
Report of the Head of Planning and Development

STRATEGIC PLANNING COMMITTEE

Date: 07-Dec-2023

Subject: Planning Application 2023/92187 Variation of condition 1. (plans) on previous permission no. 2019/93068 for reserved matters application pursuant to outline permission 2018/91119 for erection of residential development rear of, 11, Holme Avenue, Dalton, Huddersfield, HD5 8DP

APPLICANT

Stonewater
Developments Ltd

DATE VALID

24-Jul-2023

TARGET DATE

23-Oct-2023

EXTENSION EXPIRY DATE

Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

[Public speaking at committee link](#)

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral wards affected: Almondbury Ward

Ward Councillors consulted: Yes

Public or private: Public

RECOMMENDATION

DELEGATE approval of the application and the issuing of the decision notice to the Head of Planning and Development in order to:

1. To secure a S106 Deed of Variation agreement to cover the following matters:
 - a) **Affordable Housing:** Four affordable dwellings, including two affordable rent and two intermediate units (20% of the total units)
 - b) **Management and Maintenance:** of on-site drainage infrastructure (until adoption by statutory undertaker)
2. Complete the list of conditions including those contained within this report and release the planning permission.

In the circumstances where the S106 agreement has not been completed within 3 months of the date of the Committee's resolution then the Head of Planning and Development shall consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the benefits that would have been secured; if so, the Head of Planning and Development is authorised to determine the application and impose appropriate reasons for refusal under Delegated Powers.

1.0 INTRODUCTION

- 1.1 Outline Planning Permission was granted on the application site for residential development (unnumbered) via application 2018/91119. Access was a consideration as part of that application, with appearance, scale, layout, and landscaping being reserved matters. As the quantum of development was unknown as part of the outline application, conditions were imposed via this application to manage planning contributions, including affordable housing (condition 14), public open space (condition 15), education (condition 16), and sustainable modes of travel (condition 17).
- 1.2 A Reserved Matters application, covering all of the outstanding matters for 22 dwellings was submitted and approved under reference 2019/93068. A s106 agreement was not attached to the Reserved Matters application, as all relevant obligations were governed by the conditions attached to the parent outline planning application.

- 1.3 Discharge of condition application ref. 2020/91813 was submitted to address conditions 14, 15, 16, and 17. It was identified that the final number of dwellings approved as part of Reserved Matters application 2019/93068 (22 units) was below the Council's threshold for seeking an affordable contribution (25 units) and was therefore not required. Regarding the condition contributions, no affordable housing, open space or sustainable modes of travel contributions were proposed on the basis that the scheme would not be financially viable if they were provided. This was supported by a Viability Assessment which was independently verified and confirmed by a council appointed viability expert. The discharge of condition application was presented to Strategic Planning Committee on the 27th of January 2021, where members resolved to defer the application to enable the viability appraisal to be reassessed. Members indicated that further information was needed and different viability scenarios should be considered to explore whether some affordable housing could be secured.
- 1.4 Further assessment and negotiations between officers, their independent viability assessor, and the applicant took place following the deferral. These led to the applicant agreeing to an affordable housing provision of two starter homes (to be sold at 20% below the market value) and no other contribution. The application was returned to Strategic Planning Committee on the 25th of February 2021 with a recommendation for approval, subject to the two first homes being secured within a s106. Members resolved to support the application as updated. The S106 agreement was subsequently completed, and the decision notice was issued.
- 1.5 Since that time, a new owner has acquired the site and has submitted this Variation of Condition application. The applicant is Stonewater Developments Ltd, a registered provider of social housing. As part of this application, they wish to update the house types to reflect their standards and requirements and to modify the S106 agreement from requiring two first homes (an intermediate form of affordable housing that includes the sale of the units which would not comply with their business model) to four affordable units consisting of two affordable rent and two intermediate units. This increase is a betterment.
- 1.6 The application is brought to the Strategic Planning Committee because it would result in a decision that includes a S106 package which does not comply with the Local Plan 2019, in this case not including a policy compliant Public Open Space or Sustainable Travel Package. It should however be noted that this would be as previously approved and this Variation of Condition application would represent a betterment compared to the original application, through increasing affordable housing provision from two to a minimum of four.

