

January 2024



Planning Policy Statement

Land at Cuckstool Road, Denby Dale

Proposed Residential development up to 2 dwellings – outline planning application with matters of access, scale, layout and landscape to be considered (matters of appearance to remain reserved)

Prepared for David Barlow Properties by:



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Appendices

None



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1.0 Introduction

- 1.1 This Planning Policy Statement has been prepared to support an outline planning application (Layout, means of access and landscaping to be considered) for residential development up to 2 dwellings on land off Cuckstool Road, Denby Dale.
- 1.2 The applicant is the landowner David Barlow Properties.
- 1.3 The application seeks to deliver 2 energy efficient dwellings (with use of sedum roof) on part of the site together with significant biodiversity (46% increase over baseline – see submitted EclA and BNG prepared by Middleton Bell) and greenspace improvements (see Landscape scheme prepared by PWP) such that the proposal will deliver a significant overall biodiversity net gain. The revised scheme also delivers visual improvements to the site; the current site is unused and fenced off giving an unkempt appearance. Visual improvements are also secured through additional planting which in turn enhance the appearance of the greenspace whilst the scheme also improves public access through the site and into woodland beyond (please refer to submitted Landscape scheme). The proposed dwellings would be set in an enhanced greenspace with additional planting.
- 1.4 The opportunities to enhance the existing greenspace and deliver biodiversity net gain (as part of a small scheme of energy efficient dwellings) are considered to be significant planning benefits that weigh in support of the proposal.
- 1.5 The application is a revised proposal following refusal, and subsequent dismissal at appeal, for a scheme of 4 dwellings on site (LPA ref 2022/60/90668/E / PINs ref APP/Z4718/W/22/3309). The revised scheme is submitted having undertaken a legal review (undertaken by Walker Morris) of the Planning Inspector's decision and also the interpretation of Policy LP61a. of the Kirklees (Local Plan Strategy and Policies [2019]) relating to development of land designated as Urban Green Space.
- 1.6 Further details on this matter are set out below. A copy of the letter prepared by Walker Morris in respect of the appeal decision (letter dated 24 May 2023 and issued to both Kirklees Council and PINs) is submitted with this outline planning application and forms part of the case in support of the proposal.
- 1.7 The reduction in the number of dwellings (from 4 to 2) will result in less built form on the site with greater opportunity for planting and retention of views through the site to the woodland beyond. The reduced number of units also enables significant biodiversity net gain to be achieved and enhancement of the greenspace (both in terms of function and accessibility).
- 1.8 The application is lodged at a time when the LPA is unable to demonstrate a 5 year supply of deliverable housing. The current provision is stated as being 3.96 years as set out in their Interim Housing Position Statement dated 20 November 2023. The housing supply figure has reduced since the appeal was determined and the LPA acknowledge there is a shortage of homes being delivered. The

previous submission and appeal were assessed at a time when the LPA maintained they had a 5 year housing land supply despite evidence provided to the contrary.

- 1.9 The resubmission is lodged under different circumstances where the LPA have advised they only have a 3.96 year supply.
- 1.10 This lack of 5 year housing supply is a significant and new material consideration in the assessment of this application and clearly outweighs the very limited harm arising from development on the site.

Background

Pre-application Advice 2021 and 2023 Appeal decision – Legal Opinion.

Pre-application Advice 2021 and previous refusal (LPA ref 2022/60/90668/E) (2023 Appeal decision)

- 1.11 The site comprises a cleared area of land together with areas of semi natural vegetation. To the north the land rises through woodland to the cricket club beyond.
- 1.12 A pre-application submission was made on behalf of the landowner in 2021 (LPA ref 2021/20047). The pre-app submission set out 2 possible schemes, one for 8 dwellings on the western part of the site (adjacent to number 30 Cuckstool Road) with land to the east retained as open space whilst the second scheme was the reverse of this with 4 units to the east and land to the west retained as open space. The LPA response advised that whilst the 4 unit scheme was more appropriate in terms of residential amenity / design, the design, including wildlife meadows or opening of land would not overcome the harm caused by the principle of development being contrary to current land allocation.
- 1.13 Having considered the comments set out at pre-app, an application was prepared to address the key issue of loss of Urban Green Space. In particular consideration was given to Local Plan policies LP61 which sets out a number of criteria whereby development of UGS may be acceptable as well as Local Plan policy LP30 and guidance in the NPPF (paras 180 & 186) which encourage biodiversity net gain.
- 1.14 The Planning Statement (submitted previously and in support of this revised 2 unit scheme) provides evidence to show that Denby Dale has an excessive supply of natural and semi-natural greenspace (as evidenced in the Urban Green Space and Local Green Space Technical Paper (April 2017) prepared as part of the Local Plan process. The proposal also delivered significant biodiversity net gain benefits (10.76% previously but materially less than the current 2 unit scheme [over 46%]).
- 1.15 The proposed scheme has been informed by the need to deliver housing whilst seeking to achieve a minimum Biodiversity Net Gain of 10%. This involved initial EclA and then an iterative design process in terms of numbers, layout and design solutions to secure the 10% biodiversity net gain.
- 1.16 An application for up to 4 dwellings was submitted in 2022 and subsequently refused. The appeal was also dismissed. The appeal

decision has been subject to legal review (see below) and this revised scheme prepared accordingly for up to 2 dwellings.

- 1.17 The resulting outline application is based on a development of up to 2 dwellings with land between the plots and to the east subject to significant enhanced planting and habitat creation. The dwellings are located on the western element of the site (outwith the Wildlife Corridor – further details below) with eastern element left as open space with enhanced planting and access.
- 1.18 The proposed development of 2 dwellings together with enhancements to the open space and the Council's worsening 5 year housing land supply position provide very clear grounds to support this outline application. The reduced number of units allows for greater retention and enhancement of the greenspace with significant increase in BNG (now 46%, up from 10% previously) whilst the LPA have confirmed they only have a 3.96year Housing Land Supply. These new factors materially change the balance when assessing the proposal for 2 dwellings.
- 1.19 The LPA are invited to support the outline application submitted for up to 2 dwellings which will assist them in meeting their 5 year housing land supply requirements and enhance the urban greenspace and biodiversity function of the site.

Legal Advice – Walker Morris letter dated 24 May 2023

- 1.20 Following receipt of the Inspectors decision letter dated 24 April 2023 dismissing the outline planning application for up to 4 dwellings (LPA ref 2022/60/90668/E), Walker Morris undertook a review of the decision on behalf of the applicant.
- 1.21 The findings of the review are set out in Walker Morris letter dated 24 May 2023 sent to both PINs and the LPA. A copy of this letter is submitted with this outline application and forms an important element of the case in support of this revised outline application for up to 2 dwellings on site.
- 1.22 The key extracts from the Walker Morris letter are set out below – it essentially questions the findings of the Inspector in respect of the key issue relating to assessment of the site's contribution to the visual amenity of the area. It is noted that at paragraph 7 of the Inspectors Decision letter, the Inspector comments that the appeal site '*makes a significant positive contribution to this feeling of spaciousness, and in turn to the character and appearance of the area surrounding the appeal site*'. The relevant extracts are copied below:

When analysed, the refusal of permission on appeal turns on a single key issue; that the site makes an important contribution to visual amenity. We return later to the other related live issues, but this is clearly the core of the matter. This is the test set out in the second part of policy LP61 a. of the Kirklees Local Plan Strategy and Policies (2019). It is an issue that isn't identified in the equivalent aspects of NPPF (paragraph 99a). It is a qualitative matter and admittedly a question of evaluative planning judgement. However, that judgement has to be realistic and relate properly to an understanding of the land in question and its appearance.

In the latest appeal decision at paragraph 7, the Inspector makes the following conclusions;

- *That the wider area has a spacious feel.*
- *The settlement transitions at this point to rural surroundings.*
- *The appeal site makes a contribution to spaciousness.*
- *The appeal site forms part of a wider area and collectively these areas form an attractive expanse of open land.*
- *Consequently the site makes an important contribution to visual amenity.*

With respect to the Inspector, we don't accept these findings can properly be drawn from a site visit and a proper understanding of the site and its surrounding area.

The letter continues:

The site proposed for development is in fact physically and visually divorced from the surrounding area of green space to the north by a dense woodland block to the rear of the site. It sits between residential properties to the east and west and has to its south semi-detached, 20th century housing on elevated ground. It has no visual connection to the rest of the area designated as urban green space in the balance of the woodland to the north and even less to the cricket ground and bowling green to the north of that. There are no views into the site of any note at all, save from the site's frontage, which has built development already creating the character and nature of the visual amenity of the area. The site is no more spacious than any other site that is not currently built on (though in fact it has a partly demolished building in the middle of the area that was proposed for development in the appeal) and any feeling of the spaciousness of the wider area is not added to or enhanced by this site itself. It is not at a transition where the settlement is moving towards rural surroundings as it doesn't lead in any direction to the countryside that surrounds Denby Dale.

