

**KIRKLEES METROPOLITAN COUNCIL  
INVESTMENT & REGENERATION SERVICE**

**DEVELOPMENT MANAGEMENT**

**Town and Country Planning 1990 (as amended) – SECTION 70**

**DELEGATED DECISION TO DETERMINE PLANNING APPLICATIONS**

**Reference No:** 2017/61/94229/E

**Site Address:** Land Off, Healey Lane, Batley, WF17 7BN

**Description:** Reserved matters application pursuant to outline permission 2014/92328 for residential development (15 dwellings)

**Recommending Officer:** Victor Grayson

**DECISION – Refuse permission for Reserved Matters**

**I hereby authorise the refusal of this application for the reasons set out in the officer's report and recommendation annexed below in respect of the above matter.**

Kate Mansell

***AUTHORISED OFFICER***

**Date: 21-May-2021**

## Officer Report

### Site Description

The application site was described in the relevant committee report at outline application stage as follows:

*The application site extends to 0.5 hectares in area and sits between West Park Road (to the south) and Healey Lane to the north. To the east of the site is Healey Junior, Infants and Nursery School. To the west are three dwellings, including 228 Healey Lane, which has a principle elevation facing on to the site (and immediately bordering it).*

*The site levels drop slightly from north to south and mature trees line the southern boundary of the site – these are not subject to Tree Preservation Orders. Vehicle access into the site was originally from Healey Lane. Remnants of areas of hardstanding are present to northern parts of the site, with the remainder of the site being largely grassed.*

The site is unallocated and undesignated in the Local Plan. Part of the site is within a Biodiversity Opportunity Zone (Built-up Areas), and part is within the 250m buffer zone of a historic landfill site at Jail Road. Parts of the site are within a Development High Risk Area in relation to coal mining legacy (as designated by the Coal Authority), however the majority of the site is within a Development Low Risk Area. The site is within an Impact Risk Zone of a Site of Special Scientific Interest.

The school grounds to the east are designated as Urban Green Space in the Local Plan. An indicative alignment of the Core Walking and Cycling Network runs past the site.

### Description of Proposal

The applicant seeks Reserved Matters approval for a residential development of 15 dwellings. Approval of all Reserved Matters (access, appearance, landscaping, layout and scale) is sought.

A terrace of three dwellings and three link-detached dwellings would front Healey Lane. Seven detached dwellings are proposed along the site's southern (West Park Road) boundary. A further two detached dwellings are proposed within the site. A breakdown of the proposed units (and their sizes) is provided in the table below.

Unit number	Type	Storeys	Bedrooms	Floorspace	Parking
1	Link-detached	2	4	106.9sqm	Attached garage
2	Link-	2	4	106.9sqm	Attached

	detached				garage
3	Link-detached	2	4	106.9sqm	Detached garage
4	Detached	2	4	113.9sqm	Detached garage
5	Detached	2	4	113.9sqm	Detached garage
6	Detached	2	4	109.8sqm	Integral garage
7	Detached	2	4	109.8sqm	Integral garage
8	Detached	2	4	109.8sqm	Integral garage
9	Detached	2	4	109.8sqm	Integral garage
10	Detached	2	4	109.8sqm	Integral garage
11	Detached	2	4	109.8sqm	Integral garage
12	Detached	2	4	109.8sqm	Integral garage
13	Terraced	2	3	89sqm	Outdoor
14	Terraced	2	3	89sqm	Outdoor
15	Terraced	2	3	89sqm	Outdoor

No dwellings would be accessed from West Park Road. Those dwellings fronting Healey Lane would have garden paths to the footway. An estate road is proposed to extend from Healey Lane into the centre of the site, from which private drives would extend.

### **History of Negotiations/Amendments Received**

During the life of the current application, on 01/03/2018 the case officer provided advice and raised queries (by email) regarding design, open space and affordable housing matters, and forwarded consultee responses (from the Coal Authority, the Lead Local Flood Authority, KC Highways Development Management, KC Environmental Health and the council's Arboricultural Officer), advising that the points raised in those responses would need to be addressed.

In response, on 05/03/2018 the applicant's architect emailed to state that he did not disagree with some of the points raised, and that he felt there was an opportunity to improve the layout. The applicant's architect and the case officer met on 14/03/2018 to discuss possible amendments.

There then followed an exchange of emails. These included an email with an attached amended drawing (of unit 6) from the applicant's architect on 27/03/2020, and emails from officers (providing advice, requesting updates and offering assistance) dated 06/04/2018, 13/11/2018, 27/02/2019, 16/05/2019, 25/03/2020, 30/05/2020 and 01/06/2020.

