
Report of the Head of Planning and Development

STRATEGIC PLANNING COMMITTEE

Date: 31-Jul-2025

Subject: Planning Application 2024/91853 Erection of 21 dwellings with garages, formation of adoptable road, private road and parking spaces and new car park and beer garden for the Liberal Club Birkenshaw Liberal Club, 10, Croft Street, Birkenshaw, BD11 2HT

APPLICANT

Paul Frain, Riva Homes
Ltd

DATE VALID

01-Jul-2024

TARGET DATE

30-Sep-2024

EXTENSION EXPIRY DATE

30-May-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: Birstall and Birkenshaw

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 complete the list of conditions including those contained within this report and to secure a S106 agreement to cover the following matters:

- 1. Affordable Housing** – 3 x First Homes (14% provision).
- 2. Public Open Space** – Off-site contribution to local Public Open Space of £57,615.35
- 3. Highways** – £10,000 towards funding waiting restrictions at the site access onto Old Lane.
- 4. Management and Maintenance** – Management and maintenance of drainage features in perpetuity (unless adopted by the statutory undertaker), informal Public Open space on site in perpetuity and Biodiversity Net Gain measures for a minimum of 30 years.

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

1.0 INTRODUCTION

- 1.1 The application seeks full planning permission for the erection of 21 dwellings with garages, formation of adoptable road, private road and parking spaces and new car park and beer garden for the Liberal Club. The application site includes land allocated as a Housing Allocation (HS92).
- 1.2 The application is brought to Strategic Planning Committee, in accordance with the Delegation Agreement, due to a significant number of public representations being received contrary to the Officer's recommendation, and a reduction in S106 Planning obligations, specifically in respect to the provision of affordable housing.

2.0 SITE AND SURROUNDINGS

- 2.1 The site is located in Birkenshaw off Croft Street, adjacent to Birkenshaw Local Centre. The site comprises approximately 0.8ha of land, set within a predominantly residential area. To the east, south and west are residential dwellings, and to the sites immediate north is Birkenshaw Liberal Club. The Liberal Club is accessed via a road, Croft Street, through the site, from Old Lane to the east.
- 2.2 The site itself is rectangular in shape with small protrusions to both the north and east. The majority of the site is allocated for housing within the Kirklees Local Plan (site reference: HS92). The topography of the site and site area is that the eastern side of the site slopes to the south and the most steeply sloping western half of the site slopes to the south-west.

- 2.3 The site is bounded by a mixture of stone walling and hedging. A Definitive Map Modification Order (DMMO) also runs through the site connecting Allen Croft to Croft Street.
- 2.4 Until recently the site hosted numerous mature trees, many of which have been felled. These trees did not benefit from Tree Preservation Orders (TPO), although a new Tree Preservation Order has recently been served on a single Sycamore tree in the site's south-east corner (adjacent to Allen Croft).
- 3.0 **PROPOSAL**
- 3.1 The applicant is seeking planning permission for the erection of 21 dwellings with garages, formation of adoptable road, private road and parking spaces and new car park and beer garden for the Liberal Club (full application). The application site includes land allocated for housing in the Local Plan (allocation HS92).
- 3.2 The proposals comprise of:
- 8 no. 2 bed dwellings (38%)
 - 10 no. 3 bed dwellings (48%)
 - 3 no. 4 bed dwellings (14%)
- 3.3 Three of the proposed dwellings would be affordable, all provided as First Homes (following a viability review exercise, please see paragraph 10.85-10.88). These are proposed at plots P4, P5 and P6, each of which is 2bed.
- 3.4 There would be four house types cross the site and would comprise a mix of detached and semi-detached properties, all being two-storeys in height, faced in Marshall's Cromwell reconstituted pitched faced stone, with roof materials consisting of grey concrete interlocking tiles. Roof designs are to consist of pitched and hipped designs.
- 3.5 Each dwelling is to include private rear or side amenity space, with some properties also including a small, landscaped area to the front. Properties are to be bounded by a mix of either 1.6-1.8m high stone walling with timber fence panels above, 1.8m high stone walling, or 1.8m high timber vertical boarded fencing. The rear patio areas will also be treated with 1.1m high walling with railings.
- 3.6 All units would host off-street parking through either garaging or dedicated driveways. Lockable bike stores are also shown within the rear or side gardens of all dwellings. Five visitor parking spaces are also provided within the site.
- 3.7 The site's surface water is to be attenuated via a subterranean tank, to be located towards the south-western boundary, adjacent to plots P19, P20 and P21.
- 3.8 Access into the site is to be via the existing access from Old Lane which is to be redesigned and enhanced to accommodate the residential development. The road would run through the middle of the site branching off to the south for plots P7-P10, and towards the west of the site towards P19-21, also providing access to Birkenshaw Liberal Club. The majority of the dwellings would front onto this new road, although it is noted that several of the properties will front onto private access roads to the east and west.

3.9 At present there is a Definitive Map Modification Order (DMMO) claim lodged with the Council's Public Rights of Way team for an access between Allen Croft to Croft Street which runs through the application site, submitted plans show a pedestrian access through the site to create the required access.

3.10 Groundworks are proposed across the site to create developable plateaus and level plots. This would involve some areas being raised and lowered, and the provision of some retaining walls. Retaining walls are proposed throughout the site, typically within the rear gardens of properties, or between dwellings. A larger retaining wall is also proposed around the attenuation tank. Some banking is also proposed in soft non-pedestrianised areas of the site.

4.0 **RELEVANT PLANNING HISTORY (including enforcement history)**

Application site

2002/93795: Outline application for residential development – Approved (22/08/2003)

2006/91855: Renewal of unimplemented outline permission for residential development – Approved (10/08/2006)

2014/91302: Erection of 46 dwellings and associated parking – Withdrawn (05/08/2014)

2014/91302: Erection of 46 dwellings and associated parking – Withdrawn (05/08/2014)

2014/92893: Erection of 34 dwellings and associated car parking – Approved (11/09/2019)

Surrounding area

Nonrelevant to the proposal.

Planning Enforcement

COMP/23/0733 – Breach of pre-commencement condition 26 (2014/62/92893/E) (biodiversity). Pending consideration.

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

5.1 The current application was validated in 01/07/2024. The proposal was initially submitted for 18 dwellings; however, Housing Allocation (HS92) has a capacity of 28 dwellings. Following several discussions the proposed number of units to be provided on site was then increased to 21.

5.2 The applicant also submitted a Viability Assessment to demonstrate that the entire affordable housing contribution could not be achieved. However, the viability response from Altair demonstrated that affordable housing could be provided at a rate of 14.29% (3 units). An amended site layout plan was submitted to demonstrate this change.

5.3 On assessment, along with details provided via the formal consultation process and public representation, it was evident certain concerns, and technical matters were yet to be addressed. During the life of the application the applicant and officers have engaged in prolonged negotiations to attempt to resolve the various outstanding matters. Negotiations have included various meetings and other methods of correspondence. The concerns related mostly to density, housing mix/affordable units, drainage, trees, highways and access matters.

5.4 Based on the negotiations undertaken and the amendments made, along with the additional supporting documents provided, Officers are now in a position to recommend approval.

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 majority of the application site is allocated as a Housing Allocation (HS92) within the Kirklees Local Plan. The site is also located within a Bat Alert Area, and a High Coal Risk Area.

6.3 Relevant Local Plan policies are:

- **LP1** – Achieving Sustainable Development
- **LP2** – Place Shaping
- **LP3** – Location of New Development
- **LP7** – Efficient and Effective Use of Land and Buildings
- **LP11** – Housing Mix and Affordable Housing
- **LP20** – Sustainable Travel
- **LP21** – Highways and Access
- **LP22** – Parking
- **LP23** – Core Walking and Cycling Network
- **LP24** – Design
- **LP26** – Renewable and Low Carbon Energy
- **LP27** – Flood Risk
- **LP28** - Drainage
- **LP30** – Biodiversity and Geodiversity
- **LP32** – Landscape
- **LP33** – Trees
- **LP38** – Minerals Safeguarding
- **LP47** – Healthy, Active and Safe Lifestyles
- **LP49** – Education and Healthcare Needs
- **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 (SPD), or other guidance documents published by, or with, Kirklees Council:

Supplementary Planning Guidance / Documents

6.5 *Supplementary Planning Documents*

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

6.6 *Guidance Documents*

- West Yorkshire Low Emissions Strategy and Air Quality and Emissions Technical Planning Guidance (2016)
- Waste Management Design Guide for New Developments (2020)
- Planning Applications Climate Change Guidance (2021)
- Biodiversity Net Gain Technical Advice Note (2021)

National Planning Guidance

6.7 National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF), Planning Practice Guidance Suite (PPGS), 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 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 17** – Facilitating the sustainable use of minerals

6.8 Other relevant national guidance and documents:

- DCLG: Technical Housing Standards – Nationally Described Space Standard (2015)
- MHCLG: National Design Guide (2021)

Climate Change

6.9 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.

