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**Report of the Head of Strategic Investment****STRATEGIC PLANNING COMMITTEE****Date: 03-Jan-2019****Subject: Planning Application 2018/92456 Erection of 29 dwellings Land off White Lee Road, Batley****APPLICANT**Jones Homes (Yorkshire)  
Ltd and M62**DATE VALID**

07-Aug-2018

**TARGET DATE**

06-Nov-2018

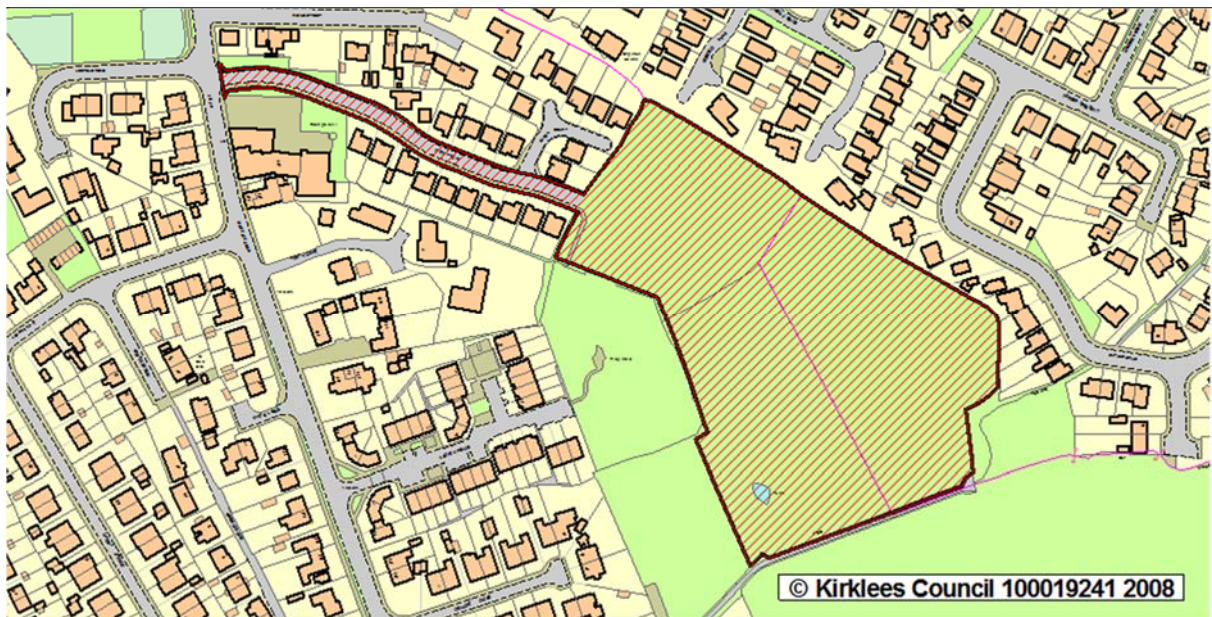
**EXTENSION EXPIRY DATE**

13-Nov-2018

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

<http://www.kirklees.gov.uk/beta/planning-applications/pdf/public-speaking-committee.pdf>

**LOCATION PLAN**

**Map not to scale – for identification purposes only**

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**Electoral Wards Affected:** Heckmondwike and Batley West

Yes

Ward Members consulted

**RECOMMENDATION:** Refuse outline planning permission

**For the following reasons:**

**1) The proposed development would result in a significant loss of Urban Green Space. This would be contrary to Kirklees Unitary Development Plan policy D3 and Kirklees Publication Draft Local Plan policy PLP61.**

**2) The proposed development, due to its shortfall in affordable housing provision, would not sufficiently meet known housing need. This would be contrary to Kirklees Unitary Development Plan policy H10, Kirklees Publication Draft Local Plan policy PLP11, the Kirklees Interim Affordable Housing Policy and chapter 5 of the National Planning Policy Framework.**

## **1.0 INTRODUCTION:**

- 1.1 This is an application for full planning permission, for a residential development of 29 dwellings.
- 1.2 The application is presented to the Strategic Planning Committee as the proposed development represents a departure from the development plan.

## **2.0 SITE AND SURROUNDINGS:**

- 2.1 The application site is 2.64 hectares in size and is located to the east of White Lee Road, Batley. The application site is surrounded by residential development, including the recent White Lee Gardens development (Sunny View and Sunny Court), Oakwell Avenue and Enfield Drive. An area of public open space and playspace, accessed from Asquith Fields, abuts the application site to the west. The south edge of the application site is abutted by a public footpath (BAT/23/20).
- 2.2 The application site's red line boundary includes the main carriageway and footway of the adjacent White Lee Gardens development.
- 2.3 The application site generally slopes downhill from west to east. Existing neighbouring dwellings to the northeast (on Shibden Drive, Oakwell Avenue and Enfield Drive) are on land lower than the application site. The site is visible from a large number of private properties, and from publicly-accessible vantagepoints.
- 2.4 The majority of the application site is designated as Urban Green Space (UGS) in the Kirklees Unitary Development Plan (UDP) and the emerging Local Plan. This designation covers a larger area beyond the application site, extending as far east as Batley Cemetery. The majority of the application site is previously

undeveloped (greenfield) land. A small part of the site is within the H11.10 housing allocation in the UDP, and the H612 housing allocation in the emerging Local Plan.

2.5 Trees exist within the site's boundaries, however none are protected by Tree Preservation Orders.

2.6 The site is not within or close to a conservation area, and there are no listed buildings immediately adjacent to the site.

### **3.0 PROPOSAL:**

3.1 The applicant seeks full planning permission for the erection of 29 dwellings.

3.2 The proposed layout is based around a new estate road that would extend the main carriageway and footway of the adjacent White Lee Gardens development. The new estate road would approximately follow a foul sewer easement, would have driveways branching off it, and would terminate with a hammerhead turning area close to the centre of the site.

3.3 A large (1.21 hectare) area of Public Open Space (POS) is proposed at the southeast part of the application site. This would include an informal kickabout area, treeplanting, hedgerows, an informal community orchard, paths and seating. A planted gravel garden is also proposed at the north corner of the site, above a buried attenuation tank.

