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**Report of the Head of Strategic Investment****HEAVY WOOLLEN PLANNING SUB-COMMITTEE****Date: 04-Oct-2018****Subject: Planning Application 2017/90324 Erection of 10 semi-detached houses Land at, Warwick Road, Batley, WF17 6AR****APPLICANT**S Patel, S Patel &  
Y Jasat**DATE VALID**

06-Mar-2017

**TARGET DATE**

05-Jun-2017

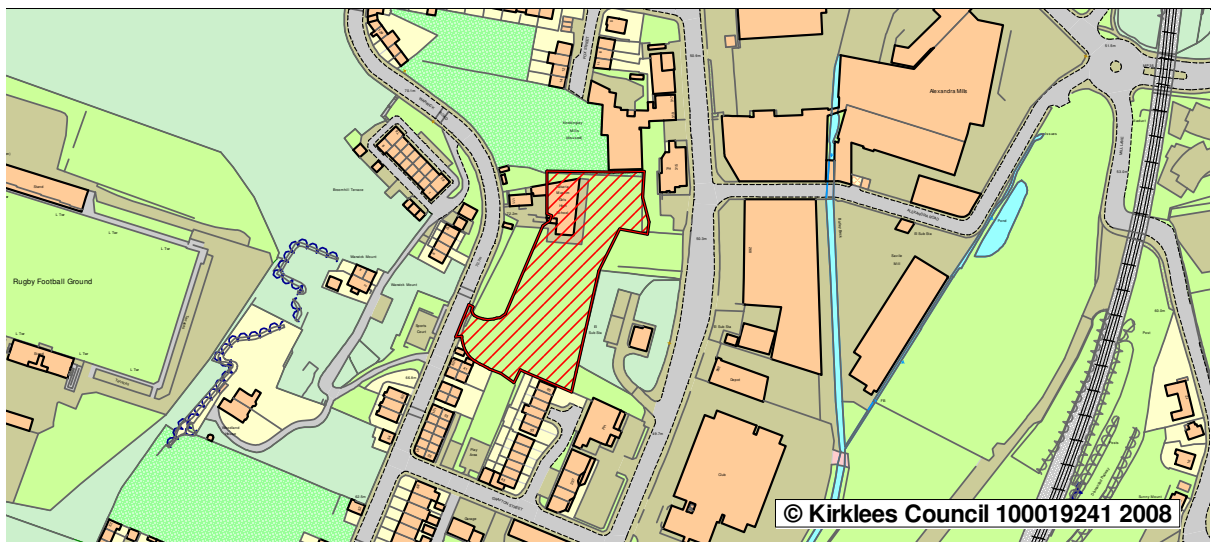
**EXTENSION EXPIRY DATE**

31-Aug-2018

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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**

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**Electoral Wards Affected: Batley East Ward**

Yes

Batley East Ward Members Consulted

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**RECOMMENDATION:**

**DELEGATE approval of the application and the issuing of the decision notice to the Head of Strategic Investment in order to complete the list of conditions including those contained within this report.**

**An update on the recent changes to the NPPF in relation to viability will be reported to planning committee through the update report.**

**1.0 INTRODUCTION:**

- 1.1 The application is brought forward to the Heavy Woollen Planning Sub-Committee for determination as the site is for residential development in excess of 0.5 hectares in area. This is in accordance with the Council's Scheme of Delegation.
- 1.2 The application was previously brought to the Heavy Woollen Planning Sub Committee on 9<sup>th</sup> November 2017 where Members agreed with Officers' recommendation (with the inclusion of an additional condition relating to the use of natural stone) which was as follows:

**DELEGATE approval of the application and the issuing of the decision notice to the Head of Strategic Investment in order to complete the list of conditions including those contained within this report and to secure a S106 agreement to cover the following matters:**

- 1. Public open space provision**
- 2. 20% of total number of dwellings to be affordable**

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

- 1.3 The application is brought back to the Heavy Woollen Planning Sub Committee as the applicant has failed to complete the required S106 legal agreement relating to the financial contributions required for Public Open Space and Affordable Housing Provision. The applicant has subsequently submitted a Viability Appraisal which has been independently assessed on behalf of the Council and the conclusion of the Viability appraisal were accepted by the Council's consultant. The consultant's conclusions are that the proposed development is unable to support any affordable housing or public open space contribution.

