
Report of the Head of Development Management**STRATEGIC PLANNING COMMITTEE****Date: 05-Jan-2017****Subject: Planning Application 2015/93238 Demolition of existing dwelling and erection of 5 detached dwellings with associated site works Thornfield, 40, Prospect Lane, Birkenshaw, BD11 2LB****APPLICANT**James Coubrough,
Nessa Asset
Management Ltd**DATE VALID**

22-Oct-2015

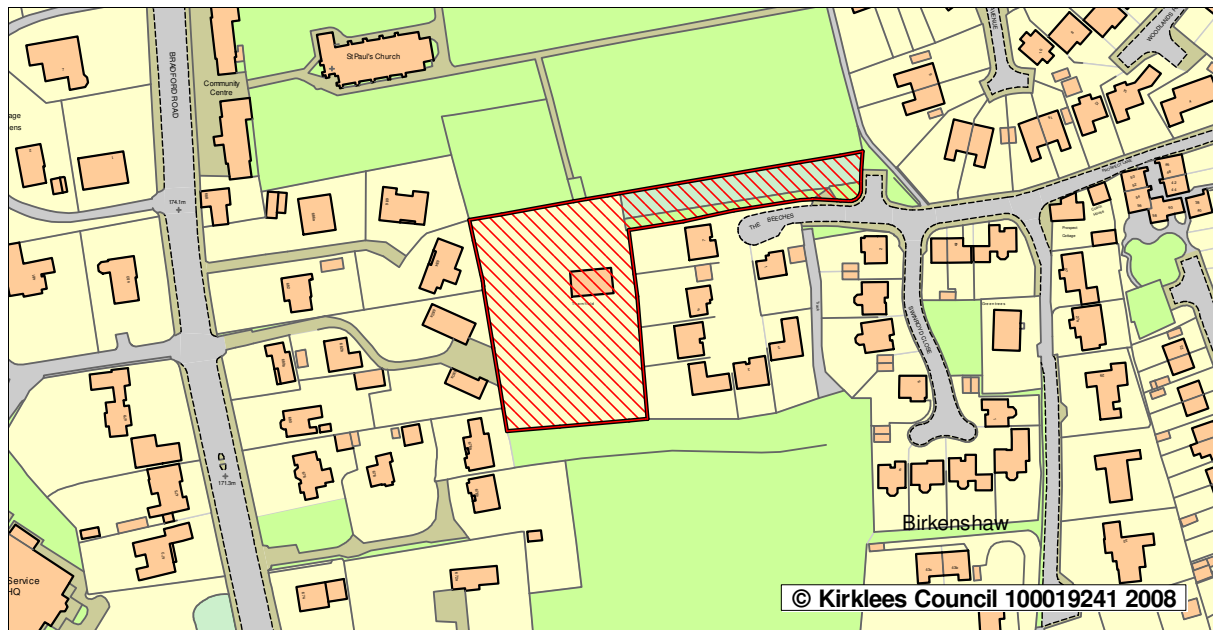
TARGET DATE

17-Dec-2015

EXTENSION EXPIRY DATE

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

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

LOCATION PLAN

Map not to scale – for identification purposes only

Electoral Wards Affected: Birstall and Birkenshaw

YES	Ward Members consulted (referred to in report)
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RECOMMENDATION:

DELEGATE approval to the Head of Development Management in order to complete the list of conditions contained within this report (and any added by the Committee).

1.0 INTRODUCTION:

- 1.1 The application is brought forward to Strategic Committee for determination as the development proposed is a departure from the Council's Unitary Development Plan as part of the site is allocated as urban greenspace.

2.0 SITE AND SURROUNDINGS:

- 2.1 The site measures approximately 0.4 hectares and is currently in residential use. It is occupied by a single detached dwelling and its associated curtilage which comprises overgrown trees and shrubs and a stone built outbuilding located at the south-eastern corner of the plot. Land levels on site slope down towards the south.
- 2.2 Access to the site is via a private hardstanding drive taken off The Beeches which comes off Prospect Lane. The drive leads onto a hardstanding area to the front of the property. There is a band of protected mature trees along the drive which extends along the northern boundary of the site. There are also some mature protected trees close to the southern boundary of the site.
- 2.3 The site is within a predominantly residential area with dwellings of varying character, design and style. It is surrounded by residential properties to the south and east, St Paul's Church to the north and a playing field to the south.

