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## Appeal Decisions

Hearing Held on 15 November 2017

Site visit made on 14 November 2017

**by A J Mageean BA (Hons) BPI PhD MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 22<sup>nd</sup> December 2017**

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### **Appeal A Ref: APP/Z4718/W/17/3174217 Land at Rumble Road, Dewsbury WF12 7LR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Persimmon Homes West Yorkshire against Kirklees Metropolitan Borough Council.
  - The application Ref 2016/62/93514, is dated 14 October 2016.
  - The development proposed is the erection of 149 dwellings with associated car parking, access, landscaping, public open space and drainage works.
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### **Appeal B Ref: APP/Z4718/W/17/3184318 Land at Rumble Road, Dewsbury WF12 7LR**

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Persimmon Homes West Yorkshire against Kirklees Metropolitan Borough Council.
  - The application Ref 2017/62/91459/E dated 26 April 2017, was refused by notice dated 11 August 2017.
  - The development proposed is the erection of 149 dwellings with associated car parking, access, landscaping, public open space and drainage works.
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## Decisions

### **Appeal A Ref: APP/Z4718/W/17/3174217**

1. The appeal is allowed and planning permission is granted for 149 dwellings with associated car parking, access, landscaping, public open space and drainage works at Land at Rumble Road, Dewsbury WF12 7LR in accordance with the terms of the application, Ref 2016/62/93514, dated 14 October 2016, subject to the conditions set out in the attached schedule.

### **Appeal B Ref: APP/Z4718/W/17/3184318**

2. The appeal is allowed and planning permission is granted for 149 dwellings with associated car parking, access, landscaping, public open space and drainage works at Land at Rumble Road, Dewsbury WF12 7LR in accordance with the terms of the application, Ref 2017/62/91459/E, dated 26 April 2017, subject to the conditions set out in the attached schedule.

## **Procedural Matters**

3. Appeal A relates to the failure of the Council to determine the planning application within the prescribed period. As the decision notice issued for Appeal B relates to essentially the same proposed development, the given reason for refusal similarly applies to Appeal A.
4. Policy PLP61 of the Kirklees Publication Draft Local Plan (DLP) is cited as a reason for refusal in this case. The criteria set out at paragraph 216 of the National Planning Policy Framework (the Framework) determine the weight to be attached to such emerging plans. In this case the draft plan is currently being examined. However, the independent Inspector has recently expressed significant concerns about some key matters following Stage 1 hearings, including the Council's approach to protecting natural/semi-natural green spaces as Urban Green Space<sup>1</sup>. I also understand that there are unresolved objections in relation to both emerging Policy PLP61 and its application to the appeal site. Therefore, whilst this Policy is broadly in line with the provisions in the Framework relating to the protection of open space and does not represent a significant departure from current development plan policy in this regard, my view is that it is of limited weight in the determination of these cases.
5. The applications are accompanied by S106 Agreements to secure affordable housing, financial contributions relating to the funding of additional school places, footpath improvements, the provision of MetroCards for the occupants of the proposed developments, improvements to local parks and recreation grounds, specific improvements to Bywell Recreation Ground and the introduction of traffic calming/management measures along Rumble Road. I have taken these documents into consideration in determining the appeals.
6. The only significant difference between the two appeals relates to action undertaken to address the objection made by Yorkshire Water to Appeal A. This concerns the fact that the site layout under consideration in Appeal A did not identify the location of the raw water main. I understand that the amended layout under consideration in Appeal B does accurately locate this facility and that an adequate easement has been agreed. Nevertheless, should Appeal A be acceptable in all other regards, this matter would not in itself amount to a planning objection to these proposals.
7. Interested parties in attendance at the hearing stated that letters notifying local residents of the appeals and hearing had not been received by all those living in local roads. However the Council maintains that the appropriate notifications took place. A number of local residents were present at the hearing and were able to express their views as part of proceedings. I am therefore satisfied that local interests have been fairly represented in these appeals and have not been prejudiced.

## **Main Issue**

8. The main issue in both appeals is the effect of the proposals on the provision of urban green space in Dewsbury East Ward.

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<sup>1</sup> Letter to Kirklees Council from Local Plan Inspector, 25 October 2017

## Reasons

### *Policy Context*

9. Urban Green Space (UGS) is a locally derived designation intended to protect open spaces of identifiable public value in the towns and villages of Kirklees. Saved Policy D3 of the Kirklees Unitary Development Plan 1999 (UDP) seeks to safeguard these sites from development, except where this would maintain or enhance the site's value as open land. Saved Policy D3 also allows for the release of UGS for development where this would result in a 'specific community benefit'. The supporting text to this policy notes that in these circumstances usually only small parts of designated UGS would be considered for development. This is because one of its main functions is to safeguard the balance within urban areas between the amount of land that is built-up and the amount of open land. Also, in all cases, the development proposed must protect visual amenity, wildlife value and opportunities for sport and recreation.
10. The appellant has challenged the relevance of saved Policy D3 to these cases in terms of its age and its consistency with the Framework. It is also suggested that it can be seen as a policy which restricts the supply of housing. However, the age of the policy is not in itself an indication of relevance. Furthermore, in the Hopkins Homes judgment<sup>2</sup> the Supreme Court clarified that whilst policies such as this may affect the supply of housing they are not policies for the supply of housing as referred to in paragraph 49 of the Framework.
11. Notwithstanding this point, the Council has accepted that it is unable to demonstrate a five-year supply of housing land, with the parties agreeing that the most that can be claimed is a 2.66 year supply, and that the relevant policies for the supply of housing are out-of-date by virtue of paragraph 49 of the Framework. The fourth bullet point of the Framework paragraph 14 therefore applies. This provides that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.
12. Nonetheless, in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. As such the starting point for decision making remains the relevant development plan policy, before other matters such as paragraph 14 of the Framework are considered.