Given the age of the application and the unresolved matters, on 22/06/2020 the case officer advised the applicant's architect that the application would be refused unless meaningful progress was made the following week. The case officer also telephoned and emailed the applicant's architect on 10/03/2021, and emailed again on 24/03/2021. The applicant's architect emailed an amended proposed site layout plan on 24/03/2021. On 26/04/2021 the case officer telephoned the applicant's architect, and on 28/04/2021 the case officer emailed the applicant's architect to again advise that the application would be refused.

On 29/04/2021 the applicant's architect submitted an amended site layout plan and amended house type drawings. As these were not accompanied by supporting information (including in relation to the site's coal mining legacy and drainage), they were not formally accepted by the council.

### **Relevant Planning History**

2014/92328 – Outline planning permission granted 29/10/2015 for a residential development of 15 dwellings.

Earlier applications related to educational and other non-residential uses.

### **Representations**

The application has been advertised via four site notices posted on 02/01/2018, a press notice published on 22/12/2017, and letters delivered to addresses abutting the application site. This is in line with the council's adopted Statement of Community Involvement. The end date for publicity was 23/01/2018.

Cllr Lowe commented that too many units were proposed, that the development would have a detrimental effect on the landscape and would be overbearing, that affordable bungalows for older people should be provided instead, that trees are already being lost, and that highway safety was a concern.

Cllr Pandor commented that 15 units would be tight for the site.

A representation from one resident was received. The main points raised are summarised as follows:

- Welcome use and development of site in principle.
- No concerns regarding loss of light.
- No concerns regarding loss of privacy, provided that side windows are not proposed.
- Removal of trees from the site has damaged an adjacent wall.
- Further damage may occur. Rotting roots of removed trees may affect adjacent foundations.

- Removal of trees has resulted in greater ingress of water into adjacent site, and hard surfaces of proposed development may make this worse.

## **Consultation Responses**

The following is a brief summary of consultee advice (more details are contained in the Assessment section of the report, where appropriate):

- Coal Authority – Fundamental concern. Application site falls within the defined Development High Risk Area, therefore within the application site and surrounding area there are coal mining features and hazards which need to be considered in relation to the determination of this planning application. Coal Authority records indicate that there is a mine entry recorded close to the south eastern corner of the site with a zone of influence which extends into the site boundary. The site is also in an area of likely historic unrecorded coal mine workings at shallow depth. No conditions related to coal mining legacy were applied to the original consent. Significant concerns regarding proposed layout and how this relates to the recorded mine entry and its zone of influence. Coal Authority holds no treatment details for this mine entry and therefore its recorded position may be subject to significant departure – this means it could be within the application site itself. Due to its untreated nature it therefore poses a significant risk to ground stability and public safety, plots 6 and 7 being of particular concern. Coal mining legacy issues which potentially pose a risk to his development should have been fully considered and the exact location of the mine entry should have been established in order that it could inform the site layout. This is in order to ensure that adequate separation is provided between this feature and any buildings proposed. Building over the top of, or in close proximity to, mine entries should be avoided wherever possible, even after they have been capped. Intrusive site investigations should be carried out in order to either discount, or confirm, the presence of the mine entry on the application site. If the mine entry is found to be present on the application site, a remedial strategy for the treatment of this feature (grouting and capping) and an appropriate ‘no-build’ zone should be identified, with this information then being used to inform the development layout. If the mine entry is discounted from being present on the site, its recorded position and potential departure should be taken into account and its zone of influence (no-build zone) identified on a layout to demonstrate that no buildings are proposed within this area. Any required mitigation measures for garden areas, which fall within this zone of influence and/or no-build zone, and are deemed to be necessary, should be identified. The nature and extent of the intrusive site investigations to investigate for the presence of the mine entry on the site should be agreed with the Permitting Section of the Coal Authority as part of the permissions process. It is a requirement of the National Planning Policy Framework (paragraphs 120-121) that the applicant demonstrates to the satisfaction of the

LPA that the application site is safe, stable and suitable for the development proposed.

