
Report of the Head of Planning and Development

STRATEGIC PLANNING COMMITTEE

Date: 27-Feb-2020

Subject: Planning Application 2019/93708 Variation of conditions 5. (highways) and 7. (visibility splays) on previous permission no. 2015/90430 for outline application for erection of residential development comprising (Use Class C3) and incorporating associated new access (to Crossley Lane and Cold Royd Lane), and associated works Land to North and South of, Crossley Lane, Dalton, Huddersfield, HD5 0QP

APPLICANT

Mark Beevers and Alan
Lewis, Harron Homes
and Narbourne Ltd

DATE VALID

13-Nov-2019

TARGET DATE

12-Feb-2020

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: DALTON

Y/N

Ward Members consulted
(referred to in report)

RECOMMENDATION:

REFUSE

The removal of clause 3 (Affordable Housing) in the Section 106 for Planning Permission 2015/90430, would be contrary to Policy LP11 of the Kirklees Local Plan and the National Planning Policy Framework.

1.0 INTRODUCTION

The application is brought to Strategic Committee as it is for a residential development in excess of 60 dwellings and the original permission and Section 106 were decided by the Strategic Committee. The applicants are seeking to vary elements of the Section 106.

2.0 SITE & SURROUNDINGS

2.1 The application site comprises 2 parcels of land bounded by Crossley Lane/ Cold Royd Lane and Crossley Lane/ Albany Road. The sites accommodates former industrial buildings and are considered to be brownfield land. The total combined area is just in excess of 4.02ha.

2.2 As detailed in the site history there is extant full planning permission on 3 parcels of land that adjoin this application site, the first site Parcel 1; off Cold Royd Lane; Parcel 2 South of Crossley Lane; and Parcel 3 to the North of Crossley Lane, extending upwards to Newlands Road.

2.3 The first parcel comprises an area of 1.37ha and is a broadly square in shape, with frontages onto both Cold Royd Lane and Crossley Lane. The site slopes down from NE to SW, there is a levels change of approx. 1.5m across the site.

2.4 Along the NE boundary is the line of a former railway track with an embankment and wall, in the NW corner this embankment/ wall is adjacent to dwellings 8, and 10, Cold Royd Lane. There is a levels difference at this point and the structure provides a retaining function. No's 8 and 10 Cold Royd Lane are Grade 2 listed buildings, however the railway embankment is not part of the curtilage to the dwellings.

- 2.5 The site formerly contained 2 industrial buildings (single storey) and 3 above ground storage tanks within the site. This site has now been cleared but the hard standing areas remain.
- 2.6 The second parcel of land comprises an area of 2.65 ha and is broadly rectangular in shape. It has an extensive frontage onto the southern side of Crossley Lane to its junction with Albany Road. The site is fairly level and extends to the south to Oxfield Beck, at which point there is a small drop to the banking. Oxfield Beck forms the southern boundary of the site.
- 2.7 The site formerly contains a vacant factory building approx. 2 storey in height (last occupied by a Ceramics Factory) and the vast majority of the site is covered in hardstanding. This buildings have now been removed.
- 2.8 The total combined area for the application site is 4.02 ha. The land is brownfield with buildings still in place. The site has the benefit of a planning approval for residential development and is also part of a larger housing allocation (ref HS29) on the Kirklees Local Plan.

3.0 PROPOSAL

- 3.1 This application seeks to vary 2 conditions on the Outline planning approval (2015/90430) with an indicative capacity of 131 dwellings that was approved subject to a Section 106 Agreement which secured

- The provision and maintenance of POS on site
- An education contribution of £135,000
- A contribution to improve existing bus stops of £10,000
- A Reappraisal after the completion of the 95th dwelling

There has been no Reserved Matters submitted or agreed on this site.

- 3.2 This application seeks to vary conditions 5 and 7. Both of these conditions relate to highways matters.

Condition 5 states:

1. Development shall not commence until a scheme detailing the layout, construction and specification of the highway works; at the two site access points from Crossley Lane and one from Cold Royd Lane (drawing number P09:4267:75 Rev A) and all associated highway works, and the appropriate Road Safety Audit, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be brought into use until all the works under the approved scheme have been carried out and completed in accordance with the approved scheme and thereafter retained throughout the lifetime of the development.

Condition 7 states:

7. The development shall not be brought into use until visibility splays of 2.4 m x 43 in both directions at each of the two site access points from Crossley Lane and from Cold Royd Lane in which there shall be no obstruction to visibility above the level of the adjacent footway as indicated on the approved plan have been completed. Thereafter, visibility splays shall be retained throughout the lifetime of the development.

Alternative sitings on Crossley Lane and Cold Road Lane are suggested.

- 3.3 The proposal also seeks to vary the terms of the Section 106 Agreement, by deleting the reference to the contribution towards the LEAP, and the removal of the re-appraisal after the 95th dwelling.

