K.C. Highways have reviewed the submitted details and do not raise concerns.
- 10.24 Progressing to other highway considerations, six car parking spaces are proposed which is considered acceptable. Their provision is to be secured via condition. Given the size of the building and the proposed access, larger vehicles would not be practically able to access the site, limiting vehicles to medium goods vehicles, similar to those which access the other commercial unit on Chapel Street. A loading area and turning facilities (using part of Chapel Street) for medium vehicles has been shown and is considered acceptable. A dedicated waste area is shown and considered acceptable, with details previously stated to be sought and secured via condition.
- 10.25 Concluding on the above, officers are satisfied that subject to the proposed conditions, the development would not harm the safe and efficient operation of the Highway, in accordance with LP21 of the KLP.

#### Other Matters

##### *Air Quality*

- 10.26 In accordance with government guidance on air quality mitigation, outlined within the NPPG and Chapter 15 of the NPPF, and local policy contained within LP24 and LP51 and the West Yorkshire Low Emission Strategy Planning Guidance, the LPA seeks to mitigate Air Quality harm. Given the scale and nature of the development officers seek the provision of one electric vehicle charging point. The purpose of this is to promote modes of transport with low impact on air quality, in accordance with the aforementioned policy.

##### *Climate change*

- 10.27 On 12<sup>th</sup> of November 2019, the Council adopted a target for achieving 'net zero' carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan pre-dates the declaration of a climate emergency and the net zero carbon target, however it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications, the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda.



- 10.28 The proposal seeks to redevelop brownfield land. Instead of seeking a new structure on Greenfield land, the applicant has identified a site which is not operating optimally and identified a more viable use for the site. The building will also be built to modern standards, compared to the existing aged building. Considering these factors, officers are satisfied that the proposal will not harm the climate change agenda

#### *Contaminated land*

- 10.29 The site is identified as being potentially contaminated due to its previous use as a mill. It is also noted that earth bunds have been formed within/on the boundary of the site that would have to be removed to facilitate development. The origin of the material used in these bunds is unknown. While the proposal is for a commercial use, it is adjacent to residential units. Accordingly, conditions are to be sought requiring ground investigation and appropriate procedures depending on the outcome. This is to accord with Policy LP53 of the Local Plan.

#### *Ecology*

- 10.30 The site is brownfield land which has developed scrub vegetation. In itself the site is considered of limited ecological value. However, it falls within a wider Bat Alert Zone and Greater Crested New Area. A bat survey has been undertaken which identified no bats roosting at the site. A GCN method statement has also been provided. Each includes recommendations and methods for the development of the site, to be secured via condition. Subject to this, officers are satisfied that the proposal will not harm local ecology. This is subject to a lighting strategy, to ensure no harmful lighting pollution.
- 10.31 Notwithstanding the above, policy seeks for development to result in a net enhancement for ecology. A Landscape and Ecological Management Plan has been provided within the application; although, it relates to an early proposal and is out of date. Nonetheless its principles are found to be acceptable and demonstrate that the site can be reasonably enhanced. A condition for an updated LEMP, prior to development commencing, is to be secured. Subject to this, officers consider the proposal to be compliant with LP33 of the KLP and Chapter 15 of the NPPF.

#### *Permitted development*

- 10.32 Under permitted development B8 users (up to 500sqm) may change to a B1 use. The above assessment has been made on a B8 user and a B1 use may be materially different (greater noise, traffic movement etc.). It is therefore considered reasonable and necessary to remove PD rights for the change of use of the site.

#### Representations

- Concerns that neighbour letters were not sent to all nearby properties.

**Response:** Neighbour Notification Letters were sent to all adjacent addresses which shared a boundary with the red-line plan. The site was also advertised by site notice. This procedure is in accordance of the Development Management Procedure Order (2015) and the Council's Development Management Charter.

- Insufficient details in regards operation of the site, including hours of use, safety, noise and odour pollution.
- Concerns over the impact upon local air quality.

**Response:** The applicant does not have an 'end user' for the site identified. Hours of use are unknown, however a B8 use is not considered a harmful noise or odour pollutant. This is subject to a condition limiting hours of external operation and deliveries, as discussed within paragraphs 10.19 and 10.20. Safety considerations would fall under separate legislation. Regarding air quality, in accordance with local policy the scale of the development warrants the imposition of a condition for an electric vehicle charging points, to encourage the use of electric and low carbon vehicles.

- Concerns over the impact upon local bats.

**Response:** A bat survey has been provided and found to be acceptable. A landscape and ecological management plan is to be secured via condition which will result in an enhancement to local ecology.

- Concerns over access to the adjacent mill for remedial works.
- The proposal will harm the view out of neighbouring properties.
- Unwilling to share their right of access over the land for industrial / commercial premises.

**Response:** The above form private matters between the parties involved and do not form material planning considerations.

- Concerns over accuracy of the plans, which are claimed to not include neighbouring dwellings or garages.

**Response:** A dwelling, removed from the site, is not shown on the location plan. As the dwelling is removed and the purpose of the location plan is to show the site's location, this is not considered an issue. The block plan's scale is low enough to not show the dwellings site. In terms of garages, these are noted to not be shown fully, however does not impact upon the ability to assess the proposal.

- Concerns over the type of vehicle that will access the site, which are presumed to be HGVs.
- Chapel Street and others in the area are already congested, which the proposal will exacerbate.
- The street is used for parking by local residents on an evening. The pavement would reduce the area for parking.
- The shown turning circle is impractical and will conflict with the other business adjacent to the site.
- No consideration has been given to emergency vehicles accessing the site.
- Concerns over safety of people, including local children, walking on Chapel Street.
- Chapel Street is a residential street used by families. Commercial vehicles using it have in the past caused damage to vehicles parked upon it.

**Response:** A Highways assessment has been made within paragraphs 10.22 to 10.25, where the impact was found to be acceptable. In response to the above, the applicant has provided an acceptable swept path plan for a medium sized (7.5t) medium good vehicle. Given the size of the site, this is envisioned to be the principal form of vehicle accessing the site. In terms of parking, six spaces are proposed which is considered enough for the scale of the building. The provision of a footway is not anticipated to result in the material loss of parking capacity of Chapel Street nor change existing access arrangement for emergency vehicles. The provision of a footway is however considered beneficial for pedestrians. Given the nature of Chapel Street, on-road turning is not opposed. Past damage to vehicles does not form a material consideration.

- The proposal will harm residential amenity through overshadowing and overbearing.
- The proposed structure is visually unattractive.

**Response:** The proposal's impacts upon visual amenity and residential amenity have been assessed within paragraphs 10.5 – 10.21. These sections concluded that, subject to conditions, the proposal complies with policies relating to visual and residential amenity and would not cause material harm.

## **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 seeks commercial development on unallocated brownfield land, adjacent to an established commercial area. There is a general principle in favour of supporting economic development. Accordingly, the principle of commercial development on the site is considered acceptable.
- 11.3 Regarding the local impact, assessments have been made against material planning considerations. On balance the proposal is not considered harmful to the amenity of neighbouring residents. Visually the building is considered acceptable and, subject to condition and S106 agreement, would not cause harm to the safe and efficient operation of the Highway. Other planning considerations have been identified and found acceptable against policy.
- 11.4 This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development would constitute sustainable development and is therefore recommended for approval.

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

1. Three-year time limit
2. To be undertaken in accordance with the plans
3. Contaminated land condition set, requiring investigation and appropriate remediation (pre-commencement)
4. Landscaping strategy and management plan
5. Material samples to be provided.
6. Goods vehicle movements and forklift trucks hours controlled
7. Waste storage area details provided, implemented and retained.
8. Updated Landscape and Ecological Management Plan to be provided, prior to development commencing, for ecology, visual amenity and residential amenity.
9. Works to be done in accordance with Bat Survey and Great Crested Newt Method Statement recommendations
10. Lighting strategy, for amenity and ecology
11. Remove PD rights for change of use to B1.
12. Parking spaces to be provided
13. EV Charging Point

### **Background Papers**

#### Application and history files

May be found at;

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2020%2f90348>

#### Certificate of Ownership

Certificate D signed. Noticed placed in Huddersfield Examiner. No declarations received.

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## Report of the Head of Planning and Development

### STRATEGIC PLANNING COMMITTEE

Date: 29-Jul-2020

**Subject: Planning Application 2019/93246 Installation of 2 fibre cabins, twelve air conditioning units, two generators and perimeter fence Land to the south of Jack Lane, Dewsbury, WF17 6JT**

### APPLICANT

City Fibre

### DATE VALID

30-Jan-2020

### TARGET DATE

26-Mar-2020

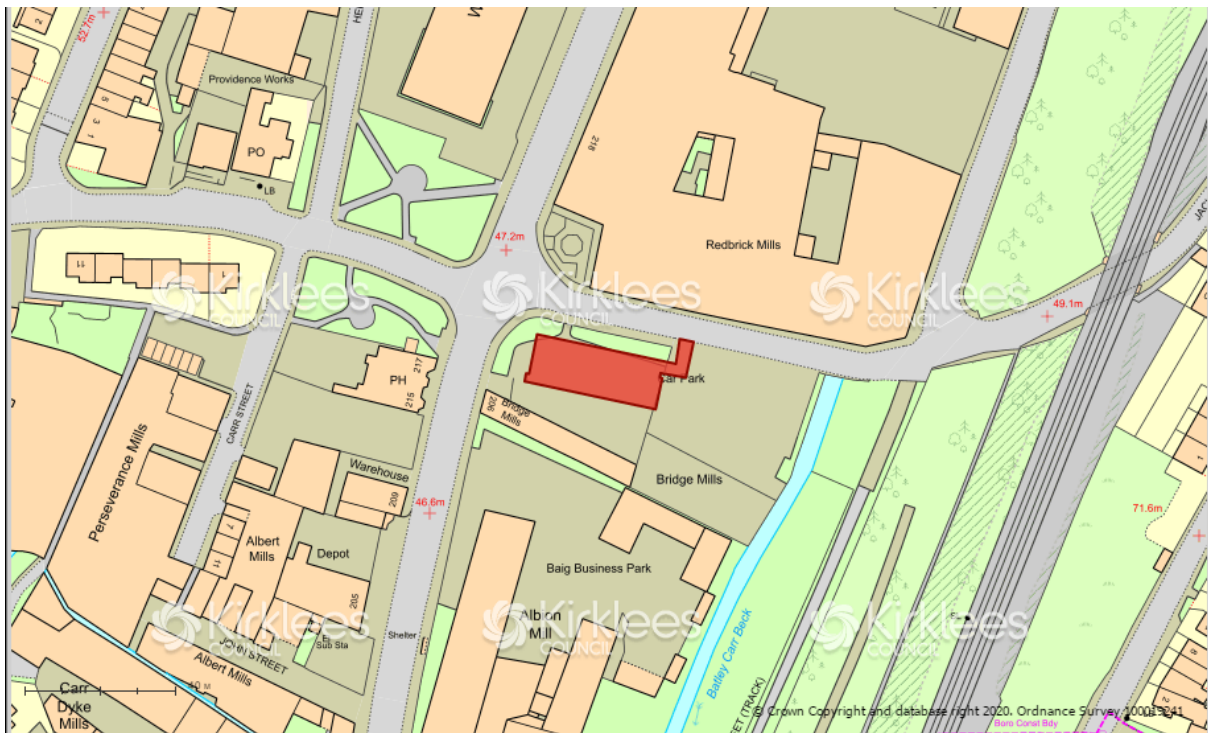
### EXTENSION EXPIRY DATE

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

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

### LOCATION PLAN



Map not to scale – for identification purposes only

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**Electoral wards affected: Batley East**

**Ward Councillors consulted: No**

**Public or private: Public**

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**RECOMMENDATION:**

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

**1.0 INTRODUCTION:**

- 1.1 The application is for the erection of two fibre cabins with 12 no. air conditioning units, two generators and a perimeter fence.
- 1.2 The application is reported to Strategic Planning Committee at the request of Cllr Habiban Zaman. The reasons for the request are as follows:

*“Can I request this application to go to planning committee and panel members to undertake a site visit too. My reasons for this are I feel the officers have not taken into consideration the impact this application will have on highways issues.*

*Highways officers do not appear to have taken into account the inevitable overspill on to adjacent streets. This has to be a material consideration in this application in my view, irrespective of the rights or otherwise to park on the land at present. Overspill on to adjacent streets will occur, that’s a fact and a direct consequence of this application if it is approved. We as councillors will have to deal with community concerns and waste tax payers money and waste council officers time in dealing with traffic and highways related issues.*

*A flood risk sequential assessment is compulsory (that’s according to the National Planning Policy Framework and Local Plan Policy LP27) and this is the responsibility of the Local Planning Authority, not the Environment Agency. Environmental Health categorically did not say a noise report could be left until after determination.*

*To approve this application without a flood risk sequential assessment would be directly contrary to national and local planning policy.*

*A community petition is also being planned to be delivered at the next full council meeting”*

## **2.0 SITE AND SURROUNDINGS:**

- 2.1 The application site is an enclosed tarmac surfaced site which is under the ownership of Kirklees Council located at the junction of Jack Lane and Bradford Road, Batley. To the North of the site is Redbrick Mills which is considered to be a non-designated heritage asset. To the South is a single storey stone building which operates as the Jumma Masjid Mosque. To the East of the site is open staff parking for Redbrick Mills.
- 2.2 On the frontage of the application site along Jack Lane, there is a line of mature trees and low boundary wall to the West. The boundaries of the site to the East and South are open.
- 2.3 Until recently the application was leased to Redbrick Mills for staff parking. This use has since ceased.
- 2.4 The majority of the application site is within a Coal Mining Low Risk Area as defined by the Coal Authority. The site is also within Flood Zone 2.

## **3.0 PROPOSAL:**

- 3.1 Full planning permission is sought for the erection of a data centre which comprises the erection of two fibre units containing 12 no. air conditioning units and 2 no generators contained within an outdoor compound.
- 3.2 Due to the operation of a large number of computer systems, which are typically required to operate at low temperatures, additional air conditioning will be required for the proposed data centres. The proposal includes the installation of freestanding air conditioning units on the northern exterior of the cabins. The units comprise four 25Kw air conditioning units with dimensions of 0.7 metres square and a height of 1.7 metres and two further 7.1Kw air conditioning units with dimension of 0.9m by 0.3m and a height of 0.8 metres. To the north west of the phase 1 cabin, a meter cabinet is proposed on a concrete base.
- 3.3 Access will be from the proposed 3m wide double access gate through the existing car park onto Jack Lane. A new 2.4m high mesh fence on concrete ring beam and a crash barrier are proposed.

## **4.0 RELEVANT PLANNING HISTORY:**

- |                |   |
|----------------|---|
| 4.1 2004/92855 | Change of use of mill complex to a mixed use comprising retail, cafes, restaurant, academy of visual arts, art gallery, community theatre space, studio workshops and erection of an extension<br>Conditional full permission |
| 97/90880       | Use of land as a temporary car park<br>Conditional full permission  |
| 93/04703       | Renewal of temporary permission for change of use of part of warehouse to retail and associated parking<br>Conditional Full Permission  |
| 90/03270       | Replacement of fire damaged warehouse<br>Conditional full permission  |

*Relevant planning application on neighbouring sites*

2020/91099 Erection of B8 industrial unit with improvements to site layout at land  
Undecided

**5.0 HISTORY OF NEGOTIATIONS:**

5.1 The case officer has been in negotiation with the agent to secure additional information necessary for the determination of the application which included the following:

- A flood risk sequential test
- Amendments to the boundary treatment following initial comments from Conservation and Design Officers
- Amended red line boundary and land ownership certificates as a result of discrepancies relating to the access to the site

This information has been submitted and subsequently reviewed by consultees, and found to be acceptable subject to conditions, for the reasons set out in the main assessment below.

**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 statutory Development Plan for Kirklees is the Local Plan (adopted 27<sup>th</sup> February 2019).

6.2 The site is Unallocated within the Kirklees Local Plan.

6.3 Kirklees Local Plan (KLP):

The following policies are considered relevant:

**LP1** – Achieving sustainable development

**LP2** – Place Shaping

**LP3** – Location of new development

**LP21** – Highway Safety and Access

**LP22** – Parking

**LP24** – Design

**LP27** – Flood Risk

**LP28** - Drainage

**LP30** – Trees

**LP33** – Biodiversity and geodiversity

**LP35** – Historic environment

**LP38** – Minerals safeguarding

**LP51**– Protection and improvement of local air quality

**LP52**– Protection and improvement of environmental quality

**LP53** – Contaminated and unstable land



## 6.4 National Planning Policy Framework (NPPF):

**Chapter 2** – Achieving sustainable development

**Chapter 11** – Making efficient use of land

**Chapter 12** – Achieving well designed places

**Chapter 14** – Meeting the challenge of climate change, coastal change and flooding

**Chapter 15** – Conserving and enhancing the natural environment

**Chapter 16** – Conserving and enhancing the historic environment

**Chapter 17** – Facilitating the sustainable use of minerals

## 6.5 Supplementary Planning Guidance

- Highways Design Guide Supplementary Planning Document
- Kirklees Local Plan allocations and designations
- West Yorkshire Low Emissions Strategy and Air Quality and Emissions Technical Planning Guidance

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

7.1 The application has been advertised in accordance with the Council's adopted Statement of Community Involvement.

7.2 As a result of the initial statutory publicity period, 2 letters of objection have been received. The statutory publicity was extended to reflect a change to the red line boundary of the application site. However, no further objections were received. The concerns raised are summarised as follows:

### *Highways*

- Possible traffic delays on Jack Lane/Bradford Road throughout the construction phase.
- Impact on the level of parking for the neighbouring established uses
- Legal right to the land through the passage of time
- Potential displacement of vehicles onto the highway due to loss of off-street parking spaces which would be of detriment to highway safety and result in obstructions to the free-flow of traffic and inter-visibility.