2.0 SITE AND SURROUNDINGS

- 2.1 The application site is 0.68 hectares in size and slopes downhill from south (125m AOD approx.) to north (110m AOD approx.). The site is accessed from the lower-level Holme Avenue to its north. Forrest Road is to the south, at a higher ground level.

- 2.2 No buildings exist within the site's boundaries. The site is partly grassed and partly overgrown with self-seeded trees and shrubs, giving the site a ruderal character. No trees on the site are the subjects of Tree Preservation Orders (TPOs). The site is not within a conservation area and there are no listed buildings immediately adjacent to the site. Surrounding buildings are in residential use.
- 2.3 A public footpath (HUD/100/10) runs along the site's east boundary, connecting Forest Road and Felcote Avenue with Holme Avenue and Brian Avenue. An informal path also runs diagonally across the site.

3.0 PROPOSAL

- 3.1 Permission is sought to vary condition 1, which relates to the plans and specifications table. The condition reads:

1. The development hereby permitted shall be carried out in complete accordance with the plans and specifications schedule 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 and so as to ensure the satisfactory appearance of the development on completion, and to accord with Policies LP21 and LP24 of the Kirklees Local Plan and guidance in the National Planning Policy Framework.*

The reason for the change is to update the plots (design and internal requirements) to suit a new landowner. The applicant also seeks to vary the previous S106 (attached to the Discharge of Condition application ref. 2020/91813) from requiring the delivery of two starter homes to four affordable units. The applicant is a registered provider and it is proposed that all units would be affordable, consisting of nine shared ownership and thirteen affordable rent units.

- 3.2 The number of units would be unchanged at 22. However, the changed house types would result in the house sizes changing as follows:

Previously approved

- 1+2bed: 0
- 3bed: 19 (86%)
- 4bed: 3 (14%)

Proposed

- 1+2bed: 5 (23%)
- 3bed: 17 (17)
- 4bed: 0

- 3.3 In terms of design and appearance, overall, the appearance of the units are similar. The previously approved units included most having garages, whereas none are proposed.

- 3.4 Certain plots would become detached, while others would become semi-detached. Previously there was 8 semi-detached pairs (16 units total) and six detached. The proposal seeks 9 semi-detached pairs (18 total) and four detached.
- 3.5 The amended proposal seeks to reduce the extent of engineering works. The units along the south boundary would remain split level, being split two / three storeys. Plots 3 – 7 are proposed to change from the approved split two/three storey to one/two storey. Plots 1 and 2 would remain two storeys only.
- 3.6 To facilitate these changes, levels across the site are being modified, but the max heights of units are to either be the same or lower. For plots 3 – 7, which are to be a storey lower, the heights would be notably lower however they would be moved between 1 and 1.5m closer to the properties on Holme Avenue. The gardens for these plots would also go from being mostly flat in the approved application, to the proposal having these units having a smaller flat garden section and then embankment and/or retaining walls.
- 3.7 Materials are governed by condition 2 on the original application and would be unchanged from that previously approved by the proposal.

4.0 RELEVANT PLANNING HISTORY (including enforcement history)

4.1 Application Site

2014/92369: Outline application for residential development – Granted

2018/91119: Outline application for residential development – Granted

2019/93068: Reserved matters application pursuant to outline permission 2018/91119 for erection of residential development – Granted

2020/91813: Discharge of conditions 14 (affordable housing), 15 (public open space) and 16 (education) of previous permission 2018/91119 for outline application for erection of residential development – DOC approved

2021/90898: Discharge of conditions 2 to 6 of previous reserved matters permission 2019/93068 pursuant to outline permission 2018/91119 for erection of residential development – Decision pending

2021/90899: Discharge of conditions 6 to 8, 13, and 18 to 20 of previous permission 2018/91119 for outline application for erection of residential development – Decision pending

2022/91875: Discharge of condition 17 (sustainable transport) of previous outline permission 2018/91119 for erection of residential development – DOC approved

2023/92199: Non material amendment to previous permission 2019/93068 for reserved matters application pursuant to outline permission 2018/91119 for erection of residential development – Decision pending

4.2 Surrounding Area

Land at, Forest Road

2023/90547: Erection of 9 dwellings – Decision pending

4.3 Enforcement History

None on site nor relevant within the area.

