
Report of the Head of Strategic Investment**HEAVY WOOLLEN PLANNING SUB-COMMITTEE****Date: 28-Sep-2017****Subject: Planning Application 2014/91242 Reserved matters application for erection of 47 dwellings Land off, Ashbourne Drive, Cleckheaton, BD19 5HZ****APPLICANT**L Ramsden, Redrow
Homes Ltd, c/o agent**DATE VALID**

15-Sep-2014

TARGET DATE

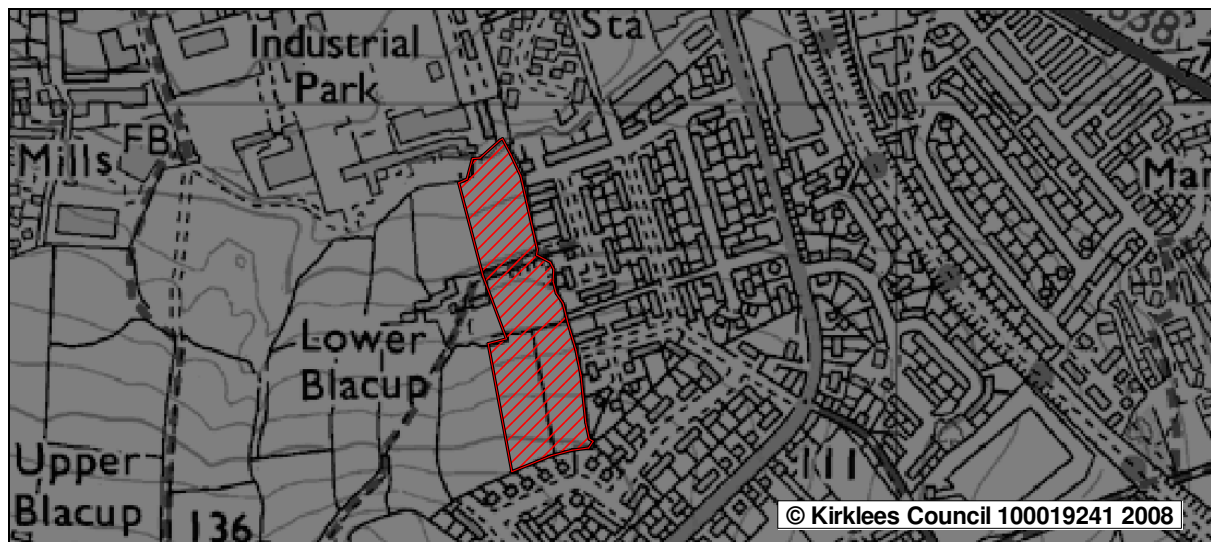
15-Dec-2014

EXTENSION EXPIRY DATE

13-Apr-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

Electoral Wards Affected: Cleckheaton

Yes

Ward Members consulted
(referred to in report)

RECOMMENDATION:

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

1.0 INTRODUCTION:

- 1.1 The application was referred to the Heavy Woollen Planning Sub-Committee on 29 June 2017 at the request of Cllr Kath Pinnock on the grounds of the strength of the comments made by statutory consultees and continuing concern from local residents and herself. This is in accordance with the Council's Scheme of Delegation.

The Chair of the Sub-Committee confirmed that Councillor Kath Pinnock's reason for making this request is valid having regard to the Councillor's Protocol for Planning Sub Committees.

- 1.2 The Planning Sub-Committee deferred a decision for the applicant to address their concerns regarding:
- The crossing of the farm track / public footpath to Lower Blacup Farm by the proposed estate road which was seen as harmful to road safety .
 - The extent of retaining walls and clarification of their facing material in order to protect visual amenity.
 - An individual Member also asked that the development be faced in brick to match the adjoining residential properties rather than artificial stone in the interests of visual amenity.

As requested by Officers Members also required the applicant to address the comments of the Highway Officer regarding parking availability and private garage sizes, road gradients, bin storage and collection positions and the provision of an additional footway to the northern cul de sac.

The application is brought back to the Sub-Committee following discussion with the applicant.

- 1.3 The principle of housing development has been established following the grant of outline planning permission at appeal on 18 December 2013. This decision reserved all matters for future approval except partial means of access to, but not within, the site. An indicative layout plan at outline stage showed two access points from Ashbourne Drive and Ashbourne View. The

outline approval included a signed Agreement under section 106 of the Act which makes provision for a financial contribution towards education and affordable housing and provides for traffic calming measures. The proposal would not have a detrimental impact on highway safety, residential and visual amenity, drainage or landscape. A separate application to reduce the provision for affordable housing is to be determined by Officers.