### *Current value as open space*

13. The site is a privately owned field, which I understand has been variously used in recent years as grazing land and for growing crops. At the time of my site visit it appeared as managed grassland and whilst a number of signs are in place to indicate that there is no public access, the open nature of the eastern site boundary suggests that informal use does take place. The public footpath (PROW) running alongside the eastern boundary is outside the appeal site.

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<sup>2</sup> Suffolk Coastal District Council v Hopkins Homes and SSCG, Richborough Estates Partnership LLP and SSCGL v Cheshire East Borough Council [2017] UKSC 37

14. The parties agree in the Statement of Common Ground (SoCG) that the site has no material ecological, wildlife conservation, biodiversity, environmental education or landscape value. Reference is made by objectors to the site's wildlife value but this appears to be limited to the trees scattered about its periphery and the hedgerow on the north western boundary.
15. The Council has undertaken recent assessments of open space, sports and recreation facilities as part of the DLP preparation. The Open Space Study 2015 (Revised 2016) (KOSS) indicates that the appeal site has been categorised as natural/semi natural green space (NSNGS). The primary purpose of such open space is wildlife conservation, biodiversity and environmental education and awareness. This category includes woodlands, local nature reserves, scrubland, grassland, heath or moor, wetlands, wastelands and bare rock habitats, as well as unmanaged and unused sites. The detailed assessment looks at the quality, quantity and accessibility of open space within each category. My review of the contribution of the site presented in the following paragraphs follows this same structure, with a final section looking at landscape value.

*i. Qualitative considerations*

16. The appeal site is given a 'high' value rating based on its physical, social, environmental and visual qualities. Within this assessment, it achieves the highest rating possible in relation to the 'Amenity and Sense of Place' category. This is based on the site's open character and the fact that it provides visual relief in the built up area. However, these benefits are restricted largely to the rear outlook of the occupants of those properties on Selso Road, Rumble Road and Bywell Road which back on to the western side of the appeal site. For these residents the site provides a pleasantly open outlook and an element of tranquillity by virtue of the absence of built form.
17. Users of the PROW also experience a sense of openness in this part of the footpath. The assessment of the level of use of the site is indicated as '2' which, as the appeal site is private land, presumably relates to PROW use. The Council's assessment guidelines indicate that a rating of '2' falls somewhere between 'poorly used' and 'reasonably used'. Whilst the path provides a direct route between Leeds Road and Wakefield Road, at the time of my site visit during a weekday afternoon the footpath was little used and appeared somewhat neglected. Furthermore, notwithstanding distant views of the Pennines to the south and the open nature of the appeal site to the west, it is not particularly attractive as a recreational route as it has high metal railings on one side and limited natural surveillance.
18. The high value given in the Council's assessment is also derived in part from the level of deprivation in this area (assumed to be the Dewsbury East Ward (DEW)), as represented by the Index of Multiple Deprivation ranking of the relevant Super Output Areas. This combines a range of key indicators relating to different elements of deprivation including income, education, housing, crime and health. Out of a maximum score of 5, which would indicate the most deprived area, the appeal site scores 4.
19. Further assessment of relevant health indicators is presented in the Urban Green Space and Local Green Space Technical Paper (2017) (Technical Paper) prepared as part of the DLP. Table 7 of this document indicates that DEW has significant health inequalities in relation to levels of obesity, rates of emergency admission due to respiratory disease and rates of adults feeling lonely or isolated. The

Technical Paper states that green spaces can help to reduce health inequalities through their availability as opportunities for physical activity and a healthier lifestyle. However as the recreational role of the appeal site is limited to providing an open setting for houses and the PROW, its role in addressing these specific health inequalities is restricted.

