

# Public Document Pack



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

**Julie Muscroft**

Governance and Commissioning

PO Box 1720

Huddersfield

HD1 9EL

**Tel:** 01484 221000

Please ask for: Sheila Dykes

Email: [sheila.dykes@kirklees.gov.uk](mailto:sheila.dykes@kirklees.gov.uk) or

[andrea.woodside@kirklees.gov.uk](mailto:andrea.woodside@kirklees.gov.uk)

Wednesday 29 November 2023

## Notice of Meeting

Dear Member

### Strategic Planning Committee

The **Strategic Planning Committee** will meet in the **Council Chamber - Town Hall, Huddersfield** at **1.00 pm** on **Thursday 7 December 2023**.

(A coach will depart the Town Hall, at 10:15 a.m. to undertake site visits. The consideration of Planning Applications will commence at 1.00 pm in the Council Chamber)

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

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

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

**Julie Muscroft**

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

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

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

### **Member**

Councillor Steve Hall (Chair)  
Councillor Bill Armer  
Councillor Moses Crook  
Councillor Carole Pattison  
Councillor Andrew Pinnock  
Councillor Mohan Sokhal  
Councillor Mark Thompson

When a Member of the Strategic Planning Committee cannot attend the meeting, a member of the Substitutes Panel (below) may attend in their place in accordance with the provision of Council Procedure Rule 35(7).

### **Substitutes Panel**

#### **Conservative**

D Bellamy  
D Hall  
A Gregg  
R Smith  
J Taylor

#### **Green**

K Allison  
A Cooper  
S Lee-Richards

#### **Labour**

B Addy  
A Anwar  
P Moore  
E Firth  
T Hawkins  
H Zaman

#### **Liberal Democrat**

PA Davies  
J Lawson  
A Munro  
A Marchington  
A Smith

# Agenda

## Reports or Explanatory Notes Attached

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**Pages**

**1: Membership of the Committee**

To receive apologies for absence from those Members who are unable to attend the meeting and details of substitutions and for whom they are attending.

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**2: Minutes of the Previous Meeting**

1 - 2

To approve the Minutes of the meeting of the Committee held on 2<sup>nd</sup> November 2023.

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**3: Declaration of Interests and Lobbying**

3 - 4

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

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**4: Admission of the Public**

Most agenda items take place in public. This only changes where there is a need to consider exempt information, as contained at Schedule 12A of the Local Government Act 1972. You will be informed at this point which items are to be recommended for exclusion and to be resolved by the Committee.

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**5: Public Question Time**

To receive any public questions.

In accordance with Council Procedure Rule 11, the period for the asking and answering of public questions shall not exceed 15 minutes.

Any questions must be submitted in writing at least three clear working days in advance of the meeting.

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## 6: Deputations/Petitions

The Committee will receive any petitions and/or 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 submit a petition at the meeting relating to a matter on which the body has powers and responsibilities.

In accordance with Council Procedure Rule 10, Members of the Public must submit a deputation in writing, at least three clear working days in advance of the meeting and shall subsequently be notified if the deputation shall be heard. A maximum of four deputations shall be heard at any one meeting.

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## 7: Planning Applications

5 - 6

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) on Monday 4<sup>th</sup> December 2023.**

To register, please email [governance.planning@kirklees.gov.uk](mailto:governance.planning@kirklees.gov.uk) or phone the Governance Team on 01484 221000.

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## 8: Site Visit - Application No. 2023/92187

Variation of Condition 1. (plans) on previous permission 2019/93068 for reserved matters application, pursuant to outline permission 2018/91119 for erection of residential development to the rear of 11, Holme Avenue, Dalton, Huddersfield.

Contact Officer: Nick Hirst, Planning Services

Ward(s) affected: Almondbury

(Estimated time of arrival on site – 10:30 a.m.)

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## 9: Site Visit - Application No. 2021/93621

Erection of 12 dwellings and associated works (within a Conservation Area) on land off Fullwood Drive, Golcar, Huddersfield.

Contact Officer: Ellie Thornhill, Planning Services

Ward(s) affected: Golcar

(Estimated time of arrival on site – 11.15 a.m.)

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**10: Planning Application - 2022/93823** 7 - 30

Variation of Conditions 2 (plans and specifications) and 5 (soft landscaping scheme) on previous permission 2016/93243 for the erection of 17 dwellings (within a Conservation Area) at Thirstin Mills, Thirstin Road, Honley, Holmfirth.

Contact Officer: Farzana Tabasum, Planning Services

Ward(s) affected: Holme Valley North

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**11: Planning Application - 2021/93621** 31 - 80

Erection of 12 dwellings and associated works (within a Conservation Area) on land off Fullwood Drive, Golcar, Huddersfield.

Contact Officer: Ellie Thornhill, Planning Services

Ward(s) affected: Golcar

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**12: Planning Application - 2023/92187** 81 - 98

Variation of Condition 1. (plans) on previous permission 2019/93068 for reserved matters application, pursuant to outline permission 2018/91119 for erection of residential development to the rear of 11, Holme Avenue, Dalton, Huddersfield.

Contact Officer: Nick Hirst, Planning Services

Ward(s) affected: Almondbury

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### **Planning Update**

An update report providing further information on matters raised after the publication of the agenda will be added to the online agenda prior to the meeting.

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Contact Officer: Andrea Woodside

## KIRKLEES COUNCIL

### STRATEGIC PLANNING COMMITTEE

Thursday 2nd November 2023

Present: Councillor Steve Hall (Chair)  
Councillor Bill Armer  
Councillor Moses Crook  
Councillor Carole Pattison  
Councillor Andrew Pinnock  
Councillor Mohan Sokhal  
Councillor Mark Thompson

**1 Membership of the Committee**

All Committee Members were present.

**2 Minutes of the Previous Meeting**

**RESOLVED** – That the Minutes of the Meeting held on 5 October 2023 be approved as a correct record.

**3 Declaration of Interests and Lobbying**

Councillors Armer, S Hall, Pattison, A Pinnock and Sokhal advised that they may have historically received lobbying on matters connected to this site.

**4 Admission of the Public**

It was noted that all agenda items would be considered in public session.

**5 Public Question Time**

No questions were asked.

**6 Deputations/Petitions**

No deputations or petitions were received.

**7 Planning Application - Application No: 2021/92734**

The Committee gave consideration to Application 2021/92734 – Improvement and widening of the A629 to include junction improvements, re-positioning of footways and footway improvements, pedestrian crossing provision, the alteration, demolition and erection of walls, construction of retaining walls, erection of fencing, hard and soft landscaping to include the removal of trees and replacement planting, replacement street lighting, change of use of land to highway and change of use to and formation of car park on land adjoining 103 Halifax Road (within a Conservation Area) - various locations at A629 Halifax Road, Huddersfield.

Under the provisions of Council Procedure Rule 37, the Sub-Committee received representations from Heather Peacock (local resident), a representative of Cycle Kirklees and Andrew Moss (applicant's agent).

## Strategic Planning Committee - 2 November 2023

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

- TCPA Section 91 – Development to commence within 3 years
- Development in accordance with plans and specifications schedule
- Car Park Management Plan (Area C)
- Construction Traffic Management Plan (Pre-commencement by Area)
- Area C Street Tree Provision Details
- Revised Tree Planting of Specified Native Species for Area B
- Revised Boundary Treatment Details for Areas B & C
- Archaeology Written Scheme of Investigation Areas C & D (Pre-commencement by Area)
- Revised Arboricultural Impact Assessment for Area C drainage (Pre-commencement in Area C)
- Arboricultural Method Statement for Areas B, C & D (Pre-commencement by Area)
- Area D Retaining Wall and Rear of Footway Wall Finishing Material (Natural Stone)
- Biodiversity Enhancement Management Plan for on-site BNG (Pre-commencement)
- Construction Environmental Management Plan for Biodiversity (Pre-commencement)
- Construction Noise & Vibration Controls & Monitoring
- Phase II Intrusive Site Investigations (Pre-commencement)
- Remediation Strategy (Pre-commencement)
- Implementation of Remediation Strategy
- Contaminated Land Verification Report
- Electric Vehicle Charging Points for Area C Car Park
- Improved landscaping arrangement for the Birkby Road / Halifax Road Junction corner adjacent 52 Inglewood Avenue
- Air Quality Impact Assessment
- Submission of a Phase 2 Intrusive Site Investigation Report (Areas B,C,D)
- Submission of Remediation Strategy
- Implementation of Remedial Strategy
- Submission of verification report

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

For: Councillors Armer, Crook, S Hall, Pattison, A Pinnock and Sokhal (6 votes)

Against: Councillor Thompson (1 vote)



<b>KIRKLEES COUNCIL</b>			
<b>DECLARATION OF INTERESTS AND LOBBYING</b>			
Strategic Planning Committee			
<b>Name of Councillor</b>			
<b>Item in which you have an interest</b>	<b>Type of interest (eg a disclosable pecuniary interest or an "Other Interest")</b>	<b>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]</b>	<b>Brief description of your interest</b>

**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 20<sup>th</sup> July 2021, 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 55 of The National Planning Policy Framework (NPPF) requires that Local Planning Authorities consider whether otherwise unacceptable development could be made acceptable through the use of planning condition or obligations.

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

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

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

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

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

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## Report of the Head of Planning and Development

### STRATEGIC PLANNING COMMITTEE

Date: 07-Dec-2023

**Subject: Planning Application 2022/93823 Variation of condition 2 (plans and specifications) and 5 (soft landscaping scheme) on previous permission 2016/93243 for erection of 17 dwellings (within a Conservation Area) Thirstin Mills, Thirstin Road, Honley, Holmfirth, HD9 6JG**

#### APPLICANT

North Park (Greetland)  
Ltd

#### DATE VALID

23-Nov-2022

#### TARGET DATE

22-Feb-2023

#### EXTENSION EXPIRY DATE

31-May-2023

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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.

[Public speaking at committee link](#)

#### LOCATION PLAN



Map not to scale – for identification purposes only

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**Electoral wards affected: Holme Valley North Ward**

**Ward Councillors consulted: Yes**

**Public or private: Public**

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**RECOMMENDATION: Approve**

**Grant the variation of conditions 2 and 5**

DELEGATE approval of the application and the issuing of the decision notice to the Head of Planning and Development on completion of:

- a) a deed of variation to the original Section 106 Obligation, to confirm the existing obligation/s and to include an additional obligation to seek off site contributions to secure the shortfall of biodiversity net gain within Holme Valley North Ward to the previously approved landscaping scheme for the site, and
- b) the list of conditions, including those contained within section 12 of the report.

**1.0 INTRODUCTION:**

- 1.1 The application is brought to Strategic Committee, due to the recent changes in the Scheme of Delegation Agreement, the interim period for which such changes to be implemented came into force from 10<sup>th</sup> November 2023 to 9<sup>th</sup> February 2024.
- 1.2 Members deferred the application at the Huddersfield Sub-Committee on 19<sup>th</sup> October. This was to allow Officers to investigate the potential for Brockholes Recreation Ground to be used for the additional planting to enhance biodiversity net gain. Furthermore, to provide details of the enforcement history at the site and to establish how the breach of the condition has occurred.
- 1.3 This report sets out a response to these matters within paragraph nos. 10.25 of the assessment and 4.2 Enforcement History respectively. Paragraph 7.5 also sets out further representations received, following the deferral of the application at Huddersfield Sub Committee on 19<sup>th</sup> October 2023, from Cllr Charles Greaves. Officer's responses to these further representations, provides a clear overview of how and when the current situation (breach of condition 5) has occurred.
- 1.4 Initially this application was brought to committee at the request of Ward Cllr Charles Greaves, who stated:
  - “Due to the failure of the applicant to discharge the pre-commencement conditions,
  - the failure of officers to identify and address this at the time,
  - that enforcement action was started but then not followed through,
  - that the work has not been completed in accordance with the conditions set down by the planning committee,
  - that the developers have offered no solution to address the issue,

- that the developers submitted a s106 viability appraisal based on the costs of undertaking this work which they have not incurred (which should trigger a review of the s106),
- that the legal power to reopen the s106 exist but have not been utilised,
- that officers have not established whether the current condition of the banking is stable,
- that no proper arrangements are in place for the long-term maintenance of the banking,
- that officers have failed to deal with this issue in a timely manner,
- that the recommendation of officers is not appropriate to the circumstances,
- that it undermines the role and purpose of planning committees and its directions to officers, that for officers to allow a developer to fail to meet their obligations and to support the developer is doing so, sets a precedent that would encourage others to choose to fail in meeting their obligations, and
- that in doing so it risks undermining the trust and confidence of the residents and councillors of Kirklees in how the planning process is managed and enforced.

1.5 The Chair of the Sub-Committee had confirmed that Cllr Greaves reasons for the referral to the committee are valid having regard to the Councillor's Protocol for Planning Committees.

## **2.0 SITE AND SURROUNDINGS:**

2.1 Situated approximately 350 metres from the centre of Honley, this is the former site of Thirstin Mills. The site has now been developed following the granting of planning permission 2016/93243 for the erection of 17 dwellings. Most, if not all, of the dwellings are occupied.

2.2 Thirstin Road bounds the site, to the north and east. A protected woodland area (which also forms part of the Wildlife Habitat Network) and a public footpath (HOL/186/10) runs along the western edge of the site with Scotgate Road running parallel to the southern boundary. A number of residential properties overlook the site from the east on the opposite side of Thirstin Road. These are a mixture of semi- detached and terraced properties with a few detached dwellings.

2.3 The site is constrained by a steep embankment to the western boundary which was formerly present and shown to be retained as part of the development under the implemented planning permission. This embankment forms part of the individual domestic curtilages to the dwellings, that back onto it.

## **3.0 PROPOSAL:**

3.1 This application is submitted under Section 73 (S73) of the Town and Country Planning Act 1990. It seeks to vary conditions 2 and 5 of planning permission 2016/93243

**Condition 2 states:**

*2. The development hereby permitted shall be carried out in complete accordance with the plans and specifications listed in this decision notice, except as may be specified in the conditions attached to this permission, which shall in all cases take precedence.*

**Reason:** *For the avoidance of doubt as to what is being permitted, to ensure the amenities of existing neighbouring residential properties and future residents of the dwellings hereby approved are protected, to ensure the satisfactory appearance of the development on completion, to conserve and enhance the significance of the Honley Conservation Area, and to accord with Policies BE1, BE2, BE5, BE12, T10 and T19 of the Kirklees Unitary Development Plan as well as the aims of the National Planning Policy Framework*

**Condition 5 states:**

*5. The approved soft landscaping scheme as shown drawing reference no. 0542-2 rev B shall be carried out during the first planting, seeding or management season following the commencement of superstructure of the hereby approved dwellings or in accordance with a phasing plan which shall have been submitted to and approved in writing by the Local Planning Authority before commencing on the superstructure of the dwellings. The approved landscaping scheme shall, from its completion, be maintained for a period of five years from the completion of planting works. All specimens which die within this period shall be replaced with like for like species.*

**Reason:** *To ensure that there is a well laid out scheme of healthy trees and shrubs, in the interests of amenity, to conserve and enhance the significance of the Honley Conservation Area, and to accord with Policies BE1, BE2, BE5 and EP11 of the Kirklees Unitary Development Plan, the National Planning Policy Framework and Circular 06/2005 (Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within the Planning System as well as Policies PLP30 & PLP32 of the Publication Draft Local Plan.*

- 3.2 The proposals seek to substitute the landscaping plan reference 0542-Rev B approved under condition 5 of planning consent 2016/62/93243/W. The approved landscaping scheme was shown to provide a matrix of native trees and shrubs, with trees to have been planted at 3m centres and shrubs at 1m centres. The covering letter initially submitted with this application stated the request to change the landscape proposals for the banking:

*“has arisen as it has been identified that the gradient of the banking along the western boundary of the site would not be suitable for substantial planting in line with the approved plans. Tree planting in this location has the potential to disrupt the mesh put in place to stabilise the banking and there is potential, once trees mature, a fallen tree would significantly damage the reinforcement, which could then result in collapse. Therefore, it is proposed to incorporate a natural landscape zone along the banking as it has been identified that the root systems within low level planting is fine allowing it to pass through the mesh reinforcement unhindered.”.*

The revised plan, titled: Landscape Option 1 ref DR-6264-01.01, showed low level planting to the embankment, in the form of only a species rich grassland mix.



- 3.3 The covering letter contradicted with the submitted plan in that it referred to “natural landscape zone”, whereas the plan showed the embankment to be replaced with grass and over time to allow woodland trees to seed and establish a naturalised scrub/woodland edge. The plan, titled: Landscape Option 1 ref DR-6264-01.01, has now been substituted with the drawing ref number 2287-0101-P02. This shows the western embankment in its current state consisting of a self-seeded banking which over time has established and naturalised with woodland trees and shrubs creating a scrub /woodland edge. This drawing also shows landscaping within the front gardens as existing, which has been carried out by owners/residents of the dwellings. The proposals are therefore to retain the embankment in its current form, with no supplemental planting.
- 3.4 In the event Members agree with Officers recommendation:
- Except for reference to updated policies, the wording of condition 2 would remain unchanged.
  - The plans table would need to be updated to replace the previously approved landscape plan, drawing reference 0542-2 rev B under planning permission 2016/93243 with the revised plan showing the embankment as existing, drawing ref no. 2287-0101-P02,
  - Condition 5 is to be omitted.
  - A supplemental S106 agreement (deed of variation) would be necessary which requires the applicant to agree to the obligations within the original S106 agreement and the inclusion of the additional obligation to secure off site contributions as set out in the assessment below.

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

- 4.1 The site has an extensive planning history, however the most relevant is listed below:

2016/93243 - Erection of 17 dwellings (within a Conservation Area) – granted 07/02/2018

2018/91138 - Discharge conditions 4 (boundary treatments), 7 (highways), 8 (construction traffic), 11 (retaining wall), 13 (drainage), 14 (watercourse) on previous permission 2016/93243 for erection of 17 dwellings – details satisfactory. Conditions discharged subject to development being completed in accordance with the approved details.

2021/91689 - Variation condition 2 and 5 on previous permission 2016/93243 for erection of 17 dwellings (within a Conservation Area) – refused 29/06/2022 on grounds that the submitted information failed to demonstrate how the objectives (to conserve/enhance) and when the works will be carried out through the submission of an appropriate method statement and phasing maintenance timetable.

#### **4.2 Enforcement History:**

**COMP/19/0022 - Major Site Monitoring (concerns that houses built larger than approved)**

Date Opened: 21/01/2019

An enquiry was made to the Enforcement team by a Councillor on 16<sup>th</sup> January 2019, regarding monitoring the site to ensure development was being carried out in accordance with the approved plans, as the Cllr thought houses may be being built larger than what was approved.

The enforcement case officer visited the site on Friday 18<sup>th</sup> January 2019. Council records indicate there did not appear to be any deviation from the plans.

On the 21<sup>st</sup> January 2019 the enforcement case officer booked the case in for site monitoring.

On 29<sup>th</sup> October 2019 a complaint was received regarding an alleged breach –

- materials used on site which were not in accordance with plans, and
- health and safety issues on the site.

The enforcement case officer signposted the complainant to the Health & Safety Executive regarding the H&S issues and requested further information regarding the alleged breach.

Date Closed: 15/06/2021 - There are no further comments on record.

Reason for Closure: no further action (NFA) - dev/use lawful

**COMP/20/0281 - Alleged breach of condition 8 of 2016/93243 (construction management plan)**

Date Opened: 15/07/2020

A complaint was received on 10<sup>th</sup> July 2020 regarding the mud on the road, because of the movement of heavy plant onto and from the site. A site visit on 29<sup>th</sup> July 2020 confirmed this. The responsible party were contacted by letter on 29<sup>th</sup> July 2020 regarding the breach of Condition 8, which required amongst other things, to provide wheel washing facilities. They were requested to provide this within 14 days. The Agent sent a photo of the wheel washing 'machine' on the 7<sup>th</sup> August 2020. The case was closed on 10<sup>th</sup> August 2020 as the breach was resolved'.

Date Closed: 10/08/2020

Reason for Closure: NFA – Resolved

**COMP/22/0356 4 - Alleged unauthorised air conditioning units**

Date Opened: 09/09/2022

A complaint was registered on 9<sup>th</sup> September 2022. The enforcement case officer has been off work for an extended period and there is no other information on record.

Case Pending

**COMP/22/0425 - Breach of condition 2 and 5 on previous permission 2016/93243 (landscaping to embankment)**

Date Opened: 29/09/2022

A breach of condition notice was served on the applicant, following the delays in receiving a new application to vary conditions 2 and 5, after the refusal of application reference no. 2021/91689 - Variation condition 2 and 5 on previous

permission 2016/93243 for erection of 17 dwellings (within a Conservation Area) – refused 29/06/2022. This application was refused on the grounds that the submitted information failed to demonstrate how the objectives (to conserve/enhance) and when the works will be carried out through the submission of an appropriate method statement and phasing maintenance timetable.

Date Closed: - decision pending on planning application 2022/93823, before Members.

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

- 5.1 A request for a deed of variation was made, which is awaited. This would include the new obligation to off-set the shortfall (in monetary value) between the approved landscaping scheme in comparison to the self-seeded naturalised embankment in its current form, to be put towards off site contributions on Council owned land to enhance biodiversity net gain.
- 5.2 Clarity on initial plan as the details submitted seem to contradict the contents of the supporting covering letter.
- 5.3 Evidence of how the western embankment is proposed to be accessed, given it is private land forming part of the curtilage areas to each dwelling backing onto it. The agent advised “in terms of access to the banking we’d need agreement to enter the banking from each owner”. Subsequently, the applicant has set out in the revised statement that not all residents/owners will authorise access to their private land (embankment), for any works to be carried out by the applicant.
- 5.4 Following a joint site visit by KC Ecology, Landscape, Enforcement and case Officers, a revised plan showing the embankment established with self-seeded landscaping, as existing was requested, along with evidence of the residents/ householders denying access for works to be carried out. Plan received and written statement from applicant, who advises that not all residents are agreeable and would not allow access to embankment, which is private land.
- 5.5 Additional statement received from applicant on 21<sup>st</sup> July 2023, which includes within it, amongst other matters, that people, when purchasing the dwellings on this site were:  
*“made aware of the incompatibility of the two separate designs and people were advised of the issue and told we’re re submitting the condition and hopefully we wouldn’t have a problem with a wildflower mix”*
- 5.6 It was considered necessary and appropriate to publish this statement and allow local residents and owners of the dwellings on the application site, an opportunity to respond to the contents of the statement.

## **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) and the Holme Valley Neighbourhood Development Plan (adopted 8<sup>th</sup> December 2021).

The site lies within the Honley Conservation Area.

### Kirklees Local Plan (2019):

- 6.2 LP24 - Design  
LP30 - Biodiversity & Geodiversity  
LP32 - Landscape  
LP35 - Historic Environment

### Supplementary Planning Guidance / Documents:

- 6.3 Kirklees Highways Design Guide (2019)

### National Planning Policy Framework (NPPF) September 2023:

- 6.4 Most relevant to this application is the following:  
Chapter 12 – Achieving well-designed places  
Chapter 15 – Conserving and enhancing the natural environment (paragraphs 174 (d,e, f), 183 and 184 relating to ground stability)  
Chapter 16 – Conserving and enhancing the historic environment

### Neighbourhood Development Plans:

- 6.5 The Holme Valley Neighbourhood Development Plan (HVNDP) was adopted on 8th December 2021 and therefore forms part of the development plan. The Policies relevant are:  
Policy 1 – Protecting and Enhancing the Landscape Character of Holme Valley  
Policy 2 – Protecting and Enhancing the Built Character of the Holme Valley and Promoting High Quality Design  
Policy 13 - ..... Securing Biodiversity Net Gain

The site is within the Landscape Character Area 6 (Honley Village Centre) within the HVNDP.