### *Visual and residential amenity*

- Concerns over the level of noise generated by the air conditioning units and generators (when used) on the neighbouring residential units
- The proposed development is in a prominent position and is not visually attractive and screening is only provided by the existing trees in the summer months
- The design is out of keeping with neighbouring buildings
- The proposal would have a negative impact on the significance of the non-designated heritage asset (Redbrick Mills)

### *Flood Risk and Drainage*

- *A flood risk sequential test is required but has not been submitted to support the application*
- *The Applicant's Flood Risk Assessment identifies the proposed development as 'essential infrastructure' but has not identified why the proposal is classed as 'essential utility infrastructure' given that broadband is more of a desirable than an essential utility.*

- *There do not appear to be any reasons why the proposed development needs to be located in a flood risk zone for operational reasons.*
- *The proposed development would most likely fall within the 'highly vulnerable' category and therefore an exceptions is also required.*

7.4 A response to the comments received above will be provided in section 10 of this report.

## **8.0 CONSULTATION RESPONSES:**

The following is a brief summary of consultee advice (more details are contained within the assessment section of the report, where appropriate):

### **8.1 Statutory:**

- *K.C Highways Development Management – No objection subject to the addition of condition relating to the submission of a construction management plan*
- *KC Lead Local Flood Authority – No objection*
- *The Environment Agency – No objection as the site is located in flood zone 2 and is considered to a use classed as 'less than vulnerable'.*

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

- *K.C Trees – No objection subject to the condition of the planting of replacement trees should any be removed as part of the development.*
- *K.C Environmental Health – No objection subject to the condition of a noise report prior to the commencement of development.*
- *K.C Conservation and Design – No objection following amendments to the proposed boundary treatment.*

## **9.0 MAIN ISSUES**

- Principle of development, land use and sustainability
- Visual amenity/local character
- Residential amenity
- Highway issues
- Other Matters
- Representations

## **10.0 APPRAISAL**

### **Principle of development, land use and sustainability**

10.1 Local Plan Policy 1 states that the Council will take a positive approach that reflects the presumptions in favour of sustainable development contained within the National Planning Policy Framework to secure development that improves the economic, social and environmental conditions in the area. Proposals that accord with policies in the Kirklees Local Plan will be approved without delay, unless material considerations indicate otherwise.

- 10.2 The application has no specific allocation within the Kirklees Local Plan. As such Policy LP 24 is relevant in that it states that proposals should promote good design in accordance with a specific set of considerations. All the considerations are addresses within the assessment. Subject to these not being prejudiced, this aspect of the proposal would be considered acceptable in principle.
- 10.3 The proposed development is for a permanent data centre which would represent essential infrastructure within Kirklees to ensure that high-speed full fibre broadband is accessible to Kirklees users. The use of the data centre is regarded as 'storage' of both physical computer systems and of virtual data (use class B8).
- 10.4 The statement of vision for Kirklees within the Kirklees Local Plan (paragraph 4.2) references the need for 'high speed broadband' for the 'next generation digital connectivity'.
- 10.5 Paragraph 7.32 of the Local Plan states 'The delivery of high speed broadband technologies is to be supported and will form a crucial part of high quality communication infrastructure to support the need for long term business prosperity, to increase local employment opportunities, reduce the need to travel and improve business links both locally and internationally'.

#### **Visual amenity**

- 10.6 Policy LP24 states that good design should be at the core of all proposals. Proposals should incorporate good design by ensuring that the form, scale, layout and details of all development respects and enhances the character of the townscape and landscape. This is supported by The National Planning Policy Framework (NPPF) which sets out that, amongst other things, decisions should ensure that developments are sympathetic to local character ...while not preventing or discouraging appropriate innovation or change (para.127 of the NPPF).
- 10.7 Paragraph 11.8 of the KLP also refers to the need for telecommunications and the impact of the infrastructure on visual amenity stating 'broadband provision is an important consideration throughout the district and applicants should support the roll out of superfast broadband provision in the district. All telecommunications infrastructure should be capable of accommodating changes in technological requirements, without having a negative impact on the streetscene'.
- 10.8 The proposed development will be located within a prominent position at the junction of Jack Lane and Bradford Road and located directly adjacent to Redbrick Mills, which are considered to be a non-designated heritage asset. Therefore consideration should be given to the impact of the proposal on visual amenity and the impact on the significance of the heritage asset.
- 10.9 The proposals, within their urban context, would not result in harm to visual amenity, by virtue of their design and scale. Furthermore, the appearance of the fencing proposed is similar to that found within the locality and would not appear out of character within this context. For these reasons, the proposals are considered acceptable from a visual amenity perspective and would accord with Policy LP 24 of the Kirklees Local Plan and guidance contained within Chapter 12 of the NPPF.

### **Residential Amenity:**

- 10.10 Chapter 12 of the National Planning Policy Framework states that planning decisions create places that are safe, inclusive and accessible and which promote health and wellbeing, with a high standard of amenity for existing and future users, and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
- 10.11 The closest residential dwellings which should be considered are flats 1 to 3 Croft Street located to the West. There is a separation distance of 20m from the site to the front elevation of the residential dwellings of 1 to 3 Croft Street which are located on the opposite side of Bradford Road at a slight angle.
- 10.12 Environmental Health Officers consider that the proposed fibre units could potentially impact on the level of residential amenity enjoyed by the neighbouring residential uses and adjacent Mosque. Therefore, a condition is recommended to secure the submission of a noise report to address how the existing uses will be protected from the proposed development. The noise report will be required to consider the existing noise climate (both day and night) and assess the noise levels at the boundary of the neighbouring properties. It should then identify any mitigation measures which are required to ensure that the development would not have a unreasonable effect on the amenity of the neighbouring premises. The condition would be a pre-commencement condition to ensure compliance with policy LP52 of the Kirklees Local Plan and Chapter 15 of the National Planning Policy Framework.

### **Summary:**

- 10.13 To conclude, the impact on the residential amenity of surrounding occupiers can be sufficiently minimised via suggested conditions, thus complying with Policies LP24 and LP52 of the Kirklees Local Plan and the aims of Chapters 12 and 15 of the National Planning Policy Framework.

### **Highway issues:**

- 10.14 The application seeks approval for the installation of two fibre cabins with associated equipment on an existing tarmac surface car park which is accessed via Jack Lane which is a 30mph, two way single carriageway link road. There are no Traffic regulation Order markings on the approach to the signalised junction with A652 Bradford Road.
- 10.15 There are no trip generation details submitted with the application. However, it is considered by Officers that the general operation of the proposals would not create a significant increase on the local highway network as to have a severe impact on its operation and efficiency.
- 10.16 The applicant has confirmed that the application is no longer in use as an overflow car park for Redbrick Mills retail development. The use was surrendered in April 2019 and is currently in ownership by Kirklees Council. Although it is recognised that the site has been used as a car park for the adjacent Mosque for some time, there is no agreement with Kirklees Council for this arrangement. As such, any parking on the site at present is considered to be unauthorised.

- 10.17 The vehicles currently parking on the site would be displaced onto the highway network. The A652 Bradford Road would not be suitable for any on street parking. However, there is limited unrestricted parking on Jack Lane adjacent to the site which would be suitable for up to 12 vehicles.
- 10.18 Due to the prominent location of the site adjacent to Bradford Road, there may be some disruption and additional traffic during the construction phase of the development due to access constraints of the site. As such, Officers consider it necessary for a condition requiring the submission of a construction management plan to show the type, size and routing of both contractors and delivery vehicles; times of use of the access; parking for both contractors and delivery vehicles and any other traffic management for large vehicles to the site.
- 10.19 The proposal is acceptable from a highway safety perspective subject to condition. The proposed development and the proposed access to the site is satisfactory to comply with Policies LP21, LP22 and LP24 of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework.

### **Other Matters**

#### **Climate Change**

- 10.20 Chapter 12 of the KLP relates to climate change and states that “Effective spatial planning is an important part of a successful response to climate change as it can influence the delivery of appropriately sited green infrastructure and the emission of greenhouse gases. Planning can also help increase resilience to climate change impact through the location, mix and design of development”. This is also reflected in the NPPF as a core land use planning principle. The NPPF emphasis that responding to climate change is central to economic, social and environmental dimensions of sustainable development. This application has been assessed taking into account the requirements summarised and provides opportunity for development that is considered to meet the dimensions of sustainable development.

#### **Trees**

- 10.21 There are a number of young trees located along the frontage of the site along Jack Lane. Whilst the trees do not currently meet the criteria for a new Tree Preservation Order to be served, they are considered to provide a degree of public amenity and act as a useful screen for the site and proposed use.
- 10.22 The proposed development site plan shows that the majority of the existing trees will be retained. However, it is unclear from the information provided if operationally, all trees can be retained throughout the construction phase of the site. As such, Officers consider it necessary for a condition to be imposed to secure the level of trees on the site. A condition would therefore be added to replace any trees which are lost as a result of the development. This condition would ensure that the development is in compliance with guidance within LP35 of the Kirklees Local Plan.

## Historic Environment

- 10.23 To the North of the site is Redbrick Mills which is considered to be a non-designated heritage asset. As such, Policy LP35 of the Kirklees Local Plan applies which outlines that 'proposals which would remove, harm or undermine the significance of a non-designated heritage asset, or its contribution to the character of a place will be permitted only where benefits of the development outweigh the harm'. This guidance is also reflected within paragraph 197 of the NPPF.
- 10.24 Following initial comments from the K.C Conservation and Design Officers, amendments were submitted to the proposed boundary treatment of the site due to the impact on the setting of the non-designated heritage asset adjacent. The proposal was amended to include a dwarf wall which corresponded with that adjacent which is considered to be acceptable and complementary to the neighbouring heritage asset.

## Flood Risk

- 10.25 The site is located within flood zone 2 and at risk of flooding from a main river source. The applicant submitted a site-specific Flood Risk Assessment and a flood risk sequential test which was reviewed by the Lead Local Flood Authority.
- 10.26 The development type is considered to comprise essential infrastructure and is therefore appropriate for this location. Furthermore, the site will only be occupied once ever 1 to 2 weeks. As such, the risk is minimal. The applicant has submitted details of how occupiers will follow flood warnings and this is deemed to be acceptable, in accordance with Policy LP 27 of the KLP and guidance contained within Chapter 14 of the NPPF.

## Representations:

- 10.27 2 no. letters of objection were received as a result of the initial publicity period. The representations received raise the following concerns which are addressed by officers as follows:

### *Highways*

Possible traffic delays on Jack Lane/Bradford Road throughout the construction phase.

**Response:** This would be a short lived, although inevitable consequence of the development, however Officers recommend the imposition of a condition requiring the submission of a construction management plan, should permission be granted. This would be required to show the type, size and routing of both contractors and delivery vehicles; times of use of the access; parking for both contractors and delivery vehicles and any other traffic management for large vehicles to the site.

Impact on the level of parking for the neighbouring established uses

**Response:** There is unrestricted on street parking available on Jack Lane.

Legal right to the land through the passage of time

**Response:** No evidence has been provided by any third party to demonstrate that a legal right to the land has been claimed.

Potential displacement of vehicles onto the highway due to loss of off-street parking spaces which would be of detriment to highway safety and result in obstructions to the free-flow of traffic and inter-visibility.

**Response:** There is unrestricted on street parking available on Jack Lane.

#### *Visual and residential amenity*

Concerns over the level of noise generated by the air conditioning units and generators (when used) on the neighbouring residential units

**Response:** A condition is recommended to secure the submission of a noise report to address how the existing uses will be protected from the proposed development.

The proposed development is in a prominent position and is not visually attractive and screening is only provided by the existing trees in the summer months

**Response:** The impact of the development on visual amenity is considered to be acceptable for the reasons set out in the main body of the report.

The design is out of keeping with neighbouring buildings

**Response:** The impact of the development on visual amenity is considered to be acceptable for the reasons set out in the main body of the report

The proposal would have a negative impact on the significance of the non-designated heritage asset (Redbrick Mills)

**Response:** Amendments have been received which address the context of the site in relation to the non-designated heritage asset.

#### *Flood Risk and Drainage*

A flood risk sequential test is required but has not been submitted to support the application

**Response:** The development is considered to comprise essential infrastructure, and therefore a sequential test is not required in this instance.

The Applicant's Flood Risk Assessment identifies the proposed development as 'essential infrastructure' but has not identified why the proposal is classed as 'essential utility infrastructure' given that broadband is more of a desirable than an essential utility.

**Response:** The proposals are necessary to ensure that high-speed full fibre broadband is accessible to Kirklees users; to support the need for long term business prosperity, to increase local employment opportunities, reduce the need to travel and improve business links both locally and internationally

There do not appear to be any reasons why the proposed development needs to be located in a flood risk zone for operational reasons.

**Response:** This is noted.

The proposed development would most likely fall within the 'highly vulnerable' category and therefore an exceptions is also required.

**Response:** The development is considered to fall within the 'less vulnerable' category.

10.28 The representations received have been carefully considered however, for the reasons set out in the assessment, they are not considered to substantiate a reason for refusal.

## **11.0 Conclusion**

11.1 The proposed development would provide essential infrastructure to support the delivery of high speed broadband technologies within the Kirklees district.

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.

11.3 The proposed development has been assessed against relevant policies in the development plan and other material considerations. It is considered that the proposed development would constitute sustainable development and is therefore recommended for approval.

## **12.0 Proposed Conditions (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Planning and Development)**

1. Standard 3 year timeframe for commencement of development
2. Development to be completed in accordance with the submitted plans and specifications
3. Noise Report
4. Construction Management Plan
5. Scheme of tree planting

## **Background Papers**

Link to the application details:-

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019%2f93246>

Certificate B signed 30.01.2020



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## Report of the Head of Planning and Development

### STRATEGIC PLANNING COMMITTEE

Date: 29-Jul-2020

Subject: Planning Application 2019/93237 Erection of stable block Springfield Farm, 15, Moorside, Cleckheaton, BD19 6JH

### APPLICANT

Mr Lodge

### DATE VALID

03-Oct-2019

### TARGET DATE

28-Nov-2019

### EXTENSION EXPIRY DATE

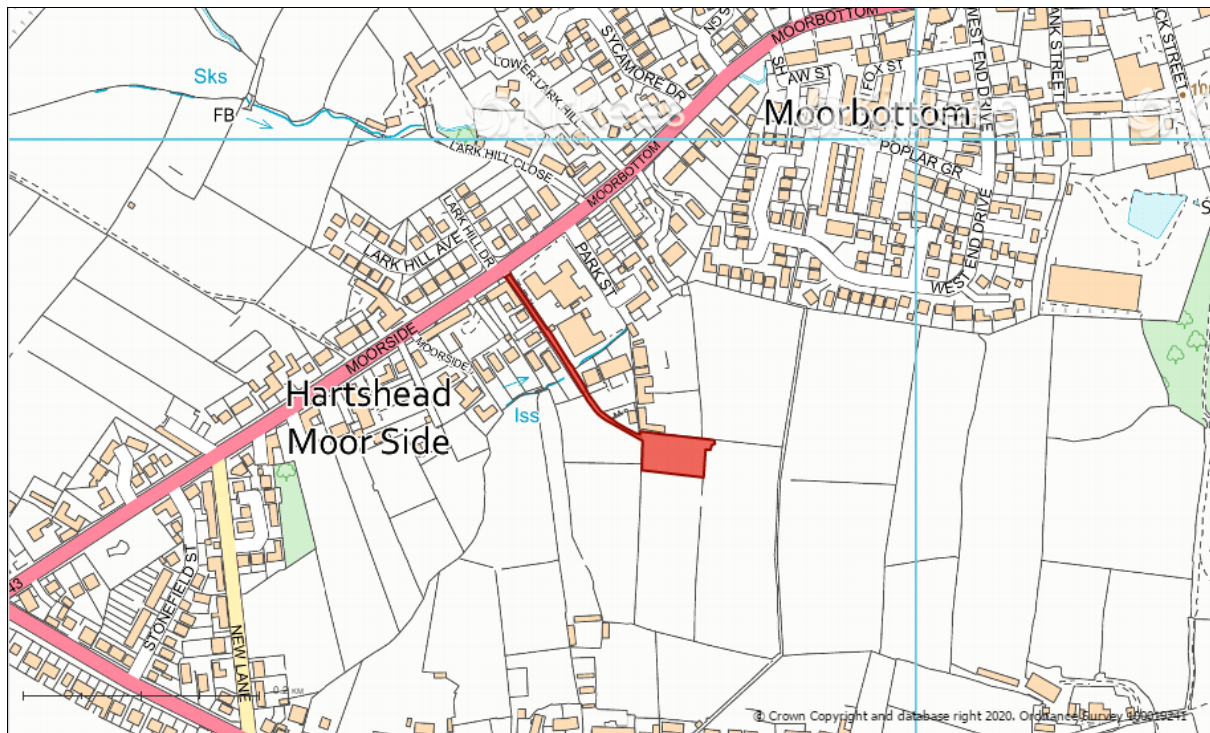
06-Dec-2019

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

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

### LOCATION PLAN



Map not to scale – for identification purposes only

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**Electoral wards affected: Cleckheaton**

**Ward Councillors consulted: No**

**Public or private: Public**

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**RECOMMENDATION:**

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

**1.0 INTRODUCTION:**

1.1 The application is for the erection of a private stable block on land which is allocated as Urban Green Space within the Kirklees Local Plan. The application is reported to the Strategic Planning Committee as the proposed development would constitute a departure from the Kirklees Local Plan.

