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

**HEAVY WOOLLEN PLANNING SUB-COMMITTEE**

**Date: 28-Apr-2022**

**Subject: Planning Application 2021/94364 Erection of 16 dwellings, access, landscaping and associated infrastructure Land to the East of Long Lane, Earlsheaton, Dewsbury**

**APPLICANT**

SterCap Ltd

**DATE VALID**

22-Nov-2021

**TARGET DATE**

21-Feb-2022

**EXTENSION EXPIRY DATE**

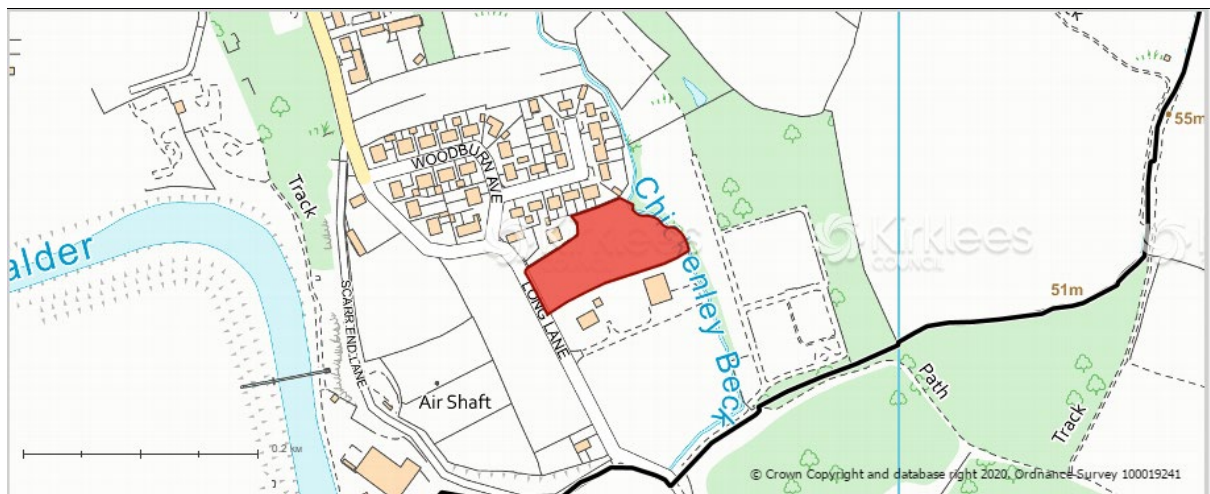
06-May-2022

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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.

[Link to Public speaking at committee](#)

**LOCATION PLAN**



**Map not to scale – for identification purposes only**

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**Electoral wards affected: Dewsbury East**

**Ward Councillors consulted: Yes - Cllr Aleks Lukic, Cllr Cathy Scott, Cllr Eric Firth**

**Public or private: Public**

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**RECOMMENDATION:**

DELEGATE approval of the application (Full) 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 deed of variation to the S106 agreement attached to planning permission 2019/93423 so that it covers the following matters:

1. Public open space provisions including off site commuted sum of £11,238.00, including a £250 site inspection fee for the future maintenance and management responsibilities of open space within the site.
2. Off-site highway works for footpath improvements to Long Lane (£4,000)
3. Contribution towards a Sustainable Travel Fund (£8,008.00)
4. Off-site financial contribution of £18,200 towards securing a biodiversity net gain.
5. 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).

In the circumstances where the S106 agreement has not been completed within 3 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 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 the erection of 16 dwellings and associated works.
- 1.2 The application was originally granted full planning permission under reference 2019/93423 at Strategic Planning Committee on 5<sup>th</sup> August 2020 with the decision notice issued on the 23<sup>rd</sup> October 2020. The development approved under this permission was for residential development of 16 dwellinghouses, which is consistent with the proposal made under this re-submitted application
- 1.3 The alterations made to the scheme under this application relate primarily to the removal of the affordable housing contribution made under the Section 106 Agreement for the previous application 2019/93423. This alteration is made on the premise of the viability appraisal conducted under the previously approved scheme. Some alterations to the layout and to boundary treatments have also been made at the request of the Case Officer to improve the development.

- 1.4 Under the scheme of delegation the previous application on the site (ref 2019/94323) was a sub-committee item, however restrictions placed on Sub-Committee meetings during the Covid-19 pandemic resulted in the item being presented and approved at Strategic Planning Committee which was conducted virtually under emergency powers in August 2020. As Committee meetings have normalised following the relaxation of Covid-19 Public Health measures, this application (ref: 2021/94364) has returned to Heavy Woollen Planning Sub-Committee in line with the Council's scheme of delegation.
- 1.5 The Officer recommendation for approval is despite the removal of the affordable housing element previously proposed under the previous application (2019/94323). The applicant's viability appraisal (VA) has been subject to an independent assessment by Eddison's on behalf of the council. Given the significant level of scrutiny that the applicant's appraisal has received through the independent process, the removal of the affordable housing is considered to have been justified. The approval of planning permission is able to be supported. Kirklees Local Plan Policy LP11 – Housing Mix and Affordable Housing allows for this proportionate method in applying viability to affordable housing for residential proposals in planning policy terms. Greater detail in respect of the viability process is provided in Section 10 of this report.
- 1.6 Committee Members may also give consideration to the wording of Paragraph 58 of the National Planning Policy Framework in forming their decision:

*The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force.*

## **2.0 SITE AND SURROUNDINGS:**

- 2.1 The application site is 0.65 hectares in size, has previously been in agricultural use, and is located to the east of Long Lane, Earlsheaton. To the south of the site is a modern farm complex known as Mitchell Laithes Farm. To the north-west is Clough Farm and Clough House, which both originate in the late 19<sup>th</sup> century. To the northeast are mid-late 20<sup>th</sup> century semi-detached properties associated with Woodburn Avenue. The site's eastern boundary is defined by Chickenley Beck, which runs north to south as well as a woodland area. To the west of Long Lane are agricultural fields.
- 2.2 The application site generally slopes downhill towards Chickenley Beck, from its north western corner at 55 metres (m) Above Ordnance Datum (AOD) to its south eastern corner at 45m AOD. Surrounding properties to the north west occupy higher ground at approximately 55m AOD, whilst Mitchell Laithes Farm occupies lower ground at approximately 45m AOD.
- 2.3 The site is previously undeveloped (greenfield) land, was previously agricultural use, and is now overgrown grassland with mature trees found towards the east. The site's southern boundary consists of mature trees and hedgerows. The site's boundary with Long Lane consists of a drystone wall and wooden gate, with hedgerows and trees set behind. The site's southern boundary with Mitchell Farm consists of mature hedgerows and trees. There is also a steel farm gate at the site's south eastern corner. The site's north western boundary

with Clough Farm consists of picket fences and mature vegetation. The site's north eastern boundary consists of typical residential boundary fencing. There are no tree preservation orders on the site.

- 2.4 Wooden poles with power cables dissect the site from east to west and north to south. A Yorkshire Water combined sewer runs across Mitchell Lane Farm and along the sites eastern edge with Chickenley Beck.
- 2.5 Historic ordnance survey maps from 1907 to 1980 show that immediately to the east of site and Chickenley Beck was Mitchell Laithes Hospital, which was first used as a hospital for infectious diseases and then as a psychiatric institute.
- 2.6 In terms of site constraints, there are no public rights of way that cross the site and the site does not affect any conservation area or listed building or their settings. The application falls within a Bat Alert area and there are a number of recorded bat roosts within the residential area to the north of the site. The eastern part of the site falls within flood zones 2 and 3, associated with Chickenley Beck. The site's south eastern corner falls within a Coal Mining Development High Risk Area and the site is recognised as being potentially contaminated.

