
Report of the Head of Planning and Development

STRATEGIC PLANNING COMMITTEE

Date: 07-Dec-2023

Subject: Planning Application 2022/93823 Variation of condition 2 (plans and specifications) and 5 (soft landscaping scheme) on previous permission 2016/93243 for erection of 17 dwellings (within a Conservation Area) Thirstin Mills, Thirstin Road, Honley, Holmfirth, HD9 6JG

APPLICANT

North Park (Greetland)
Ltd

DATE VALID

23-Nov-2022

TARGET DATE

22-Feb-2023

EXTENSION EXPIRY DATE

31-May-2023

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[Public speaking at committee link](#)

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral wards affected: Holme Valley North Ward

Ward Councillors consulted: Yes

Public or private: Public

RECOMMENDATION: Approve

Grant the variation of conditions 2 and 5

DELEGATE approval of the application and the issuing of the decision notice to the Head of Planning and Development on completion of:

- a) a deed of variation to the original Section 106 Obligation, to confirm the existing obligation/s and to include an additional obligation to seek off site contributions to secure the shortfall of biodiversity net gain within Holme Valley North Ward to the previously approved landscaping scheme for the site, and
- b) the list of conditions, including those contained within section 12 of the report.

1.0 INTRODUCTION:

- 1.1 The application is brought to Strategic Committee, due to the recent changes in the Scheme of Delegation Agreement, the interim period for which such changes to be implemented came into force from 10th November 2023 to 9th February 2024.
- 1.2 Members deferred the application at the Huddersfield Sub-Committee on 19th October. This was to allow Officers to investigate the potential for Brockholes Recreation Ground to be used for the additional planting to enhance biodiversity net gain. Furthermore, to provide details of the enforcement history at the site and to establish how the breach of the condition has occurred.
- 1.3 This report sets out a response to these matters within paragraph nos. 10.25 of the assessment and 4.2 Enforcement History respectively. Paragraph 7.5 also sets out further representations received, following the deferral of the application at Huddersfield Sub Committee on 19th October 2023, from Cllr Charles Greaves. Officer's responses to these further representations, provides a clear overview of how and when the current situation (breach of condition 5) has occurred.
- 1.4 Initially this application was brought to committee at the request of Ward Cllr Charles Greaves, who stated:
 - "Due to the failure of the applicant to discharge the pre-commencement conditions,
 - the failure of officers to identify and address this at the time,
 - that enforcement action was started but then not followed through,
 - that the work has not been completed in accordance with the conditions set down by the planning committee,
 - that the developers have offered no solution to address the issue,

- that the developers submitted a s106 viability appraisal based on the costs of undertaking this work which they have not incurred (which should trigger a review of the s106),
- that the legal power to reopen the s106 exist but have not been utilised,
- that officers have not established whether the current condition of the banking is stable,
- that no proper arrangements are in place for the long-term maintenance of the banking,
- that officers have failed to deal with this issue in a timely manner,
- that the recommendation of officers is not appropriate to the circumstances,
- that it undermines the role and purpose of planning committees and its directions to officers, that for officers to allow a developer to fail to meet their obligations and to support the developer is doing so, sets a precedent that would encourage others to choose to fail in meeting their obligations, and
- that in doing so it risks undermining the trust and confidence of the residents and councillors of Kirklees in how the planning process is managed and enforced.

1.5 The Chair of the Sub-Committee had confirmed that Cllr Greaves reasons for the referral to the committee are valid having regard to the Councillor's Protocol for Planning Committees.

2.0 SITE AND SURROUNDINGS:

2.1 Situated approximately 350 metres from the centre of Honley, this is the former site of Thirstin Mills. The site has now been developed following the granting of planning permission 2016/93243 for the erection of 17 dwellings. Most, if not all, of the dwellings are occupied.

2.2 Thirstin Road bounds the site, to the north and east. A protected woodland area (which also forms part of the Wildlife Habitat Network) and a public footpath (HOL/186/10) runs along the western edge of the site with Scotgate Road running parallel to the southern boundary. A number of residential properties overlook the site from the east on the opposite side of Thirstin Road. These are a mixture of semi- detached and terraced properties with a few detached dwellings.

2.3 The site is constrained by a steep embankment to the western boundary which was formerly present and shown to be retained as part of the development under the implemented planning permission. This embankment forms part of the individual domestic curtilages to the dwellings, that back onto it.

3.0 PROPOSAL:

3.1 This application is submitted under Section 73 (S73) of the Town and Country Planning Act 1990. It seeks to vary conditions 2 and 5 of planning permission 2016/93243

Condition 2 states:

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

Reason: *For the avoidance of doubt as to what is being permitted, to ensure the amenities of existing neighbouring residential properties and future residents of the dwellings hereby approved are protected, to ensure the satisfactory appearance of the development on completion, to conserve and enhance the significance of the Honley Conservation Area, and to accord with Policies BE1, BE2, BE5, BE12, T10 and T19 of the Kirklees Unitary Development Plan as well as the aims of the National Planning Policy Framework*

Condition 5 states:

5. The approved soft landscaping scheme as shown drawing reference no. 0542-2 rev B shall be carried out during the first planting, seeding or management season following the commencement of superstructure of the hereby approved dwellings or in accordance with a phasing plan which shall have been submitted to and approved in writing by the Local Planning Authority before commencing on the superstructure of the dwellings. The approved landscaping scheme shall, from its completion, be maintained for a period of five years from the completion of planting works. All specimens which die within this period shall be replaced with like for like species.

Reason: *To ensure that there is a well laid out scheme of healthy trees and shrubs, in the interests of amenity, to conserve and enhance the significance of the Honley Conservation Area, and to accord with Policies BE1, BE2, BE5 and EP11 of the Kirklees Unitary Development Plan, the National Planning Policy Framework and Circular 06/2005 (Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within the Planning System as well as Policies PLP30 & PLP32 of the Publication Draft Local Plan.*

- 3.2 The proposals seek to substitute the landscaping plan reference 0542-Rev B approved under condition 5 of planning consent 2016/62/93243/W. The approved landscaping scheme was shown to provide a matrix of native trees and shrubs, with trees to have been planted at 3m centres and shrubs at 1m centres. The covering letter initially submitted with this application stated the request to change the landscape proposals for the banking:

“has arisen as it has been identified that the gradient of the banking along the western boundary of the site would not be suitable for substantial planting in line with the approved plans. Tree planting in this location has the potential to disrupt the mesh put in place to stabilise the banking and there is potential, once trees mature, a fallen tree would significantly damage the reinforcement, which could then result in collapse. Therefore, it is proposed to incorporate a natural landscape zone along the banking as it has been identified that the root systems within low level planting is fine allowing it to pass through the mesh reinforcement unhindered.”.