*Further the site itself is devoid of trees and grassland and is formed of sparse weeds on a bear earth and hardcore base. It is surrounded by tall metal "building site" fencing. There is no public access to it and its amenity value is very limited in a visual sense and non-existent in any other sense. **It does not make an important contribution to visual amenity.** It is uncontroversial that the site does not make an important contribution to landscape or biodiversity.*

- 1.23 The highlighted sentence above is key in terms of this outline application being properly assessed by the LPA. It is our clear position that this site does not make an important contribution visually and as such the development of the site for up to 2 dwellings (with associated significant landscape and biodiversity enhancements) can be supported as there is no justifiable or reasonable conflict with Local Plan Policy LP61.
- 1.24 There is also comment in the Walker Morris letter on the logic and lawful interpretation of Local Plan Policy LP61 in respect of the supply of greenspace with the Inspector noting that there is no maximum requirement for the amount of greenspace that can serve a population (i.e. no maximum hectares / 1000 population). The Walker Morris letter rightly questions the lawful interpretation of this policy – this is a fundamental weakness in application of the Local Plan policy and we are not aware that this concept of a 'maximum' amount is applied by

any other LPA. Set out below is the relevant extract from the Walker Morris letter on this point.

*Regardless of this, the terms of Inspectors findings on the matter of whether the land is required to meet needs at paragraph 6 of the decision, don't bear scrutiny. He acknowledges that in quantitative terms there is many times the minimum amount required for this type of open space, in this locality, but dismisses this on the basis that the target figure isn't a maximum. The logic of this seems to be that the policy could never be met. There isn't a maximum defined anywhere, the maximum could theoretically be infinitely large in quantum. **Setting a test in this way (which is not present in the policy itself) is not lawful.** It is an approach that can't be right as a matter of logic or be a lawful interpretation of the policy. In addition there is no explanation in the decision as to why, on the facts, the amount of greenspace being many times the minimum does not show it is no longer required. This is also a point that was not addressed by the previous appeal inspector, as it wasn't argued at that time.*

- 1.25 The Walker Morris letter concludes that the Inspector's case for dismissing the appeal was not a fair and proper basis to justify the refusal. This resubmission, revised for 2 units, is made on the basis of the legal opinion set out by Walker Morris together with the material change in housing supply position and increased BNG which in combination clearly changes the planning balance in support of the proposal.

Planning History

- 1.26 The site has been subject to a number of previous applications for residential development.
- 1.27 The outline application for 4 dwellings submitted in 2022 (LPA ref 2022/60/90668/E) and the subsequent appeal is addressed above. As set out, the appeal was dismissed on the grounds that the Inspector felt the development of the site would harm the character and appearance of the area.
- 1.28 This conclusion is challenged in the Walker Morris letter dated 24 May 2023 and is submitted with this planning application.
- 1.29 Prior to the submission of the 2022 outline application, there was an application in 2016 (LPA ref 2016/91231) which comprised an outline submission for 3 dwellings. The scheme was appealed (non-determination) and unfortunately dismissed. The grounds for dismissing the appeal related to the site's UGS designation and loss of semi natural land / greenspace within the urban area. These conclusions reflect those set out in dismissing the 2022 outline application and suggest a lack of thorough assessment for the latest appeal with the Inspector repeating previous conclusions with little consideration of the policy position (in terms of housing supply and over supply of green space) and an erroneous view in respect of the alleged harmful impact on character and appearance of the area. As set out previously, there has been a clear change of circumstances since previous decisions were made in terms of housing supply and greater landscape / ecology

benefits which materially change the planning balance when assessing the current outline scheme for 2 dwellings.

The Application Site

- 1.30 The site is located on the north side of Cuckstool Road between its junctions with Miller Hill (to west) and Hollin Edge (to east).
- 1.31 The site comprises two areas of land totalling 0.35ha (see Local Plan extracts below). Access to the site is taken from Cuckstool Road.
- 1.32 The site sits within the urban area of Denby Dale in a sustainable location within walking distance of shops, services, local amenities and public transport (including train station).
- 1.33 The land to the east, south and west is in residential use whilst land to the north is woodland beyond which is the cricket club.
- 1.34 The site sits in Flood Zone 1 and is not subject to any Local Plan allocations and is not subject to any heritage designations.
- 1.35 The site is designated as Urban Greenspace within the Local Plan (extract below) with the eastern element (c 35%) falling within the Kirklees Wildlife Habitat Network (further extract below). The western parcel of land has been subject to previous site clearance. Semi natural habitats on site within the red line boundary are restricted to a habitat type classified broadly as grassland but comprising mainly tall herb, ephemeral, scrub and scattered trees. To the north (within the blue line boundary) is an area of other lowland mixed deciduous woodland. The belt of woodland to the north of the application area extends further to the east and west, comprising a connective habitat linkage within the local area. Further details on the habitat are set out in the submitted EclA prepared by Middleton Bell Ecology.
- 1.36 Local Plan extracts below show the extent of the UGS and the location of the Wildlife Habitat Network. The application site forms a small percentage of the designation whilst the proposed dwellings are sited outwith the WHN (see Proposed Development section below)

Urban Greenspace – the site forms the south east corner (site for 2 dwellings and landscape / BNG enhancements indicated with red line with woodland to the north in blue – woodland is in applicant's ownership and would be made publically accessible as part of the proposal)

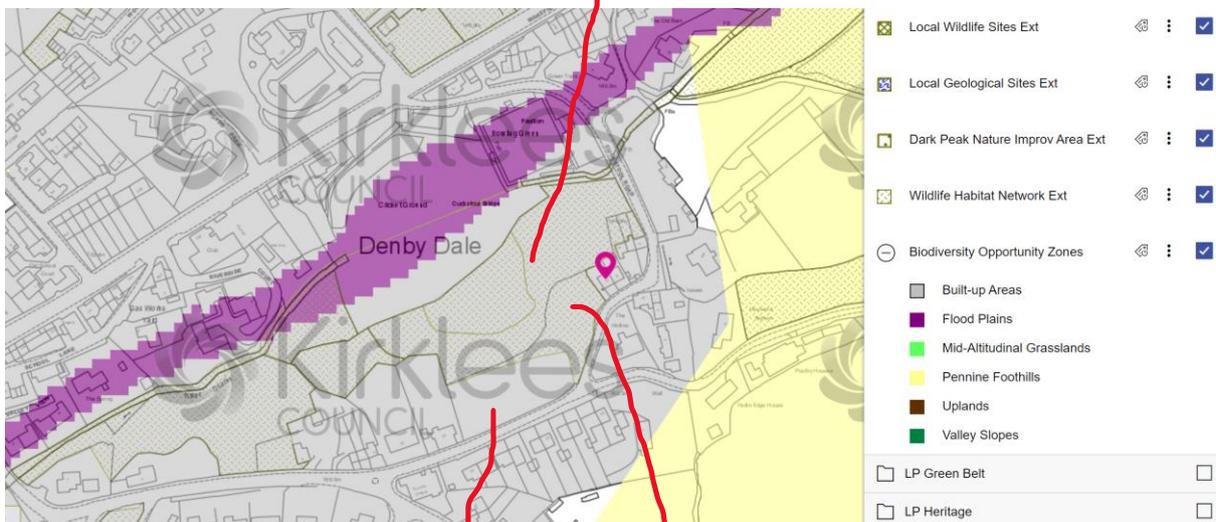
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The above extract shows the extent of the Urban Green Space and the surrounding residential uses to the east, south and west of the site. Between the site and Cricket Ground is an area of woodland. Access to this woodland, and the cricket ground beyond, can be improved with this proposal.

Local Plan Extract showing site sitting within urban area and extent of Wildlife Habitat Network (eastern third of the site). The proposed dwellings will be outwith the WHN – see red and blue line on plan above to identify site (refer to proposed layout at para 1.45 below)

Woodland – open to public



2 dwellings

Biodiversity enhancements

- 1.37 Further details are set out in the submitted EclA (prepared by Middleton Bell).

