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**Report of the Head of Planning and Development**

**STRATEGIC PLANNING COMMITTEE**

**Date: 05-Aug-2020**

**Subject: Planning Application 2019/93616 Erection of 46 dwellings Land south of Soureby Cross Way, East Bierley, BD4 6PL**

**APPLICANT**

Rouse Homes

**DATE VALID**

07-Nov-2019

**TARGET DATE**

06-Feb-2020

**EXTENSION EXPIRY DATE**

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

<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: Birstall and Birkenshaw**

**Ward Councillors consulted: Yes**

**Public or Private: Public**

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## **RECOMMENDATION:**

**DELEGATE approval of the application and the issuing of the decision notice to the Head of Planning and Development in order to complete the list of conditions including those contained within this report and to secure a Section 106 agreement to cover the following matters:**

- 1) Affordable housing – Nine affordable housing units (five social/affordable rent, four intermediate) to be provided in perpetuity.**
- 2) Education – £148,159 contribution.**
- 3) Sustainable transport – Measures to encourage the use of sustainable modes of transport, including a £34,021 contribution.**
- 4) Open space – £86,696 contribution towards off-site provision.**
- 5) Biodiversity – Contribution (amount to be confirmed) towards off-site measures to achieve biodiversity net gain.**
- 6) Management – The establishment of a management company for the management and maintenance of any land not within private curtilages or adopted by other parties, and of infrastructure (including surface water drainage until formally adopted by the statutory undertaker).**
- 7) Adjacent land – Agreement to allow cycle and pedestrian access to track to southwest without unreasonable hindrance.**

**In the circumstances where the Section 106 agreement has not been completed within three months of the date of the Committee's resolution then the Head of Planning and Development shall consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the mitigation and benefits that would have been secured; if so, the Head of Planning and Development is authorised to determine the application and impose appropriate reasons for refusal under Delegated Powers.**

## **1.0 INTRODUCTION:**

- 1.1 This is an application for full planning permission, for a residential development of 46 dwellings.
- 1.2 The application was considered at a virtual meeting of the council's Strategic Planning Committee on 24/06/2020, where it was resolved to defer the committee's decision for the following reasons:
  - 1) To undertake a further investigation into the feasibility of developing an access point via the strip of unregistered land located from the southwest of the site off Hunsworth Lane;
  - 2) To request that further work is undertaken to explore the support that could be provided to the East Bierley Community Sports Association to facilitate their plans to improve the sporting facilities.
- 1.3 The application would normally have been presented to the Heavy Woollen Sub-Committee as the site is larger than 0.5 hectares in size, but was to be presented to the Strategic Planning Committee (with the Chair's agreement) to allow for the expiry of the reconsultation period. Meetings of that committee (to which this application could have been presented) were, however, cancelled due to Coronavirus Covid-19.

## **2.0 SITE AND SURROUNDINGS:**

- 2.1 The application site is 1.82 hectares in size and is located at the southern edge of the settlement of East Bierley. The site sits between a recreation ground to the northwest (designated as urban green space in the Local Plan), and green belt land to the southeast. To the southwest is a track extending southwards from Hunsworth Lane to East Bierley Playing Fields. To the northwest is Soureby Cross Way, a residential street serving over 20 properties. Parts of Bierley Marsh (to the south of 634 Hunsworth Lane) and Soureby Cross Way are within the application site red line boundary. Part of the adjacent track to the southwest is within the blue line boundary and annotated as "land owned by applicant" on the submitted location plan.
- 2.2 The site has previously been in agricultural use. Surrounding uses are residential, recreational and agricultural.
- 2.3 The application site generally slopes downhill from north (approximately 209m AOD) to south (approximately 197m AOD).
- 2.4 The East Bierley Conservation Area includes the part of Bierley Marsh that is within the application site red line boundary. It also includes the carriageway and footway of Hunsworth Lane to the west of the application site, as well as the residential terrace at 607 to 621 Hunsworth Lane and properties further to the north, including 634 and 643 Hunsworth Lane. The nearest listed buildings are Cross House, and a cross base and stocks, all located to the north of the application site, and all Grade II listed.
- 2.5 There are no significant or TPO-protected trees within the application site, however there are trees and shrubs along its edges. A Biodiversity Opportunity Zone (Pennine Foothills) covers the site.
- 2.6 Most of the application site is within a Development Low Risk Area as defined by the Coal Authority. A small part of the site (part of Bierley Marsh, at the northernmost extent of the application site red line boundary) is within a Development High Risk Area.
- 2.7 No public rights of way cross the application site.
- 2.8 Low-level electricity cables (on timber poles) cross the site from the southwest to the northeast.
- 2.9 The application site includes most of a site allocated for residential development in the Local Plan (site allocation HS89).

## **3.0 PROPOSAL:**

- 3.1 The applicant seeks full planning permission for the erection of 46 dwellings.

- 3.2 A vehicular entrance to the site is proposed at Soureby Cross Way, from which a new estate road would run along the site's northwest boundary (adjacent to the recreation ground). In the southern part of the site, two spurs (including private drives) would extend southeastwards into the site from the main estate road. In the northern part of the site, a road would extend from the main estate road, providing access to the farmland to the southeast and extending northeastwards to a second (but gated) vehicular entrance on Soureby Cross Way. A pedestrian connection is proposed opposite unit 4, providing access to the playspace within the adjacent recreation ground. Upgrade works are proposed to parts of Bierley Marsh (to the south of 634 Hunsworth Lane) and Soureby Cross Way.
- 3.3 Dwellings would be arranged around these new roads. Nine terraced, eight semi-detached and 29 detached dwellings are proposed. All dwellings would be two storeys in height, and would have pitched roofs. 11 house types are proposed. Five of the 46 units would have two bedrooms, 19 would have three bedrooms, and 22 would have four bedrooms. An electricity substation is proposed at the southwest end of the site.
- 3.4 In relation to affordable housing, the applicant has proposed to the provision of nine units on-site (units 9 to 12, 28 and 29, and 44 to 46). These would comprise three terraced 2-bedroom units, two semi-detached 2-bedroom units, and four semi-detached 3-bedroom units.
- 3.5 All dwellings would have off-street parking, with most dwellings having attached or integral garages.
- 3.6 No publicly-accessible open space is proposed, however soft landscaped areas (not within private curtilages) are proposed around the site
- 3.7 Two box culverts (for the storage of surface water) and a hydrobrake are proposed beneath the track to the southwest of the site. A connection is proposed from these to an existing culverted watercourse beneath Hunsworth Lane.

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

- 4.1 None relevant to the main part of the application site, however the parts of Bierley Marsh and Soureby Cross Way that are within the application site red line boundary were also within the red line boundaries of the following applications:

88/02133 – Permission granted 29/09/1989 for the erection of 11 detached houses with double garages at Crosses Works.

88/02581 – Permission granted 30/01/1990 for the erection of four detached houses with double garages and an access road at Cross Gables.

90/06012 – Permission granted 01/03/1991 for the erection of 14 dwellings and garages at land off Hunsworth Lane.

93/04676 – Permission granted 18/02/1994 for the erection of 20 dwellings and garages at land off Hunsworth Lane.

- 4.2 In addition, the track to the southwest of the application site was within the red line boundary of the following application:

2011/91558 – Permission granted 24/08/2011 for erection of new changing facilities at Birkenshaw Rugby Club.

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

- 5.1 The applicant requested pre-application advice from the council in November 2018 in relation to a development of 43 units with vehicular access provided from the track to the southwest (ref: 2018/20493). Officers met the pre-application team on 13/12/2018 and 16/01/2019. No written pre-application advice letter was issued, however advice was provided verbally and via email. The main points of the advice emailed on 21/12/2018 are summarised as follows:

- Justification was be required for a scheme that doesn't provide a density of 35 units per hectare or the 59 units referred to in the draft site allocation.
- The setting of the East Bierley Conservation would not be adversely affected.
- Although there is potential for secondary/alternative/emergency access off Soureby Cross Way, the most plausible vehicular access would be off the private unmade access track onto Hunsworth Lane.
- Sight lines from the proposed access onto Hunsworth Lane are poor to the left when exiting the track. Acceptable sight lines would need to be shown from the access onto Hunsworth Lane. Given that Hunsworth Lane is a classified road the sight lines should be based on 85 percentile wet weather speeds.
- For unregistered land, appropriate notices would need to be completed to confirm all reasonable steps have been taken to establish the owners and/or notices served on all interested parties to validate any application which may include areas of land not in ownership of the applicant.
- Consideration should be given to the provision of a footway along Hunsworth Lane frontage to the site and a link could be provided through to Soureby Cross Way to improve pedestrian links.
- The proposed internal layout should be a shared surface designed to achieve a maximum speed of 15mph.
- Parking should be provided in accordance with Appendix 2 of the UDP, including visitor (1 space per 4 dwellings) and cycle parking. If integral garages are to be considered as contributing towards parking provision they must provide internal dimensions of 3m x 6m.
- Turning heads should be designed to accommodate an 11.85m long waste collection vehicle which should be demonstrated using swept path analysis.

- The internal access road should be 5.5m in width and 600mm hard margins are needed to all sections of any shared surface carriageways.
- Preliminary Ecological Appraisal required, followed by an Ecological Impact Assessment. The final proposals will need to demonstrate a biodiversity net gain.
- Education contribution of £182,495 required.
- The site has been identified as potentially contaminated land due to its proximity to a landfill site. Conditions relating to site contamination would be necessary.
- Measures to protect new residents from noise would be necessary.
- Electric vehicle charging points would be required.
- Health Impact Assessment not required.
- Drainage strategy will need to follow the drainage hierarchy. Site may be suitable for infiltration (subject to testing). Attenuation must store the critical 1 in 30 year storm. Volumes generated by storms up to and including the 1 in 100 + 30% climate change critical storm also must be stored on site. Attenuation spans greater than 1500mm beneath the highway will preclude adoption. Management and maintenance arrangements needed for drainage systems. Details of temporary drainage measures during works are needed.
- Nine affordable dwellings required (five social/affordable rent, four intermediate). Batley and Spenningsdale sub-area has a high need for affordable housing, particularly for houses of three or more bedrooms, as well as 1- and 2-bedroom homes and homes for older people.

5.2 Discussions between the pre-applicant team and officers continued into 2019 regarding the provision of access into the site, and the difficulties relating to the unregistered land along the track to the southwest.