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

- 7.1 The application was advertised in accordance with the Kirklees Development Management Charter, via neighbour notification letters, a site notice and within the newspaper. Final publicity expired 6<sup>th</sup> October 2023.

7.2 Seven representations were initially received, the concerns of which are summarised below:

- One in support of the original submission to vary the landscaping
- Further clarity required on species of plants proposed. No details of when the maintenance of the embankment would be done or how the embankment is to be cleared for new planting
- Proposed wording on condition 5 refers to outdated timescales
- No justification why planting to front gardens should be amended/ should just be supplemented.
- Suggestions given to clear existing embankment/clearing
- “Sensible to not plant trees as initially approved given it may impact on the stability of the banking and block out daylight”
- Question the practicality and reality of maintaining the embankment area once developer’s obligations come to an end
- No easy access from dwellings and unsafe to access from embankment side, due to gradient.
- One resident states they have not been approached by anyone to inspect the embankment areas,
- Too steep to mow and weed the embankment
- Question posed- Why was mesh used to stabilise the embankment if there is a risk trees will destabilise it?
- Mesh not strong enough to prevent tree growth, as illustrated to rear of some dwellings but agree trees may not be suitable
- 5 year management clause as original condition should remain and commence from alternative approved scheme
- Back gardens waterlogged in periods of heavy rain. Original approved landscaping to include shrubs would absorb the rainfall but agree no trees due to steepness
- The initial proposals to amend the landscaping with low level planting is unrealistic, impractical and does not take account of the steepness of embankment and denseness of the undergrowth that has established over three years.
- It is doubtful the two sprays of weed killer will kill the existing plants/weeds and will disturb wildlife/ecology that now lives in the undergrowth
- Spraying of weed killer is risk to residents health
- The removal of exiting established self seeded planting would expose the meshing to the embankment

7.3 Following advertisement of the revised plan showing the embankment to be retained as existing, three representations were received. The concerns of which are summarised below:

- The banking as it is, is an eyesore full of overgrown weeds does not conserve or enhance the conservation area
- This is due “to the incompetence of the developer”
- utilising existing soils on site for the regrading and stabilisation of the banking has resulted in weeds - growth has come from below
- This latest amendment to the landscaping plans - particularly insofar as they relate to the banking - seem to imply that the current proposal is to do nothing
- permission in place at the time of purchase was for the banking to be

landscaped and managed for five years and the properties were purchased on this basis

- The latest plan to do nothing completely absolves the developer from any responsibility and represents a dereliction of duty by the planning department if this amendment is allowed to proceed.
- The developer has a contractual obligation to the owners on this site - residents have all paid money (as part of the house price) to attend to the banking and he needs to do what he initially said he would do.

7.4 The revised statement received in late July 2023 was advertised and neighbour letters sent out to those that initially commented and all seventeen households of the site. At the time of writing no further representations had been received.

7.5 Subsequent to the Huddersfield Sub Committee decision to defer the application for the reasons set out in paragraph 1.2 above, Cllr Greaves has raised a number of queries and comments as set out below:

**Query 1** *“Along with residents I am keen to see a sensible outcome that ensures the long-term stability of the banking and the protection of the residents, but I also feel strongly that the Developer needs to take responsibility for their breach of planning consent and that they need to be held to account for it.”*

**Officers Response:** The proposals are seeking to vary the previously approved soft landscaping scheme, to leave the established self-seeded banking as it is. The stability of the banking is not the issue, which, the developer states, is covered under a 120 year structural guarantee. Planning permission and S106 “runs with the land” and therefore technically it is now the home owners who are responsible for their land. However, with respect to the breach the purpose of the condition, the developer is taking responsibility in the form of this current proposal, whereby an off site contribution of £20k will be required towards habitat and wildlife creation in the same ward in the interests of public benefit and biodiversity, as set out in paragraph 10.25.

**Query 2** *“In understanding how this breach came about it would be helpful to have a timeline of enforcement and a clear explanation as to why the original landscaping arrangements were not suitable but had been presented to be so, and when the currently proposed landscaping arrangements were first made and why it has taken so long to resolve this matter that all of the properties were sold in the meantime”.*

**Officers Response:** The enforcement history of the site is set out under section 4, paragraph 4.2 of this report. With regards to the original landscaping scheme, officers deemed it to be appropriate at the time of consideration under the 2016/93243 application, as the proposed soft landscaping was thought to improve biodiversity and conserve this part of the conservation area. The technical details (including the slope and engineered solution) for the reinforced embankment were subsequently approved under condition 11, through a discharge of condition application in June 2018 by the Structures team (see paragraph 10.16). The developer stated in his supporting statement at that time that:

*“When we examined the landscape drawing during advanced construction, we realised that the landscape scheme could not be implemented and the banking could not be redesigned structurally as it was already built. So, when selling the properties people were made aware of the incompatibility of the two separate designs and people were advised of the issue and told we’re re submitting the condition and hopefully we wouldn’t have a problem with a wildflower mix.”*

On the basis of the above, it is assumed the 17 owners of the houses purchased their properties in full knowledge of the breach of condition 5 (non-implementation of the soft landscaping scheme). This breach of condition 5 was brought to Officers attention on receipt of planning application 2021/91689 in April 2021, after all houses were bought by the now residents.

**Query 3.** I appreciate that Planning holds a contrary view, but I thought it may be helpful to let you know what I will be suggesting as conditions as a way forward for approval.

**Suggested conditions:**

- (a) The design of the banking was approved on the basis of the agreed landscaping plan which has not been implemented. It has not been inspected or signed-off in its current condition and the answer given to committee on this point was not clear. Now that the banking has started to self-seed and without a clear management plan there is a significant risk that trees and shrubs are now present that if allowed to fully establish could undermine the banking and its guarantee.

*At the Developers expense I would like a suitably qualified person to assess the banking and the trees and shrubs that are currently on site, and to offer clear and unambiguous advice to residents as to what steps need to be taken now in order to protect the banking, to retain the guarantee, and to be in accordance with the currently proposed landscaping arrangements. All of the costs for any remedial works should be met by the Developer.*

**Officers response:** The developer has sold the land to individual owners, all of whom have had the benefit of their own independent legal advice prior to purchase of the land. LPA is seeking a pragmatic solution to the breach of the planning condition for soft planting which did not form part of the technical details of the approved reinforced embankment. The Councils Structures team have confirmed the approved technical AIP was not dependant on the approved landscaping scheme. Details within the approved AIP, refers to the slope to be finished with a seeded erosion control blanket, finished appearance with a vegetated green slope and that *“careful choice of planting on the reinforced slope shall be undertaken to ensure that the growth is not destructive”*

The recommendation offers a twofold public benefit:

- 1) to avoid pursuing action against the 17 residents and,
  - 2) to remedy the breach of the condition, namely to achieve biodiversity and to conserve the conservation area by off site planting.
- (b) Whilst the Developer and Planning seem clear on what should and shouldn't be allowed to grow on the banking and on how it should be maintained, the residents that I have spoken to are unclear on this point, but as they will be

responsible they all need to know exactly what they should and shouldn't do and ensure that their neighbours do also.

*At the Developers expense I would like a short and concise owners guide to be provided to each resident that clearly details what actions residents should and shouldn't take in order to properly maintain the banking, to retain the protection of the guarantee and to meet their planning obligations under the currently proposed landscaping arrangements.*

**Officers Response:** noted. See response to query 2 and 3 above.

- (c) There is scope to use any off-site s106 Bio-diversity payments within the Holme Valley North ward and the current work at Brockholes rec may be a suitable project. Ward councillors are happy to work with officers on developing an appropriate scheme.

**Officers Response:** Noted. see paragraph 10.25, which advises where the public benefit to increase biodiversity, tree planting and thinning could be carried out off site to meet the shortfall of BNG in comparison to the approved soft land scaping scheme and in the interests of amenity.

- (d) This application reopens the s106 agreement process. In the original application the Developer submitted a viability statement based on projections showing that the scheme had viability issues. As works were not completed and costs were not incurred, and as the sales prices exceeded the estimates that were submitted, the Developer should be required to produce a whole new s106 report using the actual figures and consideration must be given to all s106 requirements, not just a single element of it.

*The s106 agreement should be reopened and a full list of requirements should be set out as per policy. If the Developer wishes to challenge the viability of the scheme supporting the policy requirements they must submit a new report setting out the costs and profits.*

If this is not practical then a clear answer as to why not needs to be given, as it is lawful to review the whole s106 agreement.

**Officers Response:** The proposals are seeking to vary a condition that has been breached. It does not re-open or require review of the original Section 106 agreement.

## **8.0 CONSULTATION RESPONSES:**

- 8.1 K.C Ecology – the habitats in their current form on the embankment are at a shortfall of 50% biodiversity units of the approved landscaping plans. Discussed below in assessment.
- 8.2 K.C Landscape – The original intention of condition 5 for the landscape, was to improve the habitat, wildlife and conserve and enhance the conservation area. No landscape planting proposals have been carried out on the embankment area and there is bank stabilisation mesh on the steep banking, which is now in private ownership (rear gardens) through which, what looks to be, established self-seeded vegetation.

Alternative planting schemes have been received due to safety concerns of removing the established vegetation on the steep banking and damage to the mesh, and the difficulty of accessing the rear gardens to carry out the works and maintain it for 5years. (Discussed below in assessment).



## 9.0 MAIN ISSUES

- Scope of this application and principle of development
- Relevant history of site
- Impact on amenity and biodiversity
- Planning obligations
- Representations
- Other matters
- Conclusion

## 10.0 APPRAISAL

### Scope of this application and principle of development

- 10.1 Annex A of the Government guidance on “Flexible options for planning permissions”, details the S73 variation of condition process. It advises that local planning authorities should, in making their decisions, focus their attention on national and development plan policies, and other material considerations which may have changed significantly since the original grant of permission.
- 10.2 In this case, the significant changes to policy since the original grant of the 2016/93243 planning permission is the adoption of the Kirklees Local Plan, Holme Valley Neighbourhood Development Plan and revised NPPF. The proposed variations will be considered against the relevant policies contained within these, in the recommendation of this application.
- 10.3 The principle of development of this site along with the embankment along the western boundary has previously been accepted and permission implemented. The application relates to the changes to the soft landscape details of the embankment to the rear of the approved properties, along the western boundary. Consequently, the assessment of impacts on visual amenity and the impact on the significance of the Honley Conservation Area whilst encouraging biodiversity interests within the site is a key consideration, which was the reasoning for condition 5 on the 2016/93243.

### Relevant history of site

- 10.4 The wording of condition 5 is such that the approved soft landscaping scheme as shown drawing reference no. 0542-2 rev B should have been carried out during the first planting, seeding or management season following the commencement of superstructure of the hereby approved dwellings or in accordance with a phasing plan which shall have been submitted to and approved in writing by the Local Planning Authority before commencing on the superstructure of the dwellings.

- 10.5 This condition was breached, in that the approved landscaping scheme was not carried out as required by the condition nor was an alternative phasing plan been submitted and approved, prior to commencing on the superstructure of the dwellings. All the dwellings are completed and presumed now occupied. This is verified in the representations received under this application and evidenced during a recent site inspection.
- 10.6 This application was received as a result of the Local Planning Authority serving a breach of condition notice on the applicant, following a refusal under planning application 2021/93948. The reason for refusal set out that the information submitted at the time failed to demonstrate how the proposed variations would conserve and enhance this part of Honley Conservation area whilst encouraging ecology and biodiversity interest within the site, and therefore failed to accord with Kirklees Local Plan policies LP24, LP30, LP32 and LP35 as well as policies in the Holme Valley Neighbourhood Development Plan and guidance in the National Planning Policy Framework.

Impact on amenity and biodiversity

- 10.7 The covering letter accompanying this application sets out the reason for the proposed variation to the previously approved soft landscaping on this embankment which is detailed in paragraph 3.2 above.
- 10.8 No technical information has been submitted to support the reasons for the proposed variation. The applicant also advises that the reinforced earth embankment:
- “has a reinstatement cost of £400,000. When we examined the landscape drawing during advanced construction, we realised that the landscape scheme could not be implemented and the banking could not be redesigned structurally as it was already built”.*
- 10.9 From a structural point of view, whilst the above statement is not supported by evidence to suggest that larger shrubs / tree planting could lead to potentially destabilising the embankment, this matter is not disputed given the gradient of the embankment which in some areas is quite steep and larger trees / shrubs could have the potential to collapse in extreme weather conditions which could contribute to the potential destabilising of the embankment as well as danger to the occupants of dwellings on this site.
- 10.10 With respect of the initial submitted scheme on this application, no response was provided by the applicant to officer’s request for clarity of works, as the proposals set out in the supporting covering letter accompanying this application contradicted the submitted revised plan.

10.11 As the embankment forms private garden areas to properties that back onto it within the application site, the applicant would require consent of each landowner to carry out any works to the embankment area. The applicant advises that whilst *“some residents want a wildflower mix, and would grant access, some others want to do their own thing it seems..... given the existing multiple ownerships that now exist it is not possible to undertake planting”*.

10.12 Evidence was sought from the applicant to establish which residents were approached and would permit access to their private land. In response the applicant advised that:

*“The residents I have spoken to we’re not prepared to give me any letters for different reasons*

*A. was fear of them been used as public record at committee*

*B. causing animosity with their neighbour who has a difference of opinion*

*C. One got quite cross and told me I wasn’t allowed to share emails between us due to GDPR*

*D. One said once you know what is happening come and see me and then we can discuss the plan*

*I’ve told them my understanding is this is very important to get sorted and if this issue does not get resolved and passed Kirklees will take enforcement action against the development company but far worse is the fact that as they own the land on there titles Kirklees will put an enforcement notice on their title deeds which will mean they’re unable to sell their property.*

*When selling the houses and I hope I got this right I’d always told them and this was every house that was sold we couldn’t implement the approved scheme as it was not compatible with the banking retaining solution and would void the 120 year guarantee*

*But the banking was to be considered a buffer between the houses and the woodland and not an extension of the garden as a few wanted to use as terraced gardens also it’s too steep to safely use or maintain”*

10.13 Other than the above statements from the applicant, no substantial evidence has been provided by the applicant to substantiate that not all residents of the properties on the site would grant or indeed deny access.

10.14 Whilst the merits or otherwise of any revised landscape scheme needs to be assessed, consideration has to be given to how the scheme will be enforced or how it will be delivered, established or managed and maintained in private gardens, without all the residents agreeing to access for the next five years. This said officers are of the opinion that following the fulfilment of condition 5, after a period of five years, the embankment area due to its steep gradient would potentially result in being overgrown and include self-seeding to take place, and over time effectively resulting in a similar feature to that currently present on site.

- 10.15 The applicant states *“that the Tensar reinforced earth solution which has the required 120 year guarantee was approved under by Kirklees Highways Structures and was fine to be self seeded or a wildflower mix”*. Furthermore, the applicant also states in the additional statement received, that when the properties were sold each buyer was made aware of the incompatibility of the two separate designs and people were advised of the issue and told that the applicant would be submitting a formal application to incorporate a wildflower mix to the embankment area.
- 10.16 Kirklees Highway Structures approved the design and constructional details of the reinforced earth embankment under discharge of condition 11 application reference 2018/91138. However, this did not include agreement to the reinforced embankment to be self seeded nor planted with a wildlife mix. It is also acknowledged that a wildflower mix on the embankment, overtime would inevitably become self seeded and result in a similar feature to that currently existing on site.
- 10.17 The Council’s Ecology and Landscape officers have also visited the site to establish the quality and value of the embankment in its current state. Their observations are that whilst the embankment is self-seeded, it has over time naturally established and appears to be dominated by willow, willowherb and buddleia, which is denser in some parts than others and provides some valuable wildlife habitat. This, when seen against the adjacent wildlife habitat network along the western boundary of the site, forms an important contribution not only to the wildlife habitat but also to the enhancing of this part of the Honley Conservation Area. Notwithstanding the issue of whether the embankment can be accessed due to private ownership rights, to carry out any works due to the gradient of it, the clearance of the existing embankment is likely to result in harm to the diverse wildlife habitat it currently provides and as such would contradict with the aims and objectives of the Local Plan which seeks to safeguard, enhance and minimise impact on biodiversity.
- 10.18 In light of this, together with the realistic view and practicalities of adequately being able to manage and maintain any landscaping on the embankment (whether by the existing residents or developer, due to the gradient of the embankment and potential risk of destabilising the reinforced earth embankment, which could in effect void the 120 year guarantee), it is considered taking all of the above into account, that the embankment be retained in its current state.
- 10.19 This said, in this instance it was necessary to establish the base line value of the previously approved landscaping scheme, as shown on plan reference no. 0542-2 Rev B approved under condition 5 of planning consent 2016/93243, against the baseline value of the naturally vegetated embankment in its current form. The shortfall, if any would then be sought (in monetary value) from the applicant through a legal binding agreement to be utilised towards biodiversity enhancements and habitat creation where opportunities exist on Council owned land, to comply with the aims and objectives of the above listed Local Plan and HVNDP Policies.

- 10.20 Of most relevance in this instance is Local Plan Policy LP30, which states development proposals will be required to:
- (i), result in no significant loss or harm to biodiversity in Kirklees through avoidance, adequate mitigation or, as a last resort, compensatory measures secured through the establishment of a legally binding agreement;
  - (ii) minimise impact on biodiversity and provide net biodiversity gains through good design by incorporating biodiversity enhancements and habitat creation where opportunities exist;
- 10.21 Local Plan Policy LP30 is supported by the Biodiversity Net Gain Technical Advice Note (TAN). This is a cabinet adopted document that is used to assess and determine applications. It backs up Policy LP30 by including recommendations of the Environment Act 2021 for developments to achieve a 10% net gain. Section 3.4.3 of the TAN details the following:
- “In exceptional circumstances, where it can be demonstrated that on-site compensation methods have been exhausted, it will be necessary to secure Biodiversity Net Gain off-site. In these circumstances, applicants will need to demonstrate that sufficient offsite habitat creation or enhancement has been secured to achieve a minimum 10% Biodiversity Net Gain. Details of off-site compensation must also be demonstrated in a measurable way, following the same methodology as for onsite creation and enhancement”*
- 10.22 Using the Metric (DEFRA Metric 4.0), whilst unable to obtain a comprehensive species list, the Council’s Biodiversity Officer focussing on the embankment area was able to get a good assessment from the public footpath to the rear. The Council’s Biodiversity Officer assessment is that the embankment area providing approximately 1.04 habitat units, is currently dominated by willow, willowherb and buddleia, with little species variation and creates a habitat that can be classified as mixed scrub in poor condition, a medium distinctiveness habitat that does provide some suitability for biodiversity. In contrast the previously approved scheme would have delivered 2.08 habitat units and had a species mix consistent with a woodland mix, which can be classified as other broadleaved woodland in moderate condition. This is down to the species mix that would have comprised trees, scrub and ground flora indicative of a mature woodland.
- 10.23 Given the above, the habitats in their current form on the embankment are at a shortfall of 50% biodiversity units of the approved landscaping plans and therefore, to accord with Local Plan Policy LP30 a financial payment to the Council, for use to enhance biodiversity on council managed land, will be required. The shortfall has been calculated by the Council’s Biodiversity Officer, (based on £20,000 per habitat unit (figure taken from 2019 DEFRA Impact Assessment) + 15% admin fee (figure taken from Kirklees Biodiversity Net Gain Technical Advice Note)), a total of approximately £23,920 will be sought from the applicant. Officer’s recommendation is reflective of this and on the basis the applicant is agreeable to the off-site contributions, would comply with Local Plan Policy LP30 and the aims of Policy 13 of the HVNDP.

- 10.24 In the additional statement received in July 2023, the applicant has offered “a contribution of £10,000 towards either Meltham Greenway or a biodiversity scheme in Honley or the playground to benefit the wider area”. As this does not cover the full shortfall set out in the above paragraph, formal agreement is sought and awaited from the applicant for the full amount of the shortfall. An update on this matter will be reported to the Members in the committee update or on the date of committee.
- 10.25 Confirmation has been received from the Council’s Woodland Development Manager and the Principal Landscape Architect that on further consideration, there is potential for habitat and wildlife creation at the Council’s recreation (Meadowcroft, Honley) grounds on Meltham Road (to the back of the site), Honley, approximately 480m south-west of the application site. As an alternative, Honley Head Wood, on Bradshaw Road, is Council owned with no management plan, or any works done to it for some time. This would benefit from wildlife habitat creation and or improvement (thinning, under planting etc) to increase ecological and woodland value. Both sites are within the Holme Valley North Ward, the same as the application site. With respect to Brockholes recreation ground, the Council does not own this site and as such ruled out for any additional habitat creation or tree planting. The financial contribution to be secured and used at any of the two sites identified within the Holme Valley North ward would accord with Local Plan Policy LP30 and Policy 13 of the HVNDP.

Planning obligations (Deed of Variation to the original S106 Agreement)

- 10.26 A Section 106 legal agreement forms part of the original permission which requires the maintenance and repair as necessary of the watercourse to ensure the free flowing of water and for inspections to be carried out annually to maintain in good repair. If Members are minded to approve the application, a deed of variation to the original legal agreement would be required, to secure the obligations in line with the original legal agreement as well as the obligation to secure the off-site contributions, discussed in the preceding paragraphs upon completion of the Obligation.

Representations

- 10.27 The reasoned conclusion has taken into account the representations received, together with the potential impact on the structural integrity of the reinforced embankment which forms private gardens areas, safety of residents, enforceability and the practicality of safely carrying out the maintenance and management of this area, given the identified constraints and gradient of the reinforced embankment.

Other Matters: (Conditions)

- 10.28 The previously approved permission is extant and development has been constructed in all other respect with the details approved in accordance with 2016/93243 original permission and subsequent discharge of condition applications. It is therefore not necessary to re-impose condition no. 1 requiring

the proposals to be carried out within three years of the expiry of the previous permission. Furthermore, those conditions for which variation has not been sought as part of this application and were originally imposed by planning permission approval 2016/93243 would be reproduced on the notice to provide a complete record of all conditions, regardless of whether some may have already been discharged. Where the details pursuant to the conditions under planning permission 2016/93243 have already been approved by the Local Planning Authority, and there is no change to the approved details, a further discharge of condition application for those conditions will not be necessary. This matter will be addressed by the imposition of a footnote on the decision notice.

## **11.0 Conclusion**

- 11.1 The original intention of condition (5) for soft landscape was to improve the habitat and wildlife and conserve and enhance the conservation area through the implementation of the approved landscape planting on the embankment, which although forms garden areas in private ownership was not envisaged for usable garden areas, due to its steepness. Furthermore, to ensure the structural integrity of the reinforced embankment was not compromised by future residents of the site, permitted development rights were withdrawn for development falling within Part 1 Classes A, B, C, D, E & F and Part 2 Class A or B of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) under condition 19 of the 2016 permission.
- 11.2 It is considered there would be very little merit to remove the self-seeded and naturally established vegetation which has now established over a number of years, to replace the banking with grass seeding which will potentially re-establish with similar native vegetation in time and given the complexities of the steepness and risks associated with accessing the banking for any long term maintenance and management, it will be difficult to remove growth of pioneer species/natural succession. Consequently, haven taken a balanced approach of all the material considerations, the recommendation before Members is to grant the variations proposed and seek the off-site biodiversity net gain to be secured within the same Ward, compensating for the recognised shortfall and to comply with the above listed Local Plan and HVNDP policies.
- 11.3 The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice.
- 11.4 In this case, the 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 it is therefore recommended for approval.