The revised plan, titled: Landscape Option 1 ref DR-6264-01.01, showed low level planting to the embankment, in the form of only a species rich grassland mix.

- 3.3 The covering letter contradicted with the submitted plan in that it referred to “natural landscape zone”, whereas the plan showed the embankment to be replaced with grass and over time to allow woodland trees to seed and establish a naturalised scrub/woodland edge. The plan, titled: Landscape Option 1 ref DR-6264-01.01, has now been substituted with the drawing ref number 2287-0101-P02. This shows the western embankment in its current state consisting of a self-seeded banking which over time has established and naturalised with woodland trees and shrubs creating a scrub /woodland edge. This drawing also shows landscaping within the front gardens as existing, which has been carried out by owners/residents of the dwellings. The proposals are therefore to retain the embankment in its current form, with no supplemental planting.
- 3.4 In the event Members agree with Officers recommendation:
- Except for reference to updated policies, the wording of condition 2 would remain unchanged.
 - The plans table would need to be updated to replace the previously approved landscape plan, drawing reference 0542-2 rev B under planning permission 2016/93243 with the revised plan showing the embankment as existing, drawing ref no. 2287-0101-P02,
 - Condition 5 is to be omitted.
 - A supplemental S106 agreement (deed of variation) would be necessary which requires the applicant to agree to the obligations within the original S106 agreement and the inclusion of the additional obligation to secure off site contributions as set out in the assessment below.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

- 4.1 The site has an extensive planning history, however the most relevant is listed below:

2016/93243 - Erection of 17 dwellings (within a Conservation Area) – granted 07/02/2018

2018/91138 - Discharge conditions 4 (boundary treatments), 7 (highways), 8 (construction traffic), 11 (retaining wall), 13 (drainage), 14 (watercourse) on previous permission 2016/93243 for erection of 17 dwellings – details satisfactory. Conditions discharged subject to development being completed in accordance with the approved details.

2021/91689 - Variation condition 2 and 5 on previous permission 2016/93243 for erection of 17 dwellings (within a Conservation Area) – refused 29/06/2022 on grounds that the submitted information failed to demonstrate how the objectives (to conserve/enhance) and when the works will be carried out through the submission of an appropriate method statement and phasing maintenance timetable.

4.2 Enforcement History:

COMP/19/0022 - Major Site Monitoring (concerns that houses built larger than approved)

Date Opened: 21/01/2019

An enquiry was made to the Enforcement team by a Councillor on 16th January 2019, regarding monitoring the site to ensure development was being carried out in accordance with the approved plans, as the Cllr thought houses may be being built larger than what was approved.

The enforcement case officer visited the site on Friday 18th January 2019. Council records indicate there did not appear to be any deviation from the plans.

On the 21st January 2019 the enforcement case officer booked the case in for site monitoring.

On 29th October 2019 a complaint was received regarding an alleged breach –

- materials used on site which were not in accordance with plans, and
- health and safety issues on the site.

The enforcement case officer signposted the complainant to the Health & Safety Executive regarding the H&S issues and requested further information regarding the alleged breach.

Date Closed: 15/06/2021 - There are no further comments on record.

Reason for Closure: no further action (NFA) - dev/use lawful

COMP/20/0281 - Alleged breach of condition 8 of 2016/93243 (construction management plan)

Date Opened: 15/07/2020

A complaint was received on 10th July 2020 regarding the mud on the road, because of the movement of heavy plant onto and from the site. A site visit on 29th July 2020 confirmed this. The responsible party were contacted by letter on 29th July 2020 regarding the breach of Condition 8, which required amongst other things, to provide wheel washing facilities. They were requested to provide this within 14 days. The Agent sent a photo of the wheel washing 'machine' on the 7th August 2020. The case was closed on 10th August 2020 as the breach was resolved'.

Date Closed: 10/08/2020

Reason for Closure: NFA – Resolved

COMP/22/0356 4 - Alleged unauthorised air conditioning units

Date Opened: 09/09/2022

A complaint was registered on 9th September 2022. The enforcement case officer has been off work for an extended period and there is no other information on record.

Case Pending

COMP/22/0425 - Breach of condition 2 and 5 on previous permission 2016/93243 (landscaping to embankment)

Date Opened: 29/09/2022

A breach of condition notice was served on the applicant, following the delays in receiving a new application to vary conditions 2 and 5, after the refusal of application reference no. 2021/91689 - Variation condition 2 and 5 on previous

permission 2016/93243 for erection of 17 dwellings (within a Conservation Area) – refused 29/06/2022. This application was refused on the grounds that the submitted information failed to demonstrate how the objectives (to conserve/enhance) and when the works will be carried out through the submission of an appropriate method statement and phasing maintenance timetable.

Date Closed: - decision pending on planning application 2022/93823, before Members.