The Proposed Development

- 1.38 The proposed development comprises an outline planning application for residential development for up to 2 dwellings with Landscaping, Layout, scale and means of access to be considered. External appearance are reserved for future consideration.
- 1.39 The number of units, the location on western part of the site with direct access from Cuckstool Road and indicative design (energy efficient with sedum roof) has been informed by the initial Biodiversity Net Gain calculations and the applicant's requirement to deliver at least 10% improvement over the existing situation. The submission will deliver a 46% increase in biodiversity. The dwellings are also located outwith the Kirklees Habitat Network (as set out in plans above).
- 1.40 As can be seen in the section below, the design of the dwelling enables use of sedum roofs. Energy efficiency is a key component of the scheme. In terms of scale, it is envisaged that due to topography, dwellings could be up to 3 storeys with room in the roof.
- 1.41 The suggested layout ensures there is adequate space on site for parking / turning and private amenity space whilst levels and distances ensure no issues of overlooking / loss of privacy for existing residents to the south.
- 1.42 The proposed site layout for 2 dwellings with enhanced areas of open space and planting is copied below which includes a proposed new footpath link into the adjacent woodland. The open space enhancements relate to visual amenity through additional planting together with improved access to the planted area from Cuckstool Road. The additional planting (grassland and meadow mix, trees and hedgerows) also enhance biodiversity (BNG score increased from 10% with previous 4 unit scheme to 46% with 2 unit scheme). Please refer to submitted plans and reports prepared by PWP Landscape and Middleton Bell Ecology.
- 1.43 The scheme is accompanied by a detailed landscape scheme to enhance biodiversity with hedge planting, use of sedum roofs, permeable grass grids for parking, neutral grassland and mixed scrub. The landscape scheme will also enhance the visual appearance of the greenspace.
- 1.44 Public access will be provided to the open space directly from Cuckstool Road (currently no access due to private ownership) with a new link to the woodland beyond which then leads onto the cricket ground – the link is shown to the east of Plot 2 on the PWP Landscape plan. The applicant will gift the woodland to the Woodland Trust to facilitate public access. In the event that the Woodland Trust do not want the woodland then the woodland would be placed in a private management company to manage access and maintenance of the woodland.
- 1.45 Proposed Site Layout and Landscape scheme are copied below.

Proposed Site Layout (CADvis3d)



Proposed Landscape Scheme (PWP Landscape)



- 1.46 Matters relating to external appearance are reserved for future approval.
- 1.47 Further details are set out in the submitted plans and DAS prepared by CADvis3d.

The Planning Application

- 1.48 This statement describes the application site and nature of the proposal (above) together with an assessment of planning policy issues (Chapter 2) of relevance to the application. Assessment of the planning application is set out in Chapter 3 with a summary of the planning application / planning case is set out in Chapter 4.
- 1.49 This statement will fully justify the proposal for the site and will advance reasons why it should be supported and outline planning permission granted.
- 1.50 On the basis of the information provided in this statement, the associated supporting documents and on the application drawings, a presumption in favour of development can be maintained in this particular instance, the application being in accordance with the advice set out in the NPPF.
- 1.51 The planning application is supported by the following:
 - i. Completed application forms, with all certificates signed and dated;
 - ii. Site Location Plan and Proposed Site Layout (CADvis3D)
 - iii. Design & Access Statement (CADvis3D)
 - iv. Phase 1 Geo-Environmental Report (including Coal Report)(Geo2)
 - v. CMRA (Lyons CMC)
 - vi. Preliminary Ecological Assessment (Nov 2023) (Middleton Bell Ecology)
 - vii. Outline Landscape Masterplan – PWP dwg 811 001 Rev 00
 - viii. FRA & Drainage Strategy (Andy Moseley Associates)
 - ix. Planning Statement (Alistair Flatman Planning)
- 1.52 The submitted additional technical information is considered sufficient to enable the Local Planning Authority to determine the clear merits of the proposed development.

2 Planning Policy Review

National Planning Policy Framework (Dec 2023)

- 2.1 The National Planning Policy Framework (revised July 2022) sets out the government's planning policies for England and how these are expected to be applied. The National Planning Policy Framework must be taken into account in the preparation of local and neighbourhood plans and is a material consideration in planning decisions.
- 2.2 The National Planning Policy Framework sets out that the purpose of the planning system is to contribute to the achievement of sustainable development. The guidance advises that the policies in paragraphs 1-231 taken as a whole constitute the government's view on what sustainable development in England means in practice for the planning system.
- 2.3 Set out below is a summary and assessment of the relevant sections of the NPPF.

Achieving Sustainable Development

- 2.4 Paragraphs 7, 8 and 11 of the NPPF confirm that the purpose of the planning system is to contribute to the achievement of sustainable development.
- 2.5 Paragraph 8 sets out the three overarching objectives of sustainable development, namely economic, social and environmental objectives. Paragraph 10 confirms that the presumption in favour of sustainable development is at the heart of the Framework.
- 2.6 Paragraph 11 sets out the presumption in favour of sustainable development stating:

For decision-taking this means:

- c) *approving development proposals that accord with an up-to-date development plan without delay; or*
- d) *where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁸, granting permission unless:*
- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁷; or*
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

- 2.7 The site sits within the urban area of Denby Dale (identified in the Local Plan as a District Centre [Policy LP13] – refer to Local Plan extract at para 1.36 – site within the built up area [grey colourwash]) and is well located to local shops (Local Centre to the west on A636), services and public transport. In that respect it can be considered to be a sustainably located site.
- 2.8 The LPA currently unable to demonstrate a 5 year supply of housing. The LPA stated position is 3.96years together with an acknowledgement that it has missed its housing delivery tests. As such there is a clear and significant need to boost the supply of housing in the district. This is confirmed in the Council's Interim Housing Position Statement (20 Nov 2023) – see extract below:

2. Information required to take a decision

Since adoption of the Kirklees Local Plan in February 2019, the council has successfully maintained a continuous five-year supply of housing land and over 3,840 new homes have been delivered across the district. However, the 2023 update of the council's five-year housing land supply position demonstrates only 3.96 years supply of deliverable housing sites within the next five years.

In the absence of a 5-year housing land supply, the material housing supply policies of the Local Plan are deemed 'out of date'. As such, the authority must apply the 'presumption in favour of sustainable development' in positively determining planning applications for housing, as set out in the National Planning Policy Framework 2023 (paragraph 11d).

- 2.9 The site is designated as Urban Green Space, this is distinct from Local Green Space in terms of the NPPF. As such, in the absence of a deliverable housing supply, the tilted balance is engaged and there is therefore a presumption in favour of sustainable development. The key issue is whether there are any adverse impacts that would significantly and demonstrably outweigh the benefits arising from delivery of 2 dwellings in this location within Denby Dale (as per para 11 [d]).
- 2.10 Given the significant biodiversity and landscape benefits arising from the proposal, together with economic and social benefits associated with delivery of family housing, it is considered that there are no adverse impacts that significantly or demonstrably outweigh the benefits.
- 2.11 It is considered that residential development on the site would deliver economic, social and environmental benefits, in particular in relation to enhanced quality of greenspace and biodiversity.

Delivering a sufficient supply of homes

- 2.12 Chapter 5 of the NPPF relates to the delivery of a sufficient supply of homes with Paragraph 60 confirming the Government's objective of significantly boosting the supply of housing.
- 2.13 In the absence of a deliverable 5YHLS, the development of this sustainably located site will assist the LPA in boosting the supply of housing in Kirklees.
- 2.14 Paragraph 70 confirms the role of smaller sites in meeting housing requirements stating such sites can make an important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. Paragraph 70 goes on to advise that in order to promote the development of a good mix of sites local planning authorities should 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 work with developers to encourage the sub-division of large sites where this could help to speed up the delivery of homes.
- 2.15 The application comprises a windfall site within the main urban area and will contribute to the Council's housing supply.
- 2.16 As set out above, the current position is less than 5 years at around 3.96 years.

- 2.17 As such the proposal is considered acceptable in principle with regards NPPF paras 60 and 70.

Promoting Healthy and Sustainable Communities

- 2.18 Chapter 8 sets out guidance on open space and recreation. Paragraph 102 confirms the importance of access to open space for health and well being. It should be noted that the site is not publicly accessible although the proposal will provide an opportunity for improved access to the woodland to the rear and cricket ground beyond.

- 2.19 Paragraph 103 advises that existing open space should not be built on unless one of 3 criteria are met. Paragraph 103 is copied below:

103. Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or

b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or

c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use

- 2.20 Criteria 'a' and 'b' are relevant.

- 2.21 The site is not is sports or recreation use its open space value is visual only. The site is currently private and inaccessible. It is not possible to have a surplus of 'visual amenity' nor can it be replaced. The type of open space we are dealing with does not fit clearly with the guidance set out in the NPPF.

