

Clayton Fields Objection

Land at Edgerton Road, Huddersfield, HD3 3AA

Planning History

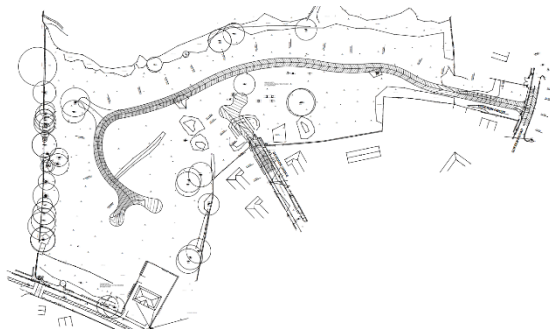
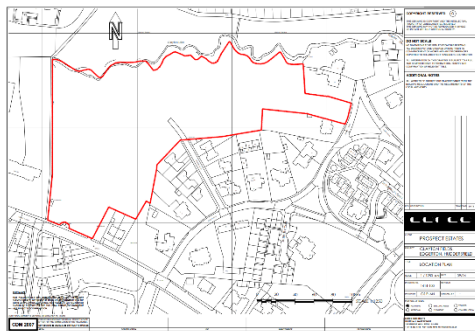
In January 1967 planning permission was given for the erection of 20 houses, 23 bungalows and 12 flats on this site. The only plan in current records is a layout of dwellings and roads which showed access off Deveron Grove and Queens Road in the same positions as now proposed. It has been historically accepted by Officers that the permission remains extant due to the commencement of construction works albeit that such works subsequently ceased.

97/90270 – Outline planning permission for 48 dwellings refused by the Huddersfield Area Planning Sub-Committee in March 2003. Refusal was on the grounds of premature development of a 'greenfield' site and concerns at the suitability of Deveron Grove and the surrounding highway system to accommodate additional traffic.

Outline Planning Permission: Access Only

Planning Application 2014/93014: 'Outline application for residential development comprising of 41 no. new dwellings plus associated works (within a conservation area)'

Site Location Plan/Block Plan:



Application was not determined in accordance with DCLG timeframes, applicant submitted an appeal to the Planning Inspectorate for 'Non-Determination' against the LPA.

Committee Report for Huddersfield Sub Committee 26 February 2015:

"The proposal is sustainable development of a site allocated for housing on the Unitary Development Plan. It will contribute to the Council's current shortfall of a five-year housing supply. It is considered that this carries great weight in the decision.

The applicant has not provided the habitat assessment requested by Officers to assess the value of the site or its potential as a bat habitat or feeding ground. It is considered that the lack of this assessment as well as appropriate mitigation measures significantly and demonstrably outweighs the benefits of securing housing on this site.

The proposal does not raise any issues of harm to drainage, residential and visual amenity, trees, heritage and road safety raised by consultees or members of the public that are not significantly and demonstrably outweighed by the benefits of housing delivery.

Members are advised that the 'fallback' position of the 1967 planning permission does not carry significant weight.

- The current proposal is contrary to UDP policy and the NPPF for the following reasons:*
- The applicant has failed to provide an adequate assessment of the woodland habitat*
- The proposal does not provide affordable housing or provision to meet education needs.*
- This justifies a recommendation of refusal to the Inspector".*

Committee Update for Huddersfield Sub Committee 11 June 2015, Item 12:

"Affordable Housing/Section 106 contributions

Following further discussions, the applicant has indicated a willingness to revisit their position in respect of affordable housing and Section 106 contributions.

The NPPF sets out how viability should be considered and paragraph 173 states,

"To ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable."

The applicant originally offered no affordable housing. However, a more detailed Viability Appraisal has now been submitted, setting out why they contend the development cannot deliver an affordable housing contribution.

The factors behind this are given as the substantial legal and planning fees associated with bringing a development forward on this site. This primarily relates to the applicant's defence of a village green application, which was overturned in 2014. Additional significant (and site specific) costs will also need to be met in respect of drainage and provision of retaining walls.

The applicant's appraisal has been subject to independent assessment on behalf of the Council. This includes thorough scrutiny of the residual land value, revenue return, development, finance and abnormal costs of the development.

Whilst the high cost of bringing forward and developing this site in terms of legal/planning fees, drainage and retaining walls is accepted; the Council's appraiser is of the view that the development can deliver a total 'pot' of £362,308 to cover all Section 106 matters.

In addition to an affordable housing contribution of £248,255, this includes the costs associated with: an Education Contribution, provision of residential Metro Cards and a bus priority loop system. Public Open Space is to be provided on site with a Unilateral Undertaking securing its

future maintenance. Section 106 contributions totalling £362,308 would allow for developer's profit of 20% on Gross Development Value.

