
Report of the Head of Planning and Development

STRATEGIC PLANNING COMMITTEE

Date: 31-Jul-2025

Subject: Planning Application 2025/90577 Variation conditions 4, 5 and 7 (landscaping) on previous permission 2013/90204 for erection of 42 dwellings, formation associated site access, and drainage and landscaping works Land off Cowrakes Road, Lindley, Huddersfield, HD3 3SS

APPLICANT

J Beeson, Harron Homes
Yorkshire Ltd

DATE VALID

28-Feb-2025

TARGET DATE

30-May-2025

EXTENSION EXPIRY DATE

08-Aug-2025

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: Lindley

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 to complete the list of conditions, including those contained within this report.

1.0 INTRODUCTION

- 1.1 This application seeks full planning permission for the variation of conditions 4 (landscape scheme), 5 (timeframe for landscaping implementation) and 7 (landscaping management) of previous permission 2013/90204 for erection of 42 dwellings, formation of associated access, drainage and landscaping works.
- 1.2 Full planning permission was granted on the application site for residential development (42 dwellings) via application 2013/90204. The original permission shows a footpath linking Dryden Way and Wadsworth Fold (between 7 and 9 Wadsworth Fold and 27 and 76 Dryden Fold).
- 1.3 The residential development has been occupied for approximately 10 years. However, the footpath shown on the original plans has not been constructed. At present, the land in question is undeveloped land that has naturalised and is fenced off from access to the public. The application seeks permission to remove the footpath and instead landscape the area.
- 1.4 The application is brought to Strategic Planning Committee due to the significant amount of representations received.

2.0 SITE AND SURROUNDINGS

- 2.1 The application site is a residential development located on the northern side of Cowrakes Lane, Lindley. The application originally approved the erection of 42 dwellings, which has since been built out, with the units spread across the streets Wadsworth Fold and Dryden Way. The land around the site was also residentially developed, under the permission 2011/91519.
- 2.2 The development has been constructed and occupied for circa 10 years.
- 2.3 This application is specifically concerned with a small portion of the original approval's land: it is a section of land between 9 and 10 Wadsworth Fold and 27 and 76 Dryden Way. The land is bounded by a 1.8m fence and is undeveloped.

3.0 PROPOSAL

3.1 Permission is sought for the variation of conditions 4, 5 and 7, each of which, which relate to landscaping. The conditions as imposed read as follows:

4. Notwithstanding the landscape master plan drawing no. 0200-0201, no development shall take place until a comprehensive scheme for landscaping treatment of the site has been submitted to and approved in writing by the Local Planning Authority.

Reason: *In the interests of the visual amenities of the area and to accord with Policies BE1 and BE2 of the Unitary Development Plan*

5. Any planting, seeding or tree management works forming part of the landscaping scheme referred to in Condition 4 shall be carried out during the first planting, seeding or management season following the commencement of development, or as otherwise may be agreed in writing by the Local Planning Authority, and shall be maintained for a period of five years from the completion of planting works. All specimens which die within this period shall be replaced.

Reason: *In the interests of the visual amenities of the area and to accord with Policies BE1 and BE2 of the Unitary Development Plan.*

7. Before commencement of development a landscaping aftercare/maintenance and management scheme for the development shall be submitted for the written approval of the Local Planning Authority and no phase shall commence until such approval has been issued. The scheme will include:

A] details of all steps necessary to implement the scheme approved under condition 5 and its time frame for implementation; and

B] details of any subsequent maintenance and site management necessary to ensure long term biodiversity enhancement of this site.

Reason: *To accord with the guidance contained in the National Planning Policy Framework part 11 "Conserving and enhancing the natural environment".*

3.2 The applicant seeks for the above conditions to be amended to substitute the submitted landscape plan. The applicant has not suggested amended wording within the application.

3.3 The reason for the proposed change is to update the landscape plans to omit an indicative footpath connecting Dryden Way and Wadsworth Fold. It is instead proposed to landscape the area. The area would be planted with a wildflower mix and enclosed by a fence with gated access for maintenance by the management company only.