- 2.22 In terms of 'a', the Urban Green Space and Local Green Space Technical Paper (April 2017) prepared by Kirklees as part of the Local Plan process confirms that there is an excess of natural and semi natural greenspace in Denby Dale. The target provision is 2ha / 1000 population whilst the provision set out in the 2017 report is 7.23ha / 1000 population. There is therefore a surplus of this type of green space and so criteria 'a' is met.

- 2.23 With regards criteria 'b' (refers to the 'loss' resulting from a proposed development being replaced by equivalent or better provision in terms of quantity and quality in a suitable location), the proposal will deliver a clear improvement in quality on the retained element of the site. The benefits arising from the proposal in terms of quality of the open space (together with biodiversity enhancements set out below) should weigh in support of the proposal. Furthermore, the scheme provides an opportunity for improved accessibility to the site and beyond which will improve use of the open space with associated health and well being for residents.

- 2.24 Consideration should also be given to the Legal Opinion set out in the Walker Morris letter dated 24 May 2023 in respect of the interpretation of supply of greenspace.

- 2.25 In light of the above, the part development of this semi natural urban greenspace can be supported as the proposal is consistent with para 103 of the NPPF.

Promoting Sustainable Transport

- 2.26 Chapter 9 of the NPPF refers to highways matters with para 115 advising that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 2.27 The proposed development of up to 2 dwellings will not give rise to any highway safety or capacity issues. Means of access would be straight from the highway with parking and turning space provided for each plot. The site is also in a sustainable location in terms of accessibility to shops, schools, employment opportunities and public transport. Further details are set out in the submitted DAS.
- 2.28 The proposal will not give rise to any severe residual cumulative impacts on the road network in terms of safety or capacity.

Making Effective use of land

- 2.29 Chapter 11 seeks to encourage effective use of land with paragraph 123 stating decisions should promote an effective use of land in meeting the need for homes while safeguarding and improving the environment. The proposed scheme is consistent with these aspirations.
- 2.30 Paragraph 124 is also relevant stating that decisions should encourage multiple benefits from both urban and rural land and take opportunities to achieve net environmental gains – such as developments that would enable new habitat creation or improve public access.
- 2.31 The proposed scheme meets both these aspirations with a 46% increase in terms of biodiversity net gain and opportunity to improve access to adjacent woodland and beyond to cricket club together with significant landscape improvements. At present there is no public access to the land.

Design – Achieving well-designed and Beautiful Places

- 2.32 Chapter 12 of the NPPF refers to Design and advises that good design is a key aspect of sustainable development. Given the current appearance of the site, it is clear that the proposal will meet this aspiration through development of 2 dwellings in-keeping with its residential surrounds and the significant increased planting / landscaping.
- 2.33 Paragraph 135 sets out a number of design criteria to be considered in terms of design of development stating:

Planning policies and decisions should ensure that developments:

- a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
- c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or

discouraging appropriate innovation or change (such as increased densities);

- d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
- e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
- f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

2.34 The proposed development is submitted in outline with details on design / appearance reserved for future consideration. However, the submitted site layout shows how the site could be laid out which includes dwellings with sedum roofs, use of grass grid for parking and additional planting to ensure a 10% biodiversity net gain. Scale wise, dwellings would be up to 3 storeys with accommodation in the roof. The layout retains boundary vegetation and provides large private gardens to rear together with retained open land between the plots. Land to the east is subject to ecological enhancement.

2.35 From the information submitted it is considered the site can be designed to reflect the residential character of its surrounds whilst retaining boundary hedges and providing a safe means of access (envisaged direct drive access from Cuckstool Road). The proposal can deliver a well-designed scheme with benefits to visual amenity of the site and its surrounds.

2.36 Para 136 is also noted. This encourages the use of trees in a development given then can make an important contribution to character and quality of the environment and also help mitigate climate change. The proposed scheme delivers 45 new trees on site, mostly native species with a number of smaller ornamental trees. Full details are shown on the submitted Landscape Plan prepared by PWP Landscape.

2.37 The Design & Access Statement that accompanies the development proposals sets out how the development could, in the future, meet all of the objectives set out above and represents high quality design.

Meeting the challenge of climate change, flooding and coastal change

2.38 Paragraph 165 of Chapter 14 confirms that development should be directed to areas with the lowest probability of flooding. The site lies within Flood Zone 1 and is therefore at low risk from flooding.

Conserving and enhancing the natural environment

2.39 Paragraph 180 of Chapter 15 advises that the planning system 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;*
- *e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and*
- *f)remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate."*

2.40 Para 180 (d) is particularly relevant to this outline application as it provides an opportunity for biodiversity net gain whilst locating housing away from the existing wildlife network and trees to the north.

2.41 Paragraph 186 relates to ecology and biodiversity considerations when determining planning applications – part 'd' is copied below as it is particularly relevant - wording highlighted (my emphasis) in terms of biodiversity net gain:

180. *When determining planning applications, local planning authorities should apply the following principles:*

*(d) **development whose primary objective is to conserve or enhance biodiversity should be supported**; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.*

2.42 Details on biodiversity are set out in the submitted Ecological Impact Assessment (Nov 2023 Report prepared by Middleton Bell). In summary there was no evidence of any protected species occurring on the site or the surrounding areas. The site is considered to be of no more than site level importance to nature conservation for the habitats supported. The site is not considered to be of importance to any species or species groups at greater than the site level. The adjacent woodland, which falls within the blue line boundary, is considered to be of local level importance to nature conservation.

2.43 The site is .35ha in total. The proposed dwellings and associated garden / parking would accommodate circa 0.1ha with remaining 0.25ha set aside for biodiversity and landscape improvements. However, the proposed dwellings would incorporate bird and bat boxes together with hedgehog holes in fencing and there is scope for planting in gardens together with sedum roof so the residential plots would also contribute to biodiversity gain. In order to offset the scheme's ecological impact, the area of the site falling within the wildlife

network (east section of the site), will be planted with native mixed scrub. In addition, areas of wildflower grassland will be created between the dwellings, with new lengths of species-rich hedgerow and native tree planting. These enhancements result in a significant Biodiversity Enhancement score over 46%. Further details are set out in the submitted EclA prepared by Middleton Bell – this should be read in accordance with the landscape scheme prepared by PWP Landscape.

- 2.44 Paragraph 189 refers to ground conditions, advising that when making decisions consideration must be given to whether a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination.
- 2.45 There are no known contamination or stability issues that would prevent redevelopment of this site. The proposed layout seeks to avoid however potential historic mine workings as identified in the submitted CMRA. Further details are set out in the submitted Phase 1 Desk Study and associated Coal Mining responses. It is noted that the previous scheme raised no ground / coal objections.

Assessment against NPPF

- 2.46 Assessing the proposal against the main objectives of the NPPF, it is clear the scheme accords with the overarching approach to planning in that:-
- The proposal will enhance the supply of housing in the district through redevelopment of a windfall site in the urban area of Denby Dale;
 - The proposal will assist the LPA in meeting its housing supply targets at a time when it is considered it is unable to justify or demonstrate a 5 YHLS position and is not delivering enough houses - insufficient homes have been built and not enough can be built from the current supply;
 - The proposal represents development of a sustainable site within the urban area;
 - The site is not of any heritage value;
 - The site can be safely accessed and will not give rise to any highway safety or capacity issues;
 - There is currently a significant surplus of semi-natural urban greenspace in Denby Dale (para 103 a);
 - The proposed development will give rise to enhancements to the open space in terms of quality and accessibility (para 103 b);
 - The Proposed development will result in a 46% Biodiversity net gain on the site;
 - The site will not give rise to any flood risk or drainage issues;
 - As illustrated by the proposed layout, elevations and Design Statement, the development proposal will provide a development that is sympathetic to and reflective of the character of the surrounding area.

Statutory Development Plan Policies

- 2.47 With respect to the proposed development, the Development Plan currently comprises the adopted Kirklees Local Plan sets out planning strategy with relevant planning policies together with an Allocations Document.
- 2.48 The site is designated as Urban Greenspace in the Local Plan with the eastern third of the site identified as part of the Kirklees Wildlife Habitat Network. The site is identified as semi-natural greenspace.
- 2.49 In light of the above and having regard to the proposal, the following Local Plan policies are noted:
- PLP 1 – Achieving Sustainable development
 - PLP 2 – Place Shaping
 - PLP 3 – Location of New Development
 - PLP 21 – Highway Safety
 - PLP 22 – Parking
 - PLP 24 – Design
 - PLP 30 - Biodiversity & Geodiversity
 - PLP 31 – Strategic Green Infrastructure Network
 - PLP 47 – Healthy, active and safe lifestyles
 - PLP 61 – Urban Green Space
- 2.50 These policies are assessed in Section 3.

