
Report of the Head of Strategic Investment

STRATEGIC PLANNING COMMITTEE

Date: 05-Oct-2017

Subject: Planning Application 2017/90557 Erection of 99 dwellings Calder View, Lower Hopton, Mirfield, WF14 8JD

APPLICANT

Brian Reynolds, Gleeson
Homes Ltd

DATE VALID

17-Feb-2017

TARGET DATE

19-May-2017

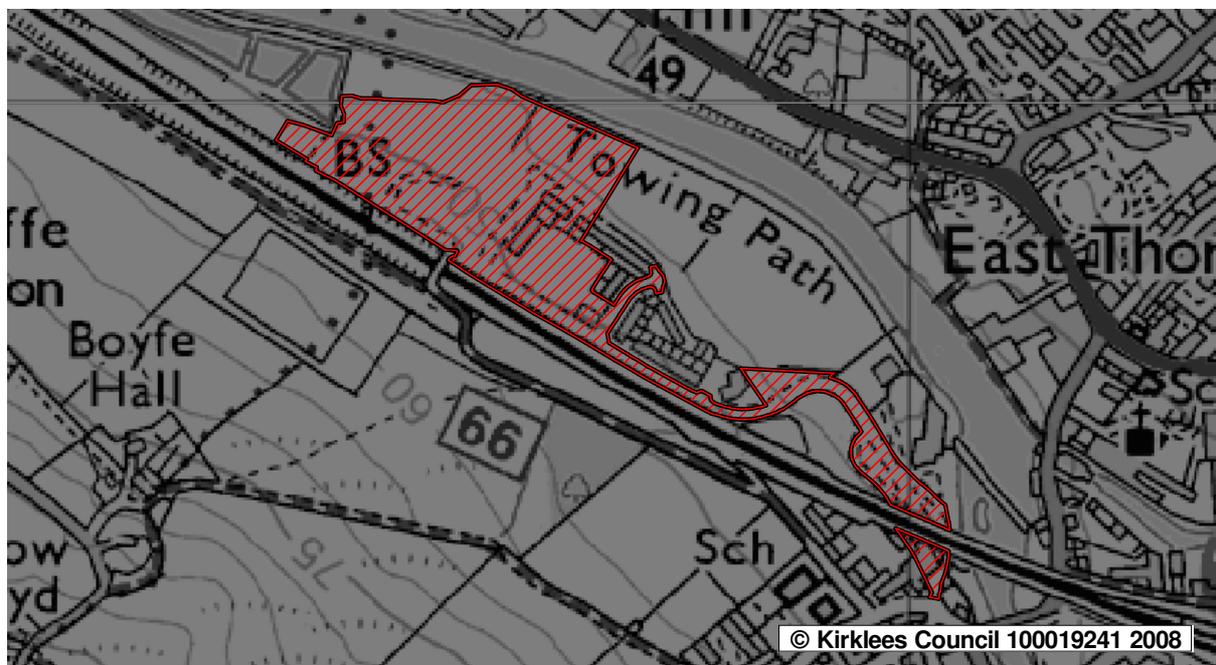
EXTENSION EXPIRY DATE

09-Oct-2017

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

<http://www.kirklees.gov.uk/beta/planning-applications/pdf/public-speaking-committee.pdf>

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral Wards Affected:

Yes

Ward Members consulted
(referred to in report)

RECOMMENDATION:

DELEGATE approval of the application and the issuing of the decision notice to the Head of Strategic Investment 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:

£22,162 for the purposes of highway maintenance, monitoring and clean following any flooding event.

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 Strategic Investment 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 Strategic Investment is authorised to determine the application and impose appropriate reasons for refusal under Delegated Powers.

1.0 INTRODUCTION:

- 1.1 The proposed development involves a full planning application for the erection of 99 dwellings. The application is referred to Strategic Planning Committee on the basis of the scale of the proposed development.
- 1.2 The site currently benefits from planning permission. Planning applications 2001/92359 and 2006/92410 granted consent for the erection of 203 dwellings. However, due to financial difficulties, the proposed development was never fully completed. A total of 65 dwellings have been built and therefore, there remains a live planning consent for a further 138 dwellings.
- 1.3 The current planning application therefore, proposes an overall reduction in the number of units from 138 (as consented) to 99 dwellings.

2.0 SITE AND SURROUNDINGS:

- 2.1 The site lies immediately adjacent to a residential area which includes a number of incomplete houses and infrastructure associated with a stalled housing development. Immediately to the south west of the site is a railway line which is separated from the site by a wooden fence. The northern portion of the site includes an area of open land which faces the River Calder. In a wider context the site is within 500m of the centre of Mirfield.
- 2.2 To the north west of the site are a number of trees which surround a number of lakes on site.

- 2.3 Access to the site is currently taken via a series of roads which run under a railway bridge from Calder Road. There is an emergency access which runs from Calder Lane to the site at a higher level.
- 2.4 The site itself constitutes an area of open land which has been partially developed in conjunction with planning permissions 2006/92410 and 2009/91267. There are remnants of building materials and infrastructure on this part of the site but the site generally resembles an unmanaged, grassed area of open, derelict land.
- 2.5 A number of dwellings face the application site along Banks Mews and a number of other dwellings positioned within the development boundary off private driveways.

3.0 PROPOSAL:

- 3.1 This is a full planning application and proposes the erection of 99 dwellings. The proposal would utilise the existing access road which leads from the junction of Chadwick Lane, South Street and Newgate. The existing access serves the existing development and the proposal would effectively extend the existing estate road which would loop, and from which would run a series of cul-de-sacs and private driveways.
- 3.2 Dwellings would comprise 13 different property styles consisting of 34no. 2 bedroom units, 59no. 3 bedroom units and 6no. 4 bedroom units. Properties would be a mix of semi-detached and detached units. It is proposed that all dwellings would be a maximum of 2 storeys in height.

Amendments

- 3.3 The scheme has been amended during the course of the planning application. The amendments can be summarised as follows:
- Alignment of the layout has been altered slightly in order to move the scheme away from the former railway bridge crossing point.
 - Alterations to plots in order to accommodate a gate to the rear gardens in order to allow bins to be moved from the front to the rear of properties.
 - Additional information and clarification has been provided in respect of drainage.
 - Amended plans have been provided in respect of the proposed area of Public Open Space in order to ensure that suitable play provision and accessibility for existing and future residents is provided.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

2001/92359 – Outline application for employment and residential development with access and associated works – refused but upheld on appeal.

2006/92410 – Reserved matters application for the erection of 203 dwellings with garages and B1 office block with associated landscaping and car parking – approved.

2007/95325 – Reserved matters application for landscaping scheme for residential and employment development – approved.

2009/91267 – Erection of 12 dwellings – Approved.

5.0 PLANNING POLICY:

- 5.1 The statutory development plan comprises the Kirklees Unitary Development Plan (saved Policies 2007).

The statutory development plan is the starting point in the consideration of planning applications for the development or use of land unless material considerations indicate otherwise (Section 38(6) Planning and Compulsory Purchase Act 2004).

The Council is currently in the process of reviewing its development plan through the production of a Local Plan. The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

Kirklees Unitary Development Plan (UDP) Saved Policies 2007:

- 5.2 D2 – Land Without Notation
H1 - Housing Need
H10/12 - Affordable Housing
H18 - Provision of Open Space
BE1/2 - Design and the Built Environment
BE11 - Building Materials – Natural Stone in Rural Area
BE12 - New dwellings providing privacy and open space
BE23 - Crime Prevention Measures
EP4 – Noise Sensitive Development
EP10 - Energy Efficiency
EP11 - Landscaping
T1 - Sustainable Transport Strategy
T10 - Highways Safety / Environmental Problems
T16 - Pedestrian Routes
T19 - Off Street Parking
G6 - Contaminated Land

Kirklees Draft Local Plan Strategies and Policies (2017):

- PLP3 – Location of New Development
PLP7 – Efficient and effective use of land and buildings
PLP11 – Housing Mix and Affordable Housing
PLP20 – Sustainable Travel
PLP21 – Highway safety and access
PLP22 – Parking

PLP24 – Design
PLP27 – Flood Risk
PLP28 – Drainage
PLP30 – Biodiversity and Geodiversity
PLP32 – Landscape
PLP35 – Historic Environment
PLP48 – Community facilities and services
PLP51 – Protection and improvement of local air quality
PLP52 – Protection and improvement of environmental quality
PLP61 – Urban Green Space
PLP62 – Local Green Space
PLP63 – New Open Space

5.3 Supplementary Planning Guidance:

- Providing for Educational needs generated by new housing
- Interim Affordable Housing Policy
- West Yorkshire Air Quality and Emissions Technical Planning Guidance
- Planning Practice Guidance

Many policies within the National Planning Policy Framework are relevant to this proposal and, where relevant, are referred to in the main report text.

6.0 PUBLIC/LOCAL RESPONSE:

6.1 The application has been advertised in the press, by site notice and by neighbour letter as a Major Development. A total of 2 representations have been received which are summarised below. A response to these points is provided in the main body of this report unless otherwise stated:

- I do not think the look of the new affordable homes will fit with the look of the existing houses on the site. The style and building materials of the existing houses should be taken into account when deciding on new house types. I do not agree with the plan to demolish two existing new build detached houses to replace them with new affordable homes. These two houses could be sold off to someone that would finish them for a considerably lower financial and environmental cost. I am concerned that the introduction of such a high number of affordable homes will attract landlords looking to buy cheap investment properties leaving very few houses for people trying to get a foot on the property ladder.

Officer response – The application does not propose to build affordable homes in accordance with the planning definition. The applicant proposes dwellings which could be sold on the open market.

- The junction just before the road drops under the railway viaduct is chaotic, particularly at school delivery and picking up times. There needs to be careful thought out in to improve the junction of 5 roads. With an increase of 150 cars using it, there could be chaos. It may be a mini-roundabout would be appropriate? Please address this issue before going ahead.

Officer response – There is an extant planning permission for housing on this site. Off-site highways works/mitigation was dealt with as part of previous planning consents as detailed in the highways section of this report.

- We have examined the plans as we reside on the site and we wish to object strongly to the development of proposals to build houses and garages directly behind our residence. Within the plans there is a proposal which we feel that the main adverse impacts upon our property and garden would be a severe reduction in light levels and an unacceptable loss of privacy will certainly impact on the peaceful enjoyment of our home and garden. The combination of the house and garage dimensions and its proximity to our property and garden would lead to a general loss of light and serious overshadowing to our property and garden throughout the day. We have a window and a set of French doors serving habitable rooms close to the application site and we are very concerned these would be affected. The extent and height of the garages and house will be visually overbearing and intrusive as they will in a direct loss of sunlight to our garden and overall privacy due to the proximity and height of the structures which is unacceptable. We purchased our property over 8 years ago from McInenery builders with the understanding there would be no properties built directly behind our property meaning our privacy and sunlight into our property and garden would never be compromised. Having reviewed the proposed properties build also we are concerned that the style and look of the proposed new properties are an inappropriate design when compared to the our property and other properties within our areas and as such the design of the properties we have seen proposed are not in keeping with the design of other properties in our area. Taking all of the above into account we feel that the application particularly the proposal to build garages and a house behind our property should not be permitted.

Councillor Bolt has made a number of comments. Whilst not formal representations on the application, he is keen to ensure that the previously agreed public open space is provided on the site.

7.0 CONSULTATION RESPONSES:

7.1 Statutory:

Environment Agency - The applicant has failed to submit any Sequential Test evidence with this application. The site lies partly within Flood Zones 2 and 3, which have a medium and high flood risk. Paragraph 101 of the National Planning Policy Framework (NPPF) requires decision-makers to steer new development to areas at the lowest risk of flooding by applying a Sequential Test.

Avoidance is the most effective flood risk management measure. Even when development can be made 'safe' in flood risk areas, there are always residual risks. In accordance with paragraph 103, consideration should only be given to development in flood risk areas following the Sequential Test.

Please ensure that sufficient evidence is provided by the applicant to allow the Sequential Test to be carried out. Development should not be permitted if there are reasonably available sites, appropriate for the proposed development, in areas with a lower probability of flooding. Evidence to support the sequential test should be added to the planning file for the public record.

It is noted that the majority of the site lies within Flood Zone 1, and therefore a sequential approach to the site layout should be considered by locating the built elements of the development in the lowest risk parts of the site.

Exception Test

The Exception Test should be applied only after the Sequential Test has been applied. If the Sequential Test demonstrates that there are 'Reasonably Available' lower risk sites to which the development could be steered, the Exception Test should not be applied and the application should be refused.

Paragraph 102 of the National Planning Policy Framework (NPPF) makes clear that both elements of the Test must be passed for development to be permitted. Part 2 of the Test requires the applicant to demonstrate in a site specific flood risk assessment.

Yorkshire Water – No objection subject to a condition.

Lead Local Flood Authority – No objection.

7.2 **Non-statutory:**

Biodiversity Officer - The submitted ecological information is sufficient to determine that none of the habitats present fall within the types listed as Habitats of Principle Importance (listed under the provisions of section 41 of the NERC Act 2006) and that protected species are unlikely to be present. Recommendations for ecological enhancement are, however, absent and this does not appear to have been a consideration in the design process. The proposed layout is poor in that no provision appears to have been made to the conservation or enhancement of the natural environment. In particular, consideration needs to be given to the local green infrastructure resource.

Environmental Health – No objection subject to conditions concerning acoustic fencing, contamination and electric charging points.

Conservation and Design - The proposal is much in line with that submitted for a formal pre-application advice in October 2016. The layout is very much as that submitted as part of the outline and reserved matters applications. Overall I have no objection to this proposal subject to the comments of Highways and those relating to POS/landscaping.

Strategic Housing - This development continues a previously stalled site. Outline planning permission 2001/92359 and reserved matters 2006/92410 approval were subject to S106 obligations. As part of those obligations, the developer of the former stalled site paid a financial contribution towards subsidising the sale of 12 homes to a Registered Provider (app no: 2001/92359, '15/06/2011 - Section 106 - Second Agreement').

A S106 obligation for the previous development also required the payment of £22,162 in lieu of providing on-site affordable housing (app no: 2001/60/92359, '07/09/2011 - Section 106 - Variation Agreement'). This contribution remains outstanding. The applicant has advised that they are prepared to pay this outstanding amount. The S106 covering the £22,162 financial contribution allowed for it to be spent elsewhere in Kirklees. Page 5 of the S106 states that: *'The Council hereby covenants with the Owner and the Developer to use the Financial Contribution for the purposes of creating Affordable Housing within the N3 N5 N6 or N7 Market Areas as identified on Plan 2.'*

(Market Areas= N3 (Batley/Dewsbury), N5 (Mirfield), N6 (South Dewsbury) and N7(Thornhill). Plan 2 is on page 7 of the S106).

The agreement set out in the S106 states that the sum of £22,162 may only be used for the purposes of Affordable Housing in the previously noted housing Market Areas. As the financial contribution would have limited use in providing affordable housing onsite at Calder View (2017/90557), it would be best used as a contribution towards the provision of affordable town centre housing in Dewsbury, as part of the North Kirklees Growth Zone (NKGZ).

Canal and Rivers Trust - The site is situated next to the River Calder, of which the Canal and River Trust are the Navigation Authority. The Trust do, however, have land interests in the navigation to the immediate west and east of the river that the site adjoins.

The Trust support the general proposal to ensure that the houses front the river, whilst the set back of the houses from the towpath will reduce the impact of access roads on the riverside to an extent. We would promote the enhancement of green links along the waterway. Natural England identify that the river valley forms an important sub-regional Green Link, and we would therefore promote the use of native planting close to the river in order to strengthen the links along the river/waterway as a whole. This ties in with the general aims of paragraph 118 from the National Planning Policy Framework, which encourages opportunities to be taken to incorporate biodiversity in and around developments. Such detail, potentially, may be provided as part of a detailed landscape scheme.

Architectural Liaison Officer – *Rear Garden fence* - This should be to a minimum height of 1.8m, and be constructed of closed boarded timber fencing as opposed to the 'hit and miss' fencing (with gaps) as shown in the application. This applies to all the rear garden fencing, including those that back onto other gardens, and not just to those gardens that back onto open public space. Having a lesser height of fencing and / or fencing with gaps would inhibit residents' privacy, and would give extra opportunity to would be offenders to see whether the occupants were at home.

Rear gardens. Side boundaries dividing house plots from each other - Plot dividers need to be tall and substantial enough to provide both privacy and security. Closed boarded timber fencing should be provided to a minimum 1.5m in height between gardens, and include privacy screen (a section of higher fencing) of 1.8m in height projecting out from the building for about 2m, to provide a private amenity area adjacent to the home. The application proposes 0.6m post and wire as a division between gardens. This would be totally inadequate for any privacy, safeguarding of children, control of animals or any form of security.

Mirfield Town Council - Would like to object to the public open space provision not having a play area and feel that as the nearest play area is Mirfield Memorial Park, that play equipment is erected in the public open space. MTC would also like clarification as to where the play equipment from South Street has been stored and suggests that perhaps this can be used by the developer. In respect of the drainage, MTC would like clarification regarding the discharge of surface water. If the pump discharges water in to the river, how much water will be left in void, ie dip in the road. MTC are also concerned

about the current highway. It would like confirmation that the current highway, following years of deterioration meets and conforms to current highways regulations.

Education - An education contribution of £239,419.00 is required.

Officer response – It has been confirmed that an Education Contribution of £235,008 was previously made in accordance with the terms of the S106 Agreement associated with the extant planning permissions. Therefore, a further contribution is not required in this case.

Landscape Officer – No objection subject to a condition.

8.0 MAIN ISSUES

Principle of Development
Impact on Character and Appearance of Area
Residential Amenity
Highway Safety
Ecology
Other Matters
Planning Obligations
Conclusion

9.0 APPRAISAL

Principle of development

- 9.1 The site lies on land without notation on the Unitary Development Plan. In addition, the principle of development has previously been accepted on this site. Planning permissions 2001/92359 and 2006/92410 granted permission for a total of 203 dwellings (there was a subsequent planning permission to amend some of the house types in 2009). The red-line boundary of the consented scheme followed the same site area as the proposed development. However, the developer at the time faced financial difficulties and subsequently ceased works on the site after 65 dwellings had been built leaving the remainder of the site partially developed.
- 9.2 The fall-back position is that the remaining 138 units could be built in accordance with extant planning permissions. The current planning application therefore, proposes an overall reduction in the number of units from 138 (as consented) to 99 dwellings which in turn would increase the space available within the development. In principle, the proposal is considered to represent an acceptable form of development.
- 9.3 In the emerging Local Plan – Publication Draft Local Plan (PDLP) - the site remains unallocated and in the Council's Strategic Housing Land Availability Assessment (SHLAA) the site is highlighted as one with planning permission for a remaining total of 137 dwellings, deliverable within 5 years. It therefore, forms part of the Council's housing land supply figure which has been used to inform the emerging Local Plan. The main change in circumstances since the extant planning applications were considered is that the Council are now unable to demonstrate a 5 year housing land supply, as required by paragraph 49 of the NPPF. In accordance with paragraph 14 of the NPPF there is a presumption in favour of sustainable development and planning

permission should only be refused where there are adverse impacts which would significantly and demonstrably outweigh the benefits.

Impact on Character and Appearance of the area

- 9.4 Section 11 of the NPPF sets a wide context to conserving and enhancing the natural environment and requires that valued landscapes are protected and enhanced and requires that the level of protection is commensurate with the status and importance of the landscapes.
- 9.5 Policy BE1 of the UDP requires that all development should be of good quality design such that it contributes to a built environment. Policy BE2 states, amongst other matters, that new development should be designed so that it is in keeping with any surrounding development. Policy BE11 of the UDP requires that new development should be constructed in natural stone of a similar colour and texture to that prevailing in the area. Policy PLP24 of the PDLP requires that good design to be at the core of all planning decisions.
- 9.6 Much of the site is previously developed and some of the land behind existing houses is unkempt and includes areas of rubble overgrown with vegetation. Many roads within the site lack a finished surface with stretches of roads not serving any housing. Existing housing stock mainly comprises 2 and 3 storey red brick houses and apartments.
- 9.7 The proposed development would reduce the permitted density of development and accommodate two storey and two and a half storey units utilising 13 different property styles, consisting of 34no. 2 bedroom dwellings, 59no. 3 bedroom dwellings and 6no. 4 bedroom dwellings.
- 9.8 The dwellings would comprise a mix of red and buff brick with buff brick detailing around windows and doors. Windows would be white PVC. The appearance of the dwellings would be simplistic but would appear representative of the local area and the existing housing stock within the site. Whilst it is accepted that the design of the dwellings proposed is slightly different to those consented and those which have already been built adjacent, the scale and overall appearance would not represent a marked change in context of the overall street scene. It is noted that the existing housing was constructed of a mottled red brick and is considered to match relatively well with the textured and contrasting brick type proposed by the applicant. In this regard the proposed development is considered acceptable.
- 9.9 A number of comments have been made by the Architectural Liaison Officer (ALO) concerning the height and type of rear fencing and boundary treatment. The ALO generally seeks higher fencing to the rear of proposed dwellings in order to provide security and privacy. The application is accompanied by a Secured Through design statement which, in respect of rear gardens, generally seeks to group properties into secure zones and does not propose high fencing within rear gardens, this in order to increase observation of rear gardens by clusters of properties.
- 9.10 The front of all properties includes open aspects and minimal boundary treatment in order to increase natural surveillance. A range of other measures including secure doors, gates and providing a layout with natural surveillance are all measures proposed to design out crime. Whilst the ALO does not accept the crime mitigation proposals particularly in respect of rear gardens;

overall, given the range of other measures proposed as part of the development in order to design out crime, the application is considered to comply with policy BE23 of the UDP.

- 9.11 In respect of the proposed public open space (POS), the applicant has amended the scheme in order to improve the proposed POS within the site. The scheme includes a circular path which would also provide access to the path adjacent to the river. The POS area would be supplemented by tree planting around the path along with a variety of play equipment and a wildflower mix on the periphery of the POS. The proposed development would provide well in excess of the POS requirement set out in policy H18 of the UDP (which requires a minimum of 30m² per dwelling). Given that no POS was provided as part of the existing development, it would also be available for use by existing residents of the former McInerney development and the amount of POS proposed would be sufficient to cater for both the existing and proposed development. The Council's landscape officer raises no objection to the POS on the basis that it is properly maintained by the applicant. However, they would wish to see minor alterations to the layout of the play equipment and a number of bins provided for dog walkers. Therefore, a condition is proposed requiring final details of the POS to be agreed. On this basis the application is considered to comply with policy H18 of the UDP.

Residential Amenity

- 9.12 Para 123 of the NPPF indicates that planning policies and decisions should aim to:
- avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development;
 - mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through use of conditions.
- 9.13 Policy BE12 of the UDP provides guidance on appropriate separate distances for dwellings. PLP24 of the PDLP requires developments to provide a high standard of amenity for future and neighbouring occupiers.
- 9.14 In all cases the proposed development would exceed the guidance set out in policy BE12 of the UDP in respect of spacing standards and there is considered to be sufficient space between existing and proposed dwellings, outbuildings and gardens and sufficient space between proposed dwellings for future occupiers. An objection has been raised by the occupier of an existing property (no 83 Calder View) in relation to the proximity of one of the proposed dwellings and garages. However, the nearest proposed garage to this existing property is 10m and as the proposed garage is single storey and the roof slopes away from the boundary of the garden, the impact on the amenity of the existing occupiers is considered to be acceptable. In this case the nearest dwelling directly facing the garden would be positioned over 27m from no83 and in excess of the requirements set out in policy BE12 of the UDP. Whilst it is noted that the previously consented layout on this site meant that no83 would be back onto an area of car parking, the proposed development would be in accordance with the UDP in respect of spacing standards and therefore, in compliance with planning policy.

Highway Safety

- 9.15 Policy T10 of the Kirklees UDP states that new development will not normally be permitted if it will create or materially add to highway safety issues. Policy PLP21 of the PDLP aims to ensure that new developments do not materially add to existing highway problems or undermine the safety of all users of the network. Para 32 of the NPPF states:

Plans and decisions should take account of whether:

- *the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;*
- *safe and suitable access to the site can be achieved for all people; and*
- *improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.*

- 9.16 The site is accessed from a single road to the south of the application site (Chadwick Fold Lane) which then splits into three in order to negotiate the existing railway arches. The three accesses comprise Calder View and Chadwick Fold Lane – both of which lead into the application site. There is a third access which sits on a higher level and lies furthest away from the river. This is the emergency access into the application site.
- 9.17 The site already benefits from extant planning permissions which permitted more dwellings to be built on the site than currently proposed. Vehicular and pedestrian access to the site is proposed by way of the same provision provided under the extant planning permission. As part of the extant planning permission an agreement under Section 278 of the Highways Act 1980 was subsequently completed in order to introduce traffic signal control at the junction of Huddersfield Road/Newgate/St Paul's Road together with footway improvements to Chadwick Fold Lane, Chadwick Lane, North Street and Calder Road.
- 9.18 As the proposed scheme involves 39 no less dwellings than the extant planning permission, the proposed development would generate less trips. The current proposals would result in 70 two way trips during peak hours. In comparison, the consented scheme would have resulted in approximately 97 trips during the peak period.
- 9.19 The proposed development is not considered to result in significant detriment to the safe and efficient operation of the highway network in respect of vehicular movements. Kirklees Highways DM raises no objection to the proposed development in respect of impact on the capacity of the local highway network.
- 9.20 In respect of the internal layout, the proposed development provides for 2 no parking spaces per dwelling throughout the development. There is a slight under-provision for the 6 no 4 bedroom houses which would be expected to provide 3 spaces per unit. However, these units also include garages which would be of sufficient size to accommodate vehicles. In addition visitor parking is to be provided via natural on-street parking. Kirklees Highways DM raises no objections in this regard.

- 9.21 The layout has been designed in accordance with a refuse vehicle length of 11.25m and the applicant has been advised to track the layout in accordance with larger refuse vehicle dimensions of 11.85m. However, it is noted that the existing layout that has already been built has been tracked using an 11.25m vehicle and therefore, it is likely that the site would be served by a smaller vehicle given that these are the predominant size of refuse wagons in Kirklees. In any event, alterations to alignment and tracking etc could be dealt with as part of any subsequent S38 agreement.
- 9.22 In terms of accessibility, there are bus stops within 500m of the proposed housing and Mirfield Station lies within 1km all of which provide regular services. There is also a pedestrian link onto the riverside path. The site has previously been found as being in a sustainable location and there is no reason to alter this view based on the proposed development.
- 9.23 Issues concerning site access are covered in the 'Flood Risk and Drainage Implications' section of this report.

Flood Risk and Drainage Implications

- 9.24 The site lies partly within Flood Zones 2 and 3, which have a medium and high flood risk (although most of the site lies in Flood Zone 1). Paragraph 101 of the National Planning Policy Framework (NPPF) requires decision-makers to steer new development to areas at the lowest risk of flooding by applying a Sequential Test. In this case there is a realistic fall-back position in the form of an extant planning permission which permits more dwellings than the number proposed by this application. Consequently, it is not considered that the site is sequentially unacceptable.
- 9.25 The main issue concerns the suitability of the access to the site at times of flooding. The existing and proposed houses are on a higher level and fall outside the flood plain and therefore, the proposed development is not considered to result in additional flooding potential for existing or future occupiers. The site is constrained in respect of access because, in simple terms, the existing flood defences and access to the site under the railway arches are lower than the water level of the river experienced in more extreme storm levels. Therefore, during high river levels the water overtops the banking and floods under the railway arches. In more extreme events such as Boxing Day 2015, the site access was impassable. The applicant has commissioned a survey which shows that during these extreme flood events the emergency access, which also runs at a higher level under the railway arches, would flood.
- 9.26 It is important to note that the situation detailed above affects existing residents associated with the partially completed McInerney development. Indeed, a large proportion of the drainage covering the wider development site is already in place and the main issue in this case concerns flooding issues associated with the existing development and the additional impact the current proposal may have. The current proposal aims to improve the situation for existing residents and ensure the best achievable outcome for residents of the proposed 99 dwellings.
- 9.27 The site falls within a wider area of land which is on the Council's Flood Operational Management Plan. This means that the site is known to be at risk of flooding and there is an action plan in place to ensure that appropriate

