
Report of the Head of Planning and Development

STRATEGIC PLANNING COMMITTEE

Date: 25-Jan-2024

Subject: Planning Application 2023/92255 Variation of conditions 1 (plans), 2 (crime prevention) and 15 (restriction of permitted development) of previous reserved matters approval 2021/93286 pursuant to outline permission 2020/91215 for erection of 41 dwellings Land at, Green Acres Close, Emley, Huddersfield, HD8 9RA

APPLICANT

Project Emley Ltd

DATE VALID

07-Aug-2023

TARGET DATE

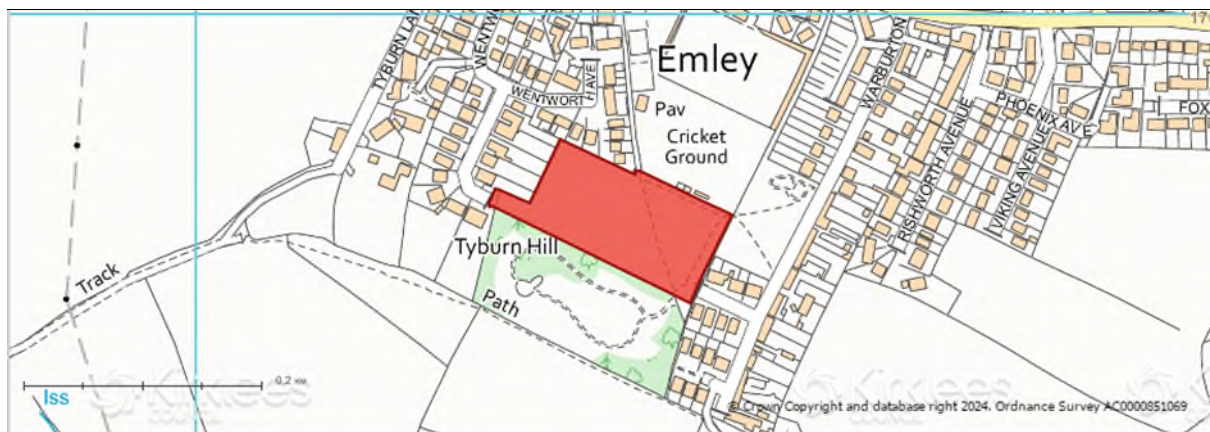
06-Nov-2023

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: Denby Dale

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. Secure a Section 106 Deed of Variation agreement, linking this approval to the previous Section 106 agreement (dated 23/06/2021) and Deed of Variation (dated 03/03/2023); and
2. Complete the list of conditions including those contained within this report and release the planning permission.

In the circumstances where the Section 106 agreement has not been completed within three 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 at the application site for residential development (no number of units specified) under application 2020/91215. Access was a consideration as part of that application, with appearance, layout, scale and landscaping being Reserved Matters. As the quantum of development was unknown at outline stage, a Section 106 agreement (dated 23/06/2021) secured appropriate planning obligations and contributions in principle, subject to details being determined upon submission of a Reserved Matters application. The Section 106 agreement secured affordable housing, financial contributions (if triggered) towards education, highways and transport improvements (including a TRO order), open space, biodiversity and the provision of management and maintenance arrangements for land not within private curtilages and for infrastructure (until adoption).
- 1.2 Reserved Matters application 2021/93286 (for 41 dwellings) was then subsequently submitted covering all of the outstanding matters. A Section 106 agreement was not attached to the Reserved Matters approval at the time of the decision, as all relevant obligations were governed by the conditions attached to the parent outline planning application.
- 1.3 Subsequent to that Reserved Matters approval, a Section 106 Deed of Variation (dated 03/03/2023) reduced the financial contribution for the off-site Public Open Space provision, which was calculated at outline stage based on the then-indicative plan. Therefore, the correct contribution has now been secured taking into account the layout approved as part of the detailed Reserved Matters application.

- 1.4 The following discharge of condition applications are pending decisions:
- 2022/90137 for conditions 17 (remediation), 18 (unexpected contamination), 19 (validation report), 20 (electric vehicle charging) and 24 (baseline ecological value) of previous outline permission 2020/91215, 2023/92253 for conditions 6 (highways), 7 (PROW), 10 (CEMP), 11 (drainage), 27 (ball stop netting) of previous outline permission 2020/91215; and
 - 2023/92254 for conditions 6 (drainage), 7 (drainage), 14 (CEMP) of previous Reserved Matters approval 2021/93286.
- 1.5 This application is a Variation of Condition (Section 73) application relating to conditions 1 (plans), 2 (crime prevention) and 15 (restriction of permitted development) of the previous reserved matters approval 2021/93286.
- 1.6 The application has been brought to the Strategic Planning Committee given the number of representations received in objection to the application.

2.0 SITE AND SURROUNDINGS

- 2.1 The application site is 1.18 hectares in size. The majority of the site is allocated for housing in the Local Plan (site allocation ref: HS137), however a small part of the site (approximately 60sqm, at the terminus of Wentworth Drive) is outside the site allocation. At the time the case officer's site visit was undertaken, ground works had begun and an entrance from had been Wentworth Drive created.
- 2.2 To the north of the application site are residential properties on Wentworth Avenue and a cricket ground which is designated as urban green space in the Kirklees Local Plan. To the east is a recreation field and residential properties on Green Acres Close. To the south is Emley's Millennium Green, most of which is in the green belt. To the west are residential properties on Wentworth Drive.
- 2.3 The public footpath DEN/21/20 runs at a diagonal across the site from North to South, connecting Wentworth Drive to the Millennium Green and Green Acres Close. DEN/96/10 also runs adjacent to the Eastern boundary.
- 2.4 There are no protected trees on or immediately adjacent to the application site, however there are trees within the adjacent Millennium Green and elsewhere around the edges of the site.
- 2.5 The application site is not within or close to a conservation area. The site includes no listed buildings, however two Scheduled Ancient Monuments (Emley Standing Cross, which is also Grade II listed, and Emley Day Holes) are within walking distance of the site. The site also has some landscape sensitivity resulting from its location, surrounding topography and visibility from surrounding public open space, and from public footpaths.

3.0 PROPOSAL

- 3.1 Planning permission is sought to vary conditions 1 (plans), 2 (crime prevention) and 15 (restriction of permitted development). Those conditions read as follows:

Condition 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 in the interests of highway safety in accordance with Policies LP1, LP2, LP3, LP4, LP5, LP7, LP9, LP11, LP20 LP21, LP22, LP23, LP24, LP26, LP27, LP28, LP30, LP32, LP33, LP34, LP35, LP38, LP47, LP48, LP49, LP50, LP51, LP52, LP53, LP63, LP65 of the Kirklees Local Plan and the aims of the Housebuilders Design Guide SPD and National Planning Policy Framework.

Condition 2:

The crime prevention measures hereby approved, shall be carried out in complete accordance with dwg no. P21:5463:21 Rev A. The measures shall thereafter be retained. Reason: In the interests of preventing crime and anti-social behaviour and to accord with Policy LP24 of the Kirklees Local Plan.

Condition 15:

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 as amended (or any Order revoking or re-enacting that Order) no development included within Classes A to E inclusive of Part 1 of Schedule 2 to that Order shall be carried out without the prior written consent of the Local Planning Authority on plots 14 – 20, 33, 34 and 41 as outlined on the hereby approved site plan P21:5463:01 Rev Q. Reason: In order to protect the trees along and adjacent to the southern boundary of the site and the ball striking net to the north. This is to accord with Policies LP24 and LP33 of the Kirklees Local Plan and the aims of the National Planning Policy Framework.