3.4 Vehicular access to the site would be provided only via the adjacent White Lee Gardens development. Pedestrian connections are also proposed to the adjacent footpath to the south.

3.5 23 of the proposed dwellings would be detached, four would form a short terrace, and two would be semi-detached. Six three-bedroom dwellings, 21 four-bedroom dwellings, and two five-bedroom dwellings are proposed. Five affordable dwellings (four terraced, one semi-detached – units 05, 06, 07, 08 and 15) are proposed, in the form of starter homes. This represents a 17% provision.

3.6 Seven house types are proposed. All dwellings would have two storeys and pitched roofs. Artificial stone and render is proposed for the elevations of the dwellings, and concrete roof tiles (in a slate grey colour) are proposed. Detached garages are proposed for some dwellings.

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

4.1 23/06/2016 – Planning permission refused for the erection of 66 dwellings (ref: 2015/92944). The reasons for refusal were:

1. The site is allocated as UGS on the Kirklees Council Unitary Development Plan (UDP) proposals map. The proposed development is contrary to Policy D3 of the UDP which relates to development on such sites. The site is considered to have value as open space and as such is not deemed surplus to requirements the development is therefore contrary to paragraph 74 of the National Planning Policy Framework. The loss of the value of the UGS is considered to outweigh all other material considerations, including the delivery of new housing.

2. The proposal fails to provide adequate public open space within the layout, contrary to policies BE23 and H18 of the Kirklees Council Unitary Development Plan.

3. The siting of plots 42 and 56 are unacceptable being contrary to Policy BE12 of the Kirklees Council Unitary Development Plan and consequently would result in an adverse impact upon the residential amenity of occupiers of the neighbouring dwellings.

4. The application has failed to demonstrate an adequate affordable housing provision to serve the development. As such to approve the application would be contrary to policy H10 of the Kirklees Council Unitary Development Plan and Supplementary Planning Document 2 (affordable housing).

4.2 26/07/2017 – Appeal against the above refusal dismissed (ref: APP/Z4718/W/16/3162164).

4.3 Planning permissions for the adjacent site (White Lee Gardens) were granted on 01/07/2013 (ref: 2010/92938) and 25/02/2015 (ref: 2014/93425).

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

5.1 Pre-application advice was provided on 29/01/2018 (ref: 2017/20449), albeit not to the current applicant. In that advice, the council stated that development of any part of the site would be contrary to UDP policy D3 and Local Plan policy PLP61, and harmful to the larger area of UGS in terms of its appearance and strategic function, and that any residential development at the site would not be supported.

5.2 Meetings were held between officers and the current applicant team on 20/09/2018, 25/10/2018 and 08/11/2018.

5.3 On 08/11/2018 the applicant clarified the affordable housing provision.

## **6.0 PLANNING POLICY:**

6.1 The statutory development plan comprises the Kirklees Unitary Development Plan (saved Policies 2007).

6.2 The statutory development plan is the starting point in the consideration of planning applications for the development or use of land unless material considerations indicate otherwise (Section 38(6) Planning and Compulsory Purchase Act 2004).

6.3 The Council is currently in the process of reviewing its development plan through the production of a Local Plan. The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25/04/2017, 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 paragraph 48 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 (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.

- 6.4 Between 20/08/2018 and 01/10/2018 the council carried out public consultation on Main and Additional Modifications to the Local Plan.

Kirklees Unitary Development Plan (UDP) Saved Policies 2007:

- 6.5 The majority of the application site is designated as UGS on the UDP Proposals Map. A small part of the site is within the H11.10 housing allocation.

- 6.6 Relevant policies are:

G4 – High standard of design  
G5 – Equality of opportunity  
G6 – Land contamination  
D3 – Urban green space  
NE9 – Tree retention  
BE1 – Design principles  
BE2 – Quality of design  
BE11 – Building materials  
BE12 – Space about buildings  
BE21 – Open space accessibility  
BE22 – Accessible parking  
BE23 – Crime prevention  
NE9 – Retention of mature trees  
EP4 – Noise sensitive development  
EP10 – Energy efficiency  
EP11 – Landscaping and ecology  
EP30 – Prolonged construction work  
T1 – Transport priorities  
T10 – Highway safety  
T14 – Pedestrian safety  
T16 – Pedestrian routes  
T17 – Cycling  
T19 – Parking standards  
H1 – Housing needs  
H6 – Housing allocations  
H10 – Affordable housing  
H11 – Affordable housing – exceptional circumstances  
H12 – Securing affordable housing  
H18 – Public open space  
R6 – Public open space  
R13 – Rights of way

Kirklees Draft Local Plan Strategies and Policies (2017):

- 6.7 In the Kirklees Publication Draft Local Plan the site is designated as UGS. A small part of the site is within the H612 housing allocation.

- 6.8 Relevant policies are:

PLP1 – Presumption in favour of sustainable development  
PLP2 – Place shaping  
PLP3 – Location of new development  
PLP7 – Efficient and effective use of land and buildings  
PLP11 – Housing mix and affordable housing  
PLP20 – Sustainable travel  
PLP21 – Highway safety and access  
PLP22 – Parking  
PLP23 – Core walking and cycling network  
PLP24 – Design  
PLP27 – Flood risk  
PLP28 – Drainage  
PLP30 – Biodiversity and geodiversity  
PLP32 – Landscape  
PLP33 – Trees  
PLP34 – Conserving and enhancing the water environment  
PLP35 – Historic environment  
PLP47 – Healthy, active and safe lifestyles  
PLP50 – Sport and physical activity  
PLP51 – Protection and improvement of local air quality  
PLP52 – Protection and improvement of environmental quality  
PLP61 – Urban green space  
PLP63 – New open space

Supplementary Planning Guidance / Documents:

6.9 Relevant guidance and documents are:

- Providing for Educational Needs Generated by New Housing
- Kirklees Interim Affordable Housing Policy
- Supplementary Planning Document 2 – Affordable Housing
- West Yorkshire Low Emissions Strategy and Air Quality and Emissions Technical Planning Guidance
- Kirklees Landscape Character Assessment
- Kirklees Housing Topics Paper
- Kirklees Council Housing Allocations
- Accessibility Assessment

National Planning Policy and Guidance:

6.10 The National Planning Policy Framework (2018) seeks to secure positive growth in a way that effectively balances economic, environmental and social progress for this and future generations. The NPPF is a material consideration and has been taken into account as part of the assessment of the proposal. Relevant paragraphs/chapters are:

- Chapter 2 – Achieving sustainable development
- Chapter 4 – Decision-making
- Chapter 5 – Delivering a sufficient supply of homes
- Chapter 8 – Promoting healthy and safe communities
- Chapter 9 – Promoting sustainable transport
- Chapter 11 – Making effective use of land
- Chapter 12 – Achieving well-designed places

- 6.11 Since March 2014 Planning Practice Guidance for England has been published online.