- Lead Local Flood Authority – Objection. Flood risk and drainage have not been considered in the proposed layout. Space should be made for surface water disposal and attenuation before a layout is agreed. If attenuation tanks are required, no spans greater than 1500mm can be accepted under an adopted highway. A developed drainage design with supporting calculations is required.
- KC Highways Development Management – Vehicle tracking drawings required to demonstrate that a 11.85m refuse vehicle can enter, manoeuvre within and exit in a forward gear. Proposed new access will need to be constructed under a Section 184 agreement of the 1980 Highways Act. Any retaining features affecting the highway will require formal technical approval by the council as the Highway Authority – relevant condition required. Existing “School Keep Clear” TRO orders on Healey Lane outside the site would need to be revoked using the approved TRO process. It is known that there are school parking issues in the area and it is highly likely that school parking will make its way in to the proposed development – this should be discouraged so there is no blocking of the turning head or access and the revocation of the existing “School Keep Clear” TROs would be mitigation against the loss of parking space on Healey Lane and may help to avoid this situation. Proposed layout is not suitable for adoption under a Section 38 agreement – detailed comments provided.
- KC Strategic Housing – Application welcomed. Three affordable housing units (20% of 15) required (two affordable rent units, one intermediate). On-site provision preferred, however a financial contribution in lieu of on-site provision can be accepted where appropriate. 1-, 2, 3- and 3+-bedroom units would help meet local affordable housing needs. Batley and Spen Strategic Market Housing Assessment sub-area has the highest level of affordable housing need in Kirklees. 3+-bedroom houses are needed in particular, as well as 1- and 2-bedroom homes and 1- and 2-bedroom homes for older people.
- KC Trees – Application not supported. Site’s boundary adjacent to West Park Road is heavily stocked with trees – although they provide screening, they are not worthy of protection and they would benefit from selective thinning. Amended design recommended, allowing more useable garden space for plots 6-12 and taking into account the future growth potential and shading of the adjacent trees. A more realistic approach requested regarding which trees are to be retained along this boundary, as many category C trees have been shown as retained despite the overcrowding present on this boundary. A suitable tree planting scheme to mitigate the removals should include planting around the other boundaries of the site.

- Yorkshire Water – No comment, as no drainage proposals have been included with this application. The original comments and recommended conditions in Yorkshire Water's letter of 08/10/2014 (re: outline application ref: 2014/92328) still apply for this development, and as conditioned on the granted decision notice dated 29/10/2015 (conditions 10, 11, 12 and 13). There is no record of drainage proposals being submitted to Yorkshire Water, via the Local Planning Authority, for formal consultation, approval and discharge of the appropriate drainage conditions.
- West Yorkshire Police Architectural Liaison Officer – Details of boundary treatments requested. Submitted details are not adequate for security purposes. Advice provided regarding boundary treatments, lighting and external doors and windows.
- KC Environmental Health – Applicant's Noise Impacts Assessment makes a satisfactory assessment of road traffic noise levels, and the proposed mitigation measures for the glazing and satisfactory. The proposed acoustic trickle vents are also satisfactory acoustically but will be insufficient to provide adequate ventilation to help control thermal comfort. Other aspects of the noise assessment are not accepted, and condition 20 of outline permission ref: 2014/92328 should not be discharged.

## **Planning Policy**

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 statutory Development Plan for Kirklees is the Local Plan (adopted 27/02/2019).

### **Kirklees Local Plan (2019)**

- LP1 – Presumption in favour of sustainable development
- LP2 – Place shaping
- LP3 – Location of new development
- LP4 – Providing infrastructure
- LP7 – Efficient and effective use of land and buildings
- LP11 – Housing mix and affordable housing
- LP20 – Sustainable travel
- LP21 – Highways and access
- LP22 – Parking
- LP23 – Core walking and cycling network
- LP24 – Design
- LP26 – Renewable and low carbon energy
- LP27 – Flood risk
- LP28 – Drainage
- LP30 – Biodiversity and geodiversity

LP32 – Landscape  
LP33 – Trees  
LP34 – Conserving and enhancing the water environment  
LP38 – Minerals safeguarding  
LP47 – Healthy, active and safe lifestyles  
LP48 – Community facilities and services  
LP49 – Educational and health care needs  
LP50 – Sport and physical activity  
LP51 – Protection and improvement of local air quality  
LP52 – Protection and improvement of environmental quality  
LP53 – Contaminated and unstable land  
LP61 – Urban green space  
LP63 – New open space

### **Supplementary Planning Guidance / Documents and other documents**

Relevant guidance and documents:

- West Yorkshire Low Emissions Strategy and Air Quality and Emissions Technical Planning Guidance (2016)
- Kirklees Housing Strategy (2018)
- Kirklees Interim Affordable Housing Policy (2020)
- Kirklees Strategic Housing Market Assessment (2016)
- Kirklees Joint Health and Wellbeing Strategy and Kirklees Health and Wellbeing Plan (2018)
- Kirklees Biodiversity Strategy and Biodiversity Action Plan (2007)
- Negotiating Financial Contributions for Transport Improvements (2007)
- Providing for Education Needs Generated by New Housing (2012)
- Highway Design Guide (2019)
- Waste Management Design Guide for New Developments (2020, updated 2021)
- Green Street Principles (2017)
- Viability Guidance Note (2020)

A draft Housebuilder Design Guide SPD, Open Space SPD and Biodiversity Net Gain Technical Advice Note were published by the council in 2020. These have undergone public consultation, but have not been adopted.