2.0 SITE AND SURROUNDINGS:

- 2.1 The application site comprises an area of approximately 2.4 hectares currently used as grazing land sloping steeply down from south to north. It is crossed east-west by the track to Lower Blacup Farm which serves as a public footpath.
- 2.2 The western boundary of the site abuts residential properties off Ashbourne Drive, Ashbourne Way, Ashbourne View and Ashbourne Croft. These dwellings are 2-storey detached and semi-detached properties. Its southern boundary abuts dwellings on Penn Drive which are semi-detached bungalows. The northern boundary is to Blacup Beck with industrial premises off Quarry Road and Iron Street beyond. The western boundary is to open fields which are part of a significant area extending to Hightown Heights and Hartshead Moor Side.
- 2.3 The site is in the vicinity of Lower Blacup Farm to the west which is a grade II listed building. The site is not in a conservation area and there are no protected trees within or adjacent to the site.

3.0 PROPOSAL:

- 3.1 The application seeks the approval of reserved matters comprising layout (including access within the site), appearance, landscaping and scale.
- 3.2 The layout would comprise 46 dwellings in two separate groups of 23 each accessed off Ashbourne View and Ashbourne Drive. The northern section off Ashbourne Drive includes an area of public open space adjacent to no 52 Ashbourne Drive between the proposed access road and Blacup Beck. This area would accommodate a surface water attenuation tank. An additional area of public open space would be provided to the west adjacent to Lower Blacup Farm.
- 3.3 Both the southern and northern sections would have access to a central area of public open space adjacent to no 12 Ashbourne View which includes a formal play area.
- 3.4 The existing access to Lower Blacup Farm and footpath route would be retained and crosses the access road for the northernmost group. The majority of the dwellings would be stepped against the contours of the site and would be mostly two-storey detached with four terraced dwellings. The dwellings would be faced in artificial stone with sporadically located rendered properties. All would have concrete roof tiles.

- 3.5 The layout would incorporate three areas of public open space to the north of the access from Ashbourne View, in a central position along part of the western boundary and between the access from Ashbourne Drive and the northern boundary of the site.

4.0 RELEVANT PLANNING HISTORY:

- 4.1 2012/93062 – Outline application for residential development (54 dwellings) with all matters reserved except access – Refused by Heavy Woollen Planning Sub-Committee on 11 April 2013 on the following grounds:

1) The application site is designated as provisional open land in the UDP. The proposed development would be contrary to UDP policy D5 which safeguards such land in accordance with NPPF paragraph 85, under which planning permission for permanent development should only be granted following a local plan review which proposes the development. The review of the local plan, starting with the preparation and adoption of the LDF core strategy, is in progress but has yet to be completed.

2) The granting of planning permission for the proposed development would be contrary to NPPF paragraph 17.1 (that planning should be genuinely plan-led) because it would pre-empt the opportunity for local people to shape their surroundings through the LDF process. Such a process will enable the residents of Kirklees to influence the choice of which POL sites should be allocated for development and which should continue to be safeguarded, in the context provided by the adopted core strategy.

3) The proposed development is indicated to be built immediately adjacent to the curtilage of the Grade II listed Lower Blacup farm. This close proximity would remove the natural buffer currently benefiting the eastern boundary of the listed property, resulting in it being visually concealed and partially encased (in particular the principal elevation of the Grade II listed property), and also compromising the agricultural setting of this historic farm complex. The proposals are judged to cause substantial harm to the setting of this designated heritage asset and it has not been demonstrated that this harm is necessary to achieve substantial public benefits that outweigh that harm. The proposals are therefore considered contrary to the national planning policy guidance in Paragraphs 132 & 133 of the National Planning Policy Framework.

4) The proposed development would be located adjacent to a working farm where potential noise, odour and other environmental nuisances could arise from the presence of livestock and farm operations. Insufficient information has been submitted to demonstrate that nearby prospective residential occupiers would not be put at unacceptable risks from these potential sources of nuisance. Additional indirect effects (should the Council require the mitigation of any identified environmental nuisances) could also result in detrimental impact on the operational viability of the existing farm. As such the proposals are considered to be contrary to the objectives of UDP Policy EP4 and national planning policy guidance in Paragraphs 109 & 123 of the National Planning Policy Framework.

Conditional outline planning permission was granted on appeal on 18 December 2016 following a Public Inquiry based on an illustrative layout of 53 dwellings. This included a S106 agreement which makes provision for 9 units of affordable housing following a viability assessment, an education contribution of £130,966 for the provision or improvement of primary education facilities at Heaton Avenue Primary school and traffic calming on Quaker Lane. The Inspector reserved all matters except partial means of access to, but not within, the site.

The Inspector imposed conditions regarding:

- Timing and maintenance / replacement of planting
- Provision of a landscape management plan.
- Arrangements for public open space provision
- Wildlife habitat provision.
- Protection of the sewer crossing the site.
- Drainage details.
- Potential contamination investigation and remediation measures
- Development free zone adjacent to Lower Blacup Farm.