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

- 5.1 A request for a deed of variation was made, which is awaited. This would include the new obligation to off-set the shortfall (in monetary value) between the approved landscaping scheme in comparison to the self-seeded naturalised embankment in its current form, to be put towards off site contributions on Council owned land to enhance biodiversity net gain.
- 5.2 Clarity on initial plan as the details submitted seem to contradict the contents of the supporting covering letter.
- 5.3 Evidence of how the western embankment is proposed to be accessed, given it is private land forming part of the curtilage areas to each dwelling backing onto it. The agent advised “in terms of access to the banking we’d need agreement to enter the banking from each owner”. Subsequently, the applicant has set out in the revised statement that not all residents/owners will authorise access to their private land (embankment), for any works to be carried out by the applicant.
- 5.4 Following a joint site visit by KC Ecology, Landscape, Enforcement and case Officers, a revised plan showing the embankment established with self-seeded landscaping, as existing was requested, along with evidence of the residents/ householders denying access for works to be carried out. Plan received and written statement from applicant, who advises that not all residents are agreeable and would not allow access to embankment, which is private land.
- 5.5 Additional statement received from applicant on 21st July 2023, which includes within it, amongst other matters, that people, when purchasing the dwellings on this site were:
“made aware of the incompatibility of the two separate designs and people were advised of the issue and told we’re re submitting the condition and hopefully we wouldn’t have a problem with a wildflower mix”
- 5.6 It was considered necessary and appropriate to publish this statement and allow local residents and owners of the dwellings on the application site, an opportunity to respond to the contents of the statement.

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) and the Holme Valley Neighbourhood Development Plan (adopted 8th December 2021).

The site lies within the Honley Conservation Area.

Kirklees Local Plan (2019):

- 6.2 LP24 - Design
LP30 - Biodiversity & Geodiversity
LP32 - Landscape
LP35 - Historic Environment

Supplementary Planning Guidance / Documents:

- 6.3 Kirklees Highways Design Guide (2019)

National Planning Policy Framework (NPPF) September 2023:

- 6.4 Most relevant to this application is the following:
Chapter 12 – Achieving well-designed places
Chapter 15 – Conserving and enhancing the natural environment (paragraphs 174 (d,e, f), 183 and 184 relating to ground stability)
Chapter 16 – Conserving and enhancing the historic environment

Neighbourhood Development Plans:

- 6.5 The Holme Valley Neighbourhood Development Plan (HVNDP) was adopted on 8th December 2021 and therefore forms part of the development plan. The Policies relevant are:
Policy 1 – Protecting and Enhancing the Landscape Character of Holme Valley
Policy 2 – Protecting and Enhancing the Built Character of the Holme Valley and Promoting High Quality Design
Policy 13 - Securing Biodiversity Net Gain

The site is within the Landscape Character Area 6 (Honley Village Centre) within the HVNDP.

7.0 PUBLIC/LOCAL RESPONSE:

- 7.1 The application was advertised in accordance with the Kirklees Development Management Charter, via neighbour notification letters, a site notice and within the newspaper. Final publicity expired 6th October 2023.

7.2 Seven representations were initially received, the concerns of which are summarised below:

- One in support of the original submission to vary the landscaping
- Further clarity required on species of plants proposed. No details of when the maintenance of the embankment would be done or how the embankment is to be cleared for new planting
- Proposed wording on condition 5 refers to outdated timescales
- No justification why planting to front gardens should be amended/ should just be supplemented.
- Suggestions given to clear existing embankment/clearing
- “Sensible to not plant trees as initially approved given it may impact on the stability of the banking and block out daylight”
- Question the practicality and reality of maintaining the embankment area once developer’s obligations come to an end
- No easy access from dwellings and unsafe to access from embankment side, due to gradient.
- One resident states they have not been approached by anyone to inspect the embankment areas,
- Too steep to mow and weed the embankment
- Question posed- Why was mesh used to stabilise the embankment if there is a risk trees will destabilise it?
- Mesh not strong enough to prevent tree growth, as illustrated to rear of some dwellings but agree trees may not be suitable
- 5 year management clause as original condition should remain and commence from alternative approved scheme
- Back gardens waterlogged in periods of heavy rain. Original approved landscaping to include shrubs would absorb the rainfall but agree no trees due to steepness
- The initial proposals to amend the landscaping with low level planting is unrealistic, impractical and does not take account of the steepness of embankment and denseness of the undergrowth that has established over three years.
- It is doubtful the two sprays of weed killer will kill the existing plants/weeds and will disturb wildlife/ecology that now lives in the undergrowth
- Spraying of weed killer is risk to residents health
- The removal of exiting established self seeded planting would expose the meshing to the embankment

7.3 Following advertisement of the revised plan showing the embankment to be retained as existing, three representations were received. The concerns of which are summarised below:

- The banking as it is, is an eyesore full of overgrown weeds does not conserve or enhance the conservation area
- This is due “to the incompetence of the developer”
- utilising existing soils on site for the regrading and stabilisation of the banking has resulted in weeds - growth has come from below
- This latest amendment to the landscaping plans - particularly insofar as they relate to the banking - seem to imply that the current proposal is to do nothing
- permission in place at the time of purchase was for the banking to be

landscaped and managed for five years and the properties were purchased on this basis

- The latest plan to do nothing completely absolves the developer from any responsibility and represents a dereliction of duty by the planning department if this amendment is allowed to proceed.
- The developer has a contractual obligation to the owners on this site - residents have all paid money (as part of the house price) to attend to the banking and he needs to do what he initially said he would do.

7.4 The revised statement received in late July 2023 was advertised and neighbour letters sent out to those that initially commented and all seventeen households of the site. At the time of writing no further representations had been received.

7.5 Subsequent to the Huddersfield Sub Committee decision to defer the application for the reasons set out in paragraph 1.2 above, Cllr Greaves has raised a number of queries and comments as set out below:

Query 1 *“Along with residents I am keen to see a sensible outcome that ensures the long-term stability of the banking and the protection of the residents, but I also feel strongly that the Developer needs to take responsibility for their breach of planning consent and that they need to be held to account for it.”*

Officers Response: The proposals are seeking to vary the previously approved soft landscaping scheme, to leave the established self-seeded banking as it is. The stability of the banking is not the issue, which, the developer states, is covered under a 120 year structural guarantee. Planning permission and S106 “runs with the land” and therefore technically it is now the home owners who are responsible for their land. However, with respect to the breach the purpose of the condition, the developer is taking responsibility in the form of this current proposal, whereby an off site contribution of £20k will be required towards habitat and wildlife creation in the same ward in the interests of public benefit and biodiversity, as set out in paragraph 10.25.