6.10 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.

7.0 PUBLIC/LOCAL RESPONSE

7.1 This application has been advertised as a Major development via site notices and through neighbour letters to properties bordering the site, along with being advertised within a local newspaper. This is in line with the Council's adopted Statement of Community Involvement.

7.2 The application was amended during its lifetime and a period of re-consultation, via neighbour letters, and site notice was undertaken. These were sent to all neighbouring residents, as well as to those who provided comments to the original period of representation.

7.3 The end of public consultation was 03/04/2025. In total 41 public comments were received. 29 of the comments were objections, 7 were general comments, and 5 were in support. The following is a summary of the comments made:

Principle of development

- The site has been left abandoned for nearly 50 years; it is an overgrown mess with very little redeeming features. In an ideal world this should have a tennis court, all weather sports pitch and some beautiful, landscaped grounds.
- The number of dwellings has risen from 18 to 21, on what grounds?
- The area has also been an unused and uncared for dumping ground, at least with the new development it will be a nicely maintained area.
- Consideration has been given to allow the Liberal Club (a brilliant social asset) to have sufficient room to still have a beer garden and car parking, this is a good balance.
- Too many houses being built on a small plot of land.
- The number of properties is roughly half what was previously proposed.
- The land has been classified as brownfield land, which is very generous, a row of terrace houses ran along one edge of this land however the majority of use has never been housing and in the decades previous was a bowling green and allotments. The land has been maintained by the Liberal Club and residents of Allen Croft.
- The development of unused surplus land to create much needed homes is much needed.
- The idea of building more homes so it can help the area as well as the club gain more business is welcomed.

- Birkenshaw needs to provide a mix of houses catering for all with 2, 3 and 4 bedrooms.
- Hope some affordable homes are provided for locals.

Officer note: Noted. Density of the site is discussed in more detail within the principle of development section of this report, along with affordable housing and housing mix.

Residential Amenity

- The proposed development is surrounded on all sides and very close to existing homes.
- Concerns in respect of the loss of light and views.
- The previous application included a boundary fence adjacent to properties on Old Lane, this application states a wall but doesn't say whether this will be a new wall or the existing very old dry stone wall, which is not very high, is in a poor state and doesn't cover the entire border area.
- Concerns over dust, noise and air pollution.
- The current wooded area provides a natural buffer, ensuring privacy and tranquillity for surrounding properties. developing this space into residential homes would significantly invade this privacy, increase noise and disrupt the peaceful character of our neighbourhood.
- Concerns over overlooking from the proposed development into neighbouring properties.
- Measures have been put in place to ensure that there will be natural yet sufficient sound and visual barriers between the club, neighbours and the new development.
- There is a detailed noise impact assessment on behalf of future occupants of the homes, but none for current local people.

Officer note: Noted. This is all discussed in more detail within the residential amenity section of this report.

Highways and Access

- Traffic calming measures should be considered on Old Lane.
- The submitted Traffic Survey was taken on May Bank holiday week and would not be representative of peak time traffic.
- Old Lane gets extremely busy with traffic, pedestrians and gets very dangerous.
- The access road to The Liberal Club was equivalent to an off-road track, this has already been improved by the developer.
- Concerns that an increase in traffic will impact on neighbouring homes structurally.
- 18 new dwellings would impact on parking 'spilling over' on to Old Lane and surrounding streets.
- Croft Street is just a dirt road with various potholes and residents open their doors directly onto this road as there are no paths. Increased traffic could lead to accidents.
- Croft Street is an unadopted road which should only allow access to the houses that are built on the street, not 20-30 cars going through to Birkenshaw Liberal Club.
- The access off Old Lane has poor sight lines.

- How will events at the Liberal Club possibly have enough parking to accommodate?
- When any rugby team are at home there is in excess of 30-40 cars.
- The access from Allen Croft through to the Liberal Club has been in use for over 25 years and should be maintained.
- Allen Croft is already a busy road with very little parking.
- The liberal club has only been allocated 10 parking spaces which isn't sufficient for the number of visitors plus staff parking.
- The lack of visitor parking for the number of houses will have a knock-on effect to the traffic on Old Lane as people already double park there.
- Concerns over the additional vehicles on Russel Grove whereby access in and out is already difficult and on many occasions dangerous.
- The overwhelmed Coop car park will spill out onto Bradford Road.
- The revised scheme will provide better footpaths, car parking and lighting, making the area safer.
- A new car park at the rear of the Liberal Club will provide much needed additional parking.
- Access from Old Lane, for emergency services/deliveries/refuse collection has been accounted for as access to the club is to be provided via a new road with a drop-down barrier, this will not only provide much needed access but the newly built and future maintained road will be a huge improvement for suppliers and services that need to use that entrance.

Officer note: Noted. This is discussed in more detail within the highway safety section of this report.

Design

- The house design is too generic and doesn't fit in with surrounding houses.
- It is crucial that the development preserves the unique character of the community.

Officer note: Noted. This is discussed in more detail within the urban design section of this report.

Trees/Ecology

- The plans do not contain enough replacement trees and bushes, existing trees should remain in situ.
- There is so much wildlife living in that area, what a waste to get rid of all that beauty.
- Trees and hedges being planted to enhance the area and promote the return of wildlife.
- The trees have been established for over 100 years.
- Removal of this green area would diminish the environmental quality of the community, including air purification and carbon reduction.
- The huge old trees have been cut back but this should be a positive to those living in close proximity due to their potential to cause subsidence with their roots.

Officer note: Noted. This is discussed in more detail within the trees and ecology sections of this report.

Infrastructure

- The village is already overdeveloped with another big development currently being worked on close by, our schools and doctors are already struggling to meet Birkenshaw's demands.
- Need to try filling all the potholes rather than building more houses to make the potholes worse.

Officer note: Noted. Infrastructure in relation to doctors and school provision is discussed in more detail within the sustainable development and climate change and planning obligations sections of this report. In regard to potholes, unfortunately this would not form a material planning consideration that could be addressed under this application. Therefore, an assessment on this matter has not been undertaken on this occasion.

Drainage/flooding

- There will be additional pressure on drains and sewerage services from extra demand.
- The associated ground cover that is currently present will create a serious flood risk to neighbouring properties from ground run off from the development.
- It is a wonder the village isn't permanently flooded because every bit of spare land is being built on.

Officer note: Noted. This is discussed in more detail within the drainage and flooding section of this report.

Other matters

- There have been issues with anti-social behaviour in St Paul's Park so adding more families in the area without the facilities for young people may add to the existing problem.

Officer note: Noted. The Council's Designing Out Crime Officer has been consulted, and this is discussed in more detail within the Crime Prevention section of this report.

- Concerns that ground excavations will result in damage to neighbouring properties walls and garden landscaping.

Officer note: Noted. The onus is on the developer to ensure that they provide a safe development, as outlined within Paragraph 197 of the NPPF.

- The site is in an ex-mining area, this should have been taken into consideration with any drilling etc. so this does not destabilise the land/area.

Officer note: Noted. The Coal Authority have been consulted on the proposals, and this is discussed in more detail within the Coal Mining Legacy section of this report.

- There is considerable opposition to this development from the local community, the development must take into account the views and well-being of current residents who have a right to maintain the quality of life they currently enjoy.

Officer note: Noted. The application has been brought to Strategic Planning Committee for the above reasons; this will allow members to make a decision on this application in light of the concerns raised within the public representations section of this report.

- The contractor is a supporter and contributor to the local area.

Officer note: Noted.

- The relocation of the beer garden will ensure the club can continue to provide a safe outdoor space for the customers to enjoy. The developer has listened to the needs of the community and taken this onboard within the scheme.

Officer note: Noted.