5.3 As set out in the submitted Statement of Community Involvement, the applicant carried out local pre-application consultation in the form of a letter (including a proposed site plan) sent to the occupants of 123 nearby properties, and to local ward Members. 17 responses were received.

5.4 During the life of the current application, the applicant submitted revised layouts which moved the proposed development's main estate road from the centre to the northwest edge of the site. In addition, the number of residential units was increased from 42 to 46, along with a commensurate increase in the proposed number of affordable housing units (from eight to nine). Amended floorplans and elevations of the proposed dwellings, a revised Flood Risk Assessment and Surface Water Management Strategy, landscaping proposals, details of works to Bierley Marsh and Soureby Cross Way, ecological information and a new Stage 1 Road Safety Audit (and designer's response) were submitted in connection with the amended layout and increased number of units. A gas risk assessment, an Ecological Impact Assessment and an Arboricultural Impact Assessment were also submitted during the life of the application, in response to comments from officers. Following the resolution of the council's Strategic Planning Committee on 24/06/2020 to defer its decision, the applicant submitted further information relating to potential support for the East Bierley Community Sports Association, and to the track to the southwest of the site.

## 6.0 PLANNING POLICY:

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27/02/2019).

### Kirklees Local Plan (2019):

6.2 The application site includes most of a site allocated for residential development in the Local Plan (site allocation HS89), as well as parts of the adjacent road to the north (Bierley Marsh and Soureby Cross Way). HS89 relates to 1.81 hectares (gross) / 1.7 hectares (net, excluding an area of open land from the developable area), sets out an indicative housing capacity of 59 dwellings, and identifies the following constraints:

- Third party land required for access
- Site is close to a Conservation Area

6.3 Relevant Local Plan policies are:

LP1 – Presumption in favour of sustainable development  
LP2 – Place shaping  
LP3 – Location of new development  
LP4 – Providing infrastructure  
LP5 – Masterplanning sites  
LP7 – Efficient and effective use of land and buildings  
LP9 – Supporting skilled and flexible communities and workforce  
LP11 – Housing mix and affordable housing  
LP20 – Sustainable travel  
LP21 – Highways and access  
LP22 – Parking  
LP23 – Core walking and cycling network  
LP24 – Design  
LP26 – Renewable and low carbon energy  
LP27 – Flood risk  
LP28 – Drainage  
LP30 – Biodiversity and geodiversity  
LP32 – Landscape  
LP33 – Trees  
LP34 – Conserving and enhancing the water environment  
LP35 – Historic environment  
LP47 – Healthy, active and safe lifestyles  
LP48 – Community facilities and services  
LP49 – Educational and health care needs  
LP50 – Sport and physical activity  
LP51 – Protection and improvement of local air quality  
LP52 – Protection and improvement of environmental quality  
LP53 – Contaminated and unstable land  
LP63 – New open space  
LP65 – Housing allocations

## Supplementary Planning Guidance / Documents:

6.4 Relevant guidance and documents are:

- 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 Interim Affordable Housing Policy (2020)
- 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)
- Highway Design Guide (2019)
- Waste Collection, Recycling and Storage Facilities Guidance – Good Practice Guide for Developers (2017)
- Green Street Principles (2017)
- East Bierley Conservation Area Appraisal (undated)

## Climate change

6.5 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.

## National Planning Policy and Guidance:

6.6 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 16 – Conserving and enhancing the historic environment
  - Chapter 17 – Facilitating the sustainable use of materials.
- 6.7 Since March 2014 Planning Practice Guidance for England has been published online.
- 6.8 Relevant national guidance and documents:
- National Design Guide (2019)
  - Technical housing standards – national described space standard (2015, updated 2016)
  - Fields in Trust Guidance for Outdoor Sport and Play (2015)
- 7.0 PUBLIC/LOCAL RESPONSE:**
- 7.1 The application has been advertised as a major development, and a development either within a conservation area or that affects its setting.
- 7.2 The application has been advertised via two site notices posted on 26/11/2019, an advertisement in the local press dated 21/11/2019, and letters delivered to addresses adjacent to the application site. This is in line with the council's adopted Statement of Community Involvement. The end date for this initial publicity was 17/12/2019.
- 7.3 16 representations were initially received from occupants of neighbouring properties, the East Bierley Village Preservation Society (EBVPS), and a representative of the East Bierley Community Sports Association (EBCSA). These have been posted online. The following is a summary of the points raised:
- Objection to loss of green belt land. Discontinuance of agricultural use hasn't changed its categorisation.
  - Objection to loss of public and protected land along Soureby Cross Way to enable widening.
  - Harm to character and appearance of East Bierley. East Bierley is a unique and rare village community, and should be preserved. Proposed development would turn East Bierley into just another district of a conurbation. Village life would be lost.
  - Landscape harm. Views of green fields would be lost.
  - Harm to character and appearance of conservation area.
  - Proposed houses not in keeping with character of the village.
  - Proposed development would be visible from public land.
  - Loss of privacy. Houses in Soureby Cross Way and Hunsworth Lane would be overlooked. Recreation ground would be overlooked.

- Loss of view from existing dwellings.
- Light pollution.
- Vehicle headlights would shine into windows of houses opposite new junction on Soureby Cross Way, causing nuisance.
- Increased noise and disturbance to quiet village. Noise of traffic would affect three houses nearest to new junction on Soureby Cross Way.
- Development would bring additional traffic. Village is often gridlocked and is used as a rat run. Vehicles have to mount footway to pass oncoming buses. Roads and village cannot cope with more vehicles. Traffic volumes and speeds are already dangerous. Local roads are too narrow. Village needs a traffic reduction scheme before more homes are built.
- School already creates vehicle movements and parking on Hunsworth Lane, The Marsh, South View Road and Soureby Cross Way. Council should extend parking restrictions close to school. Residents are often unable to access their properties. Hunsworth Lane is reduced to a single lane due to on-street parking.
- Bierley Marsh and Soureby Cross Way are single-track and are already inadequate for existing residents. Gradients make this road dangerous in icy conditions. There is limited parking, and passing places are often used for parking by visitors, delivery vehicles, people using the recreation ground and at school drop-off and pick-up times. Proposed widening would result in loss of regularly-used parking bays. Widening would result in more school-related parking, causing congestion and disruption. Planners had previously stated that Soureby Cross Way only had capacity for one more house.
- Proposed new junction to Soureby Cross Way would make reversing onto this existing street difficult.
- Children moving between school and recreation ground would be endangered by additional traffic on Soureby Cross Way. Soureby Cross Way separates the village's two main attractions for children (the duck pond and playspace), and children often run between the two.
- Proposed access and egress is inadequate. Concern regarding visibility and safety when turning out of Soureby Cross Way. Visibility is poor here when cars are parked on Hunsworth Lane. Tree also restricts visibility. Accidents will happen here, or will become more likely. Applicant's suggested reduced visibility splays questioned.
- Access from track to southwest would be more suitable – visibility here is better and compliant with recommended standards, and would mean 50% of new traffic would not need to enter the village near the school. Applicant has not demonstrated that access from track to southwest can't be achieved. Query why this isn't possible if public land can be used at Soureby Cross Way.
- Query whether land along Soureby Cross Way has been purchased or is owned by council.

- Sports club want the development to be accessed via the track. Viability of this community hub depends on track being developed. Sports club may be unable to expand and may have to relocate if track isn't improved, resulting in a loss of benefits to the village. Disappointment at loss of opportunity to upgrade access to playing fields. Applicant should make a financial contribution towards upgrading track. Proposed development doesn't leave adequate space for track to be improved.
- Proposed development would be best served by entrances at both ends of the site, and barrier in the middle.
- Access from Soureby Cross Way to field adjacent to application site should be maintained.
- Pollution risk to children caused by additional traffic.
- Construction traffic should only come via Hunsworth Lane and not through the village via Bradford Road, Cliff Hollins Lane or Raikes Lane. All access points into East Bierley have "unsuitable for large vehicles" signage. Building materials should be delivered via the track to the southwest. No heavy vehicles should access the site during school drop-off and pick-up times.
- Permission should be sought from the rugby club regarding use of their car park by contractors. Soureby Cross Way doesn't have space for contractor parking.
- Noise, disruption, mud and congestion during construction. Problems were caused at fire station development at Bradford Road, Birkenshaw.
- Soureby Cross Way cannot be closed during construction, as residents need 24-hour emergency access. Deeper works to support increased traffic on Soureby Cross Way may also disrupt gas, water and electricity supplies, adversely affecting residents.
- Construction hours should be specified.
- Development would cause stress to elderly residents of Soureby Cross Way.
- Loss of fields would exacerbate flooding problems. Natural flood protection would be destroyed. Gardens downhill will flood. Water already runs off site onto Hunsworth Lane, and freezes in winter.
- Impact on wildlife. Site supports a variety of wildlife. Applicant's information regarding bat roosts queried.
- Loss of trees. Trees proposed in private gardens may be cut down. Unclear if two trees planted along Soureby Cross Way in memory of villagers would be lost.
- Loss of community "lung" reduces ability to counteract traffic pollution.
- General lack of infrastructure locally. New housing should be limited unless new infrastructure is provided.
- Some of the development's budget should go towards improvements to public open spaces in the village, to partly offset the development's negative impacts.

- Impact on electricity supply and broadband.
- Drains under Soureby Cross Way are not deep and proposed development poses risks to utilities and sewerage system.
- Local schools do not have capacity. East Bierley Primary School cannot expand without using public land. School already has to use nearby public land. Development's children would have to be driven to schools further away, causing greater congestion, pollution and health and safety risks. Walking to school should be encouraged. BBG Academy has not been referred to.
- Local doctors are struggling with patient numbers.
- Negative impact on house prices.
- Meeting with residents should have been arranged to enable discussion of planning matters.

7.4 Amendments made to the proposals during the life of the current application necessitated reconsultation. Two further site notices were posted on 22/02/2020, a further press notice was published on 05/03/2020, and letters were again delivered to addresses adjacent to the application site and to those who had previously commented. The end date for this additional publicity was 26/03/2020.