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

5.1 Officers expressed initial concerns over the potential for overlooking from the gardens of plots 3 – 7, which were to be notably higher than before (as a result of the level changes and the plots being changed to being split one / two storey dwellings). This matter was resolved via amended plans which lowered the garden levels and included a planted buffer zone.

5.2 The changes to the levels raised concerns from K.C. Highways over the potential steepness of the Highway, with road long-sections requested. On receipt these plans confirmed the concerns. Officers undertook negotiations with the applicant which led to updated plans being received which demonstrated the concern had been addressed.

6.0 **PLANNING POLICY**

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

Kirklees Local Plan (2019) and Supplementary Planning Guidance / Documents

6.2 The application site is a Housing Allocation (ref. HS4) within the Kirklees Local Plan.

6.3 The relevant Local Plan policies are:

- **LP1** – Presumption in favour of sustainable development
- **LP2** – Place shaping
- **LP3** – Location of new development
- **LP7** – Efficient and effective use of land and buildings
- **LP11** – Housing mix and affordable housing
- **LP21** – Highways and access
- **LP22** – Parking
- **LP24** – Design
- **LP32** – Landscape
- **LP33** – Trees
- **LP65** – Housing allocations

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

Supplementary Planning Documents

- Affordable Housing and Housing Mix SPD (2023)
- Highways Design Guide SPD (2019)
- Housebuilders Design Guide SPD (2021)
- Open Space SPD (2021)

Guidance documents

- Kirklees Interim Affordable Housing Policy (2020)
- Biodiversity Net Gain Technical Advice Note (2021)
- Planning Applications Climate Change Guidance (2021)
- West Yorkshire Low Emissions Strategy and Air Quality and Emissions Technical Planning Guidance (2016)
- Waste Management Design Guide for New Developments (2020)
- Green Streets® Principles for the West Yorkshire Transport Fund

National Planning Guidance

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

- **Chapter 2** – Achieving sustainable development
- **Chapter 4** – Decision-making
- **Chapter 5** – Delivering a sufficient supply of homes
- **Chapter 8** – Promoting healthy and safe communities
- **Chapter 9** – Promoting sustainable transport
- **Chapter 11** – Making effective use of land
- **Chapter 12** – Achieving well-designed places
- **Chapter 14** – Meeting the challenge of climate change, flooding and coastal change
- **Chapter 15** – Conserving and enhancing the natural environment
- **Chapter 16** – Conserving and enhancing the historic environment

6.6 Other relevant national guidance and documents:

- MHCLG: National Design Guide (2021)
- DCLG: Technical housing standards – nationally described space standard (2015)

Climate change

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

6.8 On the 12th of November 2019 the Council adopted a target for achieving 'net zero' carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system, and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan predates the declaration of a climate emergency and the net zero carbon target; however, it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications, the council would use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

7.0 PUBLIC/LOCAL RESPONSE

7.1 The application has been advertised as a major development via site notices and through neighbour letters to properties bordering the site, along with being advertised within a local newspaper. This is in line with the Council's adopted Statement of Community Involvement. Final amendments were made after the last public representation period. These were considered minor in scope, and were improvements and/or direct responses to issues raised by the public or officers. As such, it was not considered necessary to readvertise the final amendments.

7.2 The end date for public comments was 19.09.2023. In total six public comments were received. The following is a summary of the comments made:

- The application is encroaching upon third party land, specifically to the south. The properties fronting onto Forest Road "*each own a strip of land beyond their tarmac drive. Also, there are steps that give access onto the tarmac drive from the proposed housing development. This is a private road owned and maintained by each house therefore there should be no access from the proposed development onto the private drive*".
- The proposal, through notable excavation, would affect the structural stability of properties on Forest Road where instances of subsidence area already evident.
- The proposed plans show access from the rear of the proposes houses to properties on Forest Road (nos. 45 and 47). Its unclear what purpose these serve and there is no access into and out of the site across private land.
- Concerns that the proposal may affect the water table and could lead to flooding / water running off towards Holme Avenue.
- Concerns over the capability of local roads, specifically Crest Avenue and Holme Avenue, to accommodate additional traffic. This includes both construction and operational traffic.
- The proposal will result in overlooking and a loss of privacy to neighbouring dwellings and their respective gardens.
- Construction works have happened extensively in the area and residents '*expect building works to closely adhere to neighbourhood noise guidance and agreed working hours*'
- The changes to plots 8 and 9, from three storeys to two, is welcomed.
- Concerns over existing boundary treatments and whether they'll be repaired and/or replaced.