### **3.0 PROPOSAL:**

- 3.1 The planning application proposes the development of 16 three-bed dwelling houses. The dwellings would be served by a single, shared surface access road from Long Lane via a new priority T-junction with new footway provision along the site frontage. The road will form a spinal route through the site providing access to private drives via a shared surface.
- 3.2 Four dwelling house types are proposed forming a mix of detached, semi-detached, and terraced dwellinghouses. All of the dwelling houses are two storeys in height and have been designed to accord with Table 1 of the Technical housing standards – nationally described space standard, thus each would be three-bed for five persons and measure 93m<sup>2</sup>. The supporting information states how the dwelling houses would be constructed from artificial stone and render with artificial stone and slate roof tiles. The dwelling houses are characterised by porches, eave details and window surrounds. In addition, some of the dwellings would also have bay features. All of the dwelling houses would each have two car parking spaces as well as garden spaces with allocated areas for bin stores. Cycle storage is provided within garages or standalone, secure storage within the curtilage of each plot.
- 3.3 A detailed landscaping scheme is submitted providing details of hard and soft landscaping and planting across the site. This includes retention of the existing planting along the boundaries, additional tree planting beside the roadway and stone walls across the entrance as well as fences to provide privacy and define property boundaries.
- 3.4 An area of public open space for informal recreation and/or amenity is to be provided opposite plots 1-4. The area adjacent to Chickenley Beck is also to be left as an informal open natural space with a woodland area.

- 3.5 The main alterations to the scheme under this application relate to the introduction of greater spacing between plots 1-5 through the re-siting of plot 6 beside plot 16. This amendment has allowed for the creation of 4 further detached properties at plots 1, 2, 5 and 6 which were previously semi-detached. A more consistent approach to stone boundary walling has also been applied to the POS opposite plots 1-4 and at the front of plots 2-5 as well as 6 and 16. A significant uplift in tree planting has also been proposed within the POS and in front gardens between plots 1-6.

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

- 4.1 The site has been subject to one recent planning application as cited in the introduction section. The application details are as follows:

2019/93423 – Erection of 16 dwellings and associated works – Full Planning Permission – Granted by Committee on 5<sup>th</sup> August 2020 and the Decision Notice was Issued on the 23<sup>rd</sup> October 2020.

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

- 5.1 Between the date of the Committee meeting of 5<sup>th</sup> August 2020 and the issuing of application 2019/93423 Decision Notice, as set out in paragraph 4.1 above, an on-going independent assessment of the applicant's submitted viability assessment was concluded. The independent assessment conducted by Eddison's was undertaken at the request of the Local Planning Authority in accordance with paragraph 2.3 of Kirklees Viability Guidance Note (June – 2020). The conclusions of Eddison's assessment agreed with the applicant's viability appraisal that the anticipated revenues and high abnormal development costs would render the scheme unable to deliver any level of planning gain.

- 5.2 The development approved under 2019/93423 would have provided the following:

*1. Public open space provisions including off site commuted sum of £11,238.00, including a £250 site inspection fee for the future maintenance and management responsibilities of open space within the site.*

*2. Off-site highway works for footpath improvements to Long Lane (£4,000)*

*3. Contribution towards a Sustainable Travel Fund (£8,008.00)*

*4. 20% of total number of dwellings to be affordable with a tenure split of (66% social or affordable rent and 33% intermediate housing)*

*5. Off-site financial contribution of £18,200 towards securing a 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).*

- 5.3 Council Officer's have interrogated the conclusions made by Eddison's in respect of their independent assessment and view it as a well evidenced, justified and robust review of the development's anticipated costs and revenue. As the Eddison's report is an independent financial viability assessment, Officers have no concerns in respect of its conclusions. Despite evidence

indicating within both the applicant's and the independently verified financial viability assessments that '*that the scheme is unable to viably deliver any level of planning gain on account of the anticipated revenues and high abnormal development costs*', the applicant has agreed to retain the public open space, footway improvement, sustainable travel and biodiversity financial contributions. As such, the main alteration to the scheme is the removal of affordable housing units from a varied Section 106 Agreement, subject to approval by members of the Committee.

## **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 site forms part of site allocation HS45 (formerly H307). HS45 relates to 0.66 hectares (gross), however its net site area is identified in the site allocation as 0.45 hectares, taking into account the BAP Priority Habitats and flood zone 3 area. The site allocation sets out an indicative housing capacity of 15 dwellings, and identifies the following constraints:

- The provision of a pedestrian footway is required across the site frontage
- Part of the site is within flood zone 3
- A combined sewer crosses this site
- Culverted watercourse in vicinity
- Potentially contaminated land
- Part of this site lies within a UK BAP priority habitat
- Part/all of site is within a coal referral area

6.3 The site allocation also identifies the following other site-specific considerations

- Prevention and mitigation to reflect Water Framework Directive requirements.
- The environmental benefits of opening up the culvert should be considered.

6.4 Relevant Local Plan policies are:

- LP1 – Presumption in favour of sustainable development
- LP2 – Place shaping
- LP3 – Location of new development
- LP4 – Providing infrastructure
- 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  
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:

6.5 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 Biodiversity Strategy and Biodiversity Action Plan (2007)
- Negotiating Financial Contributions for Transport Improvements (2007)
- Highways Design Guide SPD (2019)
- Housebuilders Design Guide SPD (2021)
- Open Space SPD (2021)
- Interim Affordable Housing Policy (2019)
- Waste Collection, Recycling and Storage Facilities Guidance – Good Practice Guide for Developers (2017)
- Green Street Principles (2017)
- Kirklees Viability Guidance Note (2020)

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.

6.7 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.

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

6.9 Relevant national guidance and documents:

- National Design Guide (2019)
- Technical housing standards – national described space standard (2015, updated 2016).

## **7.0 PUBLIC/LOCAL RESPONSE:**

7.1 The planning application has been advertised as a major development and was advertised via a site notice posted on 12/01/2022, letters issued to adjoining addresses adjacent to the planning application site on 14/12/2021 and the site was advertised in the Local Press on 30/12/2021. The publicity of the application is in line with the council's adopted Statement of Community Involvement, the requirements of the Development Management Procedure Order 2015 and the Planning Practice Guidance.

7.2 A re-consultation on the amended layout plans was not undertaken as the distance of habitable room windows relative to the site boundaries have been maintained at the same separation distances. This approach is considered sound as it is not considered that a material alteration to the amenity of existing residents has not been incurred when contrasted to the original layout submission under this application. The original layout submission was identical to the approved layout under 2019/93423.

7.3 2no. representations were received following the issue of the public consultation. All representations have been posted online. The following is a summary of the points raised:

- The proposal is contrary to LP11 as it removes the affordable housing contribution from the scheme.
- Concerns in respect of thoroughness of applying requirements of previous application.
- Privacy issues arising from location of plots 1-4 relative to the southern windows and garden area of Clough House – loss of amenity for Clough House.
- Privacy issues arising from the location of Clough House relative to the rear windows and garden areas of plots 1-4 – loss of amenity for plots 1-4.
- Loss or residential amenity for properties on Woodburn Avenue that back onto the application site, particularly in respect of overlooking and privacy loss.
- Decrease in highway safety for pedestrians on Long Lane during the construction period due to delivery vehicles.
- Inaccuracies in the Highway Report by AMA and insufficient width in the footway will incur safety and equality issues that do not meet LP21 or the Disability Discrimination Act 1995 [sic] (superseded by the Equalities Act).
- The proposed development is in a location that cannot access sustainable travel options contrary to LP20 and this is not offset by Electric Vehicle Charging Points as each house will elicit 30 extra vehicles on the highway network which will incur highway capacity issues (congestion).



- Distance of the development from local amenities such as the centre of Earlsheaton, local parks and health centres.
- Lack of local school places.
- Loss of a greenspace and the knock-on impact upon biodiversity contrary to LP63
- The development may be implicated by altered flood zones in the future and there is no evidence to suggest that the development is resilient to flood-risk impacts.
- The development is out of character in terms of its appearance with existing development in the vicinity contrary to Local Plan section 4.5.8. The buildings do not respect local context, street patterns or the scale and proportions of surrounding buildings.
- Potential for town 'cramming' in a low-density area which constitutes over-development of the site.
- Loss of a view and its impact upon residential amenity.
- The proposal does not support the economic, social, and environmental objectives which comprise the 3 overarching principles of the NPPF.

