

Planning Objection

Application Reference: 2023/62/91261/W

**Land at
Alexandra Road West
Paddock
Huddersfield
HD3 4EX**



June 2023

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1.0 Introduction

Instructions

- 1.1 The Leith Planning Group have once again been instructed by Stephen Collman to consider the papers including the planning application forms, supporting documents and the provisions of Government advice and Development Plan Policy for the latest planning application on Land at Alexandra Road West, Paddock, Huddersfield, HD3 4EX (application reference 2023/62/91261/W). This is the fourth application submitted over recent years and continues to propose the over development of this site. Our client has reviewed this further proposal, and once again has significant concerns with the scheme.
- 1.2 Having reviewed the application submission, we have no option other than to continue to object to the proposed development which is grossly misconceived. For avoidance of doubt, as submitted, the application remains technically inchoate; given the scope of additional information that is required, it is our view the application should either be refused outright or withdrawn. The amendments to this proposal do not justify the approval of the application, and do not overcome the significant issues identified in the reasons for refusal associated with previous applications, including the most recent scheme refused under application reference: 2022/90601, which was refused for the following reasons, namely:

“1. The majority of the proposed private amenity space would be located to the front of the new dwellings at, or close to, highway level, and consequently would make only a limited contribution to the amenities of future occupants owing to limited privacy and exposure to traffic noise. It is considered therefore that the new dwellings would not have adequate access to private outdoor space that is functional and proportionate to the size of the dwelling and the development would therefore not be in accordance with the aims of *Principle 17 of the Housebuilders’ Design Guide Supplementary Planning Document, Policy LP24(b) of the Kirklees Local Plan and paragraph 130(f) of the National Planning Policy Framework.*

2. It has not been demonstrated by means of swept path analysis that the parking spaces intended to serve the proposed dwellings would be easily accessible, allowing vehicles to conveniently turn within the site and thereby enter and leave in forward gear. It is therefore considered that the parking spaces would not be fully used and the layout would lead to vehicles seeking to park on street along Lower Gate, which already experiences high levels of on street parking. *The proposal would therefore be detrimental to highway safety and fail to accord with Policies LP21 and LP22 of the Kirklees Local Plan, Principle 12 of the Housebuilders’ Design Guide Supplementary Planning Document and Key Design Driver 21 of the Highways Design Guide Supplementary Planning Document.*”

Planning Application Reference: 2023/62/91261/W– Description of Development

1.3 The Description of Development for the application reference 2023/62/91261/W reads as follows:

“Erection of 2 detached dwellings with garages, regrading of land and erection of retaining walls to form access and turning area from Lower Gate”

1.4 We would stress that our concerns with the description of development on the previous applications remain with the description once again (and especially on the as submitted application form) failing to fully pertain to the extensive works required to implement the proposal, including the removal of a large number of trees. Despite making these comments in previous objections, the matter has not been resolved and this would suggest that the Applicant is once again failing to consider the views of neighbours.

1.5 As per our previous objections, we maintain significant concerns with the application as submitted, including a lack of survey work required to assess the impact of the proposal. The application once again fails to provide the detail expected to be able to review the potential harm to be caused by the development.

1.6 Our objections to the proposal remain from the previous refused and withdrawn applications, and can be summarised as follows:

- Unacceptable levels of noise in the local area, which would be to the detriment of future residential occupiers;
- Overdevelopment of the site. This is highlighted by the provision of insufficient space on site to accommodate the needs of the proposed residents, including relation to outdoor amenity space, which remains in the main on the site frontage contrary to one of the previous reasons for refusal;
- Lack of detailed plans showing the impact of the development on all neighbouring properties, which has not been addressed as per previous objections;
- Lack of supporting information, including, but not exclusive to:
 - Contaminated Land Assessment;
 - Preliminary Ecological Appraisal;
 - Biodiversity Net Gain/Biodiversity, Ecology Management Plan;
 - Drainage Report;
 - Structural survey and assessment of proposed retaining walls (we do not agree with the Council highways team that this can be addressed by way of condition given the significant impact this issue could have on the local area and adjacent properties);
 - Vehicle tracker drawings for all parking spaces proposed, and for delivery and emergency vehicles who may need to access the site;

- Air Quality Assessment;
- Arboricultural Impact Assessment; and
- Heritage Statement

Government Advice and Local Plan Policy

- 1.7 In preparing the comments made within this report, we have considered the papers submitted with the application, including the planning application form, supporting documentation, the planning history of the site and the provisions of Government Advice and Development Plan Policy. The application continues to constitute an unacceptable development, and the issues outlined within the previous refusals have once again not been addressed by the Applicant. We therefore kindly request that the Council once again seek to refuse consent for this additional scheme, with additional reasons for refusal as appropriate.

Principle of Development

- 1.8 It is considered that the proposed development is unacceptable in principle, in that it is in clear conflict with the policies within the adopted Development Plan for the reasons set out within this report, and due to the lack of supporting information provided. The scheme represents overdevelopment of a plot unsuitable for development, with issues with access, impact to neighbours, noise, visual impact on the streetscene, loss of biodiversity without replacement net gain, poor standards of amenity for future occupiers, and insufficient space on site for turning, manoeuvring and meeting the needs of the development. For the avoidance of doubt, the minor reduction in scale and footprint of plot 1 simply is not sufficient to overcome the previous concerns with the proposal.

Procedural Matters

- 1.9 It is our contention on the evidence submitted to date, that the Applicant has failed to provide sufficient supporting information to judge the impact of the proposals. Further, that the applicants have once again not understood the live issues and have failed to deal with them, as such any grant of consent (based on that failure) may well fall foul of the tests laid out in the Crown Estates case mentioned below and, if approved, may well be susceptible to a claim for Judicial Review. As you will appreciate the matter of fairness in the determination of planning applications is discussed at [2004] J.P.L. 1316 with particular reference to *Auborn Court Ltd v Kingston and St. Andrew Corporation* [2004] WLR 62219 and *R. (on the applicant of David Rubin) v First Secretary of State, Harrow London Borough Council*, 9 February 2004. Whilst we have every confidence in the Council's diligence in processing this application, we are instructed to evaluate the process against the legal requirements debated in the above case.

2.0 Further Information Required

Planning Application Form: Requirement of Accurate Completion

- 2.1 The local planning authority should see to it, in the public interest, that questions on the application form are answered in sufficient detail to enable the true nature of the proposal to be understood. We have concerns that the applicants have failed to complete the application form diligently and the answers to some questions are incomplete or inadequate. Under s.327A (2) introduced by s.42 of the Planning and Compulsory Purchase Act 2004:

“The Local Planning Authority must not entertain such an application if it fails to comply with the requirement.”

- 2.2 The requirement in this case is the formal manner in which the application must be made, and the formal content of any document or other matter which accompanies the application.
- 2.3 **Description of Development:** Once again the Applicant advises that the description of development should read as ‘2 detached dwellings’. This once again appears to underplay the scope and scale of development actually being applied for, and does not reflect the Council’s previously amended description of development.
- 2.4 **Existing Use:** As per the previous applications, the application forms once again incorrectly state that the site is not on land which is known or suspected to be contaminated. The site is identified as having the potential for contamination due to its historic use as a quarry. We therefore maintain as previously set out, that a Phase 1 Contaminated Land Assessment is required to identify whether the land is contaminated and whether remediation is required. The Planning Practice Guidance details that *failing to deal adequately with contamination can cause harm to human health, property and the wider environment* (Paragraph: 001 Reference ID: 33-001-20190722 Revision Date: 22-07-2019), and as such we consider it of high priority that a Contaminated Land Survey is undertaken prior to the grant of any residential consent at this location, notwithstanding other issues dealt with in this objection. Failure to ensure that land on which new homes are to be built is both safe and structurally sound to secure the safety of occupiers is clearly unacceptable.
- 2.5 **Materials:** We continue to have concerns with the lack of ambition in relation to the proposed pallet of materials, but it is once again the lack of reference to the documentation required to support and secure validation of the application, we are most concerned with. The lack of clarity on the scope of the application submission raises questions for third parties as to whether they have had sight of the full suite of reports. However, if any reports, other than the plans have been submitted, we would advise that these have not been made available for third party scrutiny, which is wholly unacceptable, and additional time should be provided to allow for a review and further comments. However, we would assume that as no additional documents have been made available with previous applications, that the submissions have simply not been prepared and therefore, we would consider that the application should be made invalid.