3.4 The following reasons have been put forward by the applicant:

- The footpath is not inclusively accessible due to the gradient, that would necessitate the use of steps. It would also lack lighting.
- The adjacent properties would become vulnerable to increased crime, due to the lack of natural surveillance and lighting.
- The original permission pre-dates the adopted best practice within Kirklees Homebuilder Design Guide SPD and Kirklees Highways Design Guide SPD.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

Application site

2013/90204: Erection of 42 dwellings, formation associated site access, drainage and landscaping works - Conditional full permission

2013/92263: Non Material Amendment to previous permission 2013/90204 for erection of 42 dwellings, formation associated site access, drainage and landscaping works - NMA Approved

Note: This NMA approved alterations to elevation and a nominal change to the layout of a single plot. There was no effect upon the path subject to this application.

2013/91803: Discharge of conditions of all conditions on previous permission 2013/90204 for erection of 42 dwellings, formation of associated site access, drainage and landscaping works - Discharge of condition approved (Partial approval)

Note: This discharge of condition sought to discharge conditions 4 and 7. No details were submitted and therefore neither condition was discharged. No further discharge of condition application was ever received.

It should be noted that condition 5 is a prescriptive condition requiring that the landscaping be done, and does not in itself require discharging (i.e., the submission of further details).

Surrounding area / wider development area

2011/91519: Residential development (294 units) and associated work, including demolition of existing building, construction of new access from Cowrakes Road and Wetherhill Road, footpaths, drainage, earthworks, provision of public open space and landscaping at Lindley View - S06 Full permission

Note: Application 2011/91519 also included the development of the land subject to the current permission. However, it was superseded, in so far as it relates to land of this current application, by 2013/90204. The remainder of the development (i.e., the other houses outside of 2013/90204's 42 was built out via 2011/91519).

2012/91814: Discharge of conditions 2, 4, 5, 6, 8, 15, 25, 26, 28, 31 & 32 on previous permission 2011/91519 for Residential development (294 units) and associated work, including demolition of existing building, construction of new access from Cowrakes Road and Wetherhill Road, footpaths, drainage, earthworks, provision of public open space and landscaping at Lindley View - Discharge of conditions approved

2012/92000: Discharge of conditions 23 & 37 from previous application 2011/91519 Residential development (294 units) and associated work, including demolition of existing building, construction of new access from Cowrakes Road and Wetherhill Road, footpaths, drainage, earthworks, provision of public open space and landscaping at Lindley View - Discharge of conditions approved

2012/92001: Discharge of conditions 9, 10, 11, 18, 19, 21, 22, 24, 27, 30, 34 & 35 on previous permission 2011/91519 Residential development (294 units) and associated work, including demolition of existing building, construction of new access from Cowrakes Road and Wetherhill Road, footpaths, drainage, earthworks, provision of public open space and landscaping at Lindley View - Discharge of conditions approved

2012/92658: Non Material Amendment to permission no. 2011/91519 for Residential development (294 units) and associated work, including demolition of existing building, construction of new access from Cowrakes Road and Wetherhill Road, footpaths, drainage, earthworks, provision of public open space and landscaping at Lindley View - NMA Approved

2013/90170: Discharge of conditions 36 and 37 on previous permission 2011/91519 for Residential development (294 units) and associated work, including demolition of existing building, construction of new access from Cowrakes Road and Wetherhill Road, footpaths, drainage, earthworks, provision of public open space and landscaping at Lindley View - Discharge of conditions approved

2013/91561: Variation of condition 3 (approved plans) on previous permission 2011/91519 for Residential development (294 units) and associated work, including demolition of existing building, construction of new access from Cowrakes Road and Wetherhill Road, footpaths, drainage, earthworks, provision of public open space and landscaping at Lindley View - Removal or modification of condition approved

2013/92091: Non Material Amendment to previous planning permission 2011/91519 for Residential development (294 units) and associated work, including demolition of existing building, construction of new access from Cowrakes Road and Wetherhill Road, footpaths, drainage, earthworks, provision of public open space and landscaping at Lindley View - NMA Approved

2013/92667: Non Material Amendment to previous permission 2011/91519 for Residential development (294 units) and associated work, including demolition of existing building, construction of new access from Cowrakes Road and Wetherhill Road, footpaths, drainage, earthworks, provision of public open space and landscaping at Lindley View - NMA Approved

2016/91999: Erection of 12 dwellings (modified proposal) - Conditional full permission

Enforcement

COMP/12/0224: Major Site Monitoring

- Case opened 17.07.2012
- Case closed 14.05.2019

An Enforcement Case to monitor the development, as part of the standard Major Site Monitoring process, was opened on 17/07/2012. The site's development was monitored by officers, including the payment of S106 contributions. The case was closed on 14/05/2019 as the development was considered to be acceptably completed.