**12.0 CONDITIONS (Full wording of conditions including any amendments/ additions to be delegated to the Head of Planning and Development). The list of conditions below are transposed from the 2016 application, as explained within paragraph 10.28 (above)**

**1. Deleted**

2. The development hereby permitted shall be carried out in complete accordance with the plans and specifications listed in this decision notice, except as may be specified in the conditions attached to this permission, which shall in all cases take precedence.

3. The dwellings hereby approved shall be faced in 'natural coursed walling stone' and 'Sandtoft Cassius Antique Slate' in accordance with the details (ref: 16/D15) received on 27/09/2017. The development shall be maintained as such thereafter and no change therefrom shall take place without the prior written consent of the Local Planning Authority.

4. Notwithstanding the submitted information details of all boundary treatments shall be submitted to and approved in writing by the Local Planning Authority before development commences on the superstructure of any dwelling hereby approved. The development shall be completed strictly in accordance with the details so approved prior to any of the dwellings being occupied and maintained as such thereafter.

**5. Deleted**

6. Prior to the occupation of the hereby approved dwellings, the approved vehicle parking areas shall be surfaced and drained in accordance with the Department for Communities and Local Government and Environment Agency's "Guidance on the permeable surfacing of front gardens" as amended or any successor guidance and made operational. The surfacing material must be of a type which does not carry debris onto the highway. Thereafter the parking areas shall be so retained, free of obstructions, and available for the use specified on the approved plans.

7. Before development commences on the superstructure of any dwelling hereby approved, a detailed scheme for the provision of a road widening including the provision of a new 2 metre wide footway to be provided as shown on drawing no. 16/D15/03 Rev F entitled 'site layout' and all associated works shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include construction specifications, white lining, signing, surface finishes together with an independent Safety Audit covering all aspects of the work. The development shall be completed in accordance with all the approved details before any part of the development is first brought into use.

8. Prior to construction commencing a schedule of the means of access to the site for construction traffic shall be submitted to and approved in writing by the Local Planning Authority. The schedule shall include • the point of access for construction traffic,

- Construction (Including site preparation) traffic, timing and routing to and from the site,
- Parking arrangement for site/construction staff,
- Wheel washing on site and street cleaning arrangement,
- Construction/build schedule and



- Details of how dust and emissions during the construction will be controlled/minimised.

The approved scheme/details shall be adhered to during and throughout the construction phase, until completion of the approved development.

9. The bin storage/collection areas as shown on drawing no. 16/D15/03 Rev F entitled 'site layout' shall be provided prior to the first occupation of the dwellings and shall be retained thereafter free of obstructions and available for storage/collection of bins only.
10. Notwithstanding the provisions of section 55(2)(a)(i) of the Town and Country Planning Act 1990 (or any re-enactment with or without modification) all integral garages on all plots shall be used for the garaging of motor vehicles and no other purposes.
11. Before development commences on the superstructure of any dwelling hereby approved, the design and construction details of all temporary and permanent highway retaining structures including any modifications to the existing retaining walls and to the embankment along the western boundary of the site shall be submitted to and approved in writing by the Local Planning Authority. The details shall include a design statement, all necessary ground investigations on which design assumptions are based, method statements for both temporary and permanent works and removal of any bulk excavations, a full slope stability analysis together with structural calculations and all associated safety measures for the protection of adjacent public highways, footpaths, culverts, adjoining land and areas of public access. The development shall be completed in accordance with the approved details before any of the dwellings are occupied and retained as such thereafter.
12. No piped discharge of surface water from the site shall take place until works to provide a satisfactory outfall, other than the local public sewerage, for surface water have been completed in accordance with details submitted to and approved in writing by the Local Planning Authority.
13. Before development commences on the superstructure of any dwelling hereby approved a scheme detailing finalised foul, surface water and land drainage (including private drainage layout, trash screen design, interface between diverted watercourse and existing infrastructure) shall be submitted to and approved in writing by the Local Planning Authority. The detailed design shall be in accordance with Site Layout 16/D15/03 Rev F, Flood Plan with Trash Screen Blockage 10991-01C and Bland and Swift addendum to FRA dated 11/09/2017. None of the dwellings hereby approved shall be occupied until the drainage scheme so approved has been provided on the site to serve the development or each agreed phase of the development to which the dwellings relate and thereafter be retained in accordance with the approved details.
14. The hereby approved dwellings shall only be occupied on completion of the maintenance and management plan for the approved on-site ordinary watercourse and all its associated ancillary structures which shall have been submitted to and approved in writing by the Local Planning Authority. Thereafter the maintenance and management of the approved watercourse including all associated ancillary structures shall be adhered to in accordance with the approved plan/schedule.

15. Remediation of the site shall be carried out and completed in accordance with the Phase I Geo-environmental Investigation report hereby approved. In the event that remediation is unable to proceed in accordance with the approved Remediation Strategy or contamination not previously considered [in either the Preliminary Risk Assessment or the Phase II Intrusive Site Investigation Report] is identified or encountered on site, all works on site (save for site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within 2 working days. Unless otherwise agreed in writing with the Local Planning Authority, works shall not recommence until proposed revisions to the Remediation Strategy have been submitted to and approved in writing by the Local Planning Authority. Remediation of the site shall thereafter be carried out in accordance with the approved revised Remediation Strategy.
16. Following completion of any measures identified in the approved Remediation Strategy or any approved revised Remediation Strategy a Validation Report shall be submitted to the Local Planning Authority. Unless otherwise agreed in writing with the Local Planning Authority, no part of the site shall be brought into use until such time as the remediation measures for the whole site have been completed in accordance with the approved Remediation Strategy or the approved revised Remediation Strategy and a Validation Report in respect of those remediation measures has been approved in writing by the Local Planning Authority.
17. In the event that contamination not previously identified by the developer prior to the grant of this planning permission is encountered during the development, all works on site (save for site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within 2 working days. Unless otherwise agreed in writing with the Local Planning Authority, works on site shall not recommence until either (a) a Remediation Strategy has been submitted to and approved in writing by the Local Planning Authority or (b) the Local Planning Authority has confirmed in writing that remediation measures are not required. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures. Thereafter remediation of the site shall be carried out and completed in accordance with the approved Remediation Strategy. Following completion of any measures identified in the approved Remediation Strategy a Validation Report shall be submitted to the Local Planning Authority. Unless otherwise agreed in writing with the Local Planning Authority, no part of the site shall be brought into use until such time as the whole site has been remediated in accordance with the approved Remediation Strategy and a Validation Report in respect of those works has been approved in writing by the Local Planning Authority.
18. An electric vehicle recharging point shall be installed within the garage serving each dwelling during the construction phase and before occupation of the dwelling or in a location accessible from the dedicated parking area to each dwelling. The cable and circuitry ratings for the charging points shall be of adequate size to ensure a minimum continuous current demand of 16 Amps and a maximum demand of 32Amps. The electric vehicle charging points so installed shall thereafter be retained.

19. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order (with or without modification) no development falling within Part 1 Classes A, B, C, D, E or F or Part 2 Class A or B of Schedule 2 of the above Order shall be carried out within the red line boundary of the application site shown on the approved plans at any time.

**FOOTNOTE:**

Conditions 3-4 and 6-19 (i.e. those conditions for which variation has not been sought as part of this application) were originally imposed by planning permission approval 2016/93243. They are reproduced on this notice to provide you with a complete record of all conditions, regardless of whether some may have already been discharged. Where the details pursuant to the above conditions in accordance with reference 2016/93243 already been submitted for discharge and approved by the Local Planning Authority and there is no change to the details required by that condition, a further discharge of condition application pursuant to this application reference will not be necessary.

**FOOTNOTE:**

It is important to note that as a hydrocarbon resistant gas membrane is to be installed, a higher standard of validation will be required. In reference to condition no. 16 the following information shall be provided in the validation report: • Specification of products used • Letter from RGS declaring products installed in all necessary plots to manufacturers specification • Photos of installation process

**FOOTNOTE:**

It is brought to the Applicants' notice that the Highway Development, Investment & Regeneration, Civic Centre 1, Market Street, Huddersfield (01484 221000 or 'Highways.Section38@kirklees.gov.uk') must be contacted to discuss road adoption arrangements under Section 38 of the Highways Act 1980.

**FOOTNOTE:**

It is the applicant's responsibility to find out whether the work approved by this planning permission requires written approval from the Highways Structures section for works near or abutting highway and any retaining structures. Contact Highways Structures Section on Tel No. 01484-221000 who can advise further on this matter.

**FOOTNOTE:**

The public footpath no. HOL/186/10 beyond the western boundary shall not, at any time prior to, during or after building works, be unofficially obstructed or closed without the prior written consent of the Council as Highway Authority.

**FOOTNOTE:**

Vegetation clearance should be undertaken outside of the bird breeding season, March to August inclusive. If any clearance work is to be carried out within this period, a nest search by a suitably qualified ecologist should be undertaken immediately preceding the works. If any active nests are present work which may cause destruction of nests or, disturbance to the resident birds must cease until the young have fledged.

**FOOTNOTE:**

All contamination reports shall be prepared in accordance with CLR11, PPS23 and the Council's Advice for Development documents or any subsequent revisions of those documents.

**FOOTNOTE:**

Please note that the granting of planning permission does not overrule private legal rights of ownership and it is your responsibility to ensure you have the legal right to carry out the approved works as construction and maintenance or parking of vehicles may involve access to land outside your ownership or subject to private rights of way.

**FOOTNOTE:**

The responsibility for securing a safe development rests with the developer and/or landowner. It is advised where a site could be affected by land stability issues this be taken into account and dealt with appropriately by the developer and/or landowner.

**FOOTNOTE:**

To minimise noise disturbance at nearby premises it is generally recommended that activities relating to the erection, construction, alteration, repair or maintenance of buildings, structures or roads shall not take place outside the hours of: 07.30 and 18.30 hours Mondays to Fridays 08.00 and 13.00hours, Saturdays With no working Sundays or Public Holidays In some cases, different site specific hours of operation may be appropriate. Under the Control of Pollution Act 1974, Section 60 Kirklees Environment and Transportation Services can control noise from construction sites by serving a notice. This notice can specify the hours during which the works may be carried out.

**Background Papers:**

Application and history files. See assessment above.

Website link to be inserted here:

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2022%2f93823>

[Planning application details | Kirklees Council](#)

Link to application reference 2018/91138 - Discharge conditions 4 (boundary treatments), 7 (highways), 8 (construction traffic), 11 (retaining wall), 13 (drainage), 14 (watercourse) on previous permission 2016/93243 for erection of 17 dwellings – details satisfactory.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2018%2f91138+>

link to application reference 2021/91689 - Variation condition 2 and 5 on previous permission 2016/93243 for erection of 17 dwellings (within a Conservation Area)

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2021%2f91689+>

Certificate of Ownership – Certificate A signed by Agent.

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## Report of the Head of Planning and Development

### STRATEGIC PLANNING COMMITTEE

Date: 07-Dec-2023

**Subject: Planning Application 2021/93621 Erection of 12 dwellings and associated works (Within a Conservation Area) Land off, Fullwood Drive, Golcar, Huddersfield, HD7 4JH**

#### APPLICANT

Armitage Developments  
UK Ltd

#### DATE VALID

03-Mar-2023

#### TARGET DATE

02-Jun-2023

#### EXTENSION EXPIRY DATE

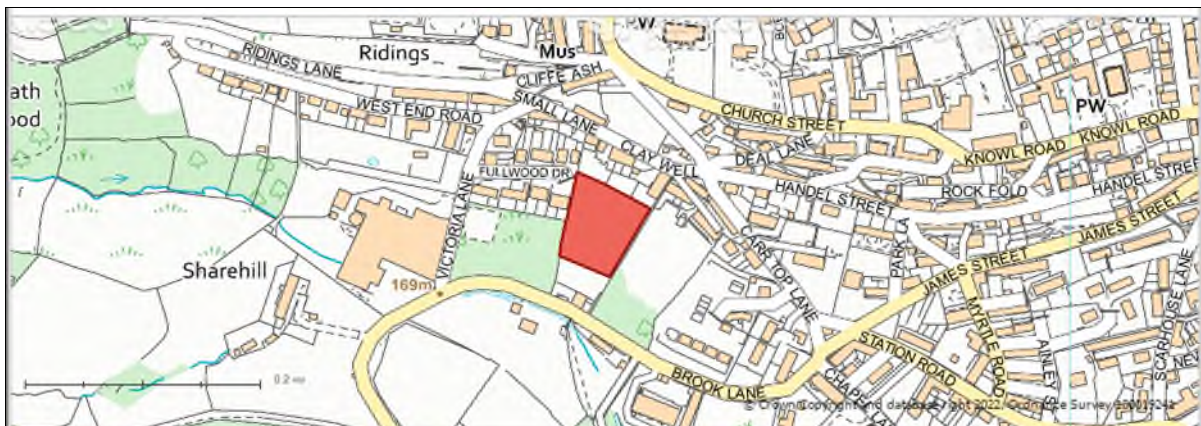
14-Dec-2023

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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.

[Public speaking at committee link](#)

#### LOCATION PLAN



Map not to scale – for identification purposes only

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**Electoral wards affected: Golcar**

**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. Affordable housing – Two affordable housing units (1 affordable or social rent and 1 first home) to be provided in perpetuity.
2. Open space – £26,883 off-site contribution.
3. Education – £21,276 contribution to be spent on priority admission area schools within the geographical vicinity of this site. Payments would be made in instalments and on a pre-occupation basis, per phase. Instalment schedule to be agreed.
4. Sustainable transport - £5,115 contribution towards measures to encourage the use of sustainable modes of transport.
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). Section 106 agreement to include a plan clearly defining all land which would be the responsibility of the management company.
6. Biodiversity – £15,640 contribution towards off-site provision to achieve a 10% biodiversity net gain.

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 an application for full planning permission, for a residential development of 12 dwellings.
- 1.2 The application is presented at Strategic Planning Committee due to the substantial number of representations received, in opposition to the development.

## **2.0 SITE AND SURROUNDINGS:**

- 2.1 The application site comprises site allocation HS153 (allocation for housing). The site is 0.41 hectares in size, a trapezoid-shaped, and slopes downhill from north to south.
- 2.2 No buildings exist within the site's boundaries, and the site is not previously-developed (brownfield) land. Parts of the site are overgrown with self-seeded trees and shrubs, giving the site a ruderal character. No trees on the site are the subjects of Tree Preservation Orders (TPOs), however a TPO covers trees to the southeast (within the adjacent site).
- 2.3 Surrounding the site is predominantly residential in character, with the site to the east under construction. A public footpath (COL/56/40) runs along the site's southeastern boundary. The site is within the Golcar Conservation Area. To the northeast of the site is a terrace of five Grade II listed cottages at 17-25 Clay Well, and the Grade II listed former factory/warehouse and dwellings at 27-29 Clay Well. To the south is a Grade II listed group of back-to-back buildings at 54, 54A, 56 and 58 Brook Lane. Undesignated heritage assets within and close to the site include the abovementioned footpath, dry stone walls and field patterns.

## **3.0 PROPOSAL:**

- 3.1 The applicant seeks full planning permission for the erection of 12 dwellings.
- 3.2 Access is proposed from Fullwood Drive, which was approved as part of the previous outline application 2017/93638. Internally, a new estate road would be provided, with a private drive to the east.
- 3.3 Dwellings would be arranged along this new estate road, provided as 8 semi-detached, 3 terraced properties and 1 detached dwelling. The housing mix would include one x 1 bed, one x 2 bed and 10 x 3 beds. Six different house types have been proposed, including house types A-F. House types A and B would be true two storey dwellings with house types C – F proposing to be two storey to the front and three to the rear, given the substantial change in levels within the site. Natural stone walls and concrete interlocking tiles to the roofs are proposed.
- 3.4 All dwellings would have off-street parking. Six of the dwellings would have an integral garage.

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

### **4.1 At the application site:**

COMP/20/0590 Alleged breach of condition 11 of 2017/93638 prior to discharge – No evidence of breach.

2017/93638 Outline application for residential development with details of point of access only (within a Conservation Area) – Conditional outline permission.

2014/90450 Outline application for 8 residential dwellings (within a Conservation

Area) – Conditional outline permission.

95/90501 Outline application for residential development (approx. 23 dwellings)  
– Refused.

94/93595 Outline application for residential development (approx. 23 dwellings)  
Refused.

Adjacent site and surrounding properties:

2021/91384 Erection of 13 dwellings (resubmission) – S106 full permission  
(land south of, 5-25, Clay Well, Golcar, Huddersfield).

More recent discharge of condition and variation of condition applications have  
been submitted on the site, following the granting of planning permission.

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

5.1 During the life of the current application, the applicant submitted, new, amended  
and corrected documents and increased the number of units from 10 to 12 in  
order to provide two affordable homes. Additional documents include a  
Biodiversity Net gain assessment, POS plan and drainage information. The  
visual appearance of the dwellings, the road layout and the boundary  
treatments have also been amended.

**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).

Kirklees Local Plan (2019):

6.2 Site allocation HS153 relates to 0.41 hectares (gross and net) which sets out a  
indicative capacity for 8 dwellings and identifies the following constraints:

- Improvements to local highway links may be required
- Public right of way at eastern boundary
- Limited surface water drainage options - third party land may be  
required to achieve drainage solution
- Site is close to listed buildings
- Site is within a Conservation Area

6.3 Relevant Local Plan policies are:

- LP1 – Presumption in favour of sustainable development
- LP2 – Place shaping
- LP3 – Location of new development
- LP4 – Providing infrastructure
- LP5 – Master planning 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
- 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
- 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:

- Highways Design Guide SPD (2019)
- Design Guide SPD (2021)
- Open Space SPD (2021)
- Affordable housing and housing mix SPD (2023)

#### Guidance document

- Biodiversity Net Gain Technical Advice Note (2021)
- Planning Applications Climate Change Guidance (2021)
- West Yorkshire Low Emissions Strategy and Air Quality and Emissions Technical Planning Guidance (2016)
- Waste Management Design Guide for New Developments (2020)
- Green Streets® Principles for the West Yorkshire Transport Fund
- Kirklees Housing Strategy (2018)
- Kirklees Joint Health and Wellbeing Strategy and Kirklees Health and Wellbeing Plan (2018)

#### National Planning Guidance:

6.4 National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) 2021, published 20th July 2021, and the Planning Practice Guidance Suite (PPGS), first launched 6th March 2014, together with Circulars, Ministerial Statements and associated technical guidance. The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

- 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

#### 6.5 Relevant national guidance and documents:

- National Design Guide (2019)
- Technical housing standards – nationally described space standard (2015, updated 2016)

#### Climate change

6.6 The Council approved Climate Emergency measures at its meeting of full Council on the 16th of January 2019, and the West Yorkshire Combined Authority has pledged that the Leeds City Region would reach net zero carbon emissions by 2038. A draft Carbon Emission Reduction Pathways Technical Report (July 2020, Element Energy), setting out how carbon reductions might be achieved, has been published by the West Yorkshire Combined Authority

6.7 On the 12th 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 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 would use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

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

7.1 The application has been advertised as a major development, as a development within a conservation area, and as a development that would affect the setting of a listed building and a public right of way.

7.2 The application has been advertised via 4 site notices, advertised within the press and letters delivered to neighbours adjacent to the application site. Final publicity expired on the 8<sup>th</sup> April 2023.

7.3 32 representations have been received by 22 individuals/local residents. The following is a summary of the points raised:

#### Visual amenity and heritage:

- The gables with peaks on the front of plot 1-7 don’t fit with the character of the conservation area and is not seen elsewhere.
- Concern regarding the height, style, roof pitches of the new dwellings.

- Our ancient hillsides do not need the blight of even more housing developments.
- There are no four storey dwellings within the area and the design is not in keeping. The majority are three storey. For properties to be in keeping with the existing properties in the conservation area, detached properties should be no more than two stories and semi-detached or terraced properties should be no more than 3.
- At 14.5 metres above existing ground level, plot 1 (plot 2 is nearly as tall) would be substantially taller than any other residential houses in the area. As narrow, detached properties their proportions are further out of character with the area.
- Three storey dwellings will be over-bearing, especially the larger plots 1 – 7.
- All of the three storey dwellings in the area are semi-detached or terraced. The only exception to this is Millbarn, which is adjacent to this plot, but Millbarn is a former commercial property, is a listed building and to a very different style and proportion to the dwellings in this proposal.
- The façade treatment to the front and rear of the property lacks character and does not fit within the conservation area.
- It is fair to say that the proposed designs are not sympathetic or characteristic to the existing properties within the Conservation Area. There are no current similar designs of these types of buildings and indeed the previous application was significantly more sympathetic (after the requirements that Kirklees placed on it for the type of building materials to be used) than this current one.
- Within a conservation area, if these houses are allowed, there will be far less old houses than there are new.
- This area of Golcar is already overdeveloped, especially the area surrounding the proposed development. Kirklees local plan promotes; “the use of brownfield land to meet development needs and support the regeneration of areas”. Policy LP 3 also states; “ensuring that opportunities for development on brownfield (previously developed) sites are realised”. Thus the need for housing can be met on more suitable brownfield sites.
- The site plans show concrete roof tiles which are out of character for the area, slate should be used instead especially because the houses sit into the hillside which forms a significant part of character area. Views from Wellhouse/Share Hill would be impacted if the wrong material is used.
- We are much happier with the design of this proposal, more appropriate style of building for the Conservation Area. But we object to Concrete Interlocking Tiles for the roofs, this is a Conservation Area and the materials should be sympathetic to the existing buildings especially the listed building and as such should be at minimum Blue Slate tiles.
- Materials should be in keeping with the Conservation Area. The dwellings should be constructed from reclaimed natural stone, timber conservation windows. Concrete roof tiles are not suitable in the conservation area.
- The proposal would have an undesirable impact on the conservation area.
- The area is deemed a 'conservation area' for a reason. It is to conserve the character of the area and its historic interest. This can't be done by adding loads of new houses.

- This development will be built within a conservation area, recognised for the contribution it makes to the cultural heritage of the locality. This land forms the foreground to views of the conservation area of Golcar from Wellhouse, the Colne Valley.
- Speaking from a heritage point of view this application is within a Conservation Area and is adjacent to a Listed Building of significant size and the current design and layout will have a negative effect on the area and are not consistent with others in the Conservation Area and do not meet the stated requirement by the Council in granting outline planning permission for the development in that “the properties must be of a layout appearance scale and landscaping proposals that would maintain significance of the conservation area and that such details would be required to have regard to the character and appearance of the Conservation Area and to draw a reference to the Conservation Area Appraisal.
- The updated proposals do not take into account Historic England’s comments.

#### Residential amenity:

- The new application incorporates up to 4 storey buildings on very substantial footings (Plots 6 – 10) which all contributes to having a severe impact on the current housing and a much greater loss of privacy.
- Loss of view.
- The proposals do not take into consideration the overlooking of existing dwellings on Clay Well, Small Lane and Fullwood Drive. The proposed sections do not show how these properties will be impacted. The sections need to be updated to include 33 – 43 Clay Well. The sections do not include any proposed levels. This is concerning as the developer could have free reign with regards to the built levels of the properties.
- The proposals will impact on neighbouring natural light.
- Impact on neighbours’ gardens from the built form.
- Concerns regarding overlooking onto existing neighbouring properties.
- The development does not comply with the separation distances set out within the SPD.
- House types C and D looks too small, this should be reviewed against the space standards.