**2.0 SITE AND SURROUNDINGS:**

2.1 The application site is a hard surfaced enclosed area which is located off a surfaced, single width private drive accessed via Moorside, Cleckheaton. To the South of the site is an existing timber store used in connection with the applicant's timber supply business.

2.2 The application site is enclosed with a timber fence and gabion baskets. The site surrounding the application site to the South and West of the site is open green space which appears to be in use for the keeping of horses.

**3.0 PROPOSAL:**

3.1 Full planning permission is sought for the erection of a timber frame, L shaped stable block. The stable block would have a length of 29.8m with a width of 9.6m to the West and 4m to the East. The stables would have an eaves height of 2.7m and overall height of 4m of a pitched roof. The stables would also have a timber overhang which would project 1.3m above the entrance to the stables.

3.2 The proposed stable block will comprise of 7 stables, a tack room and a hay barn.

3.3 The proposed stables would be located within the existing service yard for the established timber business on the site within the North Western corner and extend along the Northern boundary. The grazing land surrounding the site is owned by the applicant and the stables would be used in association with this.

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

4.1 2019/90142 - Erection of stable block – withdrawn

2018/90403 - Erection of detached dwelling (modified proposal) – Conditional full permission

2017/92760 - Variation of condition 2 (plans) on previous permission 2014/90108 for erection of detached dwelling, change of use and extension of existing dwelling to create children’s day nursery and erection of detached store – Approved

2017/90473 - Erection of detached dwelling – Conditional Full Permission

2014/90108 - Erection of detached dwelling, change of use and extension to existing dwelling to form children’s day nursery and erection of detached store – Conditional Full Permission

2003/95098 - Deemed application via enforcement appeal for erection of field shelter/store and associated surfaced access – Approved

2002/94210 - Erection of field shelter for machinery storage and workroom – Refused

99/90457 - Erection of day care centre – Conditional Full permission

95/90363 - Erection of dog hotel – Refused

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

5.1 The case officer requested further information to be submitted with regards to the access to the site following comments from the K.C Highways Development Management. It was confirmed by the applicant that the use of the stables would be for private use only which is considered to be satisfactory to K.C Highways Development Management.

#### **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 statutory Development Plan for Kirklees is the Local Plan (adopted 27<sup>th</sup> February 2019).

6.2 The site is allocated as Urban Green Space within the Kirklees Local Plan.

6.3 Kirklees Local Plan (KLP):

The following policies are considered relevant:

**LP1** – Achieving sustainable development

**LP2** – Place Shaping

**LP3** – Location of new development

**LP21** – Highway Safety and Access

**LP22** – Parking

**LP24** – Design  
**LP38** – Minerals safeguarding  
**LP51**– Protection and improvement of local air quality  
**LP52**– Protection and improvement of environmental quality  
**LP53** – Contaminated and unstable land  
**LP61** – Urban Green Space

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

**Chapter 2** – Achieving sustainable development  
**Chapter 8** – Promoting healthy and safe communities  
**Chapter 11** – Making efficient use of land  
**Chapter 12** – Achieving well designed places  
**Chapter 14** – Meeting the challenge of climate change, coastal change and flooding  
**Chapter 15** – Conserving and enhancing the natural environment  
**Chapter 17** – Facilitating the sustainable use of minerals

#### 6.5 Supplementary Planning Guidance

- Highways Design Guide Supplementary Planning Document
- Kirklees Local Plan allocations and designations
- West Yorkshire Low Emissions Strategy and Air Quality and Emissions Technical Planning Guidance

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

- 7.1 The application has been advertised in accordance with the Council's adopted Statement of Community Involvement.
- 7.2 As a result of the initial statutory publicity period, no letters of representation have been received by the Local Planning Authority.

#### **8.0 CONSULTATION RESPONSES:**

The following is a brief summary of consultee advice (more details are contained within the assessment section of the report, where appropriate):

##### 8.1 **Statutory:**

- K.C Highways Development Management – *No objection*

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

- K.C Environmental Health – *No objection subject to the conditions for the use of the stables as private use only and the submission of details for the storage and collection of waste at the site.*

## 9.0 MAIN ISSUES

- Principle of development, land use and sustainability
- Visual amenity/local character
- Residential amenity
- Highway issues
- Representations
- Other matters

## 10.0 APPRAISAL

### **Principle of development, land use and sustainability**

- 10.1 The proposal is for the erection of a stable block on an area of hardstanding currently used as a storage yard for an existing tree surgery business. The site is allocated as Urban Greenspace (UGS) (site UGS315) being part of a large area of high quality attractive green space/grassland which has the appearance of countryside and makes an important contribution to the landscape character and appearance. The whole UGS allocation was found to be justified as urban green space by the Local Plan Inspector as part of the Examination in Public.
- 10.2 Local Plan Policy LP61 (Urban Green Space) is therefore applicable to this proposal and protects urban green space from development unless specific exceptions can be met. The policy states that:-
- 10.3 “Development proposals which would result in the loss of urban green space (as identified on the Policies Map) will only be permitted where:-
- a. an assessment shows the open space is clearly no longer required to meet local needs for open space, sport or recreational facilities and does not make an important contribution in terms of visual amenity, landscape or biodiversity value; or
  - b. replacement open space, sport or recreation facilities which are equivalent or better in size and quality are provided elsewhere within an easily accessible location for existing and potential new users; or
  - c. the proposal is for an alternative open space, sport or recreation use that is needed to help address identified deficiencies and clearly outweighs the loss of the existing green space.

The protection set out in this policy also applies to smaller valuable green spaces not identified on the Policies Map.”

- 10.4 The council’s open space assessment of the wider site, undertaken as part of the Kirklees Open Space Study (2016), identifies the whole urban green space as having high value as open space and not surplus to requirements. In relation to criteria (b) the development is not proposing replacement open space.
- 10.5 In respect of exception C, whilst this proposal is for an alternative use (stable block) required in connection with the existing horse grazing use on the UGS site. However, there are no identified deficiencies in the provision of natural and semi-natural greenspace (of which land used for horse grazing is included) in the Cleckheaton ward which has 2.86 ha per 1,000 population compared to the benchmark standard of 2.0 ha per 1,000 population.

- 10.6 The existing storage area is already categorised as part of the larger natural and semi-natural greenspace which comprises urban green space allocation UGS315 and its use for stabling associated with horse grazing would therefore mean that there would be no change in the typology of open space.
- 10.7 The proposal should therefore be weighed in terms of the loss of the area of hard standing compared to any visual impacts and other material considerations, including in relation to its use supporting an existing open space use for which the land is allocated as urban green space.
- 10.8 The application site has a current permission for the erection of a timber storage shed on the site. Although this storage building is notably smaller in scale than the proposed stable block, it was considered at the time of the application (2017/92760) that the character and appearance of the land was not typical of land of this nature. The land was not considered to be used for outdoor sport and recreation and when viewing the site, the land was considered to be 'brownfield', having no character worthy of preserving for future outdoor sport and recreation.
- 10.9 The proposed erection of the stable block within this part of the site which has been enclosed and surfaced for some time (evidenced on aerial photos) would not be considered to be of detriment to the visual amenity and character of the wider Urban Greenspace or prejudice the use of the wider allocation but will support the use of the wider site for the grazing and keeping of horses. The principle of development is therefore considered acceptable by officers.

### **Visual amenity**

- 10.10 Policy LP24 of the KLP states that good design should be at the core of all proposals. Proposals should incorporate good design by ensuring that the form, scale, layout and details of all development respects and enhances the character of the townscape and landscape. This is supported by The National Planning Policy Framework (NPPF) which sets out that, amongst other things, decisions should ensure that developments are sympathetic to local character ...while not preventing or discouraging appropriate innovation or change (para.127 of the NPPF).
- 10.11 The proposed stable block would be of a standard design, constructed of timber with corrugated metal sheet roof and having an L-shaped layout. The low profile nature of the development would have minimal impact on the character of the surrounding area, particularly when viewed in relation to the previously approved timber storage shed, whilst the site is also enclosed by existing gabion walls.
- 10.12 On the basis of the above, the proposals are considered acceptable from a visual amenity perspective and would accord with Policy LP24 of the KLP and guidance contained within Chapter 12 of the NPPF.

### **Residential Amenity:**

- 10.13 Chapter 12 of the National Planning Policy Framework states that planning decisions create places that are safe, inclusive and accessible and which promote health and wellbeing, with a high standard of amenity for existing and future users, and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

- 10.14 There are no residential dwellings within close proximity of the proposed stable block which could be affected as a result of the structure itself with regards to over shadowing or overlooking.
- 10.15 However, it is considered necessary to impose a condition to restrict the use of the stables for private use only by the residents of Springfield Farm, 15 Moorside in order to ensure that the use of the stables does not detract from the level of residential amenity enjoyed by residents of Moorside by increased traffic movements and noise from the site.
- 10.16 The use of the site for the keeping and grazing of horses will generate waste which has the potential to impact on nearby properties through smell and pollution. A condition will therefore be imposed for the submission of a waste management plan which should detail how waste materials associated with the stables will be dealt with so that the odour and flies are effectively controlled and any adverse impacts on private water supplies and water courses are prevented. The operation of the stables would not be permitted until a waste management scheme has been approved in writing by the Local Planning Authority.

Summary:

- 10.17 To conclude, there is no considered impact on the level of residential amenity of neighbouring occupants, subject to the inclusion of the suggested conditions, thus complying with Policies LP24 and LP52 of the Kirklees Local Plan and the aims of Chapters 12 and 15 of the National Planning Policy Framework.

Highway issues:

- 10.18 The application seeks approval for the erection of a stable block which contains 7 no. stables, a tack room and a hay barn. Access to the application site is from A643 Moorside via an existing un-adopted road which also serves Katie's Kinder Care and The Lodge out of school club and residential properties.
- 10.19 The application site is currently used by a Tree Services business, which is also within the ownership of the applicant. The applicant has confirmed that the stables would be for their own private use and not sold or rented out separately. Given the nature of the access and existing uses served by it, it would be necessary to impose a condition, should permission be granted, restricting the use of the stables to that of a private use, in the interests of highway efficiency and safety. This would ensure that the development accords with Policy LP 21 of the KLP.

**Other matters:**

Climate Change

- 10.20 Chapter 12 of the KLP relates to climate change and states that "Effective spatial planning is an important part of a successful response to climate change as it can influence the delivery of appropriately sited green infrastructure and the emission of greenhouse gases. Planning can also help increase resilience to climate change impact through the location, mix and

design of development". This is also reflected in the NPPF as a core land use planning principle. The NPPF emphasis that responding to climate change is central to economic, social and environmental dimensions of sustainable development. This application has been assessed taking into account the requirements summarised and provides opportunity for development that is considered to meet the dimensions of sustainable development.

### **Representations**

10.21 No representations were submitted throughout the course of public consultation period.

## **11.0 CONCLUSION**

11.1 Taking all material considerations into account, the proposal to erect a stable block land allocated as Urban Greenspace is considered acceptable by officers when taking into account the nature of the site and its wider area. Furthermore, subject to the inclusion of the suggested conditions, the proposals would also be acceptable from a visual and residential amenity perspective as well as highway safety.

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.

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 Proposed Conditions (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Planning and Development)**

1. Standard 3 year timeframe for commencement of development
2. Development to be completed in accordance with the submitted plans and specifications
3. The use of the stables restricted to the private use of the residents of Springfield Farm, 15 Moorside only
4. The submission of a waste management scheme

### **Background Papers:**

Link to the application details:-

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019/93237>

Certificate A signed and dated 03.10.2019



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## Report of the Head of Planning and Development

### STRATEGIC PLANNING COMMITTEE

Date: 29-Jul-2020

**Subject: Planning Application 2020/90020 Erection of two storey side extension and external alterations 9, Kirkstone Drive, Gomersal, Cleckheaton, BD19 4QG**

### APPLICANT

G Waring

### DATE VALID

06-Jan-2020

### TARGET DATE

02-Mar-2020

### EXTENSION EXPIRY DATE

17-Mar-2020

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

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

### LOCATION PLAN



Map not to scale – for identification purposes only

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**Electoral wards affected: Liversedge and Gomersal**

**Ward Councillors consulted: No**

**Public or private: Public**

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**RECOMMENDATION:**

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

**1.0 INTRODUCTION:**

1.1 The application is brought to Strategic Planning Committee following a request from Cllr David Hall which stated:

- The proximity of the extension to the neighbouring house will be detrimental to the neighbours' amenity and will make the house look cramped compared to others on the street.
- The proximity of the extension is a precedent in the cul-de-sac. These two houses are at the end of the street, visible from the main road and thus quite prominent, the appearance would look like overcrowding.
- The next door residents are reliant on the distance between the houses for light into their kitchen, and this will be lost.

1.2 The Chair of the Strategic Planning Committee has confirmed that Councillor David Hall's reasons for referral to committee are valid having regard to the Councillor's Protocol for Planning Committees.

**2.0 SITE AND SURROUNDINGS:**

2.1 This application relates to 9 Kirkstone Drive in Gomersal. The site comprises a two storey detached dwelling which is constructed from stone to the front elevation, render to the side and brick to the rear. The property is designed with a gable roof form which is finished in concrete roof tiles. There are existing areas of uPVC cladding on the front and rear elevations. The dwelling is set back from the access road with an area of hardstanding to the front and side and a garden to the rear.

2.2 The surroundings of the site are residential in nature. Kirkstone Drive comprises a number of two storey dwellings of a similar appearance to the application site, as well as a number of 1.5 storey properties.

### **3.0 PROPOSAL:**

- 3.1 Planning permission is sought for the erection of a two storey side extension and external alterations.
- 3.2 The two storey extension would project 1.78 metres from the northern side elevation of the dwelling and would sit flush with the existing rear elevation. It would be set back from the front elevation by 0.32 metres. The extension would be designed with a double gable roof form which would have an eaves and ridge height to match that of the host property.
- 3.3 The external walls of the extension would be finished in stone to the front, render to the side and brick to the rear which would match the host dwelling. Concrete tiles are proposed for the roof which would also match the dwelling.
- 3.4 External alterations are proposed for the rear elevation of the existing dwelling. These comprise a replacement opening at first floor level and the installation of bi-folding doors at ground floor level.

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

- 4.1 No relevant planning history.

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

- 5.1 The application form states that the external walls of the extension would match those of the host property. The agent has confirmed by email received 11-Jun-2020, that the extension would be finished in stone to the front, render to the side and brick to the rear which is in keeping with the materials of the existing dwelling.

### **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 statutory Development Plan for Kirklees is the Local Plan (adopted 27<sup>th</sup> February 2019).
- 6.2 The site is unallocated on the Kirklees Local Plan.
- 6.3 Kirklees Local Plan (KLP):

**LP 1** – Achieving sustainable development

**LP 2** – Place shaping

**LP 21** – Highway safety and access

**LP 22** – Parking

**LP 24** – Design

**LP 51** – Protection and improvement of local air quality

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

**Chapter 2** – Achieving sustainable development

**Chapter 12** – Achieving well-designed places

**Chapter 14** – Meeting the challenge of climate, flooding and coastal change

**Chapter 15** – Conserving and enhancing the natural environment

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

7.1 As a result of the publicity period, 4 representations against the proposal have been received. The points raised are summarised as follows:

- Extension will be right up to the boundary seriously effecting daylight available to the kitchen window of the neighbouring property. The extension will be about 1m away from their house, blocking the window.
- The extension will result in the applicants being unable to access the rear of their property without trespassing the garden of the neighbouring property.
- Bins will have to be left at the front of the property which is unsightly and not in keeping with properties along the cul-de-sac.
- Concerned Council procedure has not been followed as notification of the application on the lamppost has only just appeared.
- Plans do not have full measurements and side elevation seems inaccurate. The roof does not correlate with other plans for front and side elevations.
- Adjacent property is dissimilar in terms of size and design and will be dwarfed by the proposed extension.
- Impact on surrounding properties and possibility of a precedent being set for further development which could affect re-sale value.
- We have lived in our property for over 30 years and have plans in place to continue living here in the future. The extension would have a detrimental impact on our lives and our home.
- For personal reasons I spend a lot of time tending to our garden. The extension would prevent wheelchair access down the side of our house.
- There is a covenant attached to the properties, limiting development.
- 90% of our amenity runs down this drive.
- Shared manhole cover and gas electric, water, drains etc.

- Carbon monoxide vent on the side of our property currently vents into an open area. With reduced space from the extension, this could blow back into our property through open windows.
- If the extension has an overhang with gutters etc, it will reduce space even further.
- An extension so close would completely cut off natural sunlight and would leave us looking onto a brick wall.
- An extension so close would represent a security risk, with the side window currently open to view from Kirkstone Drive.
- Concerned over foot traffic so close to window of adjacent property.
- For personal reasons, we use more electricity than normal use. Planned to reduce carbon footprint with the benefit of solar panels, the side elevation being ideal. May be no benefit due to the proposed extension.

7.2 The following comments have been made by Cllr David Hall (ward member for the Liversedge and Gomersal area).

- The proximity of the extension to the neighbouring house will be detrimental to the neighbours' amenity and will make the house look cramped compared to others on the street.
- The proximity of the extension is a precedent in the cul-de-sac. These two houses are at the end of the street, visible from the main road and thus quite prominent, the appearance would look like overcrowding.
- The next door residents are reliant on the distance between the houses for light into their kitchen, and this will be lost.

