
Report of the Head of Planning and Development

STRATEGIC PLANNING COMMITTEE

Date: 24-Feb-2021

Subject: Planning Application 2019/91105 Outline application for erection of residential development including means of access to the site north of Old Bank Road, Mirfield (63 dwellings) Land off, Old Bank Road, Mirfield, WF14 0HX

APPLICANT

Paul Robinson, Yorkshire
Property Estates Ltd

DATE VALID

15-Apr-2019

TARGET DATE

15-Jul-2019

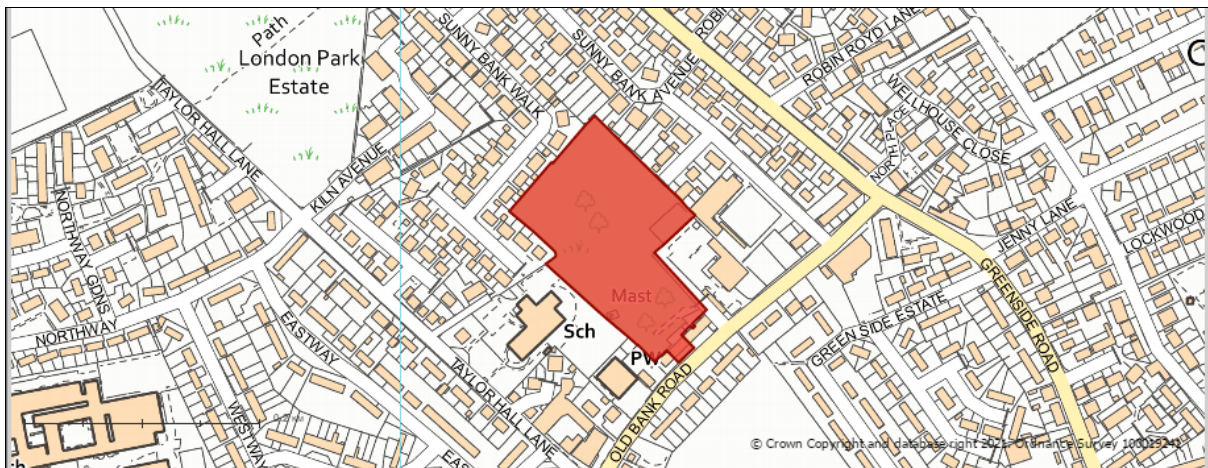
EXTENSION EXPIRY DATE

04-Oct-2019

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

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

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral wards affected: Mirfield

Ward Councillors consulted: Yes

Public or private: Public

RECOMMENDATION:

REFUSE for the following reason:

1. Having regard to the legacy of the historic uses of the site, the information submitted with the application does not demonstrate that the site can be safely developed for housing and that development could proceed without unduly prejudicing the safety and amenity of adjacent properties. The application is contrary to Policy LP53 of the Kirklees Local Plan and guidance in the National Planning Policy Framework.

1.0 INTRODUCTION:

1.1 This is an outline planning application for residential development (63 dwellings) with all matters reserved except for access.

1.2 The application is presented to Strategic Planning Committee due to the scale of the proposed development exceeding 60 dwellings. This is in accordance with the Council's Scheme of Delegation set out in the Constitution.

2.0 SITE AND SURROUNDINGS:

2.1 The site is relatively flat and comprises an area of overgrown land containing grass, shrubs and trees.

2.2 To the north west boundary of the site is residential development and to the south west is Old Bank Junior, Infants & Nursery School, a church and some dwellinghouses. To the north eastern boundary is land that was formerly occupied by The Thirsty Man public house and which has since been redeveloped for the erection of a restaurant and bar; the Old Bank Working Men's Club lies beyond that. Dwellings abut the remainder of the north eastern boundary. There is residential development towards the south east along Old Bank Road.

3.0 PROPOSAL:

3.1 The proposal is in outline form and is for the erection of residential development (63 dwellings). Access is the only matter that has been applied for.

3.2 Given that the layout of the site is not being formally considered at this stage, the applicant has been asked to alter the description of development to "up to 63 dwellings", or alternatively remove reference to the total number of dwellings altogether. This is because the application is solely being assessed in terms of the principle of residential development and the means of access

to the site. The layout, and consequently the number of units, is reserved for future approval and that will determine the quantum of development that can be accommodated on the site.

- 3.3 The indicative layout plan does nevertheless show how the site could be developed for 63 dwellings. This indicates a mixture of terraced, semi-detached and detached houses mainly set around a large area of public open space.
- 3.4 The application seeks approval of the point of access to the site. This is to be taken from Old Bank Road and three terraced houses would be demolished to facilitate the formation of the access (51, 53 and 55 Old Bank Road are proposed to be demolished).
- 3.5 Matters of layout, appearance, scale and the landscaping of the site are reserved for future consideration.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

4.1 Application site:

2018/91713 Outline application for erection of residential development including means of access to the site north of Old Bank Road, Mirfield (63 dwellings) - Withdrawn

2016/91074 - Outline application for residential development and demolition of two dwellings – Withdrawn.

