

**KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE**

DEVELOPMENT MANAGEMENT

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

DELEGATED DECISION TO DETERMINE PLANNING APPLICATIONS

Reference No:	2024/60/90253/E
Site Address:	Land at, Cuckstool Road, Denby Dale, Huddersfield, HD8 8RB
Description:	Outline application for erection of residential development with associated biodiversity and open space enhancements
Recommending Officer:	Nina Sayers

DECISION - REFUSED

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

Emma Thompson

AUTHORISED OFFICER

Date: 25-Apr-2024

Officer Report

2024/90253 - Land at, Cuckstool Road, Denby Dale, Huddersfield, HD8 8RB

Site Description

The site is addressed as Land off, Cuckstool Road, Denby Dale, Huddersfield, HD8 8RF. The area is an L shape plot of land which covers approx. 0.4ha. It is bound by Cuckstool Road to the south, dwellings to the east and west and open fields to the north. The site itself is undeveloped and allocated as Urban Green Space in the Kirklees Local Plan. The topography of the land falls notably from the south to the north.

Description of Proposal

The application is seeking outline permission for erection of residential development with associated biodiversity enhancements. Access, landscaping, layout and scale are all matters for consideration. Appearance is a reserved matter.

The proposed plans show the footprint of two dwellings with associated parking and landscaping. One is located in the western part of the plot, adjacent to 30 Cuckstool Road. The other is located ~29m east with an area of native planting located between the two. Both would be accessed via Cuckstool Road. The rest of the site would serve a biodiversity area with mixed scrub and tree planting.

History of Negotiations

This application is a revised version of a previous scheme which was refused and dismissed at appeal (2022/90668). The applicant submitted a Phase I report following receipt of KC Environmental Health's consultation request. This was reviewed and KC Environmental Health updated their responses accordingly.

Relevant Planning History

2006/93080 - Land At, Cuckstool Road, Denby Dale, Huddersfield – Refuse – Appeal Dismissed.

2016/91231 - Outline Application for Erection Of 3 Dwellings – Non-Determination Subject To Appeal - Appeal Dismissed.

2021/20047 – Pre Application Advice For Residential Development – Development Not Supported.

2022/90668 – Outline application for erection of residential development with associated biodiversity enhancements. Refused. Dismissed at appeal.

Representations Received

The application was advertised by neighbour notification letters, in the press and via a site notice. Final publicity expired on 28th March 2024. 34 representations have been received. Of these comments, 23 were objections, 9 were in support and 2 were general comments. Below is a summary of the comments made:

Objection

- previous refusals and appeals
- on Urban Green Space
- site is an integral part of the village character and ecology
- the replaced biodiversity is no better than was on the site previously. The owner has destroyed the natural habitat and amenity and felled trees
- Two new dwellings would be marginal in housing quota
- no notices erected at the site
- Industrial fencing is an eyesore and should be removed and drystone walling restored
- footpath to cricket club lost
- Coal Authority have previously objected
- queries involvement in the land and whether applicant will fulfil their duties
- obstructs a historic PROW
- BNG calculations were created after the site was cleared of vegetation
- Loss of TPOs

Support

- uplift the area and increase wildlife
- good space for people to use
- employment from tradesman
- land has been used for dumping
- land is an eyesore
- 40% of land given back to the public

General comment

- safety features required to prevent damage from adjacent Cricket Ground
- drainage concerns
- trees need to be maintained and trimmed
- access should be granted to the planted area/woodland to allow collection of Cricket Balls

Denby Dale Parish Council have also objected on the following grounds:

- Drainage issues
- Inaccurate versions of the plans
- This land is designated Urban Greenspace (UG403) and part of the Kirklees Wildlife Habitat Network (KWHN) with previous wild growth,

public access and a desire line for which a PROW application has been made.

- The current negative visual aspect of the site, and the lack of wildflowers and biodiversity, is a direct result of the developer's actions after previous applications have been rejected.
- The applicant has destroyed the habitat, covered the surface with gravel and continues to weed kill any natural growth
- These actions desolated this area of designated KWHN. Destruction was only halted by two trees with TPOs being rescued by residents (TPO 10/20 and TPO 11/20.)
- Applicant claims that Denby Dale has 'enough' green space were dismissed by the inspector in 2022. There are no 'targets' as such. In addition, since then there have been many major developments and proposals (Leak Hall Road, Wood Nook, Cliff Hill, Barnsley Road x 2) and a number of smaller ones (Old School, Viaduct, Dale Inn).
- When the last planning application was refused at appeal, the applicant was instructed to restore green space. This is taken to mean removing the applicant's ugly metal fencing, restoring the knocked down drystone wall where the illegal and dangerous entrance was made and allowing the site to regenerate. This has not been enforced.
- The Coal Authority Objection of 4 August 2022 is reserved on two conditions

These will be responded to in section 6 of this report.