7.3 Officer comments in response to representations will be made in the report below.

## **8.0 CONSULTATION RESPONSES:**

8.1 No consultations responses are required.

## **9.0 MAIN ISSUES**

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

## 10.0 APPRAISAL

### Principle of development

- 10.1 Chapter 2 of the NPPF introduces the presumption in favour of sustainable development, which is the focus of policy LP1 of the Kirklees Local Plan. This policy stipulates that proposals that accord with policies in the Kirklees Local Plan will be approved without delay, unless material considerations indicate otherwise. Policy LP24 of the KLP is the overarching policy in relation to the design of all proposals, requiring them to respect the appearance and character of the existing development in the surrounding area as well as to protect the amenity of the future and neighbouring occupiers, to promote highway safety and sustainability.
- 10.2 These considerations, along with others, are addressed in the following sections in this report.

### Impact on visual amenity

- 10.3 The proposed two storey side extension would be modest in terms of its projection, projecting 1.78 metres from the side elevation of the property, representing a subservient addition to the existing dwelling. Whilst the extension would extend the full length of the property, set back from the front elevation by 0.30 metres and would be designed with a double gable roof form, it is not considered that this would be significantly detrimental to the character of the host property in this case.
- 10.4 The extension would be finished in stone to the front, render to the side, brick to the rear and concrete tiles for the roof to match the materials used on the host dwelling. The extension is considered to be in keeping with the property in terms of its design and fenestration.
- 10.5 The extension would be visible from the street scene, and it is noted that none of the properties along Kirkstone Drive have been extended to the side elevation. Whilst the adjacent property is 1.5 storeys in nature, with the eaves sitting at a much lower level than the host property, given the scale of the proposal, and the overall height of the adjacent property, it is not considered that the proposal would be detrimental to the character of the street scene when viewed alongside the neighbouring dwellings.
- 10.6 Given the limited projection of the extension, along with its design and the fact that it would be set back slightly from the front elevation of the existing dwelling, it is not considered that it would appear overly dominant within the street scene, nor would it be out of keeping with the character of the surrounding area. The dwelling is also set back from the access road, which would reduce some of the prominence of the extension when viewed from Kirkstone Drive. It is noted that views of the side elevation of the extension would be limited.

- 10.7 Given the design of the proposed extension, which would have a gable roof which would slope perpendicular to that of the host dwelling, as well as the design of the neighbouring property which is 1.5 storeys in nature, it is not considered that the proposal would create a terracing effect in this instance.
- 10.8 The proposed external alterations which include replacement openings on the rear elevation are considered to be sympathetic to the design of the host property.
- 10.9 In conclusion, it is considered that the proposed development would be acceptable in terms of its design and the impact on the visual amenity of the application property and the character of its immediate surroundings. On this basis, officers are satisfied that the proposal complies with Policy LP24 of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework.

#### Impact on residential amenity

- 10.10 The site is located within a residential area. This section will assess the relationship of the proposed development with the neighbouring properties.

#### Impact on 14 Kirkstone Drive

- 10.11 The dwelling at 14 Kirkstone Drive is located immediately to the north of the application property. The property is 1.5 storeys in scale, with its overall height slightly greater than the application property. Notwithstanding this, the property is designed with a steep roof pitch with the eaves height located significantly below that of the application property. The property benefits from an opening in the side elevation at ground floor level which serves a kitchen.
- 10.12 A second site visit was carried out at the site, at which time the case officer viewed the proposed plans from inside the neighbouring property to assess to proposed relationship between the property and the proposed extension.
- 10.13 The extension would project 1.78 metres closer to the property than the existing dwelling, with there being a close relationship between the two properties as existing. The proposed extension would therefore have a greater overbearing and overshadowing impact than existing. The proposed extension would be set in from the shared boundary by 0.70 metres, with 1.80 metres retained between the side elevation of the extension and the side of the property. Whilst the property benefits from an opening on the side elevation, this serves a kitchen which is considered a non-habitable room. The application site is located to the south of the dwelling, with a degree of overshadowing present as existing. Whilst it is acknowledged that the proposed development would have an impact on the residential amenity of the property, given the distance that would be retained between the extension and the property, along with the existing relationship, it is not considered, on balance, that this impact would be significantly detrimental in this instance.

- 10.14 An opening is proposed in the side elevation of the extension at first floor level which would serve a stairway. Taking this into consideration, as well as the fact that the opening would face onto the blank gable roof form of the property, it is not considered that this opening would allow for harmful overlooking into the side elevation of the property in this instance. Whilst no openings are proposed for the side elevation of the extension at ground floor level, to prevent harmful overlooking into the neighbouring property, should the application be approved, a condition will be imposed to remove permitted development rights for new openings in side elevation of the extension at ground floor level. New first floor level side openings would be controlled by the General Permitted Development Order (England)(2015).
- 10.15 For the reasons set out above, the impact on the residential amenity of the property is considered, on balance, to be acceptable.

#### Impact on 8 & 10 Oxford Walk

- 10.16 The dwellings at 8 & 10 Oxford Walk are located to the rear of the property. The proposed extension would not project beyond the existing rear elevation of the application dwelling, and as such, would not be located any closer to the properties than existing.
- 10.17 Given the distance that would be retained between the extension and the properties, it is not considered that there would be a significant overbearing or overshadowing impact. It is considered that sufficient distance would be retained to prevent harmful overlooking from the habitable room openings which are proposed for the rear elevation of the extension.

#### Impact on 7 Kirkstone Drive

- 10.18 The dwelling at 7 Kirkstone Drive is located to the south of the property. Given the location of the proposed extension to the north of the application dwelling, and the fact that it would not project beyond the existing front or rear elevations, it is not considered that it would have a significant impact on the property in terms of residential amenity. No additional openings, other than the lounge, and bathroom opening which are on the southern elevation of the property as existing, are proposed for this elevation which would prevent harmful overlooking.

#### Impact on 4 Kirkstone Drive

- 10.19 The dwelling at 4 Kirkstone Drive is located to the front of the application property and is orientated towards the south east. Given the distance that would be retained between the proposed extension, it is not considered that the proposal would have a significant impact in terms of residential amenity.



## Summary in regard to residential amenity considerations

- 10.20 For the reasons set out above, the proposed development is considered, in the view of officers, acceptable on balance, complying with Policy LP24 of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework.

### Impact on highway safety

- 10.21 The proposed development would facilitate an extension of the existing living accommodation at first floor level, with the property benefiting from three bedrooms following development. The proposed extension would be located on an area of existing hardstanding, which could potentially be used for parking. Notwithstanding this, it is noted that the property currently benefits from an area of hardstanding to the front, which is considered of a sufficient size to be able to accommodate two off-street parking spaces. This is considered sufficient to accommodate the property following development. Access to the site would not be altered from existing as a result of the proposed development.
- 10.22 Considering the above, the proposal is considered acceptable from a highway safety perspective, in accordance with Policies LP21 and LP22 of the Kirklees Local Plan and Chapter 9 of the National Planning Policy Framework.

### 10.23 Representations

- Extension will be right up to the boundary seriously effecting daylight available to the kitchen window of the neighbouring property. The extension will be about 1m away from their house, blocking the window.

*Officer comment:* The impact of the development on the neighbouring properties has been addressed in the impact on residential amenity section above. The impact of the development on the neighbouring properties, is considered on balance, to be acceptable.

- The extension will result in the applicants being unable to access the rear of their property without trespassing the garden of the neighbouring property.

*Officer comment:* Access to the rear of the property would be retained through the dwelling. This would be a private issue which is not a material planning consideration which can be taken into account as part of this planning application.

- Bins will have to be left at the front of the property which is unsightly and not in keeping with properties along the cul-de-sac.

*Officer comment:* It is considered that sufficient space would be retained to the front of the property for the storage of bins following development without having an impact on highway safety or on visual amenity.

- Concerned Council procedure has not been followed as notification of the application on the lamppost has only just appeared.  
*Officer comment:* The application has been advertised in accordance with the Kirklees Development Management Charter.
- Plans do not have full measurements and side elevation seems inaccurate. The roof does not correlate with other plans for front and side elevations.  
*Officer comment:* Officers have reviewed the submitted plans and consider them acceptable for the purpose of this application.
- Adjacent property is dissimilar in terms of size and design and will be dwarfed by the proposed extension.  
*Officer comment:* The impact of the proposal on visual amenity has been addressed in the impact on visual amenity section of this report. The impact on visual amenity is considered to be acceptable.
- Impact on surrounding properties and possibility of a precedent being set for further development which could affect re-sale value.  
*Officer comment:* The impact of the proposal on the visual amenity of the surrounding area has been addressed in the impact on visual amenity section of this report and is considered to be acceptable. A precedent being set for further development and re-sale value are not material planning considerations which can be taken into account as part of this application.
- We have lived in our property for over 30 years and have plans in place to continue living here in the future. The extension would have a detrimental impact on our lives and our home.  
*Officer comment:* These comments are noted. The impact of the development on the neighbouring properties has been addressed in the impact on residential amenity section of this report.
- For personal reasons I spend a lot of time tending to our garden. The extension would prevent wheelchair access down the side of our house.  
*Officer comment:* The proposed extension would not extend beyond the curtilage of the application dwelling. The granting of planning permission would not override any legal rights of access either.
- There is a covenant attached to the properties, limiting development.  
*Officer comment:* Whilst this is not a material consideration which can be taken into account as part of this planning application, the grant of planning permission would not override any legal covenant at the properties.
- 90% of our amenity runs down this drive.  
*Officer comment:* This comment is noted.

- Shared manhole cover and gas electric, water, drains etc.

*Officer comment:* These are not material planning considerations which can be taken into account as part of this application. Issues relating to the shared manhole cover will be addressed via a Building Regulations application.

- Carbon monoxide vent on the side of our property currently vents into an open area. With reduced space from the extension, this could blow back into our property through open windows.

*Officer comment:* Whilst the extension would project closer to the property than existing, it would be set in from the neighbouring property by 1.80 metres. It is therefore not considered that this impact would be harmful to occupiers of the property in this instance.

- If the extension has an overhang with gutters etc, it will reduce space even further.

*Officer comment:* The submitted plans show that the proposed extension would be located within the curtilage of the application property. The impact of the proposed development on the neighbouring properties has been addressed in the impact on residential amenity section above.

- An extension so close would completely cut off natural sunlight and would leave us looking onto a brick wall.

*Officer comment:* The impact of the proposed development on the neighbouring properties has been addressed in the impact on residential amenity section above and is considered to be, on balance, acceptable.

- An extension so close would represent a security risk, with the side window currently open to view from Kirkstone Drive.

*Officer comment:* The proposal represents an extension to an existing residential property. Taking this into consideration, it is not considered that the proposal itself would have an impact on safety that would require mitigation in this instance.

- Concerned over foot traffic so close to window of adjacent property.

*Officer comment:* The application relates to an extension to an existing residential property. It is therefore not considered that the proposal would be detrimental to the amenity of the neighbouring property by virtue of noise created by foot traffic at the property.

- For personal reasons, we use more electricity than normal use. Planned to reduce carbon footprint with the benefit of solar panels, the side elevation being ideal. May be no benefit due to the proposed extension.

*Officer comment:* At the time of the site visit it was noted that there were no solar panels on the side elevation of the property, nor is there any planning history for solar panels at the site. This can therefore be awarded little weight when determining this particular planning application and is not considered sufficient to warrant refusal of the application in this instance.

10.24 Cllr Hall's comments are as follows:

- The proximity of the extension to the neighbouring house will be detrimental to the neighbours' amenity and will make the house look cramped compared to others on the street.

*Officer comment:* These matters have been addressed in the impact on visual and residential amenity sections of this report.

- The proximity of the extension is a precedent in the cul-de-sac. These two houses are at the end of the street, visible from the main road and thus quite prominent, the appearance would look like overcrowding.

*Officer comment:* The impact of the proposed development on visual amenity has been addressed in the impact on visual amenity section of this report.

- The next door residents are reliant on the distance between the houses for light into their kitchen, and this will be lost.

*Officer comment:* The impact of the proposed development on residential amenity has been addressed the impact on residential amenity section of this report.

#### Other Matters

##### *Coal Mining Legacy*

10.25 The site is located within a 'high risk' coal mining area. The proposed development is for householder extensions and therefore this falls under the 'exemptions' on the Coal Authority's exemptions list. For this reason, a Coal Mining Risk Assessment or consultation with The Coal Authority has not been undertaken and the proposed development is considered acceptable in this regard.

##### *Climate Change*

10.26 On 12<sup>th</sup> November 2019, the Council adopted a target for achieving 'net zero' carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan pre-dates the declaration of a climate emergency and the net zero carbon target, however it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

10.27 The proposal represents domestic development to an existing dwelling. As such, no special measures were required in terms of the planning application with regards to carbon emissions. However, there are controls in terms of Building Regulations which will need to be adhered to as part of the construction process which will require compliance with national standards. For this reason, the proposed development is considered to comply with Policy LP51 of the Kirklees Local Plan and Chapter 14 of the National Planning Policy Framework.

10.28 There are no other matters considered relevant to the determination of this application.

## **11.0 CONCLUSION**

11.1 To conclude, it is considered that the proposal, on balance, would have an acceptable impact with regards to visual amenity, residential amenity and highway safety as discussed in the above report.

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

1. Standard timeframe for implementation of development (3 years).
2. Development in accordance with the submitted plans.
3. External walls to be finished in stone to the front, render to the side and brick to the rear. Render to be of a similar colour to that on the host property and applied before the extension is first brought into use.
4. Roofing materials to match existing.
5. No new openings in the side elevation of the extension.

### **Background Papers:**

Application documents can be viewed using the link below:

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2020/90020>

Certificate A was submitted as part of this application, signed and dated 03.01.2020.

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## Report of the Head of Planning and Development

### STRATEGIC PLANNING COMMITTEE

Date: 29-Jul-2020

Subject: Planning Application 2020/91191 Installation of incline platform lift and associated works 65, Banks Road, Linthwaite, Huddersfield, HD7 5FP

### APPLICANT

I Wright

### DATE VALID

22-Apr-2020

### TARGET DATE

17-Jun-2020

### EXTENSION EXPIRY DATE

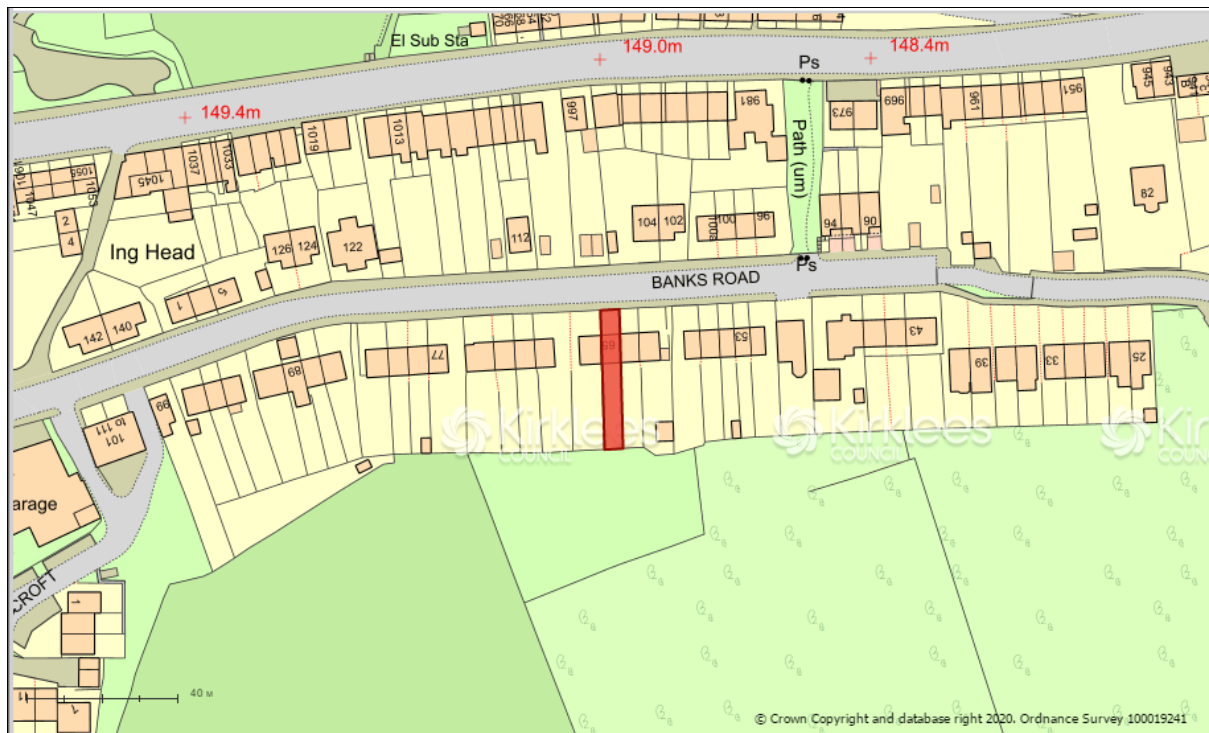
30-Jul-2020

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

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

### LOCATION PLAN



Map not to scale – for identification purposes only

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**Electoral wards affected: Colne Valley**

**Ward Councillors consulted: No**

**Public or private: Public**

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**RECOMMENDATION:**

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

## **1.0 INTRODUCTION**

- 1.1 This is an application for full planning permission (reference: 2020/91191), for the installation of an incline platform lift and associated works to the front of no. 65 Banks Road, Linthwaite, Huddersfield, HD7 5FP.
- 1.2 The application is brought before the Strategic Planning Committee as it has been called in by Councillor Bellamy in respect to potential loss of privacy to neighbouring properties.
- 1.3 The chair of the Strategic Planning Committee has confirmed that Cllr Bellamy's reasons for referral to committee are valid having regard to the Councillor's Protocol for Planning Committees.