2003/92203 - Outline application for residential development – Refused. A subsequent planning appeal was dismissed following a public inquiry in 2006.

Application refused for the following reason:

1. The Council are not satisfied that if the development were to proceed, incorporating the measures proposed by the applicant, it will not present a risk of safety to individuals and property resulting from a potential landfill gas hazard. The development would therefore be contrary to policy EP1 of the Councils Unitary Development Plan and contrary to Government advice contained in Waste Management Paper 27.

4.2 The following application is in close proximity to the site:

The Thirsty Man, 79, Old Bank Road, Mirfield

2019/90013 - Change of use from public house with flat above (A4) to restaurant/bar (A3/A4) – Approved

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

- 5.1 The application originally included 'layout' and 'scale' as matters to be considered. Officers raised some concerns with the site layout, particularly in terms of the predominance of parking. The layout also raised issues in terms of drainage attenuation under the internal estate road and the implications of that for road adoption. In response, the applicant removed 'layout' and 'scale' from the matters to be considered.

- 5.2 During the course of the application additional information has been provided, which relates to contamination issues at the site. This includes ground gas monitoring data.
- 5.3 An amended plan showing the proposed point of access has been submitted to address comments from Highways Development Management.

6.0 PLANNING POLICY:

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

Kirklees Local Plan (2019):

- 6.2 The site is unallocated in the Local Plan.
- 6.3 Relevant policies are:

LP1 – Presumption in favour of sustainable development
LP2 – Place shaping
LP3 – Location of new development
LP7 – Efficient and effective use of land and buildings
LP11 – Housing mix and affordable housing
LP20 – Sustainable travel
LP21 – Highway safety and access
LP22 – Parking
LP24 – Design
LP27 – Flood risk
LP28 – Drainage
LP30 – Biodiversity and geodiversity
LP32 – Landscape
LP33 – Trees
LP48 – Community facilities and services
LP51 – Protection and improvement of local air quality
LP52 – Protection and improvement of environmental quality
LP53 – Contaminated and unstable land
LP63 – New open space

Supplementary Planning Guidance / Documents:

- 6.3 Highway Design Guide SPD

National Planning Guidance:

- 6.4 NPPF Chapter 2 – Achieving sustainable development
NPPF Chapter 5 – Delivering a sufficient supply of homes
NPPF Chapter 8 – Promoting healthy and safe communities
NPPF Chapter 9 – Promoting sustainable transport
NPPF Chapter 11 – Making effective use of land
NPPF Chapter 12 – Achieving well-designed places
NPPF Chapter 15 – Conserving and enhancing the natural environment

6.5 Other material considerations:

Highway Design Guide SPD
Kirklees Interim Affordable Housing Policy – January 2020
National Planning Practice Guidance

7.0 **PUBLIC/LOCAL RESPONSE:**

7.1 The application was advertised by site notices, neighbour letters and press advert.

7.2 15 representations have been received. A summary of the comments received is provided below:

Principle

- Site was rejected for housing under the Local Plan process (access and contamination issues)

Land contamination

- Concerns with historic use of site and implications for contamination
- Land was previously used as a quarry and has been landfilled.
- Waste was dumped into the void vertically which results in vertical channels for gases.
- Disturbance of the land will increase health risk issues to existing and future residents
- Land disturbance may result in chemicals and VOCs being released into the groundwater and atmosphere
- Danger of contamination from new drainage infrastructure into existing drainage systems
- Assurances sought that contamination will be properly addressed. Detailed remediation strategies and construction design proposals are needed
- An application was previously refused, and an appeal dismissed, on the basis of the ground conditions and insufficient monitoring
- Subsequent applications have also raised concerns with contamination, and these have been withdrawn
- Concerns with airborne contamination arising from construction works, especially given the proximity of an infant and junior school
- Comments from Strategic Waste officer are very limited in detail
- The Environment Agency should be consulted
- Site is best left undisturbed
- Japanese Knotweed on site

Layout

- The number of houses is too large and crammed in
- Layout is overly dense
- Should be an emphasis on design and providing adequate amenity space for future residents
- Some parking spaces do not allow for adequate manoeuvrability
- Support the 'village green' approach to the layout but this is spoiled by the parking spaces surrounding it
- Design Code should be provided for the reserved matters