Query 2 *“In understanding how this breach came about it would be helpful to have a timeline of enforcement and a clear explanation as to why the original landscaping arrangements were not suitable but had been presented to be so, and when the currently proposed landscaping arrangements were first made and why it has taken so long to resolve this matter that all of the properties were sold in the meantime”.*

Officers Response: The enforcement history of the site is set out under section 4, paragraph 4.2 of this report. With regards to the original landscaping scheme, officers deemed it to be appropriate at the time of consideration under the 2016/93243 application, as the proposed soft landscaping was thought to improve biodiversity and conserve this part of the conservation area. The technical details (including the slope and engineered solution) for the reinforced embankment were subsequently approved under condition 11, through a discharge of condition application in June 2018 by the Structures team (see paragraph 10.16). The developer stated in his supporting statement at that time that:

“When we examined the landscape drawing during advanced construction, we realised that the landscape scheme could not be implemented and the banking could not be redesigned structurally as it was already built. So, when selling the properties people were made aware of the incompatibility of the two separate designs and people were advised of the issue and told we’re re submitting the condition and hopefully we wouldn’t have a problem with a wildflower mix.”

On the basis of the above, it is assumed the 17 owners of the houses purchased their properties in full knowledge of the breach of condition 5 (non-implementation of the soft landscaping scheme). This breach of condition 5 was brought to Officers attention on receipt of planning application 2021/91689 in April 2021, after all houses were bought by the now residents.

Query 3. I appreciate that Planning holds a contrary view, but I thought it may be helpful to let you know what I will be suggesting as conditions as a way forward for approval.

Suggested conditions:

- (a) The design of the banking was approved on the basis of the agreed landscaping plan which has not been implemented. It has not been inspected or signed-off in its current condition and the answer given to committee on this point was not clear. Now that the banking has started to self-seed and without a clear management plan there is a significant risk that trees and shrubs are now present that if allowed to fully establish could undermine the banking and its guarantee.

At the Developers expense I would like a suitably qualified person to assess the banking and the trees and shrubs that are currently on site, and to offer clear and unambiguous advice to residents as to what steps need to be taken now in order to protect the banking, to retain the guarantee, and to be in accordance with the currently proposed landscaping arrangements. All of the costs for any remedial works should be met by the Developer.

Officers response: The developer has sold the land to individual owners, all of whom have had the benefit of their own independent legal advice prior to purchase of the land. LPA is seeking a pragmatic solution to the breach of the planning condition for soft planting which did not form part of the technical details of the approved reinforced embankment. The Councils Structures team have confirmed the approved technical AIP was not dependant on the approved landscaping scheme. Details within the approved AIP, refers to the slope to be finished with a seeded erosion control blanket, finished appearance with a vegetated green slope and that *“careful choice of planting on the reinforced slope shall be undertaken to ensure that the growth is not destructive”*

The recommendation offers a twofold public benefit:

- 1) to avoid pursuing action against the 17 residents and,
 - 2) to remedy the breach of the condition, namely to achieve biodiversity and to conserve the conservation area by off site planting.
- (b) Whilst the Developer and Planning seem clear on what should and shouldn't be allowed to grow on the banking and on how it should be maintained, the residents that I have spoken to are unclear on this point, but as they will be

responsible they all need to know exactly what they should and shouldn't do and ensure that their neighbours do also.

At the Developers expense I would like a short and concise owners guide to be provided to each resident that clearly details what actions residents should and shouldn't take in order to properly maintain the banking, to retain the protection of the guarantee and to meet their planning obligations under the currently proposed landscaping arrangements.

Officers Response: noted. See response to query 2 and 3 above.

- (c) There is scope to use any off-site s106 Bio-diversity payments within the Holme Valley North ward and the current work at Brockholes rec may be a suitable project. Ward councillors are happy to work with officers on developing an appropriate scheme.

Officers Response: Noted. see paragraph 10.25, which advises where the public benefit to increase biodiversity, tree planting and thinning could be carried out off site to meet the shortfall of BNG in comparison to the approved soft land scaping scheme and in the interests of amenity.

- (d) This application reopens the s106 agreement process. In the original application the Developer submitted a viability statement based on projections showing that the scheme had viability issues. As works were not completed and costs were not incurred, and as the sales prices exceeded the estimates that were submitted, the Developer should be required to produce a whole new s106 report using the actual figures and consideration must be given to all s106 requirements, not just a single element of it.

The s106 agreement should be reopened and a full list of requirements should be set out as per policy. If the Developer wishes to challenge the viability of the scheme supporting the policy requirements they must submit a new report setting out the costs and profits.

If this is not practical then a clear answer as to why not needs to be given, as it is lawful to review the whole s106 agreement.

Officers Response: The proposals are seeking to vary a condition that has been breached. It does not re-open or require review of the original Section 106 agreement.

8.0 CONSULTATION RESPONSES:

- 8.1 K.C Ecology – the habitats in their current form on the embankment are at a shortfall of 50% biodiversity units of the approved landscaping plans. Discussed below in assessment.

- 8.2 K.C Landscape – The original intention of condition 5 for the landscape, was to improve the habitat, wildlife and conserve and enhance the conservation area. No landscape planting proposals have been carried out on the embankment area and there is bank stabilisation mesh on the steep banking, which is now in private ownership (rear gardens) through which, what looks to be, established self-seeded vegetation.

Alternative planting schemes have been received due to safety concerns of removing the established vegetation on the steep banking and damage to the mesh, and the difficulty of accessing the rear gardens to carry out the works and maintain it for 5years. (Discussed below in assessment).

9.0 MAIN ISSUES

- Scope of this application and principle of development
- Relevant history of site
- Impact on amenity and biodiversity
- Planning obligations
- Representations
- Other matters
- Conclusion

10.0 APPRAISAL

Scope of this application and principle of development

- 10.1 Annex A of the Government guidance on “Flexible options for planning permissions”, details the S73 variation of condition process. It advises that local planning authorities should, in making their decisions, focus their attention on national and development plan policies, and other material considerations which may have changed significantly since the original grant of permission.
- 10.2 In this case, the significant changes to policy since the original grant of the 2016/93243 planning permission is the adoption of the Kirklees Local Plan, Holme Valley Neighbourhood Development Plan and revised NPPF. The proposed variations will be considered against the relevant policies contained within these, in the recommendation of this application.
- 10.3 The principle of development of this site along with the embankment along the western boundary has previously been accepted and permission implemented. The application relates to the changes to the soft landscape details of the embankment to the rear of the approved properties, along the western boundary. Consequently, the assessment of impacts on visual amenity and the impact on the significance of the Honley Conservation Area whilst encouraging biodiversity interests within the site is a key consideration, which was the reasoning for condition 5 on the 2016/93243.

Relevant history of site

- 10.4 The wording of condition 5 is such that the approved soft landscaping scheme as shown drawing reference no. 0542-2 rev B should have been carried out during the first planting, seeding or management season following the commencement of superstructure of the hereby approved dwellings or in accordance with a phasing plan which shall have been submitted to and approved in writing by the Local Planning Authority before commencing on the superstructure of the dwellings.

- 10.5 This condition was breached, in that the approved landscaping scheme was not carried out as required by the condition nor was an alternative phasing plan been submitted and approved, prior to commencing on the superstructure of the dwellings. All the dwellings are completed and presumed now occupied. This is verified in the representations received under this application and evidenced during a recent site inspection.
- 10.6 This application was received as a result of the Local Planning Authority serving a breach of condition notice on the applicant, following a refusal under planning application 2021/93948. The reason for refusal set out that the information submitted at the time failed to demonstrate how the proposed variations would conserve and enhance this part of Honley Conservation area whilst encouraging ecology and biodiversity interest within the site, and therefore failed to accord with Kirklees Local Plan policies LP24, LP30, LP32 and LP35 as well as policies in the Holme Valley Neighbourhood Development Plan and guidance in the National Planning Policy Framework.

Impact on amenity and biodiversity

- 10.7 The covering letter accompanying this application sets out the reason for the proposed variation to the previously approved soft landscaping on this embankment which is detailed in paragraph 3.2 above.
- 10.8 No technical information has been submitted to support the reasons for the proposed variation. The applicant also advises that the reinforced earth embankment:
- “has a reinstatement cost of £400,000. When we examined the landscape drawing during advanced construction, we realised that the landscape scheme could not be implemented and the banking could not be redesigned structurally as it was already built”.*
- 10.9 From a structural point of view, whilst the above statement is not supported by evidence to suggest that larger shrubs / tree planting could lead to potentially destabilising the embankment, this matter is not disputed given the gradient of the embankment which in some areas is quite steep and larger trees / shrubs could have the potential to collapse in extreme weather conditions which could contribute to the potential destabilising of the embankment as well as danger to the occupants of dwellings on this site.
- 10.10 With respect of the initial submitted scheme on this application, no response was provided by the applicant to officer’s request for clarity of works, as the proposals set out in the supporting covering letter accompanying this application contradicted the submitted revised plan.

10.11 As the embankment forms private garden areas to properties that back onto it within the application site, the applicant would require consent of each landowner to carry out any works to the embankment area. The applicant advises that whilst *“some residents want a wildflower mix, and would grant access, some others want to do their own thing it seems..... given the existing multiple ownerships that now exist it is not possible to undertake planting”*.

10.12 Evidence was sought from the applicant to establish which residents were approached and would permit access to their private land. In response the applicant advised that:

“The residents I have spoken to we’re not prepared to give me any letters for different reasons

A. was fear of them been used as public record at committee

B. causing animosity with their neighbour who has a difference of opinion

C. One got quite cross and told me I wasn’t allowed to share emails between us due to GDPR

D. One said once you know what is happening come and see me and then we can discuss the plan

I’ve told them my understanding is this is very important to get sorted and if this issue does not get resolved and passed Kirklees will take enforcement action against the development company but far worse is the fact that as they own the land on there titles Kirklees will put an enforcement notice on their title deeds which will mean they’re unable to sell their property.

When selling the houses and I hope I got this right I’d always told them and this was every house that was sold we couldn’t implement the approved scheme as it was not compatible with the banking retaining solution and would void the 120 year guarantee

But the banking was to be considered a buffer between the houses and the woodland and not an extension of the garden as a few wanted to use as terraced gardens also it’s too steep to safely use or maintain”

10.13 Other than the above statements from the applicant, no substantial evidence has been provided by the applicant to substantiate that not all residents of the properties on the site would grant or indeed deny access.

10.14 Whilst the merits or otherwise of any revised landscape scheme needs to be assessed, consideration has to be given to how the scheme will be enforced or how it will be delivered, established or managed and maintained in private gardens, without all the residents agreeing to access for the next five years. This said officers are of the opinion that following the fulfilment of condition 5, after a period of five years, the embankment area due to its steep gradient would potentially result in being overgrown and include self-seeding to take place, and over time effectively resulting in a similar feature to that currently present on site.

- 10.15 The applicant states *“that the Tensar reinforced earth solution which has the required 120 year guarantee was approved under by Kirklees Highways Structures and was fine to be self seeded or a wildflower mix”*. Furthermore, the applicant also states in the additional statement received, that when the properties were sold each buyer was made aware of the incompatibility of the two separate designs and people were advised of the issue and told that the applicant would be submitting a formal application to incorporate a wildflower mix to the embankment area.
- 10.16 Kirklees Highway Structures approved the design and constructional details of the reinforced earth embankment under discharge of condition 11 application reference 2018/91138. However, this did not include agreement to the reinforced embankment to be self seeded nor planted with a wildlife mix. It is also acknowledged that a wildflower mix on the embankment, overtime would inevitably become self seeded and result in a similar feature to that currently existing on site.
- 10.17 The Council’s Ecology and Landscape officers have also visited the site to establish the quality and value of the embankment in its current state. Their observations are that whilst the embankment is self-seeded, it has over time naturally established and appears to be dominated by willow, willowherb and buddleia, which is denser in some parts than others and provides some valuable wildlife habitat. This, when seen against the adjacent wildlife habitat network along the western boundary of the site, forms an important contribution not only to the wildlife habitat but also to the enhancing of this part of the Honley Conservation Area. Notwithstanding the issue of whether the embankment can be accessed due to private ownership rights, to carry out any works due to the gradient of it, the clearance of the existing embankment is likely to result in harm to the diverse wildlife habitat it currently provides and as such would contradict with the aims and objectives of the Local Plan which seeks to safeguard, enhance and minimise impact on biodiversity.
- 10.18 In light of this, together with the realistic view and practicalities of adequately being able to manage and maintain any landscaping on the embankment (whether by the existing residents or developer, due to the gradient of the embankment and potential risk of destabilising the reinforced earth embankment, which could in effect void the 120 year guarantee), it is considered taking all of the above into account, that the embankment be retained in its current state.
- 10.19 This said, in this instance it was necessary to establish the base line value of the previously approved landscaping scheme, as shown on plan reference no. 0542-2 Rev B approved under condition 5 of planning consent 2016/93243, against the baseline value of the naturally vegetated embankment in its current form. The shortfall, if any would then be sought (in monetary value) from the applicant through a legal binding agreement to be utilised towards biodiversity enhancements and habitat creation where opportunities exist on Council owned land, to comply with the aims and objectives of the above listed Local Plan and HVNDP Policies.

- 10.20 Of most relevance in this instance is Local Plan Policy LP30, which states development proposals will be required to:
- (i), result in no significant loss or harm to biodiversity in Kirklees through avoidance, adequate mitigation or, as a last resort, compensatory measures secured through the establishment of a legally binding agreement;
 - (ii) minimise impact on biodiversity and provide net biodiversity gains through good design by incorporating biodiversity enhancements and habitat creation where opportunities exist;
- 10.21 Local Plan Policy LP30 is supported by the Biodiversity Net Gain Technical Advice Note (TAN). This is a cabinet adopted document that is used to assess and determine applications. It backs up Policy LP30 by including recommendations of the Environment Act 2021 for developments to achieve a 10% net gain. Section 3.4.3 of the TAN details the following:
- “In exceptional circumstances, where it can be demonstrated that on-site compensation methods have been exhausted, it will be necessary to secure Biodiversity Net Gain off-site. In these circumstances, applicants will need to demonstrate that sufficient offsite habitat creation or enhancement has been secured to achieve a minimum 10% Biodiversity Net Gain. Details of off-site compensation must also be demonstrated in a measurable way, following the same methodology as for onsite creation and enhancement”*
- 10.22 Using the Metric (DEFRA Metric 4.0), whilst unable to obtain a comprehensive species list, the Council’s Biodiversity Officer focussing on the embankment area was able to get a good assessment from the public footpath to the rear. The Council’s Biodiversity Officer assessment is that the embankment area providing approximately 1.04 habitat units, is currently dominated by willow, willowherb and buddleia, with little species variation and creates a habitat that can be classified as mixed scrub in poor condition, a medium distinctiveness habitat that does provide some suitability for biodiversity. In contrast the previously approved scheme would have delivered 2.08 habitat units and had a species mix consistent with a woodland mix, which can be classified as other broadleaved woodland in moderate condition. This is down to the species mix that would have comprised trees, scrub and ground flora indicative of a mature woodland.
- 10.23 Given the above, the habitats in their current form on the embankment are at a shortfall of 50% biodiversity units of the approved landscaping plans and therefore, to accord with Local Plan Policy LP30 a financial payment to the Council, for use to enhance biodiversity on council managed land, will be required. The shortfall has been calculated by the Council’s Biodiversity Officer, (based on £20,000 per habitat unit (figure taken from 2019 DEFRA Impact Assessment) + 15% admin fee (figure taken from Kirklees Biodiversity Net Gain Technical Advice Note)), a total of approximately £23,920 will be sought from the applicant. Officer’s recommendation is reflective of this and on the basis the applicant is agreeable to the off-site contributions, would comply with Local Plan Policy LP30 and the aims of Policy 13 of the HVNDP.

- 10.24 In the additional statement received in July 2023, the applicant has offered “a contribution of £10,000 towards either Meltham Greenway or a biodiversity scheme in Honley or the playground to benefit the wider area”. As this does not cover the full shortfall set out in the above paragraph, formal agreement is sought and awaited from the applicant for the full amount of the shortfall. An update on this matter will be reported to the Members in the committee update or on the date of committee.
- 10.25 Confirmation has been received from the Council’s Woodland Development Manager and the Principal Landscape Architect that on further consideration, there is potential for habitat and wildlife creation at the Council’s recreation (Meadowcroft, Honley) grounds on Meltham Road (to the back of the site), Honley, approximately 480m south-west of the application site. As an alternative, Honley Head Wood, on Bradshaw Road, is Council owned with no management plan, or any works done to it for some time. This would benefit from wildlife habitat creation and or improvement (thinning, under planting etc) to increase ecological and woodland value. Both sites are within the Holme Valley North Ward, the same as the application site. With respect to Brockholes recreation ground, the Council does not own this site and as such ruled out for any additional habitat creation or tree planting. The financial contribution to be secured and used at any of the two sites identified within the Holme Valley North ward would accord with Local Plan Policy LP30 and Policy 13 of the HVNDP.

Planning obligations (*Deed of Variation to the original S106 Agreement*)

- 10.26 A Section 106 legal agreement forms part of the original permission which requires the maintenance and repair as necessary of the watercourse to ensure the free flowing of water and for inspections to be carried out annually to maintain in good repair. If Members are minded to approve the application, a deed of variation to the original legal agreement would be required, to secure the obligations in line with the original legal agreement as well as the obligation to secure the off-site contributions, discussed in the preceding paragraphs upon completion of the Obligation.

Representations

- 10.27 The reasoned conclusion has taken into account the representations received, together with the potential impact on the structural integrity of the reinforced embankment which forms private gardens areas, safety of residents, enforceability and the practicality of safely carrying out the maintenance and management of this area, given the identified constraints and gradient of the reinforced embankment.

Other Matters: (Conditions)

- 10.28 The previously approved permission is extant and development has been constructed in all other respect with the details approved in accordance with 2016/93243 original permission and subsequent discharge of condition applications. It is therefore not necessary to re-impose condition no. 1 requiring

the proposals to be carried out within three years of the expiry of the previous permission. Furthermore, those conditions for which variation has not been sought as part of this application and were originally imposed by planning permission approval 2016/93243 would be reproduced on the notice to provide a complete record of all conditions, regardless of whether some may have already been discharged. Where the details pursuant to the conditions under planning permission 2016/93243 have already been approved by the Local Planning Authority, and there is no change to the approved details, a further discharge of condition application for those conditions will not be necessary. This matter will be addressed by the imposition of a footnote on the decision notice.