## **2.0 SITE AND SURROUNDINGS**

- 2.1 The application site is no.65, Banks Road, Linthwaite, Huddersfield.
- 2.2 The application site relates to a two storey mid-terraced dwelling, located just off Banks Road in Linthwaite. The property benefits from both front and rear garden/amenity areas, and there is no off-street car parking available at the site.

## **3.0 DESCRIPTION OF PROPOSAL**

- 3.1 The application seeks planning permission for the installation of incline platform lift and associated works to the front of the application site.
- 3.2 At present the dwelling is accessed via 6 concrete steps with the path sloping up at a steady gradient from approx. 1.1m (from the top of the existing steps) up to approx. 2.2m (to the front door). To be able to install the proposed lift some excavation of the existing land will need to take place. The applicant proposes to remove the existing concrete path, access steps, handrail and part of the wall located on the east.
- 3.3 The new proposals would see the current access which measures approximately 1.6m be widened slightly to 1.9m to allow room for the new platform lift to be installed. 16 new brick and flagged steps are to be created with 16 x 80 x 80mm steel stanchions to be concreted into the steps for the lifts installation. The proposed lift would measure 1.2m x 0.8m with an approximate height of 1.2m.



and a guard rail will be installed which will measure approximately 1.1m in height. New retaining walls are also proposed, these walls will be stepped in height and run along the eastern and western boundaries.

3.4 Materials proposed include retaining walls to be made from brickwork with soldier course or PC capping stones. The galvanised steel railings are to be painted black upon completion, and a new composite door and frame with low mobility threshold is to be installed to replace the existing front door.

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

4.1 2019/90478 – Certificate of lawfulness for proposed rear dormer. Certificate of lawful operations granted 9<sup>th</sup> April 2019.

#### **5.0 HISTORY OF NEGOTIATIONS/AMENDMENTS RECEIVED**

5.1 An additional section drawing was requested from the applicant's agent to show the difference in levels between the existing, and proposed alterations.

#### **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 statutory Development Plan for Kirklees is the Local Plan (adopted 27<sup>th</sup> February 2019).

6.2 The application site is unallocated in the Kirklees Local Plan but is located within the Strategic Green Infrastructure Network and Bat Alert Area. The site is also located adjacent to a PROW to the north and Green Belt to the south.

#### **6.3 Kirklees Local Plan (LP):**

- **LP1 – Achieving Sustainable Development**
- **LP2 – Place Shaping**
- **LP21 – Highways and access**
- **LP22 – Parking**
- **LP24 – Design**
- **LP30 – Biodiversity and Geodiversity**
- **LP31 – Strategic Green Infrastructure Network**

#### **6.4 National Policies and Guidance:**

- Chapter 12 – Achieving well-designed places
- Chapter 14 – Meeting the challenge of climate change, flooding and coastal change

#### **7.0 REPRESENTATIONS**

- Neighbour Letters – Expired 4<sup>th</sup> June 2020.
- Site Notice – Expired 1<sup>st</sup> June 2020.
- Press Notice – Expired 12<sup>th</sup> June 2020.

7.1 One representation has been received in objection to the proposals. These comments have been summarised below.

- Concerns over how the Council are determining applications during COVID-19.
- Overlooking and loss of privacy.

## 8.0 CONSULTATION RESPONSES

8.1 **KC Environmental Health** – Comments received 18<sup>th</sup> May 2020. The application and supporting documents have been reviewed and the Environmental Health officer does not consider there to be any significant environmental health impacts with this development. There are therefore no objections to permission being granted.

8.2 **KC Highways Development Management** – Comments received 11<sup>th</sup> May 2020. Given that the proposed lift does not encroach onto the footway along Banks Road Highways Development Management have no objection to these proposals. A footnote is recommended which relates to the granting of planning permission within the highway.

8.3 **KC PROW** – No comments have been received within statutory timescales.

## 9.0 SUMMARY OF PLANNING ISSUES

- Principle of development
- Scale, design and visual impact of the proposed development
- Impact of the proposed development upon the privacy and amenity of neighbouring properties
- Impact on highway safety
- Other matters

## 10.0 APPRAISAL

### Principle of Development:

10.1 The site is without notation in the Kirklees Local Plan (KLP), Policy LP1 of the KLP states that when considering development proposals, the Council will take a positive approach that reflects the presumption is favour of sustainable development contained in the NPPF. In terms of extending and making alterations to a property, Policy LP24 of the KLP is relevant, in conjunction with Chapter 12 of the NPPF, regarding design. In this case, the principle of development is considered to be acceptable and the proposals shall now be assessed against all other material planning considerations, including visual and residential amenity.

10.2 These issues along with other policy considerations will be addressed below.

### Impact on Visual Amenity:

10.3 Section 12 of the NPPF discusses good design. Good design is a key aspect of sustainable development, it creates better places in which to live and work and helps to make development acceptable to communities. Local Plan

Policies LP1, LP2 and most importantly LP24, are all also relevant. All the policies seek to achieve good quality design that retains a sense of local identity, which is in keeping with the scale of development in the local area and is visually attractive.

- 10.4 Local Plan Policy LP24 states that all proposals should promote good design by ensuring the following:

*'the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape' and that 'extensions are subservient to the original building, are in keeping with the existing buildings in terms of scale, materials and details and minimise impact on residential amenity of future and neighbouring occupiers'.*

- 10.5 The property is located on a residential street surrounded by similarly aged properties, it is important to note however, that there is a mix of single and two storey dwellings throughout and these do all vary in design and scale. A number of the properties on this street have been extended or altered in some way over the years, and whilst it is acknowledged that none of the properties have platform lifts installed to the front of their dwellings, it is considered that dependent on design, scale and detailing it may be acceptable to make alterations to the front of the host property.
- 10.6 The host property and its associated curtilage are of a sufficient size to support the proposals without amounting to overdevelopment. The proposals would only seek to lose approximately 0.3m of the front residential garden/amenity space. It is therefore considered that a reasonable amenity space would still be retained and as such the scale of the proposed alterations are considered to be acceptable.
- 10.7 As mentioned previously there are no other dwellings on this street which provide an incline platform lift to the front of their properties, and whilst it is acknowledged that this addition would bring a new feature into the street scene it is considered that on balance the potential visual impact it would have on the character and appearance of the area would be minimal. This is due to the front gardens of all properties on the street varying significantly from one to the other and therefore there is no uniform structure or design, it is therefore considered that this proposed change would not have any detrimental visual impacts in this instance.
- 10.8 In conclusion, the proposals are therefore considered to be appropriate in scale, size, design and location, and that they would not appear incongruous or overly dominant in the context of this site. The proposals therefore accord with LP24 of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework.

Impact on Residential Amenity:

- 10.9 The National Planning Policy Framework states that Local Planning Authorities should seek to achieve a good standard of amenity for all existing and future occupants of land and buildings. This is echoed within Kirklees Local Plan Policy LP24 which states that: -

*'proposals should provide a high standard of amenity for future and neighbouring occupiers, including maintaining appropriate distances between buildings and the creation of development-free buffer zones between housing and employment uses incorporating means of screening where necessary'*

### ***Impact on 67 Banks Road***

- 10.10 This neighbouring property adjoins the application site to the west. There is a separation distance from the proposed incline lift to this neighbouring dwellings front bay window of approximately 1.4m. Whilst it is acknowledged that the proposals will be raised in height compared to what currently exists, this would be on the landing platform and at the top 3 steps only, with the rest of the site being lower than what currently exists. It also important to note that this increase in height would be by approximately 0.2m (20cm).
- 10.11 Given the nature of the properties located in this terrace views into the front bay windows of these dwellings are already readily available when walking up the access paths to the properties. It is therefore acknowledged that occupiers of no. 65 can already openly look into the front bay window of no. 67 if they so wished to do so when walking up to their dwellinghouse. By introducing the platform lift it is acknowledged that whilst there will be a slight increase in height at the top of the access path and that views may be more prolonged given the speed of the lift on its ascent/descent these views into this window would not be significantly different to what currently takes place. It is therefore considered that the loss of privacy in this instance would be slight and would not be significant enough to sustain a reason for refusal.
- 10.12 In terms of overbearing and overshadowing, the proposed lift would sit approximately 0.3m (30cm) above the existing hedge. Given the orientation of this row of terraces, the dwellings themselves already overshadow part of the front of the properties, therefore this additional 0.3m overshadowing from the proposed lift is not considered to be detrimental and would not impact or reduce the light into the front bay window of no. 67. It is also considered that this slight change in height would not appear overbearing in nature and therefore is deemed to be acceptable in this instance.

### ***Impact on 63 Banks Road***

- 10.13 This neighbouring property adjoins the application site to the east. There is a separation distance from the proposed incline lift to this neighbouring dwellings front bay window of approximately 4m. It is considered that given this separation distance and the proposed scale and height of the proposals, that there are no concerns in respect to overshadowing or the proposals being overbearing in nature. In terms of loss of privacy, as outlined above views into neighbouring properties front bay windows are already openly available when accessing the dwellings to the front, the proposed increase of 0.2m and the new platform lift is not considered to considerably change this outlook and therefore the proposals are considered to be acceptable in this instance.

### **Summary**

- 10.14 It is considered that the proposal does not give rise to any adverse impacts upon neighbouring residential amenity and as such, this aspect of the proposal is considered to be acceptable. It is therefore concluded that the proposals comply with Policy LP24 of the Kirklees Local Plan and Section 12 of the National Planning Policy Framework.

### **Impact on Highway Safety:**

- 10.15 The application site does not provide any off-street car parking and is accessed to the south from Banks Road. Whilst no changes are proposed to the parking arrangements, there are to be changes to the access to the site. The Council's Highways officers were therefore consulted on the proposals, they stated that given that the proposed lift does not encroach onto the footway along Banks Road, Highways Development Management have no objection to these proposals.
- 10.16 Paragraph 109 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 10.17 It is therefore considered that the proposed scheme would not represent any additional harm in terms of highway safety and as such complies with Local Plan Policies LP21 and LP22, and the guidance contained within the National Planning Policy Framework.

### **Representations**

- 10.18 One representation has been received. A summary of the concerns raised along with the officer response is set out below:
- Concerns over how the Council are determining applications during COVID-19.  
**Officer note:** Discussions have been had with the objector in respect to how and why the Council are assessing and determining applications as they are at the current time. A site meeting was also undertaken with the objector on the 4<sup>th</sup> June 2020 to discuss their concerns with the proposals.
  - Overlooking and loss of privacy.  
**Officer note:** This has been assessed within the residential amenity section of this report.

### **Other Matters:**

#### Climate Change

- 10.19 On 12<sup>th</sup> November 2019, the Council adopted a target for achieving 'net zero' carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan predates the declaration of a climate emergency and the net zero carbon target, however it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications, the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

10.20 The proposal is for a small-scale domestic development to an existing dwelling. As such, no special measures were required in terms of the planning application with regards to carbon emissions. However, there are controls in terms of Building Regulations which will need to be adhered to as part of the construction process which will require compliance with national standards.

10.21 There are no other matters considered relevant to the determination of this application.

### **11.0 Conclusion:**

11.1 Paragraph 11 of the NPPF advises that Local Planning Authorities should be approving development proposals that accord with an up-to-date development plan without delay. On balance, it is considered that there are no adverse impacts arising from the proposal that would significantly and demonstrably outweigh the overarching presumption in favour of sustainable development contained within paragraph 11 of the NPPF, and therefore planning permission should be approved.

### **12.0 Conditions (summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Planning and Development)**

1. Time limit for commencement (3 years)
2. Works to be done in accordance with approved plans

**NOTE:** Works within the highway.

### **Background Papers:**

Application and history files.

Available at: <https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2020/91191>

Certificate of Ownership

Certificate A signed.

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## Report of the Head of Planning and Development

### STRATEGIC PLANNING COMMITTEE

Date: 29-Jul-2020

**Subject: Planning Application 2018/92309 Reserved Matters application (pursuant to outline application 2016/93411) for residential development of 41 dwellings Land to rear of 125 Helme Lane, Meltham, Holmfirth, HD9 5RJ**

#### APPLICANT

Conroy Homes Ltd /  
Conroy Brook  
(Developments) Ltd

#### DATE VALID

17-Jul-2018

#### TARGET DATE

16-Oct-2018

#### EXTENSION EXPIRY DATE

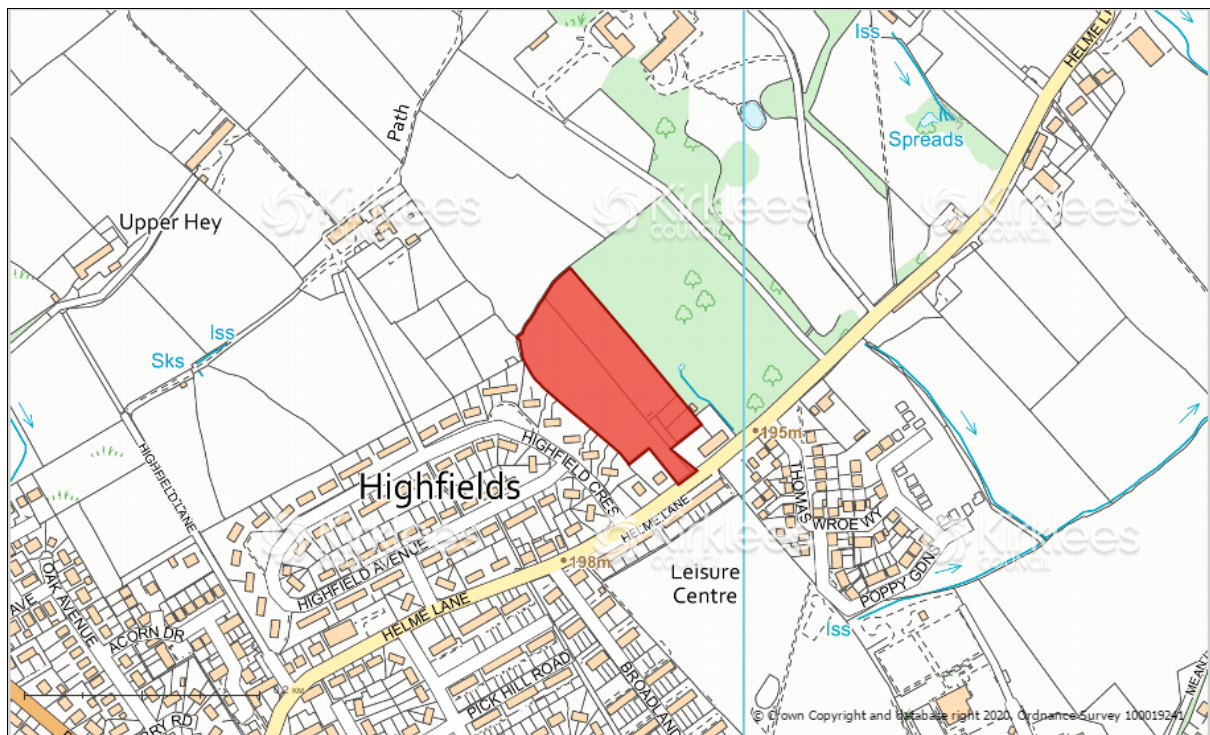
09-Nov-2018

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

#### LOCATION PLAN



Map not to scale – for identification purposes only

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**Electoral wards affected: Holme Valley North**

**Ward councillors consulted: Yes**

**Public or Private: Public**

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**RECOMMENDATION:**

DELEGATE approval of the application and the issuing of the decision notice to the Head of Planning and Development in order to complete the list of conditions including those contained within this report and to secure a Section 106 agreement to cover the following matters:

- 1) Affordable housing – six affordable housing units (four social rent, two discount market sale) to be provided in perpetuity.
- 2) Open space – £62,742 contribution towards off-site provision.
- 3) Education – £30,712 contribution.
- 4) Sustainable transport – Measures to encourage the use of sustainable modes of transport, including a £40,000 contribution towards Meltham Greenway.
- 5) Management – The establishment of a management company for the management and maintenance of any land not within private curtilages or adopted by other parties, and of infrastructure (including surface water drainage until formally adopted by the statutory undertaker).
- 6) Viability – Financial viability review mechanism to capture surplus in light of improved sales values.

In the circumstances where the Section 106 agreement has not been completed within three months of the date of the Committee's resolution then the Head of Planning and Development shall consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the mitigation and benefits that would have been secured; if so, the Head of Planning and Development is authorised to determine the application and impose appropriate reasons for refusal under Delegated Powers.

**1.0 INTRODUCTION:**

- 1.1 This is a Reserved Matters application for a residential development of 41 dwellings. The applicant seeks approval of all matters previously reserved, namely appearance, landscaping, layout and scale.
- 1.2 Outline planning permission for residential development was granted on 13/12/2016. All matters were reserved, other than access. That application (ref: 2016/93411) was considered by the Strategic Planning Committee on 01/12/2016.
- 1.3 The current application is presented to the Strategic Planning Committee as the previous outline application was, and this was in agreement with the Strategic Committee Chair. In addition, viability matters necessitate determination by committee.