- 2.6 **Vehicle Parking:** As per earlier applications, once again no information has been included in respect of cycle parking spaces, and it is considered that this should be requested from the Applicant and included on the forms and the plans. Given the size of the car ports being proposed to service the parking requirements for the development, it is clear that there is insufficient space within these areas to store bikes, without resulting in insufficient space for the parking of vehicles. This will either mean the scheme is deficient in the provision of cycle parking, or runs the risk of vehicles having to park within the other hardstanding areas on site (risking insufficient turning and manoeuvring), or parking on the highway to the detriment of highway safety. It is noted within the officer's report on the most recent refusal that they advise that a lockable unit could be placed on the garden terraces, and therefore the application could not be refused on that basis. However, in our view given the need to be seeking to address the climate crisis, and the potential impacts of cycle parking within the development as laid out above, this issue needs to be addressed in advance of determination.
- 2.7 **Trees and Hedges:** The Applicant has yet again incorrectly answered no to there being trees or hedges on and adjacent to the proposed development site. There is in fact a significant amount of foliage at this site, and we would expect an Arboricultural Impact Assessment, including a Tree Retention Plan, Tree Removal Plan and Tree Constraints Plan to be submitted prior to determination of the application. Without such information being available, it is not possible to fully understand the impact of the proposal in terms of arboriculture, nor in relation to biodiversity net gain, and therefore it is not possible to comment fully on this aspect of the proposal. The impact of the loss of vegetation on surface water runoff and the structural integrity of the site should also be considered. This matter has been addressed in all of our previous objections, however once again has not been addressed by the Applicant.
- 2.8 **Assessment of Flood Risk:** It is noted that the Applicant is proposing to dispose of surface water by way of soakaway. Given the need for retaining walls within the development, the relationship with the adjacent highway network there are serious concerns as to whether the ground can accommodate the drainage requirements of this development, and therefore whether the drainage proposals are fit for purpose. Without the submission of a detailed drainage assessment, which should be required in this instance prior to determination of the application, we do not accept the development to be acceptable. Once again, this issue has been highlighted previously to the Applicant and appears once again to have been completely disregarded within this submission. The potential for localised surface water flooding from the site onto the neighbouring highway network, particularly in heavy rain, needs to be assessed and addressed in advance of determination of this application.
- 2.9 **Biodiversity and Geological Conservation:** The Applicant continues to incorrectly answer no to the question on designated sites and biodiversity features being affected by the proposed development. The application site is allocated within the Council's adopted Local Plan (2019) as part of the Valley Slopes Biodiversity Opportunity Zones. As detailed within the Local Plan, the Council have identified these Biodiversity Opportunity Zones to reflect the habitats found in these areas. Furthermore, the

adopted Local Plan states that *All development in Kirklees, as set out in national policies and the policies described in this document, will be expected to not result in significant loss or harm to biodiversity.* We would ask that the Council require the Applicant to submit at the very least a Preliminary Ecological Appraisal to assess the impact of the proposal in terms of biodiversity, and to demonstrate biodiversity net gain and on-going site/landscape management. Without the submission of such reports one in reality could question whether the application should have been validated. This is an existing greenfield space and could therefore provide habitat or transitory space for protected species. Failing to consider and address this important issue is clearly contrary to the provisions of the development plan.

- 2.10 **Foul Sewage:** The application forms details that foul sewage is to be disposed of via the Mains Sewer and identified the plan reference AL(40) as having details of the existing system. Having reviewed the plan we once again note that the plan shows an indicative foul drainage layout “to specialists details”, but no further information had been submitted in regard to the said specialists’ details. As this is a full planning application, as opposed to an outline proposal, we consider there should have been a Drainage Strategy submitted with the application clearly showing the proposed methods and routes of foul and surface water drainage, and rates of flow from the site.
- 2.11 In addition, no information has been submitted to confirm the existing foul drainage system is sufficient to support the additional dwellings. Given the topography of the site there are also concerns regarding potential surface water flooding or water run-off onto Lower Gate which is noted to act as a major thoroughfare, and the impact poor drainage could have on the structural integrity of the site. In assessing this issue, we would draw officer’s attention to the landslip on Burnlee Road, Holmfirth which fell away after heavy rains and bad weather at the start of 2021, and which remains blocking this thoroughfare, causing on-going disturbance and disruption. The risk posed by unstable ground simply cannot be ignored, and as such it is imperative that the council are satisfied in that regard, prior to determination of the application. In our view, the issue of land stability falls to the principle of development and should not therefore be dealt with by way of condition.
- 2.12 **Waste Storage and Collection:** Whilst in this application the Applicant has provided details on the location of potential bin stores, they continue to advise that no arrangements have been made as yet for the collection of recyclable waste despite this issue being raised many times over the previous applications. Furthermore, the plans only include space on the site frontage for a single wheelie bin, and we are aware that Kirklees have 2-3 waste collections for standard waste, recycling and garden waste. The scheme does not therefore secure sufficient on site provisions for all the Council’s requirements. This could lead to (1) noise, smells and nuisance to neighbours with inconsiderate siting of the additional bins, and (2) the risk of additional bins being sited within the main hardstanding area on the site frontage, potentially creating accessibility issues within the site.
- 2.13 The Council’s Refuse Collection Vehicles (RCVs) are understood to require a minimum carriageway width of 5.0m and for this location, must have sufficient turning space such that they can re-enter in forward gear. This is confirmed within the Council’s

Highways Guidance Note – Emergency Access, Waste Management, Servicing and Deliveries (2020). It is noted that in the Officer’s Report associated with application ref: 2022/62/90601/W, that the Waste Strategy Team confirmed that roadside collection in this location would not be desirable because a refuse collection vehicle stopping to undertake collection would cause delays to other road users who would be unable to pass the stationary vehicle. Presumably any such manoeuvre would also be unsafe and pose a risk to other road users and pedestrians. It is noted that the case officer indicated that refuse collection agreement could be negotiated by way of condition, however we consider that such matters fall to the principle of development and in reality need to be addressed in advance of determination. Demonstrating through a suitable swept path analysis that refuse services can access and egress the site safely, and where on site the required collection point is located is therefore required.

- 2.14 We note a swept path analysis has been shown on the plan reference AL(40). However, it is unclear what vehicle type that is for; albeit it looks to only relate to a smaller vehicle, and in fact only relates to one of the proposed five parking bays. It does not demonstrate safe access and egress from all five spaces now being proposed. Confirmation is also sought that the proposed reduction in parking spaces from the previously proposed 6 to 5 remains policy compliant for two dwellings.

Further Information Required by the Local Planning Authority

- 2.15 The local planning authority may direct an applicant in writing to provide officers with any evidence in respect of the application, as is reasonable for them to call for, to verify any particulars or information given to them. If the direction is not complied with, the application is incomplete, and the local planning authority should notify the applicant accordingly. It should be noted that much of this information was suggested as being necessary for the previous applications, however it is clear that the Applicant has disregarded our comments on the proposal, and therefore failed to incorporate documentation such that a well-rounded assessment could be undertaken on the application. In short, we once again formally request the following documents and information:

- **Additional Plans:** The plans submitted with the application are once again insufficient to provide a full understanding of the proposed development. In particular we would like to see a wider selection of elevations and section plans showing the relationship of the proposed development with the adjacent sites in order to gain a full appreciation for the proposals, and how they will visually appear within the wider context of the site. Additional plans with clarity on the details of the proposed retaining walls in terms of visual appearance, materials and height are also required to enable a full assessment of visual impact, and to clarify if the existing dry stone wall on the site frontage will be retained.
- **Arboricultural Impact Assessment:** Given that there are extensive existing vegetation within the site we would expect a full Arboricultural Impact Assessment to be submitted prior to the determination of the application. This is of particular importance in circumstances where the Applicant has answered

“no” to there being existing trees and hedges on and adjacent to the site. The loss of any potential vegetation and the associated environmental and ecological impact of the same will also need to be considered and addressed.

- **Arboricultural Method Statement:** In addition to the Arboricultural Impact Assessment, we would request an Arboricultural Method Statement is also submitted, if necessary. This should detail all proposed tree works, the location and type of tree protection to be used, and all construction methodologies within the root protection areas of retained trees.
- **Coal Mining Risk Assessment:** The site is identified by The Coal Authority as within a Coalfield Consultation Area. As such, a Coal Mining Risk Assessment should be undertaken at this site.
- **Ground Investigation/Structural Survey:** From a review of the plans, it is understood that the implementation of the proposal would require a degree of excavation of the land. Given the sites historic use as a quarry, we would ask that a Ground Investigation is undertaken to establish whether the ground is stable enough to accommodate the proposed development, and what engineering works are required to secure the safety of the new dwellings and adjacent properties. This should be required prior to the determination of the application. The importance of this issue has been highlighted once again within the consultee response from the council highways team, however we do not agree that the matter can be addressed by way of condition as it could significantly impact upon the development. The ability to show that the site can suitably and safely accommodate the proposals needs to be addressed in advance of determination of the application.
- **Heritage Statement:** The site itself is unlisted and it does not lie within a Conservation Area. However, there are a number of Grade II Listed Buildings within close proximity to the site, namely:
 - 18 Longwood Road;
 - Barn between numbers 8 and 10, Longwood Road; and
 - 67 and 69 Lower Gate

In particular, we consider the proposal has the potential to impact on the setting 67 and 69 Lower Gate and therefore the impact of the proposal on all three heritage assets needs to be considered. We would therefore once again request that a Heritage Statement is provided in the interest of protecting and enhancing the historic environment, a requirement of both national and local planning policy.

- **Swept Path Analysis:** As detailed above, a Swept Path Analysis should be submitted demonstrating that there is sufficient turning space within the site for a standard Kirklees RCV, and at the very least clarification of the vehicle shown on drawing AL (40) to ensure that the site and all proposed vehicle parking

spaces can be safely accessed and egressed in a forward gear for a variety of vehicles. Whilst we appreciate the previous comments in relation to refuse collection and the lack of need for a swept path analysis on behalf of the Council, we find there to be potential that this is not the case, and in the instance that if they were to access the site, they should be able to do so in a safe manner.

- **Landscaping Plan:** It is not clear from the plans submitted what soft landscaping is to be implemented and where. As such, we would ask again that a landscaping plan is submitted showing the proposed soft landscaping, in circumstances where there are serious concerns that the site is not able to provide sufficient external amenity space to meet the needs of both properties.
- **Noise Assessment:** As identified within the response from Environmental Health to the previous applications, there are a number of commercial premises adjacent to the site. A Noise Assessment should be undertaken to assess the impact of the noise from adjacent developments and local road and rail noise, to confirm the level of noise would not be detrimental to residential amenity of the proposed occupiers. A single train can be louder in terms of Equivalent Continuous Noise Level (LAeq) and dB(A) than a period of Road Traffic Noise (RTN). A survey is required to assess the impact of all three on the amenity of outside spaces and the compliance with W.T.O. guidelines within any proposed development.
- **Phase 1 Contaminated Land Survey:** The site is on land that has the potential to be contaminated, and as such we would ask the Council to require a Phase 1 Contaminated Land Survey to be completed prior to the determination of the application. The report should be submitted prior to determination to ensure that any additional survey or investigative work that may be identified as necessary within the report will be carried out.
- **Planning Statement:** The plans submitted with this further application give an impression of the proposal, however no additional information has been submitted to detail the works to be undertaken, the justification for the proposal or an assessment of the proposal against planning policy. Given this is not just a simple Householder Application, but is seeking to implement two new dwellings on a site with varying topography and other material planning constraints to be considered, we would expect a Planning Statement or at the very least a Design and Access Statement setting out why the Applicant considers the proposal acceptable and in line with national and local guidance. Further, no clarification has been provided as to how this development can be seen to be meeting identified housing needs.
- **Preliminary Ecological Appraisal:** Further to the above and given the existing vegetation on the site, we would ask that a Preliminary Ecological Appraisal is required prior to a decision being made on the application. Ecological reports should not be conditioned as the impact of the proposal in terms of ecology

needs to be understood prior to determination. Given the presence of trees and hedgerows, the site has the potential for bats and birds and these potential needs to be fully considered and mitigation proposed to deal with any impacts. The Applicant is also required to set out methods for biodiversity net gain on site. Whilst the Council ecologist advises they have no objections, and are content to condition the net gain, it is our concern given the proposed overdevelopment of the plot, and lack of available space for landscaping etc that there is insufficient land available to secure the provision of net gain. This issue should therefore be addressed and confirmed in advance of determination to ensure that the scheme is deliverable and policy compliant.

- **Sustainable Drainage Strategy:** The Applicant has stated within the application forms that surface water will be dealt with via Soakaway, and foul sewage will be dealt with via the Mains Sewer. However, no significant information has been submitted to evidence that this is viable, would not undermine the structural integrity of the wider site, and that the local drainage network could support the increase in dwellings, therefore we would request a Drainage Strategy is prepared to support the proposal, to address capacity concerns and to set out proposals for sustainable flow rates from the site.
- **Topographical Survey:** There is a significant change in ground level between the north and south of the site. A topographical survey would ensure these changing levels are fully appreciated and would assist in gaining a clear understanding of the proposed development and the works required to implement the proposal, which we consider have not been dealt with in this application and would need to be formally assessed for a decision to be made.
- **Air Quality Assessment:** It is understood that Lower Gate is a main thoroughfare which is often congested at peak times, with traffic queuing on the highway on the approach to the roundabout in front of the T-Junction to Longwood Road. This leads to lots of vehicles sat idle and the potential for air pollution and impacts on health of the proposed occupiers simply cannot be ignored. In that regard we would ask that an air quality assessment be undertaken to address these concerns.
- **Energy Statement:** Whilst the Applicant is noted to have completed the local authority's pro forma on energy to support the application, there is no detailed energy assessment submitted with the application. Given that Kirklees Council declared a climate emergency in 2019, it is considered that a more detailed appraisal of the environmental impact of the scheme, and how carbon reduction and climate change have been duly considered in the design and development of the application should have been submitted.

Inchoate Application

- 2.16 Under s.327A (2) introduced by s.42 of the Planning and Compulsory Purchase Act 2004:

“The Local Planning Authority must not entertain such an application if it fails to comply with the requirements.”

- 2.17 “The requirement” in this case is the formal manner in which the application must be made and the formal content of any document or other matter which accompanies the application. As detailed above, in its current form the application is technically inchoate and does not provide sufficient information to give neighbouring residents or statutory consultees a clear understanding of the proposals, which is a theme that runs through the comparable applications that have been submitted on the site over recent years.
- 2.18 We would therefore ask that the Council either request that the Applicant provides the additional information requested, or alternatively simply refuse the application outright. In reality, the issues raised above and the documentation lacking from this current application are matters previously highlighted in relation to the application that was refused in 2022, and the earlier withdrawn and refused schemes, some of which fall to the principle of development. It is therefore considered that the council should simply refuse this further application, *which does not seek to address any previous comments that have been made, nor does it overcome the previous reasons for refusal.*

3.0 National Planning Policy Framework

- 3.1 The Revised National Planning Policy Framework was published by the Department for Communities and Local Government in July 2021, and is a material consideration in the determination of planning applications. The key paragraphs of relevance to the determination of this application are discussed below.

Section 1 - Achieving Sustainable Development

- 3.2 **“Paragraph 8:** Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):

a) an economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;

b) a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe places, with accessible services and open spaces that reflect current and future needs and support communities’ health, social and cultural well-being; and

c) an environmental objective – to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.”

- 3.3 **“Paragraph 10:** So that sustainable development is pursued in a positive way, at the heart of the Framework is a presumption in favour of sustainable development.”

- 3.4 **Comment:** This application in our view does not constitute a sustainable form of development. The scheme does not represent the right development, in the right place; the scheme will cause harm to the amenities of neighbouring residents and future occupiers of the proposed dwellings, and for the reasons laid out throughout this submission, the proposal will in reality result in harm to the local environment, and to a degree as to warrant refusal of this further application.

Sections 2 and 3 - Plan-making & Determining Applications

- 3.5 **“Paragraph 15:** The planning system should be genuinely plan-led. Succinct and up-to-date plans should provide a positive vision for the future of each area; a framework for addressing housing needs and other economic, social and environmental priorities; and a platform for local people to shape their surroundings.”