### **Climate change**

The council approved Climate Emergency measures at its meeting of full Council on 16/01/2019, and the West Yorkshire Combined Authority has pledged that the Leeds City Region would reach net zero carbon emissions by 2038. A draft Carbon Emission Reduction Pathways Technical Report (July 2020, Element Energy), setting out how carbon reductions might be achieved, has been published by the West Yorkshire Combined Authority.

On 12/11/2019 the council adopted a target for achieving “net zero” carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system, and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan predates the declaration of a climate emergency and the net zero carbon target, however it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications the council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

## **National Policies and Guidance**

The National Planning Policy Framework (2019) 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
- Chapter 14 – Meeting the challenge of climate change, flooding and coastal change
- Chapter 15 – Conserving and enhancing the natural environment
- Chapter 16 – Conserving and enhancing the historic environment
- Chapter 17 – Facilitating the sustainable use of materials

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

Relevant national guidance and documents:

- National Design Guide (2019)
- Technical housing standards – nationally described space standard (2015, updated 2016)
- Fields in Trust Guidance for Outdoor Sport and Play (2015)

## **Assessment**

### *Land use and principle of development*

The principle of residential development at this site has already been considered acceptable by the council, and outline planning permission for

residential development has previously been approved here (ref: 2014/92328). Although the Local Plan was adopted subsequent to that approval, no policies in the Local Plan would prevent a permission for residential use of the site being approved. The site is unallocated and undesignated in the Local Plan.

The site is within a wider mineral safeguarding area relating to surface coal resource (SCR) with sandstone and/or clay and shale. Local Plan policy LP38 therefore applies. This states that surface development at the application site will only be permitted where it has been demonstrated that certain criteria apply. Criterion c of policy LP38 is relevant, and allows for approval of the proposed development, as there is an overriding need (in this case, housing need, having regard to Local Plan delivery targets) for it.

Part of the site is within the 250m buffer zone of a historic landfill site at Jail Road, however this does not prevent the approval of residential development at this site.

Other policies throughout the Local Plan promote the use of brownfield (previously-developed) land to meet development needs and support the regeneration of areas (this is identified as a Strategic Objective at paragraph 4.5). At outline application stage, the site was indeed considered to be brownfield land.

#### *Sustainability and climate change*

As set out at paragraph 7 of the NPPF, the purpose of the planning system is to contribute to the achievement of sustainable development. The NPPF goes on to provide commentary on the environmental, social and economic aspects of sustainable development, all of which are relevant to planning decisions.

Although no information regarding sustainability and climate change was submitted by the applicant, it is considered that residential development at this site can be regarded as sustainable, given that the site is brownfield land, and given the site's location within an already-developed area where public transport facilities, social infrastructure and other local facilities are already available. Many of the social and community needs of residents of the proposed development can be met within the surrounding area, which further indicates that residential development at this site can be regarded as sustainable.

Further reference to, and assessment of, the sustainability of the proposed development is provided later in this report in relation to transport considerations.

#### *Urban design*

In relation to urban design matters, Local Plan policy LP24 and chapter 12 of the NPPF are relevant, as is the National Design Guide.

The site's context does not have a uniform character. Residential buildings surrounding the site include terraced, semi-detached and detached houses and bungalows, with a variety of materials including red brick, brick of other colours, natural and artificial stone, and render. The school building to the east is part single-, part two-storey, and is built of red brick. Some buildings are set within generous private gardens with significant soft landscaping, while others have smaller outdoor spaces and/or are arranged around small areas of public open space. Some nearby terraced properties meet the back of the footway. Boundary treatments include stone and brick walls, hedges, timber fences and metal railings.

At outline stage, a design and access statement was submitted and considered, as was an indicative site layout plan. However, matters of access, appearance, landscaping, layout and scale were not approved at outline stage.

No design and access statement was submitted with the current application. In an email dated 01/03/2018 the case officer asked the applicant's architect if a design and access statement was to be submitted, however, no statement was received.

The proposed layout would involve lining the site's Healey Lane frontage with a terrace of three dwellings and three link-detached dwellings, lining the site's southern (West Park Road) boundary with the rear gardens of seven detached dwellings, and providing a further two detached dwellings within the site.

