
Report of the Head of Planning and Development

HEAVY WOOLLEN PLANNING SUB-COMMITTEE

Date: 16-Mar-2023

Subject: Planning Application 2022/91911 Erection of residential development consisting of 48 dwellings with associated highways and landscaping land at, Cliff Hill, Denby Dale, Huddersfield, HD8

APPLICANT

Richard Smith, Urban
Group

DATE VALID

31-May-2022

TARGET DATE

30-Aug-2022

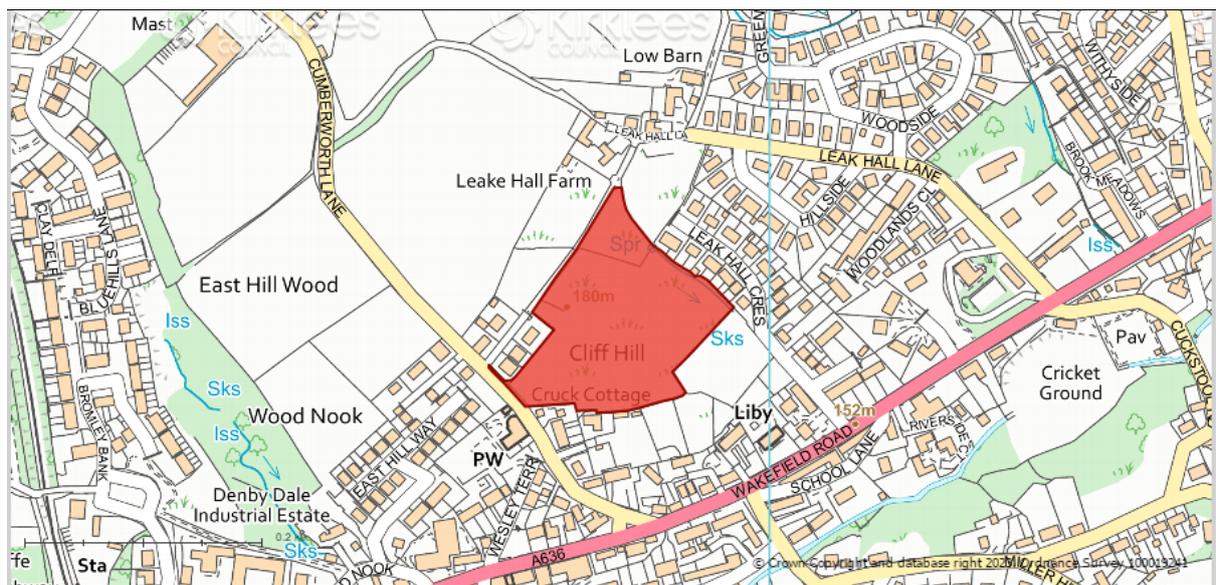
EXTENSION EXPIRY DATE

31-Mar-2023

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[Public speaking at committee link](#)

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral wards affected: Denby Dale

Ward Councillors consulted: Yes

Public or private: Public

RECOMMENDATION:

REFUSE permission for the following reasons:

1. Insufficient information has been provided to satisfy the Local Planning Authority that the risks arising from land contamination resulting on the site can be adequately mitigated under the proposed land remediation strategy. Likewise insufficient understanding of the residual impacts of the site remediation, inclusive of an incomplete understanding of the site's characterisation, do not provide sufficient comfort to allow the proposed site remediation to be undertaken subject to appropriately worded planning conditions. The current submission therefore incurs unacceptable risks that could cause harm to people and/or the environment contrary to Kirklees Local Plan Policy LP53 as well as NPPF Paragraph 183 (clauses a, b and c).

2. It has not been demonstrated that the proposed development would be environmentally feasible or acceptable nor that the proposal would provide local or national benefits that would outweigh the resultant residual environmental impacts of developing the site for the purposes of winning and working minerals (coal) resulting from the site's remediation. Indeed the proposed site remediation strategy creates unknown residual environmental impacts that have not been adequately assessed. There are therefore significant concerns with the proposed development in respect of the potential for adverse impacts on water resources, ground gas pathways, human health (noise & air quality in particular) as well as residential amenity more broadly. No overriding community benefits are identified which would make the extraction of coal acceptable from the site. Overall the proposal is found to be contrary to mineral planning policy with particular regard to Kirklees Local Plan Policies LP36, LP51 and LP52 as well as National Planning Policy Paragraphs 211 (clauses b & c) and 217 (clauses a and b).

3 The proposed development layout does not achieve a net density of 35 dwellings per hectare that would be sufficient to use allocated housing land efficiently for a residential purpose. As such the proposal is contrary to Policy LP7 of the Kirklees Local Plan and Paragraph 124 of the National Planning Policy Framework as it does not seek to maximise housing delivery and is not overridden by mitigating reasons with regard to development viability, compatibility with its surroundings or meeting local housing needs. The lack of a sufficient density would also further undermine the Local Planning Authority's housing delivery target, which is subject to a Housing Delivery Test Action Plan.

4 Proposed plots 35 and 36 are at a topographical level and distance from existing properties at 2 and 3 Springhead Gardens whereby their rear windows and garden terraces would significantly overlook and reduce the privacy of the existing residential properties at significant detriment to residents' amenity. The identified impacts on privacy in respect of levels and separation distances are contrary to the Supplementary Planning Document – Housebuilders Design Guide (with particular regard to clauses 7.19 and 7.21) and Kirklees Local Plan Policy LP24 – Design

5 It has not been demonstrated, through a lack of information, that the site's internal estate road is designed or is able to be designed to an acceptable layout/adoptable standard that would be safe for use by pedestrians and private vehicles or is operationally feasible to be serviced by a refuse collection vehicle. The proposed development is therefore contrary to the guidance contained within the Highways Design Guide SPD, as well as Policy LP21 – Highways and Access – of the Kirklees Local Plan (with specific regard to clauses a, d, e and f).

6 Insufficient information has been provided to evidence that Plots 42, 43, 44, and 45 would not incur unacceptable privacy issues in relation to the northern elevation of Cruck Cottage, given that the proposed dwellinghouses are set at a higher topographical level and within the 21m facing separation distance from the rear of the existing dwellinghouse. The identified impacts on privacy in respect of levels and separation distances are contrary to the Supplementary Planning Document – Housebuilders Design Guide (with particular regard to clauses 7.19 and 7.21) and Kirklees Local Plan Policy LP24 – Design

7. Planning obligations directly related to the development have been identified by the Local Planning Authority as being necessary to make the development acceptable in planning terms. These obligations relate to delivery of on-site affordable housing provision, a financial contribution to provide educational capacity for increased school capacity in the local area, a financial contribution to off-set open space typology shortfalls, a financial contribution to offset biodiversity loss and provide a 10% biodiversity net gain, a financial contribution for the encouragement of sustainable travel alongside provision of requisite management of drainage infrastructure and shared spaces serving the proposed development. The terms of a legal agreement to secure these obligations has not been agreed and the weight of viability evidence provided by the applicant does not have full regard to the change in site circumstances (concerning the extraction of minerals) since the Kirklees Local Plan was adopted. By consequence the application is contrary to Policies LP11, LP20, LP28, LP30, LP49 and LP63 of the Kirklees Local Plan.

1.0 INTRODUCTION:

- 1.1 This is an application for full planning permission for residential development.
- 1.2 This application is reported to the Heavy Woollen Planning Sub-Committee due to the site being in excess of 0.5 hectares (HA) in size with a yield of less than 61 units. This is in accordance with the Council's Scheme of Delegation set out in the Constitution.
- 1.3 The site is a part of a wider allocated housing site in the Kirklees Local Plan (site allocation ref. HS144).

2.0 SITE AND SURROUNDINGS:

- 2.1 The Site lies to the north of Wakefield Road, to the west of existing houses located on Leak Hall Crescent, to the north west of residential properties on Springhead Gardens, to the northeast of a Wesleyan Methodist Church and east of surrounding houses accessed from Cumberworth Lane. The site comprises a parcel of grassland, situated in a central location within the village of Denby Dale.
- 2.2 The site measures approximately 1.9 hectares in size, with its topography falling in gradient from north to south. The site is bound by a Public Right of Way (ref DEN/61/10) across its northern boundary, beyond which there is further grassland and trees which serve as a buffer between agricultural land situated further north. The western boundary of the Site is formed by Cumberworth Lane along which are a number of dwellings that directly bound the Site. The southern boundary is formed by a combination of residential dwellings and further grassland directly to the south of the site that is also a part of the site allocation. To the east the site is bound by Leak Hall Crescent which is residential in character.
- 2.3 The site comprises the majority of the housing allocation (HS144) with properties on Springhead Gardens constituting a developed part of the allocation with a residual parcel part of the allocation accessed from Leak Hall Crescent to the east and a further residual parcel accessed from Cumberworth Lane to the south. It should be noted that a culverted watercourse traverses the eastern boundary of the site.

3.0 PROPOSAL:

- 3.1 The proposal is a full application for a residential use comprising development of 48 dwellinghouses. The proposal would be accessed from the west via Cumberworth Lane and would require alterations to the site frontage, including alterations to land outside of the red line boundary and held in third-party ownership.
- 3.2 The dwellinghouses are set at a scale of between 2 and 3 storeys owing to the site's topography (i.e. split-level front to rear) and would include 8 house-types that provide the following mix: 8no. 2-bed, 9no. 3-bed, 22no. 4-bed and 9no. 5-bed units and which range from 71.9sqm to 228.4sqm in internal size.
- 3.3 The proposed units include pitched rooves and are proposed with artificial stone elevations, artificial stone detailing, wood canopies (in some instances), grey flat roof dormers (in some instances) and grey slate roofing. Window specification details have not been provided.
- 3.4 A submitted 'site remediation strategy' by Harland Resources Ltd alludes to the extraction of 12,000 tonnes of coal from the site through in one of its sub-sections. The proposed winning and working of minerals from the site was not disclosed in the application form or included in the development description. However the extraction of coal from the site is treated as a part of the proposed development, alongside the residential element, given its citation in a supporting document.

