



PB Planning

Cliff Hill, Denby Dale

**STATEMENT OF CASE**

January 2025

Strategy > Partnership > Delivery

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## 1.0 INTRODUCTION

- 1.1 This statement has been prepared in association with an appeal by Nick Gould and JGC (1980) (the Appellant) against the refusal of Kirklees Council (the Council) to grant full planning permission for residential development for Land at Cliff Road, Denby Dale.
- 1.2 The full description of the proposal as provided by the Council in their Decision Notice (Appendix A) is as follows: -  
***“ERECTION OF RESIDENTIAL DEVELOPMENT FOR 62 DWELLINGS INCLUDING GROUTING REMEDIAL WORKS FOR GROUND STABILISATION TO FACILITATE CONSTRUCTION OF DWELLINGS WITH ASSOCIATED HARD AND SOFT LANDSCAPING”***
- 1.3 The application (Ref. 2023/92191) was validated on the 30<sup>th</sup> August 2023. The application was determined by the Council's planning committee (following a recommendation for approval) on the 20<sup>th</sup> June 2024 and the decision notice was issued on the 23<sup>rd</sup> July 2024.
- 1.4 The one reason for refusal given by the Council was as follows: -  
***The ground works, removal of coal, and remediation associated with the proposed development would result in an unacceptable number of vehicle movements and unacceptable environmental impacts. In addition, due to unknown conditions beneath the site, there is a lack of information that prevents it being fully ascertained what the environmental impacts of the aforementioned works would be. Furthermore, it has not been demonstrated that the site is suitable for residential development. The proposed development is therefore contrary to Policies LP24, LP36, LP52 and LP53 of the Kirklees Local Plan and chapters 8, 15 and 17 of the National Planning Policy Framework***
- 1.5 A full list of the documentation submitted alongside the planning application and considered by the Council when determining the application is provided on pages 2-5 of the enclosed Decision Notice.
- 1.6 This statement puts forward the overall planning case in support of the Appeal proposals based on a comprehensive review of all material planning considerations associated with the Council's identified reason for refusing the planning application.
- 1.7 In doing so it considers the compliance of the proposals with national planning guidance, the development plan, and any other relevant material considerations.

## 2.0 APPEAL SITE PLANNING CONTEXT

### THE APPEAL SITE

- 2.1 The Appeal Site lies to northeast of Cumberworth Lane, to the west of existing dwellings on Leak Hall Crescent, and to the northwest of existing dwellings on Springhead Gardens. The appeal site is undeveloped, grassed agricultural land, and forms part of the northern edge of the village of Denby Dale.
- 2.2 The site slopes downhill from north to south, and measures approximately 1.9 hectares in size. A public footpath (DEN/61/10) runs along its northern boundary, beyond which there is further grassland and trees. The application site has a narrow street frontage between existing buildings on Cumberworth Lane. Although land directly to the south is also grassed, most land to the south is residential in character.
- 2.3 The site comprises the majority of site allocation HS144 (allocated for residential development in the adopted Kirklees Local Plan). Springhead Gardens, a parcel of land to the south of the application site, and a further parcel to the north of Leak Hall Crescent are within the same site allocation. The precedent that the development of the 'Springhead Gardens' site establishes in respect of the appeal proposals is discussed further in Section 4 of this statement.
- 2.4 All of the site is within a wider mineral safeguarding area relating to surface coal resource (SCR) with sandstone and/or clay and shale. The majority of the site is within the Development High Risk Area as defined by the Coal Authority, while other parts are within the Low Risk Area. A 250m buffer zone (of a historic landfill site) extends into the western edge of the site.
- 2.5 There are no designated heritage assets within the site, however the Wesleyan Methodist Church to the west is Grade II listed.
- 2.6 The site is located within Flood Zone 1 and is therefore generally at low risk of flooding. A watercourse runs along the site's northeastern boundary (to the rear of existing dwellings on Leak Hall Crescent). Yorkshire Water sewers exist beneath Cumberworth Lane and other nearby streets.
- 2.7 The Wildlife Habitat Network covers almost all of the site.
- 2.8 All of the site is within the Impact Risk Zones of the Dark Peak and Denby Grange Colliery Ponds Sites of Special Scientific Interest. Bats, twites and swifts are present at and around the site. A Tree Preservation Order (TPO 17/21/t1) protects a tree within the site.
- 2.9 The site is not located within an Air Quality Management Area (AQMA).

- 2.10 Regarding the social and other infrastructure currently provided and available in Denby Dale, the area has a number of shops, food and drink establishments, education and sports facilities, places of worship, a community hall, a community library, open spaces, and other facilities. Denby Dale railway station is a 600m walk (approximately) from the proposed entrance to the application site. The nearest bus stops are on Cumberworth Lane to the south of the site, and other bus stops further to the south on Wakefield Road are served by several bus routes.
- 2.11 The Site represents a natural infill within an wider residential area. The site is located within a highly sustainable location for residential development.

### **THE PROPOSED DEVELOPMENT**

- 2.12 The proposals relate to a residential development comprising 62 dwellings, with associated access, open space, and landscaping.
- 2.13 To stabilise the site, the Appellant proposes to use the commonly used method of grouting and capping. Additionally, excavation may be necessary at the centre of the site. This replicates the required process undertaken prior to the construction of other residential development sites contained within the same housing allocation and within proximity of the site. This point is discussed further in Section 4 of this statement.
- 2.14 The proposed site layout includes a vehicular access provided from Cumberworth Lane, with an estate road extending into the site, off which two branches are proposed. A mix of detached, semi-detached, and terraced housing would line the development's roads. Open spaces are proposed at the site entrance and along the site's northeastern boundary.
- 2.15 Of the 62 units proposed, four would be detached. The following unit size mix is proposed: -
- 3 x 1-bedroom homes
  - 12 x 2-bedroom homes
  - 24 x 3-bedroom homes
  - 23 x 4-bedroom homes
- 2.16 12 of the proposed dwellings would be affordable, provided as a mix of affordable rent homes, First Homes, and other intermediate homes. These are proposed at units 8 to 13, 34 to 36 and 60 to 62, and would therefore be located at the site entrance and along the application site's northwestern edge.

### **PLANNING POLICY CONTEXT**

- 2.17 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that: -
- “If regard is to be had to the development plan for the purposes of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”***

- 2.18 The Kirklees Local Plan (2019) is the statutory development plan for the Kirklees local authority area.
- 2.19 The appeal site comprises the largest part of Site Ref. HS144, which is allocated for residential development in the Local Plan. For the entirety of the site allocation, the Local Plan sets out an indicative housing capacity of 113 dwellings within the 3.24 hectares of allocated land.
- 2.20 Site allocation Ref. HS144 identifies the following constraints relevant to the site:-
- Third party land required to achieve sufficient visibility splays
  - The provision of a pedestrian footway is required across the site frontage at Leak Hall Lane
  - Public right of way crosses the site
  - Site is close to listed buildings
  - Site is close to an archaeological site
  - Part/all of the site is within a High Risk Coal Referral Area
- 2.21 The principle of residential development at the site is established by its allocation in the adopted Kirklees Local Plan.
- 2.22 The Council can not currently demonstrate a 5-year supply of deliverable residential development sites. This is referred to in our assessment of the site's deliverability below and within the following sections of this statement.