Consultations Responses

KC Policy – object to the scheme due to the loss of allocated urban green space and the associated harm caused by this.

KC Environmental Health – no objections subject to conditions relating to: contaminated land and electric vehicle charging points.

KC Ecology – no objections subject to conditions relation: to the submission of a Biodiversity Enhancement and Management Plan (BEMP); the timing of site clearance works; the submission of an invasive non-native species protocol; and, the submission of a lighting scheme.

KC Highways Development Management – no response received.

The Coal Authority – No objection subject to conditions.

KC Trees – No response received.

Policy

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications be determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019).

The site is allocated as Urban Green Space on the Kirklees Local Plan (2019).

Kirklees Local Plan (KLP):

LP1 – Achieving sustainable development
LP2 – Place shaping
LP3 – Location of new development
LP11 – Housing mix and affordable housing
LP21 – Highway safety and access
LP22 – Parking
LP24 – Design
LP28 – Drainage
LP30 – Biodiversity
LP33 – Trees
LP51 – Protection and improvement of local air quality
LP52 – Protection and improvement of environmental quality
LP53 – Contaminated and unstable land.
LP61 – Urban green space

Kirklees Council has adopted (as of 29th June 2021) supplementary planning documents for guidance on house building, house extensions and open space, to be used alongside existing SPDs previously adopted. This guidance indicates how the Council will usually interpret its policies regarding such built development, although the general thrust of the advice is aligned with both the Kirklees Local Plan (KLP) and the National Planning Policy Framework (NPPF), requiring development to be considerate in terms of the character of the host property and the wider street scene. As such, it is anticipated that these SPDs will assist with ensuring enhanced consistency in both approach and outcomes relating to development. In this case the follow SPDs (and design guides) are applicable:

- Highways Design Guide
- Housebuilders Design Guide SPD
- Biodiversity Net Gain Technical Advice Note

National Policies and Guidance:

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 27th March 2012, and updated 20th December 2023, the Planning Practice Guidance Suite (PPGS) first launched 6th March 2014 together with Circulars, Ministerial Statements and associated technical guidance. The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

Chapter 2 – Achieving sustainable development
Chapter 5 – Delivering a sufficient supply of homes
Chapter 11 – Making effective use of land

Chapter 12 – Achieving well-designed places

Chapter 14 – Meeting the challenge of climate change, flooding and coastal change

Chapter 15 – Conserving and enhancing the natural environment

Assessment

The following matters are considered in the assessment below –

1. Principle of development and
2. Impact on Visual Amenity
3. Impact on residential amenity
4. Impact on highway safety
5. Other matters
6. Representations
7. Conclusion

1. Principle of Development

NPPF Paragraph 11 and LP1 outline a presumption in favour of sustainable development. Paragraph 8 of the NPPF identifies the dimensions of sustainable development as economic, social and environmental (which includes design considerations). It states that these facets are mutually dependent and should not be undertaken in isolation.

The dimensions of sustainable development will be considered throughout the proposal. Paragraph 11 concludes that the presumption in favour of sustainable development does not apply where specific policies in the NPPF indicate development should be restricted. This too will be explored.

The site is not displayed as allocated on the KLP Policies Map. Policy LP2 states that:

“All development proposals should seek to build on the strengths, opportunities and help address challenges identified in the local plan, in order to protect and enhance the qualities which contribute to the character of these places, as set out in the four sub-area statement boxes below...”

Policy LP1 states that when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. The application is for residential development on land allocated as Urban Green Space within the Kirklees Local Plan. The site is also within the Strategic Green Infrastructure Network. Part of the application site boundary is also within the Kirklees Wildlife Habitat Network (WHN) as shown on the Local Plan.

Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. The application site is set within the Urban Green Space (UGS) as allocated on the Kirklees Local Plan (adopted 2019). Green spaces

close to where people live provide like this site offers opportunities for sport, recreation and play providing enjoyment, encouraging healthy lifestyles and benefiting mental well-being. They are also an essential component of the quality and local character of areas, providing visual amenity and wildlife value. Policy LP61 of the Kirklees Local Plan states:

“Development proposals which would result in the loss of urban green space (as identified on the Policies Map) will only be permitted where:

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

The protection set out in this policy also applies to smaller valuable green spaces not identified on the Policies Map.”