- 3.6 **“Paragraph 47** states planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.”
- 3.7 **Comment:** As detailed within Section 2, there is no evidence within the application submission to show that the Applicant has fully considered the provisions of national and local planning policy, or the previous reasons for refusal that have been justified by the Council. The planning system is plan led, and applications should be determined in accordance with the development plan unless material considerations indicate otherwise.
- 3.8 For the reasons outlined within Sections 3 and 4 of this submission, we consider the proposal fails to accord with the provisions of national and local planning policy. Furthermore, for the reasons within Section 6 of this report, we consider there are no material considerations to suggest the application should be approved. The Applicant has failed to address any of the issues raised in the previously refused application, and whilst it proposes a reduced footprint to plot 1, in our view the issue of mass and bulk and overdevelopment on the site has not been overcome.

Section 5 – Building a Sufficient Supply of Homes

- 3.9 **“Paragraph 69:** Small and medium sized sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. To promote the development of a good mix of sites local planning authorities should:
- a) identify, through the development plan and brownfield registers, land to accommodate at least 10% of their housing requirement on sites no larger than one hectare; unless it can be shown, through the preparation of relevant plan policies, that there are strong reasons why this 10% target cannot be achieved;
 - b) use tools such as area-wide design assessments and Local Development Orders to help bring small and medium sized sites forward;
 - c) support the development of windfall sites through their policies and decisions – giving great weight to the benefits of using suitable sites within existing settlements for homes; and
 - d) work with developers to encourage the sub-division of large sites where this could help to speed up the delivery of homes.”
- 3.10 **Comment:** The Council is understood to be able to demonstrate 5.17 years of Housing Land Supply. As such, the Council have identified a sufficient amount of land to meet their housing needs over the next five years. The application site is not included within the brownfield land register, and would therefore be considered a windfall site and not necessary to meet the housing requirements within the authority area. Whilst National Planning Policy does support the development of windfall sites, these must be within a *suitable* location. For the reasons detailed within this objection we do not consider the site is suitable for the proposed development, and this has been supported by the previous refusals. There is no justification as to why these homes are needed and that

they are meeting an identified housing need, and as such, the application cannot be supported.

Section 9 – Promoting Sustainable Transport

- 3.11 **“Paragraph 104:** Transport issues should be considered from the earliest stages of plan-making and development proposals, so that:
- a) the potential impacts of development on transport networks can be addressed;
 - b) opportunities from existing or proposed transport infrastructure, and changing transport technology and usage, are realised – for example in relation to the scale, location or density of development that can be accommodated;
 - c) opportunities to promote walking, cycling and public transport use are identified and pursued;
 - d) the environmental impacts of traffic and transport infrastructure can be identified, assessed and taken into account – including appropriate opportunities for avoiding and mitigating any adverse effects, and for net environmental gains; and
 - e) patterns of movement, streets, parking and other transport considerations are integral to the design of schemes, and contribute to making high quality places.”
- 3.12 **Comment:** There have been and continue to be specific concerns with this proposal in relation to access and vehicle parking, which once again has not been addressed within the application. We support the case officer’s concerns in relation to ensuring that the site can safely service vehicles entering and exiting the site in a forward gear, and would once again add concerns in relation to suitability and manoeuvrability of the proposed 5 parking bays. Given the continued lack of clarity on these important issues, we would once again strongly advocate refusal of this application given the potential harm to highway safety and wider highway operations.

Section 12 - Making Effective Use of Land

- 3.13 **“Paragraph 119:** Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or ‘brownfield’ land.”

3.14 **“Paragraph 120:** Planning policies and decisions should:

b) recognise that some undeveloped land can perform many functions, such as for wildlife, recreation, flood risk mitigation, cooling/shading, carbon storage or food production”

3.15 **“Paragraph 124:** Planning policies and decisions should support development that makes efficient use of land, taking into account:

- a) the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it;
- b) local market conditions and viability;
- c) the availability and capacity of infrastructure and services – both existing and proposed – as well as their potential for further improvement and the scope to promote sustainable travel modes that limit future car use;
- d) the desirability of maintaining an area’s prevailing character and setting (including residential gardens), or of promoting regeneration and change; and
- e) the importance of securing well-designed, attractive and healthy places.”

3.16 **Comment:** As per our comments on the previous applications and dealt with further in Section 2 of this objection, due to the lack of survey work and information submitted with the application, it is not possible to understand the functions of the undeveloped site. Without the necessary ecological and ground investigation reports it is not possible to fully appreciate the impact the proposals may have in terms of ecology, flood risk mitigation (from surface water run-off) and ground stability, therefore the application cannot be supported.

3.17 In addition, whilst sites need to be developed in an effective and efficient manner, this does not mean the provision of development to a density and scale which is of detriment to the character of the area, neighbour amenity and which represents poor quality development due to insufficient on site space to meet the needs of the proposed development. In our view this scheme continues to represent overdevelopment of the plot with insufficient space being retained to service the needs of future occupiers, including in relation to private outdoor amenity space, bin storage, parking etc.

Section 12 – Achieving well-designed places

3.18 **“Paragraph 126:** The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Being clear about design expectations, and how these will be tested, is essential for achieving this. So too is effective engagement between applicants, communities, local planning authorities and other interests throughout the process.”

3.19 **Comment:** Given the continued scale, form, height, mass, design, materials and proposed layout of the development subject of this further application, we do not

consider the proposals to meet the tests laid out in paragraph 126 of the Framework. The scheme results in visual harm to the amenities of the wider local area, and in our view should therefore be refused.

Section 15 - Conserving and Enhancing the Natural Environment

3.20 **Paragraph 174:** Planning policies and decisions should contribute to and enhance the natural and local environment by:

- a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);
- b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;
- c) maintaining the character of the undeveloped coast, while improving public access to it where appropriate;
- d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;

3.21 **“Paragraph 183:** Planning policies and decisions should ensure that:

- a) a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation);
- b) after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and
- c) adequate site investigation information, prepared by a competent person, is available to inform these assessments.”

3.22 **Comment:** The application site is allocated within the Local Plan as a part of the Valley Slopes Biodiversity Opportunity Zone. The Council has allocated these Zones in response to the habitats found there. ***The application makes no reference to this designation, and it would appear that no attempt has been made to identify the impact of the proposal on biodiversity, ecology and the wider local environment.*** It is therefore impossible to make a judgement as to whether the proposal conserves, protects or enhances biodiversity etc. Furthermore, there are no features that may help achieve net gains for biodiversity within the proposals, such as bat and bird boxes and extensive on site landscaping. Addressing this issue by way of condition is of concern as the impact of failing to secure an agreed gain could well be determinative.

- 3.23 A Nova Acoustic Report prepared for the application reference 2015/62/91993/W for the adjacent site found Longwood Road to have high levels of Road Traffic Noise, resulting in a recommendation of noise attenuating vents and windows on the dwellings. We understand Lower Gate to have higher levels of road traffic than Longwood Road and there is also a rail line to the south of the site and HVAC plant machinery at the newly erected Alexandra Road West Offices adjacent. All these sources contribute to increased levels of noise, potentially higher than those identified within the Nova Acoustic Report, at the site and this has not been assessed within the application. Noise must be considered as per Paragraph 174 to ensure it is not of a level that would detrimentally impact residential occupier amenity. These issues were addressed as part of our objections to the previous applications that were refused and withdrawn, however the Applicant has not sought to address these issues through additional submissions and as such, we remain of the view that the application cannot be supported.
- 3.24 As detailed within Section 2, the application site is the location of a former quarry and is identified within the Coalfield Consultation Area. The site therefore has the potential for both contamination and land instability. There has been no evidence of site investigations relating to contamination and land stability with the proposal, and without such information we consider the application should be refused as the site cannot be confirmed to be deliverable. This point had also been raised in our previous objections, and it is therefore disappointing to see that the Applicant has once again failed to undertake any investigations to support the application.

Section 16 - Conserving and Enhancing the Historic Environment

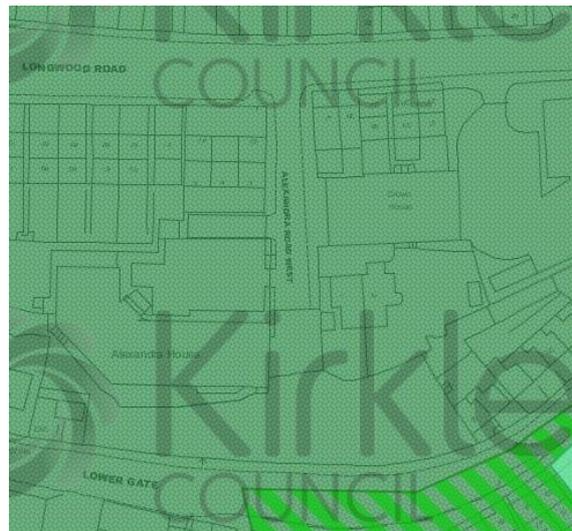
- 3.25 **“Paragraph 194:** In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets’ importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.”
- 3.26 **Comment:** The site is within close proximity to three Grade II Listed Buildings found on Longwood Road and Lower Gate. The assessment of the impact of the proposal on these nationally designated heritage assets and their settings has not been undertaken, as required by the NPPF. As such, we would expect the Council to require an assessment of the proposals on the heritage assets to be submitted as a matter of urgency and prior to reaching any decision on the application. In addition, the supporting plans are basic and do not allow us to fully assess any impact on the heritage assets in the area nor in relation to their setting.

National Planning Policy Framework Comment

- 3.27 For the reasons outlined within this section of the report, we consider the proposed development remains contrary to the provisions of the National Planning Policy Framework as highlighted within our previous objections. The issues raised previously remain relevant to the determination of this further application, and the Applicant has not sought to overcome any of the issues.
- 3.28 Whilst the proposal has been reduced in footprint, the overall number, scale and mass of development remains unchanged and remains overdevelopment of the site. As such, the impact on neighbours, the character of the area and the overdevelopment of the plot remain as per the previously refused application. The development is therefore wholly unacceptable and would have significant impacts on amenity and as such, should be refused outright as falling foul of the tests laid out within national guidance.

4.0 Local Planning Policy

- 4.1 When preparing this submission, we have paid due regard to the relevant policies contained within the adopted Development Plan for Kirklees. The plan of relevance to this application is the Kirklees Local Plan Strategy and Policies (2019). The site is allocated within the adopted Local Plan Policies Map (2019) as within the Valley Slopes Biodiversity Opportunity Zone, and within a Sandstone Minerals Safeguarding area. This is demonstrated on the extract from the Policies Map included below:



- 4.2 The key policies within the Kirklees Local Plan Strategy and Policies (2019) of reference to the determination of this application are as follows:

- Policy LP1 - Presumption in Favour of Sustainable Development;
- Policy LP7 - Efficient and Effective Use of Land and Buildings;
- Policy LP11 - Housing Mix and Affordable Housing;
- Policy LP21 – Highways and Access;
- Policy LP24 – Design;
- Policy LP28 – Drainage;
- Policy LP30 - Biodiversity and Geodiversity;
- Policy LP33 – Trees; and
- Policy LP53 - Contaminated Land

4.3 **“Policy LP7: Efficient and Effective use of Land and Buildings**

Housing density should ensure efficient use of land, in keeping with the character of the area and the design of the scheme:

- a. developments should achieve a net density of at least 35 dwellings per hectare, where appropriate;
- b. higher densities will be sought in principal town centres and in areas close to public transport interchanges
- c. 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;

- d. more detailed density requirements may be set out in area action plans, neighbourhood plans, supplementary planning documents and development briefs, where appropriate.”

4.4 **Comment:** Policy LP7 requires developments to achieve a net density of at least 35 dwellings per hectare where appropriate. As detailed within the Local Plan (2019), *site constraints such as gradients may create difficulties achieving the relevant density on sites*. We understand the Applicant was advised during their pre-application discussions on earlier schemes that this site is unlikely to be able to accommodate more than two dwellings. One of the previous applications proposed three 3-bed dwellings and was withdrawn, following this the next application sought four 3-bed dwellings which was refused on the basis of the proposals overpowering impact on the surroundings and character. The last application sought consent for two dwellings, but was also refused. This further proposal incorporates two dwellings in line with pre-application advice, however it should still be considered as overdevelopment of the plot due to the scale of overall development being proposed. As such, the overpowering sense of overdevelopment on the plot would remain through this application, and the revised scheme has failed to address the recent reasons for refusal.

4.5 **“Policy LP11: Housing Mix and Affordable Housing**

All proposals for housing, including those affecting the existing housing stock, will be of high quality and design and contribute to creating mixed and balanced communities in line with the latest evidence of housing need. 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. This includes consideration of provision for those with specialist needs.”

4.6 **Comment:** From the documents submitted with the application it would appear that both dwellings would be for market sale, and neither are detailed as specialist or accessible units for people with a specific need. As such, we consider the proposal has failed to provide a sufficient mix of housing size and tenure, or to provide for those with specialist needs. We therefore consider the proposal is wholly contrary to the provisions of Policy LP11 and should be refused outright.

4.7 It is important to provide a mix of housing in terms of size, tenure and suitability for specific groups as this contributes to meeting local needs, and also contributes to sustainable development in accordance with national planning policy. As detailed within the policy justification *for smaller schemes, where possible a mix should still be achieved*. As part of this application, the Applicant has proposed two dwellings as opposed to the previous proposals, however the overall mass and bulk remains extensive in line with the previous proposals, and provides a scale and form of development which is currently unjustified.

4.8 **“Policy LP21: Highways and Access**

Proposals shall demonstrate that they can accommodate sustainable modes of transport and be accessed effectively and safely by all users. 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. Proposals shall demonstrate adequate information and mitigation measures to avoid a detrimental impact on highway safety and the local highway network. Proposals shall also consider any impacts on the Strategic Road Network. All proposals shall:

- a. ensure the safe and efficient flow of traffic within the development and on the surrounding highway network;
- b. where needed, provide new infrastructure or improvements on or off site to ensure safe access from the highway network for pedestrians, cyclists, public transport users and private vehicles;
- c. be accompanied by a supporting Transport Assessment or Transport Statement where the development would generate significant trip generation, providing detail as to the impact on highway safety, air quality, noise and light restrictions;
- d. take into account changes in site levels and topography to ensure the development can be accessed easily and safely by all sections of the community and by different modes of transport;
- e. take into account the features of surrounding roads and footpaths and provide adequate layout and visibility to allow the development to be accessed safely;
- f. take into account access for emergency, service and refuse collection vehicles;
- g. provide on-site safe, secure and convenient cycle parking/storage facilities to encourage sustainable travel modes.”

4.9 **Comment:** Given the ongoing concerns laid out within this submission, our objections to previous applications, and previous reasons for refusal in relation safe access and egress within the site, site manoeuvrability, service and delivery vehicle access, car parking provision etc, the scheme as submitted is once again deemed to fall foul of the tests laid out within policy LP21, and the scheme should therefore once again be refused.

4.10 **“Policy LP24: Design**

Good design should be at the core of all proposals in the district and should be considered at the outset of the development process, ensuring that design forms part of pre-application consultation of a proposal. Development briefs, design codes and masterplans should be used to secure high quality, green, accessible, inclusive and safe design, where applicable. Where appropriate and in agreement with the developer schemes will be submitted for design review.

Proposals should promote good design by ensuring:

- a. the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape;
- b. they provide a high standard of amenity for future and neighbouring occupiers; including maintaining appropriate distances between buildings and the creation of development-free buffer zones between housing and employment uses incorporating means of screening where necessary;

- c. extensions are subservient to the original building, are in keeping with the existing buildings in terms of scale, materials and details and minimise impact on residential amenity of future and neighbouring occupiers;
- d. high levels of sustainability, to a degree proportionate to the proposal, through:
 - i. The re-use and adaptation of existing buildings, where practicable;
 - ii. design that promotes behavioural change, promoting walkable neighbourhoods and making walking and cycling more attractive;
 - iii. considering the use of innovative construction materials and techniques, including reclaimed and recycled materials;
 - iv. where practicable, minimising resource use in the building by orientating buildings to utilise passive solar design. This includes encouraging the incorporation of vegetation and tree planting to assist heating and cooling and considering the use of renewable energy;
 - v. providing charging points to encourage the use of electric and low emission vehicles;
 - vi. incorporating adequate facilities to allow occupiers to separate and store waste for recycling and recovery that are well designed and visually unobtrusive and allows for the convenient collection of waste;
 - vii. designing buildings that are resilient and resistant to flood risk, where such buildings are acceptable in accordance with flood risk policies and through incorporation of multi-functional green infrastructure where appropriate;
 - viii. designing places that are adaptable and able to respond to change, with consideration given to accommodating services and infrastructure, access to high quality public transport facilities and offer flexibility to meet changing requirements of the resident / user.
- e. the risk of crime is minimised by enhanced security, and the promotion of well-defined routes, overlooked streets and places, high levels of activity, and well-designed security features;
- f. the needs of a range of different users are met, including disabled people, older people and families with small children to create accessible and inclusive places;
- g. any new open space is accessible, safe, overlooked and strategically located within the site and well integrated into wider green infrastructure networks;
- h. development contributes towards enhancement of the natural environment, supports biodiversity and connects to and enhances ecological networks and green infrastructure;
- i. the retention of valuable or important trees and where appropriate the planting of new trees and other landscaping to maximise visual amenity and environmental benefits; and
- j. the provision of public art where appropriate.”

4.11 **Comment:** We consider that this further proposed development would constitute an overdevelopment of this site in terms of form, scale, and layout, particularly when considering the proposal in the context of the wider site, and in particular the implementation of the 3-storey office block to the rear of the properties, which has the potential to overbear, overshadow and overdominate these new homes to the detriment of residential amenity. The overdevelopment of the site has the potential to

impact the amenity of future occupiers and their quality of life, and the application has not been supported by any evidence to suggest that their amenity would be protected or secured.

- 4.12 The proposal does not appear to incorporate an area for electric vehicle charging, as required by LP24(d), which has also been referred to in our previous objections.
- 4.13 As detailed earlier within this section, the proposal does not seek to meet the identified needs of a range of users as required by LP24(f).
- 4.14 The application once again fails to result in an enhancement of the natural environment, and is contrary to the requirements of LP23(h) and (i) through the removal of a significant number of trees and the development on a site allocated as a Valley Slopes Biodiversity Opportunity Zone. No ecological survey work has been undertaken, such as a Preliminary Ecological Appraisal, to assess the impact of the proposal on the natural environment and identify opportunities for enhancement and mitigation of the natural environment. The footprint of the dwellings appears to be the same or very similar to the refused scheme and therefore, the previous reasons for refusal cannot be overcome in relation to the scale, massing and bulk of the proposals in context of the street scene. The proposal would therefore result in impacts on the wider character of the area, and once again is not in accordance with Policy LP24 and should therefore be refused.

4.15 **“Policy LP28: Drainage**

The presumption is that Sustainable Drainage Systems (SuDS) will be used to assist in achieving the following on each site:

- a. for proposals on greenfield sites, typical greenfield run-off rates should not be exceeded;
- b. for proposals on brownfield sites there should be a minimum 30% reduction in surface water run-off where previous positive surface water connections from the site can be proven. New connections will be subject to at least greenfield restrictions;
- c. No negative impact on local water quality and improvements in water quality where practicable;
- d. Consider whether proposed open spaces and green infrastructure within sites can contribute to the sustainable drainage of the site.

Local conditions including the existence of critical drainage areas may require a lower run-off rate to be agreed to reflect volume control, local surface water risks, water course capacity and flood risk further downstream.

There will be a general presumption against pumping surface water. It must also be demonstrated that the surface water management solution is designed to meet requirements over the lifetime of the development including evidence that management and maintenance arrangements have been secured to cover that period. This includes ensuring proposals to store water meet national standards and latest best practice.

Flow paths accommodating water from outside the site or due to an exceedance event should be designed to avoid buildings and curtilages.

Development will only be permitted if it can be demonstrated that the water supply and waste water infrastructure required is available or can be co-ordinated to meet the demand generated by the new development.”

- 4.16 **Comment:** The Applicant has stated that foul sewage is to be disposed of via the mains sewer and surface water will be disposed of via soakaway. However, no drainage strategy has been submitted with the application, albeit the Proposed Plan includes indicative layouts for each. When proposing new developments, surface water issues need to be addressed in terms of existing surface water and potential increases to run-off resulting from the development. Effective management of surface water can help to prevent increased flood risk, and negative impacts on water quality with associated biodiversity benefits.
- 4.17 As such, we would ask that the specific details of the drainage be provided prior to the determination of the application, such that it can be assessed as to whether the waste water infrastructure required is available, and has sufficient capacity to accommodate the additional demand. This is particularly important given a three-storey office block is erected adjacent to the site, which already creates an increased demand on the drainage infrastructure, and therefore it is questioned whether the existing drainage network will be able to support any further increases in usage. The need to ensure the drainage strategy of soakaway will not undermine the stability of the land and structural integrity of the proposed development is also of importance.
- 4.18 We ask that the Council require a Sustainable Drainage Strategy containing the specific details of the drainage strategy and works required to implement the chosen strategy at the site. The SuDS Strategy should provide evidence that the surface water management solution will meet requirements over the lifetime of the development, including details of management and maintenance agreements. The SuDS should be required prior to determination of this application, as failure to provide acceptable and adequate drainage management could result in the development being unviable, or result in an unacceptable increase in flood risk elsewhere, with specific concerns on potential run-off rates onto Lower Gate. The additional drainage information has been requested previously as part of the refused and withdrawn applications, and as such, we are concerned to see that it has not been prepared to support this application.
- 4.19 **“Policy LP30: Biodiversity and Geodiversity**
The council will seek to protect and enhance the biodiversity and geodiversity of Kirklees, including the range of international, national and locally designated wildlife and geological sites, Habitats and Species of Principal Importance and the Kirklees Wildlife Habitat Network.

Biodiversity and Development

Development proposals will be required to:-

- i. result in no significant loss or harm to biodiversity in Kirklees through avoidance, adequate mitigation or, as a last resort, compensatory measures secured through the establishment of a legally binding agreement;
- ii. minimise impact on biodiversity and provide net biodiversity gains through good design by incorporating biodiversity enhancements and habitat creation where opportunities exist;
- iii. safeguard and enhance the function and connectivity of the Kirklees Wildlife Habitat Network at a local and wider landscape-scale unless the loss of the site and its functional role within the network can be fully maintained or compensated for in the long term;
- iv. establish additional ecological links to the Kirklees Wildlife Habitat Network where opportunities exist; and
- v. incorporate biodiversity enhancement measures to reflect the priority habitats and species identified for the relevant Kirklees Biodiversity Opportunity Zone.”

4.20 **Comment:** As no survey work in relation to biodiversity has been undertaken it is not possible, on the evidence submitted to date, to assess the impact of the proposals on the Valley Slopes Biodiversity Opportunity Zone or in relation to habitat and ecological transitory routes. As such, there is no mitigation proposed, nor are there any biodiversity enhancement measures incorporated to reflect the priority habitats and species of the specific zone. The application therefore does not meet the requirements of Policy LP30 and should be refused without delay.

4.21 **“Policy LP33: Trees**

The Council will not grant planning permission for developments which directly or indirectly threaten trees or woodlands of significant amenity. Proposals should normally retain any valuable or important trees where they make a contribution to public amenity, the distinctiveness of a specific location or contribute to the environment, including the Wildlife Habitat Network and green infrastructure networks. Proposals will need to comply with relevant national standards regarding the protection of trees in relation to design, demolition and construction. Where tree loss is deemed to be acceptable, developers will be required to submit a detailed mitigation scheme.”

4.22 **Comment:** The Applicant has failed to undertake an Arboricultural Impact Assessment regarding the impact of the proposals on both the trees and hedges on the site and on adjacent sites. Without such assessments being undertaken to BS:5837 standards it is not possible to identify which trees on site may be considered significant, valuable or important. As the site is also allocated as part of the Valley Slopes Biodiversity Opportunity Zone, there is an increased likelihood that the trees and hedges on the site could be habitat to species, and we would therefore expect the Council to require such assessment prior to determination of the application.

4.23 **“Policy LP53: Contaminated and Unstable Land**

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.”