Highways

- Impact on local road network (congestion) owing to the amount of traffic that would be generated, including impact on the Old Bank/ Sunnybank / North Place junction.
- Parked cars on Old Bank Road likely to inhibit visibility at the proposed site access
- Poor visibility and high traffic speeds and high volume of traffic on Old Bank Road
- Pedestrian killed whilst crossing Old Bank Road in Feb 2019
- Too much traffic on the roads which is a danger to children.
- Congestion and car parking issues in area already
- Local road network requires resurfacing works

Amenity

- Overlooking and loss of light, especially from 3 storey properties
- Loss of privacy to adjacent gardens
- Loss of view
- Loss of terraced houses to create access; this would affect the character and appearance of the area and amenity of existing occupiers
- Increased noise
- Careful consideration needs to be given to the height of the houses, especially those backing onto the school. Concerns with 3 storey houses overlooking the school from a safeguarding perspective.
- Consideration needs to be given to the boundary treatment with the school

Flood risk/drainage

- Properties on Old Bank Road prone to cellar flooding

Ecology

- Trees and vegetation recently cleared from the site. Concerns raised with the impact of this on wildlife.

Other matters

- Noise from construction
- Impact of construction vehicles on highway network
- Impact on Old Bank School from increased pupil numbers. School is at full capacity
- Impact on property values
- Additional demand on doctors surgery and local dentists as well as police and emergency services and parking at Mirfield train station
- No indication of affordable housing

Mirfield Town Council:

MTC objects to the outline application due to serious environmental hazard, cross contamination to local residents and harmful to the health of local residents.

MTC demand of the developer extensive core samples from numerous places around the site and that a full detailed investigation be carried out due to the previous use of the land.

Ward Councillor Martyn Bolt:

“As the Local Plan has a demonstrable housing supply, and this site as not included then the proposal is contrary to policy and should be refused.

The impact on the visual amenity and over intensive development of the site is a further reason for refusal.

I have concerns for public health due to the uncertainty of the material tipped in the land over many years, for which I don't think there is any record?

It would appear that the proposal removes another mobile phone mast, which following the loss of the one on Slipper Lane, leaves users with poor coverage which in an emergency could have consequences.

As the houses through which the development would join Old Bank Road have little parking, then the sight lines are often impeded by parked cars which I believe is unsustainable for a new development, without alternative provision there is no guaranteed clear sight lines as the developer doesn't control those factors”.

Former MP Paula Sherriff (comments received when as a serving MP): Shares the concerns raised by 'Save Mirfield' in their representation that has been submitted to the Council. The concerns relate to ground contamination and highway matters.

8.0 CONSULTATION RESPONSES:

8.1 Statutory:

KC Highways DM – No objection to the proposed point of access to the site. The existing parking bays that would be lost as a result of the new access should be relocated within the site. The indicative layout shows a 'kink' in the road design where it connects to the proposed junction on Old Bank Road; this is not suitable and would affect road adoption.

KC Lead Local Flood Authority – No objection to the principle of development however an objection has been raised to the proposed rate of surface water discharge from the site.

The Coal Authority – No objection subject to conditions

8.2 Non-statutory:

KC Environmental Services – Object on the grounds that the applicant has failed to adequately demonstrate that the site can be safely developed for residential use (as detailed in the main report).

KC Strategic Waste – Landfill gas monitoring data provided.

KC Ecology – As recommended in the submitted Preliminary Ecological Appraisal Report further survey and assessment is needed to support this application. This includes further survey for foraging bats and invasive species (to overcome the survey limitations resulting from the out of season surveys and recent vegetation clearance), which will need to be presented in an Ecological Impact Assessment.

KC Trees – No objections

KC Landscape – The large area of open space within the site is welcomed as there is little public open space within the immediate vicinity of the site. 'Green Street' principles should be incorporated into the site layout.

KC Strategic Housing - There's a significant need for more affordable 3+ bedroom dwellings in Dewsbury and Mirfield. 13 dwellings are sought on this development (20%). Units should be spread across the site in clusters. Tenure split should be 54% Social or Affordable Rent to 46% Intermediate housing.

KC Education – Based on 63 dwellings contributions are required to Old Bank Junior, Infant & Nursery School (£2,706) and Mirfield Free Grammar School (£148,560). Figures correct as of April 2019.

The Environment Agency – No objection but the following comments are provided:

“The Old Bank Road historic landfill site occupied the north-western portion of the development site. It was licensed to receive “demolition, construction, foundry sand and spent chemical waste”, between 1945 and 1993. The age of the site and the nature of the materials deposited reduce the likelihood that the site is generating landfill gas today, but the developer and / or planning authority may wish to take further steps to assess this risk prior to development.”

The Taylor Hall Lane historic landfill site occupied a site within 250m of the development site; the nature of the wastes deposited and the available gas monitoring data suggest that the site is very unlikely to pose a landfill gas risk to the development site.