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

- 7.1 The application has been advertised as a departure from the development plan, and as a development affecting a public right of way.

- 7.2 The application has been advertised via five site notices posted on 23/08/2018, an advertisement in the local press dated 24/08/2018, and letters delivered to addresses adjacent to the application site. This is in line with the council's adopted Statement of Community Involvement. The end date for publicity was 14/09/2018.

- 7.3 14 representations were received from occupants of neighbouring properties. The following is a summary of the points raised:

- Objection to loss of UGS. Development would harm the open, rural and undeveloped character of these fields.
- Site was rejected for housing during the Local Plan preparation process.
- Brownfield sites should be prioritised for development.
- Proposed POS does not outweigh harm caused by development.
- Concern regarding management responsibilities for the proposed POS.
- Objection to loss of land of potential use for growing food.
- Area has already seen much development in recent years, resulting in infrastructure impacts. Schools and surgeries are oversubscribed.
- Proposed dwellings differ in design to existing properties, and would not be in keeping.
- Development would be crammed into site.
- Loss of privacy.
- Loss of natural light. Development would interfere with nearby solar panels.
- Noise and dirt during construction.
- Highways safety impacts affecting White Lee Gardens. Risk to playing children. Traffic calming measures at White Lee Road / Sunny View junction have not been implemented. 30mph speed limit on White Lee Road is seldom adhered to. Applicant's speed surveys are inadequate. Applicant's trip generation data is dated.
- Vehicular access from Oakwell Avenue and Enfield Drive should be considered.
- Insufficient space for parking.
- Insufficient space for vehicles to park.
- Increased risk of flooding.
- Sewers cannot cope with additional foul water.
- Adverse impacts upon bats, birds, rabbits, squirrels and hedgehogs.
- Impact upon values of existing properties.
- Impact on stability of adjacent dwellings.
- Proposed development would breach Human Rights Act.
- With an additional 29 dwellings, area would become a larger target for crime. Crime prevention measures should be implemented at existing properties. Outdoor seating area would attract youths and anti-social behaviour.

- Work has already commenced on the development.

7.4 Cllr Hall, Cllr Kendrick, Cllr Lowe, Cllr Pandor and Cllr Sheard objected to the proposed development, due to the loss of UGS. Cllr Pandor added that the proposed development constituted overdevelopment on one of the last green spaces remaining in Batley and Spen.

7.5 Responses to these comments are set out later in this report.

## 8.0 CONSULTATION RESPONSES:

### 8.1 Statutory:

Coal Authority – Site is within the defined Development High Risk Area. Site has been subject to past mining activity, and likely to have been subject to unrecorded underground coal mining at shall depth. Applicant's report notes that coal mine workings pose a significant risk to the development of the site, and recommends measures to remediate these mining hazards. Proposed grid drilling and grouting is welcomed, however applicant should also consider prior extraction of any remnant shallow coal as part of any mitigation strategy, in accordance with the NPPF. Advice provided in support of prior extraction of remnant shallow coal. Consideration should be given to potential mine gas risk. Coal Authority concurs with recommendations of applicant's phase II report that remedial works should be undertaken to ensure the safety and stability of the proposed development. No objection to proposed development subject to condition securing details of remedial works and their implementation.

KC Highways – Development at adjacent site (White Lee Gardens) included provision for traffic calming measures in the vicinity of the new junction with White Lee Road. Proposed development would increase dwellings served by the single vehicular access point to 53. Highways Development Management officers considered the previous 66-unit proposal (ref: 2015/92944) acceptable, and it was considered that the proposed access and surrounding network was capable of accommodating the additional dwellings without any adverse impact on highway safety. Development currently proposed includes a layout which raises the following concerns:

- Integral garages to Bentley and Banbury house types do not measure 3m x 6m internally, and therefore cannot be counted towards parking provision.
- Only seven parking spaces are proposed to units 05 to 08. Eight spaces are needed for these three-bedroom units.
- All private driveways measure only 3.5m wide at the entrance from the adoptable highway. These need to be 4.5m wide to enable two vehicles to pass.
- The shared surface carriageway would be only 4.8m in width, but should be 5.5m due to the bend in the road.
- Swept path diagrams are required to demonstrate that an 11.85m refuse vehicle can enter, exit and turn within the proposed development.
- The width of the access to any shared private driveway should be 6m where they provide access to individual drives. Access to plots 03, 04, 10, 11, 16, 19 and 22 therefore need to be amended.



- Access to units 14 and 15 would be difficult and splays are needed to improve the turning and manoeuvre into these plots.

KC Lead Local Flood Authority – Microdrainage results show significant flooding for the 1 in 100 +40% event, and justification is required. Only a 30% climate change figure currently required. No objection to 5l/s to public surface water sewer and 3l/s to public combined sewer as previously agreed between LLFA and Yorkshire Water. Pumped solution for surface water would not be acceptable given that gravity options are available. Temporary drainage strategy will be needed to mitigate pollution and flood risk during the construction phase (this can be conditioned). Section 106 undertaking needed, to establish a management company to maintain and manage surface water drainage until formal adoption by the statutory undertaker.

## 8.2 **Non-statutory:**

KC Biodiversity Officer – Applicant's ecological information is sufficient to support the application. Clearance of vegetation could impact upon nesting birds – condition recommended to avoid this. Implementation of applicant's ecological measures (bat and bird boxes, green linear route, grassland, sensitive lighting and ecological enhancement of peripheral boundary habitats) can ensure a biodiversity net gain can be achieved – condition recommended, although submission during the life of the current application would obviate the need for a pre-commencement condition. Condition recommended requiring a landscape and ecological management plan.