The following initial design comments and queries were emailed by the case officer to the applicant's architect on 01/03/2018:

- *2-storey dwellings with pitched/hipped roofs are appropriate to this site and its context.*
- *Please clarify external materials to be used on all dwellings (apologies if this is confirmed on a drawing and I've missed it).*
- *I am pleased to see that units 1-3 and 13-15 would properly address and help to activate Healey Lane. Could units 6-12 similarly address and activate West Park Road? The current proposal suggests those units would turn their back on this important road. Could they be redesigned so that they have their main front doors facing the road (and paths and gates providing access to the pavement, which may be possible in the light of the Arboricultural Officer's comments), but still had their garages and back doors facing the cul-de-sac?*
- *Could units 6-12 be staggered slightly, instead of built in a regimented row with the same front building line? I think this would help reflect existing patterns of development in the area, and would augment the narrow gaps between these properties.*
- *Please clarify your intentions re: boundary treatments along West Park Road. A low, stone garden wall (with openings for gates) would be appropriate here, and this could reference the existing wall to the east.*

*I appreciate, however, that existing trees may affect what boundary treatments are possible here.*

- *I note the concerns of the West Yorkshire Police Architectural Liaison Officer, however I believe it would be appropriate to reconsider the various proposals for boundary treatments once amendments to the development's layout (and re: highways concerns) have been discussed further.*

Of the above unresolved matters, the orientation and design of units 6 to 12, and the need to properly address West Park Road, is the most crucial. In the current proposals, those units would turn their back on the most important highway abutting the site, resulting in a development that would fail to address and engage with the public realm. The regimented row of seven detached dwellings – all with the same rear building line and with similar rear elevational treatments – would have a poor, unrelieved appearance that would further give the impression of a development that turns its back on the public realm. These aspects of the proposed development are considered unacceptable.

Also of concern, no information has been submitted to demonstrate that other key considerations such as drainage and ground stability have informed the proposed layout. It is possible that these constraints may significantly affect what layout is possible at this site, and may limit the quantum of development possible.

Given that these layout concerns remain unresolved, refusal of planning permission is recommended. The proposed development is not considered to be compliant with Local Plan policy LP24 and chapters 8 and 12 of the NPPF.

Of note, during the life of the application the applicant's architect indicated a willingness to rotate units so they would address (and would be accessed from) West Park Road. The applicant's architect emailed amended site layout drawings on 24/03/2021 and 29/04/2021, however no drainage or ground stability information accompanied these submissions, and it was therefore not demonstrated that the amended layout had been informed by all relevant considerations.

The current proposals would achieve a density of approximately 30 units per hectare. This falls short of the 35 units per hectare expectation set out in policy LP7 of the Local Plan, but it is not considered to represent significant under-use of the site. Refusal on density or quantum grounds is not recommended.

Details of external materials could have been secured by condition, had the application been recommended for approval.

Conditions 5 and 14 of the outline permission (ref: 2014/92328) required the submission of details of boundary treatments and landscaping, although it would have been preferable for these details to have been submitted in full at Reserved Matters stage, to enable all design-related matters to be considered simultaneously. A boundary treatments plan was submitted with the current

application, although it was unclear as to what boundary treatments were proposed along West Park Road.

#### *Quality and amenity of residential accommodation*

All the proposed residential units would be provided with adequate outlook, privacy and natural light in accordance with Local Plan policy LP24.

Local Plan policy LP11 states that all proposals for housing must aim to provide a mix (size and tenure) of housing suitable for different household types which reflect changes in household composition in Kirklees in the types of dwelling they provide, taking into account the latest evidence of the need for different types of housing. For schemes of more than 10 dwellings or those of 0.4ha or greater in size, the housing mix should reflect the proportions of households that require housing, achieving a mix of house size and tenure.

12 of the proposed dwellings would have four bedrooms, while the three terraced properties would have three bedrooms. While this preponderance of larger units is regrettable (and is a shortcoming of the proposed development), it is noted that the Local Plan does not specify a unit size mix that must be met by major residential developments.

The comments of Cllr Lowe are noted, however there is no Local Plan policy requiring the provision of affordable bungalows for older people at this site.

Although the Government's Nationally Described Space Standards (March 2015, updated 2016) (NDSS) are not adopted planning policy in Kirklees, they provide useful guidance which applicants are encouraged to meet and exceed, as set out in the council's draft Housebuilder Design Guide SPD. NDSS is the Government's clearest statement on what constitutes adequately-sized units, and its use as a standard is becoming more widespread – for example, as of April 2021, all permitted development residential conversions are required to be NDSS-compliant.

The applicant's drawings include floorspace figures for all units. Assuming these are Gross Internal Area figures, and using the lowest resident numbers set out in the NDSS (84sqm for 3-bedroom 2-storey dwellings and 97sqm for 4-bedroom 2-storey dwellings), the proposed development would be fully NDSS-compliant.