measures are implemented when there is a potential for serious flood risk (including warning procedures). This strategy has been formulated through separate legislation. Therefore, if the site floods significantly, the Council are required to deal with flood warnings and have also dealt with clean-up operations associated with the site and access under the railway arches in the past.

9.28 The applicant is willing to provide a number of additional drainage benefits on the basis that the Council agree to adopt road and drainage infrastructure under S38 of the Highways Act. Roads and infrastructure within the McInerney site are currently unadopted. In summary, the proposed improvements involve the following measures:

- Proposal to divert the existing surface water drainage from the existing McInerney development to a surface water pump station which will pump flows directly into the river. The existing outfall which currently drains the site will be fitted with a flap valve in order to prevent river water from backing up into the site and flooding under the railway arches.
- The existing emergency access, which sits on a higher level than the access road under the existing railway arches, includes road gullies and drains which are linked to the main highway drainage. Therefore, when water under the arches rises at times of flooding, the gullies surcharge and also flood the emergency access. It is proposed to drain the emergency access via the pump station as detailed above.
- Revised signage to be provided to direct traffic away from the flooded arches and towards the emergency access.

9.29 The information submitted has been assessed by the Council's Drainage Officer and no objections have been raised subject to the installation of appropriate signage to be positioned close to the railway arches, in order to warn drivers of potential flooding. However, it should be noted that both the applicant and the Council's drainage officer are in agreement that there is no feasible drainage mitigation that would eradicate flooding completely from the access due to the level of the access under the railway bridge in relation to the surroundings, and the proximity to the river. However, the proposed development would potentially result in benefits for existing and future residents as a consequence of the mitigation measures proposed.

9.30 As acknowledged above, the site has previously become inaccessible during periods of severe flooding and this includes events of flooding of the emergency access route. Due to the severing of the existing gullies and the fact that the emergency access sits on higher level than the two other accesses under the railway arches, the applicant calculates that the emergency access should remain open and passable at times of most flooding events. Consequently, it is considered that the proposed development would remain accessible for existing and future residents and in this respect; the proposed development satisfies the exception test. It is also considered that, in accordance with para 100 of the NPPF, granting planning permission in this case would use opportunities offered by new development to reduce the causes and impacts of flooding.

9.31 Members should note that the measures above would only be carried out/implemented by the applicant in the event that the Council agree to adopt

the highways and drainage infrastructure under Section 38 of the Highways Act. Therefore, the measures proposed constitute wider benefits associated with the proposed development but they cannot be factored into the decision making process and do not weigh in favour of granting planning permission.

- 9.32 The applicant is working with the Council in order to ensure that the existing and proposed roads and drains within the application site and former McInerney site are adopted under S38 of the Highways Act. Officers and the applicant have made significant progress on this matter and dialogue has been constructive. In principle, the Council are close to agreeing to adopt under S38 on the basis that this site is unique and is already on the Council's Flood Operational Management (meaning the Council are required to deal with flooding incidents on the site even if it is not adopted). However, the Council have not yet made a final decision as to whether they are able to adopt the roads and drains/infrastructure under S38.
- 9.33 In the event that the proposals above are not adopted by the Council, the proposed development is considered acceptable largely on the basis that residential development has been found acceptable on this site previously. Drainage details concerning the proposed development have been submitted by the applicant and this demonstrates that drainage of the proposed development alone is acceptable in principle. The proposal is considered to provide drainage in a manner compliant with the NPPF. Accordingly it is not necessary or reasonable in this instance to condition the requirements of additional highway improvement works beyond signage and providing an emergency access route at a time of flood related to the site access in the event the Council does not adopt the roads.

Ecology and Nature Conservation

- 9.34 The NPPF recognises that applications should conserve and enhance biodiversity, valued landscapes, minimise impacts and recognise the benefits of ecosystems. UDP policy EP11 requires that application incorporate landscaping which protects/enhances the ecology of the site. Emerging Local Plan policy PLP30 states that the Council will seek to protect and enhance the biodiversity and geodiversity of Kirklees, including the range of international, national and locally designated wildlife and geological sites, habitats and species of principal importance and the Kirklees Wildlife Habitat Network.
- 9.35 The application has been accompanied by an ecological appraisal which did not reveal any significant ecological interest within the site boundary. Nevertheless, the site lies adjacent to the River Calder which is likely to have some ecological interest and the Council's ecologist has therefore, recommended enhancement be incorporated.
- 9.36 The scheme has been amended to include an area of wildflower meadow on the edge of the POS. This is considered sufficient to ensure that the application would bring about benefits in accordance with the requirements of the NPPF.