3.0 PROPOSAL:

- 3.1 The application seeks full planning permission to demolish the existing dwelling and outbuilding on site and erect five large detached dwellings which would be constructed in natural stone and render for the walls and natural slate for the roof. Access would remain as existing via a private drive taken off The Beeches which comes off Prospect Lane. The drive would be improved by the provision of two passing places.

- 3.2 The dwellings on plot 1 and 5 would be five bedroomed and those on plot 2, 3 and 4 would be 4 bedroomed. The layout is such that three of the dwellings would be located to the south of the plot at the back and two would be located in front.
- 3.3 A Design and Access Statement, Pre Development Arboricultural Impact Assessment, Arboricultural Method Statement, Treeguard Method Statement, Tree Protection Plan, Trees Constrains Plan, Treeguard Root Protection Plan, and a Viability Assessment Report have been submitted with the application.

4.0 RELEVANT PLANNING HISTORY:

- 4.1 2009/92811 – Erection of four dwellings. Approved (not implemented)

2009/91646 – Demolition of existing dwelling and erection of 5 dwellings. Invalid.

2008/90802 – Demolition of existing dwelling and erection of 4 dwellings. Approved (not implemented)

2007/94275 – Demolition of existing dwelling and erection of 5 dwellings. Withdrawn due to sitting of development in close proximity to protected trees.

2007/90988 – Demolition of existing dwelling and erection of 1 detached dwelling. Withdrawn

2006/91216 – Excavation, infill and landscaping works to form new terrace areas. Approved

2005/92806 – Change of use of land to garden. Approved

2005/92807 – Erection of detached garden implement and utility store. Approved

2004/93316 – Erection of stable block and store. Refused

2004/95825 – Erection of detached garage with hobbies room over and detached garden implement and utility store. Refused

2003/90639 – Erection of 2 storey extension and extension to conservatory. Approved

2003/90638 – Erection of swimming pool/gymnasium/conservatory, garage extension. Refused

99/93211 – Erection of single storey extension. Refused

98/93025 – Erection 3 detached houses with garages and access off existing drive. Refused, Appeal dismissed

98/91548 – Erection of conservatory and alterations to dormer window.
Approved

97/93523 – Outline application for the erection of 2 detached dwellings.
Refused

97/93359 – Erection of two storey extension. Approved

5.0 HISTORY OF NEGOTIATIONS:

- 5.1 During the course of the application amended plans have been received to address the concerns raised by officers with regard to the impact the proposal would have on highway safety, visual and residential amenity and mature protected trees on site.

6.0 PLANNING POLICY:

- 6.1 The Council's Local Plan will be published for consultation on 7th November 2016 under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012. The Council considers that, as at the date of publication, its Local Plan has limited weight in planning decisions. However, as the Local Plan progresses, it may be given increased weight in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

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

BE1: Design Principles
BE2: Quality of Design
BE12: Space about buildings
D3: Development within Urban Green space
EP4: Development and Noise
EP11: Ecology and Landscaping
G6: Land Contamination and Stability
H6: Sites allocated for housing
H1: Meeting the housing needs of the district
H10: Affordable housing
H18: Provision of open space
NE9: Protection/retention of mature trees
T10: Highway Safety
T19: Parking provision

6.3 National Planning Policy Framework:

Core planning principles

Chapter 1: Building a strong, competitive economy

Chapter 4: Promoting sustainable transport

Chapter 6: Delivering a wide choice of quality homes

Chapter 7: Requiring good design

Chapter 8: Promoting healthy communities

Chapter 10: Meeting the challenge of climate change, flooding and coastal change

Chapter 11: Conserving and enhancing the natural environment

Chapter 12: Conserving and enhancing the historic environment

6.4 Other policy considerations:

Supplementary Planning Document 2: Affordable Housing.

7.0 PUBLIC/LOCAL RESPONSE:

7.1 The originally submitted scheme was publicised by a press and site notice and neighbours were notified; three letters of neighbour representation were received raising, in summary, the following matters:

- Prospect Lane is a single track road. Since the previous approval for 4 houses on this site, Swinroyd Close has been developed (12 dwellings - approximately another 24 cars) that now uses Prospect Lane. This road isn't suitable to cater for any more residents, supply or service vehicles.
- Southern boundary moved a metre into our garden
- Proposed housing would be imposing to neighbouring properties
- Lack of information regarding drainage
- Access road narrow, the proposal will cause congestion
- Responsibility of the track should fall on the new owners
- Kirklees Council previously refused permission for 5 detached properties to be built on the land, only approving 4.