7.5 Nine further representations were received. These have been posted online. The following is a summary of the additional points raised:

- Increase in unit numbers to 46 would worsen problems previously identified.
- No new development can look old. Majority of houses opposite are at least 80 years old.
- Views from village green and approach to pond would be affected.
- View from Soureby Cross Way across countryside would be obstructed.
- Applicant's photos don't illustrate views to Pennines and across the Spen valley.
- Land has been used for agriculture until quite recently. Field has been deliberately abandoned in recent years despite there being a local need for farmland.
- Widening of Soureby Cross Way would require loss of open space or land within the conservation area.
- Field cannot be built on if original access point is not proposed.
- Officers should visit the site at 08:45 and 15:15 to witness vehicle parking and movements at the start and end of the school day.
- Lorries should not be allowed to only use Soureby Cross Way during construction.
- Staggered junction on Hunsworth Lane is not ideal, and sight line up Hunsworth Lane has not been maintained.
- If to be used for access, Soureby Cross Way should be straightened, made less steep, and widened at its junction with Hunsworth Lane.
- Public footpaths will be flooded.
- BBG Academy is oversubscribed.

- Existing population of East Bierley will already place additional demand on over-subscribed schools.
- Existing playspace can become overcrowded and unsafe.
- Inadequate local dental care provision.
- EBVPS would like to be invited to any public meeting regarding this application.

7.6 Further drawings and documents were submitted by the applicant after the reconsultation period ended, however these illustrated amendments to the proposals and provided technical information that did not necessitate a third round of local consultation.

7.7 Following the resolution of the council's Strategic Planning Committee on 24/06/2020 to defer its decision, the East Bierley Community Sports Association made a further representation, noting:

- Full access and rights of way to the playing fields must be maintained at all times.
- Concern regarding how the track would be left post-development.
- It is not for a charitable organisation to take on ownership of part of the track.
- The sports club's preference would be for the track to be upgraded to adoptable standards – how this is achieved and enforced is up to the council.
- The sports club's operation may be jeopardised if its future plans are not taken seriously and are halted due to accessibility issues.
- The highway demands of the club's future plans should be considered together with proposed residential development.
- Sports club has no objection to access to the residential development being provided from Hunsworth Lane and along the track.
- No formal agreement is in place between the sports club and the applicant.
- As the sports club's landlord, the council needs to act to protect landowner interests, the sports club, the local community and investments previously made.

7.8 Of note, the East Bierley Community Sports Association is currently considering the expansion of facilities and activities at East Bierley Playing Fields, including the provision of two new pitches, a mini-pitch, seating, a new club house and a 150-space car park.

7.9 Cllr Smaje – Proposed development would put more pressure on an already-busy road, and would create more traffic within the conservation area. Lines of sight are already affected by parked vehicles. Proposed access is still at the wrong end of the site and is contrary to documentation supporting the Local Plan. Query if applicant has tried to locate the owner of the part of the track referred to as a ransom strip. Rugby club needs the track to be upgraded, and the proposed development should not hinder that. The council supports the rugby club and should ensure that the development would not affect the club's future success.

- 7.10 Application should not be determined at a meeting behind closed doors – several representations have been made, and members of the public should be able to participate at a committee meeting, otherwise the council could be seen as trying to push through a controversial decision. Committee members will need to visit the site to ensure they fully understand the development's impact.
- 7.11 Regarding sustainable transport contribution, it would be inappropriate to spend monies on bus shelter improvements – what is needed is regular bus services through East Bierley along Hunsworth Lane and to Cleckheaton, speed cushions further down Hunsworth Lane (past the sharp bend towards the farms). Query whether local school requires extra space for additional children (and not just a contribution towards places). Thought needs to be given to a sports contribution and play facilities.
- 7.12 As noted in the previous committee update, Cllr Smaje made the following comments on 15/12/2019:

*“Planning Statement – the plans are not backed by the Heritage Impact Assessment as claimed. The Heritage Impact Assessment carried out for Kirklees – not the developer – when the land was allocated under the Local Plan quite clearly shows the access to the site as being from the bottom of the site, not from Soureby Cross Way as the plans submitted. The proposed access impacts on existing properties as well as some of the heritage assets of the village. It will also put extra traffic directly into the centre of the village instead of spreading it using a different access. The document states that the site lines are not to standard, we haven't it would seem had enough reported accidents at that junction for it to affect the development. Surely by putting more traffic on a junction with site lines that are not to standard is only putting in place conditions for accidents to happen. The proximity of the school and parking should not be disregarded.*

*In the heritage statement produced for the council it states: “Any development in an area of moderate significance needs to be in keeping with the scale, height, massing and alignment of the historic buildings in the vicinity with particular attention paid to the immediate setting of the heritage asset. The design should seek to make use of traditional or sympathetic building materials and techniques and the proposed use of the buildings in should respect the traditional character of the setting of the adjacent heritage asset which is in this case is set out in the East Bierley Conservation Area Appraisal”.*

*The document provided by Rouse claims that the development would cause less than substantial harm, where the council's assessment indicate a moderate significance to historical buildings that needed to be mitigated. How does this development mitigate this, by putting more vehicles so close the historical assets? The scale and height of the development needs to be considered in relation to the gradient of the land.*

*Consultation – They claim they have taken into account feedback provided; however, they have completely disregarded the comments and concerns raised with them.*

*In the Design and Access Statement local view 4 on page 9 is in Birkenshaw – not East Bierley.*

*The Transport Statement shows a widening of Soureby Cross Way and discusses parking within the development. What it does not discuss is that if Soureby Cross Way is widened then parking for existing properties will be lost. How is this to be replaced?”*

- 7.13 Following the resolution of the council's Strategic Planning Committee on 24/06/2020 to defer its decision, Cllr Smaje raised queries regarding the status and ownership history of the application site and adjacent land. These queries have been answered by officers in Land Charges and Legal, Governance and Commissioning.
- 7.14 Cllr Thompson – Concurs with Cllr Smaje's comments (paragraph 7.10 above), and added that the council not only support but has heavily financed the sports club in East Bierley. For the betterment of the local community and the health benefits to the area, the council should stop thinking about what is easy for the developer and more about what is right for the area and the residents already in that area.
- 7.15 Regarding sustainable transport contribution, this could be better spent on the village health and wellbeing facilities at EBCSA or track improvements to accommodate existing traffic and the proposed additional 150 car parking spaces. Money would be wasted on Metro cards, 95% of which are never used. More buses are needed, rather than an upgrade to a bus stop that no buses serve.
- 7.16 Responses to the above comments are set out later in this report.

## **8.0 CONSULTATION RESPONSES:**

### **8.1 Statutory:**

KC Highways Development Management – The available visibility from Bierley Marsh (to the south of 634 Hunsworth Lane) onto Hunsworth Lane measured to the nearside kerb line is 2.4m x 16m to the right when exiting and in excess of 2.4m x 40m to the left. Based on a speed survey carried out on 18/10/2019, the 85th percentile wet weather speeds were 24.5mph northbound and southbound – this equates to a requirement for a stopping sight distance of 30m. There have been no recorded injury accidents at this junction in the last five years, and the junction is therefore considered to be currently operating safely. As part of the development of Soureby Cross Way the owners of 634 Hunsworth Lane entered a binding agreement with the council to preserve a 70m sight line from Soureby Cross Way onto Hunsworth Lane. This sight line is not currently being preserved and the council will therefore be contacting the landowners.

Pinch point or traffic calming feature to Soureby Cross Way should be made more apparent, so it is obvious it is not possible to pass, and who should give way. Indicative levels show that the anticipated gradients could be steep at the junction of Soureby Cross Way and the new estate road, and a longitudinal section should be provided to show that acceptable gradients can be provided.

Retained access track into adjacent field should be widened to 4.5m to allow two vehicles to pass and information should be provided regarding the anticipated frequency of use and the likely size of vehicles.

11m width of track would be adequate to ensure future expansion of sports club would not be jeopardised. Track would not need to be adopted – it could remain a private access to the expanded sports club.

Surface water sewer diameters should be no larger than 900mm in adoptable roads. Further comments on internal layout of 46-unit scheme to be included in committee update.

For the earlier 42-unit proposal, traffic generation from the site may be higher than estimated in the applicant's Transport Statement, however officers concur with the findings of the assessment and have no objection on traffic generation grounds.

West Yorkshire Combined Authority note that the closest bus stop to the site does not have a bus shelter – this could be provided at a cost of £13,000 to improve the public transport offer. To encourage the use of sustainable transport as a realistic alternative to the car, the developer needs to fund a package of sustainable travel measures. A contribution of £21,021 towards bus-only Metro cards would be appropriate for this development.

KC Lead Local Flood Authority – No objection, subject to conditions requiring a detailed drainage design for surface water and land drainage, an exceedance flow routing plan, a construction-phase surface water management plan, and a drainage management and maintenance plan.

Coal Authority – No objection, subject to condition securing implementation of the remedial works proposed by the applicant.

## **8.2 Non-statutory:**

KC Biodiversity Officer – Discrepancies in applicant's biodiversity metric calculation need addressing. Proposed development is unlikely to cause significant ecological harm, however no attempts have been made to mitigate for the loss of habitat on the site and achieve a biodiversity net gain. Instead, the applicant has suggested off-site mitigation which should be the final resort should it be demonstrated that a net gain cannot be achieved on-site. New hedgerows could easily be included within the development.

KC Conservation and Design – No objection in relation to heritage. The proposed development would not harm the setting of the conservation area.

KC Education – £148,159 education contribution required.

KC Environmental Health – Satisfactory Phase 1 contaminated land report submitted. Phase 2 report inadequate, therefore four conditions relating to contaminated land are recommended. Conditions also recommended to secure electric vehicle charging points and a Construction Environmental Management Plan.



KC Landscape – £86,696 open space contribution required, potentially for use at the adjacent recreation ground (subject to ward Member and community consultation). Birstall and Birkenshaw ward is deficient in quantity of natural and semi-natural greenspace and allotments (although the proposed development does not meet the allotments trigger of 50 units). 46 units trigger the requirement for a Local Area of Play. Condition recommended, requiring full details of landscaping and its future management, and an Ecological Design Strategy. Details of connections to recreation ground required.

KC Strategic Housing – 20% affordable housing provision required. On-site provision is preferred. In the Batley and Spenningsdale sub-area there is a significant need for 3-bedroom affordable homes (and larger), and demand for 1- and 2-bedroom affordable homes. Nine of the 46 units should be affordable. Proposed mix of 2- and 4-bedroom homes is welcomed. Affordable dwellings should be distributed evenly throughout the development (and not in clusters), and must be indistinguishable from market housing in terms of both quality and design. Proposed distribution of affordable units is acceptable. Kirklees works on a 55% social/affordable rent / 45% intermediate split – five social/affordable rent and four intermediate units would therefore be appropriate.