Comments were received from residents in Feb 2021, after the closure of the monitoring file, regarding the implementation and maintenance of the landscaping scheme and footpath links across the wider residential development. At that time, the matter was concluded with no formal action, as no enforceable action could be taken. A stop notice was not served.

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

5.1 Officers approached the applicant to provide additional information regarding the reasons for the proposed removal of the footpath and proposed replacement landscaping. A letter with further details was received and found to be acceptable by officers.

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 Unallocated within the Kirklees Local Plan. At the time of the original planning permission the site was allocated for housing within the Kirklees UDP reference H.17.

6.3 Local Plan policies relevant to this proposal are:

- **LP 1** – Achieving Sustainable Development
- **LP 2** – Place Shaping
- **LP 3** – Location of New Development
- **LP 7** – Efficient and Effective Use of Land and Buildings
- **LP 20** – Sustainable Travel
- **LP 21** – Highways and Access
- **LP 24** – Design
- **LP 32** – Landscape
- **LP 33** – Trees
- **LP 47** – Healthy, Active and Safe Lifestyles

6.4 The following are relevant Supplementary Planning Documents (SPD) or other guidance documents published by, or with, Kirklees Council:

Supplementary Planning Documents

- Kirklees Highways Design Guide (2019)
- Housebuilders Design Guide SPD (2021)
- Open Space SPD (2021)

Guidance Documents

- Biodiversity Net Gain in Kirklees Technical Advice Note (2021)
- Waste collection, Recycling and storage Facilities Guidance – Good Practice Guide for developers (2017)
- West Yorkshire Low Emissions Strategy and Air Quality and Emissions
- Planning Applications Climate Change Guidance (2021)

National Planning Guidance

6.2 National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published in December 2024 (updated February 2025) 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 5** – Delivering a sufficient supply of homes
- **Chapter 8** – Promoting healthy and safe communities
- **Chapter 9** – Promoting sustainable transport
- **Chapter 11** – Making efficient use of land
- **Chapter 12** – Achieving well-designed 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

6.3 Other relevant national guidance and documents:

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

Climate Change

6.4 The council approved Climate Emergency measures at its meeting of full Council on 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.

6.5 On 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.

6.7 It is not considered that specific mitigation measures are required to facilitate the development. The proposal will retain the site as a landscaped area with wild flowers.

7.0 PUBLIC/LOCAL RESPONSE

7.1 The application has been advertised as a Major development via site notices and within a local newspaper.

7.2 The end date for public comments was 19/04/2025. As a result of the above publicity, 47 representations were received. A summary of the comments is as follows:

Against (43)

- The original permission would provide a much-needed path and steps for resident.
- Any planting and upkeep of the area will fall to the management for which the residents already pay a substantial fee.
- Over time the area could become overgrown and a rubbish tip harming local wildlife.
- This is a cheap way for the developer to get away with their responsibilities.
- This is not in keeping with the estate where across the road is a built path.
- The 'wild' areas are not well maintained on site already.
- The original footpath increases accessibility to the local high street, local schooling and local events for a large proportion of the estate.
- The area has always been planned as a footway to facilitate a shorter access between Dryden Way and Wadsworth Fold reducing the walking distance from Pye Road and Dryden Way towards public transport links.
- Landscaping the area will create an unpaved shortcut through the new area, leading to the area being messy due to foot traffic.
- The justification put forward that the lack of access for 10 years makes the access less necessary only serves to highlight the failure of the developer to comply with the planning permission despite complaints.
- I fail to see how Harron homes are able to conclude that the originally planned footpath would be underused or undesirable, given the number of residents who would benefit.
- Leaving an unpaved shortcut could lead to antisocial behaviour.
- Walking round the bend to Cowrakes Lane is treacherous, especially in winter time which leaves me housebound.
- There is no evidence, that I am aware, of safety issues from the properties adjacent to the equivalent path linking Austin Close and Wadsworth Fold.
- In a time when we should be encouraging more people to move by active modes and public transport, the path and steps should be promoted.
- The proposal does not comply with Local Plan policies LP24, LP20 and LP21
- Harron Homes are well aware of residents questioning when the footpath will be implemented since 2015. The minutes of meeting of Lindley Park Residents and various emails with managing agents, RMG will show this.
- Planting is a cheap and unacceptable way out for the builders
- If the area is not secured, there will be significant risks due to the gradient as the area is likely to be used as a cut through