- The developer doesn't build on mass.

Officer note: Noted.

- There are so many documents to study online its quite hard for lay people to find specific information. This makes it hard to comment accurately.

Officer note: Noted.

- The Financial Viability Assessment states that the scheme is unable to viably deliver Kirklees Council's full planning gain requirements including the 20% on-site affordable housing provision and S106 contributions totalling £208,923. This raises serious concerns regarding sustainability and compliance of the development with local and national planning policies.

Officer note: Noted. The submitted Financial Viability Assessment has undergone an independent review, with conclusions discussed in more detail within the affordable housing section of this report.

Ward Councillors

7.4 The site is within the Birstall and Birkenshaw ward where members are:

- Councillor Mark Thompson
- Councillor Joshua Sheard
- Councillor Elizabeth Smaje

7.5 Councillor Thompson provided comments to outline that the previously approved scheme proposed 30+ dwellings, this seems to be the plan that has been used as the yard stick for the current plans on the land. However, if a density of 18 dwellings is continually refused on the grounds of density, it will slow or stop the plot from being developed which seems counter intuitive when the whole point is to get the land developed asap.

7.6 Councillor Smaje provided comments in relation to the natural boundary treatments at the site, and questioned whether Highways had assessed the development as she has concerns in respect of whether the development would allow for a bus to be able to pass on Old Lane and whether there would be any impact where there is currently no footway (between 128 and 136 Old Lane). An error was also raised within the Transport Statement in regard to bus services.

Officer note: The above concerns have been addressed within this committee report.

Parish/Town Council

7.7 N/A.

8.0 **CONSULTATION RESPONSES**

8.1 The following is a summary of consultee advice (more details are contained in the Assessment section of the report, where appropriate):

Statutory

KC Highways Development Management – No objections subject to conditions and a S106 agreement of £10,000 to fund waiting restrictions at the site access.

KC LLFA – No objections subject to conditions.

The Mining Remediation Authority – No objections subject to informatives.

Yorkshire Water – No objection subject to conditions.

Non-Statutory

KC Crime Prevention – No objection, with advice offered.

KC Ecology – No objections subject to the inclusion of conditions.

KC Environmental Health – No objections subject to conditions.

KC Highways Structures – No objections subject to the inclusion of conditions and informatives.

KC Landscape – No objection subject to conditions, and an off-site contribution to local Public Open Space of £57,615.35.

KC PROW – Comments received 03/12/2024. No objections subject to conditions.

KC Strategic Housing – Identified the necessary affordable housing contributions, including tenure and unit size mixture.

KC Trees - No objections subject to the inclusion of conditions.

KC Waste Strategy – No objection, with advice offered.

9.0 MAIN ISSUES

- Principle of development
- Urban Design
- Residential Amenity
- Highway Safety
- Drainage and Flood Risk
- Ecology
- Planning Obligations
- Other matters

10.0 APPRAISAL

Principle of development

10.1 Planning law requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF is a material consideration in planning decisions. Chapter 5 of the NPPF notes the Government's objective of significantly boosting the supply of homes. Applications for residential development should be considered in the context of the presumption in favour of sustainable development.

The Council's five-year housing land supply and the land allocation (housing allocation)

10.2 The 2023 update of the five-year housing land supply position for Kirklees shows 3.96 years supply of housing land, and the 2022 Housing Delivery Test (HDT) measurement which was published on 19th December 2023 demonstrated that Kirklees had achieved a 67% measurement against the required level of housing delivery over a rolling 3-year period (against a pass threshold of 75%).

10.3 As the council is currently unable to demonstrate a five-year supply of deliverable housing sites and delivery of housing has fallen below the 75% HDT requirement it is necessary to consider planning applications for housing development in the context of NPPF paragraph 11. This paragraph triggers a presumption in favour of sustainable development. For decision making this means:

"Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

(i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

(ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."

10.4 Footnote 8 of the NPPF clarifies that for applications involving the provision of housing, the presumption applies to situations whereby the local planning authority cannot demonstrate a five-year supply of deliverable housing sites; or where the Housing Delivery Test has fallen below the 75% pass threshold. Thus, the presumption in favour of sustainable development is activated in the consideration of this application.

- 10.5 The council's inability to demonstrate a five-year supply of housing land or pass the Housing Delivery Test weighs in favour of housing development. Nonetheless, this must be balanced against any adverse impacts of granting the proposal. The judgement in this case is set out in the officers' assessment.

The Quantum of Development

- 10.6 Both the Local Plan and National Planning Policy Framework set out expectations to ensure proposals represent the effective and efficient development of land. Policy LP7 requires development to achieve a net density of at least 35 dwellings per ha (dph), where appropriate. Local Plan allocations have indicative capacity figures based on this net density figure. Policy LP11 of the Local Plan requires consideration of housing mixture. These requirements are built upon within the Council's Affordable Housing and Housing Mix SPD (March 2023).

- 10.7 First considering density, allocation HS92 has an indicative capacity for 28 dwellings, calculated at the net site area delivering 35 dwellings (dph). However, it is acknowledged that part of the housing allocation falls outside of the applicant's ownership, resulting in a loss of approximately 520sqm of the indicative capacity, and although additional land is included directly to the south, east and west of Birkenshaw Liberal Club, this land is to provide a new beer garden and car park for the club, and internal access within the site, and therefore cannot be said to provide additional land towards the indicative housing capacity. Considering these exclusions, the site should be providing 27 dwellings based on a site area of circa 0.76ha.

- 10.8 In this instance 21 dwellings are proposed, this does fall short of the recommended density, resulting in a development density of 26dph. Seeking to justify this, a Justification Report has been submitted by the applicant which provides an assessment of the previously approved outline site layout drawing (ref: 2014/92893), which sought approval for 34 dwellings. The submitted Justification Report states the below issues / constraints with the previous design as to why a site with this number of units could not be reasonably developed:

- Drainage/surface water attenuation was not considered.
- Substandard sized house types not meeting the Technical Housing Standards
- Space about dwelling distances of the proposed houses to existing properties
- Substandard garden lengths on 30% of the plots
- Substandard forward visibility in three areas
- Road infrastructure that will not allow the estate to be serviced by a refuse vehicle
- The proposed junction from the estate to the Liberal Club has inadequate turning radii for a beer delivery truck to access
- The Liberal Club parking layout design doesn't allow enough reverse space to manoeuvre
- Several plot car parking spaces require lengthy reversing movements
- Substandard footpath widths

- 10.9 In addition to the above, Officers do acknowledge that due to the topography of the site and site area is that the eastern side of the site slopes to the south and the most steeply sloping western half of the site slopes to the south-west, making the site harder to develop than a flat piece of land. Alongside this, the site does comprise of an awkward shape, with restricts the site layout. Additional benefits are also to be provided to the adjacent Birkenshaw Liberal Club, in the form of a new car parking area and beer garden. Therefore, on this occasion the proposed housing density is considered acceptable.
- 10.10 Furthermore, it is acknowledged that approximately 500sqm of the housing allocation (HS92) to the north, has been removed from the scheme, this is due to land ownership issues. Nevertheless, Officers consider that a single dwelling may, without prejudice, be able to be provided within this portion of land, although access would need to be taken through the existing car park of Birkenshaw Liberal Club, which would need to be assessed separately by KC Highways within any future application.
- 10.9 Giving weight to the justification provided by the applicant, officers engaged positively with the applicant to increase the originally submitted 18 dwelling scheme, by 3 dwellings taking it to 21 units, which was considered a reasonable compromise, and appropriate for the site. Whilst this remains not close to the Local Plan's expectations for 35dph, given the above constraints and issues with the site, a provision of 21 dwellings is deemed to be reasonable for the site, on this occasion.
- 10.10 Moving on to housing mixture, LP11 seeks proposals to provide a representative mixture of house types for local needs. This is expanded upon and detailed within the Council's Affordable Housing and Housing Mix SPD (March 2023). The following is the SPD expectation for Kirklees Rural East area:

Batley & Spen	Market Housing	Affordable Rent	Affordable Intermediate
1 and 2 beds	30-60%	40-79%	60+%
3 beds	20-40%	0-19%	20-39%
4+ beds	15-35%	0-19%	0-19%

The following sets out the proposals offer:

	Market Housing	Affordable Rent	Affordable Intermediate
1 and 2 beds	27.78%	0%	100%
3 beds	55.56%	0%	0%
4+ beds	16.67%	0%	0%
Total	18	0	3

- 10.11 The proposal's affordable housing contribution is considered in full within paragraphs 10.84-10.96 of this report. In summary, the affordable housing's mixture element of the proposal is deemed acceptable (giving due regard to the viability exercise undertaken).

