
Report of the Head of Planning and Development

STRATEGIC PLANNING COMMITTEE

Date: 26-Aug-2021

Subject: Planning Application 2021/92122 Variation of Condition 1 (Plans) on previous permission 2019/94152 reserved matters application pursuant to application no 2018/90802 for development of 16,723 sq metres employment floor space together with associated internal roads, parking and landscaping in relation to the reserved matters of layout, scale, appearance and landscaping. Together with the discharge of conditions 3, 6, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 32, 33 and 34 in so far as they relate to Phase 2 Land at Slipper Lane, Leeds Road, Mirfield, WF14 0DE

APPLICANT

Gardner

DATE VALID

21-May-2021

TARGET DATE

20-Aug-2021

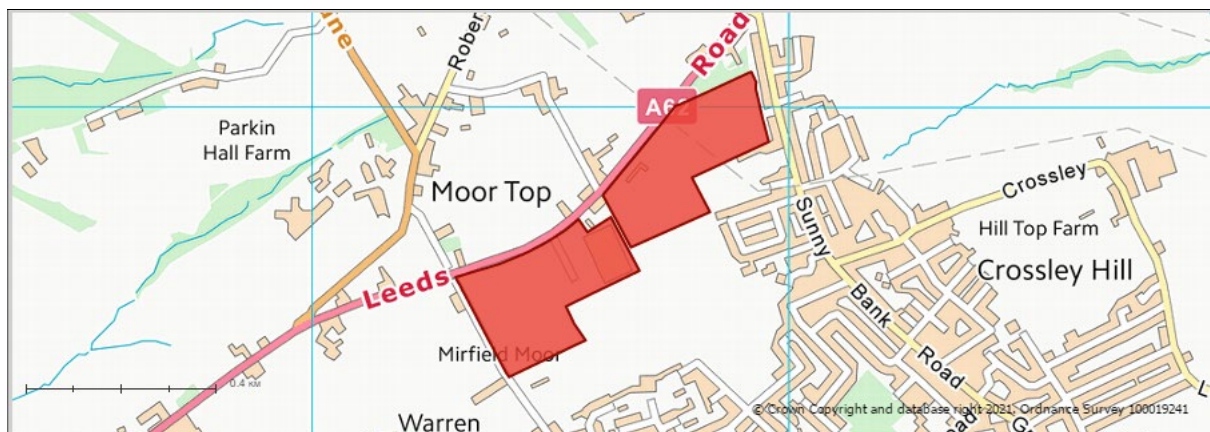
EXTENSION EXPIRY DATE

02-Sep-2021

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

DELEGATE approval of the application and the issuing of the decision notice to the Head of Planning and Development to complete the list of conditions including those contained within this report.

1.0 INTRODUCTION

- 1.1 This application seeks to vary condition 1 (plans) on previous permission 2019/94152 for reserved matters application pursuant to application no 2018/90802 for development of 16,723sq metres employment floor space together with associated internal roads, parking and landscaping in relation to the reserved matters of layout, scale, appearance and landscaping.
- 1.2 The plan sought to be varied is the landscaping plan.
- 1.3 This application is brought to the Strategic Planning Committee as the level of public representation received in objection to the proposal is considered significant and because the original application to which this variation is sought was considered by the Strategic Planning Committee. This is in accordance with the Delegation Agreement. A committee request has also been made by Councillor Bolt.

2.0 SITE AND SURROUNDINGS

- 2.1 This application relates to the Moorpark 25 / Mirfield 25 site which is a mixed-use allocation in the Local Plan (MXS6). The whole allocation comprises 12.38ha of land on the northern fringe of Mirfield. The planning approval on this site is for both residential and industrial use and development has commenced on each. This application pertains to the industrial portion of the development only.
- 2.2 The site has a frontage onto Leeds Road (A62). Taylor Hall Lane, to the north-east, separates the site from the approved residential development. Slipper Lane, which hosts several dwellings, is to the west, with playing pitches and housing allocation (HS68) to the south.
- 2.3 Vehicle access to the site is taken from Leeds Road. One of the previously approved industrial units has been constructed and is in use. The remaining five units and their associated infrastructure are at varying stages of construction.