7.2 Following the receipt of amended plans, a neighbour re-consultation was undertaken and 6 letters of neighbour representation from 4 people were received raising, in summary, the following matters:-

- Protected trees would be damaged by the development
- Bats will be affected by the development
- Access is narrow and there is no passing places, emergency vehicles would struggle to access the site
- Prospect Lane is mainly one way with just a few passing points - there is now an excessive number of vehicles using this road at present. The proposal would exacerbate problems. *A photo of the access was submitted with this representation.
- Occupiers of The Beeches are responsible for the maintenance and upkeep of the council owned woodland (with the protected trees); any new

residents should have the same built in to their contracts and the responsibility to repair any damage caused by driving on the woodland

- The access road leading to Thornfields is owned by Cala homes. Its maintenance is the responsibility of any residents of Thornfields - there is a right of access but not ownership of the land.
- Previous applications for 5 dwellings have been refused - not sure how this has changed over time?
- The route of the proposed drainage would require access over our land and we do not grant such permission
- I have planted trees along our (southern) boundary and if this breeze block wall was removed and an attempt to move the boundary further towards our boundary line, this would kill the trees that i have planted
- Access road to the site is higher than the ground floor of my property, vehicles travelling along the access road can see right through into my property. Proposal would constitute as an invasion of our privacy.
- Access to Thornfields is no wider than a path and is edged by private woodland with protected trees on one side and my property on the other side
- A tree surgeon expressed serious concern that the protected beech trees could be killed if the development was to go ahead.

7.3 Cllr Paul Kane was kept updated on the application as per his request and was informed that Officers considered that issues that arose during the course of the application had been resolved prior to committee. No further comments were received from Cllr Kane.

7.4 Ward Members (Cllr Robert Light, Cllr Andrew Palfreeman and Cllr Elizabeth Smaje) were also informed of and given an update on the application. Cllr Light commented that given the present derelict property on the site some development in keeping with the nearby newer properties is welcome however nearby residents may have concerns particularly over the bottom three properties.

8.0 CONSULTATION RESPONSES:

8.1 Statutory:

K.C. Highways Development Management – no objections subject to conditions

Coal Authority – no objections subject to an informative note

8.2 Non statutory

K.C. Ecology and Biodiversity – no objections subject to conditions

K.C. Trees – no objections subject to conditions

K.C. Environmental Services – no objections subject to conditions

K.C. Strategic Housing – recommend a commuted sum in lieu of providing affordable homes.

K.C. Parks and Landscape – no objections to the landscaping scheme but require a lump sum contribution for equipped play via a S106 agreement.

K.C. Flood Management and Drainage – no objections

Yorkshire Water – no objections to the scheme.

9.0 MAIN ISSUES

- Principle of development
- Visual amenity and Heritage considerations
- Residential amenity
- Highway issues
- Ecology issues
- Tree issues
- Drainage issues
- Land contamination and stability
- Air Quality
- Planning Obligations
- Representations
- Conclusion

10.0 APPRAISAL

Principle of development

- 10.1 The principle of residential development has previously been accepted on this site by virtue of application ref: 2008/90802 which was granted planning permission for demolition of existing dwelling and erection of 4 dwellings and application ref: 2009/92811 which was granted planning permission for erection of four dwellings. None of these permissions were implemented and they have now lapsed. When considering this along with that there has been changes to planning policy particularly the introduction of the NPPF, the principle of development on this site needs to be re-considered.
- 10.2 Section 38 of the Planning and Compulsory Purchase Act 2004, states that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. Consideration will also be necessary to the appropriate weight to be afforded to the development plan following the publication of the National Planning Policy Framework. Paragraphs 208 - 219 of the NPPF sets out how its policies should be implemented and the weight which should be attributed to the UDP policies. Paragraph 215 confirms that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF.