4.0 RELEVANT PLANNING HISTORY:

- 4.1 The site itself has no planning application history other than its inclusion as an allocated housing site within the Local Plan. The following applications relate to planning applications within the wider housing allocation:

Land Parcel Accessed from Cumberworth Lane

2018/93309 - Outline application for erection of residential development – Appeal Dismissed

2019/93906 - Outline application for erection of residential development up to 10 dwellings – Approved subject to conditions

Springhead Gardens Development

2017/93798 - Erection of 6 detached dwellings – Approved subject to conditions

2019/90118 - Discharge conditions 4 (boundary), 6 (highways), 8 (tree), 11 (ecology), 12 (lighting), 14 (Phase II) on previous permission 2017/93798 for erection of 6 detached dwellings – Approved

2019/90554 - Discharge condition 7 (drainage) on previous permission 2017/93798 for erection of 6 detached dwellings - Approved

2020/91506 - Variation of condition 2. (plans and specification) on previous permission no. 2017/93798 for erection of 6 detached dwellings – Approved

Land Parcel Accessed from Leak Hall Crescent

No planning history

5.0 HISTORY OF NEGOTIATIONS:

- 5.1 The case officer has been in negotiations with the agent to secure additional information necessary for the determination of the application. The list of amendments is set out below:

- Section plans relating to the overbearance of properties on Springhead Gardens, the section plans were subsequently provided.
- Requests for various;
- Applicant request to conduct a viability appraisal process, the tender for this was begun, but no independent assessor was appointed due to the progression of the application in respect of contaminated land;
- Amendments to the site layout in respect of providing a culvert easement of 3m;
- Amendment to the submitted site remediation plans to include 10m tree protection zone for a protected tree (ref 12/21/t1);
- Amendments made to accommodate KC Waste requirements;
- Amendment to the surface water storage solution, altered from a basin to a tank to reduce flood risk;
- Remediation strategy provided 1st August 2022;

- Supplementary remediation letter provided 13th September 2022;
- Transport Assessment provided 19th August 2022;
- Swept paths and tracking plans provided 1st December 2022;
- Application amended from 47 to 48 dwellinghouses with updated application form and fee – 13th December 2022;
- Submission of documentation relating to the option agreement to secure access visibility for the new site entrance on land belonging to 277 Cumberworth Lane;
- Site plan amended to capture missing EV charging points;
- KC Education fee altered following
- Discussions relating to crown land south of site access and the provision of a footway and dropped crossing as advised in the Road Safety Audit;
- KC Education contribution amended to reflect recent changes to school capacity and population forecasts;
- Submission of a retaining wall location plan;
- The LPA have requested that the applicant provide an alternative site remediation strategy that does not include open extraction of coal from the site or otherwise withdraw the application in favour of submitting a dedicated site remediation application inclusive of the extraction. The applicant has indicated that they are not willing to undertake either of these options and therefore the application is being recommended for refusal of permission, by consequence.

5.2 The above amendments cover the majority of new information submitted and amendments received, however it is not exhaustive.

6.0 PLANNING POLICY:

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

6.2 The site is allocated for housing in the Kirklees Local Plan (*housing allocation reference H144*). The site allocation box within the gross site area states that the allocation area 3.24HA in size and has an indicative capacity of 114 dwellings. The application site comprises 1.94HA of the site area and therefore seeks to development most of the site with access from Cumberworth Lane.

6.3 Kirklees Local Plan (KLP):

The following policies are considered relevant:

- LP1** – Achieving sustainable development
- LP2** – Place Shaping
- LP3** – Location of new development
- LP7** – Effective and efficient use of land and buildings
- LP11** – Affordable housing and housing mix
- LP20** – Sustainable travel
- LP21** – Highway Safety and Access
- LP22** – Parking
- LP23** – Core walking and cycling network
- LP24** – Design
- LP27** – Flood Risk
- LP28** - Drainage

LP30 – Trees
LP32 - Landscape
LP33 – Biodiversity and geodiversity
LP35 – Historic environment
LP36 – Proposals for mineral extraction
LP47 – Healthy, active and safe lifestyles
LP48 – Community facilities and services
LP49 – Educational and health care needs
LP50 – Sport and physical activity
LP51– Protection and improvement of local air quality
LP52– Protection and improvement of environmental quality
LP53 – Contaminated and unstable land
LP63 – New open space

6.4 National Planning Policy Framework (NPPF):

Chapter 2 – Achieving sustainable development
Chapter 5 – Delivering a sufficient supply of homes
Chapter 8 – Promoting healthy and safe communities
Chapter 9 – Promoting sustainable transport
Chapter 11 – Making efficient use of land
Chapter 12 – Achieving well designed places
Chapter 14 – Meeting the challenge of climate change, coastal change and flooding
Chapter 15 – Conserving and enhancing the natural environment
Chapter 16 – Conserving and enhancing the historic environment
Chapter 17 – Facilitating the sustainable use of minerals

6.5 Supplementary Planning Guidance & Other Material Considerations

- Highways Design Guide Supplementary Planning Document (2019)
- House Extensions and Alterations SPD (2021)
- Housebuilders Design Guide Supplementary Planning Document (2021)
- Open Space Supplementary Planning Document (2021)
- Biodiversity Net Gain Technical Advice Note (2021)
- Interim Affordable Housing Policy (2016)
- Kirklees Local Plan allocations and designations (2019)
- West Yorkshire Low Emissions Strategy and Air Quality and Emissions Technical Planning Guidance
- Kirklees Strategic Housing Market Assessment (2016)
- Mirfield Design Guide (2002)
- Viability Guidance Note (2020)
- Providing for Education Needs Generated by New Housing

7.0 **PUBLIC/LOCAL RESPONSE:**

- 7.1 The application has been advertised in accordance with the Council's adopted Statement of Community Involvement as well as the Development Management Procedure Order 2015 (as amended).

- 7.2 Following the end of the publicity periods 68 representations have been received on the application. Representors have highlighted the following material considerations with the application which are summarised below:

Site Remediation/Minerals Extraction/Environmental Health Concerns

- Concerns regarding remediation strategy not being reflective of scale of development;
- Assertion that coal extraction requires an application in of itself and should not be considered through a remediation strategy;
- Loss of property value resulting from mineral extraction/site remediation;
- Concerns relating to structural damage from excavation as well as from vibrations emanating from the proposed site works;
- Concerns in respect of noise pollution resulting from both the construction period of the residential proposal and the proposed site remediation;
- Concerns in respect of dust emissions resulting from both the construction period of the residential proposal and the proposed site remediation;
- Citation of the submitted noise and air quality document not assessing/addressing the proposed 'mining activity';
- Concerns in respect of future site stability and risk of subsidence for the proposed properties;
- Concerns in respect of the development's impact on air quality;
- Concerns that the proposed site remediation and mineral extraction will incur impacts on human health;
- Potential for water contamination resulting from excavation of the site for the extraction of coal;
- Concerns with the potential for release of methane gas during the site remediation process;
- Concerns in respect of the lack of detail on infill material;
- Inconsistency between the detail of the geo-technical reports and the remediation strategy;
- Lack of transparency in disclosing extraction of coal from the site;

Transport/Access

- Queries regarding the access point location contrary to Local Plan discussions (i.e. from Leak Hall Crescent as opposed to Cumberworth Lane);
- Concerns in respect of heavy vehicle trips in proximity to the listed church;
- Concerns with regard to the trip generation resulting from site remediation, including the size and weight of vehicles;
- Concerns in respect of the site remediation upon the safe operation of the highway network;
- Concerns in respect of the site visibility splay assumptions, in that they are insufficient and could incur an increase in collisions;
- Concerns in respect of damage to the public right of way, and requests of its protection during the construction period;
- Claims that there are various inaccuracies cited within the Transport Assessment;
- Improvements to public transport necessary to serve the site and local area;
- Various concerns relating to pedestrian safety;

- Claims the travel plan does not sufficiently encourage modal shift;
- Citation of insufficient visitor parking spaces on the site;
- Internal garage sizes are insufficient to accommodate vehicles;
- Inaccuracies in the submitted Road Safety Audit;

Drainage/Flood Risk

- Concerns in respect of the development damaging the culverted watercourse running across the eastern boundary of the site.
- Lack of information relating to the location of the culvert;
- Queries concerning the viability of using a soakaway pond/attenuation basin;
- Concerns relating to the development increasing the risk of flooding elsewhere off-site;
- Concerns in respect of the calculation which informs the volume of surface water storage required to serve the development;
- Claims of inaccuracies in the submitted surface water drainage strategy, including input variables such as rainfall;
- Local foul drainage network cannot handle the increased demand generated by the proposal;

Amenity/Privacy/Light/Design/Landscaping

- The proposed residential properties are not in-keeping with the character of the local area;
- The development would alter the landscape character of the area to a more urban setting;
- Boundary treatments are not in-keeping with the local area;
- Insufficient variety in house-type size and that the reliance on large dwellings is at the expense of providing sufficient affordable housing – consequently the proposal is not reflective of local needs;
- Landscaping proposals are limited and insufficient;
- Concerns in respect of the proximity of the proposed dwellinghouses relative to existing dwellinghouses neighbouring the site;
- Incorporation of three storey units is out of character with the local area;
- Concerns in respect of privacy loss of existing residents;
- Insufficient on-site open space in the proposal scheme;
- Dominance of frontage parking detracts from the proposal's appearance;
- Insufficient information with regard to site levels;

Infrastructure

- Concerns as to the developments impact on local services, such as schools and healthcare facilities, including the need for increased funding;
- Insufficient affordable housing proposed;

Heritage

- Concerns in respect of the potential for damage to the listed church;

Biodiversity/Trees/Climate/Energy

- Claims of site clearance during nesting bird season and that ecological reports were conducted after the site had been cleared;

- Citing of the potential for the development to disturb various protected species that inhabit the site;
- Queries as to the lack of energy saving/green infrastructure such as solar panels and air/ground source heat pumps;
- No enhancement opportunities incorporated for biodiversity;
- Claimed presence of newts on the site;
- Claims that the ecology surveys are incomplete;
- A biodiversity net gain assessment should be submitted (this has since been submitted);

Other Considerations

- Concerns in respect of the quantum of retaining walls within the proposal and their subsequent maintenance liability;
- Concerns in respect of the accuracy of submitted supporting documentation;
- Concerns that the development is located within the Green Belt;
- Not all of the development is proposed within the applicant's ownership;
- Health Impact Assessment not submitted;

7.3 Denby Dale Parish Council were consulted on the application and provided comments on the 31st August 2022 and the 20th December 2022. The latter response was a duplication of the former and was as follows:

Councillors wish to object to this as follows: The application itself contains some errors of fact.