KC Trees – No objection. Adjacent trees form a prominent landscape feature, and are on council-controlled land. Applicant's arboricultural information appears to have informed the proposed design, and unacceptable long-term conflicts between trees and occupants of the proposed development should therefore be avoided. The proposed access road appears to be located an adequate distance from the trees, however the proposed parking spaces may need to be constructed from a no-dig cellular confinement system. Arboricultural Method Statement (to show how construction would be undertaken while avoiding damage to trees) required, ideally prior to determination, but can be secured via a pre-commencement condition.

KC Waste Strategy – Inclusion of bin collection points welcomed, however clarification required regarding provision in specific locations, to ensure proposed provision can be accommodated without obstructing highways or parking. Surfacing of collection points needs clarifying. Space for three 240-litre bins needed for each dwelling. Temporary refuse collection arrangements needed if development is to be phased with residents moving into dwellings before development is completed (condition recommended). General advice provided regarding waste storage and collection.

West Yorkshire Police Designing Out Crime Officer – No objection in principle. Proposed layout (revision M) has been acceptably amended. Substation will require 2.4m fencing (either welded mesh or palisade) instead of close-boarded timber fencing, to allow better natural surveillance. Substations can attract unwanted attention from young people, and the applicant should discuss the security of the substation with the energy provider. Fence to sides of plots 40 and 41 should be brought to front building line of these dwellings to reduce deep recesses. Trellis topping recommended to fencing, to improve natural surveillance. Unadopted private drives should have street lighting (to BS 5489-2:2016 standard) so dark spaces are not exploited by offenders. Space behind plots 41 to 43 should have hostile defensible planting.

Yorkshire Water – Conditions recommended regarding development close to public water main, separate systems of foul and surface water drainage, and details and completion of satisfactory surface water outfall. 6m easement required either side of the centre line of the Dewsbury Link Main. Full details of all levels within 3m of the public water main required. Easement dimensions should be marked on plan. Public water main must be protected during construction. The development's water supply would need to be drawn from the water main beneath Hunsworth Lane. Applicant's Flood Risk Assessment is acceptable. Advice provided regarding connections to sewers and sewer adoption.

## **9.0 MAIN ISSUES**

- Land use and principle of development
- Climate change and sustainability
- Design and conservation
- Residential amenity and quality
- Affordable housing
- Highway and transportation issues
- Flood risk and drainage issues
- Trees and ecological considerations
- Environmental and public health
- Ground conditions
- Representations
- Planning obligations
- Support for the East Bierley Community Sports Association
- Other matters

## **10.0 APPRAISAL**

### Land use and principle of development

- 10.1 Planning law requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF is a material consideration in planning decisions.
- 10.2 The Local Plan sets out a minimum housing requirement of 31,140 homes between 2013 and 2031 to meet identified needs. This equates to 1,730 homes per annum.
- 10.3 Full weight can be given to site allocation HS89, most of which is included in the application site's red line boundary, and which allocates the site for housing. Allocation of this and other greenfield (and previously green belt) sites was based on a rigorous borough-wide assessment of housing and other need, as well as analysis available land and its suitability for housing, employment and other uses. The Local Plan, which was found to be an appropriate basis for the planning of the borough by the relevant Inspector, strongly encourages the use of the borough's brownfield land, however some release of green belt land was also demonstrated to be necessary in order to meet development needs. Regarding this particular site, in her report of 30/01/2019 the Local Plan Inspector (referring to the site when it was numbered H531) stated:

*“The site is located in part of the strategic gap between East Bierley and Birkenshaw. However, it would follow the existing southeastern edge of the village and not encroach onto Birkenshaw. Accordingly, and taking account of the identified need for housing, I conclude that exceptional circumstances exist to justify the removal of the site from the Green Belt”.*

- 10.4 Given the above, and notwithstanding local objections to the principle of development here, it is considered that the proposed residential use, and the principle of residential development at this site, is policy compliant.
- 10.5 The 46 dwellings proposed would contribute towards meeting the housing delivery targets of the Local Plan.

#### Climate change and sustainability

- 10.6 The applicant's Planning Policy Statement and Design and Access Statement refer to climate change and sustainability policies, and briefly refer to drainage, but do not explain how the proposed development would help to address or combat climate change effects. Officers note, however, that measures would be necessary to encourage the use of sustainable modes of transport. Adequate provision for cyclists (including cycle storage for residents) and electric vehicle charging points would be secured by condition, should planning permission be granted. A development at this site which was entirely reliant on residents travelling by private car is unlikely to be considered sustainable. Drainage and flood risk minimisation measures will need to account for climate change.
- 10.7 The application site is a sustainable location for residential development, as it is relatively accessible and is adjacent to an existing, established settlement. Although local public transport and certain other facilities are limited, East Bierley currently has a pub, sports facilities, a primary school, a hairdresser, a florist / food shop and churches, such that some of the daily, social and community needs of residents of the proposed development can be met within the area surrounding the application site, which further indicates that residential development at this site can be regarded as sustainable.
- 10.8 Further reference to, and assessment of, the sustainability of the proposed development is provided later in this report in relation to transport and other relevant planning considerations.

#### Design and conservation

- 10.9 Chapters 11, 12 and 16 of the NPPF, and Local Plan policies LP2, LP5, LP7, LP24 and LP35 are relevant to the proposed development in relation to design and conservation, as is the National Design Guide.

- 10.10 The application site is subject to constraints relevant to design and conservation, including the East Bierley Conservation Area. The conservation area includes the part of Bierley Marsh that is within the application site red line boundary. It also includes the carriageway and footway of Hunsworth Lane to the west of the application site, as well as the stone-built residential terrace at 607 to 621 Hunsworth Lane and properties further to the north, including 634 and 643 Hunsworth Lane. The nearest listed buildings are Cross House, and a (probably medieval) cross base and (probably 18<sup>th</sup> century) stocks, all located to the north of the application site, and all Grade II listed. Due to its topography and location adjacent to a recreation ground, the application site is visible in many views from public vantagepoints.
- 10.11 The council's character appraisal of the East Bierley Conservation Area defines East Bierley as a rural village surrounded by picturesque countryside and adds that the village's green spaces emphasise its rural location and allow views over the surrounding countryside. Views through gaps between buildings are specifically noted. Noting the large amount of open space in and surrounding the conservation area, the appraisal highlights that this space is an integral part of the character of the conservation area, and states that it should be preserved in order to maintain an important attribute of the village. The street layouts in the conservation area are characterised by stone-built terraced properties with pitched stone slate roofs which are interspersed by stone detached dwellings. The scale and the difference in building heights also add to the character and create a varied streetscape. The appraisal notes typologies ranging from large detached properties to terraces and converted farm dwellings, while later development spreading outwards from the village's historic centre (including 20th century development) is also noted, as are the different styles, layout and character of these areas. The appraisal notes the use of local natural stone (in regular coursed ashlar), the common roof materials (stone, slate and red tiles), the common pitched roofs, and the contribution that low stone garden walls make towards the area's character. Street surfaces are mostly tarmac, with concrete kerbs. The appraisal states that all trees play an important role in creating the character of the conservation area, and that attention should be given to existing trees and the introduction of new trees when considering development proposals in East Bierley.
- 10.12 With regard to opportunities for enhancement, the appraisal states that the scale, design and materials of new developments should reinforce and protect the features in East Bierley that give it special character, such as using similar styles and designs of buildings, replicating window designs and using materials which are used on existing historic buildings. Traditional materials should be used for new buildings as modern equivalents such as artificial stone and plastic fails to respect the character of the area. The height and scale of development proposals should be considered in order to protect key views of the conservation area.
- 10.13 The appraisal's townscape analysis map identifies important frontages at 607 to 621 and 643 Hunsworth Lane, and a key view from Bierley Marsh and Soureby Cross Way (southwards, across the recreation ground and across part of the application site). Hunsworth Lane is identified as an important gateway to the village.

- 10.14 Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the council to pay special attention to the desirability of preserving or enhancing the character or appearance of the East Bierley Conservation Area.
- 10.15 As noted by the Local Plan Inspector in her report of 30/01/2019, the application site is located in part of the strategic gap between East Bierley and Birkenshaw. Development of this site, however, would follow the existing southeastern edge of the village, and would not encroach onto Birkenshaw or significantly erode the important gap between the two settlements. Although the proposed development would inevitably bring about change to the landscape and character of this part of East Bierley, and to the village's relationship with the adjacent green belt land, it is considered that the site can be developed without causing significant landscape harm.
- 10.16 Proposed site layouts submitted at pre-application stage, and initially submitted under the current application, showed a main estate road running southwest-northeast through the centre of the site. Dwellings would have faced (and would have been accessed from) this estate road, while the development would have lined the adjacent recreation ground and green belt land with rear garden boundary treatments along most of the site's edges. This would have given the development a very insular character (augmented by the lack of a vehicular or pedestrian connection to the track to the southwest), would have created a poor relationship with adjacent land, and would have squandered opportunities to improve natural surveillance of the recreation ground.
- 10.17 During the life of the current application, officers suggested a revised approach to the proposed development's layout, whereby a new estate road would be provided along the site's northwestern edge, and from which spurs would extend southeastwards into the site. Officers noted that having development on one side of the estate road could be less efficient (in terms of number of units served per so many metres of road), but argued that this layout would enable the applicant to implement a preferable perimeter block approach, and would significantly reduce the need for rear garden boundary treatments along the edge of an important area of public realm (the recreation ground). A much better open space / estate road / house relationship could be achieved, reflecting the relationship along Hunsworth Lane on the opposite side of the open space (and creating a sense of enclosure to the recreation ground reminiscent in some ways of a village green, noting of course that such a space already exists in East Bierley at The Green to the north). Natural surveillance of the recreation ground would be greatly enhanced, and with spurs extending southeastwards from the estate road, public views through the proposed development (of the countryside beyond the application site) would be retained.