This is considered to be a reasonable developer's return and is within the generally accepted range, established by appeal decisions.

Based upon this position, Officers have undertaken further negotiations with the applicant. They have now confirmed that they are prepared to agree to pay the full amount of £362,308 (towards all Section 106 contributions), which the Council's consultant considers are able to be afforded by the development.

The table below details the Policy requirements in relation to the development, together with contributions agreed with the developer as set out above.

Provision/Contribution	Requirement	Contributions/ Costs
Affordable Housing	30% of res floor space	£248,255.25
Education Contribution	£89,547	£89,547
Public Open Space	Provided on site	Provided on site
Residential Metro Cards	£19,505.75	£19,505.75
Bus priority loops (Edgerton Road/Blacker Road junction)	£5,000	£5,000
		Total: £362,308

Whilst the Council primarily seeks to achieve on-site affordable housing, SPD2 allows the Council and developer to agree to a commuted sum towards the provision of affordable housing off-site. In this case a commuted sum is considered preferable given that the primary needs identified in the Strategic Housing Market Assessment are for 2 and 3 bedroom homes and primarily for social rent. The dwellings proposed by this development are for large, detached four bedroom houses, for which there is a much smaller need.

Officers' recent discussions with Registered Providers on other schemes has highlighted concern around the sustainability of a single unit (as would be the case with this site), with potential issues around affordability and underoccupancy in respect of welfare reforms.

Therefore, a commuted sum is considered appropriate in this instance.

Although the development does not fully meet the requirements of SPD2 in relation to the provision of affordable housing (at 30% of floorspace), the applicant's revised offer is considered reasonable given that it is in line with the independent assessment conducted on behalf of the Council.

In addition, if the applicant was to implement the 1967 consent, no affordable housing or Section 106 contributions would be secured.

Furthermore, that historic consent would involve a more dense development (55 units as opposed to the 41 now proposed) than this current application seeks consent for. As noted in the Officer report to Committee in February 2015, the layout plan for the 1967 permission,

"Shows a relatively unimaginative layout with minimal public open space and no public access alongside the Dyke...The Trees Officer confirms that the tree loss in the available plan with the 1967 decision notice would be similar if not worse overall than the current plan."

In the view of Officers, the benefits of this proposal being brought forward, rather than the 1967 consent, are considered to weigh heavily in favour of accepting the applicants' offer as detailed above.

Whilst the amount of affordable housing offered falls below that required by Policy H10 of the UDP and the Council's supplementary planning document, the provision of a financial contribution towards affordable housing is nevertheless secured by the development and will contribute towards meeting the identified need for affordable housing within the area.

The potential harm arising from the shortfall in the affordable housing provision from that required to meet the Council's policy needs to be weighed against the benefit of bringing forward new housing development at a time of general housing need and the lack of a 5 year housing land supply.

Officers' therefore advise that matters in relation to Viability and affordable housing are considered resolved and a reason for refusal on this basis would now be difficult to substantiate.

Planning Inspectorate 'Non Determination'

Appeal Ref: APP/Z4718/W/15/3002523

Affordable Housing was clearly considered in the Inspectors Report in regard the above application, and formed part of the justification for the appeal to be allowed:

"The appeal is made against a failure to give notice within the prescribed period of a decision on an application for outline planning permission, with access and layout submitted for consideration at this stage. Initially the Council opposed the scheme, concluding that the application would have been refused if appeal proceedings had not commenced due to a lack of affordable housing and sufficient information relating to biodiversity and ecology.

However, during the period leading up to the Hearing the Council's position changed following receipt of an ecological assessment, viability report and a revised layout plan. After considering this evidence, the Council's Planning Committee resolved on 11 June 2015 that the scheme was acceptable in all regards and that planning permission would have been granted".

Planning Inspectorate Decision

The appeal is allowed and outline planning permission is granted for residential development comprising of 41no. new build houses plus associated works on land at Edgerton Road, Huddersfield, HD3 3AA in accordance with the terms of the application, Ref 2014/93014, dated 1 October 2014.

