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**Report of the Head of Development Management****STRATEGIC PLANNING COMMITTEE****Date: 05-Jan-2017****Subject: Planning Application 2016/93230 Outline application for demolition of existing buildings and erection of residential developments Fenay Bridge Nursery, Fenay Lane, Fenay Bridge, Huddersfield, HD8 0AR****APPLICANT**

A Shepherd

**DATE VALID**

06-Oct-2016

**TARGET DATE**

05-Jan-2017

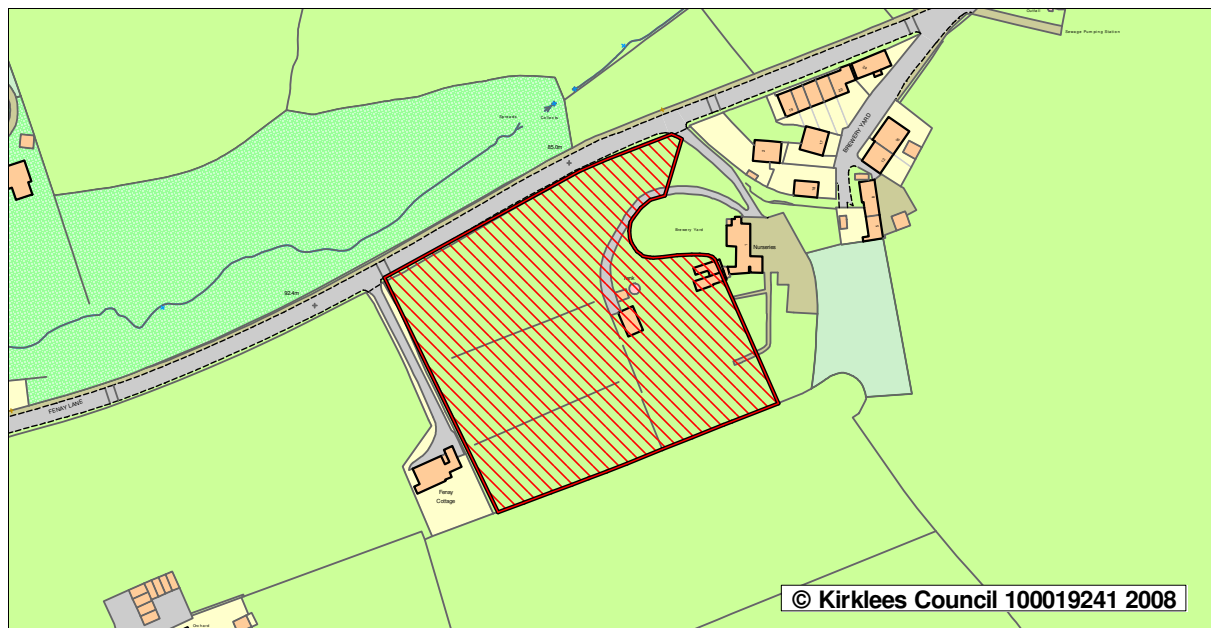
**EXTENSION EXPIRY DATE**

06-Jan-2017

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

**LOCATION PLAN**

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

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**Electoral Wards Affected: Almondbury**

Yes

Ward Members consulted  
(referred to in report)

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**RECOMMENDATION: Refuse outline planning permission**

**1. The majority of the area of the site proposed for residential development is considered to be greenfield land and the construction of residential development would result in a form of inappropriate development. The redevelopment of the remaining part of the site which is brownfield would result in a form of development which would have a greater impact on the openness of the Green Belt and to the purposes of including land with it and to the character of the local landscape. The applicant has not demonstrated that there are very special circumstances that would outweigh the harm identified, as such the development would be contrary to Section 9 of the National Planning Policy Framework.**

**1.0 INTRODUCTION:**

- 1.1 The application is brought to the Strategic Planning Committee in accordance with the Councils agreed scheme of delegated authority as the site exceeds 0.5 hectare and the development proposed is a departure from the Councils Unitary Development Plan

**2.0 SITE AND SURROUNDINGS:**

- 2.1 The application relates to a site area of approx. 1.25ha. The site is accessed via a steep drive off Fenay Lane in the north east part of the site serving a small parking area. Over two thirds of the site is occupied as a plant nursery and accommodates a number of poly-tunnels in a dilapidated state, open growing beds and two permanent buildings at the eastern end of the site. The remainder of the site accommodates level concreted areas. East of the site is land in the ownership of the applicant consisting of a grade II listed residential property. There are open fields to the south and west with a small cluster of residential properties beyond the south west corner of the application site. The northern boundary of the application site, along Fenay Lane consists of a steep landscaped banking.