2014/93145 – Application to remove the requirement for affordable housing on the site – Delegated to Officers to determine. The application seeks to reduce the affordable housing contribution from nine to nil. The application was assessed by a third party on behalf of the Council and the Officers are satisfied that five units are viable on this site. The applicant's agreement to this remains to be confirmed and the application remains undetermined.

5.0 HISTORY OF NEGOTIATIONS:

- 5.1 Prior to the application first being reported to the Area Planning Sub-Committee Officers negotiated with the applicant to address identified issues:
- The submission of an amended layout to better reflect the spacing of the existing dwellings to the south and east.
 - An acceptable visual relationship of proposed to existing dwellings at the site boundaries in terms of levels.
 - Adequate surface water flood routing.
 - Details of the design of the estate road crossing of the farm track / public footpath to maintain the width of the right of way and the protection of users.

As a result of the resolution of the Area Planning Sub-Committee on 29 June 2017 Officers requested the following:

- An amended layout to avoid the proposed roads crossing the farm track / public right of way.
- The layout to provide sufficient parking provision or domestic storage space to compensate for the below standard internal garage space.
- Road gradients to be to recommended standards
- A footway to be provided to the northern cul de sac.
- Sufficient bin storage and collection points to be provided.
- Retaining walls to be faced in materials to match the dwellings.
- Dwellings to be faced in brick to match those adjacent

In response the applicant has declined to segregate the farm track / public right of way from the proposed road layout. Amended plans have been submitted to address the Highways Officer's comments regarding road gradient, footway provision and bin storage. The Highways Officer's comments regarding inadequate parking provision has been partially addressed through the provision of separate cycle / domestic storage provision on some plots. Discussions are continuing with the applicant to extend this provision within the site.

The applicant has addressed Members' issues of retaining walls and materials.

Following the receipt of further comments from the KC Landscape Officer amended plans have been requested to address the accessibility, extent and management of the public open space areas together with planting detail. It is anticipated that these discussion will be concluded prior to the Sub-Committee meeting.

The subject and outcome of these discussions are explained in greater detail below.

6.0 PLANNING POLICY:

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

The site is identified as Provisional Open Land on the UDP proposals map.

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

- **D5** – Provisional open land
- **BE1** – Design principles
- **BE2** – Quality of design
- **BE12** – Space about buildings
- **BE23** – Crime prevention
- **T10** – Highway Safety
- **H10** – Affordable housing
- **H12** – Arrangements for securing affordable housing
- **H18** – Provision of public open space
- **EP4** – Noise sensitive development
- **EP11** – Ecological landscaping

6.3 Supplementary Planning Guidance / Documents:

Affordable Housing SPD2
Kirklees Council Interim Affordable Housing Policy

6.4 National Planning Guidance:

- **Chapter 4** – Promoting sustainable transport
- **Chapter 6** – Delivering a wide choice of high quality homes
- **Chapter 7** – Requiring Good Design
- **Chapter 10** – Meeting the challenge of climate change, flooding and coastal change
- **Chapter 11** – Conserving and Enhancing the Natural Environment

6.5 Kirklees Publication Draft Local Plan: Submitted for examination April 2017:

The site is allocated for Housing (site H708) on the Local Plan with an indicative capacity of 53 dwellings. The larger area to the west allocated as Urban Greenspace (site UGS1068).

- **PLP 1** – Presumption in favour of Sustainable Development
- **PLP 2** – Place Shaping
- **PLP 7** – Efficient and Effective use of land and buildings
- **PLP 11** – Housing Mix and Affordable Housing
- **PLP 21** – Highway Safety and Access
- **PLP 22** – Parking
- **PLP 24** – Design
- **PLP 30** – Biodiversity and Geodiversity
- **PLP 32** - Landscape
- **PLP 35** – Historic Environment
- **PLP 63** – New Open Space

7.0 **PUBLIC/LOCAL RESPONSE:**

7.1 In its initial form the application was publicised by site notice, newspaper advert and neighbour letters on 22 April 2014. Following the receipt of amended plans further publicity took place on 26 June 2015 by site notices and neighbour letters. Subsequent plans were publicised in the same manner on 24 May 2017 and the publicity period expired on 14 June 2017. In addition Ward Members were notified.

7.2 Given that the principle of development has been accepted with the grant of outline planning permission the public comment, as it relates to the proposed reserved matters, may be summarised as follows:

- Development would harm the rural setting of the site and the setting of the grade II listed buildings.
- Applications for planning permission for fewer dwellings have previously been refused on this site.
- Use of Play area next to existing property would be a source of nuisance to those residents.