#### **PLANNING APPLICATION CONTEXT & DELIVERABILITY FOR RESIDENTIAL DEVELOPMENT**

- 2.23 The key details associated with the planning application context and the site's deliverability for residential development are outlined within the Officer's June 2024 Committee Report. The report is enclosed in Appendix B.
- 2.24 In order to demonstrate the site's deliverability for residential development, utilising the committee report, we have undertaken an assessment of the sites deliverability in accordance with the definition provided within Annex 2 of the revised National Planning Policy Framework (NPPF) which states that: -
- To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years***
- 2.25 It is our clear view that the site can be considered as a **Deliverable** residential development site on account the following assessment of suitability, availability, and achievability.

Suitability

- 2.26 The site is allocated for residential development under Site Allocation Ref. HS144 within the adopted Kirklees Local Plan. The Kirklees Local Plan is the statutory development plan for the Kirklees District local authority area. Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. Accordingly, the principle of residential development at the site is established by its allocation in the adopted Kirklees Local Plan.
- 2.27 Paragraph 11 c) of the NPPF identifies that decisions should apply a presumption in favour of sustainable development which means approving proposals that accord with an up-to-date development plan without delay. Whilst the development proposals accord with the development plan, footnote 8 to Paragraph 11 d) of the NPPF also establishes that the development plan is currently out of date by virtue of the Council being unable to demonstrate a five year supply of deliverable housing sites. Accordingly, the Council are required to grant planning permission unless: -
- i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed; 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, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places, and providing affordable homes, individually or in combination.*
- 2.28 The site is not located within a protected area and does not have any impact on assets of particular importance.
- 2.29 It is the Appellant's clear position that there are no adverse impacts associated with the development which would **significantly and demonstrably** outweigh the benefits, especially when taking into account either individually or in combination that the site is located within a sustainable location; will deliver a density which makes an effective use of land when considered against the site allocation capacity; will deliver a well-designed housing scheme; and will provide a policy compliant level of affordable homes.
- 2.30 The most succinct way of demonstrating this position is through summarising the conclusions reached within the 20<sup>th</sup> June 2024 planning officer committee report associated with the scheme. The report is enclosed in Appendix B and the key elements are summarised as follows: -
- Housing Need & Delivery – Paragraph 11. 7 - A residential development of 62 dwellings would make a significant contribution towards meeting identified needs. This attracts significant weight in the balance of material planning considerations relevant to the current application.

- Principle of Development – Paragraph 11.13 – The principle of residential development at the application site is considered acceptable, subject to the further discussion of other relevant matters later in this report.
- Quantum & Density – Paragraph 11.26 - it is considered that the proposed density - while below the figure set out in Local Plan policy LP7 – is acceptable. The development represents an efficient use of scarce allocated land.
- Sustainable Location – Paragraph 11.28 – The application site is considered to be a sustainable location for residential development, as it is on the edge of an existing, established settlement that is served by public transport and other (albeit limited) facilities. As noted above, Denby Dale has a number of shops, food and drink establishments, education and sports facilities, places of worship, a community hall, a community library, open spaces, and other facilities. Denby Dale railway station is a 600m walk (approximately) from the entrance to the application site. The nearest bus stops are on Cumberworth Lane to the south of the application site, and other bus stops further to the south on Wakefield Road are served by several bus routes. Given these facilities, at least some of the daily, social and community needs of residents of the proposed development could be met locally (within walking distance), and combined trips could be made, which further indicates that residential development at this site can be regarded as sustainable.
- Climate Change – Paragraph 11.29 – A Climate Change Statement has been submitted with the application. This includes commitments regarding the use of air source heat pumps, the specification of energy-efficient electrical goods, the provision of instructions for residents, the implementation of a carbon reduction plan during construction, the orientation of dwellings to maximise solar gain (where possible), the implementation of measures to reduce flood risk, the implementation of water-saving measures, and the inclusion of appropriate landscaping incorporating biodiversity enhancements.
- Sustainable Development – Paragraph 11.25 - In light of the assessment set out above and later in this report, it is considered that the proposal can be regarded as sustainable development.
- Urban Design Matters – Paragraph 11.41 - The proposed development's internal layout is considered to be legible and logical. It appropriately responds to the site's topography (as far as is possible, given the need to achieve appropriate road gradients) and other constraints such as the TPO-protected tree
- Urban Design Matters – Paragraph 11.42 - The proposed typologies and house types are considered appropriate for this site. A welcomed mix of terraced, detached, and semi-detached dwellings is proposed. This is reflective of the variety that surrounds the application site and would ensure that a repetitive or monotonous street scene is not created.
- Urban Design Matters – Paragraph 11.43 - The proposed elevations are considered acceptable for this location. The proposed pitched roofs and fenestration arrangements are suitably reflective of local vernacular, while other details (including the proposed forward-facing gables and timber entrance canopies) would add interest to the elevations and street scene.
- Residential Quality & Amenity – Paragraph 11.55 – In terms of noise, although residential development would increase activity and movements to and from the site, given the quantum of development proposed, and the number and locations of new vehicular and pedestrian entrances that new residents would use to access the site, it is not considered that neighbouring residents would be significantly impacted. The proposed residential use

is not inherently problematic in terms of noise and is not considered incompatible with existing surrounding uses in relation to noise.

- Highways & Transportation Issues – Paragraph 11.90 - It is considered that the impact of the traffic generated by the development would have no material or severe impact on the operation or safety of the local highway network.
- Highways & Transportation Issues – Paragraph 11.100 - The site access proposals and associated works on Cumberworth Lane are considered acceptable and would provide an improvement over the current arrangements.
- Flood Risk & Drainage – Paragraph 11.130 & 11.131 - The Lead Local Flood Authority (the LLFA) support the application. Yorkshire Water have not objected to the proposals.
- Environmental Health Considerations – Paragraph 11.133 - The applicant's air quality methodology is considered by KC Environmental Health to be acceptable, and no further mitigation measures are required for this development.
- Environmental Health Considerations – Paragraph 11.136 - Regarding noise during the remediation and construction phase, works would be restricted to appropriate hours, and the applicant's proposed construction methodology (to the extent it has been detailed to date) is considered acceptable.
- Environmental Health Considerations – Paragraph 11.139 – Conditions are recommended requiring the submission of management plans for both the extraction and construction phases of development. Both plans would need to specify hours of working, and control noise and vibration, dust, and artificial lighting to minimise impacts upon neighbouring residents.
- Site Contamination & Stability – Paragraph 11.151 – It is recommended that other conditions relating to the remediation of the site's coal mining legacy be applied in accordance with the forthcoming further comments of the Coal Authority. Subject to appropriate details being submitted pursuant to these conditions, it is considered that the applicant's proposals would satisfactorily stabilise the site (in accordance with the NPPF and the Local Plan), rendering it able to accommodate residential development.
- Ecological Considerations – Paragraph 11.164 – Subject to the biodiversity net gain contribution being secured, and conditions being applied in relation to ecological mitigation and landscaping, it is considered that the proposed development is acceptable in terms of its ecological impact.
- Planning Obligations – Paragraph 11.179 – The following planning obligations securing mitigation (and the benefits of the proposed development, where relevant to the balance of planning considerations) would need to be included in a Section 106 agreement: -
  - Affordable housing – 12 affordable dwellings (seven social/affordable rent, three First Homes, and two others intermediate) to be provided in perpetuity.
  - Open space – Off-site contribution of up to £120,055 to address shortfalls in specific open space typologies.
  - On-site open space inspection fee – £250.
  - Education – Contribution of £97,444 towards secondary provision.