Support (4)

- The steps will represent a security risk with increased access to rear gardens, gathering space for antisocial behaviour, increased litter/fly tipping issues and parking issues on Wadsworth Fold.
- The path may put the gabion wall at risk from the construction works which residents are already concerned about.
- 10 years without steps had hindered nobody.
- The steps will provide a clear view into peoples house and so creating security concerns.
- Potential for noise disturbance from groups gathering on the steps, litter and parking issues with people parking on Wadsworth so they can walk up the steps.
- The pathway would be un-lit which would be a safety concern after dark.
- The steps would provide access through to the gabion walls thus creating a security risk. Our property has been broken into and a car stolen. The increased access would create greater risk.
- The path could create drainage issues which have previously occurred.
- Could form a dog walking area with issues of dog faeces.
- Lindley has reduced the amount of green spaces which has a negative impact on biodiversity. A new green space would help this.

7.3 The following comments were received from Lindley Ward Councillors, Cllr Cahal Burke, Cllr Anthony Smith and Cllr Ashleigh Robinson:

We are writing to formally object to the latest planning application submitted by Harron Homes, which seeks to remove the long-promised pedestrian link between Dryden Way and Wadsworth Close on the Lindley Park estate.

Background and Original Approval

The footpath link between Dryden Way and Wadsworth Close was an integral part of the original planning permission for the Lindley Park estate. It was specifically designed to improve connectivity, walkability, and to provide safe, direct access to main roads for local residents. This pedestrian link has been awaited by residents for over a decade, and its delivery is essential to fulfilling the sustainable transport and community cohesion aims of the original plan.

Consistency with Existing Infrastructure

A similar footpath between Wadsworth Fold and Austin Close was implemented as part of the same development. That footpath was delivered in line with the approved planning permission and is now a well-used, safe pedestrian route that benefits residents. Its success demonstrates that footpaths can be integrated safely within the estate while supporting community connectivity.

Community Safety and Connectivity

We note that comments have been received from the West Yorkshire Police Designing Out Crime Officer, who has raised concerns that the construction of the footpath could increase crime. While we acknowledge the importance of considering crime prevention in planning decisions, we emphasise that it is not appropriate to predetermine that crime would occur simply because a footpath is implemented.

Decisions should be based on evidence rather than speculative assumptions about what might happen in the future. There is no indication that the existing footpath between Wadsworth Fold and Austin Close has led to increased crime. In fact, a well-designed, clearly defined and properly maintained footpath is likely to promote natural surveillance and community use, which can help deter anti-social behaviour.

In contrast, removing the footpath would force residents to take longer, less direct routes via main roads, increasing their exposure to traffic and reducing accessibility for vulnerable users, including children, older people, and those with mobility issues. A safe, accessible footpath is an essential element of modern residential design and supports active travel and community cohesion.

Furthermore, neglected green spaces can themselves become magnets for anti-social behaviour. Replacing the footpath with a “wild” green area would likely result in a poorly maintained space that does not meet the community’s needs or the aims of the original planning approval.

Conclusion

We therefore urge the Planning Department to reject this application and require Harron Homes to deliver the pedestrian link as originally approved. This is essential to ensuring that the Lindley Park estate remains connected, safe, and accessible for all residents.

8.0 CONSULTATION RESPONSES

KC Highways Development Management: Object, due to the loss of pedestrian connectivity.

KC Designing Out Crime Officer: No objection, as the path as indicatively shown raises crime / anti-social behaviour concerns. Welcome the removal of the path.

9.0 MAIN ISSUES

- Principle of Development
- Impact of varying conditions 4, 5 and 7
- Other matters
- Conditions review
- Conclusion

10.0 APPRAISAL

Scope of the application

- 10.1 This application is made under S73 of the Town and Country Planning Act 1990, 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. The original planning permission was approved under application 2013/90204 for the erection of 42 dwellings, formation of associated access, drainage and landscaping works therefore, the principle of development remains established by way of this permission.
- 10.3 Consideration must be given to the specific changes proposed and their interaction with adopted planning policy.
- 10.4 This application relates only to the removal of an indicative footpath connecting Dryden Way and Wadsworth Fold and the implementation of a landscaped area. The application does not affect the quantum or layout of the housing. Therefore, the proposed variation would not affect the principle of the development. However, consideration of the impacts of the proposed variations against relevant policy must be undertaken.