- 10.3 The NPPF provides a presumption in favour of sustainable development and requires housing applications to be considered in this context in order to boost the supply of housing. For decision making it means approving development that accords with the development plan without delay; and where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless: any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the framework taken as a whole; or specific policies in the framework indicate development should be restricted.
- 10.4 Kirklees Council does not have a five year housing land supply. Paragraph 49 of the NPPF states that relevant policies for the supply of housing should not be considered up to date if the local authority cannot demonstrate a five year supply of deliverable sites. As the council does not have a five year housing supply, housing policies within the UDP cannot be considered up to date. This housing shortfall is a material consideration that falls in favour of the development proposed, if it complies with other relevant policies of the UDP, which remains the starting point for decision making and the NPPF of as whole.
- 10.5 The eastern half of the site, which would comprise the hardstanding drive and plots 2, 3 and a section of plot 4, is part of housing allocation H14.22. Residential development on this part of the site would therefore be in accordance with the statutory development plan (UDP) and would be acceptable subject to appropriately addressing other planning matters.
- 10.6 The rest of the site, which would be occupied by plots 1, 5 and the majority of plot 4, is allocated as urban greenspace. Policy D3 of the UDP therefore applies which is consistent with the NPPF and can be afforded weight. It states that:-

On sites designated as urban greenspace planning permission will not be granted unless the development proposed:

- i. is necessary for the continuation or enhancement of established uses or involves change of use to alternative open land uses, or would result in a specific community benefit, and, in all cases, will protect visual amenity, wildlife value and opportunities for sport and recreation; or*
- ii. includes alternative provision of urban greenspace equivalent in both quantitative and qualitative terms to that which would be developed and reasonably accessible to existing users.*

The residential development proposed does not comply with the requirements of criteria i or ii of this policy and therefore represents a departure from the Council's development plan.

- 10.7 In terms of national policy NPPF paragraph 74 advises that existing open space, sports and recreational buildings and land should not be built on unless:

- *“an assessment has been undertaken which has clearly shown the open space to be surplus to requirements; or*
- *the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or*
- *the development is for alternative sports and recreational provision, the needs for which outweigh the loss”.*

The development proposed does not make replacement provision for the loss of the open space and it is not for alternative sport and recreational provision. The application submission also does not include an assessment to consider whether the site is surplus to requirements as open space.

- 10.8 The proposal is thus not considered to be in line with either Policy D3 of the UDP or paragraph 74 of the NPPF. However, consideration has to be given to other circumstances on the site and compliance with the policies of the NPPF as the whole. Currently, the site provides open space with no formal facilities. Its contribution to the wider community is limited to an open garden space and it has no wildlife or ecological value. The retention of the site solely for the purpose of its limited visual amenity value for residents immediately adjacent to the site would represent the inefficient use of land within the urban area and would not comply with the Core Principles of NPPF. Furthermore, urban greenspace also does not form Green Belt or Local Green Space for which the NPPF requires development to be restricted.
- 10.9 The site is also located within a well-established residential area with good access to services and public transport; as a result, it is considered to be in a sustainable location. The scheme would also contribute towards sustainable development although on a very small scale. Economically as the local and wider economy would both directly and indirectly benefit through the creation of jobs, the purchasing of materials and through the sale of the end product. Socially, the scheme would boost the supply of housing in Kirklees which would enhance the quality, vibrancy and health of the local. The loss of open green space may result some environmental impact; however, the development will be constructed to the latest building regulations standards so the end scheme will be energy efficient and environmentally sustainable in this respect. Other measures can be implemented via condition to improve the sustainability of the proposal (ie, requiring installation of electric vehicle charging points).
- 10.10 Furthermore, the loss of this greenspace to residential development has previously been considered to be acceptable and although the emerging Local Plan can only be afforded limited weight at this stage, the site is proposed to be allocated for housing as there is insufficient justification for the allocation of the whole of this site as urban greenspace.

- 10.11 Given the limited community value of the urban greenspace, the benefits to be had from the scheme and the site's planning history, it is considered that exceptional circumstances can be demonstrated that would, on balance, justify the departure from Policy D3 and paragraph 73 of the NPPF.
- 10.12 Officers acknowledge that the development proposed would result in the loss of urban greenspace land; however, the site is of limited community value when considered against its function. A departure from the allocation, to make way for development that would provide housing in a sustainable location, that has previously had approval for residential development and which contributes towards the achievement of sustainable development may be supported. On balance, the scheme comprises of development that is not contrary to the overarching intentions of the NPPF as a whole and the benefits to be had from this proposal is considered to significantly and demonstrably outweigh the harm which would result from the loss of this urban greenspace. Accordingly, subject to appropriately addressing other planning matters, this proposal is acceptable in principle.