1.4 Of note, although financial viability matters could have been considered under Discharge of Conditions to be submitted pursuant to conditions 5, 6 and 7 of the outline permission (ref: 2016/93411), given that the viability of the proposed development is inextricably linked to the matters to be considered under the current Reserved Matters application, viability is accordingly addressed in this report.

## **2.0 SITE AND SURROUNDINGS:**

2.1 The application site is 1.32 hectares in size and slopes downhill from northwest (215m AOD approx.) to southeast (195m AOD approx.). The site is accessed from Helme Lane via an existing gate and dropped kerb.

2.2 The site is grassed, and no significant buildings exist within the site's boundaries. No trees on the site are the subjects of Tree Preservation Orders (TPOs), however the woodland immediately adjacent to the northeast is the subject of TPO 15/80/W1. The site is within a Biodiversity Opportunity Zone (Valley Slopes) and an Impact Risk Zone of a Site of Special Scientific Interest. The site is also within 2.5 km of the South Pennine Moors Phase 1 Special Protection Area.

2.3 The site is not within a conservation area and there are no listed buildings immediately adjacent to the site. The Helme Conservation Area exists to the northeast, on the other side of the woodland adjacent to the site.

2.4 Adjacent buildings on Helme Lane and Highfield Crescent are in residential use.

2.5 The site is allocated for residential development in the Local Plan (site allocation HS166).

## **3.0 PROPOSAL:**

3.1 The applicant seeks Reserved Matters consent in relation to appearance, landscaping, layout and scale, following the approval of outline planning permission (with details of access) in 2016.

3.2 41 residential units are proposed, comprising 20 semi-detached and 18 detached two-storey dwellings, and three dwellings in a short two-storey terrace. These would be arranged around a new L-shaped estate road off which private drives are proposed. A small area of open space is proposed close to the site's west corner, behind 20 Highfield Crescent. This would be 0.053 hectares in size.

3.3 The 41 units would comprise three 2-bedroom, 28 3-bedroom and 10 4-bedroom dwellings.

3.4 Regarding affordable housing and other planning obligations, on 20/07/2020 the applicant submitted a revised offer as follows:

- Open space contribution of £62,742
- Education contribution of £30,712
- Metro Cards contribution of £15,840
- Six affordable housing units (four social rent, two discounted market sale)

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

4.1 2016/93411 – Outline planning permission granted 13/12/2016 for residential development (with details of access).

4.2 2018/93858 – Discharge of conditions application relating to conditions 9, 10, 11, 16, 17, 18 and 19 of the previous outline permission ref: 2016/93411. Pending decision.

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

5.1 Pre-application advice was provided in a letter dated 22/09/2016, in response to a proposal for 44 dwellings. The main points of this advice were:

- No objection to release of this Provisional Open Land for residential development.
- Emerging affordable housing policy requires 20% provision.
- Based on 44 dwellings, a £117,300 open space provision and a £85,193 education contribution required.
- On-site green infrastructure required.
- Proposed 44-unit scheme appears cramped, represents overdevelopment of the site, and meaningful landscape provision would be precluded. Density should be reduced.
- Any development should acknowledge topography and protected trees, and should provide landscaping along the northern boundary.
- Transport Statement required. This should include a cumulative impact assessment including existing committed schemes in the Meltham area.
- 2.4m x 43m visibility splays are appropriate for the site's entrance.
- Internal roads should be shared surfaces designed to a maximum speed of 15mph. Internal roads need to be 5.5m wide with 600mm hard margins.
- Car parking (including visitor parking – one space per four dwellings) required. Cycle parking required. Garages need to provide internal dimensions of 3m x 6m.
- Turning heads need to accommodate 11.6m long refuse vehicle. Swept path analysis required.
- Flood Risk Assessment required. Flood incidents have been reported in the surrounding area. Survey of culverted watercourse (that runs through the site) needed – this shouldn't be conditioned. Highway drainage also needs surveying. Site walkover with officers and other investigation is needed. Consultation needed with Yorkshire Water regarding Blackmoorfoot conduit. No comment on layout or quanta can be made without further drainage information. Stand-off distance from watercourse needed. Surface water flood route needed. Existing drainage system is damaged downstream, and needs repairing before connections are made. Once repairs are made, disposal of surface water to the watercourse would need to be restricted to 2.5 litres per second. Advice provided regarding land drainage and geology. Infiltration unsuitable at this site.
- Phase I contaminated land report required.
- Electric vehicle charging points would be conditioned.
- Tree survey required in relation to nearby TPO-protected trees.
- Ecological survey and biodiversity enhancement required.

5.2 In response to comments and concerns raised by officers, the applicant submitted amended drawings during the life of the current application. These showed an increase in the number of residential units (from 32 to 41), and a revised layout. Financial viability information, drainage information and drawings intended to address highways matters were also submitted.

## **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 statutory Development Plan for Kirklees is the Local Plan (adopted 27/02/2019).

### Kirklees Local Plan (2019):

6.2 The site is allocated for housing in the Local Plan (site allocation ref: HS166). HS166 sets out an indicative housing capacity of 46 dwellings, and identifies the following constraints:

- Third party land required to achieve sufficient visibility splays
- Proximity to Special Protection Area / Special Area of Conservation
- Proximity to SSSI
- Site adjacent to a UK BAP priority habitat
- Site is close to a conservation area

6.3 Relevant policies are:

LP1 – Presumption in favour of sustainable development  
LP2 – Place shaping  
LP3 – Location of new development  
LP4 – Providing infrastructure  
LP5 – Masterplanning sites  
LP7 – Efficient and effective use of land and buildings  
LP9 – Supporting skilled and flexible communities and workforce  
LP11 – Housing mix and affordable housing  
LP20 – Sustainable travel  
LP21 – Highways and access  
LP22 – Parking  
LP23 – Core walking and cycling network  
LP24 – Design  
LP26 – Renewable and low carbon energy  
LP27 – Flood risk  
LP28 – Drainage  
LP30 – Biodiversity and geodiversity  
LP32 – Landscape  
LP33 – Trees  
LP34 – Conserving and enhancing the water environment  
LP35 – Historic environment  
LP47 – Healthy, active and safe lifestyles  
LP48 – Community facilities and services  
LP49 – Educational and health care needs  
LP50 – Sport and physical activity  
LP51 – Protection and improvement of local air quality

LP52 – Protection and improvement of environmental quality  
LP53 – Contaminated and unstable land  
LP63 – New open space  
LP65 – Housing allocations

Supplementary Planning Guidance / Documents:

6.4 Relevant guidance and documents are:

- West Yorkshire Low Emissions Strategy and Air Quality and Emissions Technical Planning Guidance (2016)
- Kirklees Housing Strategy (2018)
- Kirklees Strategic Housing Market Assessment (2016)
- Kirklees Joint Health and Wellbeing Strategy and Kirklees Health and Wellbeing Plan (2018)
- Kirklees Biodiversity Strategy and Biodiversity Action Plan (2007)
- Negotiating Financial Contributions for Transport Improvements (2007)
- Providing for Education Needs Generated by New Housing (2012)
- Highway Design Guide (2019)
- Waste Collection, Recycling and Storage Facilities Guidance – Good Practice Guide for Developers (2017)
- Green Street Principles (2017)
- Viability Guidance Note (2020)

Climate change

- 6.5 On 12/11/2019 the council adopted a target for achieving “net zero” carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system, and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan pre-dates the declaration of a climate emergency and the net zero carbon target, however it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications the council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

National Planning Policy and Guidance:

- 6.6 The National Planning Policy Framework (2019) seeks to secure positive growth in a way that effectively balances economic, environmental and social progress for this and future generations. The NPPF is a material consideration and has been taken into account as part of the assessment of the proposal. Relevant paragraphs/chapters are:

- Chapter 2 – Achieving sustainable development
- Chapter 4 – Decision-making
- Chapter 5 – Delivering a sufficient supply of homes
- Chapter 8 – Promoting healthy and safe communities
- Chapter 9 – Promoting sustainable transport
- Chapter 11 – Making effective use of land
- Chapter 12 – Achieving well-designed places

- Chapter 14 – Meeting the challenge of climate change, flooding and coastal change
- Chapter 15 – Conserving and enhancing the natural environment
- Chapter 16 – Conserving and enhancing the historic environment
- Chapter 17 – Facilitating the sustainable use of minerals

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

6.8 Relevant national guidance and documents:

- National Design Guide (2019)
- Technical housing standards – national described space standard (2015, updated 2016)
- Fields in Trust Guidance for Outdoor Sport and Play (2015)

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

7.1 The application has been advertised as a major development.

7.2 The application was initially advertised via a site notice posted on 02/08/2018, a press notice dated 10/08/2018, and letters delivered to addresses abutting the application site. This is in line with the council's adopted Statement of Community Involvement. The end date for this initial publicity was 31/08/2018.

7.3 Representations from occupants of three properties were received in response to the council's consultation. These have been published online. The following is a summary of the concerns raised:

- Objection to loss of greenfield site. Fields already lost to recent development nearby.
- Brownfield sites in Meltham should be developed instead.
- Space between Helme and Meltham should remain undeveloped.
- Harm to quiet rural area. Character of area would change.
- Proposals are too large in scale.
- Views of Meltham and other areas from Helme Lane would be adversely affected.
- Site borders a conservation area.
- Proposals lack fencing for site's western edge.
- Overlooking of adjacent dwellings.
- Loss of natural light to adjacent properties.
- Proposed dwellings would receive little natural light due to trees to east.
- TPOs protect trees in adjacent garden.
- Bats exist at the site. Application doesn't set out measures to protect existing bat colony.
- Highway concerns. Local traffic would increase. Helme Lane is already heavily used as the shortest route to Huddersfield. Existing users don't respect speed limit. Parents park outside the site when bringing children to Helme Primary School, and additional traffic would risk children's safety. Large vehicles use Helme Lane, and more such vehicles would cause damage to the road. Congestion problems would worsen in the centre of Meltham.

- Unclear where water collected by culvert would discharge to. Corner of site is already prone to flooding, and this would be made worse. Three streams appear at site during heavy rain, and water flows to Helme Lane through the existing site entrance. Existing drains on Helme Lane are inadequate.
- Impact on local schools. Local school is oversubscribed.
- Impact on GP and dental services.
- Disruption during construction. Contractor parking will cause problems. Overlapping development would make problems worse.

7.4 Cllr Greaves, Cllr Lyons and Cllr White expressed support for a Section 106 offer that included a contribution towards the Meltham Greenway.

7.5 Meltham Town Council expressed support for the application.

7.6 Following the submission of an amended proposal with a revised layout and an increase in the number of dwellings (from 32 to 41), the council carried out a full re-consultation, allowing additional time for the Christmas and New Year period. A new site notice was posted on 30/12/2019, a new press notice was published on 03/01/2020, and letters were again delivered to addresses abutting the application site. The end date for this further publicity was 24/01/2020.

7.7 Representations from occupants of three properties were received in response to the council's consultation. The following is a summary of the additional concerns raised:

- Objection to lack of hipped roofs to semi-detached dwellings.
- Objection to height of 3-storey type J dwelling. This would stick out and would harm visual amenity.
- Regarding flood risk, site should have been visited (and comments should have been made) in winter during heavy rainfall. Neighbours have had water accumulate beneath their house. Drainage along western side of site has still not been addressed fully. Culvert does not exist. Proposal to provide drainage beneath 119 and 121 Helme Lane is not shown on drawings. Applicant has not responded to comments of the Lead Local Flood Authority. Spring exists at site's north western boundary.
- No dwellings would be suitable for older people.
- Contractor's vehicles should be contained within the development site.
- Application doesn't explain increase from 32 to 41 dwellings.
- No notification of amendments posted on lampposts.
- Concern regarding owls, lapwings and other wildlife.
- Query as to why visitor parking has been removed.
- Support comments of KC Trees regarding protected woodland. No though given to effect of trees at 121 Helme Lane upon plots 1 and 2 – canopies of these trees are more extensive than realised. Plans incorrectly show trees at site entrance. Concern that site hasn't been visited in summer.
- Previous concerns regarding highway congestion, safety and disruption still apply.
- Previous concerns regarding lack fencing at site's western edge and overlooking still apply.
- There are already 48 houses for sale in Meltham.

- Objection to lack of social housing.
- Council's consultation end dates are inconsistent.
- Officers haven't responded to questions raised in previous representation.
- Online documents still refer to 32-unit scheme and are invalid. Decisions will be made on incorrect information.
- Online consultee responses still refer to 32-unit scheme.

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

## 8.0 CONSULTATION RESPONSES:

8.1 The following is a brief summary of consultees advice (more details are contained within the assessment section of the report, where appropriate):

### 8.2 Statutory:

KC Highways Commenting on 41-unit scheme – Proposed round-top road humps are unacceptable and should be removed. Ramp should be provided to mark transition from estate road to shared surface. Visitor parking (at one space per four dwellings) required. Any on-street visitor parking needs to allow for swept paths of an 11.85m long refuse vehicle. Longitudinal sections needed to allow gradients to be assessed. Stage 1 Road Safety Audit (and Designer's Response) required. Regarding Section 38 and adoption, more information needed regarding the relocated gas main, surface water attenuation, drainage, foul and surface water sewers, and a 2m wide service strip in adoptable shared surface roads without footways.

KC Strategic Drainage (Lead Local Flood Authority) Commenting on 41-unit scheme – Welcome the inclusion of a new land drain to northern perimeter and the conveyance of flows along the western boundary. The use of clay stanks to prevent the gravel surround becoming a land drain is necessary and welcomed. However, as the diversion reaches Helme Lane, the applicant's drawing must show the existing highway drain arrangement in the pavement. As Kirklees would be responsible for a highway drain and watercourse in the highway, it is highly probably that the two networks will clash and therefore should be amalgamated. Due diligence is required to show appropriate sizing of the amalgamated system with levels and a connection point in the receiving manhole.

In addition, the current culvert located just inside the gardens of adjacent houses is to remain as it will take some existing flows. The distinction should be clearly made on drawings to show the location of the two systems. For the new system to take flows of water currently posing a flood risk, a stub pipe for future connectivity should be made to the boundary for use by the neighbouring property as previously agreed.

The use of additional manholes to prevent 90-degree bends on the watercourse/land drain is welcomed.

Drainage drawings should be supplemented by drawings showing boundaries between houses. Solid boundary walls are discouraged so that if there is a blockage scenario of exceedance event, overland flows are not impeded producing a ponding effect.

Microdrainage design calculations and simulations are required to support the design of the tank. Access arrangements are not approved under the Reserved Matters application and can be dealt with elsewhere.

It is imperative that maintenance and management of land drainage and SUDS systems are incorporated within a management company – Section 106 agreement required.

Flood routing is largely acceptable for the main road in the site and the low spot connection to the attenuation tank. An analysis of the main estate road in and around the area the attenuation tank is located should be submitted with appropriate mitigation to avoid water entering property curtilage.

Yorkshire Water Commenting on 41-unit scheme – No comment.

### **8.3 Non-statutory:**

KC Conservation and Design Commenting on 41-unit scheme – No comment.

KC Ecology – Commenting on 32-unit scheme – Applicant's Biodiversity Habitat Enhancement Scheme does not include details of native planting (trees and grassland), which was a recommendation of the original Preliminary Ecological Appraisal. These measures are partly covered in the submitted landscape scheme, but some amendments to this scheme will be required to provide the necessary ecological mitigation.

The proposals do not exceed any threshold within Natural England's SSSI Impact Risk Zone tool, therefore no consultation with Natural England is required under Section 28I of the Wildlife and Countryside Act 1981.

Site is within 2.5 km of the South Pennine Moors Phase 1 SPA, however it has been concluded through Habitat Regulations Assessment Screening that the proposals would have no likely significant effect on the SPA.

Further information is needed to demonstrate the required ecological mitigation and enhancement, which can be provided through amendment to the landscape proposals and addition to the Biodiversity Habitat Enhancement Scheme.

A net biodiversity gain has not been demonstrated through the submitted information. However, this could be achieved through the following amendments:

1. The landscape proposals have capacity for additional street tree planting, which should be provided.
2. The proposed hedgerow seed mix, should be substituted for something more appropriate – a consultant ecologist will be able to advise on establishment and management.
3. There is a significant opportunity for ecological enhancement, likely sufficient to provide a net biodiversity gain, by amending the proposed attenuation tank to a pond with the same function. Appropriate planting and management would achieve the required enhancement.
4. The Biodiversity Habitat Enhancement Scheme should be amended to include management of vegetated and aquatic habitats created as part of the scheme, including trees, grasslands, shrub planting and pond, etc.



As the proposals do not demonstrate a biodiversity net gain, as required under policy LP 30, I cannot support the application.

KC Education Commenting on 41-unit scheme – Education contribution of £30,712 required.

KC Environmental Health Commenting on 32-unit scheme – Most concerns were dealt with at outline stage (ref: 2016/93411) by way of conditions regarding contaminated land and electric vehicle charging points. Condition regarding construction management (including dust management, hours of works and deliveries) recommended. Latest condition regarding electric vehicle charging should also be applied. Advice provided regarding construction noise.