The proposed provision of private outdoor amenity space for each dwelling is considered acceptable.

No on-site public open space is proposed, however this is considered acceptable given the size of the site. Condition 9 of the outline permission (ref: 2014/92328) addressed the matter of public open space.

#### *Neighbour amenity*

Acceptable separation distances are proposed between the proposed dwellings and existing neighbouring properties. The proposed distances would ensure existing neighbours would not experience significant adverse effects in terms of natural light, privacy and outlook.

In terms of noise, although residential development would increase activity and movements to and from the site, given the quantum of development proposed, and the site's location between two roads which are already used by through-traffic, it is not considered that neighbouring residents would be significantly impacted. The proposed residential use is not inherently incompatible with existing surrounding uses.

Had approval of the application been recommended, a condition regarding construction management would have been applied, to ensure measures to protect amenity and limit construction impacts (including in relation to hours of works, dust and noise) were implemented.

#### *Affordable housing*

In accordance with policy LP11 of the Local Plan and the Kirklees Interim Affordable Housing Policy, three affordable housing units (two for affordable/social rent, one intermediate) would be required in this development of 15 units. Condition 8 of the outline permission (ref: 2014/92328) addressed the matter of affordable housing, although in some respects it would be preferable to consider details of affordable housing at Reserved Matters stage, so that quanta and typologies could be considered simultaneously and amendments could be proposed in order to improve a development's viability and ensure known housing need is met.

#### *Environmental and public health matters*

The site is subject to noise from the adjacent highways and school. A Noise Impact Assessment was submitted with the application. This does not adequately address all of the concerns relating to noise affecting the site, however this matter could have been addressed at conditions stage, and is not considered to be a reason for refusal of Reserved Matters consent. No formal submission pursuant to condition 20 of the outline permission (ref: 2014/92328) has been submitted.

No information has been submitted in relation to air quality, however it is noted that condition 21 of the outline permission required the provision of electric vehicle charging points.

No information has been submitted in relation to site contamination, however it is noted that conditions 15 to 19 of the outline permission addressed this matter.

The health impacts of the proposed development are a material consideration relevant to planning, and compliance with Local Plan policy LP47 is required. Having regard to the proposed dwelling sizes, required affordable housing

provision, measures that would have been required at conditions stage to minimise crime and anti-social behaviour, and other matters, it is considered that the proposed development would not have negative impacts on human health.

### *Ground stability and coal mining legacy*

Parts of the site are within a Development High Risk Area in relation to coal mining legacy (as designated by the Coal Authority), however the majority of the site is within a Development Low Risk Area.

In their consultation response, the Coal Authority stated that, within the application site and surrounding area, there are coal mining features and hazards which need to be considered in relation to the determination of this application for Reserved Matters approval. The Coal Authority's records indicate that there is a mine entry close to the southeastern corner of the site with a zone of influence which extends into the site. This poses a significant risk to ground stability and public safety, with plots 6 and 7 being of particular concern.

The Coal Authority objected to the proposed development, as it had not been demonstrated that no significant risks to the development are posed by the recorded mine entries. Furthermore, it had not been demonstrated that the application site is, or can be made, safe and stable for the proposed development. The Coal Authority recommended that further information and evidence should be obtained from the applicant following intrusive site investigations to confirm and/or discount the presence of the mine entry from being on the site and an assessment made of its present condition. The findings of these works should then inform the development layout in order to demonstrate that adequate separation has been provided between this feature and any buildings proposed.

On 01/03/2018 the case officer forwarded the Coal Authority's consultee response to the applicant's architect, advising that the points raised therein would need to be addressed.

On 12/06/2018 the applicant's architect advised:

*"For your information the ground investigation has shown the possibility of a disused shaft in the area of plot 6 and 7 so we need to do some ground scraping on site before I can revise the layout to ensure I'm not proposing a building over it (if it turns up on site. It could be under the road)".*

No further information regarding ground stability and the site's coal mining legacy was submitted. As this matter remains unresolved, the proposals are contrary to NPPF paragraphs 170 (which states that planning decisions should contribute to and enhance the natural and local environment by... e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by unacceptable levels

of... land instability) and 178 (which states that planning decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability – this includes risks arising from former activities such as mining), and Local Plan policy LP53 (contaminated and unstable land) which states:

*“Development on land that is unstable, currently contaminated or suspected of being contaminated due to its previous history or geology, or that will potentially become contaminated as a result of the development, will require the submission of an appropriate contamination assessment and/or land instability risk assessment.*

*For developments identified as being at risk of instability, or where there is evidence of contamination, measures should be incorporated to remediate the land and/or incorporate other measures to ensure that the contamination/instability does not have the potential to cause harm to people or the environment. Such developments which cannot incorporate suitable and sustainable mitigation measures which protect the well-being of residents or protect the environment will not be permitted”.*

Of note, NPPF paragraph 179 states that where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.