KC Education – No education contribution required.

KC Environmental Health – Applicant's phase I and II reports are sufficient to characterise the site and its historic uses, and to identify potential sources of contamination. Further information required regarding elevated levels of arsenic found in samples. No interpretation of gas monitoring results has been provided, and four rounds of gas monitoring is insufficient to characterise the gas regime at this site. Conditions recommended requiring phase II report, and regarding remediation and validation. Condition recommended requiring provision of electric vehicle charging points. Advice provided regarding construction hours and noise.

KC Landscape Architect Manager – Site is safeguarded UGS. Refusal of permission recommended. Inappropriate development as set out in policy PLP61 (modification SD1-MM128). Open space is still required as there are deficiencies in the area and the UGS makes an important visual amenity contribution. Notwithstanding these concerns, little detail has been provided regarding hard and soft landscaping, proposed gravel garden is not ideally situated, Green Streets tree planting principles have not been adopted, gable end should not face the POS, site area triggers POS requirement and proposed dwelling numbers trigger Local Area of Play provision. Further advice provided regarding landscaping, trees and street lighting, and bin storage and collection.

KC Planning Policy – Saved UDP policies D3, BE2, H10, H11, H18, T10, T16 apply, SPD2 (affordable housing) and the Interim Affordable Housing Policy, Local Plan policies PLP7, PLP11, PLP20, PLP21, PLP22, PLP24, PLP28, PLP32, PLP34, PLP47, PLP50, PLP51, PLP61, PLP63, and NPPF paragraphs 11, 73 and 96 apply. Site allocated as UGS in the UDP.

Proposed development does not accord with saved UDP policy D3 and as such represents a departure from the development plan. Planning permission should only be granted if the lack of conformity with the development plan is outweighed by other material considerations. Publication Draft Local Plan shows application site as part of a larger UGS allocation (UGS973), protected from development under policy PLP61 unless specific exceptions can be met. Designation as UGS is based on and justified by Local Plan evidence, and Local Plan Inspector has not propose any changes to the allocation of UGS973 as UGS. Commentary provided in relation to NPPF paragraph 96 and 97, and the appeal decision of 26/07/2017. The council is currently unable to demonstrate a five-year supply of deliverable housing sites, and NPPF paragraph 11d applies. At adoption, the Local Plan will set out a five-year supply of deliverable housing sites, and NPPF paragraph 11c would be engaged. UDP policy H10 and SPD2 (affordable housing) are relevant, however the council is currently attaching greater weight to the Kirklees Interim Affordable Housing Policy (2016). UDP policy H18 requires a minimum of 30sqm of open space per dwelling on sites of more than 0.4 hectares in size, and the proposed POS is in excess of this. Other policies relating to design and highways are relevant.

KC Strategic Housing – Batley and Spen has the highest level of need for affordable housing in Kirklees. 3-bedroom houses in particular are needed, as well as 1- and 2-bedroom homes and 1- and 2-bedroom homes for older people. Owner-occupier rates in the area are over 65%, private renting exceeds 15% and affordable housing exceeds 15%. House prices in Batley and Spen are in the lower range for Kirklees. It is a popular area – 18% of Kirklees households planning to move in the next five years cited it as their first choice destination. Kirklees's interim affordable housing policy seeks 20% affordable housing provision on sites where 11 units or more are proposed. On-site provision is preferred, however a financial contribution in lieu of on-site provision can be acceptable where appropriate. Affordable housing allocation for this development would be six units – these can be 1-, 2- or 3-bedroom homes, three should be social/affordable rent, and three should be starter homes (which are recognised as a form of affordable housing). A split of 54% social/affordable rent / 46% intermediate is appropriate within affordable housing provisions.

West Yorkshire Police Crime Prevention Design Advisor – No objections. Development should be built to “secured by design” standards. Detailed advice provided regarding doors, windows, locks, fencing, car parking, garages, lighting and alarms.

Yorkshire Water – Condition recommended requiring implementation in accordance with drawing 10479.500.001 rev G. With regard to waste water, no objection in principle to proposed separate systems of drainage on site and off site, to anticipated amount of domestic foul water to be discharged to the public combined sewer, to the proposed amount of curtilage surface water to be discharged to the public surface water sewer in Oakwell Avenue at a restricted rate of 5l/s and to the site's public combined sewer at a restricted rate of 5l/s, and to the proposed points of discharge of foul and surface water to the sewers. Advice provided regarding sewer adoption and diversion.

## 9.0 MAIN ISSUES

- Land use and principle of development
- Urban design issues
- Residential amenity and quality
- Affordable housing
- Highway issues
- Flood risk and drainage issues
- Trees, landscaping and ecological considerations
- Representations
- Planning obligations
- Other matters

## 10.0 APPRAISAL

### Land use and principle of development

- 10.1 Planning law requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise.
- 10.2 The NPPF is a material consideration in planning decisions. The current situation regarding housing land supply in Kirklees (discussed below) is a material consideration relevant to applications for residential development. Weight can also be attached to the draft policies of the emerging Local Plan.
- 10.3 The starting point in assessing this planning application is an assessment of whether or not the proposal accords with the relevant provisions 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 to whether there are other material considerations, including the NPPF, which indicate that planning permission should be granted.
- 10.4 The site forms part of a wider UGS designation, and UDP policy D3 is central to the consideration of the proposed development. This policy states that, on sites designated as UGS, planning permission will not be granted unless the development proposed:
- i) Is necessary for the continuation or enhancement of established uses or involves change of use to alternative open land uses, or would result in a specific community benefit, and, in all cases, will protect visual amenity, wildlife value and opportunities for sport and recreation; or
  - ii) Includes alternative provision of UGS equivalent in both quantitative and qualitative terms to that which would be developed and reasonably accessible to existing users.
- 10.5 With regard to part i) of policy D3, the development of 1.18 hectares of UGS is not considered necessary for the continuation or enhancement of established uses, and an alternative open land use is not proposed for those 1.18 hectares. Although the proposed development includes some community benefit in the form of the proposed 1.21 hectares of POS, the value of this (and, therefore, the weight to be attached to this provision) is limited by the fact that POS already exists directly to the west of the site, and by the loss of amenities of

the 1.18 hectares that would be developed. Part i) also requires visual amenity to be protected, however the visual amenity provided by 1.18 hectares of the application site would be lost. The requirement of part i) relating to wildlife value could be met (albeit not in all the locations where there currently is wildlife value – re-provision elsewhere in the site would be necessary), as could the requirement relating to sport and recreation, however this compliance does not outweigh the proposed development's non-compliance with other requirements of policy D3. As an equivalent UGS provision is not proposed by the applicant, part ii) of policy D3 is not met.