- 10.18 The applicant responded positively to the above advice and submitted an amended layout that is much more successful in aesthetic, amenity and security terms. While there are still parts of the edges of the site (along the track to the southwest, and along parts of the site's green belt boundary) where rear garden fences would be necessary, the extent of these has been significantly reduced, and details to be submitted pursuant to a recommended condition would ensure that their visual impact is minimised.
- 10.19 The applicant also responded positively to officer requests for an increase in the quantum of development proposed. To ensure efficient use of land Local Plan policy LP7 requires developments to achieve a net density of at least 35 dwellings per hectare, where appropriate, and having regard to the character of the area and the design of the scheme. Lower densities will only be acceptable if it is demonstrated that this is necessary to ensure the development is compatible with its surroundings, development viability would be compromised, or to secure particular house types to meet local housing needs. Site allocation HS89 sets out an indicative housing capacity of 59 dwellings within a developable (net) area of 1.7 hectares.
- 10.20 During the life of the current application, the applicant increased the proposed number of units from 42 to 46. With 46 units now proposed in a site of 1.82 hectares, a density of only 25 units per hectare would be achieved.
- 10.21 It is noted, however, that the 1.82 hectare site area includes parts of the road (Bierley Marsh and Soureby Cross Way) to the north of the site, as well as land subject to an easement restriction relating to a Yorkshire Water main (the Dewsbury Link Main) that runs northwest-southeast across the northern edge of the application site. Development close to the site's northern edge is further constrained by the proximity of existing dwellings on Soureby Cross Way (and the need to limit impacts upon their amenities by leaving space undeveloped) and the existence of a bank on the south side of this road (changes in levels are more abrupt at this end of the site). The proposed development must also take its cue (at least partly, in terms of quantum, density and layout) from existing adjacent development and the character and appearance of the East Bierley Conservation Area, and it is noted that surrounding densities to the north, southwest and west are not particularly high, with many residential properties benefitting from spacing and good-sized gardens that help define the area's character. The grain of this existing development, and the gaps between buildings, are illustrated in figure ground plans included in the applicant's Design and Access Statement and are described in the East Bierley Conservation Area Appraisal.
- 10.22 Furthermore, it is again noted that site allocation HS89 refers to a developable (net) area of 1.7 hectares (which, with 46 units proposed, results in a density of approximately 27 units per hectare), and that the applicant has suggested that – with some of the above constraints taken into account – the developable area is as low as 1.44 hectares, resulting in a density of approximately 32 units per hectare.

- 10.23 With all these matters taken into account, although the proposed density falls short of the 35 units per hectare density specified (and applicable “where appropriate”) in Local Plan policy LP7, it is recommended that the proposed quantum of development, and its density, be accepted.
- 10.24 Due to the application site’s topography, some changes in levels would be necessary to enable the provision of access into the site and acceptable gradients for the development’s adoptable highways. These level changes would, however, be limited by the water main at the northern edge of the site, and developers are in any case normally expected to work with a site’s existing topography, rather than radically reshape it.
- 10.25 The proposed development’s estate road layout would help prevent surface water running into or pooling within residential curtilages, and ground levels and kerbs will need to be designed to direct any surface water flow away from building thresholds.
- 10.26 With the amended layout, most rear gardens of the new dwellings would back onto other proposed rear gardens, forming (or partly forming) perimeter blocks. Proposals for rear access to units 44 to 46 have been satisfactorily amended during the life of the application. Outdoor areas that are not proposed within garden curtilages would need to be defined, landscaped and managed to ensure they do not become ambiguous, leftover spaces at risk of anti-social behaviour such as fly-tipping. A condition related to crime and anti-social behaviour prevention measures is recommended.
- 10.27 In one of the most recent amendments to the proposed layout, the applicant relocated the proposed substation to the side (southwest) of unit 46. This is a welcomed response to officer concerns – in an earlier proposed layout, the substation was located at the southwest terminus of the main estate road, giving this inactive box (that would have made no positive contribution to the street scene) undue prominence, and blocking the pleasant and relatively safe north-south pedestrian route (and users’ ability to see how they might continue their journey southwards) provided by the main estate road. With the substation in its current proposed location, this important new route would be more inviting, legible and logical, an opportunity would be created for a connection to the adjacent track (for pedestrians and cyclists), and the need for a footway along the east edge of Hunsworth Lane would be partly obviated.
- 10.28 The existing electricity cables that run across the application site would be undergrounded, and their timber poles would be removed as part of the proposed development. This is welcomed.
- 10.29 Off-street car parking is proposed in front and side driveways, and in integral or attached garages. With appropriate landscaping, the proposed car parking would not have an over-dominant or otherwise harmful visual or streetscape impact.

- 10.30 11 house types are proposed, all of which would present two storeys to the proposed development's new estate roads. Nine terraced, eight semi-detached and 29 detached dwellings are proposed. The proposed mix of unit types and sizes, and the proposed two storeys, would be suitably reflective of existing development nearby and in the East Bierley Conservation Area. Conventional massing, roof forms and elevational treatments are proposed. The number of, and variations to, house types would add interest to the proposed street scenes. Pitched roofs, front gables, bay windows and porches are proposed, and these details are considered acceptable.
- 10.31 Regarding materials, section 7 of the applicant's application forms indicates that reconstituted stone is proposed for the walls of the dwellings, and grey interlocking concrete tiles are proposed for their roofs. This proposed palette must be considered in the context of the materials used in the East Bierley Conservation Area, but also in the later, 20<sup>th</sup> century development that has spread out beyond the village's historic core, and where a wider variety of materials have been used. Although inferior to the local natural stone used in many buildings in the conservation area, subject to a condition requiring details and samples it is recommended that the proposed materials (including the use of artificial stone) be accepted.
- 10.32 The proposed layout would limit the prominence of rear garden fencing, which is welcomed, however in some locations careful design of boundary treatments would be necessary, given the site's location in relation to the conservation area and the green belt, and its visibility. Front garden boundary treatments, where required, should be low to reflect those of many properties within the East Bierley Conservation Area. Careful design of boundary treatments and defensive planting will be necessary where proposed side and rear garden boundaries would be exposed to public access. The comments of the West Yorkshire Police Designing Out Crime Officer regarding units 40 and 41 are noted, however the security concerns can be addressed through the use of defensive planting, without the need for additional fencing along the site's sensitive green belt boundary. A condition requiring details of boundary treatments is recommended.
- 10.33 A high-level assessment of the impact of development (at this site) upon the East Bierley Conservation Area was carried out during the preparation of the Local Plan, and officers and the Local Plan Inspector found no reason to reject the then-proposed site allocation due to potential impacts upon this designated heritage asset. It is additionally noted that the relationship between the proposed dwellings and the adjacent recreation ground would in some ways reflect the relationship between the older buildings and The Green at the centre of the conservation area. The important southwards view across the recreation ground (identified in the East Bierley Conservation Area Appraisal) would be framed by the proposed development, however it is considered that this effect would not be harmful.
- 10.34 The application site does not have a direct relationship with the three nearest listed buildings and does not form a significant part of their settings. It is considered that the proposed development would not cause unacceptable harm to the significance of listed buildings.



10.35 In light of the above assessments, it is considered that the relevant requirements of chapters 11, 12 and 16 of the NPPF, and Local Plan policies LP2, LP7, LP24 and LP35, would be sufficiently complied with. The proposed development is considered compliant with Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. There would also be an acceptable level of compliance with guidance set out in the National Design Guide.

#### Residential amenity and quality

10.36 Local Plan policy LP24 requires developments to provide a high standard of amenity for future and neighbouring occupiers, including by maintaining appropriate distances between buildings.

10.37 Acceptable separation distances are proposed between the proposed dwellings and existing neighbouring properties. The proposed distances would ensure existing neighbours would not experience significant adverse effects in terms of natural light, privacy and outlook. The blank rear wall of the garage of unit 18 would be downhill and 19m away from the front elevation of 20 Soureby Cross Way, and the rest of the rear elevation of this new dwelling would be spaced further away, with most rear windows serving non-habitable rooms.

10.38 In terms of noise, although residential development would increase activity and movements to and from the site, given the quantum of development proposed, and the site's location close to Hunsworth Lane (which is already used by through-traffic) it is not considered that neighbouring residents to the west would be significantly impacted. Existing properties on Bierley Marsh and Soureby Cross Way could experience greater levels of everyday noise and disturbance, however these impacts are not considered so great as to warrant refusal of planning permission. The proposed residential use is not inherently incompatible with existing surrounding uses.

10.39 Residents have expressed concern regarding headlights (of vehicles moving out of the proposed development and onto Soureby Cross Way and Hunsworth Lane) shining into neighbouring properties. This is acknowledged as a potential impact (and, therefore, attracts some negative weight), however the impact would be momentary, it would only happen when vehicles are moved during dark hours, and it is therefore not considered so problematic as to warrant refusal of permission. Headlights momentarily shining on a property opposite a street entrance in this way is not an uncommon occurrence.

10.40 A condition requiring the submission and approval of a Construction (Environmental) Management Plan (C(E)MP) is recommended. The necessary discharge of conditions submission would need to sufficiently address the potential amenity impacts of construction work at this site. Details of dust suppression measures and temporary drainage arrangements would need to be included in the C(E)MP. An informative regarding hours of noisy construction work is recommended.

- 10.41 The quality of the proposed residential accommodation is also a material planning consideration.
- 10.42 In terms of unit types and sizes, the applicant proposes:
- 2x Linton (units 18 and 21), 4-bedroom, 185sqm
  - 3x Shelley (units 1, 17 and 20), 4-bedroom, 157sqm
  - 5x Sandringham (units 5, 16, 19, 33 and 41), 4-bedroom, 148sqm
  - 6x Nostell (units 4, 26, 32, 34, 37 and 40), 4-bedroom, 140sqm
  - 2x Fullwood (units 25 and 39), 4-bedroom, 135sqm
  - 4x Bretton (units 8, 27, 36 and 38), 4-bedroom, 113sqm
  - 5x Studley (units 2, 6, 30, 35 and 43), 3-bedroom, 110sqm
  - 4x Nunnington detached (units 3, 7, 31 and 42), 3-bedroom, 105sqm
  - 6x Ryedale (units 13, 14, 15, 22, 23 and 24), 3-bedroom, 84-90sqm
  - 4x Bedale (units 9, 10, 28 and 29), 3-bedroom, 83sqm
  - 5x Malham (units 11, 12, 44, 45 and 46), 2-bedroom, 72sqm
- 10.43 Five of the 46 units would have two bedrooms, 19 would have three bedrooms, and 22 would have four bedrooms. This is considered to be a sufficiently varied mix of unit sizes that would cater for a range of household sizes, would help create a mixed and balanced community, and would help to avoid visual monotony across the site. Local Plan policy LP5e requires masterplanned developments to provide for a mix of housing that addresses the range of local housing needs and encourages community cohesion, and although specific proportions of unit sizes are not set out in the policy, and although a masterplan did not need to be prepared for this particular site, the spirit and intention of this policy would be complied with.
- 10.44 Although the Government's Nationally Described Space Standards (2015, updated 2016) are not adopted planning policy in Kirklees, they provide useful guidance which applicants are encouraged to meet and exceed. Of the 46 dwellings proposed, the majority would comfortably exceed the Government's standards. The four Bretton units, the six Ryedale and five Malham units would be compliant depending upon the number of people living in those units. At 83sqm each, the four Bedale units would fall slightly short of the Government's standard (which is a minimum floorspace of 84sqm for a 3-bedroom, 4-person, 2-storey dwelling), however this is not considered significant in the context of an otherwise acceptable range of unit sizes.
- 10.45 All of the proposed dwellings would benefit from dual aspect, and would be provided with adequate outlook, privacy and natural light. Adequate distances would be provided within the proposed development between new dwellings.
- 10.46 All dwellings would have WCs at their entrance level, providing convenience for visitors with certain disabilities. No dwellings would have bedrooms on their entrance level, although several units would have habitable rooms at ground floor level that could be converted to bedrooms.
- 10.47 All of the proposed dwellings would be provided with adequate private outdoor amenity space.