3 Planning Assessment

Principle of Development

- 3.1 This windfall site comprises an infill plot in a sustainable and accessible location within the urban area of Denby Dale, a District Centre where the principle of development is acceptable.
- 3.2 The two issues here relate to housing supply and the site designation as Urban Green Space.
- 3.3 With regards the first issue, it is considered the LPA is unable to demonstrate a deliverable 5 year housing land supply and is continuing to fail in its delivery. This is confirmed in the Council's Interim Housing Position Statement (20 Nov 2023). The current supply position is 3.96years.

Housing Supply and sustainable development

- 3.4 Paragraph 60 of the NPPF (July 2021) reiterates the Government's objective to significantly boost the supply of housing (including affordable housing). As set out in Section 1, it is considered the LPA is unable to demonstrate a deliverable 5 year supply of housing. Consequently, Footnote 7 of the NPPF indicates the most important policies for determining the application are deemed to be out of date. In these circumstances, the tilted balance of Paragraph 11(d) of the Framework indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
- 3.5 Paragraph 11 of the NPPF advises that where the development plan is out of date the presumption in favour of sustainable development means granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. In addition, relevant policies relating to the supply of housing should not be considered up to date if the Council cannot demonstrate a five-year supply of deliverable housing sites (Para 11 [d]).
- 3.6 It is noted that footnote 7 (within para 11 d i) references policies in the Framework that protect areas or assets which would provide a clear reason for refusing development. Footnote 7 includes Green Belt, Heritage Assets and Local Green Space. Importantly it does not reference Urban Green Space which is demonstrably different to an Urban Green Space designation. This is clarified in the LPA Technical Paper prepared in support of the Local Plan entitled 'Urban Green Space and Local Green Space Technical Paper - April 2017'. Para 1.3 of the Technical Paper sets out the differences between the two.
- 3.7 As such, the tilted balance of Paragraph 11(d) of the Framework applies.
- 3.8 Paragraph 8 of the NPPF sets out the 3 elements of sustainable development, namely economic, social and environmental objectives.
- 3.9 The proposal will bring clear economic benefits in terms of creation of construction jobs and increased spend in the local economy both during and post construction.
- 3.10 In terms of social benefits, the proposal will deliver enhanced, accessible open space (bringing physical and mental health benefits for residents) and family

homes to Denby Dale. The proposal will therefore meet social objectives of sustainable development by creating a vibrant and healthy community providing a sufficient number of homes in a well-designed scheme with access to open space.

- 3.11 With regards environmental benefits, the site is currently part of a cleared site (semi natural grassland) with little ecological or landscape value. The proposal seeks to deliver up to 2 energy efficient homes with increased planting with associated visual amenity and biodiversity benefits. The eastern part of the site will be retained as open space and enhanced ecologically. In addition, the proposal will not result in any drainage / flood risk issues and can be safely served from Cuckstool Road.
- 3.12 In terms of access to services, the site is within walking and cycling distance of the town centre and local schools as well as public transport (bus and train).
- 3.13 The proposal is therefore considered to constitute sustainable development, delivering economic, social and environmental benefits such that there are no adverse impacts that significantly or demonstrably outweigh the delivery of new houses.
- 3.14 In light of the above it is considered the proposal constitutes sustainable development and is consistent with the NPPF. The principle of development should be supported.
- 3.15 Local Plan Policies LP1, LP2 and LP3 reflect national guidance set out in the NPPF in terms of sustainable development and delivery of housing. The proposal is consistent with these policies.
- 3.16 As such the principle of development is acceptable in respect of housing supply and the application should therefore be approved.

Development on Urban Green Space (typology – semi natural)

- 3.17 The site falls within a larger area of land designated as Urban Green Space. The UGS designation includes the cricket club and woodland which are unaffected by the proposal. The site itself comprises semi natural greenspace with the eastern portion falling with part of the wider Kirklees Wildlife Habitat Network. This eastern section is not proposed for built development and is subject to biodiversity enhancements. The scheme for 2 would also maintain large areas of open, undeveloped land between the dwellings – this land would also be subject to ecological and landscape enhancements through planting of meadow grassland and native trees.
- 3.18 The 2021 pre-application response advised that the principle of development would not be acceptable due to contradictions with urban greenspace (and wildlife habitat network) policies.
- 3.19 Local Plan Policy 61 is relevant as it relates to Urban Green Space and sets out scenarios where its development may be acceptable.
- 3.20 In the first instance, it is considered that the LPA's lack of a deliverable 5YHLS is a material consideration in terms to the weight that can be afforded the policy. The need to boost the supply of housing weigh in support of the proposal. The Policy is out of date and therefore reduced in weight. The relevant planning matters relate to the degree of actual harm caused to the objective of the policy.

- 3.21 Policy 61 reflects guidance set out in the NPPF (set out and assessed in Section 2) and sets out 3 scenarios where development on green space can be supported. 2 of the 3 are considered relevant, namely over supply of semi natural greenspace in Denby Dale (criteria a) and biodiversity benefits arising in terms of enhancements to the retained semi natural greenspace (criteria b). These are addressed below.
- 3.22 In addition, full consideration should be given to the legal opinion set out in the Walker Morris letter dated 24 May 2023 as this also addresses Policy LP61 demonstrating how the proposal can be considered consistent with the criteria set out therein.
- 3.23 In terms of supply the following extracts taken from the Urban Green Space and Local Green Space Technical Paper (April 2017) prepared to support the Local Plan are relevant.
- 3.24 Table 2 below confirms the minimum district wide open space standards for each type of green space. For semi natural greenspace it is 2ha / 1000 population.

Table 2: Kirklees Minimum District Wide Open Space Standards

Type of Open Space	Standard	Kirklees Minimum District-Wide Standard
Parks & Recreation Grounds	Quantity	0.8 ha per 1,000 population
	Quality	Green Flag Award or 'High' rating in open space site assessment
	Accessibility	15 mins walk (720m) and/or 30 mins travel time to a major park
Amenity Greenspace	Quantity	0.3 ha per 1,000 population
	Quality	'High' rating in open space site assessment
	Accessibility	10 mins walk (480m)
Natural & Semi-natural Greenspace	Quantity	2.0 ha per 1,000 population
	Quality	'High' rating in open space site assessment
	Accessibility	15 mins (720m) and 2km of 20ha site
Allotments	Quantity	0.5 ha per 1,000 households
	Quality	Score of 60% on open space assessment (quality) 'High' rating in open space site assessment
	Accessibility	15 mins walk (720m)
Children & Young People	Quantity	No standard proposed
	Quality	Minimum through age play opportunities (0-16 years) to be available within a 15 mins walk (720m) of home. Ideally the range of opportunities should be available at one site (destination play areas) and each new or newly refurbished play area in Kirklees should provide the minimum play opportunities.
	Accessibility	15 mins walk (720m) for children's provision and 2km for youth facilities
Sport	No standards set as the Kirklees Playing Pitch Strategy identifies deficiencies or surplus provision through a supply and demand analysis following Sport England's playing pitch methodology.	
Cemeteries /Churchyards	No standards set as provision is based on burial demand.	
Green Corridors	No standards set as the nature of green corridors means it is inappropriate to measure the area compared to local need as provision of green corridors is demand led.	

3.25 Table 3 below sets out the current provision of open space compared to the minimum standards. For Denby Dale this shows a significant over supply of semi natural greenspace at 7.23 ha / 1000 population. The relevant figure is coloured green in the table below.

Table 3: Current Provision of Open Spaces Compared to the Minimum District-Wide Quantity Standards

Area	Ward	Parks & Recreation Grounds (ha per 1,000 population)	Natural and Semi-natural Greenspace (ha per 1,000 population)	Allotments (ha per 1,000 households)	Amenity Greenspace (ha per 1,000 population)
Batley & Spen	Batley East	0.29	0.40	0.13	0.36
	Batley West	0.81	1.70	0.10	0.26
	Birstall & Birkenshaw	3.23	0.60	0.22	0.79
	Cleckheaton	0.65	2.86	0.12	0.08
	Heckmondwike	0.54	0.67	0.39	0.43
	Liversedge & Gomersal	1.02	0.17	0.09	0.33
	Area Totals	1.06	1.05	0.17	0.37
Dewsbury & Mirfield	Dewsbury East	1.00	0.74	0.19	0.58
	Dewsbury South	0.90	0.58	0.67	0.23
	Dewsbury West	0.80	4.16	1.13	0.27
	Mirfield	0.45	0.37	0.37	0.33
	Area Totals	0.78	1.50	0.56	0.35
Huddersfield	Almondbury	0.65	2.12	0.68	0.18
	Ashbrow	0.45	6.49	0.57	0.34
	Crosland Moor & Netherton	1.16	0.48	0.79	0.22
	Dalton	0.98	5.47	0.35	0.28
	Greenhead	0.88	1.22	0.87	0.13
	Lindley	1.15	1.74	0.68	0.20
	Newsome	0.35	4.56	0.78	0.36
Area Totals	0.80	3.15	0.68	0.24	
Kirklees Rural	Colne Valley	0.31	1.42	0.52	0.24
	Denby Dale	0.50	7.23	0.31	0.51
	Golcar	0.34	0.80	0.10	0.15
	Home Valley North	0.69	0.80	0.23	0.01
	Holme Valley South	0.72	1.51	0.16	0.05
	Kirkburton	0.50	0.95	0.52	0.41
	Area Totals	0.51	2.06	0.30	0.22

Source: Kirklees Open Space Study Assessment Report 2015 (Revised 2016)

3.26 Finally, within Appendix 2 of the Technical Paper is a summary of rejected urban green space sites. The extract below identifies a rejected site at Leak Hall Lane

- 3.31 Further the site itself is devoid of trees and grassland and is formed of sparse weeds on a bare earth and hardcore base. It is surrounded by tall metal "building site" fencing. There is no public access to it and its amenity value is very limited in a visual sense and non-existent in any other sense.
- 3.32 The site **does not make an important contribution to visual amenity**. It is uncontroversial that the site does not make an important contribution to landscape or biodiversity.
- 3.33 With regards the second criteria (b) of Policy 61, it is considered the proposal will deliver clear biodiversity benefits through enhancement of the site and provides opportunities for enhanced connectivity with the woodland and cricket club to the north. The proposed planting scheme, including trees, hedges and wildflower grass, together with use of bird and bat boxes delivers a 46% increase in BNG across the site. The proposal delivers direct access to the site from Cuckstool Road together with a footpath link through to the woodland beyond. Public access to the woodland will be secured by transferring the land to the Woodland Trust, or if they are not willing to take the woodland on, it will be transferred to a management company. As such there is an improvement in the quality and accessibility of the retained green space which is consistent with the aspirations of Policy 61 (b).
- 3.34 In light of the above, it is considered the principle of development of part of the urban green space together with biodiversity net gain (further details below) is consistent with NPPF guidance (para 99) and Local Plan Policy 61 and can therefore be supported.

Ecology – Biodiversity Net gain

- 3.35 The site comprises an area of semi natural greenspace. The eastern section (approx. third) also sits within the Kirklees Wildlife Habitat Network. The proposed housing is not sited within the wildlife network area and so will not harm the function of that space. That said, the scheme does seek to deliver biodiversity benefits.
- 3.36 The proposed development has been informed by the desire to achieve a minimum 10% biodiversity net gain on the site. Ecology survey work completed by Middleton Bell Ecology (see EclA submitted) informed the number of dwellings, their design parameters (in terms of sedum roof and grass tiles for parking areas) and wider planting mix and quantities.
- 3.37 As demonstrated in the submitted EclA, the proposal can deliver a net gain over 46%. This is a significant achievement for a small residential scheme and weighs in support of the proposal.
- 3.38 The importance of securing biodiversity net gain in planning is set out in the Environment Act 2021 as well as guidance in the NPPF (paras 174 and 180). Local Plan Policy 30 refers to Biodiversity and Geodiversity. This policy seeks to encourage biodiversity net gain from development proposals. In reality the benefits are often limited due to scale of a proposal or the availability of land on which to deliver meaningful enhancements.
- 3.39 In this case however the proposal will deliver biodiversity net gain based on enhancing the existing semi natural greenspace, hedge planting, use of sedum roofs and bird / bat boxes together with gaps in fencing for hedgehogs.

- 3.40 In light of the above, it is considered the proposal will result in significant biodiversity enhancement on site in accordance with NPPF and Policy 30. This weighs significantly in favour of the proposal.

Design / Visual Amenity

- 3.41 The application is submitted in outline with layout to be considered but matters of scale and appearance reserved. The proposal is for up to 2 dwellings with direct access from Cuckstool Road. As part of the biodiversity emphasis the dwellings are expected to have sedum roofs. The intention is also that the dwellings will incorporate energy efficiency design features (details are set out in the submitted DAS).
- 3.42 The outline application is accompanied by proposed site layout demonstrating how 2 dwellings can be located on the site. The proposed layout retains open space to the east as well as between the dwellings. This would be enhanced as set out in the EclA and as shown on the submitted landscape plan (PWP dwg)
- 3.43 It is noted that Local Plan policies deal predominantly with detail and as such are more relevant for future reserved matters submissions. However, in drawing up the proposed layout, Local Plan policies LP21 (Highways & Access), LP22 (Parking) and LP24 (Design) have all been considered. Consideration has also been given to Policy LP31 in terms of Strategic Green Infrastructure – in this case maintaining opportunities for links to woodland at the rear and cricket club beyond.
- 3.44 The proposed layout demonstrates how the development of the site for 2 dwellings can comply with these policies. The design and siting of levels ensures dwellings can sit comfortably on site without being over dominant in respect of those at a higher level to the south. Design wise (and materials), there is a mix of styles / materials on existing housing stock surrounding the site. As such this site would provide an exciting opportunity for a small scale, bespoke high quality scheme of dwellings that create their own sense of place.
- 3.45 Overall, the proposal with details suggested in the DAS and on the proposed layout, is consistent with guidance set out in the NPPF and the relevant Local Plan policies LP21, LP22, LP24 and LP31.

Amenity Considerations

- 3.46 The proposed site layout ensures that there are no issues of overlooking / loss of privacy with regards existing dwellings adjacent to the site whilst future residents will also benefit from adequate private amenity space. Overall, the proposed layout demonstrates one way the site can be laid out to deliver 2 dwellings and ensure existing and proposed residents enjoy acceptable levels of residential amenity.

Highways

- 3.47 Access is proposed as simple driveways from Cuckstool Road with space within each plot for parking and turning.
- 3.48 The quantum of development is not expected to give rise to any highway capacity or safety issues.
- 3.49 The low trip generation expected will have no material adverse impact on the existing highway network. In terms of the NPPF (para 111) it is considered the

proposal will not result in an unacceptable impact on highway safety or severe residual cumulative impacts on the road network.

- 3.50 Local Plan policies LP21 and 22 relate to Highway Safety and Parking respectively. The site can be safely accessed with adequate parking / turning on site to ensure there are no highways issues arising in terms of capacity or safety. As such it is considered the requirements of LP21 & 22 have been met.
- 3.51 In light of the above, it is considered that the Proposed Development would not have an unacceptable effect on traffic flow and safety and as such will not detract from the character or appearance of the area.

Landscaping

- 3.52 Details on landscaping are submitted and are for approval with this outline. The submitted PWP Landscape scheme demonstrates significant landscape benefits in terms of planting of trees and hedges together with areas of meadow grassland and native scrub. The proposed landscape scheme delivers significant visual and biodiversity benefits.
- 3.53 The landscape scheme also introduces elements of public access to the site and to the woodland beyond – this will improve use of the site as it is currently fenced off.

Ground Conditions

- 3.54 The site comprises grassland. It is not considered the proposal will give rise to any new issues in terms of pollution / contamination or ground stability. Further details can be found in the submitted Phase 1 Desk Study and CMRA. The layout shows dwellings located in areas where there is no known contamination, stability or mining issues.

Flood Risk / Drainage

- 3.55 The site is in FZ1. It can be suitably drained as demonstrated in the submitted FRA / Drainage Strategy and will not give rise to any flooding issues on or off site.

Summary

- 3.56 Considering the above assessment and with regards the submitted plans, and technical reports, it is considered the proposal is consistent with relevant National and Local planning policies. As such there is no planning reason why outline planning permission should not be granted for the proposal.

