
Report of the Head of Planning and Development

STRATEGIC PLANNING COMMITTEE

Date: 05-Dec-2024

Subject: Planning Application 2024/90357 Removal of conditions 10, 12, 13, 14, 20, 33, 38, 39 and 40 and variation of conditions 1, 19, 24, 29, 34, 36 and 37 of previous permission 2019/90949 for variation of condition 18 (crushing and screening operations) of previous permission 2013/90793 for mineral extraction Land Adj, Thewlis Lane, Crosland Hill, Huddersfield, HD4 7AB

APPLICANT

Myers Group

DATE VALID

15-Jul-2024

TARGET DATE

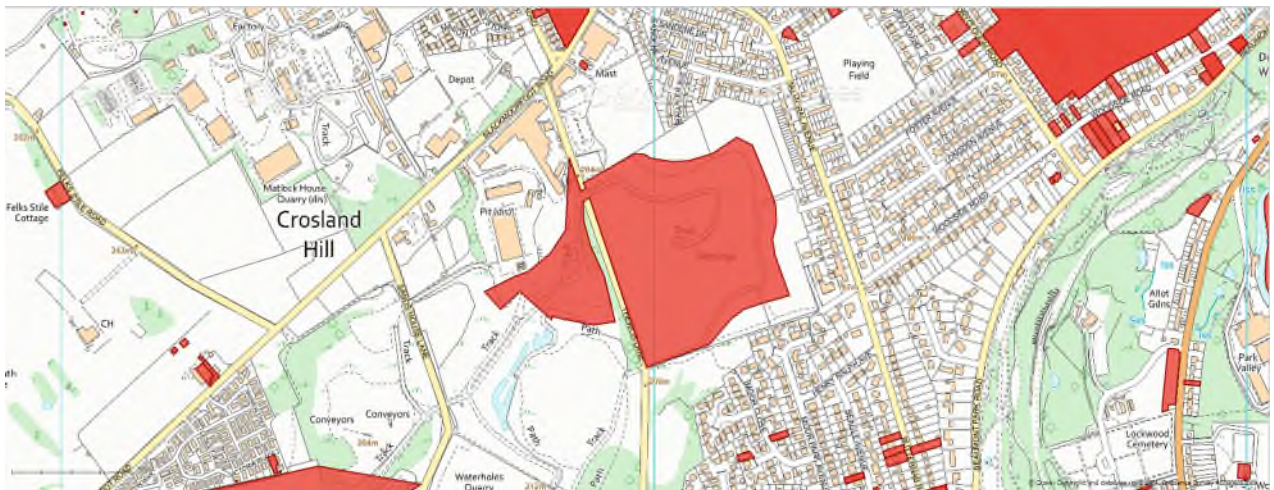
14-Oct-2024

EXTENSION EXPIRY DATE

Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

[Public speaking at committee link](#)

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral wards affected: Crosland Moor and Netherton

Ward Councillors consulted: Yes

Public or private: Public

RECOMMENDATION:

DELEGATE approval of the application and the issuing of the decision notice to the Head of Planning and Development in order to allow the publicity period to expire, complete the list of conditions including those contained within this report and to secure a Deed of Variation to the original Section 106 agreement dated 09/06/2006 and associated with permission 2003/91691.

Should the remaining public consultation raise issues that would result in substantive changes to the officer recommendation, the application shall be discussed with the Chair and/or considered again by the Strategic Planning Committee.

In the circumstances where the Section 106 Deed of Variation has not been completed within three months of the date of the Committee's resolution then the Head of Planning and Development shall consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the benefits that would have been secured; if so, the Head of Planning and Development is authorised to determine the application and impose appropriate reasons for refusal under Delegated Powers.

1.0 INTRODUCTION:

- 1.1 The application is brought to Strategic Planning Committee in accordance with the scheme of delegation as the proposal is a major development and represents a significant departure from the Local Plan.
- 1.2 The site forms a large part of a housing allocation (site reference: HS22). The indicative capacity for the site is 243 dwellings to be delivered during the Local Plan period with a further 257 dwellings beyond the plan period (500 total). The site comprises an active quarry site. Given the site's use for mineral extraction and allocation for 500 homes in the Kirklees Local Plan, the 2013/90793 permission required the site to be backfilled to an engineered solution, to accommodate future development of the site for housing.
- 1.3 The applicant is now seeking to vary and remove a number of planning conditions relating to the 2019/90949 permission (this being the latest planning permission, which varied permission 2013/90793 – see paragraph 3.1 below) including those requiring an engineered backfill, stating that the engineered backfill to provide housing on the full site is unviable. The applicant is therefore now proposing a lower level of restoration and the option to deliver housing (up to 327 dwellings) on the remaining parts of the site housing allocation.

2.0 SITE AND SURROUNDINGS:

- 2.1 The application site occupies an area of approximately 10.3 hectares in total and is currently in use as an operational quarry which forms part of a larger complex of quarries and associated infrastructure. The application site is located approximately 3km southwest of Huddersfield town centre, on the periphery of Crosland Hill. The current mineral extraction area is bounded to the west by Thewlis Lane which meets Blackmoorfoot Road to the north. The application site red line boundary also includes an area on the western side of Thewlis Lane which is currently being used in association with the wider operations of the mineral extraction business. This area also overlaps and forms part of the site to which application 2003/91691 (and the associated Section 106 agreement) related.
- 2.2 There are residential properties to the north, east and south, the nearest being approximately 100 metres from the quarry void. Areas to the east and southeast (beyond the application site red line boundary) comprise grazing land, with the eastern and southeastern boundaries being adjacent to existing residential dwellings and gardens along Balmoral Avenue (to the east) and Moor Park Avenue (to the southeast).
- 2.3 Previous permissions for the development of this site allowed for mineral extraction, and the construction of screen bunds around the perimeter of the working area. Other than from the quarry entrance onto Thewlis Lane, direct views of the quarry workings are not readily gained from public vantagepoints.
- 2.4 A Public Right of Way (PROW) (refs: HUD/220/20 and HUD/220/30) run parallel to the southern boundary of the housing allocation and the site is bisected through the middle by a claimed bridleway HUD 139/10. A diverted route was approved under discharge of condition application 2014/90396.

3.0 PROPOSAL:

- 3.1 The operations at the site are being carried out under the 2013/90793 extant permission, with the relevant phasing and restoration details having been approved under subsequent discharge of condition application 2014/90920 and referenced in the last Section 73 application 2019/90949. The proposals are now seeking to vary conditions 1, 19, 24, 29, 34, 36 and 37, to enable a low level restoration scheme (as opposed to an engineered backfill of the former quarry area), and to remove conditions 10, 12, 13, 14, 20, 33, 38, 39 and 40 of the 2019/90949 permission, under the Section 73 process.
- 3.2 The applicant proposes removal of these conditions which the applicant believes are no longer relevant to the site, given the details therein have either been superseded by events and or they refer to a restoration scheme which is no longer proposed by the applicant and which requires an engineered backfill and restoration of the site for agriculture and nature conservation.
- 3.3 The proposed variation to condition 1 also seeks an extension of time (for the extraction of minerals, restoration of the site and other works) from the previously-approved 31/12/2025 to 31/12/2027.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

4.1 Application site:

92/62/05699/W0: Mineral Extraction and Landfill – Granted.

2003/91691: Extension of mineral working with restoration and demolition and subsequent reinstatement of dwelling and adjacent buildings – Granted with Section 106 agreement.

2013/90793: Mineral extraction – Granted with Deed of variation to Section 106 on planning permission 2003/91691.

2014/90396: Discharge conditions 10 (bridleway), 13 (screen mound), 47 (noise), 49 and 50 (dust) on previous permission 2013/90793 for Mineral extraction – Granted.

2014/90920: Discharge conditions 8 (plant crossing), 11 (highway structures), 12 (geotechnical stability), 19 (backfill), 29 (restoration), 53 (archaeological recording) on previous permission 2013/90793 for mineral extraction – Granted.

2019/90949: Variation condition 18 (crushing and screening operations) on previous permission 2013/90793 for mineral extraction – Granted.

2019/91053: Discharge condition 19 (backfill) on previous permission.

2022/20327: Pre-application enquiry for residential development and variation of extant consent 2013/90793. Accompanied by a Viability Appraisal – comments provided.

Surrounding Area:

Woodcock & Wilson Ltd, Blackmoorfoot Road

2022/90834: Erection of extension and new accessway within the site – Granted. Noted here due to proximity to site.

Lowdham Leisureworld, Crosland Hill Road, Crosland Moor

2021/93150: Residential development for 87 dwellings including demolition of existing buildings and ground works, provision of open space, landscaping and on-site infrastructure – Pending consideration.

Land off Blackmoorfoot Road and Felks Street, Crosland Moor (Black Cat site)

2018/90748: Outline application for the development of up to 630 residential dwellings (Use Class C3), up to 70 care apartments with doctors surgery of up to 350 sq m (Use Classes C2/C3/D1), up to 500 sq m of Use Class A1/A2/A3/A4/A5/D1 floorspace (dual use), vehicular and pedestrian access points off Blackmoorfoot Road and Felks Stile Road and associated works – Refused.

2020/92546: Outline application (with details of points of access only) for the development of up to 770 residential dwellings (Use Class C3), including up to 70 care apartments (Use Classes C2/C3) with doctors surgery of up to 350 sq m (Use Class D1); up to 500 sq m of Use Class A1/A2/A3/A4/A5/D1 floorspace (dual use), vehicular and pedestrian access points off Blackmoorfoot Road and Felks Stile Road and associated works – Outline permission granted subject to Section 106 agreement.

2024/90035: Non material amendment to previous permission 2020/92546 for outline application – Approved.

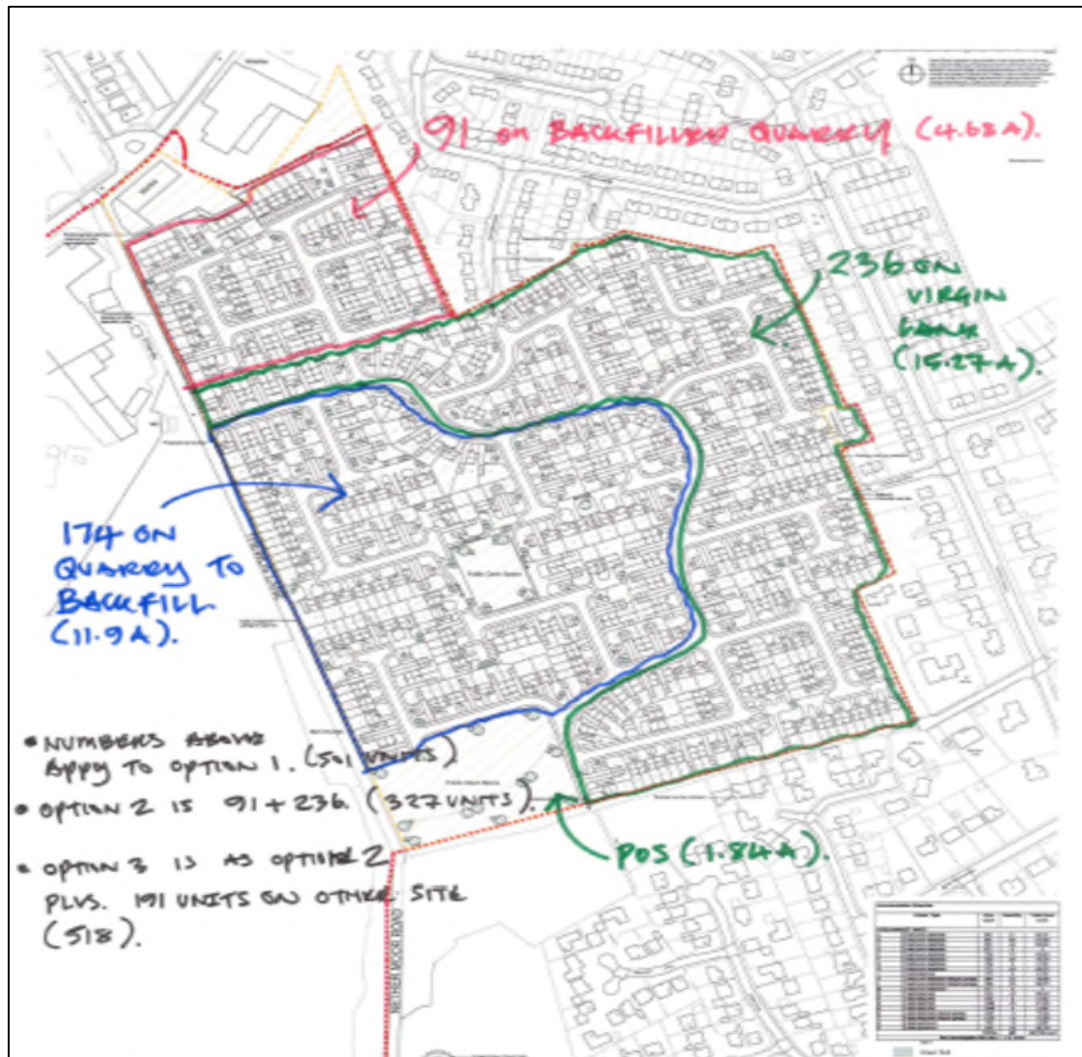
2024/92235: Reserved Matters application (including considerations of appearance, scale, layout, access (including pedestrian and cycle access into and within the site and vehicular access within the site)), and landscaping) for the erection of 231 residential dwellings and associated works including landscaping and the provision of open space, pursuant to [WESTERN PARCEL] outline permission 2020/92546 (with details of points of access only) for the development of up to 770 residential dwellings (Use Class C3), including up to 70 care apartments (Use Classes C2/C3) with doctors surgery of up to 350 sqm (Use Class D1); up to 500 sqm of Use Class A1/A2/A3/A4/A5/D1 floorspace (dual use), vehicular and pedestrian access points off Blackmoorfoot Road and Felks Stile Road and associated works – Pending consideration.

5.0 HISTORY OF NEGOTIATIONS (including revisions to the scheme):

Pre-application stage – consideration of financial viability

- 5.1 In March 2022, the council received a pre-application enquiry, where the applicant proposed to vary the previously-approved restoration scheme for this site, and instead implement a 'low level restoration' scheme. The reasoning for seeking this was principally one of viability. The applicant claimed it would not be viable to redevelop the entire site for residential use due to the prohibitive costs of the approved restoration plan. Instead, the applicant claimed redevelopment of the site for residential use would only be viable if a low level of restoration to the quarry hole, to provide public open space, was implemented as part of a wider residential scheme on the remainder of the site. The applicant also stated that *"it has become too costly to restore the site as approved"* as the costs were deemed prohibitive and would be financially damaging to their business.
- 5.2 During the pre-application enquiry the applicant was advised to submit a viability report which assessed the financial implications of infilling the quarry void, to substantiate the applicant's assertion. This was received and independently verified by an appropriate independent viability assessor on behalf of the council. The independent assessment's purpose was to:
- Consider the viability of redeveloping the site for circa 500 dwellings (in line with the current site allocation, including the approved restoration plan (engineered backfill) for the quarry hole (referred to as Option 1); and
 - Consider the viability of a low level restoration of the quarry hole to provide public open space with circa 327 units on the remainder of the site (referred to as Option 2).

Both options are shown on the plan below:



- 5.3 At the time the independent assessor undertook a high-level analysis of the company accounts for Johnson Wellfield Limited over a period of five years. The accounts highlighted that the company made a loss in 2017 followed by small profit in 2018 followed by a loss in 2019 and then profits in 2020 and 2021. The assessment advised that the high level analysis supported the applicant's claim that the cost of restoring the site, based on the costs provided, would damage or severely impact the company financially. It was also acknowledged that the applicant (Johnson Wellfield Limited) is a subsidiary of the Myers Group, which according to their most recent accounts available at the time, generated a profit (after taxation) in 2021 but made a loss in 2020. Whilst it is unclear from a legal perspective whether the obligation to restore the site can be passed up to the parent company, it was acknowledged by the assessor that at the time the most recent accounts for the Myers Group also suggested that the cost of restoring the quarry hole, based on the information provided, would also be financially damaging to this company.

- 5.4 The following provides the key viability assumptions adopted by the independent assessor for the development appraisals for Options 1 and 2:

Input	Option 1	Option 2	Comments
Sales values (market sale)	Between £250psf and £275psf		Values dependent on house types.
Sales values (first homes)	Based on 30% of market value subject to - ceiling price of £250,000		
Sale values (social rent)	£80psf		based on the transfer process set out in the Council's Affordable Housing and Housing Mix SPD
Sale values (intermediate)	£120psf		
Build costs – houses	£140psf		Inclusive of preliminaries, external works and Part L uplifts
Build costs – apartments	£155psf		
Quarry hole restoration costs	£13,271,884	£6,635,942	Based on a single quotation from Blackwell Earthmoving
Abnormal costs	£2,491,115		Costs relating to gas measures, stiffened rafts, piling, cut and turn and importing of clean cover and crush.
Bio diversity net gain	£315,000	£200,000	Estimated costs
Planning obligations	£2,620,048	£905,000	Costs to be confirmed with LPA but cover, off site highways, POS, travel plan and education contributions.
Contingency	10%	10%	Considered to be a reasonable assessment given complexities of the site, with significant ground issues.
Project fees	8%	8%	Considered a reasonable allowance for a scheme of this size and complexity.
Disposal costs	3%	3%	Of private sales GDV
Interest	6%	6%	
Developers Profit	20%	20%	Target return based on 20% of total GDV.

- 5.5 The independent assessor concluded that neither option would be viable, and advised that:

“Even when affordable housing and other S106 obligations are removed Option 1 remains unviable, generating a negative land value. Sensitivity testing has demonstrated that Option 1 only becomes viable when the developer’s profit is reduced to 15% of GDV alongside the removal of affordable housing and other S106 obligations. Under this scenario the land value is £642,927. Whilst this option is viable the land value is significantly below the benchmark land value (£1,970,000).

If affordable housing and S106 obligations are removed for Option 2 the residual land value is circa £535,000. Therefore, the site is viable but the land value is considerably, below the benchmark land value of £1,970,000. The only scenario for Option 2 which exceeds the benchmark land value is when developers profit is reduced to 15% of GDV and alongside the removal of affordable housing and S106 obligations.”

- 5.6 Subsequently, a number of other low level restoration options were presented to the council during the pre-application process (with additional information regarding working days and carbon emissions), as set out below:

Option 0

Original ground level restoration – Not to engineered specification

Working days: 410

Cost: £1,806,000

Carbon: 950 Tonnes (equivalent to 4.3 million miles in an average UK car)

Option 1

Low level restoration – Moderate slope gradient

Working days: 436

Cost: £954k

Carbon: 493 Tonnes (equivalent to 2.2 million miles in an average UK car)

Option 2

Low level restoration – Maximum slope gradient

Working days: 261

Cost: £564k

Carbon: 281 Tonnes (equivalent to 1.3 million miles in an average UK car)

Option 3

Low level restoration – Retaining geological feature

Working days: 144

Cost: £306k

Carbon: 146 Tonnes (equivalent to 0.7 million miles in an average UK car)

- 5.7 In view of these details the independent assessor provided the following further comments:

“Within my original report, I assumed a cost of £6,635,942 for the low-level restoration of the site. The information that was subsequently issued by the Applicant showed costs ranging between £306,000 and £1,806,000.

This information doesn't change our initial advice in that the full restoration of the site isn't viable, as these costs relate to alternative scenario focussed on low level restoration of the quarry hole to POS with residential on the remainder of the site.

However, the reduced costs for the low-level restoration do make more of our original sensitivities viable. As demonstrated in the table below.

As demonstrated our base appraisal which assumes 20% profit doesn't generate a land value which exceeds our Benchmark Land Value of £1,970,000. But if developers' profit is reduced to 15%, low level restoration options 1, 2 and 3 would ensure the BLV is exceeded, which includes affordable housing and other S106. If developers' profit is reduced to 17.5% then only low level restoration option 3 would generate a land value greater than then benchmark. Option 2 would be marginal, being only slightly below.

With the lower cost options for the low level of restoration there is more scope to secure a scheme without any concessions on affordable housing and other planning obligations but this does rely on the costs being more aligned to Options 2 and 3.

	Low Level Restoration				
	AY Assumption	Option 0	Option 1	Option 2	Option 3
	£6,635,942	£1,806,000	£954,000	£564,000	£306,000
Base Appraisal	(£5,481,389)	£101,142	£980,169	£1,385,145	£1,653,052
1 Reduction in developers profit to 15%.	(£3,702,708)	£1,656,821	£2,541,542	£2,946,519	£2,797,115
2 Reduction in developer's profit to 15% and removal of affordable housing.	£1,811,282	£6,826,707	£7,711,406	£8,116,382	£8,384,288
3 Reduction in developer's profit to 15%, removal of affordable housing and other S106 obligations.	£2,605,719	£7,621,125	£8,505,840	£8,910,815	£9,178,722
4 Reduction in developers profit to 17.5%.	(£4,942,473)	£568,524	£1,453,240	£1,858,215	£2,126,122
5 Reduction in developers profit to 17.5% and removal of affordable housing.	£822,058	£5,837,485	£6,722,188	£7,127,164	£7,395,070
6 Reduction in developers profit to 17.5%, removal of affordable housing and other S106 obligations.	£1,616,498	£6,631,928	£7,516,622	£7,921,597	£8,189,503

Current application

- 5.8 The Residual Appraisal and Engineered Backfill Report, accompanying this application are representative of the details submitted under the above pre-application enquiry and considered by the independent assessor on behalf of the council. The appraisal states “*redevelopment of the site under Option 1 is not viable due prohibitive development costs involved in restoring the current quarry to a developable state*”.
- 5.9 During the life of the current application, the applicant submitted drawings and documents in response to officer's requests for clarity of works (including sectional and landscaping details) and consultee comments regarding PROW and ecology matters.
- 5.10 On 30/10/2024 the applicant also requested a further extension of time to that initially proposed, now to 31/12/2027, to allow additional time for the restoration scheme to be delivered at the site. This, together with the need to advertise the application as a departure from the Local Plan, necessitated a further round of public consultation by site notice and in the local press. The final publicity is due to expire 20/12/2024.

6.0 PLANNING POLICY:

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27/02/2019).

Kirklees Local Plan

- 6.2 The application red line covers several allocations and designations relating to larger Housing Allocation (HS22), Mineral Extraction areas (MES1 – MES5), and a Waste Safeguarded site (WS2) in the Local Plan. Relevant Local Plan policies are:

LP21 – Highways and access
LP23 – Core walking and cycling network
LP27 – Flood Risk
LP28 – Drainage
LP30 – Biodiversity and Geodiversity
LP32 – Landscape
LP36 – Proposals for mineral extraction
LP37 – Site restoration and aftercare
LP51 – Protection and improvement of air quality
LP52 – Protection and improvement of environmental quality
LP53 – Contaminated and unstable land
LP65 – Housing allocations
LP69 – Minerals extraction sites

Supplementary Planning Guidance / Documents:

- 6.3 National Planning Policy for Waste 2014

National Planning Policy and Guidance:

- 6.4 The National Planning Policy Framework (2023) seeks to secure positive growth in a way that effectively balances economic, environmental and social progress for this and future generations. The NPPF is a material consideration and has been taken into account as part of the assessment of the proposals. Relevant paragraphs/chapters are:

Chapter 6 – Building a strong competitive economy
Chapter 8 – Promoting Healthy and safe communities
Chapter 9 – Promoting sustainable transport
Chapter 11 – Making effective use of land
Chapter 13 – Protecting Green Belt land
Chapter 14 – Meeting the challenge of climate change, flooding and coastal change
Chapter 15 – Conserving and enhancing the natural environment
Chapter 17 – Facilitating the sustainable use of minerals

Climate change:

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

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

7.0 PUBLIC/LOCAL RESPONSE:

- 7.1 The current application was initially advertised by the council as a major development affecting public rights of way (footpaths HUD/220/30, HUD/220/20 and HUD/220/10) and also as affecting the setting of a listed building.
- 7.2 The application was advertised by the council via site notices (posted on 28/03/2024), a press notice (published on 02/08/2024, after clarification was received from the applicant) and letters (sent on 14/03/2024) delivered to addresses close to the application site, in line with the council's adopted Statement of Community Involvement. The end date of that initial publicity period was 23/08/2024.
- 7.3 As a result of the initial public consultation, three representations are received. The points raised are summarised below:
- Noise and dust from quarry already substantial and will be increased the nearer it gets to residential properties.
 - Removal of condition 15 and 13 of permission 2013/90793 will have a serious negative impact on area.
 - Natural landscape will be impacted and loss of trees, detrimental impact on conservation of area.
 - Increased HGV movement will pose risk to highway safety to people in area with additional noise pollution, impact on air quality, additional noise and dust pollution.
 - Loss of existing woodland, established oak tree and wildlife.
 - Loss of existing well-used PROWs.
- 7.4 More recently, the council has had to readvertise the application, for two reasons. Firstly, as the proposals represent a departure from the development plan, they must be advertised as such. Secondly, as set out under paragraph 5.10 above, on 30/10/2024 the applicant requested a further extension of time to that initially proposed, now to 31/12/2027, to allow additional time for the restoration scheme to be delivered at the site. Consequently, further consultation letters were sent to residents on 12/11/2024, site notices were published on 20/11/2024, and a press notice is due to be published on 29/11/2024. The end date of this second publicity period will be 20/12/2024.
- 7.5 Any further representations received in response to the ongoing public consultation will be reported to Members in the committee update or on the day of the committee meeting.

- 7.6 Officers consider it acceptable for the Strategic Planning Committee to consider the application prior to the expiry of the second publicity period, given the public consultation that has already been carried out. The interests of local residents are not expected to be prejudiced. However, as noted in the officer recommendation, should the remaining public consultation raise issues that would result in substantive changes to the officer recommendation, it is recommended that the application be discussed with the Chair and/or considered again by the Strategic Planning Committee.

8.0 CONSULTATION RESPONSES:

8.1 Statutory:

K.C. Lead Local Flood Authority – Supports the proposals.

Environment Agency – No comments received

8.2 Non-statutory:

K.C. Environmental Health – No objections

K.C. Ecology – Support subject to conditions

K.C. Highways Development Management – Support the variation of condition 1 and the removal of condition 10 of previous permission. All other changes are not expected to have impacts on the operation or efficiency of the local highway network.

K.C. Public Rights of Way (PROW) – The temporary bridleway should be retained at all times.

K.C. Planning Policy – It is understood that the applicant has submitted information to confirm that the restoration of the site in order to deliver the full allocation capacity is unviable. This would be a material consideration for the planning officer to consider when applying the planning balance.

The council are currently unable to demonstrate a five-year housing land supply and although the proposal would reduce the amount of housing on the site as originally anticipated, it is accepted that the proposal would still provide a significant number of homes on the site, which would be of benefit to the council's current housing land supply position.

9.0 MAIN ISSUES

- Background, current position and the principle of development:
- Scope of this application
- Environmental issues (ecology/biodiversity)
- Local amenity issues (noise, dust and air quality)
- Drainage/flood risk and private water/watercourses pollution issues
- Highway/ PROW issues
- Representations
- Other matters (conditions)
- Planning obligations
- Conclusion

10.0 APPRAISAL

Background, current position and the principle of development:

- 10.1 Planning application 2013/90793 approved the extraction of minerals at Thewlis Lane Quarry. The permission included several conditions which sought to govern the phasing of the mineral extraction and the restoration of the site back to an agricultural/nature conservation use, with details such as timeframes and methods of the backfill to an engineered standard (to allow future residential development).
- 10.2 Subsequently a number of discharge of condition applications were received and determined, one of which included Thewlis Lane Quarry extraction taking place at the same time as extraction at the nearby Airfield Quarry. Shale extracted from Airfield Quarry would be used to backfill Thewlis Lane Quarry to an engineered standard.
- 10.3 On the understanding that the site would be restored to an engineered standard that would enable future development, the Thewlis Lane Quarry and adjacent land was allocated for housing within the Local Plan. As noted above, allocation reference HS22 has an indicative capacity of 500 units. This is broken down into 243 units within the plan's 15-year lifetime and 257 post-plan, giving due regard to the timeframe of restoration.
- 10.4 As noted the applicant is now advising that the engineered backfilling of the site and housebuilding on all of the allocated site would not be viable. The applicant therefore seeks to vary and remove a number of conditions of the 2013/90793 permission.
- 10.5 Also of note is that 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 19/12/2023 demonstrated that Kirklees had achieved a 67% measurement against the required level of housing delivery over a rolling three-year period (the "pass" threshold is 75%). The council's inability to demonstrate a five-year supply of housing land, or pass the Housing Delivery Test, weighs in favour of housing development throughout the borough, although this must be balanced against any adverse impacts of granting permissions for such proposals. This consideration is particularly relevant to proposals for housing development, however it must also be taken into account when non-residential development is proposed at sites that the council has allocated for housing, and where a proposal would result in a lower level of housing delivery than was originally anticipated.
- 10.6 Further to the outcome of the pre application enquiry, the supporting statement submitted with this application states:

"Due to viability issues, notably the significant increased costs of an engineered backfill, coupled with a lack of return on the worked site (due to a significant fault), the applicant is no longer able to comply with the restoration details previously approved"

- 10.7 The application is accompanied by an 'Engineered Backfill Report' which sets out a number of scenarios, including details of how and why the original backfill proposals have not come to fruition. This is set out under scenario 1. Scenario 2 relates to the site being reinstated to original ground level but not to an engineered standard (and, therefore, unsuitable for housing development). Scenario 3 relates to a low level restoration, resulting in minor regrading utilising existing materials within the site and respreading of the existing soil bunds. Scenario 4 set outs the timeline, phasing and potential environmental impacts of the carrying out of the engineered backfill (post extraction).
- 10.8 The following sets out an overview provided in the submission documents:

Scenario 1 – Why the original backfill proposals have not come to fruition:

- 1. An initial working area had to be created to extract mineral, in this instance mineral was removed but insufficient working area was available to start an engineered backfill.*
- 2. Area initially identified for mineral storage in the Airfield was insufficient in size and thus had to be tipped on top of shale. This sterilised significant volumes of mineral that would no longer be available for the return journey of vehicles.*
- 3. During the extraction process in Thewlis Lane, a significant mineral fault was experienced in the southeast corner running through the middle of the entire site. This resulted in 'short shifting' mineral in the extraction process to access good quality block suitable for masonry and paving.*

Scenario 2 – Site reinstated to original ground level but not to an engineered standard, therefore unsuitable for housing development:

In this scenario the starting point is that Thewlis Lane is already partially filled with mineral which has not left the extraction area. Mineral removed from the extraction face has been placed immediately behind the working area. Once extraction of mineral is completed from Thewlis Lane, balance of mineral required can be moved from Airfield.