4.0 BACKGROUND AND HISTORY

- 4.1 2011/91152 - Full planning permission for erection of 131 dwellings formation of access, internal access roads, and the creation of play areas. Land off Crossley Lane and Cold Royd Lane, Dalton.

(NB: This is an extant permission and applications for discharge of condition have been submitted).

(This site comprises 3 parcels of land and is adjacent to the current application which comprises 2 parcels of land adjacent to this approval).

5.0 NEGOTIATIONS.

- 5.1 There is a current pre- application enquiry for the erection of up to 199 dwellings on this and the neighbouring site.- both are allocated for housing and have extant permissions.

6.0 PLANNING POLICY:

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019).

Kirklees Local Plan (2019):

6.2.

- LP1 Presumption in favour of sustainable development
- LP3 Location of new development
- LP11 Housing mix and affordable housing
- LP20 Sustainable travel
- LP21 Highway safety and access
- LP22 Parking
- LP23 Core walking and cycling network
- LP24 Design
- LP27 Flood Risk
- LP28 Drainage
- LP30 Bio diversity and geo diversity
- LP32 Landscape
- LP33 Trees
- LP49 Education and health care needs
- LP51 Protection and improvement of local air quality
- LP52 Protection and improvement of environmental quality
- LP53 Contaminated and unstable land
- LP63 New Open Space

Supplementary Planning Guidance / Documents:

6.3 Relevant guidance and documents:

- West Yorkshire Low Emissions Strategy and Air Quality and Emissions Technical Planning Guidance (2016)
- Kirklees Housing Strategy (2018)
- Kirklees Strategic Housing Market Assessment (2016)
- Kirklees Joint Health and Wellbeing Strategy and Kirklees Health and Wellbeing Plan (2018)
- Kirklees Biodiversity Strategy and Biodiversity Action Plan (2007)
- Negotiating Financial Contributions for Transport Improvements (2007)
- Providing for Education Needs Generated by New Housing (2012)
- Highways Design Guide (2019)
- Waste Collection, Recycling and Storage Facilities Guidance – Good Practice Guide for Developers (2017)
- Green Street Principles (2017)
- Fields in Trust Guidance for Outdoor Sport and Play (2015)

National Planning Policy and Guidance:

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

- Chapter 2 – Achieving sustainable development
- Chapter 4 – Decision-making
- Chapter 5 – Delivering a sufficient supply of homes
- Chapter 8 – Promoting healthy and safe communities
- Chapter 9 – Promoting sustainable transport
- Chapter 11 – Making effective use of land
- Chapter 12 – Achieving well-designed places
- Chapter 14 – Meeting the challenge of climate change, flooding and coastal change
- Chapter 15 – Conserving and enhancing the natural environment
- Chapter 17 – Facilitating the sustainable use of materials.

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

6.6 Relevant national guidance and documents:

- National Design Guide (2019)

- Technical housing standards – nationally described space standard (2015, updated 2016)

Climate change

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

7.1 PUBLIC/LOCAL RESPONSE:

7.1. Neighbours have been consulted by site notice and neighbour letters. 4 letters of objection have been received on the grounds

- The development represents an increase in traffic from the previous approval
- (Note this scheme relates to relocation of access points not any numbers);
- The new access points are unsuitable, and more dangerous;
- This is an inappropriate site to build on given the existing extensive traffic usage of Crossley Lane which is used as a shortcut/rat run

8.0 CONSULTATION RESPONSES:

8.1 **KC Highways DM-** Sought amended distances (45m apart) between the 2 new access points. Amended plans have been received that achieve this and Highways have removed their objection.

9.0 MAIN ISSUES

- Principle of development
- Highway issues
- Section 106 issues

10.0 APPRAISAL

Principle of development

10.1 This site is part of a larger allocation for housing, and has an outline permission for residential with access approved. As such there is no objection to the principle of residential development and subject to details and Highways satisfaction there is no objection to alternative access points.

10.2 A Reserved Matters application has not been received yet, but if and when it is the relevant policies within the Local Plan will be material considerations, in determining the acceptability of the layout/ density etc.

Highway issues

- 10.3 The principle of a residential development of this scale in this location has been long established and this and neighbouring sites allocated for housing.
- 10.4 Highways Services initially raised an objection to the alternative access locations and sought amendments. Amendments have been received and Highways have no objections to the amended locations.