- Uncertainty of who maintains landscaping and boundary planting in the site and immediately next to existing property together with uncertainty over boundary treatment. Concerns relate to overgrown planting and property security.
- Lack of affordable housing.
- The layout allows for future additional housing on individual plots.
- Plans do not show conservatories on existing houses backing onto the site.
- There has been no meaningful consultation by the developer with the local community.
- Uncertainty over the planning decision is reducing house price.
- The site includes land in the ownership of neighbouring property and 'protected trees' have been removed.
- The crossing of the estate road and the track to Lower Blacup Farm is a potential road safety hazard due to it being used as a short cut and conflict between vehicles and pedestrians. Existing delivery lorries and refuse vehicle reverse along the lane due to lack of turning facilities at Lower Blacup Farm. Access should be restricted to farm vehicles or the middle cul de sac should be turned around to provide the entrance at the top of the site.
- It is not clear how the road and parking areas will be put in to an adequate gradient to accommodate the slope on either side of the track.
- The farm track should not be used for construction traffic.
- The proposed estate road is too narrow to allow for adequate passage of vehicles, particularly large delivery and refuse vehicles, as well as sufficient on-street parking.
- The site is served by Quaker Lane and then Hightown Road which are both busy at times. The former is a 'rat run' by vehicles to by-pass the junction of Westgate and Hightown New Road which leads to congestion by the Fire Station.
- Westgate will be accessed by other sites recently have recently been given planning permission.
- The increase in traffic resulting from the development will result in increased noise and pollution.
- The surrounding roads were built to lower standards of car ownership. Ashbourne Drive is congested with parked cars leading to vehicle damage and pedestrian and emergency vehicle access difficulty.
- The dwellings should be faced in stone on this prominent site on the skyline to be in keeping with its surroundings.
- Precautions should be taken to prevent structural damage to existing dwellings by construction traffic.
- It is not clear how the surface water tank will be emptied.
- Measures are required to keep surrounding roads clean during construction.
- Existing problems of blockage of foul sewers and flooding from the Beck will be exacerbated.

Summary of comments received from Cllr K Pinnock:

- There will be conflict between farm traffic and residential traffic and pedestrians where the estate road crosses the farm track. The plans should be amended to prevent access over the farm track or make the crossing point single track with road safety measures to reduce traffic speed.
- Access to / from the farm track and Ashbourne Way needs to be prevented.

- Concern that there is only one full width footpath on one side of the road throughout the development.
- Concerned at the number of dwellings not served by the public highway.
- Any approval for reserved matters should include the conditions laid down by the Inspector on appeal particularly road safety measures on Quaker Lane from Ashbourne Drive to Westgate and contributions to Education and affordable housing.
- There is no equipped play area in the development.
- There should be adequate boundary treatment between existing property and the proposed open space.

Comments in relation to additional publicity:

In response to the latest round of publicity seven public objections have been received which in terms of relevance to the reserved matters under consideration may be summarised as follows:

- The development will exacerbate road safety problems in the area where there is traffic congestion, children playing on the streets and recent accidents.
- There should be no windows at close proximity to existing dwellings which would affect privacy.
- A play area close to an existing dwelling will create 'uncertainty and inconvenience' as well as harming property value. Furthermore situated close to vehicular access to the site it will put children at risk. It is suggested that a play area is located in the position of plot 24 and the number of houses is reduced to 46.
- Noise and dirt during construction period. Construction vehicle access will be from Ashbourne Drive and Ashbourne View only to the detriment of residents and the condition of roads and pavements.
- The development should be served by two separate culs de sac from Ashbourne Drive and Ashbourne View avoiding the hazard to pedestrians of crossing the existing farm track / public footpath.
- The existing farm track / public footpath should not be used at any time during or after construction and restrictions on parking of construction / workers' vehicles in the immediate area should be enforced.
- There are inadequate community benefits from the proposal.
- The design of the dwellings and density would be out of character with the surroundings and visually intrusive on this elevated site.
- There has not been sufficient publicity for the proposals.

Cllr K Pinnock has made additional comments as follows:

- The applicant appears to have taken no action to mediate conflict of users of the farm track to the detriment of road safety.
- The plans do not adequately deal with changes of level within the site. Cross sections do not address the more difficult site levels.
- In cross-sections A-A & B-B there are retaining walls, the height and length of which are not clear.

8.0 CONSULTATION RESPONSES:

8.1 Statutory:

K.C Highways Development Management – Initial comments were as follows:

- Insufficient size of integral garages resulting in inadequate off-street parking provision.
- Requirement for an increase in the turning head size to the north and redesign of the northern access to provide acceptable gradients.
- PROW Officers have no objections subject to a condition requiring adequate measures to protect the public footpath crossing the site.

Following the receipt of amended plans Highways Officers are satisfied that their comments are satisfactorily addressed subject to cycle / domestic storage buildings being provided to all 4-bed units.

- **KC PROW**– Welcome the retention of the public footpath Spen 94, preferably with a green corridor. This should reflect its recorded width of 6.1 metres. Controls over construction traffic and the protection of path users are required pre-commencement. The scheme lacks detail of the estate road crossing point over the footpath.

KC Flood Management – Following the receipt of amended plans Officers consider that satisfactory surface water attenuation has been provided. Flood routing is not completely satisfied but this can be addressed by specific mitigation techniques. The broad layout is acceptable.