10.6 Emerging Local Plan policy PLP61 (as proposed to be modified) states that development proposals which would result in the loss of UGS will only be permitted where:

- a) An assessment shows the open space is clearly no longer required to meet local needs for open space, sport or recreational facilities and does not make an important contribution in terms of visual amenity, landscape or biodiversity value; or
- b) Replacement open space, sport or recreation facilities which are equivalent or better in size and quality are provided elsewhere within an easily accessible location for existing and potential new users; or
- c) The proposal is for an alternative open space, sport or recreation use that is needed to help address identified deficiencies and clearly outweighs the loss of the existing green space.

10.7 The applicant has submitted an Urban Greenspace Review which, at paragraph 33, states that there is more than sufficient land within the Heckmondwike and Batley West wards which fulfils the role of UGS to offset the proposed development.

10.8 Officers have, however, noted that deficiencies in the provision of natural and semi-natural green space in the area is not the determining factor in designating allocation UGS973 as urban green space. Rather, it is the overall qualities, characteristics and function of the site as valuable open space (as evidenced by the council's quality assessment) which justify designation of this site as UGS *supported by* deficiencies in the quantity of natural and semi-natural green space (NSNG) within the urban (built-up) area and public health inequalities within these wards. UGS973 forms part of a larger NSNG that was assessed as having high value as open space based on its:

- High structural and landscape benefits – the site performs a strategic function as a large green lung within a densely developed area. It helps separate built-up areas and its extensive open quality and dominance in the landscape being a prominent hillside location helps define the identity and character of the area;
- High amenity and sense of place benefits – the site is visually attractive and contributes significantly to the appearance and semi-rural character of the area and in doing so provides local communities with a sense of place and identity; and
- Level of use – the site is, or was, in agricultural grazing use and recreational use along a number of PROWs that cross the site.

10.9 Of note, public hearings for the emerging Local Plan have been held, and the Inspector's post-hearings letter (dated 15/06/2018) has confirmed that the Local Plan is likely to be capable of being found legally compliant and sound

subject to main modifications. The Inspector had not asked the council to make a modification in relation to the designation of the application site as UGS, despite the objection of the site promoter.

- 10.10 Reference should also be made to the appeal decision of 26/07/2017, in which the Inspector noted that the site reads as part of, and significantly contributes towards the strategic function of, the wider UGS. He also noted that public footpath BAT/23/20 was an important route which transports its users into a semi-rural environment, bounded by attractive natural and semi-natural open greenspace along both sides, while offering some stunning views across the wider landscape for those travelling in an easterly direction. He added that the footpath provides visual relief and a sense of openness and rurality in fairly dense urban surroundings, and that the site itself has a pleasant, semi-rural character, that it positively contributes to and enhances the enjoyment of the use of the public footpath, and that its designation as UGS is merited.
- 10.11 In light of the above, it has not been clearly shown by the applicant that the application site is no longer required as UGS, nor has it been demonstrated that the site does not make an important contribution in terms of visual amenity or landscape value. Part a) of emerging Local Plan policy PLP61 has not been met.
- 10.12 Replacement open space, sport or recreation facilities which are equivalent or better in size are not proposed by the applicant, and the proposed development is not for an alternative open space, sport or recreation use that is needed to help address identified deficiencies and that clearly outweighs the loss of the existing green space. Parts b) and c) of Local Plan policy PLP61 have therefore not been met.
- 10.13 As noted in recent appeal decisions, Kirklees is not currently meeting (by a substantial margin) the requirement to identify a five-year supply of housing land. This is important in the context of paragraph 11 of the NPPF which states that, in relation to decision-taking, the presumption in favour of sustainable development means approving development proposals that accord with an up-to-date development plan without delay, and where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless i) the application of NPPF policies that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against NPPF policies taken as a whole.
- 10.14 As the council is unable to demonstrate a five-year housing land supply as required by the NPPF, relevant UDP policies relating to housing are considered to be out-of-date. Given the situation regarding housing land supply, with regard to this application and the presumption in favour of sustainable development, the NPPF states that planning permission should only be refused where there are adverse impacts which would significantly and demonstrably outweigh the benefits.
- 10.15 In the case of the current application, it is indeed considered that the adverse impacts of losing 1.18 hectares of high-value UGS would significantly and demonstrably outweigh the benefits of the proposed development, which are duly acknowledged and which include:

- The provision of 29 residential units (including 5 affordable housing units).
- The provision of 1.21 hectares of POS (although, again, it is noted that POS already exists directly to the west of the site, and the loss of amenities of the 1.18 hectares of UGS (that would be developed) is also relevant).
- Economic benefits, including employment during the construction phase.
- Section 106 contributions which, although required to mitigate impacts of the proposed development, may also be of public benefit.
- Improved neighbourhood permeability through new pedestrian connections to public footpath BAT/23/20.
- Net biodiversity gains.

10.16 Of note, many of the above benefits could be (or would be required to be) delivered had the proposed development been delivered on a site allocated (or otherwise suitable) for housing. Many of these benefits are not, or would not be, unique to the proposed development.

10.17 It must also be noted that, with the forthcoming (early 2019) adoption of the Local Plan, the council will be able to demonstrate a five-year housing land supply. This will mean that NPPF paragraph 11c would be engaged, and full weight would be attached to policy PLP61 (which would not be complied with).

10.18 Other arguments advanced by the applicant have been considered, but none carry sufficient weight to justify approval of residential development (contrary to policies D3 and PLP61) at part of the application site. The final balance of planning considerations is returned to later in this report, however in conclusion regarding land use and the principle of development, and having regard to the high value of the application site as UGS, it is not considered that sufficient justification has been made for the harm and the significant departure from the development plan that the proposed development would entail.

10.19 During the life of the current application, at the request of the applicant, officers considered whether a smaller development (with fewer than 29 units and less loss of UGS) could be accepted at this site. However, all of the concerns detailed above would still apply to a smaller scheme – all parts of the UGS are considered valuable, and such a development would still cause material harm and would fail to comply with policies D3 and PLP61. Also of note, while the extent of harm may be reduced in a smaller scheme, so to would some of that scheme's benefits.

10.20 Paragraph 23 of the appeal decision of 26/07/2017 includes a reference to the possibility of the site accommodating development without causing undue harm to the UGS (providing that the erosion of the open area is kept to a minimum). This aside is noted, however it was made without the appeal Inspector having an alternative, smaller scheme before him, and was apparently based on a comment of the UDP Inspector that now carries no weight, given that the Local Plan Inspector has more recently made no similar comment regarding development on UGS. Paragraph 23 is not a sound basis upon which a case for development at this site can be made.

10.21 Given that the purpose of the planning system is to contribute to the achievement of sustainable development, some commentary on the

sustainability of the proposed development is appropriate. While it is noted that the site is adjacent to existing settlements and their sustainable transport options and other facilities (the site is not isolated and inaccessible), it is a previously-undeveloped (greenfield) site, and is a valuable, irreplaceable, open, green resource that would be lost if development went ahead. For this reason it is considered that the proposal does not constitute sustainable development.

#### Urban design issues

- 10.22 Relevant design policies include chapter 12 of the NPPF, UDP policies G4 and BE2, and emerging Local Plan policies PLP2 and PLP24.
- 10.23 The proposed layout is based around a new estate road that would extend the main carriageway and footway of the adjacent White Lee Gardens development, with driveways branching off it, and terminating with a hammerhead turning area close to the centre of the site. This layout, which has also been influenced by a foul sewer easement, raises no design concerns, and is considered acceptable. Although some dwellings would present their side elevations to the new estate road, a sufficient number of dwellings would face the most important road that their curtilages would abut. The provision of dwellings that would face the proposed POS welcomed.
- 10.24 The part of the site where new dwellings are proposed (i.e., the land within the application site's red line boundary, but excluding the proposed area of POS and the carriageway and footway of the adjacent White Lee Gardens development) is approximately 1.18 hectares in size. With 29 residential units proposed in approximately 1.18 hectares, the proposed development would achieve a density of approximately 25 units per hectare. Paragraph 3.2 of the submitted Planning Statement puts the proposed density at 20 units per hectare, which appears to have been arrived at by using a 1.43 hectare figure (derived from the 2.64 hectare site area minus the proposed 1.21 hectare POS).
- 10.25 To ensure efficient use of land Local Plan policy PLP7 requires developments to achieve a net density of at least 35 dwellings per hectare, where appropriate, and having regard to the character of the area and the design of the scheme. Lower densities will only be acceptable if it is demonstrated that this is necessary to ensure the development is compatible with its surroundings, development viability would be compromised, or to secure particular house types to meet local housing needs.
- 10.26 At the adjacent site (White Lee Gardens) planning permission was granted for a development of 24 dwellings in a site of 1.03 hectares. That development has achieved a density of 23 units per hectare. Much of the other development surrounding the application site appears to be of a similar density.
- 10.27 Given this context, and having regard to the wording of policy PLP7, it is considered that the proposed density, although lower than the 35 units per hectare normally required, is acceptable.
- 10.28 The proposed dwellings would all be of two storeys, and would have a similar design to those recently built at White Lee Gardens, with pitched and hipped roofs, front gable features, projecting bay windows, porches, and a mix of integral and detached garages. Most dwellings would face the most important

street they abut, and four dwellings would face the proposed POS, which is welcomed, as residential developments are too often designed to turn their back or sides onto such areas of the public realm. 23 units would be detached, four would form a short terrace, and two would form a pair of semi-detached properties – this range of house types is fairly typical of the surrounding area, and is considered acceptable in design terms.

- 10.29 The applicant proposes the use of artificial stone and cream-coloured render, which is unfortunate, but is considered acceptable in this location, given that these materials were recently used at White Lee Gardens, and given that the current proposal has been designed as a second phase to that adjacent development.

#### Residential amenity and quality

- 10.30 The minimum distances set out under UDP policy BE12 would be achieved in respect of adjacent properties at 22 and 31 Oakwell Avenue and 99 Enfield Drive. The northeast corner of unit 03 would come close to 9 Shibden Drive, however the approximate 8m distance between these properties is considered acceptable, due to the intervening vegetation and steep slope, the proposed boundary treatment, and the absence of windows in the side elevation of unit 03. The proposed dwellings have been designed and would be positioned to not adversely affect (to a significant degree) the privacy, outlook or natural light currently enjoyed by existing residents.
- 10.31 Of note, although the proposed development would result in the loss of UGS viewed from some neighbouring properties, however it is outlook, rather than private views, that can be protected under planning.
- 10.32 In terms of noise, although the proposed residential development would introduce (or increase) activity and movements to and from the site (particularly past the recently-built properties on the adjacent White Lee Gardens development), given the quantum of development proposed, it is not considered that neighbouring residents would be significantly impacted. The proposed residential use is not considered incompatible with existing surrounding uses in terms of amenity.
- 10.33 Had approval of planning permission been recommended, a condition requiring the submission and approval of a Construction Management Plan would have been applied. The necessary conditions-stage submission would need to sufficiently address the potential amenity impacts of construction work at this site, including cumulative amenity impacts should other nearby sites be developed at the same time.
- 10.34 The quality of the proposed residential accommodation is also a material planning consideration.
- 10.35 Although the Government's Nationally Described Space Standards (March 2015) are not adopted planning policy in Kirklees, they provide useful guidance which applicants are encouraged to meet and exceed. The proposed dwellings would meet the minimum unit size figures set out in this guidance.
- 10.36 All units would benefit from dual aspect.