10.12 The proposals market housing mixture does however not fully adhere to the expectations of the SPD, nonetheless, the slight under provision of 1 & 2 beds properties and slight over provision of 3 bedroomed properties is not considered a significant or drastic change to what is required in the area. Officers therefore raise no concerns in respect of the proposed sizes of the market housing in this instance.

10.13 In light of the above, the site is a housing allocation in the Local Plan, with the proposal considered to represent an effective and efficient use of the allocation site, in accordance with relevant planning policy (albeit not in accordance with the relevant SPD). The proposal would aid in the delivery of housing to meet the Council's targets, and the principle of development is therefore found to be acceptable. Consideration must then be given to the proposal's local impacts, considered below.

Sustainable Development and Climate Change

10.14 As set out at paragraph 7 of the NPPF, the purpose of the planning system is to contribute to the achievement of sustainable development. The NPPF goes on to provide commentary on the environmental, social and economic aspects of sustainable development, all of which are relevant to planning decisions.

10.15 The site is located within an existing established settlement, close to various local amenities and facilities. At least some, if not all, of the daily, economic, social and community needs of residents of the proposed development could be met within the area surrounding the application site, which further indicates that residential development at this site can be regarded as sustainable.

10.16 Specific to the development, the applicant has submitted a Climate Change Statement, which details the following design approach:

- Materials are to be sourced from local suppliers;
- There will be a fabric first approach with highly insulated walls, roofs and floors to obtain excellent thermal efficiency;
- All dwellings are to have air source heat pumps – no gas boilers;
- Invasive Japanese Knotweed has been removed from the site;
- Extensive landscape proposals and the planting of approximately 40 no. trees will contribute to the biodiversity of the site;
- Dwellings have been orientated to maximise solar gain; and
- Water reducing taps and eco-flow shower heads are to be installed.

10.17 Regarding the social infrastructure currently provided and available in Birkenshaw (which is relevant to the sustainability of the proposed development), it is noted that residents have raised that local GP provision is limited. Although health impacts are a material consideration relevant to planning, there is no policy or supplementary planning guidance requiring a proposed development to contribute specifically to local health services. Furthermore, it is noted that funding for GP provision is based on the number of patients registered at a particular practice and is also weighted based on levels of deprivation and ageing population. Direct funding is provided by the NHS for GP practices and health centres based on an increase in registrations. Local education needs are addressed later in this report in relation to planning obligations.

- 10.18 Regarding climate change, measures would be necessary to encourage the use of sustainable modes of transport. Adequate provision for cyclists (including cycle storage and space for cyclists), electric vehicle charging points, and other measures have been proposed or would be secured via condition (referenced where relevant within this assessment). A development at this site which is entirely reliant on residents travelling by private car is unlikely to be considered sustainable. Drainage and flood risk minimisation measures would need to account for climate change. These factors will be considered where relevant within this assessment.

Urban Design issues

- 10.19 Relevant design policies include LP2 and LP24 of the Local Plan and Chapter 12 of the National Planning Policy Framework. These policies seek for development to harmonise and respect the surrounding environment, with LP24(a) stating; *'Proposals should promote good design by ensuring: the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape'*
- 10.20 The site is not within or adjacent to a Conservation Area, and there are no Listed Buildings located within close proximity to the site.
- 10.21 Residential development surrounds the application site in all directions, thus the proposal would not appear as a rural extension (i.e. encroaching into open countryside), but more so an infill development. As a housing allocation, it is accepted that the development of the site would lead to a notable change in the character of both the site and the wider area. The development of the site would need to respect the topography and character of the area, without being overly dominant. It is considered that the proposed development sufficiently achieves this.
- 10.22 The layout of the development is largely determined by the natural features of the site, which is somewhat constrained by existing development which bound the site, and the restriction to the single access onto Old Lane.
- 10.23 In terms of urban grain, it is acknowledged that the wider area is typically defined by rows of terraced properties, of older stock and which are smaller in scale to modern housing. However, there are small clusters of detached and semi-detached dwellings within close proximity to the site. The proposals are therefore considered to reflect the wider area whilst also providing more contemporary housing and additional facilities for the adjacent Birkenshaw Liberal Club, within a restricted site.
- 10.24 Progressing to the specifics of the proposed dwellings, as is set out in detail in the table of paragraphs 10.46-10.47, all the proposed dwelling houses exceed the minimum space standards set out in the Government's National-Described Space Standards. This is, in itself, not a cause for concern as the standards are minimums, not maximums. Notwithstanding this, the proposed dwellings are not considered to be significantly larger than properties surrounding the site, which vary significantly in scale and size. As the surrounding area is defined by varied house types, the established character area allows for some variance between streets, although it is noted that the area does comprise of more traditional style properties, 2 storey properties.

- 10.25 The sites existing ground level slopes from north to south. Retaining walls would therefore feature throughout the site, ranging between 0.15-2.1m at the most extreme. Most of the walls are contained within rear gardens or within the site and therefore are less visible from wider public vistas. Officers are satisfied that the applicant has kept these to an operational minimal.
- 10.26 The proposed dwellings are all to be two-storeys in height, with some single storey sections. As mentioned above, dwellings in the area are typically two storeys in height, and while those proposed would be larger than is typical for dwellings in the area, the proposed units are not considered to be so unduly large to appear incongruous when viewed within the context of the area.
- 10.27 Moving on to the design of the dwellings, architecturally they have a simple and contemporary vernacular. The architectural design of dwellings in the area is varied, however, there is a strong element of 2 storey traditional terraces constructed in stone. Officers consider that the modern attractive vernacular of the proposed units would appear suitably harmonious given that the units would be viewed amongst the less traditional Birkenshaw Liberal Club and properties on Old Lane. More generally, the character of the surrounding area largely comprise detached and terraced properties set within small/medium sized plots of a similar density. The proposal would accord to this.
- 10.28 Regarding facing materials, Marshalls Cromwell reconstituted pitched faced stone is to be utilised throughout the site. Whilst natural stone would have been preferred, given the viability issues discussed below, the use of a suitably high quality reconstituted pitched faced stone in this location is deemed to be suitable, the delivery of which is recommended to be secured via condition.
- 10.29 Roofing materials are proposed as grey concrete interlocking tiles. Roof designs are to consist of pitched and hipped designs. It is considered in this instance that the roof designs are reflective of properties within the immediate area, and that the materials would be acceptable, subject to a suitable end product being used. This should be complimentary to adjacent development and is likewise recommended to be securable via condition.
- 10.30 Regarding the retaining wall materiality, the submitted Design & Access Statement outlines that Marshall Cromwell reconstituted stone would be used for the retaining/garden walls. This material is deemed to be acceptable, in principle, although details via condition are also considered reasonable to ensure a suitable product is used.
- 10.31 In addition to the above, the proposals also include the provision of a new beer garden and parking area for Birkenshaw Liberal Club. The new beer garden will be located to the east of the existing club and will be bounded by a mix of 1.8m high stone walling and stone walling with fence panels. This reflects boundary treatments both proposed within the wider site, and within adjacent properties, and therefore is deemed to be appropriate. In terms of the new car parking area, this is to be located to the west of the club and will adjoin the existing access on Croft Street. Formal parking is to be provided here for 10 vehicles. As the majority of the surrounding hard standing of the club is already used for parking, the provision of this formalised space is considered acceptable and would not appear visually incongruous in this location.

Landscaping/Boundary Treatments

- 10.32 Boundary treatments include a mix of 1.6-1.8m stone walling with fence panels, 1.8m stone walling, 1.1m patio stone walling with railings, 1.8m high timber vertical boarded fencing, and 450mm timber high kick rail adjacent to the footpath. These materials are typical in the urban environment and are considered to be acceptable.
- 10.33 Moving on to proposed landscaping, the application is supported by a Landscape Proposals plan of which soft landscaping is shown, with trees and hedges planted throughout the estate. While trees in the highway to be adopted are not proposed, trees adjacent to the highway that would achieve a similar aesthetic are proposed. No formal onsite public open space is to be provided within the site however, areas of soft landscaping planted with a native scrub mix are provided within the south-western and south-eastern corners of the plot, as well as to the north of the entrance into the site, which helps soften the overall scheme.
- 10.34 In terms of hard landscaping, estate roads are to consist of tarmacadam, and paved garden areas are to be finished with Marshall Saxon textured buff paving slabs. These materials are considered to be suitable.
- 10.35 Policy LP33 of the Kirklees Local Plan states:
The Council will not grant planning permission for developments which directly or indirectly threaten trees or woodlands of significant amenity.

