Dear Sir or Madam

I write to lodge my objection to the application number 2024/62/91202/E, Land off Marsh Lane, Shepley, Huddersfield HD8 8AS. My objections take the following forms.

Inaccuracy of the submitted plans as to dwelling numbers

I note that the submitted application is replete with errors which I consider to be sufficiently serious as to be fatal to the application in its current form. The most serious of the inaccuracies relates to the number of dwellings for which permission is being sought. The errors which I have identified to date are as follows:

1. The description of development set out on the planning portal is for "eight dwellings with associated access and external works", while the application form itself describes the development as "creation of access and erection of seven dwellings with associated external works."[1]
2. The "Plan General" shows what appears to be 8 plots,[2] while the various grouped plans and elevations refer to a Plot 9[3] which does not exist on the proposed site sections plan.[4]
3. There is no elevation plan provided for Plot 2.
4. The Design and Access statement is for 7 plots.[5]
5. The Biodiversity Net Gain assessment is informed by a proposed development plan for 7 dwellings.[6]
6. The Transport Assessment assessed the impact of 8 residential developments.[7]

[1] https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/filedownload.aspx?application_number=2024/91202&file_reference=1043753
[2] https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/filedownload.aspx?application_number=2024/91202&file_reference=1062469
[3] https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/filedownload.aspx?application_number=2024/91202&file_reference=1055527
[4] https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2024/91202
[5] https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/filedownload.aspx?application_number=2024/91202&file_reference=1043756
[6] https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/filedownload.aspx?application_number=2024/91202&file_reference=1043754
[7] https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/filedownload.aspx?application_number=2024/91202&file_reference=1047646

As the Local Planning Authority ('the LPA') will be aware, Article 7 of the Town and Country Planning (Development Management Procedure)(England) Order 2015 ('the DMPO') requires the following:

7. (1) Subject to paragraphs (3) to (5), an application for planning permission must—

(a) be made in writing to the local planning authority on a form published by the Secretary of State (or a form to substantially the same effect);

(b) include the particulars specified or referred to in the form;

(c) except where the application is made pursuant to section 73 (determination of applications to develop land without conditions previously attached) or section 73A(2)(c) (planning permission for development already carried out) of the 1990 Act ***M1*** *or is an application of a kind referred to in article 20(1)(b) or (c), be accompanied, whether electronically or otherwise, by—*

(i) a plan which identifies the land to which the application relates;

(ii) any other plans, drawings and information necessary to describe the development which is the subject of the application;

(iia) the information relating to the condition under paragraph 13 of Schedule 7A to the 1990 Act ("the biodiversity gain condition") specified in paragraph (1A);

(iii) except where the application is made by electronic communications or the local planning authority indicate that a lesser number is required, 3 copies of the form; and

(iv)except where they are submitted by electronic communications or the local planning authority indicate that a lesser number is required, 3 copies of any plans, drawings and information accompanying the application.

Adherence to these requirements is not optional. Section 327A of the Town and Country Planning Act 1990 ('the 1990 Act') states:

(1) This section applies to any application in respect of which this Act or any provision made under it imposes a requirement as to—

(a) the form or manner in which the application must be made;

(b) the form or content of any document or other matter which accompanies the application.

(2)The local planning authority must not entertain such an application if it fails to comply with the requirement.

The errors in the application form and supporting documentations are such that it is impossible to understand what the applicant wishes to develop. The application is therefore in breach of Article 7(1)(c)(iii), with the result that section 327A of the 1990 Act is engaged. Accordingly, the LPA must not entertain the application. Any permission granted would be amenable to judicial review on the grounds that the Council has acted *ultra vires.*

Impact on statutory consultees

The point above notwithstanding, the errors in the application are also fatal for two additional reasons. First, the confusion in the application is replicated in the responses provided by the statutory consultees. Yorkshire Water's response considers the erection of nine dwellings[8] while Kirklees Council, in its capacity as Lead Local Flood Authority,[9] environmental health consultee[10] and as the body responsible for tree protection[11] has conducted its assessment in the belief that seven dwellings will be constructed.

Assuming that the application is, in fact, for 8 dwellings as set out in the document "Plan General", all of the responses provided by the statutory consultees are based on an error of fact and, therefore, cannot have accurately assessed the impact of the proposed development on the area's services, amenities and environment. This gives rise to the possibility of unfairness in decision-making, which the courts have accepted may give rise to a ground for challenge by way of judicial review *Watt, R (on the application of) v London Borough of Hackney & Anor [2016] EWHC 1978 (Admin).*

Impact on public consultation

Finally, the errors have also infected the consultation which the LPA is obliged to run, as per Article 15 of the DMPO. As the LPA will have seen, the neighbour representations received to date have all expressed confusion over the number of dwellings proposed in this application. It is suggested that the disparity in dwelling numbers arises from an amendment which was made during the application process. I therefore draw your attention to the case of *R (on the application of Holborn Studios Ltd) v Hackney LBC; R. (on the application of Del Brenner) v Hackney LBC [2017] EWHC 2823 (Admin).* This case considered the question of fairness with regard to consultation in planning applications and the need to re-consult following modifications being made to an application. The judge determined that:

[8] https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/filedownload.aspx?application_number=2024/91202&file_reference=1057730
[9] https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/filedownload.aspx?application_number=2024/91202&file_reference=1046686
[10] https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/filedownload.aspx?application_number=2024/91202&file_reference=1045332
[11] https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/filedownload.aspx?application_number=2024/91202&file_reference=1045675

> *…it is necessary to consider whether not doing so deprives those who were entitled to be consulted on the application of the opportunity to make any representations that, given the nature and extent of the changes proposed, they may have wanted to make on the application as amended."*[12]

Clearly, if those who are responding to the consultation are not clear what it is that they are being asked to consult on, they are being deprived of the opportunity to make any representations they may wish to make. This is a clear breach of the public law duty of fairness and, again, would leave any permission voidable at judicial review.

Failure to comply with the Local Plan

Notwithstanding the manifold errors above which require that the LPA refuse to entertain the application, this application does not comply with the Local Plan. Specifically, it conflicts with Policy LP11, which concerns Housing Mix and Affordable Housing. This policy sets a target of 20% affordable homes, and states:

"All proposals for housing must aim to provide a mix (size and tenure) of housing suitable for different household types which reflect changes in household composition in Kirklees in the types of dwelling they provide, taking into account the latest evidence of the need for different types of housing."

The policy justification goes on to explain that such an aspiration continues to apply for smaller schemes, such as the one proposed here.[13] The current application makes no provision at all for affordable, or even mixed, housing provision. Indeed, the application form – to the extent that it can be relied upon, given the errors it contains – indicates the proposed development will aim to deliver 2 3-bedroom houses and 5 houses with 4+ bedrooms. As per Kirklees Council's most recent Annual Monitoring Report, houses with 3+ bedrooms accounted for 68.7% of all house completions in 2022/2023.[14] It is therefore hard to understand how the proposed development will contribute to the Council's policy of achieving a housing mix.

[12] §79
[13] https://www.kirklees.gov.uk/beta/planning-policy/pdf/local-plan-strategy-and-policies.pdf, §8.30
[14] https://www.kirklees.gov.uk/beta/planning-policy/pdf/annual-monitoring/Local-Plan-Authority-Monitoring-Report-2022-23.pdf

1. The tree with the TPO number 01/00/t31 (x 418744 y 409407) is missing from the plans.
2. Local character?