- 4.24 **Comment:** As stated within our previous objections and within Section 2, the application site is **on the location of a former quarry and is included on the Council’s Contaminated Land Register as having the potential for contamination by virtue of its historic use.** As no Contaminated Land Assessment has been undertaken at the site, the proposal is entirely non-compliant with Policy LP53. Developments which cannot incorporate suitable and sustainable mitigation measures should not be permitted, however, without a Contaminated Land Assessment to review it is not possible to identify if mitigation is necessary or possible. Without such information we consider the Council have no choice but to refuse the application due to the potential of contamination and the risk that could have on public health.

Supplementary Planning Documents

- 4.25 In addition to the Local Plan policies referred to above, it is noted that the application also needs to demonstrate compliance with a number of supplementary planning documents including the following:

- KC Highways Design Guide 2019
- Housebuilders Design Guide Supplementary Planning Document, (HDG SPD 2021)
- Open Space Supplementary Planning Document (2021)
- Biodiversity Net Gain Technical Advice Note
- Climate Change Guidance for Planning Applications

- 4.26 For the reasons laid out through this report the scheme is not felt to be compliant with the above provisions, and this further supports the case to refuse the application.

Development Plan Comment

- 4.27 For the reasons detailed above, we consider the Applicant has failed to pay due regard to the provisions of Kirklees Local Plan and relevant adopted supplementary planning documents. As such, the issues raised through our previous objections to the refused and withdrawn applications remain. As a result, the proposed development remains contrary to Local Planning Policy, as well as National Planning Policy, meaning the application should be refused outright and without delay.

5.0 Planning Comment – Principle of Development

5.1 Section 70(2) of the Town and Country Planning Act 1990 requires a local planning authority, in dealing with a planning application, to have regard to the provisions of the development plan, as far as material to the application, and to any other material considerations.

5.2 Section 54A of the Planning Act, inserted by S.26 of the Planning and Compensation Act 1991 and brought into force from September 25, 1991 provides as follows:

“Where, in the making any determination under the Planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise.”

5.3 There is guidance as to how the Government views the effect of the above sections. Paragraph 20 of Annex 2 to Circular 14/91, Planning and Compensation Act 1991, states:

“The starting point is to be the development plan. If the development plan has something to say on a particular application, the plan should be followed unless the weight of the other considerations tells against it. This will still allow appropriate weight to be given to all other material considerations.”

5.4 The matter is debated in case law including: Boulevard Land Ltd v Secretary of State for the Environment, [1998] J.P.L. 983, Budgen Stores Ltd v Secretary of State for the Environment, Transport and the Regions [1998] E.G.C.S. 28 and City of Edinburgh Council v Secretary of State for Scotland [1998] J.P.L. 224, HL.

Location and Project

5.5 There is an elementary and fundamental problem which needs to be resolved at the outset in the making of decisions. The first point is often determinative – location comes first followed by project because an examination of for example, The National Planning Policy Framework, which demonstrates that location governs what might or might not be granted permission in the area concerned.

5.6 In this regard, adopted Local Plan Policy LP24 is highly referable, in circumstances where it not only addresses the issue of the design and appearance of the proposed buildings, but also the relationship with neighbouring properties and the surrounding area, including the impact of the proposal on the character and appearance of the area. As set out within this objection, the proposed development fails to accord with this, and other policies contained within the Statutory Development Plan as per the previous applications that have been refused or withdrawn. The application continues to propose a footprint and mass of development which is wholly out of keeping and unsuitable for the application site.

- 5.7 The 'project' in this instance is considered contrary to the provisions of the National Planning Policy Framework and the adopted Local Development Plan, as outlined in Sections 3 and 4 of this submission.

Statutory Development Plan

- 5.8 The Statutory Development Plan comprises the policies from the Kirklees Local Plan (2019) and the determinative adopted Supplementary Planning Documents. The scheme as submitted has been found to run contrary to these adopted policy documents, as well as the provisions of the National Planning Policy Framework.

Summary

- 5.9 Given that the criterion set out in the adopted Kirklees Development Plan are not met, there is a legitimate expectation, based on Section 70(2) of the Town and Country Planning Act 1990, that the proposed development will be refused. Our objections to the previous applications that have been refused or withdrawn remain relevant given the overall footprint and scale of development being proposed, which is not in accordance with national and local planning policy, and would not conserve the amenity of neighbours or future occupiers. The matter of other material considerations is dealt with in Section 6.

6.0 Planning Comment – Material Considerations

- 6.1 **Principle of development – Other material considerations:** Where there are other material considerations which ‘indicate otherwise’, the development plan should nevertheless be the starting point, with those other material considerations weighed in reaching a balanced decision. The issues involved are dealt with in the decision of the House of Lords in *City of Edinburgh Council v Secretary of State for Scotland* [1998] J.P.L. 224, HL.
- 6.2 We have identified material considerations that are considered to outweigh the presumption in favour of development in this case:
- 6.3 **Previous refusals:** The previous applications were refused for a number of reasons which remain relevant as part of this proposal. The development would result in an overbearing impact on the site due to the extensive mass and footprint of the dwellings and associated car parking. In addition, the development would not provide sufficient levels of high quality amenity for the proposed occupiers, nor the neighbouring occupiers and as such, would result in negative impacts on amenity. It is considered that the parking layout remains ill-conceived and there is potential for access and safety issues to occur on site. As the proposal has failed to take into account the previous reasons for refusal, the only decision that could be made is to refuse the proposal.
- 6.4 **Effect on neighbouring properties:** It is commonplace for the local planning authority to take into account the amenity interests of those who live adjacent to the site in question. If the proposal will affect their amenity or the local environment then the local planning authority may, if they consider there to be demonstrable harm, refuse planning permission or grant it subject to conditions alleviating the objection concerned.
- 6.5 The proposal will have significant detrimental impact on the character of the area and in turn impact local residents and neighbours. There is also potential for impact on amenity that cannot be identified due to the lack of information submitted with the proposal. In view of this, we would ask that the application is refused outright.
- 6.6 **Sustainable development:** Sustainable development is a cornerstone of Government policy and is always a material consideration. It was held in *Aldi Stores Ltd and British Gas plc v Secretary of State for the Environment and Daventry DC* (1996) J.P.L B93 that an Inspector was entitled to find that there would be demonstrable harm in respect of proposals contrary to sustainability policies and the effects on local amenity. As laid out at Sections 3 and 4, the development fails to demonstrate a sustainable form of development, and as such should be refused outright.
- 6.7 **Noise:** The application has failed to fully consider the impact of noise on the proposed use of the site for residential units under Use Class C3. Lower Gate, to the southern boundary of the site has previously been identified by Nova Acoustics within the application reference 2015/62/91993/W as having high levels of Road Traffic Noise and there is also a rail line to the south of the site, which also generates high levels of

noise. Further to this, the recently implemented 3-storey office block adjacent to the site is also understood to include a number of significant HVAC mechanical plant units which generate noise. Whilst we appreciate there are residential uses within this area, we believe an Acoustic Assessment should be undertaken to review the current noise levels at the site prior to allowing additional residential development in this location. Unacceptable levels of noise can be detrimental to residential occupier amenity. Furthermore, if the applicant provides an Acoustic Assessment suitable noise mitigation could then be included as a condition to a grant of consent if necessary.

- 6.8 General disturbance causing loss of amenity, from vehicles or machinery, is material: the fact that the noise may not amount to a statutory nuisance is not pivotal. It was held in *Persimmon Homes (North Wales) Ltd v Secretary of State for the Environment, Transport and the Regions* that the levels of noise from commercial premises would result in gross disturbance and harm to reasonable enjoyment by the residents of the homes proposed. For the reasons outlined, we consider this location to be inappropriate for the proposed development, where future occupiers will likely experience disturbance and nuisance as a result of noise.
- 6.9 **Proposal itself offers poor amenity:** A quite distinct situation arises where the proposal itself offers poor amenity to the intended occupants, such as lack of sunlight, over-crowded residential development generally, lack of amenity space, susceptibility to noise, and so forth. In one particular case an inspector upheld the Council's view that a large flat should not be sub-divided into two because the result would be two small flats in a confined situation with a poor outlook and lower standards of amenities for their residents. It was held in *Holywell Property (St Albans) Ltd v Dacorum DC*, 16 January 2014, PR0290408, CO/1451/2013, that a Planning Inspector had been entitled to uphold the refusal of the Local Planning Authority on the basis of poor amenity and crowded conditions. In the case of this present application, the development does result in a cramped form of development which offers poor amenity to the proposed residents, with poor quality amenity space and is therefore deemed to be unacceptable.
- 6.10 **Loss of Trees:** It was held in *St Vincent Housing Association v Secretary of State for Communities and Local Government* that a development would result in the loss of twenty trees and in addition to those identified for removal all of which would have an unacceptable impact on the character and appearance of the local area and on wildlife. The proposed development would result in the loss of a significant number of trees and hedges which currently make an important contribution to the street scene as well as act as habitat and wildlife corridors. A Tree Survey and Arboricultural Impact Assessment have not been carried out or submitted with the application and as such, it is not possible to determine the impacts.
- 6.11 **Contamination:** The general thrust of government guidance on contamination is that for the most part contaminated land should be dealt with not by regulation, but in the course of purchase and sale or lease negotiations or applications for planning permission where inevitably the local planning authority will require the site to be cleaned up sufficiently for the purposes for which it is proposed to be used. In the case of this proposal, no Contaminated Land Survey or Coal Mining Assessment has been

undertaken, meaning the local authority would be unable to condition works to clean up the site sufficiently if required. The application should therefore be refused.