## **2.0 SITE AND SURROUNDINGS:**

- 2.1 The existing site forms the lower half of a large area of land which slopes steeply from Warwick Road to the west down towards Bradford Road to the east. The site includes the main Zakariya Muslim Girls School building. The remaining land is overgrown but is believed to have been playing fields at some time in the past.
- 2.2 The western area of land neighbouring the site is subject to planning application 2017/90322, for the erection of seven dwellings.
- 2.3 The site is located adjacent to high density residential development around the Warwick Road area with more commercial activities to the east located along Bradford Road. The Legends Public House neighbours the site.

## **3.0 PROPOSAL:**

- 3.1 The application site forms part of a larger site that has been subdivided into two separately submitted planning applications. Application 2017/90322 is for seven detached dwellings which are located to the west of the site access and front Warwick Road. This application 2017/90324, is for 10 dwellings. Both applications are submitted in full.
- 3.2 The application subject of this report, reference 2017/90324, is for 5 pairs of semi-detached dwellings located in a row and accessed off a new road through the site. The dwellings are two storeys to the front and three to the rear, providing 4 bedroom accommodation. Each property has off street parking to the front and a reasonable sized garden area to the rear.
- 3.3 The materials proposed for construction are artificial stone and artificial slate roof.

## **4.0 RELEVANT PLANNING HISTORY:**

- 4.1 As referenced above, application 2017/90322 for development of the western area of land shares the same access proposed under application 2017/90324, the subject of this report. The two applications result in a total of 17 dwellings and in order to avoid incremental development, the two applications are being considered as a whole for the purposes of contributions to affordable housing and public open space (POS). The application for seven dwellings is delegated to officers for determination.

## **5.0 HISTORY OF NEGOTIATIONS:**

- 5.1 Following the Heavy Woollen Planning Sub Committee on 9 November 2017, a Viability Appraisal has been submitted by the applicant for both sites. This has been independently assessed and concludes that it is not viable to provide any contributions with respect to affordable housing and POS.

## **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 48 of the National Planning Policy Framework (2018). 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 (2018), 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 application site is unallocated on the UDP proposals map and as Urban Green Space (school playing fields) on the Draft Local Plan.

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

**D2** – Unallocated land  
**BE1** – Design principles  
**BE2** – Quality of design  
**BE11** – Materials  
**BE12** – Space about buildings  
**BE23** – Crime prevention  
**H1** – Housing needs of the district  
**H10** – Affordable housing  
**H12** – Arrangements for securing affordable housing  
**H18** – Provision of open space  
**T10** – Highway safety  
**T19** – Parking standards  
**G6** – Land contamination  
**EP4** – Noise sensitive development  
**EP11** – Ecological landscaping

- 6.4 Supplementary Planning Guidance / Documents:

Interim Affordable Housing Policy

## 6.5 National Planning Policy Framework:

**Chapter 2** – Achieving sustainable development

**Chapter 5** - Delivering a sufficient supply of homes

**Chapter 6** – Building a strong, competitive economy

**Chapter 8** – Promoting Healthy and Safe Communities

**Chapter 9** – Promoting sustainable transport

**Chapter 11** – Making efficient use of land

**Chapter 12** – Achieving well designed places

**Chapter 14** – Meeting the challenge of climate change, flooding and coastal change

**Chapter 15** – Conserving and enhancing the natural environment

## 6.6 Kirklees Publication Draft Local Plan: Submitted for examination April 2017

Policies:

**PLP1** – Presumption in favour of sustainable development

**PLP2** – Place shaping

**PLP3** – Location of new development

**PLP11** – Housing mix and economy

**PLP20** – Sustainable travel

**PLP21** – Highway safety and access

**PLP22** – Parking

**PLP24** – Design

**PLP28** - Drainage

**PLP30** – Biodiversity and geodiversity

**PLP53** – Contaminated and unstable land

## 7.0 **PUBLIC/LOCAL RESPONSE:**

- 7.1 One representation received raising concerns regards proximity of residential development to the public house.

