
Report of the Head of Strategic Investment

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 22-Feb-2018

Subject: Planning Application 2016/90524 Outline application for erection of three dwellings (Within the curtilage of a Listed Building) Middle Burn Farm, Burn Road, Birchencliffe, Huddersfield, HD2 2EG

APPLICANT

J Clegg

DATE VALID

19-Jan-2018

TARGET DATE

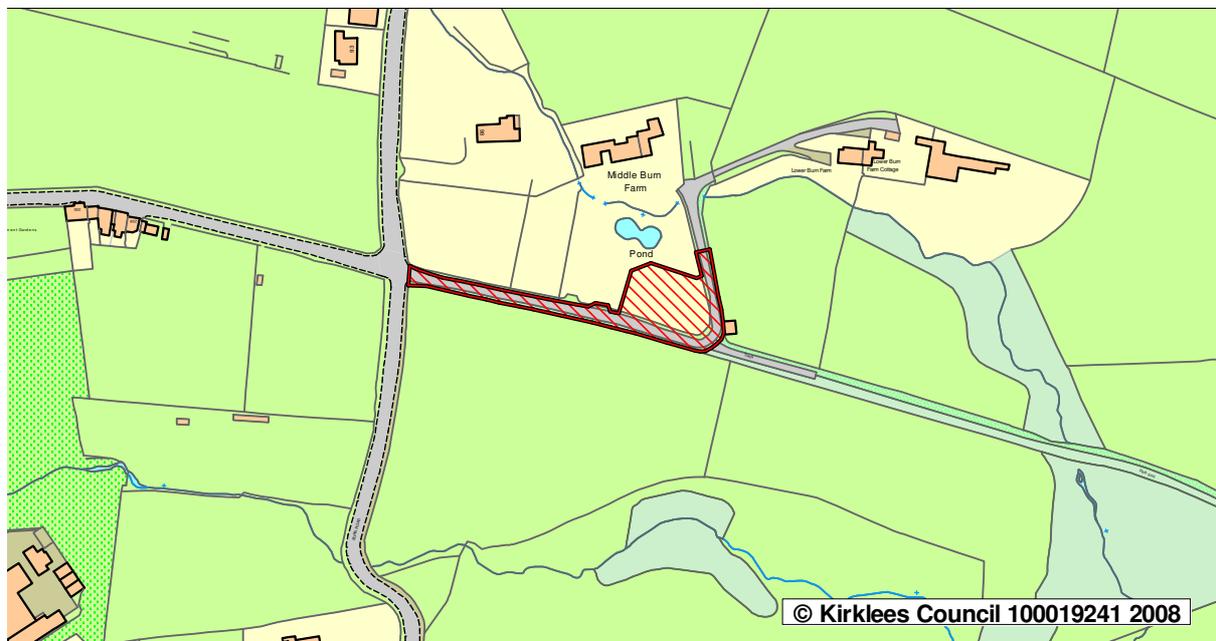
16-Mar-2018

EXTENSION EXPIRY DATE

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

<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: Lindley

No

Ward Members consulted

RECOMMENDATION:

DELEGATE approval of the application and the issuing of the decision notice to the Head of Strategic Investment subject to the resolution of issues related to the assessment of a recorded mine entry close to the site to the satisfaction of The Coal Authority and in order to complete the list of conditions including those contained within this report (and any added by the committee).

1.0 INTRODUCTION:

- 1.1 The application was withdrawn from the agenda for Sub Committee meeting of 4th January 2018 because it became apparent that the applicant did not own the entirety of the application site and therefore an incorrect ownership certificate had been supplied which invalidated the application. The applicant has now resolved this matter by serving notice within a local newspaper and submitting the requisite ownership certificate.
- 1.2 The application is brought forward to the Sub Committee in accordance with the Scheme of Delegation because the proposal is for residential development on Provisional Open Land and therefore represents a departure from Policy D5 of the development plan.

2.0 SITE AND SURROUNDINGS:

- 2.1 The application site forms part of the grounds of Middle Burn Farm which is a Grade II listed farmhouse building. The site lies to the front of Middle Burn Farm adjacent to Burn Road. The land comprises part of a substantial lawn with stone walling on two sides. There is a small group of semi-mature trees within the south east corner of the site.
- 2.2 The site lies within a semi-rural location with sporadic farm buildings nearby. There are open fields to the south which have planning permission for the erection of a substantial residential development. Outline planning permission for four dwellings has also been approved on land to the west which forms part of the garden of 98 Burn Road.
- 2.3 There have been a series of planning and listed building consent applications to extend and convert an existing leisure annex connected to Middle Barn Farm into a separate dwellinghouse, the most recent permission being 2014.
- 2.4 The access to the site carries Byway HUD/396/40 which is part of the Kirklees Way.

- 2.5 Middle Burn Farm lies within the Green Belt but a large proportion of its front garden, including the application site, is allocated as Provisional Open Land within the Unitary Development Plan.

3.0 PROPOSAL:

- 3.1 This is an outline application for the erection of three dwellings. Matters of access, appearance, layout and scale are being considered. The landscaping of the site is reserved for future approval.
- 3.2 The scheme is for a row of three adjoining properties fronting onto Burn Road. Each of the dwellings is two storeys in height with a pitched roof. Proposed facing materials are coursed stone and artificial stone slates.
- 3.3 Two of the dwellings would be accessed off Burn Road and the third would be accessed via an existing access track that runs along the eastern boundary of the site.

4.0 RELEVANT PLANNING HISTORY:

- 4.1 Middle Burn Farm:

2014/91432 – Erection of single storey dwelling – Refused and appeal dismissed (further details contained within appraisal)

2014/91117 - Demolition of link and conservatory, erection of extension and alterations to convert existing leisure annex into dwelling – Approved

2014/91118 – Listed Building Consent for Demolition of link and conservatory, erection of extension and alterations to convert existing leisure annex into dwelling – Granted

- 4.2 Adjacent to the application site:

2016/90073 – Outline application for erection of residential development (at 98 Burn Road) – Approved

2017/90180 – Erection of 95 dwellings with access from Yew Tree Road and Burn Road (includes fields to the south of the application site) – Approved

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

- 5.1 The scheme has been reduced from four dwellings down to three and the layout, scale and appearance of the dwellings has been amended. This was in order to achieve a form of development that better respected the character of the surrounding area.
- 5.2 Details of bin storage and collection were requested and have been provided.

6.0 PLANNING POLICY:

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). 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 Examination in Public began in October 2017. 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. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

6.2 The site is allocated as Provisional Open Land (POL) on the Unitary Development Plan Proposals Map and also adjoins a Green Corridor. The site is part of Housing Allocation H706 within the Publication Draft Local Plan.

6.3 Kirklees Unitary Development Plan (UDP) Saved Policies 2007:

D5 – Provisional Open Land
D6 – Land adjoining green corridor
BE1 – Design principles
BE2 – Quality of design
BE11 – Materials
BE12 – Space about dwellings
T10 – Highway safety
T19 – Parking standards
R13 – Public Rights of Way
G6 – Land contamination

6.4 Kirklees Publication Draft Local Plan (submitted for examination 25th April 2017):

PLP3 – Location of New Development
PLP6 – Safeguarded Land
PLP21 – Highway safety and access
PLP22 – Parking
PLP24 – Design
PLP28 – Drainage
PLP30 – Biodiversity and Geodiversity
PLP32 – Landscape
PLP35 – Historic Environment
PLP51 – Protection and improvement of local air quality
PLP53 – Contaminated and unstable land.

6.5 Supplementary Planning Guidance / Documents:

N/A

6.6 National Planning Guidance:

NPPF Chapter 6 – Delivering a wide choice of quality homes

NPPF Chapter 7 – Requiring good design

NPPF Chapter 11 - Conserving and enhancing the natural environment

NPPF Chapter 12 - Conserving and enhancing the historic environment

7.0 PUBLIC/LOCAL RESPONSE:

7.1 Original scheme advertised by site notice, press advert and neighbour letters. Four representations have been received in response to that publicity. The representations received in response to this publicity are summarised as follows:

Visual amenity/character of the area:

- Detrimental impact on visual amenity of the surrounding area
- First development of its type on this side of the byway
- Visual intrusion
- Siting of dwellings is beyond existing line of dwellings
- Loss of open land

Highway matters:

- Unsuitable location
- Inadequate access and turning facilities provided
- Intensification in the use of a public byway to the detriment of the safety and convenience of users of the byway
- The byway currently serves four dwellings and the proposal would double this number
- Restricted width along the byway limits passing and turning
- Lack of visitor parking

Other issues:

- Impact on a listed building (Middle Burn Farm)
- Will set a precedent for further development
- Impact of construction traffic on safety of users of the public byway
- Development will exacerbate issues associated with other approved development nearby

7.2 The amended plans were advertised by neighbour notification letter. In response two representations were received. A summary of the comments raised is provided as follows:

- Insufficient information provided in relation to the impact on designated heritage assets

- Scheme not in keeping with guidelines that not more than 5 properties should be served off from a public byway
- Access to neighbouring properties will be blocked during construction and limited turning space on the byway
- Limited space outside of plots 1 and 2 for parking. Visitor parking could cause obstructions
- What turning arrangements are there for deliveries etc?
- Parking spaces for plot 3 look awkward. Manoeuvring would be tight and there is no scope to widen the private drive off which plot 3 would be served.
- Bin storage/collection space may also cause an obstacle on the byway

7.3 Following the submission of a new ownership certificate a further round of neighbour notification publicity has been carried out. This expired on 14th February.

7.4 One comment has been received in response to this publicity. It has been suggested that the applicant does know who owns the shared private access drive [contrary to the declaration in the ownership certificate].

8.0 CONSULTATION RESPONSES:

8.1 Statutory:

The Coal Authority – Objects until such time that it can be demonstrated that no significant risks to the development are posed by an identified mine entry.

KC Highways – No objections, including to the use of the byway for access.

8.2 Non-statutory:

KC Conservation & Design – No objections raised

KC PROW Section - Would prefer additional vehicle movements and access routes to be within the site in the interests of highway users. This may require the parking areas and drives to be set back or for the properties to be served by improvement of existing access off Hud/396. Query how many properties are being served off the byway.

KC Lead Local Flood Authority – No objections

9.0 MAIN ISSUES

- Principle of development
- Landscape character
- Heritage issues
- Residential amenity
- Highway issues
- Coal issues
- Ecology issues
- Drainage issues
- Representations
- Other matters

10.0 APPRAISAL

Principle of development

- 10.1 The site is part of a much larger area of land which is allocated as Provisional Open Land (POL) on the Unitary Development Plan (UDP) Proposals Map. Planning permission for 95 dwellings has been approved on a significant proportion of the allocation (2017/90180) and outline consent for four dwellings has also been approved on a small part of the allocation just to the west of the site (2016/90073).
- 10.2 The National Planning Policy Framework (NPPF) outlines the government's definition of sustainable development and paragraph 14 of the Framework sets out a presumption in favour of sustainable development.
- 10.3 The proposal is for new houses and paragraph 49 states that "*housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites*".
- 10.4 As evidenced in recent appeal decisions (eg. APP/Z4718/W/16/3147937 - Land off New Lane, Cleckheaton), the Council is failing to meet its requirement to ensure a five year housing land supply by a substantial margin. This is important in the context of paragraph 14 of the NPPF.
- 10.5 As the Council is unable to demonstrate a 5 year housing land supply as required by paragraph 49 of the NPPF, relevant policies relating to housing are considered to be out-of-date. Indeed, the housing land supply shortfall is substantial and falls below 3 years. Whilst the Council have submitted the emerging Local Plan for examination which, for housing purposes, is predicated on the basis of a five year housing land supply, the Local Plan has not been through examination and nor has it been adopted. Therefore, it is currently the case that the Council are unable to identify a five year supply of specific deliverable housing sites against the requirement.
- 10.6 Based on the above, 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.
- 10.7 Policy D5 of the UDP relates to development on POL. It states:
- On sites designated as provisional open land planning permission will not be granted other than for development required in connection with established uses, changes of use to alternative open land uses or temporary uses which would not prejudice the contribution of the site to the character of its surroundings and the possibility of development in the long term.*
- 10.8 It is considered that policy D5 is not a policy for the supply of housing in respect of the way in which it relates to paragraph 49 of the NPPF. Therefore, policy D5 is considered to be up to date.

- 10.9 The proposed development is clearly at odds with policy D5 of the UDP partly because the scheme of housing development fails to maintain the character of the land as it stands and fails to retain the open character. The proposed development therefore constitutes a departure from the development plan.

Emerging Local Plan

- 10.10 In respect of the emerging Local Plan, the Publication Draft Local Plan (PDLP) was submitted to the Secretary of State on 25th April 2017 for examination in public. The Examination in Public began in October 2017. The site forms a housing allocation (H706) within the PDLP. Given that the PDLP has now been submitted and is undergoing examination consideration needs to be given to the weight afforded to the site's allocation in the PDLP.

- 10.11 The NPPF provides guidance in relation to the weight afforded to emerging local plans. Paragraph 216 states:

From the day of publication, decision-takers may also give weight to relevant policies in emerging plans according to:

- *the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);*
- *the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*
- *the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).*

- 10.12 The above is further supplemented by guidance in the Planning Practice Guidance (PPG). The PPG states that “*arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both:*

a. the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or neighbourhood planning; and

b. the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.

- 10.13 Given the scale of the development proposed when assessed against the wider context of the PDLP the application could not be deemed to be premature.

- 10.14 Given the advanced stage at which the Local Plan has progressed considerable weight should be afforded to the policies and allocations within the emerging Local Plan. There are however two unresolved objections to the proposed housing allocation (H706), one from Historic England and one from a member of the public. The objection from Historic England relates to the impact on the significance and/or setting of Middle Burn Farm and Lower Burn Farm. As the site is within the grounds of Middle Burn Farm and is also close to Lower Burn Farm this objection is of direct relevance to the application and as such the weight that can be afforded to the application site's allocation in the emerging plan is substantially reduced.
- 10.15 If the emerging Local Plan was to be adopted in its current form, the Council would be able to demonstrate a five year housing land supply. However, the PDLP has not been through examination and as it stands the Council is a substantial way off being able to demonstrate a five year housing land supply and housing delivery has persistently fallen short of the emerging Local Plan requirement. This triggers the presumption in favour of sustainable development as advocated by paragraph 14 of the NPPF.
- 10.16 Planning permission should therefore be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted. In this case that would include policies relating to the protection of heritage assets.

Planning appeal decision

- 10.17 An application for a single storey dwelling within the front garden of Middle Burn Farm was refused in 2014 and a subsequent appeal dismissed (application reference 2014/91432). This application related to the western part of the front garden whereas the current application relates to the eastern part. The application was refused on the following grounds:

"The proposed development would form a prominent and incongruous feature in close proximity to a public byway in an area which has an open and rural character. This would be out of keeping with the established pattern of development in the locale and would be harmful to the visual amenity and character of the area, contrary to policy BE2 of the Kirklees Unitary Development Plan and guidance within chapter 7 of the National Planning Policy Framework".

- 10.18 The Planning Inspectorate dismissed the appeal on the grounds of the effect of the proposal on the character and appearance of the surrounding area and the setting of Middle Burn Farm. The Inspector considered that the provision of a single dwelling (in the context of the Council's lack of a 5 year housing land supply) did not outweigh the harm identified. The findings of the Inspector are considered within the relevant sections of this appraisal.

Landscape character

- 10.19 The site lies within the Grimescar Valley and is situated in a rural location characterised by sporadic detached dwellings set within generous sized plots. The nearby properties are all set well back from the access track that serves them and the site. While the site and the surrounding area is visible from the built-up urban edge of Huddersfield and vice versa, it has an open, rural character and appearance because of the space around the dwellings, their sporadic siting, the design of the buildings and the proximity to open fields. The site is currently bounded by open fields to the east and on the opposite side of Burn Road.
- 10.20 Middle Burn Farm comprises a single dwelling which was formerly a row of cottages and a barn. On the western side of the dwelling is a leisure annex which has been built on the footprint of a former outbuilding. This is separated from the house, but connected via a glazed link; planning permission has previously been granted to demolish this link and extend and alter the annex to form a dwellinghouse. The proposed dwellings would be sited in part of the front garden area of the dwelling.
- 10.21 Whilst the proposal would introduce a modern form of development that would change the existing character of the area, the proposal needs to be viewed in the context of planning permission 2017/90180 for the erection of 95 dwellings. This recently approved development involves the erection of 30 houses within the fields on the opposite side of Burn Road, including dwellings quite close to the boundary with Middle Burn Farm. The remainder of the 95 houses are to be built on fields slightly further to the south and on a separate parcel of open land to the northwest.
- 10.22 The 30 dwellings to be built on the opposite side of Burn Road will significantly alter the character and appearance of the land surrounding the application site and in this context it is considered that the erection of 3 dwellings on the application site would have a relatively limited impact on the overall character of the area. Furthermore, outline consent has also been granted for a row of four detached dwellings within the grounds of 98 Burn Road which would lie on the same side of Burn Road as the proposal; if built these dwellings would further alter the character of the area.
- 10.23 Planning permission for either of these aforementioned developments had not been approved at the time application 2014/91432 for the erection of a single storey dwelling within the front garden of Middle Burn Farm was considered by both the Council and the Planning Inspectorate. These permissions therefore represent a material change in circumstances.
- 10.24 The appeal decision made reference to a potential large scale residential development in part of the POL allocation but because there was not an application for such development at that time and no guarantee that planning permission would be granted the Inspector assessed the appeal on the basis of the surrounding area as it existed at the time. The Inspector commented that large scale development on this part of the POL (the indicative scheme the Inspector had seen was for about 200 houses) would significantly alter the character and appearance of the land near to the application site.

- 10.25 Whilst the previous proposal within the front garden of Middle Burn Farm was for a lesser quantum and scale of development than that proposed, the principle of introducing some form of development within this particular location fundamentally remains the same when assessing the impact on the character of the surrounding area as it *currently* exists. In other words any new building within the front lawn of Middle Burn Farm would have a perceptible impact on the open rural character of the landscape. However, once the 30 dwellings to be built on the opposite side of Burn Road are taken into account it does not make a significant difference whether there is one dwelling or three dwellings in this location when considering the impact on the character of the area.
- 10.26 The proposed scheme has been amended to mitigate the visual impact of the development within the landscape and particularly when viewed from public byway HUD/396/40. The number of dwellings has been reduced from four to three and only two of the dwellings will be served directly off Burn Road with the third taking its point of access via a track to the eastern site boundary. Each dwelling has also been given a garage. The effect of this has been to significantly reduce the prominence of parking within the development.
- 10.27 The original proposal was for a row of four terraced dwellings with the end properties having a single storey projecting element at the rear resulting in large asymmetrical gable ends. The layout and scale of the dwellings has been amended to break up the mass of the buildings by varying the position, depth, and height of the respective dwellings. This provides deviation within the building line and roofline. For example, a single storey garage has been added between plots 1 and 2, the ridgeline of plot 2 is set above that of plot 3 and the end plots (1 and 3) have a reduced depth to lessen the prominence of the gable ends of the development on the approaches to the site. A single storey lean-to garage has also been added to the side of plot 1 which provides some horizontal emphasis to this elevation.
- 10.28 The proposed facing materials are coursed stone and artificial stone slates. These are considered to be acceptable subject to the approval of samples.
- 10.29 Whilst landscaping is a reserved matter the site plan shows a 900mm wall around the development to delineate it from the remainder of the Middle Burn Farm site. There is also scope for a large proportion of the existing stone wall to the site frontage and eastern boundary to be retained.
- 10.30 The scale, appearance and layout of the site are considered to be acceptable within the context of existing and approved development within the surrounding area. The application is therefore considered to comply with Policies BE1, BE2 and BE11 of the UDP, PLP24 and PLP32 of the emerging Local Plan and guidance in the NPPF.

Heritage issues

- 10.31 Middleburn Farm is a grade II listed building. It was originally a barn, dating from the 18th century. The two storey building is rendered and has a pitched stone slate roof. Extensions and additions have been added to the property which has affected its setting to an extent. The significance of the building, amongst other things, is derived from its age, historic associations and architectural style. Lower Burn Farm, Lower Burn Farm Cottage and Lower Burn area also grade II listed buildings and lie over 75m to the north east of the site. Lower Burn Farm Cottage is listed by virtue of its attachment to Lower Burn Farm.

- 10.32 Paragraph 131 of the NPPF states that “in determining planning applications, local planning authorities should take account of:
- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
 - the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
 - the desirability of new development making a positive contribution to local character and distinctiveness”.
- 10.33 “When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation” (NPPF paragraph 132). The setting of a designated heritage asset is an important aspect of its significance. Preserving the special architectural and historic interest of a listed building is required by section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and considerable importance and weight is to be attached to this.
- 10.34 At present the large front garden of Middle Burn Farm provides a very open aspect to views of this listed building from numerous directions and the proposal would therefore erode some of this openness. Any new buildings on the site would become part of the building’s setting and influence how it is experienced.
- 10.35 Advice has been sought from the Conservation and Design section. It is considered that development in this part of the site (i.e. the eastern part of the front garden) would have the least impact on the setting of Middle Burn Farm by allowing a reasonable amount of the open aspect provided by the front garden to be retained. Conversely, the site of application 2014/91432 was located much more to the front of the listed building and despite being for a lesser quantum and scale of development would have had a greater impact on its setting in officers’ view. It is also considered that the setting of the listed buildings to the north east of the site would not be significantly harmed given the separation distances involved.
- 10.36 A linear form of development that fronts onto Burn Road is considered to be the most appropriate form of development in order to respect the established rural character of the surrounding area that Middle Burn Farm, Lower Burn Farm and Lower Burn contribute to. The design is considered to be acceptable and details such as corbels, dentils and timber windows (as proposed) enhance the overall appearance. The proposed facing materials would harmonise with Middle Burn Farm. A condition requiring the approval of samples would be necessary.
- 10.37 The effect of the proposal on the significance of Middle Burn Farm (and the other identified nearby listed buildings) is considered to be less than substantial having regards to paragraph 134 of the NPPF. In such circumstances this harm should be weighed against the public benefits of the proposal. The proposal would provide additional housing, albeit at a modest level, at a time when the Council is unable to demonstrate a 5 year supply of housing land. Considering the relatively limited impact on the setting of Middle Burn Farm as identified within this appraisal it is considered that the harm is outweighed by the delivery of new housing in this instance.

Residential Amenity

- 10.38 Policy BE12 of the UDP is the Council's space about buildings Policy. This seeks to provide acceptable separation distances between new and existing dwellings.
- 10.39 The nearest existing dwellinghouse is Middle Burn Farm which is over 40m from the site boundary. Lower Burn Farm, Lower Burn Farm Cottage and Lower Burn lie over 75m away to the north east of the site. 98 Burn Road is a similar distance away to the northwest. These distances are sufficient to prevent any significant residential amenity issues.
- 10.40 New dwellings are planned on the field to the opposite side of Burn Road. There are two plots that have a direct relationship with the application site, both of which have a side elevation onto the site. One of the plots has a habitable window at ground floor level which is a secondary bay window and is around 15m from the front wall of plot 1. A degree of screening would be provided by a stone wall along the boundary with Burn Road that is to be retained as part of the approved development to the south. The separation distance is considered to be acceptable considering the nature of the window (secondary) and screening to be retained.
- 10.41 The boundary of the approved outline development to the west at 98 Burn Road is around 27m away from the application site with some boundary screening in between. This does not give rise to any particular concerns.
- 10.42 Issues of noise and air quality impacts on future residents were considered as part of application 2017/90180 for the erection of 95 dwellings and found to be acceptable. This conclusion holds for the proposal.
- 10.43 The application satisfies Policies BE12 and BE1 of the UDP and PLP24 of the emerging Local Plan and guidance in the NPPF.

Highway issues

- 10.44 Access to the proposed dwellings would be gained via an unrestricted public byway HUD 396 which forms a junction with Burn Road to the west. The byway currently serves four dwellings. The surface is typical of its type and has different types of hard surfacing in most areas.
- 10.45 The application seeks permission for the erection of three additional dwellings with associated parking provision. Two of the dwellings have their own direct access from the public byway to garages and driveways and the third dwelling takes its access from a private track off the byway that runs to the east of the site and provides an additional means of access to Middle Burn Farm and serves as the access for Lower Burn Farm, Lower Burn Farm Cottage and Lower Burn.
- 10.46 The site plan indicates that a new passing area will be formed along the frontage of Middle Burn Farm and the surface of the byway will be made good between the site and the junction with Burn Road to the west. Details of the improvements would need to be conditioned. It is also considered necessary for the existing stone wall along the frontage of Middle Burn Farm to be re-built around the passing place in the interests of the visual amenity of the area and the setting of Middle Burn Farm.

- 10.47 The width of the byway adjacent to the parking for plots 1 and 2 is around 5.5m but ideally this distance would be 6m. Alterations to the surface of the byway will be required in order to achieve this distance, details of which could be required by condition.
- 10.48 The number of dwellings and associated traffic generation is unlikely to have any material impact on the local highway network. The route is registered as a Byway Open to All Traffic and therefore public highway rights exist along the access to the development for vehicles.
- 10.49 Some concerns have been raised by the Council's PROW section around the use of the byway for access and associated vehicle manoeuvres on the byway. However the level of traffic generated by this (now reduced) number of dwellings is likely to be fairly insignificant and subject to details of alterations/improvements to the byway as mentioned above it is considered that the proposals are acceptable in terms of the safety of users of the byway.
- 10.50 The four properties currently served off the byway are serviced by a refuse vehicle that is able to turn around using the shared access to the east of Middle Burn Farm. This would continue to be the case for the proposed development. In terms of bin storage and collection arrangements for the three dwellings acceptable details have been provided.
- 10.51 The application is considered to comply with Policies T10, R13 and T19 of the UDP and PLP21 and 22 of the emerging Local Plan.

Coal mining issues:

- 10.52 The Coal Authority records indicate that there is a recorded mine entry just outside the eastern boundary of the site with a zone of influence which extends into the site. The Coal Authority holds no treatment details for this mine entry and it has a potential departure distance which means it could potentially be located within the application site itself.
- 10.53 The planning application is supported by a Coal Mining Risk Assessment. The report acknowledges the presence of the mine entry just outside the application site and the risk that this poses to the development on the site. The report recommends that intrusive site investigations to locate the shaft, or at least discount its presence on the application site, should be carried out. The report also recommends that any development within 20m of the shaft is relocated.
- 10.54 The Coal Authority objects to the application at this current time because the exact location of the mine entry has not been confirmed and it is therefore unable to fully assess the impact of the proposals.
- 10.55 The applicant recognises the need to provide this information however such intrusive site investigations would involve a considerable financial cost and the applicant is reluctant to commission the works without any firm prospect that planning permission will be granted. In the circumstances officers consider that it is reasonable for the application to be brought before the committee to make a resolution on the proposals and if the development is deemed to be acceptable then the applicant will then have sufficient comfort to carry out the intrusive site investigations.

- 10.56 In the event that the proposals could not be carried out because of constraints imposed by the location of the mine entry and the scheme consequently needed to be significantly amended, the application would then be brought back before the committee for a new resolution.
- 10.57 Subject to members accepting this approach and the carrying out of the necessary investigations to the satisfaction of The Coal Authority the development would comply with Policy G6 of the UDP, emerging Policy PLP53 of the PDLP and Chapter 11 of the NPPF.

Ecology and trees:

- 10.58 The site is adjacent to a Green Corridor within the UDP and therefore Policy D6 of the UDP is relevant. The corridor broadly runs between the site and Middle Burn Farm (following the boundary between the POL and the Green Belt to the north).
- 10.59 The site itself is considered to be of limited ecological value given that it is predominantly lawned garden. There is a small group of semi-mature trees within the south east corner of the site but their loss would not significantly affect the overall function of the Green Corridor. None of the trees are worthy of a preservation order.
- 10.60 It is considered that the development would not result in any significant harm to the Green Corridor or any other ecological impacts. Biodiversity mitigation and enhancement can nevertheless be provided as part of the development such as bird nest boxes and an appropriate landscaping scheme at reserved matters. The development complies with chapter 11 of the NPPF.

Drainage issues

- 10.61 The Lead Local Flood Authority has been consulted and no objections raised.

Representations

- 10.62 Seven representations have been received to date. One of the main issues raised relates to the impact on the character of the area and this has been fully considered within this appraisal. Concerns have also been raised with the impact on the setting of Middle Burn Farm and this issue has also already been addressed.
- 10.63 Highway safety is another main concern. In particular the number of dwellings being served off the byway (exceeding 5), visitor parking and bins obstructing the byway, the practicalities of manoeuvring in/out of the parking spaces for plot 3 and turning provision for larger vehicles such as delivery vans have been cited as specific areas of concern. A response is provided below.
- 10.64 There would be a total of seven properties being served off the existing byway. There would be some improvements made to the surfacing and some limited widening opposite plots 1 and 2. There is no specific policy that restricts the number of properties that can be served off a byway; published guidance suggests a maximum of 5 properties being served off a private drive although this is only guidance and all applications are to be assessed on their own merits. Having considered the merits of this application the proposals are acceptable to officers.

- 10.65 It is considered that the widening of the byway opposite plots 1 and 2 to 6m improves the ability for visitors to park here whilst enabling other vehicles to pass. Details of bin storage facilities that would not impede the byway can be secured by condition. Details of turning facilities for larger vehicles are to be provided. Highways have not raised any objections to the access to plot 3.
- 10.66 Of the other issues raised it has been suggested that the proposal will set a precedent for future development along this side of the byway. Any further applications on the remainder of this part of the POL will be assessed on their own merits having regard to relevant local and national policies and all other material considerations.
- 10.67 There are also concerns with the impact of the physical construction of the development on users of the public byway. A condition requiring a construction management plan could be imposed to help alleviate the impacts during the construction phase.
- 10.68 It has been suggested that the development will exacerbate issues associated with other approved development nearby. Officers consider that the scale of development is such that it would not materially add to any impacts associated with other local developments, including the 95 houses recently approved on part of the POL allocation.
- 10.69 Comments have been made in relation to land ownership and specifically the shared access track to the east of Middle Burn Farm that would serve plot 3. The applicant has stated that they do not know who owns the access track to the east of Middle Burn Farm and therefore formal notice was served in a local newspaper, in accordance with relevant legislation. A representation has however suggested that the applicant does in fact know who owns the access track. Officers are unable to substantiate either assertion and consider that land ownership issues have been satisfactorily addressed for the purposes of the planning application.

Other matters

- 10.70 Given that the proposal seeks the erection of 3 new dwellings and in line with the West Yorkshire Low Emissions Strategy (WYLES) and Policy PLP24 of the PDLP a condition would be appropriate requiring the provision of an electric charging point at each of the proposed properties. This would help to mitigate the impact of the development on air quality.

11.0 CONCLUSION

- 11.1 The principle of the development on the land is accepted considering nearby approved development and the proposals have been designed so as to mitigate the impact on the visual amenity of the landscape and the setting of Middle Burn Farm as well as Lower Burn Farm, Lower Burn Farm Cottage and Lower Burn which are grade II listed buildings. The development would not materially harm residential amenity, highway safety or biodiversity. Coal mining legacy issues are to be resolved as detailed within this appraisal.

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

1. Standard conditions for outline applications including time limits for submission of reserved matters and commencement of development
2. Approval of samples of materials
3. Surfacing of parking places
4. Details of improvements to public byway HUD 396 including details to widen the byway to 6m opposite the points of access for plots 1 and 2 and formation of passing place
5. Re-use existing stone wall around proposed passing place
6. Electric vehicle charging points
7. Construction management plan
8. Any conditions to be imposed at the recommendation of The Coal Authority following intrusive site investigations
9. Biodiversity mitigation/enhancement measures.

Background Papers:

Application and history files.

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2016%2f90524>

Certificate of Ownership – Certificate C signed: 16th January 2018