- 6.12 **Climate Change:** On 4th December 2020 the Prime Minister announced a new ambitious target to reduce the UK's emissions by at least 69% by 2030, compared to 1990 levels. This is the first climate change target set by the UK following its departure from the EU and meets the recommendation of experts at the independent Climate Change Committee who advise on emissions targets. This comes following the UK's departure from the EU, under which they were required by the Energy Performance of Buildings Directive to ensure all new buildings must be nearly zero-energy from 31st December 2020. The new target set by the Prime Minister is among the highest in the world and commits the UK to cutting emissions at the fastest rate of any major economy so far. As such this demonstrates the UK's continued commitment to cutting emissions and it can be presumed that sustainable and low carbon development will remain at the forefront of the Governments planning agenda. Therefore, we consider new developments should still seek to implement measures to reduce emissions and increase energy performance. There has been insufficient information submitted to demonstrate how the Applicant has sought to implement measures to increase the energy performance of the dwellings, and we consider this to be a material consideration weighing against the development. It should be noted that Government policy, other than planning policy, is always a material consideration as found in *Kent CC v. Secretary of State for the Environment (1976) P. & C.R 70*.
- 6.13 **Air Quality:** Lower Gate is a busy road through Paddock and is often congested at peak times. Air pollution from queuing traffic on Lower Gate could have the potential to cause harm to health. Furthermore, Kirklees Metropolitan Borough Council was identified within the Governments UK Plan for Tackling Roadside Nitrogen Dioxide Concentration (2017) as one of the authorities who have been directed to develop plans to bring roadside concentrations of NO₂ within legal limits. This need is reiterated within the Government's Clean Air Strategy 2019 which details that *short-term exposure to concentrations of NO2 can cause inflammation of the airways and increase susceptibility to respiratory infections and to allergens. It exacerbates the symptoms of those who are already suffering from lung or heart conditions, shortening their lives*. As such, we do not consider it acceptable for residential dwellings to be placed in this location due to the risk to health the regularly congested Lower Gate poses. We would ask an Air Quality Assessment is undertaken to review the levels of pollution produced on Lower Gate, particularly during peak hours.
- 6.14 **Parking Impact on Highway Safety:** Quoting the report associated with application: 2021/62/92467/W "Principle 12 of the house builders design guide seeks to ensure that new dwellings provided appropriate and well-designed parking and access arrangements for dwellings. The Highways Design Guide SPD provides specific guidance on acceptable parking arrangements in section 5 with key design driver 21 the most relevant part, which advises that: "Parking considerations should be factored into the design process at the earliest opportunity in order to ensure that the location, standards and specifications for on and off-street parking help to achieve good design."

- 6.15 There are concerns that the five proposed parking spaces meet only the minimum standards, and that the proposed parking layout would make internal turning cumbersome. Likewise manoeuvring two cars into the garages would be difficult. No detailed swept path analysis has been provided to show how each of the parking spaces would function. Without clear demonstration that the site can safely service its parking needs within the development, the application should simply be refused.
- 6.16 **Decision making – Overall advantage:** In addition to those matters relating to decision making, such as the development plan and sustainable development, there is inevitably a balancing exercise to be carried out; few decisions are free of such an approach. The phrase “overall-advantage” reflects this balance; at the end of the day the decision-maker must attach what weight he/she considers appropriate to the material consideration in question. The so-called “overall-advantage” is nothing more than the weighing of often disparate planning considerations so that it can be said that the advantages outweigh the disadvantages, or the reverse.
- 6.17 In this case there are no other material considerations of sufficient weight to overcome the policy presumption against the development. The material considerations of reference to this application tilt the balance in favour of refusal. We would therefore formally request that the application be refused outright.
- 6.18 **Failure to take account of relevant matters:** There are several referable cases where there has been a failure to take account of the relevant matters two of which are noted, namely:
- Tameside Metropolitan Borough Council v Secretary of State for the Environment (1984) J.P.P. 180** It was alleged on appeal to the High Court that the Inspector had erred in law in that he had failed to take into account a material consideration, namely matters relating to traffic and other consequences likely to flow from the granting of planning permission. Held that the decision letter did not deal with the traffic issues raised at all, except referable in one sentence and thus a substantial point had not been properly dealt with. The decision was quashed.
- Crown Estates Commissioners v. Secretary of State for the Environment and Holderness Borough Council (1994) J.P.P B113** Where there is evidence on a material issue, it is incumbent upon the Council to make a finding on that evidence, within reason. Further, the Council must be in a position to understand all live issues and thus be able to deal with them accordingly.
- 6.19 The decision-maker ought to take into account a matter, which might cause him to reach a different conclusion from which he would reach if he did not take it into account. Where statute obliges the decision-maker to take a matter into account, it is a matter of law whether or not it was done. *Bolton Metropolitan District Council v. Secretary for the Environment (1991) J.P.L 241*. This report details those matters, which the Applicant has failed to deal with adequately, and failings in the applications.
- 6.20 It is our concern, on the basis of the evidence submitted to date, that the Applicant has failed to provide sufficient supporting information to satisfactorily judge the impact of

the proposal on the character and appearance of the local area, which can be seen in the various previous applications that were refused and withdrawn. The lack of a Noise Assessment, Air Quality Assessment, Tree Survey, Arboricultural Impact Assessment, structural survey, energy statement and Ecological Assessment (with details on biodiversity net gain) are of particular concern, given the sensitive designation of the site within the adopted Local Plan (2019). As such any grant of consent may well fall foul of the tests laid out in the Crown Estates case mentioned above and could be susceptible to a claim for Judicial Review if approved.

7.0 Conclusions

- 7.1 Following our detailed review of the documentation submitted, we consider that this poorly conceived application, like the ones that were previously refused and withdrawn, has completely disregarded the provisions of the National Planning Policy Framework, the adopted Local Plan (2019) for Kirklees and relevant Supplementary Planning Documents. This is demonstrated by the schemes poor design in terms of overdevelopment of the site, its location within the Valley Slopes Biodiversity Opportunity Area without suitable survey work or mitigation proposed, and the disregard for the provisions of the national and local planning policies.
- 7.2 Approval of the scheme would therefore be to the detriment of the character and appearance of the local area, and would not support the aims of local or national policy. The issues with the proposals that were previously raised against the withdrawn scheme for 3 dwellings and the refused schemes for 4 dwellings and lastly for two dwellings, have not been taken into consideration by the Applicant, and as such remain relevant. The scheme is still considered to constitute gross overdevelopment of the plot resulting in a sense of overdevelopment that would impact on the wider character of the area and street scene.
- 7.3 There are also once again considerable flaws in how the application has been submitted and a significant amount of information remains absent, making a thorough assessment of the proposal and its impacts difficult. In view of this, and our points outlined in this document, we trust that the application will be refused in line with those associated with the previous scheme on site. There are also a number of other material considerations, including effect on neighbouring properties and noise, that warrant the outright refusal of the application which are laid out in Section 6.
- 7.4 Should additional information be submitted, or a revised scheme be prepared, we would ask that we and other third parties be given the opportunity to review and comment as necessary.
- 7.5 In addition, should the Council be minded to approve the proposal based on the information provided in support of the application, we would be advising our client to seek legal recourse.