11.0 Conclusion

- 11.1 The original intention of condition (5) for soft landscape was to improve the habitat and wildlife and conserve and enhance the conservation area through the implementation of the approved landscape planting on the embankment, which although forms garden areas in private ownership was not envisaged for usable garden areas, due to its steepness. Furthermore, to ensure the structural integrity of the reinforced embankment was not compromised by future residents of the site, permitted development rights were withdrawn for development falling within Part 1 Classes A, B, C, D, E & F and Part 2 Class A or B of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) under condition 19 of the 2016 permission.
- 11.2 It is considered there would be very little merit to remove the self-seeded and naturally established vegetation which has now established over a number of years, to replace the banking with grass seeding which will potentially re-establish with similar native vegetation in time and given the complexities of the steepness and risks associated with accessing the banking for any long term maintenance and management, it will be difficult to remove growth of pioneer species/natural succession. Consequently, haven taken a balanced approach of all the material considerations, the recommendation before Members is to grant the variations proposed and seek the off-site biodiversity net gain to be secured within the same Ward, compensating for the recognised shortfall and to comply with the above listed Local Plan and HVNDP policies.
- 11.3 The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice.
- 11.4 In this case, the application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development would constitute sustainable development and it is therefore recommended for approval.

12.0 CONDITIONS (Full wording of conditions including any amendments/ additions to be delegated to the Head of Planning and Development). The list of conditions below are transposed from the 2016 application, as explained within paragraph 10.28 (above)

1. Deleted

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

3. The dwellings hereby approved shall be faced in 'natural coursed walling stone' and 'Sandtoft Cassius Antique Slate' in accordance with the details (ref: 16/D15) received on 27/09/2017. The development shall be maintained as such thereafter and no change therefrom shall take place without the prior written consent of the Local Planning Authority.

4. Notwithstanding the submitted information details of all boundary treatments shall be submitted to and approved in writing by the Local Planning Authority before development commences on the superstructure of any dwelling hereby approved. The development shall be completed strictly in accordance with the details so approved prior to any of the dwellings being occupied and maintained as such thereafter.

5. Deleted

6. Prior to the occupation of the hereby approved dwellings, the approved vehicle parking areas shall be surfaced and drained in accordance with the Department for Communities and Local Government and Environment Agency's "Guidance on the permeable surfacing of front gardens" as amended or any successor guidance and made operational. The surfacing material must be of a type which does not carry debris onto the highway. Thereafter the parking areas shall be so retained, free of obstructions, and available for the use specified on the approved plans.

7. Before development commences on the superstructure of any dwelling hereby approved, a detailed scheme for the provision of a road widening including the provision of a new 2 metre wide footway to be provided as shown on drawing no. 16/D15/03 Rev F entitled 'site layout' and all associated works shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include construction specifications, white lining, signing, surface finishes together with an independent Safety Audit covering all aspects of the work. The development shall be completed in accordance with all the approved details before any part of the development is first brought into use.

8. Prior to construction commencing a schedule of the means of access to the site for construction traffic shall be submitted to and approved in writing by the Local Planning Authority. The schedule shall include • the point of access for construction traffic,

- Construction (Including site preparation) traffic, timing and routing to and from the site,
- Parking arrangement for site/construction staff,
- Wheel washing on site and street cleaning arrangement,
- Construction/build schedule and

- Details of how dust and emissions during the construction will be controlled/minimised.

The approved scheme/details shall be adhered to during and throughout the construction phase, until completion of the approved development.

9. The bin storage/collection areas as shown on drawing no. 16/D15/03 Rev F entitled 'site layout' shall be provided prior to the first occupation of the dwellings and shall be retained thereafter free of obstructions and available for storage/collection of bins only.
10. Notwithstanding the provisions of section 55(2)(a)(i) of the Town and Country Planning Act 1990 (or any re-enactment with or without modification) all integral garages on all plots shall be used for the garaging of motor vehicles and no other purposes.
11. Before development commences on the superstructure of any dwelling hereby approved, the design and construction details of all temporary and permanent highway retaining structures including any modifications to the existing retaining walls and to the embankment along the western boundary of the site shall be submitted to and approved in writing by the Local Planning Authority. The details shall include a design statement, all necessary ground investigations on which design assumptions are based, method statements for both temporary and permanent works and removal of any bulk excavations, a full slope stability analysis together with structural calculations and all associated safety measures for the protection of adjacent public highways, footpaths, culverts, adjoining land and areas of public access. The development shall be completed in accordance with the approved details before any of the dwellings are occupied and retained as such thereafter.
12. No piped discharge of surface water from the site shall take place until works to provide a satisfactory outfall, other than the local public sewerage, for surface water have been completed in accordance with details submitted to and approved in writing by the Local Planning Authority.
13. Before development commences on the superstructure of any dwelling hereby approved a scheme detailing finalised foul, surface water and land drainage (including private drainage layout, trash screen design, interface between diverted watercourse and existing infrastructure) shall be submitted to and approved in writing by the Local Planning Authority. The detailed design shall be in accordance with Site Layout 16/D15/03 Rev F, Flood Plan with Trash Screen Blockage 10991-01C and Bland and Swift addendum to FRA dated 11/09/2017. None of the dwellings hereby approved shall be occupied until the drainage scheme so approved has been provided on the site to serve the development or each agreed phase of the development to which the dwellings relate and thereafter be retained in accordance with the approved details.
14. The hereby approved dwellings shall only be occupied on completion of the maintenance and management plan for the approved on-site ordinary watercourse and all its associated ancillary structures which shall have been submitted to and approved in writing by the Local Planning Authority. Thereafter the maintenance and management of the approved watercourse including all associated ancillary structures shall be adhered to in accordance with the approved plan/schedule.