Proposals should normally retain any valuable or important trees where they make a contribution to public amenity, the distinctiveness of a specific location or contribute to the environment, including the Wildlife Habitat Network and green infrastructure networks.

Proposals will need to comply with relevant national standards regarding the protection of trees in relation to design, demolition and construction. Where tree loss is deemed to be acceptable, developers will be required to submit a detailed mitigation scheme.
- 10.36 Whilst a significant portion of unprotected trees on site have already been felled, a small number of trees are to be retained, most specifically a mature Sycamore to the south-eastern portion of the site, adjacent to the proposed pedestrian footpath. During the process of this application a Tree Protection Order notice has been served to the landowner on this mature Sycamore. Whilst not currently formalised due to the representation period which expires on the 22/08/2025, it is important to note that this may be formalised in the near future.
- 10.37 Nevertheless, to ensure the trees retention which the site, tree protective fencing is to be erected around the retained trees, as outlined within the Tree Protection Plan contained within the submitted Arboricultural Method Statement. In terms of the trees to be retained to the south-east, it is proposed that special tree protection measures are to be incorporated into the development such as new surfaces being constructed using 'no dig' cellular confinement systems, Plot 10 to be construction on a pile and beam foundation in order to avoid damage to the tree roots, and where possible, tree roots are to be protected by suitable boards over a non-compressible layer (such as 200mm depth of wood-chip).

- 10.38 Given the above, an assessment has been undertaken by the Council's Trees Officer who considers the proposals to be acceptable subject to conditions relating to ensuring that no utilities are placed within the root protection area of retained trees, and that the development is undertaken in accordance with the Arboricultural Impact Assessment and Tree Protection Plan.
- 10.39 In summary, the proposed works would notably change the character and appearance of the site and wider area, nonetheless, the proposed development is deemed to be designed to a high standard and would infill a portion of land, allocated for housing, located between existing development, thus representing an attractive continuation of the residential environment. Accordingly, the proposal is deemed to comply with the aims and objectives of Policies LP2 and LP24 of the Kirklees Local Plan, and Chapter 12 of the National Planning Policy Framework.
- 10.40 The above assessment has been based on the proposal as submitted. Given the layout of the development and its location adjacent to other residential and commercial properties, it is considered that further development on the site, via extensions or outbuildings, could notably affect the quality of the design. It is therefore prudent to remove permitted development rights for outbuildings and extensions for all units within the site.

Residential Amenity

- 10.41 Local Plan policy LP24 requires developments to provide a high standard of amenity for future and neighbouring occupiers, including by maintaining appropriate distances between buildings.
- 10.42 All separation distances to third party dwellings notably meet/exceed the minimums outlined within the Housebuilders Design Guide SPD, namely 21m between facing rear habitable room windows and 12m between habitable room windows and a blank/side facing wall of original buildings (i.e. excluding extensions), and the provision of new boundary treatments allows for further screening of the site.
- 10.43 Whilst it is acknowledged that the site slopes from north to south and with the slight changes to ground levels to create developable plateaus and level plots, dwellings proposed towards the southern boundary of the site are to be set at a slightly higher ground level than those properties on Allen Croft and Bradford Road. However, this arrangement is not uncommon within the area given the sloped topography of the area in general. Given that the recommended separation distances have been met/exceed and the orientation of dwellings to adjacent residential properties, Officers consider that there are no significant concerns in respect to overlooking, overshadowing, or the proposals appearing overbearing in nature. However, it is considered reasonable and necessary to remove permitted development rights for extensions and outbuildings within the properties to avoid any loss of residential amenity in the future.
- 10.44 Furthermore, it has been raised in representations that adjacent properties currently have a clear view over the site, which is currently greenfield. Whilst noted, there is no right to a view in planning and the loss of an attractive view is not a material consideration. The material consideration is the impact of their amenity, through matters such as overbearing, overshadowing and overlooking, which has been discussed above.

- 10.45 The applicant has submitted a Construction Management Statement (Ref: RHCS-MWA-XX-XX-RP-A-0002), which is considered to sufficiently address potential amenity impacts of construction work at this site. This will be secured via condition.
- 10.46 In summary, subject to the recommended conditions, Officers are satisfied that the development would not materially prejudice the amenity of existing neighbouring dwellings. Consideration must also be given to the amenity of future occupiers and the quality of the proposed units.
- 10.47 The sizes (in sqm) of the proposed residential units is a material planning consideration. Local Plan policy LP24 states that proposals should promote good design by ensuring they provide a high standard of amenity for future and neighbouring occupiers, and the provision of residential units of an adequate size can help to meet this objective. Although the Government's Nationally Described Space Standards (March 2015, updated 2016) (NDSS) are not adopted planning policy in Kirklees, they provide useful guidance which applicants are encouraged to meet and exceed, as set out in the council's Housebuilder Design Guide SPD. NDSS is the Government's clearest statement on what constitutes adequately-sized units, and its use as a standard is becoming more widespread – for example, since April 2021, all permitted development residential conversions have been required to be NDSS-compliant.

House Type	No. of Beds	No. of units	Proposed (GIA,m ²)	NDSS (GIA m ²)
Langham	3	4	100sqm	93sqm
Carlton	3	6	101sqm	93sqm
Stafford	2	8	74sqm	70sqm
Berkeley	4	3	164sqm	124sqm
Total	58	21		

- 10.48 All of the proposed units would exceed the NDSS minimums, which is welcomed. All units would also have well-proportioned habitable rooms that are served by good sized windows. The internal spacing and separation distances between the units are acceptable and will not result in overbearing, overshadowing, or overlooking between the new units.
- 10.49 All the dwellinghouses would have outdoor amenity space, including private gardens of a size commensurate to the host dwelling. However, by virtue of the sites sloped topography and need to create level plateaus for the dwellings, retaining walls would be in many of the units' gardens, in particular those properties located towards the southern boundary of the site. This does mean that in some instances gardens are subdivided reducing their effective size. Nevertheless, tired gardens are not unusual across Kirklees, due to the steep topographical parts of the region. Officers consider that the majority of the retaining walls are proposed to be in rear gardens or between dwellings and therefore would not result in material harm to the amenity of future occupiers.

- 10.50 Policy LP47 of the KLP refers to healthy, active, and safe lifestyles and recognises that these will be enabled by a number of criteria including (a) access to a range of high quality, well maintained and accessible open spaces and (b) increasing access to green spaces and green infrastructure to promote health and mental well-being.
- 10.51 No Public Open Space is to be provided on site, however as a smaller site in a semi-rural location the provision of on-site POS is not a concern. Nevertheless, an off-site contribution of £57,615.35 is to be provided towards improvements to existing facilities in the vicinity of the development, potentially including Birkenshaw Park and Tong Moor Open Space.
- 10.52 In terms of noise, although residential development would increase activity and movements to and from the site, given the quantum of development proposed, and the number and locations of new vehicular and pedestrian entrances that new residents would use to access the site, it is not considered that neighbouring residents would be significantly impacted. The proposed residential use is not inherently problematic in terms of noise and is not incompatible with existing surrounding uses.
- 10.53 Further to the above, the applicant has submitted a Noise Impact Assessment (NIA), this report concludes that Plot 6 should have a 2.4m high solid brick wall or timber fence installed along its western boundary as a precaution against potential noise from the proposed beer garden at the Liberal Club. In addition to this, Plots 3-6 are to be provided with a mechanical extract ventilation (MEV) as a precaution against potential noise from the beer garden, and Plots 17, 18, 19 and 20 shall also have a MEV as a precaution to the Birkenshaw Liberal Club concert room. KC Environmental Health request that should planning permission be granted, mitigation measures recommended within the report shall be implemented and be retained thereafter.
- 10.54 To conclude, the proposed development is not considered to be detrimental to the amenity of neighbouring residents. Furthermore, the proposal would secure an acceptable standard of amenity for future residents. Subject to the proposed conditions, the proposal is deemed to comply with Policies LP24 and LP52 of the Kirklees Local Plan.
- Highway Safety
- 10.55 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 would 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.
- 10.56 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. The NPPF continues that 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.