- 3.2 The reason for the proposed change is to update the design of the house types approved from the Barratt and David Wilson Homes design to the Newett Homes house types. Given the layout changes, the landscape masterplan has been amended, as has the associated the biodiversity net gain assessment and ecological design strategy.
- 3.3 Conditions 2 (crime prevention measures) and 15 (removal of permitted development rights for plots 14-20, 33, 34 and 41) also specify the site layout plan approved as part of the Reserved Matters application and therefore would need updating as part of this application.

- 3.4 The number of units would be unchanged at 41, however, there would be a slight amendment to the number of bedrooms proposed. This would be as follows:

Type	Approved	Proposed
Affordable units		
1 bed	6	6
3 bed	2	2
Open market		
3 bed	23	25
4 bed	10	8

- 3.5 In terms of design and appearance overall, the units would appear broadly similar to those approved. The most noticeable change would be that the majority of the units, apart from plots 7 and 8 and 24-29 would benefit from a dual pitched roof. Materials are governed by condition 2 on the original approval and would be unchanged from that previously approved.

4.0 RELEVANT PLANNING HISTORY (including enforcement history)

4.1 Application site

2023/92327 Erection of six dwellings, including associated parking, landscaping, open space and ball stop netting (modified proposal) – Pending consideration.

2023/92254 Discharge conditions 6 (drainge), 7 (drainge), 14 (CEMP) on previous permission 2021/93286 for reserved matters application pursuant to outline permission 2020/91215 for erection of 41 dwellings – Pending consideration.

2023/92253 Discharge conditions 6 (highways), 7 (PROW), 10 (CEMP), 11 (drainage), 27 (ball stop netting) on previous permission 2020/91215 for outline application for erection of residential development – Pending consideration.

2022/90137 Discharge of conditions 13 (coal legacy), 17 (remediation), 18 (unexpected contamination), 19 (validation report), 20 (electric vehicle charging), 21 (arboricultural impact assessment and method statement), 24 (baseline ecological value), 25 (ecological design strategy) and 29 (noise report) of previous outline permission 2020/91215 for erection of residential development – Pending consideration.

2021/93286 – Reserved matters application pursuant to outline permission 2020/91215 for erection of 41 dwelling – Approved.

2020/91215 – Outline application for erection of residential development – Section 106 outline permission granted.

2019/90380 – Outline application for erection of residential development and associated access – Refused and appeal dismissed.

99/91668 – Formation of grass full-size practice pitch and all weather training/fitness surface with associated lighting and formation of Millennium Green – Refused and appeal dismissed.

Enforcement history

COMP/23/0452 Alleged breach of condition 8 (2020/91215) – Pending investigation.

5.0 HISTORY OF NEGOTIATIONS (including revisions to the scheme)

5.1 Officers raised concern with the additional impact which a gable roof form (with two roof slopes) would have on the amenity of the existing occupiers at numbers 14 and 16 Wentworth Avenue, and therefore amended plans have been secured to change the roof types for plots 7 and 8 back into a hipped design. Further revisions to the site layout, landscape and Secure by Design plans have been sought in response to consultee comments.

6.0 PLANNING POLICY

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27/02/2019).

Kirklees Local Plan (2019):

6.2 The application site is a Housing Allocation (ref: HS137) within the Kirklees Local Plan.

6.3 Relevant Local Plan policies are:

- LP1 – Presumption in favour of sustainable development
- LP2 – Place shaping
- LP3 – Location of new development
- LP4 – Providing infrastructure
- LP5 – Master planning sites
- LP7 – Efficient and effective use of land and buildings
- LP9 – Supporting skilled and flexible communities and workforce
- LP11 – Housing mix and affordable housing
- LP20 – Sustainable travel
- LP21 – Highways and access
- LP22 – Parking
- LP24 – Design
- LP26 – Renewable and low carbon energy
- LP27 – Flood risk
- LP28 – Drainage
- LP30 – Biodiversity and geodiversity
- LP32 – Landscape
- LP33 – Trees
- LP34 – Conserving and enhancing the water environment
- LP35 – Historic environment
- LP38 – Minerals safeguarding
- LP47 – Healthy, active and safe lifestyles

- LP48 – Community facilities and services
- LP49 – Educational and health care needs
- LP50 – Sport and physical activity
- LP51 – Protection and improvement of local air quality
- LP52 – Protection and improvement of environmental quality
- LP53 – Contaminated and unstable land
- LP63 – New open space
- LP65 – Housing allocations

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

Supplementary Planning Guidance / Documents:

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

Guidance documents

- 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
- Kirklees Joint Health and Wellbeing Strategy and Kirklees Health and Wellbeing Plan (2018)
- Kirklees Interim Housing Position Statement to Boost Supply (2023)

National Planning Guidance:

6.5 National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF), published 19/12/2023 and the Planning Practice Guidance Suite (PPGS), first launched 06/03/2014, 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 and beautiful places
- Chapter 14 – Meeting the challenge of climate change, flooding and coastal change
- Chapter 15 – Conserving and enhancing the natural environment
- Chapter 16 – Conserving and enhancing the historic environment
- Chapter 17 – Facilitating the sustainable use of materials.

6.6 Other relevant national guidance and documents:

- MHCLG: National Design Guide (2021)
- DCLG: Technical housing standards – nationally described space standard (2015, updated 2016)

6.7 Climate change

The Council approved Climate Emergency measures at its meeting of full Council on the 16/01/2019, 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 12/11/2019 the Council adopted a target for achieving 'net zero' carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system, and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan predates the declaration of a climate emergency and the net zero carbon target; however, it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications, the council 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 and development affecting public rights of ways via site notices and through neighbour letters sent to properties bordering the site, and has been advertised in a local newspaper. This is in line with the council's adopted Statement of Community Involvement.
- 7.2 Final publicity expired: 26/09/2023.
- 7.3 As a result of the above, 49 objections have been received. A summary of the concerns raised are as follows:

Visual amenity:

- Increasing the density of population within Emley would negatively impact the village.
- The new developer is forging ahead without adequate consultation or respect for the impact of their 'project' (not ours) on the local community. They are trying to squeeze too many homes onto the land available. The project must be scaled back.
- The ball protection nets required to protect the proposed site and new owners from ball strike from the cricket field will be an eyesore and the height required will be a blot on the landscape.
- No mention is made or samples shown of the type of stone to be used, this should be reflected by those stone fronted houses on Wentworth Drive. Not the yellow stone used by Newett Homes on their current

development in Skelmanthorpe, which is totally out of character with area and is not pleasant to look at.

- The position of Plot 30 appears to be moving very close to the existing PROW route and there is likely to be conflict with people walking along the PROW.

Residential amenity:

- Building a house, shown as plot 8 on the current plan, would block out daylight/sunlight, seriously restricting light into some of the properties along Wentworth Avenue. Residents have a right to light which will be lost as part of the development.
- Impact on health and well-being due to existing residents not being able to use their gardens.
- The feeling of enclosure.
- The impact of my concerns cannot be fully understood by looking at a flat outline plan without any scale or measurements given. This is something that Kirklees Planning should make their top priority to look into.
- 41 (+6) additional homes, with reasonably accessible roads in a relatively small space suggests cramped living arrangements internally and externally and low quality of life for future tenants. Future developments around the village should be looking to introduce substantial, quality homes, to continue to keep the village profile and desirability high.
- There are no distances/measurements drawn on the plans submitted.