In relation to policy LP61(a), the assessment of this site undertaken as part of the Kirklees Open Space Study 2016 did not identify the site as no longer required but rather identified the woodland area (site ref OLS 442 Class ID 191), in which the application site is included, as having important value as open space that should be retained and does not identify the site as surplus to requirements. As the open space assessment of this site has clearly not shown the land to be surplus to requirements, the proposal would therefore be contrary to the first part of policy LP61 criteria a) and NPPF paragraph 103 criteria a).

The methodology for determining potential surplus open spaces is set out in the Kirklees Open Space Study 2016 (KOSS) at paragraphs 4.6.6 and 4.6.7 and relates to those sites assessed as having low value as open space. In this case, the application site forms part of larger site (UG403) allocated as UGS based on its high value as open space, having important qualities as a natural/semi-natural greenspace (woodland area) as identified in the Kirklees Open Space Study 2016 (KOSS) and value as sport facilities comprising a cricket pitch and bowling green (identified in the Kirklees Playing Pitch strategy 2016).

Furthermore, additional evidence relating to the importance of natural/semi-natural greenspaces sites was provided to the Local Plan Inspector during the Local Plan Examination in Public, which can be found in document EX42 of Section 9 of the Kirklees examination library. On justification of the whole of allocation UG403 as UGS, EX42 states;

“The site merits urban green space allocation based on its wildlife value and the visual benefits it provides to the cricket ground and the appearance and character of the area.”

The applicant's Planning Policy Statement (para 2.22) states that there is an excess of natural and semi-natural greenspace in Denby Dale with the "target provision" being 2ha per 1000 population whilst the provision is 7.23ha/1000 population. On this basis, the applicant considers that there is a surplus of this type of greenspace and argues criteria 'a' is met.

The Local Plan quantity standards are not 'targets' as stated by the applicant. The quantity standards are used as a minimum benchmark against which to assess the current level of provision in a ward compared against the district wide standard, as stated in the Kirklees Urban Green Space and Local Green Space Background Technical Paper paragraph 4.2.3. They are also used to inform open space provision for new housing developments. The standards should not be interpreted as maximum levels of provision or the basis on which UGS sites could be considered to be surplus for open space purposes where provision is above the standard.

Furthermore, the total 119.12 hectares provision of natural/semi-natural greenspace in the Denby Dale ward includes two large woodlands, Deffer Wood at Clayton West (98.7 hectares) and Upper Dearne Valley Woods at Upper Cumberworth (14.02 hectares). Both these woodlands are within the Green Belt and therefore not within the built-up areas of the Denby Dale ward. Excluding these two sites the standard of NSNG provision available within the non-green built-up areas of the Denby Dale ward (Upper Cumberworth, Denby Dale, Lower Cumberworth, Clayton West, Scissett, Skelmanthorpe, and Emley) will be 0.06 ha per 1,000 population. Therefore, there is very modest NSNG provision within the built-up areas/villages within the Denby Dale ward that are not within the green belt.

LP61 criteria (a) also refers to the importance of sites in terms of visual amenity, landscape, and biodiversity value. In this respect, the application site itself forms an intrinsic part of the wider UGS, provides open visual amenity in the streetscene and functions as part the woodland landscape. The proposed development does not therefore meet the second part of LP61 (a).

This proposal does not seek to offer any replacement provision and is not for an alternative open space/recreation use as stated in LP61 criterion b and c respectively. The loss of urban green space would represent a departure from the development plan.

The site has been subject to a number of applications for residential development, most recent 2022/90668 for 4 dwellings, which was dismissed at appeal. In the latest appeal statement (paragraph 7), the inspector states:

"The appeal site makes a significant positive contribution to the feeling of spaciousness and in turn to the character and appearance of the area surrounding the site. It also forms part of the wider area of designated urban green space which includes a cricket club, a bowls club and the woodland which is immediately to the rear of the site. Collectively this area forms an important and attractive expanse of open land within the urban area. As part of this, the

appeal site makes an important contribution to visual amenity. This means that criterion a) of Policy LP61 of the LP is not satisfied.

Paragraph 8 of the appeal decision, the Inspector also states:

“By opening up the woodland to the rear of the site would also result in a quantitative loss of urban green space as part of this proposal”. The Inspector also states that “the area of open space on the appeal site would be of a limited size and the woodland has a steep topography that would be likely to impair its useability. It is unclear whether the cricket club would be receptive to allowing access onto their property from the woodland, but in any event such an access would only be of benefit to people wishing to access the club itself. Taking these considerations as a whole, I am not persuaded that the open space provision would be better in qualitative terms than at present. The proposal does not therefore satisfy criterion b) of Policy LP61.”