7.3 The site is within Almondbury ward. Local ward members were notified of the proposal. Councillors Alison Munro and Bernard McGuin highlighted concerns from location residents, as identified above and specifically regarding possible land ownership conflicts.

8.0 CONSULTATION RESPONSES

8.1 Statutory

K.C. Highways (Development Management): K.C. Highways have been involved in ensuring the changes sought, particularly to the layout and levels do not result in the highway arrangements becoming unacceptable. While initial concerns were held, these have been addressed via amendments following negotiations. Therefore, no objection, subject to the previous conditions being retained.

K.C. Lead Local Flood Authority: No objection subject to previous conditions being re-applied.

8.2 Non-statutory

K.C. Highways (Structures): Require repeated conditions relating to ground stability adjacent or near to the highway and footpaths.

K.C. Strategic Housing: Provided advice on expected market housing mixture and affordable housing requirements. No objection and welcome the delivery of additional affordable housing on the site.

9.0 MAIN ISSUES

- Scope of the application
- Implications of varying of condition 1
- Previous conditions and planning obligations
- Representations

10.0 APPRAISAL

Scope of the application

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

10.2 The starting point for a S73 application is the previously granted planning permission, which must carry significant material weight. However, consideration must first be given to whether any material changes in circumstances have taken place. This includes the policy and local context.

- 10.3 In terms of policy, the original application 2019/93068 was assessed against the Local Plan (2019), which remains the development plan and therefore the assessment criteria will be consistent. The National Planning Policy Framework has been subject to minor revisions since 2019/93068 was determined, but none are deemed material or relevant.
- 10.4 Regarding the local context, there has been no changes in the environment (including built and natural) which would materially impact on the assessment of the application.
- 10.5 Considering the above, consideration must principally be given to the specific changes proposed and their interaction with adopted planning policy. Furthermore, it should be noted that application 2019/93068 was a reserved matters submission to 2018/91119's original granting of outline permission. The reserved matters were layout, scale, appearance, and landscaping, with access having been assessed and approved as part of the outline permission.

Implications of varying of condition 1

- 10.5 The original application was a reserved matter considering layout, appearance, scale, and landscaping. Therefore, the impact of the proposed plan variation will be considered through the same approach.

Layout

- 10.6 First considering layout and visual amenity, the layout changes are considered small in scale would not materially affect the visual appearance of the site. Unit positions are principally the same, with minimal variation that would not affect prejudice visual amenity value. The change in the ratio of detached to semi-detached is limited and would not cause the development to appear incongruous in the area.
- 10.7 Progressing to layout and residential amenity, the relationship of most units to their neighbours, including plots 1 – 2 and 8 – 22 would not be materially changed. Notably, plots 8 – 22 are on a substantially lower ground level to those on Forest Road and would be reduced in height compared to those approved, negating any concerns of overbearing, overlooking, or overshadowing. Plots 3 – 7 would move between 1 and 1.5m closer to nos. 1 – 7 Holme Avenue, with a minimum separation distance of 22.9m (between plot 5 and no. 5 Holme Avenue, discounting extensions). This still exceeds the 21m expected by the Householder Design Guide SPD, however the level differences between Holme Avenue and the site must be acknowledged, with the proposed dwellings being notably higher. Nonetheless, while the separation distances would fall by between 1 and 1.5m, the heights of plots 3 – 7 would fall by 1.5m by virtue from changing from the approved two/three storey split level to one/two storey split level. As a result, the lower height is considered to negate the closer distance and would prevent the dwellings causing materially harmful overbearing, overlooking, or overshadowing.