- 10.37 No units have been identified by the applicant as fully wheelchair-accessible, however. It is, however, noted that all units would have ground floor WCs, and some would have ground floor studies that may be convertible to a ground floor bedroom, meaning that a household member with certain disabilities could live in these units.
- 10.38 Private gardens are proposed for all dwellings. Although those for units 05 to 08 are relatively small, this is not a shortcoming of such significance as to warrant refusal of planning permission. Of note, UDP policy BE12 and emerging Local Plan policy PLP24 do not specify a minimum requirement (in sqm) for private outdoor amenity space for dwellings.
- 10.39 The proposed 1.21 hectares of on-site POS and planted gravel garden vastly exceed POS requirements for a development of this size. In addition, POS already exists at Asquith Fields. Residents of the proposed development would be well served by POS within walking distance of their homes.

#### Affordable housing

- 10.40 To accord with policy H10 of the UDP, emerging Local Plan policy PLP11 and the Kirklees Interim Affordable Housing Policy, six of the 29 units proposed would need to be provided as affordable housing (three social/affordable rent, and three starter homes).
- 10.41 The applicant's proposals regarding affordable housing were unclear. Submitted drawing 2654-4-001 B had five properties asterisked as affordable housing, and paragraph 7.5 of the submitted Planning Statement referred to five starter homes and a 17% provision. The 17% figure was repeated at paragraph 8.12 of the Planning Statement. Five starter homes and a 15% provision were mentioned at paragraph 9.3 of the Planning Statement. Other drawings, however, only showed four properties asterisked, and paragraph 8.3 of the submitted Planning Statement referred to four affordable homes and a 14% provision.
- 10.42 On 08/11/2018 the applicant clarified that five starter homes (a 17% provision) were proposed.
- 10.43 Officers have queried why a policy-compliant (20%) affordable housing provision, comprising three social/affordable rent and three starter homes, is not proposed by the applicant. The applicant has responded by referring to other occasions where the council has not objected to provisions lower than 20%. However, while this may explain why the applicant believes a lower-than-20% provision should be accepted, it does not explain why a policy-compliant provision cannot be achieved as part of the current proposed development. The applicant has not provided financial viability evidence, nor is any other evidence demonstrating what *preventing* the applicant from proposing a policy-compliant provision. In the absence of such evidence, a second reason for refusal is recommended.
- 10.44 Given the need to integrate affordable housing within developments, and to ensure dwellings of different tenures are not visually distinguishable from each other, affordable housing would need to be pepper-potted around the proposed development. The applicant's drawings indicate that units 05, 06, 07, 08 and 15 would be affordable housing units. These are the smallest units within the proposed development, and are of a unique house type. Units 05, 06, 07 and

08 would have the development's smallest gardens. These units would be visually distinguishable from the units of other tenures in the proposed development, and had the proposed development been recommended for approval, officers would have sought improvements to the distribution and range of unit sizes within the proposed affordable housing provision.

#### Highway issues

- 10.45 UDP policy T10 states that new development will not normally be permitted if it will create or materially add to highways safety problems. Policy PLP21 of the emerging Local Plan requires development proposals to be accessed effectively and safely by all users, and states that new development will not be permitted if it adds to highway safety problems. Paragraph 107 of the NPPF states that appropriate opportunities to promote sustainable transport modes should be taken up, that safe and suitable access to sites should be achieved for all users, and that any significant impacts on the transport network or on highway safety should be mitigated.
- 10.46 Sunny View (the main street of the White Lee Gardens development) currently terminates with a dead end at the application site's west boundary. Sunny View itself has pavements on both sides of the carriageway, and is accessed from White Lee Road (the B6122). Bus routes serve White Lee Road, Carlinghow Lane and Leaside Road. The south edge of the application site is abutted by a public footpath (BAT/23/20).
- 10.47 The applicant proposes to extend the carriageway and footways of Sunny View with a new estate road that would have driveways branching off it, and that would terminate with a hammerhead turning area close to the centre of the site. Beyond this, pedestrian connections through the proposed POS would link to footpath BAT/23/20.
- 10.48 The adjacent White Lee Gardens development included provision for traffic calming measures in the vicinity of the new junction with White Lee Road. The proposed development would increase the number of dwellings served by this single vehicular access point from 24 to 53. As with the previous 66-unit proposal (ref: 2015/92944), it is considered that this access, and the surrounding highways network, is capable of accommodating the additional dwellings proposed without causing any adverse impact in relation to highway safety. No concerns have been raised by Highways Development Management officers regarding the adequacy of the applicant's trip generation information and speed survey data.
- 10.49 The proposed development, however, includes a layout which raises the following highways concerns:
- Integral garages to Bentley and Banbury house types do not measure 3m x 6m internally, and therefore cannot be counted towards parking provision.
  - Only seven parking spaces are proposed to units 05 to 08. Eight spaces are needed for these three-bedroom units.
  - All private driveways measure only 3.5m wide at the entrance from the adoptable highway. These need to be 4.5m wide to enable two vehicles to pass.
  - The shared surface carriageway would be only 4.8m in width, but should be 5.5m due to the bend in the road.

- Swept path diagrams are required to demonstrate that an 11.85m refuse vehicle can enter, exit and turn within the proposed development.
  - The width of the access to any shared private driveway should be 6m where they provide access to individual drives. Access to plots 03, 04, 10, 11, 16, 19 and 22 therefore need to be amended.
  - Access to units 14 and 15 would be difficult and splays are needed to improve the turning and manoeuvre into these plots.
- 10.50 There appears to be scope within the proposed layout for amendments that would address the above concerns. Had the application been recommended for approval, these amendments would have been requested prior to determination, or secured by condition.
- 10.51 Notwithstanding the above concerns, the main stretch of the new estate road would have an adequate (5.5m) width. Refuse collection points are appropriately indicated. Parking (including visitor parking) is considered adequate for most dwellings. Adequate cycle parking could have been secured by condition, had the application been recommended for approval.
- 10.52 The proposed pedestrian route through the proposed development, connecting Sunny View with footpath BAT/23/20 and the POS at Asquith Fields, is welcomed. This aspect of the proposed development would improve neighbourhood permeability, and would provide a useful southeast-northwest route, in accordance with UDP policies T16 (which requires new development to make provision for convenient pedestrian routes) and R13 (which promotes the development of new links in the public right of way network) and emerging Local Plan policy PLP20.