Urban Design and heritage matters

- 10.13 Chapter 12 of the NPPF seeks to preserve the setting of listed buildings which echoes the sentiments outlined within section 16 (2) of the Planning (Listed Buildings and Conservation Area) Act 1990, which seeks conservation of historic assets and their setting. St Paul's church located to the north-west of the site is grade II listed. However, as the site would maintain a distance of approximately 58 metres from this listed building and the existing mature protected trees and additional trees proposed along the northern boundary of the site will continue to provide a buffer to the church grounds, it is not considered that the proposal would adversely affect the setting of this listed building.
- 10.14 Chapter 7 of the NPPF requires development to be of good design. Policy BE1 of the UDP requires all development to be of good quality design such that it positively contributes to the built environment. Policy BE2 of the UDP requires new development to be designed so that it is in keeping with the character of the surrounding area; has regard to the topography and landscape of the site, and satisfactory access can be achieved.
- 10.15 The layout of the development proposed comprises two dwellings to the front of the plot and the three dwellings to the rear, with no road frontage. However, similar type of development is evident within the vicinity and this is also true of the existing dwelling on site; therefore, the layout would not compromise the character of the area. Although a better balance could be provided between built area on the plots and a soft landscaping, the reduced size of the dwellings slightly improves this relationship such that, on balance, the proposal would not result in over development of the site. Conditions can be imposed restricting permitted development to ensure that the proposal would not result in overdevelopment of the plot.

- 10.16 The landscaping scheme also retains most mature trees on site allowing them to continue to contribute to the visual amenity of the area and additional tree planting would create a pleasant and attractive environment. Boundary treatment proposed comprising of stone walls and timber fences is also acceptable in the area. Details of the proposed materials for these walls and fenced can be secured via conditions in the interest of visual amenity.
- 10.17 In terms of the design, the dwellings are generally large in scale which is characteristic of the area. They would have comprehensive and balanced appearance to the front and rear elevations, with fenestration aligned and consistent with each other. Architectural detailing on the properties would positively contribute to the aesthetics of the dwellings. The proposed materials are also evident within the vicinity. Given the design of the dwellings proposed and subject to the use of appropriate high quality materials, which can be secured via condition, the properties would positively contribute to the built development within the area.
- 10.18 Given the above considerations, subject to conditions, the proposal is considered to comply with Policies BE1 and BE2 of the UDP and chapter 7 of the NPPF.

Residential Amenity

- 10.19 A core planning principle 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. Policy BE12 sets out the normally recommended minimum distances between habitable and non-habitable room windows of existing and proposed dwellings. Objections have been received stating that the proposal would result in overbearing and overlooking impacts to neighbouring properties. Concerns about noise from the development have also been raised.
- 10.20 Distances in excess of 21.0 metres would be retained to the neighbouring dwellings at no's 6 and 7 The Beeches to the east of the site. The proposal would thus not result in any significant adverse material impacts upon the amenity currently enjoyed by the occupiers of these neighbouring properties.
- 10.21 The dwelling proposed on plot 3 would retain distances of 15.0 metres and 17.0 metres distances to the dwellings at no's 5 and 4 The Beeches respectively, located to the east of the site. These dwelling comprise west facing habitable room windows; however, the dwelling proposed on plot 3 would not have east facing habitable room windows. In this case the distance is required to be 12 metres in accordance with Policy BE12. When considering this along with that the dwelling on plot 3 would be located on significantly lower ground level in comparison to these dwellings, it is not considered that the proposal would result in any significant overbearing, overlooking or loss of sunlight impacts.