- 10.48 Regarding open space, it is accepted that on-site provision would not be appropriate or necessary at this site, given the large recreation ground immediately to the northwest. A financial contribution of £86,696 would instead be required, based on the open space needs of a 46-unit development, and existing provisions and deficiencies in East Bierley and the Birstall and Birkenshaw ward.
- 10.49 Access to the adjacent recreation ground is also an important consideration, and it is noted that the proposal to line the recreation ground with the development's main estate road should ensure good access is available to residents – a pedestrian connection is proposed opposite unit 4 (providing access to the playspace within the adjacent recreation ground), and a simple 450mm high timber knee rail is proposed along this boundary.
- 10.50 Although some details of landscaping proposals have been shown on the applicant's drawings, a condition is recommended, requiring further details of the development's outdoor spaces and their purpose, design, landscaping, boundary treatment and management.

#### Affordable housing

- 10.51 Local Plan policy LP11 requires 20% of units in market housing sites to be affordable. A 55% social or affordable rent / 45% intermediate tenure split would be required, although this can be flexible. Given the need to integrate affordable housing within developments, and to ensure dwellings of different tenures are not visually distinguishable from each other, affordable housing would need to be appropriately designed and pepper-potted around the proposed development.
- 10.52 The 20% policy requirement would be equivalent to 9.2 affordable units; therefore this 46-unit development would normally necessitate the provision of nine affordable units.
- 10.53 Nine affordable units are indeed proposed, and these would comprise three terraced 2-bedroom units, two semi-detached 2-bedroom units, and four semi-detached 3-bedroom units. In light of advice from KC Strategic Housing, this affordable unit size mix is considered acceptable.
- 10.54 The applicant has confirmed that units 9, 10, 11 and 12 would be intermediate, and units 28, 29, 44, 45 and 46 would be affordable/social rent. This is policy-compliant and is considered acceptable. All affordable housing would need to be provided in perpetuity.

- 10.55 The proposed locations of the affordable housing are considered acceptable, given the size of the site and the proposed development, and the proposal to provide the affordable units in three locations (rather than grouping them together). Similar detailing and the same materials are proposed for all dwellings, which would help ensure that the nine affordable units would not be visually distinguishable from the development's market units.

#### Highway and transportation issues

- 10.56 Local Plan policy LP21 requires development proposals to demonstrate that they can accommodate sustainable modes of transport, and can be accessed effectively and safely by all users. The policy also states that new development will normally be permitted where safe and suitable access to the site can be achieved for all people, and where the residual cumulative impacts of development are not severe.
- 10.57 Paragraph 108 of the NPPF states that, in assessing applications for development, it should be ensured that appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, that safe and suitable access to the site can be achieved for all users, and that any significant impacts from the development on the transport network (in terms of capacity and congestion), or highway safety, can be cost-effectively mitigated to an acceptable degree. Paragraph 109 adds that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highways safety, or if the residual cumulative impacts on the road network would be severe.
- 10.58 Although not explicitly required by site allocation HS89, providing vehicular access to part or all of the site from the track to the southwest would be preferable to having a single vehicular access point on Soureby Cross Way. This preference was stated by the council during the preparation of the Local Plan – for this site, in relation to Soureby Cross Way the Accepted Site Options Technical Appraisal (July 2017) referred only to a “potential secondary / alternative / emergency access”. Officers provided advice to the applicant to that effect at pre-application stage, and in “numerous” responses to the applicant's own pre-application local consultation (as detailed in the submitted Statement of Community Involvement) the point of access was raised as a concern. At application stage, representations from Members, local residents, the East Bierley Village Preservation Society (EBVPS), and a representative of the East Bierley Community Sports Association (EBCSA) also confirmed a preference for providing vehicular access from the southwest. It is recognised that such access would necessitate the upgrade of part of the existing track (which is currently in a poor condition), and that such an upgrade would be of significant benefit to the sports club to the south of the application site, where a variety of publicly-beneficial activities are regularly organised.
- 10.59 The applicant's initial pre-application proposals showed vehicular access provided from the track to the southwest of the site. However, it was subsequently established that the track has a pinchpoint created by an unregistered strip of land. Within the pinchpoint an adequate carriageway and footway width cannot be provided – the pinchpoint is simply too narrow to accommodate a 5.5m wide carriageway for two-way traffic and a 2m wide

footway. To provide an adequate carriageway and footway here, the applicant would have to intrude into this unregistered land, however to do this lawfully the applicant would need to carry out a public consultation procedure under Section 228 of the Highways Act, giving any interested party 21 days to object to this land being adopted and used for access. The problem here relates to risk – the Section 228 procedure can only be carried out 12 months after completion of the development and its access point, which means that an interested party could make a claim for this strip of land rather late in the day, and ultimately could prevent the completed development being safely accessed. The applicant is understandably not prepared to take this significant risk, and has therefore sought an alternative access from the north. Prior to the submission of the current application, and following extensive discussion with officers, it was established that access could be provided from Soureby Cross Way subject to alterations within land currently adopted by the council and land within the site's title.

10.60 The applicant made efforts at pre-application stage to establish who owns the above-mentioned land that creates the pinchpoint within the track. The applicant's team made local enquiries and searched Land Registry records at pre-application stage, to no avail. It should also be noted that these searches and enquiries do not have the legal status that the Section 228 procedure has, and it is possible that – regardless of what efforts the applicant makes at this stage to establish ownership of the land – the owner may still chose not to come forward until a Section 228 procedure is commenced (after the development is completed, when the owner could potentially exploit a ransom scenario).

10.61 Notwithstanding the above, in light of the decision of the Strategic Planning Committee on 24/06/2020 to request a further investigation into the feasibility of providing access via the track to the southwest of the application site, the applicant has provided further information and drawings illustrating the problematic situation with the unregistered land. The applicant's drawings will be included in the case officer's presentation, and the applicant's additional information (regarding the unregistered land, and previously-explored options for providing access over it) is summarised as follows:

- Establishing ownership – The application site's landowner has visited the occupant of the adjacent property (612 Hunsworth Lane) and viewed that property's title deeds – these confirmed that the unregistered land is not within the same ownership as 612 Hunsworth Lane. Officers have also queried whether a thorough publicity campaign (locally, and with notices posted in the Estates Gazette etc) could reduce the risk of the owner of the unregistered land coming forward at a later date, however the owner would not be obliged to come forward in response to such efforts, and it is again noted that any such campaign would not have the legal force of the Section 228 procedure.
- Adverse Possession – Solicitors acting for the application site's landowner have attempted to prove Adverse Possession in respect of the unregistered land, on the grounds that the application site's landowner maintained it for 24 years. The Land Registry, however, would not grant Adverse Possession as the land was not fenced off and was therefore open to the public.

- Avoiding unregistered land – The applicant has considered providing a vehicular and pedestrian access that avoids the unregistered land, however to achieve this (while accommodating a minimum 5.5m carriageway, 2m footway and 0.6m hard margin) the applicant would have to intrude into the common land of the recreation ground. Not only would this involve the loss of land currently in public use for recreation purposes, the release of the land from registration as common land would be a complex and costly legal process.
- Indemnity insurance – The applicant has considered whether insurance (against the possibility of the owner of the unregistered land coming forward at a later date) could be taken out, however this option was not pursued due to the cost of the insurance and the related legal fees.

10.62 Given the above, it is considered that the applicant has further demonstrated the significant attempts made to overcome the problem created by the unregistered land. Furthermore, given that adequate access can be provided to the site from the north (via Bierley Marsh and Soureby Cross Way, as assessed later in this report), it is considered that the council cannot reasonably require the applicant to instead provide access via the track to the southwest.

10.63 The applicant has stated that the proposed development would not interfere with an 11m wide private right of way that exists along the track. Given this unobstructed width, and given that an adequate carriageway and footway could still be provided immediately outside the application site (if needed, should the sports club expands its activities and car park), officers are satisfied that the proposed development, and specifically the footprints and curtilages of the proposed dwellings, would not prevent future improvements to the track.

10.64 The applicant has also expressed an intention to use the nearest section of the track for construction access, and then transfer its ownership to the sports club or the council, if either party are willing to take responsibility for it, however the council is unlikely to take on ownership of that part of the track unless it is upgraded to an adoptable standard beforehand, the applicant's drainage proposals would preclude adoption (this matter is considered at paragraph 10.67 below), and the above-mentioned unregistered land may also affect the likelihood of adoption by the council. The sports club are also unwilling to take on ownership of this part of the track.

10.65 At the virtual committee meeting of 24/06/2020, Members queried whether this transfer of land could be secured via a Section 106 agreement, however officers remain of the view that this should not be a requirement of the council, as the suggested transfer of land is not considered necessary to make the development acceptable, and would therefore fail the statutory tests. Although it may technically be possible for the matter to be included in a Section 106 agreement if all parties (the applicant, the sports club and the council) were agreeable, if it was made clear that its inclusion was not crucial to the approval of planning permission, and if the parties were satisfied that a legal challenge to its inclusion was unlikely, officers would still advise against

this, as it would unnecessarily involve the council in a land transfer between two other parties, and may place an expectation upon the council to enforce or otherwise intervene if the transfer did not take place or was delayed. Officers suggest that, if the land is to be transferred to the sports club, this should be done via a unilateral undertaking that does not involve the council.