4.0 Summary

- 4.1 This Planning Policy Statement has been prepared to support an outline planning application (Layout, means of access and landscaping to be considered) for residential development up to 2 dwellings on land off Cuckstool Road, Denby Dale.
- 4.2 The application seeks to deliver 2 energy efficient dwellings (with use of sedum roof) on part of the site together with significant biodiversity (46% increase over baseline – see submitted EclA and BNG prepared by Middleton Bell) and greenspace improvements (see Landscape scheme prepared by PWP) such that the proposal will deliver a significant overall biodiversity net gain. The revised scheme also delivers visual improvements to the site, enhancement of the greenspace and improved public access through the site and into woodland beyond (please refer to submitted Landscape scheme). The proposed dwellings would be set in an enhanced greenspace with additional planting.
- 4.3 The opportunity to enhance the existing greenspace and deliver biodiversity net gain (as part of a small scheme of energy efficient dwellings) are considered to be significant planning benefits that weigh in support of the proposal.
- 4.4 The application is a revised proposal following refusal, and subsequent dismissal at appeal, for a scheme of 4 dwellings on site (LPA ref 2022/60/90668/E / PINs ref APP/Z4718/W/22/3309). The revised scheme is submitted having undertaken a legal review (undertaken by Walker Morris) of the Planning Inspector's decision and also the interpretation of Policy LP61a. of the Kirklees (Local Plan Strategy and Policies [2019]) relating to development of land designated as Urban Green Space.
- 4.5 The reduction in the number of dwellings (from 4 to 2) will result in less built form on the site with greater opportunity for planting and retention of views through the site to the woodland beyond. The reduced number of units also enables significant biodiversity net gain to be achieved and enhancement of the greenspace (both in terms of function and accessibility).
- 4.6 The application is lodged at a time when the LPA are unable to demonstrate a 5 year supply of deliverable housing. The current provision is stated as being 3.96 years. This has reduced since the appeal was determined and the LPA acknowledge there is a shortage of homes being delivered. The Council prepared a Interim Housing Position Statement in November 2023 which confirmed the supply position and ongoing undersupply issue.

Background – Legal Opinion.

- 4.7 Following receipt of the Inspectors decision letter dated 24 April 2023 dismissing the outline planning application for up to 4 dwellings (LPA ref 2022/60/90668/E), Walker Morris undertook a review of the decision on behalf of the applicant.
- 4.8 The findings of the review are set out in Walker Morris letter dated 24 May 2023 sent to both PINs and the LPA. A copy of this letter is submitted with this outline application and forms an important element of the case in support of this revised outline application for up to 2 dwellings on site.

- 4.9 The key extracts from the Walker Morris letter are set out below – it essentially questions the findings of the Inspector in respect of the key issue relating to assessment of the site's contribution to the visual amenity of the area. It is noted that at paragraph 7 of the Inspectors Decision letter, the Inspector comments that the appeal site 'makes a significant positive contribution to this feeling of spaciousness, and in turn to the character and appearance of the area surrounding the appeal site'. The relevant extracts are copied below:

When analysed, the refusal of permission on appeal turns on a single key issue; that the site makes an important contribution to visual amenity. We return later to the other related live issues, but this is clearly the core of the matter. This is the test set out in the second part of policy LP61 a. of the Kirklees Local Plan Strategy and Policies (2019). It is an issue that isn't identified in the equivalent aspects of NPPF (paragraph 99a). It is a qualitative matter and admittedly a question of evaluative planning judgement. However, that judgement has to be realistic and relate properly to an understanding of the land in question and its appearance.

In the latest appeal decision at paragraph 7, the Inspector makes the following conclusions;

- *That the wider area has a spacious feel.*
- *The settlement transitions at this point to rural surroundings.*
- *The appeal site makes a contribution to spaciousness.*
- *The appeal site forms part of a wider area and collectively these areas form an attractive expanse of open land.*
- *Consequently the site makes an important contribution to visual amenity.*

With respect to the Inspector, we don't accept these findings can properly be drawn from a site visit and a proper understanding of the site and its surrounding area.

The letter continues:

The site proposed for development is in fact physically and visually divorced from the surrounding area of green space to the north by a dense woodland block to the rear of the site. It sits between residential properties to the east and west and has to its south semi-detached, 20th century housing on elevated ground. It has no visual connection to the rest of the area designated as urban green space in the balance of the woodland to the north and even less to the cricket ground and bowling green to the north of that. There are no views into the site of any note at all, save from the site's frontage, which has built development already creating the character and nature of the visual amenity of the area. The site is no more spacious than any other site that is not currently built on (though in fact it has a partly demolished building in the middle of the area that was proposed for development in the appeal) and any feeling of the spaciousness of the wider area is not added to or enhanced by this site itself. It is not at a transition where the settlement is moving towards rural surroundings as it doesn't lead in any direction to the countryside that surrounds Denby Dale.

*Further the site itself is devoid of trees and grassland and is formed of sparse weeds on a bear earth and hardcore base. It is surrounded by tall metal "building site" fencing. There is no public access to it and its amenity value is very limited in a visual sense and non-existent in any other sense. **It does not make an important contribution to visual***

amenity. *It is uncontroversial that the site does not make an important contribution to landscape or biodiversity.*

4.10 The highlighted sentence above is key in terms of this outline application being properly assessed by the LPA. It is our clear position that this site does not make an important contribution visually and as such the development of the site for up to 2 dwellings can be supported as there is no justifiable or reasonable conflict with Local Plan Policy LP61.

4.11 There is also comment in the Walker Morris letter on the logic and lawful interpretation of Local Plan Policy LP61 in respect of the supply of greenspace with the Inspector noting that there is no maximum requirement for the amount of greenspace that can serve a population (ie no maximum hectares / 1000 population). The Walker Morris letter rightly questions the lawful interpretation of this policy. Set out below is the relevant extract from the Walker Morris letter on this point.

Regardless of this, the terms of Inspectors findings on the matter of whether the land is required to meet needs at paragraph 6 of the decision, don't bear scrutiny. He acknowledges that in quantitative terms there is many times the minimum amount required for this type of open space, in this locality, but dismisses this on the basis that the target figure isn't a maximum. The logic of this seems to be that the policy could never be met. There isn't a maximum defined anywhere, the maximum could theoretically be infinitely large in quantum. Setting a test in this way (which is not present in the policy itself) is not lawful. It is an approach that can't be right as a matter of logic or be a lawful interpretation of the policy. In addition there is no explanation in the decision as to why, on the facts, the amount of greenspace being many times the minimum does not show it is no longer required. This is also a point that was not addressed by the previous appeal inspector, as it wasn't argued at that time.

4.12 The Walker Morris letter concludes that the Inspector's case for dismissing the appeal was not a fair and proper basis to justify the refusal. This resubmission, revised for 2 units, is made on the basis of the legal opinion set out by Walker Morris together with the material change in housing supply position and increased BNG which in combination clearly changes the planning balance in support of the proposal.

The Application Site

4.13 The site is located on the north side of Cuckstool Road between its junctions with Miller Hill (to west) and Hollin Edge (to east).

4.14 The site comprises two areas of land totalling 0.35ha. Access to the site is taken from Cuckstool Road.

4.15 The site sits within the urban area of Denby Dale in a sustainable location within walking distance of shops, services, local amenities and public transport (including train station). The land to the east, south and west is in residential use whilst land to the north is woodland beyond which is the cricket club.

4.16 The site sits in Flood Zone 1 and is not subject to any Local Plan allocations and is not subject to any heritage designations.

4.17 The site is designated as Urban Greenspace within the Local Plan with the eastern element (c 35%) falling within the Kirklees Wildlife Habitat Network. The

western parcel of land has been subject to previous site clearance. Semi natural habitats on site within the red line boundary are restricted to a habitat type classified broadly as grassland.

- 4.18 Further details are set out in the submitted DAS and EclA.

The Proposed Development

- 4.19 The proposed development comprises an outline planning application for residential development for up to 2 dwellings. Matters of Access, Layout, Scale and Landscape are to be considered with design matters relating to appearance reserved for later approval.
- 4.20 The number of units, the location on western part of the site with direct access from Cuckstool Road and indicative design (energy efficient with sedum roof) has been informed by the initial Biodiversity Net Gain calculations and the applicant's requirement to deliver at least 10% improvement over the existing situation. The dwellings are also located outwith the Kirklees Habitat Network.
- 4.21 The suggested layout ensures there is adequate space on site for parking / turning and private amenity space whilst levels and distances ensure no issues of overlooking / loss of privacy for existing residents to the south.
- 4.22 The proposal delivers a 46% biodiversity net gain on site as well as significant landscape improvements and wider increased accessibility to the site and beyond.
- 4.23 Further details are set out in the submitted plans and DAS prepared by CADvis3d together with Middleton Bell's EclA and PWP Landscape's Landscape Plan.