20. On this point I have also considered the relevant aspects of the Framework. Paragraphs 73 and 74 and the glossary definition of 'open space' have the most direct links with saved Policy D3. The glossary definition refers to open space as being of public value in terms of offering important opportunities for sport and recreation and acting as visual amenity. The question of whether these two limbs of this definition, that is sport/recreation and visual amenity, are meant to be conjoined or can be separately applied is contested by the parties, and indeed has been the subject of different interpretations by Inspectors dealing with similar cases.
21. My view is that the glossary definition is provided in support of paragraphs 73 and 74 within the 'Promoting healthy communities' section of the Framework. These paragraphs read together establish the need for high quality open spaces and opportunities for sport and recreation based on robust assessments of need. Such provision should be protected from development unless it is found to be surplus to requirements, would be replaced by better provision elsewhere, or the development itself is for alternative sports and recreation provision. As such the sport and recreation element of the glossary definition is of primary importance. In this sense it does not appear that the intention was to allow the visual amenity element to be detached as a stand-alone test of the value of open space.
22. I have noted that the sport or recreational role of the appeal site itself is limited to providing an open setting for the PROW and a pleasant outlook for residents. Nonetheless it does have some basic public value in these regards. In this respect it appears that there is some contrast with the case referred to by the appellant<sup>3</sup> relating to a community garden with no formal access or use and which was enclosed by high hedges. In this case a challenge to an Inspector's conclusion that the site had little public value was rejected.
23. Overall, the value of the appeal site in qualitative terms is limited.

*ii. Quantitative considerations*

24. The KOSS indicates that the amount of NSNGS within the DEW falls below the required standard of 2ha per 1000 population. The KOSS identifies 14.05ha as NSNGS giving a current level of 0.74ha per 1000. The 4.5ha appeal site contributes around a third of the NSNGS in this area and is the largest of all the sites identified. However, the DLP Inspector's comments in relation to the Stage 1 hearings make reference to the fact that these quantitative assessments have not taken into account the surrounding countryside or other NSNGS in nearby settlements. On this particular point I understand that Green Belt sites have mostly been excluded from the assessment of NSNGS. This is except for local nature reserves and woodlands with formal public access arrangements, though it appears that there are no such sites of any significant size within DEW.
25. The range of alternative sites put forward by the appellant which include Green Belt land have been criticised by the Council. I agree that this evidence has not

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<sup>3</sup> Robinson v SSCLG, Suffolk Coastal District Council and Withers Trust Corporation Ltd [2016] EWHC 634 (Admin)

followed the same rigorous assessment criteria as the KOSS, and that some of the smaller sites would not be appropriate for inclusion. I also agree with the similar assessment made by the Inspector in the White Lee Road case<sup>4</sup> that the appellant's evidence does not indicate with any certainty that a surplus of NSNGS exists.

26. Nevertheless DEW contains 186ha of Green Belt land and is essentially an urban fringe area with a close relationship with the Green Belt curtilage of both Kirklees and the adjoining Council area of Wakefield to the east. Visible connections with open land and countryside to the east and south are evident from a number of vantage points in the vicinity of the appeal site. As such the contribution of these areas to visual amenity and specifically the sense of openness for the residents of DEW is a valid consideration. This suggests that the significance of the quantitative deficiencies of NSNGS within DEW is not as great as the Council's assessment would indicate.

*iii. Accessibility*

27. The Council's standard for access to NSNGS is for residents of towns and villages to have access to such sites within 15 min walking time (720m) and/or be within 2km of a 20ha site. The KOSS indicates that there is no current deficiency in terms of access to NSNGS in DEW. Furthermore, my view is that the role of the appeal site in providing visual relief within the built up area is also performed by some of the other open space designations within the KOSS. For example, the Bywell playing fields are immediately to the north of the appeal site, and Wakefield Road playing fields are close by to the south east. Overall the KOSS demonstrates that there is a good level of access to a wide range of open space types within DEW.

*iv. Landscape value*

28. I have already established the fact that the site has limited landscape value. Furthermore saved Policy D3 is not a landscape protection policy and so this point is not central to the Council's case. Nevertheless, I have considered the landscape character and appearance of the site in terms of the evidence presented, the views of local residents and my own site visit observations.
29. Open views across the site are valued by the occupiers of properties backing onto it. In this respect the site provides a buffer between this housing and the Shaw Cross Business Park to the east, with the large UPS warehouse visible beyond the steep bank lining the eastern side of the PROW. As such, and accepting that the Business Park is a relatively recent addition, the appeal site has intrinsic value to these local residents and users of the PROW as open land. More specifically it gives a semi-rural appearance to an area which is for the most part surrounded by urban land uses. I have also noted that the open nature of the site affords distant views of the Pennine foothills to the south.
30. However, the site itself is mostly flat and featureless with any landscape interest limited to perimeter trees and the section of mature hedgerow on the north western boundary. Indeed, from my observations on site, it seems that the assessment made by the UDP Inspector that the site is 'featureless grassland of undistinguished character and unexceptional appearance' remains as relevant today as it was then.

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<sup>4</sup> APP/Z4718/W/16/3162164

31. There is little or no visibility of the appeal site in the wider area. As such its value in terms of the sense of openness and visual relief beyond its immediate context is limited. The Council makes reference to the fact that the development of land at the Owl Lane site to the east, on the other side of the Business Park, would isolate the appeal site and make its preservation even more important. However, the restricted visibility and landscape value of the appeal site, combined with the extent of green and open areas further to the east and south, mean that this point does not in itself add to its value.

*v. conclusions on current value of open space*

32. Pulling these threads together, the role of the site in relation to both the primary purposes of NSNGS and the specific health deprivation indicators identified by the Council is limited at the present time. Also, whilst a deficiency of NSNGS has been identified in DEW, there is good access to a range of other open space types in this local area. However, the value of the appeal site relates to its open nature and the absence of built form in this urban fringe location, providing an open setting for the PROW and nearby houses. In these basic terms it has some public value. As such its designation as UGS has not been incorrectly applied.

*Effect of development*

33. The proposed developments of 149 dwellings would result in the loss of an area of open land which has intrinsic value to those living close to it. Open views across this area would be lost, as would some of the southern distant views from the PROW to the foothills of the Pennines. As such the semi-rural appearance of this immediate area would be greatly eroded, with the nature of the PROW changing from semi-open to largely enclosed and urban in character.
34. The Council makes a comparison between the effect of the developments on this site and that considered by the Inspector in the White Lee Road appeal. This previous case similarly addressed the loss of an area of privately owned land designated as NSNGS with a PROW separating it from a wider area of UGS. I was able to view this site as part of my site visit and observed that it forms part of an attractive landscape, with the PROW offering stunning views across a wider area. Thus the Inspector's comments regarding the loss of openness and feeling of rurality resulting from the development proposed in this previous case related to an open area which clearly has more strategic landscape significance than that currently under consideration.
35. The developments would be of comparable density to surroundings streets, and would contain a mixture of detached, semi-detached and a small number of terraced properties. This layout would incorporate two areas of public open space (POS): one of modest size close to the northern boundary, and also a good sized space at the southern end which would link to the PROW. The proposed layout plan also indicates a further four potential and proposed links from the site onto the PROW. As such pedestrian permeability through this currently inaccessible site would be achieved, creating opportunities for the PROW to integrate more effectively with a wider range of movement around this area. Suggested amendments to the housing layout to improve opportunities for the natural surveillance of the footpath have been incorporated into the proposals, and improvements to the PROW itself would be funded through the S106 Agreements.

36. Some of the existing perimeter trees would be removed, though there would be additional tree planting to site boundaries, within the POS and in some street and garden areas. This would assist in softening, though clearly not masking or significantly screening, the appearance of what would essentially be an urban landscape.

*Specific community benefit*

37. I have noted that saved Policy D3 allows for development of UGS where this would result in a specific community benefit. The supporting text to this Policy further states that: 'Exceptionally, there may be cases for areas within designated urban green space to be released for development not associated with open land uses where it can be shown that this would result in a specific benefit to the community'.
38. The present schemes would replace the whole UGS area, though two smaller areas of POS would be created. Additionally the S106 Agreements would provide for Off-Site Community Benefit Contributions amounting to £596,000 to fund improvements to Bywell Recreation Ground, Wakefield Road Recreation Ground and Earlsheaton Park. This would include drainage works to enable year round use, footpath improvements, landscaping, seating areas, improvements to play equipment and other sport and recreation provision including football pitches and informal recreation facilities.
39. The Framework at paragraph 204 requires that planning obligations should only be sought if they are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. The funding for the Off-Site Community Benefit Contribution has been identified on the basis of £4,000 per new dwelling. Each of these sites is well within 1km of the appeal site. Whilst not formally part of the Off-Site Community Benefit Contribution, additional funding for play equipment at the Bywell Road site would be provided in lieu of on-site play provision.
40. The full range of improvements originally identified by the Council cannot be funded by this sum, nonetheless I accept that the provisions identified would be sufficient to mitigate the loss of UGS and ensure that these enhanced sport and recreation facilities would meet the needs of the future occupiers of the proposed dwellings as well as existing local residents. As such I am satisfied that the three paragraph 204 tests would be met.
41. Additional obligations are included which would secure the provision of 30 units of affordable housing, a contribution to the educational needs generated by the development, a contribution to the improvement of the PROW, the provision of MetroCards to the future occupiers of the dwellings to encourage the use of public transport, and a contribution towards traffic calming measures associated with the Rumble Road access and Selso Road junctions. I find that each of these elements meet the tests set out in paragraph 204. Furthermore, I have been provided with a signed and dated Planning Obligation Compliance Statement indicating compliance with Regulation 122 of the Community Infrastructure Levy Regulations.

### *Conclusion on Main Issue*

42. The supporting text to saved Policy D3 states that one of the main functions of UGS is to safeguard the balance within urban areas between the amount of land that is built up and the amount of open land. In these simple terms this proposed development would undermine this policy purpose. Furthermore, the final limb of the relevant sub-section of this policy requires that, in all cases, the development proposed will protect visual amenity, wildlife value and opportunities for sport and recreation. In this case I have identified the fact that the visual amenity of some local residents would be harmed by this development, in that what are currently open views would be replaced by built form.
43. Balanced against this I have found that in qualitative terms the current value of the appeal site as NSNGS is limited. I have also noted that the development would bring some improvements to the site itself in terms of landscaping, access to the PROW, small areas of POS and enhancement of wildlife value.
44. With reference to the 'exceptional' situation in which development of UGS may be justified by a specific community benefit, the appellant has provided Section 106 Agreements to fund improvements to local sports and recreation facilities. Such provision would improve local opportunities for participation in both formal and informal sport and recreation in the local area. As such a more direct contribution would be made to the health outcomes identified earlier.
45. Nevertheless it remains that when assessed against all the requirements of saved Policy D3 there would be conflict with the need to protect visual amenity. In this respect the proposals would have a harmful effect on the provision of UGS in DEW.

### **Other Matters**

46. I have taken into consideration the views and concerns of local residents as expressed in both the letters relating to the planning applications and in person at the hearing. I give further consideration to the main points made below.

#### *Access and Highway Matters*

47. Reference is made to possible congestion from the additional traffic which would be generated by the developments, particularly at the traffic lights from Bywell Road onto Leeds Road and Wakefield Road. Nevertheless the Transport Assessment has demonstrated that, taking all traffic considerations into account, including the operation of local schools, the traffic generated by the proposals would have no material impacts on the safety and operation of the highway network, or significantly add to any peak time congestion.
48. Concerns about pedestrian safety are also raised, noting the presence of a high proportion of elderly people in the area and also children accessing local schools. Particular reference is made to the possibility that there would be additional cars parked in roads to the west of the appeal site, and also speeding traffic. These proposals may well result in additional cars parking in local roads around school drop off and pick up times. However as parking for the new dwellings would be provided on site it does not appear that this would be a significant problem for most of the day. Furthermore, in addition to the existing traffic calming measures in place in the form of raised platforms at junctions along Bywell Road, the S106 Agreements make provision for the funding of further traffic calming measures to reduce vehicle speeds if the Council determines that this is required.

49. Reference is also made to the potential disruption to local bus services as the result of additional parking on Selso Road. However, this local road is of reasonable width and so this would be unlikely to lead to problems of any significance.
50. I have also noted concerns about the inadequacy of the width of the access point to the site from Rumble Road, particularly if cars are parked in the street. Nevertheless it is clear that the geometry and width of this area meet the required design standards.
51. Reference is also made to additional air pollution from car engines resulting from these schemes. Whilst this may be the case, this location is well served by public transport. Furthermore, provisions to support sustainable transport modes, including funding for residents' MetroCards within the S106 Agreements, would ensure that any adverse effects are minimised.

#### *Living conditions*

52. I have some sympathy with the fact that the living conditions of the occupiers of dwellings which back onto the appeal site would change, both during development and when new residents move into this area. For the occupants of these properties there would be additional noise and activity which would contrast with the current situation. Whilst I have taken this point into consideration, it must be balanced against the fact that such effects are likely to be experienced whenever new houses are built. Such considerations should not in themselves stymie growth, subject to any necessary safeguards.
53. The proposed dwellings would be mostly 2 storeys, though some would be two and a half storeys in height. Whilst some existing dwellings in surrounding streets are of similar height, there are also a number of bungalows backing onto the appeal site. However, whilst recognising the potential for overlooking, there would be reasonable distances between the existing and proposed dwellings, and these proposals have been designed in accordance with design standards which seek to protect residential amenity. Therefore an appropriate level of privacy for properties in what is an urban fringe location would be provided.

#### *Land safety and stability*

54. References to this being a former coal mining area, with resulting contamination and safety concerns, have been addressed by submissions made by the appellant. As such specific conditions relating to further investigation and remedial work could be required if necessary.

#### *School capacity*

55. A sum to fund the additional school places that would be required as the result of these developments has been calculated by the Local Education Authority and incorporated into the S106 Agreements. Whilst concern is expressed about the adequacy of this sum, it is clear that these schemes would result in the further expansion of the local community in this area, with spin-off benefits in terms of support for both the local economy and local services.

### **Balancing and Conclusions**

56. I have found that the proposal would be contrary to UDP saved Policy D3 which seeks to protect UGS. Of specific concern is that the development of this field

would have a harmful effect on the visual amenity of some local residents, particularly those whose homes back onto the appeal site. However, as the degree of harm identified is restricted by the lack of visibility of the site in the wider area, I attribute limited weight to the conflict with this policy.

57. Furthermore, set against this harm is the modest value of the site as NSNGS in qualitative terms, the fact that the quantitative deficiencies of such provision in DEW is not as great as the Council suggests, and the fact that the site has limited landscape or wildlife value. I have also noted that the developments proposed could bring about some benefits in terms of improvements to landscaping and publicly accessible open space, both on site and through the provision of funding through the Section 106 Agreements to fund improvements elsewhere.
58. I identified at the outset that there is a significant shortfall in the supply of housing within the Borough and that paragraph 14 of the Framework applies.
59. When considered against the three dimensions of sustainable development the proposed developments would make a social contribution towards helping address the shortage of housing in the Borough as a whole. This would include the provision of 30 units of affordable housing which would help address local needs in this regard. Environmentally, there would be the loss of open land, though I have also noted the improvements to landscaping and the footpath itself.
60. Economically, the loss of a modestly sized area of agricultural land to development would not have a significant adverse effect. The developments would generate construction employment and the additional households would increase the spending power of the local community to the benefit of businesses and services in the area.
61. My overall conclusion in these cases, having considered all matters, including those raised by local residents, is that the adverse impacts of the proposals would be limited and fall short of significantly and demonstrably outweighing the benefits of 149 dwellings in helping address the shortfall in housing land supply. As a result the presumption in favour of sustainable development applies. Consequently, whilst there would be a conflict with the development plan, the other material considerations are of sufficient weight to outweigh that finding.