Yorkshire Water – No objections (no observation comments required)

Police Architectural Liaison Officer – General advice provided in relation to designing out crime.

9.0 MAIN ISSUES

- Principle of development
- Urban design issues
- Residential amenity
- Highway issues
- Contamination issues
- Drainage issues
- Ecology and trees
- Planning obligations
- Representations

- Other matters
- Climate change

10.0 APPRAISAL

Principle of development

- 10.1 The site was previously allocated for housing under the Unitary Development Plan but the allocation was not retained within the current Local Plan. The Kirklees Local Plan Submission Document – Rejected Site Options Report – July 2017 identified the following significant constraints:

Third party land required for access as no frontage onto highway. There does seem to be an access to the site from Old Bank Road, ownership needs to be clarified. This site has significant contaminated land issues, toxic industrial waste has been land filled and we know that other developments have stopped due to the issues associated with remediation.

- 10.2 Whilst it needs to be acknowledged that housing windfall sites are important to contributing to the housing supply, at the heart of this application is whether those issues identified in the Rejected Site Options Report have been adequately addressed within this submission. Those matters, namely land contamination and access, are addressed separately within this appraisal.
- 10.3 The site is unallocated in the Local Plan and therefore, as indicated above, the proposal represents a windfall opportunity.
- 10.4 Paragraph 68 of the NPPF recognises that “small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built-out relatively quickly. To promote the development of a good mix of sites local planning authorities should...support the development of windfall sites through their policies and decisions – giving great weight to the benefits of using suitable sites within existing settlements for homes”. The application site lies within an existing settlement and is therefore considered to be a sustainable location.

Urban design issues

- 10.5 An indicative layout plan has been submitted showing how the site could be developed for 63 houses.
- 10.6 Chapter 7 of the NPPF and Policy LP7 of the Local Plan promote an efficient use of land. Policy LP7 seeks a minimum target density of 35 dwellings per hectare, where appropriate. 63 dwellings equates to a density of 35.75 dwellings per hectare, which would slightly exceed the target density under Policy LP7 and would therefore be in compliance with this policy.
- 10.7 However, the layout of the site is reserved for future approval. It is advised that officers have strong concerns with the indicative layout in terms of the predominance of car parking within the street scene. This would therefore be considered further at Reserved Matters stage.
- 10.8 It is considered important that any future layout has regard to the West Yorkshire Combined Authority’s ‘Green Streets Principles’ and has a legible street hierarchy provided through the use of appropriate surfacing materials.

- 10.9 It is considered that the large area of open space as indicated could be made into an attractive feature within the development and such an area would also benefit from excellent natural surveillance.
- 10.10 Visual interest across the development can be provided through careful consideration of the scale, design and facing materials of the dwellings.
- 10.11 Under the previous application (2018/91713 - withdrawn) officers raised concerns with regard to the loss of terraced houses to facilitate the access off Old Bank Road. It was noted that these houses, which date from the Victorian period, have a regimented appearance with a strong stone frontage, headers, cills, chimney pots and fenestrations, all typical of this era. It was considered that the dwellings make a positive contribution to the street scene and the demolition of the dwellings to be replaced by a new access to serve a residential street would represent a significant element of harm to the character and appearance of the street scene.
- 10.12 Officers remain of the opinion that the loss of the terraced houses would result in harm to the street scene. This issue is, however, to be weighed in the planning balance.
- 10.13 The applicant has not put forward any justification for the location of the proposed access although officers recognise that alternative options are very limited. There is a section of unadopted highway that provides access to 71-75 Old Bank Road and is used as parking for these properties. Sunny Bank Grove abuts the site although this is a narrow unadopted access. A shared access with the new restaurant at the former Thirsty Man site would be difficult to achieve given the approved layout of the restaurant site including its parking. The potential for an alternative suitable access is therefore restricted.
- 10.14 The loss of the houses is to be weighed against the benefits of the development, including the potential to remediate a contaminated site and the provision of new housing on a windfall site. Notwithstanding officers' previously stated views on the loss of the terraced houses, on balance the benefits of the development are considered to outweigh the impact of the loss of these houses on the visual amenity and character of the street scene.

Highway issues

- 10.15 The application is supported by a Transport Assessment which assesses the traffic impact of a development of some 63 dwellings in trip generation terms. Highways Development Management consider that the trip rates utilised are acceptable and the traffic generated can be accommodated on the local highway network without resulting in any significant adverse impacts.
- 10.16 The applicant has provided an amended access arrangement plan, which shows the proposed junction off Old Bank Road. It is considered this amended plan demonstrates suitable visibility splays and is acceptable.