Benefits:

- 1. Area restored to original levels.*
- 2. Creates a generous green open space for the future.*
- 3. Significantly less carbon emitted compared with Scenario 1*

Disadvantages:

- 1. Area not suitable for housing development.*
- 2. Does not deliver housing stock in line with Local Plan.*
- 3. Approximately 1.5 million tonnes of mineral will require transporting from Airfield to Thewlis Lane.*
- 4. It will take 350 working days to complete once work commences.*
- 5. Approximately 809 tonnes of carbon will be emitted during this process.*
- 6. Cost to complete exercise estimated at circa £2.53m.*

Scenario 3 – Site completed with a low level restoration:

In this scenario a low-level restoration will comprise of mineral that is left from the original extraction with no imported mineral outside of the Thewlis Lane operating area.

Benefits:

- 1. Creative green space that provides versatile urban areas usable across the local community.*
- 2. Improving biodiversity within the area allocated for development in the Local Plan.*

3. No delays to the development of surrounding land.
4. Minimal work required with heavy machinery to landscape the area, estimated at below 20 tonnes of carbon.
5. Delivers housing stock

Disadvantages:

1. Low level restoration area will not be suitable for development.

Scenario 4 – Engineered backfill (post extraction):

Two working areas have been identified to complete the project, they are Thewlis Lane and Airfield. Site referred to as 'Airfield' is located approximately 1 mile West of Thewlis Lane and is accessible using internal haul roads owned by Johnsons Wellfield. There are multiple stages in completing an engineered backfill at Thewlis Lane, the relatively small working area determines the speed of which this project can be completed. Based on the working areas available, the scheme is split into four phases:

Phase 1 - Movement of material from Thewlis Lane to Airfield, this is scheduled to take 34 weeks and will involve the removal of all over and inter burden.

Phase 2 - This phase runs for the entirety of the project and is focused solely on the crushing of material to a specification suitable to complete an engineered backfill and would run for an estimated 104 weeks, with no allowance for slippage or unforeseen operational issues during this period.

Phase 2a - Will consist of crushing material being transported from Thewlis Lane and will run concurrently with Phase 1. As noted in Phase 1, this will run from week 1 to week 34 of the project. Phase 2b will consist of crushing material transported within the Airfield site. This will commence after Phase 1 has been completed due to vehicle movements on site and the available working area. This phase will run 70 weeks, from week 35 to week 104 of the project.

Phase 3 - Transporting crushed material from Airfield to Thewlis Lane and placing as an engineered backfill to required specification. This phase would also run concurrently with Phase 2, for the final 34 weeks of the project. It will commence on week 70 and run through to completion on week 104.

Third party contractor has quoted a price of £8.25m for the works excluding engineering and fuel, these two items will add an estimated £1.8m. Total cost for works at £10.0m”.

- 10.9 Whilst both scenarios 2 and 3 could enable the quarry area (void) to be used as a public open space in connection with a future residential development, Scenario 3 is viewed to be more environmentally friendly as it would not result in the level of trips and carbon emissions that would be associated with Scenario 2 to infill the quarry void to bring it to previous ground levels.
- 10.10 Scenario 3 is the proposed low level restoration scheme submitted for consideration. This would result in minimal regrading and respreading of the existing soil bunds into the site. Furthermore, whilst it is recognised that the proposal would reduce the amount of housing on the site (from the quantum originally anticipated), it is accepted that the proposal could still provide a significant number of homes on the remainder of the housing allocation, which would be of benefit to the council's current housing land supply position, subject to the necessary planning consents in due course.

Planning balance and principle of development

10.11 The following consideration takes into account the planning balance in respect of the submitted low level restoration proposals, and taking into account the outcome of the viability assessment, which was verified by an appropriate assessor on behalf of the council (see paragraphs 5.1 to 5.10 above), concluding that the previously-approved engineered backfill restoration proposals were unviable.

10.12 Housing delivery is imperative and attracts great weight when considering proposals for this housing allocation. The applicant has set out the following additional factors to consider:

“The priority of the business is to safeguard its longevity to support local jobs within the immediate division of Johnsons Wellfield but also its vertical integration with Myers Building Supplies (Builders Merchants).

Johnsons Wellfield supplies Dimension Stone products as well as Aggregates to Myers Building Supplies, the two companies are part of an integrated supply chain.

Due to mineral issues that have been experienced in 2018, late 2020 and running through to date. Johnsons Wellfield is not currently fulfilling orders secured, based on supplying a ‘Classic’ Crosland Hill Sandstone for which it is renowned for.

During the past 14 months, mineral extracted from Thewlis Lane is not representative of extensive core holes that were carried out in 2018 to assess remaining mineral. This current situation is not sustainable, resulting in lower output and restricting commercial opportunities due to mineral type.

Therefore, mineral extraction will move to Moor End South to obtain sufficient ‘Classic’ Crosland Hill Block Stone. This has become a number one priority for the business. Primary operational focus will be to extract mineral from Moor End South to recover the current position by creating suitable stock of Block Stone. This is envisaged to take circa 20-24 months. Following a period where sufficient Block Stone Stock has been created, the business can reconvene extraction at Thewlis Lane. On this basis, half of the operational focus will remain at Moor End South with the other half at Thewlis Lane”.

10.13 It is acknowledged that the business is focusing on meeting their demands by extracting mineral from Moor End South to recover the current position by creating suitable stock of block stone. Taking account of the unviable position regarding the approved engineered backfill, it is considered that the factors set out above weigh in favour (in the planning balance) of the low level restoration scheme put forward. Furthermore, it has been demonstrated that the proposed low level restoration scheme would not prevent the development of the remainder of the housing allocation, and a significant number (327) of dwellings could still be delivered here. Given this assessment, it is considered that the principle of implementing a reduced level of restoration at this site can be accepted.

Scope of this application:

- 10.14 Section 73 of the Town and Country Planning Act 1990 concerns the “Determination of applications to develop land without compliance with conditions previously attached”, colloquially known as “varying” or “amending” conditions. Section 73 applications must also involve consideration of the conditions subject to which planning permission should be granted. Where an application under Section 73 is granted, the effect is the issue of a fresh grant of permission and the decision notice should list all conditions pertaining to it. The application cannot be used to vary the time limit for implementation.
- 10.15 It is important to note that when assessing Section 73 applications the previously-granted planning permission is a significant material consideration, which impacts heavily on the assessment of the proposal. If the original application has been implemented, or if the permission has not yet expired, the applicant may go ahead and complete the original approved scheme if they wish.
- 10.16 The site is an operational quarry where mineral extraction is being carried out under a previous approval. Therefore, the principle of mineral extraction and restoration of the site has long been established. However, alterations to planning policy and other material considerations that may have emerged since the original grant of planning permission are relevant and need to be considered.

Landscape and environmental issues (ecology/biodiversity):

- 10.17 Mandatory Biodiversity Net Gain (BNG) is to be applied to planning permissions granted in respect to relevant planning applications made on or after 12/02/2024. However, Government guidance sets out the BNG does not apply to:
- Retrospective planning permissions made under section 73A; and
 - Section 73 permissions where the original permission which the section 73 relates to was either granted before 12/02/2024 or the application for the original permission was made before 12/02/2024
- 10.18 This application falls under the second bullet above. However, the proposals will need to be considered under Local Plan Policy LP30 which promotes the protection and enhancing of biodiversity and geodiversity of Kirklees. The criteria of most relevance under this policy state that development proposals are required to:
- (i) result in no significant loss or harm to biodiversity...; and
 - (ii) minimise impact on biodiversity and provide net biodiversity gains through good design by incorporating biodiversity enhancements and habitat creation where opportunities exist.
- 10.19 Also of relevance is Local Plan Policy LP32 which requires proposals to be designed to take into account and seek to enhance the landscape character of the area. In this instance as the proposals relate to an operational quarry, the proposals will also be considered against Local Plan Policy LP37, which requires restorations to be sympathetic to the character and setting of the wider area and capable of sustaining an appropriate after-use.

- 10.20 The application site red line boundary relates to two parcels of land, with the larger part on the eastern side of Thewlis Lane, where extractive operations are being carried out in the quarry void. The second (smaller) area lies to the western side of Thewlis Lane which is being used in association with the stone processing/storage operations of the wider business. The larger of the two areas would have seen the site landscaped with grass, areas of woodland along the northern boundary and a heathland strip adjacent to Thewlis Lane under the previously-approved soft landscaping details. The smaller area west of Thewlis Lane was approved to provide heathland scrub.
- 10.21 The submitted proposal, as shown on drawing TL1181-D7v5 rev B, indicates minimal regrading within the quarry void and the respreading of all soil bunds back into the site, except the bund along Thewlis Lane. This bund has self-seeded and established over time, providing important ecological habitat areas, and integrates well with soft landscaping on the opposite side of the road. The bund would serve a dual purpose, providing a soft landscaping feature which contributes to ecological interest in the area, and serving a role as a safety measure, deterring access into the existing operational quarry/void beyond what would be a sheer drop adjacent to Thewlis Lane. The applicant proposes to seed all areas with a grass seed.
- 10.22 It is proposed to continue using the smaller area (west of Thewlis Lane) for stone processing as part of the wider operation of the business. The continued use of this area for stone processing and storage is acknowledged to be an integral part of the wider operations of the business and not solely connected to Thewlis Lane. As such the proposals for its continued use to aid the operations of the wider business are accepted. The final restoration of this area is linked to the restoration of the Waterholes/Wellfield Quarry Restoration planning permission (2003/91691) which is shown within the area edged brown on Plan C (and referred to as "the Brown Area") in the Section 106 agreement dated 09/06/2006. This matter will require a Deed of Variation to the original Section 106 agreement (discussed below).
- 10.23 To offset the loss of any biodiversity net gain that would have been achieved under the previously-approved scheme, at the request of officers the plans have been revised to include additional planting in the form of a native species hedge along the road frontage of the larger part of the site, adjacent to the bund which is to be retained, to accord with Local Plan Policy LP30. The proposed minimal regrading works would leave the site steeply sloping with an exposed quarry face. Other than the difference in land levels, the soft landscaping proposals would not deviate significantly from those previously approved. In summary, the revised soft landscaping proposals would achieve an appropriate level of biodiversity net gain through the retention of the bund along Thewlis Lane and additional enhancement measures, in accordance with Local Plan Policies LP32 and LP37. This matter is to be addressed by appropriately-worded conditions in the event Members support the proposals, along with an additional condition also required to secure the proposed fence at the base of the quarry face.

Local amenity issues (noise, dust and air quality):

- 10.24 National Planning Practice Guidance sets out clearly the principal issues that mineral planning authorities should address, and acknowledges that not all issues will be relevant at every site to the same degree. Also of relevance are Local Plan Policies LP36 and LP52, which refer to the impacts on the environment including human health local ecology / biodiversity (addressed above), and any cumulative effects arising from individual sites and/or a number of sites in a locality
- 10.25 As noted above, there are residential properties to the north, east and south, the nearest being approximately 100 metres from the quarry void. There are a number of conditions on the previous permission which require works to be carried out in compliance with the details previously agreed, in relation to noise, dust and air quality matters. Should Members support the low level restoration proposals, the new permission would repeat the necessary conditions as imposed on the 2019/90949 permission, which were required to protect the amenities of nearby sensitive receptors and to accord with Local Plan Policies LP36 and LP52.

Drainage/flood risk and private water/watercourses pollution issues:

- 10.26 The submission includes an updated Flood Risk Assessment (FRA) which takes account of the proposed low level restoration scheme. On assessment of this the Local Lead Flood Authority (LLFA) has advised:

“The proposed method of disposal of surface water on the site following restoration works and infiltration will be aided by the use of swales. The LLFA concludes that the proposed works will still not cause flood risk and therefore has no objections to the scheme”.

- 10.27 As a result of the revised FRA, existing condition 24 of the previous permission would need to be amended to refer to this revised FRA, in the event the proposals are supported by Members.

Highway / PROW issues:

- 10.28 All new developments can potentially impact on the highway network, and it is important that the extents of these impacts are fully understood and considered when determining planning applications. New development will normally be permitted where safe and suitable access to the site can be achieved for all people and where the residual cumulative impacts of development are not severe. Kirklees Local Plan Policy LP21 is of relevance in this instance, and sets out that proposals should demonstrate adequate information and mitigation measures to avoid a detrimental impact on highway safety and the local highway network.
- 10.29 Also of relevance is Local Plan Policy LP36 which requires proposals for mineral extraction to be considered having regard to, amongst other things, the impact on the environment and highway safety. Part 2 of Policy LP36 (where relevant to highways) clearly sets out that proposals to extract minerals, including from former waste deposits, will be permitted provided that they will not:

c. cause nuisance or materially significant disturbance to local residents as a consequence of the generation of dust, noise or vibration by site operations or associated transport;

d. prejudice highway safety through the volume or nature of vehicle movements generated;

f. cause materially significant permanent change to local rights of way networks;

10.30 As noted above (paragraph 8.2) KC Highways Development Management, on review of the proposals, have confirmed that the variation of condition 1 and the removal of condition 10 of previous permission 2019/90949 are supported from a highways perspective. All other changes are not expected to have impacts on the operation or efficiency of the local highway network.

10.31 With respect to the impact potential impact on local public rights of way, the revised restoration proposals would not adversely impact on the users of the nearby definitive public right of way which runs parallel to the southern boundary of the site.

10.32 In summary, the proposals, subject to the imposition of all relevant highway conditions from the 2019/90949 permission, would ensure the continuation and completion of works can be carried out without causing material highway safety impacts to any/all users of the wider highway network, in accordance with guidance in the NPPF and Kirklees Local Plan Policies LP21 and LP36 (points c, d and f).

Representations:

10.33 Concerns received relate to the expansion of operations and increasing the footprint of the quarry. Whilst the variations proposed include extending the time to complete mineral extraction and restoration by a further two years to 31/12/2027, the proposals do not seek to extend the footprint of the quarry. Inevitably, the increase in time would prolong operations and restoration works, however these would continue to be carried out in accordance with a number of conditions which are recommended to protect the amenities of the area and environmental conditions.

Other matters (conditions):

10.34 Planning permission 2019/90949 was granted subject to 53 conditions. The current proposals seek to remove conditions 10, 12, 13, 14, 20, 33, 38, 39 and 40 and to vary conditions 1, 19, 24, 29, 34, 36 and 37 for the reasons set out in paragraphs 3.1 and 3.2 above. The following sets out the conditions the applicant has sought to be removed followed by officers' explanation as to whether it is appropriate to remove or reword each condition.

Condition 10

10) The development shall be carried out in accordance with details approved under Discharge of Conditions application 2014/90920 with regard to all associated temporary and permanent highway retaining structures.

Explanation: The relevant discharge condition application acknowledged there were no temporary highway retaining structures. As such this condition is not considered necessary and can be removed.

Condition 12

12) The temporary screen mounds approved under Discharge of Conditions application 2014/90396 shall be retained and maintained fit for purpose for the lifetime of the development in accordance with the details approved.

Explanation: Other than the screen mound adjacent to Thewlis Lane, on the housing allocation which is to be retained, all other screening mounds are proposed to be respread back into the site under the current proposals. Therefore, this condition can be reworded to ensure the temporary screen mounds are respread as proposed.

Condition 13

13) The screen mounds constructed in accordance with approved plan 10093/456 'Method of Working Phase 2' and to the specification approved under Discharge of conditions application 2014/90396 shall be seeded to grass and maintained in a tidy and weed-free condition for the life of the site. They shall be removed upon completion of backfilling of Phase 7 and the soils used in the restoration of the site.

Explanation: The proposals under consideration would require the mounds to be respread back into the site as such this condition is no longer considered necessary and can be removed.

Condition 14

14) The site shall be worked in 8 phases in accordance with approved plan series 10093/455, 10093/456, 10093/457 Rev. C, 10093/458, 10093/459 Rev. C, 10093/460, 10093/4461 and 10093/462.

Explanation: The majority of the site has now already been worked and the current proposals seek to complete the proposed low level restoration scheme by 31/12/2027. Notwithstanding this, the applicant states that the phasing of the site has changed over recent years as a result of various unforeseeable circumstances, including a significant mineral fault found at the site during the mineral works. This condition is no longer considered necessary and can be removed.

Condition 20

20) A detailed scheme of mineral working and backfill operations shall be submitted to the Mineral Planning Authority 12 months after the date of commencement and every 12 months thereafter until completion of mineral working and backfill. The scheme shall provide for:

- (a) a plan indicating the lateral extent, location and direction of mineral extraction to be undertaken over the following 12 months;*
- (b) typical cross-sections of the extraction to be undertaken during the following 12 months including an indication of the maximum depth of excavation;*
- (c) a plan indicating the lateral extent, location and direction of backfilling to be undertaken over the following 12 months to achieve proposed backfill contours (Contours indicated on approved Plan no. 10093/468 less 500 mm to allow for proposed soil depth);*
- (d) a survey plan indicating the location and extent of mineral extraction and location, lateral extent and finished levels of backfill achieved during the previous 12 months;*
- (e) details of any ancillary operations, e.g. stone splitting, hand dressing, location, duration and equipment.*

Every year the developer shall arrange a site meeting to be held within 1 month of the date of submission of the annual working programme to discuss the

programme and to review progress to which the Mineral Planning Authority shall be invited.

Explanation: This condition will not be necessary or relevant in the event Members approve the proposed low level restoration scheme. It can therefore be removed.

Condition 33

33) On receipt of the written approval of the Mineral Planning Authority for the works required by Condition 32 above, topsoil shall be spread over the surface of the areas to be restored to agriculture to the depth specified in Condition 29. The Mineral Planning Authority shall be notified in writing when the works required in this condition have been completed.

Explanation: The site is no longer to be restored in line with the previous restoration plan nor is the site to be restored to agriculture, therefore this condition can be reworded to omit any reference to agriculture and condition 29. It is therefore recommended that this condition be reworded.

Condition 38

38) The aftercare scheme submitted in accordance with Condition 37 above shall be fully implemented and shall provide details of:

- a) the person responsible for implementing the aftercare scheme;*
- b) a plan showing each area subject to aftercare, with demarcation of any areas having different aftercare steps or management proposals;*
- c) the steps to be carried out in each area during the aftercare period and their timing within the overall programme in accordance the requirements identified in National Planning Practice Guidance;*
- d) detailed programme for the first year of aftercare in accordance the requirements identified in para. 44 to 48 of the Technical Guidance to the National Planning Policy Framework.*

Explanation: This condition can be removed, given the details would be secured in reworded condition 37, which would consolidate conditions 37, 38, 39 and 40 of planning permission 2019/90940.

Condition 39

39) Following compliance with Condition 37 above, a detailed annual aftercare programme shall be submitted to the Mineral Planning Authority before 31 August in each year of aftercare of any phase. The programme submitted shall amplify the outline aftercare scheme for works to be carried out in the following 12 months, including any modifications to the original proposals. The approved scheme shall accord with the requirements identified in National Planning Practice Guidance.

Explanation: This condition can be removed, given the details would be secured in reworded condition 37, which would consolidate conditions 37, 38, 39 and 40 of permission 2019/90940.

Condition 40

40) Every year during the aftercare period the developer shall arrange a site meeting to be held every year before 30 November to discuss the report prepared in accordance with Conditions 37 and 39 above to which the following parties shall be invited: a) the Minerals Planning Authority; b) all owners of the land within the site; c) DEFRA.

Explanation: This condition can be removed, given the details would be secured in reworded condition 37, which would consolidate conditions 37, 38, 38, 39 and 40 of permission 2019/90940.

- 10.35 Turning now to the conditions proposed to be varied, namely conditions 1,19, 24, 29 34, 36 and 37, the following sets out the current and proposed new wording where relevant.

Condition 1

1) The extraction of all minerals, the removal of all buildings, plant and machinery and the restoration of the site for agriculture and nature conservation shall be completed by 31 December 2025.

Proposed new wording:

The extraction of minerals, the removal of all buildings, plant and machinery and the restoration of the site in accordance with drawing TL1181-D7 Rev C shall be completed by 31/12/2027.

Condition 19

19) The quarry void shall be backfilled in accordance with either the details approved under Discharge of Conditions applications 2019/91053 or 2014/90920.

Proposed new wording:

The quarry void shall be backfilled in accordance with details shown on drawing TL1181-D7 Rev C

Condition 24

24) The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) by S M Foster Associates Ltd, dated June 2012, Ref 033/027/01/fra included as Appendix 8 in the Environmental Impact Assessment and the following mitigation measures detailed within the FRA:

- Managing the surface water runoff such that surface water will be attenuated within the site.*

The mitigation measures shall be fully implemented in accordance with the timing/phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the Mineral Planning Authority.

Proposed new wording:

The development shall be completed in accordance with the submitted Flood Risk Assessment and Surface Water Drainage Strategy Reference: 3531/FRA, dated July 2024.

Condition 29

29) After the completion of mineral extraction in each phase the site shall be progressively restored to agriculture/nature conservation in accordance with the detailed scheme approved under Discharge of Conditions application 2014/90920.

Proposed new wording:

After the completion of mineral extraction, the site shall be backfilled in accordance with land levels and restored to grassland as shown on drawing TL1181-D7 rev C, in the first available growing season.

Condition 34

34) In each phase a grass sward shall be developed in those areas of the site to be restored to grassland, and a grass, heather and wildflower sward on those areas of the site to be restored to nature conservation in the first available growing season.

Proposed new wording:

The proposed new wording for condition 29 would ensure the site is grassed in accordance with the submitted details. As such condition 34 can be removed.

Condition 36

36) Within 2 months of the restoration and seeding of each phase the operator shall submit to the Mineral Planning Authority a plan with contours at sufficient intervals to indicate the final restored form of the site together with a record of the depth and composition of the reinstated soil profiles.

Proposed new wording:

Similar to condition 34, the requirements of this condition (levels/contours) would be achieved through the rewording of condition 29. As such condition 36 can be removed.

Condition 37

37) An outline aftercare scheme detailing the steps which may be necessary over the aftercare period of 5 years to bring each restoration phase to the required standard for use for agriculture or for nature conservation shall be submitted to the Mineral Planning Authority at least 3 months prior to the completion of replacement of all restoration soils on any phase of the permitted development.

Proposed new wording:

An outline aftercare scheme detailing the steps which may be necessary over the aftercare period of five years, to ensure a grass sward is established for the whole of the area edged red east of Thewlis Lane, shall be submitted to and approved in writing by the Mineral Planning Authority at least three months prior to the completion of the site restoration. The approved aftercare scheme shall provide details of:

- a) The person responsible for implementing the aftercare scheme;
- b) A plan showing the area subject to aftercare, with demarcation of any areas having different aftercare steps or management proposals; and
- c) The steps to be carried out in each area during the aftercare period and their timing within the overall programme to ensure grassland is maintained.

Following compliance with above, a detailed annual aftercare programme shall be submitted to and approved in writing by the Mineral Planning Authority before 31 August in each year of aftercare of the site. The programme submitted shall amplify the aftercare scheme for works to be carried out in the following 12 months, including any modifications to the original proposals.

- 10.36 Other conditions not referenced above (but which are also to be reworded) include 9 and 30. All other conditions of the 2019/90949 permission will remain unchanged, with minor errors in the wording corrected.

Planning obligations:

- 10.37 The current operative extant permission includes a small area (approximately 0.8h) of land west of Thewlis Lane within the application site red line boundary, which overlaps an area of land included in the 2003/91619 planning permission and an associated Section 106 agreement. The Section 106 agreement includes obligations related to restoration and aftercare for the wider Johnsons quarry areas. The applicant proposes to omit the small overlapped area from the restoration/aftercare obligations as set out in the legal agreement for the 2003/91619 permission, and proposes to continue using this area for stone

processing and storage purposes, in association with the wider operations of the business. This is supported, as it would facilitate and assist in the continued supply of this valuable resource/material, as is encouraged by the NPPF (chapter 17). Consequently, a Deed of Variation is required to the original Section 106 of the 2003/91619 planning permission, as the proposals would affect the future use of this area of land under the current application.

11.0 CONCLUSION

- 11.1 Through the submission of a viability appraisal, the applicant has demonstrated that the engineered backfilling of the site is unviable for and as such housebuilding on the full housing allocation would not be possible. This effectively means the proposals involve a significant departure from the Local Plan. The applicant's position regarding viability has been verified independently on behalf of the council. The option of the low-level restoration scheme put forward (Scenario 3) would allow minimal regrading with materials on site, as well as the resspreading of the soil bunds back into the quarry void and this area being restored to grassland. Whilst it is recognised that the proposal would reduce the number of units delivered (in the future) on the housing allocation, at a time when the council is unable to demonstrate a five year housing land supply, the low level restoration scheme without an engineered backfill is supported. It is considered that the remainder of the housing allocation could still be developed to accommodate a significant number of units (up to 327).
- 11.2 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.
- 11.3 This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development would constitute sustainable development and is therefore recommended for approval.

12.0 CONDITIONS (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Planning and Development).

- 1) Development to be completed by 31/12/2027.
- 2) A copy of approved documents/plans to be retained on site at all times for inspection.
- 3) Development to be carried out in accordance with approved plans/documents.
- 4) Prior cessation measures to deal with restoration and aftercare in the event that mineral extraction is abandoned/ceases.
- 5) Sole means of vehicular access to and egress site via Thewlis Lane.
- 6) No commercial vehicles shall enter public highway from permitted site unless wheels and chassis cleaned.
- 7) The heavy plant crossing point on Thewlis Lane approved under Discharge of Conditions Application 2014/90920 shall be retained.
- 8) The total tonnage of material exported from and imported to the application site shall not exceed 2500 tonnes per day in total.
- 9) The temporary bridleway as shown on drawings TL1181-D7 rev C and 10093/600 rev A, shall be retained.
- 10) Previous condition deleted.

- 11) The development shall be carried out in accordance with details approved under Discharge of Conditions application 2014/90920 with regard to geotechnical stability.
- 12) The temporary screen mounds shall be respread back into the site as per submitted drawing TL1181-D7 rev C.
- 13) Previous condition deleted.
- 14) Previous condition deleted.
- 15) No mineral extraction shall take place below the topographical levels previous approved under planning permissions regulating operations.
- 16) No mineral extraction within the site shall take place below the topographical levels indicated on plan 10093/464 'Cross Sections Through Thewlis Lane Quarry'.
- 17) All mobile crushing and screening operations shall be carried out in accordance with previously approved details.
- 18) All mobile screening and crushing operations shall only use mineral extracted from Thewlis Lane, used for backfilling of Thewlis Lane and not export material from the site.
- 19) The quarry void shall be backfilled in accordance with submitted details and drawing TL1181-D7 rev C.
- 20) Previous condition deleted.
- 21) From the date of this permission the operator shall maintain records of monthly production and mineral extraction.
- 22) There shall be no discharge of foul or contaminated water from the site into either groundwater or any surface waters.
- 23) Any facilities for the storage of oils, fuels, or chemicals shall be sited on impervious bases and surrounded by impervious bund walls.
- 24) The development shall only be carried out in accordance with submitted FRA.
- 25) Previous condition deleted.
- 26) The stripping, movement and replacement of topsoil and subsoil shall only be carried out under sufficiently dry and friable conditions.
- 27) Previous condition deleted.
- 28) Previous condition deleted.
- 29) After the completion of mineral extraction, the site shall be progressively restored to grassland in accordance with the submitted details.
- 30) The final surface of backfilled quarry overburden shall be graded to provide an even surface 500mm lower than the agreed final contours.
- 31) The spreading of subsoil and topsoil shall only be carried out when the material is in a dry and friable condition.
- 32) Soils to be respread using a backacter. All stones and any other object larger than 75mm shall be removed from the surface of the soil.
- 33) Topsoil shall be spread over the surface of the areas to be restored to grassland following completion of works in conditions 30 and 32.
- 34) Previous condition deleted.
- 35) If satisfactory grass growth is not obtained as a result of the initial sowing, such part shall be cultivated and reseeded, after the correction of any nutrient deficiencies in the soil.
- 36) Previous condition deleted.
- 37) Previous aftercare conditions (37-40) combined into one, as per wording in report above.
- 38) Previous aftercare conditions (37-40).
- 39) Previous aftercare conditions (37-40).
- 40) Previous aftercare conditions (37-40).
- 41) Hours for operation of the quarry in accordance with previous approved details.

- 42) Development to be carried out in accordance with previously approved Noise Impact Assessment/restrictions.
- 43) Exceptionally noisy operations shall only be carried out within previously approved details.
- 44) All vehicles, plant and machinery operated within the site shall be maintained in accordance with the manufacturer's specifications at all times.
- 45) All vehicles on site shall operate using broad band reversing alarms only.
- 46) There shall be no blasting.
- 47) The development to be carried out in accordance with the noise monitoring scheme approved under Discharge of Conditions application 2014/90396.
- 48) The clean supply of water currently provided for the suppression of dust shall be maintained.
- 49) The development shall be carried out in accordance with previously approved dust suppression scheme.
- 50) The development shall be carried out in accordance with previously approved dust monitoring scheme.
- 51) There shall be no storage of waste skips or containers or other plant and equipment not directly associated with the operation of the quarry.
- 52) Removal of PD rights – No fixed plant or machinery, buildings, structures and erections, or private ways which would project above natural ground levels.
- 53) Reporting of any artefact or feature of archaeological or geological interest encountered on the site.

Background Papers:

Application and history files.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2024%2f90357>

Certificate of Ownership – Certificate B signed