#### Highways safety and access

- Existing health and safety concerns in the area in relation to highway safety.
- The surrounding roads are totally unsuitable for the development.
- Victoria lane is steep and the exit from Fullwood Drive is tight. Victoria lane is heavy with traffic at school times and dangerous without building traffic adding to this.
- The roads leading to and from these houses are not fit for heavy use.
- Access via Hillcrest where existing infrastructure has already been placed would be more suitable as recommended by Kirklees Highways. Clay Well/Small Lane operate as one lane in parts, more traffic is not acceptable. This is also applicable on Fullwood Drive where on street parking is fundamental to the residents but also would restrict access.
- As you go down Victoria Lane it is cobbled which is a fundamental character material of Golcar but not suitable for more vehicle traffic.

- As previously pointed out in previous applications the access to the plot from Fulwood Drive would present a lot of additional dangers to the residents of Clay Well and Small Lane as the traffic heading up to the village would naturally snake through these tiny roads, so too would the increased volume of daily delivery vehicles. It would be much better to continue the access to the previous two plots from Carr Top Lane a view that is also shared by Jamie Turner, Principal Engineer for Kirklees Council.
- An increase in housing will mean more pedestrians on these narrow dangerous roads.
- This planning application shows the roadway continuing through this estate of new houses from Carr Top Road up to Fullwood Drive, which was designed as a cul-de-sac and families have for 40 years allowed their children to play out in safety. Any attempt to use the cul-de-sac as an access road would be entirely unsuitable and dangerous. There could potentially be a further 100 plus cars using this cul-de-sac every day. The road is single track and impassable if householders park outside their homes. Also the road surface was not laid to be a main road and is off Victoria Lane which is very steep.
- Highway surveys tend to be done in the car when there aren't as many cars about.
- A much better alternative would be to access the plot through the 2 developments (1 currently built 2018/92848 and 1 currently in planning ref 2021/91384) that are accessed off Carr Top Lane which is a much more usable road for passing traffic. This would also involve creating a road over a current public footpath it would ironically ensure the footpath would be safer as it would require remaking and hence be of a better condition than it is currently and hence safer for users of it. Also any parents utilising the facilities of the local schools and nurseries in the village would likely take these shortcut routes and further compound the Health and Safety issues at the very peak times of traffic and congestion.
- Winter in Golcar is hills of ice and snow, and adding additional cars trying to drive down them, is likely to cause damage to property. The road condition is likely to become even worse.
- The junction of Carr Top with Church St is a particular concern with only one passing place (the entrance to a private drive) and with drivers regularly reversing back down or even more dangerously, reversing back into the traffic on Church Street, a procedure that must be done blind due to the steepness of the slope.
- The access off Fullwood Drive onto Victoria Lane offers very poor visibility. It's dangerous.
- Victoria Lane and Fullwood Drive are not suitable. These roads are already at capacity. Fullwood Drive already has 21 dwellings along it.
- Victoria Lane is a steep ungritted road which is not accessible in bad weather.
- It would be more suitable for the development to be accessed from the East off Carr Top Lane, through the newly built houses which form Hillcrest View. However the access from Carr Top Lane is also overused and not suitable for the existing number of vehicles which drive and park along this road.
- The roads leading to Golcar village, to Brook Lane and to schools and doctors surgery have no pavements or footpaths and can be dangerous to children walking to school, or visits to the doctor. An increase in housing will mean more pedestrians on these narrow dangerous roads.

- There are existing problems with Small Lane and Clay Well which would only get worse with this development.
- Adding more traffic to the school runs can only worsen the Health and Safety issues.
- The application states “The development would give rise to a minimal number of peak hour vehicle movements causing negligible impact to the highway network.” This is a statement with no evidence to back it up. If you were to observe the traffic patterns in current existence on Fulwood Drive it would be very quick to demonstrate the statement has no validity.
- No matter how well served the location is with a fantastic bus route and local schools, these do not stop people from regularly driving to the shops and the schools.
- The roads are already almost impossible to drive down without coming up against another car and having to reverse right back down narrow roads, with no passing places. Adding further traffic of not just people who live in the area, but delivery trucks and visitors, will make the roads absolutely impossible.
- Damage to properties from car accidents in bad weather.
- I have burst a tyre before now on a raised man hole cover after it became exposed when cobble stones were worn away through water running off the hills, which is still not fixed.
- We have already had substantial housing developments on land off Carr Top Lane despite the inadequacy of this road. By granting permission for the development off Fullwood Drive, the driving nightmare would only increase.
- There are serious safety issues due to the fact that the general infrastructure in the area cannot cope with additional demand.
- No doubt the road will need digging up for this development to take place and gain access to water/electricity.
- There is a constant struggle with parking at Fullwood Drive. Residents park on the road (due to existing parking provisions) leaving issues with access. The proposals remove parking spaces from the end of Fullwood Drive and this will add to the strain.
- There are already a significant number of cars which park on Fullwood Drive and this is already a hazard.
- Parking provisions on site do not seem adequate. 2 bed properties have been given 1 space and 3 bed properties have been provided 2 spaces. It's likely more parking provisions will be required on site, as most 3 bed dwellings have 3 cars.
- Lack of visitor parking.
- As many of these are three and above bedroomed houses it is likely that as time goes by and the children brought up within them will each get cars and the roads ever more populated. This exact outcome can be witnessed on Bobbin Close in Golcar where some of the properties now have 5 cars. This is unsustainable within this very specific landscape.
- Emergency vehicles may find it difficult to get through.
- Does not appear to be suitable turning for a refuse vehicle or fire engine.
- The land owned by the owner is not fully adjacent to the existing road at Fullwood, the boundary slips down to the south meaning vehicle access would have to come down in front of no.20 Fullwood, on street parking here is common as such access unsuitable.
- Fullwood Drive is a cul-de-sac which has a metre wide strip of land called a ‘ransom strip’ at the head of the turnaround, which is owned jointly by

the owners of numbers 20 and 21. No one has any right to use Fullwood Drive as an access road to what will be Phase 3 of a plan to build a massive housing estate.

- A lack of bin stores and presentation points.

#### Ecological concerns (including trees):

- The builders are not considerate. They ripped down trees during the nesting period. The birds were very distressed. I believe it is illegal to disturb birds during nesting?
- They have demolished the pond. There were newts in the pond. Not anymore.
- They tore down the trees without permission. There are bats living and nesting in and around the field. I have not seen any bats since development started.
- The contractors have returned this year. All the tree remains have been shredded to pulp. The vast majority of trees were established trees. The site is prepped for development before the plans are passed.
- We are already highly disappointed from the works that were carried out in the field without any notice on the 20th October 2020, they came into the field with a digger and destroyed the natural habitat that was home to an abundance of the above animals and birds. On 20 September 2021, machinery was again moved onto this land to clear shrubland and shred any tree remains.
- Item 10 states there are no trees and hedges – but despite a massive land clearance earlier in the year there are still a considerable number of trees and hedges so the application is incorrect and what about the trees they were required to retain last time?
- This area is very important for bats on or near the development site. However, ever since the digger came on Tuesday 20 October 2020. I have not seen a single bat – they have gone entirely.
- There are invasive plants in the field. I am concerned that this will not be treated appropriately.
- Work should not begin until the invasive plants/species are removed.
- The habitats onsite (namely the wooded areas) make up part of the conservation area character of Golcar and have significant amenity value to local residents. It is unclear of the intentions of the developer regarding landscape and biodiversity, as documents contradict one another.
- No new trees are shown on the most recent proposals and but 11 were shown on the old plans. The Arb Impact shows 20 trees lost, I believe a ratio of 3:1 is recommended so at least 60 quality new trees should be planted.
- This planning application needs redesigning to include the trees already there. There are some trees of high-capacity value in the middle. Mitigation is not acceptable because of the length of time it takes to grow young trees or saplings. We're in a climate emergency every tree counts.
- The Biodiversity Impact Assessment is based on the PEA undertaken in 2017 and thus a new PEA is needed to obtain an up-to-date Biodiversity Gain/loss measurement, it is also based on 8 dwellings. The biodiversity loss is not acceptable in relation to climate change and LP24 of the KLP.
- I would like to see the updated ecology reports.
- As noted within the consultee comments by Yorkshire Wildlife Trust the proposal results in a 40% loss of Biodiversity. Policy LP-24 of the

Kirklees Local Plan states; “development contributes towards enhancement of the natural environment, supports biodiversity and connects to and enhances ecological networks and green infrastructure”. A loss in biodiversity goes against this policy.

- The latest government proposals are that everyone should be within 15 minutes of a green space - this is a perfect example of a natural green space being destroyed. This land and hillside is a natural wild area and the habitat of many species of birds and wildlife.
- We need to preserve our wildlife corridors.
- Impact on an highly active bird population.
- I often see wild deer and beautiful animals should be encouraged.
- The site does not provide any natural greenspace.
- The proposed development would radically alter the natural environment that forms an essential part of the conservation area. The new plans require even less trees to be kept than the previous plans, even the larger central tree (T25-Category B) would be sacrificed to the development. This visually detrimental scenario would also have a negative impact on the huge variety of wildlife current inhabiting the area.

#### Drainage concerns:

- The historic water, drainage and sewage system in this area was not built to cope with the amount of new drainage that will be required for this development. There is surface water running constantly in this area, there are natural springs in the field, and further development could have a big impact on this. It turns to ice in cold weather and is dangerous.
- There appears to be little mention of the current springs that exist on the plots and the potential for the damage these could create, as the direction of these water courses change slightly, as they do, over the course of time.
- We are already finding excess water pouring into our garden and haven't got a solution to this problem. It has arisen since the building work in the adjoining field. Building more houses will cause us more problems.
- Item 11 states there is no existing water course but there is a natural spring within the land that the developer has attempted to conceal by digging over the land but it is there and is very visible after all this rain and there are two existing culverts that run under our garden and exits into the development.
- The proposals will also create a flood risk for the dwellings to the South of the site. The site currently delays the water run-off in periods of heavy rainfall. During periods of heavy rainfall in the area flooding and severe run-off is common, the proposals will make this issue much worse, due to the large amount of hardstanding and dwellings on the site. Reducing the number of dwellings on site would help this. There has also been no reference to SUDS.

#### General concerns:

- Fullwood Drive does not have the infrastructure to support another 10 dwellings; particularly houses of this size.
- As you are no doubt aware that the building work has already started before the so-called planning permission has been granted. The works canteen has already been erected at the end of our road. The works are currently illegal without planning permission.



- The field is now a dumping ground for building equipment, containers etc. It's an absolute eye sore.
- They have already broken down the stone wall at the head of the cul-de-sac and crossed the strip of land that they do not own and have no right to do. They brought in a digger and started to clear the land and then they brought a woodchipper to continue clearing the land. They have also erected a large metal fence.
- More habitats of flora and fauna not only would be destroyed, but already have been by the developers who have already driven diggers onto the land.
- The doctor's surgery is over subscribed and under review.
- Local doctors are already impossible to get appointments at, there's no dentist available, schools are full.
- Current strain on all local community resources.
- The local schools are over subscribed/over stretched.
- The outline application (2017/60/93638/W) was for 10 residential dwellings and not 12 as on the latest proposals this is not acceptable. Also most of the consultation documents are based on the original proposal and thus not valid in relation to updated plans.
- Considering the current middle plot that is being developed adjacent to this has seen lots of complaints from neighbours that the developers have ignored the fencing locations and heights and created much severe ground works behind their properties, what assurances will be provided to ensure this does not happen here and that the groundworks will cause no slippage to the existing properties and gardens in Clay Well?
- The builders of these houses on the previous site behind Clay Well have demonstrated a clear disregard for planning permissions, they've already cleared the ground despite not being allowed due to protected newts, they knocked down a wash house from the 1800s despite the fact they had no permission, they're building houses on a higher elevation than they have permission for as they haven't flattened the land properly, destroyed land that didn't belong to them, and have erected fences above what was agreed. And they've been allowed to get away with all of it. No repercussions from the council at all.
- What assurances can the Council give to better insulate the new houses.
- These dwellings will not be affordable to many local people.
- The development should provide affordable/social housing.
- Since this has happened my view is destroyed by big piles of rubbish left behind, mature trees were cut down that have been there for as long as I can remember. They broke through the wall off of Fullwood drive removed all of the original drystone wall that created the boundary line and put up heras fencing.
- Our privacy has already been impacted by the other houses that are across the field, I do not want more houses building next door to mine.
- Children have always been safe to play on our road, because it's quiet and everybody knows everybody, bringing more people in is unsafe.
- There is already too much noise coming from the new houses in the other field that they have built, we don't need more houses, we need more privacy.
- The land in question was last used as allotments. Planning permission should not be granted to build in the field as it was still being used as allotments until very recently. I noticed that land in the Holme Valley was

refused planning permission because the land is 'allotment land', although it has not been used for this purpose for several years'.

- The proposed site is noted in the land registry as allotment gardens. I believe allotments are not just beneficial to the environment but enhance protected species - thus the proposed site is not suitable for development. As this site is a green field site which has not been previously developed, the majority of nearby residents do not feel this site should be developed and the previous application for outline development has been misjudged.
- Further to this local policy states "proposals involving development on allotments, or land last used as allotments, will not be permitted unless replacement allotments of equivalent community benefit are provided or it can be demonstrated that there is no unsatisfied local demand for allotments. Having been on the waiting list for 3 years I can confirm there is significant demand for allotments, within the local area.
- In my property deeds I have a map from H M Land Registry, dated 1981 showing the land in question as 'Allotment Gardens'. If the Land Registry knew that the land was Allotment Gardens, why is Kirklees Council not aware of the designated status of this land and it being illegal for it to be developed? Planning permission should not be granted to build in the field as it was still being used as allotments until very recently.
- Whilst the application is keen to show the purpose of Provisional Open Land allocations was to identify a reserve of land for future residential development. It has been well documented in recent years that Kirklees Council cannot demonstrate a five year housing supply and therefore try to justify the development as "It is therefore appropriate for POL sites to assist in meeting the Council's requirement for housing" there is no mention how this will increase the benefit to the community. There is no mention of a contribution to social housing (essential for every thriving community), there is no mention of contribution towards the educational infrastructure or health services (without which the current community will suffer).
- At last the Government has realised that brown field sites should be used to build more houses on sites that have previously been developed, closer to town centres and other services and amenities.
- Although on previous applications the Council has made it clear that there is no obligation to insist on using Brown Field sites there is a preferred desire for designated brown land to be used before green land within Kirklees, have all brown field sites been exhausted before consideration will be given to this development?
- Healthy and safety risks to local residents.
- Lastly, no doubt the road will need digging up for this development to take place and gain access to water/electricity. This will impact all residents having access to their homes. There is no other access as you are aware, this is a cul de sac and therefore as we have experienced when the builders removed trees a few weeks back, we were asked to move our cars and large vehicles were parked up causing disruption and noise.
- No proposed plans and elevations have been provided for plots 6&7 as the drawing for house type C denotes plots 2&3, the roof layout is mirrored and not reflective of the proposed design. Also the elevation drawings do not match the site layout for plot 1. The Proposed plans, elevations and site plan do not include a scale bar. Thus consultees

cannot scale these drawings. I feel an updated set of drawings should be issued and the comment period extended as this is a standard validation requirement.

- Residents identified that “development should be close to employment opportunities and well-served by public transport, but should not overload existing roads, drainage systems, schools and other vital services”. It would be interesting to know what local employment opportunities these houses would be serving and certainly how they would not overload local schools.
- There is no provision for a public play area yet a large area frequented by a lot of children especially over the summer months, will be lost. although it will be noted that this is private land and not public land, should there not be a provision to include an open play area for the benefit of the community to ensure compliance with Council policy? The development also damages the Golcar Ginnel Trail. We will lose that.

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

7.5 Due to the changes made and the increase in the number of dwellings from 10 to 12, officers undertook a second round of publicity. This included a full re-consultation via neighbour letters, the press and site notices.

#### Local ward councillors

7.6 All local ward councillors have been notified of this application given the amendments sought, whereby Councillors Turner and Reynolds have confirmed their support.

### **8.0 CONSULTATION RESPONSES:**

#### **8.1 Statutory:**

KC Highways DM: The application is considered to be acceptable. Swept paths are being done for a smaller than standard refuse vehicle. Conditions are required to include a construction management plan, a highway survey pre and post development, any hardstanding to be drained in a permeable surface, the removal of the conversion of garages, details of the road/gradients to an adoptable standard, the requirements of new finished floor levels and a condition to secure the design and implementation of the PROW link.

KC Lead Local Flood Authority: Final drainage details show that there is adequate space within the site for water, which can be discharged at an acceptable rate, which would head to the manhole in the neighbouring Brierstone site.

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

KC Ecology: The EclA determined that the habitats at the site were of no more than site level value. Additional survey work confirmed that habitats, breeding birds, foraging and commuting bats, amphibians, reptiles, badgers and hedgehog had the potential to be negatively affected by the proposed development and as such mitigation measures should be placed on any forthcoming consent to ensure that protected species and habitats are protected throughout the scheme. Furthermore, an updated Biodiversity Net Gain calculation has been submitted with the EclA, using the Biodiversity Metric

3.0 calculator tool. The submitted metric details that there will be an overall net loss of 0.52 habitat units at the site (31.74% net loss) and a net gain of 0.11 hedgerow units. In order for the development to achieve a 10% net gain and come forward in line with local and national planning policies, 0.68 habitat units will need to be delivered, via off-site compensation.

KC Education: A contribution of £21,276 is required to support Golcar J I and N School and Colne Valley High School.

KC Waste Strategy: In support of the development as a refuse vehicle can enter and manoeuvre within the site safely, as to enter the highway in forward gear. Bin collection and presentation points are also acceptable. Details of temporary arrangements would be required via a condition, along with the details and materials of the bin stores.

KC Conservation and Design: In support of the scheme given the amended plans received. However, would request that conditions regarding samples of materials to be used, including windows and doors to be attached to the decision notice in the case of an approval.

KC Strategic Housing: In support of the scheme as two affordable homes are proposed.

KC Crime Prevention: No objection subject to a condition being attached to the decision notice requiring security measures to be submitted before development commences.

KC Landscape: In support of the application, however, a financial contribution would be required in order to secure the off-site Public Open Space (POS). A condition is also recommended requiring further details of the hard and soft landscaping and a management and maintenance plan for it.

Yorkshire Water: No objection subject to conditions being attached to the decision notice.

Historic England: The site benefits from outline planning permission which established the principle of residential development in this location. The current application relates to the detailed design of the scheme, which is required to have regard for the character and appearance of the Golcar Conservation Area and the setting of the adjacent grade II listed buildings.

In our previous response of 18 October 2021 we advised that several elements of the proposed scheme were appropriate to the character of the conservation area, but others are not and would be harmful to this character, particularly in views towards the settlement. We recommended amendments to the scheme to better respond to the local architectural landscape.

The amendments that have been made to the scheme have responded to the comments set out in our previous letter. Given that the principle of residential development on the site has been established through the outline planning permission, we have no further comments to make on the scheme. We are content for the application to be determined in line with local and national planning policy and expert advice provided by your authority's Conservation Officers.

As such, Historic England has no objection to the application on heritage grounds.

KC Trees: A tree survey and arboricultural impact assessment has been submitted which identifies several trees across the site, most are of a low amenity value as individual specimens but there are some of better quality and value amongst them, collectively offering reasonable tree cover and wildlife habitat to the site.

While some of the trees around the perimeter of the site are shown as being retained unfortunately, the higher value trees are central within the site and have not been designed around within the current layout, which shows them as being removed. While this is undesirable and a change in layout is a preferred option, if this is not feasible, we would at least expect the tree loss to be appropriately mitigated by means of a suitable landscape plan which would include detail of tree size, species, and location with an appropriate aftercare and maintenance programme.

In principle this site has been allocated for housing development and I have no major objection to the proposal however, it is desirable to integrate good quality existing trees into new housing designs and any unavoidable tree loss must be appropriately mitigated with new tree planting being an integral part of any new development scheme.

KC Highway Structures: No objection subject to conditions being attached in the case of an approval to include, any details for new retaining walls adjacent to the highway, an assessment of the steep embankment and any details of surface water attenuation within the highway.

KC Environmental Health: In our previous response dated, 6th December 2021, we commented on a Phase 2 Geo-Environmental Report by Rogers Geotechnical dated 1st December 2020 (ref: C977/20/E/1511 - Rev 1). The Phase 2 report concluded that the site is generally uncontaminated, except for a hotspot of asbestos contamination in the location of WS2, thought to be associated with made ground at the site. Subsequently, the report has recommended that remediation is necessary to remove the asbestos contamination or break the pollutant pathways.

Since then, the Phase 1 Desk Study by JNP Group report number NG8480/FUL/PH1, dated February 2014, has been submitted. The report includes geo-technical information, which is outside the remit of Environmental Health, this consultation response therefore only relates to the land contamination aspects of the report. We agree with the report findings and that all potential pollutant linkages that were identified at the Phase I level have been assessed in the later investigation by Rogers Geotechnical as detailed in their report dated 1st December 2020 (ref: C977/20/E/1511 - Rev 1).

Officers agree that remediation is therefore necessary at this site. We note the outline remediation proposals in the Phase 2 report however these refer to outdated guidance and do not go far enough i.e. we require details relating to the delineation of the asbestos hotspot. Therefore, Environmental Health now recommend conditions relating to a standalone remediation strategy and conditions related to the next phases of development.

Notwithstanding the above, additional conditions are also recommended in the case of an approval to include details of electrical vehicle charging points and a construction environmental management plan.

West Yorkshire Archaeology Advisory Service: There is currently no significant archaeological impact associated with the proposed development.

Natural England: No comments to make on this application.

Northern Gas: No objections to these proposals, however there may be apparatus in the area that may be at risk during construction works and should the planning application be approved, then we require the promoter of these works to contact us directly to discuss our requirements in detail.

Yorkshire Wildlife Trust: The ecological surveys were conducted in 2017 and therefore require updating. The Biodiversity Net Gain assessment has been based on these surveys, yet the report itself states that '*Given the transient nature of the subject we would consider the baseline survey results and biodiversity calculations contained within this report to be accurate for 2 years*'. However, I note that the report also states that '*Some habitats on site have been cleared at the time of writing. For the purposes of this assessment, the calculations are based off the habitats present at the time of the original PEA*'. This is concerning and suggests that ecological impacts may have already occurred at the site. Clarification on exactly what has taken place at the site, and why, should be provided prior to determination.

The calculations show a net loss of approximately 40% at the site, which is not acceptable. We strongly advise that the applicant should re-assess the scheme in order to incorporate the required biodiversity net gain. Only after all on-site options have been explored should the potential for an off-site compensation area be considered, in order to make up the shortfall in biodiversity net gain units. If this option is progressed detailed proposals would need to be put forward, including how the off-site compensation area can be secured and managed for the required 30 years.

**Comment:** Updated documents have been received for an updated BNG Metric Calculation, Ecological Impact Assessment (EclA) and Landscape and Ecological Management Plan (LEMP). These documents provide a comprehensive assessment of the ecological constraints and impacts of the scheme. These have been reviewed in full by KC Ecology. As such, the comments from the Yorkshire Wildlife Trust pre-date the updated information.