Implications of varying conditions 4, 5 and 6

Connectivity

- 10.5 Paragraph 115 of the NPPF states that, in assessing applications for development, it should be ensured that appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, that safe and suitable access to the site can be achieved for all users, and that any significant impacts from the development on the transport network (in terms of capacity and congestion), or highway safety, can be cost-effectively mitigated to an acceptable degree. Paragraph 116 of the NPPF adds that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highways safety, or if the residual cumulative impacts on the road network would be severe.
- 10.6 Local Plan policy LP21 requires development proposals to demonstrate that they can accommodate sustainable modes of transport and can be accessed effectively and safely by all users. The policy also states that new development will normally be permitted where safe and suitable access to the site can be achieved for all people, and where the residual cumulative impacts of development are not severe.
- 10.7 The original application incorporated an indicative footpath to enhance the permeability of the residential development and allow residents to walk to local services and transport links via Cowrakes Road without the need to travel via a longer route (length of 31m from head of the approved footpath on Dryden Way, along Dryden Way to Wadsworth Fold and ending at the bottom of the approved footpath) or relying on the use of vehicles. An indicative footpath connecting Wadsworth Fold and Austin Close was also approved. This has been since constructed.

- 10.8 The removal of the indicative footpath would reduce the connectivity and pedestrian permeability of the site, notably for units to the west of Wadsworth Road on Dryden Way. For those units, the footpath would be the most direct route to Cowrakes Road, which has bus stops and leads onto the nearby centres of Lindley and Salendine Nook. The applicant notes that the path not be lit and would require steps, due to the topography. The landings between the steps would vary from 1 in 13, 1 in 48, 1 in 20 and 1 in 31. The flights would not take up the full width of the available space between the walls and steps would vary in width along the length of the footpath, with the risings a maximum of 150mm and treads a minimum of 280mm. There would be sloping verges either side where the stepped path is away from the adjacent walls.
- 10.9 While needing steps would lower the overall accessibility of the route, even so, it would provide a net benefit.
- 10.10 Considering the above, failing to provide the path must be acknowledged as a negative on the planning balance. This has led to concerns and an objection from K.C. Highways to the removal.
- 10.11 Notwithstanding the above, in mitigation, the removal of the path does not make the site inaccessible as residents are able to follow the highway and pavements, albeit it this is a slightly longer route (approximately 300m). It should also be noted that the site has operated without the path for circa 10 years.

Crime Prevention

- 10.12 The proposed variation has been assessed by the West Yorkshire Police Designing out crime officer (DOCO).
- 10.13 Paragraph 8.1 of Secure by Design Residential (homes) guide 2025 advises that footpaths should be safe, secure and accessible. This guidance states that footpaths should not provide access to rear or side boundaries of dwellings, as this has been proven to generate crime. Furthermore, footpaths should be well-lit and wide. This is also mirrored in advice contained within Crime Prevention Through Environmental Design which states that opportunities for access, egress and through movement should be minimised to prevent unauthorised access.
- 10.14 The assessment carried out by the West Yorkshire DOCO concluded that should the footpath be implemented, it would not meet these criteria. The footpath would increase the site's vulnerability, specifically for the dwellings adjacent to the path, by increasing opportunities for acquisitive crime and antisocial behaviour. This concern would be exacerbated as the footpath would be unlit, with limited natural surveillance.
- 10.15 The West Yorkshire Police DOCO also added concerns over the safety of the footpath on a slope which would be unlit and narrow.
- 10.16 As the footpath would pass the rear of properties, with no lighting and limited surveillance, the construction of the footpath is advised against as it could create hidden routes prone to misuse.

- 10.17 Officers note that the response from West Yorkshire Police DOCO is given as a view as to what measures might reduce the risk of crime but there can be no guarantees that the recommendations will prevent crime. Nevertheless, returning to the planning balance, removing the footpath would provide anti-crime benefits which weigh in favour on the planning balance.