## 8.0 **CONSULTATION RESPONSES:**

- 8.1 Below is a summary of the consultation responses received at the time of submission of the application; where appropriate these are expanded upon in the assessment section of this report:

### 8.2 **Statutory:**

**K.C Highways Development Management** – No objection in principle.

### 8.3 **Non-statutory:**

**K.C Environmental Services** – No objections.

**K.C. Ecology** – No objections.

**K.C. Strategic Housing** – Contribution required.

**K.C. Landscaping** – On site provision required.

**Yorkshire Water** – No objections subject to conditions.

## 9.0 MAIN ISSUES

- Principle of development
- Urban design issues
- Residential amenity
- Landscape issues
- Housing issues
- Highway issues
- Drainage issues
- Planning obligations
- Representations
- Other matters

## 10.0 APPRAISAL

### Principle of development

- 10.1 The site is without notation on the UDP Proposals Map and Policy D2 (development of land without notation) of the UDP states “planning permission for the development ... of land and buildings without specific notation on the proposals map, and not subject to specific policies in the plan, will be granted provided that the proposals do not prejudice [a specific set of considerations]”.
- 10.2 Paragraph 14 of the NPPF introduces a presumption in favour of sustainable development. For decision taking, unless material considerations indicate otherwise, this means:
- *‘approving development proposals that accord with the development plan without delay; and*
  - *where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:*
- *Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*
  - *Specific policies in this Framework indicate development should be restricted.’*
- 10.3 The site is included as a new urban green space allocation in the submitted Publication Draft Local Plan but this is purely on the basis of it being part of the school grounds. Limited weight should be attached to this as the school has since closed. Furthermore, site inspection already showed that the land to be dissociated with the school and become overgrown and unkempt in appearance leading to the conclusion that the grounds are not in active use, nor had they been in recreational use recently. The topography and accessibility to the site prevent effective use of the land for any leisure purposes.
- 10.4 The NPPF sets out at paragraph 11 that decisions should apply a 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. At present, the Council is unable to demonstrate a five-year supply of housing land and therefore the provision of new housing to meet the shortfall is a material consideration that weighs in favour of the development proposed.

- 10.5 National Policy encourages the use of brownfield land for development but decisions should promote and support the development of under-utilised land if this would help to meet identified needs for housing. The site is currently unallocated and performs no function as part of the school grounds.
- 10.6 The eastern area of land, subject of this planning application, comprises of land that is considered to be greenfield (previously undeveloped). As such, consideration needs to be given to any harm which would result from the loss of this open land. The specific impacts of the development, for example, the visual and ecological impacts, are addressed later in this assessment but, in principle, it is considered by officers that there is no overriding reason why development on this land would be inappropriate, subject to consideration of the UDP policies listed above.
- 10.7 Due to the size, scale and numbers of dwellings proposed, the scheme is subject to a number of contributions with regard to the provision of affordable housing and public open space (POS). All contributions (20% affordable housing and POS) were proposed to be provided when the application was brought to the Heavy Woollen Sub Committee on the 9<sup>th</sup> November 2017. These were to be secured via a Section 106 Agreement prior to the decision notice being issued. This was not completed and the applicant submitted a Viability Appraisal.
- 10.8 Para. 57 of the NPPF advises that where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. In this case, the Viability Appraisal submitted by the applicant was independently assessed on behalf of the Council and the conclusions of the viability appraisal were accepted by the Council's consultant. The consultant's conclusions are that the proposed development is unable to support any affordable housing or education contribution. Officers' advice to Members is that they can consider whether, in the interest of housing delivery forward, whether a pragmatic approach to enable this site is appropriate in this instance.

#### Urban Design issues

- 10.9 At the time of the officer's site visit, the land was overgrown and the school building in a state of disrepair. Although the supporting statement describes this grassed area of land as former playing fields it is clear that the land is not maintained as such nor is access easily obtainable. Whilst it is clear that the site has not previously been developed (i.e. greenfield), it is unallocated on the Kirklees UDP proposals map. An assessment has to be made as to whether its loss in terms of visual amenity would be detrimental to the character of the area and whether the benefit of development would outweigh its loss as a greenfield site. There is no merit in the retention of the school building which currently has a negative impact on the area. The site is bound by high density residential development to the south with the area to the north being occupied by the school in addition to further residential properties. Residential development is proposed to the west with mixed commercial uses to the east.

- 10.10 Due to the quality of the land and topography of the site it is considered that the site has very limited contribution to the visual amenity of the area and development would provide wider benefit in providing housing in place of the loss of a greenfield site in addition to replacing the existing school building with an improved built form.
- 10.11 Chapter 12 of the NPPF emphasises the importance of good design. Paragraph 124 states that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Decision should ensure that developments are visually attractive, sympathetic to local character and history and establish a strong sense of place (paragraph 127). Policies BE1 and BE2 of the UDP reiterate considerations in relation to design, materials and layout. The layout of buildings should respect any traditional character the area may have. New development should also respect the scale, height and design of adjoining buildings and be in keeping with the predominant character of the area.
- 10.12 The scheme has been designed so as to take advantage of the topography of the site and views to the east. The dwellings proposed are in pairs and are two storey to the front increasing to three storey at the rear, each with a balcony at ground floor level. The development complements the character of the local townscape and the design of existing houses in the area, particularly by following the linear form of development predominant within the immediate vicinity. The size, height, scale, window proportions and roof pitch have been given careful consideration to create a development that is both sympathetic towards and integrates well with its surroundings and it is considered that it achieves these aims. The materials of construction proposed are artificial stone and slate however Members stated that natural stone should be used as it is more appropriate to the area. As such a condition is imposed to ensure the development is in accordance with Policy BE11 and Publication Draft Local Plan Policy PLP24.
- 10.13 An area of planting/green space is incorporated at the entrance to the development, softening the visual impact the development will have. The landscaped area is located around a bank of parking and as such softens the hard landscaping. Taking into account the development of the site with hardstanding/access roads, the incorporation of areas of green space are welcomed. It is considered on balance, that the details would provide a development that would meet the aims of chapter 12 of the NPPF by contributing positively to the surrounding area and would also be in accordance with Policies BE1, BE2 and D2 of the Kirklees UDP and Publication Draft Local Plan Policies PLP2 and PLP24 of the Publication draft Local Plan.

#### Residential Amenity

- 10.14 In assessing the impact of the development on both dwellings externally surrounding the site and the dwelling proposed within the site, Policy BE12 of the UDP is of relevance. This policy recommends a separation distance of 12m between existing habitable room windows and non-habitable room windows and 21m between habitable room windows of any two dwellings. A distance of 10.5m is recommended from a habitable room window and the boundary of any adjacent undeveloped land and 1.5m between any wall of a new dwelling and the boundary of any adjacent land other than a highway.



- 10.15 The dwellings are located in a row fronting the new access road and provide off street parking to the front thereby setting them back from the road frontage. The distances to the dwellings proposed opposite exceed 21 metres as recommended by Policy BE12 and would thus be well in excess of 21m from the existing row of four cottages on the opposite side of Warwick Road.
- 10.16 The layout of the development takes advantage of land levels resulting in dwellings that are two storey at the front including a lower level at the rear and therefore three storey in appearance. Each dwelling incorporates a balcony. As the pairs of dwellings are identical it is considered that the relationship to each adjacent property is acceptable.
- 10.17 With regard to the existing dwellings to the south of the site, such as no.65 Grafton Street, the gable of plot 1 would face towards this property. There are no openings in the gable of the existing dwelling and therefore, there would be no loss of privacy to these occupants when in their property. In order to retain the privacy when in their garden area, a 2.0m high fence is proposed to be erected along the shared boundary, which can be secured via condition. Due to the land level differences, whilst officers are of the opinion that a satisfactory development is proposed, it is recommended that a condition relating to finished floor levels is imposed in order to ensure that there would be no overbearing impact created upon the existing residents.
- 10.18 With regard to nos. 109 Warwick Road and no.41 Grafton Street, which are back to back properties located to the south of the site, there are windows in the gable of these properties which face towards the application site. The proposed dwellings would be set back from these windows and therefore, no direct relationship would be created between the dwellings. The proposed access into the application site would also be separated from the gable of these properties by the proposed soft landscaped area and parking spaces.
- 10.19 To summarise, it is not considered that the design will result in any loss of amenity to any existing occupants and those purchasing any of the dwellings will be fully aware of the relationship. Each dwelling includes ample amenity space to the rear for future occupants. It is considered that the scale, design and layout of development accords with the aims of Policy D2 of the UDP as well as policy BE12 of the UDP and Publication Draft Local Plan policy PLP24 in terms of residential amenity and as such is acceptable.