## 9.0 MAIN ISSUES

- Land use and principle of development
- Sustainability and climate change
- Design and conservation
- Residential amenity
- Affordable Housing
- Highways and transportation issues
- Flood risk and drainage issues
- Trees and landscaping
- Ecological considerations
- Other matters
- Representations
- Planning obligations and financial viability
- Conclusion

## 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 Local Plan identifies a minimum housing requirement of 31,140 homes between 2013 and 2031 to meet identified needs. This equates to 1,730 homes per annum. National planning policy requires local planning authorities to demonstrate five years supply of deliverable housing sites against their housing requirement.
- 10.3 The 2023 up-date of the five-year housing land supply position for Kirklees shows 3.96 years supply of housing land. As the Council is currently unable to demonstrate a five-year supply of deliverable housing sites, it is necessary to consider planning applications for housing development in the context of NPPF paragraph 11 which triggers a presumption in favour of sustainable development. This means that for decision making *“Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date (NPPF Footnote 8), granting permission unless: (i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed (NPPF Footnote 7) ; or (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”*
- 10.4 The Council’s inability to demonstrate a five-year supply of housing land weighs in favour of housing development but has to be balanced against any adverse impacts of granting the proposal. The judgement in this case is set out in the officers assessment.
- 10.5 The site comprises of site allocation HS153 (allocated for housing) to which full weight can be given. It is also noted that outline planning permission for residential development has already been granted at this site, with the most recent being ref 2017/93638, which was subject of a committee resolution to approve.
- 10.6 The 12 dwellings proposed would contribute towards meeting the housing delivery targets of the Local Plan.
- 10.7 To ensure efficient use of land Local Plan policy LP7 requires developments to achieve a net density of at least 35 dwellings per hectare, where appropriate, and having regard to the character of the area and the design of the scheme. Lower densities will only be acceptable if it is demonstrated that this is necessary to ensure the development is compatible with its surroundings, development viability would be compromised, or to secure particular house types to meet local housing needs.

- 10.8 With the 12 units proposed in a site of 0.41 ha, a density of 29 dwellings per hectare (dph) would be achieved. Whilst this is slightly below the recommended density, officers have noted the sites other constraints including its challenging topography that limits the sites developable space and that adequate space needs to be maintained between the new dwellings and those existing on Fullwood Drive. The proposed development should also take its cue (at least partly, in terms of quantum, density and layout) from existing adjacent development and the character and appearance of the Golcar Conservation Area, and it must again be noted that tree coverage is quintessential to Golcar's character. Furthermore, the proposed units (12) exceed the indicative capacity at 8, whilst providing the relevant house types and tenures for the local area.
- 10.9 With these matters taken into consideration, although the density falls slightly short of 35 dph, specified (and applicable "where appropriate") in Local Plan policy LP7, it is recommended that the proposed quantum of development, and its density, be accepted.
- 10.10 Progressing to housing mixture, LP11 seeks for proposals to provide a representative mixture of house types for local needs. This is expanded upon and detailed within the Council's Affordable Housing and Housing Mix SPD (March 2023). However, as the Council's Affordable Housing and Housing Mix SPD (March 2023) was adopted after discussions were held with officers regarding the design and appropriate density for this site, given its longstanding nature, a reasonable and pragmatic arrangement has been required and full adherence to the SPD is not expected.
- 10.11 As is evident, the proposal does not conform to the recently adopted SPD's expectations. However, negotiations between the applicant and officers on the housing mixture were predicated on the older Strategic Housing Market Assessment (SHMA). Nonetheless, the site is located within Kirklees Rural West whereby there is a greater need for 1, 2 and 3 bedroom market housing as opposed to 4+ beds, to which the development does provide (albeit in the form of 10 x 3 bedroom dwellings). As such, a balanced approach has been taken.
- 10.12 Summarising on the above, the proposal would represent a good density of development and the housing mixture proposed is not unreasonable. Accordingly, the proposed is considered to represent an effective and efficient use of land, in compliance with policies LP7 and LP11, and the Council's Affordable Housing and Housing Mix SPD (March 2023).
- 10.13 Further to the above, representations have been received outlining that the site is used for Allotment Gardens and therefore should not be developed upon. Whilst an Ordnance Survey maps from 1955 onwards annotated the site as "Allotment Gardens", it appears that the used has been intermittent in recent years – aerial photographs show some cultivation in 2012, but not in 2000 to 2009. At the time the 2017 outline application for the site was considered, limited weight was attached to this previous use of part of the site. Officers note that the site is privately owned and that refusal of planning permission would not have resulted in local demand for allotments being met, as the council has no authority to allocate private allotments to people on the council's waiting list.



- 10.14 The site is also within a wider mineral safeguarding area relating to sandstone. Local Plan policy LP38 therefore applies. This states that surface development at the application site will only be permitted where it has been demonstrated that certain criteria apply. Criterion c of policy LP38 is relevant, and allows for approval of the proposed development, as there is an overriding need (in this case, housing need, having regard to Local Plan delivery targets) for it. As such, the principle of development can be supported.

#### Sustainability and climate change

- 10.15 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. 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 some (albeit limited) local facilities, and measures (commuted sum) would be secured via a S106 towards sustainable transport.
- 10.16 The submitted Planning Statement acknowledges the need to transition to a low carbon future, taking into account flood risk and coastal change, however, does not identify any specific measures.
- 10.17 Measures would be necessary to encourage the use of sustainable modes of transport. Adequate provision for cyclists (including cycle storage for residents) and electric vehicle charging would be secured by condition, should planning permission be granted. A development at this site which was entirely reliant on residents travelling by private car is unlikely to be considered sustainable.
- 10.18 Drainage and flood risk minimisation measures will need to account for climate change.
- 10.19 The application site is in a sustainable location for residential development, as it is relatively accessible and is at the edge of an existing, established settlement relatively close to sustainable transport options and other facilities. The site is not isolated and inaccessible.
- 10.20 Golcar has pubs, convenience shops, a post office, a pharmacy, churches, schools, a library, eating establishments, the excellent Colne Valley Museum, and other facilities, such that many of the daily, social and community needs of residents of the proposed development can be met within the area surrounding the application site, which further indicates that residential development at this site can be regarded as sustainable.
- 10.21 However, in order to enhance the sites sustainability in line with the adjacent site to the east (granted planning permission under ref: 2021/91384), a condition has been proposed to require details of renewable energy and/or energy efficiency measures to be incorporated into the development, prior to its commencement. This is considered necessary and reasonable to accord with Policies LP24 and LP26 of the Kirklees Local Plan.

## Design and conservation

- 10.22 The NPPF offers guidance relating to design in Chapter 12 (achieving well designed places) whereby Paragraph 126 provides a principal consideration concerning design which states:
- “The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.”*
- 10.23 Kirklees Local Plan Policies LP1, LP2 and significantly LP24 all also seek to achieve good quality, visually attractive, sustainable design to correspond with the scale of development in the local area, thus retaining a sense of local identity.
- 10.24 Policy LP24 of the KLP states that proposals should promote 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...”*.
- 10.25 Paragraph 129 of the NPPF sets out that design guides and codes carry weight in decision making. Of note, Paragraph 134 of the NPPF states that development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes.
- 10.26 Principle 2 of the Kirklees Housebuilders Design Guide SPD states that: *“New residential development proposals would be expected to respect and enhance the local character of the area by:*
- Taking cues from the character of the built and natural environment within the locality.*
  - Creating a positive and coherent identity, complementing the surrounding built form in terms of its height, shape, form and architectural details.*
  - Illustrating how landscape opportunities have been used and promote a responsive, appropriate approach to the local context.”*
- 10.27 Principle 5 of this SPD states that: *“Buildings should be aligned and set-back to form a coherent building line and designed to front on to the street, including corner plots, to help create active frontages. The layout of the development should enable important views to be maintained to provide a sense of places and visual connections to surrounding areas and seek to enable interesting townscape and landscape features to be viewed at the end of streets, working with site topography.”*
- 10.28 Principle 15 states that the design of the roofline should relate well to site context. Further to this, Principle 13 states that applicants should consider the use of locally prevalent materials and finishing of buildings to reflect the character of the area, whilst Principle 14 notes that the design of openings is expected to relate well to the street frontage and neighbouring properties.

- 10.29 Section 72 of the Planning (Listed Buildings & Conservation Area) Act (1990) places a duty on the council to pay special attention to the desirability of preserving or enhancing the character and appearance of the Golcar Conservation Area when determining this application.
- 10.30 Kirklees Local Plan Policy LP35 relates to the historic environment. It states that development proposals which would affect a designated heritage asset should preserve or enhance the significance of that asset. In cases likely to result in substantial harm or loss, development would only be permitted where it can be demonstrated that the proposals would bring substantial public benefits that clearly outweigh the harm.
- 10.31 Paragraph 199 of the NPPF requires that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
- 10.32 The site and its context have a relatively high degree of townscape, landscape and heritage sensitivity issues, due to the site been located within Golcar's hillside and Conservation Area, meaning that it is visible from the other side of the subsidiary valley that runs northwest-southeast between Golcar and Wellhouse.
- 10.33 The relevant conservation area character appraisal defines Golcar as a *"large, closely-knit hillside village of picturesque quality and special architectural and historic interest. The appraisal notes that the settlement's location on the steep hillside above the valley of the River Colne (and the subsidiary valley) gives it a highly dramatic setting, reminiscent of an Italian hill village. The subsidiary valley is identified as a defining influence on the character of the village, as is the village's organic form and limited formal planning. Important vistas north-eastwards from the bottom of the subsidiary valley and Albion Mill are also noted, and the appraisal suggests that when Golcar is viewed from here the natural landscape appears to frame the village. The hillside's green space is identified as a buffer that prevents the settlements of Golcar and Wellhouse from merging, thus protecting the character and setting of both areas. Tree coverage is identified as quintessential to Golcar's character, and panoramic views of the settlement reiterate the importance of trees to Golcar, creating extra interest, depth and character in the area. The surrounding landscape makes a vital contribution to the character and setting of Golcar, the topography creating a panorama not apparent in other areas. Steep slopes and footpaths, stone steps and narrow lanes with homogeneous vernacular stone architecture characterise the settlement. Golcar has several dry stone walls defining fields, open spaces and earlier boundaries, all of which impart character. Golcar's early settlement pattern is still visible, the urban grain of the conservation area is characterised by small linear plots, and there are few detached properties"*.
- 10.34 Paragraph 5.2 of the council's Housebuilders Design Guide SPD notes that the *"general character of the towns and villages of Kirklees is typified by stone-built properties closely following the hillside contours"*, and Golcar provides a notable example of this.

- 10.35 The 12 dwellings proposed are considered to take into account this hillside setting, as they would appear as a continuation to Fullwood Drive. Given the changes in topography within the site in particular, the rear elevations of the southern dwellings would be three storey in height. This would be a similar arrangement to the site immediately to the east (ref: 2021/91384). Therefore, the proposed development is considered to be sufficiently reflective of the predominant patterns within this hillside location. More specifically, the use of differing front and rear elevations is considered to be an appropriate response to the sites challenges, rather than introducing the need for large areas of excavation and retaining walls. To the northern side of the site, the dwellings would be two storeys in height.
- 10.36 The proposed massing and grain would respect the sites context and amendments have been made to omit the repetition of five detached dwellings to the southern side of the site and to include three sets of semi-detached dwellings and one detached dwelling. This is to accord with the characteristics defined within Golcar's conservation area appraisal.
- 10.37 With regards to layout, officers acknowledge the challenging topography of the site and accept that some levelling would be required in order to create the development platforms and the provision of acceptable gradients along the proposed estate road. The road layout has been designed so that it is read as a legible and logical extension to Fullwood Drive. It would include one central road, with a turning head and private drive to serve plots 6,7 8 and 9. The private driveway would also provide a connection to the public footpath (COL/56/40) which runs directly to the east of the site. This not only would allow pedestrian users access onto the public footpath but would be used to link the application site to the development to the east.
- 10.38 In line with Policy LP5 (master planning), Highways officers initially requested that the sites vehicular access was taken from the east, as this would ensure the best use of land and buildings, by adjoining undeveloped land so it may subsequently be developed. However, given the significant changes in topography within the sites, the agent has confirmed that to take vehicular access from the eastern site is unachievable due to on site levels and therefore, it has been concluded that this would have to be taken via Fullwood Drive, as approved as part of the previous outline application 2017/93628.
- 10.39 Regarding architectural form, the proposed dwellings would have a typical, simple modern vernacular, some of which would benefit from front and rear gables and lean to additions in order to add some variation. Dwellings in the area have a varied appearance but can predominantly be identified as the vernacular design of their period of construction, with simple aesthetics.
- 10.40 In terms of openings, adequately sized mullion windows are proposed, along with the inclusion of larger areas of glazing to rear elevations. This would accord with Principle 14 of the Housebuilders Design Guide SPD which states that *"innovation for energy efficiency is encouraged, particularly for maximising solar gain"*. Officers would like to see all new window frames, included the stonework for the blind windows being set back by 75-100mm and therefore this can be added as a condition to the decision notice. Roof forms in the area are predominantly gable, however, there are some examples of hipped roofs. As such, the scheme has been designed to include gable roofs, to respond to the local character.

- 10.41 Off street parking is proposed predominantly to the front of the dwellings, with one exception to the side and within integral garages. Whilst this has the potential to dominate the street scene with hardstanding, green space and some planting have been proposed where possible. As such, given the constraints on site, this can be supported on balance by officers.
- 10.42 The dwellings would be faced in natural stone with concrete tiles to the roofs. Whilst officers would prefer a natural slate roof tile, the subsequent cost associated with this has been noted and therefore KC Conservation and Design have confirmed that they have no objection to the use of a concrete tile subject to it being of a high quality in order to imitate a natural slate. As such, samples of materials are required prior to their use, along with window and door details.
- 10.43 Details of the boundary treatments are included within the proposed site plan (dwg no. (100)03 Rev L), to include a native evergreen hedge to the southern boundary and dry stone walling to the northern boundary. These boundary treatments are welcomed from a heritage perspective, as they would appear natural and in keeping with the surrounding landscape in order to sustain and enhance the character and setting of Golcar's Conservation Area. Notwithstanding the above, no specific details have been provided to the eastern and western boundaries and therefore a full boundary treatment plan will be required as part of any approval, prior to the commencement of the superstructure.
- 10.44 In conclusion, it has been considered that the details provided within this full planning application, demonstrates that the development has been designed to sympathetically respond to the local character for example, with the use of traditional walling materials and elevational detailing. It is considered that the proposal development complies with the councils guidance documents for residential developments.

#### *Setting of Golcar Conservation Area*

- 10.45 Sections 66 and 72 of the Planning (Listed Buildings & Conservation Area) Act (1990) requires that LPA's pay special attention to the desirability of preserving or enhancing the character or appearance of the setting of a listed building and conservation area where relevant.
- 10.46 Kirklees Local Plan Policy LP35 relates to the historic environment. It states that development proposals which would affect a designated heritage asset should preserve or enhance the significance of that asset. In cases likely to result in substantial harm or loss, development would only be permitted where it can be demonstrated that the proposals would bring substantial public benefits that clearly outweigh the harm. This is supported by guidance contained within Chapter 16 of the NPPF.
- 10.47 Paragraph 199 of the NPPF requires that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

- 10.48 The application site lies within the Golcar conservation area. The north boundary lies adjacent to the Grade II Listed Building known as Mill Barn and to the rear boundary lies the Grade II Listed Building subdivided into 54, 54a and 58 Brooke Lane.
- 10.49 In light of the above, given the amendments sought to ensure the developments acceptable design (including scale, grain, orientation and materials), along with the installation of natural boundary treatment to include evergreen hedging and dry stone walling, it is considered that there would be no undue harm on the significance of the aforementioned heritage assets.
- 10.50 Additionally, it is considered that the relevant requirements of Chapters 11, 12 and 16 of the NPPF and Policies LP2, LP7, LP24 and LP35 of the Kirklees Local Plan would be sufficiently complied with. The scheme also complies with the guidance set out within the council's Housebuilders Design Guide SPD.

#### Residential amenity

- 10.51 A core planning principle as set out in the NPPF is that development should result in a good standard of amenity for all existing and future occupiers of land and buildings. This is also reinforced within part (b) of Policy LP24 of the Kirklees Local Plan. Principle 6 of the Housebuilders Design Guide SPD sets out that residential layouts must ensure adequate privacy and maintain high standards of residential amenity, to avoid negative impacts on light, outlook and to avoid overlooking. Specifically, it outlines that for two storey dwellings the following, typical minimum separation distances between existing and proposed dwellings, are advised: -
- 21 metres between facing windows of habitable rooms at the back of dwellings.
  - 12 metres between windows of habitable windows that face onto windows of non-habitable room.
  - 10.5 metres between a habitable room window and the boundary of adjacent undeveloped land.
  - For a new dwelling located in a regular street pattern that is two storeys or above, there should normally be a minimum of a 2 metre distance from the side wall of the new dwelling to a shared boundary.
- 10.52 In addition to this, Paragraph 130 (f) of the National Planning Policy Framework states that planning decisions should ensure that developments have a high standard of amenity for existing and future users.
- 10.53 Principle 17 of the Council's adopted Housebuilders Design Guide SPD requires development to ensure an appropriately sized and useable area of private outdoor space is retained. Principle 16 of the Housebuilders Design Guide seeks to ensure the floorspace of dwellings provide a good standard of amenity for future residents and make reference to the 'Nationally Described Space Standards' document (March 2015).
- 10.54 The site is surrounded by existing residential development to the north, east, south and west. With regards to separation distances, it has been noted that the majority of the dwellings would retain 21m between windows of habitable rooms and 12m between windows of habitable rooms that face onto a non-habitable room, within the site and to third party properties. This would ensure that there would be no undue overlooking, commensurate with the minimum recommended separation distances set out in the SPD.

- 10.55 Notwithstanding the above, officers have noted the concerns raised by some residents along Fullwood Drive and Clay Well with regards to potential loss of privacy and overbearing from the new dwellings and the relationship these would have with the existing properties. Officers have noted that the property most likely to be impacted upon as part of this application would be no. 20 Fullwood Drive, which is located to the north west of plot 1. As such, there is some potential for overbearing and overshadowing upon no. 20's outdoor amenity space. However, on balance this is not considered to be detrimental given the angle of plot 1 and the fact that no. 20 Fullwood Drive is situated to the west, allowing sunlight to be received to its rear garden and rear windows within an afternoon and evening. There would also be no openings within the western facing side elevation of plot 1 which would omit any undue overlooking into these neighbours' outdoor amenity space. Future first floor openings would need to be fitted with obscure glazing to accord with the General Permitted Development Order and permitted development rights for future ground floor windows within this plot can be removed. This would be attached as a condition to the decision notice.
- 10.56 No. 21 Fullwood Drive on the other hand, is set further north, with there being a greater separation distance to this dwelling. As such, there would be no material harm to these neighbours' amenity.
- 10.57 With regard to the properties along Clay Well, acceptable separation distances are proposed to accord with the above. Given the changes in land levels, these properties are already set at a higher level and therefore, the two storey dwellings to the northern edge of the application site are not considered to propose any undue overbearing or overshadowing impact upon these neighbours' amenity.
- 10.58 Likewise, the impact to which the application site would have on the approved dwellings to the east (pursuant to application 2021/91384) would be limited, due to the tree cover which would be retained and the dwellings having a side to side relationship.
- 10.59 An adequate separation distance of approximately 40m would be retained to no. 54a Brook Lane from plots 4 – 7. Therefore, whilst the land levels drop significantly to these existing neighbours, the aforementioned separation distance is considered to mitigate against any undue overbearing and overshadowing upon their amenity.
- 10.60 Consideration must also be given to internal separation distances and the amenity of future occupiers. Whilst internal separation distances fall slightly short of the recommended 21m at approximately 19.5m, officers have afforded weight to the constraints of the site and the buildability of certain areas, given the topography, and therefore do not consider this slight reduction to result in any undue loss of privacy to future amenity and therefore can be supported.
- 10.61 The quality of the proposed residential accommodation is also a material consideration and therefore the 12 units would comprise of 1 x one bed, 1 x two beds and 10 x three beds. Each unit would meet or exceed the Government's Nationally Described Space Standards and would provide a dual aspect for all residents, in regards to outlook, privacy and light.

### Landscaping

- 10.62 The proposed private gardens are considered commensurate in scale to their host dwellings. They offer good separation and space about dwellings, whilst offering private amenity space for residents, securing a high standard of visual and residential amenity.
- 10.63 As the site is for 12 dwellings, the scheme triggers the need for open space to accord with Policy LP63 of the Kirklees Local Plan. Given the steep nature of the site, it is noted that most types of open space would not be suitable. Therefore, a financial contribution would be required for £22,086.00, which would be secured via a S106 agreement, including funding for Two Furrows and Wellhouse.
- 10.64 Although some details of landscaping have been shown on the proposed site plan (Dwg no. (100)03 Rev L), a condition is recommended requiring further details of the hard and soft landscaping and a management and maintenance for it. Details of improvements (and the pedestrian connection) to the adjacent public footpath would be required. This is to accord with Policies LP32 and LP63 of the Kirklees Local Plan and Chapter 15 of the NPPF.

### Highways issues

- 10.65 Paragraph 110 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 111 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.
- 10.66 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 would 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.
- 10.67 KC Highways DM have been formally consulted as part of the application process. The officer has noted that the site would be accessed off of Fullwood Drive, a 30 mph two-way residential access road of approximately 5.5m width with footways and street lighting. Outline with access was approved from Fullwood Drive under the previous application (2017/93638).



- 10.68 The proposed site is 330m to bus stops on a low frequency bus route and approximately 400m to stops on a medium frequency route. These distances can be lowered to approximately 115m and 230m if PROW footpaths are used, although the condition of the PROWs and if they will allow for year-round and bad weather use has not been confirmed. The site is approximately 430m from shops and services and 430m to a school (via PROWs). It should be noted that many of the roads in the area are based on a historical layout and do not provide pedestrian facilities for the full length of the routes.
- 10.69 There is a PROW footpath COL/56/40 that runs adjacent to the edge of the site and there are proposals to link a pedestrian access from the site to the PROW.
- 10.70 As part of the outline permission, a contribution of £5,115.00 for provision of bus only metro-cards was requested. This should be included as part of a s106 agreement and should be offered to the purchasers of the dwellings on occupation. The site is below the required size for a Travel Plan to be submitted and so one would not be requested, however the residential metro card scheme will need to be administered by the applicant or housebuilder.
- 10.71 No trip generation details were provided with the application, however the proposals are for an additional two dwellings above the ten granted outline permission in 2017 and so officers would expect a slight intensification of vehicular trips on the local network but this increase is not considered to be great enough as to have a severe impact on the operation or efficiency of the local highway network.
- 10.72 As outlined above access to the site was granted as part of the outline permission and this was through Fullwood Drive, with an access being made at the end of the existing turning head. In previous highways comments made with this application, concern was raised over the access and it was suggested that the applicant should consider linking the development to the adopted highway by going through the development to the east. However, this has not been deemed acceptable due to land level constraints and also may cause a severing of the PROW.
- 10.73 It should be noted that Fullwood Drive experiences on-street parking on both sides, even though most of the dwellings appear to have off street parking, and this often obstructs the footways to allow access through. It is assumed that access for refuse collection is obtained and this should remain the same for the proposed development. However, there may be issues with construction access and due to this, officers would require a construction access management plan, to be conditioned.
- 10.74 Officers would also like to see a condition survey carried out on the access routes to the site, with a secondary survey upon completion, with any defects caused during construction identified and rectified by the applicant. This is considered reasonable and therefore an appropriate condition would be attached in the case of an approval.
- 10.75 The site is to be offered up for adoption by the Local Highway Authority under a Section 38 agreement. Drawing no (100) 03 Rev L shows an improved access road off the existing turning head and the curve in the road is now designed to match standards with a 20m radius.