#### Flood risk and drainage issues

- 10.53 The site is within Flood Zone 1, and is larger than 1 hectare in size, therefore a site-specific Flood Risk Assessment was submitted by the applicant. This proposes to dispose of surface water to the public surface water sewer at Oakwell Avenue at a rate of 5l/s (for the northwest part of the site), and to a public combined sewer (south of the application site) at a rate of 3l/s (for the central part of the site). On-site attenuation tanks are also proposed. 16% of the site would be covered with hardstandings, and 10% by buildings. 74% of the site would have permeable surfaces.
- 10.54 The Lead Local Flood Authority (LLFA) have raised no objection to the proposed 5l/s discharge to the public surface water sewer and the 3l/s discharge to the public combined sewer as previously agreed between the LLFA and Yorkshire Water. No pumped solution for surface water disposal would be suitable for this site, as gravity options are available, and no such pumped solution is proposed by the applicant.
- 10.55 The LLFA have queried the applicant's microdrainage results for flooding in climate change scenarios, however this matter could have been resolved through further discussions or by condition, had the application been recommended for approval. Similarly, had the application been recommended for approval, a temporary drainage strategy (to mitigate pollution and flood risk during the construction phase) would have been secured by condition and a Section 106 undertaking would have been required, securing the

establishment of a management company to maintain and manage surface water drainage until formal adoption by the statutory undertaker.

#### Trees, landscaping and ecological considerations

- 10.56 Trees exist within the site's boundaries, however none are protected by Tree Preservation Orders. It is considered that the proposed development can be implemented without adverse impact upon trees, and is compliant with UDP policy NE9 and emerging Local Plan policy PLP33.
- 10.57 A Landscape Masterplan (ref: P18\_0690\_03.C) was submitted by the applicant. This illustrates the proposed informal kickabout area, new hedgerow planting and other features of the proposed POS, annotates planting and seating to the proposed gravel garden, and includes indicative planting to private gardens. Had the application been recommended for approval, a condition would have been recommended, requiring the submission of a landscape and ecological management plan, details of species, maintenance proposals, and confirmation that no ambiguous leftover spaces would be provided outside the curtilages of dwellings.
- 10.58 The applicant's ecological information is considered sufficient to support the application. The clearance of vegetation from the site could impact upon nesting birds, and had the application been recommended for approval, a condition would have been recommended to avoid such impacts. The implementation of the applicant's proposed ecological measures (namely, the installation of bat and bird boxes, provision of a green linear route, planting of grassland, specification and implementation of sensitive lighting and ecological enhancement of peripheral boundary habitats) would have ensured a biodiversity net gain would be achieved. An appropriate condition requiring this implementation would have been recommended.

#### Representations

- 10.59 14 representations were received from occupants of neighbouring properties. The comments raised have been addressed in this report.

#### Planning obligations

- 10.60 As noted above, to accord with policy H10 of the UDP, emerging Local Plan policy PLP11 and the Kirklees Interim Affordable Housing Policy, six of the 29 units proposed would need to be provided as affordable housing (three social/affordable rent, and three starter homes).
- 10.61 No contribution toward off-site POS provision is required, given the proposed on-site provision. A contribution towards off-site provision of a Local Area of Play may be required, if adequate provision is not made within the proposed POS.
- 10.62 The council's Education department were consulted and commented that no contribution towards local education provision would be required.
- 10.63 Provisions to secure the establishment of a management company (to maintain and manage surface water drainage until formal adoption by the statutory undertaker) would have been required.

- 10.64 No contribution towards the provision of Metro cards, or improvements to the local highway network, have been requested by relevant consultees.

#### Other planning matters

- 10.65 With regard to ground contamination, although the applicant's phase I and II reports are sufficient to characterise the site and its historic uses, and to identify potential sources of contamination, further information is required regarding the elevated levels of arsenic found in samples, as is interpretation of the applicant's gas monitoring results. Had the proposed development been recommended for approval, appropriate conditions would have been recommended by officers to address these omissions and to ensure compliance with UDP policy G6 policy and PLP53 in the emerging Local Plan.
- 10.66 A condition requiring the provision of electric/hybrid vehicle charging points would also have been recommended, had the proposed development been recommended for approval.
- 10.67 The proposed development's impacts upon the values of existing properties is not a material planning consideration.
- 10.68 There is no evidence demonstrating that the proposed development would adversely affect the stability of adjacent dwellings. Damage to neighbouring properties is largely a civil matter to be resolved between the developer and neighbouring owners, however flood risk and the site's coal legacy are considered in this report.
- 10.69 Implementation of the proposed development would not be contrary to the Human Rights Act 1998.
- 10.70 There is no evidence demonstrating that implementation of the proposed development would disproportionately increase crime in the area. Had approval of permission been recommended, the applicant would have been encouraged to seek Secured by Design accreditation.
- 10.71 With regard to the site's coal mining legacy, it is noted that the Coal Authority have not objected to the proposed development subject to a condition being applied, securing details of remedial works and their implementation. The applicant's own supporting information recommended that remedial works should be undertaken to ensure the safety and stability of the proposed development, and this would have been secured by condition, had approval of permission been recommended.
- 10.72 While health impacts are a material consideration, there is no policy or supplementary planning guidance requiring a proposed development to contribute specifically to local health services. Furthermore, it is noted 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. Direct funding is provided by the NHS for GP practices and health centres based on an increase in registrations.

## **11.0 CONCLUSION**

- 11.1 The application site is designated as Urban Green Space in the UDP (saved policies) and in the emerging Local Plan. Residential development of the site

would be contrary to UDP policy D3, and material considerations do not outweigh the harm and policy non-compliance that the proposed development would entail. In addition, the proposed development does not include a policy-compliant affordable housing provision. Refusal of planning permission is recommended.

## **12.0 Reasons for refusal:**

- 1) The proposed development would result in a significant loss of Urban Green Space. This would be contrary to Kirklees Unitary Development Plan policy D3 and Kirklees Publication Draft Local Plan policy PLP61.
- 2) The proposed development, due to its shortfall in affordable housing provision, would not sufficiently meet known housing need. This would be contrary to Kirklees Unitary Development Plan policy H10, Kirklees Publication Draft Local Plan policy PLP11, the Kirklees Interim Affordable Housing Policy and chapter 5 of the National Planning Policy Framework.

## **Background Papers:**

Application and history files.

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2018%2f92456>

Certificate of Ownership – Certificate A signed