- Sustainable transport – Measures to encourage the use of sustainable modes of transport, including: -
  - £49,335.88 contribution towards sustainable travel measures;
  - Implementation of a Travel Plan;
  - £10,000 towards Travel Plan monitoring; and
  - Provision of public access between the development's estate road and public footpath DEN/61/10 (and maintenance of links) in perpetuity.
- Biodiversity – Contribution of £147,775 towards off-site measures to achieve biodiversity net gain.
- Management and maintenance – The establishment of a management company for the management and maintenance of any land not within private curtilages or adopted by other parties, of infrastructure (including surface water drainage until formally adopted by the statutory undertaker, and of the site's existing watercourse) and of street trees (if planted on land not adopted).
- Conclusion – Paragraphs 12.1 to 12.5 – The principle of residential development at this site is considered acceptable. The applicant has satisfactorily addressed the concerns set out in the previous reasons for refusal (ref: 2022/91911), and concerns raised during the life of this application. The site has constraints in the form of adjacent residential development (and the amenities of these properties), access, topography, drainage, ecological considerations, heritage, and other matters relevant to planning. These constraints have been sufficiently addressed by the applicant or would be addressed at conditions stage. The proposed development has been assessed against relevant policies in the development plan and other material considerations. Subject to conditions, it is considered that the proposed development would constitute sustainable development (with reference to paragraph 11 of the NPPF) and is therefore recommended for approval.

2.31 It is clear that it was the view of the Council's planning officers that the appeal site represents a suitable site for residential development. There are no objections to the development proposals from any of the Council's technical officers or statutory consultees.

2.32 A number of planning conditions were proposed within the report. All of which were discussed with the Appellant and agreed at the time. The Appellant can again confirm their acceptance of these conditions.

2.33 However, with specific reference to the reason for refusal, should the Council consider it necessary the applicant is happy to work with them to agree amended conditions through the Statement of Common Ground which would secure the following: -

- We can confirm that the appellant does not intend to dispose of any coal extracted from the site for commercial purposes. Due to the nature of the works involved, it is expected that the coal/material extracted from the site will be inert on account of the process involved and the geo-environmental composition of the site's ground conditions. Accordingly, the construction process will replicate other recent developments within this area of the District which did not have an unacceptable environmental impact.

- Whilst proposed Conditions 3, 4, and 7 provide a comprehensive list of requirements that need to be submitted as part of the Groundworks Management Plan, Construction Environmental Management Plan, and Construction Traffic Access, should the Council consider that the previously proposed and agreed conditions need to be amended to provide further assurance in respect of working hours; vehicle routing; limiting the number of construction vehicles accessing the site on a daily basis; and/or restricting the hours when construction traffic can access the site; then such details can be discussed with the Appellant and included within a Statement of Common Ground.

2.34 On account of the evidence provided above it is unequivocal that the appeal site represents a suitable site for residential development. This position is also corroborated by the Council's previous granting of planning permission of a separate housing development which is sited within the same housing allocation (Land at Leak Hall Crescent - Application Ref. 2017/93798 – now known as Springhead Gardens). A site which shares the same geo-environmental composition as the application site, and which has since been constructed without any of the perceived environmental impacts that were referred to in the original reason for refusal associated with the planning application at this site. Further information is provided in respect of this site in Section 4 of this statement.

Availability

2.35 The site is available for residential development now as there are no legal or ownership constraints as the landowners by virtue of this Appeal and the previous planning applications are expressing an intention to develop the site for residential use within the next 5-years.

Achievability

2.36 A viable housing development can be delivered at the site within the next 5 years. The landowners are in discussions with a number of developers, including national housebuilders, who are interested in developing the site for residential use. Each of the interested parties have had the benefit of being able to review the technical reports submitted alongside the previous planning application, which has enabled them to undertake their own economic viability assessment of the site, including an assessment of any site-specific abnormal costs. The site is considered to be achievable for residential development now as there is a realistic prospect that the site can deliver new homes within the next 5 years.

Deliverability Conclusion

2.37 The site can be considered a deliverable residential development site and its release would deliver significant economic and social benefits in the form of: -

- Creating a sustainable community which contributes to the District's market and affordable housing needs, offering existing and potential residents of the District the opportunity to live in the house and location they desire.

- New construction expenditure in the region of £9m creating substantial direct and indirect employment opportunities of approximately 39 new direct jobs and 54 new indirect jobs of which 70% are usually retained in the local area.
- Sustaining and improving Kirklee's labour market through delivering new homes in the right location.
- Increasing retail and leisure expenditure in the local area by approximately £1.4m per annum, creating 9 jobs in these sectors.
- Provision of funding towards public services from an estimated figure of £500k from the Government's new homes bonuses & annual council tax payments of circa £90k per annum.

2.38 The development of the site will deliver a number of socio-economic benefits to Denby Dale and the wider District within 5-years of the approval of the planning application, alongside making an important contribution to the Council's current 5-year housing land supply deficit.

## **CONCLUSION**

2.39 The principle of residential development at the site is established by its allocation in the adopted Kirklees Local Plan.

2.40 The proposals can deliver a comprehensive development of market and affordable housing alongside a number of environmental and community benefits to meet the needs and aspirations of the local area.

2.41 The development proposals are situated in a suitable and highly sustainable location in respect of existing settlement form and there are no technical or environmental (built and natural) constraints that would preclude the development of the site. The site is available for development now and is achievable as new homes would be delivered at the site within the next 5-years should the Appeal be allowed.

2.42 It is clear that the only matter to be considered in respect of this Appeal are those outlined within the Council's one reason for refusal. The development proposals can therefore be considered to align with all other relevant policies of the adopted Local Plan and national planning guidance.

2.43 Accordingly, the following sections of this statement respond directly to the Council's one reason for refusing the application, and in doing so consider the development proposals against relevant national and local planning policy guidance.

### 3.0 REVISED NATIONAL PLANNING POLICY FRAMEWORK

- 3.1 The revised NPPF was published on the 12<sup>th</sup> December 2024. Paragraph 231 of the guidance makes clear that the policies contained within it are material considerations which should be taken into account in dealing with applications from the day of its publication. In this regard, below we provide a synopsis of the key revisions made to the NPPF which impact upon the appeal proposals.
- 3.2 There is an overall rhetoric of accelerating the delivery of new homes across the country, and affordable homes in particular. The development will of course deliver a policy compliant 20% affordable homes across a range of affordable tenures.
- 3.3 With regard to the changes to the Presumption in Favour of Sustainable Development outlined Paragraph 11 d), whilst it is our position that the development proposals fully accord with the Development Plan (and would therefore fall to be assessed against paragraph 11(c) in planning terms), there is a strengthening of the objective to accelerate the delivery of affordable homes in the revised Paragraph 11 d) where the provision of affordable homes is specifically identified as a matter that decision-taking should pay a particular regard to. The development will of course deliver a policy compliant 20% affordable homes across a range of affordable tenures.
- 3.4 With regards to *Delivering A Sufficient Supply of Homes*, Paragraph 61 presents amended wording which strengthens the Government's approach to the delivery of new homes where it confirms that the overall aim should be to meet an area's identified housing need, removing the reference to 'as much.....need as possible". The site is of course allocated for housing in the adopted Local Plan and its development would make an important contribution to meeting the District's housing needs.
- 3.5 The amendments to Paragraph 62 make clear that to determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning practice guidance. On the same day, the Government published the results of the new standard method calculation for each of the country's local authority areas. For the Kirklees area the annual housing requirement has increased to **1,840 homes** per annum.
- 3.6 With regard to Maintaining Supply & Delivery of new homes (Paragraph 78), the Council published a Housing Delivery Test Action Plan in May 2024 (enclosed in Appendix C) in response to the Council's failure to meet the 2022 Housing Delivery Test. The Action Plan outlines in Paragraph 3.6 that at that point in time the Council believed they had a **3.96 year** supply of deliverable housing land. Due to the increase in the District's annual housing needs the Council will continue to be unable to demonstrate a 5-year land supply (5YLS) of deliverable housing sites. However, the implication of the revised NPPF is an increase in the Council's

5YLS deficit by a minimum of 550 homes (or 660 homes with the 20% buffer included). This would increase the Council's 5YLS shortfall from 2,800 homes to **3,460 homes**.