- 10.66 For the avoidance of doubt, with this suggested transfer of land not included in a Section 106 agreement related to the current application, no positive weight can be attached to the applicant's offer when the council considers the merits of the current application. It is also noted that any party wishing to upgrade the track to an adoptable standard would need to address the above-mentioned matters relating to the unregistered land.
- 10.67 Finally in relation to the track, it is noted that the applicant intends to install pipework and surface water storage beneath it as part of the current proposal. These works would effectively prevent adoption of the track in the future, as spans of more than 900mm are proposed, however this does not raise concerns, as the track would not necessarily need to be adopted in connection with any future expansion of the sports club's activities and car park. Given the work proposed by the applicant, it is reasonable to assume that the relevant section of the track would be restored to at least a better-than-existing condition by the applicant, which would be of some benefit to the sports club and users of the East Bierley Playing Fields.
- 10.68 The applicant has advised officers that access to the East Bierley Playing Fields would be maintained at all times during construction works. As no public right of way exists along the track, this is a private matter to be resolved between the parties, however the applicant's assurance is nonetheless welcomed.
- 10.69 Prior to the submission of the current application, officers accepted that a single vehicular access could be provided to the site via Soureby Cross Way, subject to improvement works being carried out. Of note, although residents of the proposed development would rely entirely on this single point of vehicular access, a second gated access point on Soureby Cross Way is shown on the proposed layout, further to the southeast. This would provide access to adjacent farmland, and is not intended for everyday or general public use.
- 10.70 Widening and upgrade works are proposed to parts of Bierley Marsh (to the south of 634 Hunsworth Lane) and Soureby Cross Way, as illustrated on drawing P19-2185 004 rev B. These involve land already adopted by the council, and the creation of a carriageway generally 5.5m in width, with a short length between 3.8m and 4.8m in width, intended to serve as a traffic-calming feature. A 2m wide footway is proposed along the kerb edge on the north side of this carriageway (of note, a footway already exists on the north side of Soureby Cross Way, however it is separated from the carriageway by a soft landscaped strip). 2m wide footways and crossings are also proposed around the junction of Soureby Cross Way and the main estate road, so that pedestrian residents of the development would be able to cross Soureby

Cross Way away from its busiest point, and would be able to continue northwards via Bierley Marsh. Part of Hunsworth Lane lacks a footway along its east kerb, however existing and proposed footways would allow residents of the development and users of the recreation ground to access the village and its school without having to use Hunsworth Lane.

- 10.71 The concerns of residents regarding children moving between the school and the recreation ground (using Bierley Marsh, the brick-paved indicative crossing point on Soureby Cross Way, and the connecting path within the recreation ground) are noted, and works to Soureby Crossway will need to include measures to ensure risks to safety are not increased.
- 10.72 Adequate visibility can be provided at the Bierley Marsh (to the south of 634 Hunsworth Lane) / Hunsworth Lane junction.
- 10.73 In relation to trip generation, for the earlier, 42-unit iteration of the proposals, the applicant's Transport Statement predicted 25 additional vehicle movements in the morning peak hour (08:00 to 09:00) and 23 additional movements in the afternoon peak hour (17:00 to 18:00). Although the concerns of local residents are noted, given local road and junction capacity, it is not considered that this level of additional traffic would cause severe impacts. The 46 units now proposed would generate a similar level of additional traffic, which is also considered acceptable. Indeed, Highways Development Management officers have advised that in terms of additional traffic generation the increase in unit numbers from 42 to 46 would result in potentially two to three additional two-way movements at peak times, which officers do not consider to be significant.
- 10.74 Positive weight can be attached to the applicant's proposal to line the southeast edge of the adjacent recreation ground with the development's main estate road. At pre-application stage, officers had suggested securing the provision of a footway along Hunsworth Lane in connection with development at the application site, however the current proposal is preferable, as it provides a southwest-northeast route away from the traffic of Hunsworth Lane, designed to 15mph speeds, and does not require the paving of a 2m wide strip of the recreation ground and the erosion of this important urban green space.
- 10.75 With the pleasant and relatively safe southwest-northeast route proposed adjacent to the existing recreation ground, the proposed development responds positively to Local Plan policies LP20, LP24dii and LP47e, which promote and require the creation of safer pedestrian environments, walkable neighbourhoods, good connectivity and permeability, and layouts that encourage active and sustainable travel.
- 10.76 Having regard to paragraph 5.19 of the council's Highway Design Guide SPD, the proposed development is not of the size that would normally necessitate the submission of a Travel Plan. It is, however, still recommended that other measures to encourage the use of sustainable modes of transport be secured. The West Yorkshire Combined Authority



have recommended that a contribution of £13,000 be secured to fund the provision of a new bus shelter, and that a contribution of £21,021 (towards bus-only Metro cards) would be appropriate. However, in light of comments from ward Members (including in relation to the limited public transport services currently available in East Bierley), it is recommended that these contributions be secured and put towards alternative sustainable transport measures to be agreed between officers and ward Members.

- 10.77 Regarding the proposed development's internal arrangements, the proposed development's sight lines, forward visibility, design speeds, alignments, gradients and adoptability have not attracted an objection from Highways Development Management officers. The applicant has submitted swept path analysis (for an 11.85m refuse vehicle) which suggest amendments to the curtilages of some plots would be necessary. These changes would be minor in scale, would not affect the numbers of units (or significantly reduce the outdoor amenity spaces of units), and would not warrant further public consultation, therefore it is recommended that this matter be delegated to officers to resolve at conditions stage. Highways Development Management officers are satisfied that this matter can be addressed via an appropriately-worded condition.
- 10.78 Acceptable off-street parking is proposed for the proposed residential units in accordance with council's Highways Design Guide. An adequate number of visitor parking spaces (12) are proposed. Details of secure, covered and conveniently located cycle parking for residents would be secured by a recommended condition.
- 10.79 A condition, requiring details of the surfacing and drainage of parking spaces, is recommended.
- 10.80 Storage space for three bins will be required for all dwellings. Bin collection points have been shown on the applicant's drawings, however further details of waste collection, including details of management to ensure any waste collection points are not used for fly-tipping or permanent bin storage, are required by recommended condition. The same condition would require refuse collection points in locations that would not obstruct access to private driveways. This would also consider the visual impact of waste storage arrangements within the development.

#### Flood risk and drainage issues

- 10.81 The site is within Flood Zone 1, and is larger than 1 hectare in size, therefore the applicant submitted a site-specific Flood Risk Assessment and Surface Water Management Strategy (FRASWMS) in support of the proposed development.
- 10.82 The site slopes downhill from north to south. To the west of the application site, a culverted watercourse runs beneath Hunsworth Lane. Further south this becomes Hunsworth Upper Lane Beck, and eventually joins the River Spen. A combined public sewer also runs beneath Hunsworth Lane. Beneath Soureby Cross Way there is a public surface water sewer and a separate

public foul water sewer. A Yorkshire Water main (the Dewsbury Link Main) runs northwest-southeast across the northern edge of the application site.

- 10.83 In response to officer comments, the applicant's drainage proposals were amended during the life of the current application. The applicant's FRASWMS now states that two box culverts (for the storage of surface water) and a hydrobrake are proposed beneath the track to the southwest of the site. A connection is then proposed from these to the existing culverted watercourse beneath Hunsworth Lane. A discharge rate (to the culverted watercourse) of 3.6 litres per second is proposed.
- 10.84 Prior to settling on this proposed drainage solution, the applicant appropriately followed the drainage hierarchy and – in light of site investigation results – concluded that infiltration was not appropriate as means of surface water disposal at this site. Officers concur with this conclusion.
- 10.85 The Lead Local Flood Authority (LLFA) are satisfied with the proposed drainage strategy, subject to conditions. Two of these conditions are recommended later in this report, however the condition recommended by the LLFA regarding drainage maintenance and management would be addressed via a Section 106 planning obligation, and details of temporary surface water drainage arrangements would be secured via the recommended condition requiring the submission and approval of a Construction (Environmental) Management Plan.
- 10.86 Residents have expressed concern regarding the proposed development's implications for off-site drainage. It is noted, however, that surface water currently leaves the site via infiltration (and possibly overland flows at times when the land is saturated), whereas following completion of the proposed development surface water would be collected, attenuated, and directed to the existing culverted watercourse, such that there is likely to be a reduction in surface water reaching surrounding land from the application site. Effectively, the proposed development would result in currently uncontrolled discharge being brought under control.
- 10.87 Foul water from the proposed development would discharge to the existing combined public sewer beneath Hunsworth Lane. This proposal has not attracted an objection from Yorkshire Water, and is considered acceptable.
- 10.88 Although representations from Yorkshire Water have referred to a 6m easement required either side of the centre line of the Dewsbury Link Main (i.e., an undeveloped strip with a total width of 12m), the applicant has advised that an existing legal agreement applicable to the site requires only an 8m wide strip to be kept clear of development, and has provided correspondence from Yorkshire Water accepting this. Notwithstanding this lesser requirement, the applicant has shown a 12m wide strip on the proposed layout, as betterment and to inform negotiation with Yorkshire Water regarding changes in levels (which are necessary to ensure the main estate road would achieve acceptable gradients) close to the water main.