- 10.22 No. 678a Bradford Road is located to the south-west of the application site. Given the orientation of the nearest dwelling proposed on plot 5 to this property, along with the 9.0 metre distance it retains to the common boundary, it would not result in any direct overlooking into any habitable room windows or any material overbearing or overshadowing impacts. There will however be some overlooking to the rear garden however, given the distance retained, the impact would be minimal.
- 10.23 No. 680A Bradford Road is located to the west of the application site. Given the orientation of the dwelling proposed on plot 5 with no west facing principle habitable room windows, and the distance of approximately 9.0 metres to be retained between the properties at the least, the proposal would not result in any significant adverse material impact upon the amenities currently enjoyed by the occupiers of this property. The side panels of the bay window to the rear of the dwelling on plot 5 however, could be obscured glazed (secured via condition) to ensure that there will be no overlooking to this dwelling and that at no. 678a Bradford Road.
- 10.24 Due to the orientation of the dwellings on 682a and 684 to the dwellings on plots 1 and 5 which comprise no primary west facing habitable room windows along with the distance retained between the properties, the proposal would not result in any adverse material impacts upon the amenities currently enjoyed by the occupiers of these dwellings.
- 10.25 Given the increase in the amount of dwellings on this site, it is anticipated that there would be a rise in noise levels from vehicles entering and leaving the site. However, as the proposal only comprises 5 dwellings and the proposed use of the site is residential, it is not considered that the noise levels to be generated from the vehicles utilising this access would be significant to harm the living conditions for the occupiers of the neighbouring properties.
- 10.26 As for noise that could be generated during the construction phase if this application is approved a note advising on how to minimise noise disturbance during construction can be relayed onto the applicant via the decision notice.
- 10.27 The dwellings provide a good amount of floor space to offer a good standard of amenity to the future occupants. The provision of amenity space could have been larger given the size of the dwellings; however, it is a reasonable size. Conditions can be imposed restricting PD rights to ensure that the level of amenity provision is maintained.
- 10.28 Given the above considerations, subject to conditions, this proposal would comply with Policy BE12 and EP4 of the UDP and paragraph 17 of the NPPF.

Highway issues

- 10.29 Policy T10 of the UDP states that new development should not be normally permitted if it will create or add significantly to safety or environmental problems on the existing highway network, or, it if does not make provision for appropriately designed new highways within the development. Policy T19

require the provision of off-street parking on new developments to be in accordance with the standards sets out in appendix 2 of the UDP. Objections have been received stating that the proposed hardstanding drive is inadequate and Prospect Road is oversubscribed and inadequate such that this proposal would give rise to additional highway safety issues on this road.

- 10.30 The proposed access to the development is via the existing hardstanding drive which would be improved by the addition of two passing places. Internal turning would just be wide enough to accommodate refuse and emergency vehicles and bin storage locations are in accessible areas. The proposed parking areas are also adequate for the sizes of the dwellings proposed, in line with highways parking standards. K.C. Highways Development Management consider the scheme (access, turning and parking arrangements) to be acceptable on balance, subject to conditions which are in the interest of highway safety and can be imposed if this application is approved.
- 10.31 With regards to Prospect Lane, K.C. Highways Development Management anticipate that a development of this size would only generate additional 3, two way vehicle movements in the AM and PM peak. Whilst there is a section of Prospect Lane which is considered insufficient in width to allow two vehicles to pass, forward visibility is good and given the relatively low level of additional vehicle movements this development is anticipated to generate, it is not considered that this will result in a significant impact upon the safe operation of the highway.
- 10.32 Subject to conditions, the proposal would comply with Policy T10 and T19 of the UDP.

Ecological issues

- 10.33 UDP Policy EP11 requires that applications for planning permission should incorporate landscaping which protects/enhances the ecology of the site. Paragraph 109 of the NPPF requires the planning system to contribute to and enhance the natural and local environment by among other things, “minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government’s commitment to halt the overall decline in biodiversity...” Objections have been raised stating that the proposal would affect bats.
- 10.34 The site currently comprises a single detached bungalow and an outbuilding surrounded by over grown trees and shrubs although these are not of any ecological value. There are also some mature protected trees along the periphery of the northern boundary and close to the southern boundary. The site is also within a bat alert area. K.C. Ecology officer concludes that there are no statutory constraints to the development and bats are unlikely to be using the existing building for roosting, although the building is surrounded by good foraging habitat. However, a series of biodiversity mitigation and enhancement measures have been recommended which have been incorporated into the submitted landscaping plans. Other measures will be

secured via condition if this application is approved for the proposal to comply with Policy EP11 of the UDP and Chapter 11 of the NPPF.