15. Remediation of the site shall be carried out and completed in accordance with the Phase I Geo-environmental Investigation report hereby approved. In the event that remediation is unable to proceed in accordance with the approved Remediation Strategy or contamination not previously considered [in either the Preliminary Risk Assessment or the Phase II Intrusive Site Investigation Report] is identified or encountered on site, all works on site (save for site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within 2 working days. Unless otherwise agreed in writing with the Local Planning Authority, works shall not recommence until proposed revisions to the Remediation Strategy have been submitted to and approved in writing by the Local Planning Authority. Remediation of the site shall thereafter be carried out in accordance with the approved revised Remediation Strategy.
16. Following completion of any measures identified in the approved Remediation Strategy or any approved revised Remediation Strategy a Validation Report shall be submitted to the Local Planning Authority. Unless otherwise agreed in writing with the Local Planning Authority, no part of the site shall be brought into use until such time as the remediation measures for the whole site have been completed in accordance with the approved Remediation Strategy or the approved revised Remediation Strategy and a Validation Report in respect of those remediation measures has been approved in writing by the Local Planning Authority.
17. In the event that contamination not previously identified by the developer prior to the grant of this planning permission is encountered during the development, all works on site (save for site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within 2 working days. Unless otherwise agreed in writing with the Local Planning Authority, works on site shall not recommence until either (a) a Remediation Strategy has been submitted to and approved in writing by the Local Planning Authority or (b) the Local Planning Authority has confirmed in writing that remediation measures are not required. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures. Thereafter remediation of the site shall be carried out and completed in accordance with the approved Remediation Strategy. Following completion of any measures identified in the approved Remediation Strategy a Validation Report shall be submitted to the Local Planning Authority. Unless otherwise agreed in writing with the Local Planning Authority, no part of the site shall be brought into use until such time as the whole site has been remediated in accordance with the approved Remediation Strategy and a Validation Report in respect of those works has been approved in writing by the Local Planning Authority.
18. An electric vehicle recharging point shall be installed within the garage serving each dwelling during the construction phase and before occupation of the dwelling or in a location accessible from the dedicated parking area to each dwelling. The cable and circuitry ratings for the charging points shall be of adequate size to ensure a minimum continuous current demand of 16 Amps and a maximum demand of 32Amps. The electric vehicle charging points so installed shall thereafter be retained.

19. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order (with or without modification) no development falling within Part 1 Classes A, B, C, D, E or F or Part 2 Class A or B of Schedule 2 of the above Order shall be carried out within the red line boundary of the application site shown on the approved plans at any time.

FOOTNOTE:

Conditions 3-4 and 6-19 (i.e. those conditions for which variation has not been sought as part of this application) were originally imposed by planning permission approval 2016/93243. They are reproduced on this notice to provide you with a complete record of all conditions, regardless of whether some may have already been discharged. Where the details pursuant to the above conditions in accordance with reference 2016/93243 already been submitted for discharge and approved by the Local Planning Authority and there is no change to the details required by that condition, a further discharge of condition application pursuant to this application reference will not be necessary.

FOOTNOTE:

It is important to note that as a hydrocarbon resistant gas membrane is to be installed, a higher standard of validation will be required. In reference to condition no. 16 the following information shall be provided in the validation report: • Specification of products used • Letter from RGS declaring products installed in all necessary plots to manufacturers specification • Photos of installation process

FOOTNOTE:

It is brought to the Applicants' notice that the Highway Development, Investment & Regeneration, Civic Centre 1, Market Street, Huddersfield (01484 221000 or 'Highways.Section38@kirklees.gov.uk') must be contacted to discuss road adoption arrangements under Section 38 of the Highways Act 1980.

FOOTNOTE:

It is the applicant's responsibility to find out whether the work approved by this planning permission requires written approval from the Highways Structures section for works near or abutting highway and any retaining structures. Contact Highways Structures Section on Tel No. 01484-221000 who can advise further on this matter.

FOOTNOTE:

The public footpath no. HOL/186/10 beyond the western boundary shall not, at any time prior to, during or after building works, be unofficially obstructed or closed without the prior written consent of the Council as Highway Authority.

FOOTNOTE:

Vegetation clearance should be undertaken outside of the bird breeding season, March to August inclusive. If any clearance work is to be carried out within this period, a nest search by a suitably qualified ecologist should be undertaken immediately preceding the works. If any active nests are present work which may cause destruction of nests or, disturbance to the resident birds must cease until the young have fledged.

FOOTNOTE:

All contamination reports shall be prepared in accordance with CLR11, PPS23 and the Council's Advice for Development documents or any subsequent revisions of those documents.

FOOTNOTE:

Please note that the granting of planning permission does not overrule private legal rights of ownership and it is your responsibility to ensure you have the legal right to carry out the approved works as construction and maintenance or parking of vehicles may involve access to land outside your ownership or subject to private rights of way.

FOOTNOTE:

The responsibility for securing a safe development rests with the developer and/or landowner. It is advised where a site could be affected by land stability issues this be taken into account and dealt with appropriately by the developer and/or landowner.

FOOTNOTE:

To minimise noise disturbance at nearby premises it is generally recommended that activities relating to the erection, construction, alteration, repair or maintenance of buildings, structures or roads shall not take place outside the hours of: 07.30 and 18.30 hours Mondays to Fridays 08.00 and 13.00hours, Saturdays With no working Sundays or Public Holidays In some cases, different site specific hours of operation may be appropriate. Under the Control of Pollution Act 1974, Section 60 Kirklees Environment and Transportation Services can control noise from construction sites by serving a notice. This notice can specify the hours during which the works may be carried out.

Background Papers:

Application and history files. See assessment above.

Website link to be inserted here:

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2022%2f93823>

[Planning application details | Kirklees Council](#)

Link to application reference 2018/91138 - Discharge conditions 4 (boundary treatments), 7 (highways), 8 (construction traffic), 11 (retaining wall), 13 (drainage), 14 (watercourse) on previous permission 2016/93243 for erection of 17 dwellings – details satisfactory.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2018%2f91138+>

link to application reference 2021/91689 - Variation condition 2 and 5 on previous permission 2016/93243 for erection of 17 dwellings (within a Conservation Area)

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2021%2f91689+>

Certificate of Ownership – Certificate A signed by Agent.