Traffic generation and the local network

- 10.57 First considering traffic generation, a proposal of 21 dwellings is expected to generate the following movements:

	Arrival	Departure	Two-way
Weekday AM Peak	4	9	13
Weekday PM Peak	8	5	13

- 10.58 This is deemed to be reasonably low-level traffic, which would not have a detrimental impact upon the capacity of the local network or nearby junctions.
- 10.59 Reviewing collision records, the submitted Transport Statement highlights that Personal Injury Collision (PIC) data for the last 5 years, up to December 2023 demonstrates that there has been a single accident on Bradford Road to the west. The analysis provided in Figure 1 of the Transport Statement suggests that driver error or driver recklessness is to blame and cannot be attributed to the road layout. The accident is therefore not considered to indicate a road safety problem or any trends of significance which would warrant treatment or be a cause for concern due to a slight change in flows as a result of the development proposals.

Point of Access

- 10.60 Access is to be via the existing point of access from Old Lane to the east, which is to be redesigned and widened (from circa 4/4.5m to 5.5m) to accommodate the proposed residential development. Suitable visibility has been demonstrated at the entrance, and this is in accordance with the existing driven speed (30mph) along Old Lane. To ensure the junction is kept free of parked vehicles, the developer has been asked to fund a Traffic Restriction Order (TRO) for waiting restrictions at the site access. This would involve a sum payable of £10,000 to be secured via a Section 106 agreement. In addition, the existing bus stop opposite the site access would need to be relocated; this can be secured via condition should planning permission be granted.
- 10.61 An independent Stage 1 RSA and designers' response has been provided regarding the access arrangements associated with the site, which have been considered and addressed accordingly.

Internal highway layout and parking

- 10.62 Regarding the internal road arrangements, the submitted details and Stage 1 Road Safety Audit have been reviewed by KC Highways Development Management, with the internal layout being offered for adoption as indicated on the submitted highway areas plan ref: 4875-ECE-XX-XX-DR-C-0021-REV-P01 (adoption would be subject to separate S38 process). It is deemed to comply with the standards of the Highway Design Guide SPD, with sufficient space being provided for a refuse collection vehicle to enter the site for bin collection purposes.

- 10.63 All dwellings would have a level of dedicated off-road parking in accordance with the Council's Highway Design Guide SPD, including suitably sized garages (measuring 6m x 3m internally). In terms of visitor parking, the Highways Design Guide SPD recommends one per four dwellings. This amounts to 5 dedicated spaces, which the proposal includes. Furthermore, these spaces are well located through the site, with the majority of the spaces located centrally within the site, with 1 visitor space sited towards the entrance of the estate. KC Highways have raised no objection to the visitor spaces.
- 10.64 All dwellinghouses are shown to have adequate space for the storage of three waste bins in either their side or rear gardens, which is welcomed. KC Waste Strategy raise no objection to this.
- 10.65 Given the scale of the development, it is likely that this is to be phased, a condition is to be imposed for a waste collection strategy during the construction phase. This is due to refuse collection facilities not accessing roads prior to adoption or whilst construction works continue, therefore appropriate arrangements must be considered and implemented.
- 10.66 KC Highways did initially recommend that a condition be imposed, should planning permission be granted, which requires a schedule to be submitted of the means of access to the site for construction traffic. However, the applicant sought to submit a Construction Management Statement (ref: RHCS-MWA-XX-XX-RP-A-0002), of which KC Highways deemed the submitted information to be acceptable to allow the initially requested construction traffic condition to be removed. Officers concur with this assessment.
- 10.67 KC Highway Structures also recommend conditions, should planning permission be granted, in respect of the submission of schemes which detail the location and cross-sectional information and construction/design details for all new retaining walls/building retaining walls adjacent to the existing/proposed adoptable highway, and for all new surface water attenuation tanks/pipes/manholes located within the proposed highway footprint or influence zone of highway loading.

Sustainable Travel

- 10.68 Policy LP20 of the Kirklees Local Plan states '*The council would support development proposals that can be served by alternative modes of transport such as public transport, cycling and walking and in the case of new residential development is located close to local facilities or incorporates opportunities for day-to-day activities on site and would accept that variations in opportunity for this would vary between larger and smaller settlements in the area.*'
- 10.69 The majority of the site is allocated in the Local Plan for residential development. The site is below the threshold for the requirement of a Travel Plan (50+ units). Nevertheless, the accessibility of the site was assessed as part of the Local Plan process and it was concluded to be a sustainable location, being within the middle of an existing settlement. The supporting Transport Statement includes a review of the facilities that are within walking and cycling distance of the site – this confirms that there is a range of local facilities that are accessible by foot and by cycle.

- 10.70 Officers acknowledge that at present there is a claim for an access between Allen Croft and Croft Street to become a pedestrian footpath, the Council's Public Right of Way (PROW) officers are currently assessing the claim, and thus this is pending consideration. The application seeks to incorporate this access in a similar, but revised location, outlined on drawing no. RHCS-MWA-XX-XX-DR-A-0003, Rev P20. KC PROW raise no objections to the proposals, now that the access has been widened to 2m. To ensure that this link is provided at a suitable time in the development process, it is considered reasonable to include a condition which requires a scheme to be submitted to the Council prior to development commencing on the superstructure of any of the dwellings hereby approved. This scheme shall include details of gradients, any steps, surface treatments etc. and no more than 5 dwellings can be first occupied until the pedestrian connection has been provided. This is deemed reasonable and necessary, in the interests of sustainable travel.
- 10.71 Regarding public transport, the site is within walking distance to bus stops on the A651 and Old Lane; both are circa 0.1mile walk. The stops are served by nos. 259, 263, 283, 283A, and AL6 services, which provide frequent services between Bradford and Dewsbury, East Bierley and Brighouse and to Huddersfield bus station.
- 10.72 Overall, it is concluded that the proposal is acceptable with regard to the matters of access and highway impact. Subject to relevant conditions and the planning obligations specified, it has been demonstrated that the proposed development can accommodate sustainable modes of transport and be accessed effectively and safely by all users and that any significant impacts from the development on the transport network can be appropriately mitigated. It would therefore comply with Policies LP20 and LP21 of the Kirklees Local Plan and guidance contained within the National Planning Policy Framework.
- Drainage and Flood Risk
- 10.73 The NPPF sets out the responsibilities of Local Planning Authorities determining planning applications, including securing appropriate drainage, flood risk assessments taking climate change into account, and the application of the sequential approach. Policies LP27 and LP28 of the Local Plan detail considerations for flood risk and drainage respectively.
- 10.74 First considering flood risk from fluvial sources, the site is wholly within Flood Zone 1. Nevertheless, the application is supported by a Flood Risk and Drainage Assessment which has been reviewed by KC Lead Local Flood Authority (LLFA). Comments have also been received from Yorkshire Water.
- 10.75 Considering surface water and foul water arrangements, surface water and foul water discharge is proposed to discharge via gravity to the existing public combined sewer to the south of the site via a new connection, this will connect to the 300mm public combined sewer in Allen Croft. Surface water discharge is to be restricted to 3.5 l/s as a minimum practicable rate as stipulated by Yorkshire Water. Both the surface and foul water drainage systems are to be offered for adoption to Yorkshire Water. This proposal has not attracted an objection from Yorkshire Water and is therefore considered acceptable. However, Yorkshire Water have requested conditions in respect of no obstructions over or within 3 metres of a public water main, and that the proposed drainage should be in accordance with the submitted drainage strategy.