7.4 Officers sought the views of Ward Councillors during the determination of the planning application.

Cllr Aleks Lukic:

*"I think this is a resubmission of an approved development but without affordable housing following a new viability assessment. As such I don't think there is any comment for me to make it is up to officers and the committee to evaluate the viability evidence and its effect on the affordable housing that had been agreed. However, like when I was first asked about the previous application 2019/93423, I will also declare for your awareness that an individual who sponsored my election campaign is involved with this application. His donation is registered as a disclosable pecuniary interest"*

Cllr Eric Firth:

*"Do I presume this goes back to committee after an appraisal has been done? His costs may have gone up but house prices have rocketed so I hope that's taken into consideration"*

7.5 Responses to the above comments are set out later in this report.

## 8.0 CONSULTATION RESPONSES:

### 8.1 Statutory:

The Coal Authority: Informative of the Coal Authority Standing Advice recommended.

Environment Agency: No objection, subject to a condition securing the necessary mitigation measures outlined in the Flood Risk Assessment. A permit will be required for works that are within 8 metres of the Chickenley Beck (main river) such as for example, proposed fencing or any structure to discharge surface water to the main river.

KC Highways: No objection, subject to the necessary planning conditions and planning obligations.

KC Lead Local Flood Authority: No objection, subject to the necessary planning conditions and planning obligations.

## 8.2 **Non-statutory:**

Northern Gas Networks: No objection.

KC Conservation and Design: No Response.

KC Ecology: No Response

KC Environmental Health: No objection, subject to conditions seeking Submission of Remediation Strategy; Implementation of the Remediation Strategy; Submission of Validation Report; Securing Electric Vehicle Charging Points and Construction Environmental Management Plan. Officers are aware of the farming operation at Mitchell Laithes Farm but given the type of livestock at the farm it is considered that noise and odour assessments are not necessary.

KC Landscape: No response (conditions from previous application carried over).

KC Waste Strategy (Refuse & Cleansing): No response (conditions from previous application carried over).

KC PROW: No Response

KC Public Health: No response

KC Strategic Housing: No objections to the removal of the affordable housing component. KC Strategic Housing accept the findings of the independently assessed Viability Appraisal, in that no affordable housing can be supported via the proposed development and that the provision of any affordable housing would render the scheme undeliverable.

KC Trees: No objections – the landscaping plan has been revised to prevent topsoil storage being located within the Root Protection Areas of retained trees, advised by the 26/01/22 response.

West Yorkshire Ecology Service: No objections given the off-site biodiversity contribution. However advisory comments on the content of future applications

West Yorkshire Police Crime Prevention Design Advisor: No objection in principle but has provided detailed advice on the design of: shared rear access footpaths (particularly for plots 14 and 15), boundary treatments (particularly for plots 10,11 and 16), access gates to rear gardens, public spaces to be well overlooked and illuminated, maintenance and management of trees and vegetation, external lighting (particularly near to the beck) and additional security measures (internal partition wall construction, door sets, windows, motorcycle and cycle storage, car parking, bin stores)

Yorkshire Water: No objection, subject to a condition requiring compliance with the submitted Flood Risk Assessment.

Wakefield Council: No response.

West Yorkshire Archaeology Advisory Service: No objection. The West Yorkshire Historic Environment Record has been checked and there are currently no significant known heritage issues apparent in the proposed development or its vicinity. Therefore, the WYAAS do not consider any archaeological works are necessary.

## **9.0 MAIN ISSUES**

- Land use, sustainability, and principle of development
- Viability, Affordable housing, and housing mix
- Planning obligations
- Urban design
- Residential amenity and quality
- Affordable housing and housing mix
- Highway and transportation issues
- Flood risk and drainage issues
- Trees and ecological considerations
- Environmental and public health
- Ground conditions
- Climate change
- Representations
- Other matters

## **10.0 APPRAISAL**

### Land use, sustainability, 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. Therefore, 16 dwellings proposed would contribute towards meeting housing delivery targets of the Local Plan.
- 10.3 The application site is allocated for housing in the Local Plan (site allocation ref: HS45, formerly H307). In line with policy LP65 of the Local Plan, full weight can be given to this housing site allocation.
- 10.4 The site is not designated as Urban Green Space or Local Green Space in the Local Plan, but is greenfield land, and was previously in agricultural use and designated as part of the West Yorkshire Green Belt in the superseded Unitary Development Plan. Allocation of this and other greenfield sites by the council was based on a rigorous borough-wide assessment of housing and other need, as well as analysis of 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 development on greenfield land was also demonstrated to be necessary in order to meet development needs.

- 10.5 The Inspector within the report on the Examination of the Kirklees Publication Draft Local Plan (File Ref: PINS/Z4718/429/9) dated 30/01/2019 provided the following site allocation commentary in paragraph 209:

*“H307, east of Long Lane, Earlsheaton – The site is well contained and lies between built development which limits its relationship with the open countryside. The site is small and clear defensible boundaries would be provided by the field boundaries. Therefore, the integrity of the gap between Dewsbury and Wakefield would be retained and sprawl would be prevented. On this basis, and taking account of identified housing needs, I conclude that exceptional circumstances exist to justify the removal of the site from the Green Belt.”*

- 10.6 As such, the principle of residential development at this site is considered acceptable. However, the identified site constraints and the development's impacts would need to be appropriately mitigated, along with the need for a high-quality development. These matters are considered later in this report.

#### Viability, Affordable Housing and Housing Mix

- 10.7 The PPG clarifies that to define land value for any viability assessment, a benchmark land value (BLV) should be established on the basis of the existing use value (EUV) of the land, plus a premium for the landowner. This uplift is often referred to as 'existing use value plus's (EUV+). Eddisons' have used the residual appraisal methodology, as is established practice for viability assessments. In simple terms the residual appraisal formula is as follows:

**Gross Development Value less Total Development Cost (inclusive of S106 obligations, abnormal development costs and finance) less/minus Profit, equals the Residual Land Value.**

- 10.8 The Residual Land Value is then compared to the Benchmark Land Value (BLV) as defined in the Planning Policy Guidance on Viability. Where the Residual Land Value produced from an appraisal of a policy compliant scheme is in excess of the Benchmark Land Value the scheme is financially viable, and vice versa:

**Residual Land Value > Benchmark Land Value = Viable**

**Residual Land Value < Benchmark Land Value = Not Viable**

- 10.9 Planning Practice Guidance indicates that a profit level of 15-20% of gross development value is generally considered to be a suitable return to developers. There are a number of factors that determine what a reasonable level of profit might be, including the availability of development finance, the state of the market and the consequent risk in proceeding with schemes, as well as development values and demand. In determining the appropriate level for an individual development, regard is had to the individual characteristics of that scheme.

10.10 The applicant's viability assessment evidenced that their BLV was £240,000 which equates to £220,000 for the net developable area. Eddisons, as the independent assessor, provided the following comments on the submitted BLV:

*It is typically accepted practice that a Benchmark land Value is the Existing Use Value plus a premium, however in this instance we do not consider the addition of a premium to be appropriate. The EUV would be reflective of the uplift in land value as a result of the benefit of planning consent for residential development on site. This implicitly applies a premium to the land, over and above its current use i.e. agricultural land.*

*It is therefore our opinion that a landowner's expectation in respect of the sale of the subject site would be in the region of £220,000, reflecting a land value of £200,000 per acre on a net development basis. We consider this land value to be supported by the comparable evidence discussed in the EUV section above.*

10.11 Various scenarios are provided below which establish different BLV outputs based upon the profit level and inclusion or exclusion of planning obligations in the development value versus the development costs. For the purpose of interpretation, the residual price equates to the BLV and planning obligations would only be accepted if the BLV is able to be met.

#### 15% Profit Scenario – With Affordable Housing

Profit at 15% for Private Dwellings	Profit at 17.5% for Private Dwellings as stated in our initial report
£402,800	£467,292

Residualised price based on 15%	Residualised price based on 17.5%
(£209,639)	(£270,474)

\*Brackets indicate a negative land value.

#### 15% Profit Scenario – Nil Affordable Housing/S106

Profit at 15%	Profit at 17.5%
£473,723	£552,677

Residualised price based on 15%	Residualised price based on 17.5%
£111,055	£38,222

10.12 Of the above, the best outcome is produced from a scheme of 100% open market sales, with no affordable housing or S106 Contributions, at 15% profit. Whilst this produces a residual land value of c.£111,055, this is still below the benchmark land value of £220,000.