Highway safety:

- Construction traffic should not be coming through Green Acres Close as Waburton is a single track in most parts. But when the contractor came to erect fencing he came through the Millennium Green gate, trouble is that is setting a precedent for the future?
- It was disappointing to note that Newett Homes initially brought in contractors through the Green Acres Close entrance despite it being clear in the Planning Consent that access through Green Acres could only be used by Emergency Service or the Millennium Green.
- There are existing traffic problems within Emley throughout the day (not only during peak times such as rush hour) with drivers exceeding safe speeds regularly due to frustrations - increasing the housing number will introduce more road traffic around play areas and the main street of the village. This will be especially noticeable on game days (football and cricket) as the village already becomes difficult and somewhat dangerous to drive through during this time.
- Lack of visitor parking. There is only one visitor parking space near the modified six plots and no pavement. There are six apartments and three directly opposite that have no provision for visitor parking. One visitor parking space is not sufficient for 15 houses. My understanding is there should be one visitor space for every four houses. On street parking at entrance to site is far too remote from the plots and therefore unlikely to be used (visitors will not want to park at the entrance and then walk a distance – they may have mobility issues/young/elderly).
- Plots 30 to 40 also have no facility for visitor parking.

- The new plan is poorly proposed and will lead to over parking in the area where PROW 21/20 crosses the Planned Development which will inevitably lead to pedestrian conflict with traffic where at present there is no conflict.
- Pedestrian safety will inevitably be compromised, overcrowding will result with too many parked cars, and an increased number of cars will have to exit the site at a tight, potentially dangerous junction. Roads into the village from the A636 are, in places, only just wide enough for two average cars to pass, the increase in vehicle numbers especially during construction and afterwards will be dangerous and potentially impede emergency vehicles.
- Wentworth Drive entrance (from Upper Lane) and route to the site location is inadequate and dangerous. Often parked on by many from all over the village (re snow) or visiting the pub. Also, there are no road marking at the junctions. Causing major safety issues.
- Significant highway and parking issues within the area.
- The police allow all parking in contravention of highway code because (they say) the council told them it's OK.
- No bin collection points are shown for plots 21, 23 and 24 and the apartments.

Ecology:

- Is the plan to take down hedges of which there are an awful lot of wildlife? Is the builder putting in preparation for them to go elsewhere?
- The Ecological Impact Assessment prepared by SLR dated 08/08/2023 submitted in support of this application and in discharge of condition 25 (ecological design strategy) makes no reference at all to the Emley Millennium Green which is directly adjacent to the building site. Nor does the supporting ecological plan show any of the 100s of trees/bushes/planting present on the Millennium Green. It is not even labelled as the Emley Millennium Green on the Plan.
- Concerns regarding the impact the development would have on Emley Millennium Green (to wildlife, hedgerows and trees etc).
- The Millennium Green has been used for several years for the release of recovering hedgehogs from a nearby hedgehog hospital. Newett Homes is aware of this. There is no mention of how wildlife will be impacted by the removal of the existing large hedgerow of trees and bushes along the length of the boundary between the Millennium Green and the development site, this is where many of the released hedgehogs are likely to be found. The ecological assessment also makes no mention of moles on the Millennium Green which are close to the development land. Nor is there mention of the large variety of wildlife found on the Millennium Green and surrounding areas including bats, barn owls, blue tits, nuthatch and treecreeper birds, to name but a few species.
- Lack of adequate wildlife and access corridor to the Millennium Green.
- No thought of hedgehog friendly fences within the development to allow them to traverse. This will impact upon these species which are already on the decline.
- It appears that Plots 34 and 41 are being moved slightly closer the boundary of the Millennium Green. There is already going to be too much removal of trees and bushes on the boundary of the Millennium Green to accommodate these two plots and they should not be brought any

closer. How will the Millennium Green trees and tree roots be affected which are in very close proximity to these two plots. The ecological updating survey by SLR dated 08/08/2023 make no reference to this.

- What are the plans to maintain the trees and hedges from the Millennium Green that will be part of the boundary of the new houses? This information should be shared prior to building commencing.
- There are diverse species of butterfly and birds within these trees, such as nut hatch tree creeper that will also be impacted.
- Concerned that the hedgerow including lots of wildlife is to be taken out at the side of Green Acres Close. Supporting biodiversity and wildlife should be at the forefront of any development and allows the site to keep in with the greenness of the surrounding area.
- We understand that on the day of the ecology report, our volunteers from Shelley Hedgehogs actually interacted with the person generating the report, advising where the nests actually are. However, the ecologist made no effort to check or confirm this. The volunteer was there checking over the local nests and has no link to Emley or the Millennium Green but uses the area to re-introduce them into the wild.

General concerns:

- Increasing the number of houses in the village by such a large amount also has a negative impact on the market value of existing homeowners in the village.
- There will be a great impact on services within Emley including an already overcrowded school, more vehicles to add to the ever increasing speeding problem.
- If we have to have new housing why not build basic, decent affordable properties in keeping with the surroundings (not apartments) which will help the younger residents onto the property ladder thereby allowing them to stay in the village. We need to think about affordability, the local environment rather than profit.
- The school is overcrowded.
- The village infrastructure cannot cope.
- The main impacts are on nature and wildlife that seem to have been completely dismissed or ignored coupled with the outrageously tall ball strike netting which will just destroy to look of the area around the cricket club, proposed houses as well as the villages much loved Millennium Green.
- Additionally, the environmental impact should be a primary concern – building phase producing large amounts of particulates and harmful gases, increase of works traffic introducing additional fumes, increase of domestic traffic as a result of increased housing, loss of green space, loss of biodiversity where pollinating species reside/feed, noise pollution for humans, pets and wildlife.
- Newett Homes have applied to alter the size and position of seven Plots (Plots 14 to 20 which are closest to the ball stop netting) and also the size and position of the ball stop netting. This is because on the original plans there wasn't enough room for the ball stop netting support stanchions as well as room for the claimed PROW which runs adjacent the cricket field stone wall boundary.
- The new position of the six plots provides more room for the Ball stop netting and the claimed PROW but in turn brings these 6 plots closer to the public highway with little or no front garden spaces.

- There is only one visitor parking space provided at this end of the development near to the modified six plots and there is no public footpath. There are six apartments and three town houses directly opposite the six modified plots which have no provision for visitor parking either. One visitor parking space for 15 plots is not sufficient. Plots 30 to 40 also have no facility for visitor parking.
- How will the refuse wagon collect bins from the modified plots and from the apartment block plus from plots 21 23 and 24, as there are no bin collection points?
- Newett Homes plan to create a corridor along their northern boundary to incorporate the ball stop netting and the claimed PROW, but surely this is creating a dark alleyway between the dwelling rear fences and the cricket field boundary wall? This could be viewed by the police as a danger zone for potential house break-ins?
- If the ball stop netting is located in this public area of the claimed PROW, in addition to the repair and maintenance issues, the fact that they are accessible to the members of the public could mean that they could be prone to vandal damage in a secluded unmonitored vicinity. Newett Homes needs to consider all these factors and clearly and provide detailed plans to show how the public area will a) provide a secure space for the ball stop netting, b) provide sufficient space for any maintenance machinery to access the area and c) provide sufficient safe space for the claimed PROW.
- I note that there has been a change to the number of houses near the PROW – surely Newetts should be sharing design and artists impression, including the type of stone, doors and windows.
- Concerns raised regarding the planning application 2023/92327 for six modified dwellings.
- The route of the existing PROW will cross the new public highway, but the crossing point is an offset raised ramp that does not run in line with the route of the PROW? Is this safe for children crossing? At the moment children walking along this PROW encounter no cars or roads but will now have to negotiate a raised offset ramp as well as looking out for vehicles? Also, potential problems for pushchairs, wheelchairs, roller skates etc.
- The Secure by design layout dated 11/07/2023 appears to show a diversion of the main diagonal PROW through the site.
- The cricket pitch section and the ball strike net plan both dated 27/06/2023 prepared by Newett Homes are not sufficient. There is no information or evidence to show that the stanchions/supports and netting design nor the new position of the net, nor the height of the net is adequate.
- The Labosport report LSUK.21-0698 dated 19/11/2021 commissioned by Barratts is now outdated. Labosport needs to be instructed to prepare a fresh report following a physical site inspection rather than a desk top appraisal. The report needs to factor in the changes to the position and design of the ball stop netting, and also factor in and changes to the way cricket is played at the cricket ground.
- The proposed netting and its height is not what was approved in the Planning Application 2021/93286. The Labosport LSUK.21-0698 dated 19/11/2021 gave a height of 18 metres but Newett are now using 17 metres. A new Labosport/Newett Boundary Risk assessment is required to look at the heights again particularly due to the proposed nets being moved and the claimed PROW now being incorporated into the new

design. As already stated this should be a physical survey not a desk top survey.