Enforcement position

- 10.18 Conditions 4 and 7 required the submission of details: these details were never formally submitted or approved, and the conditions remain undischarged. However, the wider residential site was monitored with regular visits to note the landscaping being undertaken.
- 10.19 Concerns have been previously raised to the Local Planning Authority by the residents within this time, with regards to the maintenance of landscaped areas within wider the site and the failure to complete the footpath within this smaller part of the development, which is now the subject of this application.
- 10.20 Following an enforcement case (reference COMP/12/0224), Planning Enforcement officers investigated and concluded that no breach in planning control had occurred with regards to the omission of the path. As per the original decision notice and its conditions there is no specific requirement (or need) to construct the path. The developer cannot be bound to complete a development in its entirety. This is set out within the National Planning Policy Guidance (Use of Planning Conditions) which states the following:

'Conditions requiring a development to be carried out in its entirety will fail the test of necessity by requiring more than is needed to deal with the problem they are designed to solve. Such a condition is also likely to be difficult to enforce due to the range of external factors that can influence a decision whether or not to carry out and complete a development.'

- 10.21 No dedicated condition explicitly requiring the provision of the footpath was imposed at the time of the original decision. While condition 4 requires that a 'landscaping' scheme be provided, which could include hard landscaping and the path, delivery of the approved details was controlled via condition 5. Condition 5 only required that the 'planting, seeding or tree management works forming part of the landscaping scheme referred to in Condition 4 shall be carried out', with no explicit requirement for the delivery of a path.
- 10.22 As such, the omission of the indicative footpath does not breach the planning permission. It is noted, however that the relevant landscaping conditions relating to this smaller development within the wider site were never formally approved although as a result of monitoring visits, the landscaping undertaken across was considered to be generally acceptable. Under such circumstances the Local Planning Authority would not consider formal enforcement action.
- 10.23 A question raised by residents during the enforcement case was the need for the footpath to be constructed to enable the adoption of the highway. However, Officers note that a footpath was not offered for adoption and would remain within private ownership: the road adoption was not predicated on delivery of the indicative footpath.

- 10.24 In conclusion, the original permission did not include a specific condition relating to the delivery of the footpath. The Local Planning Authority are therefore unable to enforce the construction of the footpath and refusing to accept the variation of condition would be unreasonable.

Residential Amenity

- 10.25 Paragraph 135 of the National Planning Policy Framework states that planning decisions should ensure that developments have a high standard of amenity for existing and future users.
- 10.26 Further to this Policy LP15 criteria (d) notes that regard should be given to the protection of the amenity of existing residents and future occupiers of the proposed residential use in accordance with amenity and design policies within the plan (and particular consideration should be given to matters such as privacy, noise and air quality).
- 10.27 The proposed amendments would not materially impact on the residential amenity of neighbouring dwellings. The proposal would retain the boundary fencing as existing, preventing public access through the site.

Biodiversity implications

- 10.28 The applicant has claimed that the proposed new landscaped area, to replace the originally proposed hard surfacing, would have ecological / biodiversity benefits. While this has not been quantified (such as via the Biodiversity Net Gain Metric), officers do accept this to be a benefit. However, the benefit would be very limited and carry little if any weight in the planning balance by virtue of the very limited size of the area under consideration.

Summary of variation

- 10.29 The weighing of the planning balance is based on the professional judgement of the decision maker. In this case, were this application simply an assessment of weighing the pedestrian connectivity benefits vs the anti-social harm and ecological benefits, officers would likely be minded to object to the proposal. However, matters of enforceability are also relevant in this case. It has been identified that there is no enforcement mechanism to secure the delivery of the path.
- 10.30 It is therefore recommended that the removal of the indicative footpath be accepted, in favour of a soft landscaped area. As a result, it is recommended that the conditions in question be amended as follows:

Condition 4: As approved, condition 4 requires a comprehensive scheme of landscaping to be submitted. As this has now been submitted as part of this application, and has also been implemented, it is recommended that condition 4 be removed in full as it no longer serves a purpose.

Condition 5: As approved, condition 5 establishes the timeframe for the implementation of the landscaping (per the approval of condition 4). Bar the change to the footpath area, the landscaping has been done. It is therefore recommended that condition 5 be amended to specifically require the delivery of the newly proposed landscaping, within the former footpath zone, within the next planting season.