- 10.13 On account of the negative land value generated in respect of the policy compliant scheme, Eddisons' conclude that a fully policy compliant scheme is not viable. Even considering a scheme of 100% open market sales, with no affordable housing or S106 Contributions, as detailed above, the site demonstrates viability constraints and generates a residual land value of c.£38,000, which is significantly below the benchmark land value. Eddisons' appraisal concludes, in line with the applicant's report, *'that the scheme is unable to viably deliver any level of planning gain on account of the anticipated revenues and high abnormal development costs'*. On this basis the outcome of the viability process is accepted by the Local Planning Authority and assigned significant weight in decision-making terms with regard to planning obligations.
- 10.14 Local Plan policy LP11 requires 20% of units in market housing sites to be affordable. The same policy states that *'the proportion may be less where viability evidence demonstrates that there are development costs which would otherwise prejudice the implementation of the proposal'*.
- 10.15 In this instance, 20% of the proposed 16 dwelling units would represent 3.2 affordable dwelling units. The Council's Interim Affordable Housing Policy states that the 20% affordable housing contribution will normally be rounded to the nearest whole number. The applicant had agreed under the previous application (2019/93423) that 3no, out of the proposed 16 dwelling units would be affordable with plots 3, 12 and 15 allocated.
- 10.16 Following submission of the applicant's viability appraisal and abnormal costs relating to their proposed development of the site, the subsequent independent viability assessment concluded that under even the lowest profit scenarios, the proposed development would not be able to be viable with any planning obligations including affordable housing. KC Strategic Housing have reviewed the independent assessment and agree that the removal of the affordable housing component is justified and proportionate in line with the requirements of LP11.
- 10.17 As the purpose of the independent assessment was to challenge the assumptions within the applicant's viability submission, it would be considered unreasonable for the Local Planning Authority to justify refusal of the proposed development on the basis of the removal of the affordable housing element when it has been independently corroborated that the site could not be developed with its inclusion. As previously set out in paragraph 10.14, LP11 makes provision for this eventuality and the removal of the affordable housing component is consequently deemed to be acceptable in planning policy terms as the circumstances of the case, in this instance, are reflective of the high abnormal costs of developing the site from a Geo-Environmental/Site Remediation perspective. As the applicant has agreed to provide the other planning contributions, an overage clause for the affordable housing contribution is not determined to be appropriate in this instance.
- 10.18 Local Plan policy LP11 states how schemes of more than 10 dwellings or those of 0.4ha or greater in size, the housing mix should reflect the proportions of households that require housing, achieving a mix of house size and tenure. Therefore, a greater housing mix including 2-bed and 4-bed dwelling houses could have been accommodated on the site. However, there is a significant need for 3-bedroom dwellings identified in the Strategic Housing Market

Assessment for the Dewsbury and Mirfield sub-area. As such, it is considered that the proposal would still make a contribution to the sub-areas overall housing mix in accordance with Local Plan policy LP11.

### Planning obligations

10.19 Planning obligations, that would need to be secured by a Section 106 Agreement, would be necessary to mitigate against the impacts of the proposed development, should planning permission be granted. In accordance with paragraph 57 of the NPPF, planning obligations should only be sought where they are:

- Necessary to make the development acceptable in planning terms;
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development

10.20 For clarity and completeness, should this application be approved, the following contributions would be secured through a Section 106 Agreement, which are all considered necessary to mitigate the impacts of the proposed development and considered to be policy compliant:

- Open space – Off-site financial contribution of £11,238.00 is required in lieu of this shortfall, including an inspection fee of £250.
- Biodiversity net gain – Off-site financial contribution of £18,200.
- Footpath improvements to Long Lane - Off-site financial contribution of £4,000
- Sustainable Travel Fund – Financial contribution of £8,008.00 towards encouraging the use of modes of sustainable travel.
- 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).

10.21 The developer contributions outlined above are considered to be directly related to the scheme at hand as well as necessary to make the development acceptable and fair and reasonable in scale and kind to the development, as required by paragraph 57 of the NPPF.

### Urban design

10.22 Chapters 11 and 12 of the NPPF, and Local Plan policies LP2, LP7 and LP24 are relevant to the proposed development in relation to design and conservation, as is the National Design Guide. Details of the current proposals are provided in section 3.0 of this report.

10.23 The proposal would effectively take place on a field between the houses associated with Woodburn Avenue to the north, which is set on higher ground and Mitchell Laithes Farm to the south, which is set on lower ground.

10.24 The main access into the site would be with Long Lane on its western edge and is considered acceptable in principle by officers to serve a residential development of this scale. In addition, the proposed footpath improvements along the site's Long Lane frontage would be in accordance with the site allocation site constraint, aiding pedestrian connectivity. Representations have

stated that the proposed street layout does not reflect the layouts of the surrounding residential areas. The proposed layout has been dictated by the shape of the site and the lie of the land. The lowest part of the site to the east is proposed as an informal open natural space and woodland area, which will include known flood risk, drainage, mining legacy and ecological site constraints.

- 10.25 The proposed layout shows buildings positioned around an access road with Long Lane. It is considered that the new layout would positively work with the existing topography that generally slopes from west to east. However, some levelling may be necessary to enable the creation of development platforms and to the provision of acceptable gradients along the estate road. While developers would normally be expected to work with a site's existing topography, it is accepted that some reshaping of this site may be necessary to accommodate development. Planning conditions may, therefore, be necessary to secure the final site levels, as well as details of appropriately designed retaining walls and structures.
- 10.26 The proposed carriageway has been designed to incorporate shared street principles and the proposed drawings, show how dwelling units would be designed to positively relate to the street scene. Amendments have been made to the design proposal that included the repositioning of some driveways and incorporating more landscape measures to reduce the visual dominance of the parked car. The layout under the latest revision has further decreased the dominance of parked cars and provided further spacing between plots – particularly units 1-6. Each dwelling house has a separate pedestrian access from/to the front door with the street. As such, it is considered that the proposed layout has been appropriately designed to create a 'sense of place.'
- 10.27 In terms of scale and density, the site allocation policy recognised the site as having a gross area of around 0.66ha and a developable area of around 0.45ha as a result of the identified flood risk and ecological constraints. The site allocation policy suggested an indicative capacity of 15 dwellings. It is important to understand that this indicative number is not a minimum or a maximum figure and just an indication of the number of houses that could be achieved on site. Local Plan Policy LP7 requires a housing density that ensures the efficient use of land, in keeping with the character of the area and the design of the scheme. Developments should achieve a net density of at least 35 dwellings per hectare, where appropriate. Lower densities will only be acceptable if it is demonstrated that this is necessary to ensure the development is compatible with its surroundings. The importance of making effective use of land is also recognised in Chapter 11 of the NPPF and the PPG, which was updated on 22/07/2019, regarding this matter.
- 10.28 This proposal would provide 16 dwellings and a density of 35.6 dwelling per hectare. The proposal is predominately defined by 2 storeys detached and semi-detached buildings which reflect the prevalent residential development form in the locality. The applicant has used other built forms including a 2 storey terrace block of 3no. dwelling units. Officers consider that the proposed design demonstrates an appropriate density and would not represent overdevelopment as some representations suggest.