- 10.8 Regarding the garden levels of plots 3 – 7, as a result of these units losing a storey (being proposed as two storeys to the rear as opposed to three as approved) yet needing to have a similar finished floor level to the road (to enable access), the garden levels would go from largely flat to including an embankment and/or retaining wall in places. These would be topped by boundary treatment consisting of 1.8m high fencing, to define curtilage and prevent overlooking from the new dwelling's garden spaces. Nonetheless, the separation distances between the properties and these modest level changes / retaining walls and fencing, being a minimum of 10.5m, and are considered acceptable to prevent materially harmful overbearing or overshadowing upon existing residents.
- 10.9 As a result of the level changes and to avoid new fencing being too close to neighbouring properties, a landscaped zone would separate plots 3 – 7 from the properties on Holme Avenue. This would result in the identified plots having smaller gardens than previously approved. Smaller gardens to respond to topographical constraints is not unusual for the area or wider district and the Local Plan does not have dedicated garden size requirements. The consideration is whether the garden size would be so small as to materially prejudice the amenity standard of the dwellings. The dwellings are good sized and well-spaced from neighbouring properties and would otherwise offer residents a high standard of amenity. Accordingly, the smaller than previously approved and small than typical garden sized are not considered a material cause for concern for future residents' amenity.
- 10.10 Considering Highways, the access arrangement from Holme Avenue was approved at outline stage, with that proposed being consistent with the earlier approval. The applicant has demonstrated that the changes to the development's level and other layout changes to the new road would not prejudice the delivery of a safe and effective highway.
- 10.11 Various units have lost garages, therefore reducing their level of off-road parking. However, these units have also had their number of bedrooms reduced and reducing their parking demand. As a result, all units would have an adequate provision of parking. Regarding visitor parking, the previous application included five dedicated visitor parking bays. The proposal includes two dedicated visitor bays and identifies three on-road visitor parking spaces. This was requested by K.C. Highway Structures during their technical review of the applicant's retaining wall details. The location of the three on-street parking spaces is considered to be acceptable and would not interfere with the safe and effective use of the road.
- 10.12 The proposed layout is not substantially different to that previously approved, although the changes do have implications for amenity and highways. Nonetheless, these implications have been considered and found to be acceptable. The proposed varied layout would not prejudice visual amenity, residential amenity, or highway safety, in accordance with the requirements of policies LP21 and LP24.

Appearance and scale

- 10.13 The appearance and scale of most of the units would remain broadly the same as approved, remaining as representatives of modern Pennine vernacular that would harmonise well with the appearance and scale of dwellings in the area. The removal of garages from most units does not materially affect their appearance.
- 10.14 Plots 3 – 7 would change from being split level two / three storey to being split one / two storey, therefore appearing as bungalows to the front. Bungalows are common in the area and would suitably integrate into the site and wider area, raising no concerns.
- 10.15 Regarding the amenity of residents, as noted above plots 3 – 7 would move closer to the existing dwellings on Holme Avenue (still be beyond 21m) but would be notably reduced in height. As a result, notwithstanding the level differences between the site and properties on Holme Avenue, this change is not considered to result in material harm to existing residents via overbearing or overshadowing. Window arrangements, i.e., their rough location and orientation, would remain as before and the proposed amendments would not lead to potential new instances of overlooking.
- 10.16 All plot sizes are being reduced, but all units would remain at or in excess of the Nationally described Space Standards.
- 10.17 Materials were secured via condition 2 on the previous application. This would be unaffected by the proposed variation and therefore does not fall to be considered as part of this application. See paragraphs 10.23 – 10.26 for more details on the other previously imposed condition. In conclusion, the appearance and scale of the proposed dwellings are concluded to be acceptable and would not prejudice visual amenity, residential amenity, or highway safety, in accordance with the requirements of policies LP21 and LP24.

Landscape

- 10.18 Landscaping changes between the approved and proposed change are nominal. An area of open space would remain in the west of the site, at a materially same size. Landscaping to the front of units would remain consistent to that approved and tree-planting would be provided where feasible.
- 10.19 The most notable change to landscaping is along the east boundary, adjacent to PROW HUD/100/10. However, this would change from a consistent retaining wall with small areas for landscaping around it, to part retaining wall and part embankment, bringing more open / green space onto the site. Technical details for approval of the retaining wall and a scheme for the widening of the PROW were previously secured via condition and would be repeated (further details below).
- 10.20 A substantial retaining wall would still be required along the south boundary, within the gardens of lots 8 – 22. Minimal changes are proposed to the steepness of the banking and/or the location of retaining walls to reflect the modified house layouts and sized. Fundamentally however, the retaining wall

would but materially the same and previously approved. Regarding other hard landscaping, other than retaining walls, other boundary treatments are to consist of 1.8m high timber fencing as was previously approved, other than as noted within paragraphs 10.7 – 10.9.