Reserved Matters Application: Appearance, Landscaping, Layout and Scale to be considered

Reserved Matters Application no. 2017/90190 'Reserved matters application pursuant to outline permission 2014/93014 for erection of residential development comprising of 41 dwellings plus associated works (within a Conservation Area)'



The above application was granted conditional planning permission for the approval of Reserved Matters on 21st April 2017

A note was attached to the Decision Notice which stated that work should be commenced within 2 years of the date of decision. Ordinarily it would be expected that such wording would be included within a planning condition, but presumably Kirklees Council Planning Department have taken legal advice in this regard as this is the standard wording within their Decision Notices in regard Reserved Matters applications:

Application Number: 2017/61/90190/W

To: John Crompton,
LOROC Architects
25A, Park Square West
Leeds
LS1 2PW

For: Rob Cooke, Prospect Estates Ltd

In pursuance of its powers under the above-mentioned Act and Order the KIRKLEES COUNCIL (hereinafter called "The Council") as Local Planning Authority, having considered your application submitted to the Council for approval of:-

RESERVED MATTERS APPLICATION PURSUANT TO OUTLINE PERMISSION 2014/93014 FOR ERECTION OF RESIDENTIAL DEVELOPMENT COMPRISING OF 41 DWELLINGS PLUS ASSOCIATED WORKS (WITHIN A CONSERVATION AREA)

At: EDGERTON ROAD, EDGERTON, HUDDERSFIELD, HD3 3AA

NOTE: Development pursuant to the outline planning permission to which this approval of reserved matters relates, must be commenced no later than the expiration of two years from the final approval of reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

In accordance with the plan(s) and applications submitted to the Council on 20-Jan-2017, being matters reserved in a permission granted on 11-Sept-2015 the Council have approved the said matters in terms of, and subject to compliance with the details specified in your application, subject to the following conditions:-

A number of applications were made to vary and discharge planning conditions in relation to the Outline Planning permission and Reserved Matters permission:

2017/91916 'Variation of condition 23 (highway works) on previous permission 2014/93014 (APP/Z4718/W/15/3002523) for outline application for residential development comprising of 41 no. new dwellings plus associated works (within a conservation area)' was granted conditional planning permission on 01 Sep 2017

2019/90244 'Discharge of conditions 3 (stone) and 4 (roofing materials) of previous permission 2017/90190 for reserved matters pursuant to outline permission 2014/93014 for erection of

residential development comprising of 41 dwellings plus associated works (within a Conservation Area).

2019/90245 'Discharge of conditions 5, 7, 8, 9, 10, 12, 13, 14, 15, 17, 20, 22, 23 and 24 of previous permission 2014/93014 for outline application for residential development comprising of 41 no. new dwellings plus associated works (within a Conservation Area)' Split decisions were issued on 12th June 2020 discharging conditions 7, 8 and 9 (Drainage) and 12 (Lighting scheme) and 4th September 2020 refusing discharge of conditions 14 (Habitat Mitigation Strategy) and 17 (Eradication of invasive species).

A further Decision Notice issued on 15th September 2020 appears to discharge conditions 5, 15, and 24, and refuse to discharge conditions 22 and 23.

It should be noted that the conditions not discharged would be considered to go to the heart of the permission.

Given the above, it would appear that unless a lawful start was made on or before 21st April 2019, the permission has expired, and there is no extant permission currently in place.

Certificate of lawfulness for existing commencement of formation of access road

Lawful Development Certificate Application no. 2019/90964

The applicant submitted a Lawful Development Certificate application on 22nd March 2019.

It is presumed that this application was submitted in the knowledge that the Reserved Matters application was about to expire. Submitting such an application very late in the process (i.e. one month prior to the expiration of application no. 2017/90190) is a well-known tactic by developers used to pressure Local Planning Authorities into rushing the decision making process.

The above application was withdrawn by the applicant on 31st March 2022 by the applicant. It is likely that the application was withdrawn as no positive recommendation could be reached.

Applications following the expiration of the Reserved Matters Application

The LPA continue to address and determine condition discharge applications on what appears to be an expired permission. It's unclear as to why it would be considered that there is an extant permission here.

It is acknowledged that some site clearance took place in November 2016. However, this appears to amount to some top-soil scraping only. In any case, the site appears to have re-naturalised to its former state.

There are no Building Control records showing commencement of any development on site.

In the unlikely event that there is an extant Reserved Matters application on site. The latest application is considered below.

Application to Modify Section 106 obligation relating to previous permission 2014/93014 for outline application for residential development comprising of 41 dwellings plus associated works (within a Conservation Area)

Application no. 2022/91822

The above application seeks to remove financial obligations that formed the backbone of the justification to grant outline planning permission. These obligations are as follows:

Provision/Contribution	Requirement	Contributions/ Costs
Affordable Housing	30% of res floor space	£248,255.25
Education Contribution	£89,547	£89,547
Public Open Space	Provided on site	Provided on site
Residential Metro Cards	£19,505.75	£19,505.75
Bus priority loops (Edgerton Road/Blacker Road junction)	£5,000	£5,000
		Total: £362,308

Affordable Housing

It should be noted that the Affordable Housing contribution as considered by the Inspector when determining the Outline Planning Permission did not fully meet the 30% contribution ordinarily required.