Tree issues

- 10.35 Policy NE9 requires new development to retain any mature trees within the application site and to ensure their continued viability. Objections have been received stating that the proposal would damage the mature tree around the site.
- 10.36 The proposal would result in the removal of 3 protected trees along the northern boundary; however, the Tree Officer agrees that the trees are damaged thus has no objections to this. Furthermore, replacement trees will be planted and the healthy trees will be retained. A Tree Protection Plan, Trees Constrains Plan, Treeguard Root Protection Plan, Treeguard Method Statement, Arboricultural Method Statement and a Pre-Development Arboricultural Impact Assessment have been submitted with the application. These illustrate that the proposed works would not affect the trees to be retained on site and detail how the trees will be protected prior and during the construction of the development. The Trees officer concludes that subject to conditions requiring the development to be carried out in accordance with the submitted details the proposal would not affect the viability of health protected trees on site. The proposal is thus considered to comply with Policy NE9 of the UDP.

Drainage issues

- 10.37 Paragraph 103 (chapter 10) of the NPPF requires the Local Planning Authority to give priority to the use of sustainable drainage systems. Objections had been raised that no drainage details had been provided. However, additional plans were received demonstrating separate systems of drainage on site. Surface water is proposed to be discharged to the private surface water drain into the Beeches (at a restricted rate of 3.5 litres/second). Discharge of foul and surface water is proposed to the respective private drains and ultimately into the network in The Beeches. The applicant has also provided evidence illustrating that other sustainable methods of drainage were unsuitable on site.
- 10.38 Yorkshire Water and K.C. Flood Management and Drainage have raised no objections to the drainage system proposed. The proposal thus complies with paragraph 103 of the NPPF.

Land contamination and Stability

- 10.39 Policy G6 of the UDP requires development to be considered having regard to available information on the contamination or instability of the land concerned. Paragraph 109 (chapter 11) of the NPPF requires the planning system to contribute to and enhance the natural and local environment by among other things preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by

unacceptable levels of soil, air, water or noise pollution or land instability; and remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

Land contamination

- 10.40 In this case the site has previously been in use as garden. K.C. Environmental Services therefore recommend a condition that details how to deal with unexpected contamination encountered on site during development. Given the unclear nature of potential contamination on site this condition can be imposed if planning permission is granted for the proposal to comply with Policy G6 of the UDP and the paragraph 109 of the NPPF.

Coal Legacy

- 10.41 The application site falls within the defined Development High Risk Area; therefore within the application site and surrounding area there are coal mining features and hazards which need to be considered in relation to the determination of this planning application. The Desk Study Report submitted with the application identified a possibility of unrecorded shallow coal workings beneath the site and recommended that mining legacy be investigated further through the undertaking of a borehole investigation.
- 10.42 A borehole investigation was subsequently carried out and that the results of this investigation concludes that due to the depth of these workings and the amount of competent rock cover, there is minimal risk of void migration from the workings reaching the surface. As such, the site is stable with regard to coal mining and no remedial or mitigatory measures are proposed.
- 10.43 The Coal Authority concurs with the conclusion of the reports thus raise no objections to the scheme but recommend that should planning permission be granted, an informative note on development in areas identified as containing potential hazards arising from former coal mining activity should be included on the decision notice. The note can be relayed on to the applicant if this application is approved for the proposal to comply with Policy G6 of the UDO and the NPPF.

Air Quality

- 10.44 Along with reduction of air pollution, the NPPF also encourages the promotion of sustainable transport. The West Yorkshire Low Emission Strategy Planning Guidance has been drafted to take a holistic approach to Air Quality and Planning. In this particular instance taking into account the NPPF and the WYESPG it is considered that promoting green sustainable transport could be achieved on this site by the provision of an electric vehicle charging point. This in turn can impact on air quality in the longer term. A condition can be imposed to secure the charging point for the proposal to comply with the NPPF.