- The submitted 'Cricket Pitch Section' plan and the 'Ball Strike Net Plan' both dated 27/06/2023 prepared by Newett Homes is not sufficient. There is no information or evidence to show that the stanchions/supports and netting design nor the new position of the net, nor the height of the net is adequate. The cricket field and the development land are exposed to high winds and adverse weather and this needs to be factored into any design. The balls strike netting needs to be robust enough to withstand the extremes of weather experienced in Emley, and to prevent rattling and whistling noises disturbing residents in the vicinity.
- The proposed netting is not only lower than it should be but it does not extend to the perimeters originally proposed. It is shown as not extending the full length of the cricket field wall, i.e. where the proposed attenuation tanks are to be grassed over and the development children play this area is not covered by the safety of the nets, are the development children play this area is not covered by the safety of the nets, are children not as important as the houses. This is of course in addition to the fact that there will need be access for a "cherry picker" machine space for repair / maintenance of the ball stop netting - which would need a clear 3.00m driveway, and this is not reflected in their most recent proposals to Kirklees.

Clarification is also required of the exact position on the plan of the PROW that runs adjacent to 10 Green Acres Close and the recreation Ground (DEN/96/10) as there seems to be conflict with the site legal boundary line which appears to overlap into the garden of 10 Green Acres Close.

- Concerns raised regarding the information submitted for the Discharge of Condition applications 2023/92254 and 2023/92253.
- Labosport – these experts should be working with Newetts to ensure all Health and Safety measures are met – young families are going to be living and children playing in these gardens and areas. No chances or short cuts can be taken here. Labosport and Planning agreed 18 metre nets and the nets would be erected prior to building commencing. Newetts are not following this advice.
- Poor communication from Newett Homes to local residents.
- Clearer communication with residents needs sharing from Newetts – eg more drawings outlining layout with proposed materials to be used and measurements – size of garden and clear diagrams showing car parking spaces and access for bin wagon. Especially those on Wentworth Drive and the surrounding areas.
- All this information including all measurements of the houses and gardens should be available to all before the start of building. This information should be shared prior to building commencing.
- The plans are so small we cannot measure the minimum size agreed for the garages at 7m x 3m.
- I note the attenuation area is grassed over and will attract children playing. Could there be some assurance that this area is a safe area to play and walk across. Could it have signage?
- A request to Newetts and planning, please be open and transparent with Emley residents. We deserve this consideration and courtesy.
- Contractors were going to cut off the locks on Green Acres Close in order to access the land even though this was known to them to be against the

Planning conditions, continued for five days to bring equipment into the field from Warburton, no causeways.

- Impact on the Millennium Green and its users from a noise perspective.
- Concerned about the potential for noise, disturbance and odour from the proposed development.
- The Millennium Green is a registered charity. The green is well used and supports a variety of wildlife as well as established mature grass land and trees some of which were planted by school children. The peace of the green offers a place of reflection and emotional connection with the environment and personal memories. The effect of new housing close by and the infrastructure required to support the proposed new development will adversely affect all of this.
- The development would result in an increase to the risk of injury during a cricket match if the ball was to bounce back over the proposed area causing serious injury/death.

Denby Dale Parish Council: Defer to Kirklees Council officers.

Local ward councillors

All ward councillors have been notified of this application, however, no comments have been received.

8.0 CONSULTATION RESPONSES

8.1 Statutory:

KC Highways Development Management – Given the revised layout plan and Section 38 general agreement plan, officers consider the proposal to be acceptable. However, the applicant is reminded that the council's Section 38 team have accepted the 22m forward visibility distance on the basis that a Road Safety Audit does not raise any concerns and recommends that this is increased for road safety reasons.

8.2 Non-statutory:

KC Ecology – Following previous comments, the Section 73 scheme achieves a greater number of habitat units: 2.10, compared with 1.59 to the Reserved Matters scheme, but a lower number of hedgerow units: 1.09, compared with 1.42 secured with the Reserved Matters. As such, the on-site net change for our development is -2.97 habitat units, and 0.56 hedgerow units. This represents an increase in 0.42 habitat units, and a decrease of 0.33 hedgerow units (although still a net gain).

Due to an increase of landscaping within this full planning application, the revised layout would achieve a loss of 0.06 habitat units fewer than the original Reserved Matters scheme. However, in order to achieve a 10% net gain required by the Section 106 secured as part of the outline permission, a revised sum of £79,810 would be required towards off site biodiversity net gain.

KC Crime Prevention – The amended plans are considered acceptable as the security measures are proportionate to the scheme proposed.

KC Landscape – Initial concerns were raised as the site layout plan only showed 46 new trees to be planted rather than the 60 approved. As such, an amended plan has been sought to rectify this and show 60 new trees to be provided within the modified layout. Concern has also been raised by the inclusion of *Prunus lusitanica* on the south western side of the PROW near plots 30 and 31. However, KC Ecology have confirmed that given its location, it would need to be maintained and therefore on balance this species can be supported.

Sport England – No objection to the application subject to a condition regarding management and maintenance of the ball strike net and its associated apparatus being re-attached to this application.

9.0 MAIN ISSUES

- Scope of the application
- Assessment of changes proposed
- Previous conditions and planning obligations
- Representations
- Conclusion

10.0 APPRAISAL

Scope of the application

- 10.1 This application is made under Section 73 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, Section 73 enables the varying of a condition’s wording. The effect of a granted Section 73 application is the issuing of a fresh planning permission. Therefore, all previously imposed conditions should be retained if they remain relevant. The time limit for development to commence cannot be extended through Section 73.
- 10.2 The starting point for a Section 73 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 previous Reserved Matters application 2021/93286 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 2021/93286 was determined, but none are deemed material or relevant to this application.
- 10.4 With regard to local context, there have been no changes in the environment (including built or natural) which would materially impact on the assessment of this application.
- 10.5 In light of the above, consideration must be given to the specific changes proposed and their interaction with adopted planning policy.

Assessment of the changes proposed

- 10.6 The site is allocated for housing within the Kirklees Local Plan. Planning permission has been granted for residential development of the site under applications 2020/91215 and 2021/93286. Therefore, the principle of development has already been established. The now-proposed variation would not impact on the principle of development and policies in relation to the development broadly remain unchanged.
- 10.7 The number of units would not change under this application. However, the changes to the house types proposed would result in two additional 3-beds being proposed at the loss of two 4-beds. This would amount to a total of 25x 3-bed dwellings (as opposed to the 23 approved) and 8x 4-bed dwellings (compared to the 10 approved).
- 10.8 In this instance, such changes can be supported due to the known housing need within Kirklees Rural East, where there is a greater need for 3-bed dwellings than 4-bed dwellings. Nonetheless, the retention of 8x 4-bed dwellings would still comply with the council's Affordable Housing and Housing Mix SPD in that 24% of the market homes would be 4-bed. This would accord with Policy LP11 of the Kirklees Local Plan.
- 10.9 Policies LP1, LP2 and LP24 of the Kirklees Local Plan are all relevant, as these policies seek to achieve good quality design that retains a sense of local identity, which is in keeping with the scale of development within the area and is visually attractive.
- 10.10 These aims are also reinforced within Chapter 12 of the NPPF (Achieving well designed plans) where paragraph 131 provides an overarching consideration of design stating that *"the creation of high quality buildings and places are fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities"*.
- 10.11 The previous application concerned the Reserved Matters of layout, appearance, scale, and landscaping. The impact of the proposed plan variation will be considered through the same approach in the following paragraphs.

Layout

- 10.12 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 prejudice the sites visual amenity value. The ratio of detached, semi-detached and terrace properties would also remain unchanged.
- 10.13 With regards to layout and residential amenity, it has been noted that the majority of the relationships between the proposed dwellings and existing third party properties surrounding the site would remain the same. However, the footprint for plot 8 would be marginally smaller than what was previously approved.

- 10.14 The amended site layout would ensure that an acceptable level of amenity would be retained to 55 Wentworth Avenue, as separation distances of 11-15m would be retained from the rear elevations of plots 10 and 11 to the side elevation at these neighbours.
- 10.15 The submitted overlay plan to show the previous scheme compared to the one proposed as part of this application, shows the separation distance between plot 21 and 10 Green Acres Close to be reduced. However, there would still be 4.5m retained at the closest point between these two dwellings. Plot 21 would be situated to the northwest of 10 Green Acres Close meaning that any overshadowing would only be evident in an evening and therefore, the minor alteration would not be detrimental to these neighbours amenity, when taking into account the approved scheme.
- 10.16 Significant separation distances would still be retained from 25-35 Wentworth Drive to plots 1-8.
- 10.17 Considering highways, the road layout would remain unchanged, with some slight alteration to its finish in order to secure Section 38 approval. This has included the submission of a forward visibility splay plan. Adequate on-site parking would remain, in accordance with the council's Highway Design Guide SPD. As such, Highways Development Management officers are in support of the scheme.
- 10.18 Having taken the above into account, the proposed layout is not substantially different to that previously approved. The proposed varied layout would not prejudice visual or residential amenity or highway safety in accordance with Policies LP21 and LP24 of the Kirklees Local Plan, Principle 6 of the Housebuilders SPD and Chapter 12 of the NPPF. Adequately-sized gardens would be maintained with a secure outdoor area for the proposed flats.

Appearance and scale

- 10.19 The appearance and scale of most of the units would remain broadly the same as approved, benefiting from a simple and modern vernacular. It is considered that the proposed house types represent an appropriate response to the site and are in keeping with the character and appearance of the dwellings which exist in the locality.
- 10.20 Regarding the amenity of existing residents, as noted above, plots, 10, 12 and 21 would move slightly closer to third party properties. However, it has been noted that the overall height of some of the houses including plot 21 would be reduced from 8.5m to 8.25m as part of this proposal.
- 10.21 Furthermore, amendments have been sought to the roof form of plots 7 and 8 to change this back into a hip rather than a dual pitch. This is to omit any further overbearing and overshadowing onto the amenity of numbers 14 and 16 Wentworth Avenue. Officers have noted that the overall height of this pair of semi-detached properties would be reduced by 0.5m and would therefore provide a betterment to the future amenity of numbers 14 and 16 Wentworth Avenue when compared to the plans previously approved. As such, this reduction is welcomed.

- 10.22 As a result of the above, the minor changes proposed are not considered to result in a material harm to existing residents via overbearing and overshadowing. Window arrangements would remain broadly as approved and would not lead to new instances of overlooking.
- 10.23 As previously approved each unit would either meet or exceed the Nationally Described Space Standards and would benefit from a dual aspect in order to achieve adequate privacy, natural ventilation, natural light and outlook.
- 10.24 Materials were secured via condition 2 of the previous permission, to include a reconstituted stone with grey concrete roof tiles. This would be unaffected by the proposed variation and therefore does not fall to be considered under this application. In conclusion, the appearance and scale of the proposed dwellings are considered 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 (including biodiversity)

- 10.25 Landscaping changes between the approved and proposed scheme are minimal. Small areas of public open space would remain along the PROW and above the proposed attenuation tank, linking the site to the recreation ground. Initial plans showed a reduction in the number of trees to be planted, however, concern was raised by KC Landscape, and this has been amended to show 60 as approved.
- 10.26 The detailed planting plan has been reviewed and considered acceptable on balance. The plan shows a small area of *Prunus lusitancia* adjacent to the PROW, which is considered to be an invasive species. Officers have requested for this to be amended to a non-invasive species, however, the applicant's agent has responded outlining that this species is only used in a small area adjacent to the PROW, given its low maintenance and not requiring significant pruning. Therefore, given these extenuating circumstances this species can on balance be supported.
- 10.27 Overall the proposed variation would not prejudice the proposals' landscaping arrangements which would remain of a high quality and would be visually acceptable, in accordance with Policies LP24 and LP32 of the Kirklees Local Plan. The previous off-site contribution towards public open space would still be required.

Summary

- 10.28 The application is a Section 73 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.

Previous conditions and planning obligations

- 10.29 As this is an application under Section 73 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.

10.30 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).

10.31 The 15 conditions from the 2021/93286 permission should therefore be repeated and amended where necessary. For reference, these conditions are:

- 1) Development in accordance with the plans and specifications schedule (to be varied; the wording of the condition would remain the same, but the plans table would be updated)
- 2) Crime prevention measures to be completed in accordance with plan P21:5463:21 Rev A (to be varied – the wording of the condition would remain the same, but the plan reference would be updated)
- 3) Details of external lighting
- 4) Detailed design of ball-stop net and associated support columns
- 5) A management maintenance plan to include the routine inspection and maintenance, and long-term repair and replacement of columns, netting and such other associated apparatus
- 6) A scheme detailing foul, surface water and land drainage
- 7) A scheme, detailing temporary surface water drainage
- 8) Development in accordance with the advice and directions (recommendations) contained in the Arboricultural Method Statement, reference, Wharnccliffe Trees and Woodland Consultancy
- 9) Full details of hard and soft landscaping, including and management and maintenance programme
- 10) Details of all new retaining walls/ building retaining walls adjacent to the existing/ proposed adoptable highways
- 11) Details of any new surface water attenuation pipes/manhole located within the proposed highway footprint
- 12) Removal of permitted development rights for windows and doors within the northern facing side elevation of plot 8
- 13) A plan detailing the position and location of bat and bird boxes and hedgehog friendly fence panels
- 14) A Construction Environmental Management Plan
- 15) Removal of permitted development rights for Class Classes A to E inclusive of Part 1 of Schedule 2 for plots 14 – 20, 33, 34 and 41 as outlined on the hereby approved site plan P21:5463:01 Rev Q (to be varied – the wording of the condition would remain the same, but the plan reference would be updated)

10.32 For the avoidance of doubt, the 28 conditions attached to the outline permission 2020/91215, would not be affected by this Section 73 Variation of Condition application, and would continue to be in effect.

Planning Obligations

10.33 If approved, this application would result in a new stand-alone planning permission being issued. As contributions have already been dealt with under the original outline application, a Deed of Variation would be required to tie this approval to the original Section 106 agreement (dated 23/06/2021 and secured at outline stage in connection with application 2020/91215) and the subsequent Deed of Variation dated 03/03/2023. For Members' information, the previously-agreed obligations and contributions were:

- 1) Affordable housing – eight affordable housing units (either 6 social/affordable rent, two intermediate/discount market sale or four social/affordable rent, and four intermediate/discount market sale) to be provided in perpetuity.
- 2) Open space – A sum of £44,006 towards off site provision.
- 3) Education – £78, 891 contribution to be spent on priority admission area schools within the geographical vicinity of this site. Payments would be made in instalments and on a pre-occupation basis, per phase. Instalment schedule to be agreed.
- 4) Highways and transport - £20,520.50 towards a Sustainable Travel Plan Fund (£500.50 per dwelling)
- 5) Management – The establishment of a management company for the management and maintenance of any land not within private curtilages or adopted by other parties, and of infrastructure (including surface water drainage until formally adopted by the statutory undertaker).
- 6) Biodiversity - £77,970 contribution towards off-site provision (to be amended, please refer to paragraph 10.30).
- 7) Traffic Regulation Order – £7,000 contribution.

10.34 As part of the assessment of this application, officers have noted that the off-site biodiversity contribution calculated at Reserved Matters stage was based on a no-net-loss scenario. However, having reviewed the Section 106 agreement attached to the outline permission, it states that a 10% net gain should be secured. Therefore, it recommended that a revised sum of £79,810, based on the most up-to-date scheme and biodiversity metric, achieving a 10% net gain, be secured as part of this application.

Other matters

Crime prevention measures

10.35 A revised Secure by Design layout plan has been received as part of this application process, taking into account the comments raised by the West Yorkshire Designing Out Crime Officer (DOCO). The plan shows proportionate security measures for the development proposed, taking into account the minor layout changes proposed as part of this application. This is considered acceptable and would accord with Policy LP24(e) of the Kirklees Local Plan.

Representations

10.36 The following are responses to the matters raised within the public representations received, which have not been previously addressed within the above assessment.

Visual amenity:

- Increasing the density of population within Emley would negatively impact the village.
- The new developer is forging ahead without adequate consultation or respect for the impact of their 'project' (not ours) on the local community. They are trying to squeeze too many homes onto the land available. The project must be scaled back.
- The ball protection nets required to protect the proposed site and new owners from ball strike from the cricket field will be an eyesore and the height required will be a blot on the landscape.
- **Comment:** This application does not provide an opportunity to re-assess the principle of development, nor would the number of units be changed.

- No mention is made or samples shown of the type of stone to be used, this should be reflected by those stone fronted houses on Wentworth Drive. Not the yellow stone used by Newett Homes on their current development in Skelmanthorpe, which is totally out of character with area and is not pleasant to look at.
Comment: Materials would include a reconstituted stone with grey concrete roof tiles, as approved as part of the Reserved Matters application.

- The position of Plot 30 appears to be moving very close to the existing PROW route and there is likely to be conflict with people walking along the PROW.
Comment: This has been noted, however, officers do not consider this to cause any conflict with the PROW or for its users.

Residential amenity:

- Building a house, shown as plot 8 on the current plan, would block out daylight/sunlight, seriously restricting light into some of the properties along Wentworth Avenue. Residents have a right to light which will be lost as part of the development.
- Impact on health and well-being due to existing residents not being able to use their gardens.
- The feeling of enclosure.
- The impact of my concerns cannot be fully understood by looking at a flat outline plan without any scale or measurements given. This is something that Kirklees Planning should make their top priority to look into.
- 41 (+6) additional homes, with reasonably accessible roads in a relatively small space suggests cramped living arrangements internally and externally and low quality of life for future tenants. Future developments around the village should be looking to introduce substantial, quality homes, to continue to keep the village profile and desirability high.
Comment: A detailed assessment upon residential amenity can be found earlier in this report.

- There are no distances/measurements drawn on the plans submitted.
Comment: The plans are drawn to a scale and therefore can be measured (on paper if printed, and electronically).

Highway safety:

- Construction traffic should not be coming through Green Acres Close as Waburton is a single track in most parts. But when the contractor came to erect fencing he came through the Millennium Green gate, trouble is that is setting a precedent for the future?
- It was disappointing to note that Newett Homes initially brought in contractors through the Green Acres Close entrance despite it being clear in the Planning Consent that access through Green Acres could only be used by Emergency Service or the Millennium Green.
Comment: Condition 8 on the outline permission states that “No vehicular access shall be provided from Green Acres Close, other than that already provided for the Millennium Green and that required for emergency services access”. This condition therefore remains in force. Should access be taken from Green Acres Close by construction traffic, then residents are advised to contact Planning Enforcement.
- There are existing traffic problems within Emley throughout the day (not only during peak times such as rush hour) with drivers exceeding safe speeds regularly due to frustrations – increasing the housing number will introduce more road traffic around play areas and the main street of the village. This will be especially noticeable on game days (football and cricket) as the village already becomes difficult and somewhat dangerous to drive through during this time.
Comment: This application is not to re-assess the principle of development, nor would it have any further impact on highway safety, as the road layout is to remain the same with adequate on-site parking.
- Lack of visitor parking. There is only one visitor parking space near the modified six plots and no pavement. There are six apartments and three directly opposite that have no provision for visitor parking. One visitor parking space is not sufficient for 15 houses. My understanding is there should be one visitor space for every four houses. On street parking at entrance to site is far too remote from the plots and therefore unlikely to be used (visitors will not want to park at the entrance and then walk a distance - they may have mobility issues/young/elderly).
- Plots 30 to 40 also have no facility for visitor parking.
Comment: The number of visitor parking spaces would remain as approved, along with the number of dwellings.
- The new plan is poorly proposed and will lead to over parking in the area where PROW 21/20 crosses the Planned Development which will inevitably lead to pedestrian conflict with traffic where at present there is no conflict.
- Pedestrian safety will inevitably be compromised, overcrowding will result with too many parked cars, and an increase number of cars will have to exit the site at a tight, potentially dangerous junction. Roads into the village from the A636 are, in places, only just wide enough for two average cars to pass, the increase in vehicle numbers especially during construction and afterwards will be dangerous and potentially impede emergency vehicles.
- Wentworth drive the Entrance (from upper lane) and route to the site location is inadequate and dangerous. Often parked on by many from all

over the village (re snow) or visiting the pub. Also there are no road marking at the junctions. Causing major safety issues.

- Significant highway and parking issues within the area.
- The police allow all parking in contravention of highway code because (they say) the council told them it's OK.

Comment: The highway arrangement will remain unchanged as part of this application and therefore is as approved. The application is not to re-assess highway safety.

- No bin collection points are shown for plots 21, 23 and 24 and the apartments.

Comment: Bin collection would be as approved under the Reserved Matters application.

Ecology:

- Is the plan to take down hedges of which there are an awful lot of wildlife? Is the builder putting in preparation for them to go elsewhere?

Comment: Some hedgerow removal may be required to facilitate the proposed development, however, from the submitted information, there will be a significant uplift in the quantity and quality of hedgerows throughout the site, that will provide benefits for a range of ecological receptors.

- The Ecological Impact Assessment prepared by SLR dated 08/08/2023 submitted in support of this application and in discharge of condition 25 (ecological design strategy) makes no reference at all to the Emley Millennium Green which is directly adjacent to the building site. Nor does the supporting ecological plan show any of the 100s of trees/bushes/planting present on the Millennium Green. It is not even labelled as the Emley Millennium Green on the Plan.

- Concerns regarding the impact the development would have on Emley Millennium Green (to wildlife, hedgerows and trees etc).

Comment: This has been noted, however, none of the trees/hedges within the Millennium Green adjacent to the sites (southern boundary) would be impacted by this proposal.

- The Green has been used for several years for the release of recovering hedgehogs from a nearby hedgehog hospital, Newett Homes is aware of this. There is no mention of how wildlife will be impacted by the removal of the existing large hedgerow of trees and bushes along the length of the boundary between the Emley Millennium Green and the development site, this is where many of the released hedgehogs are likely to be found. The ecological assessment also makes no mention of moles on the Millennium Green which are close to the development land. Nor is there mention of the large variety of wildlife found on the Millennium Green and surrounding areas including bats, barn owls, blue tits, nuthatch and treecreeper birds, to name but a few species.

Comment: The trees/woodland area along the boundaries between the Millennium Green and the site are outside the red line boundary for this application and therefore will not be removed. The Ecological Design Strategy sets out that hedgehog highways will be created in all garden fences. The access gaps shall be appropriately labelled with signs on both sides, to deter householders from blocking the purpose made gaps.

These highways will act as suitable corridors for a variety of small mammals. Condition 23 on the outline application details measures to avoid impacts to nesting birds throughout the construction.

- Lack of adequate wildlife and access corridor to the Millennium Green.
- No thought of hedgehog friendly fences within the development to allow them to traverse. This will impact upon these species which are already on the decline.

Comment: The Ecological Design Strategy sets out that hedgehog highways will be created in all garden fences. The access gaps shall be appropriately labelled with signs on both sides, to deter householders from blocking the purpose made gaps.

- It appears that Plots 34 and 41 are being moved slightly closer the boundary of the Millennium Green. There is already going to be too much removal of trees and bushes on the boundary of the Millennium Green to accommodate these two plots and they should not be brought any closer. How will the Millennium Green trees and tree roots be affected which are in very close proximity to these two plots. The ecological updating survey by SLR dated 08/08/2023 make no reference to this.
- What are the plans to maintain the trees and hedges from the Millennium Green that will be part of the boundary of the new houses. This information should be shared prior to building commencing.

Comment: The aforementioned plots would be moved marginally closer to the boundary with the Millennium Green, which is not considered to result in the removal of any additional trees/bushes which may have been required to facilitate the layout approved at Reserved Matters Stage. Condition 22 on the outline application states that trees will be protected in accordance with BS5837:2012.

- There are diverse species of butterfly and birds within these trees, such as nut hatch tree creeper that will also be impacted.

Comment: This has been noted. Integral bird boxes (e.g., supplied by Bird Brick Houses), to include 48 swift bricks, will be incorporated into buildings at a minimum height of 3 to 4 m above ground, with east or north facing aspects, looking onto semi-natural vegetation (i.e., hedgerow).

- Concerned that the hedgerow including lots of wildlife is to be taken out at the side of Green Acres Close. Supporting biodiversity and wildlife should be at the forefront of any development and allows the site to keep in with the greenness of the surrounding area.

Comment: This has been noted and adequate biodiversity enhancement measures have been proposed as part of this application.

- We understand that on the day of the Ecology report, our volunteers from Shelley Hedgehogs actually interacted with the person generating the report, advising where the nests actually are. However, the ecologist made no effort to check or confirm this. The volunteer was there checking over the local nests and has no link to Emley or the Millennium green but uses the area to re-introduce them into the wild.

Comment: This has been noted, however, the Ecological report has been undertaken by a competent consultancy. The council accepts the findings of the report and they make a robust impact assessment regarding the potential impacts to not only hedgehogs, but other protected faunal groups.

General concerns:

- Increasing the number of houses in the village by such a large amount also has a negative impact on the market value of existing homeowners in the village.

Comment: This is not a material planning consideration, nor does this application seek to re-assess the principle of development, as this has already been established under the outline and reserved matters applications.

- There will be a great impact on services within Emley including an already overcrowded school, more vehicles to add to the ever increasing speeding problem.
- If we have to have new housing why not build basic, decent affordable properties in keeping with the surroundings (not apartments) which will help the younger residents onto the property ladder thereby allowing them to stay in the village. We need to think about affordability, the local environment rather than profit.
- The school is overcrowded.
- The village infrastructure cannot cope.
- The main impacts are on nature and wildlife that seem to have been completely dismissed or ignored coupled with the outrageously tall ball strike netting which will just destroy to look of the area around the cricket club, proposed houses as well as the villages much loved Millenium Green.

Comment: This application does not seek to re-assess the principle of development, as this has already been established under the Outline and Reserved Matters applications.

- Additionally, the environmental impact should be a primary concern - building phase producing large amounts of particulates and harmful gases, increase of works traffic introducing additional fumes, increase of domestic traffic as a result of increased housing, loss of green space, loss of biodiversity where pollinating species reside/feed, noise pollution for humans, pets and wildlife.

Comment: This has been noted and appropriate measures were secured via conditions on the Outline and Reserved Matters application. This application is just to assess the change to the house types proposed.

- Newett Homes have applied to alter the size and position of 7 Plots (Plots 14 to 20 which are closest to the ball stop netting) and also the size and position of the ball stop netting. This is because on the original plans there wasn't enough room for the ball stop netting support stanchions as well as room for the claimed PROW which runs adjacent the cricket field stone wall boundary.

- The new position of the six plots provides more room for the Ball stop netting and the claimed PROW but in turn brings these 6 plots closer to the public highway with little or no front garden spaces.
- There is only one visitor parking space provided at this end of the development near to the modified six plots and there is no public footpath. There are six apartments and three town houses directly opposite the six modified plots which have no provision for visitor parking either. One visitor parking space for 15 plots is not sufficient. Plots 30 to 40 also have no facility for visitor parking.
- How will the refuse wagon collect bins from the modified plots and from the apartment block plus from plots 21 23 and 24 as there are no bin collection points?
- Newett Homes plan to create a corridor along their northern boundary to incorporate the ball stop netting and the claimed PROW, but surely this is creating a dark alleyway between the dwelling rear fences and the cricket field boundary wall? This could be viewed by the police as a danger zone for potential house break-ins?
- If the ball stop netting is located in this public area of the claimed PROW, in addition to the repair and maintenance issues, the fact that they are accessible to the members of the public could mean that they could be prone to vandal damage in a secluded unmonitored vicinity. Newett Homes needs to consider all these factors and clearly and provide detailed plans to show how the public area will a) provide a secure space for the ball stop netting, b) provide sufficient space for any maintenance machinery to access the area and c) provide sufficient safe space for the claimed PROW.
- I note that there has been a change to the number of houses near the PROW – surely Newetts should be sharing design and artists impression, including the type of stone, doors and windows.
- Concerns raised regarding the planning application 2023/92327 for 6 modified dwellings.

Comment: These comments appear to relate to the modified proposal (2023/92327) rather than this particular Section 73 (variation of condition) application.

- The route of the existing PROW will cross the new public highway, but the crossing point is an offset raised ramp that does not run in line with the route of the PROW? Is this safe for children crossing? At the moment children walking along this PROW encounter no cars or roads but will now have to negotiate a raised offset ramp as well as looking out for vehicles? Also, potential problems for pushchairs, wheelchairs, roller skates etc.
Comment: This has been noted and Highway Officers have confirmed that there is sufficient space at the top of the ramp for pushchairs, wheelchairs and people on roller skates to cross the road and join back onto the PROW.
- The Secure by design layout dated 11/07/2023 appears to show a diversion of the main diagonal PROW through the site.
Comment: The alignment of the PROW would remain as existing and as approved.

- The cricket pitch section and the ball strike net plan both dated 27/06/2023 prepared by Newett Homes are not sufficient. There is no information or evidence to show that the stanchions/supports and netting design nor the new position of the net, nor the height of the net is adequate. The cricket field and the development land are exposed to high winds and adverse weather and this needs to be factored into any design. The balls strike netting needs to be robust enough to withstand the extremes of weather experienced in Emley, and to prevent rattling and whistling noises disturbing residents in the vicinity.

Comment: In the absence of acceptable information pursuant to conditions 4 and 5 on the Reserved Matters application, these conditions will be re-attached as part of this current S73 application.

- The Labosport report LSUK.21-0698 dated 19/11/2021 commissioned by Barratts is now outdated. Labosport needs to be instructed to prepare a fresh report following a physical site inspection rather than a desk top appraisal. The report needs to factor in the changes to the position and design of the ball stop netting, and also factor in and changes to the way cricket is played at the cricket ground.

Comment: Given that this application is a modification to the Reserved Matters relating to house type/minor layout changes, it is not considered necessary or reasonable to require the applicant to submit a new Labosport report.

- The proposed netting and its height is not what was approved in the Planning Application 2021/93286. The Labosport LSUK.21-0698 dated 19/11/2021 gave a height of 18 metres but Newett are now using 17 metres. A new Labosport/Newett Boundary Risk assessment is required to look at the heights again particularly due to the proposed nets being moved and the claimed PROW now being incorporated into the new design. As already stated this should be a physical survey not a desk top survey.

Comment: The proposed height of the ball strike net is to remain at 17m as approved at Reserved Matters stage and set out within the Labosport assessment. The net would also remain in the same location as approved.

- The proposed netting is not only lower than it should be but it does not extend to the perimeters originally proposed. It is shown as not extending the full length of the cricket field wall, i.e. where the proposed attenuation tanks are to be grassed over and the development children play this area is not covered by the safety of the nets, are the development children play this area is not covered by the safety of the nets, are children not as important as the houses. This is of course in addition to the fact that there will need be access for a “cherry picker” machine space for repair / maintenance of the ball stop netting – which would need a clear 3.00m driveway, and this is not reflected in their most recent proposals to Kirklees.

Comment: The length of the net would not change as part of this application. It is still be proposed to the rear of plots 14-20. The net is to protect the houses adjacent to the cricket pitch from damage and to not prejudice the playing of this sport given the location of the houses proposed. The risk of ball strike to users of the green space above the attenuation tank would be similar to that which currently exists (where

the site is currently open with no ball strike net in situ to protect the users of the public footpaths). Sport England have not requested that the net be extended to cover other parts of the application site.

Clarification is also required of the exact position on the plan of the PROW that runs adjacent 10 Green Acres Close and the recreation Ground (DEN/96/10) as there seems to be conflict with the site legal boundary line which appears to overlap into the garden of 10 Green Acres Close.

Comment: The location of public footpath DEN/96/10 has been shown on the site layout plan. Any concerns regarding land ownership/legal boundary lines is outside of the remit of this planning application.

- Concerns raised regarding the information submitted for the Discharge of Condition applications 2023/92254 and 2023/92253

Comment: This has been noted.

- Labosport – these experts should be working with Newetts to ensure all Health and Safety measures are met – young families are going to be living and children playing in these gardens and areas. No chances or short cuts can be taken here. Labosport and Planning agreed 18 metre nets and the nets would be erected prior to building commencing. Newetts are not following this advice.

Comment: This concern has been noted.

- Poor communication from Newett Homes to local residents.
- Clearer communication with residents needs sharing from Newetts – eg more drawings outlining layout with proposed materials to be used and measurements – size of garden and clear diagrams showing car parking spaces and access for bin wagon. Especially those on Wentworth Drive and the surrounding areas.

- **Comment:** This concern has been noted.

- All this information including all measurements of the houses and gardens should be available to all before the start of building. This information should be shared prior to building commencing.

- The plans are so small we cannot measure the minimum size agreed for the garages at 7m x 3m.

Comment: The plans submitted are all to scale and therefore can be scaled electronically or on paper if printed at the correct size.

- I note the attenuation area is grassed over and will attract children playing. Could there be some assurance that this area is a safe area to play and walk across. Could it have signage?

Comment: The onus would be on the developer to provide adequate signage should there be any health and safety risks associated with the green space above the attenuation tank.

- A request to Newetts and planning, please be open and transparent with Emley residents. We deserve this consideration and courtesy.

Comment: All documents and files submitted for this application are showing on the Council's website for transparency.

- Contractors were going to cut off the locks on Green Acres Close in order to access the land even though this was known to them to be against the Planning conditions, continued for five days to bring equipment into the field from Warburton, no causeways.
Comment: Damage to public/private property is outside of the remit of planning and the police should be contacted. Should access be taken from Green Acres Close, then residents are advised to contact Planning Enforcement.
- Impact on the Millenium Green and its users from a noise perspective.
- Concerned about the potential for noise, disturbance and odour from the proposed development.
Comment: A Construction Environmental Management Plan was secured as part of the Reserved Matters application to control and reduce disturbance during construction.
- The Millennium Green is a registered charity. The green is well used and supports a variety of wildlife as well as established mature grass land and trees some of which were planted by school children. The peace of the green offers a place of reflection and emotional connection with the environment and personal memories. The effect of new housing close by and the infrastructure required to support the proposed new development will adversely affect all of this.
Comment: This has been noted, however, this relationship has already been established.
- The development would result in an increase to the risk of injury during a cricket match if the ball was to bounce back over the proposed et causing serious injury/death.
Comment: This has been noted and adequate precautions/measures are required by conditions 4 and 5 on the Reserved matters application.

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 this is a Section 73 application, the principal consideration is the planning implications of the proposed variation. The principle of development was established at outline stage. The considerations relevant to this Section 73 are limited to the variation's impacts on the layout, scale, appearance, and landscaping of the proposal. It is concluded that the proposed variation would not introduce new concerns, prejudice material considerations or conflict with planning policy, having regard to the previous approval. The minor changes to the design of the house types would improve visual amenity and would in some instances, provide a betterment in respect of amenity to third party dwellings, given the reduction in overall height to some of the units along the edge of the site.
- 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 Deed of Variation to the original 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)

1. Development in accordance with the plans and specifications schedule
2. Crime prevention measures to be completed in accordance with plan reference Z115.113 rev B
3. Details of external lighting
4. Detailed design of ball-stop net and associated support columns
5. A management maintenance plan to include the routine inspection and maintenance, and long-term repair and replacement of columns, netting and such other associated apparatus
6. A scheme detailing foul, surface water and land drainage
7. A scheme, detailing temporary surface water drainage
8. Development in accordance with the advice and directions (recommendations) contained in the Arboricultural Method Statement, reference, Wharnccliffe Trees and Woodland Consultancy
9. Full details of hard and soft landscaping, including and management and maintenance programme
10. Details of all new retaining walls/ building retaining walls adjacent to the existing/ proposed adoptable highways
11. Details of any new surface water attenuation pipes/manhole located within the proposed highway footprint
12. Removal of PD rights for windows and doors within the northern facing side elevation of plot 8
13. A plan detailing the position and location of bat and bird boxes and hedgehog friendly fence panels
14. A Construction Environmental Management Plan
15. Removal of permitted development rights for Class Classes A to E inclusive of Part 1 of Schedule 2 for plots 14 – 20, 33, 34 and 41 as outlined on the hereby approved site plan Z155.002 rev E

Background Papers:

Website link - [Planning application details | Kirklees Council](#)

[Link to Reserved Matters application – Planning application details | Kirklees Council](#)

[Link to Outline application - Planning application details | Kirklees Council](#)

Certificate B signed and notice served.