KC Landscape Commenting on 41-unit scheme – Holme Valley North ward is deficient in all open space typologies. 3,936.82sqm of greenspace required, within which a Local Area of Play (LAP) is needed, designed in accordance with Fields in Trust guidance. 0.053 hectares of on-site amenity greenspace leaves a shortfall requiring £62,742 in lieu of the LAP (for children and young people's provision), parks and recreation, and natural and semi-natural greenspace. Allotments are deficient in the ward, but the 50-unit trigger is not met. There are existing facilities within the recommended 720m of the site, which would require enhancement in lieu of on-site provision. The off-site contribution could be considered for Broadlands Recreation Ground, Hey Doorstep Green, and potentially Robert Ashton Memorial Park, subject to detailed engagement with Members, citizen consultation, and ward Member and Cabinet ratification nearer the time. Greenspace appraisals are carried out for each facility to demonstrate enhancement opportunities. Local Plan policies LP32 and LP63 need to be met, and full landscaping details should be secured by condition. Detailed advice provided regarding landscaping, street lighting and bin storage and collection.

KC Strategic Housing Commenting on 41-unit scheme – Eight affordable units required. These should be 1- or 2-bedroom homes, provided as four social or affordable rent dwellings and four intermediate dwellings. There is a significant need for affordable 1- and 2-bedroom homes in Kirklees Rural West, and for 1- and 2-bedroom homes for older people. Affordable homes should be distributed evenly throughout the development, and must be indistinguishable from market housing in terms of quality and design.

KC Trees Commenting on 41-units scheme – The Arboricultural Method Statement (rev C) does now at least consider the proposals seeking approval. I am still unsatisfied that it is vague and unhelpful for any prospective developer, however if the fencing is positioned as shown the adjacent trees will be protected from accidental damage and soil stripping. Conditions recommended requiring implementation in compliance with the Arboricultural Method Statement, and relating to any additional tree work during construction.

## 9.0 MAIN ISSUES

- Land use and principle of development
- Quantum and density
- Sustainability and climate change
- Urban design issues
- Residential amenity
- Affordable housing
- Highway issues
- Flood risk and drainage issues
- Ecological considerations
- Trees
- Environmental and public health
- Representations
- Financial viability and planning obligations
- Other planning matters

## 10.0 APPRAISAL

### Land use and principle of development

- 10.1 Planning law requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF is a material consideration in planning decisions.
- 10.2 The principle of residential development at this site has already been established. The application site is allocated for housing in the Local Plan (site allocation ref: HS166). Full weight can be given to this site allocation, and as noted above outline planning permission has been granted for residential development at this site.

### Quantum and density

- 10.3 The Local Plan sets out a minimum housing requirement of 31,140 homes between 2013 and 2031 to meet identified needs. This equates to 1,730 homes per annum.
- 10.4 Site allocation HS166 sets out an indicative site capacity of 46 dwellings, which reflects the expectation of Local Plan policy LP7 that developments should achieve a net density of at least 35 dwellings per hectare, where appropriate. Having regard to paragraphs 122 and 123 of the NPPF, given that allocated land in Kirklees is finite, and given the housing delivery targets set out in the Local Plan, applicants should “sweat” their sites as far as possible (having regard to all other planning considerations) to ensure that appropriate and optimal densities are achieved. The appropriate quantum and density for each site will, however, be partly determined by its constraints, including those constraints identified by the council in site allocations, and those that may be identified and evidenced by applicants when undertaking more detailed site analysis and design work.

- 10.5 Of note, during pre-application discussions the applicant tabled a 44-unit scheme. Officers asked for the density of that scheme to be reduced, stating that the proposal had a cramped layout appeared and represented overdevelopment of the site. However, that advice was given in 2016 (prior to the adoption of the Local Plan), and did not follow a full exploration of the relationship between the proposed development's quantum and financial viability.
- 10.6 Under the current application, the applicant initially proposed a development of 32 dwellings, comprising eight semi-detached and 24 detached two-storey dwellings. This would have achieved a density of only 24 dwellings per hectare, resulting in an unacceptable underuse of the allocated site. Officers were additionally concerned that this low quantum of development, and the high proportion of detached dwellings proposed, was adversely affecting the scheme's financial viability (the applicant had argued that the 32-unit scheme could not provide any affordable housing or Section 106 contributions).
- 10.7 The applicant argued that, of the site's 1.32 hectares, only 0.83 hectares was developable, and that 32 dwellings would have resulted in a density of 38.5 dwellings per hectare. In response, officers did not agree that only 0.83 hectares of the site were developable, but accepted that the site was indeed subject to additional constraints that had not been identified in the site allocation – these included an existing gas main and easement running through the length of the site, a culverted watercourse running along the site's southwest boundary, and the adjacent TPO-protected trees.
- 10.8 Given the above, and notwithstanding advice given at pre-application stage, officers considered that an increase in the number of units proposed should be explored. Furthermore, with changes to unit types, officers considered that a greater number of units would be possible without adversely affecting residential amenity or quality.
- 10.9 Following meetings and the submission of a series of revised layouts, the applicant submitted the current 41-unit scheme, most recently illustrated on drawing 0101 rev P12. In this revised layout, the number of detached dwellings has decreased to 18, the number of semi-detached and terraced dwellings has increased to 23, and private drives have been rationalised. The revised layout accommodates the existing gas main, culverted watercourse, and their respective easements, and includes an area of on-site open space where these constraints prevent development. The revised layout also provides adequate distances between existing and proposed dwellings, includes adequate outdoor amenity space for each dwelling, makes space for water (attenuation and related easements are annotated on the applicant's drawings), and responds to the requirements of the council's Highway Design Guide SPD and the need to ensure adjacent TPO-protected trees are not adversely affected.
- 10.10 With 41 units now proposed in a site of 1.32 hectares, a density of 31 dwellings per hectare would be achieved. This is considered sufficiently close to the 35 dwellings per hectare referred to in Local Plan policy LP7. It is accepted that the applicant is unable to achieve further increases in unit numbers (above the 41 units now proposed) without adversely affecting residential amenity or quality, or otherwise compromising the scheme in relation to other considerations relevant to planning. It is recommended that the quantum and density currently proposed be accepted.

## Sustainability and climate change

- 10.11 As set out at paragraph 7 of the NPPF, the purpose of the planning system is to contribute to the achievement of sustainable development. The NPPF goes on to provide commentary on the environmental, social and economic aspects of sustainable development, all of which are relevant to planning decisions.
- 10.12 It is considered that residential development at this site can be regarded as sustainable, given the site's location adjacent to an already-developed area, its proximity to public transport and other local facilities in Meltham, and the measures related to transport and connectivity that can be put in place by developers. Meltham and the application site are not isolated and inaccessible, and bus stops are located within walking distance of the application site. Facilities available in Meltham would enable residents of the proposed development to address at least some of their daily, economic, social and community needs within the area surrounding the application site, which further indicates that residential development at this site can be regarded as sustainable.
- 10.13 Regarding climate change, measures would be necessary to encourage residents of the proposed development to use sustainable modes of transport. It is recommended that cycle storage for residents be secured by condition (electric vehicle charging points are already required by condition 18 of the outline planning permission ref: 2016/93411), and that sustainable transport measures be secured via a Section 106 agreement. A development at this site which was entirely reliant on residents travelling by private car is unlikely to be considered sustainable.
- 10.14 Drainage and flood risk minimisation measures will need to account for climate change.
- 10.15 Further reference to, and assessment of, the sustainability of the proposed development is provided later in this report in relation to transport and other relevant planning considerations.

## Urban design issues

- 10.16 Chapters 11, 12 and 16 of the NPPF, and Local Plan policies LP2, LP5, LP7, LP24 and LP35 are relevant to the proposed development in relation to design, as is the National Design Guide.
- 10.17 The application site is sloped, increasing its visibility when viewed from the southeast. The site is, however, immediately adjacent to existing residential development to the southwest, and is opposite development on the south side of Helme Lane, such that development at this site would appear as an extension to an existing settlement. Given this adjacent existing development, and the limited screening provided by the adjacent woodland to the northeast, the proposed development would not cause significant harm to the wider landscape or the character of the area.

- 10.18 The proposed layout responds to the site's shape and constraints, and includes a new L-shaped estate road off which private drives are proposed. The proposed layout is legible and logical, it allows for natural surveillance of the development's areas of public realm (including the proposed small area of open space), and it minimises the visual impact of parked vehicles where possible. The location of the proposed open space is considered acceptable, given that this is determined by the existing gas main, culverted watercourse, and their respective easements.
- 10.19 2-storey dwellings are proposed (some with attic rooms). This is appropriate to the site's context, where the majority of dwellings are 2-storey. An objection has been raised by a resident to the proposed house type J on height grounds, however the provision of attic rooms with dormers would not result in dwellings that are out of character with surrounding residential development.
- 10.20 Ten house types are proposed, giving the proposed development sufficient elevational variety and visual interest. Conventional massing, pitched roof forms and elevational treatments are proposed. An objection has been raised by a resident to the lack of hipped roofs, however such a roof design is not considered necessary to render the proposed development acceptable in design terms.
- 10.21 A materials schedule was submitted by the applicant on 12/11/2018. The applicant proposes artificial stone (Forticrete Anstone Olde Heather Black with a pitched finish) for the elevations of the dwellings, and grey interlocking concrete roof tiles. While natural stone would be preferred, it is noted that the same artificial stone has been approved at a recent residential development nearby (under application ref: 2015/93169), that natural stone has not been used in several other nearby buildings, and that the application site is not within a conservation area. The proposed materials are therefore considered acceptable.
- 10.22 Some details of proposed boundary treatments are shown on drawing 9601 rev P03, however a condition requiring the submission of full details of all boundary treatments is recommended. The use of 1.8m timber fencing in locations visible from the public realm would not be considered acceptable, and solid boundary treatments may be necessary to restrict overland flows in blockage events.
- 10.23 The same drawing includes details of landscaping, however a condition requiring full details of landscaping is recommended, to secure appropriate planting (including native species, planting attractive to pollinators, and year-round visual interest), management and maintenance.
- 10.24 There are no designated heritage assets within or covering the site, however the Helme Conservation Area is relatively close (approximately 100m to the northeast), and Craddin Cottage at 190 Helme Lane is Grade II listed. Due to distance and the intervening woodland, the application site does not have a direct relationship with these heritage assets, and does not form a significant part of their setting, therefore it is considered that the proposed development would not cause unacceptable harm to their significance.

## Residential amenity

- 10.25 Local Plan policy LP24 requires development to provide a high standard of amenity for future and neighbouring occupiers, including by maintaining appropriate distances between buildings.
- 10.26 Acceptable separation distances are proposed between the proposed dwellings and existing neighbouring properties. The proposed distances would ensure existing neighbours would not experience significant adverse effects in terms of natural light, privacy and outlook.
- 10.27 External lighting at this site can be designed to avoid the introduction of light pollution that would otherwise adversely affect neighbouring amenity and wildlife. An appropriate condition is recommended.
- 10.28 In terms of noise, although residential development would introduce (or increase) activity and movements to and from the site, given the quantum of development proposed, and the site's location on Helme Lane (which is already used by through-traffic) it is not considered that neighbouring residents would be significantly impacted. The number of vehicle movements along Helme Lane would increase, but not to levels unusual for a road of this size and character.
- 10.29 Condition 19 of the outline planning permission (ref: 2016/93411) requires the submission of details relating to construction traffic, including the point of access for construction traffic, details of the times of use of the access, the routing of the construction traffic to and from the site, construction workers' parking facilities and the provision, use and retention of wheel washing facilities within the site. Details submitted pursuant to that condition are currently under consideration under application ref: 2018/93858. In relation to the current Reserved Matters application, a further condition is recommended requiring the submission of a Construction Management Plan (CMP) intended to address the other ways in which construction work can potentially cause impacts, including cumulative impacts (should other nearby sites be developed at the same time) and details of dust suppression measures and temporary drainage arrangements. An informative regarding hours of noisy construction work is also recommended.
- 10.30 The quality of the proposed residential accommodation is also a material planning consideration.
- 10.31 The 41 units would comprise three 2-bedroom, 28 3-bedroom and 10 4-bedroom dwellings. Although a small number of one-bedroom units would have been welcomed, the proposed unit size mix would cater for a reasonably wide range of household sizes, would help create a mixed and balanced community, would help avoid visual monotony across the site, and is considered acceptable.
- 10.32 Although the Government's Nationally Described Space Standards (2015, revised 2016) are not adopted planning policy in Kirklees, they provide useful guidance which applicants are encouraged to meet and exceed. The majority of the 41 proposed dwellings would meet these standards, however the six type F units would only be 74sqm in size and the three type L units would only be 77.1sqm in size (whereas the Government advises a minimum size of 84sqm for a 3-bedroom, 4-person, 2-storey dwelling). Refusal of planning permission is not recommended in relation to these shortfalls, however this matter weighs negatively in the balance of planning considerations.

- 10.33 All of the proposed dwellings would benefit from dual aspect, and would be provided with adequate outlook, privacy and natural light. Adequate distances would be provided within the proposed development between new dwellings.
- 10.34 All dwellings would have WCs at ground level, providing convenience for visitors with certain disabilities. No dwellings would have ground floor bedrooms, although some of the dwellings would have habitable rooms at ground floor level that could be converted to bedrooms. An objection has been raised by a resident to the lack of housing intended for occupation by older people, however there is no policy requirement for such provision as part of a development at this site.
- 10.35 All of the proposed dwellings would be provided with adequate private outdoor amenity space proportionate to the size of each dwelling and its number of residents.
- 10.36 A small area of on-site open space, 530sqm (0.053 hectares) in size, is proposed close to the site's west corner, behind 20 Highfield Crescent. As the Holme Valley North ward is deficient in all open space typologies, the 41-unit scheme triggers a need for 3,936.82sqm of open space (other than allotments, as the 50-unit trigger is not met by the proposed development). It is accepted that a larger area of open space cannot (and should not) be provided on-site, given the site's topographical constraints and the need to accommodate a sufficient number of dwellings (of an acceptable design and level of amenity). The applicant's approach to open space will, however, necessitate a financial contribution towards off-site open space. A contribution of £62,742 would be required, including funding for a Local Area of Play. This contribution could be put towards existing facilities within walking distance of the application site, including Broadlands Recreation Ground, Hey Doorstep Green, and Robert Ashton Memorial Park, subject to engagement with Members and residents, and Cabinet ratification.

#### Affordable housing

- 10.37 Local Plan policy LP11 requires 20% of units in market housing sites to be affordable. A 55% social or affordable rent / 45% intermediate tenure split would be required, although this can be flexible. Given the need to integrate affordable housing within developments, and to ensure dwellings of different tenures are not visually distinguishable from each other, affordable housing would need to be appropriately designed and pepper-potted around the proposed development.
- 10.38 To comply with policy LP11, the proposed development would need to provide eight affordable housing units (four social or affordable rent, and four intermediate), however regarding affordable housing and other planning obligations, on 20/07/2020 the applicant submitted a revised offer that includes six affordable housing units (four social rent, two discounted market sale).

- 10.39 On 20/07/2020 the applicant clarified that the four social rent dwellings would comprise one type F unit and three type L units, while the two discounted market sale dwellings would be type F units. This would mean three of the six units on the southwest side of the new estate road would be affordable, as would the three terraced dwellings proposed towards the site's east corner. Given the size and layout of the proposed development, it is considered that the proposed development's affordable component would be adequately distributed across the site.
- 10.40 The financial viability of the proposed development is discussed later in this report.

#### Highway issues

- 10.41 Local Plan policy LP21 requires development proposals to demonstrate that they can accommodate sustainable modes of transport and can be accessed effectively and safely by all users. The policy also states that new development will normally be permitted where safe and suitable access to the site can be achieved for all people, and where the residual cumulative impacts of development are not severe.
- 10.42 Paragraph 108 of the NPPF states that, in assessing applications for development, it should be ensured that appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, that safe and suitable access to the site can be achieved for all users, and that any significant impacts from the development on the transport network (in terms of capacity and congestion), or highway safety, can be cost-effectively mitigated to an acceptable degree. Paragraph 109 of the NPPF adds that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highways safety, or if the residual cumulative impacts on the road network would be severe.
- 10.43 Helme Lane is subject to a 30mph speed restriction, is open to two-way traffic, is a bus route, and carries through-traffic between Meltham and settlements to the north. The application site has a frontage to Helme Lane of approximately 20m, and a single access point via a gate and dropped kerb. A second gated access point (serving the adjacent residential property to the east) uses the same dropped kerb. There is a lighting column directly outside the application site, footways on both sides of the carriageway, and no yellow line markings along the kerbs.
- 10.44 A single vehicular access point is proposed to Helme Lane. Access to the site was previously considered at outline application stage, and condition 8 of the outline planning permission (ref: 2016/93411) requires the provision of adequate visibility splays (as per previously-approved plan 16/D29/06 rev D) prior to commencement of development. A 2.4m x 43m visibility splay is shown on the applicant's current drawings.
- 10.45 Trip generation was also previously considered at outline application stage. Paragraphs 10.15 and 10.16 of the committee report for application ref: 2016/93411 considered the anticipated trips generated by a 44-unit scheme at this site, concluding that the 36 two-way morning peak and 36 two-way evening peak movements would not have an unacceptable impact on the local road network, and that the proposed site access and the Helme Lane / Broadlands Road junction would operate well within capacity.