- 10.17 The formation of the proposed access would result in the loss of a parking layby on Old Bank Road. This is a result of the formation of the access itself but also because the footway adjacent to the layby is to be widened to tie in with the footway around the proposed new access. This means that off-street parking spaces would be removed from the sightlines at the new junction. It is proposed that the lost parking spaces would be accommodated within the development site. A condition requiring compensatory parking as part of any 'layout' submitted at reserved matters stage is recommended.
- 10.18 The proposed access arrangement plan and the indicative site layout plan show a 'kink' within the internal estate road where it joins the proposed point of access. This road design is not considered to be appropriate and is likely to affect road adoption. The internal road arrangement would form part of the site 'layout' which is a reserved matter however for clarity the applicant has been asked to submit amended plans which remove this 'kink'.
- 10.19 Highways Development Management have highlighted that the development will need to provide suitable parking provision commensurate to the size of the dwellings that come forward under the reserved matters should this outline application be approved. This is to ensure that an undersupply of off-street parking does not unduly impact on access through the development.
- 10.20 In summary, the proposed point of access is considered to be acceptable and officers accept that the traffic generated by the proposed development can be safely accommodated on the highway network. The application therefore accords with Policy LP21 of the Kirklees Local Plan and guidance in the NPPF.

Contaminated land

- 10.21 Paragraph 178 of the NPPF states that planning decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land contamination. This also includes from risks arising from any proposals for mitigation, including land remediation. Furthermore, adequate site investigation information should be made available to inform the assessment.
- 10.22 Policy LP53 of the Local Plan relates to contaminated and unstable land. Development on land that is currently contaminated will require the submission of an appropriate contamination assessment. Where there is evidence of contamination, measures should be incorporated to remediate the land and/or incorporate other measures to ensure that the contamination does not have the potential to cause harm to people or the environment. Such developments which cannot incorporate suitable and sustainable mitigation measures which protect the well-being of residents or protect the environment will not be permitted.
- 10.23 The application site has been subject to several previous planning applications which have considered the issue of contamination on this site.
- 10.24 The planning history of the site includes outline application 2003/92203 which was refused by the council on the grounds of the potential landfill gas hazard, despite the incorporation of remedial measures proposed by the applicant. This refusal was the subject of an appeal to the Planning Inspectorate and a public inquiry was held in 2006. The appeal was dismissed.

10.25 The Planning Inspectorate considered that, at the least, the south-western part of the site was contaminated by both methane and volatile organic compounds (VOCs) to an extent that it was unlikely to be suitable for housing in the foreseeable future. The overall conclusion at that time was that there would be an unacceptable risk to the occupiers of the proposed development arising from the generation of landfill gas on the site. The planning inspector suggested an additional investigation was required for VOCs and methane, but also a contaminated groundwater assessment due to the possibility that contaminated groundwater may extend to cellars adjacent to the site.

10.26 The appeal decision provides some useful background information to the historic use of the site.

“Before World War II the site was a brickworks and a large water-filled clay quarry within it has been progressively back-filled since the war with a variety of wastes. These include demolition and construction waste, and spent waste from the nearby Mirvale Chemical Works, which was involved in the production of creosote and agricultural chemicals. However, there is no proper record of the type and quantities of waste deposited other than that in the licence for the northern part of the site which operated from 1978 until it was surrendered in 1993. This permitted solid, inert and non-putrescible demolition and construction waste only.”

10.27 In 2016 an outline application for residential development on the site was submitted by the current applicant and later withdrawn (2016/91074). At that time, Kirklees Environmental Services commented on the complexity of the contamination at the site and stated that it would be unable to support any planning application (including in outline form) until a detailed intrusive investigation had been carried out and acceptable remediation proposals provided.

10.28 Similar comments were made by Environmental Services in 2018 in relation to a subsequent outline application for erection of residential development which was also made by the current applicant and then withdrawn (2018/91713).

10.29 The current application was submitted in April 2019. Environmental Services commented on the submission and advised that they would not be able to properly assess the application until a full current site investigation was provided. That investigation would need to include at least 12 months of recent gas monitoring to fully characterise the gassing conditions on-site during various meteorological and groundwater conditions.