Presumption in favour of sustainable development

Paragraph 1.8 of the applicants planning statement states the council is unable to demonstrate a 5yr housing land supply. The 2023 update of the five-year housing land supply position for Kirklees shows 3.96 years supply of housing land, and the 2022 Housing Delivery Test (HDT) measurement which was published on 19th December 2023 demonstrated that Kirklees had achieved a 67% measurement against the required level of housing delivery over a rolling 3-year period (against a pass threshold of 75%).

As the Council is currently unable to demonstrate a five-year supply of deliverable housing sites, and delivery of housing has fallen below the 75% HDT requirement, it is necessary to consider planning applications for housing development in the context of NPPF paragraph 11 which triggers a presumption in favour of sustainable development. This means that for decision making *“Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date (NPPF Footnote 8), 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 proposed (NPPF Footnote 7) ; 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.”*

Whilst this weighs in favour of housing development it must be balanced against any adverse impacts of granting the proposal. As acknowledged by the appeal inspector’s decision relating to application 2022/90668, the site makes a significant positive contribution to the feeling of spaciousness and to the character and appearance of the wider area. The site therefore makes an important contribution to visual amenity, providing a function as an important attractive expanse of open land within the urban area. Whilst this proposal is for two dwellings as opposed to the previous proposed four dwellings and part of the site would remain as open space with enhancements, consideration needs to be given to the visual impact of this proposal on the site and wider area. The amount of NSNG within the urban area is limited and cannot be

considered to be surplus to requirements and the proposal would result in the loss of UGS.

The council have been proactive in seeking to address the lack of a five-year housing land supply and have recently approved and published an Interim Housing Position Statement to Boost the Supply. This sets out principles for decision making in determining planning applications and the early release of safeguarded land sites for housing development where identified constraints can be overcome and includes actions the council is proactively undertaking to support housing delivery. In applying the planning balance careful consideration should be given the adverse effects of the loss of urban green space and harm to the appearance and character of the area when weighed against the very modest benefits of an additional two dwellings to the housing land supply, the limited economic benefits likely to arise from employment during the construction works and the social benefits from the proposed enhancements. This should also take into consideration the proactive approach the council are taking to boost housing supply and address under delivery.

Additionally, the appeal statement issued by the inspector states that “even if it were to be the case that there is a shortfall in the five-year housing land supply on the scale suggested by the appellant, the adverse effects arising from the loss of the urban green space and the harm to the character and appearance of the area would significantly and demonstrably outweigh the benefits arising from the biodiversity improvements, the boost to the supply of housing and the economic and social benefits that have been identified. Therefore, the proposal does not benefit from the presumption in favour of sustainable development.”

In summary, the proposal would deliver additional houses to contribute towards the council's housing land supply, albeit a very modest contribution, and seeks to provide enhanced green space with additional tree planting with access to the adjoining woodland and proposes to deliver BNG beyond the 10% requirement providing habitat creation. However, these benefits need to be weighed against the adverse impacts of the proposal on visual amenity and the character of the area. It is considered that the impact of the loss of the urban green space and the harm to the character and appearance of the area would significantly outweigh the benefits of the proposed scheme.

For the reasons set out above, the development is considered contrary to Local Plan policies LP24 and LP61, Chapter 12 of the NPPF and the Housebuilders Design Guide SPD with regard to the principle of development.

2. Impact on Visual Amenity

The NPPF offers guidance relating to design in Chapter 12 (achieving well designed and beautiful places) whereby 131 provides a principal consideration concerning design which states:

“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.”

Kirklees Local Plan policies LP1, LP2 and significantly LP24 all also seek to achieve good quality, visually attractive, sustainable design to correspond with the scale of development in the local area, thus retaining a sense of local identity.

LP24 states that 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...”

Paragraph 134 of the NPPF sets out that design guides and codes carry weight in decision making. Of note, Paragraph 139 of the NPPF states that development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes. Relevant to this is the Kirklees Housebuilders Design Guide SPD, which aims to ensure future housing development is of high-quality design.

Principle 2 of the Kirklees Housebuilders Design Guide SPD states that: *“New residential development proposals will be expected to respect and enhance the local character of the area by:*

- *Taking cues from the character of the built and natural environment within the locality.*
- *Creating a positive and coherent identity, complementing the surrounding built form in terms of its height, shape, form and architectural details.*
- *Illustrating how landscape opportunities have been used and promote a responsive, appropriate approach to the local context.”*

Principle 15 states that the design of the roofline should relate well to site context. Further to this, Principle 13 states that applicants should consider the use of locally prevalent materials and finishing of buildings to reflect the character of the area, whilst Principle 14 notes that the design of openings is expected to relate well to the street frontage and neighbouring properties.