Assessment

Principle of Development

- 4.24 This windfall site comprises an infill plot in a sustainable and accessible location within the urban area of Denby Dale, a District Centre where the principle of development is acceptable.
- 4.25 The two issues here relate to housing supply and the site designation as Urban Green Space. With regards the first issue, it is considered the LPA are unable to demonstrate a deliverable 5 year housing land supply (currently 3.96 years)

Housing Supply and sustainable development

- 4.26 Paragraph 60 of the NPPF (July 2021) reiterates the Government's objective to significantly boost the supply of housing. It is considered the LPA are unable to demonstrate a deliverable 5 year supply of housing. Consequently, Footnote 7 of the NPPF indicates the most important policies for determining the application are deemed to be out of date. In these circumstances, the tilted balance of Paragraph 11(d) of the Framework indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
- 4.27 Paragraph 8 of the NPPF sets out the 3 elements of sustainable development, namely economic, social and environmental objectives. The proposal will bring clear economic benefits in terms of creation of construction jobs and increased spend in the local economy both during and post construction. In terms of social benefits, the proposal will deliver enhanced, accessible open space

(bringing physical and mental health benefits for residents) and family homes to Denby Dale. With regards environmental benefits, the site is currently part of a cleared site (semi natural grassland) with little ecological or landscape value. The proposal seeks to deliver up to 2 energy efficient homes with increased planting with associated visual amenity and biodiversity benefits (proposal delivers 46% BNG which is significantly greater than target of >10% net gain). The eastern part of the site will be retained as open space and enhanced ecologically. In addition, the proposal will not result in any drainage / flood risk issues and can be safely served from Cuckstool Road.

- 4.28 The proposal is therefore considered to constitute sustainable development, delivering economic, social and environmental benefits such that there are no adverse impacts that significantly or demonstrably outweigh the delivery of new houses.

Development on Urban Green Space (typology – semi natural)

- 4.29 The site falls within a larger area of land designated as Urban Green Space. The UGS designation includes the cricket club and woodland which are unaffected by the proposal. The site itself comprises semi natural greenspace with the eastern portion falling with part of the wider Kirklees Wildlife Habitat Network. This eastern section is not proposed for built development and is subject to biodiversity enhancements.
- 4.30 NPPF para 103 and Local Plan Policy 61 are relevant as they relate to Urban Green Space and set out three scenarios where its development may be acceptable. 2 of the 3 are considered relevant, namely over supply of semi natural greenspace in Denby Dale (criteria a) and biodiversity benefits arising in terms of enhancements to the retained semi natural greenspace (criteria b). These are addressed below.
- 4.31 In terms of supply the following extracts taken from the Urban Green Space and Local Green Space Technical Paper (April 2017) prepared to support the Local Plan are relevant. The Technical Paper confirms the minimum district wide open space standards for each type of green space. For semi natural greenspace it is 2ha / 1000 population. Table 3 within the Technical Paper below sets out the current provision of open space compared to the minimum standards. For Denby Dale this shows a significant over supply of semi natural greenspace at 7.23 ha / 1000 population.
- 4.32 In light of the above it is clearly demonstrated that there is an over supply of semi natural greenspace in Denby Dale and as such the principle of development on part of this urban green space site can be supported.
- 4.33 The legal opinion set out by Walker Morris addresses criteria (a) further. The extracts below set out why the site does not make an important contribution to visual amenity and how therefore the proposal can be considered to comply with Policy LP61 (a). The relevant extracts from the letter are copied below:

The site proposed for development is in fact physically and visually divorced from the surrounding area of green space to the north by a dense woodland block to the rear of the site.

It sits between residential properties to the east and west and has to its south semi-detached, 20th century housing on elevated ground.

It has no visual connection to the rest of the area designated as urban green space in the balance of the woodland to the north and even less to the cricket ground and bowling green to the north of that.

There are no views into the site of any note at all, save from the site's frontage, which has built development already creating the character and nature of the visual amenity of the area.

It is not at a transition where the settlement is moving towards rural surroundings as it doesn't lead in any direction to the countryside that surrounds Denby Dale.

Further the site itself is devoid of trees and grassland and is formed of sparse weeds on a bare earth and hardcore base.

*It does not make an **important** contribution to visual amenity. It is uncontroversial that the site does not make an important contribution to landscape or biodiversity.*

We cannot therefore see how the Inspector reached the conclusion that he did in paragraph 7 of his decision about visual amenity.

This position is important as it is clear that the first part of Policy LP61 a. is of no real relevance to land that at best could only have a visual amenity value and not otherwise an open space, sport and recreation value. Visual amenity cannot ever really be something that can be assessed in terms of whether it is still required to meet the local needs (surplus). This points to a need for a different approach when dealing with land that (at best) has only a visual function. This need for a different approach is recognised in the text to the policy at 19.46 and in the officer's report on this appeal application. In other words the question of surplus is not, on proper application of the policy, relevant when dealing with land of this nature, with potential value derived only from its visual aspects.

*The only real test for this type of green space land is whether it makes an **important** contribution to visual amenity.*

- 4.34 Taking the last point above, it is our view that the site does not make an important contribution to visual amenity.
- 4.35 With regards the second criteria (b), it is considered the proposal will deliver clear biodiversity benefits through enhancement (46%) of the site and provides opportunities for enhanced connectivity with the woodland and cricket club to the north. The site and adjacent woodland would be publicly accessible (they are currently private and inaccessible). As such there is an improvement in the quality and accessibility of the retained green space
- 4.36 In light of the above, it is considered the principle of development of part of the urban green space together with biodiversity net gain (further details below) is consistent with NPPF guidance (para 103) and Local Plan Policy 61 and can therefore be supported.

Ecology – Biodiversity Net gain

- 4.37 The site comprises an area of semi natural greenspace. The eastern section (32pprox.. third) also sits within the Kirklees Wildlife Habitat Network. The proposed housing is not sited within the wildlife network area and so will not harm the function of that space. That said, the scheme does seek to deliver biodiversity benefits.
- 4.38 The proposed development has been informed by the desire to achieve a minimum 10% biodiversity net gain on the site. As demonstrated in the

submitted EclA, the proposal will deliver significant biodiversity enhancements at around 46% increase on existing. This is a significant achievement for a small residential scheme and weighs in support of the proposal.

- 4.39 In light of the above, it is considered the proposal will result in significant biodiversity enhancement on site in accordance with NPPF and Local Plan Policy 30. This weighs significantly in favour of the proposal.

Other planning considerations

- 4.40 The application is submitted in outline with access, layout, scale and landscaping to be considered. The submitted proposed layout shows how 2 dwellings could be laid out with direct access from Cuckstool Road with each dwelling benefitting from parking, turning and garden areas. The site can be developed without harm to residential amenity of dwellings opposite and can deliver enhanced planting / landscaping as well as provision of bat / bird boxes.
- 4.41 The site is in Flood Zone 1 where there is the lowest risk of flooding and can be developed without increasing the risk of flooding. There are no heritage designations on site whilst there are no known ground conditions that would prevent development for housing.
- 4.42 Assessing the proposed development against the main objectives of the NPPF, it is clear the scheme accords with the overarching approach to planning in that:-
- The proposal will maintain the supply of housing in the district through redevelopment of a small windfall site in the urban area of Denby Dale;
 - The proposal will assist the LPA in meeting its housing supply targets at a time when it is considered it is unable to justify or demonstrate a 5 YHLS position and is not delivering enough houses - insufficient homes have been built and not enough can be built from the current supply;
 - The proposal represents development of a sustainable site within the urban area;
 - The site is not of any heritage value;
 - The site can be safely accessed and will not give rise to any highway safety or capacity issues;
 - There is currently a significant surplus of semi-natural urban greenspace in Denby Dale (para 103 a);
 - The proposed development will give rise to enhancements to the open space in terms of quality and accessibility (para 103 b);
 - The Proposed development will result in a greater than 10% Biodiversity net gain on the site – 46% enhancement;
 - The site will not give rise to any flood risk or drainage issues;
 - As illustrated by the proposed layout, elevations and Design Statement, the development proposal will provide a development that is sympathetic to and reflective of the character of the surrounding area.

- 4.43 The Proposed Development therefore complies with requirements set out in the NPPF and Local Plan policies PLP1, PLP2, PLP3, PLP21, PLP22, PLP24, PLP30, PLP31, PLP47 and PLP61.
- 4.44 In view of the above, it is considered the scheme satisfies national and local policy and represents a suitable and sustainable development proposal for the site that addresses all the relevant and material considerations. In this context, the proposal satisfies Section 38(6) of the Planning and Compulsory Purchase Act 2004 and it is considered that outline planning permission should be granted.