- *Assessment of flood risk: will the proposal increase the risk of flooding elsewhere. This has been answered 'no' but it is believed to be a clear 'yes'. There are springs marked to the north of the site, which drain down the hill. There is also an area into which these springs empty, where water is held, so that it seeps down the hill rather than rushes. There are sinks marked adjacent to the site.*
- *There is a beck that runs in the valley at the back of the houses on Leak Hall Lane, so the claim that 'there is no watercourse near the site' is false.*
- *Biodiversity and geological conservation. The applicant claims no knowledge of animal life, but it currently includes birds (including owls), bats, common toads and insects.*
- *The applicant claims no industrial or commercial processes or machinery whereas the 'remediation plan' includes an open cast coal mine using various huge excavators as the developer's site investigation 'has revealed several challenges including shafts, voids and seams.' This plan (effectively an open cast mine) includes a 'coal processing area' next to the public footpath and in close proximity to homes and a 'temporary overburden heap' right next to the footpath and at the top of the valley from which the springs feed the beck. Runoff is thus bound to enter the water system and contaminate it. It must be asked why this area of wet land at the head of a watercourse is considered suitable for such a spoil heap. In addition to these factual errors:*
- *Harland Resources (the mining operation) state that they are aware of the TPO relating to the tree in the development and a protection zone will be established throughout these works. The tree survey says that developers have already damaged many trees with machinery or by depositing debris on them. A length of hedgerow has also been recently destroyed by heavy machinery.*
- *The air quality assessment and environmental impact statements make no mention of the proposed open cast mine and its deleterious effects.*

- *The area to the north of the site is a possible deserted medieval settlement (West Yorkshire Historic Environment Record MWY2516) (see report from Archaeological Advisory Service). It is reported that earthwork remains of possible house platforms were observed here. This location along with a wider area around Leak Hall is a Class III Area of Archaeological Importance and a non-designated heritage asset. Evidence of medieval rural settlement is rare in the county in general and any remains of this date encountered would be of up to regional importance. The Archaeological Advisory Service recommends that, in accordance with appropriate policies, the developer be required to provide the Planning Authority with an archaeological evaluation, based on appropriate analytical methods, of the full archaeological implications of the proposed development. It recommends that this evaluation should be carried out prior to the determination of this application as required by the NPPF.*
- *Paragraph 111 of the NPPF states that "Development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe." It is believed this to be the case.*
- *The Transport Assessment begins from the false premise that Cumberworth Lane is 'lightly trafficked' (3.2.1 TA Report). There is a weekday average of 167 traffic movements one way and 189 the other per hour at peak times (i.e. around 6 per minute) (see their own data); hardly 'light'. Their own speed summary has over a third of weekday traffic movements exceeding the speed limit on average in one direction (northwest) and over half exceeding the speed limit in the other direction (southeast).*
- *The TA assumes 'minimal impact' on the wider road network. It is estimated 47 households each with at least one car, many with two (they are mostly 4 bedroomed properties). At an average 1.5 cars per household that is a likely increase in traffic on this blind bend of approximately 150 cars per day (assuming just one return journey for each vehicle). In addition, it is proposed, whilst the mining takes place, to have 18 coal wagon movements per day plus other associated machinery.*

The Planning Committee therefore objects on the grounds of:

- *Errors in the application, particularly in relation to watercourses.*
- *Damage to biodiversity and protected species such as bats.*
- *Work required by the Archaeological Advisory Service.*
- *Inappropriate housing for this area. Four bedroom 'executive' type homes are not needed for young couples or older people wishing to downsize in the village. It can only lead to an increase in commuter traffic. The density of the housing is also high.*
- *None of the housing could be considered 'affordable'.*
- *The 'remediation' strategy, required to make a site which 'has revealed several challenges including shafts, voids and seams' usable, is essentially an unregulated open cast coal mine, whose workings will interfere with wildlife, watercourses and archaeological evidence.*
- *The transport assessment is based on the false premise that Cumberworth Lane is 'lightly trafficked.'*
- *In addition, there is no mention of S106 (or whatever it is now). Do developers no longer have to even pretend to mitigate their destruction by providing local services/support?*

- 7.4 Denby Dale Ward Members were notified of the application and its subsequent amendments. The following representations were provided:

Cllr Tim Bamford – 9th September 2022:

I wish to comment on this application as follows.

For background, I used to work in the opencast coal industry.

The remediation strategy is a little thin in detail for, what amounts to, an opencast coal mine.

This is contrary to para 217 of the NPPF.

The site has three redundant mine shafts on it and at least one spring.

It is a 'High Risk Geotechnical Area' full of voids, gas and mine entry points.

The remediation statement has no temporary drainage plan and, given the problems mentioned earlier this should be a major worry. When opened up to its maximum depth, if we have a prolonged bout of wet weather, the result could have serious consequences. Water, which will be mixed with contaminated water from the old workings will have to be pumped from the excavation and be settled and treated before being drained off site.

The coal will also be processed on site ie crushed and screened to meet power station requirements leading to noise and dust. This is unacceptable.

The spoil heaps are also a worry, destabilising wet weather could lead to a slip of the heaps.

When the spoil is put back and compacted the vibration could lead to damage to adjacent properties.

This will also affect the springs, which have already flooded houses on Wakefield Road due to Eastwood homes grouting their site, adjacent to this site, before building. This has diverted the spring into these properties.

The price of coal has risen dramatically recently which would make this remediation strategy very attractive to the developer.

I am not happy about the proposal to use Cumberworth Lane as the access to site.

This access is on a pinch point on the road, which is narrow, if a bus comes along it is a struggle to pass it.

A loaded truck coming downhill in the wet would struggle to stop for someone exiting site unexpectedly due to poor sight lines. Trucks will not be able to access site without mounting the opposite pavement, which is obviously unsafe.

I would also like to mention that the Local Plan Inspector accepted this site into the local plan on the assumption that Leak Hall Lane was to be the access point. Why then is the suggested access on Cumberworth Lane which was deemed to be unsuitable?

I have many concerns about this site but these are the most serious ones.

The site originally came forward as around 70 fully affordable houses. What happened to this proposal?

In summary, given the challenging issues with drainage and highways, I think this site cannot be developed safely

I may add more comments later.

Best regards

Cllr Tim Bamford

I have the following comments to add.

- 4 and 5 bedroomed homes which the area does not need. We need housing – bungalows – for older people and affordable, 3 bedroomed semis/terraced fit for single people and big enough for young families, conforming to National Internal Space Guidelines*
- Affordable housing proposed appears to fall short of LPA criteria – 20% affordable – therefore 6 homes needed on 30 house development*
- Lack of visitor parking spaces – does not conform to LPA requirements – 1 space for every 4 homes required.*
- Attenuation tank and pumping station infringe the buffer zone – means excavations near to trees*
- Road turning area also infringes on buffer zone*
- Likewise garden area of house at entrance infringes on buffer zone*
- No information on levels – a major problem with previous application – housing should be designed to fit the lie of the land not built on tiers.*
- No public space*
- Overuse of close lapped wooden fencing inappropriate to the look and heritage of the area – should be stone walls and preferably hedging to comply with Councils 'green' and sustainable policies.*
- Serious concerns about site access and sightline visibility, particularly in view of the changes proposed via a new application from Yorkshire Country Properties on the adjoining site. Why aren't these two sites linked by internal roadways and one way system – i.e. one entrance in, one entrance out.*

7.5 Cllr Simpson objected to the scheme in discussions with the planning officer. In a number of correspondence Cllr Simpson raised issues regarding the environmental impact of the scheme, including: pollution of waterways, air quality, noise and wider environmental impacts particularly relating to the remediation strategy and proposed extraction and processing of coal. Cllr Simpson maintains his objection and asks the committee to refuse the application on the basis of the environmental issues outlined.

7.6 Cllr Watson provided the following comments:

I write with reference to the above planning application and to set out a number of concerns with the extant application. These do not cover all the concerns I have but should give a good indication of why I consider this site to be wholly inappropriate for the proposed development and are, therefore, made on the basis that if necessary further objections may be set out in due course.

Mineral Extraction

A fundamental and major concern with this application is that the proposal for the site is to essentially create an open cast mining operation right in the centre of Denby Dale village and in particular in very close proximity to residential areas.

The proposal would seem to be essentially for a mineral extraction site which is not something that was considered in the Kirklees Local Plan and is wholly inappropriate for a location such as this.

Coal production at a volume of 1200 tonnes per week over a period of 10 weeks is a substantial mining operation and this is wholly inappropriate for this location.

Remediation Statement

There is reference within the documentation supporting the application to three redundant mine shafts. The remediation statement makes reference in an almost nonchalant way to there being “several challenges including shafts, voids and seams”. There is also reference to the ground having been left in “a potentially unstable condition that will be addressed prior to building on site”.

In short it seems to be acknowledged that there are substantial risks both during and potentially after the development of the site but the proposed remediation statement is lacking in technical detail and might be generously described as “sparse” or “superficial”.

The gas monitoring report states:

“Given the information presented above, the levels of ground gas, if left untreated, is likely to affect the end users at the site, such that a ‘high’ risk should be considered.”