The application proposal is seeking outline consent including access, landscaping, layout and scale. Appearance is to be assessed at reserved matters stage. It must be noted that the impact on the urban green space and character of the street scene has been assessed under the principle of development section and is considered unacceptable. Notwithstanding this, officers will now undertake a full assessment of the impact on visual amenity below.

Principle 5 of the Housebuilder’s Design Guide SPD highlights the importance of buildings following a coherent building line. In this instance, there is not a

clear building line within the Northern part of Cuckstool Road, as no.30, which is adjacent to the application site, fronts the highway whereas the other properties are set back ~7 metres. The proposed dwellings would be set back ~10 metres from the highway which is significantly further than the existing dwellings. It is noted that this is likely allow for sufficient separation to the properties to the south and off-street parking provision. No block plan has been provided showing the relationship of the proposed dwelling in relation to the existing dwellings in the street. Officers have concerns about the set back of the dwellings in relation to the street scene however it is unlikely this would warrant a reason for refusal on balance.

The two dwellings would be located 29 metres apart which would appear fragmented and would not be in keeping with the general building group or spacing of existing properties in the street scene which would be detrimental to visual amenity.

The proposal would add hard landscaping to the front of the dwellings, however this is surrounded by soft landscaping and there would be hedgerow shielding this from the street scene. Therefore, notwithstanding the concerns regarding the impact on the urban green space and wider character as outlined above, the proposed landscaping would be acceptable from a visual amenity perspective.

As no details have been submitted in respect of the proposed design or materials, it is acknowledged that care would need to be taken at reserved matters stage to reflect the local vernacular and use materials what currently exist within the local area. The submitted planning statement states that the dwellings could be three storey properties with accommodation in the roof. All the other dwellings on the street are two storey and therefore two-storey properties would be much more in keeping with the street scene and it is unlikely officers would find three-storey dwellings acceptable. The proposed site section shows a two-storey dwelling to the front and three-storeys to the rear to align with the topography of the land. In any case, a street scene should be provided at reserved matters stage to show the relationship with the existing dwellings and surrounding area.

Details of boundary treatment should be provided at reserved matters stage. Consideration should be given to ensuring this is in keeping with the wider street scene.

As outlined in detail in the principle of development section of this application, the impact of the loss of the urban green space and the harm to the character and appearance of the area would be detrimental to visual amenity. Therefore the scheme would fail to comply with LP24 of the Kirklees Local Plan, Chapter 12 of the NPPF and the principles of the Housebuilders Design Guide SPD.

3. Impact on Residential Amenity

Sections B and C of LP24 state that alterations to existing buildings should: “maintain appropriate distances between buildings’ and ‘minimise impact on residential amenity of future and neighbouring occupiers”. Further to this,

Chapter 12 of the National Planning Policy Framework states that planning decisions should ensure that developments have a high standard of amenity for existing and future users.

Principle 6 of the Housebuilder Design Guide SPD states 'Residential layouts must ensure adequate privacy and maintain high standards of residential amenity, to avoid negative impacts on light, outlook and to avoid overlooking.' The Housebuilders Guide PD goes on to set out typical minimum separation distances. These are as follows:

- 21 metres between facing windows of habitable rooms at the backs of dwellings;
- 12 metres between windows of habitable rooms that face onto windows of a non-habitable room;
- 10.5 metres between a habitable room window and the boundary of adjacent undeveloped land; and
- for a new dwelling located in a regular street pattern that is two storeys or above, there should normally be a minimum of a 2 metres distance from the side wall of the new dwelling to a shared boundary.

The application proposal is seeking outline consent including access, landscaping, layout and scale. Appearance is to be assessed at reserved matters stage. As details of design have not been provided, the impact on residential amenity cannot be fully assessed at this stage however the submitted layout, section and details within the planning statement give an understanding of what impact there may be on residential development.

The submitted planning statement and submitted section outline that the proposed dwellings would be split level dwellings appearing two storey from the front and three-storey to the rear. There would be a separation distance of 24.5m between the front elevation of the proposed dwellings and the properties to the southern side of Cuckstool Road. This would be considered a sufficient separation distance to prevent any significant harm to residential amenity.

The proposed dwelling to the east of the site would be adjacent to no.30 Cuckstool Road and it is noted that due to the angled boundary, the most northerly point of the dwelling would only be 1.3m to the boundary of the site however it is noted that this is set back significantly from no.30. The relationship of the dwelling with no.30 is unlikely to cause significant harm to the amenity of the occupiers, however consideration should be given to the height of the western side elevation to ensure it would not appear overbearing from the rear amenity space of no.30. Consideration should also be given to the openings proposed in the side elevation to ensure no overlooking harm occurs.