- 10.46 For the 41-unit scheme now proposed, adequate off-street parking would be provided for individual dwellings, however only one visitor parking space is annotated on the proposed layout, when 10 such spaces should be provided. It is recommended that the provision of additional visitor parking spaces be secured by condition.
- 10.47 During the life of the current application, the applicant has amended gradients to the proposed estate road, improved alignment onto Helme Lane, improved refuse vehicle turning, widened and redesigned driveways and improved provisions for pedestrians (including the addition of a footway up to the curtilage of unit 7 on the south side of the estate road). A road safety audit and designer's response have been submitted, and the applicant has deleted previously-proposed round-top traffic calming features from the scheme, in response to officer requests. Final comments from Highways Development Management officers on the applicant's latest refuse vehicle tracking plan (AMA/20188/ATR005, received 02/07/2020 and showing swept paths for a 11.85m refuse vehicle) will be reported in the committee update.
- 10.48 A condition regarding the surfacing and drainage of parking areas is considered appropriate, as is an informative regarding works to the highway. Condition 9 of the outline planning permission (ref: 2016/93411) already requires the submission of details of internal adoptable roads.
- 10.49 In earlier comments, Highways Development Management officers relayed a request from the West Yorkshire Combined Authority (Metro) for funding for a package of sustainable travel measures including discounted MetroCards. For bus-only Residential MetroCards, a contribution of £15,840 was requested. The applicant has agreed to make this contribution. However, given site circumstances and in light of comments from ward Members, it is considered that any such contribution would be better put towards encouraging other forms of sustainable transport such as walking and cycling, and specifically the Meltham Greenway, which is a key east-west leisure and transport route that is part of the existing Core Walking and Cycling Network, that is likely to be used by residents of the proposed development, and which requires funding for its eastwards extension towards Beaumont Park. In light of the applicant's earlier offer of a £40,000 contribution towards the Meltham Greenway, it is considered appropriate to secure that larger figure, with the offered £15,840 being put towards it.
- 10.50 No recorded or claimed rights of way run through or alongside the application site, however public footpath MEL/26/40 runs from Helme Lane through the Helme Ridge development and Broadlands Recreation Ground to Broadlands Road. This footpath has also been identified as part of the existing Core Walking and Cycling Network in the Local Plan. Further south, this publicly-accessible route connects with the Meltham Greenway.
- 10.51 Details of secure, covered and conveniently-located cycle parking for residents would be secured by a recommended condition.

- 10.52 Storage space for three bins, and refuse collection points, would be required for all dwellings. Further details of waste collection, including details of management to ensure waste collection points are not used for fly-tipping or permanent bin storage, are required by recommended condition. The same condition requires the provision of refuse collection points in locations that would not obstruct access to private driveways.

#### Flood risk and drainage issues

- 10.53 The site is within Flood Zone 1 and slopes downhill from northwest (215m AOD approx.) to southeast (195m AOD approx.). A culverted watercourse runs beneath the site, close to its southwest boundary. This, and a drain from a pond in the adjacent woodland, ultimately carry surface water to Meltham Dike to the east.
- 10.54 Of note, matters of drainage could be addressed via submissions made pursuant to condition 16 of the outline planning permission (ref: 2016/93411), which requires the submission of details of the proposed means of separate disposal of foul and surface water drainage. However, as drainage is closely linked to layout in many respects (space needs to be allowed for attenuation, flood routing affects layout, and easements along drains may limit developable space, for example), it is appropriate to consider drainage under the current Reserved Matters application.
- 10.55 As noted at outline stage, infiltration is not considered to be an appropriate method of surface water disposal at this site, and the applicant therefore instead proposes disposal to an existing watercourse to the south of the site, with on-site attenuation storage and a hydrobrake reducing the discharge rate to 8 litres per second. In addition, to address existing problems affecting the site and adjacent properties, a new land drain is proposed to the site's northern perimeter, and the existing culvert that runs along the site's southwest boundary would be renewed and partly diverted around 121 Helme Lane.
- 10.56 The Lead Local Flood Authority (LLFA) objected to the applicant's earlier drainage proposals, however with the proposals as detailed above, and with the applicant's most recent drawings and supporting information, the LLFA's concerns have largely been addressed. The applicant has attempted to address outstanding matters via a further drainage layout drawing submitted on 07/07/2020, and the LLFA's comments on this latest submission will be reported in the committee update. Notwithstanding those awaited comments, it is considered that the outstanding matters could be addressed via condition 16 of the outline planning permission, and additional conditions recommended at this Reserved Matters stage. Maintenance and management of drainage systems (up to the point of adoption by the statutory undertaker) would be secured via a Section 106 agreement.

#### Ecological considerations

- 10.57 The site is within a Biodiversity Opportunity Zone (Valley Slopes) and an Impact Risk Zone of a Site of Special Scientific Interest. The site is also within 2.5 km of the South Pennine Moors Phase 1 Special Protection Area.

- 10.58 The applicant submitted an amended Biodiversity Habitat Enhancement Scheme on 09/10/2018 in response to the comments of the council's Biodiversity Officer. This amended document included proposals for additional tree planting, ecological enhancement planting, and an amended seed mix, however the document was effectively superseded following the increase in the quantum of development from 32 units 41, and the related revisions to layout.
- 10.59 Of note, further information would need to be submitted by the applicant in relation to ecological impacts and enhancement pursuant to condition 17 of the outline planning permission (ref: 2016/93411) in any case, and submissions made pursuant to that condition can address some of the outstanding concerns of the council's Biodiversity Officer. Condition 17 requires the submission of details of a biodiversity habitat enhancement scheme including details and potential locations for bat and bird roost opportunities within the development and neighbouring trees. The wording of condition 17, however, does not specifically require details to demonstrate that a biodiversity net gain (as now required by Local Plan policy LP30 and chapter 15 of the NPPF) would be achieved.
- 10.60 The proposed development is likely to result in a biodiversity net loss (contrary to Local Plan policy LP30 and chapter 15 of the NPPF), although the extent of this loss has not been quantified by the applicant through a biodiversity metric calculation. A condition (further to condition 17 of the outline planning permission) is therefore recommended, requiring the applicant to provide the necessary calculation, and to explore all options for on-site compensatory works. If adequate compensatory works could be achieved on-site, the applicant would need to look for nearby, available sites where compensatory works can be implemented with the agreement of the relevant landowner. If no such sites can be found by the applicant, a financial contribution could be made which the council would be required to spend on such compensatory measures at an available site as near as possible to the application site.

### Trees

- 10.61 No trees within the application site are the subjects of Tree Preservation Orders (TPOs), however the woodland immediately adjacent to the northeast is the subject of TPO 15/80/W1.
- 10.62 Amended plans submitted during the life of the application moved the proposed dwellings away from the site's northeast boundary to help ensure the adjacent protected trees would not be adversely affected by the proposed development. In addition, the applicant's latest Arboricultural Method Statement (rev C, received 26/06/2020) includes proposals for fencing which, if positioned as shown, would protect the adjacent trees from accidental damage and soil stripping. Conditions requiring implementation of the Arboricultural Method Statement, and relating to any additional tree works during construction, are recommended.
- 10.63 A resident has expressed concern regarding potential impacts upon trees at 121 Helme Lane, however this matter has not triggered an objection from the council's Arboricultural Officer, those trees are not TPO-protected, and the footprint of unit 1 would not interfere with their root protection areas.

## Environmental and public health

- 10.64 With regard to the West Yorkshire Low Emission Strategy, although condition 18 of the outline planning permission (ref: 2016/93411) already requires the provision of electric vehicle charging points, a further condition is recommended at this Reserved Matters stage, specifying that each charge point must be capable of ensuring a minimum continuous current demand of 16 amps and a maximum demand of 32 amps.
- 10.65 The health impacts of the proposed development are a material consideration relevant to planning, and compliance with Local Plan policy LP47 is required. Having regard to the sizes of most of the proposed dwellings, the affordable housing and other planning obligations that are to be secured, measures that can be secured at conditions stage to minimise crime and anti-social behaviour, and other matters, it is considered that the proposed development would not have negative impacts on human health.
- 10.66 Regarding the social infrastructure currently provided and available in Meltham and the surrounding area (which is relevant to the public health impacts and the sustainability of the proposed development), and specifically local GP provision, there is no policy or supplementary planning guidance requiring the proposed development to contribute specifically to local health services. Furthermore, it is noted that funding for GP provision is based on the number of patients registered at a particular practice and is also weighted based on levels of deprivation and aging population. Direct funding is provided by the NHS for GP practices and health centres based on an increase in registrations.

## Representations

- 10.67 Six representations have been received from the occupants of five properties. Below are the case officer's responses to the issues raised which have not been addressed earlier in this report.
- The availability of houses for sale elsewhere in Meltham is not a reason for withholding Reserved Matters approval in relation to a further 41 dwellings. Market churn is normal, and is not an indication of a lack of demand for housing in Meltham.
  - Residents have correctly noted that some submission documents still refer to the earlier 32-unit scheme, however not all documents needed to be updated in light of the amended scheme.

## Financial viability and planning obligations

- 10.68 To mitigate the impacts of the proposed development, the following planning obligations would need to be secured via a Section 106 agreement:
- Affordable housing – Eight affordable housing units (four social/affordable rent, and four intermediate) to be provided in perpetuity.
  - Open space – £62,742 contribution towards off-site provision.
  - Education – £30,712 contribution.
  - Sustainable transport – Measures to encourage the use of sustainable modes of transport, including a £40,000 contribution towards Meltham Greenway.

- Management – The establishment of a management company for the management and maintenance of any land not within private curtilages or adopted by other parties, and of infrastructure (including surface water drainage until formally adopted by the statutory undertaker).

- 10.69 As noted above, although financial viability matters could have been considered under Discharge of Conditions to be submitted pursuant to conditions 5 (public open space), 6 (affordable housing) and 7 (education) of the outline permission (ref: 2016/93411), given that the viability of the proposed development is inextricably linked to the matters to be considered under the current Reserved Matters application, viability is accordingly addressed in this report. Officers now advise applicants that, if they intend to submit viability information in relation to Section 106 obligations, this should be submitted at Reserved Matters stage, so that viability can be considered concurrently with the layout and quantum of the proposed development, and amendments (to improve viability) can be made if necessary. Were applicants to submit viability information pursuant to outline conditions after Reserved Matters have been approved, there would be less scope for exploring layout and quantum amendments (to improve viability), and/or progress would be delayed as new Reserved Matters applications would need to be submitted.
- 10.70 Accordingly, the applicant submitted financial viability evidence during the life of this Reserved Matters application. This evidence was updated following the amendments to the proposed development which included an increase in the number of residential units from 32 to 41 and updated again in light of comments from officers.
- 10.71 The applicant's viability information has been assessed by the council's independent viability consultant, Rider Levett Bucknall (RLB). Officers have also had regard to the council's Viability Guidance Note, approved by Cabinet on 02/06/2020.
- 10.72 The applicant has used a variety of benchmark land value figures in submissions made during the life of the application, varying from £350,000 for the entire site, to £350,000 per acre in a later submission (an unexplained tripling of the value), to £582,000 in the applicant's latest appraisal. RLB, however, maintain that a benchmark land value of £350,000 is appropriate, noting that this figure is close to what will actually be paid for the site.
- 10.73 Sales values have also not been agreed with the applicant. RLB have used the best comparable evidence by referring to the Helme Ridge (Thomas Wroe Way) development nearby, which RLB have adjusted for sales incentives. The applicant, however, has referred to sales values at other schemes but has not provided a compelling explanation for the figures used therefrom.
- 10.74 Regarding this particular viability appraisal input, one potential way forward would be through the use of a viability review mechanism. This is allowed for in the council's Viability Guidance Note, and would involve including provisions within a Section 106 agreement that would enable the council to claw back money (to be put towards affordable housing) should the completed units at this site sell for more than the amounts used by the applicant in an agreed application-stage appraisal.

10.75 The applicant's cut and fill costs have also been questioned, and RLB have adjusted these costs in their appraisal as the applicant had not demonstrated that the excavated material could not be used as fill, achieving more of a balanced earthworks solution which is the usual practice to reduce the costs and achieve a sustainable construction solution.

10.76 In their latest assessment (dated 13/07/2020), RLB have asserted that the proposed development can in fact provide the above-listed open space, education and sustainable transport planning obligations, achieve a profit within the industry-accepted range of profit expectations (15-20%) and achieve a surplus sufficient to provide between six and eight affordable housing units (the number of units secured would depend upon their type and tenure, and what level of profit is accepted). RLB have advised, for example, that if a profit of 17.5% were to be accepted (this being the mid-point of the industry-accepted range of profit expectations, and the minimum profit level required by this particular applicant, which is considered reasonable), an affordable housing provision of six units could be secured, provided as one type F and three type L social rented units and two type F discounted market sale units.

10.77 The key findings of RLB are set out in the table below. Of note, eight affordable units could be provided by the proposed development, however this would reduce profit levels to 15.1%, which is at the very bottom of the industry-accepted range of profit expectations, and would bring with it a higher degree of risk to a developer.

Bramley / RLB									
Comparison	Bramleys		RLB		Difference		RLB Affordable Housing Policy Cost 20%		RLB Affordable Housing Profit 17.35%
08 July 2020	21-Apr-20		31-Mar-20						
<b>DEVELOPMENT VALUE</b>									
Gross Development Value	£10,447,815		£10,654,915		£207,100		£10,654,915		£10,654,915
							AHC		£892,754
									£9,762,161
<b>DEVELOPMENT COST</b>									
Land Costs	£ 609,330		£ 372,750		-£236,580		£ 372,750		£ 372,750
Construction Costs									
Housebuild	£5,668,261		£5,628,281						
Abnormals	£1,032,510		£ 953,515						
Contingency	£ 363,185	£ 7,063,956	£ 329,090	£ 6,910,886	-£153,070		£ 6,910,886		£ 6,910,886
Design									
Design and Planning Fees	£ 349,980		£ 335,935		-£ 14,045		£ 335,935		£ 335,935
<b>Section 106</b>									
Metro	15840		£ 15,840						
POS	62742		£ 62,742						
Education	30712		£ 30,712						
Affordable Housing	0	£ 109,294	£ -	£ 109,294	£ -		£ 109,294		£ 109,294
Marketing and Disposal	£ 151,098		£ 119,912		-£ 31,186		£ 119,912		£ 119,912
Finance	£ 230,592		£ 219,622		-£ 10,970		£ 219,622		£ 219,622
Developers Profit	17.50%	£ 1,828,368	17.50%	£ 1,864,610	£ 36,242				
<b>Total Development Costs</b>	£10,342,618		£ 9,933,009		-£409,609		£ 8,068,399		£ 8,068,399
<b>Residual Surplus</b>	£ 105,197		£ 721,906		£616,709		Residual Profit 15.17%	£ 1,443,199	£ 1,693,761 17.35%

10.78 In light of these most recent findings of RLB, regarding affordable housing and other planning obligations, on 20/07/2020 the applicant submitted a revised offer as follows:

- Open space contribution of £62,742
- Education contribution of £30,712
- Metro Cards contribution of £15,840
- Six affordable housing units (four social rent, two discounted market sale)

- 10.79 With the offered Metro Cards contribution diverted to a more appropriate and relevant project similarly intended to encourage the use of sustainable modes of transport (the Meltham Greenway) and increased to £40,000 (to reflect an earlier offer made by the applicant), and subject to a viability review mechanism being secured in a Section 106 agreement, it is recommended that the applicant's latest offer be accepted. Key components of the viability review (including land value, timing of the review and arrangements for capturing any surplus) would need to be agreed between the council and applicant and would need to be based on the inputs used by RLB.
- 10.80 The provision of training and apprenticeships is strongly encouraged by Local Plan policy LP9, and although the proposed development does not meet the relevant threshold (housing developments which would deliver 60 dwellings or more), any agreement by the applicant to provide a training or apprenticeship programme to improve skills and education would be welcomed. Such agreements are currently not being secured through Section 106 agreements – instead, officers are working proactively with applicants to ensure training and apprenticeships are provided.

#### Other planning matters

- 10.81 A condition removing permitted development rights from some of the proposed dwellings is recommended. This is considered necessary for the dwellings proposed with smaller gardens, as extensions under permitted development allowances here could reduce the private outdoor amenity spaces to an unacceptable degree.

### **11.0 CONCLUSION**

- 11.1 The application site is allocated for residential development under site allocation HS166, outline planning permission for residential development has previously been granted, and the principle of residential development at this site remains acceptable.
- 11.2 The site has constraints in the form of adjacent residential development (and the amenities of these properties), topography, drainage, existing underground infrastructure (and its easements), adjacent TPO-protected trees, and other matters relevant to planning. These constraints have been sufficiently addressed by the applicant or can be addressed at conditions stage.
- 11.3 The proposed development raises concerns in relation to its unmitigated impacts that would arise from a shortfall in affordable housing, however an assessment of the development's viability indicates that this shortfall should be accepted.
- 11.4 The public benefits of the proposed development are noted, and approval of the Reserved Matters is recommended.

**12.0 CONDITIONS (summary list – full wording of conditions, including any amendments/ additions, to be delegated to the Head of Planning and Development)**

1. Development to be carried out in accordance with the approved plans and specifications.
2. Submission of a Construction Management Plan.
3. Submission of details relating to internal adoptable roads.
4. Cycle parking provision to be provided within the site.
5. Provision of visitor parking spaces.
6. Specification of Electric Vehicle charging points
7. Details of surfacing and drainage of parking areas.
8. Provision of waste storage and collection.
9. Implementation of Arboricultural Method Statement.
10. Details of additional tree works.
11. Submission of Flood Risk and Drainage details.
12. Crime prevention measures.
13. Boundary treatments.
14. External lighting.
15. Full Landscaping scheme.
16. Biodiversity enhancement, net gain and Ecological Design Strategy / Landscape and Ecological Management Plan
17. Removal of permitted development rights.

**Background Papers:**

Application and history files

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2018%2f92309>

Certificate of Ownership – Certificate B signed on previous application form for outline planning permission application