### *Conditions*

62. I have considered the conditions suggested in these cases which, having regard to Planning Practice Guidance, I have amended in the interests of clarity and enforceability. The following refers to both those conditions listed with reference to Appeal A and those listed with reference to Appeal B.
63. A condition detailing the approved plans is required to provide certainty. Conditions requiring details of wall and roof materials and landscaping are necessary in the interests of the character and appearance of this area. It is necessary to include a condition requiring noise mitigation measures to be introduced to some dwellings in the interests of the living conditions of future occupiers.
64. Conditions relating to the investigation and treatment of contaminated land are required to ensure that risks to the future users of the land and neighbouring land are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

Those relating to the satisfactory means of surface water disposal, including during the construction phase and also resulting from extreme weather events, are required to prevent the increased risk of flooding. In the interests of protecting and enhancing local wildlife a condition seeking to promote biodiversity is necessary.

65. Conditions relating to internal highway layout and lining to the junctions of local roads are required in the interests of the safety of the local highway network. A condition requiring a Construction Method Statement is necessary for the same reasons, whilst also to protect the living conditions of local residents. Finally a travel plan and electric vehicle charging points are required in the interest of promoting environmental sustainability. It is essential that the requirements of the above conditions are put into place prior to the development commencing to ensure that the development is acceptable in respect of the matters they seek to address.

### **Final Conclusion**

66. For the reasons identified above, the appeals should succeed.

*AJ Mageean*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Justin Gartland	Lichfields
Brain Denney	Pegasus Group
Richard Sagar	Walker Morris
Martin Whittaker	Optima Highways
Kate Schofield	Walker Morris
Paul Thornton	Permission Homes
Adam Jackson	Lichfields

### FOR THE LOCAL PLANNING AUTHORITY:

Bill Topping	Kirklees Council, Planning Service
Andrea Lane	Kirklees Council, Planning Service
Andrew Muddiman	Kirklees Council, Environment and Greenspace
Rebecca Drake	Kirklees Council, Planning Service

### INTERESTED PERSONS:

Melanie Walker (rep)	Local Resident
A Watts	Local Resident
John Goldthorpe	Local Resident
Ian Townend	Local Resident
Brain Smith	Local Resident
Margaret Brooke	Local Resident
Christopher Brown	Local Resident
Anne R Brown	Local Resident
Roger Lewis	Local Resident
A Moorhous	Local Resident
Cllr Cathy Scott	Local Resident
Nicolas Hirst	Local Resident
James Garbett	Walker Morris
James Parkin	Permission Homes

### DOCUMENTS

- 1 Planning Obligation Compliance Statement
- 2 Note summarising Off-Site Community benefit Contribution:  
Proposed Expenditure
- 3 Summary of S106 Agreement with respect to Appeal A
- 4 Summary of S106 Agreement with respect to Appeal B
- 5 Signed and dated S106 Agreement relating to Appeal A
- 6 Signed and dated S106 Agreement relating to Appeal B

## **Schedule of Conditions: Appeal A**

- 1) The development hereby permitted shall be begun not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in complete accordance with following the approved plans and specifications except as may be required by other conditions: Location Plan RR-2015-01; Proposed Layout Plan RRD-2017:001D; Landscape Masterplan YOR.2651.005 Rev B; Boundary Treatments 423-BOUN-01; Plans and Elevations: Bickleigh BK-WD10 Rev C; Plans and Elevations: Clayton Corner CCA-WD10 Rev H; Plans and Elevations: Chedworth CD-WD10 Rev P; Plans and Elevations: Hanbury HB-WD10 Rev R; Plans and Elevations: Hatfield HT-WD10 Rev S; Plans and Elevations: Roseberry RS-WD10 Rev S; Plans and Elevations: Rufford RF-WD10 Rev T; Plans and Elevations: Single and Double Garage SGD-01 Rev B; Plans and Elevations: Souter SU-WD10 Rev U; Plans and Elevations: The Alwick AN-WD10 Rev F; Plans and Elevations: Winster WS-WD10 Rev U; Illustrative Sections YOR.2651.07; Levels and Drainage Layout Rev A; Garages 6X3 SGD-02 Rev B.
- 3) Prior to commencement of the development hereby approved details of the walling and roofing materials to be used, shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with approved details.
- 4) No development shall commence until there shall have been submitted to and approved in writing by the Local Planning Authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of the development.
- 5) All planting, seeding or turfing included in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) Before construction of the buildings identified in drawings SK05 & SK06 of the Noise Assessment report by WYG Planning and Environment dated 26 January 2017 (ref: A095148) as requiring noise mitigation, a noise mitigation scheme for those plots shall be submitted to and approved in writing by the Local Planning Authority. In addition to the standard double glazing and acoustic background ventilation specified in the above mentioned WYG report, the mitigation scheme shall include a specification for a means of providing rapid acoustic ventilation for the purposes of achieving thermal comfort without the need to open windows. The mitigation scheme shall be implemented before the plot is brought into use and retained permanently thereafter.
- 7) No development shall commence until a Phase II Intrusive Site Investigation Report to provide a land contamination risk assessment has been submitted to and approved in writing by the Local Planning Authority.