The letter of 12 September 2022 from Rogers Geotechnical Services Limited advises:

*“The remediation statement provided from Harland Resources is solely to deal with the **geotechnical** risks associated with instability from underground coal mining workings.”*

In short it concerns me that there are substantial risk factors which have just not been considered or addressed in depth and in the absence of such proper consideration and analysis it would be negligent of the council to grant planning consent based upon the information before the committee.

Water

There has already been issues of flowing water impacting homes on Wakefield Road which it seems arises as a consequence of other development in the area.

I have grave concerns as to how the extraction of these large volumes of minerals may affect the flow of water in and around the site both during and subsequent to the extraction works.

Traffic/Access

I have had residents of the area express concerns to me in the past about the speed and volume of traffic travelling to/from Denby Dale along Cumberworth Lane and in particular in the part of the road close to the centre of Denby Dale around the Methodist Church.

These proposals, both during construction, and thereafter would simply serve to exacerbate these issues.

Conclusion

There is much more that could be said regarding this site by detailed reference to the documentation filed and why the proposals should not be acceptable from a planning perspective.

It suffices to say that there are substantial and legitimate concerns which the proposals do not come close to addressing.

In addition to the specific concerns detailed above this application effectively seeks to “shoehorn” a substantial development into an area where it is completely inappropriate and unsustainable and which the development process as proposed will, it is recognized, require very substantial remediation which should not be given serious consideration in this location.

For these reasons alone the application for planning permission should be refused.

*Yours sincerely
Cllr Michael Watson*

- 7.6 Queries on behalf of Mark Eastwood MP have been raised by his team on behalf of local residents, however no formal comments have been received by the LPA.

8.0 CONSULTATION RESPONSES:

The following is a brief summary of consultee advice (more details are contained within the assessment section of the report, where appropriate):

8.1 Statutory:

- *K.C Highways Development Management & Highway Structures*

Highways Structures have confirmed that the development would be acceptable subject to conditions.

Highways Development Management have cited that the development is acceptable in principle subject to further information being provided that would confirm that the internal estate road is operationally safe for use by private vehicles of new occupants and refuse collection vehicles that would service their properties.

HDM Advise that a sustainable travel fund for the purpose of providing bus and rail metro cards for new occupants of the site would be required at a cost of £52,128. (48 x £1066). This metric is informed through consultation with West Yorkshire Combined Authority.

- *Lead Local Flood Authority*

Provisional support subject to downstream defect repair.

- *Health & Safety Executive*
No objections
- *The Coal Authority*
No objections subject to conditions
- *Yorkshire Water*
No objections subject to conditions

8.2 **Non-statutory:**

- *KC Crime Prevention*
No objections
- *K.C Ecology*
Based upon the submitted biodiversity net gain metric a figure of £147,890 (inclusive of 15% admin fee) in an off-site financial contribution results from the proposed development.
- *K.C. Education*
A financial contribution of £59,573 is required from the proposed development for the purpose of providing provision of increased school capacity in the local area.
- *K.C Trees*
No objections subject to conditions
- *K.C Environmental Health*
Object in respect of multiple matters, specifically with regard to the proposed site remediation and the resultant potential environmental impacts.
- *K.C Landscape*
A financial contribution of £88,594 is required to offset shortfalls in Public Open Space Typologies, as defined in the Open Space SPD.
- *K.C Strategic Housing*
There is a requirement for 10 on-site affordable units from this proposal with a split of 5 homes as social rent, 3 First Homes and 2 further intermediate units.
- *K.C. Strategic Waste*

A nearby landfill site (WDL 160) lies approximately 245m away from the site. Monitoring surveys indicate that methane values emanating from the landfill site are 'nil'. Consequently no action or further investigation is required.

- *K.C Public Right of Way*

No connection is attempted to the PROW from the site.

- *K.C Conservation and Design*

No objections subject to conditions

- *KC Waste Strategy*

Advice provided in respect of the proposed uses' waste management.

- *Northern Gas Network*

No objections

- *West Yorkshire Archaeology Service*

Post determination programme of archaeological excavation is advised. No objection subject to attachment of the condition.

9.0 MAIN ISSUES

9.1 The appraisal of the application will review the following topics:

- Land Use and Principle of Development
- Environmental Health, Site Contamination and Stability
- Housing and Residential Amenity
- Transportation and Access Matters
- Biodiversity and Tree Matters
- Scale, Visual Appearance, Heritage and Landscaping Matters
- Site Drainage and Flood Risk
- Planning Obligations
- Representations
- Other Matters

10.0 APPRAISAL

Principle of development, land use and sustainability

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. The starting point in assessing any planning application is therefore to ascertain whether or not a proposal accords with the relevant policies within the development plan, in this case, the Kirklees Local Plan. If a planning application does not accord with the development plan, then regard should be as to whether there are other material considerations, including the NPPF, which indicate the planning permission should be granted.

- 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 and taking account of windfalls, committed housing figures and losses/demolitions.
- 10.3 The planning application site consists of Local Plan housing allocation HS69. Full weight can be given to this site allocation for housing development in accordance with Local Plan policy LP3 – Location of New Development. Allocation of this and other greenfield sites (including those taken from the Green Belt) was based on a rigorous borough-wide assessment of housing and other need, as well as an analysis of available land and its suitability for housing, employment and other uses. Full weight can be given to this site allocation subject to the following constraints identified within the housing allocation box within the KLP Allocations and Designations document, which are relevant to the site:
- Third party land required to achieve sufficient visibility splays;
 - The provision of a pedestrian footway is required across the site frontage at Leak Hall Lane;
 - Public right of way crosses the site;
 - Site is close to listed buildings;
 - Site is close to an archaeological site;
 - Part/all of the site is within a high-risk coal referral area
- 10.4 An indicative capacity of 114 dwellings over 3.24HA is noted in the supporting text of the site allocation. This equates to 35 dwellings per hectare which is exactly in line with the density required by policy LP7 – Efficient and Effective Use of Land and Buildings. The proposal is 1.94HA of the allocation with a proposed yield of 48 units.
- 10.5 When discounting informal open space areas within the site boundary, the developed area of the proposal is 1.70HA. This would elicit, under the density target of policy LP7, that the site would have a capacity of 60 (59.5r) dwellinghouses when allowing for a density of 35 dwellings per HA. A capacity based upon the calculation of the gross site area of 1.94HA against the target density of 35 dwellings per HA is 70 (67.9r) dwellinghouses per HA.
- 10.6 Policy LP7 requires a net density to be used when calculating whether a proposal meets the density requirement. Consequently the 1.70HA site area is applicable and the proposal under this application, being 48 dwellings in yield, is 12 units below the target of 35 dwellings per HA. As a result the proposed layout achieves a density of 28.2 dwellings per HA which is significantly below the requisite density target of LP7. It can therefore be assumed that the development does not make efficient use of land and buildings, and it has not been sufficiently demonstrated that the proposed layout is necessary to be compatible with its surroundings or to secure a particular house type that would meet local needs or financial viability. A reason for refusal is sustained on this basis given that the proposed development is contrary to Policy LP7 of the Kirklees Local Plan and Paragraph 124 of the National Planning Policy Framework. Kirklees is subject to a Housing Delivery Test Action Plan, therefore meeting anticipated densities for allocated sites is crucial to housing supply in the local area.

- 10.7 In respect of the site's surroundings, there is a highly mixed situation in respect of housing density, with terraced properties directly south, semi-detached properties to the east and a number of detached properties situated to the north west and south east. Overall it is considered that the site does not integrate sufficient terraced housing to increase the site density to an acceptable level and the at the site is over-reliant on semi-detached and detached housing. As detailed in the *Housing Mix* section below, there is no overriding requirement for a particular house type in Kirklees Rural East and therefore there is no requirement to provide lower density housing at the mix currently proposed. As regards financial viability, a viability submission has been provided, however it is afforded little weight in respect of decision recommendation to Committee as the independent assessment of its assumptions has not been entered into due to separate matters pertaining to other reasons for refusal.
- 10.8 Furthermore, with regard to Local Plan Policies LP1 – Presumption in Favour of Sustainable Development and LP3 – Location of New Development, it is considered that residential development at this site can be regarded as sustainable given the site's location adjacent to an accessible, developed area, its proximity to public transport and other local amenities. The site is located approximately 150m from the centre of Denby Dale which provides a good range of shops and services. There are several schools within the vicinity (Denby Dale First and Denby C of E) and the site is easily accessible by public transport, with good bus routes within 50-150m walking distance of the site. Buses run along both Cumberworth Lane and Wakefield Road to the south of the site which provide access to both Holmfirth, Huddersfield, Barnsley and Penistone. The Denby Dale train station on the Barnsley – Huddersfield line is also just over 500m walking distance from the site. Considering the above, it is considered that this site is within a sustainable location and would comply with Paragraph 110 of the NPPF which states that *“appropriate opportunities to promote sustainable transport modes can be - or have been – taken up, given the type of development and its location”*.
- 10.9 On the basis of the above analysis, it is Officers' recommendation to confirm to members that the principle of development for the proposal is not acceptable due to the issues relating to the density of the scheme, which is contrary to Policy LP7 and Paragraph 124 of the NPPF.

Environmental Health, Site Contamination and Stability

- 10.10 In accordance with Paragraph 183 of the National Planning Policy Framework, Planning policies and decisions should ensure that:
- a) a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation);
 - b) after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990;
- and
- c) adequate site investigation information, prepared by a competent person, is available to inform these assessments.

Environmental Health Matters Related to Contaminated Land

- 10.11 Environmental Health was originally consulted in August 2022 to provide comments on the proposal to erect 47 dwellings (now 48) with associated highways and landscaping on the land at Cliff Hill, Denby Dale and to date, Environmental Health have provided three consultation responses (on 1st September, 22nd November 2022 and 19th December 2022). In their original response dated 1st September 2022, Environmental Health reviewed the following documents submitted in support of the application:
- Phase 1 Report by Arc Environmental, dated 9th September 2021 (ref: 21-719)
 - Phase 2 Report by Rogers Geotechnical Services Ltd, dated 25th May 2022 (ref: C2206/22/E/3401)
 - Geo Risk+ Report by Groundsure, dated 15th November 2021 (ref: SF-8329067)
 - Remediation Statement by Harland Resources Ltd, dated 11th July 2022 (no reference)
- 10.12 Environmental Health accepted the Phase 1 report and found the Phase 2 and Geo Risk+ report satisfactory however, as the site characterisation was considered incomplete, conditions were recommended to secure the submission of a completed Phase 2 investigation and report and for the subsequent phases of the development. Environmental Health did not accept the remediation statement as it was determined to be missing fundamental information in relation to contaminated land. At that time, Environmental Health stated that they did not object to the proposed development subject to the necessary conditions being applied to any consent granted.
- 10.13 Following a second consultation request, Environmental Health commented on a letter titled, 'Ref: Statement for Outline of Remediation – Cliff Hill, Denby Dale, Huddersfield' by Rogers Geotechnical Services Ltd, dated 12th September 2022 (Ref: Ref C2206/21/E/3401-Letter).
- 10.14 The letter acknowledged that the previous remediation statement by Harland Resources Ltd., dealt solely with geotechnical risk at the site and the letter advised that an 'updated conceptual site model will be produced to indicate the mitigation of such risks as part of a sitewide geo-environmental remediation statement.' The letter also proposed a phased approach to the remediation. The document then listed all our previously recommended conditions and detailed statements to be provided to address each of the conditions. Environmental Health accepted the letter, however their previous recommendations remained.
- 10.15 Environmental Health have since received, a letter titled 'Ref: Gas Monitoring – Cliff Hill, Denby Dale, Huddersfield (ref: C2206/21/E)' by Rogers Geotechnical Services Ltd (RGS), dated 15th July 2022 (ref: C2206/21/E/3228). The letter includes geotechnical information, which is outside the remit of Environmental Health.

- 10.16 The Phase II investigation report ref: C2206/21/E) provided four ground gas monitoring readings over 1 month. The new document provides additional ground gas data. Collectively the data set provided to date consists of 6 readings over 3 months, with atmospheric pressures between 991 mb and 1013 mb. The report states that the monitoring found 'a maximum concentration of 0.1% methane, with concentrations of carbon dioxide ranging between 0% and 8.2% in association with oxygen levels of between 12.3% and 21.4%.' In addition, the maximum flow rate was 0.1 l/h. The gas screening value for both methane and carbon dioxide was calculated as 0.0001 l/h and 0.0082l/h respectively.
- 10.17 From the data set, the report considers that the gas regime should be provisionally characterised as Characteristic Situation Level 2 due to elevated carbon dioxide. However, the report continues to recommend continuous monitoring to fully realise rapid gas release from pressure drops based on best practice guidance. This is because of the potential pathways present at the site associated with coal mine workings.
- 10.18 The report concludes that the document should be viewed as a 'live document' and updated when the design is fixed and before construction commences. The document also recommends a further review of mine gas risk once proposals have been finalised, remediation of mine workings, implementation of additional ground gas monitoring and the production of a remediation strategy and validation report. Concerning the ground gas monitoring RGS proposed that this could be undertaken post-remediation to confirm the results.
- 10.19 Environmental Health cannot confirm the validity of the information presented in the letter as no full data sheets have been presented that detail the atmospheric pressure trends and no calibration information for the ground gas monitors has been included. Finally, the proposals for additional monitoring are unclear and do not go far enough given the ground gas data presented.
- 10.20 Having assessed all contaminated land documents submitted to date, Environmental Health cannot confirm whether the site could be safely developed as the site characterisation remains incomplete. In addition, from the remediation statement, it is understood that coal extraction activities are proposed at the site as a part of the site's remediation. Environmental Health have concerns that such extraction works may significantly alter the ground gas pathways at the site, which in turn may change the conclusions of the ground gas characterisation.
- 10.21 Environmental Health have advised that what is clear is that ground gas appears to be a potential source of contamination at the site in its current state and there is a risk to end-users should no remediation take place. However, it is unclear at this stage whether the site can be safely remediated as we do not consider the site characterisation to be complete. Therefore, it is inappropriate to consider remediation at this stage. Moreover, the proposals may alter the ground conditions undermining any ground gas monitoring and remediation made at this time.

10.22 To summarise the Contaminated Land Findings to Date:

- Fieldwork included but was not limited to, 10 windowless sample boreholes, the installation of 9 gas monitoring standpipes 'between ~1m and 3.6m depth', 9 rotary open hole boreholes and 15 mechanical excavated trial pits.
- Collectively the ground gas monitoring to date consists of 6 readings over 3 months.
- Several instances of intact coal and voids were identified, and the strata conditions were described as showing 'variability.'
- Notably, the report describes 'potentially three distinct horizons of coal, or workings beneath the site'.
- None of the 9 soil samples analysed were found to exceed the chosen assessment criteria for inorganic or organic contaminants.
- Ground gas monitoring reported a maximum concentration of 0.1% methane with concentrations of carbon dioxide ranging between 0% and 8.2% in association with oxygen levels of between 12.3% and 21.4%. The maximum flow rate reported was 0.1 l/h.
- The gas screening value (GSV) has been calculated in accordance with CIRIA C665 for both methane and carbon dioxide, as 0.0001 l/h and 0.0082l/h respectively.
- The site has provisionally been characterised as *Characteristic Situation Level 2* (based on carbon dioxide exceeding the 5% limit) however additional ground gas monitoring has been proposed by RGS.

10.23 In respect of key contaminated land issues, it should be noted that the Remediation Statement by Harland Resources Ltd, dated 11th July 2022 (no reference) primarily contains geotechnical information, which is outside the remit of Environmental Health. Environmental Health's consultation response therefore only relates to the land contamination aspects of the report which relate to the potential for adverse impacts on the natural environment and human health.

10.24 To date, no new remediation strategy has been submitted. The document mentions the extraction of 12,000 tonnes of coal and associated on-site activities. As discussed, Environmental Health (and by consequence the Local Planning/Mineral Authority) do not accept the Remediation Statement by Harland Resources Ltd, dated 11th July 2022 (no reference). Moreover, the scale of the coal extraction and activities are not explicitly detailed in the planning description and supporting information. This has a significant bearing on the validity of previous comments and recommendations made by Environmental Health.

10.25 In addition to this, there is little evidence to confirm whether the remediation strategy has been authored by a competent person as defined under Annex 2 of the National Planning and Policy Framework (NPPF). The report also fails to

include the necessary information required in a remediation strategy as detailed in the Land Contamination Risk Management (LCRM) guidance and in the Yorkshire and Lincolnshire Pollution Action Group (YALPAG) guidance.

- 10.26 Notwithstanding, from the submitted documents, it is understood that several coal seams and features exist on-site. The remediation statement suggests that to remediate the site, topsoil will be stripped and stockpiled, followed by the excavation of coal seams and backfilling with the originally stripped materials. The document also appears to propose the washing of coal, stockpiling and screening of materials on-site.
- 10.27 The disturbance of soil, coal seams and regrading at the site may lead to altered ground gas pathways from on-site and off-site sources. Therefore, any ground gas monitoring undertaken at this stage (as suggested by RGS) may not be reflective of an actual future site setting where the land has been remediated and is 'ready' for groundwork in relation to any permitted residential development. To clarify, should any permitted activities in relation to coal extraction and associated on-site activities take place, then this may have consequences for the residential planning permission that is sought by the applicant.
- 10.28 A further concern would be the potential for acid mine drainage (AMD) which does not appear to be considered in the supporting documents provided to Environmental Health to date. The exposure of, backfilling, and washing proposed at the site may increase the likelihood of AMD in proximity to a culverted watercourse, with the potential for significant pollution being incurred by the on-site and off-site environment. Stockpiled coal may also be at risk of producing acidic drainage. Again, such effluent can cause serious degradation of the on-site and off-site environment that could significantly impact receptors.
- 10.29 Lastly, the risk of combustible materials appears to be poorly considered to date. Whilst the remediation statement provided does suggest that any exposed seams will be 'clay sealed' this does not go far enough.
- 10.30 What is clear is that additional risk assessments and site investigations would be necessary to characterise the site and we consider that the contaminated land information provided to date has been unable to determine to a high degree of confidence that there is no significant possibility of significant harm to either on-site or off-site receptors. The mineral planning authority, in conjunction with Environmental Health, would have serious concerns should remedial proposals include the extraction of coal and associated mining activities on-site. The information submitted thus far does not satisfy Council officers that the proposals are possible through conditional permission and for that reason, an objection is lodged to the current proposals on contaminated land grounds.
- 10.31 Paragraph 183a of the NPPF stipulates that planning policies and decisions should ensure that a site is suitable for its proposed use taking account of contamination, proposed remediation, and potential impacts from that remediation. Paragraph 183b of the NPPF requires that planning decisions ensure, as a minimum, that land not be capable of being classified as contaminated land under Part IIA of the Environmental Protection Act 1990. Paragraph 183c of the NPPF states that adequate site investigation information, prepared by a competent person, is available to inform these

assessments. Lastly, as progress is made through the stages of the LCRM guidance, the LPA will need a high level of certainty to ensure compliance and that risks have been satisfactorily assessed.

- 10.32 As the analysis above sets out, it is considered that the supporting information provided to date fails to wholly meet NPPF guidelines and some of the information provided has failed to meet the necessary requirements for documents as per LCRM guidance. Moreover, extraction of coal at the site (and the associated activities) may present a new potential source of contamination and may change gas pathways that cannot be assessed at this stage. Consequently insufficient information has been provided to satisfy the Local Planning Authority that the risks arising from land contamination on the site can be adequately mitigated under the proposed land remediation strategy. Likewise insufficient understanding of the residual impacts of the site remediation, inclusive of an incomplete understanding of the site's characterisation, do not provide sufficient comfort to allow the proposed site remediation to be undertaken subject to appropriately worded planning conditions. The current submission therefore incurs unacceptable risks that could cause harm to people and/or the environment contrary to Kirklees Local Plan Policy LP53 as well as NPPF Paragraph 183 (clauses a, b and c).

Site Remediation, Land Stability and The Proposed Extraction of Coal

- 10.33 When determining planning applications, great weight should be given to the benefits of mineral extraction, including to the economy. In considering proposals for mineral extraction, minerals planning authorities should ensure that there are no unacceptable adverse impacts on the natural and historic environment, human health or aviation safety, and take into account the cumulative effect of multiple impacts from individual sites and/or from a number of sites in a locality; likewise minerals planning authorities should ensure that any unavoidable noise, dust and particle emissions and any blasting vibrations are controlled, mitigated or removed at source, and establish appropriate noise limits for extraction in proximity to noise sensitive properties.
- 10.34 With particular regard to oil, gas and coal exploration and extraction, minerals planning authorities should not grant planning permission for the extraction of coal unless:
- a) the proposal is environmentally acceptable, or can be made so by planning conditions or obligations; or
 - b) if it is not environmentally acceptable, then it provides national, local or community benefits which clearly outweigh its likely impacts (taking all relevant matters into account, including any residual environmental impacts).
- 10.35 Supporting paragraph 15.11 of the Kirklees Local Plan states that national planning guidance does not support the opening of new opencast coal sites unless they meet strict criteria regarding environmental impact or provide overwhelming community benefits.
- 10.36 In Environmental Health's previous response dated 1st September 2022, the consultee made comments and recommendations in relation to air quality, noise and a construction environmental management plan. As it has emerged that the application goes beyond proposals for residential development and

includes the large-scale extraction of coal and associated activities, previous Environmental Health advice is now considered valid only to the residential aspect of the proposal. This is because the working of minerals was not made clear in the application form, development description or supporting information other than a remediation statement. Indeed the submitted information pertinent to noise and air quality had no regard to matters relating to coal extraction and therefore Environmental Health have had insufficient information before them to make an informed recommendation to the Minerals Planning Authority in respect of the acceptability of the proposal. Similarly, Environmental Health in conjunction with the Minerals Planning Authority have serious concerns that the proposed coal extraction element of the proposed remediation strategy will have significant impact on air quality, noise and vibration for local residents immediately adjacent the development site.

10.37 As no information has been submitted to address the concerns highlighted in paragraph 10.34, Environmental Health and the Minerals Planning Authority cannot adequately assess the proposal to confirm the extent of any significant adverse impacts on human health or the amenity of the occupiers of neighbouring properties as the documents fail to encompass the whole of the proposed works. What's more, and as alluded to in paragraphs 10.27 and 10.28 of this report, there are also potentially significant adverse impacts to the natural environment resulting from the proposed site remediation in respect of altered ground gas pathways (post-remediation) and AMD.

10.38 No overriding community benefits have been put forward by the applicant and none are obvious the Minerals Planning Authority other than the supply of housing infrastructure, which is not considered to sufficiently offset the harm of opencast coal mining which is, fundamentally, proposed within a settlement.

10.39 The Coal Authority have provided no objections to the proposed site remediation aspect of the development. The Minerals Planning Authority receiving clarification on their comments on the 27th January 2021, as follows:

As you are aware, the remit of the Coal Authority's Planning team is to provide advice and guidance to Local Planning Authorities for sites within the defined Development High Risk Area where buildings and pipelines are proposed. In this case the development proposal was supported by a report from a geotechnical consultant which recommends that the removal of any remnant coal and coal mining legacy features from the site will remove the risks to land instability arising from these features. The geotechnical consultant has concluded that this will ensure that the proposed development will be safe and stable. In terms of addressing the risks posed by past coal mining activity this is an acceptable form of remediation. On this basis, and in light of our remit, the Planning team at the Coal Authority has raised no objections.

It is not the role of the Planning team at the Coal Authority to comment on the acceptability of the remedial works in respect of any potential environmental and amenity impacts they may have, or to comment on the design of these works. The implications of the remedial works proposed is a matter for the LPA to consider as part of its decision making process.

10.40 The Minerals Planning Authority therefore do not recommend refusal of the application in respect of land stability matters, as it is clear that the proposal is acceptable purely from a land stability perspective. The Minerals Planning

Authority therefore clarify that their objection to the proposal relates to how the site remediation, for the purpose of land stability, incurs unacceptable (and unidentified) environmental and amenity impacts for nearby residential occupiers and that this is reflected in its reason for refusal. Nevertheless, the Planning Authority would highlight that it is their opinion that the applicant has not undertaken sufficient investigation into alternative remediation methods, such as bulk infill grouting of voids, that would be considered less environmentally intrusive. Investigation into the feasibility of alternative methods of site remediation for land stability and contaminated land purposes

- 10.41 Indeed the applicant has justified their approach in correspondence dated 2nd March 2023 that, in their view, the extraction of coal is an incidental mineral resulting from remediation of the site. It is perceived that this position is predicated on paragraph 210 clause d of the NPPF. Should this be correct, it is the opinion of the Minerals Planning Authority that there are several issues with this view. The first is that paragraph 210 relates to planning policies, not planning decisions, with the latter being the case in this instance. The second, is that NPPF paragraph 217 and its sub-clauses supersede paragraph 210 clause d with specific regard to coal extraction. The third and final point, subject to the first and second points, is that the prior extraction of minerals to facilitate non-mineral development is caveated by wording which requires the mineral extraction to necessary as well as practical and environmentally feasible.
- 10.42 As suggested in paragraph 10.38, the Mineral Planning Authority have not received sufficient information in respect of alternative remediation methods to be satisfied that the proposed remediation strategy is necessary. Similarly, the proposed remediation method to openly extract coal in proximity to a large number of dwellinghouses within a settlement is not considered practical, especially when consideration of alternative site remediation methods have not been reviewed. Finally, the environmental feasibility of coal extraction has been insufficiently evidenced, as explained in paragraphs 10.27, 10.28, 10.34 and 10.35 of this report.
- 10.43 Procedurally, with regard to the Development Management Procedure Order, the winning and working of materials has not been applied for and cannot be classified as incidental because the proposed remediation is not environmentally feasible and could have significant impacts in respect of human health.
- 10.44 To conclude, though the Minerals Planning Authority attach great weight to the economic benefits of mineral extraction on the site, it has not been demonstrated that the proposed development would be environmentally feasible or acceptable nor that the proposal would provide local or national benefits that would outweigh the resultant residual environmental impacts of developing the site for the purposes of winning and working minerals (coal) which result from the site's remediation. Indeed the proposed site remediation strategy creates unknown residual environmental impacts that have not been adequately assessed. There are therefore significant concerns with the proposed development in respect of the potential for adverse impacts on water resources, ground gas pathways, human health (noise & air quality in particular) as well as residential amenity more broadly. No overriding community benefits are identified which would make the extraction of coal acceptable from the site. Overall the proposal is found to be contrary to mineral planning policy with particular regard to Kirklees Local Plan Policies LP36, LP51 and LP52 as well as National Planning Policy Paragraphs 211 (clauses b & c) and 217 (clauses a and b).

Housing and Residential Amenity

Housing Mix

- 10.45 LP11 of the Kirklees Local Plan states that all proposals for housing must aim to provide a mix (size and tenure) of housing suitable for different household types which reflect changes in household composition in Kirklees in the types of dwelling they provide, taking into account the latest evidence of the need for different types of housing.
- 10.46 The emerging Affordable Housing and Housing Mix SPD indicates that Kirklees Rural East has a delivery distribution split of between 10/20% for 1 bed dwellings, 20/40% for 2 bed dwellings, 25/45% for 3 bed dwellings, and 5/25% for 4+ bed dwellings. There is therefore no overriding demand for a particular house type in the area due to the broad requirement for a variety of housing units in respect of size and tenure and there is no other information that has been supplied by the applicant that would indicate this not to be the case.
- 10.47 The proposed housing mix for this application is 8no. 2-bed, 9no. 3-bed, 22no. 4-bed and 9no. 5-bed units and which range from 71.9sqm to 228.4sqm in internal size. Clearly the proposal is over-reliant on dwelling types that are at the larger end of the spectrum with regard to the housing need for the local area, and though up to a quarter of the site could be expected to deliver 4+ bedroom dwellings, the current housing mix composition of 4+ dwellings is approximately 64.6% of the site yield.
- 10.48 The consultation for the Affordable Housing and Housing Mix SPD closed on 1st November 2022 and has not yet been adopted by the Council. Consequently a reason for refusal cannot be attached to this decision for reason of insufficient distribution within the housing mix. However, it should be put on record that any subsequent submission, following adoption of the SPD, would be subject to scrutiny in respect of future guidance requirements set out therein.

Amenity of Existing Dwellings

- 10.49 Following requests from the Case Officer, the applicant has supplied a 'Separation Distances Plan' (ref. 571 16-BBA-XX-00-DR-A-0207 Rev P01) and a 'Separation Sections' Plan (ref. 00000-BBA-XX-XX-DR-A-0250 Rev P01). The distances plan covers the entire site whilst the section plan looks directly at the interaction between plot 37 relative to 2 Springhead Gardens.
- 10.50 It is considered that plots 35 and 36 will have broadly the same topographical level as plot 37 whilst being located significantly closer to Nos. 2 and 3 Springhead Gardens. Significant impact will mainly be incurred by Plot 2 Springhead Gardens given that the rear garden terrace of Plots 35 and 36 will be at the same level as that properties first floor windows with the ground floor windows of the proposed units just below ridge height and the subsequent first and second floor windows rising further still. The impact on 3 Springhead Gardens is less than that of the neighbour at No.2, however the loss of amenity is considered to still be significantly adverse.

- 10.51 An attempt at off-setting the rear-facing elevations of plots 35 and 36 has been provided through an amendment to the layout of these plots, however the proximity of the proposed units within the 21m separation distance alongside the asymmetric site-level relationship relative to the existing properties does not overcome concerns with privacy loss highlighted by the Local Planning Authority. Consequently a reason for refusal on this particular amenity matter is sustained by the Local Planning Authority as the proposed development does not meet sufficient separation distances set out in the Supplementary Planning Document – Housebuilders Design Guide (with particular regard to clauses 7.19 and 7.21) and Kirklees Local Plan Policy LP24 – Design.
- 10.52 There are also significant concerns in respect of the development’s potential impact on the privacy of Cruck Cottage. Despite information being requested by the Case Officer that elicited the supplementary information concerning plots 35 and 36, details of the window relationship of Cruck Cottage relative to proposed plots 42, 43, 44 and 45 has not been forthcoming. Consequently a further reason for refusal is forwarded in respect of Cruck Cottage’s amenity out of an abundance of caution. Indeed, the proposed plots have the potential to significantly reduce the privacy of the existing dwelling as they are, again, set at a higher topographical level and are significantly within the 21m facing separation distance from the rear of the existing dwellinghouse.

Conclusion

- 10.61 For the reasons set out above, it is considered that the proposal does not sufficiently protect the amenity of existing residential occupiers bordering the site. Therefore the application does not comply with the objectives of the Housebuilder’s Design Guide SPD or the Local Plan policy LP24.

Transportation and Access Matters

- 10.62 Chapter 9 of the National Planning Policy Framework states that when assessing sites for development, it should be ensured that appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, safe and suitable access to the site can be achieved for all users and any significant impacts from the development on the transport network, or on highway safety can be cost effectively be mitigated to an acceptable degree. Policy LP21 of the Kirklees Local Plan reiterates this.
- 10.63 It should be noted that a detailed Highways Development Management response was provided through pre-application advice (reference 2021/20976).

Vehicular Access

- 10.64 The site access takes the form simple priority T junction, with a carriageway width of 5.5m and 2m wide footways to both sides. A 2m wide footway is also proposed along the site frontage. The posted speed limit on Cumberworth Lane in the vicinity of the site is 30mph. On site observations suggest that southbound approach speeds may be in excess of 30mph and as requested at pre-app stage a speed survey has been undertaken to determine vehicle speeds and establish the required visibility splay. The speed survey was undertaken at a point approximately 100m north of the proposed site access,

survey data identified 85 percentile southbound speeds of 34.8mph. Based on MfS2 SSD calculation and taking into account the gradient of Cumberworth Lane this equates to a required visibility splay of 59m, which the access drawing confirms is achieved. Given the accesses proximity to the Wakefield Road junction and the built-up nature and geometry of the Southern end of Cumberworth Lane, vehicles are observed to be travelling within the posted 30mph speed limit. Accordingly, a visibility splay of 43m commensurate with a 30mph speed limit is considered appropriate.

- 10.65 In the vicinity of the site access Cumberworth Lane is in the order of 5.5m wide, it will therefore be necessary to demonstrate using vehicle Swept Path Analysis (SPA) that an 11.85m long Waste Collection Vehicle can safely enter and exit the site. Widening of the site access carriageway may be required to accommodate this manoeuvre.
- 10.66 In summary, the proposed access arrangements are acceptable in principle, subject to providing a revised vehicle swept path analysis demonstrating that a Waste Collection Vehicle can enter and exit the site safely – a revised plan is subsequently required to confirm this.

Pedestrian Access, Sustainable Travel and Connectivity

- 10.67 A new 2m wide footway is proposed along the Cumberworth Lane site frontage that connects to the track/PROW (Footpath No. DEN/61/10) located to the north of the site access, which is welcomed.
- 10.68 The new footway should also be improved to the south of the site frontage linking the site to the existing footway, providing a continuous footway along the eastern edge of Cumberworth Lane to Wakefield Road. The current proposals result in a short length of approximately 20m, between the proposed and existing footways, with no suitable pedestrian provision. The intention being that pedestrians walking south will cross Cumberworth Lane to use the footway on the western side.
- 10.69 The lack of a continuous footway on the eastern side of Cumberworth Lane was raised in the Stage 1 RSA, with the recommendation that a continuous footway be provided. Highways Development Management concur with the recommendation of the Road Safety Audit and are of the view that rather than crossing and potentially re-crossing Cumberworth Lane, pedestrians walking south towards Wakefield Road are more likely keep to the east and walk in the carriageway for this relatively short length (approx.. 20m) in order to reach the existing footway to the south. The carriageway at this point is relatively narrow and increases the potential risk of vehicular and pedestrian conflict, pedestrians walking south would have their back to oncoming traffic.
- 10.70 It is noted that the applicant have investigated ownership of the strip of land required to construct the southern footway arm, which it is understood now belongs to the Crown, and that they are prepared to make a £20,000 contribution towards construction of the footway should the Council acquire the land. It appears that Urban are not prepared to enter into negotiations with the Crown and District Valuer to purchase the land required, which it is accepted could take some time, and want to place the onus for the purchase and cost of the land on the Council.

- 10.71 The Applicant (in correspondence dated 10th January 2023) has acknowledged that the purchase of the required land is not insurmountable, although could take some time to negotiate, but suggest that this responsibility and cost should be borne by the Council. Kirklees Highways Development Management are of the opinion that the land and footway are required to provide a safe pedestrian walking route to and from the development and the responsibility and cost for the purchase and provision of the footway lies with Applicant.
- 10.72 A future application will be expected to provide a connected footway across the southern radii of the site access to join up with existing footway provision further south on the eastern side of Cumberworth Lane. Similarly, a pedestrian connection to the public right of way that traverses the northern boundary of the site would also be expected. It is not considered that these matters warrant a reason for refusal in this instance, however should a future proposal not include the cited connectivity improvements, the Local Planning Authority reserve the right to attach a further reason for refusal on the basis that opportunities for enhancement have not been considered, contrary to Policies LP20 - Sustainable Travel and LP23 – Core Walking and Cycling Network.

Estate Road Design

- 10.73 The internal road layout is required to be built to adoptable standards, as set out in the Kirklees 'Highway Design Guide SPD' and 'Highways Guidance Note – Section 38 Agreements for Highway Adoptions' March 2019 (version 1) and associated documents.
- 10.74 Though swept path plans for an 11.85m Refuse Collection Vehicle have been provided by the applicant, as requested verbally in a meeting with Highways Development Management and the Case Officer on the 18th November 2022, the following information is yet to be provided despite being requested via the pre-application and at the subsequent meeting:
- Provision of a plan which confirms the carriageway and footway widths. Residential Streets are 5.5m carriageway, 2m footways, Shared Surface Streets – 5.5m carriageway, 0.6m hard margins
 - Provision of carriageway long section plans which are required to determine appropriate carriageway and footway gradients. Desirable maximum gradient 1:20.
 - Plans confirming that all internal junctions provide visibility splays of 2.4m x 23m –
 - Plans setting out the horizontal alignment to provide forward visibility splays of 23m, across all junctions and forward visibility splays must fall within the adopted highway – (a revised plan is required in respect of the forward visibility splay of the second bend which does not sit fully within the adopted carriageway)
- 10.75 Given that the bullet-pointed details were raised via pre-application advice as being necessary to support the submission of a formal planning application, the Local Planning Authority consider it valid to sustain a reason for refusal predicated on the lack of information to make an informed decision with regard to the layout of the proposal's internal access and whether that access can be safely used by the development's future occupants and adequately serviced by a refuse collection vehicle. Consequently, the application does not demonstrate that the development meets the layout requirements with regard to a safe layout set out within the Highways Design Guide SPD which is supported by Policy LP21 of the Kirklees Local Plan (with specific regard to clauses a, d, e and f).

Travel Plan

- 10.76 A Framework Travel Plan has been submitted, should a future submission have a yield in excess of 50 units, the Framework Travel Plan should be updated and re-submitted.

Scale, Visual Appearance, Heritage and Landscaping Matters

- 10.77 Policy LP24 – Design of the Local Plan states that proposals should promote good design by ensuring the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape.
- 10.78 The scale of the scheme is considered to be an appropriate response to the challenges of the site's topography. This position is considered broadly, and does not apply to instances relating to privacy loss where precise and sensitive design responses to a reduced scale would be appropriate.
- 10.79 Though refinements to the visual appearance and landscaping of the scheme are considered to be required, such matters are not determined to be sufficient to warrant a reason for refusal in this instance.
- 10.80 In respect of heritage, no objections have been received from KC Conservation with regard to impact on the listed building opposite the site access (subject to implementation of consultee advice) and no objections have also been received from West Yorkshire Archaeology Service.

Biodiversity and Tree Matters

Trees

- 10.81 KC Trees have indicated no objections to the proposal following amendments to the development proposal in respect of providing sufficient protection to the TPO'd tree adjacent plot 31. To-date, advisory comments on street tree planting have not been adopted by the applicant.

Ecology & Biodiversity Net Gain

- 10.82 An Ecological Impact Assessment (EclA) has been submitted with the application. KC Ecology have advised that the habitats on site are of variable ecological value, with the majority comprising modified grassland of low distinctiveness. In the eastern section of the site is an area of other neutral grassland, which supports a more diverse range of botanical species. The hedgerows, scrub and trees along with an area of tall ruderal are of increased value for faunal groups including breeding birds, invertebrates, bats and hedgehog. Faunal surveys undertaken at the site identified low-moderate levels of bat foraging and commuting, mainly contained within the northern section of the site. It is considered that in order to continue usage of the site for foraging and commuting bats, a vegetated corridor in the northern section of the site along with a wildlife sympathetic lighting scheme should be adopted as part of the development. These measures could be delivered through appropriately worded conditions.

- 10.83 The site lies within the Kirklees Wildlife Habitat Network, Biodiversity Opportunity Zone – Pennine Foothills and the Strategic Green Infrastructure Area – River Dearne Corridor. It is considered that appropriate use of the mitigation hierarchy has been applied within the EclA through the inclusion of open space across the site, incorporating appropriate native species within the landscape proposals. Retention of a vegetated corridor to the north of the site aims to allow continued use of the site by wildlife, linking residential gardens to more favourable habitat to the north-west. It is considered that the development proposals will allow continued linkage between habitats of increased favourability, within the surrounding area. The inclusion of protected species provisions will seek to provide increased opportunities for bats, birds and invertebrates, along with allowing continued usage of the site by hedgehogs. In line with Policy LP30, although the majority of the habitats on site are to be lost to the proposed development, it is considered that the increase of protected species provisions along with the retention of vegetated areas throughout the site will seek to increase connectivity of ecological corridors. KC Ecology consequently recommend that appropriate mitigation and enhancement measures are placed on any forthcoming consent (through both conditions and a legal agreement), in order to ensure that protected species and habitats are safeguarded throughout the development and that opportunities for these species remain, post development.
- 10.84 A Biodiversity Net Gain Assessment has been submitted with the application, with calculations undertaken in the DEFRA Biodiversity Metric 3.1. From consultation responses with Kirklees consultees, it is understood that the site has been subject to a site strip, however, the habitats included in the baseline assessment of the site appear to be from pre-site clearance, in line with legislation and guidance. Should further information indicate this not to be the case, the Local Planning Authority reserve the right to review the BNG figure and/or take appropriate action accordingly.
- 10.85 Units obtained for the site post-development, based on retained habitats and habitat creation / enhancement included within the landscape proposals indicate that a net gain in respect to habitat areas is unlikely to be achieved with the current scheme with a potential biodiversity net loss of -4.99 habitat units (-34.75% net change). Indicated gains of 0.77 hedgerow units (+66.95% net change) and 0.10 river/ditch units (+68.27% net change) are also considered likely. Due to nature and scale of the current proposals, opportunities to address the shortfall in habitat units on-site are limited in addition to habitat retention/creation/enhancements already proposed.
- 10.86 To achieve adequate biodiversity off-setting a financial payment would be required to Kirklees Council in order to enhance biodiversity on council managed land. For the development to achieve a 10% net gain, 6.43 habitat units would be required, this equates to a financial contribution of £147,890 will be required (figure based on £20,000 per habitat unit to achieve a 10% net gain (figure taken from 2019 DEFRA Impact Assessment) inclusive of a 15% admin fee (figure taken from Kirklees Biodiversity Net Gain Technical Advice Note)). It is the intention for this financial sum to be secured through an appropriately structured legal agreement. The habitats indicated to be delivered on site would be secured through an appropriately worded condition

- 10.87 Subject to agreement of the conditions and financial contribution, the development would be considered in line with the BNG Technical Advice Note and LP30 – Biodiversity and Geodiversity.

Site Drainage and Flood Risk

- 10.88 The National Planning Policy Framework states that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood risk assessment. Development should only be allowed in areas at risk of flooding where, in the light of this assessment it can be demonstrated that:
- a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;
 - b) the development is appropriately flood resistant and resilient;
 - c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate;
 - d) any residual risk can be safely managed; and
 - e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

This is reiterated in the Kirklees Local Plan Policy LP27 'Flood Risk'.

- 10.89 Major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate. The systems used should:
- a) take account of advice from the Lead Local Flood Authority;
 - b) have appropriate proposed minimum operational standards;
 - c) have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development; and
 - d) where possible, provide multifunctional benefits.
- 10.90 Under the pre-application, the Lead Local Flood Authority (LLFA) indicated that the site would not require submission of a sequential test as a part of the Flood Risk Assessment (FRA). This is because the site is allocated via the Local Plan.
- 10.91 The proposed surface water outfall is currently unsuitable. A significant downstream defect has been assessed on part of the outfall culvert near Wakefield Road and work is required to reduce the risk of flooding. The volume generated by the development could increase flood risk in the short term. It is envisaged that engineering works will take place in the near future. The Local Planning Authority are advised by the LLFA that until such a time as work has been carried out, no connection, permanent or temporary, should be made. As such, any future application would be subject to this issue being resolved and a decision will not be determined until it can be proven that the issue has been resolved or that it can be resolved through a Grampian condition or a unilateral undertaking.
- 10.92 Irrespective of the defect, the LLFA have confirmed that a proposed future connection/discharge rate of no more than 5l/s is agreed in principle.

- 10.93 The LLFA advise that a new headwall and trash screen, intention of improvement and formal design of the surface water drainage solution are all noted from submitted plans. A cross section supplied by the applicant sets out the box culverted section and includes the provision of safety fences for open watercourse sections adjacent to parking areas. The LLFA advise that watercourse improvements should be conditioned for detailed design once approval for the connection can be given.
- 10.94 The LLFA have raised a point regarding whether any capping/grouting will take place on site. This is because such work can cause less infiltration of water, particularly in the construction phase. As this type of remediation has not been proposed by the applicant, it is not valid under this application. However any future application should include measures necessary to reduce risk within the construction phase/temporary drainage solution.
- 10.95 The LLFA have indicated that perimeter land drainage will need to be considered as part of a detailed drainage design to ensure that the development will not increase flood risk elsewhere, particularly from groundwater emergence.
- 10.96 As concerns overland flood routing in the event of a blockage of the surface water tank or an extreme weather event, the LLFA have confirmed they are satisfied that previous issues have been rectified and safe flood routing is now shown on relevant submitted plans.
- 10.97 Overall the LLFA are satisfied that the site can be designed to minimise flood risk subject to the downstream defect being remediated. However any future application would likely be held in abeyance until the defect is resolved given its potential to increase flood risk within the wider settlement. The framework drainage design consequently meets the requirements of LP27 – Flood Risk.

Planning Obligations

- 10.98 The following planning obligations are considered to be necessary to make the development acceptable in planning terms as they are supported by up to date Local Plan Policies. Likewise the obligations are determined to be directly related to the proposed development and are fairly and reasonably related in scale and kind to the development:

Affordable housing

- KC Strategic Housing advise that 9 affordable units required with a composition of 2 First Homes, 2 Other Intermediate Units and 5 Social/Affordable Rent. The units should be of a 2 and 3 bedroom mix. This contribution is in line with the 20% affordable housing requirement set out under Policy LP11 – Affordable Housing and Housing Mix of the Kirklees Local Plan

Education

- KC Education advise that a financial contribution of £59,573 is required from the proposed development for the purpose of providing provision of increased school capacity in the local area, as defined in the ‘ Providing for Education Needs Generated by New Housing’ Policy and Guidance Document and required by Policy LP49 – Educational and Health Care Needs of the Kirklees Local Plan.

Public Open Space

- A financial contribution of £88,594 is required to offset shortfalls in Public Open Space Typologies of the proposal, as defined in the Open Space SPD and required by Policy LP63 – New Open Space of the Kirklees Local Plan.

Biodiversity

- Based upon the submitted biodiversity net gain metric a figure of £147,890 (inclusive of 15% admin fee) in an off-site financial contribution results from the proposed development. This figure is advised by the Kirklees Biodiversity Net Gain Technical Advice Note and is in line with the requirements of Policy LP30 – Biodiversity and Geodiversity of the Kirklees Local Plan.

Sustainable Travel

- A sustainable travel contribution for the purpose of providing bus and rail metro cards for new occupants of the development would be required at a cost of £52,128. (48 x £1066). The obligation is in line with the requirements of Policy LP20 – Sustainable Travel of the Kirklees Local Plan.

Site Management

- The development is required to ensure management on-going management provision for shared spaces and drainage infrastructure relating to the development, as required by the Open Space SPD and Policies LP63 – New Open Space and LP28 - Drainage of the Kirklees Local Plan.

- 10.99 The applicant has submitted an financial viability assessment (on the 31st January 2023) to counter the planning policy obligations identified above. Likewise the Council have conducted a tender for appointing an independent assessor to review the submitted viability appraisal. However the application is to be decided before an independent assessor is appointed.
- 10.100 As the submitted viability appraisal has not been independently assessed, it is afforded limited weight, especially as the abnormal development costs set out within the submitted appraisal fail to take account of the economic benefits generated by the proposed site remediation for the winning and working of coal.
- 10.101 Consequently a reason for refusal is substantiated on the premise that the applicant has not agreed to the terms set out in paragraph 10.98 which the Local Planning Authority determine to be necessary to make the development acceptable in planning terms, are directly related to the proposed development and are fairly and reasonably related in scale and kind to the development.

Representations

- 10.102 It is considered that the material considerations raised by representors and local representatives have been addressed throughout the assessment conducted in Section 10 of this report.

Other Matters

10.103 There are no other matters.

11.0 CONCLUSION

- 11.1 Despite being an allocated housing site, the proposed development is not acceptable for multiple planning policy considerations. These matters span contaminated land issues, the potential for significant adverse environmental effects resulting from site remediation inclusive of mineral extraction, residential amenity and privacy issues, insufficient information with regard to transport safety and amenity as well as a lack of agreement with regard to planning obligations.
- 11.2 The Local Planning Authority desire for HS144 to come forward, and approvals on other parts of the allocation are reflective of this. However, the Local Authorities concerns, particularly in respect of contaminated land and mineral extraction matters, are of a severity that cannot allow the application to progress to an approval that would be subject to conditions. The applicant has refused the options provided by the Local Planning Authority and therefore Officers are compelled to make a recommendation of refusal to the Heavy Woollen Planning Committee for the reasons set out at the beginning of the report.
- 11.3 The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF, taken as a whole, constitute the Government's view of what sustainable development means in practice. As set out above, this application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development proposals do not accord with the development plan and the adverse impacts of granting permission would significantly and demonstrably outweigh any benefits of the development when assessed against policies in the NPPF and other material considerations.

Background Papers:

Application and history files.

Link to the application details:-

[Planning application details | Kirklees Council](#)

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2022%2f91911>

Certificate of Ownership – B – 21 days notice provided to land-owners (it should be noted that this does not include 277 Cumberworth Lane subject to a Option Agreement which the Council are seeking legal advice upon).