- 3.7 Furthermore, in the context of the Housing Delivery Test, the latest publication by the Government identifies that the Council's housing delivery has reduced to just **54%** of the total number of homes required over the previous 3-years. These results not only trigger the presumption in favour of sustainable development, but they also provide clear evidence of the acute housing needs of the District.
- 3.8 Accordingly, the presumption in favour of sustainable development outlined in Paragraph 11 would continue to be engaged and the Council's action plan for meeting this shortfall should surely focus on the approval of applications on allocated housing sites where there is no strong reason for refusal.
- 3.9 Furthermore, whilst we would argue that the proposals fully accord with the development plan (and would therefore fall to be assessed against paragraph 11(c) in planning terms), when considering the scheme against the requirements of Paragraph 11 d), as the site is not located within a protected area and does not have any impact on assets of particular importance, the evidence submitted alongside the planning application and the Officer's committee report outlines the clear position that there are no adverse impacts associated with the development of the site which would **significantly and demonstrably** outweigh the benefits, including those associated with land instability and remediation works.
- 3.10 It is clear that the revisions made to the NPPF give even greater weight to the benefits associated with the delivery of new homes on this allocated housing site.
- 3.11 It is Appellant's position that the development clearly accords with national planning policies and the relevant policies of the Kirklees Local Plan, meaning this appeal should be allowed without delay.
- 3.12 Further evidence to corroborate this position is provided in the following section of this statement.

## 4.0 RESPONSE TO REASON FOR REFUSAL

4.1 This section of the statement responds to the Council's one reason for refusal.

4.2 The Council's reason for refusal is again outlined as follows: -

***The ground works, removal of coal, and remediation associated with the proposed development would result in an unacceptable number of vehicle movements and unacceptable environmental impacts. In addition, due to unknown conditions beneath the site, there is a lack of information that prevents it being fully ascertained what the environmental impacts of the aforementioned works would be. Furthermore, it has not been demonstrated that the site is suitable for residential development. The proposed development is therefore contrary to Policies LP24, LP36, LP52 and LP53 of the Kirklees Local Plan and chapters 8, 15 and 17 of the National Planning Policy Framework***

4.3 With specific regard to the Local Plan policies referenced within the reason for refusal, we provide our initial comments as follows: -

- **Policy LP24** – The policy relates to 'Design' and provides a number of criteria which seek to ensure that good design is at the core of all proposals in the district with specific reference to high quality, green, accessible, inclusive, and safe design. There is no reference in the policy to construction traffic/vehicle movements or ground stability conditions in respect of the construction process. We are therefore unsure why this condition is included in the reason for refusal. We will seek to agree a Statement of Common Ground with the Council as part of the appeal process which clarifies this position for the Appeal Inspector.
- **Policy LP36** – Relates to 'Proposals For Minerals Extraction'. As identified in Section 2 of this statement, we can confirm that the Appellant does not intend to extract or dispose of any coal found at the site through the construction process for commercial purposes. It is expected that the coal/material extracted from the site will be inert due to the nature of the construction works involved and the geo-environmental composition of the site's ground conditions. Accordingly, the construction process will replicate other recent developments within this area of the District which did not have an unacceptable environmental impact. Furthermore, notwithstanding this position, in respect of the criteria outlined within Part 2 of the Policy, whilst proposed Conditions 3, 4, and 7 provide a comprehensive list of requirements that need to be submitted as part of the Groundworks Management Plan, Construction Environmental Management Plan, and Construction Traffic Access, should the Council consider that the previously proposed and agreed conditions need to be amended to provide further assurance in respect of working hours; vehicle routing; limiting the number of construction vehicles accessing the site on a daily basis; and/or restricting the hours when construction traffic can

access the site; then such details can be discussed with the Appellant and included within a Statement of Common Ground.

- **Policy LP52** – The policy refers to ‘Protection and Improvement of Environmental Quality’ and states that proposals which have the potential to increase pollution from noise, vibration, light, dust, odour, shadow flicker, chemicals and other forms of pollution or to increase pollution to soil must be accompanied by evidence to show that the impacts have been evaluated and measures have been incorporated to prevent or reduce the pollution, so as to ensure it does not reduce the quality of life and well-being of people to an unacceptable level or have unacceptable impacts on the environment. The evidence provided below will respond to this policy directly, referring to the evidence submitted alongside the original planning application, the Council’s committee report, and the precedent established by other recently approved planning applications associated with sites located within close proximity of the site.
- **Policy LP53** – The policy relates to ‘Contaminated and Unstable Land’ and states that development on land that is unstable, currently contaminated or suspected of being contaminated due to its previous history or geology, or that will potentially become contaminated as a result of the development, will require the submission of an appropriate contamination assessment and/or land instability risk assessment. The policy further states that for developments identified as being at risk of instability, or where there is evidence of contamination, measures should be incorporated to remediate the land and/or incorporate other measures to ensure that the contamination/instability does not have the potential to cause harm to people or the environment. Again, the evidence provided below will respond to this policy directly, referring to the evidence submitted alongside the original planning application, the Council’s committee report, and the precedent established by other recently approved planning applications associated with sites located within close proximity of the site.

4.4 The above policies and the justification text associated with them are provided within Appendix D for ease of reference.

4.5 Following our review of the reason for refusal and the policies referenced within it, the evidence provided within this section of the statement will confirm that: -

- The ground works, removal of coal, and remediation associated with the proposed development will not result in an unacceptable number of vehicle movements.
- The ground works, removal of coal, and remediation associated with the proposed development will not result in unacceptable environmental impacts.

- The technical evidence submitted alongside the planning application confirms that the development proposals will not have an unacceptable impact on the environment and that the correct mitigation measures will be secured by planning condition to ensure that the site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. The submitted information provides a further layer of information beyond that which is usually submitted prior to the determination of a planning application and in doing so delivers assurances that the concerns raised by local residents will be appropriately mitigated. Further evidence to support this position is provided in the 3<sup>rd</sup> party independent peer review submitted alongside this appeal and our review of other planning applications within close proximity of the site.

## **REVIEW OF THE POSITION OUTLINED IN THE COUNCIL'S JUNE 2024 COMMITTEE REPORT**

- 4.6 The issues raised within the reason for refusal relate to matters raised by members of the Council when the application was initially heard at planning committee on the 16<sup>th</sup> May 2024. At the committee members resolved to defer a decision on the application so that more detail could be provide in relation to: -
- How much material would be removed from the site;
  - How much material would be imported into the site (as grouting or other material);
  - How the above operations would be carried out;
  - How environmental impacts would be mitigated; and
  - Assurance in respect of the risk associated with combustible material being left on site.
- 4.7 In response to the reasons for deferral, the appellant submitted further information to address each of the five matters listed above. This was included in the letter from GRM Development Consultants Ltd dated 31<sup>st</sup> May 2024 which is enclosed in Appendix E for ease of reference. A helpful summary of this information is set out at section 4 of the 20<sup>th</sup> June 2024 committee report. The summary is replicated below but with additional commentary from the appellant where considered necessary.
- 4.8 Prior to the submission of the appeal the Appellant requested that an independent 3<sup>rd</sup> party undertake a peer review of the documentation submitted alongside the planning application and the Council's review of it. The 'peer review' was undertaken by a geo-environmental expert with 25 years' experience in site investigation and remediation mainly within Yorkshire and the North East. The result of this review is firmly that the documentation submitted alongside the original application, and the Council's Environmental Health Officer's (EHO) review of it, were robust and that the site can be developed without any adverse environmental impacts. The 'peer

review' is enclosed with this appeal within Appendix F. The full summary of the 'peer review' is provided below, but it is also referenced throughout this section.

*How much material would be removed from the site*

4.9 Paragraph 4.2 of the committee report states that *“the appellant’s response states that, based on an extraction area\_of approximately 4,500sqm, a coal seam of between 1m and 2m in thickness, an assumed average seam thickness of 1.4m, and assuming that 30% of the seam has been worked, approximately 4,400 cubic metres of material is anticipated to be extracted. The applicant has stated, however, that this figure is likely to change as works progress and as more information becomes available.”*

4.10 Prior to submission of the appeal the appellant requested a 3<sup>rd</sup> party peer review of the information submitted alongside the planning application. Further details are provided below, but in essence the peer review agrees with the position outlined within the committee report. However, with specific regards to the reason for refusal, this issue is more related to how the material would be removed and the vehicle trips associated with this process, rather than how much material would need to be removed. We provide our full response to this point when providing full details of the 3<sup>rd</sup> party peer review below.

*How much material would be imported into the site (as grouting or other material)*

4.11 Paragraph 4.3 of the committee report states that the *‘applicant’s response document states that, based on approximately 300 primary holes and an additional 250 secondary holes being drilled, an anticipated hole depth of approximately 20m, and an approximate volume of 3 cubic metres of grout per treatment hole, a volume of 1,650 tonnes of material would need to be brought to the site. The applicant has stated, however, that this figure is likely to change as works progress and as more information becomes available, and that a more refined estimate may be calculated following additional borehole investigations’*

4.12 Paragraph 4.4 further states that *the applicant has added that this material would consist of a mix of pulverised fuel ash (PFA), Ordinary Portland Cement (OPC) and sand.*

4.13 Again, the 3<sup>rd</sup> party peer review agrees with the information that was submitted alongside the planning application and the position outlined within the committee report. However, with specific regards to the reason for refusal, this issue is more related to how the material would be imported and the vehicle trips associated with this process, rather than how much material would need to be imported to the site.

How the above operations would be carried out

4.14 The committee report includes the following details in respect of this matter: -

- Paragraph 4.5 - *The applicant has submitted a site cross-section, illustrating the existing and proposed ground levels and the degree of change that would occur following excavation.*
- Paragraph 4.6 - *The applicant's response document states that different grouting treatments are proposed for different parts of the site, determined by risk. Grouting is not proposed beneath private gardens and open spaces, some grouting is proposed beneath the development's estate roads, and the highest degree of intervention is proposed beneath the new dwellings. A plan attached to the applicant's document (although based on a superseded layout) illustrates this approach.*
- Paragraph 4.7 - *On site, a mixing plant would be used to prepare the grout. The applicant proposes to use "large tracked rotary rigs" (similar in size to some 360 excavators – the applicant has provided a photograph) which would drill the treatment holes. Rubber grout pipes would carry the grout from the on-site mixing plant to the holes, and the grout would be injected into the holes. Tertiary holes may need to be drilled to check and prove the success of the grouting. Three rigs would be on site at any one time.*
- Paragraph 4.8 - *The removal of material from the application site would necessitate approximately 550 HGV loads being moved from the site (according to the applicant's estimate).*
- Paragraph 4.9 - *The bringing of material to the application site would necessitate further movements to and from the site – the applicant has stated that, at worst, this would involve three deliveries a day (by HGV) for the duration of the drilling and grouting works.*
- Paragraph 4.10 - *Regarding works and construction traffic routing, officers have advised the applicant that this should make use of higher-order roads as much as possible. That would mean using Wakefield Road (the A636) and only 175m of Cumberworth Lane. It would also mean turning right into the site (across a lane of traffic) and turning left out of the site. Risks involved with HGVs crossing a lane of traffic when turning this can be addressed through signage, bankspeople and temporary traffic lights where appropriate.*

- 4.15 Again, the 3<sup>rd</sup> party peer review agrees with the information that was submitted alongside the planning application and the position outlined within the committee report. Indeed, the level of information provided is akin to that which is usually submitted to discharge detailed planning condition associated with the construction management process. Notwithstanding this point, as the information was reviewed by the Council's Planning and Environmental Health Officers and considered acceptable by them (as evidenced in the officer's recommendation for approval), it is clear that the Council's relevant expert officers considered the appellant's proposed construction operations to be acceptable. No further evidence has been provided by the Council to date to refute this position. Indeed, no evidence has been provided at this point to outline how the Appellant's proposed construction process could have an unacceptable environmental impact, especially given the construction traffic routing was previously agreed with officers.
- 4.16 We outline below that the result of the 3<sup>rd</sup> party peer review is firmly that the documentation submitted alongside the original application, and the Council's Environmental Health Officer's (EHO) review of it, were robust and that the site can be developed without any adverse environmental impacts. In the same manner as the recently constructed residential development site at Leak Hall Crescent which is part of the same housing allocation (Ref. HS144). Further details of which are provided below.
- 4.17 Finally, whilst proposed Conditions 3, 4, and 7 provide a comprehensive list of requirements that need to be submitted as part of the Groundworks Management Plan, Construction Environmental Management Plan, and Construction Traffic Access, should the Council consider that the previously proposed and agreed conditions need to be amended to provide further assurance in respect of working hours; vehicle routing; limiting the number of construction vehicles accessing the site on a daily basis; and/or restricting the hours when construction traffic can access the site; then such details can be discussed with the Appellant and included within a Statement of Common Ground.

*How environmental impacts would be mitigated*

- 4.18 The committee report outlines in Paragraphs 4.11 to 4.13 that the appellant had previously agreed to adhere to the Council's following recommendations in respect of working hours, the submission of a detailed Groundworks Management Plan and a Construction Environmental Management Plan, and to a traffic management plan which routed construction traffic along higher order routes: -
- Paragraph 4.11 - *The applicant has agreed to adhere to the working hours recommended by KC Environmental Health (namely: 07:30 to 18:30 hours Mondays to*

*Fridays, 08:00 to 13:00 hours Saturdays, and no working on Sundays of public/bank holidays).*

- Paragraph 4.12 – *Conditions requiring the submission and implementation of a Groundworks Management Plan and a Construction (Environmental) Management Plan are recommended. These would secure measures regarding the control of noise, dust, and other pollutants, and would control other matters relevant to environmental impacts including the prevention of mud and debris being spread along highways, and street sweeping.*
- Paragraph 4.13 - *Routing works and construction traffic along higher-order roads can additionally help to minimise amenity and environmental impacts.*

4.19 Again, the 3<sup>rd</sup> party peer review agrees with the information that was submitted alongside the planning application and the position outlined within the committee report. Indeed, the appellant agreed to adhere to the specific requirements which were recommended by the Council's Planning and Environmental Health Officers and which were due to be secured via planning condition.

4.20 Of note, the proposed conditions sought to be imposed by the Council in respect of the Appeal proposals are far more comprehensive than those sought at the Leak Hall Crescent site (a recently completed development site located within the same allocation as the Appeal site - Site Ref HS144), which provides further assurances that robust mitigation measures will be implemented at the Appeal site prior to and throughout the entire construction process. Further details are provided in respect of the Leak Hall Crescent site below.

4.21 Again, whilst proposed Conditions 3, 4, and 7 provide a comprehensive list of requirements that need to be submitted as part of the Groundworks Management Plan, Construction Environmental Management Plan, and Construction Traffic Access, should the Council consider that the previously proposed and agreed conditions need to be amended to provide further assurance in respect of working hours; vehicle routing; limiting the number of construction vehicles accessing the site on a daily basis; and/or restricting the hours when construction traffic can access the site; then such details can be discussed with the Appellant and included within a Statement of Common Ground.

Assurance in respect of the risk associated with combustible material being left on site

4.22 The committee report includes the following details in respect of this matter: -

- Paragraph 4.14 - *As with most fires, three elements would be needed for materials at the application site to combust: fuel, heat, and oxygen. With a fuel (in this case coal) present at the site, a source of heat (such as a garden bonfire) could pose a risk if there was not an intervening non-combustible barrier that would prevent the heat and sufficient oxygen from reaching the fuel.*
- Paragraph 4.15 - *The applicant had asserted that 0.5m of inert cover would provide an adequate barrier but has acknowledged the advice of KC Environmental Health that 1m of cover would be necessary, and that inert service trenches are also required. The applicant has agreed to provide these, and compliance with these requirements would be enforced through the recommended conditions.*
- Paragraph 4.16 - *With this inert cover in place, officers are satisfied that fire risks would be sufficiently reduced, and refusal of permission on these grounds is not recommended.*

4.23 Again, the 3<sup>rd</sup> party peer review agrees with the information that was submitted alongside the planning application and the position outlined within the committee report, and the Appellant maintains their agreement to adhere to the previously proposed planning conditions and the compliance with the provision of 1m of inert cover requested by the Councils' Environmental Health Officer.

4.24 Furthermore, we can confirm that the Appellant does not intend to dispose of any coal extracted from the site for commercial purposes. As stated above, it is expected that the coal/material extracted from the site will be inert due to the nature of the construction process involved and the geo-environmental composition of the site's ground conditions. Accordingly, and again, the construction process will replicate other recent developments within this area of the District which did not have an unacceptable environmental impact. No evidence has been provided by the Council prior to the refusal of the planning application which justifies the reason for refusal and which demonstrates that the construction of the site would have an unacceptable environmental impact.

#### **FURTHER DOCUMENTATION SUBMITTED ALONGSIDE THE PLANNING APPLICATION**

4.25 In addition to the above commentary, as outlined in Section 2 of this statement, the Council's Planning, Environmental Health, and Tree Officers also had the benefit of reviewing the following documents associated with the construction process which are usually submitted at the discharge of planning conditions stage: -

- Dust Management Plan
- Remedial Works Noise Assessment

- Construction Traffic Route Plan
- Tree Protection Plan & Method Statement

- 4.26 As outlined within the committee report, the Council's Planning, Environmental Health, and Tree Officers concluded that the measures outlined within each of the documents were considered acceptable.
- 4.27 The reports provide further evidence to confirm that the development proposals will not have an unacceptable environmental impact. The documentation provides a further layer of information beyond that which is usually submitted prior to the determination of a planning application and in doing so delivers assurances that the concerns raised by local residents will be appropriately mitigated.
- 4.28 Whilst proposed conditions 3, 4, 7, and 34 secure the requirement for these details/documents to be resubmitted to the Council for review and approval, the appeal does offer the potential for these previously submitted documents to be 'listed' within each of the aforementioned conditions to provide further assurances that the measures outlined within each will be delivered.
- 4.29 Again, should the Council consider that the previously proposed and agreed conditions need to be amended to provide them with further reassurance, such details can be discussed with the Appellant and included within a Statement of Common Ground.
- 4.30 It is abundantly clear that the planning application was supported by the appropriate and proportionate level of technical information to confirm that the development proposals would not lead to unacceptable environmental impacts. There is no evidence available to justify the Council's reason for refusal. Further evidence to support this position is provided in the 3<sup>rd</sup> party independent peer review submitted alongside this appeal and our review of other planning applications within close proximity of the site.

#### **INDEPENDENT EXPERT PEER REVIEW OF THE PLANNING APPLICATION & COUNCIL'S REASON FOR REFUSAL**

- 4.31 As referred to on a number of occasions above, enclosed with this statement is an independent 'Peer Review' undertaken by RSK Geosciences of the ground investigation reports submitted in support of the planning application and the construction treatment specification proposed for the site. The 'peer review' is enclosed in Appendix F.
- 4.32 The reviewer and author of the enclosed letter is an Associate Director and Team Leader for RSK Geosciences, with 25 years' experience relating to site investigation and remediation

mainly within Yorkshire and the North East. RSK Geosciences work with a number of national housebuilders across the region.

- 4.33 The peer review outlines that the ground investigation reports submitted alongside the application demonstrate that the site is not contaminated and that this has been accepted by the Council's Environmental Health Officers.
- 4.34 The peer review outlines that the site has a coal mining legacy, which has been investigated, with shallow mine workings and mine entries identified within the site. It further states that the proposed treatment plan for these areas has been reviewed by the Coal Authority and who have no objection to the proposed development.
- 4.35 The peer review identifies that the correct process has been followed in respect of the proposed treatment of shallow workings, which will be undertaken by drilling and grouting, and which mirrors the process that has been undertaken on many development sites within West Yorkshire. With respect to earthworks to lower site levels, a surplus of material will be created within the site that will require export off-site, this will include coal. The peer review confirms that the removal of the coal and other material is a standard earthworks exercise to enable design levels to be achieved. Where coal is left in situ, it will be covered with at least 1m of inert material, as recommended by the Council.
- 4.36 The peer review confirms that the cut and fill earthworks will be undertaken within regulated environmental controls relating to noise, dust, surface water runoff, vibration, and traffic movements. These environmental controls can be detailed within the requested Groundworks Management Plan and Construction Environmental Management Plan (which are to be secured via planning condition) which will control the site working conditions to ensure that the correct measures are put in place throughout the entirety of the construction process. The conditioning of these documents/requirements essentially guarantees that there will not be any unacceptable environmental impacts associated with the construction process.
- 4.37 The peer review has assessed the approved details of other development sites located within proximity of the appeal site. The two developments relate to Land at Leak Hall Crescent, which is located within the same housing allocation as the Appeal site (Ref. HS114), and Land at Wood Nook, which is an adjacent housing allocation (Ref. H143). This assessment confirmed that these two sites had similar ground conditions to the Appeal site (as a result of shallow mine working) and that they have both been successfully treated to allow residential development using the same treatment methods as proposed at the Appeal site.

- 4.38 In summary, the peer review confirms that the technical evidence submitted alongside the planning application confirms that the development proposals will not have an unacceptable impact on the environment and that the correct mitigation measures will be secured by planning condition to ensure that the site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination.
- 4.39 Whilst RSK Geosciences appreciate the previous requests made by local residents for the developers to confirm the specific amount of material, which is required to be taken from the site, they share the view that this is something that cannot be fully quantified until work commences on site. This is the same position with all development sites, not just those underlain by coal. But what they do confirm in their letter is that the processes which have been proposed for the groundworks and treatment at the Appeal site are in full accordance with the required regulations outlined in CIRIA C758D (2019), Construction Procedures for Earthworks BS EN 16907-3:2018 and guidance in NHBC Chapter 4.6. Which, in addition to the requirement of the proposed planning conditions, will ensure that there are no adverse environmental impacts throughout the construction process. The aforementioned adjacent development sites located within proximity of the Appeal site have followed the same construction process that is being proposed here without any unacceptable environmental impact. Which is direct evidence of the robustness of the measures which are proposed to be put in place.
- 4.40 The result of the peer review is firmly that the documentation submitted alongside the original application, and the Council's Environmental Health Officer's (EHO) review of it, were robust and that the site can be developed without any adverse environmental impacts.

**PRECEDENT ESTABLISHED BY A RECENT DEVELOPMENT WITHIN HOUSING ALLOCATION SITE REF. HS144**

- 4.41 As outlined above, we believe there is a precedent which has been established by the development of a site located within proximity of the Appeal site, which shares the same geo-environmental composition as the Appeal site, and which has since been constructed without any of unacceptable environmental impacts.
- 4.42 The development in question is now known as 'Springhead Gardens' and the planning application details are as follows: -
- Application Ref. 2017/93798 – Land at Leak Hall Crescent, Denby Dale – Development of 6 Detached Dwellings.
- 4.43 Of key importance, this site is located within the same housing allocation boundary as the appeal site, Site Ref. HS144. As stated, it therefore shares the exact same geo-environmental composition as the application site.

4.44 The application was approved by the Council on the 6<sup>th</sup> June 2018. The committee report and committee update report associated with the development (enclosed in Appendix G) provides the following commentary of relevance to the appeal: -

- Committee Report – Paragraph 10.37 – *Environmental Services have assessed the phase I Contaminated Land Report agreed with the conclusions. They raise no objections subject to conditions to secure a Phase II Intrusive Site Investigation Report. In light of the intrusive site investigation report submitted to address coal mining legacy issues they have been consulted to determine the need for any further conditions. Any further comments will be reported to Members in the update.*
- Committee Report – Paragraph 11.1 – *The principle of residential development on this site allocated as Provisional Open Land, and as a proposed housing allocation in the Kirklees Publication Draft Local Plan, is considered to be acceptable. There would be no detrimental impact on highway safety or residential amenity.*
- Committee Update Report - *The Coal Authority now withdraws its holding objection subject to the inclusion of conditions. These include that prior to the commencement of development, a scheme of intrusive site investigations are undertaken to establish the risks posed by past coal mining activity, and that a report of the findings and scheme of any remediation works/remediation measures necessary is submitted for approval and then implemented. The conditions already suggested by Environmental Services to address contamination matters therefore remain applicable.*

4.45 The decision notice (enclosed in Appendix H) provides details of the conditions which were attached to the approval. Of relevance Condition 8 requires the submission of a Tree Protection Plan and Conditions 14, 15, 16, and 17 require the submission of a Phase 2 Site Investigation Report, the subsequent carrying out of any recommended remediation, and the submission/approval of a validation report once the works had been completed.

4.46 In contrast, whilst the appeal proposals are already supported by a Phase 2 Site Investigation and a Tree Protection Plan & Method Statement pre-determination of the application, the conditions attached to the Leak Hall Crescent scheme did not stipulate the need to submit a Groundworks Management Plan, Construction Environmental Management Plan, and/or Construction Traffic Access details prior to the commencement of development at the site.

4.47 As referenced in the submitted 3<sup>rd</sup> part peer review, this is likely because the need to treat shallow mine workings by drilling and grouting is a common process that has been undertaken

on many development sites within West Yorkshire, and as it is a process that will not have an unacceptable environmental impact if the required regulations outlined in CIRIA C758D (2019), Construction Procedures for Earthworks BS EN 16907-3:2018 and guidance in NHBC Chapter 4.6 are delivered. Which is what the appeal proposals will comply with.

- 4.48 Notwithstanding this point, subsequent to the approval of the planning application, an application to discharge condition 14 of the permission was discharged by the Council on the 13<sup>th</sup> March 2019 (Ref. 2019/90118). The application was supported by the following documents:
- Report on Shaft Investigation reference J3978/17/E/G dated May 2018 by Rogers Geotechnical Services.
  - Phase 1 Desk Study reference J3978/17/EDS dated 4th September 2017 by Rogers Geotechnical Services
  - Letter reference J3978/17/EDS dated 22nd January 2018 by Rogers Geotechnical Services
  - Geo-Environmental Report reference J3978/17/E/GE dated 15th October 2018 by Rogers Geotechnical Services
  - Gas Monitoring Report reference J3978/17/E/GM dated 5th December 2018 by Rogers Geotechnical Services
- 4.49 Of paramount importance to the appeal proposals, the above referenced documents were all prepared by the same geo-technical engineering practice (Rogers Geotechnical Services) as those submitted in support of the appeal proposals.
- 4.50 A comparison of the Phase 2 Site Investigations submitted alongside both applications identifies that the same overall approach was proposed in respect of grouting, excavation, filling, and piling. However, a further layer of detail was included within the documentation which supports the Appeal proposals on account of the further requests made by the Council in response to queries raised by local residents and third parties. The Phase 2 Site Investigation for the Leak Hall Crescent site is enclosed in Appendix I.
- 4.51 As stated above, the Leak Hall Crescent site has since been successfully treated to allow for residential development, using the same treatment methods as proposed at the Appeal site, and the site has been constructed without any unacceptable environmental impact.
- 4.52 Accordingly, the development at the Leak Hall Crescent site provides a practical example of where the ground instability remediation/treatment and construction measures proposed by the Appellant have been successfully carried out without any unacceptable environmental impact.
- 4.53 Finally, the conditions sought to be imposed by the Council in respect of the Appeal proposals are far more comprehensive than those sought at the Leak Hall Crescent site, which provides

further assurances that robust mitigation measures will be implemented at the Appeal site prior to and throughout the entire construction process.

4.54 Accordingly, the precedent established by the Leak Hall Crescent site provides further evidence that the reason for refusal cannot be justified by the Council, as it presents evidence of the Council reaching the same position presented by the Appellant when determining a planning application on a site located within the same site allocation and which shares the same geo-environmental composition as the appeal site.

4.55 Whilst the 3<sup>rd</sup> party peer review also references Land at Wood Nook, Denby Dale which is part of housing site allocation Ref. HS143, as the site is not located within the same housing allocation (though adjacent to the Appeal site), it was considered that the Leak Hall Crescent precedent was the most pertinent in respect of the appeal proposals.

## **CONCLUSION**

4.56 The case presented in this section of the statement provides evidence which confirms that the Council's one reason for refusal cannot be justified. With specific regard to the Local Plan policies outlined within the reason for refusal the evidence presented confirms that: -

- **Policy LP24** – The policy specifically relates to ‘Design’ and there is no reference in the policy to construction traffic/vehicle movements or ground stability conditions in respect of the construction process.
- **Policy LP36** – The policy relates to ‘Proposals For Minerals Extraction’ and we have confirmed that the Appellant does not intend to extract or dispose of any coal found at the site through the construction process for commercial purposes. It is expected that the coal/material extracted from the site will be inert due to the nature of the construction works involved and the geo-environmental composition of the site’s ground conditions. The appeal proposals will follow the correct process in respect of the treatment of site’s ground conditions, which will be undertaken by drilling and grouting, and which mirrors the process that has been undertaken on many development sites within West Yorkshire. Including the recently completed development at Leak Hall Crescent, which is located within the same housing allocation, and which provides a practical example of where the treatment measures proposed by the Appellant have been successfully carried out without any unacceptable environmental impact. The development of the appeal site will actually be undertaken on a more robust basis as the conditions being sought to be imposed on the Appeal site by the Council are far more comprehensive than those sought at the Leak Hall Crescent site.

- Policy LP52** – The policy refers to ‘Protection and Improvement of Environmental Quality’ and the technical evidence submitted alongside the planning application confirms that the development proposals will not have an unacceptable impact on environment. The submitted information provides a further layer of information beyond that which is usually submitted prior to the determination of a planning application and in doing so delivers assurances that the concerns raised by local residents will be appropriately mitigated. Whilst proposed conditions 3, 4, 7, and 34 secure the requirement for these details to be resubmitted to the Council for review and approval, the appeal does offer the potential for these previously submitted documents to be ‘listed’ within each of the aforementioned conditions to provide further assurances that the measures outlined within each will be delivered. Notwithstanding this point, it is abundantly clear that the planning application was supported by the appropriate and proportionate level of technical information to confirm that the development proposals would not lead to unacceptable environmental impacts. There is no evidence available to justify the Council’s reason for refusal. Further evidence to support this position is provided in the 3<sup>rd</sup> party independent peer review submitted alongside this appeal and our review of other planning applications within close proximity of the site.
- Policy LP53** – The policy relates to ‘Contaminated and Unstable Land’ and the technical evidence submitted alongside the planning application confirms that the development proposals will not have an unacceptable impact on environment. The submitted information provides a further layer of information beyond that which is usually submitted prior to the determination of a planning application and in doing so delivers assurances that the concerns raised by local residents will be appropriately mitigated. There is no evidence available to justify the Council’s reason for refusal. Further evidence to support this position is provided in the 3<sup>rd</sup> party independent peer review submitted alongside this appeal and our review of other planning applications within close proximity of the site.

4.57 With regards to national planning guidance, the evidence provided in this section of the statement confirms that the development proposals meet the requirements of Paragraphs 196 and 197 of the NPPF on account of: -

- Paragraph 196 a) - The technical evidence submitted alongside the planning application confirms that the development proposals will not have an unacceptable impact on environment and that the correct mitigation measures will be secured by planning condition to ensure that the site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals

for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation).

- Paragraph 196 b) – The mitigation measures secured via the proposed planning conditions will ensure that after remediation the land will not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990.
- Paragraph 196 c) – The technical evidence submitted alongside the planning application included adequate site investigation information prepared by a competent person and was considered acceptable by the Council's EHO and a 3<sup>rd</sup> party independent peer review undertaken as part of the appeal.
- Paragraph 197 – The developer/landowner accepts full responsibility for securing the safe development of the site. The responsibility is secured via the proposed planning conditions to be attached to the proposals and the aforementioned other environmental regulations which control the construction process.

## 5.0 CONCLUSION

- 5.1 This statement has provided robust evidence to demonstrate that the residential development of the Appeal site delivers sustainable development.
- 5.2 This statement has reviewed relevant planning policy at the national and local levels. It demonstrates considerable support for the proposed development of the Appeal site in the manner proposed.
- 5.3 The appeal site is located in a sustainable location and the principle of residential development at the site is established by its allocation in the adopted Kirklees Local Plan.
- 5.4 The site can deliver a comprehensive development of market and affordable housing alongside a number of environmental and community benefits to meet the needs and aspirations of the local area.
- 5.5 The development proposals are situated in a suitable and highly sustainable location in respect of existing settlement form and there are no technical or environmental (built and natural) constraints that would preclude the development of the site. The site is available for development now and is achievable as new homes would be delivered at the site within the next 5-years should the Appeal be allowed.
- 5.6 The Council's Committee Report makes clear that it was the view of the Council's planning officers that the appeal site represents a deliverable site for residential development. Indeed, there are no objections to the development proposals from any of the Council's technical officers or statutory consultees.
- 5.7 It is clear that the only matter to be considered in respect of this Appeal are those outlined within the Council's one reason for refusal. The development proposals can therefore be considered to align with all other relevant policies of the adopted Local Plan and national planning guidance.
- 5.8 The revised NPPF outlines the overall rhetoric of accelerating the delivery of new homes across the country, and affordable homes in particular. The development will of course deliver a policy compliant 20% affordable homes across a range of affordable tenures.
- 5.9 With regard to Maintaining Supply & Delivery of New Homes, the Council cannot demonstrate a 5-year supply of deliverable housing land, and the implication of the revised NPPF is an increase in the Council's 5-year land supply deficit by a minimum of 550 homes (or 660 homes

with the 20% buffer included). This would increase the Council's 5YLS shortfall from 2,800 homes to **3,460 homes**. Furthermore, in the context of the Housing Delivery Test, the latest publication by the Government identifies that the Council's housing delivery has reduced to just **54%** of the total number of homes required over the previous 3-years.

- 5.10 These results not only trigger the presumption in favour of sustainable development, but they also provide clear evidence of the acute housing needs of the District.
- 5.11 Accordingly, the presumption in favour of sustainable development outlined in Paragraph 11 of the NPPF is engaged and the Council's action plan for meeting their housing shortfall should surely focus on the approval of applications on allocated housing sites where there is no strong reason for refusal.
- 5.12 With specific regard to the Council's one reason for refusal, the case presented in Section 4 of this statement provides evidence which confirms that the Council's one reason for refusal cannot be justified. The technical evidence submitted alongside the planning application confirms that the development proposals will not have an unacceptable impact on the environment and that the correct mitigation measures will be secured by planning condition to ensure that the site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. The submitted information provides a further layer of information beyond that which is usually submitted prior to the determination of a planning application and in doing so delivers assurances that the concerns raised by local residents will be appropriately mitigated. Further evidence to support this position is provided in the 3<sup>rd</sup> party independent peer review submitted alongside this appeal and our review of other planning applications within close proximity of the site.
- 5.13 The appeal proposals therefore clearly accord with the relevant policy guidance presented within the NPPF and the Kirklees Local Plan.
- 5.14 Evidence has also been presented of the Council reaching the same position presented by the Appellant when determining a planning application on a site located within the same site allocation and which shares the same geo-environmental composition as the appeal site.
- 5.15 With specific regard to the 'tilted balance' and Paragraph 11 of the NPPF, whilst we would argue that the proposals fully accord with the development plan (and would therefore fall to be assessed against paragraph 11(c) in planning terms), when considering the scheme against the requirements of Paragraph 11 d), the site is not located within a protected area and does not have any impact on assets of particular importance and it is the clear position that there are no

adverse impacts associated with the development which would **significantly and demonstrably** outweigh the benefits, including those associated with flood risk.

5.16 Accordingly, there is a presumption in favour of granting planning permission for this development without delay. The appeal should therefore be allowed.