10.30 Since then the applicant has provided additional information in support of the application, including updated ground gas risk assessments. This information has been assessed by Environmental Services in respect of the land contamination aspects of the report (not the geo-technical information). A summary of the key findings from the applicant’s investigation is provided as follows:

1. Visual and olfactory evidence of contamination identified during the site investigation.

2. The key contaminants affecting the site are methane, carbon dioxide and VOCs. However, there are also several metals, metalloids and organic contaminants which are widespread in significant amounts (e.g. asbestos, lead, arsenic and petroleum hydrocarbons) in shallow and deeper made ground.
3. A maximum methane concentration of 91% v/v, maximum carbon dioxide concentration of 8% v/v, a minimum oxygen concentration of 0.0 % v/v and a maximum flow rate of 1.4 l/h. At concentrations of >5%, gas protection elements are recommended.
4. VOC gases were found in concentrations beyond the measurement capabilities of the equipment used (>10,000 ppm) within the area of the infilled quarry.
5. Significantly elevated VOC concentrations were found in soil samples. For example, naphthalene which is considered the most mobile and volatile of the VOCs was reported at 3600 mg/kg in samples taken from the infilled quarry. This is more than 600 times over the screening value of 5.6 mg/kg.
6. Groundwater should be considered contaminated due to the high readings of EPH, BTEX, phenol and VOC. For instance, benzene concentrations were found at over 50 times the World Health Organisation's screening value.

10.31 Further additional information has been submitted this year which details two additional ground gas monitoring visits undertaken in 2021. As a result, the applicant has undertaken gas and groundwater monitoring on eight occasions over 39 months up until 21st January 2021. A previous data set was compiled between June 2003 and December 2003 by a third-party. In total the applicant considers that 15 sampling visits have been made and that these have covered worst-case conditions for barometric pressure and atmospheric pressure and as such follow published guidance. The applicant therefore contends that no further gas monitoring is required and considers that specialist remediation can be implemented so that it limits residents being exposed to any unpleasant odours during or after treatment.

10.32 Despite the submission of additional information, Environmental Services have significant concerns with the application. It is considered that the site has a high level of contamination which remains inadequately assessed and that any assessment thus far has not followed industry recommended contaminated land guidance.

10.33 The ground gas monitoring undertaken by the applicant is intermittent and inconsistent, despite it being carried out over 39 months. Only 8 readings have been taken during this time and seasonality has not been fully considered. For instance, no measurements were taken between February and May or during July throughout the whole monitoring period. Of these readings, two have been undertaken at falling pressure but only once below 1000 mb (976 mb). Given the complex nature of the site and the high readings reported, officers consider that it fails to confirm the ground gas regime on site to a high degree of confidence.

- 10.34 Published guidance recommends a minimum of 24 visits over 12 months in a site of high sensitivity end-use and high generation potential risk. It recommends at least two sets of readings should be at low and falling atmospheric pressure (but not restricted to periods below <1000 mb). The ground gas monitoring programme by the applicant falls well short of these recommendations. As such, it is unclear how recommendations for gas protection elements can justifiably be made. For this reason, it also falls short of our recommendations as the site remains a potential risk to end-users.
- 10.35 The submitted information acknowledges a risk from VOCs but there remains a lack of in-depth consideration for VOCs and associated fundamental issues. For instance, when methane levels are high, the ability to detect VOC gases using the methods employed become diminished. It is possible that the presence of methane reduced the detectable VOCs. However, no assessment to the effects of methane on VOC readings have been made. Furthermore, there has not been consideration given to any alternative quantitative gas analysis methods (e.g. gas chromatography–mass spectrometry). Following on from that, there were no references to occupational exposure limits in the risk assessment despite the extremely high levels reported. Lastly, despite the vapour and soil concentrations reported, and the acknowledgement of plausible vapour migration from VOC at depth, the updated conceptual model in the Phase II report states, ‘inhalation, ingestion and dermal contact with soil and dust - not considered a viable pathway due to depth of contamination’ assigning a moderate/low risk. This is contradictory and unclear.
- 10.36 No detailed groundwater risk assessment to ascertain the risk from groundwaters to both on-site and off-site receptors has been undertaken. Such investigation works were identified by the planning inspector and the applicant’s own intrusive investigation report includes it as a recommendation for further work, however, insufficient in-depth information relating to the groundwater risk on site has been submitted to support the assessment of the application.
- 10.37 It is acknowledged that the applicant has suggested remediation relating to gas protection elements and clean cover across the site. However, officers are of the opinion that these proposals are made from an inadequate assessment of the site and they fail to envisage the significant health risks to nearby residents during and following remediation.
- 10.38 In conclusion, the applicant is fully aware of the significant contamination at the site and the need for further detailed investigation and remediation proposals. Officers consider that the information provided fails to determine, to a high degree of confidence, that there is no significant potential of substantial harm to either on-site or off-site receptors.
- 10.39 The applicant’s assessment has clearly shown there are very high concentrations of methane and VOCs, together with other significant contaminants. However, there is also a level of uncertainty relating to the assessment methodology and consequently the accuracy of the concentrations measured. As such, the contaminant concentrations may be higher than the reported values. It is therefore considered that the risks to the proposed development from the contamination at the site have not been fully and accurately quantified. In other words, the applicant has failed to demonstrate that the site can be safely developed.