There would be adequate space to provide amenity space surrounding the properties to ensure the amenity of future occupiers. Consideration should also be given at the reserved matters stage in terms of design to ensure the proposed dwelling meets the minimum recommendations as set out within the Nationally Described Space Standards for such a dwelling.

The current submission is an outline application with appearance reserved, therefore the impact the proposed development would have on the amenities of the occupants of the neighbouring properties cannot be fully assessed at this stage. It is considered that based on the detail provided, the site could accommodate two dwellings without causing significant harm to residential amenity. Thus complying with Policy LP24 of the Kirklees Local Plan, Chapter 12 of the National Planning Policy Framework and the Housebuilders Design Guide SPD.

4. Impact on Highway Safety

This application seeks outline approval for the erection of a residential development with associated biodiversity enhancements at Cuckstool Road, Denby Dale. At this stage, access, landscaping, layout and scale are matters for consideration with appearance reserved. The proposed site plan shows two dwellings being served by private driveways onto Cuckstool Road. Off-street driveway space for at least two vehicles plus the plans appear to demonstrate an integral single garage for each property.

Officers have not received a response from KC Highways Development Management (DM) however it is noted that they raised no objection to the 2022 outline application for four dwellings on the site, nor did they object to the 2016 outline application for three dwellings in the site. Both of which proposed a similar access to this scheme, albeit with more dwellings. Taking this into consideration, and as the scheme is for less dwellings, it is considered unlikely they would raise an objection to this proposal. The principle of development is considered unacceptable, and therefore officers would not be recommending approval of this application, should approval be recommended, details of the highway safety measures should be secured by condition so these can be assessed and approved by highway officers.

It is expected that bin collection, cycle storage, visibility, footway improvements, and other detailed design issues to be addressed in a reserved matters application. Officers are therefore satisfied that, subject to condition, the scheme would accord with Local Plan policies LP21 and LP22 of the Kirklees Local Plan, Chapters 9 and 12 of the NPPF and the Highways Design Guide SPD with regard to highway safety.

5. Other Matters

Ecology

The proposed application outlines the eastern and southern part of the site to host ecological enhancements. An Ecological Impact Assessment (EclA) has been provided to support the application, which is welcomed. The EclA provides a comprehensive assessment of the ecological constraints and impacts of the scheme. Therefore, provided the ecological measures identified within the EclA are incorporated, it is not anticipated there will be significant negative ecological impacts and the proposals are in accordance with LP30.

However, there are not expected to be any ecological enhancements to such a degree to outweigh the other concerns with the development.

The EclA has made use of the DEFRA biodiversity metric 3.0, which identifies that a net gain of 46.11% for habitats will be achieved post-development. Whilst this is a high metric, this does not provide justification for overcoming/offsetting the harm set out in the principle of development section of the above assessment. A significant biodiversity gain could be provided on alternative sites, without resulting in a loss of Urban Green Space and therefore in this instance it does not tip the planning balance.

Notwithstanding this, if the application were to be approved at appeal, conditions are recommended to ensure any updated design take into account the ecological baseline of the site and are based on up-to-date survey data. This would include: the submission of a Biodiversity Enhancement and Management Plan (BEMP); the timing of site clearance works; the submission of an invasive non-native species protocol; and, the submission of a lighting scheme. Subject to these conditions, the scheme is considered to accord with Local Plan policy LP30, Chapter 15 of the NPPF and the Biodiversity Net Gain Technical Advice Note with regard to ecology and biodiversity.

Climate Change

On 12th November 2019, the Council adopted a target for achieving 'net zero' carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan predates the declaration of a climate emergency and the net zero carbon target. However, it includes a series of policies, which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications, the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda. The proposal is for the erection two detached dwellings. To ensure it contributes positively to mitigating the impact of climate change and air quality, a condition should be inserted to the decision notice requiring an electric vehicle recharging point be provided within the site for the future occupants of each dwelling. This is to comply with the aims of policy LP24 of the Kirklees Local Plan and chapters 9 and 14 of the NPPF, which seek to promote sustainable transport and to support low carbon future.

Trees

Officers note that the site is bound by protected trees to the north as well as protected trees to the front of the site. The proposed layout would encroach on the area of protected trees to the rear of the site. No arboricultural information has been provided as part of this application and no reference has been made to the impact on the protected trees as part of the submitted details. Whilst no response has been received from the Trees officer regarding this application, it

is anticipated that without a Tree Survey and Arboricultural Impact Assessment they are unlikely to be able to provide comment. Given the principle of development is unacceptable, and as it would result in additional costs to the applicant, no additional information has been requested at this stage. Should the application be approved, these would need to be secure by condition in order to comply with LP33 of the Kirklees Local Plan.