- 10.76 The access road measures at approximately 5.5m width and this is acceptable. A swept path analysis for an 11.22m refuse collection vehicle (RCV) was submitted on drawing No 1377 001B and shows that it can safely navigate the access road and turning head. An 11.22m RCV was used rather than the 11.85m RCV as stated in the Kirklees Highways Design Guide, as this is what is required by Kirklees Waste Strategy Team in their consultation response. Given the existing narrow roads on the surrounding highway network, it is doubtful that a larger vehicle would be able to reach the site and so the use of a 11.22m RCV is acceptable on balance in this specific instance.
- 10.77 The proposed turning head within the site is an improvement to the existing at the end of Fullwood Drive.
- 10.78 Access to the parking for plots 6 to 9 are shown to be off a private drive, with a footpath to an adoptable size shown to connect to the PROW. Further details regarding the design and implementation of the PROW link are required and can be controlled via a condition.
- 10.79 In terms of on-site parking for each unit, local guidance states that:
- 1 and 2 bed flats = 1 space per dwelling
  - 2 and 3 bed houses = 2 spaces per dwelling
  - 4 + bed houses = 3 spaces per dwelling
  - 1 visitor space per 4 dwellings
- 10.80 The parking for the proposal can be found within the table below:

Plot number	Number of beds	Garage or no garage	Parking spaces required	Parking spaces proposed
1	3	Yes	2	2
2	3	Yes	2	2
3	3	Yes	2	2
4	3	Yes	2	2
5	3	Yes	2	2
6	3	Yes	2	2
7	3	Yes	2	2
8	3	No	2	2
9	3	No	2	2
10	3	No	2	2
11	2	No	2	2
12	1	No	1	1

- 10.81 Whilst an adequate number of parking spaces have been proposed, Highway officers have noted that the road gradient compared to the finished floor levels for plots 2 – 7 could mean that the driveways are too steep. The applicant's agent, however, believe that these could achieve a 1:12 gradient. As such, additional information would be required by condition in order to demonstrate full road gradients (a long section) and how these would work with the finished floor levels, prior to development commencing.
- 10.82 Notwithstanding the above, the garages internally measure 3m x 6m and therefore are suitable for the parking of a vehicle. Highway officers would not wish to see these garages converted (for plots 2-7) and therefore have requested a condition to this effect be attached to the decision notice. This would omit any future shortfall in parking to these plots which would lead to additional pressures upon the existing highway network.
- 10.83 Further to the above, the proposed site plan also shows three visitor parking spaces and this would be acceptable for 12 dwellings.
- 10.84 With regards to waste storage and collection points, these are generally acceptable as amended plans have been sought to show storage for 3 residual bins for each dwelling, along with acceptable collection points. A bin collection point has been demonstrated to the south of plot 10 for the dwellings situated along the private drive. Details of temporary waste storage during construction would be required and this can be secured via condition.
- 10.85 KC Highways Structures have also reviewed this planning application, raising no objection subject to conditions regarding any new retaining walls adjacent to the highway, a scheme assessing the adequacy of the steep embankment and details of any drainage within the highway being submitted to and approved in writing by the LPA before development commences.

#### Flood risk and drainage issues

- 10.86 Paragraphs 159-162 of the NPPF and Policy LP27 of the Kirklees Local Plan state inappropriate development in areas of flood risk should be avoided by directing development away from areas at highest risk through application of a sequential test.
- 10.87 Details have been provided with this application to show the installation of two attenuation tanks under the private drive and parking spaces of plots 6 and 7 and 8, 9 and 10. KC Lead Local Flood Authority (LLFA) accepts the proposed attenuated surface water discharge of 3.4 l/s discharging from the application site to the head man hole in the neighbouring Brierstone site (directly to the east). For the avoidance of doubt, the allowable surface water discharge from the neighbouring site into the YW sewer network should be a maximum of 5l/s for both combined sites.
- 10.88 The hydraulic calculations and proposed drainage layout are also considered acceptable, but officers understand that these only include preliminary information and therefore more detailed information would be required. Revised calculations and construction stage drawings should be submitted for the discharge of drainage conditions when the drainage has been fully designed.

- 10.89 The proposed geocell attenuation tanks should be provided with adequate access points to allow for safe inspection and maintenance. As such, the development can be supported by drainage officers subject to conditions being attached to include full drainage details, overland flow routing, construction phase surface water and a pollution prevention plan.
- 10.90 Alongside the above, it is recommended that the management and maintenance for the proposed drainage infrastructure (until adoption by Yorkshire Water) be secured via a S106 agreement.

#### Ecological considerations

- 10.91 Chapter 15 of the NPPF relates to conserving and enhancing the Natural Environment. Paragraph 179 of the NPPF outlines that decisions should promote the protection and recovery of priority species and identify and pursue opportunities for securing net gains for biodiversity. Paragraph 180 goes on to note that if significant harm to biodiversity resulting from development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. This is echoed in Policy LP30 of the Kirklees Local Plan.
- 10.92 Furthermore, Policy LP30 of the KLP outlines that development proposals should minimise impact on biodiversity and provide net biodiversity gains through good design by incorporating biodiversity enhancements and habitat creation where opportunities exist. Principle 9 of the Housebuilders Design Guide SPD echo the Local Plan in respect of biodiversity.
- 10.93 The application site is previously-undeveloped (greenfield) land, with trees and shrubs that may mean the site provides, or has the potential to provide, habitats for wildlife. Some neighbouring residents have stated that bats, deer and many species of bird have been seen at this site. In addition, two ponds exist within 500m of the site.
- 10.94 In support of this application an updated BNG Metric Calculation and Ecological Impact Assessment (EclA) have been submitted. This has been undertaken following the Preliminary Ecological Assessment, submitted with the outline application in 2017. The submitted documents provide a comprehensive assessment of the ecological constraints and impacts of the scheme, as set out in KC Ecology's initial response.
- 10.95 The EclA determined that the habitats at the site were of no more than site level value. Additional survey work confirmed that habitats, breeding birds, foraging and commuting bats, amphibians, reptiles, badgers and hedgehog had the potential to be negatively affected by the proposed development and as such mitigation measures should be placed on any forthcoming consent to ensure that protected species and habitats are protected throughout the scheme. As such, two conditions are proposed requiring a Biodiversity Enhancement and Management Plan to demonstrate (but not including to) how the 1.12 habitat units and 0.13 hedgerow units are to be achieved post-development, as well as the submission of a Construction Environmental Management Plan (for biodiversity). This is to accord with Policy LP30 of the Kirklees Local Plan and the aims of Chapter 15 of the NPPF.

- 10.96 An updated Biodiversity Net Gain calculation has been submitted with the EclA, using the Biodiversity Metric 3.0 calculator tool. The submitted metric details that there will be an overall net loss of 0.52 habitat units at the site (31.74% net loss) and a net gain of 0.11 hedgerow units. In order for the development to achieve a 10% net gain and come forward in line with local and national planning policies, 0.68 habitat units will need to be delivered, via off-site compensation.
- 10.97 In line with the Kirklees Biodiversity Net Gain Technical Advice Note, the off site compensation would need to be secured via an off site contribution, given that there is not sufficient space within the space to provide the net gain required. This would require a contribution of £15,640, which would be secured via the S106.

### Trees

- 10.98 Policy LP33 of the Kirklees Local Plan states that “the Council would not grant planning permission for developments which directly or indirectly threaten trees or woodlands of significant amenity...Proposals should normally retain any valuable or important trees where they make a contribution to public amenity, the distinctiveness of a specific location or contribute to the environment”. This is supported by Principle 7 of the Housebuilders SPD.
- 10.99 KC Trees have been formally consulted as part of this application whereby the officer has confirmed that a tree survey and arboricultural impact assessment has been submitted which identifies several trees across the site, most are of a low amenity value as individual specimens but there are some of better quality and value amongst them, collectively offering reasonable tree cover and wildlife habitat to the site.
- 10.100 While some of the trees around the perimeter of the site are shown as being retained unfortunately, the higher value trees are central within the site and have not been designed around within the current layout, which shows them as being removed. While this is undesirable and a change in layout would be the preferred option from a trees perspective, officers as a minimum, expect the tree loss to be appropriately mitigated by means of a suitable landscape plan which would include detail of tree size, species, and location with an appropriate aftercare and maintenance programme.
- 10.101 Given that the principle of the site has been allocated for housing development, KC Trees have no objection to the proposal, however, it is desirable to integrate good quality existing trees into new housing designs and any unavoidable tree loss must be appropriately mitigated with new tree planting being an integral part of any new development scheme. As such, a condition to require details of any new tree planting to mitigate against those lost, would be captured under the proposed landscape conditions.

## Environmental Health

- 10.102 A Phase II Report by Rogers Geotechnical dated 1st December 2020 (ref: C977/20/E/1511 - Rev 1) has been submitted in support of this application. The Phase 2 report concluded that the site is generally uncontaminated, except for a hotspot of asbestos contamination, which was thought to be associated with made ground at the site. Subsequently, the report has recommended that remediation is necessary to remove the asbestos contamination or break the pollutant pathways.
- 10.103 Since then, the Phase 1 Desk Study by JNP Group report number NG8480/FUL/PH1, dated February 2014, has been submitted. Officers agree with the report findings and that all potential pollutant linkages that were identified at the Phase I level have been assessed in the later investigation by Rogers Geotechnical as detailed in their report dated 1st December 2020 (ref: C977/20/E/1511 - Rev 1).
- 10.104 As such, KC Environmental Health officers agree that remediation is therefore necessary at this site. An outline remediation proposal has been set out within the Phase II report, however, these refer to outdated guidance and do not go far enough i.e. officers require details relating to the delineation of the asbestos hotspot. Therefore, it is recommended that in the case of an approval, that conditions requiring a stand along remediation strategy, along with its implementation and verification be attached to the decision notice. This is to accord with Policy LP53 of the Kirklees Local Plan and the aims of Chapter 15 of the NPPF.
- 10.105 With regard to the West Yorkshire Low Emission Strategy, a condition is recommended, requiring the provision of an electric vehicle charging point for each dwelling. Technical details of the chargers to be submitted would be required at the discharge of condition stage. This is to support Policies LP20, LP24 and LP47 of the Kirklees Local Plan and Chapters 2, 9 and 15 of the NPPF.
- 10.106 Lastly, Environmental Health officers have requested the submission of a Construction Environmental Management Plan prior to any works taking place. This should include but is not limited to; timetable of works, vehicle sizes, routes, movements, parking during construction, details and the location of signage, details of measures to control and monitor the emission of dust and dirt during construction etc. A footnote is also required to set out that no noisy construction shall be undertaken outside of the hours of 07.30 to 18.30 hours Mondays to Fridays 08.00 to 13.00 hours Saturday, with no noisy activities on Sundays or Public Holidays. This is to accord with Policy LP24 and LP52 of the Kirklees Local Plan and the aims of the NPPF.

## Other matters

### *Crime prevention*

- 10.107 The Council's Designing Out Crime Officer has been formally consulted as part of this application. The Officer has raised no objection to the proposed layout however, has requested that a condition is attached to the decision notice in the case of an approval, requiring the security measures for the site be attached to an approval. This should include boundary treatments, lighting, window and glazing details, doors and locking systems, CCTV and alarms and cycle and motorcycle storage. This is to accord with Policy LP24 (e) of the KLP.

## Representations

10.108 As a result of the above publicity, 32 representations have been received by 22 individuals/local residents at the time of writing. Most of the matters raised have been addressed within the report. However, officers have provided a brief response to the concerns raised below:

### Visual amenity and heritage:

- The gables with peaks on the front of plot 1-7 don't fit with the character of the conservation area and is not seen elsewhere.
- Concern regarding the height, style, roof pitches of the new dwellings.
- Our ancient hillsides do not need the blight of even more housing developments.
- There are no four storey dwellings within the area and the design is not in keeping. The majority are three storey. For properties to be in keeping with the existing properties in the conservation area, detached properties should be no more than two stories and semi-detached or terraced properties should be no more than 3.
- At 14.5 metres above existing ground level, plot 1 (plot 2 is nearly as tall) would be substantially taller than any other residential houses in the area. As narrow, detached properties their proportions are further out of character with the area.
- Three storey dwellings will be over-bearing, especially the larger plots 1 – 7.
- All of the three storey dwellings in the area are semi-detached or terraced. The only exception to this is Millbarn, which is adjacent to this plot, but Millbarn is a former commercial property, is a listed building and to a very different style and proportion to the dwellings in this proposal.
- The façade treatment to the front and rear of the property lacks character and does not fit within the conservation area.
- It is fair to say that the proposed designs are not sympathetic or characteristic to the existing properties within the Conservation Area. There are no current similar designs of these types of buildings and indeed the previous application was significantly more sympathetic (after the requirements that Kirklees placed on it for the type of building materials to be used) than this current one.

**Comment:** These concerns have been noted and significant amendments have been sought to create an acceptable housing mix and design. A full assessment can be found within the committee report. However, the main amendments include, two and three storey properties, a design to sympathise with surrounding built form, both in terms of elevational treatment and height. As such, officers and heritage officers consider the development to have an acceptable visual impact on the surrounding built form and the nearby heritage assets.

- The site is within a conservation area and if these houses are allowed, there will be far less old houses than there are new.

**Comment:** This has been noted.

- This area of Golcar is already overdeveloped, especially the area surrounding the proposed development. Kirklees local plan promotes; “the use of brownfield land to meet development needs and support the regeneration of areas”. Policy LP 3 also states; “ensuring that opportunities for development on brownfield (previously developed) sites are realised”. Thus the need for housing can be met on more suitable brownfield sites.

**Comment:** The site is allocated for housing within the KLP.

- The site plans show concrete roof tiles which are out of character for the area, slate should be used instead especially because the houses sit into the hillside which forms a significant part of character area. Views from Wellhouse/Share Hill would be impacted if the wrong material is used.
- We are much happier with the design of this proposal, more appropriate style of building for the Conservation Area. But we object to Concrete Interlocking Tiles for the rooves, this is a Conservation Area and the materials should be sympathetic to the existing buildings especially the listed building and as such should be at minimum Blue Slate tiles.
- Materials should be in keeping with the Conservation Area. The dwellings should be constructed from reclaimed natural stone, timber conservation windows. Concrete roof tiles are not suitable in the conservation area.
- **Comment:** This concern has been noted, however KC Conservation and Design have raised no objection to the principle of concrete tiles, due to the cost implications associated with natural slate, however, this would have to include a high quality imitation. As such, samples would be required and these must be agreed with the LPA, prior to their use. Walling materials would include natural stone.
- The proposal would have an undesirable impact on the conservation area.
- The area is deemed a 'conservation area' for a reason. It is to conserve the character of the area and its historic interest. This can't be done by adding loads of new houses.
- This development will be built within a conservation area, recognised for the contribution it makes to the cultural heritage of the locality. This land forms the foreground to views of the conservation area of Golcar from Wellhouse and the Colne Valley.
- Speaking from a heritage point of view, this application is within a Conservation Area and is adjacent to a Listed Building of significant size and the current design and layout will have a negative effect on the area and are not consistent with others in the Conservation Area and do not meet the stated requirement by the Council in granting outline planning permission for the development in that “the properties must be of a layout appearance scale and landscaping proposals that would maintain significance of the conservation area and that such details would be required to have regard to the character and appearance of the Conservation Area and to draw a reference to the Conservation Area Appraisal”.



- The updated proposals do not take into account Historic England's comments.

**Comment:** Officers acknowledge that the site is within Golar Conservation Area and adjacent to a number of listed buildings and therefore KC Conservation and Historic England have been consulted. Given the amendments sought the initial concerns raised by the aforementioned consultees has been overcome, subject to conditions being attached to the decision notice. As such, officers do not consider the development to harm the setting of the heritage assets.

#### Residential amenity:

- The new application incorporates up to 4 storey buildings on very substantial footings (Plots 6 – 10) which all contributes to having a severe impact on the current housing and a much greater loss of privacy.

**Comment:** Given the amendments sought, there would be no 4 storey dwellings and only the rear elevations of plots 1 – 7 would be three storey in height. As such, this would help retain acceptable levels of privacy for neighbouring properties.

- Loss of view.

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

- The proposals do not take into consideration the overlooking of existing dwellings on Clay Well, Small Lane and Fullwood Drive. The proposed sections do not show how these properties will be impacted. The sections need to be updated to include 33 – 43 Clay Well. The sections do not include any proposed levels. This is concerning as the developer could have free reign with regards to the built levels of the properties.

**Comment:** These concerns have been noted and sections plans have been submitted as part of the amended scheme. A full assessment upon the properties at Clay Well can be found within paragraph 10.57 of the committee report.

- The proposals will impact on neighbouring natural light.
- Impact on neighbours' gardens from the built form.
- Concerns regarding overlooking onto existing neighbouring properties.

**Comment:** A full assessment upon neighbouring amenity can be found within the report above within reference to paragraphs 10.51 – 10.59.

- The development does not comply with the separation distances set out within the SPD.

**Comment:** Officers consider the development to accord with the SPD, as set out within paragraph 10.54 of the committee report.

- House types C and D look too small, this should be reviewed against the space standards.

**Comment:** All the house types either comply or exceed the Nationally described space standards.

#### Highways safety and access

- Existing health and safety concerns in the area in relation to highway safety.

- The surrounding roads are totally unsuitable for the development.
- Victoria lane is steep and the exit from Fullwood Drive is tight. Victoria lane is heavy with traffic at school times and dangerous without building traffic adding to the traffic.
- The roads leading to and from these houses are not fit for heavy use.
- Access via Hillcrest where existing infrastructure has already been placed would be more suitable as recommended by Kirklees Highways. Clay Well/Small Lane operate as one lane in parts, more traffic is not acceptable. This is also applicable on Fullwood Drive where on street parking is fundamental to the residents but also would restrict access.
- As you go down Victoria Lane it is cobbled which is a fundamental character material of Golcar but not suitable for more vehicle traffic.
- As previously pointed out in previous applications the access to the plot from Fullwood Drive would present a lot of additional dangers to the residents of Clay Well and Small Lane as the traffic heading up to the village would naturally snake through these tiny roads, so too would the increased volume of daily delivery vehicles. It would be much better if the application was accessed by Carr Tope Lane, a view that is also shared by Jamie Turner, Principal Engineer for Kirklees Council.
- An increase in housing will mean more pedestrians on these narrow dangerous roads.
- This planning application shows the roadway continuing through this estate of new houses from Carr Top Road up to Fullwood Drive, which was designed as a cul-de-sac and families have for 40 years allowed their children to play out in safety. Any attempt to use the cul-de-sac as an access road would be entirely unsuitable and dangerous. There could potentially be a further 100 plus cars using this cul-de-sac every day. The road is single track and impassable if householders park outside their homes. Also the road surface was not laid to be a main road and is off Victoria Lane which is very steep.
- Highway surveys tend to be done in the car when there aren't as many cars about.
- A much better alternative would be to access the plot through the 2 developments (1 currently built 2018/92848 and 1 currently in planning ref 2021/91384) that are accessed off Carr Top Lane which is a much more usable road for passing traffic. This would also involve creating a road over a current public footpath and would ironically ensure the footpath would be safer. Also any parents utilising the facilities of the local schools and nurseries in the village would likely take these shortcut routes and further compound the Health and Safety issues at the very peak times of traffic and congestion.
- Winter in Golcar is hills of ice and snow, and therefore adding additional cars is likely to cause damage to property and make the road conditions worse.
- The junction of Carr Top with Church St is a particular concern with only one passing place (the entrance to a private drive) and with drivers regularly reversing back down or even more dangerously, reversing back into the traffic on Church Street, a procedure that must be done blind due to the steepness of the slope.
- The access off Fullwood Drive onto Victoria Lane offers very poor visibility. It's dangerous.
- Victoria Lane and Fullwood Drive are not suitable. These roads are already at capacity. Fullwood Drive already has 21 dwellings along it.

- Victoria Lane is a steep ungritted road which is not accessible in bad weather.
- It would be more suitable for the development to be accessed from the East off Car Top Lane, through the newly built houses which form Hillcrest View. However the access from Car Top Lane is also overused and not suitable for the existing number of vehicles which drive and park along this road.
- The roads leading to Golcar village, to Brook Lane and to schools and doctors surgery have no pavements or footpaths and can be dangerous to children walking to school, or visits to the doctor. An increase in housing will mean more pedestrians on these narrow dangerous roads.
- There are existing problems with Small Lane and Clay Well which would only get worse with this development.
- Adding more traffic to the school runs can only worsen the Health and Safety issues.
- The application states “The development would give rise to a minimal number of peak hour vehicle movements causing negligible impact to the highway network.” This is a statement with no evidence to back it up. If you were to observe the traffic patterns in current existence on Fulwood Drive it would be very quick to demonstrate the statement has no validity.
- No matter how well served the location is with a fantastic bus route and local schools, these do not stop people from regularly driving to the shops and the schools.
- The roads are already almost impossible to drive down without coming up against another car and having to reverse right back down narrow roads, with no passing places. Adding further traffic of not just people who live in the area, but delivery trucks and visitors, will make the roads absolutely impossible.
- Damage to properties from car accidents in bad weather.
- I have burst a tyre before now on a raised man hole cover after it became exposed when cobble stones were worn away through water running off the hills, which is still not fixed.
- We have already had substantial housing developments on land off Carr Top Lane despite the inadequacy of this road. By granting permission for the development off Fullwood Drive, the driving nightmare would only increase.
- There are serious safety issues due to the fact that the general infrastructure in the area cannot cope with additional demand.
- No doubt the road will need digging up for this development to take place and gain access to water/electricity.

**Comment:** Full highways comments can be found within the committee report, however, officers would like to add that the site is allocated for housing within the Kirklees Local Plan, whereby outline permission granted access from Fullwood Drive. Nonetheless, appropriate conditions to mitigate some of the concern would be required. These include a construction, access management plan and road surveys for example. A contribution towards sustainable transport measures would also be secured via the S106 agreement, whereby the future occupiers should be offered metro cards upon occupation.

- There is a constant struggle with parking at Fullwood Drive. Residents park on the road (due to existing parking provisions) leaving issues with access. The proposals remove parking spaces from the end of Fullwood Drive and this will add to the strain.
- There are already a significant number of cars which park on Fullwood Drive and this is already a hazard.
- Parking provisions on site do not seem adequate. 2 bed properties have been given 1 space and 3 bed properties have been provided 2 spaces. It's likely more parking provisions will be required on site, as most 3 bed dwellings have 3 cars.
- Lack of visitor parking.
- As many of these are three and above bedroomed houses it is likely that as time goes by and the children brought up within them will each get cars and the roads ever more populated. This exact outcome can be witnessed on Bobbin Close in Golcar where some of the properties now have 5 cars. This is unsustainable within this very specific landscape.

**Comment:** The application site has been designed to ensure that adequate parking and visitor parking is provided. This would mitigate any future impact upon Fullwood Drive, as officers acknowledge that some residents do currently park on street.

- Emergency vehicles may find it difficult to get through.
- Does not appear to be suitable turning for a refuse vehicle or fire engine.  
**Comment:** The site has been designed to an adoptable standard to allow for access from the emergency services and for refuse collection.
- The land owned by the owner is not fully adjacent to the existing road at Fullwood, the boundary slips down to the south meaning vehicle access would have to come down in front of no.20 Fullwood, on street parking here is common as such access unsuitable.
- Fullwood Drive is a cul-de-sac which has a metre wide strip of land called a 'ransom strip' at the head of the turnaround, which is owned jointly by the owners of numbers 20 and 21. No one has any right to use Fullwood Drive as an access road to what will be Phase 3 of a plan
- to build a massive housing estate.  
**Comment:** This has been noted, however, the access would adjoin the adopted highway and would appear as a continuation of Fullwood Drive (including the existing footpath). Any private rights of land ownership is not a material planning consideration.
- A lack of bin stores and presentation points.  
**Comment:** Adequate bin storage and presentation points have been provided. Temporary bin storage details will be conditioned.

#### Ecological concerns (including trees):

- The builders are not considerate. They ripped down trees during the nesting period. The birds were very distressed. I believe it is illegal to disturb birds during nesting?
- They have demolished the pond. There were newts in the pond. Not anymore.