The scheme was considered 'on balance', given the other benefits that bringing forward housing on this site would provide. It should also be acknowledged that Kirklees Council was not able to demonstrate a 5-year housing land supply at this time, so the 'tilted balance' was in play.

Changes to Local Planning Policy Position

It should also be acknowledged that 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 27th February 2019).

Under the newly adopted Local Plan, to accord with Local Plan Policy LP11 and the Kirklees Affordable Housing Policy, 20% of the dwellings/units of the final scheme will be sought for affordable housing with a tenure split of 54% Social or Affordable Rent to 46% Intermediate housing. The policy assumes on site provision. However, exceptionally, where the LPA considers it appropriate, a financial contribution to be paid in lieu of on-site provision will be acceptable.

In this case, an off-site contribution figure has already been agreed historically.

Any revision of the off-site contribution should be fully justified in accordance with the current Local Plan and supporting documents.

Kirklees Interim Affordable Housing Policy – January 2020

Data from SHMA (October 2016) (Table 7.11) provides evidence on the number of eligible households that could afford starter homes, in this case in Hudds North:

	Batley and Spen	Dews and Mirfield	Hudds North	Hudds South	Kirklees Rural – East	Kirklees Rural – West	Kirklees Total
Starter Home Price	£96,000	£101,600	£106,000	£94,080	£152,000	£113,000	£104,000
% existing eligible households considering owner occupation who could afford Starter Homes	33.9%	0%	0%	32.4%	40%	69.3%	31.5%
% newly forming households who would consider owner occupation who could afford a Starter Home	53.5%	20.7%	23.5%	14.4%	34.7%	67.0%	23.3%

Table 7.8 of SHMA sets out evidence of the affordable needs by SHMA subarea and property size by setting out the net annual affordable housing imbalance by sub-area, property size and designation.

Sub-area	General Needs		Older Person	Total
	1-2 bed	3 bed	1-2 bed	
Batley and Spen	96	209	10	315
Dewsbury and Mirfield	-89	175	-17	69
Huddersfield North	74	134	-13	195
Huddersfield South	21	139	22	182
Kirklees Rural – East	93	11	3	106
Kirklees Rural – West	173	-25	34	182
Total	367	642	39	1049

This appears to be the most up to date information available from the Kirklees, showing a clear need for affordable homes in Huddersfield North.

It is recognised that financial viability is inherently linked to the ability to satisfy planning policy and to deliver regeneration objectives and economic development. It is also recognised that this is an allocated housing site.

As Kirklees can now demonstrate a 5-year housing land supply, there seems no reason as to why a policy compliant scheme cannot be delivered to support the most effective use of land for Kirklees's allocated housing sites.

Education Provision

As outlined within the S106 agreement secured on the Outline permission an education contribution is required due to the number of units being proposed.

The contribution is determined in accordance with the Council's policy and guidance note on providing for education needs generated by new housing. The financial contribution is calculated with reference to number of units proposed, unit sizes and projected pupil numbers, in accordance with Policy LP49 – Educational and health care needs.

The Education Department considered that a contribution was required in terms of the capacity of nearby schools. It seems unlikely that this capacity issue has now been fully resolved.

Sustainable Transport

Progressing to sustainable travel, the site is within the urban environment with nearby amenities. The site is adjacent to a bus links into Huddersfield Town Centre. Huddersfield in turn has public transport links to the wider region.

West Yorkshire Metro previously calculated a figure of £19,505 to be put towards metro cards to promote bus usage. This is to promote alternative, low emission, methods of travel.

Within their '2025 Kirklees Transport Vision' Kirklees Council has set an ambitious 20 year Transport Vision to allow sustainable transport systems to flourish. It would be difficult to see how this would be achieved without significant investment from development sites as the future occupiers become service users.

Conclusion

1. It would appear that unless a lawful start was made on or before 21st April 2019, the permission has expired, and there is no extant permission currently in place.
2. If there is an extant permission in place, it is respectfully requested that the best use is made of this housing site, with a policy compliant, viable, and sustainable development scheme.

It is requested, therefore, that application no. 2022/91822, which seeks to modify the previously agreed Section 106 obligation relating to previous permission 2014/93014 for outline application for residential development comprising of 41 dwellings plus associated works (within a Conservation Area) is refused.