- 10.21 Overall, the proposed variation would not prejudice the proposals landscaping arrangements which would remain of a high quality and be visually acceptable, in accordance with Policy LP24. It remains the case that an off-site Public Open Space contribution would not be secured contrary to LP63, however this remains as approved in the previous application and as detailed in paragraphs 1.1 -1.5 and is therefore not a material change in circumstances.

Reserved Matters summary

- 10.22 The application is a S73 variation of condition to a Reserved Matters application where the considerations were layout, appearance, scale, and landscape. The impact of the proposed variation to the plans has been considered against these considerations and found to be acceptable and in accordance with the policies contained within the Local Plan (bar policy LP63 as noted in the above paragraph).

Previous conditions

- 10.23 As this is an application under S73 of TCPA 1990 it would, in effect, be a new permission. Planning practice guidance (The Use of Conditions) confirms that the original planning permission would continue to exist whatever the outcome of the application under section 73 and that the conditions imposed on the original permission still have effect unless they have been discharged.
- 10.24 The PPG also confirms that for the purpose of clarity, decision notices for the grant of planning permission under section 73 should set out all of the conditions imposed on the new permission, and restate the conditions imposed on earlier permissions that continue to have effect (Paragraph: 040 Reference ID: 21a-040-20190723).
- 10.25 The 11 conditions from the 2019/93068 permission should therefore be repeated. As several have been previously discharged (or partly discharged), a note relating to the previously submitted information remaining relevant is recommended for consistency. For reference, these conditions are:
1. Works to be done in accordance with approved plans (to be varied; the wording of the condition would remain the same, but the plans table would be updated)
 2. Material samples to be provided
 3. Details of retaining walls to PROW HUD/100/10
 4. Details of widening of PROW HUD/100/10
 5. Surface water details to be provided
 6. Surface water management and maintenance strategy to be provided
 7. Unexpected spring management strategy (if springs are identified)
 8. Works to be done in accordance with Ecological Design Strategy
 9. Works to be done in accordance with Construction Management Plan
 10. Plot 22 west side elevation to include obscure glazed windows
 11. Removing PD rights for side windows.

- 10.26 For the avoidance of doubt, the 25 conditions attached to the parent outline permission, ref. 2018/91119, would be unaffected by this S73 to the Reserved Matters application and continue to be in effect.

Planning obligations

- 10.27 The original permission, 2019/93068, did not include a S106 agreement. The planning obligations (two first homes and drainage maintenance) were secured in a S106 attached to the Discharge of Condition application ref. 2020/91813. However, given that the applicant is a registered provider, they seek to deliver the site as all affordable units (100%). Having two units sold as first homes, as currently required by the previous S106, would not work with their business model.
- 10.28 The applicant is proposing that the previous S106 agreement be varied to include 4 affordable units including two affordable rent and two intermediate units. This would represent 20% of the total units, as opposed to the previous 10%, which is a direct benefit and would comply with the requirements of LP11. No other contributions would be secured, bar the management and maintained of the drainage infrastructure (until adopted), as before. See paragraphs 1.1 – 1.5 for further details.

Other Matters

- 10.29 The consideration of S73 applications is limited to impacts directly associated with the desired amendment. There are considered to be no other impacts upon material planning considerations via the proposed variation. Typical considerations, such as drainage and ecology, are addressed via conditions to be repeated if minded to approve or on the unaffected parent outline permission, as detailed in paragraphs 10.23 - 10.26.

Representations

- 10.30 The following are responses to the matters raised within the public representations received, which have not been previously addressed within this assessment.
- The application is encroaching upon third party land, specifically to the south. The properties fronting onto Forest Road *“each own a strip of land beyond their tarmac drive. Also, there are steps that give access onto the tarmac drive from the proposed housing development. This is a private road owned and maintained by each house therefore there should be no access from the proposed development onto the private drive”*.