- They tore down the trees without permission. There are bats living and nesting in and around the field. I have not seen any bats since development started.
- The contractors have returned this year. All the tree remains have been shredded to pulp. The vast majority of trees were established trees. The site is prepped for development before the plans are passed.
- We are already highly disappointed from the works that were carried out in the field without any notice on the 20th October 2020, they came into the field with a digger and destroyed the natural habitat that was home to an abundance of the above animals and birds. On 20 September 2021, machinery was again moved onto this land to clear shrubland and shred any tree remains.

**Comments:** These concerns have been noted and no development should begin, until formal planning permission has been sought. If residents are concerned regarding any unauthorised works, they should contact KC Planning Enforcement. Alternatively, if residents believe that an offence has taken place under the wildlife and countryside act (1981 as amended), concerns should be raised with the police, as this is outside the remit of planning. Protected species will be protected under the construction, access management plan for biodiversity.

- Item 10 states there are no trees and hedges – but despite a massive land clearance earlier in the year there are still a considerable number of trees and hedges so the application is incorrect and what about the trees they were required to retain last time?

**Comment:** The application form should state that there would be some trees lost as part of this development, however, these would be replaced within the landscape scheme for the development.

- This area is very important for bats on or near the development site. However, ever since the digger came on Tuesday 20 October 2020. I have not seen a single bat – they have gone entirely.

**Comment:** Measures to protect these species are required as part of this application, and have been set out within the EclA.

- There are invasive plants in the field. I am concerned that the this will not be treat appropriately.
- Work should not begin until the invasive plants/specifies are removed.

**Comment:** Any invasive species and details regarding their removal would be secured under the construction environmental management plan condition.

- The habitats onsite (namely the wooded areas) make up part of the conservation area character of Golcar and have significant amenity value to local residents. It is unclear of the intentions of the developer regarding landscape and biodiversity, as documents contradict one another.

**Comment:** The development is seeking to sustain the character of the conservation area, by providing adequate landscaping and habitats to enhance biodiversity where possible. Conditions have been requested to acquire further detail should planning permission be granted.

- No new trees are shown on the most recent proposals and but 11 were shown on the old plans. The Arb Impact shows 20 trees lost, I believe a ratio of 3:1 is recommend so at least 60 quality new trees should be planted.
- This planning application needs redesigning to include the trees already there. There are some trees of high capacity value in the middle. Mitigation is not acceptable because of the length of time it takes to grow young trees or saplings. We're in a climate emergency every tree counts.  
**Comment:** The submitted site plan shows 10 new native trees to be planted, along with shrubs and a wildflower meadow. Trees to the sites perimeter and within the site itself would be retained where possible. Further details of any new trees, their species and density would be required as part of a future discharge of condition application.
- The Biodiversity Impact Assessment is based on the PEA undertaken in 2017 and thus a new PEA is needed to obtain an up to date Biodiversity Gain/loss measurement, it is also based on 8 dwellings. The biodiversity loss if not acceptable in relation to climate change and LP24 of the KLP.
- I would like to see the updated ecology reports.
- As noted within the consultee comments by Yorkshire Wildlife Trust the proposal results in a 40% loss of Biodiversity. Policy LP-24 of the Kirklees Local Plan states; “development contributes towards enhancement of the natural environment, supports biodiversity and connects to and enhances ecological networks and green infrastructure”. A loss in biodiversity goes against this policy.  
**Comment:** An up to date EclA has been undertaken, to include the two additional houses and correct BNG calculations. This has been reviewed by KC Ecology in their comments have been outlined within the committee report above.
- The latest government proposals are that everyone should be within 15 minutes of a green space - this is a perfect example of a natural green space being destroyed. This land and hillside is a natural wild area and the habitat of many species of birds and wildlife.  
**Comment:** This has been noted and KC Landscape have confirmed that there is public open space within a 15 minute walk from this site, which will be enhanced via a financial contribution from the developer of the site.
- We need to preserve our wildlife corridors.
- Impact on an highly active bird population.
- I often see wild deer and beautiful animals should be encouraged.  
**Comment:** These comments have been noted.
- The site does not provide any natural greenspace.  
**Comment:** This has been noted and given the size and constraints of the site, it has not been feasible to get any meaningful on-site POS and therefore an off site contribution is required.
- The proposed development would radically alter the natural environment that forms an essential part of the conservation area. The new plans require even less trees to be kept than the previous plans, even the larger central tree (T25-Category B) would be sacrificed to the

development. This visually detrimental scenario would also have a negative impact on the huge variety of wildlife current inhabiting the area.

**Comment:** This concern has been noted, however the site is allocated for housing within the KLP and therefore a balance between the delivery of the houses and the provision of tree planting and landscaping has been made.

#### Drainage concerns:

- The historic water, drainage and sewage system in this area was not built to cope with the amount of new drainage that will be required for this development. There is surface water running constantly in this area, there are natural springs in the field, and further development could have a big impact on this. It turns to ice in cold weather and is dangerous.
- There appears to be little mention of the current springs that exist on the plots and the potential for damage these could create the buildings as the direction of these water courses change slightly, as they do, over the course of time.
- We are already finding excess water pouring into our garden and haven't got a solution to this problem. It has arisen since the building work in the adjoining field. Building more houses will cause us more problems.
- Item 11 states there is no existing water course but there is a natural spring within the land that the developer has attempted to conceal by digging over the land but it is there and is very visible after all this rain and there are two existing culverts that run under our garden and exits into the development.
- The proposals will also create a flood risk for the dwellings to the South of the site. The site currently delays the water run-off in periods of heavy rainfall. During periods of heavy rainfall in the area flooding and severe run-off is common, the proposals will make this issue much worse, due to the large amount of hardstanding and dwellings on the site. Reducing the number of dwellings on site would help this. There has also been no reference to SUDS.

**Comment:** KC LLFA have been formally consulted as part of this application and their comments have been outlined within the above committee report. The information submitted, whilst limited identifies an acceptable run off rate, discharge point and shows that two attenuation tanks can be provided within the site. More technical information on these matters would be required as part of a discharge of condition application, should planning permission be granted.

#### General concerns:

- Fullwood Drive does not have the infrastructure to support another 10 dwellings; particularly houses of this size.  
**Comment:** This has been noted.
- As you are no doubt aware that the building work has already started before the so called planning permission has been granted. The works canteen has already been erected at the end of our road. The works are currently illegal without planning permission.
- The field is now a dumping ground for building equipment, containers etc. It's an absolute eye sore.

- They have already broken down the stone wall at the head of the cul-de-sac and crossed the strip of land that they do not own and have no right to do. They brought in a digger and started to clear the land and then they brought a wood chipper to continue clearing the land. They have also erected a large metal fence.
- More habitats of flora and fauna not only would be destroyed, but already have been by the developers who have already driven diggers onto the land.

**Comment:** No development should begin until planning permission has been granted. If there is concern regarding this, Planning Enforcement should be contacted.

- The doctor's surgery is over subscribed and under review.
- Local doctors are already impossible to get appointments at, there's no dentist available, schools are full.
- Current strain on all local community resources.

**Comment:** Although health impacts are a material consideration relevant to planning, there is no policy or supplementary planning guidance requiring a proposed development to contribute specifically to local health services. Furthermore, it is noted that funding for GP provision is based on the number of patients registered at a particular practice and is also weighted based on levels of deprivation and aging population. Direct funding is provided by the NHS for GP practices and health centres based on an increase in registrations. Local education needs are addressed later in this report in relation to planning obligations.

- The local schools are over subscribed/over stretched.
- Comment:** A contribution towards additional school places would be sought as part of this application.

- The outline application (2017/60/93638/W) was for 10 residential dwellings and not 12 as on the latest proposals this is not acceptable. Also most of the consultation documents are based on the original proposal and thus not valid in relation to updated plans.

**Comment:** All new consultations have taken place, where necessary, since increasing the number of units on site to 12.

- Considering the current middle plot that is being developed adjacent to this has seen lots of complaints from neighbours that the developers have ignored the fencing locations and heights and created much severe ground works behind their properties, what assurances will be provided to ensure this does not happen here and that the groundworks will cause no slippage to the existing properties and gardens in Clay Well?
- The builders of these houses on the previous site behind Clay Well have demonstrated a clear disregard for planning permissions, they've already cleared the ground despite not being allowed due to protected newts, they knocked down a wash house from the 1800s despite the fact they had no permission, they're building houses on a higher elevation than they have permission for as they haven't flattened the land properly, destroyed land that didn't belong to them, and have erected fences above what was agreed. And they've been allowed to get away with all of it. No repercussions from the council at all.



**Comment:** Appropriate conditions would be attached to the decision notice, in the case of an approval, whereby it would be the responsibility of the developer to comply with these and build the development in accordance with the approved plans/information. If local residents have any concerns regarding the above and consider the development to be in breach of any conditions, KC Planning Enforcement should be contacted.

- What assurances can the Council give to better insulate the new houses.

**Comment:** The dwellings would need to be built in accordance with the most recent building regulations in order to ensure thermal efficiency.

- These dwellings, will not be affordable to many local people.
- The development should provide affordable/social housing.

**Comment:** Two affordable homes have been proposed out of the 12 dwellings. This would accord with Policy LP11 of the KLP.

- Since this has happened my view is destroyed by big piles of rubbish left behind, mature trees were cut down that have been there for as long as I can remember. They broke through the wall off of Fullwood drive removed all of the original drystone wall that created the boundary line and put up heras fencing.

**Comment:** This has been noted, however, the loss of a view is not a material planning consideration. The creation of a gap/access onto the site is not considered to be development in its own right, and may have been undertaken to allow for the required surveys to be undertaken. The installation of heras fencing would be to restrict any unauthorised access.

- Our privacy has already been impacted by the other houses that are across the field, I do not want more houses building next door to mine.

**Comment:** The site is allocated for residential development within the KLP.

- Children have always been safe to play on our road, because it's quiet and everybody knows everybody, bringing more people in is unsafe.
- There is already too much noise coming from the new houses in the other field that they have built, we don't need more houses, we need more privacy.

**Comment:** These concerns have been noted.

- The land in question was last used as allotments. Planning permission should not be granted to build in the field as it was still being used as allotments until very recently. I noticed that land in the Holme Valley was refused planning permission because the land is 'allotment land', although it has not been used for this purpose for several years'.

- The proposed site is noted in the land registry as allotment gardens. I believe allotments are not just beneficial to the environment but enhance protected species - thus the proposed site is not suitable for development. As this site is a green field site which has not been previously developed, the majority of nearby residents do not feel this site should be developed and the previous application for outline development has been misjudged.

- Further to this local policy states “proposals involving development on allotments, or land last used as allotments, will not be permitted unless replacement allotments of equivalent community benefit are provided or it can be demonstrated that there is no unsatisfied local demand for allotments. Having been on the waiting list for 3 years I can confirm there is significant demand for allotments, within the local area.
- In my property deeds I have a map from H M Land Registry, dated 1981 showing the land in question as 'Allotment Gardens'. If the Land Registry knew that the land was Allotment Gardens, why is Kirklees Council not aware of the designated status of this land and it being illegal for it to be developed? Planning permission should not be granted to build in the field as it was still being used as allotments until very recently.
- Whilst the application is keen to show the purpose of Provisional Open Land allocations was to identify a reserve of land for future residential development. It has been well documented in recent years that Kirklees Council cannot demonstrate a five year housing supply and therefore try to justify the development as “It is therefore appropriate for POL sites to assist in meeting the Council’s requirement for housing” there is no mention how this will increase the benefit to the community. There is no mention of a contribution to social housing (essential for every thriving community), there is no mention of contribution towards the educational infrastructure or health services (without which the current community will suffer).

**Comment:** The principle of development has been set out within the committee report.

- At last the Government has realised that brown field sites should be used to build more houses on sites that have previously been developed, closer to town centres and other services and amenities.
- Although on previous applications the Council has made it clear that there is no obligation to insist on using Brown Field sites there is a preferred desire for designated brown land to be used before green land within Kirklees, have all brown field sites been exhausted before consideration will be given to this development?

**Comment:** The site is allocated for housing within the KLP.

- Healthy and safety risks to local residents.

**Comment:** Given the size of the site, it is not considered to cause any risks to the health and safety of local residents. Adequate precautions and signage should be installed before development commences to ensure the safety of the workers and the surrounding local residents.

- Lastly, no doubt the road will need digging up for this development to take place and gain access to water/electricity. This will impact all residents having access to their homes. There is no other access as you are aware, this is a cul de sac and therefore as we have experienced when the builders removed trees a few weeks back, we were asked to move our cars and large vehicles were parked up causing disruption and noise.

**Comment:** The digging up of the road for access to water/electricity is outside of the planning remit, however, a CEMP would be attached as a condition to the decision notice, which will identify where workers and deliveries will park within the site during the construction phase.

- No proposed plans and elevations have been provided for plots 6&7 as the drawing for house type C denotes plots 2&3, the roof layout is mirrored and not reflective of the proposed design. Also the elevation drawings do not match the site layout for plot 1. The Proposed plans, elevations and site plan do not include a scale bar. Thus consultees cannot scale these drawings. I feel an updated set of drawings should be issued and the comment period extended as this is a standard validation requirement.

**Comment:** The correct plans to show the house types (including the floor plans and elevations for each) have been submitted as part of this application. Each plan also includes the correct scale to which the drawings can be measured.

- Residents identified that “development should be close to employment opportunities and well-served by public transport, but should not overload existing roads, drainage systems, schools and other vital services”. It would be interesting to know what local employment opportunities these houses would be serving and certainly how they would not overload local schools.

**Comment:** Local jobs may be created by this development, with the dwellings having the potential to bring in new local professionals to the area and Kirklees. A financial contribution would also be provided to school places as part of the S106 agreement.

- There is no provision for a public play area yet a large area frequently used by a lot of children especially over the summer months, will be lost. Although it will be noted that this is private land and not public land, should there not be a provision to include an open play area for the benefit of the community to ensure compliance with Council policy? The development also damages the Golcar Ginnel Trail. We will lose that.

**Comment:** Give the size and constraints of the site, it is not feasible to provide any meaningful public open space. However, an enhancement to the local area will be made as part of this planning application. This will be secured via a S106 contribution.

#### Financial contributions and planning obligations

10.109 Paragraph 56 of the NPPF confirms that planning obligations must only be sought where they meet all of the following: (i) necessary to make the development acceptable in planning terms, (ii) directly related to the development and (iii) fairly and reasonably related in scale and kind to the development.

10.110 As such, the following contributions are required for this type of development.

#### Affordable housing

10.111 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.

10.112 To comply with LP11, the proposed development would need to provide 2 affordable housing units. These would be provided in the form of 1 x affordable rent and 1 first home. This is supported by the Council's Strategic Housing Team.

#### Education

10.113 Whilst the site is isolation would not require an education contribution, a wider master planning approach has been undertaken (to accord with LP5 of the KLP) given the adjacent housing allocations. The contribution is determined in accordance with the Council's policy and guidance note on providing for education needs generated by new housing. This confirms that The Local Authority's (LA) Planning School Places Policy (PSPS) provides the framework within which decisions relating to the supply and demand for school places are made. In this instance a contribution of £21,276 is required to go towards Golcar J I & N School and Colne Valley High School.

#### Public open space

10.114 In accordance with LP63 of the Kirklees Local Plan new housing developments are required to provide public open space or contribute towards the improvement of existing provision in the area.

10.115 An off site contribution of £26,883 is required, to accord with the Public Open Space SPD and Policy LP63 of the Kirklees Local Plan.

#### Management and maintenance

10.116 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), shall be secured via the S106.

#### Highways and transport

10.117 A financial contribution of £5,115 towards measures to encourage the use of sustainable modes of transport is required, to accord with Policy LP20 of the KLP.

#### Biodiversity

10.118 In accordance with Policy LP30 of the Kirklees Local Plan, developments are expected to demonstrate a net gain to local ecology. This is measured via the biodiversity metric and should be delivered through on-site enhancements. When sufficient enhancements cannot be delivered on site, an off-site financial contribution may be sought.

10.119 In this instance, an off-site contribution of £15,640 is required to provide a 10% biodiversity net gain.

## **11.0 Conclusion**

- 11.1 The application site is allocated for residential development under site allocation HS153. Outline permission with access onto Fullwood Drive has been previously granted under application 2017/93638, however, this application seeks a new full permission. Nonetheless, the principle of residential development remains acceptable.
- 11.2 The site is constrained by topography, contamination, the local highway network and is located within Golcar Conservation Area and within close vicinity to a number of Listed Buildings. These constraints have been sufficiently addressed by the applicant or can be addressed at the conditions stage.
- 11.3 The proposal would not cause any undue harm to visual amenity or heritage, residential amenity, highway safety and all other material planning considerations and would provide local affordable homes alongside market housing compliant with local and national policies.
- 11.4 Full planning contributions would be secured via a S106 agreement.
- 11.5 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, subject to conditions and planning obligations being secured via an appropriate S106 agreement.

## **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 years to commence development.
2. Development to be carried out in accordance with the approved plans and documents.
3. Sample of facing materials.
4. Samples of roofing materials.
5. Details of all new windows and doors.
6. Window frames and stonework for blind windows set back into reveal by 75-100mm.
7. Details of pedestrian connection.
8. Details of proposed internal adoptable roads.
9. Submission of a CEMP.
10. Submission of road survey.
11. Permeable surfacing to all vehicle parking areas.
12. Removal of PD rights for the garages at plots 2-7.
13. Submission of full drainage details.
14. Assessment of the effects of a 1 in 100 year storm event.
15. Submission of temporary drainage for surface water.
16. Submission of a Biodiversity Enhancement and Management Plan (BEMP).
17. Submission of a CEMP (for biodiversity).
18. Details of temporary waste arrangements.
19. Details of measures to deter crime and anti-social behaviour.
20. Submission of all hard and soft landscape materials.
21. Submission of an AIP for any new retaining walls/buildings adjacent to the adoptable highway.

22. An assessment of the adequacy of the steep embankment.
23. Details of any drainage within the highway.
24. Submission of a Phase 1 Report.
25. Submission of a Phase 2 Report.
26. Submission of a Remediation Strategy.
27. Development in accordance with approved Remediation Strategy.
28. Submission of a Validation Report.
29. Details of EVCP's.
30. Removal of PD rights for ground floor openings within the western elevation of Plot 1.
31. Details of renewable energy and/or energy efficiency measures
32. Removal of PD rights within Part 1 and Class A of Part 2 of the GDPO.
33. Details of finished floor levels.
34. No removal of hedgerows, trees or shrubs shall take place between 1st March and 31st August inclusive.
35. Submission of a revised Arboricultural Method Statement.
36. Details of any additional tree works required during the construction process that are not identified within the revised Arboricultural Method Statement.

### **Background Papers:**

Application files: <https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2021/93621>

[Planning application details | Kirklees Council](#)

Certificate B signed.

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## Report of the Head of Planning and Development

### STRATEGIC PLANNING COMMITTEE

**Date: 07-Dec-2023**

**Subject: Planning Application 2023/92187 Variation of condition 1. (plans) on previous permission no. 2019/93068 for reserved matters application pursuant to outline permission 2018/91119 for erection of residential development rear of, 11, Holme Avenue, Dalton, Huddersfield, HD5 8DP**

#### APPLICANT

Stonewater  
Developments Ltd

#### DATE VALID

24-Jul-2023

#### TARGET DATE

23-Oct-2023

#### 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.

[Public speaking at committee link](#)

#### LOCATION PLAN



**Map not to scale – for identification purposes only**

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**Electoral wards affected:** Almondbury Ward

**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:

1. To secure a S106 Deed of Variation agreement to cover the following matters:
  - a) **Affordable Housing:** Four affordable dwellings, including two affordable rent and two intermediate units (20% of the total units)
  - b) **Management and Maintenance:** of on-site drainage infrastructure (until adoption by statutory undertaker)
2. Complete the list of conditions including those contained within this report and release the planning permission.

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 Outline Planning Permission was granted on the application site for residential development (unnumbered) via application 2018/91119. Access was a consideration as part of that application, with appearance, scale, layout, and landscaping being reserved matters. As the quantum of development was unknown as part of the outline application, conditions were imposed via this application to manage planning contributions, including affordable housing (condition 14), public open space (condition 15), education (condition 16), and sustainable modes of travel (condition 17).
- 1.2 A Reserved Matters application, covering all of the outstanding matters for 22 dwellings was submitted and approved under reference 2019/93068. A s106 agreement was not attached to the Reserved Matters application, as all relevant obligations were governed by the conditions attached to the parent outline planning application.



- 1.3 Discharge of condition application ref. 2020/91813 was submitted to address conditions 14, 15, 16, and 17. It was identified that the final number of dwellings approved as part of Reserved Matters application 2019/93068 (22 units) was below the Council's threshold for seeking an affordable contribution (25 units) and was therefore not required. Regarding the condition contributions, no affordable housing, open space or sustainable modes of travel contributions were proposed on the basis that the scheme would not be financially viable if they were provided. This was supported by a Viability Assessment which was independently verified and confirmed by a council appointed viability expert. The discharge of condition application was presented to Strategic Planning Committee on the 27<sup>th</sup> of January 2021, where members resolved to defer the application to enable the viability appraisal to be reassessed. Members indicated that further information was needed and different viability scenarios should be considered to explore whether some affordable housing could be secured.
- 1.4 Further assessment and negotiations between officers, their independent viability assessor, and the applicant took place following the deferral. These led to the applicant agreeing to an affordable housing provision of two starter homes (to be sold at 20% below the market value) and no other contribution. The application was returned to Strategic Planning Committee on the 25<sup>th</sup> of February 2021 with a recommendation for approval, subject to the two first homes being secured within a s106. Members resolved to support the application as updated. The S106 agreement was subsequently completed, and the decision notice was issued.
- 1.5 Since that time, a new owner has acquired the site and has submitted this Variation of Condition application. The applicant is Stonewater Developments Ltd, a registered provider of social housing. As part of this application, they wish to update the house types to reflect their standards and requirements and to modify the S106 agreement from requiring two first homes (an intermediate form of affordable housing that includes the sale of the units which would not comply with their business model) to four affordable units consisting of two affordable rent and two intermediate units. This increase is a betterment.
- 1.6 The application is brought to the Strategic Planning Committee because it would result in a decision that includes a S106 package which does not comply with the Local Plan 2019, in this case not including a policy compliant Public Open Space or Sustainable Travel Package. It should however be noted that this would be as previously approved and this Variation of Condition application would represent a betterment compared to the original application, through increasing affordable housing provision from two to a minimum of four.

## **2.0 SITE AND SURROUNDINGS**

- 2.1 The application site is 0.68 hectares in size and slopes downhill from south (125m AOD approx.) to north (110m AOD approx.). The site is accessed from the lower-level Holme Avenue to its north. Forrest Road is to the south, at a higher ground level.

- 2.2 No buildings exist within the site's boundaries. The site is partly grassed and partly overgrown with self-seeded trees and shrubs, giving the site a ruderal character. No trees on the site are the subjects of Tree Preservation Orders (TPOs). The site is not within a conservation area and there are no listed buildings immediately adjacent to the site. Surrounding buildings are in residential use.
- 2.3 A public footpath (HUD/100/10) runs along the site's east boundary, connecting Forest Road and Felcote Avenue with Holme Avenue and Brian Avenue. An informal path also runs diagonally across the site.