- 10.40 Officers consider that unacceptable pollutant pathways from very high concentrations of multiple contaminants remain which may present a significant risk of serious harm to future on-site and existing off-site receptors. Environmental Services have significant doubts that it is feasible to remediate the site to make it acceptable for residential use, and without creating new and unacceptable risks to adjacent properties – which include dwellings and a primary school.
- 10.41 In summary, the application fails to accord with Policy LP53 of the Local Plan and paragraph 178 of the NPPF.

Residential Amenity

- 10.42 The layout of the site and the scale of the dwellings are reserved for approval in the future but in principle officers are satisfied that acceptable separation can be achieved between new and existing dwellings as well as between new dwelling and new dwelling within the site.
- 10.43 Development on the site will also need to provide a high standard of amenity for future residents. This would be influenced by the provision of adequate internal and external space for each dwelling. This may impact on the total number of dwellings that can be accommodated on the site.
- 10.44 The new access would result in additional comings and goings in very close proximity to existing properties. This has the potential to result in noise disturbance. It is acknowledged that this issue was raised as a concern by officers under application 2018/91713.
- 10.45 Notwithstanding the previously expressed concerns, the amount of vehicle movements associated with up to 63 dwellings is unlikely to be so significant so as to result in any unacceptable harm such that it would justify a refusal of planning permission in its own right. This is especially the case considering that Old Bank Road is already a well-used road and there are other potential sources of noise within the vicinity that would add to the background noise climate. What is more, Environmental Services have not raised this matter as a particular issue of concern.

Drainage and flood risk issues

- 10.46 This is an outline application with access the only matter that has been applied for. It is therefore considered that technical matters concerning drainage can be dealt with by conditions. It would be appropriate for drainage information to be submitted alongside 'layout' at reserved matters to ensure that any layout makes suitable provision for the disposal of surface water.
- 10.47 It is proposed that surface water would discharge to the main sewer network. Kirklees Lead Local Flood Authority (LLFA) consider that this represents the most suitable method of disposal on this site, having regard to the hierarchy of surface water disposal. The LLFA has raised a substantive concern with the proposed discharge rate within the indicative drainage scheme. However, detailed drainage design would be dealt with by conditions alongside consideration of the layout of the site which provides an opportunity to ensure adequate on-site attenuation is provided.

- 10.48 Yorkshire Water have been consulted and no objections have been raised.
- 10.49 The site is located within Flood Zone 1 and is therefore at the lowest risk of flooding.

Representations

- 10.50 Fifteen representations have been received, including objections from Old Bank School and the community group 'Save Mirfield'.
- 10.51 Issues with land contamination and highway safety figure prominently within the representations and such matters have been addressed in detail earlier within this report.
- 10.52 Design concerns have been raised with the indicative layout plan and the indicative scale of the dwellings. A number of concerns have also been raised with the impact on residential amenity, such as overlooking and loss of light. Matters of scale and layout have been removed from the matters to be considered at this stage. Any future reserved matters submission will need to pay due regard to the character of the surrounding area and provide adequate separation to adjacent properties. Officers have commented on the design of the indicative layout as part of this assessment.
- 10.53 Ecological and flood risk/drainage issues have also been raised as grounds for concern and this report has taken such matters into consideration.
- 10.54 Of the other matters raised, the highway and residential amenity impacts of construction can be mitigated through a construction management plan; the proposal would be required to provide a contribution towards education provision which would off-set increased demand for school places; the scale of development is not of a level that would justify new medical facilities and ultimately it is a matter for medical providers to deliver those services having regard to local population statistics; and the impact of the development on property values is not a material planning consideration.
- 10.55 Mirfield Town Council and Councillor Martyn Bolt have commented on the application.
- 10.56 Officers share the concerns that have been raised in relation to contamination.
- 10.57 It is not considered that there are grounds to refuse the application on the basis that the site is not allocated for housing and the council is able to demonstrate the required level of housing land supply. The housing targets in the Local Plan include an allowance for windfall sites such as this and on unallocated sites applications are to be treated on their own merits, having regard to all material planning considerations.
- 10.58 The site lies in a predominantly residential area and officers are satisfied that an acceptable scheme could come forward at reserved matters stage which would not unduly harm the visual amenity of the area. New development would need to respect the character and urban grain of the surrounding area.

- 10.59 The indicative layout indicates that an existing mobile phone mast within the site would be removed. This is a matter for the developer and the mast owner/operator and is not something that can be taken into account as part of this planning application.
- 10.60 Ward Councillor Bolt has also raised the issue of visibility from the proposed access because of the presence of parked cars along Old Bank Road. This issue has been considered by officers and is reflected in the proposed access arrangement plan. Alternative parking for the existing dwellings is proposed within the application site.