Condition 7: As approved, condition 7 required a landscaping aftercare/maintenance and management scheme for the development. Given that the site's landscaping, bar the landscaping within the footpath area, is well established and has been for over five years, it is not considered reasonable or necessary to require aftercare/maintenance and management scheme for said areas. However, a dedicated aftercare/maintenance and management scheme for the new landscaping area is considered reasonable and it is recommended that condition 7 be amended to specifically reference this area.

Conditions review

- 10.30 As this is an application under S73 of the Town and Country Planning Act 1990, it would in effect be a new planning application. 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.
- 10.31 The PPG also confirms that for the purpose of clarity, decision notices for the grant of 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).
- 10.32 The 32 conditions from the 2013/90204 permission should therefore be repeated. As most of the conditions have been discharged, and that the proposed variation is limited in scope and would not materially affect or prejudice any of the conditions (bar those applied to be varied) a note relating to the previously submitted information remaining relevant is recommended for consistency. For reference, the conditions are as follows:
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. Details of boundary treatments
 3. Boundary treatment details
 4. Landscaping strategy to be submitted (to be removed)
 5. Planting, seeding or tree management to be carried out in first season following commencement of development (to be varied)
 6. Details of floor levels
 7. Landscape aftercare/maintenance and management scheme (to be varied)
 8. Phase II
 9. Remediation strategy
 10. Completion of remediation strategy
 11. Validation report
 12. Submission of evidence that the noise attenuation scheme has been implemented
 13. Submission of ventilation scheme
 14. No building or obstruction located over or within 0.3m either side of centre line of sewers
 15. Site to be developed with separate foul and surface water drainage systems
 16. Details of sustainable surface water drainage scheme
 17. Details for disposal of foul water

18. No occupation until completion of approved foul drainage works
19. Details of on-site surface water attenuation
20. Scheme of mitigation measures identified in the Flood risk assessment
21. Submission of programme of works and safety audits
22. Scheme for provision of bat roosts
23. Scheme for provision of bird nest opportunities
24. Details of the design, construction and stability of all retaining walls adjacent to highway
25. Construction management plan
26. Scheme detailing construction of site accesses and improvement works
27. Before the commencement of the 50 dwelling units on scheme 2011/91519, a scheme detailing the scheme of improvements at Ainley Top Roundabout; scheme of improvement for the footway on the west side of Weatherhill Road.
28. Submission of scheme for adoptable on-site highways, footways, footpath links and shared surfaces
29. Private parking areas to be surfaced and drained
30. Scheme for enhancement of public transport infrastructure through provision of real time information screens in bus shelters
31. Submission of design for public footpath HUD/408/20 to increase width to 2.0m
32. Scheme for surface improvement of public footpath HUD/408/20

11.0 CONCLUSION

- 11.1 The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken constitute the Government's view of what sustainable development means in practice.
- 11.2 The failure to deliver the approved footpath is a shared frustration with residents. However, following an enforcement investigation it has been concluded that there is no breach in planning control and therefore, the Local Planning Authority have no powers to enforce the construction of the footpath.
- 11.3 The footpath, as shown indicatively on the approved plans, would offer benefits to the connectivity of the site for residents; while a positive, the public benefits are considered to be modest and largely internal. The proposed footpath would be unlit, lack natural surveillance and provide potential opportunities for crime.
- 11.4 The variation offers an opportunity to regularise the approved plans and remove ambiguity. The site is currently undeveloped land with no purpose. In omitting the indicative footpath and landscaping the area, the site would be regularised and given purpose which in turn will benefit visual amenity and although on a minimal scale, would have an ecological benefit.
- 11.5 On balance, the removal of the footpath is considered acceptable. The loss of pedestrian permeability and safety concerns are noted by officers, however, in the absence of an enforceable mechanism, the variation of condition is considered acceptable.

- 11.6 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.
- 11.7 This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development would constitute sustainable development and is therefore recommended for approval.

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

Previous conditions to be reimposed, with conditions 4, 5, and 7 to be amended as per the report (please see paragraph 10.32), with others updated to reflect changes in local / national policy.

Background Papers:

[Application and history files](#)

Available at:

[Planning application details | Kirklees Council](#)

[Certificate of Ownership](#)

Certificate A signed.