- 10.76 Attenuation storage is to be provided via an attenuation tank located to the south-western boundary, adjacent to plots P19, P20 and P21. Attenuation storage will be provided for rainfall events up to the return period of 1 in 100 year plus climate change. The submitted indicative details are welcome and demonstrate suitable space has been provided for water, although a condition for a fully detailed scheme is recommended. Subject to this condition, KC LLFA raise no objections to this.
- 10.77 The maintenance and management of the approved SUDs/surface water infrastructure (until formally adopted by the statutory undertaker) is recommended to be secured via the Section 106 agreement. Details of temporary surface water drainage arrangements during construction are proposed to be secured via a condition.
- 10.78 Considering the above, subject to the proposed conditions and securing the management and maintenance arrangements via the Section 106 agreement, the proposal is considered by Officers and the LLFA to comply with the aims and objectives of Policies LP28 and LP29 of the Kirklees Local Plan.
- Ecology
- 10.79 Policy LP30 of the Kirklees Local Plan states that the council will seek to protect and enhance the biodiversity of Kirklees. Development proposals are therefore required to result in no significant loss or harm to biodiversity and to provide net biodiversity gains where opportunities exist.
- 10.80 The applicant has submitted a Preliminary Ecological Appraisal which has been reviewed by KC Ecology. This report states that the site relates to a small section of unmanaged land which supports a mixture of woodland and scrub which are heavily disturbed, with Croft Street running through part of the site. The report provides several recommendations for bats, birds, invasive species and hedgehogs. Further surveys/documents are also required in respect of a bat activity survey and an invasive non-native species management/removal plan for Japanese Knotweed. It is deemed reasonable to include a condition which requires the development to be carried out in accordance with the recommendations contained within the Preliminary Ecological Appraisal.
- 10.81 The provision of a Biodiversity Net Gain (BNG) of 10% is now a mandatory requirement for developments in England under Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021). This is subject to limited exceptions. Unless exempt, every planning permission granted pursuant to an application submitted after 12/02/2024 is deemed to have been granted subject to a pre-commencement condition requiring a Biodiversity Net Gain Plan to be submitted and approved by the local planning authority prior to commencement of the development.
- 10.82 A Biodiversity Net Gain calculation has been undertaken using the DEFRA metric. This shows a baseline of 4.54 habitat units and 0.08 hedgerow units. There are no watercourse units on site. The proposed development is predicted to lead to a post-intervention value of 2.49 habitat units and 0.0 hedgerow units. Resulting in an estimated loss of – 2.06 habitat units (-45.26%), and -0.08 hedgerow units (-100%). The applicant will therefore need to provide a minimum of 2.55 habitat units (with a minimum of 1.27 units for woodland) and 0.08 hedgerow units off-site to meet the required 10% net gain.

- 10.83 Under the legislation, a condition is in place by law. The biodiversity gain condition has its own separate statutory basis, as a planning condition under paragraph 13 of Schedule 7A of the Town and Country Planning Act 1990. As such, it is not considered necessary for any further condition to be in place upon any grant of permission given the statutory requirements in relation to biodiversity. However, an informative note will be included to highlight this requirement to the applicant.

Planning Obligations

- 10.84 Paragraph 58 of the NPPF confirms that planning obligations must only be sought where they meet all the following:

- A. necessary to make the development acceptable in planning terms;
- B. directly related to the development; and
- C. fairly and reasonably related in scale and kind to the development.

- 10.85 Should planning permission be granted, Officers recommend that this permission should be subject to a Section 106 agreement to cover the following:

Affordable Housing

- 10.86 Policy LP11 of the Local Plan and the council's Affordable Housing and Housing Mix SPD requires major developments (10+ dwellings) to contribute 20% of total units as affordable housing. For this site, a 20% contribution of 21 dwellings would be 4 units, with two units being affordable rent, one being a first home, and one being another form of intermediate tenure.

- 10.87 It is noted that the applicant has provided a Viability Assessment seeking to demonstrate that a full 20% contribution towards affordable housing could not be provided, and that the scheme would not be viable should these obligations be imposed upon them. The Government's planning practice guidance provides the following overview of the Viability Assessment process for context:

'Viability assessment is a process of assessing whether a site is financially viable, by looking at whether the value generated by a development is more than the cost of developing it. This includes looking at the key elements of gross development value, costs, land value, landowner premium, and developer return. Any viability assessment should be supported by appropriate available evidence informed by engagement with developers, landowners, and infrastructure and affordable housing providers.

Any viability assessment should follow the government's recommended approach to assessing viability as set out in this National Planning Guidance and be proportionate, simple, transparent and publicly available. Improving transparency of data associated with viability assessment will, over time, improve the data available for future assessment as well as provide more accountability regarding how viability informs decision making.

In plan making and decision-making viability helps to strike a balance between the aspirations of developers and landowners, in terms of returns against risk, and the aims of the planning system to secure maximum benefits in the public interest through the granting of planning permission'.

- 10.88 The applicant's Viability Assessment has been reviewed by an independent viability assessor (Altair) appointed by the Council, to advise Officers on this specialist subject.
- 10.89 Planning Practice Guidance indicates that a profit level of 15-20% of gross development value is generally considered to be a suitable return to developers. There are various factors that determine what a reasonable level of profit may be, including the availability of finance, the state of the market and the consequent risk in proceeding with schemes, as well as development values and demand. In determining the appropriate level for an individual development, regard is had to the individual characteristics of that scheme.
- 10.90 Taking the above into account, Altair did conclude that the scheme is capable of supporting affordable housing in the form of three x First Homes, whilst still providing a suitable profit level for the developer. It was therefore agreed that a 14.29% contribution of on-site affordable homes would be provided, resulting in 3 units.
- 10.91 Whilst the Council seeks the tenure of affordable dwellings to be 55% affordable rent and 45% intermediate (including 25% first homes), given the above assessment in respect of viability of the site, it has been concluded that three First Homes (100% of the affordable units) are to be provided. Seeking another tenure type, such as affordable rent, would increase the cost per affordable unit to secure, and would result in less than three total affordable units. The number and tenure of the affordable homes is therefore deemed to be acceptable to ensure development at this site.
- 10.92 Please note that the viability exercise was predicated on the other planning contributions (public open space and off-site Highway works) being delivered and are detailed in the following subsections.
- 10.93 Notwithstanding the above, the Council's Affordable Housing and Housing Mix SPD sets our expectation for affordable housing unit size and mixture. Falling within the Batley and Spen sub-area, the SPD seeks the following mix of affordable units:

Batley and Spen	Affordable Rent	Affordable Intermediate
1 and 2 beds	40-79%	60+%
3 beds	0-19%	20-39%
4+ beds	0-19%	0-19%

- 10.94 The following sets out the proposals offer:

	Affordable Rent	Affordable Intermediate
1 and 2 beds	0%	100% (3 units)
3 beds	0%	0%
4+ beds	0%	0%
Total	0	3

- 10.95 Whilst the above table shows a slight overprovision in the proportion of affordable intermediate properties, which are specifically to be 2 bedrooled units, this is considered to be a modest departure, which has resulted from viability assessments undertaken on the site. Officers do not consider the provision of 3, 2 bed First Homes to be a significant concern in this instance, and thus the sizes and types of affordable units proposed are accepted.
- 10.96 Policy seeks to ensure that the affordable units are indistinguishable from market homes. The design of the affordable homes in this instance are not considered to be visually distinguishable from the development's private element as the house type proposed for the affordable units (Stafford), would also be used within five units of the private element. The same materials would be used across all the tenures, and elevational detailing would be similar across the application site.
- 10.97 Relevant planning policy also seeks to ensure affordable units are spread throughout the site. Whilst Officers would have preferred to see the affordable units dispersed more throughout the site, the applicant did confirm that Plots 13-16 have significantly higher build costs due to the retaining wall found in rear gardens and the elevated patio areas. Given the concerns raised within the viability assessment, Officers consider that on this occasion, the location of the affordable units is acceptable.
- 10.98 Overall, on balance, the proposed affordable housing offer is considered acceptable and would meet the expectations of Policy LP11 and the Council's Affordable Housing and Housing Mix SPD.

Public Open Space

- 10.99 In accordance with Policy LP63 of the Kirklees Local Plan new housing developments are required to provide public open space or contribute towards the improvement of existing provision in the area.
- 10.100 The application does not propose any on-site Public Open Space, and therefore an off-site contribution of £57,615.35 towards existing facilities in the vicinity of the development, including but not limited to Birkenshaw Park and Tong Moor open space. This is in accordance with the Public Open Space SPD. The contribution is recommended to be secured within the Section 106 agreement. This is considered appropriate to comply with Policy LP63 of the Kirklees Local Plan.

Education

- 10.101 Applications proposing over 25 dwellings require consideration as to whether education contributions are required. As this scheme seeks to provide just 21 dwellings, this requirement has not been triggered.