Planning obligations

- 10.61 Policy LP11 of the Kirklees Local Plan requires 20% affordable housing provision, and this should be provided on-site in the first instance. The proposal would be required to provide 13 affordable units.
- 10.62 As this is an outline application with access the only matter applied for it is considered that affordable housing provision can be dealt with via condition and subsequent S106 agreement.
- 10.63 The indicative layout provides a large area of open space within the site. This is welcomed by the Council's Landscape Section as there is limited public open space within the vicinity of the site. As layout is a reserved matter it is considered that POS provision can be secured by condition at this stage and then a subsequent S106 agreement. Open space requirements will be based on Policy LP63 of the Local Plan.
- 10.64 An education contribution of £151,266 is required by this development (based on 63 dwellings). Education provision can be secured by condition at this stage and when the layout is finalised at reserved matters stage, subsequent S106 agreement.
- 10.65 Given the scale of development it is considered that the proposal should deliver a financial contribution to fund sustainable travel measures. This is normally delivered through the provision of residential Metro cards although where Metro cards are not taken up by all residents of the development then it is considered that the balance should be applied to alternative sustainable travel measures to encourage residents of the development to use sustainable modes of transport, the need for which directly arises from the development; this may include off-site measures. Based on 63 dwellings and the provision of one Metro card per dwelling the contribution would be £31,500. This would be secured via S106 agreement.

Ecology and trees

- 10.66 The application is supported by a Preliminary Ecological Appraisal Report which recommends that further ecological survey work and assessment is needed. This includes further survey for foraging bats and invasive species (to overcome the survey limitations resulting from the out of season bat surveys and the vegetation clearance that has previously been carried out).

- 10.67 The 'layout' of the site has been removed from the matters to be considered and it is only the principle of development and the point of access that fall to be considered. There are no overriding objections to the principle of development on ecological grounds although the design of the development will need to provide suitable biodiversity mitigation and enhancement (resulting in a net biodiversity gain). It is considered that this can be provided via an Ecological Impact Assessment submitted alongside the details of 'layout', 'appearance' and 'landscaping'.
- 10.68 The arboricultural officer has confirmed that at the time the application was submitted none of the trees on the site were deemed to be worthy of preservation.

Other matters

- 10.69 The application site falls within the defined Development High Risk Area for coal mining and The Coal Authority records indicate that shallow coal seams are recorded to have been worked beneath this site.
- 10.70 The planning application is accompanied by a Coal Mining Risk Assessment which indicates that recorded workings present beneath the site are likely to cause land instability at the surface. Intrusive site investigations are necessary in order to design appropriate remedial/mitigatory measures to ensure that the site is safe and stable for the development proposed. The Coal Authority has no objections to the application, subject to a condition to secure site investigations and a suitable scheme of remediation. In the likely event that coal is encountered, the Coal Authority considers that due consideration should also be afforded to the potential risk posed by mine gas to the proposed development.
- 10.71 To promote lower carbon forms of transport and mitigate the impact of the development on air quality it is considered that electric vehicle recharging points should be provided. A condition is therefore recommended requiring the provision of electric vehicle recharging points for the individual dwellings. This is to accord with Policy LP24 of the Kirklees Local Plan, guidance in the NPPF and the West Yorkshire Low Emissions Strategy (WYLES).
- 10.72 It is necessary to ensure that new development is safe, so that crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion. This is in line with guidance in the NPPF and Policy LP24 of the Local Plan and the residential scheme that comes forward at reserved matters stage will need to accord with this. 'Secured by Design' advice on this application has been provided by the Police Architectural Liaison Officer.

Climate change:

- 10.73 On 12th November 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.

- 10.74 The proposal would deliver a financial contribution towards sustainable travel measures and the development would be required to provide electric vehicle recharging points, both of which will help to mitigate the impact of this development on climate change.

11.0 CONCLUSION

- 11.1 The planning history of this site indicates the significant issues which exist with contamination associated with the previous use of the land. The application, as with previous applications, fails to adequately determine the extent of the risk posed to the proposed development from contamination and thus demonstrate that the site can be safely developed.
- 11.2 Officers recognise that there would be a significant benefit to remediating this land and delivering new housing. However, the uncertainties which exist with a range of contaminants (including ground gas and VOCs) are such that officers are unable to state, with a sufficiently high degree of confidence, that the site can be made suitable for the proposed end-use, and whilst also protecting existing occupiers and users of adjacent property from unacceptable risk.
- 11.3 The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice.
- 11.4 This application has been assessed against relevant policies in the development plan and other material considerations. For the reasons set out in this report, it is considered that the development would not constitute sustainable development and the application is therefore recommended for refusal.

Background Papers:

Application and history files.

Website link:

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019%2f91105+>

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