Planning obligations

- 10.45 Policy H18 requires proposals for housing development on sites of more than 0.4 hectares to include measures within the site for the provision of public open space at a minimum rate of 30sq.m. per dwelling. Off-site provision to the same minimum standard or improvements to established public open space will be acceptable as an alternative where there is land with potential as public open space or established public open space readily accessible to the site.
- 10.46 The application site is approximately 0.4 hectares and therefore triggers the requirement for provision of open space. However, it falls within the area of the existing equipped play facility at Birkenshaw Park therefore it would not require its own on site equipped provision. A contribution in the order of £13,800 to improve existing off-site POS located to the north would be required for a scheme of this nature and scale. The size of the additional units proposed would appeal to families and given the proximity of the application site to the open space, it is considered that the future occupiers would use the facility, increasing wear and tear and requiring maintenance.
- 10.47 UDP Policies H10 and H12 set out that the provision of affordable housing is a material consideration. Current Council guidelines specify that the Council aspires to secure 15% of the development floor-space for affordable housing on brownfield sites, and 30% of the development floor-space for affordable housing on greenfield sites. An interim affordable housing policy has however recently been adopted by the Council reflecting the Draft Publication Local Plan Affordable Housing policies. The interim policy is based on the affordable housing policy in the emerging draft local plan and is therefore underpinned by up-to-date evidence of the viability of schemes within the District can likely afford where at least 20% of total dwellings on sites are allocated for affordable housing, with a split of 55-45% social rented to sub market tenure. This informal policy forms guidance to be read in conjunction with SPD2 and is a material consideration when determining planning applications.
- 10.48 It is considered that the Council has demonstrated that the contributions required are for a planning purpose, and are directly related to the development and fairly and reasonably relates in scale and kind to the proposal and the contributions are justified in this instance.
- 10.49 A financial viability report has been submitted and assessed by an independent assessor. Satisfactory information has been provided to demonstrate that the development would not be viable if contributions are sought. Paragraph 173 of the NPPF states that pursuing sustainable development requires careful attention to viability and costs in plan-making and decision-taking. To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable. When considering this, along with the benefits

of the scheme, the proposal is considered to be acceptable without contributions.

Representations

- 10.51 Matters raised in representations relating to the proposed access, impact on neighbour amenity, drainage, biodiversity and impact on trees have been considered within this report, other matters are addressed below.

Southern boundary ownership issue

- 10.52 Response: The applicant has submitted land registry details demonstrating that the southern boundary comprises land within his ownership.

Maintenance of the woodland (protected trees) and drive

- 10.53 Response: This is a private matter not material to the determination of this application.

Previous refusals for 5 dwellings on site

- 10.54 Response: All applications for 5 dwellings on this site were withdrawn for reasons stated in section 4.0 of this report. Notwithstanding this each application has to be considered against its own merits.

Drainage route

- 10.55 Response: Amended plans have been submitted illustrating that the development would no longer drain to the main sewer thus access over the objector's would not be required for drainage purposes. In any case, it is the applicant's responsibility to ensure that they can implement the development proposed.

Overlooking from vehicles on the access road

- 10.56 Response: There is a close-boarded timber fence screening views from the access to the side elevation of this property. From the rear, the access road within the site would be set on lower ground level in comparison to this property. The front of the property is already in public view. It is therefore not considered that the proposal would give rise to material overlooking from this respect.

Rights of way over access and responsibility for maintenance

- 10.57 Response: Applicant has stated they have right of access over the land adjacent to number 7. It belongs to the residents of the Beeches, who all have been served notice. The applicant signed certificate B.

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. A section of the site is allocated for housing and the majority of the site is allocated as green space. Having assessed the application against the relevant policies in the development plan and other material considerations,

the benefits to be had from the scheme and its compliance with the NPPF as a whole outweighs the departure from its greenspace allocation within the development plan. The proposal comprises sustainable development that's would not adversely affect the character and appearance of the area, residential amenity and highway safety and appropriately addresses other planning matters.

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

1. Time frame for implementation.
2. Standard plans condition.
3. Submission of materials.
4. Contamination conditions.
5. Proposal to be in accordance with Arboricultural Impact Assessment and Method Statement submitted with the application.
6. Requirement for evidence of arboricultural supervision as stated in the Arboricultural Method Statement.
7. Secure biodiversity enhancement measures.
8. Boundary fence and walling materials.
9. Adequate surfacing and drainage of vehicle parking areas and access
10. Provision of turning facilities as per the plan.
11. Provision of bin storage area prior to first use of development.
12. Provision of electric vehicle charging point.
13. Restricting permitted development rights – extensions.
14. Restriction of additional windows.
15. Obscure glazing required for side facing window.

NOTE: Noise

NOTE: Vegetation clearance

NOTE: Carrying out of works within the highway

Background Papers:

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2015%2f93238>

Certificate of Ownership – Notice served on the occupiers of no's 1-7 The Beeches,
Prospect Lane