8.2 Non-statutory:

KC Conservation & Design – Concern about

- Inadequate space between buildings
- Boundary treatment to roadsides could look oppressive.
- Need for entrance feature buildings at key locations.
- Inadequate landscaping.
- Creating a hierarchy of street in terms of materials.

The officer notes that design was also formulated to allow an entrance feature and visual space for the listed building which has been broadly achieved.

The officer concludes that whilst the above points would improve the layout it is not to say that the proposed design is not appropriate, bearing in mind the constraints of the site, particularly topography. Therefore the Conservation & Design Officer is of the opinion that the layout as submitted is acceptable and does not warrant refusal from an urban design point of view.

Yorkshire Water – no objections subject to conditions.

KC Landscape – concerns at tree loss, request further details of the gradients of the public open space areas relating to public and disabled accessibility; their relationship to the adjacent proposed dwellings and the privacy of those occupants and clarification of the maintenance responsibilities of the open space areas and planting within the plots. The Officer also notes that the extent of useable public open space is less than that shown on the submitted layout plan.

KC Ecologist – requires further details of planting and biodiversity protection and enhancement.

Police Architectural Liaison Officer – require marked boundaries to distinguish between private and public space.

9.0 MAIN ISSUES

- 9.1 The principle of development has been accepted by virtue of the outline planning permission (reference 2012/93062). The application is for the approval of reserved matters and as such, the main issues will be addressed as follows:

- Layout
- Appearance
- Access within the site
- Landscaping
- Scale
- Representations

10.0 APPRAISAL

Layout

- 10.1 The proposed layout is similar to the indicative plan included in the Design & Access Statement accompanying the outline planning permission. Two cul de sacs were shown from Ashbourne Drive and Ashbourne View. The southern (up-slope) cul de sac crossed the farm track as repeated in the current plans.
- 10.2 The Inspector confirmed that access to the site was to be determined at outline stage while access within the site was reserved as part of layout. He expressed no view on the relationship of the farm track and the indicative estate roads and accepted that “the indicative layout is partly to demonstrate that the proposed number of dwellings can be accommodated and is subject to change at the detailed stage.”
- 10.3 In their initial response to the concerns of local residents and Cllr Kath Pinnock regarding the crossing by the estate road of the footpath and access track as previously reported to Sub-Committee the applicant has stated that they do not consider that there will be a road safety issue given the volume of users. The applicant considers that the design of the crossing including measures to protect pedestrians will be assessed when the S38 application is reviewed by the Highways Authority and through the road safety audit process. A site section has been supplied across the farm track.

- 10.4 In response to the views of the Sub-Committee the applicant has stated that it is not possible to physically segregate the farm track as access is required to plots 14-23. The applicant has suggested that signage is a fair compromise as it can be placed to make people aware of the presence of the farm track and would not need managing on a daily basis. The applicant considers that the current arrangement would encourage and enhance pedestrian connectivity across the site and encourage the enjoyment of the urban greenspace areas beyond the site boundary. The applicant considers that separating new development from existing "is not a precedent that the Council should be encouraging."

Officers are continuing discussions and the response will be reported at the Sub-Committee meeting.

- 10.5 The Highways Officer has considered the concerns of local residents and Cllr K Pinnock with regard to the crossing of the estate road with the farm track / public footpath to Lower Blacup Farm and the prospect of estate vehicles using the farm track as a short cut. Officers consider there would not be a harmful effect on road safety given that the design of the residential road is that it would cross the farm track with track users giving way, there would be low vehicle speeds and a low number of dwellings served by the new road. This situation would not be dissimilar to the existing use of the track use at its junction with Ashbourne Way.
- 10.6 With regard to concerns that the future residents could use the track as a short cut, given that the distance to the Ashbourne Way junction with Ashbourne Drive is the same and that the time travelled would be quicker traversing the better standard new residential road, Officers consider it unlikely that the track would be seen as the preferred route from a highways point of view.
- 10.7 Officers consider that the close relationship of the proposed dwellings to each other could be improved. Whilst the majority of the dwellings are detached they are sited close up to the side boundaries of the narrow plots leaving little open space between them and giving a cramped appearance with limited views between dwellings. This differs from the streetscene of existing dwellings to the east where, whilst there are a greater number of semi-detached dwellings, there is more space between dwellings as a result of increased separation and, in some cases the incorporation of side driveways.
- 10.8 NPPF part 7 requires good design in new development regarding it as a key aspect of sustainable development and contributing positively to making places better for people. Paragraph 57 notes the importance of the achievement of high quality design whilst paragraph 64 advises that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.
- 10.9 The applicant was requested to amend the layout to provide a greater separation between dwellings but has declined.