Highways and Sustainable Travel

- 10.102 As detailed within the highways section of this report, it is recommended that the following contribution towards highways and sustainable travel be secured:
- £10,000 to fund waiting restrictions at the site access (Old Lane).

- 10.103 The provision of the above is considered to comply with the aims of Policy LP20 of the Kirklees Local Plan.

Management and Maintenance

- 10.104 Clauses are required to ensure appropriate arrangements are in place for the ongoing management and maintenance of certain features on site, such as the management and maintenance of drainage infrastructure (prior to its adoption by a statutory undertaker), informal Public Open space on site in perpetuity, and any on-site Ecological Net Gain features for a minimum of 30 years.

Other Matters

Coal Mining Legacy

- 10.105 The application site falls within the Development High Risk Area zone for legacy coal workings. This means that there are records of coal mining related features at the surface or shallow depths in and around the site. For context, a sizeable portion of Kirklees falls within this zone. Due to being within this zone, the application is supported by a Phase 1 Geotechnical & Geo-environmental Site Investigation report and a Phase 2 Geotechnical and Geo-environmental report.

- 10.106 The above Phase 1 report firstly identified that possible unrecorded shallow mine workings posed a potential risk of instability at the site, and that intrusive ground investigations in the form of the drilling of boreholes (to establish the depth, thickness and condition of underlying coal seams/workings) shall be undertaken. The Phase 2 report indicates that these intrusive investigations have now been carried out at the site and that whilst some broken ground and the Wheatley Lime coal was encountered, drilling and grouting is not considered necessary. The Mining Remediation Authority concur with the content of the Phase 1 and Phase 2 reports and therefore raise no objections to the proposed development, requesting no conditions.

Contaminated Land

- 10.107 In accordance with Local Plan Policy LP53, as a major residential development consideration of ground contamination is required.
- 10.108 The application is supported by a Phase 1 Geotechnical & Geo-environmental Site Investigation report authored by Eastwood, dated March 2024 (ref: 48785-ECE-XX-XX-RP-C-0001), a Phase 2 Geotechnical and Geo-environmental Site Investigation report authored by Eastwood, dated January 2025 (ref: 48785-ECE-XX-XX-RP-C-0008), and a Remediation Implementation Plan authored by Eastwood, dated February 2025 (ref: 48785-ECE-XX-XX-RP-C-0008).
- 10.109 The Phase 1 report describes the site as heavily vegetated with surrounding residential properties and Birkenshaw Liberal Club adjacent to the northern boundary. The site was previously used as allotments and a bowling green. During a walkover in February 2024 by Eastwoods they noted fly tipped waste, including petrol containers. The Phase 2 report provides additional information in relation to the ground conditions, including additional window

sampling and chemical analysis. Phase 2 identifies the requirement for remediation at this site. The remediation strategy proposes the removal of made ground and the replacement of 600mm clean cover systems in gardens and areas of public open space. The consultant of the report advises that site-won material is not suitable for reuse at the site, and the specification for imported material has been provided in Section 6 of the report. Verification proposals have also been provided.

- 10.110 KC Environmental Health have reviewed the above documents and whilst they accept Phase 1 and Phase 2 reports, they do not agree with the proposals for clean cover considering the presence of asbestos at the site, if made ground is to remain in-situ in areas of soft landscaping and gardens. It is expected that a greater thickness of clean cover and/or the consideration for a barrier layer to provide the necessary protection to end-users, for the above reasons KC ENVH do not accept the remediation proposals and land contamination conditions for remediation, and the submission of a verification report shall be required, should planning permission be granted.
- 10.111 The above recommended conditions are deemed to be sufficient mitigation, and to accord with LP53 of the Kirklees Local Plan.

Crime Mitigation

- 10.112 The West Yorkshire Police Liaison Officer has made a number of comments and recommendations, particularly with regards to home security, rear access security and boundary treatments. All of the comments are advisory and have been referred to the applicant. No prohibitive security concerns have been raised.
- 10.113 It is therefore considered that the site can be satisfactorily developed whilst minimising the risk of crime through enhanced security and well-designed security features in accordance with Local Plan Policy LP24(e).

Minerals

- 10.114 The site is within a wider mineral safeguarding area relating to shallow coal with sandstone and/or clay and shale. Local Plan Policy LP38 therefore applies.
- 10.115 This states that surface development at the application site would only be permitted where it has been demonstrated that certain criteria apply. Criterion c of Policy LP38 is relevant, and allows for approval of the proposed development, as there is an overriding need (in this case, housing need, having regard to Local Plan delivery targets) for it.

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 The proposal seeks the residential development of a housing allocation. The proposed density (26dph), whilst lower than the recommended housing allocation density (35dph), given the constraints identified throughout the planning process, the proposed 21 dwellings is considered appropriate for the site and complies with the expectations of the Local Plan on this occasion. The housing mixture (i.e. sizes) proposed does depart from the expectations of the Council's Affordable Housing and Housing Mix SPD, however, this is very slight and is not considered to be a significant concern, and the harm caused is not considered to outweigh the presumption in favour of sustainable development, established by the Council's lack of a five-year housing land supply. Accordingly, the principle of development is concluded to be acceptable.
- 11.3 Site constraints include topography, the pedestrian access (DMMO claim), neighbouring residential and commercial properties and various other material planning considerations. Nonetheless, the proposed development adequately addresses each. The design and appearance of the proposed development is considered acceptable. There would be no undue harm to the amenity of neighbouring residents or future occupiers. The proposed access and highway impacts have been assessed to be acceptable. Other planning issues, such as drainage, ecology, and trees have been addressed through the proposal.
- 11.4 Viability issues have been demonstrated and independently assessed. This concluded that the scheme would be unviable if required to provide full policy-compliant contributions, specifically affordable housing. Accordingly, the development is recommended for approval, with a reduced package of S106 contribution(s); the proposals would provide three x First Homes (as opposed to four of mixed tenure), an off-site contribution to local Public Open Space of £57,615.35, and a £10,000 contribution towards funding waiting restrictions at the site access onto Old Lane. Obligations for on-site management and maintenance would also be secured.
- 11.5 This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development would constitute sustainable development and is therefore recommended for approval, subject to conditions and planning obligations to be secured via a Section 106 agreement.
- 12.0 **CONDITIONS (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Planning and Development)**
- 1) Three years to commence development
 - 2) Development to be carried out in accordance with the approved plans and specifications
 - 3) Materials for walls and retaining structures shall comprise of Marshall's Cromwell reconstituted pitched face stone
 - 4) Surfacing and drainage of approved vehicle parking areas
 - 5) Visibility splays to be provided
 - 6) Means of access to and from the site shall be in accordance with the preliminary access design(s) show on plan ref: PRGN-2318-HGM-DR-CH-0001C
 - 7) Management of waste

- 8) Highway condition survey
- 9) Relocation of bus stop
- 10) Development undertaken in accordance with Noise Impact Assessment
- 11) Development in accordance with Construction Management Statement
- 12) Submission of a remediation strategy
- 13) Implementation of remediation strategy
- 14) Submission of Verification Report
- 15) Electric Vehicle Charging Points
- 16) Construction Environment Management Plan (Biodiversity
- 17) Submission of a Landscape Management and Maintenance Plan (LMMP)
- 18) Details of cycle storage for all dwellings
- 19) Provision of pedestrian connection
- 20) Removal of pd rights for outbuildings and extensions on all dwellings
- 21) Detailed design scheme for foul surface water and land drainage
- 22) Roofing materials – prior to their use
- 23) Development in accordance with Preliminary Ecological Appraisal
- 24) Development in accordance with Arboricultural Impact Assessment
- 25) Development in accordance with Arboricultural Method Statement and Tree Protection Plan
- 26) Unexpected tree works
- 27) No obstruction over or within 3 metres of the public water main
- 28) Submission of a scheme detailing the location and cross-sectional information and construction/design details for all new retaining walls/building retaining walls adjacent to the existing/proposed adoptable highway
- 29) Submission of a scheme detailing the location and cross-sectional information and construction/design details for all new surface water attenuation tanks/pipes/manholes located within the proposed highway footprint or influence zone of highway loading

Background Papers

Application and history files

Available at:

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2024/91853>

Certificate of Ownership

Certificate B signed.