### **3.0 PROPOSAL:**

- 3.1 The application is submitted in outline for demolition of existing buildings and the principle of residential development with all matters reserved. The information submitted includes an indicative layout for five dwellings and new point of access and drive on the same alignment as that approved on the garden centre application in December 2015. The information submitted states the dwellings will have a cumulative internal floor area (including garaging) of no more than 970 sqm, of two storey high. The indicative layout presents the dwellings to be arranged and served off a round vehicle access road with rear gardens extending to the south and west site boundaries. A planted landscaped area is proposed along the eastern boundary.

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

- 4.1 An extant permission exists on this site for the change of use from plant nursery with retail sales to garden centre and formation of new access. This was granted by Strategic Committee on December 2015 under application no. 2014/93595, in accordance with officer's recommendation. Condition no. 5 of this permission restricted the retail sales areas to a cumulative internal floor area of no more than 970 sq. metres.

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

- 5.1 A supplemental statement was received on 16<sup>th</sup> November 2016 and a further second supplemental statement received on 14<sup>th</sup> December. The content of these are referred to in the assessment below.

### **6.0 PLANNING POLICY:**

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007).
- 6.2 The Council's Local Plan was 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.

6.3 The site is in an area washed over by green belt on the UDP Proposals Map and in part brownfield where the existing permanent buildings and area of hardstanding exists, with the remainder of the site being predominantly greenfield. It is noted the site forms part of a larger site which was put forward for consideration as a housing site on the Draft Local Plan, but rejected.

6.4 Kirklees Unitary Development Plan (UDP) Saved Policies 2007:  
T10 – Highway safety  
T19 – Parking standards  
D2 – efficient operation of existing and planned infrastructure

6.5 Supplementary Planning Guidance / Documents:

National Planning Guidance:  
Protecting Green Belt land (Section 9)  
Conserving and enhancing the natural environment (Section 11)  
Conserving and enhancing the historic environment (Section 12)

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

7.1 The Council has advertised the application by site notices and through neighbour letters. This is in line with the Councils adopted Development Management Charter. The publicity period expired on 29<sup>th</sup> November 2016. As a result of the above publicity, no representations from local residents are received. However concerns/objections are received from Ward Cllr Judith Hughes who states that “I object to this planning application as there are no special circumstances for this development within the green belt. This application emphasises why it is important to have a local plan in place.”

7.2 In addition, a site visit has been requested by Ward Cllr Bernard McGuin, who states that Councillors will get a better appreciation of the area.

7.3 The application site lies within approximately 229 metres from the boundary of Kirkburton Parish Council, to the south east. Given the close proximity to its boundary Kirkburton Parish Council objects on the grounds of “poor access to the site” and states “it is a narrow steep drive giving poor sightlines when exiting the site”

## **8.0 CONSULTATION RESPONSES:**

### **8.1 Statutory:**

K.C. Highways Development Management – support indicative details showing a new access, subject to conditions

### **8.2 Non Statutory:**

K.C. Environmental Services – no objections

K.C Flood Management & Drainage – support as no apparent surface water flood risk identified. A drainage assessment giving reference to the West Yorkshire Combined Authority SUDS guide for outline applications would need to be considered.

K.C Policy – Bullet point 6 of NPPF paragraph 89 states that the partial or complete redevelopment of brownfield land need not constitute inappropriate development in the green belt, provided that there is no greater impact on openness than the existing use. The majority of this site is not considered to be brownfield and so redevelopment would constitute inappropriate development. Inappropriate development is, by definition, harmful to the green belt and should not be approved unless very special circumstances exist that would outweigh the harm to the green belt that would be caused by the development.

The application site is part of Publication Draft Local Plan rejected housing option H227 which is stated to be brownfield in the Publication Draft Local Plan Rejected Site Options Report dated November 2016. The Council acknowledges that this is an error and that the site should have been described as 'predominantly greenfield' (PG). Now that this error has been brought to the Council's attention it will be rectified in due course prior to the submission of the Local Plan to the Planning Inspector.

K.C Landscape – No comments received

## **9.0 MAIN ISSUES**

- **Principle of the development**
- **Green Belt considerations**
- **Residential amenity considerations**
- **Highways assessment**
- **Setting of listed building**
- **Drainage**
- **Representations**

## **10.0 APPRAISAL**

### **10.1 Principle of development**

10.2 The application site lies in an area washed over by Green Belt and a small area of it represents a brownfield site, currently used as a plant nursery with retail sales, being operated by one full time and one part time member of staff. The starting point for assessment is the National Planning Policy Framework (NPPF) in particular Section 9 'Protecting Green Belt Land'.

10.3 Paragraph 87 states that *"as with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances"*.

- 10.4 the NPPF also advises that Local Planning Authorities should ensure that substantial weight is given to any harm to the Green Belt, 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
- 10.5 As part of the site is brownfield, Paragraph 89 of the NPPF is also relevant which states that "*a Local Planning Authority should regard the construction of new buildings as inappropriate in Green Belt. One of the exceptions to this includes,*
- *limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development*".
- 10.6 The proposals will be considered in light of the requirements set out above to consider whether there are any considerations that would outweigh the harm to the Green Belt in order to decide whether very special circumstances exist. In addition all other material planning considerations need to be assessed such as the impact of the development on highway safety, amenity and all other material planning considerations.
- 10.7 Turning to the loss of employment land, Policy B4 of the UDP is also a consideration. Proposals which involve the development of sites with established use, or last used for business and industry will have regard to amongst other things, the suitability of the land and premises for continued business and industrial use, number of jobs likely to be created or maintained the compatibility of the proposed use with the surroundings uses, the effect on the local amenity and highway network.
- 10.8 Officers are of the opinion, that with regard to the number of jobs to be maintained (equivalent to 1.5 posts), the benefits of providing additional housing and the creation of further jobs through the construction phase could be considered to be more beneficial in terms of sustainable development and economically would outweigh the loss of the existing jobs should the principle of developing this site be supported. With regard to the suitability of the land and premises for continued business and industrial use, the recent grant of planning permission for a garden centre demonstrates that the continued business use of the site is compatible with the surrounding uses.
- 10.9 **Green Belt considerations:**
- 10.10 The applicant has based his case on considering the whole of the site being brownfield and states that the proposals would have a net gain in the openness of the green belt in comparison to the existing development on this site and that of the extant permission. Whilst Officers strongly contend that the whole of the site is not brownfield, the proposals are considered where applicable against paragraph 89 of the NNPF, which allows the redevelopment of previously developed land, provided the proposals would

not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.

- 10.11 Approximately one third of the site is brownfield. This is mainly concentrated in the north east part of the site, consisting of two permanent buildings (with a floor area of approximately 217sqm) and a small area of hard standing served of the existing access from Fenay Lane. The remaining two thirds of the site is greenfield comprising of a number of open growing beds and poly-tunnels (most of which are without sheeting). The site has a long established use as a plant nursery with fairly low key structures.
- 10.12 It is against this context that any other harm to the Green Belt arising as a result of the development proposed will need to be considered.
- 10.13 The indicative plan shows a new vehicular access from Fenay Lane and internal access road, in the north-west part of the site, to serve the proposed five dwellings. Other than the end plot, shown in the north east part of the site, which would be on brownfield part of the site, the remainder of the development would largely be on the greenfield part of the site.
- 10.14 The supporting information states the existing structures on site comprise a total of 2230 sqm. The indicative layout is shown to have a cumulative footprint of 970sqm. The agent considers the residential layout will improve the openness of the green belt as it reduces the amount of built development on the site. This the agent goes on to state this will be same in area as the retail floor space restricted under conditions of the permission relating to the garden centre. In addition, it is stated the new access will have limited impact on the openness and any impact from the new vehicular access would in any case be off-set by the closure of the existing access together with the surface turning parking and other hard areas within the site. The applicant also states that granting of this application would provide a small contribution to the housing supply at a time when the Council is unable to show a 5 year supply of deliverable housing sites.
- 10.15 To support the proposed alternative use of the site a letter from Hanson Chartered Surveyors has been submitted. They were instructed by the applicant to advise on the issues relating to the existing use as a nursery with the benefit of planning permission as a garden centre within the current market trend. The letter goes onto say:

“Following what is generally regarded as a recovery after the last eight years of recession, the market has seen a genuine improvement in demand for many types of commercial property. Confidence in the business sector has generally improved consistent with the recovery but just as the recovery is subject to an element of doubt, particularly with the Brexit vote, there are signs that business confidence is currently in the wane. (PMI Index as at 22 July 2016 showing the severest fall in confidence since 2008).