### 3.0 PROPOSAL

- 3.1 Permission is sought to vary condition 1, which relates to the plans and specifications table. The condition reads:

*1. The development hereby permitted shall be carried out in complete accordance with the plans and specifications schedule listed in this decision notice, except as may be specified in the conditions attached to this permission, which shall in all cases take precedence.*

**Reason:** *For the avoidance of doubt as to what is being permitted and so as to ensure the satisfactory appearance of the development on completion, and to accord with Policies LP21 and LP24 of the Kirklees Local Plan and guidance in the National Planning Policy Framework.*

The reason for the change is to update the plots (design and internal requirements) to suit a new landowner. The applicant also seeks to vary the previous S106 (attached to the Discharge of Condition application ref. 2020/91813) from requiring the delivery of two starter homes to four affordable units. The applicant is a registered provider and it is proposed that all units would be affordable, consisting of nine shared ownership and thirteen affordable rent units.

- 3.2 The number of units would be unchanged at 22. However, the changed house types would result in the house sizes changing as follows:

#### Previously approved

- 1+2bed: 0
- 3bed: 19 (86%)
- 4bed: 3 (14%)

#### Proposed

- 1+2bed: 5 (23%)
- 3bed: 17 (17)
- 4bed: 0

- 3.3 In terms of design and appearance, overall, the appearance of the units are similar. The previously approved units included most having garages, whereas none are proposed.

- 3.4 Certain plots would become detached, while others would become semi-detached. Previously there was 8 semi-detached pairs (16 units total) and six detached. The proposal seeks 9 semi-detached pairs (18 total) and four detached.
- 3.5 The amended proposal seeks to reduce the extent of engineering works. The units along the south boundary would remain split level, being split two / three storeys. Plots 3 – 7 are proposed to change from the approved split two/three storey to one/two storey. Plots 1 and 2 would remain two storeys only.
- 3.6 To facilitate these changes, levels across the site are being modified, but the max heights of units are to either be the same or lower. For plots 3 – 7, which are to be a storey lower, the heights would be notably lower however they would be moved between 1 and 1.5m closer to the properties on Holme Avenue. The gardens for these plots would also go from being mostly flat in the approved application, to the proposal having these units having a smaller flat garden section and then embankment and/or retaining walls.
- 3.7 Materials are governed by condition 2 on the original application and would be unchanged from that previously approved by the proposal.

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

##### **4.1 Application Site**

2014/92369: Outline application for residential development – Granted

2018/91119: Outline application for residential development – Granted

2019/93068: Reserved matters application pursuant to outline permission 2018/91119 for erection of residential development – Granted

2020/91813: Discharge of conditions 14 (affordable housing), 15 (public open space) and 16 (education) of previous permission 2018/91119 for outline application for erection of residential development – DOC approved

2021/90898: Discharge of conditions 2 to 6 of previous reserved matters permission 2019/93068 pursuant to outline permission 2018/91119 for erection of residential development – Decision pending

2021/90899: Discharge of conditions 6 to 8, 13, and 18 to 20 of previous permission 2018/91119 for outline application for erection of residential development – Decision pending

2022/91875: Discharge of condition 17 (sustainable transport) of previous outline permission 2018/91119 for erection of residential development – DOC approved

2023/92199: Non material amendment to previous permission 2019/93068 for reserved matters application pursuant to outline permission 2018/91119 for erection of residential development – Decision pending

## 4.2 Surrounding Area

*Land at, Forest Road*

2023/90547: Erection of 9 dwellings – Decision pending

## 4.3 Enforcement History

None on site nor relevant within the area.

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

5.1 Officers expressed initial concerns over the potential for overlooking from the gardens of plots 3 – 7, which were to be notably higher than before (as a result of the level changes and the plots being changed to being split one / two storey dwellings). This matter was resolved via amended plans which lowered the garden levels and included a planted buffer zone.

5.2 The changes to the levels raised concerns from K.C. Highways over the potential steepness of the Highway, with road long-sections requested. On receipt these plans confirmed the concerns. Officers undertook negotiations with the applicant which led to updated plans being received which demonstrated the concern had been addressed.

## 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).

Kirklees Local Plan (2019) and Supplementary Planning Guidance / Documents

6.2 The application site is a Housing Allocation (ref. HS4) within the Kirklees Local Plan.

6.3 The relevant Local Plan policies are:

- **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** – Highways and access
- **LP22** – Parking
- **LP24** – Design
- **LP32** – Landscape
- **LP33** – Trees
- **LP65** – Housing allocations

6.4 The following are relevant Supplementary Planning Documents or other guidance documents published by, or with, Kirklees Council;

#### *Supplementary Planning Documents*

- Affordable Housing and Housing Mix SPD (2023)
- Highways Design Guide SPD (2019)
- Housebuilders Design Guide SPD (2021)
- Open Space SPD (2021)

#### *Guidance documents*

- Kirklees Interim Affordable Housing Policy (2020)
- Biodiversity Net Gain Technical Advice Note (2021)
- Planning Applications Climate Change Guidance (2021)
- West Yorkshire Low Emissions Strategy and Air Quality and Emissions Technical Planning Guidance (2016)
- Waste Management Design Guide for New Developments (2020)
- Green Streets® Principles for the West Yorkshire Transport Fund

#### National Planning Guidance

6.5 National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) 2021, published 20<sup>th</sup> July 2021, 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 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

6.6 Other relevant national guidance and documents:

- MHCLG: National Design Guide (2021)
- DCLG: Technical housing standards – nationally described space standard (2015)

#### Climate change

6.7 The Council approved Climate Emergency measures at its meeting of full Council on the 16<sup>th</sup> of January 2019, and the West Yorkshire Combined Authority has pledged that the Leeds City Region would reach net zero carbon emissions by 2038. A draft Carbon Emission Reduction Pathways Technical Report (July 2020, Element Energy), setting out how carbon reductions might be achieved, has been published by the West Yorkshire Combined Authority.

6.8 On the 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 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 would use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

## 7.0 PUBLIC/LOCAL RESPONSE

7.1 The application has been advertised as a major development via site notices and through neighbour letters to properties bordering the site, along with being advertised within a local newspaper. This is in line with the Council’s adopted Statement of Community Involvement. Final amendments were made after the last public representation period. These were considered minor in scope, and were improvements and/or direct responses to issues raised by the public or officers. As such, it was not considered necessary to readvertise the final amendments.

7.2 The end date for public comments was 19.09.2023. In total six public comments were received. The following is a summary of the comments made:

- The application is encroaching upon third party land, specifically to the south. The properties fronting onto Forest Road “*each own a strip of land beyond their tarmac drive. Also, there are steps that give access onto the tarmac drive from the proposed housing development. This is a private road owned and maintained by each house therefore there should be no access from the proposed development onto the private drive*”.
- The proposal, through notable excavation, would affect the structural stability of properties on Forest Road where instances of subsidence area already evident.
- The proposed plans show access from the rear of the proposes houses to properties on Forest Road (nos. 45 and 47). Its unclear what purpose these serve and there is no access into and out of the site across private land.
- Concerns that the proposal may affect the water table and could lead to flooding / water running off towards Holme Avenue.
- Concerns over the capability of local roads, specifically Crest Avenue and Holme Avenue, to accommodate additional traffic. This includes both construction and operational traffic.
- The proposal will result in overlooking and a loss of privacy to neighbouring dwellings and their respective gardens.
- Construction works have happened extensively in the area and residents ‘*expect building works to closely adhere to neighbourhood noise guidance and agreed working hours*’
- The changes to plots 8 and 9, from three storeys to two, is welcomed.
- Concerns over existing boundary treatments and whether they’ll be repaired and/or replaced.

7.3 The site is within Almondbury ward. Local ward members were notified of the proposal. Councillors Alison Munro and Bernard McGuin highlighted concerns from location residents, as identified above and specifically regarding possible land ownership conflicts.

## **8.0 CONSULTATION RESPONSES**

### **8.1 Statutory**

K.C. Highways (Development Management): K.C. Highways have been involved in ensuring the changes sought, particularly to the layout and levels do not result in the highway arrangements becoming unacceptable. While initial concerns were held, these have been addressed via amendments following negotiations. Therefore, no objection, subject to the previous conditions being retained.

K.C. Lead Local Flood Authority: No objection subject to previous conditions being re-applied.

### **8.2 Non-statutory**

K.C. Highways (Structures): Require repeated conditions relating to ground stability adjacent or near to the highway and footpaths.

K.C. Strategic Housing: Provided advice on expected market housing mixture and affordable housing requirements. No objection and welcome the delivery of additional affordable housing on the site.

## **9.0 MAIN ISSUES**

- Scope of the application
- Implications of varying of condition 1
- Previous conditions and planning obligations
- Representations

## **10.0 APPRAISAL**

### Scope of the application

10.1 This application is made under S73 of the Town and Country Planning Act 1990, which allows for the 'Determination of applications to develop land without compliance with conditions previously attached'. In addition to removing conditions, S73 enables the varying of a condition's wording. The effect of a granted S73 application is the issuing of a fresh planning permission. Therefore, all previously imposed conditions should be retained if they remain relevant. Conversely, the time limit for development to commence cannot be extended through S73.

10.2 The starting point for a S73 application is the previously granted planning permission, which must carry significant material weight. However, consideration must first be given to whether any material changes in circumstances have taken place. This includes the policy and local context.

- 10.3 In terms of policy, the original application 2019/93068 was assessed against the Local Plan (2019), which remains the development plan and therefore the assessment criteria will be consistent. The National Planning Policy Framework has been subject to minor revisions since 2019/93068 was determined, but none are deemed material or relevant.
- 10.4 Regarding the local context, there has been no changes in the environment (including built and natural) which would materially impact on the assessment of the application.
- 10.5 Considering the above, consideration must principally be given to the specific changes proposed and their interaction with adopted planning policy. Furthermore, it should be noted that application 2019/93068 was a reserved matters submission to 2018/91119's original granting of outline permission. The reserved matters were layout, scale, appearance, and landscaping, with access having been assessed and approved as part of the outline permission.

#### Implications of varying of condition 1

- 10.5 The original application was a reserved matter considering layout, appearance, scale, and landscaping. Therefore, the impact of the proposed plan variation will be considered through the same approach.

#### *Layout*

- 10.6 First considering layout and visual amenity, the layout changes are considered small in scale would not materially affect the visual appearance of the site. Unit positions are principally the same, with minimal variation that would not affect prejudice visual amenity value. The change in the ratio of detached to semi-detached is limited and would not cause the development to appear incongruous in the area.
- 10.7 Progressing to layout and residential amenity, the relationship of most units to their neighbours, including plots 1 – 2 and 8 – 22 would not be materially changed. Notably, plots 8 – 22 are on a substantially lower ground level to those on Forest Road and would be reduced in height compared to those approved, negating any concerns of overbearing, overlooking, or overshadowing. Plots 3 – 7 would move between 1 and 1.5m closer to nos. 1 – 7 Holme Avenue, with a minimum separation distance of 22.9m (between plot 5 and no. 5 Holme Avenue, discounting extensions). This still exceeds the 21m expected by the Householder Design Guide SPD, however the level differences between Holme Avenue and the site must be acknowledged, with the proposed dwellings being notably higher. Nonetheless, while the separation distances would fall by between 1 and 1.5m, the heights of plots 3 – 7 would fall by 1.5m by virtue from changing from the approved two/three storey split level to one/two storey split level. As a result, the lower height is considered to negate the closer distance and would prevent the dwellings causing materially harmful overbearing, overlooking, or overshadowing.



- 10.8 Regarding the garden levels of plots 3 – 7, as a result of these units losing a storey (being proposed as two storeys to the rear as opposed to three as approved) yet needing to have a similar finished floor level to the road (to enable access), the garden levels would go from largely flat to including an embankment and/or retaining wall in places. These would be topped by boundary treatment consisting of 1.8m high fencing, to define curtilage and prevent overlooking from the new dwelling's garden spaces. Nonetheless, the separation distances between the properties and these modest level changes / retaining walls and fencing, being a minimum of 10.5m, and are considered acceptable to prevent materially harmful overbearing or overshadowing upon existing residents.
- 10.9 As a result of the level changes and to avoid new fencing being too close to neighbouring properties, a landscaped zone would separate plots 3 – 7 from the properties on Holme Avenue. This would result in the identified plots having smaller gardens than previously approved. Smaller gardens to respond to topographical constraints is not unusual for the area or wider district and the Local Plan does not have dedicated garden size requirements. The consideration is whether the garden size would be so small as to materially prejudice the amenity standard of the dwellings. The dwellings are good sized and well-spaced from neighbouring properties and would otherwise offer residents a high standard of amenity. Accordingly, the smaller than previously approved and small than typical garden sized are not considered a material cause for concern for future residents' amenity.
- 10.10 Considering Highways, the access arrangement from Holme Avenue was approved at outline stage, with that proposed being consistent with the earlier approval. The applicant has demonstrated that the changes to the development's level and other layout changes to the new road would not prejudice the delivery of a safe and effective highway.
- 10.11 Various units have lost garages, therefore reducing their level of off-road parking. However, these units have also had their number of bedrooms reduced and reducing their parking demand. As a result, all units would have an adequate provision of parking. Regarding visitor parking, the previous application included five dedicated visitor parking bays. The proposal includes two dedicated visitor bays and identifies three on-road visitor parking spaces. This was requested by K.C. Highway Structures during their technical review of the applicant's retaining wall details. The location of the three on-street parking spaces is considered to be acceptable and would not interfere with the safe and effective use of the road.
- 10.12 The proposed layout is not substantially different to that previously approved, although the changes do have implications for amenity and highways. Nonetheless, these implications have been considered and found to be acceptable. The proposed varied layout would not prejudice visual amenity, residential amenity, or highway safety, in accordance with the requirements of policies LP21 and LP24.

### *Appearance and scale*

- 10.13 The appearance and scale of most of the units would remain broadly the same as approved, remaining as representatives of modern Pennine vernacular that would harmonise well with the appearance and scale of dwellings in the area. The removal of garages from most units does not materially affect their appearance.
- 10.14 Plots 3 – 7 would change from being split level two / three storey to being split one / two storey, therefore appearing as bungalows to the front. Bungalows are common in the area and would suitably integrate into the site and wider area, raising no concerns.
- 10.15 Regarding the amenity of residents, as noted above plots 3 – 7 would move closer to the existing dwellings on Holme Avenue (still be beyond 21m) but would be notably reduced in height. As a result, notwithstanding the level differences between the site and properties on Holme Avenue, this change is not considered to result in material harm to existing residents via overbearing or overshadowing. Window arrangements, i.e., their rough location and orientation, would remain as before and the proposed amendments would not lead to potential new instances of overlooking.
- 10.16 All plot sizes are being reduced, but all units would remain at or in excess of the Nationally described Space Standards.
- 10.17 Materials were secured via condition 2 on the previous application. This would be unaffected by the proposed variation and therefore does not fall to be considered as part of this application. See paragraphs 10.23 – 10.26 for more details on the other previously imposed condition. In conclusion, the appearance and scale of the proposed dwellings are concluded to be acceptable and would not prejudice visual amenity, residential amenity, or highway safety, in accordance with the requirements of policies LP21 and LP24.

### *Landscape*

- 10.18 Landscaping changes between the approved and proposed change are nominal. An area of open space would remain in the west of the site, at a materially same size. Landscaping to the front of units would remain consistent to that approved and tree-planting would be provided where feasible.
- 10.19 The most notable change to landscaping is along the east boundary, adjacent to PROW HUD/100/10. However, this would change from a consistent retaining wall with small areas for landscaping around it, to part retaining wall and part embankment, bringing more open / green space onto the site. Technical details for approval of the retaining wall and a scheme for the widening of the PROW were previously secured via condition and would be repeated (further details below).
- 10.20 A substantial retaining wall would still be required along the south boundary, within the gardens of lots 8 – 22. Minimal changes are proposed to the steepness of the banking and/or the location of retaining walls to reflect the modified house layouts and sized. Fundamentally however, the retaining wall

would but materially the same and previously approved. Regarding other hard landscaping, other than retaining walls, other boundary treatments are to consist of 1.8m high timber fencing as was previously approved, other than as noted within paragraphs 10.7 – 10.9.

- 10.21 Overall, the proposed variation would not prejudice the proposals landscaping arrangements which would remain of a high quality and be visually acceptable, in accordance with Policy LP24. It remains the case that an off-site Public Open Space contribution would not be secured contrary to LP63, however this remains as approved in the previous application and as detailed in paragraphs 1.1 -1.5 and is therefore not a material change in circumstances.

#### *Reserved Matters summary*

- 10.22 The application is a S73 variation of condition to a Reserved Matters application where the considerations were layout, appearance, scale, and landscape. The impact of the proposed variation to the plans has been considered against these considerations and found to be acceptable and in accordance with the policies contained within the Local Plan (bar policy LP63 as noted in the above paragraph).

#### Previous conditions

- 10.23 As this is an application under S73 of TCPA 1990 it would, in effect, be a new permission. Planning practice guidance (The Use of Conditions) confirms that the original planning permission would continue to exist whatever the outcome of the application under section 73 and that the conditions imposed on the original permission still have effect unless they have been discharged.
- 10.24 The PPG also confirms that for the purpose of clarity, decision notices for the grant of planning permission under section 73 should set out all of the conditions imposed on the new permission, and restate the conditions imposed on earlier permissions that continue to have effect (Paragraph: 040 Reference ID: 21a-040-20190723).
- 10.25 The 11 conditions from the 2019/93068 permission should therefore be repeated. As several have been previously discharged (or partly discharged), a note relating to the previously submitted information remaining relevant is recommended for consistency. For reference, these conditions are:
1. Works to be done in accordance with approved plans (to be varied; the wording of the condition would remain the same, but the plans table would be updated)
  2. Material samples to be provided
  3. Details of retaining walls to PROW HUD/100/10
  4. Details of widening of PROW HUD/100/10
  5. Surface water details to be provided
  6. Surface water management and maintenance strategy to be provided
  7. Unexpected spring management strategy (if springs are identified)
  8. Works to be done in accordance with Ecological Design Strategy
  9. Works to be done in accordance with Construction Management Plan
  10. Plot 22 west side elevation to include obscure glazed windows
  11. Removing PD rights for side windows.

- 10.26 For the avoidance of doubt, the 25 conditions attached to the parent outline permission, ref. 2018/91119, would be unaffected by this S73 to the Reserved Matters application and continue to be in effect.

#### Planning obligations

- 10.27 The original permission, 2019/93068, did not include a S106 agreement. The planning obligations (two first homes and drainage maintenance) were secured in a S106 attached to the Discharge of Condition application ref. 2020/91813. However, given that the applicant is a registered provider, they seek to deliver the site as all affordable units (100%). Having two units sold as first homes, as currently required by the previous S106, would not work with their business model.
- 10.28 The applicant is proposing that the previous S106 agreement be varied to include 4 affordable units including two affordable rent and two intermediate units. This would represent 20% of the total units, as opposed to the previous 10%, which is a direct benefit and would comply with the requirements of LP11. No other contributions would be secured, bar the management and maintained of the drainage infrastructure (until adopted), as before. See paragraphs 1.1 – 1.5 for further details.

#### Other Matters

- 10.29 The consideration of S73 applications is limited to impacts directly associated with the desired amendment. There are considered to be no other impacts upon material planning considerations via the proposed variation. Typical considerations, such as drainage and ecology, are addressed via conditions to be repeated if minded to approve or on the unaffected parent outline permission, as detailed in paragraphs 10.23 - 10.26.

#### Representations

- 10.30 The following are responses to the matters raised within the public representations received, which have not been previously addressed within this assessment.

- The application is encroaching upon third party land, specifically to the south. The properties fronting onto Forest Road *“each own a strip of land beyond their tarmac drive. Also, there are steps that give access onto the tarmac drive from the proposed housing development. This is a private road owned and maintained by each house therefore there should be no access from the proposed development onto the private drive”*.

**Response:** The red-line of the development was established at outline stage. Neither Reserved Matters nor S73 applications can enlarge red-lines. Therefore, all land included in this application is as previously considered and approved. No evidence to substantiate resident’s claims has been provided, while the applicant’s red-line complies with Council held land registry data.

- The proposal, through notable excavation, would affect the structural stability of properties on Forest Road were instances of subsidence area already evident.

**Response:** Paragraph 184(a) of the NPPF States:

*183. Planning policies and decisions should ensure that: a) a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination.*

Neither a detailed assessment nor condition were imposed on the previous approval pertaining to land stability and the properties on Forest Road. However, the residents raising the matter is a material difference and, as above, land stability is a material consideration for planning applications. Furthermore, by virtue of the level changes, the gradient and engagement for the engineering works now proposed are materially different from that before and introduce solid retaining walls, as opposed to just embankment. Therefore, in the interest of ensuring appropriate regard is given to land stability, it is considered reasonable to require a condition for land stability assessments and further details of the proposed engineering operations. A condition to this effect, to comply with Paragraph 184, is therefore deemed reasonable.

- The proposed plans show access from the rear of the proposed houses to properties on Forest Road (nos. 45 and 47). It's unclear what purpose these serve and there is no access into and out of the site across private land.

**Response:** On review of the plans, officers do not consider them to show direct access to Forest Road, beyond connecting to PROW HUD/100/10 as previously approved.

- Concerns that the proposal may affect the water table and could lead to flooding / water running off towards Holme Avenue.
- Concerns over the capability of local roads, specifically Crest Avenue and Holme Avenue, to accommodate additional traffic. This includes both construction and operational traffic.

**Response:** The development of the site for 22 dwellings is established via the parent outline application and original reserved matters. The proposal is a S73 variation of condition seeking alterations which would not materially affect traffic generation nor the site's drainage arrangements.

- The proposal will result in overlooking and a loss of privacy to neighbouring dwellings and their respective gardens.

**Response:** The impact on neighbouring residents has been considered in paragraphs 10.7 – 10.9 and found to be acceptable.

- Construction works have happened extensively in the area and residents '*expect building works to closely adhere to neighbourhood noise guidance and agreed working hours*'

**Response:** The original application included a condition (condition 9) approving a construction management plan which is to be repeated. As a previously imposed condition not sought to be varied, it does not form a material consideration of this application.

- Concerns over existing boundary treatments and whether they'll be repaired and/or replaced.

**Response:** A detailed boundary treatment plan has been provided which gives particulars on the proposed boundaries. The status and works to existing boundary treatments that are party-wall applicable would be a private matter for land owners.

## 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 As a S73 application the principal consideration is the planning implications of the sought variation. The principle of development was established at outline stage, with the considerations of this S73 being the variation's impacts on the layout, scale, appearance, and landscaping of the proposal. It is concluded that the proposed variation would not prejudice material considerations or planning policy, when giving weight to the previous approval and viability assessment undertaken. Nonetheless, increasing the affordable housing from two first homes to four affordable units (two affordable rent, two intermediate) is a welcome betterment and may be secured within a S106 deed of variation.

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, subject to conditions and planning obligations to be secured via a Section 106 agreement.

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

Note: Condition repeated as per previous application 2019/93068 as detailed in paragraph 10.25, plus one additional condition as detailed in paragraph 10.30 regarding land stability and retaining works along southern boundary.

1. Works to be done in accordance with approved plans (to be varied; the wording of the condition would remain the same, but the plans table would be updated)
2. Material samples to be provided
3. Details of retaining walls to PROW HUD/100/10
4. Details of widening of PROW HUD/100/10
5. Surface water details to be provided
6. Surface water management and maintenance strategy to be provided
7. Unexpected spring management strategy (if springs are identified)
8. Works to be done in accordance with Ecological Design Strategy
9. Works to be done in accordance with Construction Management Plan
10. Plot 22 west side elevation to include obscure glazed windows
11. Removing PD rights for side windows.
12. Land stability and retaining works details along southern boundary (new condition).

## **Background Papers**

### Application and history files

Available at:

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2023%2f92187>

### Certificate of Ownership

Certificate A signed.

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