3.0 PROPOSAL

3.1 Permission is sought to vary condition 1 from 2019/94152, which is as follows:

1. The development hereby permitted shall be carried out in complete accordance with the with the plans and specification listed in this decision notice, except as may be specified in the conditions attached to the permission, which shall in all cases take precedence.

Reason: *For the avoidance of doubt and to ensure the satisfactory appearance of the development on completion, and to accord with Policies LP21, LP22, LP24 and LP32 of the Kirklees Local Plan.*

3.2 The variation sought is to supersede the previous landscaping plan with a new version in the approved plans table.

3.3 The principal amendment sought relates to 2180sqm of land (across two pockets) on the west and north boundaries. It is proposed to substitute a shrub, 'whip', and 'standard' tree mixture with a shrub and 'whip' tree mixture in these areas.

3.4 'Standard' and 'whip' are arboricultural terms which define the form, age, and size of a tree. It does not pertain to species. A 'standard' tree has a single straight trunk, which is absent of lower branches, and has a minimum height of 1.8m. A 'whip' is an unbranched young tree seedling of approximately 0.5-1.0 m in height.

3.5 Within the 2180sqm of land the approved plans proposed approximately 74 standard trees of several species as well as circa 654 whips. The proposal seeks to replace this with no standard trees and circa 1800 whips¹, again of varied species. There would be no standards within this 2180, although standards remain proposed elsewhere within the site. In each case the trees would be planted alongside a shrub mixture.

3.6 Other changes include minor variations to the layout of trees along the south and east boundaries and within the site; these changes do not materially affect size or numbers of trees to be planted. Certain species have been changed. An area of hedgerow on the east boundary, which was removed, is shown to be re-planted in the proposed plans.

4.0 RELEVANT PLANNING HISTORY (including enforcement history)

4.1 Application Site

2014/90688: Outline application for erection of commercial floorspace (B1c, B2, B8) including details of engineering operations to form serviced employment plots and full application for the erection of 166 dwellings – S106 Outline Permission Granted

¹ Over time and due to management both standard or whip tree numbers would be expected to fall as the environment becomes established.

2018/90801: Reserved Matters application pursuant to outline permission 2014/90688 as varied by application 2018/90802 for erection of commercial floorspace (B1c, B2, B8) including details of engineering operations to form serviced employment plots and full application for the erection of 166 dwellings (INDUSTRIAL PART ONLY) – Reserved Matters approved

2018/90802: Removal of condition 31 (B8 floorspace) and variation of conditions 23 (Residential) (Road Safety Audits) and 30 (Industrial) (Road Safety Audits) on previous application 2014/90688 for outline application for erection of commercial floorspace (B1c, B2, B8) including details of engineering operations to form serviced employment plots and full application for the erection of 166 dwellings – S106 removal / modification of conditions

2018/93622: Reserved matters application pursuant to permission no 2018/90802 for removal of condition 31 (B8 floorspace) and variation of conditions 23 (Residential- Road Safety Audits) and 30 (Industrial-Road Safety Audits) on previous application 2014/90688 for outline application for erection of commercial floorspace (B1c, B2, B8) including details of engineering operations to form serviced employment plots – Reserved Matters approved

2019/90756: Variation of condition 2. (plans and specifications) on previous permission no. 2014/90688 for outline application for erection of commercial floorspace (B1c, B2, B8) including details of engineering operations to form serviced employment plots and full application for the erection of 166 dwellings – S106 removal / modification of conditions

2019/93224: Non-material amendment pursuant to permission no. 2018/93622 for reserved matters application pursuant to permission no 2018/90802 for removal of condition 31 (B8 floorspace) and variation of conditions 23 (Residential- Road Safety Audits) and 30 (Industrial-Road Safety Audits) on previous application 2014/90688 for outline application for erection of commercial floorspace (B1c, B2, B8) including details of engineering operations to form serviced employment plots – NMA Approved

2019/94152: Reserved matters application pursuant to application no 2018/90802 for development of 16,723 sq metres employment floor space together with associated internal roads, parking and landscaping in relation to the reserved matters of layout, scale, appearance and landscaping. Together with the discharge of conditions 3, 6, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 32, 33 and 34 in so far as they relate to Phase 2 – NMA Approved