#### Landscape issues

- 10.20 The application includes two areas of greenspace that are proposed for planting. Discussions regarding the provision of onsite POS have concluded that a requirement for offsite contributions would be required.
- 10.21 UDP Policy EP11 and Publication Draft Local Plan Policy PLP30 requires that applications for planning permission should incorporate landscaping which protects/enhances the ecology of the site. A revised Ecological Assessment has been submitted during the course of the application. The revised report addresses Officer's concern and the recommendations, although general in nature, are appropriate for the proposed scheme. Conditions are recommended to provide more certainty in the biodiversity outcomes. The lighting scheme will need to take account of the adjacent Kirklees Wildlife Habitat Network, and an

appropriate condition in this respect is recommended. The scheme has been assessed by the Council's Ecologist, and providing mitigation and enhancements are conditioned, the proposals would comply with the objectives of Chapter 15 of the NPPF.

- 10.22 The development is considered to be in accordance with Policy EP11 of the UDP and Publication Draft Local Plan Policy PLP30 and with the inclusion of the recommended conditions would ensure that the proposal would improve biodiversity within the local area, complying with current guidance contained within the NPPF.

#### Housing issues

- 10.23 Chapter 5 of the NPPF clearly identifies that Local Authority's should seek to boost significantly the supply of housing. Housing applications should be considered in the context of the presumption in favour of sustainable development. Paragraph 68 of the NPPF recognises that "small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. To promote the development of a good mix of sites local planning authorities should... support the development of windfall sites through their policies and decisions – giving great weight to the benefits of using suitable sites within existing settlements for homes". The development site forms two moderate parcels of land located within a residential area. The development for 17 houses would contribute to housing delivery where a five year supply cannot currently be demonstrated.
- 10.24 The development would contribute to the aims of Policy H1 of the UDP and chapter 5 of the NPPF in that it would provide additional housing in a sustainable location.

#### Highway issues

- 10.25 Access to serve the proposed development, along with the application for seven dwellings (2017/90322), is proposed to be taken off Warwick Road, to the north of nos. 109 Warwick Road and no.41 Grafton Street. The point of access is considered acceptable from a highway safety perspective to serve the number of dwellings proposed, including sight lines of 2.4m x 43m.
- 10.26 During the course of the application, a revised layout plan has been submitted which is considered to incorporate a suitable internal turning area for vehicles to manoeuvre in and out of the proposed driveways as well as an adequate turning head between plots 8 and 9.
- 10.27 Officers accept that this is a steeply sloping site however, during the course of the application additional information has been submitted which demonstrates that satisfactory gradients for the internal road and driveways can be achieved. Further detail of the internal road, which shall be to an adoptable standard, is recommended to be secured via condition.
- 10.28 To summarise, the proposals, with the inclusion of the recommended conditions, are considered satisfactory from a highway safety and efficiency perspective, in accordance with policies D2 and T10 of the UDP and Publication Draft local Plan Policy PLP21 and PLP22.

### Drainage issues

- 10.29 The NPPF sets out the responsibilities for Local Planning Authorities in determining planning applications, including flood risk assessments taking climate change into account and the application of the sequential approach. There are no objections subject to the inclusion of conditions regarding drainage specifically.

### Representations

- 10.30 One representation was received regarding the issue of proximity of their establishment to the site. The application has been assessed taking into account the proximity to the business and an acoustic report has been considered acceptable subject to conditions.