- 10.10 Officers concerns are consistent with NPPF advice and UDP policies BE1 and BE2. However it is recognised that the appearance of the scheme must be seen in its context. The difference in layout between the proposed development and existing dwellings to the east is not substantial and in some cases later side extensions have reduced the gap between existing dwellings. On balance Officers conclude that the visual harm is outweighed by the benefit of housing delivery and they could not recommend refusal on the basis of the spacing of the dwellings.
- 10.11 The layout has been assessed in the light of UDP policy BE12 and the relationship of the facing habitable room windows on proposed dwellings to each other and to the existing ones bordering the site. Within the site there are a few instances where facing habitable room windows between proposed dwellings are less than the 21 metres minimum recommended under policy BE12. However, the harm is ameliorated as the views are across roads so that the expected privacy level would be less or where the dwellings are not directly facing.
- 10.12 For the most part the relationship of the proposed dwellings to those abutting the site is in accordance with UDP policy BE12. The majority of the dwellings on Ashbourne Way have long rear gardens and whilst these reduce towards the end of that cul de sac the nearest relationship between no 26 and plot 21 exceeds the recommended distance set out in UDP policy BE12.
- 10.13 The nearest dwelling on Penn Drive to the south, no 30 is 19.87 metres from the habitable room windows on plot 36. However, the proposed dwelling is set below the level of no 30 and at an angle to it such that the effect is considered acceptable.
- 10.14 With regard to the recommended distance of 12 metres between a habitable room window and a blank wall or the window to a non-habitable room, as set out in UDP policy BE12, there are a number of instances where this distance is not met. The distance between the side wall of plot 1 and the ground floor extended rear wall of 2 Ashbourne Croft is 11.76 metres although the distance is exceeded at first floor level. However, it is considered that the discrepancy and resultant harm is minor and the harm is outweighed by the benefit of housing delivery.
- 10.15 Within the site the distance between habitable room windows on the rear of plots 13-15 and the blank side elevation of plot 11 is 10.5 metres and that between habitable room windows on the rear of plot 13 and the blank side elevation of plot 11 is less than the recommended distance at 10.5 metres and 10.9 metres. Similarly it is considered that the discrepancy and resultant harm is minor and is outweighed by the benefit of housing delivery.
- 10.16 Local residents have referred to locations where extensions to dwellings have not been identified on the location plan. This issue was considered by the Local Government Ombudsman when considering a similar case involving proposed new development at Kitson Hill Road, Mirfield. In subsequently considering the development in the light of the Ombudsman decision Members were advised that

“When measuring distances between proposed and existing dwellings, the Local Planning Authority must take into account the presence of habitable room windows in extensions and conservatories. This, of course, does not mean that proposed layouts that include distances less than those specified as the normally acceptable minimum distances can never be approved. Policy BE12 clearly provides for lesser distances to be approved in certain circumstances”. Members will need to satisfy themselves in each case that:

- the circumstances of the particular development together with any mitigation measures being proposed are, in their judgement, adequate to ensure that no detriment will be caused to existing or future occupiers of the dwellings or any adjacent premises; or
- where some impact on residential amenity cannot be avoided, that any detriment is outweighed by other material considerations and is reasonable in all the circumstances.

The Ombudsman will expect the Council to consider each case on its own merits.

10.17 In this case the following is noted:

- Habitable room windows at the rear of no 24 Ashbourne Way are 22 metres from those proposed on plot 20. This is reduced at ground floor by a conservatory however, this is at a slight angle.
- No 30 Penn Drive has a rear conservatory and no 36 Penn Drive has a conservatory up to its rear boundary with the application site. However, in both cases they are not directly facing the proposed dwelling.

It is considered by officers that where distances are not in accordance with policy BE12 the extent of the harm is outweighed by the benefit of housing delivery on this site. This harm can be ameliorated by removing permitted development rights for further extensions.

10.18 On appeal for the original outline application, the Inspector considered an indicative site layout plan which had been submitted after the application had been refused but before Proofs of Evidence were exchanged. This showed a buffer zone immediately to the east of Lower Blacup Farmhouse and reduced the number of dwellings from 54 to 53. This Authority accepted that the revised indicative layout addressed its concerns regarding the setting of the listed building and the living conditions of future residents due to potential nuisance from farming activities. Thus reasons for refusal 3 & 4 were withdrawn. The Inspector regarded the encroachment of dwellings close to the listed building as less than substantial harm which, in accordance with paragraph 134 of the NPPF was weighed against the public benefits of the proposal including the provision of new housing where a 5-year supply of deliverable housing land does not exist. The Inspector imposed a condition (15) requiring a buffer to be kept free from the erection of dwellings and curtilage space excluding parking and incidental landscaping.

10.19 The amended layout submitted with this application, whilst different from the earlier indicative plan incorporates this buffer to Officers' satisfaction. The Conservation & Design officer confirms that this then lessens the amount of public benefit needed to be accrued to outweigh the harm to the setting of the listed building. The public benefit in this case is one of providing housing numbers which was accepted by the Inspector so there is no reason to suggest that if in a planning sense the need for housing tips the balance towards approval this should not be the case in terms of heritage issues.

Therefore on balance the Conservation & Design Officer withdraws his previous objection and considers the application is now in compliance with Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and para 134 of the NPPF.

- 10.20 The Inspector was satisfied that the indicative layout included a substantial buffer between Blacup Beck and the proposed houses acting as a wildlife corridor. The layout now proposed retains that feature.
- 10.21 The proposed public open space (POS) areas have been assessed for accessibility and accordance with UDP policy H18
- 10.22 The KC Landscape Officer has detailed comments on the public open space (POS) provision and layout which the applicant has been asked to address. Whilst the layout appears to show extensive pos the accessible area is significantly less. The areas contain slopes of 1 in 4 and 1 in 3 which are not accessible for walking down nor could they be safely managed and maintained. The applicant has been asked to provide a management plan showing how these areas would be maintained.
- 10.23 The latest sections show a 2.75 metre high retaining wall to the northern boundary of the centrally located POS. This would need a suitably high fence on top for safety reasons which in total could be an oppressive feature from the gardens of plots 16, 17 & 23 adjoining the POS as well as the rear habitable room windows of plots 16 & 17 which directly face it. The applicant has been asked to address this.
- 10.24 The applicant has proposed to include the northern verge of the farm track crossing the site as POS. However, the steep slope and narrow width gives it little public value therefore whilst useful as a landscaped area it could not be taken into account in the overall POS provision within the site.
- 10.25 Other areas would benefit from improving access to able and disabled people albeit requiring a series of extensive ramps.
- 10.26 Discussions are continuing between Officers and the applicant to resolve the public open space issues. It is recognised that the steeply sloping nature of the site makes accessibility a problem and there is a balance to be struck between optimising accessibility and the extent of ramps which would detract from the value and use of the remaining space. These can be resolved by condition.

Appearance

- 10.27 The dwellings would be faced in artificial stone and whilst the design is not remarkable the appearance of the dwellings would be acceptable in the context of the site. The applicant has considered the Member's suggestion to build the development in brick to match the surrounding dwellings. However the applicant states that there is a current nationwide shortage of facing bricks which is severely affecting housebuilding production. The use of alternative materials is essential to maintain building rates.

- 10.28 The main consideration in the proposal is the way that the development has been designed to accommodate the site slope. The site is narrow so that whilst small sections at the access points are built along contours the majority of the layout climbs across the contours leading to stepped housing and retaining structures.
- 10.29 The applicant states that the extent of retaining walls is proportional to the overall gradient as the maximum slope is 1 in 6 and influenced by the maximum road gradient allowed by the Local Highways Authority given that this is less than the natural slope of the site. This results in significant retaining structures particularly on the boundaries of the site. The applicant states that in order to minimise the visual impact of the walls they are positioned within garden areas where possible.
- 10.30 Sample section drawings have been submitted showing the following:
- A retaining wall of 0.95m to the garden of plot 6 facing the rear garden of no 10 Ashbourne Way.
 - No retaining wall to the rear boundary of plot 20 to the rear garden of no 24 Ashbourne Way.
 - A retaining wall of 0.47 metre to the side and rear garden of 2 Ashbourne Croft facing into the rear garden of plot 46.
 - A retaining wall of 0.53 metre to the rear garden of plot 39 facing into the rear garden of 8 Ashbourne Croft.
 - A retaining wall of 2 metres to the rear garden of 30 Penn Drive facing into the rear garden of plot 36.
 - A retaining wall of 3 metres to the rear garden of 36 Penn Drive facing into the rear garden of plot 32.
- 10.31 Given the sloping nature of the site, the heights involved and the partial screening offered by the proposed and existing dwellings it is considered that these features are acceptable in terms of visual and residential amenity. The walls would be gabions which the applicant argues are an established retaining system that is both attractive and durable. The applicant states that alternative masonry solutions are more expensive (between 20-30% depending on height) and also require a significant amount of facing bricks with the inherent problems as referred to above. However, in the light of Members' request discussions are continuing with the applicant to face the gabion walls with artificial stone to match the proposed dwellings.
- 10.32 The main consideration in the proposal is the way that the development has been designed to accommodate the site slope. The site is narrow so that whilst small sections at the access points are built along contours the majority of the layout climbs across the contours leading to stepped housing and retaining structures.
- 10.33 The applicant has submitted sectional drawings which highlight the following:-
- The finished floor level (ffl) of plot 1 would be 0.36 metre higher than that of nos 23 & 25 Ashbourne Way
 - Plot 2 would go in at existing ground level, plots 4-7 would be raised above existing ground reaching a maximum of 2.35 m above ground level at plot 7.
 - Plots 18 – 23 would be below existing ground level to a maximum of 1.76 m on plot 23 immediately next to no 28 Ashbourne Way. The finished floor level (ffl) of plot 20 would be 1.37 m below that of no 24 Ashbourne Way.

- The ffl of plot 32 would be 5.22 metres below that of 36 Penn Drive.
- The ffl of plot 46 would be 0.92 m below that of no 2 Ashbourne Croft.
- The ffl of plot 39 would be 0.4 m above that of no 8 Ashbourne Croft.
- The private drive serving plots 38-40 would lie close up to the boundary with the rear of no 8 Ashbourne Croft and would be approximately 0.4m above its garden level and 0.28 m above ffl.
- The proposed ground level of the surface of the earth covering of the surface water attenuation tank would be 0.64m above ffl of nos 50 & 52 Ashbourne Drive.
- At the lower end of the site the ffl of the proposed dwellings (plots 4-7) adjacent to the rear of existing dwellings on Ashbourne Way would be a above existing ground levels to varying degrees to a maximum of 2.37 metres. This is indicated to be dealt with by a mixture of soil grading and retaining walls.
- On the western side of the site the proposed dwellings are higher than existing ground levels peaking at 3.5 metres on plot 24.

These relationships are felt to be acceptable given the site gradient.

10.34 In response to the initial concerns of Cllr Kath Pinnock over the extent of the submitted sectional information the applicant considers that these have been addressed in the submitted plans.

Access

10.35 The access points into the site were agreed at outline stage.

10.36 In response to the Highways Officer's comments regarding road gradients the applicant has amended the proposal to include a shared surface on the northern side which has satisfied the Officer.

10.37 The layout plan shows a width of the public bridleway in accordance with that shown on the Definitive Map.

10.38 With regard to the Highways officer's request for real time bus information at nearby bus stops and the provision of Metro Cards to new residents, it is noted that these requirements were not imposed by the Inspector on appeal and it is not considered appropriate to do so at this stage.

Landscaping

10.39 The applicant has submitted an existing tree survey and proposed landscaping masterplan. This shows natural surveillance to public open spaces, screen planting close to the listed building and planting to soften long distance views.

10.40 The KC Landscape officer has no objections to the proposed landscaping but has requested a detailed landscape scheme showing species, planting densities and the exact position of tree planting to avoid conflict between properties. These details are awaited from the applicant however, they could be reserved by condition should the Sub-Committee wish.

- 10.41 The submission of a landscape management plan to optimise long-term biodiversity interests together with the eradication of invasive species is a requirement of a condition of the outline planning permission as is the provision of bat roost and bird nesting opportunities within the development site.

Scale

- 10.42 The proposed dwellings are two-storey which would be similar in scale to those dwellings to the east. At the top of the site where the proposed dwellings lie adjacent to bungalows on Penn Drive they are set below existing ground levels such that they will not be harmfully intrusive from that road or on the skyline.

Representations

- 10.43 With regard to those representations which have not been addressed above, officers respond as follows:

- Previous applications have been refused on this site in the past.
Response: The proposal must be considered on its own planning circumstances current at the time of this application.
- Nuisance from play areas.
Response: The provision of public open space within the site is a requirement of UDP policy H18. Furthermore no objections have been raised by the Police Architectural Liaison Officer. There is no evidence to suggest that nuisance will be caused to a harmful degree.
- Uncertainty over maintenance of public open space.
Response: This is covered by the terms of condition 7 of the outline planning permission.
- Layout allows for potential increase in housing
Response: Any such proposal would be the subject of a future application for planning permission in its own right.
- Site includes land in other ownership
Response: No evidence has been submitted to justify this claim. Any planning permission would not override private ownership rights.
- Potential structural damage to adjacent property during construction.
Response: This is not a planning issue and is the responsibility of the developer.
- Drainage issues
Response: Drainage issues would be dealt with under condition 10 of the outline planning permission.
- Effects of Construction
Response: A construction management plan can be imposed as a condition as part of this approval.

- Property Value

Response: This is not a material planning consideration.

- Inadequate community benefits

Response: These have been established at the outline stage.

- Inadequate publicity

Response: The publicity for this proposal is considered adequate. Local residents consider that the position of the latest site notices are not conveniently placed on a cul de sac. However, the application has been the subject of three rounds of publicity with responses and Officers consider that this has attracted a comprehensive account of public concerns and this would be unlikely to be added to by a further round of publicity.

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. This application has been assessed against relevant policies in the development plan and other material considerations.

11.2 The proposal is considered to constitute sustainable development.

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

1. Samples of all facing and roofing materials
2. Details of boundary treatment
3. Electric Charge Points
4. Removal of Permitted Development Rights for extensions and new openings
5. Construction Management Plan
6. Detailed road construction including flood water routing.
7. Retention of 6.1 metres width for the public bridleway crossing the site.

Background Papers:

Application and history files:

Link to the details for this reserved matters application

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2014%2f91242>

Link to the details for the outline permission reference 2012/93062

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2012%2f93062>