## Trees and ecological considerations

- 10.89 The application site is previously undeveloped (greenfield) land, was previously in agricultural use, and is grassed. There are no significant or TPO-protected trees within the application site, however there are trees and shrubs along its edges. The conservation area status of the site bestows protection on trees over a specified size. A Biodiversity Opportunity Zone (Pennine Foothills) covers the site.
- 10.90 The applicant initially submitted a Preliminary Ecological Appraisal (PEA), and later submitted an Ecological Impact Assessment (EclA) and an Arboricultural Impact Assessment (AIA) during the life of the application, in response to officer comments. A biodiversity net gain calculation was also submitted – this confirms that the proposed development would result in a net loss (contrary to Local Plan policy LP30 and chapter 15 of the NPPF). The extent of this loss, however, needs to be clarified by the applicant – the applicant's EclA refers to a -1.91 loss, while the submitted net gain calculation refers to a -2.32 loss.
- 10.91 Given that a net loss would be caused, the applicant has asked officers to advise what financial contribution would be required to achieve the necessary net gain. This, however, is premature – the applicant should first explore opportunities for on-site mitigation (there are, for example, areas where hedgerow planting would be possible, and the area above the water main easement may have potential for wildflower meadow planting, should Yorkshire Water agree to this in a timely manner). It is likely that on-site measures alone would not result in the proposed development achieving a net gain, therefore the applicant would additionally be expected to explore whether nearby sites (within the applicant's ownership, and suitable for accommodating mitigation measures) are available. It is considered that the absence of details of provision at such sites, and/or of a financial contribution for off-site provision (the relevant amount to be calculated once the above exploration has been carried out) need not prevent the current application being considered by the Strategic Planning Committee, and it is recommended that authority to resolve these matters be delegated to officers.
- 10.92 Trees within the adjacent recreation ground are valuable in terms of their visual amenity, and together they form a prominent landscape feature. It is therefore important that any development proposed at the application site is informed by their location and shading. The applicant's arboricultural information has indeed informed the proposed design, and it is considered that unacceptable long-term conflicts between the adjacent trees and the occupants of the proposed development should therefore be avoided. The proposed main estate road would be located an adequate distance away from the trees; however the proposed parking spaces may need to be constructed from a no-dig cellular confinement system. An Arboricultural Method Statement (to show how construction would be undertaken while avoiding damage to trees) is required, and an appropriate condition is recommended. This will need to include an appropriate Tree Protection Plan.

- 10.93 Residents' concerns regarding existing trees along Bierley Marsh and Soureby Cross Way (planted in memory of East Bierley villagers) are noted. Although these trees are not shown on some of the applicant's drawings, there is no evident reason why they would need to be felled in connection with the proposed development, as the widening of Bierley Marsh (to the south of 634 Hunsworth Lane) and Soureby Cross Way would not take land beyond the existing south kerb of the carriageway. The above-mentioned Tree Protection Plan will be required to include protection measures for these trees.

#### Environmental and public health

- 10.94 With regard to the West Yorkshire Low Emission Strategy, a condition is recommended, requiring the provision of electric vehicle charging points. In addition, measures to discourage high emission vehicle use and encourage modal shift (to public transport, walking and cycling) and uptake of low emission fuels and technologies, should be secured via Section 106 obligations.
- 10.95 The health impacts of the proposed development are a material consideration relevant to planning, and compliance with Local Plan policy LP47 is required. Having regard to the proposed dwelling sizes, affordable housing, proximity to the adjacent recreation ground and playspace, pedestrian connections (which can help facilitate active travel), measures to be proposed at conditions stage to minimise crime and anti-social behaviour, and other matters, it is considered that the proposed development would not have negative impacts on human health.
- 10.96 Regarding the social infrastructure currently provided and available in East Bierley and the surrounding area (which is relevant to the public health impacts and the sustainability of the proposed development), and specifically local GP provision, there is no policy or supplementary planning guidance requiring the proposed development to contribute specifically to local health services. Furthermore, it is noted that funding for GP provision is based on the number of patients registered at a particular practice, and is also weighted based on levels of deprivation and aging population. Direct funding is provided by the NHS for GP practices and health centres based on an increase in registrations.

#### Ground conditions

- 10.97 Council-held records indicate that the site is potentially contaminated, and in an earlier response Environmental Health officers requested further information regarding gas risk and arsenic concentrations. The applicant duly responded, and in light of further comments from Environmental Health officers, conditions regarding site contamination remediation are recommended.

- 10.98 Most of the application site is within a Development Low Risk Area as defined by the Coal Authority. A small part of the site (part of Brierley Marsh, at the northernmost extent of the application site red line boundary) is within a Development High Risk Area. The Coal Authority have raised no objection to the proposed development, subject to a condition securing the implementation of the remedial works proposed by the applicant.
- 10.99 The site is within a wider mineral safeguarding area relating to surface coal resource (SCR) with sandstone and/or clay and shale. Local Plan policy LP38 therefore applies. This states that surface development at the application site will only be permitted where it has been demonstrated that certain criteria apply. Criterion c of policy LP38 is relevant, and allows for approval of the proposed development, as there is an overriding need (in this case, housing need, having regard to Local Plan delivery targets) for it.

### Representations

- 10.100 A total of 25 representations were received from occupants of neighbouring properties. The material planning considerations raised in the comments have been addressed in this report.

### Planning obligations

- 10.101 To mitigate the impacts of the proposed development, the following planning obligations would need to be secured via a Section 106 agreement:
- 1) Affordable housing – Nine affordable housing units (five social/affordable rent, four intermediate) to be provided in perpetuity.
  - 2) Education – £148,159 contribution.
  - 3) Sustainable transport – Measures to encourage the use of sustainable modes of transport, including a £34,021 contribution.
  - 4) Open space – £86,696 contribution towards off-site provision.
  - 5) Biodiversity – Contribution (amount to be confirmed) towards off-site measures to achieve biodiversity net gain.
  - 6) Management – The establishment of a management company for the management and maintenance of any land not within private curtilages or adopted by other parties, and of infrastructure (including surface water drainage until formally adopted by the statutory undertaker).
  - 7) Adjacent land – Agreement to allow cycle and pedestrian access to track to southwest without unreasonable hindrance.
- 10.102 The above heads of terms have been agreed with the applicant.

10.103 The provision of training and apprenticeships is strongly encouraged by Local Plan policy LP9, and although the proposed development does not meet the relevant threshold (housing developments which would deliver 60 dwellings or more), any agreement by the applicant to provide a training or apprenticeship programme to improve skills and education would be welcomed. Such agreements are currently not being secured through Section 106 agreements – instead, officers are working proactively with applicants to ensure training and apprenticeships are provided.

#### Support for the East Bierley Community Sports Association

10.104 In light of the decision of the Strategic Planning Committee on 24/06/2020 to request further work to explore the support that could be provided to the East Bierley Community Sports Association to facilitate their plans to improve the sporting facilities, the following matters are noted:

- Transfer of track – The applicant has again offered to transfer ownership of part of the adjacent track to the sports club, without charge. This matter is considered at paragraphs 10.64 to 10.66 above. The applicant has argued that it would be more beneficial for the sports club to own and control an upgraded private access instead of a section of adoptable highway shared with a residential development. The sports club, however, are unwilling to take on responsibility for this part of the track, noting that they are a volunteer-run charity with no similar responsibilities, and they do not own the playing fields (they are leased from the council). The sports club's preference is for the council to adopt the section of track.
- Improvements to track – It is again noted that the applicant is likely to restore this part of the track to at least a better-than-existing condition, which would be of some benefit to the sports club and users of the East Bierley Playing Fields.
- Infrastructure – The applicant has noted that the electricity substation (which would be built as part of the proposed development) could be specified to provide for the future needs of sports club.
- Section 106 contributions – The applicant does not object to the financial contributions (required to make the proposed development acceptable in planning terms) being used on sports club projects. Officers note, however, that any such use of these monies would normally follow community and Member consultation, and must meet the relevant statutory tests.

10.105 The applicant has again contacted the sports club to discuss ways in which its activities can be supported, and the outcome of these discussions (and a meeting scheduled for 28/07/2020) will be included in the committee update.

#### Other planning matters

10.106 A condition removing permitted development rights from the proposed dwellings is recommended. This is considered necessary due to the site's location adjacent to (and partly within) the East Bierley Conservation Area, and its visibility from public vantagepoints. Extensions, outbuildings and other alterations under permitted development allowances here could be harmful to the significance of this heritage asset, and could cause visual harm in longer views across the site and the adjacent recreation ground.

10.107 Loss of views across private land (not under the control of the viewer) is not a material planning consideration.

10.108 There is no evidence to suggest the proposed development would result in problems relating to electricity or internet supply.

## **11.0 CONCLUSION**

11.1 The application site is allocated for residential development under site allocation HS89, and the principle of residential development at this site is considered acceptable.

11.2 The site has constraints in the form of adjacent residential development (and the amenities of these properties), the East Bierley Conservation Area, topography, drainage and other matters relevant to planning. These constraints have been sufficiently addressed by the applicant, or can be addressed at conditions stage. The applicant has proposed an appropriate quantum of development and an acceptable layout, the proposals respond appropriately to the conservation area, and the quality of residential accommodation is considered acceptable. The provision of 46 residential units at this site (including the provision of nine affordable housing units) would contribute towards meeting the housing delivery targets of the Local Plan, and are welcomed. Approval of full planning permission is recommended, subject to conditions and planning obligations to be secured via a Section 106 agreement.

11.3 The NPPF 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. The proposed development has been assessed against relevant policies in the development plan and other material considerations. Subject to conditions, it is considered that the proposed development would constitute sustainable development (with reference to paragraph 11 of the NPPF) and is therefore recommended for approval.

## **12.0 CONDITIONS (summary list – full wording of conditions, including any amendments/ additions, to be delegated to the Head of Planning and Development)**

1. Three years to commence development.
2. Development to be carried out in accordance with the approved plans and documents.
3. Submission of a Construction (Environmental) Management Plan (including temporary surface water drainage arrangements).
4. Provision of visibility splays.
5. Completion of coal legacy mitigation works.

6. Submission of details of a connection for pedestrians and cyclists between the main estate road and the track to the southwest.
7. Submission of amended drawings to accommodate 11.85m refuse vehicle swept paths.
8. Submission of details relating to internal adoptable roads.
9. Submission of details of surfacing and drainage of parking spaces.
10. Cycle parking provision prior to occupation.
11. Provision of electric vehicle charging points (one charging point per dwelling with dedicated parking).
12. Submission of details of waste storage and collection.
13. Submission of details of retaining walls.
14. Submission of an Arboricultural Method Statement and Tree Protection Plan.
15. Submission of a detailed drainage design for surface water and land drainage.
16. Submission of a detailed exceedance flow routing plan.
17. No development or landscape features within water main easement.
18. No piped discharge of surface water from the development prior to the completion of surface water drainage works.
19. Submission of an intrusive site investigation report (phase II report).
20. Submission of a remediation strategy.
21. Submission of a validation report.
22. Submission of details of crime prevention measures.
23. Submission of details of electricity substation and its boundary treatments.
24. External materials (details and samples to be submitted).
25. Submission of details of boundary treatments.
26. Submission of details of external lighting.
27. Submission of a full landscaping scheme and Ecological Design Strategy.
28. Submission of details of biodiversity enhancement and net gain.
29. Removal of permitted development rights for extensions and outbuildings.

### **Background Papers:**

Application and history files.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019%2f93616>

Certificate of Ownership – Certificate B signed