- 10.29 Existing dwellings found in the immediate area are either brick built with concrete tile roofs, either detached bungalows or 1 ½ / 2 storey semi-detached dwelling houses, developed in the mid-late 20<sup>th</sup> century or 2 storey, stone built, slate roof detached dwelling houses built in the 19<sup>th</sup> century. The proposal includes a distinctive design, mimicking some architectural features found on the 19<sup>th</sup> century dwelling houses found along Long Lane. The proposed building materials will comprise of artificial stone and some rendered areas to external walls, artificial stone and slate roof tiles, and white uPVC windows with art stone head and cills and other architectural features. These materials are considered acceptable subject to approval of samples, which can be secured by planning condition.
- 10.30 A mixture of built forms as well as building styles and materials can be found within the wider area. Materials such as brick, stone, artificial stone, and render, as well as a mixture of flat profile and pantile roof tiles. Therefore, the varied character and appearance of the local vernacular reinforces the acceptability of the design of the proposed development, which would be considered in keeping.
- 10.31 The reduction in the number of semi-detached dwellings and the introduction of more detached units has aided the site's appearance relative to the previously approved layout. Under the previous layout plot 1 was positioned immediately beside the site's newly created footway to the north of the site entrance and plots 1-5 were cramped on the northern side of the spine road. The revised layout pushed plot 6 to the opposite side of the site beside plot 16. This alteration served to significantly reduce the overly compact feel of the site entrance as plots 1-5 have become more spaced-out and less reliant on front of plot parking. To comply with the new requirement of tree-lined streets under paragraph 131 of the NPPF, the applicant has increased the number of trees to be planted as a part of the scheme. These include a greater number of trees within the Public Open Space area beside the site entrance as well as in front of properties. The greenspace area adjacent to Chickenley Beck is also to benefit from mixed native tree planting.
- 10.32 In light of the above assessment, it is considered that the scale, siting, design, and density of the development proposed would be in harmony with its surroundings and respect the character of the townscape. It represents an efficient use of a greenfield site as required by Local Plan policy LP7. Subject to a condition requiring samples of facing and roofing materials being submitted for approval, the development would thereby accord with the aims of Chapters 11 and 12 of the NPPF, and Local Plan policies LP2, LP7 and LP24.

#### Residential amenity and quality

- 10.33 Although there are no formal standards for space about buildings or separation distances between dwelling houses, paragraph 127 clause (f) of the NPPF and clause (b) of policy LP24 of the Local Plan requires proposal to provide a high standard of amenity for future and neighbouring occupiers; including maintaining appropriate distances between buildings.

- 10.34 The proposed site plan shows that there would be a separation distance in excess of 21 metres from the rear of the proposed dwelling houses to the rear of the first floors of the dwelling houses at Woodburn Avenue. However, 34 and 36 Woodburn Avenue have a ground floor extension/projection and a conservatory, respectively. As such, the separation distance between the ground floor of the existing dwelling houses at 34 and 36 Woodburn Avenue with the proposed dwelling houses at plots 7, 8 and 9 is 18 metres. Residents who live at these properties have raised concerns regarding privacy, overshadowing, overlooking, and views associated with the proposed houses and boundary landscaping. Officers would have preferred if a greater separation distance of 21 metres was proposed to fully address these concerns. However, it is considered that the magnitude of proposed impact on residential amenity is not great enough to warrant a refusal as the existing properties on Woodburn Avenue are set at a higher level so as to offset the 3m deficit from the separation distance standard. Residents have also raised concerns about the potential for plots 7, 8, 9 and 10 to build extensions further hindering privacy and sunlight in the future. Officers share such concerns and consider that a planning condition should be imposed that removes permitted development rights for these plots to ensure that no large, overly dominant extensions, outbuildings, or dormers would be constructed, which could have an adverse impact on neighbouring residential amenity.
- 10.35 The proposed site plan also shows that the rear of the proposed dwelling houses at plot 5 have a minimum separation distance of 12.1 metres with the side elevation (which contains windows) of the existing dwelling house known as Clough Farm. The proposed dwelling house at plot 5 (House Type E2) would have no bedroom windows at first floor of its rear elevation facing Clough Farm. Additionally, given that Clough Farm is a 1 ½ storey building, set on higher ground to the proposal site, the erection of a suitable boundary treatment would reduce any adverse impact on residential amenity in this location. The eastern first floor window serving bedroom 1 of plot 5 will have oblique views to the rear of Clough Farm but these are not direct and therefore not of significant concern in amenity terms. The same occurs with the window serving bedroom 3, despite it being only 6m distant to the side elevation of plot 4, the angle of the side elevation aids outlook toward the site's access road and open space to the south.
- 10.36 However, officers consider that a planning condition should be imposed that removes permitted development rights for plot 5. This measure would ensure that no large, overly dominant extensions, outbuildings, or dormers would be constructed, which could have an adverse harmful impact on the uniformity and character of the development or create significant amenity issues to adjacent occupiers.
- 10.37 As regards the impact of plots 3 and 4 upon Clough Farm, the former plot will outlook over shared space in front of the existing property whilst the latter plot will meet the minimum 12m standard between side and rear elevations set out under the Housebuilders SPD.
- 10.38 Concerns have been raised that the proposal would have an adverse impact on the residential amenity of Clough House, to the north west of the application site, particularly as it is a single aspect dwelling house. It is understood that suggestions were put forward by residents to the developer during a public

consultation exercise to reposition the road and plots 1-4 to achieve greater separation distances. However, officers are of the opinion that as the current proposal would achieve a separation distance of at least 30 metres between Clough House and the nearest proposed dwelling and that Clough House sits at an advantageous height relative to the proposal site that there would be no adverse impact on residential amenity in this location.

- 10.39 There is a separation distance of around 29 metres between the proposed detached dwelling houses comprising plots 1-5 and the bungalow found at Mitchell Farm to the south of the site with intervening boundary landscape features. As such, officers consider that there would be no adverse impact on residential amenity in this location. It should be noted that the introduction of plot 6 elicits a greater distance between its rear habitable windows and the shared boundary of the site with Mitchell Laithes Farm than the previous site layout where plot 16 was previously positioned.
- 10.40 Officers consider that all of the proposed dwelling houses, set behind driveways and/or front gardens have a good separation from one another.
- 10.41 Local Plan Policy LP24 (Design) does not specify a minimum size requirement (in sqm) or design for private outdoor amenity space for dwellings. However, it is considered that all of the proposed dwelling houses would have reasonably size and shape gardens for amenity purposes.
- 10.42 The quality of the proposed residential accommodation is also a material planning consideration and a number of representations have raised this as an issue with the application. Although the Government's Nationally Described Space Standards (NDSS) (March 2015, amended May 2016) are not adopted planning policy in Kirklees, they provide useful guidance which applicants are encouraged to meet and exceed. During the application, officers requested that all of the proposed dwellings accord with the NDSS. As a result the applicant provided amended plans to comply with these standards.
- 10.43 Representations have raised concerns about dust, noise and disturbance associated with construction traffic. This matter would be addressed by a condition requiring the submission and approval of a Construction Management Plan and is therefore recommended. The necessary conditions-stage submission would need to sufficiently address the potential amenity impacts of construction work at this site, including cumulative amenity impacts should other nearby sites be developed at the same time.

#### Highway and transportation issues

- 10.44 A gated field access can be found at the site with Long Lane and another gated field access can be found with Mitchell Laithes Farm to the south east corner. The proposal would result in these access points being removed and made good.
- 10.45 Long Lane is a single two way 20mph carriageway with street lighting. There are no footways along this section of Long Lane. The nearest footway is 30m to the north. Pedestrian provisions between the site and the Headland Lane/Town Street junction in the centre of Earlsheaton is considered poor with narrow footway and roads and in some places no footway provisions. To the south of the site, Long Lane provides access to three other dwellings and the

waste water treatment works. Traffic volumes should therefore be light. Approximately 900m to the north Long Lane forms a priority T junction with Town Street. Footways are present along both sides of all arms of the junction and informal pedestrian crossing with dropped kerbs and tactile paving are present across the minor arm.

- 10.46 The application site is situated within a 2 km walking catchment of Earlsheaton local facilities including a primary school, health services, post office and convenience stores. Bus stops are located on Town Street providing a combined frequency of one bus every 10 minutes on weekdays and Saturday and one bus every 20 minutes on Sundays. The site is therefore considered to be in a reasonably sustainable location for access by non-car modes. In line with paragraph 5.19 of the Highway Design Guide Supplementary Planning Document, a condition will be required to secure a Travel Plan. Additionally, as part of a Section 106 Agreement, officers would seek a financial contribution towards encouraging potential residents to use modes of sustainable travel, in line with the measures set out in the Travel Plan.
- 10.47 It is proposed that the residential development will be accessed via a new access junction to the west of the site via Long Lane, in the form of a simple priority T junction. Visibility is provided with splays of 2.4m x 43m to the north and splays of 2.4m x 43m to the south, these are provided in accordance with the required Manual for Street standards for 30mph streets. The Highways Statement explains how the southern splay meets the nearside kerb at 17.5m and at its full extent of 43m. However given the significantly low volume of traffic approaching from the south, minimal risk of any overtaking vehicles being in the nearside lane, this is considered to provide a suitable splay for the proposed access junction. A condition is necessary to ensure these sightlines shall be cleared of all obstructions to visibility exceeding 1 m in height and these shall be retained free of any such obstruction.
- 10.48 The proposed access road connects Long Lane with an informal open natural space and woodland area to the east. The access road has a varied alignment and a shared surface design to create visual interest and slow the speed of traffic. The access road also includes a central turning area for refuse vehicles. The proposed access road will have a centre line gradient in excess of the 1 in 20 gradients. The Council's Highway Section 38 team would prefer the provision of a footway to the southern side of the proposed carriageway. However, Highways Development Management consider the proposed design of the access road is still acceptable.
- 10.49 Each of the proposed 16no. 3-bed dwelling houses would have 2no. car parking spaces. Although, the Highway Statement states that there are 5no. visitor parking spaces only 3no. visitor parking spaces are shown on the site plan. The Local Plan nor the Highways Design Guide Supplementary Planning Document do not set parking standards for residential development, but officers consider that proposed parking standards are acceptable. Planning conditions are considered necessary to agree the final details of the proposed carriageway design.

- 10.50 The latest supporting Highway Statement does not include any vehicular trip information for 16 dwellings on the site. However, for the previous proposal for 21 dwelling units, the industry standard TRICS trip rates were used. It was forecasted that the following vehicular trips during the highway network peak hours:
- AM Peak (8:00 – 9:00am) – 5 Arrivals and 11 Departures – 16 Two-Way Trips
  - PM Peak (17:00 – 18:00pm) – 8 Arrivals and 5 Departures – 13 Two-Way Trips
- 10.51 The Highways Statement considered that the proposed trip generation of the proposed scheme would be negligible and would have no noticeable impact on the local highway network. Representations queried these findings and raised concerns regarding the proposed traffic impacts and highway safety. However, Highways Development Management officers have raised no such concerns. Furthermore, the reduction from 21 dwelling units to now 16 dwelling units will further reduce the trip generation associated with the proposal site.
- 10.52 The site plan illustrates designated waste storage areas for each dwelling house. The Council's Waste Strategy officer has stated that the majority of their previous concerns regarding waste storage have now been negated with the replacement of the apartment block with a single dwelling house. However, bin presentation points for each dwelling are not shown. As such, conditions seeking further details regarding waste storage, bin presentation points and access for collection of waste for each dwelling are considered necessary. Additionally, a planning condition is necessary to secure details of temporary waste collection arrangements to serve occupants of completed dwellings whilst the remaining site is under construction.
- 10.53 During the course of public consultation, at the request from officers, a revised swept path analysis was provided showing that a refuse collection vehicle measuring 11.85m in length could be used on the proposed road layout.
- 10.54 One of the recognised site constraints within the site allocation box was the provision of a pedestrian footway across the site frontage. Appendix D of the Highways Technical Note, reference AMA/20466/SK001 shows how this could be achieved. However, it is noted that the proposed works would potentially conflict with the stepped access and land that may be in Clough House ownership. As such, a planning condition would be required to secure further details to ensure the appropriate off-site works to the existing footway provision.
- 10.55 It has been agreed that the developer will fund some footway improvement works with the provision of dropped pedestrian crossing at the Woodburn Avenue junctions with Long Lane and edge of carriageway white lining between the northern end of the proposed footway along Long Lane and the existing footway 30m to the north of the site. These measures can be secured by planning condition and Section 106 Agreement.
- 10.56 Officers consider that subject to the necessary planning conditions and planning obligations this proposal would accord with Kirklees Local Plan policies LP21 and LP22 and NPPF Chapter 9, with regard to its potential impact on the local highway network and on highway safety.

## Flood risk and drainage issues

- 10.57 The eastern edge of the site is defined by Chickenley Beck and contains land that falls within flood zones 2 and 3 on the Environment Agency's Flood Risk Map, updated earlier this year. The eastern edge of the site is at the highest risk of flooding (Flood Zone 3) and there is an area of land surrounding this that is at a lower risk of flooding (Flood Zone 2). The remainder and majority of the site is in Flood Zone 1.
- 10.58 As parts of the site fall within Flood zones 2 and 3 a site-specific Flood Risk Assessment (FRA) was required to support the proposal. However, a sequential analysis and exceptions test are not considered necessary as the proposed dwellings are located in Flood Zone 1 and the site is allocated for housing in the Local Plan. Thus, the site has already been considered to be sequentially preferable for residential development.
- 10.59 The site plan within the FRA shows that the proposed dwelling houses are located within flood zone 1 and that flood zones 2 and 3 are within a Public Open Space. The Lead Local Flood Authority (LLFA) have highlighted that the Environment Agency are the responsible authority for considering main river flood risk. Initially, the LLFA raised concerns with the previous proposal's FRA had not provided evidence that had considered Climate Change within the assessment of flood risk from this watercourse. However, the latest FRA has since been updated with this in mind and this matter has been considered by the Environment Agency who have raised no objections regarding main river flood risk. The Council's Emergency Planning Team have requested the necessary flood resilience measures and access issues for any properties built next to Chickenley Beck be considered. If approval is granted, these measures can be recommended as part of a footnote to any decision notice.
- 10.60 It is proposed to discharge surface water to an attenuation system which would then connect into Chickenley Beck at a greenfield run-off rate of 3.17 litres/second. The scheme has been amended to ensure that such systems could eventually be adopted, which is considered acceptable by the LLFA. Infiltration has been considered but may not be appropriate for this site due to it being potentially contaminated and/or made land. Conditions relating to securing the discharge rate and the detailed drainage design would be required with any permission. In addition, the future maintenance and management of the proposed drainage system are required to be secured under a Section 106 Agreement.
- 10.61 Plans show an existing 675mm diameter Combined Sewer running on the eastern bank of Chickenley Beck. The FRA explains how a connection would be sought with this Combined Sewer for foul water discharge. Yorkshire Water have not raised any objections to the planning application subject to the necessary conditions.
- 10.62 The proposed drainage strategy utilises the new access road and Public Open Space. Therefore, conditions will be required in relation to highway adoption and to ensure that no trees are located over the proposed drainage infrastructure.

- 10.63 Officers consider that this proposal accords with Local Plan policies LP27, LP28 and Chapter 14 of the NPPF with regard to its potential impact on local flood risk and drainage.

Trees, landscaping, and ecological considerations

- 10.64 The application site is undeveloped (Greenfield) land and comprises one agricultural field. The field is primarily characterised by improved grassland and tall ruderal, with scattered scrub. Species rich hedgerows can be found along the site's southern boundary and young trees beyond with Mitchell Laithes Farm and scattered trees can be found along the site's northern boundary with houses of Woodburn Avenue. Introduced scrub can be found along the site's western boundary with Long Lane, whilst broadleaved woodland and dense scrub can be found along the site's eastern boundary with Chickenley Beck.
- 10.65 No trees within or near to the site are protected by Tree Preservation Orders. The trees found to the north and east as well as a hedgerows to the south are proposed to be retained and incorporated into the proposed development. An Arboricultural Impact Assessment and Method Statement accompanies the application and provides details as to the necessary measures for their retention. A planning condition would be required to ensure that that the recommendations within this document are secured, in line with Local Plan policies LP24 and LP33.
- 10.66 The applicant has submitted a Preliminary Ecological Appraisal in support of the proposed development. The Appraisal concludes that with the current layout, the southern boundary hedgerow cannot be protected from potential negative impacts from homeowners, which may result in impacts to nature conservation, which are of local importance. The Appraisal goes onto conclude that subject to securing necessary mitigation proposals and enhancement measures recommendations that the scheme should not result in significant ecological harm. A number of conditions will be required to minimise ecological harm and secure these ecological measures.
- 10.67 At the request of the Council's Biodiversity officer, the applicant has used the Natural England Biodiversity Metric 2.0 (JP029) to calculate the net biodiversity change as a result of the proposal. The proposal showed that there would be a biodiversity net loss. The applicant has agreed to offset this loss with an appropriate financial contribution (£18,200.00) towards biodiversity improvements elsewhere in the district, which can be secured by a Section 106 Agreement. As such, the proposed development would accord with Local Plan policy LP30.
- 10.68 Given the increase in the number of trees under this application compared with the previous proposal, it is likely that the off-site biodiversity contribution figure would have been revised lower. However, the applicant has agreed, for continuity, to provide the same financial sum agreed under the previous permission. This is welcomed by Officers as the sum agreed reflects an up-lifted figure in policy terms.

- 10.69 The site falls within a Bat Alert Area and the Flood Plains and Pennine Foothills Biodiversity Opportunity Zones. It is worth noting that the nearby Chickenley Beck, the adjacent Clough Farm and Mitchell Laithes Farmhouses are all designated as part of Wildlife Habitat Network Combined. The proposed landscape plan shows the retention of existing landscape features and the inclusion of new landscape features within the proposed garden curtilages. The proposal includes a Public Open Space with Long Lane which will aid in informal recreation and the 'sense of place.' In addition, an informal open natural space and woodland area is proposed adjacent to Chickenley Beck that would consist of majority of the site's constraints. The landscape plan proposes the use of a mixture of ornamental and native species. As such, these proposals would be in line with Local Plan policies LP24, LP30, LP32 and LP33. However, planning conditions and obligations securing further design details as well as a landscape maintenance and management details for the landscape proposals are considered necessary.
- 10.70 The landscape plan includes details regarding boundary treatments. However, officers require further details, including elevational drawings of fences and walls to ensure that such boundary treatments are suitable for each location. Furthermore, it is considered that further consideration needs to be given to visually prominent locations and residential amenity, as well as the existing southern hedgerow. These details can be secured at the discharge of condition stage.
- 10.71 Japanese knotweed and Himalayan balsam have been recorded on site. A protocol to ensure eradication within the site and prevent the spread outside of the site can be secured through planning condition.
- 10.72 The proposed open spaces would go some way towards meeting the relevant requirements of a residential development of 16 dwelling units in the Dewsbury East ward, which is deficient in a number of the open space typologies. However, the size of the proposed development triggers the need for a Local Area of Play (LAP) which is not indicated on the applicant's drawings. Therefore, to accord with Local Plan policy LP63 an offsite contribution of £11,238.00 would be required to be secured by way of Section 106 Agreement. There may be an opportunity for the applicant to reduce this requirement if a LAP was provided on-site as a series of well-designed features and playable elements or equipment within a natural playable space. If no such on-site provision is made, the required off-site contribution would be spent in the ward and could be spent at Earlsheaton Park, which is within the recommended 20-minute walking distance from the site.
- 10.73 The latest site layout has omitted the central 'village green' element of the on-site POS. This would have elicited a small up-lift in the off-site contribution figure of £11,238.00. However, given that the development of the site has been through a viability appraisal process, and it has been evidenced that it cannot provide any planning contributions, the applicant is retaining the off-site contribution for the POS at the same level as the previous application. The alterations to the scheme to remove the 'village green' open space in favour of a less-cramped layout were requested by Kirklees Officers and the original submission by the applicant sought to retain the central POS space. On balance, and in the context of Paragraph 58 of the NPPF whereby a change in site circumstances affects the weight of a decision in respect of development contributions, Officer's consider the retention of the previous POS figure as acceptable.



## Public and environmental health

- 10.74 With regard to the West Yorkshire Low Emission Strategy, a condition is recommended, requiring the provision of electric vehicle charging points. In addition, a Travel Plan, including mechanisms for discouraging high emission vehicle use and encouraging modal shift (to public transport, walking and cycling) and uptake of low emission fuels and technologies, should be secured be planning condition.
- 10.75 The health impacts of the proposed development are a material consideration relevant to planning, and compliance with Local Plan policy LP47 is required. A Health Impact Assessment (HIA) supports the application and has regard to matters such as, site construction, affordable housing provision, sustainability, access to open space, community safety, contribution to local employment and the economy, community cohesion and climate change. Public Health officers support the HIA and consider the proposed development would not have negative impacts on human health.
- 10.76 At the pre application stage and during the planning application, Environmental Health officers requested that the applicant provide clarification regarding the use of Mitchell Laithes Farm. The agent subsequently informed officers that the adjacent agricultural buildings were used for the storage of machinery. When carrying out a site visit on the 8<sup>th</sup> November 2019, a tractor was seen parked in the large recently erected agricultural building to the southeast corner of the site. Environmental Health received an email correspondence on 2<sup>nd</sup> March 2020 from the residents of the house at Mitchell Laithes Farm. The email clarified that Mitchell Laithes Farm was still an active agricultural land holding and that a building had been recently erected for purposes of housing livestock, more specifically sheep in lamb. The email also explained how the existing building is described correctly on the Planning Statement, as storage for machinery. The recently erected building does not have planning permission and has been reported to Planning Enforcement and Compliance for the appropriate action to be taken. As such, officers are of the opinion that it would be unreasonable to impose conditions regarding noise and odour assessments and subsequent mitigation measures associated with any related farming activity. Furthermore, given the type of livestock it is considered that that there would be no adverse effect on future resident's residential amenity.
- 10.77 Regarding the social infrastructure currently provided and available in Earlsheaton (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

- 10.78 Regarding potential site contamination, the findings of the applicant's Combined Phase 1 & 2 contaminated land reports are accepted. The report indicates the presence of made ground apart from in the western quarter of the site. The depth of made ground increases towards the eastern boundary. The analysis results show that the topsoil is unsuitable for reuse at the proposed development. It also identifies significantly elevated levels of contaminants in the ash & clinker made ground which was also found to be combustible. The report advises that remediation of the site will be necessary to make it suitable for the proposed end use. It also advises that basic Radon protection measures are also required. The report also considers the risks from ground gas and concludes that these are low. It also advises that leachability needs to be considered in connection with the design of the drainage strategy for the development. Officers consider that conditions regarding site remediation can be included on a subsequent grant of planning permission, and this would be a satisfactory way of dealing with this issue.
- 10.79 The site only marginally falls within the defined Development High Risk Area (south-eastern corner), this is within flood zones 2 and 3 and no development is being proposed within this area. Therefore, the Coal Authority concludes that the site is not considered to be at risk from shallow mine workings and an intrusive mining investigation is not considered necessary. Accordingly, the Coal Authority has no objection to this planning application.
- 10.80 Much of the site falls within the high-risk area with regard to coal mining legacy issues. The applicant has provided a supporting geo-environmental assessment based on intrusive site investigations. This assessment concludes that the site is not considered to be at risk of subsidence from shallow mine workings and therefore no mitigation measures (e.g., consolidation by drilling & grouting) will be required. This document has been reviewed by the Coal Authority and its findings accepted.
- 10.81 It is therefore considered that this proposal accords with Kirklees Local Plan policy LP53 with regard to potential contaminated and unstable land.

### Climate change

- 10.82 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.

10.83 Officers note, that measures would be necessary to encourage the use of sustainable modes of transport. Adequate provision for cyclists (including cycle storage for residents), electric vehicle charging points, the provision of footway improvements along Long Lane, a Travel Plan and a sustainable travel fund would be secured by conditions and/or via a Section 106 Agreement, should planning permission be granted. A development at this site which is entirely reliant on residents travelling by private car and did not provide opportunities to encourage modes of sustainable travel is unlikely to be considered sustainable. Drainage and flood risk minimisation measures would also take into account climate change and the Water Framework Directive would also be secured by condition and/or via a Section 106 Agreement, in line with Local Plan policies LP27, LP28 and LP29. Furthermore, the Environment Agency have raised no objections regarding main river flood risk from Chickenley Beck even when considering climate change.

### Representations

10.84 A summary of the issues raised, and associated responses are provided as follows:

- The proposal is contrary to LP11 as it removes the affordable housing contribution from the scheme.

**Officer Response:** As set out in paragraphs 10.9 and 10.10 of this report, Policy LP11 allows for a proportional reduction of the affordable housing contribution dependent on viability information. The independently reviewed viability information indicates that the proportion of affordable housing that could be brought forward as a part of the scheme is nil. As such, the proposed development is considered to comply with LP11.