Other Issues

- 9.37 A noise report has been submitted with the application and the proposed development has been assessed in accordance with the requirements set out in policy EP4 of the UDP. The main noise source derives from the railway line

which is located to the south west of the site. In order to mitigate noise from the railway line it is proposed to include an acoustic fence (in place of the existing fence) which would run along the development boundary. Acoustic glazing and ventilation is also proposed for some plots. Conditions are recommended in order to ensure suitable mitigation is implemented.

- 9.38 In terms of air quality, the application has been assessed against the West Yorkshire Low Emission Strategy Planning Guidance. In accordance with the guidance the installation of 1 no electric charging point is required per unit or 1 charging point per 10 spaces. However, the applicant in this case proposes the installation of a spur in the garages to enable the installation of electric charging points but does not intend to provide charging points in accordance with policy requirements. In this case it is acknowledged that the site has a live planning permission for more dwellings than is now proposed and that represents a realistic fall back for the applicant. Consequently, the proposal represents a compromise which is considered acceptable to officers.

Planning Obligations

- 9.39 The outline planning permission 2001/92359 and reserved matters 2006/92410 approval were subject to S106 obligations in respect of an education contribution (£235,008), an off-site highway contribution (£30,000 towards improving pedestrian links between the site and Mirfield Town Centre), the provision of affordable housing and arrangements for the provision and maintenance (£37,000). These obligations have been met apart from the arrangements for the provision and maintenance.
- 9.40 In relation to affordable housing it is noted that the requirements of the original permission have been met. £1.262 million was given to Jephson Housing Association to subsidise the purchase of 5 apartments and seven three bed houses. These have now been transferred to the Housing Association stock.
- 9.41 Planning permission 2009/91267 for the erection of 12 dwellings (substitution of house types) for plots 72-81 was subject to a S106 obligation that required the payment of £22,162 in lieu of the provision of on-site affordable housing. This contribution remains outstanding. However, it is also noted that in the event that the roads are adopted under S38, there may be an opportunity to utilise the £22,162 for the purposes of highway maintenance, monitoring and clean up in the area surrounding the railway arches following any flooding event. In these circumstances it is recommended that the monies be spent on highway and drainage mitigation as opposed to affordable housing.
- 9.42 In respect of POS, a S106 agreement would be required to ensure adoption and future maintenance of the POS area.

10.0 CONCLUSION

- 10.1 The application site lies on an area of land allocated as Provisional Open Land on the UDP. The Council are unable to demonstrate a five year housing land supply and the NPPF seeks to boost significantly the provision of housing. In addition, the site forms part of a larger consented development which has been partially built. The partially built development could be completed at any time resulting in an addition 138 dwellings as opposed to the 99 dwellings proposed as part of this application.

- 10.2 There are a number of additional benefits proposed as part of the development. The layout is considered to be more spacious than the consented development and there would be tangible benefits in developing an area of land that is untidy and derelict. Aside from these direct benefits, the proposed wider drainage works would ensure that improvements were made to the drainage of the existing access ensuring that in the worst case scenario, there would be a safe access to and from the application site. This would also benefit existing residents of the partially built development. However, these drainage works are wider benefits which rely on the Council adopting the roads and infrastructure under S38 of the Highways Act.
- 10.3 All other matters including design, POS, ecology and highways have been satisfactorily addressed.
- 10.4 In conclusion, the tilted balance in favour of sustainable development as advocated by para14 of the NPPF is engaged in this case. There are no adverse impacts of granting planning permission which would significantly and demonstrably outweigh the benefits. Overall the proposal constitutes a sustainable form of development representing an improved design over the previously consented scheme, and it is therefore, recommended that planning permission is granted subject to the following.
- 11.0 CONDITIONS (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Development Management)**

1. 3 years
2. Approved plan
3. Boundary Treatments in accordance with details prior to occupation
4. Details of acoustic fence
5. Drainage details (excluding site access details if no adoption is agreed)
6. Finished floor levels
7. Details as to how the site to be accessed in emergency at times of flooding (emergency access)
8. Ventilation of windows closest to railway
9. Contaminated Land – in case contaminants found on site
10. YW – separate system of drainage for foul and surface water.
11. Measures to reduce crime in accordance with submitted report.
12. Construction method statement
13. Landscaping to be implemented.

Background Papers:

Application and history files.

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2017%2f90557>

Certificate of Ownership –Certificate A signed: