
Report of the Head of Strategic Investment**STRATEGIC PLANNING COMMITTEE****Date: 03-Jan-2019****Subject: Planning Application 2018/91661 Proposed residential development - outline application for up to 74 dwellings with means of access to, but not within, the site Land at Walkley Terrace and Brunswick Street, Heckmondwike****APPLICANT**Andrew Redmile, Ernest
Gordon Ltd**DATE VALID**

19-Jul-2018

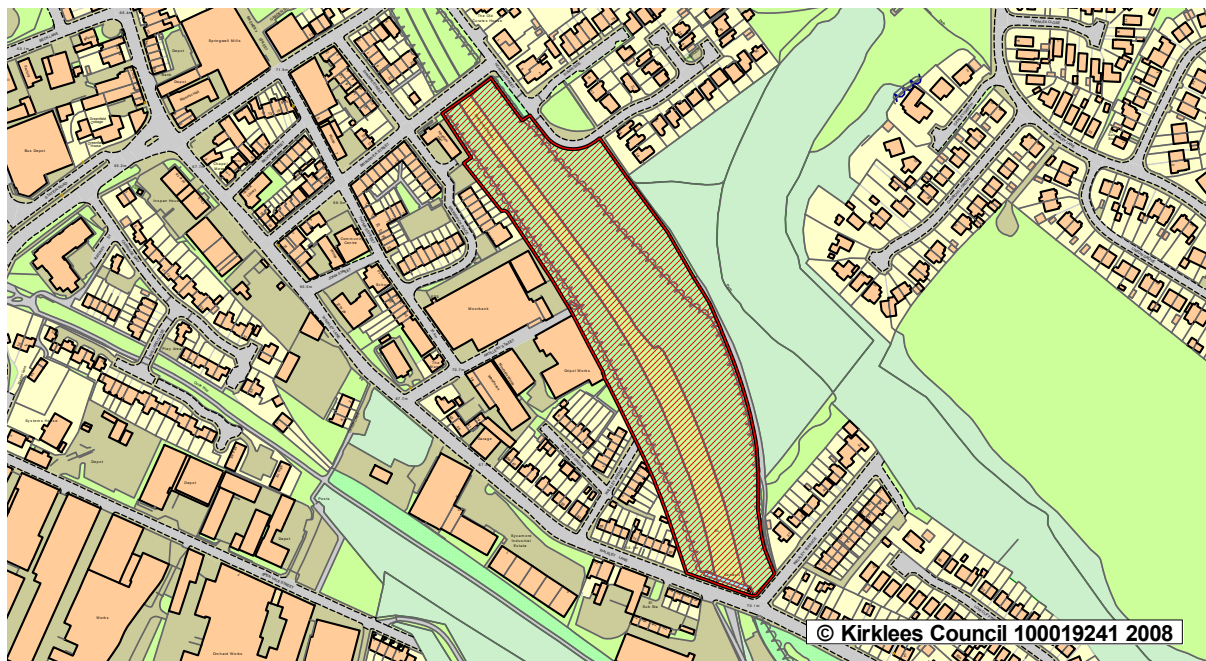
TARGET DATE

18-Oct-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: Heckmondwike

Yes

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.

1.0 INTRODUCTION:

- 1.1 This application is brought to the Strategic Planning Committee as the proposal includes residential development involving more than 60 dwellings.
- 1.2 A decision to defer determination of this application was made by the Strategic Planning Committee on the 22 November 2018. Members of the committee requested that the applicant hold a public meeting with residents and ward members to understand their concerns and attempt to resolve their objections. The Applicant was also requested to resolve/consider the following issues:
- Outstanding drainage matters
 - Recent aspirations of the West Yorkshire Combined Authority for the potential to create a rail link through the Spen Valley as part of a wider rail network scheme
 - Provision of a cycleway/bridleway link illustrated on an indicative layout

2.0 SITE AND SURROUNDINGS:

- 2.1 The application site comprises a redundant railway cutting which accommodated the former branch line which served Heckmondwike. The cutting has been closed for more than 50 years and has naturally regenerated with self-seeded trees and rough grassland. The site occupies an area of approximately 2.7 ha and is located approximately 335m south east of the centre of Heckmondwike. The area surrounding the site is mainly residential in character although there is evidence of commercial activity to the west and south west and an area of open land is located immediately to the east which extends a considerable distance towards Cawley Lane to the north east and towards several playing fields to the east off Byron Grove. Public Right of Way (PROW) HEC/22/30 runs in a north/south direction adjacent to the eastern boundary of the site.

3.0 PROPOSAL:

3.1 The applicant has submitted an outline planning application for residential development with all matters reserved except for the point of access. Whilst not seeking approval for layout as part of this application the applicant has provided indicative details which show:

- The potential to provide up to 74 dwellings
- How the site could be engineered via a cut and fill of onsite material to provide a satisfactory landform to allow development.

3.2 The site would be accessed via a new junction from Horton Street to the north of the site.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

93/02757 – Infilling of former railway cutting (withdrawn)

94/90001 - Land infilling of derelict railway cutting and plugging of Brunswick street bridge and church street bridge (withdrawn)

99/92140 - Reclamation of derelict railway cutting by partial infilling to form shared cycle/footpath and open greenspace (deemed withdrawn)

2000/92085 – Partial infilling of railway cutting (withdrawn)

2017/93488 - Outline permission for erection of 96 dwellings and planning permission for infill of land (Refused – Appeal pending)

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

5.1 During the assessment of this application the following has been secured:

- The exclusion of the spine road from the access proposals. This will now require further consideration as part of the layout at the reserved matters stage.
- Additional information regarding highway safety issues including a road safety audit, revised/additional plans and additional survey work.
- Additional information indicating how the cut and fill operation would be achieved and the methods used to retain the adjacent land
- Indicative details of how a cycle/pedestrian route could be achieved within the site

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 Kirklees Unitary Development Plan (UDP) Saved Policies 2007:

D2 - Unallocated land
D3- Urban Green Space
D6 – Development affecting a wildlife corridor
DL1 – Bringing derelict land back into beneficial use
DL3 – Specific derelict land sites
BE1 – Design principles
BE2 – Quality of design
BE12 – Space about buildings
BE23 – Crime prevention.
EP4 – Noise sensitive development
EP6 – Noise generating development
R13 – Development affecting public rights of way
T10 – Highway safety
T18 – proposed pedestrian/cycle route
T23 – Development of disused railways
T19 – Parking standards
H10 – Affordable housing
H18 – Provision of open space
NE9 – Retention of mature trees
G6 – Land contamination

6.3 National Planning Guidance:

NPPF Section 5 Delivering a sufficient supply of homes
NPPF Section 6. Building a strong, competitive economy
NPPF Section 9 Promoting sustainable transport
NPPF Section 12 Achieving well-designed places
NPPF Section 14 Meeting the challenge of climate change, flooding and coastal change
NPPF Section 15 Conserving and enhancing the natural environment.

6.4 Other Policies

SPD2 Affordable Housing
West Yorkshire Low Emissions Strategy

6.5 Kirklees Publication Draft Local Plan (KPDLP): Submitted for examination April 2017

The Local Plan identifies the site as potentially forming part of the core cycling/walking network.

PLP11 - Housing mix and affordable housing

PLP20 -Sustainable Travel
PLP21 - Highway safety and access
PLP22 – Parking
PLP 23 – Core Walking and Cycling Network
PLP24 - Design
PLP28 - Drainage
PLP30 - Biodiversity and geo diversity
PLP32- Landscape
PLP33 – Trees
PLP38 – Minerals Safeguarding
PLP 51 - Protection and improvement of local air quality
PLP52 - Protection and improvement of environmental quality
PLP53 – Contaminated and Unstable Land
PLP61-Urban Green Space

7.0 PUBLIC/LOCAL RESPONSE:

- 7.1 This application was publicised by the erection of 9 site notices in the vicinity of the site the mailing of 75 neighbourhood notification letters and an advertisement in the local press. 173 representations have been received in connection with this proposal and the individual representation are available to view on the Council's website. The issues raised can be summarised as follows:
- The proposed development would have an adverse impact on local wildlife
 - The development would have a detrimental impact on highway safety in the vicinity of the site as the local highway network cannot accommodate the additional vehicles associated with this proposal.
 - Heavy vehicles used in landfilling this site cannot be accommodated on the existing highway network
 - Local schools will not be able to meet the additional demand created by this proposal
 - The proposal would lead to nuisance associated with noise and dust
 - This is not the right location to tip rubbish
 - The previous mining legacy at this site, which includes known mineshafts, could be detrimentally affected by this development
 - The houses will be rented by people wanting to ensure their children can go the Heckmondwike Grammar school
 - The proposal could lead to flooding problems as the cutting currently acts to drain surface water from the area.
 - Drainage infrastructure in the area is already struggling to cope and this development would overload the existing system
 - The development would result in a lowering of property prices in the locality of the site

- The privacy of existing residential properties would be adversely affected
- The development will have a detrimental impact on the visual amenity of the area
- Land stability in the area could be affected by the proposed infilling works and no assessment of this has been provided.
- This proposal would reduce the possibility of creating a link to the wider cycle network
- Air quality would be adversely affected as a result of increased traffic
- Local amenities and services in the vicinity of the site are insufficient to cope with these additional residential properties
- The proposal would result in the loss of an important part of Heckmondwike's heritage
- Residents were not given adequate time to comment on this proposal
- This is a valuable green space in an urban setting and should not be developed
- The proposal would have an adverse effect on Part of an Urban Greenspace allocation in the UDP.
- The development would result in the loss of a route that could potentially be used for rail transport in the future
- The land is used regularly by many local dog walkers as a recreational facility
- The housing needs of Heckmondwike included in the Local Plan did not include this site. The site is not therefore required
- The development would have a detrimental impact on highway safety in the vicinity of the site as the local highway network cannot accommodate the additional vehicles associated with this proposal.
- Heavy vehicles used during the cut and fill operation at this site cannot be accommodated on the existing highway network
- The proposal could lead to flooding problems as the cutting currently acts to drain surface water from the area.
- This proposal does not include proposals to incorporate a cycle route within the development which would be contrary to both UDP and Local Plan Policies.
- This development does not safeguard a former railway line and it would therefore be contrary to UDP policy T23 and KPDLP policy PLP23.

- The site forms part of the Green Infrastructure Network in the Local Plan and its development for housing would not accord with KPDLP policy PLP31.
- The Committee report misrepresents K.C. Highways comments as it indicates no objection to the proposal when Highways comments on the Councils website indicate several concerns. Furthermore, additional Information on queue length analysis and in a road safety audit has not been reviewed and commented on by K.C. Highways and members are not therefore in a position to determine the application.
- Dealing with Flood risk and drainage issues following a committee resolution is unacceptable and potentially unlawful as the information provided to address this matter should be available for all to see prior to any recommendation being made.
- The committee report indicates that affordable housing, public open space and education contributions would be secured by way of condition and this could lead to a Section 73 application claiming such conditions do not meet the tests for conditions, i.e. that planning conditions cannot be used to secure financial contributions.

7.2 Ward members were consulted on the application. Cllr V Kendrick made the following comments on the proposal:

“As a ward councillor, I am very concerned about the impact on the small streets around this proposal that already experience serious congestion, which is likely to be exacerbated not only during the development but following the building of a substantial number of houses and the increased traffic that they will produce. I am also concerned about the impact on local residents, who reside in properties surrounding this site because of the increased noise, dust and pollution during the site preparation and development.”

Cllr D Sheard made the following comments which were included in the committee update for the Strategic Planning Committee meeting on 22 November 2018:

“I would like to register my objection to the application on the grounds that the construction of the access road cannot be completed without causing intolerable nuisance to local residents. If the committee is inclined to agree the application, I would ask for the decision to be deferred to consider the effect that WYCA proposals to reopen a rail link in the Spen Valley have been announced and as this is one of the disused railway lines it may be needed for either a rail or greenway link.”

8.0 CONSULTATION RESPONSES:

8.1 Statutory:

K.C. Highways – No objections subject to planning conditions requiring:

- The submission of details relating to retaining structures supporting the adjacent PROW (HEC/22/30)

- The submission of details relating to proposed retaining structures retaining existing highways
- Longitudinal and Cross sectional details of the former cutting and the proposed access road
- Details of all surface water attenuation culverts and tanks which area to be located within the adoptable highway
- Construction Management Plan

The Environment Agency – No objection

K.C. Flood Management – No objection in principle as a drainage solution can be achieved. LLFA has recommended that planning conditions need to be included with any subsequent planning permission requiring full details of the drainage arrangements to be submitted and approved prior to development on site.

The Coal Authority – No objection subject to the inclusion of a planning conditions which requires:

- Prior to any development on site, intrusive site investigations being carried out to establish the coal mining legacy on site;
- The submission of a report containing the results of intrusive investigations and any remedial measures necessary, including the submission of a layout plan which identifies the exact location of the mine entries and appropriate zones of influence of the mine entries on site, and the definition of suitable 'no-build' zones;
- As part of a subsequent reserved matters application the submission of a statement confirming that the proposed development and surrounding properties will not be affected from any forms of development within the western part of the site; and
- All remedial works are implemented prior to the commencement of development

The Health and Safety Executive – No objection

8.2 **Non-statutory:**

K.C. Ecology Unit – No objections subject to planning conditions which require:

- An ecological design strategy to support any subsequent reserved matters planning application.
- Prior to any development commencing the submission and approval of a construction environmental management plan.
- The submission and approval of a landscape and ecological management plan.

K.C. Environmental Health - No objection subject to planning conditions which require that:

- Before development commences a dust suppression scheme is approved
- Before development is brought into use the noise suppression measures indicated in the supporting noise assessment are implemented and written evidence that the specified noise levels have been achieved
- Before development commences a phase II intrusive contaminated land survey be carried out
- If required the approval of a site remediation strategy and any remediation to be carried out in accordance with the approved scheme
- The submission of a validation report should site remediation be required
- Measures to deal with contamination not previously identified
- Before development commences a scheme be approved detailing facilities for charging electric vehicles and other ultra-low emissions vehicles, minimum 16amp.

K.C. Education – Indicates that an education contribution of £182,859 is required in connection with this proposal.

K.C Strategic Housing – No objection subject to the provision of at least 14 affordable units. The applicant has indicated the provision of 18 affordable units and K.C. Strategic Housing indicate that 10 should be social rented and 8 intermediate dwellings.

K.C. Arboricultural Officer – No objection subject to a tree protection plan being provided with any subsequent reserved matters application.

K.C. Landscape – No objection subject to either:

- the provision of a minimum of 2220 m² of Public Open Space which includes an onsite equipped play area.
- a commuted sum of £196,950 to provide off site POS facilities

K.C. Public Rights of Way – Object as this proposal would not provide a dedicated motor traffic free route for cyclists and pedestrians and insufficient information has been provided with regard to the protection of the adjacent public right of way.

Yorkshire Water – No objection subject to the inclusion of planning conditions which require (Conditions to be agreed with LLFA):

- The provision of a 6m standoff area either side of the water main crossing the site
- The site being developed with a separate system of drainage for foul and surface water

- No piped discharge of surface water from the site until a satisfactory outfall has been provided

Sustrans/Railway Paths Ltd - Object, the proposed Cycleway/pedestrian link is unacceptable in its current form as it would link directly to the estate road rather than being a separate cycle/pedestrian route and the proposed drainage measures may cause flooding which may degrade land or structures which are owned by Railway Paths Ltd.

West Yorkshire Combined Authority – Comments to follow in the committee update

9.0 MAIN ISSUES

- Principle of development
- Urban design issues
- Residential amenity
- Highway issues
- Flood Risk/Drainage issues
- Environmental issues
- Representations
- Other matters
- Conclusion.

10.0 APPRAISAL

10.1 Principle of development

10.2 The majority of the site is unallocated in the Unitary Development Plan (UDP) although is identified as derelict land (DL 14.2), a wildlife corridor and a potential pedestrian/cycle route. However, a small part of the site in its north eastern section is allocated as Urban Green Space. Within the emerging local plan, the site was promoted as a potential housing allocation but was rejected by the Council due to concerns about the likelihood of the resolution of significant identified constraints in order that the site could be brought forward during the plan period. Consequently the majority of the site has not been allocated for any specific purpose within the local plan but has been identified as being part of the district's Core Walking and Cycling Network. Part of the aforementioned small section of Urban Green Space has been brought forward in the Local Plan but has been reduced in size by approximately 30%. Paragraph 2 of the NPPF stresses that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise.

10.3 The site is identified in the UDP as a derelict site (DL14.2) in the UDP which could be brought into beneficial use to assist in the regeneration of the district and proposes its future use as a footpath/cycleway. The land is therefore specifically identified in the UDP as a strategic route for pedestrians and cyclists. The potential use of the site for this purpose has been carried forward into the Local Plan.

10.4 The site is identified as a Green Corridor in the Local Plan and, in accordance with UDP policy D6, development of the site needs to either demonstrate that this corridor will be safeguarded or an alternative Green Corridor will be established and there will be no detriment to wildlife or restriction to public

access. It should be noted that no public access through the site bottom currently exists.

- 10.5 With regard to the small area of urban greenspace, UDP policy D3 and KPDLP policy PLP 61 indicates that development within such areas can be approved subject to the development providing alternative provision in both quantitative and qualitative terms to that which would be developed and this alternative provision would be reasonably accessible to existing users. This is mirrored in the KPDLP policy PLP61.
- 10.6 The NPPF is a material consideration in planning decisions. The current situation regarding housing land supply in Kirklees is a material consideration relevant to applications for residential development and weight can also be attached to the draft policies of the emerging Local Plan.
- 10.7 Therefore, the starting point in assessing this planning application is to ascertain whether or not the proposal accords with the relevant provision of the development plan, which in this case comprises the saved policies of the Kirklees UDP (1999). If a proposal does not accord with the development plan, regard should be had as to whether there are other material considerations, including the NPPF, which indicate that planning permission should be granted.
- 10.8 However, paragraph 11 of the NPPF makes it clear that where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted without delay unless i) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits (when assessed against NPPF policies taken as a whole), or ii) specific policies in the NPPF indicate development should be restricted.
- 10.9 Kirklees is not currently meeting the requirement to identify the supply of housing land as required in paragraph 67 of the NPPF. This is therefore important in the context of paragraph 11 of the NPPF in that relevant UDP policies relating to housing must now be considered to be out-of-date.
- 10.10 Whilst the council has prepared a Local Plan that, for housing purposes, is predicated on the basis of a five-year housing land supply, it is currently undergoing examination, and has not been adopted. Therefore, it remains the case that the council is unable to identify a five-year supply of specific deliverable housing sites.
- 10.11 Having said this the emerging Local Plan is a material consideration. It sets out a housing requirement of 31,140 homes between 2013 and 2031 to meet identified needs. This equates to 1,730 homes per annum. 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. An element of the five year supply is made up of windfall sites, which this application site would fall within that definition.
- 10.12 The majority of the site is without notation on the UDP proposals map and policy D2 is therefore relevant to the assessment of this proposal .UDP policy D2 indicates that applications for development will be granted provided that proposals do not prejudice:

- i the implementation of proposals in the plan;
- ii the avoidance of over-development;

- iii the conservation of energy;
- iv highway safety;
- v residential amenity;
- vi visual amenity;
- vii the character of the surroundings;
- viii wildlife interests; and
- ix the efficient operation of existing and planned infrastructure.

10.13 As previously indicated, with regard to policies in the emerging Local Plan, the majority of the site has not been allocated for any specific purpose. Bearing in mind the Local Plan is currently being examined, consideration must be given to the weight to be afforded to draft policies contained therein. Paragraph 48 of the NPPF sets out what weight can be given to 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 the NPPF (the closer the policies in the emerging plan to the policies in the NPPF, the greater the weight that may be given).

As the Plan is currently being examined in public and is at an advanced stage, it is considered that significant weight should be given to its policies.

10.14 Whilst the majority of the site has not been allocated for any specific purpose in both the UDP and in the emerging local plan, this does not preclude its development for housing and this site can be considered as a windfall opportunity to address the current shortfall in the district's housing provision.

10.15 Due to the scale of the development, affordable Housing, Public Open Space and Education provision, are relevant. However, as the application for is for outline planning permission with only the point of access applied for, the final number of dwellings is not being agreed at this time. As such, the level of provision of Affordable Housing, Education contributions and Public Open Space cannot be accurately calculated at this time. However, advice has been provided by relevant service areas with regard to the level of affordable housing, the provision of POS and the likely education contribution based on the provision of up to 74 dwellings.

10.16 The site falls within a mineral safeguarded area in the Local Plan which in this area seeks to ensure that viable surface coal resources are not sterilised by non-minerals development. KPDL policy PLP 38 states that:

1. Surface development will only be permitted within a Mineral Safeguarded Area where it has been demonstrated that:

- a. the mineral concerned is proven to be of no economic value as a result of the undertaking of a Mineral Resource Assessment; or
- b. the development will not inhibit mineral extraction if required in the future; or
- c. there is an overriding need for the development; or
- d. the mineral can be extracted prior to the development taking place

2. This policy will not apply to the following classes of surface development as they are unlikely to lead to the long term sterilisation of viable mineral resources:

- a. extension to existing buildings and the erection of ancillary buildings within their curtilages;
- b. developments on sites of less than 1000 sq. meters except for proposals within 250 metres of an existing planning permission for mineral extraction;
- c. minor development (such as walls, gates and access);
- d. temporary uses of sites for periods of less than 5 years;
- e. amendments to previously approved developments;
- f. applications for Listed Building Consent;
- g. reserved matters;
- h. applications for advertisement consent

However, due the previous mining activity in the area and the size of this site it is considered highly unlikely that there are any remaining viable reserves within this site. Furthermore it is considered that the district's need for housing constitutes an overriding need in this instance. The Coal Authority was consulted on this proposal and has not raised this as an issue.

10.17 Given the issues above it is therefore considered that this proposal is acceptable in principle because there is no significant conflict with relevant UDP, emerging Local Plan or national planning policy guidance.

10.18 Urban Design

10.19 This application does not seek full permission for the layout, scale and appearance of the development. Consequently should this application be approved, this would not include the design, numbers or layout of dwellings on the site. These issues would be the subject of a subsequent reserved matters application. However, the applicant has provided an indicative plan which demonstrates that the site could accommodate the scale of residential development indicated.

10.20 It is considered appropriate at this stage to provide general comments on this indicative design. The design submitted with this application indicates that in order to facilitate the proposed housing significant engineering operations would be required to create the necessary landform. This would result in substantial changes to the site's topography which would require careful consideration at the reserved matters stage. Furthermore, there are known constraints including former mine workings and water/drainage infrastructure which may influence the final design of the site layout. Consequently, whilst it is considered by officers that there are no absolute constraints to developing the site for residential purposes, it is likely that the design of the layout at the reserved matters stage will require significant amendments to address the aforementioned constraints. The final numbers of dwellings may therefore need to reduce in order to satisfactorily address these concerns.

10.21 The site is located on the periphery of an existing built up area and would effectively form an extension to housing areas to the west and north of the site. Whilst the applicant seeks outline planning permission with the layout to be dealt with as a reserved matter, an indicative plan has been included in the application which indicates a housing density of approximately 28 per ha. which

would principally involve terraced town house style properties with a small number of semi-detached dwellings. Bearing in mind the constraints associated with this site, it is considered this development density is appropriate and is compatible with existing properties in the surrounding area which includes concentrations of terraced properties as well as a mixture of semi-detached and detached dwellings.

- 10.22 Due to the topography of the site, the residential properties would be sited below the ground level of the surrounding area. This would become more marked towards the south due to the fall of the land. Consequently the impact of the development on existing surrounding residential properties would be reduced. The indicative layout provided shows that the normal minimum space about buildings detailed in policy B12 can be met both with regard to new dwellings on site and between the new dwellings and existing residential properties close to the site boundaries.
- 10.23 The indicative layout includes a significant element of undeveloped land, particularly at the northern end of the site and along the eastern boundary, which offers an opportunity to provide replacement urban green space (UGS) within the same development on land not allocated as UGS or for development. There is therefore the potential to provide a more visually attractive and improved natural/semi-natural greenspace on an area considerably larger than the UGS proposed to be lost and in a suitable location nearby. This could therefore result in a net gain in the quantity and quality of UGS of this specific type which replaces the loss of the small area of UGS at the north eastern edge of the site in accordance with UDP policy D3 and KPDLP policy PLP 61. The replacement of the UGS of the type proposed will need to be secured via a planning condition.
- 10.24 The applicant has indicated that an equipped play area could be accommodated at the southern end of the site. However, officers consider that this would be an inappropriate location and unlikely to provide a useful recreation facility. Bearing in mind the constraints associated with this site and that on site POS would need to equate to a minimum area of 2220m², it is considered that, should planning permission be granted, it would be more appropriate to seek a financial contribution to provide off site enhancement to existing facilities. Such a facility is located approximately 700m to the east off Cawley Lane and could benefit from upgrading. The Council's landscape team has indicated that, based on the provision of 74 houses, a contribution of £196,950 would be appropriate. However, this would be reduced should the final design of the site involve fewer residential dwellings. This is a matter to be confirmed at Reserved Matters stage.
- 10.25 A significant area of woodland measuring approximately 2.5 ha. is located to the north east of the site which would provide an attractive green backdrop to the development and would provide a degree of separation between this site and other existing concentrations of residential developments.
- 10.26 The issue of scale and design would be the subject of a subsequent reserved matters application but the surrounding area includes a mixture of buildings ranging from single storey to four stories. It is therefore considered that buildings of a similar design would be acceptable in principle. Consequently officers consider that this proposal accords with UDP policies BE1 and BE2, KPDLP policy PLP24 and Section 12 of the NPPF.

10.27 Residential Amenity

10.28 The nearest residential properties to the site are located to the west of the site off Brunswick Place, Walkley Drive, Walkley Avenue and Walkley Lane and to the east off Walkley Terrace, all of which include properties that immediately abut the application site. Other residential properties are close to the site off Sunnyside, Horton Street and Brunswick Street. Some of these properties would have direct views of the site but it is not considered that the residential use of this site would result in significant detrimental impacts associated with visual amenity or noise nuisance.

10.29 To facilitate the construction of the dwellings, a significant cut and fill operation would be required. The applicant has indicated that this would take in the region of a number of weeks. Noise would therefore be generated by heavy vehicles operating during the excavation and working of soils. As previously indicated the nearest residential properties are on the boundary of the site and there is therefore the potential for the amenity of neighbouring residents being detrimentally affected. However, these activities would be for a limited period only and equate to the type of noise generated at a typical development site.

10.30 The applicant has provided a noise assessment in support of this application which considered the noise implications associated with the residential use of the site. This has been reviewed and officers are in general agreement with its findings.

Subject to the inclusion of planning conditions requiring the implementation of dust suppression measures and the implementation of noise attenuation measures within the development it is considered that this proposal accords with UDP Policies EP4, EP6, KPDLP policies PLP51 and PLP52 and policy guidance contained in Section 15 of the NPPF.

10.31 Highway Issues

10.32 The proposed access to the development would be formed off Horton Street at the northern end of the site via a new purpose built junction. The applicant has provided a Transport Statement which has assessed the impact of the development with regard to the additional traffic generated by this proposal and its likely impact on the existing highway network. This assessment indicates that for 74 dwellings, it is predicted to generate 18 arrivals and 34 departures in the morning peak hour and 35 arrivals and 22 departures in the evening peak hour and that this level of additional traffic would not have a significant impact on the local highway network. Following consideration of this assessment Officers considered that in principle the use of Horton Street to access the site would be acceptable but additional information was requested in the form of a road safety audit, with regard to the proposed junction design and additional survey work to assess the queuing potential at the junctions of:

- Walkley Lane/Church Street
- Walkley Lane/Brunswick Street
- High Street/Church Street

10.33 Officers have assessed the road safety audit and the data provided in connection with the aforementioned junctions and have concluded that it is not anticipated that this development will increase queue lengths at these junctions significantly. Given that an independent road safety audit is provided for the junction with Horton Street and that the proposed development traffic generation is not anticipated to increase queuing significantly at the 3 junctions identified as potentially worst affected by the proposed development these proposals are now considered acceptable from a highways development management perspective and that this proposal accords with Kirklees UDP policy T10, KPDLP policy PLP 21 with regard to the potential impact on highway safety.

10.34 The site is identified in the UDP as a potential cycle/pedestrian route and as part of the district's core walking/cycling network which could potentially provide a further link from the Spen Greenway to the Spen Ringway. The applicant has indicated that this could be achieved by providing a shared surface segregated path and cycleway running adjacent to the estate road. Whilst it is considered that the details of the route including the provision of a segregated system which would separate vehicular traffic from cyclist and pedestrians could be secured via a subsequent reserved matters application which would be in accordance with UDP policy T18 and KPDLP policy PLP23, Sustrans and the Council's PROW team have objected to this proposal as detailed in section 8 of this report. This objection is considered to have been addressed earlier on in the paragraph.

10.35 Flood Risk/Drainage issues

10.36 The application site falls within an area allocated as Flood Zone 1 and the risk of a river flooding event is therefore assessed as having a less than a 1 in 1000 annual probability. However, due to the site's topography, flood maps held by the Environment Agency indicate that flooding resulting from overland surface water along the full length of the base of the cutting has a 1 in 30 chance.

10.37 The applicant has submitted a Flood Risk Assessment and Drainage Strategy which indicates that surface water and foul water drainage can be designed to ensure that the development of the site does not significantly add to local flood risk. Following comments from the Lead Local Flood Authority (LLFA) further clarification on drainage arrangements has been provided. Yorkshire Water does not object to proposed drainage arrangements and whilst the LLFA has indicated that further work is required to secure satisfactory drainage measures, the LLFA has indicated that it considers a drainage solution can be achieved.

10.38 Specifically the LLFA has indicated that alternative combined sewer arrangements would appear to be available which would provide a gravity fed connection to the site, which would be preferable. However, the LLFA has indicated that drainage details can be secured via appropriately worded planning conditions and it is therefore considered that this proposal would therefore accord with KPDLP policy PLP28 and Section 14 of the NPPF with regard to drainage and flood risk.

10.39 Environmental Issues

10.40 Biodiversity – The indicative layout shows that some of the more valuable Habitats on site are to be retained, or a capable of being retained, as part of the final scheme and the means of compensation for the loss of important

ecological features is discussed within the supporting Ecological Impact Assessment (EclA). This approach is in accordance with the mitigation hierarchy. The site is considered to be important for foraging bats, wild birds and hedgehog, which include priority species. However, means of mitigating impacts to these species are discussed in the EclA, which can be secured by planning condition.

10.41 As the application is in outline form only, the indicative layout is subject to change. Should this application be approved, the applicant will need to demonstrate how the detailed scheme will provide the necessary biodiversity net gain. However, Officers consider that due to the flexibility in the layout, it will be possible to provide this net gain, which can be secured through the imposition of appropriately worded planning conditions. Officers therefore consider that this proposal would accord with UDP policy D6, KPDLP policy PLP30 with respect to its potential impact on local ecology.

10.42 Landscape – This site is not prominent within the wider landscape due to the presence of existing buildings and mature vegetation. Consequently, at distance, the proposed development would be unlikely to have a significant effect on the area's landscape character. At closer distance the site is overlooked by a number of residential properties and by PROW HEC/22/30 which is immediately adjacent to the eastern boundary of the site. The cut and fill operation and subsequent development of the site would therefore be visible at close quarters. The experience of pedestrians using PROW HEC/22/30 would therefore be detrimentally affected during the construction phase albeit for a temporary period only. However, bearing in mind the surrounding built environment, officers consider that the subsequent residential development of the site would not have a significant detrimental impact on the local landscape.

10.43 Contamination/pollution – Due to the previous uses of this site it is likely that the site will be contaminated. The applicant has supported this application with a Stage 1 desk study ground condition report which indicates contamination sources on site could include:

- Possible made ground from the construction of the railway line on the site: - metals inorganics, total petroleum hydrocarbons (TPH), polyaromatic hydrocarbons (PAH), phenol, and asbestos.
- Possible ash and asbestos from use of trains. Including steam trains: - asbestos, metals, PAH, TPH. 6.15.3 Methane
- Methane and Carbon dioxide from possible shallow coal seams/workings (including two mine entries on site) and from filled land within 250m of the site.

This supporting report indicates that an intrusive survey should be carried out to identify such contamination sources and design subsequent mitigation measures. Officers consider that such a survey could be secured via planning conditions in accordance with advice provided by the Council's Pollution and Noise Control Team and the proposal would therefore accord with UDP policy G6, KPDLP policy PLP53 and Section 15 of the NPPF.

10.44 Land stability – Paragraph 178 of the NPPF indicates that planning decisions should ensure that land is suitable for its proposed use taking into account risks arising from land stability both in connection with natural hazards and former

activities such as mining. Records indicate that there are known mine entries and workings within the site and that the topography of the land is such that the significant engineering operations will be required to retain the land on the eastern side of the former railway cutting to facilitate the cut and fill operation.

- 10.45 With regard to the mining legacy associated with this site, the applicant has submitted a Stage 1 Desk Study Report which acknowledges the presence of workings and recommends that further intrusive works should be carried out prior any development taking place to establish the extent of such workings. This report has been reviewed by the Coal Authority which has indicated that subject to the further intrusive investigations being carried out and their findings used to support any subsequent reserved matters application, it does not wish to object to the proposal. Should this application be approved, it is therefore proposed to include a planning condition requiring that prior to development commencing on site intrusive investigations are carried out and details of any proposed mitigation measures are submitted to and agreed by the Council.
- 10.46 The applicant proposes to use Gabion walls to retain the eastern side of the former railway cutting and areas to the west where the land would be built up to create the required landform. This would require extensive site engineering to achieve this and whilst this method could provide a satisfactory mechanism to ensure land stability is maintained, full structural designs have not been provided and the final design of these works would not be agreed as part of this application should it be approved. It is therefore proposed to include a planning condition requiring the submission of a scheme which provides full details of how land stability would be affected and how the effects of the cut and fill operation would be mitigated.
- 10.47 It is therefore considered that this proposal would accord with KPDLP policy PLP53 and Section 15 of the NPPF with regard to the proposed development's potential impact on land stability.
- 10.48 Air Quality – This proposal would generate dust, particularly during the cut and fill phase which could have a detrimental impact on the area. Additional vehicle movements associated with this proposal would also impact on air quality in the vicinity of the site. KPDLP policy PLP51 and Section 15 of the NPPF require that a development's potential impact on Air Quality should be considered when assessing planning applications. With regard to the cut and fill operation, measures could be implemented to reduce dust generation and a dust suppression scheme could be included should planning permission be granted. This could include damping down areas over which vehicles operate, speed restrictions on site and ceasing operations during windy conditions etc.
- 10.49 The West Yorkshire Emissions Strategy provides a mechanism to include measures which can offset the damage to air quality associated with developments resulting from additional vehicular movements. In order to address this impact it is proposed to include a planning condition requiring that charging facilities are provided for electrical vehicles and ultra-low emissions vehicles to encourage the use of more sustainable methods of travel.
- 10.50 Representations:
- 10.51 Details of the issues raised in representations and associated responses have been summarised below:

- The proposed development would have an adverse impact on local wildlife
Response: This matter has been considered in the Section titled Environmental Issues.
- Local schools will not be able to meet the additional demand created by this proposal
Response: Should planning permission be granted, this would be subject to the provision of a financial contribution which would be used to provide additional capacity at existing schools.
- The proposal would lead to nuisance associated with noise and dust
Response: This matter has been considered in the Section titled Residential Amenity
- This is not the right location to tip rubbish
Response: This proposal does not involve the import of waste to facilitate development
- The previous mining legacy at this site, which includes known mineshafts, could be detrimentally affected by this development
Response: This matter has been considered in the section titled “Environmental Issues”
- The houses will be rented by people wanting to ensure their children can go the Heckmondwike Grammar school
Response: The council is not in a position to comment on this as it is not a material planning consideration
- The development would result in a lowering of property prices in the locality of the site
Response: The effects of granting planning permission on property prices is not a material planning consideration. Consequently this issue cannot form part of an assessment of a planning application
- The privacy of existing residential properties would be adversely affected
Response: It is acknowledged that this development would have an impact on nearby properties. However, the detail of the residential layout would be considered at reserved matters stage and where the siting and layout of the properties would be considered. Officers consider that the site offers adequate space to ensure that the final design complies with the council’s adopted policy regarding space about buildings.
- The development will have a detrimental impact on the visual amenity of the area
Response: This matter has been considered in the Sections titled residential Amenity and Environmental Issues.
- Land stability in the area could be affected by the proposed cut and fill works and the by the existing ground conditions which include historic mine workings and no assessment of this has been provided.
Response: The applicant has provided information indicating how the cut and fill operation would be facilitated and the method of retaining the land. However, further detailed information will be required prior to

development commencing on site and this will be secured by planning condition. It is the developer's responsibility to ensure that adequate measures are taken to mitigate the effects of such operations on any subsequent or existing development and that measures are put in place to mitigate any impact on the site's mining legacy. The Coal Authority has indicated it does not wish to object to the proposal subject to an intrusive survey being carried out prior to development and its results and any proposed mitigation being agreed.

- This proposal would reduce the possibility of creating a link to the wider cycle network

Response: The proposal does include the potential for a further extended link to the Spen Green Way and therefore offers an opportunity to extend the cycle and pedestrian network in accordance with the Council's objectives both within the Unitary Development Plan and the emerging Local Plan.

- Air quality would be adversely affected as a result of increased traffic
Response: This matter has been considered in the Sections titled Residential Amenity and Environmental Issues.

- Local amenities and services in the vicinity of the site are insufficient to cope with these additional residential properties
Response: it is considered that this site is situated within a sustainable location and the increase in residential properties associated with this proposal would not place significant strain on existing amenities.

- Residents were not given adequate time to comment on this proposal
Response: Details of how this application was publicised are indicated in the Section titled Public/local response.

- This is a valuable green space in an urban setting and should not be developed
Response: This matter has been considered in the Sections titled residential "Amenity and Environmental Issues"

- The proposal would have an adverse effect on Part of an Urban Greenspace allocation in the UDP.
Response: Whilst a small part of a wider urban greenspace allocation would be developed as part of this proposal, this could be offset by setting aside an area of land at the northern end of the site this would comply with UDP Policy D3 and KPDL policy PLP61.

- The development would result in the loss of a route that could potentially be used for rail transport in the future
Response: Due to development which has already been carried out on or in the immediate vicinity of the route of this former railway line, it is considered that it is unlikely that it would now be feasible to bring it back into use as a railway line.

- The land is used regularly by many local dog walkers as a recreational facility

Response: There is currently no public right of access to this site and its use as a recreational facility may therefore constitute trespass.

- The housing needs of Heckmondwike included in the Local Plan did not include this site. The site is not therefore required

Response: Whilst this site has not been allocated in the local plan for housing this does not mean it cannot be considered for such a use or that it can't contribute towards the housing needs of the area. The individual planning merits of the proposal must be considered when determining whether the site is appropriate.

- The development would have a detrimental impact on highway safety in the vicinity of the site as the local highway network cannot accommodate the additional vehicles associated with this proposal.

Response: This matter has been considered in the Sections titled "Highways Issues"

- Heavy vehicles used during the cut and fill operation at this site cannot be accommodated on the existing highway network

Response: The road network in the vicinity of the site is capable of allowing heavy vehicles to access the site. Such vehicles would be kept on site for the duration of cut and fill works which would minimise disruption

- The proposal could lead to flooding problems as the cutting currently acts to drain surface water from the area.

Response: This matter has been considered in the Sections titled "Flood Risk/Drainage Issues"

- Drainage infrastructure in the area is already struggling to cope and this development would overload the existing system

Response: This matter has been considered in the Sections titled "Flood Risk/Drainage Issues"

- This proposal does not include proposals to incorporate a cycle route within the development which would be contrary to both UDP and Local Plan Policies.

Response: Indicative proposals submitted by the applicant indicate that a segregated cycle/pedestrian route can be achieved as part of this proposal. It is considered that the details of such a route could be secured a reserved matters stage and the proposals therefore accord with relevant policies in the UDP and Local plan.

- This proposal does not safeguard a former railway line and it would therefore be contrary to UDP policy T23 and KPDLP policy PLP23.

Response: This matter has been considered in the Section titled "Other Matters"

- The site forms part of the Strategic Green Infrastructure Network in the Local Plan and its development for housing would not accord with KPDLP policy PLP31.

Response: This site does not fall within either the Wildlife Habitat Network or the Green Infrastructure Network in the Local plan

- The Committee report misrepresents K.C. Highways comments as it indicates no objection to the proposal when Highways comments on the Council's website indicate several concerns. Furthermore, additional information on queue length analysis and in a road safety audit has not been reviewed and commented on by K.C. Highways and members are not therefore in a position to determine the application.

Response: Following the receipt and consideration of additional information, including a road safety audit and queue length analysis, final comments were received from Highways on 14 November 2018 indicating the proposal is considered acceptable to Highways Development Management. These comments have now been uploaded to the Council's website.

- Dealing with Flood risk and drainage issues following a committee resolution is unacceptable and potentially unlawful as the information provided to address this matter should be available for all to see prior to any recommendation being made.

Response: Whilst the Lead local Flood Authority maintains its objections at this stage, it is considered by officers that a drainage solution can be achieved in this case. It is therefore considered that this matter can be satisfactorily dealt with following further investigations prior to the issue of a decision notice. As the detailed drainage scheme would be designed at Reserved Matters stage when Layout is a consideration the only matter to resolve is whether the site is drained by infiltration or through a piped scheme. This does not go to the heart of the matter or effect the principle of the decision whether to grant residential permission.

- The committee report indicates that affordable housing, public open space and education contributions would be secured by way of condition and this could lead to a Section 73 application claiming such conditions do not meet the tests for conditions, i.e. that planning conditions cannot be used to secure financial contributions.

Response: The proposed conditions would require that these matters are resolved prior to the site being developed. The method of securing such contributions would, in fact, be via a planning obligation (Section 106 agreement). This is a legitimate method of dealing with such matters. Furthermore until a detailed layout is applied for at Reserved Matters stage it is not possible to be precise about the amount of contributions required.

10.52 Other matters

- 10.53 Policy T23 of the adopted UDP indicates that development which would prevent the future re-use of disused railways for transport purposes will not normally be permitted. However, development already exists to the north and south on the former route of this section of disused railway. Consequently, as bringing it back into use would involve the demolition of a significant number of residential properties at Old Station Court and Thornleigh Drive, it is considered it is unlikely that this would be now seen as a viable option. In fact the Spenn Valley Green Way would seem to offer a better option as it currently has no significant development affecting its route all the way to Low Moor where a link to the existing network to Bradford could be achieved.

- 10.54 The West Yorkshire Combined Authority (WYCA) has recently published details of its aspirations to secure a wider rail network to address future public transport needs. This includes a potential rail link between Dewsbury, Heckmondwike and Cleckheaton. There are no firm proposals or a definitive route at this stage and it is therefore considered that such proposals cannot carry significant weight in the assessment of this development.
- 10.55 Since the application was presented at the Strategic Planning Committee on the 22 November the WYCA has been consulted with regard to this proposal. Formal comments from the WYCA are to follow.
- 10.56 In order to address the concerns raised by members at the Strategic Planning Committee meeting on 22 November 2018, the applicant organised a public meeting on the 14 December 2018 to which ward members were invited. Minutes of this meeting, which were produced by the applicant, are included in appendix 1 of this report. Members should note that these minutes have not been circulated to all attendees of the meeting and cannot be verified by officers as a true and accurate record.
- 10.57 It should be noted that since the organisation of that meeting 12 letters of complaint have been received by the Council specifically complaining about the arrangements. The issues raised can be summarised as follows:
- Only one week's notice was given of the date of the meeting
 - The date and time of the meeting was unacceptable as it was during working hours and too close to Christmas
 - Many people would have childcare problems as the start of the meeting coincided with school finishing time
 - The developer did not attend in person but sent a representative
- 10.58 An appeal has been lodged against planning application 2017/93488 affecting this site. The aforementioned planning application was for outline permission for erection of 96 dwellings and planning permission for infill of land. This application was refused on the 15 February 2018 for the following reasons:
- The proposed temporary access arrangements associated with the landfilling element of this proposal would have a significant detrimental impact on highway safety in the vicinity of the site in that the local highway network is not capable of safely accommodating the regular daily movement of the heavy goods vehicles needed to transport infill material to the site. This would be contrary to Unitary Development Plan policy T10 and Kirklees Publication Draft Local Plan policies PLP21, PLP44 and Section 7 of the National Planning Policy Framework.
 - The applicant has failed to demonstrate that the landfill of the site over a period of at least two years will not have a detrimental impact on the amenity of neighbouring uses as a result of noise and dust. This would be contrary to Unitary Development Plan policies EP4, EP6 and WD5 and Kirklees Publication Draft Local Plan policies PLP51 and PLP52 and Section 11 of the National Planning Policy Framework.

- The applicant has failed to demonstrate that this proposal will not have a detrimental impact on the ecology of the area and that local biodiversity will not be detrimentally affected. This would be contrary to Unitary Development Plan policies D6, WD5 and Kirklees Publication Draft Local Plan policy PLP30 and Section 11 of the National Planning Policy Framework.
- The applicant has failed to demonstrate that this proposal will not have a detrimental impact on air quality in the area. This would be contrary to Kirklees Publication Draft Local Plan policy PLP51 and Section 11 of the National Planning Policy Framework.
- The applicant has failed to demonstrate that the drainage measures proposed would not increase the risk of flooding in the local area. This would be contrary to Kirklees Publication Draft Local Plan policy PLP27 and Section 10 of the National Planning Policy Framework.

Whilst the appeal has been accepted by the Planning Inspectorate the Council has been informed that an Inspector has not yet been appointed and the process of responding to the appeal has not therefore formally commenced.

11.0 Conclusion

- 11.1 The majority of the site is unallocated in the Unitary Development Plan (UDP) although is identified as derelict land, a wildlife corridor and a potential pedestrian/cycle route. With regard to the Local Plan, the majority of the site has not been allocated for any specific purpose but has been identified as being part of the district's Core Walking and Cycling Network. However, this does not preclude the development of the site for housing and as there is no significant conflict with relevant UDP, emerging Local Plan or national planning policy guidance, this proposal is considered to be acceptable in principle.
- 11.2 This application is for outline planning permission with all matters reserved except for the point of access. Consequently, whilst issues relating to appearance, landscaping, layout and scale will require careful consideration at the reserved matters stage, it is considered that the principle of developing this site is acceptable and development can be carried out in such a way that these matters can be satisfactorily addressed.
- 11.3 The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice.
- 11.4 The proposed development has been assessed against relevant policies in the development plan and other material considerations. It is considered that the proposed development would constitute sustainable development (with reference to paragraph 11 of the NPPF) and is therefore recommended for approval.

12.0 Conditions and reasons

1-4 Standard timeframe for the submission of reserved matters conditions requiring:

- Details of layout, scale appearance and landscaping
- Particulars of reserved matters to be submitted to LPA and approved in writing
- Reserved matters application to be submitted within 3 Years of date of approval
- The development to be begun within 2 years of the approval of reserved matters

5. The provision of affordable housing, Public Open Space and Education contribution.

6. Highways conditions requiring:

- The submission of details relating to retaining structures supporting the adjacent PROW (HEC/22/30)
- The submission of details relating to proposed retaining structures retaining existing highways
- Longitudinal and Cross sectional details of the former cutting and the proposed access road
- Details of all surface water attenuation culverts and tanks which area to be located within the adoptable highway
- Details of how user of the adjacent PROW will be protected during the development
- Construction Management Plan to minimise disturbance and disruption for local residents during the construction phase

7. A suite of conditions to deal with:

- Dust suppression
- potential contamination,
- installation of electric vehicle charging points

8. Drainage conditions to deal with:

- Detailed drainage arrangements
- Discharge rates
- Flood Routeing

9. The submission and approval of a detailed geotechnical assessment

10. The submission and approval of a coal mining report which includes the findings of an intrusive survey and any mitigation measures to deal with mine workings

11. A suite of conditions to secure biodiversity enhancements in the form of:

- An ecological design strategy
- Construction environmental plan
- Landscape and ecological management plan

12. Submission of a tree protection plan

13. A scheme indicating how both the adjacent PROW and its users will be protected.

14. A condition requiring that the use of approx. 0.5 ha. of land at the northern end of the site is set aside as land not to be developed and that details of its treatment are submitted to and approved by the LPA.

15. Provision of electric charging points, minimum 16amp for each dwelling

16. Maximum number of dwellings at Reserved Matters to not exceed Transport Assessment without prior approval.

Background Papers:

Application and history files.

Website link:

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2018%2f91661>

Certificate of Ownership – Completed and dated 21.05.2018