- Concerns in respect of thoroughness of applying requirements of previous application.

**Officer Response:** No conditions have been subject to Detail of Condition applications and therefore all relevant conditions from the previous application will be brought forward onto this application.

- Privacy issues arising from location of plots 1-4 relative to the southern windows and garden area of Clough House – loss of amenity for Clough House.
- Privacy issues arising from the location of Clough House relative to the rear windows and garden areas of plots 1-4 – loss of amenity for plots 1-4.
- Loss or residential amenity for properties on Woodburn Avenue that back onto the application site, particularly in respect of overlooking and privacy loss.
- Loss of a view and its impact upon residential amenity.

**Officer Response:** For the reasons stated in the report, officers do not consider that the proposed development would have an unacceptable impact on existing and future residential amenity. The right to a view is not a material planning consideration, as detailed in planning case law on this particular subject.

- Decrease in highway safety for pedestrians on Long Lane during the construction period due to delivery vehicles.
- Inaccuracies in the Highway Report by AMA and insufficient width in the footway will incur safety and equality issues that do not meet LP21 or the Disability Discrimination Act 1995 [sic] (superseded by the Equalities Act).
- The proposed development is in a location that cannot access sustainable travel options contrary to LP20, and this is not offset by Electric Vehicle Charging Points as each house will elicit 30 extra vehicles on the highway network which will incur highway capacity issues (congestion).

**Officer Response:** Highways Development Management has assessed the planning application against policies LP20, LP21 and LP22 of the Local Plan, the Highways Design Guide Supplementary Planning Document as well as against the relevant national legislation, policy, and guidance. Subject to the suggested planning conditions and requested planning obligations Highways Development Management have raised no objections. Furthermore, the Highways Authority, if considered necessary, could seek additional works to be carried out to the local road network under separate legislation.

- Distance of the development from local amenities such as the centre of Earlsheaton, local parks and health centres.
- Lack of local school places.

**Officer Response:** These matters were considered during the site allocation process, which formed part of the Local Plan adoption. Additionally, the development is below the threshold of 25 dwelling units for the Council to seek planning obligations towards education. Funding for health care 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. As part of any approval, a Section 106 Agreement would secure the necessary financial contributions towards public open space improvements in the locality.

- Loss of a greenspace and the knock-on impact upon biodiversity contrary to LP63

**Officer Response:** The Biodiversity Officer has assessed the previous planning application against Policy LP30 of the Local Plan and subject to the suggested planning conditions and requested planning obligations has raised no objections.

- The development may be implicated by altered flood zones in the future and there is no evidence to suggest that the development is resilient to flood-risk impacts.

**Officer Response:** The proposed development would take place outside flood zones 2 and 3 and climate change has been considered. Subject to the necessary planning conditions, there are no objections from the Environment Agency, the Lead Local Flood Authority and Yorkshire Water regarding flood risk.

- The development is out of character in terms of its appearance with existing development in the vicinity contrary to Local Plan section 4.5.8. The buildings do not respect local context, street patterns or the scale and proportions of surrounding buildings.

- Potential for town ‘cramming’ in a low-density area which constitutes over-development of the site.

**Officer Response:** For the reasons stated in the report, officers consider that the latest proposal for 16 dwellings is also in accordance with policies LP7 and LP24 of the Local Plan.

- The proposal does not support the economic, social, and environmental objectives which comprise the 3 overarching principles of the NPPF.

**Officer Response:** For the reasons stated in the report, officers consider that the latest proposal for 16 dwellings will contribute toward Strategic objectives 4, 6, 7 and 8 of Kirklees Local Plan which accord with the 3 overarching principles of the NPPF.

### Other Matters

- 10.85 The West Yorkshire Police Liaison officer has made a number of comments and recommendations, particularly with regards to home security, rear access security and boundary treatments in terms of defensible space. All of the comments made are advisory and have been referred to the applicant. Subject to the imposition of conditions, it is considered that the site can be satisfactorily developed whilst minimising the risk of crime through enhanced security and well-designed security features in accordance with LP24 (e).
- 10.86 The site allocation reference HS45 box makes reference to a culverted watercourse in vicinity of the site and how the environmental benefits of opening up the culvert should be considered. However, it is considered that there is no culverted watercourse within the red line boundary.

## **11.0 CONCLUSION**

- 11.1 The application site is allocated for residential development under site allocation HS45, and the principle of residential development at this site is considered acceptable.
- 11.2 In effect, this full planning application is a re-submission of the previous application 2019/93423. The site has constraints in the form of adjacent residential development (and the amenities of these properties), highway safety, flood risk and drainage, topography, ecological considerations, and other matters relevant to planning. The re-submission was predicated on the outcome of an independently arbitrated viability appraisal process which confirmed that the site could not be developed with any quantum of financial development contribution due to the high abnormal costs of remediating the site, particularly its topsoil.
- 11.3 By consequence, on-going negotiations between Council Officers and the applicant has resulted in a compromise whereby the affordable housing component of the previous scheme has been removed with the retention of the remaining sustainable travel, off-site highway works, public open space and biodiversity contributions that were secured under 2019/93423. The applicant has been pragmatic in accepting the retention of these contributions when the viability evidence would justify their removal from the application. Officers recognise this and afford it significant weight in terms of the planning judgement on the application, in line with Paragraph 58 of the NPPF. Likewise,

the applicant's positive approach to re-configuring the site layout to improve the appearance of the development has also weighed in favour of the scheme. On this basis, approval of full planning permission is justified and is thereby recommended to Committee members, subject to conditions and planning obligations to be secured via a variation to existing Section 106 Agreement.

- 11.4 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. Sample materials to be provided
4. Details of finished floor levels
5. Submission of boundary treatments details
6. Hard and soft landscaping details, including management and maintenance
7. Submission of a schedule of the means of access to the site for construction traffic and a Construction Management Plan
8. Provision of sightlines of 2.4m x 43m north and 2.4 x 17.5m south at Long Lane that are free from obstructions, exceeding 1m in height.
9. Approved vehicle parking areas shall be surfaced and drained in accordance with 'Guidance on the permeable surfacing of front gardens
10. Submission of a scheme detailing the proposed internal adoptable estate roads
11. Submission of a detailed scheme for the provision of footway adjacent to Clough House
12. Submission of a detailed scheme for the provision of footway vehicular dropped crossings at the Woodburn Avenue junctions with Long Lane and edge of carriageway white line between the northern end of the proposed footway along Long Lane and the existing footway 30m to the north of the site with associated signing and white lining
13. Submission of a Travel Plan
14. Cycle parking provision prior to occupation
15. Provision of electric vehicle charging points (one charging point per dwelling with dedicated parking)
16. Provision of details of retaining walls
17. Details of carriageway design and details, including drainage, street lighting, signing, surface finishes, sight lines and road audits
18. Suitable storage, bin presentation points and access for collection of wastes from the dwellings
19. Temporary waste collection arrangements to serve occupants of completed dwellings whilst the remaining site is under construction
20. Provision of suitably located and designed grit bin facilities

21. Full detailed design for drainage including pipe and manhole schedule including assessment of requirements for an Oil Separator
22. Full detailed design of site levels including flow routing from the site including consideration of overland flow paths from drainage and gulley bypass
23. Full details of the proposed means of managing surface water during the construction including silt management to prevent blocking up of drainage systems
24. The development shall be carried out in accordance with the mitigation measures of the submitted flood risk assessment
25. Separate systems of drainage for foul and surface water on and off site
26. Submission of Land Contamination Remediation Strategy
27. Implementation of the Land Contamination Remediation Strategy
28. Submission of Land Contamination Validation Report
29. Details of a scheme to eradicate Japanese Knotweed and/or Himalayan Balsam
30. Submission of an external lighting scheme
31. Submission of a Construction Environmental Management Plan
32. Submission of an Ecological Design Strategy
33. Carried out in accordance with the mitigation measures of the submitted Arboricultural Impact Assessment and Method Statement
34. Removal of permitted development rights for extensions and outbuildings.

### **Background Papers:**

Application and history files.

[Link to application details](#)

Certificate of Ownership – Certificate A signed

The Eddisons Viability Appraisal and Abnormals Report are available under the consultees tab via the planning application link.