Contaminated Land and Coal Mining Legacy

Policy LP53 of the Kirklees Local Plan relates to contaminated and unstable land. It highlights that for developments identified as being at risk of instability, measures should be incorporated to remediate the land or incorporate other measures to ensure that the 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.

The application site falls within the defined Development High Risk Area; therefore within the site and surrounding area there are coal mining features and hazards which need to be considered in relation to the determination of this planning application. The applicant has submitted a Coal Mining Risk Assessment and, following initial comments from KC Environmental Health, a Phase I Environmental Assessment.

The Phase I report provides an in-depth appraisal of the site history and previous surrounding land uses, since the 1800s. The conceptual site model has identified current and likely future receptors, potential sources of contamination and likely pathways. Based on the information in the risk assessment the site is considered to provide a moderate/low risk to human health receptors. The report concludes that during the site walkover there was no visual or olfactory evidence of contamination or contaminative activities at the site. However, the review of the coal mining risk assessment suggests that there is a risk of ground gas generation associated with historic coal mining activities beneath the site and in the surrounding area. It goes on to recommend gas monitoring, and shallow soil sampling if made ground is encountered, including further investigation into the coal mining legacy beneath the site.

KC EH generally accept the report but note the absence of shallow soil sampling for calorific sampling. They also expect any future ground investigation to confirm the absence of contamination in all shallow soils within the boundary of the application site. Therefore, contamination land conditions are recommended should approval be granted.

The Coal Authority were also consulted on the proposed scheme who reiterated their comments raised on the 2022 application. If permission was to be granted it is considered conditions are required for the undertaking of intrusive site investigation, a report of findings arising from the intrusive site investigations and any remedial and / or measures necessary and the implementation of the remediation strategy and the submission of a validation report is required. This

is to ensure the safety and amenity of future occupants is secured given the risk through the coal mining legacy and contaminated land on this site.

Delegated decision

It is noted that this application has been a delegated decision by planning officers. In line with the scheme of delegation, the majority of public representation aligns with officer recommendation. Similarly, as the application is being recommended for refusal, it does not warrant a departure to the local plan. Therefore, this application could be a delegated decision by planning officers.

PROW

It is noted that a number of representation refers to a public right of way which is blocked by the proposal. There are no public rights of way, or claimed paths, through, or adjacent to, the application site. Therefore there would be no impact on public rights of way as a result of the proposed development.

There are no other material considerations at this outline stage.

6. Representations

34 representations have been received. Of these comments, 23 were objections, 9 were in support and 2 were general comments. Below is a summary of the comments made:

Objections

- previous refusals and appeals

Officer response: officers are aware of the planning history on this site and this has been taken into consideration during the assessment of this application.

- on Urban Green Space
- Two new dwellings would be marginal in housing quota

Officer response: this is a material planning consideration which has been carefully considered in the principle of development section of this report

- site is an integral part of the village character and ecology

Officer response: this is a material planning consideration which has been carefully considered in the principle of development, visual amenity and other matters section of this report

- the replaced biodiversity is no better than was on the site previously. The owner has destroyed the natural habitat and amenity and felled trees
- no notices erected at the site

Officer response: The application was advertised in accordance with the Development Management Procedure Order 2015 and the council's Development Management Charter.

- footpath to cricket club lost
- obstructs a historic PROW

Officer response: As outlined in the other matters section of this report, there are no recorded public rights of way through, or adjacent to the site.

- Loss of TPOs

- Coal Authority have previously objected

Officer response: these are material planning considerations which have been carefully considered in the other matters section of this report

- Industrial fencing is an eyesore and should be removed and drystone walling restored

Officer response: The fencing is not a material planning consideration and the proposed boundary treatment has been assessed by officers in the visual amenity section of this report.

- BNG calculations were created after the site was cleared of vegetation
- Use of pesticides on site

Officer response: The clearing of a site does not require planning permission and separate controls exist for protected flora and fauna. The impact on ecology has been assessed in the other matters section of this report.

- queries involvement in the land and whether applicant will fulfil their duties

Officer response: This is not a material planning consideration so no further comments will be made.

Support

- uplift the area and increase wildlife

Officer response: this is a material planning consideration that has been carefully considered in the other matters section of this report

- land has been used for dumping
- land is an eyesore

Officer response: this is a material planning consideration that has been carefully considered in the visual amenity section of this report

- employment from tradesman

Officer response: This is not a material planning consideration for a development of this scale

- good space for people to use
- 40% of land given back to the public

Officer correspondence: This application is proposes a loss of urban green space. Planning permission would not change the ownership or accessibility of the land

General comment

- safety features required to prevent damage from adjacent Cricket Ground
- drainage concerns
- trees need to be maintained and trimmed
- access should be granted to the planted area/woodland to allow collection of Cricket Balls

Officer response: Should approval be recommended, these points could have been raised with the agent to see whether it could be incorporated into the scheme however as the proposal is recommended for refusal, no additional steps have been taken.

Denby Dale Parish Council have also objected on the following grounds:

- Drainage issues
- *Officer response: This is not a material planning consideration at this stage of development for a proposal of this scale.*
- Inaccurate versions of the plans
- *Officer response: Officers are not aware of any inaccuracies in the submitted plans.*
- This land is designated Urban Greenspace (UG403) and part of the Kirklees Wildlife Habitat Network (KWHN) with previous wild growth, public access and a desire line for which a PROW application has been made.
- Applicant claims that Denby Dale has 'enough' green space were dismissed by the inspector in 2022. There are no 'targets' as such. In addition, since then there have been many major developments and proposals (Leak Hall Road, Wood Nook, Cliff Hill, Barnsley Road x 2) and a number of smaller ones (Old School, Viaduct, Dale Inn).
- The Coal Authority Objection of 4 August 2022 is reserved on two conditions
- *Officer response: These are material planning considerations which have been taken into consideration in the principle of development and other matters section of this report.*
- The current negative visual aspect of the site, and the lack of wildflowers and biodiversity, is a direct result of the developer's actions after previous applications have been rejected.
- The applicant has destroyed the habitat, covered the surface with gravel and continues to weed kill any natural growth
- These actions despoiled this area of designated KWHN. Destruction was only halted by two trees with TPOs being rescued by residents (TPO 10/20 and TPO 11/20.)

Officer response: The clearing of a site does not require planning permission and separate controls exist for protected flora and fauna. The impact on ecology has been assessed in the other matters section of this report.

- When the last planning application was refused at appeal, the applicant was instructed to restore green space. This is taken to mean removing the applicant's ugly metal fencing, restoring the knocked down drystone wall where the illegal and dangerous entrance was made and allowing the site to regenerate. This has not been enforced.

Officer response: It is unclear what parties were involved in this agreement, but this is not included within any of the planning decision notices and therefore is not enforceable by the planning department.

7. Conclusion

The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice. The proposed development would result in the loss of urban green space causing detrimental harm to the visual amenity and character of the street scene and locality without any outweighing benefits.

This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development proposals do not accord with the development plan and the adverse impacts of granting permission would significantly and demonstrably outweigh any benefits of the development when assessed against policies in the NPPF and other material consideration.

Recommendation: Refuse

Reason for Refusal

1. The proposed development would result in the loss of valuable urban green space as allocated in the Kirklees Local Plan. The proposed development fails to demonstrate that the open space is clearly no longer required to meet local needs for open space and that it does not make an important contribution in terms of visual amenity, landscape or biodiversity value. Also, the application neither proposes any replacement open space or alternative open space. The loss of this allocated urban green space would cause detrimental harm to the visual amenity, landscape and character of the street scene and townscape given the site's intrinsic value to the locality and the key value it provides to the edge of settlement environment. To permit the development would be wholly contrary to Kirklees Local Plan policies LP24 and LP61, and Chapters 12 and 15 of the National Planning Policy Framework with regard to the principle of development and design.

Plans and Specifications Table:-

Plan Type	Reference	Version	Date Received
Location Plan and Existing Site Plan	2146 A(00)-01		29/01/2024
Outline Landscape Masterplan	PWP 811 001	00	29/01/2024
Proposed Site Plan	2280 A(90)-01		29/01/2024
Phase I Environmental Assessment	21/1224.1.1		14/03/2024
Planning Policy Statement	January 2024		29/01/2024
Coal Mining Risk Assessment	CMRA 00295		29/01/2024
Design and Access Statement	2280		29/01/2024
Flood Risk Assessment and Drainage Strategy	21246-FRDS-001		29/01/2024
Ecological Impact Assessment	MBE/ECO/2023/21/01		29/01/2024

Pursuant to article 35 (2) of the Town and Country Planning (Development Management Procedure) Order 2015 and guidance in the National Planning Policy Framework, the Local Planning Authority has, where possible, made a pre-application advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application. The applicant submitted a Phase I report following receipt of KC Environmental Health's consultation request. This was reviewed and KC Environmental Health updated their responses accordingly.