The information suggests that home grown market and consumed produce is not affected directly by matters of Brexit but like all businesses, consumer confidence and a desire or willingness to spend at the retail level is paramount to a garden centre success”.

- 10.17 The author of the letter comments, despite the growth in the DIY market, the garden centre and nursery market has seen a degree of consolidation with larger companies “cherry picking” better locations and investing in the larger sites and closing the older less well located sites. The letter gives a number of examples where recent acquisition of garden centres have been taken over by larger companies and goes on to list a number of garden centres, which the author of the letter states, due to market pressures has forced them to close, which in the authors opinion gives clear evidence that the location and local support for garden centres together with their size are critical to their success. Reference is also made by the author to the closure of Kirklees Bradley nursery on Leeds Road, which the author states the Council found the economics of nurseries difficult to justify.
- 10.18 The letter concludes that with the change in the mood in the market, the experience of closures, this properties size, location, condition and need for heavy re- investment, that even offered in the open market a buyer could not be found. The applicants Surveyor recommends an alternative use for the site for residential with low density be sought.
- 10.19 Officers agree that location is important to the success of a garden centres/ businesses. However, in light of the application site and information submitted, this confirms the site in its current state or indeed with the recent planning permission has not been advertised/ offered for sale on the open market since planning permission was granted. The lack of likely uptake of implementing the recent planning permission as discussed in the applicants supporting statement from the Surveyor suggests that the fall back position of constructing the approved planning permission is unlikely to exist.
- 10.20 The indicative details refer to 2 storey dwellings being created on site. This would impact on openness significantly, particularly when compared to the size, scale and area of previously developed land. The indicative plan also shows large gardens which use the majority of the application site and a new vehicular access from Fenay Lane. This domestication of the Green Belt on Greenfield land would not only be inappropriate by definition but also have a greater impact on the openness of the green belt and the purpose of including land within it than the existing development, which is primarily an open land use. The proposals as such are contrary to paragraphs 87 and 89 of the NPPF. Furthermore, Officers consider that the harm to the openness of the Green Belt would also result in encroachment of development in the countryside.
- 10.21 Turning to the purpose of including land within the green belt, Paragraph 79 of the NPPF stipulates that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential



characteristics of Green Belts being their openness and permanence.

10.22 Paragraph 80 sets out the five purposes of Green Belt:

- To check the unrestricted sprawl of large built up areas
- To prevent neighbouring towns merging into one another
- To assist in safeguarding the countryside from encroachment
- To preserve the setting and special character of historic towns; and
- To assist in urban regeneration by encouraging the recycling of derelict and other urban land

10.23 The site lies in an area washed over by green belt and is detached from any settlement. The application site forms part of a larger site which was recently put forward for consideration as a housing site on the Draft Local Plan, but rejected as it would have created a small pocket of non-green belt land surrounded by green belt which is contrary to the purposes of including land in the green belt. Due to the Draft Publication Local Plan not being sufficiently advanced only limited weight is afforded to this consideration.

10.24 To summarise, in light of the above recognised harm that would be generated from the proposed development, officers are of the opinion the information submitted with the application does not constitute very special circumstances that outweigh the harm to the Green Belt by reason of inappropriateness, greater impact on the openness of the green belt than the existing development and other harm, encroachment into the countryside, which fails with one of the above fundamental purposes of the green belt (the third point of paragraph 80), contrary to Section 9 of the NPPF.

10.25 A further supplemental statement was submitted by the agent, during the course of the application, which specifies the proposals would not affect the setting of the nearby listed building and drawing Officers attention to case law, quoting the Court of Appeal ruling in *Turner v. Secretary of State for Communities and Local Government* and *East Dorset Council*, which the agent states, recognised that visual impact is an implicit element in assessing the overall effect of development on green belt openness. Officers, do not dispute this, however, each application is considered on its own merits taking into account all material considerations relevant at the time. In this case for the above reason set out above and as there has clearly been no attempt to market the site, officers are of the opinion that the case put forward by the agent is not accepted as very special circumstances.

10.26 A second supplemental statement was received on 14 December, which makes particular reference and includes copies of recent appeal decisions. The agent states “the evidence clearly puts a very different slant on the assessment of the impact on the openness in the context of green belt development”. Without knowing the full background and details of the appeal sites a comparison cannot be made. Furthermore, as stated above each application is considered on its own merits.

10.27 Two photographs are provided with the second supplemental statement. These show the extent of the two permanent buildings/poly tunnels and growing beds on the site, pre-dating the current condition of the site. The agent makes reference to the visual impact of these structures and states “this must of course be carefully weighed against the application proposals and in particular the efforts taken in preparing the illustrative layout to minimise visual impact”. The additional information does not introduce anything new and the assessment above is made taking into account the visual impact of the existing development, in comparison to the resultant visual impact of the proposed development on the openness of the green belt.

**10.28 Residential amenity considerations:**

10.29 The site is separated from residential properties to the south west and north east. The provision of formal garden areas along the south and west boundaries of the application site would have no detrimental impact on the nearest property, beyond the south west corner of the site, which would be separated by the existing dense landscaping along the western boundary.

**10.30 Highway considerations:**

10.31 Policy T10 of the UDP states that new development should not materially add to any highway safety implications.

10.32 Fenay Lane (C997) is an adopted highway connecting Penistone Road to Birks Lane and is subject to 30-mph speed limit. This is an outline application with all matters reserved, as such no details are submitted. However, in relation to access arrangements, the applicant states that the new private drive/access into the site from Fenay Lane would be on the same alignment as that approved under the garden centre application and the existing steep drive would be closed off. DM Highway Officers on assessment of the proposals advice is, the illustrative sketch shows a new vehicle access in similar position to that proposed by the 2014/93595 application for the garden centre, directly onto Fenay Lane. The illustrative sketch also demonstrates that each of the proposed dwellings will have sufficient off-street parking together with internal service vehicle turning for the proposed number of dwellings. On this basis, the principle of a new vehicular access into the site, could be supported from a highways point of view.

**10.33 Setting of listed building:**

10.34 In respect of the adjacent listed building, north east of the site, given the considerable difference in land levels and topography of land between the application site and this listed building together with existing landscaping, the proposals are considered would not be in close proximity to cause harm to the setting of this listed building.

**10.35 Drainage issues:**

- 10.36 With regards to Drainage issues, the Strategic Drainage Officer provides the following advice:

Whilst there is no objection in principle, an examination of any additional hardstanding surface is required in respect of drainage and quality of any discharge to determine whether attenuation is required and the use of an oil/petrol interceptor. Should Members approve the application, evidence of the existing and proposed surface water drainage arrangements would need to be submitted and approved by condition.

Subject to the imposition of appropriate drainage conditions, it is considered the site can be adequately developed in accordance with advice in the NPPF.

## 11.0 **Representations**

- 11.1 Response to the issues not covered above:

The proposals would introduce a new improved vehicular access similar to that previously approved under application no. 2014/93595 for the garden centre, directly onto Fenay Lane.

## 12.0 **CONCLUSION:**

- 12.1 In conclusion the proposed development is considered to represent inappropriate development in the Green Belt which would be harmful to the openness and character of the Green Belt.
- 12.2 The proposal would result in the redevelopment of a site predominantly greenfield and in part brownfield, in doing so, the proposals would have a greater impact (harm) on the openness of the Green Belt than the existing development and would also be contrary to one of the five purposes the Green Belt serves by failing to safeguarding the countryside from encroachment.
- 12.3 The justification submitted by the Agent has been assessed. However, this is not considered to demonstrate very special circumstances that clearly outweigh the harm to the Green Belt by reason of inappropriateness and other identified harm mentioned above.
- 12.4 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.
- 12.5 This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that (delete as appropriate) the development proposals do not accord with the development plan and/or the adverse impacts of granting permission would significantly and demonstrably outweigh any benefits of the development when assessed against policies in the NPPF and other material consideration.

**Background Papers:**

Application and history files – as stated above

Website link to be inserted here

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2016%2f93230>

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