- 8) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use.
- 9) In the event that remediation is unable to proceed in accordance with the approved Remediation Strategy, or contamination not previously considered [in either the Preliminary Risk Assessment or the Phase II Intrusive Site Investigation Report] is identified or encountered on site, all works on site (save for site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within 2 working days. Unless otherwise agreed in writing with the Local Planning Authority, works shall not recommence until proposed revisions to the Remediation Strategy have been submitted to and approved in writing by the Local Planning Authority. Remediation of the site shall thereafter be carried out in accordance with the approved revised Remediation Strategy.
- 10) Following completion of any measures identified in the approved Remediation Strategy or any approved revised Remediation Strategy a Validation Report shall be submitted to the Local Planning Authority. Unless otherwise agreed in writing with the Local Planning Authority, no part of the site shall be brought into use until such time as the remediation measures for the whole site have been completed in accordance with the approved Remediation Strategy or the approved revised Remediation Strategy and a Validation Report in respect of those remediation measures has been approved in writing by the Local Planning Authority.
- 11) No development shall commence until a scheme detailing the provision of electric charging points within the development has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to occupation of the development, or in accordance with a timeframe to be agreed with the Local Planning Authority, and subsequently be retained permanently thereafter.
- 12) No development shall commence until a scheme detailing separate foul, surface water and land drainage, (including off site works, outfalls, an agreed surface water discharge rate with the LLFA, balancing works incorporating the critical 1 in 30 and 1 in 100 storm events with a 30% allowance for climate change, plans and longitudinal sections, hydraulic calculations, phasing of drainage provision, existing drainage to be maintained/diverted/abandoned, and percolation tests, where appropriate) has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a detailed maintenance and management regime for the piped watercourse and works for the lifetime of the development. None of the dwellings shall be occupied until such approved drainage scheme has been provided on the site to serve the development, or each agreed phasing of the development to which the

dwelling relate, and retained thereafter in accordance with the agreed management and maintenance plan.

- 13) No development shall commence until a detailed assessment of, and scheme to mitigate, the effects of 1 in 100 year storm events, with an additional allowance for climate change, exceedance events and blockage scenarios on drainage infrastructure and surface water run-off pre and post development between the development and the surrounding area, in both directions, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall develop the solution shown on Drainage Strategy Plan 4565-C-D10-10 Rev A included in the revised Flood Risk Assessment and Surface Water/SUDS Strategy Report 4565 FRA01B dated 26th April 2017, where routes avoid property and curtilage. No part of the development shall be brought into use (and dwellings shall not be occupied) until the works comprising the approved scheme have been completed. The approved scheme shall be retained permanently thereafter.
- 14) No development shall commence until a scheme detailing temporary surface water drainage for the construction phase (after soil and vegetation strip) has been submitted to and approved in writing by the Local Planning Authority. The scheme shall detail:
- phasing of the development and phasing of temporary drainage provision.
  - include methods of preventing silt, debris and contaminants entering existing drainage systems and watercourses and how flooding of adjacent land is prevented.
- The temporary works shall be implemented in accordance with the approved scheme and phasing. No phase of the development shall be commenced until the temporary works approved for that phase have been completed. The approved temporary drainage scheme shall be retained until the approved permanent surface water drainage system is in place and functioning in accordance with written notification to the Local Planning Authority.
- 15) No development shall commence until a scheme detailing biodiversity enhancement (including bird and bat roost opportunities within the development) shall be submitted for the written approval of the Local Planning Authority. The approved scheme shall be implemented prior to occupation, or in accordance with a timetable to be agreed with the Local Planning Authority, and retained permanently thereafter.
- 16) No development shall commence until a scheme detailing the programme of works, internal highway layout, and construction specification, and all associated highway works together with the appropriate level Road Safety Audits has been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until the approved scheme has been implemented. The implemented scheme shall be retained permanently thereafter.
- 17) No development shall commence until a scheme detailing give way lining at the junctions of Selso Road and Hobart Road with Rumble Road has been submitted to and approved in writing by the Local Planning Authority. No part of the development shall be occupied until the approved scheme has been implemented. The implemented scheme shall be retained permanently thereafter.