2019/93965: Non-material amendment to previous permission 2019/94152 for reserved matters application pursuant to application no 2018/90802 for development of 16,723sq metres employment floor space together with associated internal roads, parking, and landscaping in relation to the reserved matters of layout, scale, appearance and landscaping. Together with the discharge of conditions 3, 6, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 32, 33 and 34 in so far as they relate to Phase 2 – NMA Approved

2020/93957: Discharge of condition 2 (materials) of previous permission 2019/94152 – DOC Approved

2020/93958: Discharge of condition 7 (drainage) of previous permission 2019/94152 – DOC Approved

2020/94101: Discharge condition 6 on previous permission 2019/94152 – DOC Approved

2021/91271: Non-material amendment to previous permission 2019/94152 for reserved matters application pursuant to application no 2018/90802 for development of 16,723sq metres employment floor space together with associated internal roads, parking, and landscaping in relation to the reserved matters of layout, scale, appearance and landscaping. Together with the discharge of conditions 3, 6, 13, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 32, 33 and 34 in so far as they relate to Phase 2 – NMA Approved

Note: Discharge of condition applications for 2019/94152 listed only.

Note: The above includes some permissions which relate partly or wholly to the adjacent residential development.

4.2 Surrounding Area

None.

4.3 Enforcement

Application site

COMP/16/0136: Major site monitoring – Ongoing

Note: This is a separate ongoing matter which is currently being monitored by the Council's Planning Compliance Team.

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

5.1 The application initially sought to replace the originally approved standard trees with 'Hydro-seeded British Native wildflower and grass seed mix'; this did not include the planting of trees. The applicant stated that this was for health and safety purposes, as the planting and ongoing maintenance of the trees on the site's steep topography would not be feasible. This was disputed by officers and not considered to be acceptable as it would not achieve the purpose of the trees; to act as a visual screen.

5.2 Discussions took place between officers, K.C. Trees and the applicant. It was concluded that the use of whip trees, at a higher density, was an arboriculturally preferable solution.

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) and Supplementary Planning Guidance / Documents

6.2 The application site is part of land allocated for mixed use within the Local Plan (site allocation ref: MXS6). As set out within the Relevant Planning History section, the site has implemented permissions for part commercial and part residential development.

6.3 Relevant Local Plan policies are:

- **LP1** – Presumption in favour of sustainable development
- **LP2** – Place shaping
- **LP24** – Design
- **LP30** – Biodiversity and geodiversity
- **LP32** – Landscape
- **LP33** – Trees
- **LP51** – Protection and improvement of local air quality
- **LP52** – Protection and improvement of environmental quality

6.4 The following are relevant Supplementary Planning Documents or other guidance documents published by, or with, Kirklees Council:

Guidance documents

- Planning Applications Climate Change Guidance (2021)

National Planning Guidance

6.5 National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) 2021, published 20th July 2021, and the Planning Practice Guidance Suite (PPGS), first launched 6th March 2014, together with Circulars, Ministerial Statements and associated technical guidance. The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

- **Chapter 2** – Achieving sustainable development
- **Chapter 4** – Decision-making
- **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

6.6 Other relevant national guidance and documents:

- MHCLG: National Design Guide (2021)

Climate change

6.7 The Council approved Climate Emergency measures at its meeting of full Council on the 16th of January 2019, and the West Yorkshire Combined Authority has pledged that the Leeds City Region would reach net zero carbon emissions by 2038. A draft Carbon Emission Reduction Pathways Technical Report (July 2020, Element Energy), setting out how carbon reductions might be achieved, has been published by the West Yorkshire Combined Authority.

6.8 On the 12th of 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 would use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

7.0 PUBLIC/LOCAL RESPONSE

Public representation

7.1 The application has been advertised as a major development via site notices and through neighbour letters to properties bordering the site, along with being advertised within a local newspaper. This is in line with the Council's adopted Statement of Community Involvement. The end date for the original period of publicity was the 9th of July 2021. Following amendments to the proposal a second period of public representation has been undertaken via letters to neighbouring residents and interested parties.

7.2 The second period of publicity is not due to expire until the 18th of August. As such the period of publicity will expire on the day the committee agenda is to be published. Representations received to the initial periods of publicity, and those in response to the current publicity received at the date the report was compiled, are summarised below. These total 73 representations. Any further representations received on the final day of the representation period will be reported to members in the update.

- The original proposal for mature trees will eventually help screen the building and blend the site into the landscape.
- Wildflower meadow planting will not provide sufficient screening and will degrade over years.
- It is not reasonable or appropriate to design something, and then claim it is not safe to build it. This is a cost saving exercise. Developers should not be able to change approved plans.
- Mature trees prevent movement and stability issues on sloping sites and prevent flooding. They also benefit local ecology.
- Questions over what other options have been considered, such as higher retaining walls or tiered levels.
- Trees absorb carbon, limit other pollutants and produce oxygen. Through removing trees, these benefits will be lost.
- The commercial buildings are set on a high banking and are large, unattractive, and detrimental to the amenity of residents. The building causes overshadowing upon Slipper Lane and dwellings upon it. The development has affected local property values. Concerns over associated traffic to the buildings.
- Hedgerow has been removed which should not have been removed.
- The plans are unclear about the ratio of shrubs to trees to be planted.

- The applicant has already reduced the size of the buffer zone from that originally approved.

7.3 Local ward members were notified of the application. The site falls within Mirfield Ward. Cllr Martyn Bolt has expressed concerns and objection to the proposal, ultimately requesting a committee decision. Cllr Bolt raised the following matters.

- The applicant was aware of the steepness of the banking and therefore knew of these issues beforehand, when they initially proposed them. Standard trees could be planted on this site, in a safe way. Developers should be required to build their original permissions.
- The whip trees will not provide adequate screening compared to the standard trees, to the detriment of appearance and residents, or environmental benefits.

7.4 Mirfield Town Council: No comments received.

8.0 CONSULTATION RESPONSES

8.1 Statutory

The assessment of S73 (variation of condition) applications is limited to '*only the question of the conditions subject to which planning permission should be granted*'. Based on this criterion, and the nature of the variation sought, no statutory consultees have been identified.

8.2 Non-statutory

K.C. Ecology: No objection.

K.C. Trees: No objection.

9.0 MAIN ISSUES

- Variation of condition 1
- Previous conditions
- Representations

10.0 APPRAISAL

10.1 This application is made under S73 of the Town and Country Planning Act 1990, which allows for the 'Determination of applications to develop land without compliance with conditions previously attached'. In addition to removing conditions, S73 enables the varying of a condition's wording. The effect of a granted S73 application is the issuing of a fresh planning permission. Therefore, all previously imposed conditions should be retained, if they remain relevant: this will be considered in paragraphs 10.17 – 10.21. Conversely, the time limit for development to commence cannot be extended through S73, however in this case the original development has been commenced and completed.

10.2 The NPPF requires that decisions should '*ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme*'.

- 10.3 The starting point for a S73 application is the previously granted planning permission, which must carry significant material weight. However, consideration must first be given to whether any material changes in circumstances have taken place. This includes the policy and local context.
- 10.4 In terms of policy 2019/94152 was assessed against the Kirklees Local Plan (2019) and NPPF2019. The KLP remains the adopted local development plan. The National Planning Policy Framework (NPPF) was revised on 20 July 2021 and sets out the government's planning policies for England and how these are expected to be applied. This revised Framework replaces the previous National Planning Policy Framework published in March 2012, revised in July 2018 and updated in February 2019. The revisions will be considered where relevant.
- 10.5 For local context, no development within the local area is considered to materially affect the proposal comparative to the previous application's assessment.

Variation of condition 1

- 10.6 The landscape buffer zones purpose is to create an attractive environment and minimising harm to residential amenity, through screening the development.
- 10.7 The applicant has cited health and safety concerns with the planting, and then the ongoing maintenance, of 'standard' size trees in an area of 2180sqm of land where the land gradient is 1 in 3 or greater. They do not consider it to be possible due to the size of standards (minimum 1.8m) and planting them on land with gradients of 1 in 3 or greater. Therefore, they initially requested to remove tree planting and revert to a mixture without trees.
- 10.8 Officers accept that the areas are steep which would increase the difficulty for planting and managing the land. It is however disputed that the planting and subsequent maintenance would be impossible.
- 10.9 Notwithstanding the above, discussions took place between officers, K.C. Trees, and the applicant. An amended proposal was discussed to replace the 'standard' trees with a higher number of 'whip' trees in the 2180sqm of land. Putting aside the applicant's concerns over safety there are reasonable arboricultural grounds to support this change. K.C. Trees have provided the following assessment:

The latest proposed landscaping scheme has shifted from ornamental landscaping, solely using standard sized trees (1.5-2m in height), to now incorporating woodland type planting on the banking areas around the main structures using a native species mix.

Shifting to the woodland type planting design, while this uses younger trees (whips 60-80cm) at the planting stage, it does allow significantly more trees to be planted. Which over the long term will result in a better, denser, screen and higher wildlife value.

It is noted that substituting some of the original planned standard trees, for areas of woodland type planting, will give a reduced immediate visual impact. Although using this woodland mix, with younger trees, will produce a better long-term result and the younger trees will have better establishment rates, over the larger standard trees which can be prone to establishment difficulties.

To illustrate the difference in planting schemes and the significant increase in tree numbers provided across the site as a whole (not just the 2180sqm):

- The initial tree planting scheme proposed 153 standard size trees and 1218 whips across the site.*
- The proposed scheme includes 98 standard size trees, with 3,053 whips.*

On that basis there are no objections to the amended scheme, which over long term is likely to provide significantly higher value than the original ornamental type landscaping.

- 10.10 As noted by K.C. Trees it is accepted that there would be a reduced immediate visual impact through exchanging standards for whips. However, the originally approved standards were still young trees which would take many years to reach maturity and offer their maximum screening.
- 10.11 Interpreting growth speed is difficult due to various factors, such as ground composition and growing conditions. While it could take approximately 10 years for the proposed whips to reach a comparable size to the standard, when a standard is planted out its establishment rate is much slower. This is because it's been removed from ideal nursery growing conditions when its larger and therefore more sensitive, before being deposited 'in the real world' with adverse conditions. Comparatively, younger whips are expected to establish quicker and be more resilient in their environment.
- 10.12 K.C. Trees consider there to be too many variables to calculate when either the approved standards or proposed whips will reach maximum height. The largest size tree in the proposed species mix can take approx. 20-50 years to reach maturity. However, they do highlight that research have shown that whips can often get their quicker.
- 10.13 Comparing the practical effects, neither standard nor whip trees will have an immediate screening effect given their relative height to the industrial buildings. Officers consider the higher density of the whips would be more visually prominent and attractive than the immediate height of the standards. The whips would also provide a greater screening value which would only increase in time. In the medium to long term, the woodland appearance, as opposed to approved ornamental planting, and higher density of the proposed whip planting is considered acceptable.
- 10.14 From an ecological perspective there are no concerns over the proposed variation. While no assessment has been made over pollution absorption specific to the planting, anecdotally officers expect a higher number of trees to absorb more pollutants over their full lifetime.

- 10.15 On other variations sought elsewhere within the site. Certain plant species have been changed between the approved and proposed plans, following officer recommendation. This is due to changing guidance on invasive non-native species. The amended species mix is considered acceptable. Other changes are minor in nature and will not have a material impact.
- 10.16 Weighting the above considerations, officers are satisfied that the proposed variation, the use of a higher number of whips as opposed to fewer standard trees, will offer acceptable screening to the benefit of visual and residential amenity. The proposal is deemed to comply with the aims of LP24 and LP33 of the Kirklees Local Plan.

Previous conditions

- 10.17 As this is an application under S73 of TCPA 1990 it will in effect be a new permission. The Planning Practise Guidance confirms that for the purpose of clarity, decision notices for the grant of planning permission under section 73 should set out all the conditions imposed on the new permission, and restate the conditions imposed on earlier permissions that continue to have effect (Paragraph: 040 Reference ID: 21a-040-20190723).
- 10.18 Application 2019/94152 was granted with 7 conditions:
1. Development to be done in accordance with plans (sought to be varied)
 2. Material samples to be provided and used
 3. Parking areas to be provided and retained
 4. Prior to occupation of each unit a servicing plan is to be provided
 5. The landscaping scheme shall be completed and maintained
 6. Details of unit 4's elevations to be provided
 7. Drainage strategy to be implemented unless appropriate replacement strategy is approved.
- 10.19 Condition 1 is sought to be varied; however, the wording will not change. The associated plans table would be updated to supersede the approved landscaping strategy with that proposed.
- 10.20 All other conditions remain pertinent and are to be kept. As several have been previously discharged, a note relating to the previously submitted information remaining relevant is recommended for consistency.
- 10.21 Application 2019/94152 was not granted subject to a S106 agreement. Therefore, a S106 Deed of Variation is not required.

Representations

- 10.22 73 representations have been received to date. Several matters raised have been addressed within this report. The following are matters not previously directly addressed.
- It is not reasonable or appropriate to design something, and then claim it is not safe to build it. This is a cost saving exercise. Developers should not be able to change approved plans.

Response: The planning system allows for developers to amend their applications, subject to appropriate assessment, where the need arises.

- Mature trees prevent movement and stability issues on sloping sites and prevent flooding. They also benefit local ecology.
- Questions over what other options have been considered, such as higher retaining walls or tiered levels.

Response: Standard trees are not 'mature' trees, although they are accepted to be older and larger than whips. The tree planting was not designed to improve stability or prevent flooding, but for visual screening. Nonetheless, whips are not expected to prejudice any stability or flooding benefits which would have been offered by the standard trees. Officers are unaware of other options considered by the applicant.

- Trees absorb carbon, limit other pollutants and produce oxygen. Through removing trees, these benefits will be lost.

Response: Following amendments to the plans, the standards are to be replaced by whips – this comment was received when the standards were not to be replaced by any trees. The now proposed use of whips will not prejudice these benefits.

- The commercial buildings are set on a high banking and are large, unattractive, and detrimental to the amenity of residents. The building causes overshadowing upon Slipper Lane and dwellings upon it. The development has affected local property values. Concerns over associated traffic to the buildings.

Response: The screening of standards and whips has been assessed previously. Local property values are not material planning considerations. The proposed landscape changes are not expected to impact highway considerations.

- Hedgerow has been removed which should not have been removed.

Response: Replacement hedgerows are shown and have been planted on site. Their temporary removal (understood to be for access reasons) did not breach the planning conditions on the site.

- The plans are unclear about the ratio of shrubs to trees to be planted.

Response: This is denoted on the plans.

- The applicant has already reduced the size of the buffer zone from that originally approved.

Response: The size of the buffer zone approved as part of this application, including its original approval and subsequent variations, has not changed. Previous applications for the development of the site, which were never implemented and have since expired, did include larger buffer zones, which has led to confusion on this matter.

11.0 CONCLUSION

- 11.1 The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice.
- 11.2 As a S73 application the principal consideration is the planning implications of the sought variation. While the whips are accepted to have a less immediate effect, in the medium to long term they will result in a greater screening effect. Considering this alongside the limited weight given to the applicant's concerns over safety of planting standard trees, on balance officers consider the proposed variation to be acceptable.
- 11.3 This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development would constitute sustainable development and is therefore recommended for approval, subject to the re-imposition of the previous conditions.

12.0 CONDITIONS (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Planning and Development)

1. Development to be done in accordance with plans (sought to be varied)
2. Material samples to be provided and used
3. Parking areas to be provided and retained
4. Prior to occupation of each unit a servicing plan is to be provided
5. The landscaping scheme shall be completed and maintained
6. Details of unit 4's elevations to be provided
7. Drainage strategy to be implemented unless appropriate replacement strategy is approved.

Note: Pertaining to the previously approved discharge of conditions associated with 2019/94152.

Background Papers

Application and history files

Available at:

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2021%2f92122>

Certificate of Ownership

Certificate A signed.