Section 106 issues

- 10.5 The Previous consent on the site (2015/90430) is an outline permission which could still be the subject of a Reserved Matters being submitted with the terms of the existing Section 106 remaining.
- 10.6 However, the applicants are also seeking to vary the existing Section 106, in respect of the following two matters:
- Removal of the contribution towards a LEAP; and
 - The deletion of the clause requiring a reappraisal of the sites viability after the 95th dwelling.
- 10.7 The applicants indicate that an alternative layout for this and the adjoining site (referred to in the pre- application enquiry in section 5, will include a LEAP, but have given no justification for removing the reappraisal)
- 10.8 As stated, there is no alternative layout or reserved a matters for this and/or the adjoining site submitted for consideration. As such the effect of removing the financial contribution to the LEAP, would be to allow an outline planning permission on a 4.02 ha site without any POS contributions being required at all.
- 10.9 As such the request is effectively for an open outline application with no POS, which would be contrary to policy LP63 of the Kirklees Local Plan. The applicants have subsequently withdrawn this element of the application
- 10.10 The second part of the request to vary the Section 106 seeks the removal of the obligation for a reappraisal on the completion of the 95th dwelling. When the original application was submitted with the viability appraisal it was accepted following independent advice that the scheme was not viable with an affordable housing contribution. Any overage realised by a reappraisal would be split 50/50 between the Council and the developer. If the overage was insufficient to deliver dwellings on site it would be used to make a contribution towards a neighbouring affordable housing project.
- 10.11 It is accepted that the current applicant's proposals in the reserved matters will differ from the original indicative layout, and that accordingly the trigger point for the reappraisal may need to change, depending on the numbers of units eventually approved.
- 10.12 The applicants have submitted the following as justification for the request.

"As evidenced with our existing sites within the Kirklees area, Harron Homes as a housebuilder is committed to delivering high-quality homes to our customers. Our land purchasing process and progression through the technical process is committed to starting on-site within the most efficient

timescale. As part of our process, we do not bank land and delay deliverable sites as part of our business model; we progress with land which we consider to be developable in the short term and which benefits Kirklees as a whole.

With our experience of developing sites in Kirklees, we have not previously had a re-appraisal clause within our S106 agreements, and our business model does not necessitate such a clause. Re-appraisal clauses are applicable to development which is deliverable over a prolonged time period and where it can be evidenced that there is a future potential of change. Harron Homes are looking to commence development on this site during Summer 2020.

For the site currently being considered on Crossley Lane, Dalton there are areas of concern where a re-appraisal clause can affect the future deliverability of the site and also further increase the risk to us as the developer. The site has historically stalled, due to a number of constraints to the land and historic activities which has lead to levels of contamination on site. Harron Homes are already making large investments into this site, an intrusive Ground Investigation has just been completed which has identified historic tanks below the ground containing contaminated material, we are investigating the level to which this has contaminated the surrounding lands and we are faced with piling the majority of the site as well as stabilising surrounding retaining walls and banking.

The previous permissions have identified through a viability appraisal that there are constraints to the deliverability of the site. Our more detailed ground investigation works are revealing additional more costs and constraints which put more pressure on the viability of developing this site. Retaining a re-appraisal clause on the S106 adds further risk and uncertainty to what is already a high-risk site and we hope that the Council can support us in progressing development on a site which can deliver transformative benefits to this area and the immediate surroundings.

We understand that previous re-appraisal clauses applied by the Council have never generated any additional contributions and we see nothing in this site to suggest that contributions will increase, this clause is therefore unnecessary and prohibitive to the regeneration of this site.”

- 10.13 There is guidance within the Planning Practice Guidance (PPG) which is relevant on how viability should be reviewed during the lifetime of the project which states:

Where contributions are reduced below the requirements set out in policies to provide flexibility in the early stages of a development, there should be a clear agreement of how policy compliance can be achieved over time. As the potential risk to developers is already accounted for in the assumptions for developer return in viability assessment, realisation of risk does not in itself necessitate further viability assessment or trigger a review mechanism. Review mechanisms are not a tool to protect a return to the developer, but to strengthen local authorities' ability to seek compliance with relevant policies over the lifetime of the project

10.14 The reappraisal was agreed in 2015 in line with the then PPG advice which has subsequently been updated and reaffirmed. As such it is not considered that satisfactory justification to delete the reappraisal clause has been offered, and to agree the deletion would be contrary to the guidance contained in the National Planning Policy Framework and the Planning Practice Guidance, which inform the Councils Adopted Local Plan policies and decision making.

11.0 CONCLUSION

11.1 The variation of conditions 5 and 7 and the alternative access positions are acceptable. The request to delete the reappraisal clause in the Section 106 is not acceptable.

11.2 The application has to be determined in its entirety and a split decision is not an option in this case, as such the application is recommended for refusal. The removal of clause 3 (Affordable Housing) in the Section 106 for planning permission 2015/90430, would be contrary to policy LP11 of the Kirklees Local Plan and the National Planning Policy Framework

Background Papers:

Application and history files.

Website link to be inserted here

Certificate of Ownership – Notice served on/ or Certificate A signed:

