
Report of the Head of Planning and Development

HEAVY WOOLLEN PLANNING SUB-COMMITTEE

Date: 27-Oct-2022

Subject: Planning Application 2020/93777 Outline application for erection of residential development east of, Mill Lane, and Heaton Grange, Hanging Heaton, Batley, WF17 6EN

APPLICANT

Wharfedale Ltd

DATE VALID

06-Nov-2020

TARGET DATE

05-Feb-2021

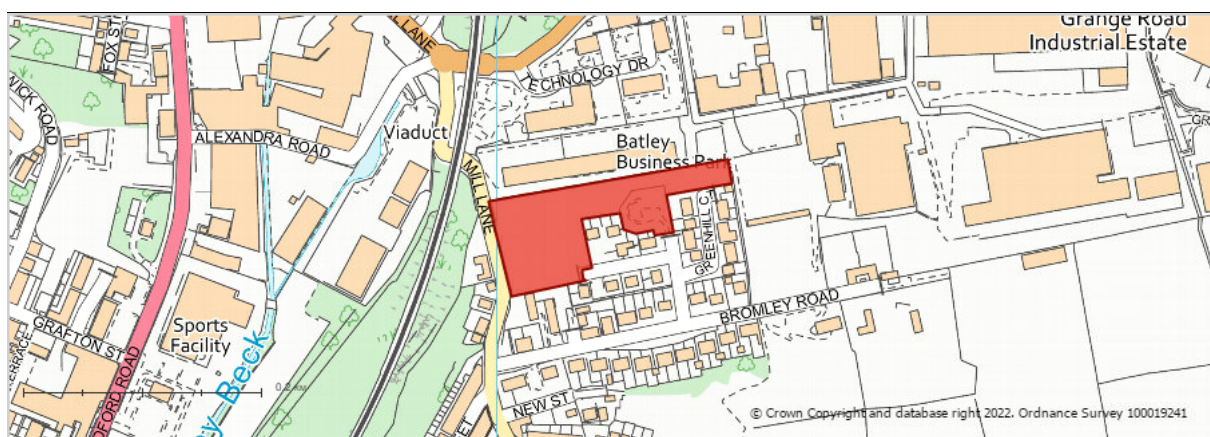
EXTENSION EXPIRY DATE

16-Nov-2022

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[Public speaking at committee link](#)

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral wards affected: Batley East Ward

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 in order to complete the list of conditions including those contained within this report and to secure a S106 agreement to cover the following matters:

1. Deed of Variation to the Section 106 Agreement made under planning application 97/61/90214/E1 to allow for removal of a bond for a landscape buffer and a reduction in the extent of the landscape buffer to reflect the provisional layout of the scheme and to include items 2 to 6 in the Officer Recommendation;
2. Financial contribution towards off-site open space in the local area of £16,647 (subject to Reserved Matters) inclusive of administration and inspection fees in accordance with the Open Space SPD. The figure is intended to be spent on play area upgrades in the immediate vicinity of the development site;
3. Sustainable Transport Contributions including a Bus Stop Improvement Contribution of £10,000.00 and an MCard Contribution of £9,207.00;
4. 20% On-site Affordable Housing Units delivered in line with the Interim Affordable Housing Policy;
5. Biodiversity Contribution of £21,620 (Figure to be confirmed) delivered in line with the requirements of the adopted Biodiversity Technical Advice Note;
6. On-site Open Space, Surface Water Drainage & Highways Management & Maintenance Companies, prior to adoption.

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 The application seeks outline permission, with access as a consideration, for residential development. The site is unallocated land with regard to the Kirklees Local Plan Policies Map.
- 1.2 The application is brought to the Planning Sub-Committee (Heavy Woollen Area) because the site area exceeds 0.5ha (but less than 61 units), in accordance with the requirements of the Scheme of Delegation to Officers.

2.0 SITE AND SURROUNDINGS

- 2.1 The application site is a relatively large L-shaped area of overgrown grassland measuring approximately 0.69 hectares in size. A number of trees are situated around the perimeter of the site. The site is in an elevated position from the existing Heaton Grange development and is significantly higher than Mill Lane which is located directly west of the site. The existing residential dwellings are located directly south and east of the site, and Batley Business Park is situated north of the site which also lies at a much lower level.
- 2.2 A public right of way (ref BAT/37/20) runs across the eastern boundary of the site. A foul and surface water sewer also cross the eastern section of the site from the northwards from the northern boundary of 9 Greenhill Court. A Bat Alert is designated across the western boundary of the site which highlights that bats may traverse or inhabit the area.

3.0 PROPOSAL

- 3.1 Outline application for the erection of a residential development with an indicative capacity of 18 dwellinghouses, of which 4 are intended to be affordable units.
- 3.2 Access is included within the application, with layout, scale, appearance and landscaping being reserved for subsequent consideration.
- 3.3 The proposed access road would form a continuation of the turning head of Heaton Grange adjacent to the existing property of 17 Heaton Grange. The highway would continue the footway on the northern side of Heaton Grange up to the first bend whereby the footway would continue into the site on the opposite side of the carriageway. The initial width of the vehicular carriageway would be 5.5m in width and would be widened to 10+m in width through a right-angle bend into the site whereby it would then reduce back to 5.5m in width.
- 3.4 Although layout, scale, appearance and landscaping are reserved matters, an indicative site layout plan has been included as part of the application to demonstrate how the site could be developed. The plan includes 18 dwellings, 11 two-bed properties and 7 three-bed properties. The plan also includes private outdoor amenity space and off-street parking for two vehicles for each dwelling. Five visitor parking bays have also been shown.
- 3.5 Dwellings are proposed to be erected on the northern and western side of the access with further dwellings indicatively proposed on the western and eastern sides of the internal road layout (subject to further review under a separate reserved matters application). The internal site layout is afforded a turning head to allow all vehicles to turn within the development and leave in a forward gear.
- 3.6 The indicative plan also shows a landscape buffer to the north to maintain a suitable separation distance between the proposed development and the existing industrial complex. This is to act as the A footpath linking the proposed development to the existing children's play area is also shown.

4.0 RELEVANT PLANNING HISTORY

4.1 Application Site

- 2011/92202 – Outline application for residential development (15 dwellings) – Approved
- 2007/90376 – Erection of 12 no. dwellings with integral garages - Refused
- 2003/91325 – Erection of 25 dwellings with garages – Withdrawn
- 97/90214 – Erection of 16 Dwellings (Phase II) – Approval of Reserved Matters
- 95/93539 – Outline application for residential development – Approved

5.0 HISTORY OF NEGOTIATIONS

- 5.1 The proposed development's redline is subject to a historic Section 106 Agreement under permission 97/90214 whereby various phases of residential development pursuant to the historic permission have been built, however certain requirements within the permission's attached S106 have not been complied with or enforced by the Council.
- 5.2 The lack of compliance relates, in respect of 2020/93777, to the provision of a landscape buffer zone between the residential area of Heaton Grange and that of Batley Business Park to the north. The buffer zone was to be designed in accordance with the Landscape Proposals (MA/HD/BR/001) plan attached to the S106 agreement. The land was then to be adopted by Kirklees Council through a bond to be paid via the S106 agreement prior to the occupation of development within the western and eastern parcels, hatched in black ink (referred to as the 'Black Land' in the agreement). However, the eastern parcel of 'Black Land' now forming Greenhill Court has been developed and occupied for a significant number of years following approval of a full application 2002/92270 for 13no. dwellinghouses and a subsequent Section 73 variation of condition application under 2005/94521. Satellite imagery evidences that Greenhill Court was developed and occupied by June 2009 and the buffer zone has not been developed in accordance with the design set out in plan within the Section 106 Agreement, nor has a bond been paid to take on responsibility for the area.
- 5.3 The land within the red-line of this application, under 2020/93777, includes the western parcel of 'Black Land', as well as the entire buffer zone. Given that the historic legal agreement has not been complied with but has also not been enforced in conjunction with the submission of a new application seeking to develop the remaining land, Officers sought Counsel Opinion from Mark Howell at Kings Chambers who provided formal advice in May 2021. The advice provided commentary as to how to proceed based upon 2 options, which are as follows:

Option 1

Comply with the 95/97 Section 106 agreement, which will ultimately involve transferring the land to the Council for future management and maintenance, with the appropriate commuted sum. This will also reduce the number of houses on the current scheme from 18 to around 12, based on the current indicative layout.

Option 2

Agree to vary the Section 106 agreement under Section 106a of the 1990 Planning Act (which would require specific application and an eight week determination period), allowing the development to proceed along the lines of the current proposed layout under the current planning application, with discussions regarding the appropriate balance of on-site provision vs off-site contributions. If necessary, such an application could be determined alongside the planning application at the appropriate planning committee.

- 5.4 The conclusion of this advice was a recommendation to proceed with Option 2 due to the problematic nature of deciding the application under historic requirements which have not been complied with. The application should therefore be decided on current planning policy and should be based on current evidence and information to make the proposal acceptable in planning terms. This stance has been adopted by Officers in their assessment of the application in section 10 of this report as well as in the Officer recommendation to Heavy Woollen Sub-Committee.
- 5.5 In respect of amendments to the detail of the scheme, these largely relate to the inclusion of a footway along the access road from the entry point into the site adjacent to 17 Heaton Grange up to the turning head adjacent to plot 12 on the indicative layout plan. The original submission included provision of shared surface, but due to the challenging gradients of the site, a shared surface without a footway was not acceptable to the Local Highway Authority.
- 5.6 Subsequent iterations of plans in March 2022, August 2022 and October 2022 highlight the evolving design of the bend into the site between plots 4 and 18, whereby the highway changed from a shared surface, to a speed bend with a footway and now a right angle bend into the site with the footway addition retained. Due to the altered detail of the access in October remaining broadly similar to the amended plans in the August consultation alongside the lack of evident material harm to amenity through the design evolution of the access design, further publicity of the application was not deemed necessary.

6.0 PLANNING POLICY

Kirklees Local Plan (2019)

- 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).

The site is unallocated land with regard to the Kirklees Local Plan Policies Map.

6.2 The following Kirklees Local Plan policies apply to this application:

- LP1** – Presumption in favour of sustainable development
- LP2** – Place shaping
- LP3** – Location of new development
- LP6** – Safeguarded Land
- LP7** – Efficient and effective use of land and buildings
- LP11** – Housing mix and affordable housing
- LP20** – Sustainable Travel
- LP21** – Highway safety and access
- LP22** – Parking
- LP24** – Design
- LP27** – Flood risk
- LP28** – Drainage
- LP30** – Biodiversity and geodiversity
- LP32** – Landscape
- LP33** – Trees
- LP35** – Historic environment
- LP51** – Protection and improvement of local air quality
- LP52** – Protection and improvement of environmental air quality
- LP53** – Contaminated and unstable land
- LP63** – New open space

Supplementary Planning Guidance / Documents

6.3 The following are relevant Supplementary Planning Guidance / Documents published by Kirklees Council or national government.

- MHCLG: National Design Guide
- Kirklees Supplementary Planning Document – Highways Design Guide
- Kirklees Supplementary Planning Document – Housebuilders Design Guide
- Biodiversity Net Gain Technical Advice Note
- Interim Affordable Housing Policy

National Planning Guidance

6.4 National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF), published 19th February 2019, 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 5** – Delivering a sufficient supply of homes
- **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

7.0 PUBLIC/LOCAL RESPONSE

Public representation

- 7.1 The application has been subject to two rounds of publicity involving the initial publicity in November 2020 which included neighbour letters issued to local residents on the 17th November 2020, the display of four site notices on the 24th November 2020 and the advertisement of the application in the Dewsbury Reporter on the 26th November 2020. The application was re-publicised for the purposes of amended plans on the 9th August 2022 with neighbour notification letters and four further site notices displayed in the surrounding area. A further press advert was published in the Dewsbury Reporter on the 18th August 2022.
- 7.2 The initial round of public consultation returned 2 representations both objecting to the application on the following grounds:
- Loss of privacy and sunlight (Nos 28 and 30 Heaton Grange).
 - Loss of amenity through increased noise from traffic generation of residents and from the construction of the dwellinghouses.
 - Change of character to the area (the cul-de-sac of Heaton Grange)
- 7.3 The second round of publicity yielded 5 further representations objecting to the application on the following grounds:
- Increase in traffic and danger to children playing in the residential areas as well as safety issues for a busy school route.
 - Increase in noise.
 - Increase in air pollution.
 - Additional traffic generated by the scheme presenting a safety issue.
 - Loss of privacy and sunlight (Nos 28 and 30 Heaton Grange).
 - Loss of amenity through increased noise from traffic generation of residents and from the construction of the dwellinghouses.
 - Change of character to the area (the cul-de-sac of Heaton Grange)
 - Complaints about the appearance of the land
 - Complaints relating to making the site more available to access and thereby making property more vulnerable to crime and exacerbate existing anti-social behaviour.
- 7.4 The issues with the scheme cited above are material planning considerations which shall be reviewed in the residential amenity and representations chapters of the assessment in section 10 below

8.0 CONSULTATION RESPONSES

8.1 Statutory

The Coal Authority: Standing advice recommended

K.C. Highways & Structures: No objection subject to conditions.

K.C. Lead Local Flood Authority: Provisional no-objections to outline application, reserved matters advice provided.

Yorkshire Water: No objections subject to conditions

8.2 **Non-statutory**

K.C. Crime Prevention: Advice provided.

K.C. Conservation & Design: The housing layout would have no adverse impact on the understanding or appreciation of the designated heritage asset, or the wider historic environment, despite resulting in a change to the former industrial character of the setting of the viaduct.

K.C. Ecology (& Yorkshire Wildlife Trust): No objections subject to a financial contribution to offset Biodiversity loss and recommended conditions

K.C. Environmental Health: No objections subject to conditions

K.C. Landscape: No objections subject to the conditions and S106 requirements (inclusive of off-site financial sum) set out within the consultee response.

K.C. Policy: Observations regarding density, open space and biodiversity.

K.C. PROW: Support the provisional layout's connection to the existing play area

K.C. Public Health: Rapid Health Impact Assessment not required.

K.C. Strategic Housing: 4 affordable units required, split between 2 and 3 bedroom units with 2 units being affordable/social rent and 1 being intermediate and 1 being a first homes.

K.C. Strategic Waste: Information relating to nearby site contamination history. No issues cited.

K.C. Trees: Advise that further details relating to tree planting should be provided at the reserved matters stage.

K.C. Waste Strategy: Recommendations made in respect of layout for reserved matters stage

The Coal Authority: Standing advice recommended

WYCA Metro: Provided advice on sustainable transport funding.

WYCA Archaeology Advisory Service: No concern or interest in the site being developed

9.0 **MAIN ISSUES**

- Principle of development
- Highway Matters
- Residential Amenity Matters
- Urban Design & Heritage Matters
- Biodiversity Matters

- Drainage Matters
- Planning Obligations/Contributions
- Other matters
- Representations

10.0 APPRAISAL

Principle of development

Sustainable development

- 10.1 NPPF Paragraph 11 and LP1 outline a presumption in favour of sustainable development. Paragraph 8 of the NPPF identifies the dimensions of sustainable development as economic, social and environmental (which includes design considerations). It states that these facets are mutually dependent and should not be undertaken in isolation. The dimensions of sustainable development will be considered throughout the proposal. Paragraph 11 concludes that the presumption in favour of sustainable development does not apply where specific policies in the NPPF indicate development should be restricted. This too will be explored.

Land Use

- 10.2 The site has no allocation within the Kirklees Local Plan proposal's map. 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 which also takes account of windfalls, committed housing figures and losses/demolitions. Development of the land for residential use would fall under the category of 'windfall'. The Five Year Housing Supply set out in Chapter 8 of the Local Plan identifies that no windfall allowance is provisioned for within the calculation of the housing supply position until Year 5 of the plan period, at which point a 450 unit allowance per annum is allotted for the final 10 years of the plan period. The reasoning for omission of a windfall allowance in the first 5 years of the plan 'has been assumed that windfall delivery during this part of the plan period would be from sites which already have planning permission' (Paragraph 8.12 of the KLP). Nevertheless, the Kirklees Local Plan does not directly exclude the grant of planning permission to windfall sites on non-allocated land despite the treatment of such sites within the Housing Land Supply calculation.
- 10.3 Accordingly, the proposed residential use is acceptable. This is supported by LP1 of the Local Plan and Chapters 1 and 5 of the NPPF which establish a general principle in favour of residential development and the need to develop out appropriate land for it. Nonetheless local and national policy require additional tests to ensure the proposed residential development is appropriate. LP3 and LP7 of the Local Plan, in accordance with the NPPF, establish a need justify the location of new development and to provide appropriate densities of dwellings respectively. LP11 of the Local Plan seeks to ensure an appropriate mixture of dwelling types and sizes.

- 10.4 First, considering location, LP3 requires development to reflect the following criteria:
- a. the settlement's size and function; and
 - b. place shaping strengths, opportunities and challenges for growth; and
 - c. spatial priorities for urban renaissance and regeneration; and
 - d. the need to provide for new homes and jobs;

As the development is classified as 'infill' development in close proximity to Batley town centre and adjacent to existing residential dwellings to the south and east, the proposal meets the requirements of point 'a' in respect of reflecting the size and function of the nearest settlement. With regard to points 'b' and 'c', again, the site's infill function greatly aids place-shaping by developing an underutilised site that is significantly negative in respect of the appearance of the place in which it is situated. In relation to the final point, the proposed development seeks to deliver homes on the site thereby meeting identified need for housing in the local area. By consequence the location of the development is considered to meet the requirements of Policy LP3.

- 10.5 In considering density, LP7 establishes an expected minimum density for housing sites of 35 dwellings per ha, where appropriate. At a site area of 0.69ha the site would be expected to accommodate 24 dwellings to comply with LP7's 35 dwellings per ha. Given that the site has been submitted indicatively for 18 units, this is 6 units below the density level required. That being said, there are a number of design factors within this proposal that caveat the interpretation of the minimum density requirement in this instance. The development is required to provide a noise buffer zone to the industrial estate to the north, this allows for the creation of a 0.3ha public open space and biodiversity improvement area that stretches across the northern boundary of the site and enables the newly formed POS to integrate with an existing play area. To the west a landscape buffer is retained adjacent to Mill Lane owing to the steep topography in that particular location. The resultant net developable area is therefore calculated as 0.46ha which elicits a 16 unit density. As the application has been proposed with an indicative yield of 18 units, it notionally exceeds the minimum density required by LP7.
- 10.6 It is accepted that the density, and whether it is 'appropriate', has relevance for other material considerations. This notably includes amenity. Such considerations would be reviewed in subsequent assessment sections below and it may be the case that, alongside amendments required through housing mixture, that the indicative yield of 18 units may need to be reduced to accommodate design alterations.
- 10.8 In respect of the housing mix, the Local Plan seeks for a considered mixture of housing sizes (bedrooms) and type (detached, semi etc..). The application form indicates that 11 units are to have a 2 bedroom capacity whilst 7 of the units are to have a 3 bedroom capacity. Again, formal confirmation of this will be established at reserved matter stage. Regarding type, the indicative scheme shows the majority of units as semi-detached, with mews-style and terraced properties at plots 5 to 9 and 12 to 14. The inclusion of detached units may be necessary at reserved matters stage, to comply with housing mix requirements set out in the SHMA. Officers are satisfied that at this time there is no evidence to suggest that an appropriate housing mixture could not be achieved on the site and the application has the potential to be in compliance with LP11.

Conclusion

- 10.9 To conclude on the above, officers consider the principle of an outline residential development, subject to review of the proposal's access, to be acceptable and compliant with policies of the Local Plan relating to its location, density and housing mix subject to further details forthcoming at reserved matters stages.

Highway Matters

- 10.10 Access into the site is a principle matter for this outline application however it should be noted that the layout of the site, including the highway layout, is the subject of a subsequent reserved matters application. That being said, the highway layout proposed under this outline application has been set out on the submitted plans in accordance with significant design discussions with the KC Highways Development Management Section. The content of any future reserved matters application relating to 'layout' will be expected to be broadly in line with the plans assessed under this outline application.
- 10.11 Access to the development is from Heaton Grange. Heaton Grange is a two-way traditional estate road laid out in a cul-de-sac formation, benefiting from street lighting to side road standards with a carriageway width of 5.5 metres and suitable footways to both sides. A footpath link is shown from this site to the public open space area to the south of Heaton Grange.
- 10.12 Heaton Grange is to be extended into the site with the provision of a shared surface carriageway with turning area to serve the proposed development. Plots 1, 5, 7, 8, 10 and 11 would be accessed through a parking court arrangement via a short section of road travelling beneath plot 8. Each house has been allocated two car parking spaces and five visitor parking bays. The design and access statement confirms that each house would also have an integrated cycle store. These design points are in accordance with the Highway Design Guide SPD and provide evidence that the proposal can be designed at reserved matters stage in a policy-compliant manner.
- 10.13 Information within the accompanying 'Highway Statement' by Paragon Highways confirms that the development is anticipated to generate some 13 trips during each of the network peak hours (morning peak between 8am and 9am, evening peak between 5pm and 6pm), and that the level of traffic generated by the proposals can be accommodated by the local highway network without an adverse material impact on its safe operation. Kirklees Highways Development Management agree with the findings of the applicant's 'Highway Statement'. Matters relating to the development's impact on highway capacity at peak times due to the site's additional trip generation are considered satisfactory.
- 10.14 In respect of accessing the development site, the consultation response dated 16th June 2022 from Highways Development Management requested the applicant to provide longitudinal section through the centre line of the proposed carriageway and confirm the proposed road gradients. The desirable maximum carriageway longitudinal section gradient on all adoptable shared surface carriageways is 1 in 20 (5%). If this is not achievable, then the specific circumstances should be discussed with the Council to address potential mobility and safety implications.

- 10.15 The applicants have since confirmed that the proposed gradient is 1 in 12. This gradient is considered too steep for the carriageway to be shared use and the layout is amended to include a 2.0m wide footway along the section of road with a 1 in 12 gradient. An 18m forward visibility splay is also shown to the 90-degree bend in the road. Following review of the revised access layout, Kirklees Highways Development Management have confirmed that the access arrangement provides acceptable levels of forward visibility for vehicles despite the access topographical gradient. The provision of the footway is indicatively provided throughout the adoptable highway up to the turning head adjacent to plot 12.
- 10.16 Further to the previous paragraph, the indicative road layout includes swept paths for Kirklees' 11.85m long refuse collection vehicles (RCV). The swept path diagrams overlaid on the layout drawings confirm that RCVs can access and egress from the site in a forward gear when utilising the turning head within the site adjacent to plot 12. Similarly, all rear doors serving the indicative locations of dwellinghouses are within 45m of collection points – as per the requirement of clause 3.19 of the Highways Design Guide SPD. Overall it can be considered that vehicular and pedestrian access to and from the site meets the requirements of the guidance documents and policies within the Local Plan relating to transport.
- 10.17 In respect of nearby public transport feasibility, the site is located within the recommended 400m catchment from the nearest bus routes that operate on Mill Lane. Bus services which operate on Mill Lane include the 119/120 which operate between Wakefield and Batley at a 60 minute frequency. The bus availability for the site is therefore considered to be acceptable. The size of the development is unlikely to change the bus route's frequency.
- 10.18 The closest bus stop on this corridor is Stop No. 16122, which would benefit from the installation of a Real Time Information display at a cost to the developer of £10,000.00. This financial requirement is to be secured through a Deed of Variation to an existing Section 106 Agreement that covers the site.
- 10.19 Furthermore, and to encourage the use of sustainable transport as a realistic alternative to the car, the developer will be required to fund a package of sustainable travel measures. It is a requirement that the developer contributes towards sustainable travel incentives to encourage the use of sustainable modes of transport through the payment of a sustainable travel fund. The fund can be used to purchase a range of sustainable travel measures including discounted MetroCards (Residential MetroCard Scheme) for all or part of the site. The purchase of MetroCards is required for this development as a means of encouraging the use of public transport and would cost £9,207.00 calculated as a proportion of the site yield. The MetroCards are to be secured through the Deed of Variation and would be Bus Only Residential MetroCards.
- 10.20 It should be noted that a pedestrian link was proposed from the site to Mill Lane. However, this has since been removed from indicative layout plans as the eastern side of Mill Lane is without a footway and it was not determined as feasible to provide a safe route for crossing the road to the existing footway on the western side of Mill Lane. Likewise, there were concerns due to the lack of natural surveillance of the staircase forming the link and the potential for encouraging criminal behaviour and routes of escape.

Conclusion

- 10.21 In considering the above highway matters, the design of the site access alongside associated highway capacity, highway safety and public transport are considered in line with the requirements of the Highways Design Guide SPD and Policies LP20 (Sustainable Travel) and LP21 (Highways and Access) of the Kirklees Local Plan.

Residential Amenity Matters

- 10.22 LP24 seeks to protect the amenity of residents, stating proposals should 'provide a high standard of amenity for future and neighbouring occupiers; including maintaining appropriate distances between buildings'. This reflects the guidance of Chapter 12 of the NPPF with more specific standards available in Section 7.3 of the Housebuilders Design Guide.
- 10.23 There are no closely spaced residential properties to the west or north of the site, though an industrial estate (Batley Business Park) is set across the northern boundary of the site where a landscape buffer is retained.
- 10.24 In respect of the amenity of future occupiers of the proposed dwellings, layout and scale are reserved matters therefore comments and critiques of the layout are notional at this stage of the application process. However, based on the indicative details submitted in support of the application, officers are satisfied that suitably sized dwellings, with commensurate garden spaces, can be accommodated on the site. The exemption to this is the indicative garden for plot 6, which is relatively small compared to neighbouring provision with the rear elevations of plots 4 and 6 being 20.2m in distance and therefore below minorly below the 21m back-to-back separation standard required by the Housebuilder's Design Guide. Notwithstanding this, the shortfalls outlined here are considered of a magnitude that could be addressed at reserved matters stage and do not constitute a valid reasonable reason to refuse this outline application.
- 10.25 It is presumed that primary habitable room windows would be aligned front/rear for house type B set out on the indicative layout plan. This presumption would prevent concerns of overbearing, overshadowing or overlooking. House Type A forms corner plots and therefore the window layout is likely to be across all three elevations. Plot 18 is constituted of House Type A and though it faces the side elevation of 17 Bromley Road, it meets the 12m standard for principle elevations set facing side elevations. Overall there are no issues perceived with the layout of House Type A in respect of privacy or overlooking. There are, however, concerns with the layout of house Types E and F given their unorthodox layout arrangement to provide a parking court. Plot 8 (House Type F) is afforded no private external amenity space and the principle elevation of plot 7 (House Type E) has design issues in respect of its limited principle elevation. Though not a valid reason for refusal in this instance, the layout at reserved matters is likely to require the removal of either plot 7 or 8 to enable a policy compliant design.

- 10.26 Further consideration of the development's impact in respect of protecting the amenity of existing residents from an overshadowing and overbearance perspective indicates that plot 2 faces onto the side elevation of No.17 Heaton Grange. In this instance, the 16m separation distance between the elevations comfortably exceeds the 12m minimum of the Housebuilders SPD. Furthermore, the side elevation of plot 11 is 13.6m from the rear elevation of 32 Heaton Grange and this, again, exceeds the minimum 12m requirement of the Housebuilders SPD.
- 10.27 Overall the scheme is set to the north and west of existing properties on Heaton Grange and those accessed from Bromley Road, by consequence the proposed development is highly unlikely to negatively overshadow existing properties and their residents. Likewise, as set out in the discussion above, the presumed window relationship of the house types on the indicative layout plan have a high probability of being able to be designed so that privacy can be maintained for existing and future residents.
- 10.28 The scheme is found to be capable of meeting the requirements of the Housebuilders SPD and LP24 Design, subject to detailed submissions at reserved matters stage.

Environmental Health

- 10.29 In respect of minimising disruption to residents during the construction phase, dust, artificial light, noise and vibration associated with the construction phase of the development would have the potential to cause a significant impact on nearby residents. It is therefore necessary for the applicant to provide a construction environmental management plan that provides details of the mitigation measures that would be taken to minimise any adverse impact. The CEMP is included in the list of conditions set out in section 12 of this report.
- 10.30 In respect of potential adverse noise impacts, a Noise Impact Assessment (NIA) by Environmental Noise Solutions dated 21 Sep 2020 (ref: NIA/9195/20/9209/v2/34 Heaton Grange) has been submitted with the application. The report details an assessment of ambient noise levels from a number of monitoring locations across the site set at various heights above ground level. The report advises that distant and local road traffic is the main noise affecting the site with some additional contribution from railway noise. The commercial premises to the north of the site was considered not to be a significant noise source.
- 10.31 The determination of the commercial premises not being a significant noise source is important to the consideration of this application as the 97/90214 permission (under its associated S106 Agreement) requires a dedicated landscape buffer across the northern part of the site with its southern boundary running parallel to the western and eastern parts of the red line boundary from the rear boundaries of Nos. 28, 30, 32 and 34 Heaton Grange (the area outlined in orange on Landscape Proposals Plan (MA/HD/BR/001) within the 97/90214 Agreement). Though it is unclear as to why this landscape buffer was required under 97/90214, it is presumed that it was designed for the purpose of providing satisfactory separation distances to the residential development so as to ensure satisfactory sound levels due to the uses prevalent on the business park in the late 1990s.

- 10.32 As Environmental Health have agreed with the conclusions made in respect of the NIA, that the business park is no longer considered a source of significant noise, the requirement for a buffer zone of 30m in depth is no longer required, and therefore the incursion of plots 8, 9, 10 & 11 into the buffer zone delineated within Landscape Proposals Plan (MA/HD/BR/001) of the 1997 S106 Agreement is acceptable to LPA Officers. The new buffer would be 12m in depth for a distance of 55m between plots 8 and 9 and it would also receive incursion from the proposed turning head of the indicative highway layout. Irrespectively, a layout would be determined at reserved matters stage.
- 10.33 Re-focusing on the identified noise impacts themselves outlined within the NIA, the report determines the likely daytime and night-time noise levels across the site. The assessment takes into consideration the likely impact of reduced road and rail movements because of coronavirus restrictions. As the final site layout is not yet confirmed in this outline application, the report makes a number of general recommendations for noise mitigation which are:
- minimum distance of circa 20 – 22 metres between the closest planned facades and the units to the north
 - A scheme of sound insulation works for glazing and trickle ventilation at the dwelling in table 5.1
 - An acoustic barrier or site arrangement to protect outdoor amenity areas at plots closest to Mill Lane
 - An alternative means of ventilation for plots where windows need to be kept closed for noise mitigation.
- 10.34 The report advises that a more detailed building envelope specification can be provided when a detailed layout is determined. Environmental Health consider that the report provides a satisfactory assessment of the existing noise affecting the site and demonstrates that, with appropriate noise mitigation measures, satisfactory indoor and outdoor sound levels to be achieved at the development. As noise mitigation measures would be necessary, and these need to be specific to the final layout considerations, it is recommended that these are secured via condition and as such have been added to the condition list under Section 12 of this report. It should be noted that plots 9 and 10 achieve 20m separation to the commercial units on Batley Business Park.
- 10.35 Overall the scheme is found to comply with the aims and objectives of LP52 of the KLP.

Urban Design & Heritage Matters

- 10.36 In respect of urban design and heritage matters, comments are limited given that scale, appearance, landscaping and layout are reserved matters. The discussion set out below is advisory and relates predominantly to principles relating to the acceptability of the design of residential development in this location in the context of the adjacent heritage assets.
- 10.37 The proposal is located on the cleared site of the former Batley Gas Works adjacent to the Grade-II listed Railway Viaduct on L & NWR line to the north west, which opened in 1848. The viaduct is a robust architectural feature which is appreciated across the hillside landscape. The topography of the site means that the eastern section is roughly at the same height as the rockstone

faced viaduct which is in active use. The indicative housing layout would be arranged at the top of the embankment above Mill Lane. The housing layout would have no adverse impact on the understanding or appreciation of the designated heritage asset, or the wider historic environment, despite resulting in a change to the former industrial character of the setting of the viaduct. The proposal, in principle, consequently meets the requirements of LP35 (The Historic Environment) of the KLP subject to details forthcoming at subsequent reserved matters stages.

- 10.38 The housing location would essentially become a tightly enclosed site at the end of the road network due to the existing topography and development/uses which wrap around the site, resulting in the single access. It is understood that the outline layout is indicative and would require further detailing to enhance the landscaping of the boundaries and the access roads and the amenity spaces. In particular, the housing layout should ensure that the access roads are defined by tree planting rather than hard surface car-parking. The current layout includes inadequate landscaping, essentially only drainage/service easements and the central part of the site is dominated by a shared parking court. KC Conservation and Design advise that, given the apparent drainage issues, that the parking areas should incorporate more permeable surfaces, SUDS and planting whilst the trees to be removed would need to be demonstrably compensated for by new additional planting.
- 10.39 Therefore, while the principle of the housing allocation is supported, the requirement is clear that the eventual detailing via Reserved Matters should better accord with the requirements and guidance in the National Design Guide and directly reference the objectives of the Council's Housebuilders Design Guide SPD. The key objective should be to complete the residential transformation of the wider area by creating a high-quality standard for this relatively discreet and intimate area, reducing the hard standing and better integrating the greenspaces into the layout while making appropriate accommodation for wildlife. Therefore, while the residential character is supported, the indicative proposal should not be taken to be the defining layout due to the need to better integrate the layout into its context through the reduction of hard surfaces and introduction of tree planting and wider soft landscaping.
- 10.40 Given the above considerations, LPA Officers are satisfied that there are no probative reasons why appropriate details could not be provided at reserved matters stage. Accordingly, based on the details held at this time, LPA Officers are satisfied that, subject to appropriate details being provided at reserved matters, the proposal would not cause harm to visual amenity or conflict with the aims and objectives of LP24 or the KLP or Chapter 12 of the NPPF.

Biodiversity Matters

Biodiversity Net Gain

- 10.41 With regard to biodiversity, an updated biodiversity net gain assessment has been submitted with the application following initial comments from KC

Ecology.

- 10.42 The updated BNG assessment results in an overall net loss of 0.67 habitat units (-24.92%) and a net gain of 0.52 hedgerow units (+434.25%). In order to ensure that a net gain is achievable in line with national and local planning policy, a financial contribution would be required. In line with the adopted Biodiversity Technical Advice Note detailed above, the commuted sum to replace the biodiversity lost on-site with enhancements off-site would be £21,620. It is intended that a fee for biodiversity is to be secured through a Section 106 agreement.
- 10.43 It should be noted that the applicant is in the process of submitting revised on-site enhancements for biodiversity as well as a metric calculation that seeks to reduce the headline financial contribution. The applicant has also queried the premise of the net gain figure provided by KC Ecology as this is based upon a 10% net gain required by the Environment Act. The Environment Act is yet to come into force and therefore a requirement for 10% net gain cannot be withstood or required by the LPA until it comes into force. The fallback position in this instance is 'no net loss' to on-site biodiversity specified in Policy LP30 and therefore a revised figure will be provided via the Committee Update once KC Ecology are in receipt of the updated information to be provided by the applicant. The Officer Recommendation reflects this situation.

Ecological Impact & Protected Species

- 10.44 A Preliminary Ecological Appraisal (PEA) has been submitted to provide an update on the PEA completed at the site in 2020 along with providing new baseline information on an additional segment of land within the eastern section of the site. Following re-consultation with KC Ecology, it is determined that the updated PEA identifies ecological constraints and opportunities which should be used to inform an Ecological Impact Assessment (EclA). As detailed in the PEA within recommendation R3, once the landscape masterplan is fixed, with Biodiversity Net Gain principles guiding an updated landscape plan and additional surveys completed, the EclA can summarise the potential impacts of the proposed development on the Site's baseline.
- 10.45 KC Ecology have also advised that the PEA does not provide a robust evaluation to conclude that reptile species will be likely absent from the site. Throughout the country, reptile species are often under recorded, therefore the reasoning for the likely absence of this species group on site is not accepted by LPA Officers. Given the proximity of the railway, which often provides suitability for common and widespread reptile species and locality of connectivity to other areas of suitable habitat, additional survey work to determine the presence/likely absence of reptiles is recommended by KC Ecology. In addition to the above, the PEA does not make use of the most up to date redline boundary, which excludes the play area in the eastern section of the site. A condition securing the EclA and the up to date surveys cited above is included in the summary list located in Section 12 below. The EclA will be required at any reserved matters stage, as set out in the condition list.

Conclusion

- 10.46 The application will secure no net loss of biodiversity through the Section 106 agreement, the mechanism through which will be confirmed in the Committee Update. Matters relating to protection of protected species are covered by appropriately worded conditions due to the outline nature of the application.

Drainage Matters

- 10.47 The Flood Risk Assessment and Drainage Strategy and accompanying Drainage drawing submitted with the application are generally accepted by the LLFA and Yorkshire Water apart from a number of technical matters that would need to be resolved at the reserved matters stage. These relate to agreement of a discharge rate to the Yorkshire Water Sewer, consistency in the calculation of the quantum of storage required for the 1 in 100 year 6 hour storm event, flood routing needing to be contained within the site as well as the repetition (as mentioned in the Urban Design Matters section above) for newly created hard surfaces to drain to ground as opposed to main sewer.
- 10.48 The drainage design is at a preliminary stage reflecting the outline stage of the application process. Given that no objections have been received by statutory consultees following their review of the submitted drainage scheme, LPA Officers presume that the scheme is initially compliant with the requirements of LP 27 Flood Risk and LP28 Drainage of the KLP.

Planning Obligations/Contributions

Deed of Variation

- 10.49 As set out in the 'History of Negotiation' section, a Deed of Variation to the Section 106 Agreement made under planning application 97/61/90214/E1 is necessary for this planning application to allow for removal of a bond for a landscape buffer and a reduction in the extent of the landscape buffer to reflect the provisional layout of the scheme and to include items 2 to 6 in the Officer Recommendation. The Deed of Variation will allow a reduction in the landscape buffer to aid the scheme, but it will restrict any further erosion of the landscape buffer through citation of the 'POS Area' plan (WLHG-MWA-XX-XX-DR-A-0008 – Rev P3) within the amended agreement. The portion of the site within the green area set out on the POS Area plan will be restricted from any form of development other than that which is necessary to provide the hard and soft landscaping works proposed.

Affordable Housing

- 10.50 In accordance with Policy LP11 of the LP and the Interim Affordable Housing Policy 2016 the provision of affordable housing is a material planning consideration. These policies seek a contribution of 20% of built units is sought.
- 10.51 Indicatively 4 units will be required from the 18 unit yield, however as the application is made at outline with the number of units and their size not finalised, the contribution will be made on a proportional 20% basis, in line with the requirements of the LP

Biodiversity

- 10.52 The development results in an overall net loss of 0.67 habitat units (-24.92%) and a net gain of 0.52 hedgerow units (+434.25%). In order to ensure that a net gain is achievable in line with national and local planning policy, a financial contribution would be required. In line with the adopted Biodiversity Technical Advice Note detailed above, the commuted sum to replace the biodiversity lost on-site with enhancements off-site would be £21,620. It is intended that a fee for biodiversity is to be secured through a section 106 agreement. A further on-site enhancement plan and updated Biodiversity Net Gain metric are to be submitted by the applicant which could alter the figure within the Officer recommendation to Committee. A final figure will be provided through the Committee Update.

Education

- 10.53 An education contribution is not required in this instance as the proposal's yield is significantly below the 25 dwelling threshold by which the 'Providing for Educational Needs' Guidance document advises that development of this size or above begins to have a measurable impact on school accommodation.

Highways

- 10.54 WYCAS Metro seek a contribution for sustainable travel, suggested as bus only Metro Cards for new residents of the site and an upgrade to a bus stop near to the site, the former costing £9,207.00 and the latter costing £10,000.00. The aim of these contributions is to support sustainable transport measures.

Public Open Space

- 10.55 LP63 requires the provision of Public Open Space and Local Areas of Play for residential developments. A financial off-site figure of £16,647 has been agreed with the applicant based upon the indicative layouts submitted in support of the application. Though further details would be finalised at Reserved Matters stage (landscape/layout) to arrive at a final figure, the contribution is intended to provide upgraded equipment for adjacent play areas.

Site Management

- 10.56 The agreement will also ensure that any on-site Open Space, Surface Water Drainage or Highways Management & Maintenance Companies are in place upon first occupation of the site. The POS will remain in the maintenance of a management company in perpetuity whilst the drainage and highways management companies shall be in place until such time as each piece of infrastructure is adopted by the statutory undertaker.

Other Matters

Contamination and Contaminated land

10.57 The site has been identified by Environmental Health as potentially contaminated land (site reference 27/6) due to its historic land use including a gas works, landfill site, waste transfer stations and scrapyards. Furthermore, Environmental Health have reviewed the submitted Phase II report Geoenvironmental Ground Investigation Report by Haigh Huddleston & Associates dated September 2020 (ref: E20/7738/R001A Rev A) and certain issues remain with the consistency of this report. Consequently, a revised Phase II report will be required prior to any site remediation being agreed, implemented and validated. As such, a full suite of contaminated land conditions are set out within section 12 below, of which the Phase II and Remediation Strategy reports will be required to be submitted to and approved by the LPA prior to commencement of any development on the site.

Representations

- Loss of privacy and sunlight (Nos 28 and 30 Heaton Grange).

Response: Matters relating to residential amenity have been reviewed in Section 10 of the report. However, it is noted that Layout and Scale are reserved matters and therefore a determinate conclusion as to amenity impacts cannot be made at this outline application stage. However, for purposes of responding directly to the representor's concerns, plots 10 and 11 are cited to the north of the row of semi-detached dwellings forming 28, 30, 32 and 34 Heaton Grange and the side elevation of plot 11 is 13.6m from the rear elevation of 32 Heaton Grange. 30 Heaton Grange is set even further forward in the building line and therefore its rear elevation is even further away from plot 11. Plot 11 is also set directly north of the existing properties and therefore impacts in respect of sunlight are determined to be negligible – at least at this outline stage of the application process. In respect of privacy, it is highly likely that no habitable room windows would face toward the rear private gardens or elevations of 28, 30, 32 or 34 Heaton Grange as this would be carefully analysed at the reserved matters application relating to 'appearance'.

- Loss of amenity through increased noise from traffic generation of residents and from the construction of the dwellinghouses.

Response: The highway from the new development would serve an extra 18 dwellinghouses, possibly less. As no through-route is to be provided, though layout is a reserved matter, trip-generation is limited to the dwellinghouses proposed on the indicative layout. Consequently, increased noise from traffic generation is understood to be limited and highly likely to be negligible. Matters relating to amenity impacts during the construction period are not normally a material planning consideration. However, a construction environmental management plan condition is recommended in the list of conditions in section 12 of this report for the purposes of minimising disruption to existing residents.

- Change of character to the area (the cul-de-sac of Heaton Grange)
- Complaints about the appearance of the land

Response: The access into the site clearly presents an area where development was intended to continue to develop the full scope of the site approved under the 1997 permission. The development under this application will also be a cul-de-sac through provision of a further turning head adjacent to plot 12. Given the low-intensity use and unkempt nature of the development site, LPA Officers determine that development for residential purposes would be concordant with Heaton Grange (as an existing residential estate) and would, by association, become a net benefit in respect of the visual appearance of the local area.

- Increase in traffic and danger to children playing in the residential areas as well as safety issues for a busy school route.
- Additional traffic generated by the scheme presenting a safety issue.
- Loss of amenity through increased noise from traffic generation of residents and from the construction of the dwellinghouses.
- Increase in noise.

Response: The increase in traffic would be modest, as set out in the Transport Statement by Paragon Highways and agreed with by Highways Development Management Section. In any case, it is not the responsibility of the development proposal to control the behaviour of motorists on the highway, this responsibility lies with individual motorists and therefore it would be unreasonable to refuse the application on the basis of unfounded highway safety fears that are located off-site and not subject to issues relating to highway capacity that would be exacerbated by the size of the development in and of itself.

Once completed the development would be in residential use and subject to normal controls of under the Control of Pollution Act. Noise from new residents is not a material planning consideration. Noise from the construction period will be subject to the CEMP condition and enforcement powers available to Kirklees' Council Regulatory Services department.

- Increase in air pollution.

Response: The development seeks to encourage the use of electric vehicles through the provision of Electric Vehicle Charging Points to be installed within all new dwellinghouses on the site. The EVCP infrastructure is to be required by condition as set out in the list of conditions section below. The emission of dust during the construction period is to be controlled through best practice to be submitted and approved by the LPA through the discharge of CEMP condition.

- Complaints relating to making the site more available to access and thereby making property more vulnerable to crime and exacerbate existing anti-social behaviour.

Response: The stairway to Mill Lane has been removed from the proposed layout owing to concerns relating to highway safety in crossing Mill Lane as well as issues in relation to providing opportunities for criminal behaviour. More broadly, the development of the site will be provide more natural surveillance of the proposed POS area.

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 The proposal seeks residential development on a non-allocated site, with the development confirming that it is able to achieve an acceptable design in respect access into the site alongside a policy-compliant density and housing mix. Therefore, the principle of development is considered to be acceptable.
- 11.3 Turning to the reserved matters of landscape, scale, appearance and layout, based on the indicative details provided, officers are satisfied that there are no prohibitive reasons why appropriate details may not be provided at reserved matters stage.
- 11.4 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.

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

1. Standard OL condition 1 (submission of reserved matters)
2. Standard OL condition 2 (implementation of reserved matters)
3. Standard OL condition 3 (reserved matters submission time limit)
4. Standard OL condition 4 (reserved matters commencement time limit)
5. Standard Outline Permission – Accordance with Plans
6. Submission of internal adoptable highway details (pre-commencement)
7. Submission of details relating to existing and proposed retaining walls (pre-commencement)
8. Submission of details relating to supporting structures within the highway (pre-commencement)
9. Submission of a Construction Environmental Management Plan (pre-commencement)
10. Submission of detailed Noise Impact Assessment (pre-commencement)
11. Submission of Phase II Contaminated Land Intrusive Site Investigation Report (pre-commencement)
12. Submission of a Remediation Strategy (pre-commencement and subject to condition 11)
13. Site remediation in compliance with condition 12
14. Submission of validation report
15. Submission of Electric Vehicle Charging Point details
16. Submission of hard and soft landscaping scheme in accordance with reserved matters (pre-commencement)
17. Submission of foul, surface water and land drainage details (pre-commencement)
18. Submission of surface water drainage design within set parameters (pre-commencement)
19. Submission of storm event exceedance and flood routing scenarios (pre-commencement)

20. Submission of temporary drainage details during the construction period (pre-commencement)
21. Submission of an EclA with supporting species surveys (submission at any reserved matters stage)
22. Submission of a Biodiversity Enhancement Management Plan (submission at any reserved matters stage)

Background Papers

Application and history

Files accessible at;

[Link to application details](#)

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2020%2f93777>

Certificate of Ownership

Certificate A and B