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**Report of the Head of Strategic Investment**

**HUDDERSFIELD PLANNING SUB-COMMITTEE**

**Date: 13-Dec-2018**

**Subject: Planning Application 2018/92216 Erection of 5 dwellings land off, Netherley Drive, Marsden, Huddersfield, HD7 6HL**

**APPLICANT**

Alfa Homes

**DATE VALID**

17-Jul-2018

**TARGET DATE**

11-Sep-2018

**EXTENSION EXPIRY DATE**

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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: Colne Valley**

No

Ward Members consulted  
(referred to in report)

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## **RECOMMENDATION**

REFUSE, for the following reasons;

1. The site is allocated as Provisional Open Land within the Kirklees Unitary Development Plan and Safeguarded Land within the emerging Kirklees Publication Draft Local Plan. While the Council is unable to demonstrate a five year housing land supply, because the site has been through Appropriate Assessment the titled balance through the presumption in favour of sustainable development does not active. The benefits of the proposal, including the housing provision, does not in this situation justify the loss of Provisional Open Land. To approve the development would be in breach of Policy D5 of the Kirklees Unitary Development Plan and Policy PLP6 of the Kirklees Publication Draft Local Plan.
2. The proposed dwellings, by virtue of their mass, scale and height, would fail to respect the character of the surrounding area. Furthermore the proposal proposes significant retaining works and walls which would also fail to harmonise with the surrounding built environment. To approve the development would be in breach of Policies BE1 and BE2 of the Kirklees Unitary Development Plan, PLP24 of the Kirklees Publication Draft Local Plan and Chapter 12 of the National Planning Policy Framework.
3. The proposed development seeks the pumping of surface water as a drainage solution. Insufficient justification has been provided to evidence that alternative methods of drainage have been appropriately explored and discounted. To approve the scheme would be contrary to Policy PLP28 of the Kirklees Publication Draft Local Plan and the aims and objectives of Chapter 14 of the National Planning Policy Framework.
4. There is no information supporting the application relating to requirements to support local infrastructure. A S106 agreement is required to ensure contributions towards Public Open Space and play equipment. The proposed development, therefore, fails to achieve the requirements of Policy H18 of the Kirklees Unitary Development Plan, PLP4 and PLP47 of the Kirklees Publication Draft Local Plan and the aims and objectives of Chapter 8 of the National Planning Policy Framework.

## **1.0 INTRODUCTION**

1.1 The application seeks full planning permission for the erection of five dwellings.

1.2 The application is referred to the Huddersfield Planning Sub-Committee as it seeks residential development within a site area exceeding 0.5ha, but less than 61 units. This is in accordance with the Council's delegation agreement.

## **2.0 SITE AND SURROUNDINGS**

2.1 The site consist of a moderate sized open field. It is currently used for grazing and there are no structures or mature trees within the site. The boundary principally consists of mid height drystone walling. The topography of the site, and the wider area, slopes downwards from east to west.

2.2 Access is from Netherley Drive, to the south of the site. Netherley Drive is populated by semi-detached and terraced dwellings. The field's access route is partly shared by PROW COL/207/40. North of the site are other open fields. To the east of the site are the rear gardens and elevations of terraced dwellings fronting onto Mount Road. To the west are larger, independently designed, detached dwellings sporadically laid out on the raising land.

## **3.0 PROPOSAL**

3.1 The proposal seeks the erection of five detached five-bed dwellings. Two of the units would be two storeys. The remaining three units would be split level, presenting two storeys to the front and three to the rear.

3.2 The dwellings would be accessed from a private drive connecting to Netherley Drive. It features two off-road visitor parking bays. All dwellings would benefit from four parking spaces (including one within a garage space).

3.3 Due to the site's existing land levels, retaining walls are required through the site. These vary from between 1.0m to 3.7m. Boundary fences to sub-divide units would be 1.8m high timber fences. In places these would be sited atop retaining walls. No Public Open Space is located within the site.

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

### **4.1 Application Site**

2015/93926: Outline application for erection of residential development – Withdrawn

## 4.2 Surrounding Area

No planning history considered relevant to the current proposal.

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

5.1 Officers expressed concerns over the principle of development, the design / scale of the dwellings and drainage issues. The principle of development issues were complicated due to ecological concerns, outlined below.

5.2 Initial discussions took place relating to the design and drainage concerns. However following discussions relating to the principle of development, it was concluded that the concerns could not be overcome. Therefore the applicant requested that the application be determined based on the submitted details.

## 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 site is allocated as Provisional Open Land (POL), as is the adjoining field to the north-east, within the Kirklees Unitary Development Plan Proposals Map.

6.3 The site is allocated as Safeguarded Land on the PDLP Policies Map, as is the adjoining field to the north-east.

#### 6.4 Kirklees Unitary Development Plan (UDP) Saved Policies 2007

- **G6** – Contaminated land
- **D5** – Provisional Open Land
- **BE1** – Design principles
- **BE2** – Quality of design
- **BE11** – Materials
- **BE12** – Space about dwellings
- **EP11** – Ecological landscaping
- **T10** – Highways accessibility considerations in new development
- **T19** – Parking standards
- **H1** – Housing (Strategy)
- **H18** – Provision for Open Space for New Housing
- **R13** – Rights of way and public access areas

#### 6.5 Kirklees Draft Local Plan Strategies and Policies (2017)

- **PLP 03** – Location of New Development
- **PLP 05** – Master planning sites
- **PLP 07** – Efficient and effective use of land and buildings
- **PLP 11** – Housing Mix and Affordable Housing
- **PLP 20** – Sustainable Travel
- **PLP 21** – Highway safety and access
- **PLP 22** – Parking
- **PLP 24** – Design
- **PLP 27** – Flood Risk
- **PLP 28** – Drainage
- **PLP 30** – Biodiversity and Geodiversity
- **PLP 32** – Landscape
- **PLP 51** – Protection and improvement of local air quality
- **PLP 52** – Protection and improvement of environmental quality
- **PLP 53** – Contaminated and unstable land
- **PLP 61** – Urban Green Space
- **PLP 62** – Local Green Space
- **PLP 63** – New Open Space

#### 6.6 National Planning Guidance Framework (2018)

- **Chapter 2** – Achieving sustainable development
- **Chapter 4** – Decision-making
- **Chapter 5** – Delivering a sufficient supply of homes
- **Chapter 11** – Making effective 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

## 7.0 PUBLIC/LOCAL RESPONSE

7.1 The application has been advertised via site notice, press notice and through neighbour letters to addresses bordering the site. This is in line with the Council's adopted Statement of Community Involvement. The end date for publicity was the 4<sup>th</sup> of September, 2018.

7.2 In response to the period of publicity 19 representations were received. The following is a summary of the comments made;

### *Allocation / principle*

- The site is proposed as Safeguarded Land within the Local Plan. The Inspector has agreed that the land should not be developed until post 2031. The local plan is ongoing but the site remains after modification, adding weight to its safeguarded status.
- At the Public Examination of the Local Plan earlier this year, part of the document information available for the Inspector to make her decision to retain the land as safeguarded was "*improvements will be required at Netherley Drive/Mount Road and third-party land may be required to facilitate this*". The NPPF states development should not contribute to land instability issues.

### *Other*

- The application makes no reference to the landslide risk in the area, which is referenced within the submitted Geo-Environmental Risk Assessment.
- Other applications have been refused in the past. This includes reasons such as unsuitable of land and drainage.
- Local schools and doctors are at capacity, as are services such as police.
- Brownfield sites should be developed first.
- There is a covenant on the land stating it can't be built on until 2030.
- Marsden has a big drug problem. These large 'luxury' homes will be targeted. This will lead to more security lights, which will impact on neighbouring residents and ecology.
- Alfa Homes, the applicant, has only been in business 2 years and lack the experience and financial assets to properly develop this site.
- The proposal does not provide details on all utilities and how they would be managed.
- The few houses proposed do not outweigh the harm caused by the proposal.

### *Drainage*

- Geo-Environmental Risk Assessment shows a watercourse crossing the site, which is not addressed. There are also underground springs on site which should not be disturbed. Concerns to various aspects of the Flood Risk Assessment raised.

- Contamination from the site entering local reservoirs needs be considered.
- Insufficient investigation and consideration has been given to the drainage of the site.
- Numerous residents stating that there are springs and watercourses under the site.
- Sewers in the area are very old and are at capacity. This has led to flooding in local dwellings.
- Objection to the use of pumping stations.

### *Highways*

- In past applications the council have raised concerns over the sightlines at the Mount Road junction, with any intensification in the area would harm highway safety. The local plan references that improvements will be required at Mount Road/Netherley Drive. A speed survey for Mount Road has not been provided.
- The Transport Assessment states that no injuries have been recorded. Not all accidents are injuries or go recorded. Residents state knowledge of incidents.
- There is a private road behind Mount Road, serving several dwellings. This needs to be considered cumulatively with the proposal.
- Question over the proposed access arrangements and details to be included. What would be adopted? Where does the red line go? What are the implications for the substation? Officers should give consideration to the access's impact on access.
- Mount Road is unsuitable for further development being a substandard width, often being single lane due to parking. In places there is only pavement on one side. A Mount Road speed survey has not been provided.
- [Photographs provided of on-street parking within the area]
- Local roads do not have speed restrictions enforced.
- Mount Road/Netherley Drive is a bottlenecked junction.
- The entrance to the site is a PROW, used by horses, cyclists and motorcycles. Insufficient detail is given to the impact and how it would be retained.
- Public transport in the area is limited during poor weather.
- Concerns over disruption during development.
- The Transport Assessment was done during a holiday, limiting its accuracy.
- The proposal's private drive is narrow and could lead to issues within the site itself.
- The site has insufficient parking for the proposed use.

### *Ecology*

- The ecological survey was undertaken at an unsuitable time of year. A bird survey should be undertaken.
- The proposal would harm local nesting birds.
- The survey is the same from 2015.

### *Residential Amenity*

- The dwellings are 25.0m from local residents, which is considered to 'contravene planning conditions'.
- Properties would lose natural light and privacy given the higher site level to Mount Road.
- Residents raise hedgehogs being within the area. Bats, toads and owls are also mentioned.
- Green space makes people feel better; the loss of this field will harm the health of local people.

### *Visual Amenity*

- Local views will be impacted upon, particularly from parks near Butterley Reservoir, the Pule Hill Area and Wessenden Valley. This will harm tourism and the local economy.
- The proposal would harm openness and the rural character of the area.

### Ward Councillor Interest

7.3 Given the scale and nature of the proposal local ward members were not notified of the proposal.

7.4 Councillor Bellamy contacted officers expressing concerns on highways and drainage. Officers explained their assessment and concerns, which Councillor Bellamy accepted.

## **8.0 CONSULTATION RESPONSES**

### **8.1 Statutory**

Natural England: No objection, however defer to the local authority ecologist in terms of local impact.

### **8.2 Non-statutory**

K.C. Ecology: Identify that Appropriate Assessment for the site was required for the site. Concluded no objection, subject to mitigation being conditioned.

K.C. Environmental Health: No objection subject to condition.

K.C. Highways: No objection subject to conditions.

K.C. Landscape: No objection subject to conditions and a financial contribution for Public Open Space and local Area of Play

K.C. Lead Local Flood Authority: Object, due to increased surface water discharge and the use of a surface water pump.

## 9.0 MAIN ISSUES

- Principle of development
- Urban design issues
- Residential amenity
- Highway issues
- Other matters
- Representations

## 10.0 APPRAISAL

### Principle of development

#### *Land allocation*

- 10.1 Planning law requires applications to be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework 2018 (NPPF) is one such material consideration. The starting point in assessing any planning application is, therefore, to ascertain whether or not a proposal accords with the relevant provisions of the development plan; in this case the saved policies in the Kirklees Unitary Development Plan, 1999 (UDP). If a planning application does not accord with the development plan, then regard should be had as to whether there are other material considerations, including the NPPF, which indicate that planning permission should be granted. The Council are also at an advanced stage in the preparation and adoption of the Local Plan. The Local Plan - Kirklees Publication Draft Local Plan (PDLP) – was submitted for examination in April 2017.
- 10.2 The land is allocated as Provisional Open Land within the UDP Proposals Map. Policy D5 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 longer term.*

- 10.3 Within the emerging Local Plan the site is allocated as Safeguarded Land. Policy PLP6 states;

*Areas identified as safeguarded land will be protected from development other than that which is necessary in relation to the operation of existing uses, change of use to alternative open land uses or temporary uses. All proposals must not prejudice the possibility of long term development on safeguarded land sites.*

Within the subtext to this policy, and reflective of para139 of the NPPF, safeguarded land comprises areas between the urban area and the Green Belt. This is in order to meet long-term development needs stretching well beyond the plan period. It is considered that this policy anticipates development on safeguarded land at some time in the future, rather than having the overall purpose of seeking to restrict or prevent development indefinitely. Nevertheless, this policy is considered to carry substantial weight and the proposed development would be in clear contravention of this policy.

*Weight to attribute to the PDLP Allocation*

- 10.4 As part of the PDLP examination process a series of public hearings have taken place to discuss a variety of different issues, including the proposed site allocation. Following the hearing sessions the Inspector invited the Council to consult on a range of proposed modifications in order to make the Local Plan sound. The consultation period on these proposed modifications ended on 1st October 2018. Insofar as site specific modifications are concerned, the allocation associated with the application site is not subject to any modifications and, therefore, the emerging designation – Safeguarded (ref – SL2167) – remains and will be carried forwards with the intention that it remains safeguarded in the adopted PDLP.
- 10.5 Six objections were received to the proposed designation through the plan making process. Some of these objections highlight that the land should be protected from further development (green space or Green Belt) whilst others representations state that the land should be allocated for housing. However, given that the list of proposed modifications published by the Inspector did not advise that the current intended designation should be altered, there does not appear to be a compelling case to designate the site as anything other than Safeguarded. The NPPF is a Government statement of policy and is, therefore, considered an important material consideration especially in the event that there is an emerging Local Plan, as is the case here. This is reinforced in para 48 of the NPPF which guides that due weight should be given to relevant policies in emerging Local Plans having regard to the stage of the Local Plan, the extent to which there are unresolved objections, and the degree of consistency with policies in the NPPF. Consequently, it can only be concluded at this stage that significant weight should be attached to the Safeguarded PDLP designation on the basis of the advanced stage of preparation of the Local Plan, and the fact that objections to the Safeguarded designations have been heard through the public hearings.

### *PDLP Policies, Allocations and Prematurity*

- 10.6 The PDLP's Safeguarded allocation would clearly prevent the development of the site. However, while substantial weight is provided to the policy the UDP remains as the adopted development plan. The NPPF provides guidance in relation to prematurity. Paragraph 49 states:

*...arguments that an application is premature are unlikely to justify a refusal of planning permission other than in limited circumstances 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 plan; and*

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

- 10.7 The PDLP and supporting housing needs assessments demonstrate that the housing requirement over the plan period amounts to circa 31,000 units. The current proposal seeks five units. The amount of housing proposed as part of this application, therefore, is not considered to meet the threshold required to demonstrate that the development is so substantial that it undermines the plan making process as it does not predetermine decisions about the scale or location of new development that are central to the PDLP. Furthermore, it is noted that the proposal does not comprise housing covering the whole of the emerging Safeguarded allocation. Whilst the PDLP is at an advanced stage, the proposed development would not undermine the plan making process. In addition, the provision of housing on this site would not appear to result in tangible harm to the local plan process and outcomes as a result of 'over-allocation'. There is no cap on housing numbers and the spirit of the NPPF is to promote housing development on appropriate sites. As its name suggests, safeguarded land is intended to safeguard land for potential future development and the provision of housing at this time would only serve to boost housing numbers.

### *Sustainable development and the five year housing land supply*

- 10.8 NPPF Chapter 2 and PLP1 outline a presumption in favour of sustainable development. Paragraph 8 of the NPPF identifies the dimensions of sustainable development as economic, social and environmental (which includes design considerations). It states that these facets are mutually dependent and should not be undertaken in isolation. When assessing development proposals, this means objectively assessing and meeting the development needs of an area, unless the harm would outweigh the benefits.

10.9 As the Council are unable to demonstrate a 5 year housing land supply, as required by para 73 of the NPPF, relevant policies relating to housing are considered to be out-of-date. Indeed, the housing land supply shortfall is substantial. Whilst the Council have submitted the Publication Draft Local Plan (PDLP) for examination which, for housing purposes, is predicated on the basis of a five year housing land supply; the Local Plan has not 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.

10.10 Where the council are unable to demonstrate a five year housing land supply, the presumption in sustainable development amounts to a titled balance in favour of residential development.

10.11 However, paragraph 177 of the NPPF states;

*The presumption in favour of sustainable development does not apply where development requiring appropriate assessment because of its potential impact on a habitats site is being planned or determined.*

The proposal has been through appropriate assessment. The reasons for this, and the outcome of the appropriate assessment, is detailed later within this report. Therefore, because the site has been through appropriate assessment, the presumption in favour of sustainable development does not apply to the proposed development. Accordingly there is no titled balance in favour of residential development in this case.

10.12 As the proposal seeks residential development, consideration must also be given to whether the proposal represents an efficient use of land. First, consideration is given to the wider allocation. The proposal seeks to develop 0.52ha of a 0.85ha allocation. At this time officers are satisfied that the proposal would not preclude the development of the remainder of the allocation as the access could be upgraded and extended. Conversely, concerns are held over the proposed density. The scheme seeks five, five-bed detached dwellings on 0.5ha of land. This represents a density of 10 dwellings per ha, while Policy PLP7 seeks a density of 35 dwellings per ha, where appropriate. Paragraph 123 of the NPPF states that;

*'Where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning policies and decisions avoid homes being built at low densities, and ensure that developments make optimal use of the potential of each site'.*

While PLP7's reference to 35 dwellings per ha 'where appropriate' is noted, as are the topographical constraints of the site, no evidence has been provided to justify such a shortfall in density targets. Turning to housing mix, PLP11 states that;

*'schemes of more than 10 dwellings or those of 0.4ha or greater in size, the housing mix should specifically reflect the proportions of households that require housing and achieve a mix of house size and tenure'.*

The applicant states that the proposal would *'broaden the range, quality and choice of the housing offer within this part of Marsden'*. No evidence of such demand has been provided to substantiate this statement.

- 10.13 Considering the above, the low density and limited housing mix of the proposal is deemed an inefficient use of land. This is therefore considered to weaken the weight officers can attribute to the material consideration of a provision of housing at a time of shortage.

*Principle of Development, Conclusion*

- 10.14 The site lies on POL land on the UDP and it is considered that accompanying policy D5 should be applied full weight. The site is allocated as Safeguarded in the PDLP to which significant weight should be attributed due to advance stage of the emerging Local Plan process. The strict application of these policies would prevent improvement to the shortfall in the supply of housing at this particularly time and this should, therefore, be weighed against the significant lack of housing land supply and the contribution to housing numbers made by this application.
- 10.15 The weight given to providing housing at a time of shortage through policy is acknowledged. The weight afforded to housing provision is, in this case, reduced through officer concerns over the inefficient use of land.
- 10.16 Weighing these various considerations, without the tilted balance provided by the presumption in favour of sustainable development, leads officers to the conclusion that the principle of development should not, in this situation, be supported.

Urban Design, including Landscape

- 10.17 Policy BE1 requires new development to retain a sense of local identity, with BE2 stating new development should be in keeping with surrounding development in respect to density, layout and building height. These requirements are reflected in PLP24 and Paragraph 127(c) of the NPPF, which states;

*Planning policies and decisions should ensure that developments: are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);*

- 10.18 The site comprises a roughly rectangular piece of open land which slopes upwards from east to west, therefore sitting on a higher level than properties on Mount Road. The land is open and has some value as a piece of open land. However, it is relatively featureless and there are few landscape elements of significant value. Having been through the land allocation process of the PDLP its current POL allocation and emerging Safeguarded status serves to underline the fact that the site is not considered to be an intrinsic component of urban greenspace or the wider countryside but, rather, an urban and rural fringe parcel of open land acting as a Green Belt buffer.
- 10.19 The proposed two house types are detached. In isolation the proposed dwellings are not considered visually unattractive, being a typical modern housing design. No details are provided regarding either facing or roofing materials. Natural stone walls would be sought, however there is more scope for variation for the roofing. Nonetheless this could be secured through further discussion with the applicant or a suitably worded condition.
- 10.20 Notwithstanding the above, in the context of the wider area they are anticipated to appear incongruous and harm the character of the area. Officers do not consider the proposal to be an '*appropriate innovation or change*'.
- 10.21 The site is adjacent to historic terrace rows which establish a strong characteristic for the area. Conversely Netherley Drive consists of semi-detached dwellings. Because of the topography, the proposed dwellings would be seen prominently above the terrace rows and less so against the semi-detached dwellings of Netherley Drive. The site would be highly prominent from distant views. While detached dwellings adjacent to terraces are not opposed in principle, the mass, scale and layout of the proposed dwellings would not reflect the traditional architecture of the area. This includes the semi-detached dwellings of Netherley Drive, although these contribute to the character of the area less.
- 10.22 The above concern is exacerbated on the proposal's reliance on retaining walls and that plots 3, 4 and 5 would have their three storey side elevations facing into the valley. This is near unique in the area, with most dwellings facing into the valley. Plots 3, 4 and 5 have side elevations three storeys in height, which each dwelling being higher than the next. This would result in a large massing of predominately blank stone climbing the valley side. In terms of retaining walls, to form level garden spaces, these frequently raise up to 'between 2 – 3m' within the site, with a maximum height given of 3.65m. Despite being a hilly location, retaining walls are kept to a minimum within the area, with development working with natural ground levels.

10.23 As a consequence the proposed development would represent an unacceptably dominant feature within the local area which fails to respect the established character. There would be little commonality between the simple, traditional vernacular of the existing terraced units, and the more modern semi-detached dwellings of Netherley Drive, which are a characteristic of the surrounding area and the approach to the proposed development. The proposed development fails to complement local vernacular in terms of scale, form and materials. Paragraph 130 of the NPPF states that;

*Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards...*

10.24 Officers acknowledge that there are detached and semi-detached dwellings higher up the valley side. However these blend into the topography and are spread out, from one another and the higher density terraced dwellings below, resulting in a natural transition of development thinning out as the valley raises. The proposed development would not respect this characteristic, through introducing large detached dwellings in closer proximity and significant engineering operations.

10.25 Turning to landscaping, limited details have been given at this stage. However there are considered no prohibitive reasons which would prevent a high quality landscaping scheme being provided via condition. Full landscape proposals are required as a planning condition including hard and soft landscape details and planting plans to create a diverse and attractive landscape which should enhance the setting of the development. Thoughtful planting to incorporate native species would contribute to enhancing the biodiversity in this setting and would help in the development of green corridors.

10.26 It is noted that the site is adjacent to the Green Belt, with the site's west boundary being the Green Belt boundary; while not within the Green Belt, given its close proximity the impact upon the Green Belt must be considered. While there are concerns relating to scale and mass, this relates to the adjacent built development. Given the low density of development and good spacing between units, officers are satisfied that the proposal on this Green Belt adjacent site would not harm the Green Belt.

10.27 Concluding on the above, the proposed dwellings would fail to respect local characteristics and, as a result, would appear incongruous within the area to the harm of visual amenity. The proposal is deemed to fail to comply with Policies BE1 and BE2 of the UDP PLP24 of the PDLP and Chapter 12 of the NPPF.

## Residential Amenity

- 10.28 To the east of the site are the dwellings of Mount Road. Their rear elevations face the site. The closest separation distance between these and the proposed dwellings is 29.8m between plot 5 and nos.100 and 102, and 41.0m between plot 1 and nos.112 – 116.
- 10.29 The level difference between the application site and the dwellings on Mount Road are noted, with the new dwellings being on the higher land level. Nonetheless, the above distances are well in excess of the recommended minimum separation distance of BE12. The level difference between the sites is not considered so severe to raise concerns of overbearing, overshadowing or overlooking at the distances given. This is with acknowledgment that plots 1 and 2 face the garden spaces of several dwellings at a distance of 12.0m.
- 10.30 To the south of the site is Marshdene. The proposed access drive would run adjacent to their dwelling, past the side elevation. However the separation distance is sufficient to prevent concerns over disruption caused by passing cars, such as noise and light pollution. In terms of the physical development, Marshdene would have habitable room windows 12.1m from plot 1's single storey garage, and 18.6m from the two storey side elevation. There is a minimum separation distance of 2.0m from the garage to the shared boundary. Officers are satisfied that this arrangement would not cause undue overbearing or overshadowing. No windows are positioned to harmfully overlook Marshdene's dwellinghouse or curtilage.
- 10.31 To the west of the site are Pule Spring and Butterley View. While bungalows, these are at a minimum 29.0m from plots 1 and 2 and would reside on a higher ground level. Officers are satisfied the proposal would not result in harm to the amenity of occupiers of these dwellings.
- 10.32 It is noted that boundary treatment details have been provided, with boundary treatment forming an important consideration of amenity between existing and new residents. However the details provided are limited. For example, retaining walls are shown as boundary walls with it being unclear if fencing would be added on top. This has the potential to be tall features which would impact on amenity. Conversely, the details provided are considered acceptable at this stage, with a full schedule of boundary details securable via condition.
- 10.33 The above assessment has been based on the scheme submitted. Should the dwellings be erected they would benefit from Permitted Development rights for outbuildings and extensions. Because of the generous sizes of the proposed garden spaces and their separation of the dwellings from 3<sup>rd</sup> party dwellings, it is not considered reasonable or necessary to remove Permitted Development rights for outbuildings and extensions due to residential amenity concerns.

- 10.34 It is noted that all of the referenced dwellings and many in the area face the site, which is currently open land and would amount to an attractive view. However there is no right to a view in planning. The aspects of relevance are whether there is undue harm through considerations such as overbearing or overshadowing. For the reasons outlined above, this is not considered the case.
- 10.35 Consideration must also be given to the amenity of future occupiers. The dwellings shown are a suitable size of the numbers of bedrooms sought. Garden spaces are commensurate for the scale of the buildings. All habitable rooms would be served by windows which provide natural light and a reasonable outlook.
- 10.36 Concluding on the above, officers are satisfied that the proposed development would not harm the amenity of neighbouring residents subject to the aforementioned conditions. Furthermore, future occupiers would have an acceptable level of amenity. The proposal complies with policy PLP24 of the PDLP and Chapter 12 of the NPPF.

#### Highway issues

- 10.37 First considering the impact through introduction of dwellings, officers are satisfied that five dwellings are not expected to generate sufficient vehicle trips to have a materially harmful impact on the safe and efficient operation of the local highway network. Further to this, the site is within walking distance to a medium frequency bus route, shops and local centre (1.2km). There is also a railway station 1.6km away.
- 10.38 The proposal complies with parking policy standards, including both per dwelling and visitor parking spaces.
- 10.39 Regarding the proposed access, the proposed access is approximately 4.6m wide and currently serves three residential properties and adoption plans show that this part of the access is within highway land. With the addition of the development proposals this would increase to 8 dwellings and because of this, the initial part of the access between Netherly Drive and the access drive to Butterley View would be sought to be made to adoptable standards, securable via condition. Turning to sightlines, Visibility splays of 2.4 x 36m to the left and 41m to the right can be achieved from the access, these are below those required from manual for streets for the posted road speed. However, independent speed surveys have shown that the 85th percentile speeds measured on the highway are less than 14mph and that the Manual for Streets visibility splay length for this speed of 2.4 x 17m are easily achievable. The maximum speed measured was 19.5mph heading westbound, this would require a splay length of 2.4 x 25m and again this is achievable. Such sightlines can be secured via condition.

- 10.40 Regarding waste arrangements, officers are satisfied that waste collection and storage can be appropriately managed on site. The turning head has been calculated for a 10.6m vehicle, which is smaller than the 11.8m refuge vehicles used by the council. However there is evidently sufficient space for this to be accommodated; this would be required to be evidenced via a condition showing appropriate swept path analysis.
- 10.41 In terms of structural works adjacent to the highway, including retaining walls, any retaining features affecting the highway will require formal technical approval by the Council as the Highway Authority. In consultation with the Highways Structures Team, if minded to approve a condition can be imposed requiring such details.
- 10.42 Summing the above, subject to appropriate conditions officers are satisfied that the proposed development would not harm the safe and efficient operation of the Highway, in accordance with Policy T10 of the UDP and PLP21 of the PDLP.

#### *Public Right of Way (PROW)*

- 10.43 The development proposals share an access with a short section of Public Right of Way (PROW) COL/207/40 which crosses the access and continues up the access road to Butterly View to Old Mount Road. The proposal would result in the initial section of the PROW experiencing an intensification of vehicular traffic. Nonetheless the PROW already accommodates vehicle traffic and an additional five dwellings is not considered detrimental to the PROW.
- 10.44 Nonetheless the PROW and its users will need to be protected during and after the development. This would be the responsibility of the developer, in conjunction with the PROW team. If minded to approve a note detailing the requirements of the PROW and contact details for the PROW team can be provided. This is deemed to comply with the aims of R13 of the UDP.

#### Other Matters

##### *Ecology*

- 10.45 The site is within 250 m of the South Pennine Moors Phase 2 Special Protection Area (SPA) and the South Pennine Moors Special Area of Conservation (SAC), which are European protected sites. Furthermore the development exceeds a threshold within Natural England's SSSI Impact Risk Zone tool, which indicates the potential for effects on the European protected sites.

- 10.46 The application is submitted with a Preliminary Ecological Appraisal. This has been reviewed by K.C. Ecology. It was concluded, given the sites above designations, that a Stage 1 Habitat Regulations Assessment was required. The Stage 1 assessment concluded that, due to potential impacts upon the European Protected Site's local birds and their habitats, Stage 2 'Appropriate Assessment' of the site was required, in accordance and undertaken with the Conservation of Habitats and Species Regulations 2017.
- 10.47 The Appropriate Assessment concluded that, subject to mitigation, the proposals would have no adverse effect on the integrity of European Protected Site. Such mitigation measures can be secured via condition. The mitigation secured and the assessment undertaken are considered to comply with the general planning requirements of Policy PLP30 of the PDLP and Chapter 15 of the NPPF, which the proposal is deemed to comply with. Natural England were consulted and confirmed they have no objection to the proposal, subject to the Local Authority Ecologist being satisfied.
- 10.48 It is noted that the Appropriate Assessment concluded that the impact could be mitigated via condition. In relation to the impact upon the Presumption in Favour of Sustainable Development, as addressed in sections 10.8 – 10.14 of this report, paragraph 177 of the NPPF's wording states;

*The presumption in favour of sustainable development does not apply where development requiring appropriate assessment because of its potential impact on a habitats site is being planned or determined.*

The wording does not make any reference to the outcome of the Appropriate Assessment, only that if undertaken the Presumption in Favour of Sustainable Development does not apply.

#### *Planning obligations*

- 10.49 Given the scale of the proposal Affordable Housing and Education contributions are not sought.
- 10.50 Policy H18 of the UDP requires 30sqm of Public Open Space per dwelling on development sites in excess of 0.4 hectares. Furthermore, seeking five dwellings, the proposal triggers the requirement for a Local Area of Play (LAP), to enhance local play areas. Given the size of the site and number of dwellings sought, each of these contributions would be sought through an off-site contribution. This would be cumulatively £57,901. The provision of the POS and LAP contributions would be secured by S106 agreement, if minded to approve.

### *Drainage issues*

- 10.51 The site is within Flood Zone 1 with no recorded watercourses on site. However surface water drainage must be considered. Representations have raised drainage as a particular issue in the area. When considering new development surface water issues need to be addressed in terms of existing surface water and potential increased to run-off resulting from the development.
- 10.52 The proposal seeks to pump surface water to a culverted watercourse on Netherley Drive. This necessitates a surface water pump station PLP28 establishes a general presumption against pumping surface water as it introduces a risk not currently present. Should the pump it break or become disabled surface water would not be appropriately managed, to the detriment of local people. PLP28 has received no main modifications following the Inspector's interim letter and therefore can be considered to carry significant weight.
- 10.53 The reason given for needing a pump is that Yorkshire Water state the connection to the east on Mount Road (downhill) is not supported due to various concerns. The Lead Local Flood Authority (LLFA) are unsatisfied with this reason, with no evidence or declaration from Yorkshire Water. As such, the LLFA consider that the connection on Mount Road should be considered further. As this has not been done, the application has failed to demonstrate that the surface water management solution has been designed to meet requirements for the development.
- 10.54 The drainage proposals for the scheme are not acceptable, with insufficient justification provided to justify the proposed scheme. The proposal would therefore be in breach of policy PLP28 of the PDLP and Chapter 14 of the NPPF.

### *Contaminated land*

- 10.55 The application is been supported by a Phase 1 Contaminated Land report. It identified that historically a tramway crossed the site, likely resulting in made ground and possible contamination, along with historic landfill near the site.
- 10.56 The Phase 1 report recommends a Phase 2 be undertaken. The findings and recommendations of the Phase 1 are supported by K.C. Environmental Health. Therefore conditions would be imposed requiring the submission of a Phase 2 Report, Remediation Strategy and Validation Report. This is in the interest of ensuring a safe development, in accordance with G6, PLP53 and Chapter 15 of the NPPF.

## *Air Quality*

- 10.57 In accordance with Chapter 11 of the NPPF and Policies PLP24 and PLP51, if minded to approve, a condition is to be imposed requiring the provision of electric vehicle charging points. This is in the interest of mitigating the impact of the development on air quality and supporting the use of low carbon forms of transport. This would also accord with the West Yorkshire Low Emissions Strategy.

## Representations

### *Allocation / principle*

- The site is proposed as Safeguarded Land within the Local Plan. The Inspector has agreed that the land should not be developed until post 2031. The local plan is ongoing but the site remains after modification, adding weight to its safeguarded status.
- The few houses proposed do not outweigh the harm caused by the proposal.

**Response:** These comments are noted and broadly align with officers' assessment.

- At the Public Examination of the Local Plan earlier this year, part of the document information available for the Inspector to make her decision to retain the land as safeguarded was "*improvements will be required at Netherley Drive/Mount Road and third-party land may be required to facilitate this*". The NPPF states development should not contribute to land instability issues.

**Response:** The Local Plan reviewed the site which a much greater density of development. This is materially different to the proposal and carries little weight in the current scheme.

### *Other*

- The application makes no reference to the landslide risk in the area, which is referenced within the submitted Geo-Environmental Risk Assessment.

**Response:** Officers hold no definitive evidence that landslide risk at the site is insurmountable. It is the applicant/developers responsibility to secure a safe development.

- Other applications have been refused in the past. This includes reasons such as unsuitable of land and drainage.

**Response:** Each application is assessed on its own merits.

- Local schools and doctors are at capacity, as are services such as police.

**Response:** As part of the development of the Local Plan evidence base, an ongoing infrastructure planning process has considered the impact of future growth on health infrastructure, summarised in the Infrastructure Delivery Plan (IDP) 2015 and IDP Addendum 2016. This is an on-going process and will be monitored and updated alongside the Local Plan. It acknowledges that funding for GP provision is based on the number of patients registered at a particular practice and is also weighted based on levels of deprivation and aging population, with direct funding provided by the NHS for GP practices/health centres based on an increase in registrations. Notwithstanding the above, given the small scale of the scheme it is not considered reasonable in this instance to require a contribution towards health infrastructure.

- Brownfield sites should be developed first.

**Response:** There is no presumption in planning for Brownfield before Greenfield development.

- There is a covenant on the land stating it can't be built on until 2030.

**Response:** This is a private legal matter and not a material planning consideration.

- Marsden has a big drug problem. These large 'luxury' homes will be targeted. This will lead to more security lights, which will impact on neighbouring residents and ecology.

**Response:** Officers note these concerns. However the proposal is not considered more or less at risk from crime than other sites. Planning permission is unlikely to be required for security lighting.

- Alfa Homes, the applicant, has only been in business 2 years and lack the experience and financial assets to properly develop this site.
- The proposal does not provide details on all utilities and how they would be managed.

**Response:** The above are not a material planning considerations.

### *Drainage*

- Geo-Environmental Risk Assessment shows a watercourse crossing the site, which is not addressed. There are also underground springs on site which should not be disturbed. Concerns to various aspects of the Flood Risk Assessment raised.

- Numerous residents stating that there are springs and watercourses under the site.
- Insufficient investigation and consideration has been given to the drainage of the site.
- Objection to the use of pumping stations.
- Contamination from the site entering local reservoirs needs be considered.

**Response:** This is noted. The LLFA expressed concerns that not all aspects of drainage were explored.

- Sewers in the area are very old and are at capacity. This has led to flooding in local dwellings.

**Response:** The management of public sewers is the responsibility of Yorkshire Water. No evidence is held that they are substandard and would not be suitable.

### *Highways*

- In past applications the council have raised concerns over the sightlines at the Mount Road junction, with any intensification in the area would harm highway safety. The local plan references that improvements will be required at Mount Road/Netherley Drive. A speed survey for Mount Road has not been provided.

**Response:** The proposal is materially different to past applications, seeking only five units. This limits the impact of the proposal, as well as the potential for improvement works.

- The Transport Assessment states that no injuries have been recorded. Not all accidents are injuries or go recorded. Residents state knowledge of incidents.
- Mount Road is unsuitable for further development being a substandard width, often being single lane due to parking. In places there is only pavement on one side. A Mount Road speed survey has not been provided.
- [Photographs provided of on-street parking within the area]
- Local roads do not have speed restrictions enforced.
- Mount Road/Netherley Drive is a bottlenecked junction.

**Response:** While the existing issues in the area are noted, the proposal seeks five dwellings. Officers and K.C. Highways are satisfied that the traffic generated from five dwellings would not have a materially harmful impact upon the local highway network.

- Question over the proposed access arrangements and details to be included. What would be adopted? Where does the red line go? What are the implications for the substation? Officers should give consideration to the access's impact on access.

- The entrance to the site is a PROW, used by horses, cyclists and motorcycles. Insufficient detail is given to the impact and how it would be retained.

**Response:** The application's red line goes to the adopted highway. Notice has been served on council as the Highway Authority. The section of road serving the development and other dwellings off the route holding the PROW would be sought to be built to adoptable standard. This would be secured via condition, if minded to approve.

- Public transport in the area is limited during poor weather.
- The Transport Assessment was done during a holiday, limiting its accuracy.

**Response:** These comments are noted, but are not considered to invalidate the submitted details.

- Concerns over disruption during development.

**Response:** Given the scale of the site and limited number of dwellings sought, officers are satisfied the site could be developed without undue short term harm to residents.

- The site has insufficient parking for the proposed use.
- There is a private road behind Mount Road, serving several dwellings. This needs to be considered cumulatively with the proposal.
- The proposal's private drive is narrow and could lead to issues within the site itself.

**Response:** Officers are satisfied with the proposed internal arrangement, sightlines and parking standards.

### *Ecology*

- The ecological survey was undertaken at an unsuitable time of year. A bird survey should be undertaken.
- The proposal would harm local nesting birds.
- The survey is the same from 2015.
- Residents raise hedgehogs being within the area. Bats, toads and owls are also mentioned.

**Response:** The ecological report is dated February 2018. K.C. Ecology has reviewed the submitted document and are satisfied that it is suitable for planning purposes. Subject to mitigation the proposal would not cause undue harm to local species.

### *Residential Amenity*

- The dwellings are 25.0m from local residents, which is considered to 'contravene planning conditions'.
- Properties would lose natural light and privacy given the higher site level to Mount Road.

**Response:** officers are satisfied that the proposal would not harm the amenity of neighbouring residents. This is considered within paragraphs 10.28 – 10.36.

- Green space makes people feel better; the loss of this field will harm the health of local people.

**Response:** The comment is noted, however given the overall small size of the site, within a rural environment, officers do not consider the loss materially harmful to residents. It is noted that the field is not used for sport or recreation.

### *Visual Amenity*

- Local views will be impacted upon, particularly from parks near Butterley Reservoir, the Pule Hill Area and Wessenden Valley. This will harm tourism and the local economy.
- The proposal would harm openness and the rural character of the area.

**Response:** Officers have expressed concerns over visual amenity, as these comments are noted.

## **11.0 CONCLUSION**

11.1 The site lies within an area allocated as Provisional Open Land within the UDP and Safeguarded Land within the emerging PDL. While the council is unable to demonstrate a five year housing land supply, as the site has been through appropriate assessment the titled balance and presumption in favour of sustainable development does not apply. The proposal seeks an inefficient development, therefore the benefits of additional housing, at a time of shortage are considered limited. Weighing these policies, the principle of development is not deemed acceptable.

11.2 In terms of other impacts, concerns are held over the design of the proposed development, which is anticipated to appear incongruous within the area. Concerns are also held over the proposed drainage scheme, which seeks to use a pumped solution for surface water. There is a presumption against such schemes, however unsatisfactory justification has been provided.

11.3 The proposal has been assessed against the Policies of the UDP, PDLP and NPPF. Officers conclude the proposal is not acceptable and should not be supported.

## **Background Papers**

### Application and history files

Available at;

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2018%2f92216>

### Certificate of Ownership

Certificate B signed. Notice served on Kirklees Council, A. Brook, K. Brook-Craven and E. Brook.