It is also noted that – because the site’s coal mining legacy and the necessary resolution of its implications may significantly impact site layout and the quantum of development that can be safely implemented here – the matter cannot be addressed at conditions stage. For the same reasons, the applicant’s architect’s attempted submission of amended proposals on 29/04/2021 (with no accompanying information regarding ground stability) was not accepted.

Given the above concerns, refusal of Reserved Matters approval is recommended in relation to ground stability and the site’s coal mining legacy.

#### *Refuse storage and collection*

The submitted site layout plan did not include details of waste storage and collection for each of the 15 dwellings, and no vehicle tracking drawings were submitted to demonstrate that an 11.85m refuse collection vehicle could enter and manoeuvre within the site. Had approval of the application been recommended, a condition requiring details of adequate waste storage and collection arrangements would have been applied.

#### *Highways and parking*

Local Plan policy LP21 requires development proposals to demonstrate that they can accommodate sustainable modes of transport, and can be accessed effectively and safely by all users. The policy also states that new

development will normally be permitted where safe and suitable access to the site can be achieved for all people, and where the residual cumulative impacts of development are not severe.

Paragraph 108 of the NPPF states that, in assessing applications for development, it should be ensured that appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, that safe and suitable access to the site can be achieved for all users, and that any significant impacts from the development on the transport network (in terms of capacity and congestion), or highway safety, can be cost-effectively mitigated to an acceptable degree. Paragraph 109 adds that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highways safety, or if the residual cumulative impacts on the road network would be severe.

An estate road is proposed to extend from Healey Lane into the centre of the site, from which private drives would extend. Those dwellings fronting Healey Lane would have garden paths to the footway. These proposals have attracted no objection from Highways Development Management officers, although it is noted that “School Keep Clear” road markings may need to be removed (via a separate TRO process) where they extend along the site’s road frontage.

No dwellings would be accessed from West Park Road, however the provision of private drives off West Park Road (without on-site turning space) could be accepted, provided that there would be adequate off-street car parking (to avoid additional visibility obstructions with parked vehicles on the highway), and provided that suitable Section 184 agreements were entered into for the dropped crossings required. Any boundary treatments along West Park Road would need to be kept to 0.6m to allow for visibility of pedestrians using the footway – this lower height would be required as the route is expected to be used by children attending the adjacent primary school. If gates were to be installed at such private drives, these would need to be set back a minimum of 5m from the carriageway edge to allow vehicles waiting for the gate to open to be able to pull clear of the highway, and the gates would also need to be set to only open inwards.

No concerns regarding the likely number of vehicle movements to and from the site have been raised by Highways Development Management officers.

Adequate on-site parking is proposed for the 15 dwellings. Had approval of the application been recommended, conditions relating to the surfacing and drainage of parking spaces would have been applied. For sustainability reasons, a condition securing details of cycle parking would also have been applied.

Detailed comments were provided by Highways Development Management officers in relation to the proposed internal estate road, and its suitability for adoption. Permission could not reasonably be withheld on the grounds that the current design of the estate road renders it unadoptable, and to resolve

these matters the applicant would instead be expected to engage with the council's Section 38 team, in discussions running parallel to planning negotiations.

Had the application been recommended for approval, a condition securing the submission of a Construction Management Plan (including details of construction traffic routes, construction access points, and contractor parking) would have been applied.

### *Trees, landscaping and biodiversity*

The application site's boundary adjacent to West Park Road is heavily stocked with trees, and these provide screening, however they are not worthy of protection and they would benefit from selective thinning. Such thinning should enable the provision of private drives off West Park Road to at least some dwellings, as well as more useable garden space for these plots.

Limited details of landscaping (including treeplanting) were provided in support of the current application, however it is noted that condition 14 of the outline permission (ref: 2014/92328) addressed this matter.

Local Plan policy LP30 and paragraph 170 of the NPPF require the proposed development to achieve a biodiversity net gain. This requirement became applicable during the life of the application, and the case officer did not request a biodiversity metric calculation from the applicant's architect, therefore it is considered unreasonable to refuse the application on the grounds that a biodiversity net gain has not been demonstrated. Nevertheless, biodiversity net gain is a planning policy requirement, and the application must be determined in accordance with current relevant planning policies. Therefore, had the application been recommended for approval, a condition requiring details demonstrating a net gain would have been applied, and a Section 106 agreement would have been required to enable the developer to make a financial contribution in the event that an on-site net gain could not be achieved.