### Planning obligations

- 10.31 When originally reported to the Heavy Woollen Planning Sub-Committee on 9<sup>th</sup> November 2017, the following contributions were being sought:
- 10.32 *Affordable Housing:*  
Following comments provided by Strategic Housing, the Council applied the Council's interim affordable housing policy requirement of 20% of the development being affordable to be secured by S106 Agreement.
- 10.33 *Public Open Space*  
This application for 10 semi-detached dwellings along with the additional 7 being proposed under application 2017/90322 falls within the threshold for requesting a public open space contribution (because of the resultant overall site area), in accordance with Policy H18 of the UDP. As part of this application, a small area of on-site provision is proposed which is insufficient for policy requirement. In line with the calculations for public open space this results in a shortfall requiring an off-site contribution of £44,100.76.
- 10.34 Since the above was reported to the Heavy Woollen Planning-Sub Committee, as previously set out, a Viability appraisal has been submitted by the applicant. The appraisal has been independently assessed and it concludes that the development would not be viable if the above contributions were secured. Officers are continuing to consider the findings of the appraisal and an Update on any changes to the recommendation will be considered in the Update Planning Committee report. A confidential paper setting out the findings of the viability report will be prepared and supplied to Committee prior to the Committee meeting.

### Other Matters

- 10.35 *Noise*  
The application site was assessed due to its vulnerability to potential noise disturbance from the nearby substation and adjacent entertainment establishment. Environmental Health has recommended specific noise attenuation measures to be incorporated into the development, to be validated prior to any occupation. These are to be secured via suggested conditions and would ensure that the proposals accord with the aims of policy EP4 of the UDP and chapter 15 of the NPPF.

10.36 *Sustainable transport:*

Paragraph 35 of the national Planning Policy guidance states that “Plans should protect and exploit opportunities for the use of sustainable transport modes for the movement of goods or people. Therefore, developments should be located and designed where practical to...incorporate facilities for charging plug-in and other ultra-low emission vehicles.”

10.37 As such, this development should encourage the use of ultra-low emission vehicles such as electric vehicles. A condition is recommended in relation to the provision of facilities for charging plug-in electric vehicles.

10.38 There are no other matters considered relevant to the determination of this application.

## **11.0 CONCLUSION**

11.1 The Viability Appraisal submitted by the applicant was independently assessed on behalf of the Council and the conclusions of the viability appraisal were accepted by the Council's consultant. The consultant's conclusions are that the development proposed is unable to support any affordable housing or POS.

11.2 The Council's consultant concluded that a scheme of smaller unit sizes at a higher density (to 35 dwellings per hectare), and including the abnormal costs provided by the applicant, suggests that the subject site is capable of sustaining a policy compliant residential development including the full suite of S106 contributions and affordable housing.

11.3 Officers have considered whether the increase in density is achievable on the site and have afforded significant weight to the constraints of the site. It is not considered that the site is capable of supporting an increase in residential units due to the topography in addition to the requirements for access and parking whilst maintaining an acceptable level of landscaping and amenity. As such, Officers' advice to Members is that they can consider whether, in the interest of housing delivery forward, whether a pragmatic approach to enable this site is appropriate.

11.4 The proposal is considered to comply with all other current planning policies and it is the opinion of officers that there would be no significant adverse impact in terms of visual or residential amenity. Furthermore there would be no issues with regard to highway or pedestrian safety.

11.5 The NPPF has introduced a presumption in favour of sustainable development. The revisions to the NPPF in July 2018 have relevance to the determination of this application and Officers will update Members at the Committee if there is any change in circumstances that require further consideration for this application.

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

1. Time limit for implementation – 3 years
2. Plans to be approved
3. Materials (natural stone and slate to be submitted)
4. Remove permitted development rights for new extensions / outbuildings
5. Areas to be surfaced and drained
6. Access sightlines to be provided
7. Details of internal adoptable roads
8. Details of the method of storage/access for waste
9. Noise mitigation in accordance with submitted report
10. Specification of acoustic barrier
11. Ventilation scheme
12. Scheme for provision of electric vehicle charging points
13. Landscape/ecological mitigation and enhancement plan
14. Finished floor levels
15. Boundary treatments
16. Separate systems for drainage
17. Surface water disposal

### **Background Papers:**

Link to planning application details:

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2017%2f90324>

Certificate of Ownership – Notice served on the Zakariya School

Link to the planning application for 7 dwellings (2017/90322)

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2017%2f90322>