Response: The red-line of the development was established at outline stage. Neither Reserved Matters nor S73 applications can enlarge red-lines. Therefore, all land included in this application is as previously considered and approved. No evidence to substantiate resident’s claims has been provided, while the applicant’s red-line complies with Council held land registry data.

- The proposal, through notable excavation, would affect the structural stability of properties on Forest Road were instances of subsidence area already evident.

Response: Paragraph 184(a) of the NPPF States:

183. 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.

Neither a detailed assessment nor condition were imposed on the previous approval pertaining to land stability and the properties on Forest Road. However, the residents raising the matter is a material difference and, as above, land stability is a material consideration for planning applications. Furthermore, by virtue of the level changes, the gradient and engagement for the engineering works now proposed are materially different from that before and introduce solid retaining walls, as opposed to just embankment. Therefore, in the interest of ensuring appropriate regard is given to land stability, it is considered reasonable to require a condition for land stability assessments and further details of the proposed engineering operations. A condition to this effect, to comply with Paragraph 184, is therefore deemed reasonable.

- The proposed plans show access from the rear of the proposed houses to properties on Forest Road (nos. 45 and 47). It's unclear what purpose these serve and there is no access into and out of the site across private land.

Response: On review of the plans, officers do not consider them to show direct access to Forest Road, beyond connecting to PROW HUD/100/10 as previously approved.

- Concerns that the proposal may affect the water table and could lead to flooding / water running off towards Holme Avenue.
- Concerns over the capability of local roads, specifically Crest Avenue and Holme Avenue, to accommodate additional traffic. This includes both construction and operational traffic.

Response: The development of the site for 22 dwellings is established via the parent outline application and original reserved matters. The proposal is a S73 variation of condition seeking alterations which would not materially affect traffic generation nor the site's drainage arrangements.

- The proposal will result in overlooking and a loss of privacy to neighbouring dwellings and their respective gardens.

Response: The impact on neighbouring residents has been considered in paragraphs 10.7 – 10.9 and found to be acceptable.

- Construction works have happened extensively in the area and residents '*expect building works to closely adhere to neighbourhood noise guidance and agreed working hours*'

Response: The original application included a condition (condition 9) approving a construction management plan which is to be repeated. As a previously imposed condition not sought to be varied, it does not form a material consideration of this application.

- Concerns over existing boundary treatments and whether they'll be repaired and/or replaced.

Response: A detailed boundary treatment plan has been provided which gives particulars on the proposed boundaries. The status and works to existing boundary treatments that are party-wall applicable would be a private matter for land owners.

11.0 CONCLUSION

11.1 The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice.

11.2 As a S73 application the principal consideration is the planning implications of the sought variation. The principle of development was established at outline stage, with the considerations of this S73 being the variation's impacts on the layout, scale, appearance, and landscaping of the proposal. It is concluded that the proposed variation would not prejudice material considerations or planning policy, when giving weight to the previous approval and viability assessment undertaken. Nonetheless, increasing the affordable housing from two first homes to four affordable units (two affordable rent, two intermediate) is a welcome betterment and may be secured within a S106 deed of variation.

11.3 This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development would constitute sustainable development and is therefore recommended for approval, subject to conditions and planning obligations to be secured via a Section 106 agreement.

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

Note: Condition repeated as per previous application 2019/93068 as detailed in paragraph 10.25, plus one additional condition as detailed in paragraph 10.30 regarding land stability and retaining works along southern boundary.

1. Works to be done in accordance with approved plans (to be varied; the wording of the condition would remain the same, but the plans table would be updated)
2. Material samples to be provided
3. Details of retaining walls to PROW HUD/100/10
4. Details of widening of PROW HUD/100/10
5. Surface water details to be provided
6. Surface water management and maintenance strategy to be provided
7. Unexpected spring management strategy (if springs are identified)
8. Works to be done in accordance with Ecological Design Strategy
9. Works to be done in accordance with Construction Management Plan
10. Plot 22 west side elevation to include obscure glazed windows
11. Removing PD rights for side windows.
12. Land stability and retaining works details along southern boundary (new condition).

Background Papers

Application and history files

Available at:

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2023%2f92187>

Certificate of Ownership

Certificate A signed.