### *Drainage*

The site is within Flood Zone 1, but is less than 1 hectare in size, therefore a site-specific Flood Risk Assessment did not need to be submitted. However, drainage is nonetheless a consideration.

No drainage strategy was submitted with the current application or at outline application stage, therefore it is unclear how (if at all) flood risk and drainage considerations have informed the proposed layout. These key considerations should inform layout in many respects, including in relation to attenuation (space may be required for on-site storage, which is normally best located at the lowest part of the site and above which houses should not be built) and flood routing.

Of note, although conditions 10 to 13 of the outline permission (ref: 2014/92328) addressed flood risk and drainage, given that these matters are key factors affecting layout, they cannot be considered entirely separately from those matters under consideration at Reserved Matters stage.

On 01/03/2018 the case officer forwarded the Lead Local Flood Authority's consultee response to the applicant's architect, advising that the points raised therein would need to be addressed. No further information relating to flood risk and drainage has been submitted, therefore the matter remains unresolved, and the proposed development is considered to be contrary to policies LP27 and LP28 of the Local Plan.

Of note, the Lead Local Flood Authority's comment relating to 1500mm spans beneath an adopted highway have since been superseded – 900mm is now the maximum span acceptable.

#### *Other matters*

The comments of one neighbouring resident (regarding damage to their property) are civil matters, and are not material planning considerations. Other concerns regarding surface water would be addressed pursuant to conditions 10 to 13 of the outline permission (ref: 2014/92328) or in the information relating to drainage that should have been submitted at Reserved Matters stage (given its relevance to layout).

The comments of ward Members regarding the quantum of development are noted, however it is again noted that the proposed development would achieve a density of approximately 30 units per hectare, which falls short of the 35 units per hectare expectation set out in policy LP7 of the Local Plan.

#### **Conclusion**

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.

This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the proposal does not accord with the development plan.

**Recommendation** – Refuse Reserved Matters consent.

## Decision Authorisation – Delegated Powers

**Application Number** – 2017/94229

**Officer Recommendation** – Refuse Reserved Matters consent

### Reasons for refusal

1. The proposed development, due to its layout, design and proposed access arrangements, would fail to sufficiently engage with West Park Road, would present an inactive site edge and unrelieved massing of a poor appearance to the most important highway and public realm abutting the site, and would fail to achieve a satisfactory standard of design. The proposed development is therefore contrary to policy LP24 of the Kirklees Local Plan and guidance in the National Planning Policy Framework.
1. In the absence of supporting information relating to flood risk, drainage, ground stability and the site's coal mining legacy, it has not been demonstrated that those material considerations have appropriately informed the proposed layout, nor that the proposed development does not pose unacceptable risks to public safety. The proposed development is therefore contrary to policies LP27, LP28 and LP53 of the Kirklees Local Plan and guidance in the National Planning Policy Framework.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Location plan			12/12/2017
Site layout plan	2605-02-01	C	12/12/2017
Site layout presentation plan	2605-02-02	B	12/12/2017
Sections	2605-02-03		12/12/2017
Boundary treatments and landscape plan	2605-02-05		12/12/2017
Plans and elevations (plots 1 to 3)	2605-11-01		12/12/2017
Plans and elevations (plot 4)	2605-14-01		12/12/2017
Plans and elevations (plot 5)	2605-15-01		12/12/2017
Plans and elevations (plot 6)	2605-16-01		12/12/2017
Plans and elevations (plot 7)	2605-17-01		12/12/2017
Plans and elevations (plot 8)	2605-18-01		12/12/2017
Plans and elevations (plot 9)	2605-19-01		12/12/2017

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Location plan			12/12/2017
Plans and elevations (plot 10)	2605-20-01		12/12/2017
Plans and elevations (plot 11)	2605-21-01		12/12/2017
Plans and elevations (plot 12)	2605-22-01		12/12/2017
Plans and elevations (plots 13 to 15)	2605-23-01		12/12/2017
Arboricultural Report	JCA, 12856-A/AJB, 12/09/2017		12/12/2017
Arboricultural Method Statement	JCA, 12856-B/AJB, 12/09/2017		12/12/2017
Noise Impact Assessment	PDA, 9840/2412/WSC/1, 12/05/2017		12/12/2017

Pursuant to article 35 (2) of the Town and Country Planning (Development Management Procedure) Order 2015 and guidance in the National Planning Policy Framework, the Local Authority have, where possible, made a pre-application advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application. The applicant was informed of the concerns regarding the application. The Local Planning Authority provided opportunities for the proposals to be amended, provided advice on options for a revised layout, and discussed resubmission options with the applicant.

**Report Dated:** 20/05/2021