- 18) No development shall take place, until a Construction Method Statement has been submitted to, and approved in writing by the Local Planning Authority. The Statement shall provide for:
- i. the parking of vehicles of site operatives and visitors;
  - ii. loading and unloading of plant and materials;
  - iii. storage of plant and materials used in constructing the development;
  - iv. wheel washing facilities;
  - v. measures to control the emission of dust and dirt during construction;
  - vi. a scheme for recycling/disposing of waste resulting from demolition and construction works;
  - vii. delivery, demolition and construction working hours;
  - viii. site manager and resident liaison officer contact details (including their remit and responsibilities)
  - ix. advisory directional/speed limit signage on Rumble Road.
- The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 19) Prior to the occupation of the first dwelling, a scheme for the provision and maintenance of a full Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall include measures to improve and encourage the use of sustainable transport. The measures will include (but not limited to) the provisions as laid out within the Framework Travel Plan Rev 2 dated 12 April 2017 that accompanies this application. The full Travel Plan will include details of how and when measures will be introduced, as well as targets to achieving sustainable mode share throughout the lifetime of the plan. This will include:
- targets aimed at lowering car use, particularly single occupancy trips, from/to the site;
  - a program for monitoring the Travel Plan and its progress and how its objective of more sustainable travel will be promoted.
- The approved Travel Plan shall thereafter be retained throughout the lifetime of the development.

## **Schedule of Conditions: Appeal B**

- 1) The development hereby permitted shall be begun not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in complete accordance with the following approved plans and specifications except as may be required by other conditions: Location Plan RR-2015-01; Proposed Layout Plan RRD-2017:001E; Landscape Masterplan YOR.2651.005 Rev B; Boundary Treatments 423-BOUN-01; Plans and Elevations: Bickleigh BK-WD10 Rev C; Plans and Elevations: Clayton Corner CCA-WD10 Rev H; Plans and Elevations: Chedworth CD-WD10 Rev P; Plans and Elevations: Hanbury HB-WD10 Rev R; Plans and Elevations: Hatfield HT-WD10 Rev S; Plans and Elevations: Roseberry RS-WD10 Rev S; Plans and Elevations: Rufford RF-WD10 Rev T; Plans and Elevations: Single and Double Garage SGD-01 Rev B; Plans and Elevations: Souter SU-WD10 Rev U; Plans and Elevations: The Alwick AN-WD10 Rev F; Plans and Elevations: Winster WS-WD10 Rev U; Garages 6X3 SGD-02 Rev B.
- 3) Prior to commencement of the development hereby approved details of the walling and roofing materials to be used, shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with approved details.
- 4) No development shall commence until there shall have been submitted to and approved in writing by the Local Planning Authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of the development.
- 5) All planting, seeding or turfing included in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) Before construction of the buildings identified in drawings SK05 & SK06 of the Noise Assessment report by WYG Planning and Environment dated 26 January 2017 (ref: A095148) as requiring noise mitigation, a noise mitigation scheme for those plots shall be submitted to and approved in writing by the Local Planning Authority. In addition to the standard double glazing and acoustic background ventilation specified in the above mentioned WYG report, the mitigation scheme shall include a specification for a means of providing rapid acoustic ventilation for the purposes of achieving thermal comfort without the need to open windows. The mitigation scheme shall be implemented before the plot is brought into use and retained permanently thereafter.
- 7) No development shall commence until a Phase II Intrusive Site Investigation Report to provide a land contamination risk assessment has been submitted to and approved in writing by the Local Planning Authority.

- 8) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use.
- 9) In the event that remediation is unable to proceed in accordance with the approved Remediation Strategy, or contamination not previously considered [in either the Preliminary Risk Assessment or the Phase II Intrusive Site Investigation Report] is identified or encountered on site, all works on site (save for site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within 2 working days. Unless otherwise agreed in writing with the Local Planning Authority, works shall not recommence until proposed revisions to the Remediation Strategy have been submitted to and approved in writing by the Local Planning Authority. Remediation of the site shall thereafter be carried out in accordance with the approved revised Remediation Strategy.
- 10) Following completion of any measures identified in the approved Remediation Strategy or any approved revised Remediation Strategy a Validation Report shall be submitted to the Local Planning Authority. Unless otherwise agreed in writing with the Local Planning Authority, no part of the site shall be brought into use until such time as the remediation measures for the whole site have been completed in accordance with the approved Remediation Strategy or the approved revised Remediation Strategy and a Validation Report in respect of those remediation measures has been approved in writing by the Local Planning Authority.
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dwelling relate, and retained thereafter in accordance with the agreed management and maintenance plan.

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- The temporary works shall be implemented in accordance with the approved scheme and phasing. No phase of the development shall be commenced until the temporary works approved for that phase have been completed. The approved temporary drainage scheme shall be retained until the approved permanent surface water drainage system is in place and functioning in accordance with written notification to the Local Planning Authority.
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- iii. storage of plant and materials used in constructing the development;
- iv. wheel washing facilities;
- v. measures to control the emission of dust and dirt during construction;
- vi. a scheme for recycling/disposing of waste resulting from demolition and construction works;
- vii. delivery, demolition and construction working hours;
- viii. site manager and resident liaison officer contact details (including their remit and responsibilities)
- ix. advisory directional/speed limit signage on Rumble Road.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

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- a program for monitoring the Travel Plan and its progress and how its objective of more sustainable travel will be promoted.

The approved Travel Plan shall thereafter be retained throughout the lifetime of the development.