CALDERDALE METROPOLITAN BOROUGH COUNCIL

PLANNING COMMITTEE

WARDS AFFECTED: MORE THAN THREE

Date of meeting: 25 January 2022

Chief Officer: Director of Regeneration and Strategy.

1. SUBJECT OF REPORT

APPLICATIONS FOR DETERMINATION RE PLANNING PERMISSION, LISTED BUILDING CONSENT/CONSERVATION AREA CONSENT, LOCAL AUTHORITY APPLICATIONS, CROWN APPLICATION OR CONSENT TO FELL PROTECTED TREES

(i) Executive Summary
(ii) Individual Applications

2. INTRODUCTION

2.1 The attached report contains two sections. The first section contains a summarised list of all applications to be considered at the Committee and the time when the application will be heard. Applications for Committee consideration have been identified in accordance with Council Standing Orders and delegations.

2.2 The second section comprises individual detailed reports relative to the applications to be considered.

2.3 These are set out in a standard format including the details of the application and relevant planning site history, representations/comments received arising from publicity and consultations, the officers assessment and recommendation, with suggested conditions or reasons for refusal, as appropriate.

2.4 Where the Committee considers that a decision contrary to the recommendation of the Director of Regeneration and Strategy may be appropriate, then consideration of the application may be deferred for further information.

2.5 Where a Legal Agreement is required by the Committee, the resolution will be "Mindful to Permit Subject to a Legal Agreement being completed", combined with a delegation to the Director of Regeneration and Strategy.

3. IMPLICATIONS ARISING FROM REPORT

3.1 Planning Policies

These are set out separately in each individual application report.

3.2 Sustainability

Effective planning control uses the basic principle of sustainable development by ensuring that development meets the needs of the present without compromising the ability of future generations to meet their own needs. Through the development control system, the Council can enable environmental damage to be minimised and ensure that resources are used efficiently and waste minimised. Particular sustainability issues will be highlighted in individual reports where appropriate.

3.3 Equal Opportunities

All applications are considered on their merits having regard to Government guidance, the policies of the Development plan and other factors relevant to planning. This will be done using the Development Control Code of Conduct for officers and members as set out in the Council's Standing Orders.

In the vast majority of cases, planning permission is given for land, not to an individual, and the personal circumstances of the applicant are seldom relevant.

However, the Council has to consider the needs of people with disabilities and their needs are a material planning consideration. Reference will be made to any such issues in the individual application reports, where appropriate.

The Council also seeks to apply good practice guidance published in respect of Race and Planning issues.

3.4 Finance

A refusal of planning permission can have financial implications for the Council where a subsequent appeal is lodged by the applicant in respect of the decision or if a case of alleged maladministration is referred to the Local Government Ombudsman or a Judicial Review is sought through the Courts.

In all cases indirect staff costs will be incurred in processing any such forms of 'appeal'.

There is no existing budget to cover any direct costs should any such 'appeal' result in 'costs' being awarded against the Council. These would have to be found by way of compensatory savings from elsewhere in the Planning Services budget.

Reference: 6/00/00/CM

Richard Seaman
For and on behalf of
Director of Regeneration and Strategy

FOR FURTHER INFORMATION ON THIS REPORT CONTACT:

Richard Seaman TELEPHONE :- 01422 392241
Corporate Lead
For Planning Services

DOCUMENTS USED IN THE PREPARATION OF THIS REPORT:

1. Planning Application File (numbered as the application show in the report)
2. National Planning Policy and Guidance
3. Calderdale Development Plan(including any associated preparatory documents)
4. Related appeal and court decisions
5. Related planning applications
6. Relevant guideline/good practice documents

DOCUMENTS ARE AVAILABLE FOR INSPECTION AT:

www.calderdale.gov.uk.

You can access the Council's website at the Council's Customer First offices and Council Libraries.

List of Applications at Committee 25 January 2022

Time & No.	App No.	Location	Proposal	Ward	Page No.
14.00	21/00655/HSE	4 Gladstone Street Stainland Elland Calderdale HX4 9EX	Dormer extension (retrospective) (Re-submission of 20/01099/HSE)	Greetland And Stainland	5 - 13
14.00	19/01231/FUL	Land East Of White Hart Fold Rochdale Road Ripponden Sowerby Bridge Calderdale	Residential Development of 5 detached dwellings.	Ryburn	14 - 27
14.00	20/00105/FUL	Former Cal Val Works Hoo Hole Cragg Road Mytholmroyd Hebden Bridge	Demolition of existing works building and construction of 21 residential dwellings (Revised Scheme to 14/00918) (Additional Plans)	Luddendenfoot	28 - 51
15.00	21/00917/FUL	North Bridge Leisure Centre North Bridge Street Halifax Calderdale HX3 6TE	Demolition (retention of sports hall) and replacement facility to include 25m 6 lane pool and teaching pool with spectator seating, cafe, adventure play and adventure climbing, multifunction rooms, fitness suite, wellness suite and studios (Additional Information Received Air Quality Report)	Town	52 - 74

Time Not Before: 14.00 - 01

Application No: **21/00655/HSE**

Ward: **Greetland And Stainland**
Area Team: **South Team**

Proposal:
Dormer extension (retrospective) (Re-submission of 20/01099/HSE)

Location:
4 Gladstone Street Stainland Elland Calderdale HX4 9EX

Applicant:
Taylor

Recommendation: **REFUSE**

Parish Council Representations: N/A
Representations: No
Departure from Development Plan: No

Consultations:

Stainland And District Parish Council
Conservation Officers

Description of Site and Proposal

The application site is a two-storey, traditional, natural stone, back-to-back inner terrace property situated in the residential area of Holywell Green, Stainland. The immediate locality is made up of pre-dominantly stone built terraces. The terrace within with the application site is situated is to the rear of and perpendicular to another terrace fronting Stainland Road; the site is located within Stainland Conservation Area.

This application is a resubmission of a previous refusal for retrospective planning permission in relation to a dormer to the front [west facing] elevation of the dwelling.

The application is presented to Committee at the request of Councillor Holdsworth.

Relevant Planning History

A 2019 enforcement complaint file remains pending for the alleged unauthorised development of a dormer at the site.

Planning permission was refused by Planning Committee for a 'Dormer to front elevation (retrospective)' – planning reference 20/01099/HSE.

A subsequent appeal against this refusal was dismissed by the Planning Inspectorate on 29 April 2021.

Key Policy Context:

Replacement Calderdale Unitary Development Plan Designation	Primary Housing Area Conservation Area
Replacement Calderdale Unitary Development Plan policies	**H2 -** Primary Housing Area **BE1 -** General Design Criteria **BE2 -** Privacy, Daylighting and Amenity Space **BE18 -** Development within Conservation Areas
National Planning Policy Framework	**12 -** Achieving well-designed places **16 -** Conserving and enhancing the historic environment
Other relevant planning Constraints	None

Publicity/ Representations:

The application was publicised by means of a site notice, a press notice and neighbour notifications.

8 letters of support have been received.

Summary of support:

- Dormer is in keeping with the area.
- Made a perfect family home.
- Does not impact on privacy – overlooks allotment/overgrown land.
- Blends in with roof-tops – not visible from main road.
- Dormer is acceptable as it is without need for further alteration.
- Re-design supported but considered un-necessary.
- Dormer not visible when accessing terrace – by foot or by vehicle.
- Beautiful addition to house.

Ward Councillor Comments

Councillor Holdsworth has requested the application be heard by planning committee and offered the following comment:

"I would ask that Planning Committee considers the above planning application for 4 Gladstone Street, Stainland. The residents believe the new plans are more in keeping with the conservation area and do not detract from the roof line as much as the previous dormer extension did."

Parish/Town Council Comments

The development is located with the boundaries of Stainland and District Parish Council.

The Parish Council have made no comments with regards the application at the time of writing this report.

Assessment of Proposal

Principle of Development

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) compliments this requirement. The revised NPPF [2021] sets out the Government's planning policies for England and how these are expected to be applied, alongside other national planning policies. Paragraph 219 of Annex 1 (Implementation) of the NPPF advises to the effect that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. The closer the policies in the plan to the NPPF policies, the greater the weight they may be given.

At the heart of the NPPF is a presumption in favour of sustainable development. Paragraph 11 of the NPPF establishes that for decision taking this means:

- approving development proposals that accord with an up-to-date development plan without delay; or
- where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
  - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed,
    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.

In this case, the site does not lie within an area where the framework indicates that development should be restricted.

The site lies within a Primary Housing Area designation in the Replacement Calderdale Unitary Development Plan [RCUDP] and as the proposal relates to development to extend an existing dwelling it is considered acceptable in principle under Policy H2.

Materials, Layout and Design

Section 12 of the NPPF focuses on achieving well-designed places and states that good design is a key aspect of sustainable development.

Paragraph 130 of the NPPF states planning policies and decisions should ensure that developments:

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

Paragraph 134 states development that is not well designed should be refused, especially where it fails to reflect local design polices and government guidance on design [contained in the National Design Guide and National Model for Design Code], considering, any local design guidance and supplementary planning documents, such as design guides and codes.

Both the National Design Guide and the National Model for Design Code are material considerations. The Guide establishes that a well-designed place is unlikely to be achieved by focusing only on the appearance, materials and detailing of buildings, but needs to take into consideration all factors, including layout, form and scale of buildings [including relationship with the wider setting and surroundings], appearance, landscaping, materials and detailing.

RCUDP policy BE1 establishes that development should make a positive contribution to the quality of the existing environment or, at the very least, maintain that quality by means of high standards of design. Development should:

i. respect or enhance the established character and appearance of the existing buildings and surroundings in terms of layout, scale, height, density, form, massing, siting, design, materials, boundary treatment and landscaping;
ii. retain, enhance or create any natural and built features, landmarks or views that contribute to the amenity of the area;
iii. be visually attractive and create or retain a sense of local identity;
iv. not intrude on key views or vistas;
v. not significantly affect the privacy, daylighting and amenity of residents and other occupants;
vi. incorporate landscaping and existing trees that contribute significantly to the amenity and nature conservation value of the local environment as an integral part of the development site's design and where appropriate incorporate locally native plants and create wildlife habitats;
vii. be energy efficient in terms of building design and orientation; and
viii. include consideration of the needs of security and crime prevention.

The application site is located within a built-up area of residential properties, comprising in the main, of rows of stone built terraced dwellings with blue slate roofs which set out the local vernacular. The application site is part of one of these terraces and comprises of a back-to-back property: it is noted that other similar properties within the same terrace have been knocked through to create single through properties. The terrace, although not prominent in terms of view from Stainland Road, is still considered to be an attractive traditional stone terrace with character features to its roofscape in the form of stone chimney stacks and pots. Other than the dormer subject of this application the terrace has no other development its roofscape and it is noted that there are no other dormers on the immediately adjacent terraces in locality.

The proposal relates to an existing dormer, built in 2018, which is currently of a flat roof, box design and which covers most of the roof plane to this back-to-back dwelling. Retrospective permission has been sought previously for the dormer in situ: this was refused on grounds of design and appearance and a subsequent appeal against the refusal was dismissed for the same reasons. This revised proposal seeks a dormer of the same scale but with a chamfered roof design aimed to reduce the overall bulk of the dormer. The proposed dormer will have a flat roof projecting out approximately 2.2m, the proposed roof will then drop to form a lean-to roof following the same angle of pitch as the existing roof: the overall projection of the dormer roof will be 4m. Four roof-lights are proposed within this roof slope. The position of the dormer will remain as existing, i.e. extending across the frontage of the dwelling and inset between the two existing chimney stacks. The front elevation of the dormer has been redesigned from a flat frontage to one that incorporates slight recesses to inset the proposed window positions. Three windows are proposed each set in-line with the windows to the lower levels of the front elevation. Proposed materials are indicated as EPDM to the flat roof, matching tiles to the front roof slope and aluminium cladding and matching tiles to the frontage and cheeks.

The existing dormer is and has previously been considered, dominant in terms of its scale and design, evidenced by the previous refusal of planning permission and dismissal of the subsequent appeal. The revised proposal, although seeking to reduce the dominance arising from the bulk and massing, remains dominant and obtrusive, by virtue of its overall scale, which although inset from the eaves by approximately 600mm, still covers most of the roof plane to the dwelling. Should other dormers of similar scale be built on to this roof plane, the existing traditional character of the terrace would be lost, to the detriment of visual appearance of both the terrace and its locality.

The application is supported by numerous supporting statements. Information included in these statements refers to what could be built under permitted development along with citing examples of similar dormers approved and accepted across the Authority. With reference to permitted development rights: the site is a back-to-back terrace with a single elevation, i.e. the principal elevation – a dormer cannot be constructed under permitted development rights on the principal elevation of a dwelling and the site being within a Conservation Area also precludes development of this nature under permitted development. With regards the examples of other dormers, each has been looked at and it is concluded that none are comparable to the site: the cited examples refer to dormers on the rear of through terraces, semi-detached and detached properties, dormers of much smaller scales where the existing roof plane remains the dominant feature. Only one was similar, but this again was on a through terrace, not a back-to-back property and the recommendation based on policy was for refusal. The agent has also cited the Technical Housing Standards – Nationally Described Space Standards as a material consideration. This document however is applicable to new dwellings only and is not a relevant consideration in terms of a householder extension.

Several neighbours have given their support to the application, which although noted, the comments do not outweigh the policy conflict arising from the proposal.

The terrace has an attractive appearance which is replicated in adjacent terraces and characterises the type of dwellings found in the locality, i.e., two storey stone-built dwellings with uninterrupted roof planes. The introduction of this large-scale dormer is considered discordant and out of character with the area. The dormer results in the loss of the roof plane to the dwelling, impacts on the appearance of the character features of the established chimney stacks and disrupts the established roofline of the terrace. The proposal fails to enhance the natural built features which contribute to the visual amenity of the area and it fails to respect and enhance the established character and appearance of both the existing terrace and its surroundings.

The dormer is not considered to respect or enhance the established character and appearance of the existing buildings and surroundings, in that it results in a three-storey dwelling midway within this traditional terrace. Due to the design and scale the dormer impacts on the sense of local identity and is detrimental in terms of view of the terrace. The proposal is therefore considered to conflict with the policy BE1 and section 12 (Achieving well-designed places) of the NPPF.

Impact on Heritage Assets

The application site lies within Stainland Conservation Area [designated November 1982]. The village is in a hilltop position approximately 4 miles south of Halifax. The character of Stainland is essentially linear with all principal buildings facing the main spine road through the centre with further housing developed on the more minor roads which are set at right angles off the main spine road. The architecture of the village is characterised by the use of local materials retaining a traditional appearance, i.e. natural stone, stone slate, mullioned windows, chimney pots, stone flags or setts and iron railings [taken from the Stainland Conservation Area Appraisal].

Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 requires that in exercising functions with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

The Courts have held that when a Local Planning Authority finds that a proposed development would harm a heritage asset, the Authority must give considerable importance and weight to the desirability of avoiding such harm to give effect to its statutory duties under section 72 of the Act. The finding of harm to a heritage asset gives rise to a strong presumption against planning permission being granted. The current application must be judged on this basis.

Paragraph 199 of the NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Paragraph 200 states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.
Paragraph 202 states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

Paragraph 206 states Local Planning Authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites, and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.

RCUDP Policy BE18 states that the character or appearance of Conservation Areas, defined on the Proposals Map, will be preserved or enhanced. New development and proposals involving the alteration or extension of a building in or within the setting of a Conservation Area will only be permitted if all the following criteria are met:

i. the form, design, scale, methods of construction and materials respect the characteristics of the buildings in the area, the townscape and landscape setting,

ii. the siting of proposals respects existing open spaces, nature conservation, trees and townscape/roofscape features,

iii. it does not result in the loss of any open space which makes an important contribution to the character of the Conservation Area or features of historic value such as boundary walls and street furniture; and

iv. important views within, into and out of the area are preserved or enhanced.

The Council's Conservation officer has been consulted on the application and whilst noting the change to the roof design of the dormer, re-iterated the comments made on the previous submission, which were as follows:

> *This application relates to a two-storey stone mid-terraced house, located in the Stainland Conservation Area. This particular terrace, located to the north of the main road through the village, represents one of the few remaining back-to-back workers' cottages, built in the latter half of the nineteenth century to house workers probably employed in local mills or quarrying.*
>
> *The proposal is for a dormer extension, which has already been constructed, to the front roof slope. The dormer extension occupies the full width of the entire west-facing roof slope of the property and is full height to the ridge. It is flat roofed with windows to the front.*
>
> *There are no other dormer extensions on this side of this particular terrace, which therefore appears otherwise intact in terms of its original roofscape. Indeed, there are few dormer extensions in this part of the Conservation Area. This dormer is a prominent and bulky addition to the dwelling, with a box-like appearance, which interrupts the uniformity of the terrace roof profile, and significantly alters the appearance of the property and the terrace. It appears as an unsympathetic and incongruous feature in the roofscape and is out of keeping with the surrounding area.*
>
> *Thus, the dormer extension - being an inappropriate extension at roof level - is considered to cause harm to the significance of the Stainland Conservation Area, this harm being less than substantial in terms of the NPPF. Given the reference in the NPPF to the need to give "great weight" to an asset's conservation (para 199), and the requirement for "clear and convincing justification" for any harm (para 200), and the need to demonstrate "public benefits" where there is less than substantial harm (para 202), it is considered that the dormer extension does not comply with the NPPF.*

The agent has provided numerous supporting statements, all of which have been noted. The statements detail the history of the site, its inclusion within the Conservation Area, the applicants' need for more space to justify the need for the proposal and other examples of dormers within the Stainland area.

The agent argues that since its designation the area of Stainland has been further developed and some notable buildings lost, along with them key architectural features, and as a result, he questions whether there remains sufficient cause for a continued Conservation Area designation. The agent also points out that the appraisal document for the Conservation Area is out of date, having not been updated since publication in 1982. For the purposes of this application and report however, the Conservation Area designation is current and therefore relevant, and regardless of the date of the appraisal document, the assessment is based on current planning policy. It is argued that because the site is located on a minor road accessed off the main spine road running through the centre of the Conservation Area, the impact of the dormer is reduced. The area, as a whole, is included within the Conservation Area and as such all aspects within it can be of significance, whether on the main highway or tucked away: it is considered that often it is the more hidden elements that can provide the most character.

With regards the need for additional accommodation, the Conservation Officer states that this is not a relevant consideration in heritage terms *"as the dwelling in its original form could still be well and fully used for residential purposes. It is inappropriate to suggest the resultant increased size of the property represents its optimum viable use. Whilst it is recognised that occupiers may require additional space as families grow, this should not be at the expense of the character of the wider designated heritage asset. Other larger dwellings, which may be more appropriate for a growing family, are available in the locality. Equally the proposal does not display any public benefits (as also required by para 202 of the NPPF).*

It is concluded that the proposed dormer, due to its scale, bulk and massing will not respect the characteristics of the existing buildings in the area. Furthermore, the dormer occupies the majority of the roof-plane to the dwelling resulting in a strident and imposing feature that dominates the established roofscape in conflict with the policy requirements.

For the above reasons, it is considered that the development would fail to preserve or enhance the character and appearance of the Stainland Conservation Area, as required by the Planning (Listed Buildings and Conservation Areas) Act 1990 and therefore
the proposal conflicts with the requirements of policy BE18 and section 16 of the NPPF.

Residential Amenity

Policy BE2 establishes that development should not significantly affect the privacy, daylighting or amenity space of existing and prospective residents and other occupants. Annex A sets out guidelines to help assess whether such impacts arise.

No policy conflict is considered to arise from this proposal. The front [west facing] elevation of the property and therefore of the dormer will overlook allotment gardens with the facing terrace beyond sited at an approximate distance of 30m. The dormer is at roof level within the terrace and as such there will be no undue impact in terms of loss of light or overbearing on neighbouring properties due to its siting and distance from neighbours.

The proposal is considered acceptable in relation to policy BE2 of the Replacement Calderdale Unitary Development Plan.

CONCLUSION

The proposal is not considered to be acceptable. The recommendation to refuse planning permission has been made because the development is not in accordance with policy BE18 (Development within Conservation Areas), BE1 (General Design Criteria) of the Replacement Calderdale Unitary Development Plan and sections 12 (Achieving well-designed places) and 16 (Conserving and enhancing the historic environment) of the National Planning Policy Framework, nor have there been any material considerations to indicate that an exception should be made in this case.

Richard Seaman
For and on behalf of
Director of Economy and Environment

Date 7 December 2021

Further Information

Should you have any queries in respect of this application report, please contact in the first instance:

Diane Scaramuzza (Case Officer) on 01422 392266

or

Lauren Clarkson (Lead Officer) on 01422 392216

Reasons

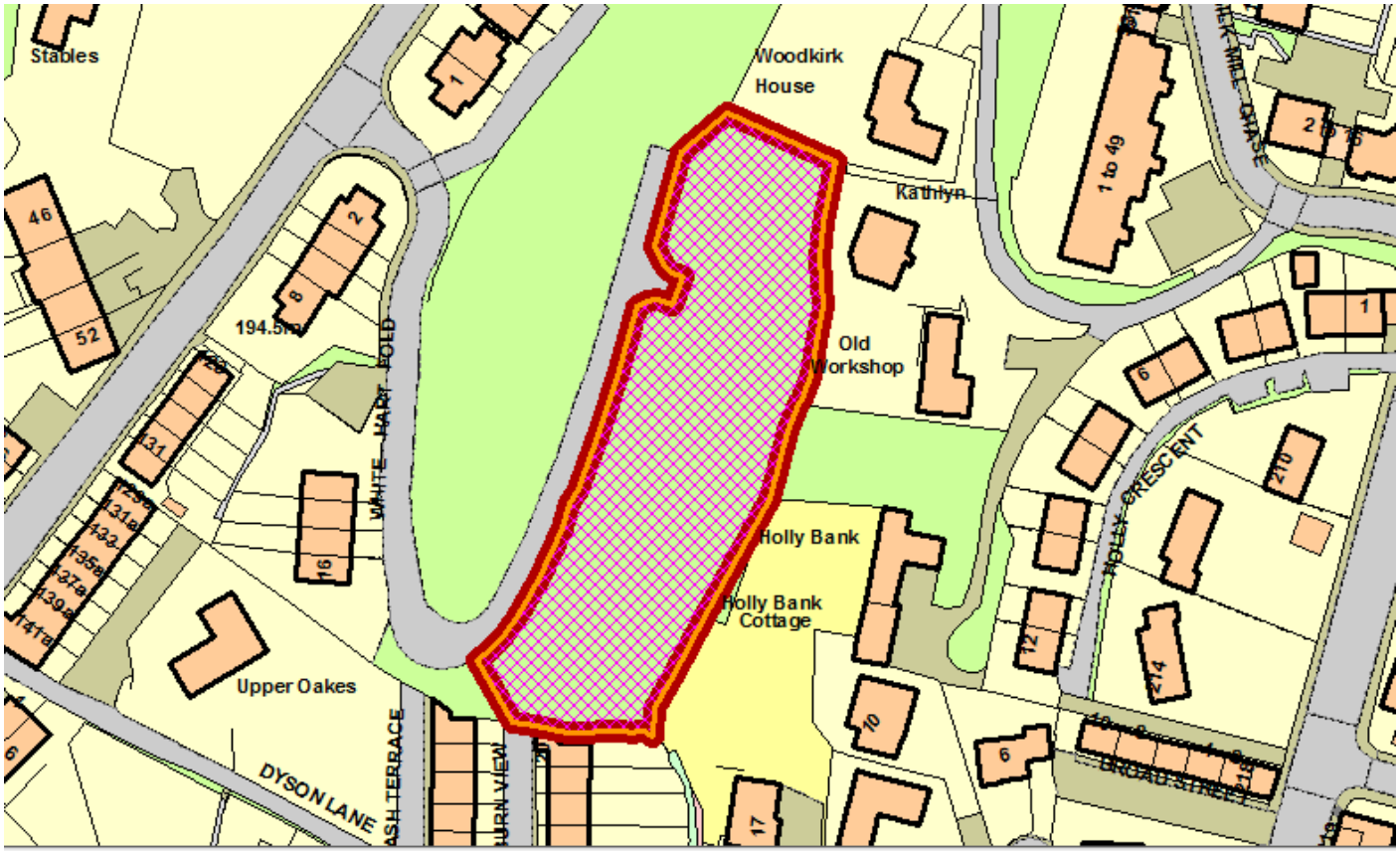
1. In the opinion of the Local Planning Authority, the proposed dormer on the principal elevation, would be out of character with the existing dwelling by virtue of its design, scale, form and massing. It would result in a new, dominant feature within the terrace roof profile, interrupting and failing to respect the simple roof-form and significantly altering the appearance of the both the existing dwelling and this traditional terrace. Its appearance is unsympathetic to, and would result in an incongruous feature in, the roofscape/streetscene which is considered to harm to the character and appearance of the Stainland Conservation Area. As such, the proposal would be contrary to Policy BE1 (General Design Criteria), Policy BE18 (Development within Conservation Areas), Section 12 (Achieving well-designed Places) and Section 16 (Conserving and enhancing the historic environment) of the NPPF.

Time Not Before: 14.00 - 02

Application No: **19/01231/FUL** Ward: **Ryburn**
Area Team: **South Team**

Proposal:
Residential Development of 5 detached dwellings.

Location:
Land East Of White Hart Fold Rochdale Road Ripponden Sowerby Bridge Calderdale



Applicant:
Moreton-Deakin

Recommendation: **PERMIT**

Parish Council Representations: Yes No Objections
Representations: No
Departure from Development Plan: No

Consultations:

Highways Section
Ripponden Parish Council
Highways Section
Yorkshire Water Services Ltd
Flood Risk Manager
West Yorkshire Police ALO
Countryside Services (E)
Planning Application 19/01231/FUL

Description of Site and Proposal

The site forms part of a larger development site that has been developed to the west of Rochdale Road, Ripponden. Recent residential development is located to the east, west and south. The site is relatively steep, sloping downwards from west to east, and is currently an unused grassed area. An internal access road has been constructed within the site which currently serves dwellings around the site. To the west of the application site on the other side of the access road, ten dwellings are fully constructed and completed under applications 14/01428/FUL, 15/01412/FUL and 17/00086/FUL.

There are trees subject of a Tree Preservation order to the east of the site under TPO/96/00957/C.

Planning permission is sought for the construction of five detached dwellings with three different house types.

The application is accompanied by the following supporting documents:

- Drainage plan
- Bat self-certification form
- Bat survey
- Phase 1 contamination report
- Tree survey

The application has been referred to Planning Committee due to the sensitive nature of the application and at the request of Councillor Geraldine Carter (prior to stepping down).

Relevant Planning History

The site has very extensive planning history. The key applications 04/02307/FUL, 09/01522/FUL and 15/01310/FUL are particularly relevant as these are previous permissions relating to the application site subject of this application, establishing the principle of residential development on the site.

An application for six detached dwellings was permitted under delegated powers on 5th April 2005 (application number 04/02307/FUL).

An application for the construction of ten dwellings (amended plans) was permitted (subject of a legal agreement) under delegated powers on 24th April 2013 (application number 09/01522/FUL).

An application for construction of ten dwellings was permitted under delegated powers on 17th April 2015 (application number 14/01428/FUL).

An application for eight dwellings was permitted under delegated powers on 4th July 2016 (application number 15/01310/FUL)

An application for variation of condition 1 of planning application 16/01132/FUL to amend plans was permitted under delegated powers on 9th August 2017 (application number 17/00711/VAR).

Key Policy Context:

Replacement Calderdale Unitary Development Plan Designation	Primary Housing Area Wildlife Corridor
Replacement Calderdale Unitary Development Plan policies	**H2** Primary Housing Area **H9** Non-allocated Sites **BE1** General Design Criteria **BE2** Privacy, Daylighting and Amenity Space **BE3** Landscaping **BE4** Safety and Security Considerations **BE5** The Design and Layout of Highways and Accesses **T18** Maximum Parking Allowances **EP14** Protection of Groundwater **EP20** Protection from Flood Risk **EP22** Sustainable Drainage Systems **EP11** Development on Potentially Unstable Land. **NE20** Tree Preservation Orders **NE21** Trees and Development Sites **NE15** Development in Wildlife Corridors **NE16** Protection of Protected Species **NE17** Biodiversity
National Planning Policy Framework Paragraphs	5. Delivering a sufficient supply of homes 8. Promoting healthy and safe communities 9. promoting sustainable transport 12. Achieving well-designed places 16. Conserving and enhancing the historic environment
Other relevant planning constraints	Bat alert area Tree preservation order 96/00957/C

Publicity/ Representations:

The application was publicised with site and press notices. In addition, 31 neighbour notification letters were sent.

15 letters of objection/representation were received.

Summary of Points Raised:

- Overlooking
- Loss of trees and wildlife
- Overbearing
- Over dominance
- Privacy issues
- No garden space for the size of dwellings
- Road safety
- Loss of view (*not a planning consideration*)
- No provision for bin storage
- Stability

- Parking inappropriate for size of dwelling
- No footpath which should be provided
- Impact of HGVs whilst building the dwellings
- Supporting documentation out of date
- The applicant does not indicate who the site developer/owner is?
- Direct overlooking
- Health and safety
- Dwellings to be built on a steep hillside/incline
- Parking
- Subsidence
- Height of properties
- No provision for footpaths
- Existing houses due to developer have many structural issues
- Unadopted road
- Ownership
- Application form wrong
- Plans don't show enough details for distances to other properties (now provided)

Parish/Town Council Comments

The development is located within the boundaries of Ripponden Parish Council.

> "approved"

Ward Councillor comments:

Councillor (at the time of application) Geraldine Carter requests that the application is referred to Planning Committee if the recommendation is to permit and makes the following comments:

> "*I have suggested that an objection should be submitted now in respect of lack of information, required distances not adhered to for space about dwellings and overlooking issues, overbearing design and the houses should be no more than 3 levels to match the existing, lack of parking within the property red lines for size of houses bearing in mind there is insufficient space for on-street parking and no visitor bays identified."*

Assessment of Proposal

Principle of Development

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) compliments this requirement. The revised NPPF was updated on 21st July 2021 and sets out the Government's planning policies for England and how these are expected to be applied. Alongside other national planning policies. Paragraph 219 of Annex 1 (implementation) of the NPPF advises to the effect that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. The closer the policies in the plan to the NPPF policies, the greater weight they may be given.

At the hear of the NPPF is a presumption in favour of sustainable development. Paragraph 11 of the NPPF establishes that for decision taking this means:

- Approving development proposals that accord with an up-to-date development plan without delay; or
- Where there are no relevant development plans policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
  - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (*for examples…land designated as Green Belt…. Designated heritage assets)*
  - 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.

The site does not lie within an area, or contain other constraints, where the Framework indicates that development should be restricted.

The site lies within the Primary Housing Area where RCUDP policies H2 (Primary Housing Areas) and H9 (Non-Allocated Sites) are relevant. It is recognised however that the references in H2 and H9 to residential development only being acceptable on previously developed, brownfield sites, are not compliant with the NPPF. The NPPF encourages the re-use of brownfield land but does not preclude new residential development on undeveloped greenfield land. As such, the presumption in favour of development applies and the principle of the proposed is acceptable. Furthermore, the principle of development has already been established through the granting of 04/02307/FUL, 09/01522/FUL and 15/01310/FUL.

<u>Housing Issues</u>

Paragraph 11, footnote 8 of the NPPF establishes that, for applications involving the provision of housing, the policies which are most important for determining the application should not be considered up-to-date if the Local Planning Authority cannot demonstrate a five-year supply of deliverable housing sites, unless the policy protects areas or assets of particular importance and provides a clear reason for refusing the development.

The Council does not have a 5-year housing land supply. The current position is that Calderdale has a 2-year housing supply.

RCUDP policy H9 regarding housing on Non-Allocated Sites is a principal consideration, however, in view of paragraph 11, it recognised that it is now out-of-date and non-compliant with the NPPF. Although this policy is not an irrelevant consideration, one can infer from paragraph 219 of the NPPF that the weight to be given to policies will be less where they are not consistent with the NPPF. It is also recognised that the policy is not consistent with the NPPF in respect of the reference to residential development only being acceptable on previously developed, brownfield sites. The NPPF encourages the re-use of brownfield land but does not preclude new residential development on undeveloped greenfield land.

The application site is within the Primary Housing Area and the site is considered to be in a sustainable location with easy access to public transport and local services within Ripponden. The principle of development is therefore supported and the presumption in favour of sustainable development applies.

Environmental, amenity, traffic and other relevant issues, are considered further below.

Layout, Design and Materials

Policy BE1 of the Replacement RCUDP seeks development that contributes positively to the local environment through high quality design, respecting the established character of the area in particular scale, design, materials, appropriate landscaping, being energy efficient and includes consideration for crime prevention.

RCUDP policy H10 establishes that all new housing development should be constructed to a minimum net density of at least 30 dwellings per hectare ad defined in PPG3, however this policy is considered out of date as the NPPF states that Local Planning Authorities should "*set their own approach to housing density to reflect local circumstances".*

Section 12 of the NPPF paragraph 124 states:

> *The creation of high-quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities…*

The application site consists of a relatively steep area of land which is enclosed by the loop of a semi-complete estate road. The application constitutes the third phase of the overall site development with phase two in the middle of the site completed around two years ago. The upper site on the roadside (Rochdale Road) has been developed with terraced properties. The middle site (Phase two) is now complete, and this current application site (phase three) lies below the access road for five detached dwellings.

This application relates to five dwellings with plots 1 and 4 being house type one, plots 2 and 3 being house type two, and plot 5 being house type three. All the plots have been designed on a split-level basis and set into the hillside below to make the most of the views across the valley.

House type 1 (plots 1 & 4) will be built over four floors, the lower ground level providing a storage room underneath the balcony, the ground floor provides a hallway, cloakroom, utility room, kitchen, dining room, lounge and study leading onto a balcony at the rear, the first floor provides master en-suite, bathroom and bedroom, the second floor provides two further bedrooms and bathroom. It will appear four storeys at the rear (south) and two storeys at the front (north). At the rear the height to eaves is 9.9m and 11.7m to ridge. To the front (roadside) the height to eaves is 4.9m and 9m to ridge.

House type 2 (plots 2 & 3) will be built over four floors, the lower ground level will provide a storage room under the balcony, the ground floor provides a study, lounge, dining room, kitchen utility and hallway, the first floor provides two en-suite bedrooms, the second floor provides two further bedrooms and a jack and jill bathroom. These plots will appear four storeys at the rear and two-storey at the front. At the front the height to eaves is 9.9m and 12.2m to ridge. At the front (roadside) the height to eaves is 4.9m and 9.6m to ridge

House type 3 (plot 5) will be built over three floors with attached garage, the ground floor providing four bedrooms and family bathroom, the first floor providing a kitchen, hallway, cloakroom, dining room and the first floor providing a lounge/bedroom with study. This plot will appear three storeys at the rear and single storey at the front. At the front the height to eaves is 7.5m and 9.2m to ridge. At the front (roadside) the height to eaves is 2.3m and 6.6m to ridge.

Each dwelling will have access to balconies and garden area and plot 5 will benefit from an attached single garage, whilst all the other plots benefit from double garages attached to the east elevation of all plots apart from plot 2 which has the garage on the west elevation. All the plots will also provide parking at the front of each dwelling.

Each dwelling will incorporate architectural features which are consistent with the other dwellings within the vicinity with details such as quoins, dentils, corbels and parapets.

Materials proposed for the dwellings are natural stone walling with a natural blue slate roof. No details of hardstanding areas, pavements etc have been submitted and therefore a condition will require theses details. Additionally, no boundary treatment to the rear of the proposed houses has been submitted or how the plots will be divided up to provide garden areas and again a condition will require these details to be submitted for approval.

It is considered that the design of the dwellings will sit comfortably with the surrounding area whilst not an exact replica of the ten dwellings already constructed at the site, the five dwellings will mirror some detailing on those dwellings.

It is considered that the design, scale, and massing of the dwellings as shown on plan respects the established character of the area and would not harm the amenity of nearby residents.

As such, the proposal is considered to comply with the Replacement Calderdale Unitary Development Plan policy BE1.

<u>Residential Amenity</u>

RCUDP Policy BE2 establishes that development should not significantly affect the privacy, daylighting or amenity space of existing and prospective residents and other occupants. Annex A sets out guidelines to help assess whether such impacts arise.

Opposite the site (north) on the other side of the access road, there are ten dwellings (approved under application 14/01428/FUL). Those dwellings are at a distance of between 14 and 18m from the proposed dwellings subject of this application. The ten dwellings have main aspect windows facing the secondary and blank aspect windows of the proposed five dwellings. The distance required under Annex A of the RCUDP is 18m or 9m (main to secondary or main to side) which is considered acceptable.

Plot 1 is the nearest dwelling to no, 17 White Hart Fold, it is positioned at an angle from the dwelling. The distance is 14m as marked on the site layout plan and the distance from main to secondary (kitchen window on plot 1 which is inset) requires a distance of 18m. However, the rest of the windows on that elevation are considered side aspect windows (windows to non-habitable rooms) and therefore the distance required would be 12m (main to side), which would be considered acceptable as the distance would be 14m or more from the inset kitchen window. Either way there would be no direct overlooking considering the balcony to no. 17 is in line with the roofline of plot 1 and the angle of the proposed dwelling.

Plots 2 and 3 are opposite numbers 19. 21 and 23 White Hart Fold, these plots (2 & 3) have non-habitable windows (blank aspect) at first floor level and a dining room window at ground floor level facing those dwellings. The distance required is 21m (main to main) the actual distance as mark on the site layout plan is 18.5m giving a shortfall of 2.5m. However, the main windows from the existing dwellings are at first floor level and therefore there would be no direct overlooking from the dining room into those existing dwellings as they would be at a higher level and would look onto the roof of plot 2 and 3. As such the distance although there is a shortfall is considered acceptable.

Plot 4 is the nearest dwelling to no. 25 and 27 White Hart Fold. The distance is over 18m as marked on the site layout plan and the distance from main to secondary (kitchen window on plot 4) which is inset requires 18m. This distance is considered acceptable. The rest of the windows on this plot are side aspect windows (windows to non-habitable rooms) and therefore the distance required would be 12m (main to side) which is considered acceptable.

Plot 5 is the nearest dwelling to no. 29 and 31 White Hart Fold. The distance is over 18m as marked on the site layout plan and the distance from main to secondary (kitchen window on plot 4) requires a distance of 18m, as such, the distance is considered acceptable.

There is a recently constructed dwelling (under application 17/00711/VAR) at 19 Excelsior Close, which has secondary windows (lounge and kitchen) on the rear elevation at first floor level and at second floor level (bedroom). As plot 2 will have main windows on its south elevation looking towards the dwelling below the distance required is 21m or more. The actual distance is over 23m and at lower level. The distance is therefore considered acceptable.

As such, the proposal is considered to comply with the Replacement Calderdale Unitary Development Plan policy BE2.

Highway Considerations

RCUDP policy BE5 seeks to secure highways and accesses whose design and layout ensure the safe and free flow of traffic in the interests of highway safety and to provide an attractive environment. RCUDP policy T18 seeks to ensure there is adequate off street parking facilities for dwellings.

Each dwelling proposes a garage and parking spaces directly in front of each garage.

The Assistant Director – Strategic Infrastructure (Highways**)** was consulted on the application and made the following comments: -

> .
> *The planning approval reference 14/01428/FUL indicated a 5.5m wide carriageway with a 1m margin or footway along the southern side.*
>
> *The layout submitted to discharge condition 1 of that application included a 1.8m kerbed footway on the south side and a flush 1.8m footway on the northern side.*
>
> *The access road has been constructed with a width of 5m with no footway provision on either side.*
>
> *The access road on the submitted layout is based on the 2014 application layout rather than what was constructed, namely a 5.5m carriageway with 1m margins or footways flanking both sides.*
>
> *The plan should be resubmitted to clarify what is being proposed - will the road be widened to 5.5m or will the proposed dwellings be constructed using the existing 5m width?*
>
> *There is no visitor parking provided. Given the closely spaced driveways on both sides of the road and the road width, there will be little opportunity for on-street visitor parking. The turning head is likely to be used. The turning head is also not deep enough for a refuse vehicle to turn around.*

The turning head should therefore be extended with two visitor parking spaces leading off the end. A swept path indicating a 3-point turn by a large refuse wagon should be submitted.

The layout suggests a footway but the parking areas for the new dwellings are shown as encroaching on this. Either a 2m footway is provided or a block paved construction is provided from the bend to the eastern end of the access road. This should have a ramped transition from the tarmacadam surfacing.

The road surface is in poor condition which is surprising given the age of the development. This can be addressed by a condition.

There are no details of how the access road will be drained. Presumably the road currently drains towards the development site and into the hillside. With the development this could result in standing water on the access road. Details of how this will be addressed including the access road levels should be submitted.

There is sufficient cycle storage in the integral garages.

As such a number of conditions are requested."

Since the comments above, an amended site layout plan has been submitted and The Assistant Director – Strategic Infrastructure (Highways**)** was reconsulted on the amended plan and made the following comments:-

"The revised drawing is acceptable.

Suggested conditions were provided with the comments dated 10 September 2021."

Paragraph 112 (e) of the NPPF establishes that development should be designed where practical to incorporate facilities for charging plug-in and other ultralow emission vehicles. As such, a condition is included requiring the installation of a suitable facility to permit the recharge of an electrical battery powered vehicle that may be used in connection with that dwelling if approved.

Subject to the conditions, the proposal would satisfy RCUDP policies BE5 and T18.

<u>Flooding and Drainage</u>

Policy EP14 of the RCUDP aims to secure appropriate levels of drainage for new development. Policy EP20 of the RCUDP states development will not be permitted if it would increase the risk of flooding due to surface water run off, and EP22 of the RCUDP says development proposals shall incorporate sustainable drainage systems.

Applicants will need to demonstrate that adequate foul and surface water drainage infrastructure is available to serve the proposed development and that ground and surface water is not adversely affected.

With regards to drainage the applicant proposes to connect to the existing drainage system.

In terms of drainage, standard drainage conditions relating to the submission of full drainage details to be submitted for the LPA's written approval is suggested and the response from the Flood Risk Manager has been added as an informative.

Yorkshire Water were consulted on the application and have raised no objections to the proposal. The response regarding adoption and diversion agreements required by Yorkshire Water have been added as an informative.

Subject to conditions, the proposal would be acceptable in terms of RCUDP policies EP14, EP20 and EP22.

Land stability

Policy EP11 establishes that areas of potentially unstable land are defined in the proposals map. An applicant proposing development within an area of potentially unstable land or a site bounded by potentially unstable land will be required to prepare a stability report, assessing the nature and scale of any stability problems and identifying any measures required to overcome the problems, and submit the findings to the Council for consideration.

There are areas of land in Calderdale, which may be of concern to developers, owners or occupiers of sites because of their unstable or potentially unstable nature.

The site when viewed from White Hart Fold is a level area of land but then slopes down from west to east. As the proposal is for housing being built into the hillside, there are concerns regarding the stability of the site during construction especially to those properties below the site on Excelsior Close.

Whilst this site is not identified as being in an area containing potential hazards, the site is a sloping site with residential properties below. In order to ensure that the site is safe during construction from any stability issues and due to concerns raised by objectors, a condition is requested to provide a stability report to ensure the safe construction of the site.

Given the above, and subject to the condition, the proposal would satisfy RCUDP policy EP11 which discusses development on potentially unstable land.

Wildlife Conservation

Policy NE15 states that development will not be permitted in a wildlife corridor if it would impair the functioning of the corridor by preventing the movement of species.

RCUDP policy NE16 establishes that development will not be permitted if it would harm the habitat requirements of legally protected, rare or threatened wildlife species and the species themselves unless provision is made to protect those species and their habitats.

RCUDP policy NE17 establishes that development will be required where appropriate to enhance biodiversity. Conditions or planning obligations will be attached to:-

I. Protect, maintain and enhance biodiversity.
II. Protect restore and manage features of ecological importance and important species and their habitats; and
III. Create new wildlife habitats, especially where they link wildlife corridors or isolated habitats or create buffer zones.

The site is located within a bat alert area. As such the Council's Nature Conservation Officer was consulted on the application and made the following comments:-

My comments made in relation to 17/00086/FUL still apply: "I consider the bat report to be satisfactory and I am satisfied that there is a negligible chance of an adverse impact on roosting bats.

In line with the biodiversity enhancement requirements set out in the NPPF, I recommend the inclusion of one permanent bat roosting feature or one permanent swift nesting feature. Landscaping proposals should take into account existing planting and use locally native planting where possible. A condition is requested."

Subject to conditions, the proposal is considered to comply with policies NE15, NE16 and NE17 of the RCUDP.

Trees and Landscaping

Policy NE20 seeks to ensure that TPOs protect individual trees or groups of trees that make an important contribution to local amenity. A proposal to remove one or more trees will not be permitted unless it's in the interests of good arboricultural practice, or the developer has demonstrated that the benefits of the development including any tree replacement planting will outweigh the harm caused by the removal of the trees.

Policy NE21 seeks to ensure that trees located on or adjacent development sites, development proposal will be permitted provided that a tree survey is submitted where removal of trees are proposed, trees are retained which are worthy of retention, trees are protected during construction work, replacement tree planting, appropriate layout of development to prevent an unacceptable degree of shade cast and distances between proposed excavations for development and existing trees, and between foundations and new planting, are sufficient to ensure continued health of the trees.

The site is relatively clear of any trees and shrubbery but there is an area of trees identified as being the subject of a Tree Preservation Order 96/00957/C. This area will become part of the rear gardens for four of the plots and as such a tree survey should have been submitted with the application. The only submission was that of a site layout plan from the previous application on the site (Ref: 15/01310/FUL) which was for eight dwellings.

It would appear that the dwellings will be constructed without any implications for those trees. However, to ensure that no trees will be affected by the proposal, conditions are proposed requiring a landscaping scheme and implementation of the landscaping scheme.

As such, subject to conditions, the proposal is therefore considered to comply with policies NE20 and NE21.

CONCLUSION

The proposal is considered to be acceptable subject to conditions. The recommendation to grant planning permission has been made because the development is in accordance with the policies and proposals in the Replacement Calderdale Unitary Development Plan and National Planning Policy Framework set out in the 'Key Policy Context' section above and there are no material considerations to outweigh the presumption in favour of such development.

Richard Seaman
For and on behalf of
Director of Regeneration and Strategy

Date: 7th December 2021

Further Information

Should you have any queries in respect of this application report, please contact in the first instance:-

Janine Branscombe (Case Officer) on 01422 392215 or Paul Rossington (Lead Officer) on 07976 439991

Conditions

1. The development shall be carried out in accordance with the schedule of approved plans listed above in this decision notice, unless variation of the plans is required by any other condition of this permission.

2. The development shall not be occupied until details of the treatment of all boundaries of the site have been submitted to and approved in writing by the Local Planning Authority. The treatments so approved shall then be provided in full prior to the first occupation of the dwellings and shall thereafter be retained.

3. The development shall not begin until plans of the site showing details of the existing and proposed ground levels, proposed floor levels, levels of any paths, drives, garages and parking areas and the height and finish of any retaining walls within the development site have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in complete accordance with the details so approved and shall be so retained thereafter.

4. The development shall not begin until a site investigation and assessment has been carried out by a properly qualified and experienced expert(s) able to demonstrate relevant specialist experience in the assessment and evaluation of unstable land. The findings of the investigation shall be submitted in writing to the Local Planning Authority before development commences. Such investigations shall identify the nature and extent of any unstable land and indicate such remedial measures as are necessary to ensure land stability in the area, within the site and beyond as a result of the proposed development. All measures identified under these provisions shall be implemented as the development proceeds and shall be completed before any part of the development is brought into use.

5. No removal or management of any tall vegetation, including brambles, trees and shrubs, should be carried out between 1st March and 31st August inclusive unless a suitably qualified and experienced ecologist has undertaken a bird survey immediately before the vegetation has been cleared and provided written confirmation that no birds will be harmed or disturbed and/or that there are appropriate measures in place to protect nesting birds on site. Any such written confirmation should be submitted to the LPA."

6. Prior to the first occupation of the dwellings a permanent bat roosting feature and single swift nesting feature shall be installed within the fabric of the buildings and shall be so retained thereafter.

7. Prior to drainage beginning, full details of the foul and/or surface water and/or sustainable systems of drainage if feasible and/or sub-soil drainage and external works for the development (taking into account flood risk on and off site and including details of any balancing works, off-site works, existing systems to be re-used, works on or near watercourses and diversions) have been submitted to and approved in writing by the Local Planning Authority. The details so approved shall be implemented prior to the completion of the development and retained thereafter.

8. In connection with any garage, driveway, vehicle hardstanding or car-port hereby approved for construction within the boundary of the dwellings, prior to the first occupation of any of the dwellings, there shall be installed in an appropriate location a suitable facility to permit the recharge of an electrical battery-powered vehicle that may be used in connection with the dwellings. Unless otherwise required by the location the installation(s) shall comply with IEE regulations IEC 61851-1 Edition 2, and BSEN 62196-1. The facility shall be so retained thereafter.

9. Unless otherwise agreed in writing by the Local Planning Authority, the development shall not begin until a scheme of landscaping the site, which shall include details of all existing trees and hedges on the land, details of any to be retained and details of measures for their protection during construction, has been submitted to and approved in writing by the Local Planning Authority.

10. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the dwellings or the completion of the development, whichever is the sooner; and shall be so retained thereafter, unless any trees or plants within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased. These shall be replaced in the next planting season with others of similar size and species, (unless otherwise agreed in writing by the Local Planning Authority) and these replacements shall be so retained thereafter.

11. No dwelling shall be occupied until the parking and manoeuvring facilities shown on the permitted plans for that dwelling have been provided and sealed and made available for the occupiers of that dwelling. These facilities shall thereafter be retained.

12. Before the development begins details of the construction and specification for the access road reconstruction shall be submitted to and approved in writing by the Local Planning Authority. The details so approved shall be fully implemented before any part of the development is occupied and shall be retained thereafter.

13. Prior to commencement of works at the site, a scheme for the prevention of mud or other material being deposited onto the public highway, including full details of any equipment on the site used to clean the hardstanding areas, access, wheels and chassis of vehicles, equipment location and means of drainage, shall be submitted to and approved in writing by the local planning authority. The permitted scheme shall be implemented on commencement of works. The scheme shall be updated where the local planning authority consider mud on the road to be a recurrent problem by the operator or their agents in liaison with and to the written approval of the local planning authority. The updated scheme shall be implemented within a timescale to be agreed. In the event of mud or other material being deposited onto the public highway, immediate remedial and preventative action shall be taken, including suspension of operations if necessary.

Reasons

1. For the avoidance of doubt as to what benefits from planning permission and to ensure compliance with the Development Plan and National Planning Policy Framework.

2. In the interests of amenity and privacy and to ensure compliance with policies BE1 and BE2 of the Replacement Calderdale Unitary Development Plan.

3. To ensure that the works are carried out at suitable levels in relation to adjoining properties and highways in the interests of visual amenity and to ensure compliance with Policies BE1 and BE2 of the Replacement Calderdale Unitary Development Plan.

4. For the avoidance of doubt and to ensure compliance with policy EP11 of the Replacement Calderdale Unitary Development Plan.

5. In the interests of conservation and to protect the ecological species and in order to ensure compliance with Policies NE16 and NE17 of the Replacement Calderdale Unitary Development Plan.

6. In the interests of conservation and to protect the ecological species and to ensure compliance with polices NE16 & NE17 of the Replacement Calderdale Unitary Development Plan.

7. To ensure proper drainage of the site and to ensure compliance with Policies EP14, EP20 and EP22 of the Replacement Calderdale Unitary Development Plan.

8. In the interests of sustainability and to ensure compliance with Paragraph 112 of Section 9 (Promoting sustainable transport), of the National Planning Policy Framework.

9. In the interests of visual amenity and to ensure compliance with policies NE20 and NE21 of the Replacement Calderdale Unitary Development Plan.

10. In the interests of amenity and to help achieve a satisfactory standard of landscaping and to ensure compliance with Polices NE20 and NE21 of the Replacement Calderdale Unitary Development Plan.

11. To ensure that suitable access (and parking provision) is available through the course of construction works in the interests of highway safety and to ensure compliance with Policies BE5 and T18 of the Replacement Calderdale Unitary Development Plan.

12. To ensure that suitable access is available in the interests of highway safety and to ensure compliance with policies BE5 and T18 of the Replacement Calderdale Unitary Development Plan.

13. In the interests of highway safety and to ensure compliance with Policies BE% of the Replacement Calderdale Unitary Development Plan.

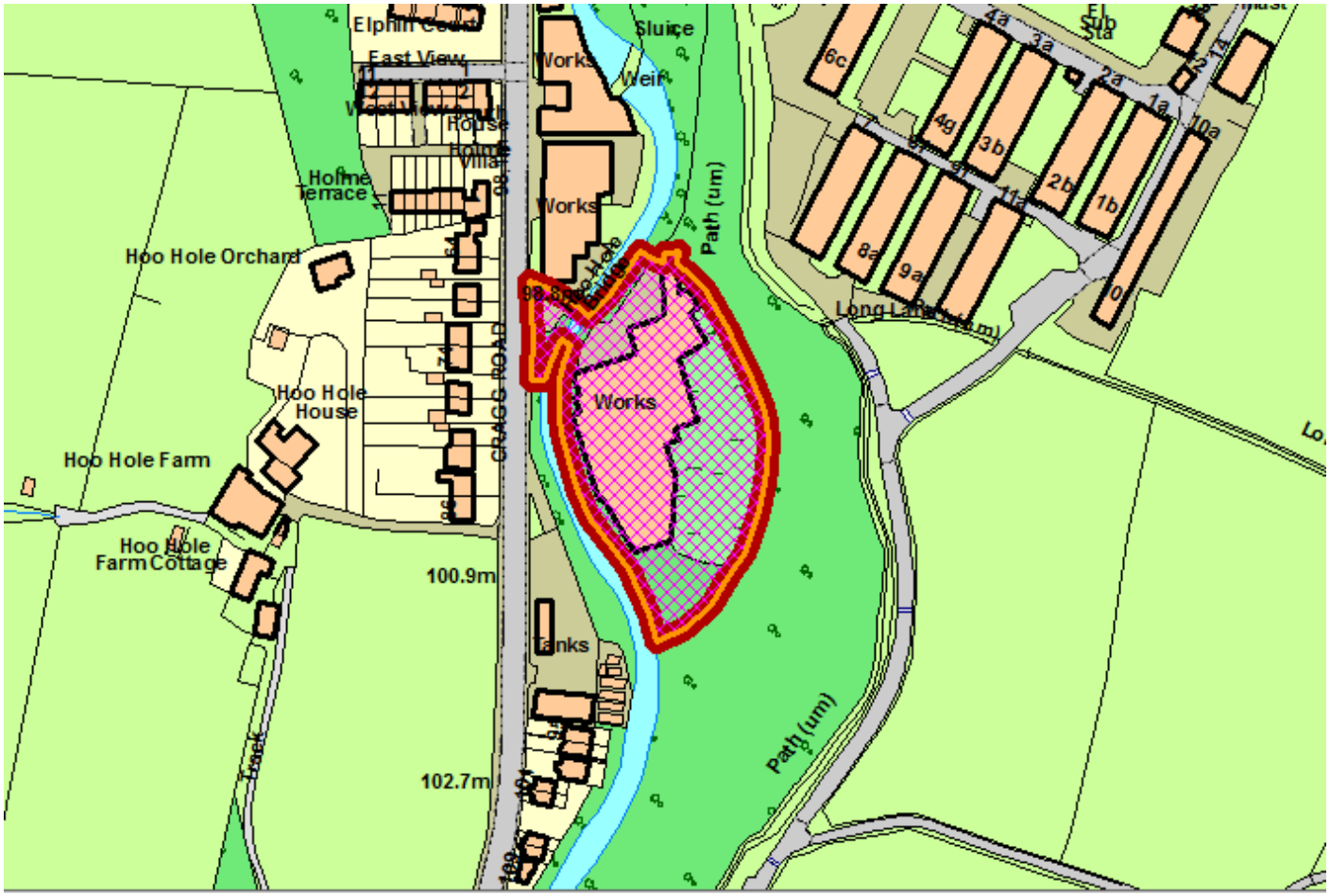
Time Not Before: 14.00 - 03

Application No: **20/00105/FUL**

Ward: **Luddendenfoot**
Area Team: **North Team**

Proposal:
Demolition of existing works building and construction of 21 residential dwellings (Revised Scheme to 14/00918) (Additional Plans)

Location:
Former Cal Val Works Hoo Hole Cragg Road Mytholmroyd Hebden Bridge Calderdale



Applicant:
Messrs Thornber

Recommendation: **REFUSE**

Parish Council Representations: N/A
Representations: No
Departure from Development Plan: No

Consultations:

Environment Agency (Waste & Water)
Hebden Royd Town Council
Environment Agency (Waste & Water)
Countryside Services (E)
Countryside Services (E)
Highways Section
Environment Agency (Waste & Water)
West Yorkshire Combined Authority
Lead Local Flood Authority
Environmental Health Services - Pollution Section (E)
Yorkshire Water Services Ltd
Housing Services
Education Services
Canal & River Trust
Business And Economy
West Yorkshire Police ALO
Tree Officer
West Yorkshire Passenger Transport Exec
Community Engagement
Environmental Health Services - Pollution Section (E)

Description of Site and Proposal

The site is located off Cragg Road in Mytholmroyd. It is part of an established industrial area and forms a central portion of a linear employment area running along the eastern side of Road. Immediately to the north of the site is the Royd Ices depot (for ice cream manufacture and its distribution across the country through a fleet of 40 or so vehicles). To the east is a steep wooded hillside, to the south is a mix of woods and industrial uses. To the west the site is bounded by the tree lined Cragg Brook, beyond which is Cragg Road then residential properties on the opposite side of the road. Access to Cragg Road is across an open surfaced yard area adjoining Royd Ices. That employment site has the features of a general industrial area including a yard area for vehicle repair, maintenance cleaning and loading, including external floodlighting, tannoy system and incinerator.

The wooded hillside to the west of the site is subject to a TPO, whilst Hoo Hole Bridge, which forms the access to the site across Cragg Brook, is a Grade II Listed structure.

Planning permission is sought for the demolition of existing buildings and construction of twenty-one dwellings, plus a footbridge across the Cragg Brook.

The application is supported by the following documents:

- Flood Risk Assessment
- Bat Survey
- Design and Access Statement
- Planning Obligations Statement
- Renewable Energy Statement
- Ecological Report
- Structural Appraisal
- Phase I Land Contamination Report
- Noise Assessments prepared by ENS dated 8th August 2019, 5th June 2020
- Final Noise Report prepared by ENS dated 30th November 2021

Relevant Planning History

A previous application, for the development of twenty one dwellings, was withdrawn by the applicant on 8 May 2015 (application number 14/00918/FUL).

An application for the demolition of existing works buildings and the construction of 21 residential dwellings (Revised Scheme to 14/00918FUL) was 'permitted' under delegated powers on 17 September 2018. However the planning permission was subsequently quashed on 11 March 2019 as a result of a successful Judicial Review.

This current application is a new application and has to be considered on its individual merits. This includes evidence, facts and policies that have changed since the original assessment.

The latest Judicial Review was brought on the grounds of:

- Mistake of fact regarding the use of rear yard of Royd Ices premises and failure to consider the implications of that use on residential amenity.
- Failure to correctly assess noise from the Royd's Ices air handling units.
- Flawed approach to policy in the failure to deal with discrepancy between policy EP8 'other incompatible uses' and paragraph 182 ([now 186] of the NPPF.

Following the Judicial Review proceedings and the Quashing Order, the applicant has basically resubmitted the same plans and proposals as application 20/00105/FUL, but with the addition of amended plans and a final noise statement.

Key Policy Context:

Replacement Calderdale Unitary Development Plan Designation (RCUDP)	Green Belt Primary Employment Area Wildlife Corridor
Replacement Calderdale Unitary Development Plan policies (RCUDP)	**GE1** Meeting the Economic Needs of the District **GE3** Development of Employment Sites for Non Employment Uses **GP1** Encouraging Sustainable Development **H9** Non Allocated Sites **BE1** General Design Criteria **BE2** Privacy, Daylighting and Amenity Space **BE3** Landscaping **BE4** Safety and Security Considerations **BE5** the Design and Layout of Highways and accesses **BE15** Setting of a Listed building **T18** Maximum Parking Allowances **E1** Primary Employment Areas **E5** Safeguarding Employment Land and Buildings **E13** Encourage rural diversification **E14** The Conversion and adaption of rural buildings for commercial or business use **NE15** Development in Wildlife Corridors **NE16** Protection of Protected Species **NE18** Ecological Protection of Water Areas **NE20** Tree Preservation Orders **NE21** Trees and Development Sites **EP8** Other Incompatible Uses

	EP9 Development of contaminated sites **EP14** Protection of Groundwater **EP20** Protection from Flood Risk **EP22** Sustainable Drainage Systems **RCUDP Annex A**
National Planning Policy Framework Paragraphs (NPPF) **Planning Practice Guidance**	**5.** Delivering a Sufficient Supply of Homes **6.** Building a strong and competitive economy **8.** Promoting healthy and safe communities **9.** Promoting Sustainable Transport **11.** Making effective use of land **12.** Achieving well-designed places **13.** Protecting Green Belt land **14.** Meeting the challenge of climate change, flooding and coastal change **15.** Conserving and Enhancing the Natural Environment **16.** Conserving and Enhancing the Historic Environment **63 & 64**. Affordable Housing Noise
Other relevant planning constraints	Flood Zones 2 and 3 Bat Alert Area Grade II Hoo Hole Bridge at the access to the site
Material Planning Considerations	Calderdale Climate Emergency declaration Emerging Calderdale Local Plan (Policy EE1)

Publicity/ Representations:

The application was publicised with site and press notices. In addition sixteen neighbour notification letters were sent.

Two letters of objection was received against the current application.

In addition, a noise report was submitted on 24th March 2020 on behalf of the neighbouring commercial premises, Royd Ices, prepared by DRUK Ltd. This was later updated by a noise report received on 30/11/2021.

The application was publicised on 19th March 2020, and subsequently on the 18 March 2021, following submission of the additional noise assessment reports from objector and applicant.

Summary of points raised:

Objections:

- Number of issues of concern to the neighbouring business
- Residential traffic will conflict with the industrial access
- Highway safety concerns
- Noise Report prepared by ENS actually indicates the unsuitability of the site for residential use
- Noise Report does not take into account other lawful B2 uses that could occur on the neighbouring site
- Site surrounded on three sides by unrestricted industrial uses

Parish/Town Council Comments

The development is located within the boundaries of Hebden Royd Town Council who make the following comments:

> *"Recommend Refusal unless the following points are addressed.*
> *' That parking provision and access roads are constructed using SuDS.*
> *' That all the trees shown in the plan are issued TPO's*
> *' That the homes are constructed with sustainable, and provide some means of renewable energy ' solar/wind/hydro*
> *' That a proportion of the homes are built to 'Lifetime Homes' standard*
> *'That consideration is given to the treatment of water which runs off the hill behind the proposed site*
> *' That a proportion of the homes are affordable*

Summary of the Applicant's Position

Planning permission has already been supported and granted by the Council in 2018 for the erection of 21 dwellings on this site. Although the Judicial Review by Royd Ices quashing this permission was made against the Council (as opposed to the applicants), the applicants consider they have since addressed the grounds of judicial review. In particular, a comprehensive noise assessment has been undertaken over a two week summer period in order to fully assess the noise environment in connection with Royd Ices business activities.

Subject to close boarded fences around the nearest plots and enhanced glazing and ventilation, the noise assessment concludes that the proposed development would be unlikely to result in complaints and would not therefore place unreasonable operational constraints on the adjacent Royd Ices business.

Officers agree that the site is no longer suitable for employment use and the applicant seeks to replace this area of land many times over by developing the adjacent Top Land site for employment purposes comprising over 8 hectares, as provisionally allocated through the draft Local Plan. The proceeds from the Hoo Hole site would be re-invested in order to help finance the development of Top Land.

The 'tilted balance' is considered to be triggered in this case because the Council is unable to demonstrate a five year supply of housing sites. As such, NPPF Paragraph 11 states that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

It is considered that the issue of noise from Royd Ices does not represent an adverse impact, and would not significantly and demonstrably outweigh the benefits in this case, which in summary comprises a 21 unit boost to Council's housing supply on a sustainably located and recycled brownfield site, close to Mytholmroyd shops, services, community facilities and public transport links.

Principle of Development

Planning law requires that applications for Planning Permission be determined in accordance with the Development Plan, unless material considerations indicate otherwise. Local Planning Authorities are encouraged to approach decisions on proposed development in a positive and creative way.

The current Local Plan contains general policies GE1 (Meeting the Economic Needs of the District and GP1 (Encouraging Sustainable Development) which are in conflict with the proposal.

The Council has adopted detailed planning policies E1 & E5, which encourage the retention of primary employment sites, other than in specific circumstances. However the Council also has adopted planning policy H9 which allows the development of Housing on non-allocated sites. Also, as Calderdale currently fails to deliver sufficient housing, NPPF para 11 notes that the planning balance is 'tilted' in favour of allowing such sites to be developed for housing.

The following sections of the report look at all these issues, among others. However members must decide what weight they wish to give to each policy in taking their decision.

<u>Employment Issues</u>

Policy E1 'Primary Employment Areas' sets out the type of employment uses acceptable in the allocated Employment Area.

Policy E5 'Safeguarding Employment Land and Buildings' states:

Proposals for non-employment uses which involve the loss of land resources and/or buildings which are either currently or whose last use was for industrial, business, office (Use Classes B1, B2 and B8) or other employment uses, will be permitted providing one or more of the following apply:-

i. …
ii. …
iii. it can be demonstrated that the site and/or buildings are not economically or physically capable of supporting industrial, business (Use Class B1, B2 and B8) or other employment generating uses and that other UDP objectives can be achieved by the development;
iv. no demand exists to use the site for employment purposes and this is justified by evidence demonstrating the site has been adequately advertised on the open market for a reasonable length of time with purchase/lease costs set at an appropriate level to reflect the employment potential of the site/building in the local market;
v. …
vi. ….

Policy E13 Encourages rural diversification, including the re-use and adaption of rural buildings for commercial or business use, while policy E14 sets criteria for such conversion and adaptions.

Policy GE3 'Development of Employment Sites for Non Employment requires that "*where non-employment uses are proposed on sites whose current or last use is/was for employment purposes (use classes B1, B2 & B8), the provision of a contribution to offset the permanent loss of such a land resource will be sought.*

The site is indicated as an Employment Area in the current Local Plan. It is proposed to retain the Primary Employment Area designation in the emerging Local Plan, scheduled for adoption in 2022.

The Council's Business and Economy Manager was consulted and commented:

"No objections to this loss of employment space as the site is no longer suitable for employment use as the premises have poor access and the building is in a poor state of repair and would need significant investment to make it suitable for modern business uses which, due to its location and distance from the M62 is unlikely."

The Planning Statement that accompanied that the original application included an Economic Statement covering the proposed loss of employment land as a result of the development. The applicant's statement included the following paragraph:

" Although the site is relatively flat it is in an area at risk from flooding and is also outside the main built up area of Mytholmroyd, in a semi rural location and remote from the main road network. As a result its location is not considered to be attractive to the needs of modern business. The business previously operating from the site has moved to another location and although there remains a low key commercial use of part of the building for plant hire, this is only on a short term basis. [Regarding Policy GE3,] the applicant has invested heavily in the restructuring of the nearby Top Land Country Business Park and concurrent with this application is a proposal for a new office unit at the business park which will partly be funded by the sale of the application site for residential purposes…"

The buildings currently have a 10-15% occupancy rate at non-commercial rental rates.

At the time of the previous delegated decision (now quashed), it was considered that the 'tilted balance' towards approving housing outweighed current employment policies.
However, while it is argued that the site and buildings on it are no longer capable of meeting the modern needs of businesses, there is not clear evidence to support the assertion that the buildings or site are incapable of adaption or re-development for the allocated use. Furthermore, evidence from planning staff visiting the site demonstrates that substantial commercial vehicles can access the site. Also flooding issues identified as restrictions on employment use can be addressed just as easily for employment uses as for housing use. Employment surveys underpinning the emerging Local Plan and the presence of local businesses elsewhere in the employment zone demonstrate that there is some local demand for employment uses in the area.

Paragraph 123 of the NPPF states that Local Planning Authorities should take a positive approach to applications for alternative uses of land which is currently developed but not allocated for specific purposes in plans, where this would help to meet identified development needs. Therefore it can be argued that policy E5 is out of date and out of step with the NPPF as it places burden on the applicant to demonstrate that the site is surplus to requirements/unsuitable, which limits the relevance of this policy and the Local Plan allocation.

While it is argued by the applicant that the Council's Employment Policies should be regarded as out of date because of failures in housing delivery, substantially the same policies are being brought forward for adoption in the emerging Local Plan by the summer of 2022. The contents of the emerging local plan are material, although the final parts of it remain to be tested at examination in January 2022.

Furthermore, regarding suitability of access for employment use, substantial commercial vehicles have been seen to access the site across the Hoo Hole bridge without difficulty.

In the emerging Local Plan, the application site and the adjacent Royd Ices site are both designated as Primary Employment Area. Whilst it is important to stress that this is not analogous to a new employment allocation, draft Local Plan Policy EE1 provides measure of protection for such sites, as well as neighbouring employment land. Essentially, the draft policy establishes that development for resulting in loss of the employment use will not be permitted unless:

a. *the site or premises are no longer capable of employment use, or*

b. *there is no demand to use the premises for employment use, supported by evidence of extensive marketing, over a reasonable length of time, at a realistic purchase/lease cost or*

c. *the site has been identified for release in the most up to date Employment Land Review, and*

d. *the proposed use is compatible with neighbouring uses and, where applicable, would not prejudice the continued use of neighbouring land for employment*

Given the comments of Business and Economy above the application evidently passes the test under criterion a. However, the policy *also* requires development to comply with criterion d. relating to prejudicing neighbouring employment activity. The extent to which this criterion is satisfied is effectively at the root of the objections to the application that have been made on behalf of Royd Ices. It is important to note that there is not a criterion in RCUDP policy E5 analagous to criterion d. of draft Local Plan Policy EE1.

In terms of weight to be accorded to draft policy EE1, it has been subject to two separate representations: The first party *fully supports part 1 (ii) of the policy which acknowledges that employment sites can be used for alternative purposes where it is demonstrated that they are no longer viable for employment purposes*. The second party states *that It would be desirable to assist regeneration of Dean Clough and linkages with the town centre to provide some flexibility on this policy subject to a new planning document being prepared.*

Clearly, neither of these representations attack the underlying objectives or direction of the policy, and there is certainly no suggestion that either of the representors have an issue with criterion d. In principle it is therefore considered that significant weight could be attached to policy EE1 if it were concluded the proposed development would prejudice the use of neighbouring land for employment.

<u>Housing Issues</u>

The National Planning Policy Framework (NPPF) and the accompanying Planning Practice Guidance (PPG) require Councils to maintain a rolling 5-year supply of deliverable land for housing. Currently Calderdale has a 2 year housing land supply. Calderdale has also failed the government's 'Housing Delivery Test'. So in accordance with the NPPF, the most important Local Plan employment policies for the determination of this planning application are deemed out of date, triggering the application of the NPPF 'tilted balance' towards approval, unless specific national policies of restriction give a clear reason for refusal. The planning balance is addressed below. Given the shortfall in housing land within Calderdale, the provision of 21 dwellings carries significant weight towards approval.

However the site was not put forward for housing development in the 'call for sites' process for the new Local Plan and was not assessed as suitable for housing development during the Local Plans site allocations process. The emerging Local Plan has identified sufficient sites to satisfy the Housing Land Supply targets,

The NPPF para 65 specifies that no less than 10% of homes should be affordable – not less than 3 units on this site are required to meet this policy requirement. When checked there were 652 active applications on the Housing Register, suggesting there is demand for such housing. However paragraph 64 or the NPPF allows the use of a 'Vacant Building Credit' to encourage the use of 'brownfield sites', which overrides the need for the developer to provide affordable housing in this case.

'Lifetime Homes' standards are no longer applicable and the replacement M4(2) standard is not yet in place.

Policy H9 of the adopted Local Plan relates to housing on non-allocated sites and sets out criteria where such development will be allowed. The site is not allocated for housing and therefore this policy can apply. The criteria in this policy cover access to services and facilities, the availability of infrastructure now and in the future, physical and environmental constraints, unacceptable environmental, amenity, traffic or safety problems, the effect on heritage assets and compliance with other UDP policies. There are significant concerns about whether reasonable environmental and amenity standards can be met, and this is explored later in the report.

Green Belt

The submitted Site Layout plan shows that only a small section of the site's 3 metre wildlife buffer will lie within the Green Belt. Paragraph 150 of the NPPF refers to categories of development, which includes change of use of land, that are not inappropriate in the Green Belt, provided that its openness is preserved and there is no conflict with the purposes of including land in the Green Belt. This small incursion of the site into the Green Belt is for a wildlife corridor, which adjoins built development outside the Green Belt, and so it is considered that there is no harm to either openness or the functions of the Green Belt from this development. The element of the application within the Green Belt is therefore appropriate development, and it is not necessary to demonstrate the existence of very special circumstances to support the proposal.

Impact on Heritage Assets

Under section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, decision makers must give considerable importance and weight to the desirability of avoiding any harm to designated heritage assets. The finding of harm to a heritage asset gives rise to a strong presumption against planning permission being granted.

RCUDP Policy BE15 'setting of a listed building' states that "*development will not be permitted, where through its siting, scale, design or nature, it would harm the setting of a listed building."*

The site's vehicle access is over the Grade II listed Hoo Hole Bridge. The Bridge dates from the 18th Century and was probably constructed to access an 18th century corn mill on the site, which no longer exists, having been replaced by later buildings. The significance of the bridge stems from its age and simple vernacular form, and as evidence of a long established access over the river. No works are proposed to the listed bridge. The closest part of the development is the proposed footbridge, with the proposed housing some distance away.

The Council's Conservation Officer confirmed in a final consultation response:

"… I do not consider the proposed footbridge would be harmful to the setting of the listed bridge."

The overall proposal (including both the housing and footbridge) is considered acceptable under policies BE15 and under section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and is not considered to result in harm to the setting of the Listed structure or its significance as a heritage asset.

Residential Amenity

The key policies and guidance on Residential Amenity are BE2, EP8 and NPPF para 186, and PPG on 'Noise).

BE2 – this establishes that development should not significantly affect the privacy, daylighting or amenity space of existing and prospective residents and other occupants.
RCDUP Annex A sets out guidelines to help assess whether such impacts arise.

The recommended minimum acceptable distances between the dwellings and the site boundary is a minimum of 1.5m. Plot 9 has a distance to the boundary of 1.2m and Plot 10 has a distance of 1.1m to the boundary. However these are both between blank gable ends and the boundary, so it is not considered this would result in a loss of amenity or privacy. There are no impacts on residential privacy and daylighting as a result of of the separation distances between the proposed development and the site boundary with other uses. However there are considerable potential impacts on amenity from the adjoining employment uses.

EP8 'Other Incompatible Uses' states that "*Where development proposals could lead to the juxtaposition of incompatible land-uses, they will be only permitted if they do not lead to an unacceptable loss of amenity caused by odour, noise or other problems. Where development is permitted, appropriate planning conditions and/or obligations will be added as necessary to provide landscaping, screening, bunding, physical separation distances or other mitigation measures."*

Paragraph 186 of the NPPF states that "*Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed.*

Government guidance on noise was updated in 2019. It makes clear that noise is relevant to planning and that consideration needs to include activities that are permitted but not yet commenced. Furthermore that noise can override other planning concerns. In assessing noise impact it specifies that there must be consideration of whether or not a good standard of amenity can be achieved. In assessing the risk of conflict between new development and existing businesses it specifies the need to look at *" …those activities that businesses or other facilities are permitted to carry out, even if they are not occurring at the time the application is made."*

The advice goes on to specify how mitigation but " …*can help to achieve asatisfactory living or working environment…".* However it also indicates that "*Although the existence of a garden or balcony is generally desirable, the intended benefits will be reduced if this area is exposed to noise levels that result in significant adverse effects*."

The applicant has prepared a final noise assessments (by ENS), confirming that issues relating to existing noise can be addressed through suitable mitigation measures. The objector has commissioned and submitted an alternative Noise Assessment. (by ADC Acoustics) and came to different conclusions.

The Assistant Director – Neighbourhoods (Environmental Health) was re-consulted on the proposal in the light of these updated assessments and made final comments as follows:

"The Planning Officer has asked me to comment on further evidence recently submitted by the applicant (Noise Memo by ENS dated 24/11/21) and from the objector (Noise Review by ADC Acoustics dated 30/11/21) .
The salient issues are that the neighbouring business is objecting on the grounds that noise from activities on their site "it is suggested that the emission of noise from activities undertaken on the Royd Ices rear service area, have the potential to cause significant disturbance to the residents of the proposed development" DRUK/ACC/RS/IMRICRWCRM/2840 dated 24/3/20). This conclusion was based on a mock-up of some of the noise sources from the site due to the report being prepared

during the winter months. The report was assessed against "BS 4142:2014, "Method for rating and assessing industrial and commercial sound".

The applicant also conducted noise monitoring and submitted a number of noise reports and comments which concluded : " Providing the mitigation measures proposed in this report are implemented, the proposed development will not place any unreasonable constraints on any surrounding commercial uses, and is therefore in keeping with the aims of Paragraph 182 of the NPPF (NIA/8496/19/8478/v3/Cragg Road 5 June 2020) . This conclusion was based on noise monitoring primarily carried out at the site on dates in May 2019. The report was assessed against Planning Practice Guidance (PPG) & Noise Policy Statement for England (NPSE) & BS 8233:2014 'Guidance on Sound Insulation and Noise Reduction for Buildings'

One of the issues is that noise assessment is not a simple or straightforward issue and there are a number of guidelines that exist.

The applicant has submitted an update (Noise memo by ENS dated 24/11/21) following introduction at the site of a new compressor. This demonstrated by modelling that the noise could be mitigated by the proposed mitigation to the houses.
The objectors agent submitted a review (ADC Acoustics dated 30/11/21).
Both documents add to the discussion and make valid points worthy of consideration.
The addition of the new compressor is an indicator of how the Royds site cannot be considered as a fixed static entity and we would caution against placing too much weight on the noise from specific activities and rather take an overview that a variety of commercial and manufacturing activities can take place on the site at any time of day or night.

Since the original comments from Environmental Health in February 2021 we have the opportunity to visit the site and make our own observations. During the course of investigation into noise complaints by the existing residents of houses on Cragg Road we can state that the noise profile from Royd ices is very variable depending on the time of year and time of day. During the peak summer months June to August there is considerable daytime (primarily evening) and some night-time noise. At other times the site is quiet. This explains the variable results from monitoring. As the applicants have stated the homes and maybe the gardens can be mitigated by construction methods to achieve accepted standards for the occupiers.

<u>Conclusion</u>

The placing of residential accommodation between two industrial sites has the potential to lead to housing of a less desirable quality if the windows have to be kept closed at all times or gardens are noisy from industrial activity. Furthermore, extensions and modifications can occur to the dwellings over time and these may weaken or have no sound amelioration measures incorporated within them.

The activities carried on at industrial sites can be varied, wide-ranging and noisy. New companies, equipment and processes can be legitimately introduced (without the need for planning consent) and potentially change the character of the area overnight. Therefore the close proximity of residential premises between two existing industrial land uses could affect the viability of these existing premises as complaints would be very difficult to resolve.

If planning services are mindful to approve this application then I request that we are reconsulted for conditions."

From the planning perspective, noise from the employment area is a real and present issue, with the potential for future conflict between uses. There have been a number of historic and recent noise complaints from nearby residents, and allegations of the unauthorised installation of noisy

equipment. These complaints relate both to noise from manufacture, and the maintaining, repairing and movement of distribution vehicles associated with the employment use.

The various Noise Reports and their assessment by noise experts and Council Environmental Staff are based on actual readings of noise on the site from existing noise sources. However, the operation of the current adjoining employment use (Royd Ices) is highly variable. Depending on weather and stock levels there may either be no production or it may operate 24/7. At any one time it may use some or all of its manufacturing equipment. Existing equipment may be replaced by other equipment with a different noise profile installed under permitted development rights. So in addition to looking at actual noise readings the Local Planning Authority must consider the compatibility of the proposed housing and the adjoining employment uses and whether or not permitting the housing development is sustainable development and in the interests of the good planning of the area.

Furthermore, addressing the noise issue by the use of mitigating measures can cause different amenity problems e.g. by design and construction you can minimise the noise within the houses, However, the use of such noise mitigating measures may create oppressive living conditions by residents being unable to open windows, or enjoy the normal benefits of secluded balconies and gardens.

Recent planning appeal decisions shed some light on how the (independent) Planning Inspectorate address such situations.

Planning Appeal X1355/W/17/3180002 from 2018 is highly relevant. As in this appication, the adjacent employment use had no planning restrictions on the nature of the businesses or their hours of operation. The inspector considered this flexibility a important element in enabling existing businesses to expand and respond to changing circumstances.

The Inspector considered the main issue in the Appeal to be whether [housing] development would be compatible with nearby industrial units. The Inspector expressed significant concern over the appropriateness of mitigation measures, due to the nature of the proposed family accommodation and the times of industrial operations and so considered them harmful to living conditions and contrary to the NPPF. The Appeal was dismissed.

Planning Appeal APP/C1570/W/21/3274573 from 2021 addressed a proposal for housing in an area affected by noise from adjoining motorway and railway. The inspector considered that "…*being able to open windows in a family dwelling is an essential part of everyday life, and something which most people take for granted*." She continued "*Keeping all windows closed to produce a suitable noise environment internally would, to my mind create an oppressive living environment…"*

In this specific case there was a 'tilted balance' towards the approval of housing. However the Inspector found that '…*this proposal would not meet the needs of the future occupiers because it would fail to provide acceptable living conditions or a high standard of amenity…*'. The Appeal was dismissed.

Assessing both the current and potential future situations, it is considered that the proposal is contrary to Policy EP8.

<u>Layout, Design & Materials</u>

RCUDP Policy BE1 calls for development to make a positive contribution to the quality of the existing environment to, at the very least, maintain that quality by means of high standards of design.

Section 12 of the NPPF 'Achieving well-designed places' paragraph 126 states that:

> *"The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development, acceptable to communities…."*

Paragraph 130 seeks the design of places *"…with a high standard of amenity for existing and future users…"*

While Paragraph 134 states that *"Development that is not well designed should be refused…"*

The National Design Guide (2019) forms part of the planning practice guidance and is a material consideration in the decision-making process. The NDG sets out how well-designed buildings and places rely on a number of key components and the manner in which they are put together.

The proposed layout of the scheme consists of six detached properties plus five blocks of terraced houses, each block consisting of three dwellings. All properties have 3 bedrooms, and can therefore be considered as family properties. Some are two storeys, whilst the majority are three storeys. All properties have private garden space to the rear, whilst to the front of the terraced properties there are parking areas along with landscaping. The detached properties have private driveways. The proposed dwellings are arranged in line on either side of a central access road. The properties are screened from Cragg Road behind a well-established tree line, and to the north by an 'acoustic fence'.

All the proposed housing is within the footprint of the existing mill buildings and curtilage. The dwellings will replace a series of mill buildings that are constructed from a mix of materials including stone and red brick. The proposed dwellings are to be faced in stone, with slate to the roof. UPVC windows and doors are proposed, with 'Juliet balconies' on some windows.

Vehicle access is taken from Cragg Road, across a concreted yard area to the south of the Royd Ices building and then across the Listed bridge over the Cragg Brook.

From the entrance to the site, a new pedestrian bridge is proposed across the Cragg Brook into the development. This is to be constructed with timber decking, which is supported by a main tubular central support, with 1.1m handrails on both sides.

With noise and disturbance from the adjoining industrial area area, windows fixed permanently closed and mechanical ventilation to mitigate the effects of noise, the main view from houses over an access track to another line of 2 or 3 storey houses, with gardens significantly affected by nearby mature trees, and the design is far from ideal when compared to the aspirations in the Local Plan and NPPF for high quality of amenity and design.

When considering all elements of residential amenity together, the proposal is not considered to positively contribute to the health and wellbeing of future residents, as described in policy BE1 and section 12 of the NPPF, and so is in conflict with that policy.

<u>Highway Considerations</u>

RCUDP Policy BE5 seeks to ensure that new development provides for safe and efficient movement by pedestrians, vehicles and cyclists.

RCUDP Policy T18 sets out maximum parking allowances for new development.

Paragraph 110 of the NPPF requires that in assessing sites for development it should be ensured that:

1. Appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;
2. Safe and suitable access to the site can be achieved for all users; and
3. Any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.

Paragraph 111 states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. It is considered that the proposal meets these requirements.

Paragraphs 110, 111 and 112 of the NPPF encourage safe and sustainable transport. They establish that development should be designed where practical to incorporate facilities for charging plug-in and other ultra low emission vehicles. In accordance with this, a condition is proposed requiring the installation of a suitable facility to permit the recharge of any electrical battery powered vehicle that may be used in connection with each dwelling.

One of the three grounds of challenge in the successful judicial review proceedings related to a 'Mistake of fact regarding continuation of cleaning operations'. In essence the council had erred in concluding that the Claimant had no right of access to the rear yard of its premises.

In the covering letter accompanying this resubmission, the applicant has stated that: *"Although the tarmac apron bounded by the Royd Ices building southern elevation, the river and Cragg Road is owned by the applicants (see enclosed land ownership plan), a measured survey has been undertaken in connection with the acknowledged right of way along the southern elevation of the Royd Ices building. This was found to vary between 4.1m and 4.2m and the proposed layout plan has been amended accordingly."*

Given this right of way and the extension of the rear yard towards the river by Royd Ices, it is acknowledged that it is possible for ice cream vans and other similar sized (or smaller) vehicles to gain access to and from the rear yard of Royd Ices using this 4.1 – 4.2m wide access.

The revised Layout Plan shows that the neighbouring business would be able to access the rear yard by the right of way alongside the southern elevation of the Ice Cream factory. This revision was made following issues raised to the original site layout plan that included landscaping that resulted in a much narrower access to the rear. The Highways Officer has commented on the resubmission and does not consider that there are highways safety concerns in relation to any potential conflict between residential traffic and the business traffic. Amenity concerns raised by the objector about noise from commercial vehicles has been covered in the applicant's submitted noise report.

The Assistant Director – Strategic Infrastructure (Highways) commented:

"With the exception of the annotated third party access rights adjoining the vehicular access, the submitted plan layout is identical to revision G of application 15/00919/FUL.

That scheme was found to be acceptable subject to a number of conditions."

*W*hile the vehicle access arrangements are considered acceptable on highway grounds by the relevant experts, there remain concerns about the deliberate mixing of traffic fron the industrial area with vehicles and pedestrians from a new housing area.

Given the low level of use on the footbridge likely as a result of the small scale of the proposed development, the footbridge could easily be used by cyclists.

The proposals are not considered to harm the Hebden Royd 064 Public Right of Way, which is situated to the north of the site. The proposed development is not considered to impinge on access to the footpath nor is it considered to detract from its existing setting.

Following expert advice from highway engineers, there are therefore no highway objections subject to condition numbers 11, 12, 13, 14, 15, 16 and 25 plus the stated reasons of the approval notice on the 2015 application.

Subject to the above conditions the proposal accords with policies BE5 and T18 of the RCUDP and paragraphs 110, 111 and 112 of the NPPF.

Flooding and Drainage

RCUDP Policies EP14 and EP20 establish that ground and surface water will be protected and development will not be permitted if it would increase the risk of flooding due to surface water run-off or obstruction. Sustainable Drainage Systems should be incorporated where appropriate in accordance with RCUDP Policy EP22.

For major developments, NPPF paragraph 168 establishes that sustainable drainage systems should be incorporated unless there is clear evidence that this would be inappropriate.

Applicants need to demonstrate that adequate foul and surface water drainage infrastructure is available to serve the proposed development and that ground and surface water is not adversely affected.

Drainage of water from the hillside is being addressed through a separate Environment Agency Scheme outwith the site. The Scout Road Surface Water Transfer Scheme is aimed at intercepting surface water flow south of Mytholmroyd and transferring the flow into Cragg Brook, to help reduce flood risk to the village of Mytholmroyd. The pipeline for this is located just upstream from the application site and work on this has recently commenced. This flood alleviation scheme has been taken into account in the Flood Risk Assessment submitted as part of this planning application.

The site is shown to lie within Flood risk Zones 2 and 3 on Environment Agency maps. However, according to the re-modelled data agreed with the EA and JBA (acting for the applicant) who undertook all the modelling in conjunction with the EA and Calderdale Council, the site is not in Flood Zone 3 (the current flood risk planning map is acknowledged to be out of date and needs updating) but part of the site is in Zone 2. As such, a sequential assessment is needed, but not an exceptions test. The applicant's agent submitted a sequential test on 4th June 2021.

Within Mytholmroyd, there are various land designations and constraints that are not deemed suitable in principle for the proposed development. As such the following areas have been excluded from the search:

1) Land designated as Green Belt.
2) Land in Flood Zones 2 & 3.
3) Land provisionally designated as new employment sites in the Draft Local Plan.
4) Land protected as open / green space.

Large parts of Mytholmroyd are located within Flood Zones 2 and 3. Any available sites within these areas would offer no sequential advantages over the proposed site and so are not considered.

Finally, the size of any available site needs to be similar to that of the application site in order to accommodate the proposed residential development.
In summary, for Cragg Vale, the land is either already developed, within the Green Belt, or within Flood Zone's 2 & 3. As such, reasonably available sites are ruled out in this area.
Given the above assessment, it is considered that within the search area comprising Mytholmroyd and Cragg Vale, there are no reasonably available sites for the proposed development. It is therefore considered that the Sequential Test is passed in accordance with national planning policy and guidance.

The Environment Agency were consulted and originally objected on the absence of an acceptable Flood Risk Assessment.

They also noted that "*in a previous [planning] condition, the EA stipulated an easement of 3m from the bank for any development at this site. This has been insufficiently addressed in the current FRA and submitted plans - regardless as to whether the current buildings are closer than 3m, full access must be available along the bank to the channel*.

Additionally, environmental requirements from a biodiversity and ecological perspective also require an 8m buffer zone from the channel (further details below). Therefore, the current layout must be revisited to address this.

To overcome the EA objection related to flooding and the water environment, the EA required the applicant to submit a revised FRA and details.

The applicant submitted further information in order to address the remaining EA objections. The EA were reconsulted and confirmed that *"they were now satisfied with the responses provided in regard to the modelling, climate change and soffit level of the footbridge. In light of this, we are now minded to remove our objection, subject to condition".*

Yorkshire Water were consulted on the proposal and raised no objections subject to a condition that required the site to be developed with separate systems of drainage for foul and surface water on and off site.

The Lead Local Flood Authority were consulted on the proposal and commented *"A new FRA and hydraulic modelling has been submitted for the development site which shows the site to be at a reduced flood risk in comparison to the existing Flood Map for Planning. Development should be built in accordance with this FRA and seek to implement the recommended flood mitigations options, furthermore the proposed dwellings should ideally be outside of the modelled 1 in 100 year plus climate change flood extents".*

Subject to conditions relating to drainage details and building in accordance with the FRA, the LLFA raised no objections.

The Environment Agency suggested 3 conditions, requiring the submission of drainage details for foul and surface water drainage systems, a scheme for the disposal of surface ater by a sustainable drainage system an lastly development in accordance with submitted Flood Risk Assessment.

Subject to these conditions along with the EA condition in relation to flood risk, the proposal complies with Policies EP14 for the protection of groundwater, EP20 Flood Risk Protection and EP22 the ability to provide approppriate sustainable drainage systems.

Ground Conditions

RCUDP policy EP9 deals with development of contaminated sites. Section 15 paragraph 174 of the NPPF seeks to prevent development from contributing or being adversely affected by unacceptable levels of soil, air, water or noise pollution and land stability.

The land is identified as being potentially contaminated. The applicant submitted an initial land contamination report, however Environmental Health officers requested additional information in order to make comments on this element of the application.

The applicant subsequently submitted additional information, which confirmed the previous historic uses, and also committed to a detailed investigation of the ground conditions. Given the additional information submitted any approval should to include conditions requiring a phase II survey. Subject to conditions the proposal accords with policy EP9 of the RCUDP.

Wildlife Conservation

The site lies within the Wildlife Corridor and is also within a Bat Alert Area. RCUDP policy NE15 discusses development in wildlife corridors and establishes that development will not be permitted in a wildlife corridor if it would affect the function and harm the nature conservation value of the corridor.

RCUDP policy NE16 discusses the protection of protected species and establishes that development will not be permitted if it would harm the habitat requirements of legally protected, rare or threatened wildlife species and the species themselves unless provision is made to protect those species and their habitats.

Furthermore, policy NE17 states that where appropriate, development will be required to enhance biodiversity.

Paragraph 170 of the NPPF states that *"Planning policies and decisions should contribute to and enhance the natural and local environment by ……*

d) minimising impacts on and providing net gains for biodiversity….

Paragraph 180 of the NPPF also states that *"When determining planning applications, local planning authorities should apply the following principles….*

d) ……opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity…

Initially, the applicant had submitted an Ecology Survey (ES) undertaken by Quants Ecology, July 2019. This concluded that the proposal was unlikely to have any significant effects on protected sites or Ancient Woodland, although the report suggested that there may be potential adverse effects on the Wildlife habitat network along both the eastern and western boundaries of the site.

ES did not predict significant effects on Cragg Brook habitats as a result of the development, although this would require avoidance of artificial light spill plus implementing standard pollution prevention measures during installation of the footbridge. The ES also recommended retaining the pond.

The lowland mixed deciduous woodland should be retained where possible with replacement planting or natural regeneration where appropriate. Removing non-native species could also offer an enhancement.

The ES listed a number of species which were relevant to the site, although no evidence of Great Crested Newts was established. A limited range of birds were recorded at the site although bats were in evidence. The Council's Countryside Officer seeks a condition to provide a number of integrated bat roosts and provision for bird nesting sites, based on the Environmental Survey.

The ES suggested that Cragg Brook provides good quality habitat for Otters, although no evidence of Otter Holts or resting places were identified during the survey. There was no evidence of Water Voles at the site.

Initially the EA raised an objection to the biodiversity element of the application. They commented that their objections were concerned with the lack of an 8m buffer along Cragg Brook, the lack of clarity on the recommendations to retain the habitats set out in the Ecological Report, and habitat loss.

Subsequently the applicant provided additional ecological information in an updated Ecological Impact Assessment and accompanying biodiversity metric.

The Ecology Officer was reconsulted and then commented:

"*I note the submission of a Biodiversity Net Gain assessment and Ecological impact Assessment.*

The net gain is calculated at 0.9%, a marginal improvement on the baseline. While 10% net gain is not yet mandated, I would expect a gain of at least 5% in order to give confidence that there will be a demonstrable net gain in order to comply with NPPF and Policy NE17. In this case, the planting of a 3m width of dense locally native shrubs adjacent to the river would give a sufficient level of net gain. This should be excluded from the gardens and fenced to prevent access. This would also provide mitigation from the effects of disturbance and lighting to otters and other sensitive riverine wildlife. Existing trees and shrubs should be retained where possible.

I would also expect at least 6 integrated bat roosting features to be installed within the buildings. Bat roosting and bird nesting features (for species such as dipper and grey wagtail) should be installed with the bridge structures if possible."

The EA were also reconsulted and commented:

"We welcome the inclusion of Biodiversity Net Gain and use of the DEFRA metric. We have the below comments to make in this regard.

The Metric proposes the retention and improvement the pond, tall ruderal and woodland habitats for the benefit of wildlife, which we are supportive of.

The 'Environmental Impact Assessment, August 2020, Section 6.4' mentions the implementation of a 'Habitat Enhancement and Management Plan'. We are supportive of this and would request to be consulted on this plan prior to implementation.

However, the proposals as submitted fail to deliver 10% BNG in line with current guidance on the use of the Defra metric, which has been used by the applicant in this application to determine the level of BNG.

Within the Environmental Impact Assessment, August 2020 under Section 6 'Likely Significant Effects' there is mention of potential disturbance to otters from artificial lighting and noise. Evidence of otter has been found and noted within the assessment with a spraint located just downstream of the bridge and potential couch sites along the Brook. The EIA suggests mitigation should be in place and makes suggestions to mitigate light but does not make any further suggestions to mitigate for this increased noise. By not allowing a buffer between the gardens and the brook it will lead to increased disturbance to otters in the local area.

We are concerned that there will be a risk that owners will remove any vegetation and trees along the waterbody if its within their own private gardens.

We have agreed layout previously (15/00919/FUL) and therefore that a 3m buffer is provided, however, we reiterate and recommend a densely vegetated buffer along Cragg Brook is provided, preferably fenced off so that it is separate to the residential gardens. This would help to reduce the impact of noise and light disturbance to otters and other wildlife using the watercourse and could also be added the Biodiversity Net Gain Matrix."

Given the Ecology Officer's comments along with the EA comments, a condition could be attached to any permission requiring a landscaping scheme to incorporate the suggested planting and 3m buffer. A condition could also be added for the provision of at least 6 integrated bat roosting features to be installed within the buildings. Bat roosting and bird nesting features (for species such as dipper and grey wagtail) should be installed with the bridge structures, where possible.

Subject to this and other conditions sought by the Ecology Officer, the proposal accords with policies NE15, NE16, and NE17 of the RCUDP and section 15 of the NPPF.

<u>Trees and Landscaping</u>

Policy BE3 states that development proposals, where appropriate, will be accompanied by landscaping schemes designed as an integral part of the development. Schemes shall incorporate the retention of existing trees and other site features, along with appropriate tree and plant species which respect the landscape characteristics of the site.

Policy NE20 of the RCUDP states that *"A development proposal that would result in the removal or damage, or would threaten the future survival of one or more trees covered by an Order will not be permitted unless either:*

i. the removal of one or more tree would be in the interests of good arboricultural practice; or
ii. the developer has demonstrated that the benefits of the development including any replacement planting will outweigh the harm caused by the removal of the tree or trees.

Policy NE21 establishes that trees located on or adjacent to development site should be retained and replacement tree planting, if required, should be undertaken to a minimum of one replacement for each tree removed.

A small area of protected trees lie in the north east part of the site. The applicant has stated that the entire development apart from enhancements to the access will take place within the footprint of the existing built structure and none of these trees are proposed to be removed. The Council's Tree Officer was consulted and repeated comments provided against a previous application for the site:

"Due to the number of trees and location of the trees a full ground survey has not been undertaken. It was noted that little or no works have been undertaken to the trees and some of the trees appear to have defects but the full extent of the defects are not known. The trees between the highway and the river are the subject of an Order and will help to screen any development but long term management

is required. With reference to the trees on the hillside to the west of the site, the proposal does not appear to directly affect the trees but they will dominate the dwellings below and therefore occupiers are likely to request works or possible removal due to shade problems or concern. Should this happen each request will be considered on its own merits."

As the Tree Officer confirms, the proposed development would not result in the loss of any protected trees on the hillside to the east, and therefore would not conflict with policy NE20 of the RCUDP. Under policy NE21, additional planting is proposed. Regarding the trees on the hillside to the west of the site, the proposal does not appear to directly affect the trees, but the tree officer acknowledges that they will dominate the dwellings below and therefore occupiers are likely to request works or possible removal due to shade problems or concern. Should this happen each request will be considered on its own merits.

However, subject to a condition relating to the protection of the retained trees the proposal accords with policies NE20 and NE21 of the RCUDP. There is no evidence that a further TPO is required.

<u>Other Social and Environmental Impacts</u>

Paragraph 93 of Section 8 of the NPPF states:

> *To provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should: …*
>
> *b) take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community;…*

Paragraph 174 of Section 15 of the NPPF states:

> *Planning policies and decisions should contribute to and enhance the natural and local environment by: …*
>
> *e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air (and water) quality….*

The Planning Practice Guidance establishes that when deciding whether air quality is relevant to a planning application considerations could include whether development would significantly affect traffic including generating or increasing traffic congestions, significantly changing traffic volumes etc. It is considered that the proposed development is well served by existing highway infrastructure and the proposed number of dwellings would not result in a significant impact on air quality from the resulting vehicle movements.

The Air Quality & Emissions Technical Planning Guidance suggests that most developments, however large or small, can "*contribute to overall air quality and provides for a proportionate level of mitigation to be put in place to achieve sustainable development".* Facilities for charging plug-in and other ultra low emission vehicles can be conditioned in accordance with paragraph 112 of the NPPF and it is considered that this would provide appropriate mitigation. The proposal also meets paragraph 93 and 174 of the NPPF.

Public Footpath Hebden Royd 064 to east of Mill

The proposed layout does not interfere with the line of the public footpath as shown on the Council's own records. The Public footpath will remain, and the applicant is aware of the need not to obstruct it.

Provision of Solar Panels, etc

While solar panels would be desirable at this time of Climate Emergency, they do not form part of the application and cannot reasonably be required by planning condition.

Education Provision

The applicant is willing to accept a requested planning obligation for £74,468 as a contribution for necessary Secondary School places.

Crime Prevention

RCUDP policy BE4 'Safety and Security Considerations' explains that "*Developers should, prior to submitting detailed proposals, seek advice from the West Yorkshire Police Architectural Liaison Officer on designing out crime, and any recommendations received should be incorporated into the development proposal unless these conflict with other significant interests (for example, the interests of Listed Buildings). Developers are also encouraged to submit statements in conjunction with planning applications that emphasise the measures taken to design out crime".*

The West Yorkshire Police ALO has been consulted and has provided details of crime prevention measures. Whilst they have no objections to the proposals, they recommend the site should be built to "secured by design" standards to keep the calls for service to a minimum. An informative attached to the decision notice could draw the Liaison Officer's comments to the attention of the applicant.

Addressing the Judicial Review Grounds of Challenge

This application follows a 'permission' that was quashed as a result of a Judicial Review on the following grounds:

- Mistake of fact regarding the use of rear yard of Royd Ices premises and failure to consider the implications of that use on residential amenity.
- Failure to correctly assess noise from the Royd Ices air handling units.
- Flawed approach to policy in the failure to deal with discrepancy between policy EP8 'other incompatible uses' and paragraph 182 ([now 186] of the NPPF.

1) The applicant has clarified the access and ownership issues, stating:

Although the tarmac apron bounded by the Royd Ices building southern elevation, the river and Cragg Road is owned by the applicants (see enclosed land ownership plan), a measured survey has been undertaken in connection with the acknowledged right of way along the southern elevation of the Royd Ices building. This was found to vary between 4.1m and 4.2m and the proposed layout plan has been amended accordingly.

The revised Layout Plan shows that the neighbouring business would be able to access the rear yard via the right of way alongside the southern elevation of the Ice Cream factory. This is in contrast to permitted site layout plan that involved landscaping that resulted in a much narrower access to the

rear. The Highways Officer has commented on the resubmission and does not consider that there are highways safety from any potential conflict between residential traffic and the business traffic.

2 &3) Regarding both the failure to take into account noise from the air handling units, and the failure to address discrepancies between EP8 and paragraph 182 of the NPPF, the applicant has now provided three noise assessments in order to address the second and third grounds for the Judicial Review. These issues have been considered by the Council's Environmental Health Officer earlier in this report.

Planning Balance

When balancing the development plan, material planning considerations, government guidance and recent planning appeal decisions:

1) the Council only has a two-year housing land supply, which is a substantial shortfall. The lack of the required 5 year housing land supply means that the most important policies of the development plan relevant to the determination of this application are deemed out of date. So the planning balance is tilted towards approval under the NPPF.

2) this proposal would be a meaningful contribution to meeting the shortfall of housing sites, and so attracts considerable weight towards approval.

3) it is in a sustainable location, within walking distance of local services and facilities including public transport. It is the redevelopment of a previously developed site. In addition, there would be social and economic benefits due to increased expenditure potential in the area and supporting the vitality of local services and facilities and the community in general. There would also be short term benefits from investment in construction and jobs.

4) the applicant's Noise Reports indicate that harm to the proposed housing from noise is very limited and can be addressed by design features such as acoustic fencing, permanently closed windows & mechanical ventilation.

However:

1) the site is indicated for employment use in both current and emerging local plans and there is no robust evidence that it is incapable of such use.

2) while there is a general presumption in favour of sustainable development and the planning balance is tilted towards approval of housing, sufficient housing sites have been put forward and favourably assessed in the housing site search for the emerging Local Plan, so that addition of a further site which has not been identified through the site search process is not justified.

3) the development of housing as proposed, with the measures required to reduce the impacts of the adjoining employment use, would both create an unacceptable quality of housing and create harm to the amenity of future residents, contrary to the guidance in the NPPF.

4) the development would create unacceptable restrictions on, and harm to, the operation of adjoining employment sites, comparable to findings of recent, relevant planning appeal decisions.

5) whilst consistency in the planning decision making process is important, we must have regard to all of the information before us at the current time, including the emerging Local Plan, changes to government planning advice in the NPPF and recent planning appeal decisions

from the Planning Inspectorate. Following the Judicial Review process where aggrieved third parties successfully challenged a previous decision, decision makers should maintain an open mind when when considering new applications for such proposals. This must extend to taking a different decision where the evidence so dictates.

6) This proposal would not meet the needs of the future occupiers because it would fail to provide acceptable living conditions or a high standard of amenity. The effects could harm both health and well-being, and my overall conclusions on future living conditions is such that the benefits of housing become much reduced.

It is considered that the harm from granting planning permission would significantly and demonstrably outweigh the benefits. The material considerations considered above do not justify making a decision other than in accordance with the development plan when assessed against the development plan and the NPPF as a whole. In particular there is conflict with overarching Local Plan policies GE1 and GP1 which seek to address the needs of employment and the need for sustainability respectively, and policy BE1 and EP8 which deals with quality of design and compatibility of uses respectively. On balance the overriding considerations are that the scheme would fail to contribute to the economic role of sustainable development in relation to coordinating development requirements; the social role of creating a high quality built environment which supports the communities health and well-being and the environmental role of enhancing the built environment and minimising pollution.

CONCLUSION

The proposal is that the Council REFUSE the application. The recommendation has been made because the development is not accordance with the policies and proposals in the Replacement Calderdale Unitary Development Plan and National Planning Policy Framework set out in the 'Key Policy Context' section, and that while the 'balance' is tilted in favour of approval of housing, this is significantly and demonstrably outweighed by the adverse effects of the application.

The reason for refusal is:

1) The development of new housing adjoining a general employment site, with the measures required to reduce the impact of the adjoining employment use, would create harm by an unacceptable quality and amenity of housing contrary to Replacement Calderdale Unitary Development Plan policies BE1, EP8 and the guidance in section 12 of the NPPF; mitigation measures can change the nature of the harm to amenity, but not remove it. Furthermore, the development of new housing on and adjoining a general employment site would create harm by unacceptable restrictions on the operation of adjoining employment sites (such as potential reduction in their operating hours, the location of operations, and general noise emissions as a result of public complaints), contrary to Replacement Calderdale Unitary Development Plan policy GE1, guidance in the NPPF and criterion d. of draft Local Plan policy EE1.

Richard Seaman
For and on behalf of
Interim Director of Regeneration and Strategy

Date: 10 December 2021

Further Information

Should you have any queries in respect of this application report, please contact in the first instance:- Paul Rossington (Interim Development Manager) Paul.Rossington@ Calderdale.gov.uk

Reasons

1. The development of new housing adjoining a general employment site, with the measures required to reduce the impact of the adjoining employment use, would create harm by an unacceptable quality and amenity of housing contrary to Replacement Calderdale Unitary Development Plan policies BE1, EP8 and the guidance in section 12 of the NPPF; mitigation measures can change the nature of the harm to amenity, but not remove it. Furthermore, the development of new housing on and adjoining a general employment site would create harm by unacceptable restrictions on the operation of adjoining employment sites (such as potential reduction in their operating hours, the location of operations, and general noise emissions as a result of public complaints), contrary to Replacement Calderdale Unitary Development Plan policy GE1, guidance in the NPPF and criterion d. of draft Local Plan policy EE1.

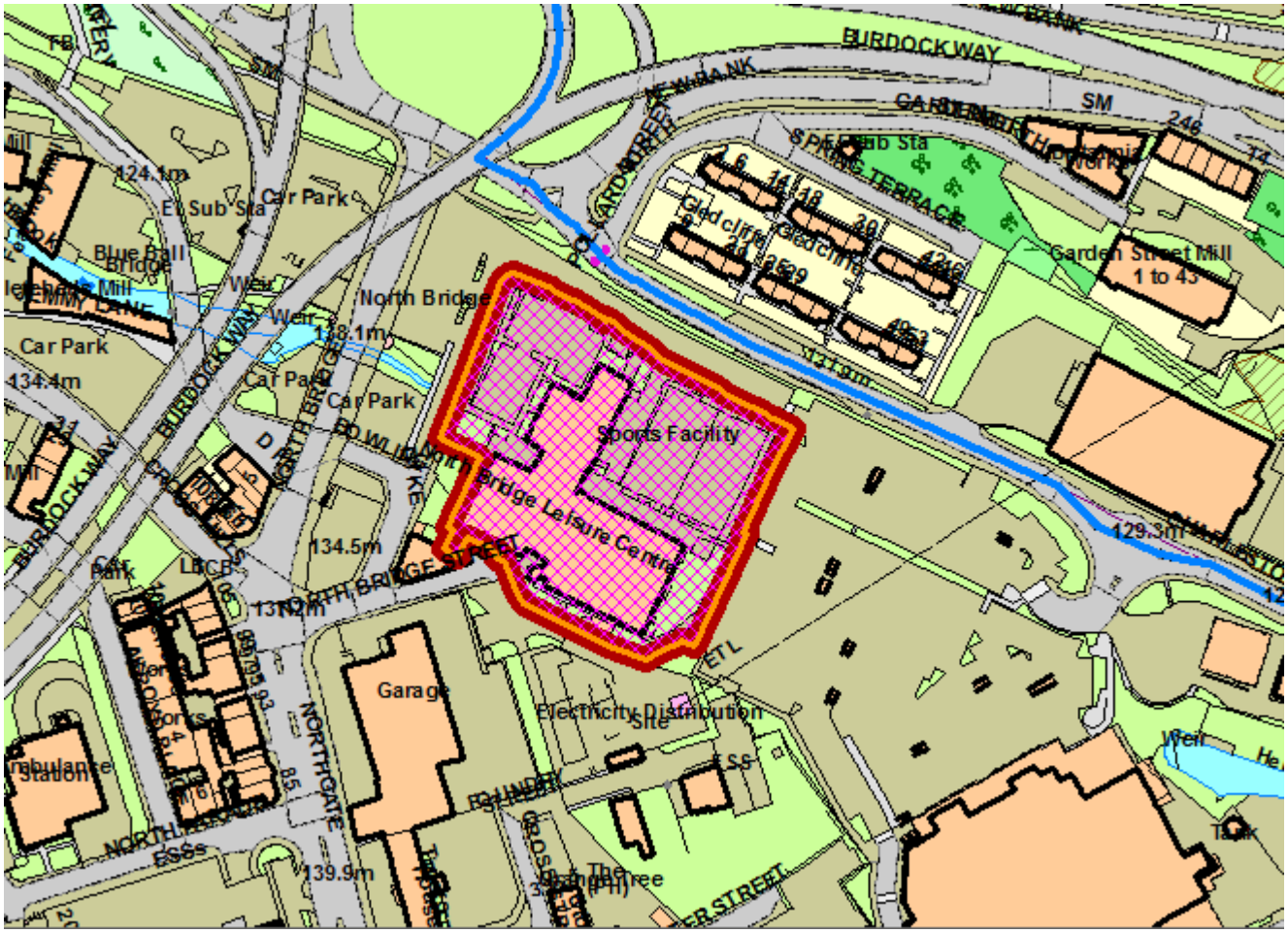
Time Not Before: 15.00

Application No: **21/00917/FUL**

Ward: **Town**
Area Team: **South Team**

Proposal:
Demolition (retention of sports hall) and replacement facility to include 25m 6 lane pool and teaching pool
with spectator seating, cafe, adventure play and adventure climbing, multifunction rooms, fitness suite,
wellness suite and studios (Additional Information Received Air Quality Report)

Location:
North Bridge Leisure Centre North Bridge Street Halifax Calderdale HX3 6TE



Applicant:
Calderdale Metropolitan Borough Council

Recommendation: **DEEMED PERMIT**

Parish Council Representations: N/A
Representations: No
Departure from Development Plan: No

Consultations:

Highways Section
Environmental Health Services - Pollution Section (E)
Lead Local Flood Authority
Countryside Services (E)
Environment Agency (Waste & Water)
Canal & River Trust
Design Council & CABE
Business And Economy
Recreation, Sport And Streetscene - Trees
Tourism & Rural Development
Sport England
West Yorkshire Police ALO
West Yorkshire Passenger Transport Exec
Yorkshire Water Services Ltd
Environmental Health Services - Pollution Section (E)
Highways Section

Description of Site and Proposal 21/00917/FUL

North Bridge Leisure Centre sits to the north of the town centre, and occupies a site area of approximately 0.98 hectares, including a 'pay and display' car park for 72 vehicles. The site is fairly level, however, the surrounding areas immediately outside the site increase in level dramatically to east and west. To the north is North Bridge and the overpass, to the south is Sainsburys Supermarket and associated parking. A culvert containing the Hebble Brook runs 10m below the site.

The current Leisure Centre is 34m by 37m and has a height of approximately 12.5m and a footprint of 3,841 sqm over two floors, it is constructed from red brick and designed for its functional purpose. Facilities provided are primarily focused on 'dry-side' sports provision, including 11 badminton courts, 1 squash court, combat room and a fitness suite (38 Stations), all weather football pitches, plus some ancillary social facilities and staff accommodation/office facilities. The main entrance is on the north elevation facing North Bridge.

The surrounding area comprises of a mix of commercial uses with Sainsburys supermarket to the south and North Dean to the north. There are good public transport links close by. The nearest bus stops to the site are located on Northgate, approximately 250m walking distance from the site. Halifax railway station is to the south of the site located some 900m walking distance, via Winding Road.

The site lies outside of the designated Conservation Area, but within its setting. However, in the immediate vicinity of the Application Site are the Grade II Listed North Bridge & Drinks Fountain, beyond which is the Dean Clough complex which includes a number of Grade II listed former mill buildings.

The site directly abuts to the North New Bank, Halifax Air Quality Management Area (AQMA) Calderdale 8.

The proposal is for the demolition of part of the existing North Bridge Leisure Centre (retention of sports hall) and reconfiguration of the site to combine both wet and dry leisure facilities. Facilities would include 25m, 6no. lane swimming pool, teaching pool, an 8no. court sports hall, fitness suite/studios, adventure climbing/play, and a 100no. seated café and spectator gallery to the

swimming pool. In addition, flexible space/multifunction rooms would be provided. The proposal would also see the closure of the existing swimming pool complex located on Skircoat Road, Halifax which comprises a 25m, 6 lane pool with spectator gallery, teaching pool, diving facilities, fitness suite (30 stations) 2 squash courts and Dance/spinning studio.

The proposed new build elements would have a gross floor area of 6,719 sqm over two floors. A maximum length of 74m and width of 60m with a maximum height of 9m (10.95m to parapet).

The new build elements would be clad in aluminium tapered cassettes in bright colours. The cassettes would be angled with varying depths and sizes adding to the building texture and diversity. Grey brickwork will contrast with the other materials and provide a robust ground floor facade. Translucent backlit polycarbonate facade would be used to allow natural light into the swimming pools whilst maintaining privacy and preventing too much glare from entering the pool hall.

The retained sports hall will be reclad in perforated metal grey cladding with illuminated strips, while the existing masonry would be cleaned and painted to match the new build and rendered with a masonry type of render depending on its condition.

A ‘green roof’ is proposed above the swimming pools and the activities halls.

Pedestrian access has been rationalised and made clearer and safer. The main entrance would be moved to face the Sainsburys car park, the reception and self-service areas would sit directly adjacent to the access primary route

Within the site boundary 23 parking spaces and 8 accessible parking spaces, located closer to the entrance of the building with a designated access route would be provided. Vehicle access has been maintained to the northeast façade to allow for emergency services to get to the first aid room, and to the northwest side for pool chemical deliveries. A layby has been incorporated on the northwest side for refuse collection vehicles to park and collect from the bin shelter which is situated unobtrusively next to the western corner of the building.

Cycle Parking for 36 visitors has been included in the proposals in addition to secure staff parking.

The application is accompanied by the following supporting documents:

- Planning Statement
- Design and Access Statement
- Transport Assessment
- Travel Plan
- Construction Management Plan
- Preliminary Investigation Report & Ground Investigation Report
- Preliminary Ecological Appraisal
- Heritage Impact Assessment
- Noise Assessment
- Energy Strategy
- Flood Risk Assessment
- Flood Risk Sequential Assessment
- Drainage Strategy
- Delivery and Service Management Plan
- Statement of Community Involvement
- Air Quality Assessment

The application has been brought to Committee because the Corporate Lead - Planning considers that the application should be referred to the Planning Committee for determination because of the sensitivity of the proposal.

Relevant Planning History

Since 1978 the site has had an extensive planning history relating to its use as a Leisure Centre. Including extensions to provide 3 squash courts (planning reference 81/02323/FUL); an extension to form additional fitness area (planning reference 86/01869/FUL); construction of an outdoor multi-purpose sports pitch (planning reference 87/01705/FUL); erection of 8 -rink indoor bowls facility (planning reference 88/00269/FUL); and an outside multi-purpose sports area (planning reference 96/00039/LAA)

Key Policy Context:

Replacement Calderdale Unitary Development Plan Designation/Allocation	Town Centre Cycle Corridor Halifax Residential Priority Area
Replacement Calderdale Unitary Development Plan policies	**GP1** Encouraging Sustainable Development **GP2** Location of Development **GBE1** The Contribution Of Design To The Quality Of The Built Environment **BE1** General Design Criteria **BE3** Landscaping **BE4** Safety and Security Considerations **BE5** The Design and Layout of Highways and Accesses **BE6** The Provision of Safe Pedestrian Environments **BE15** Setting of a Listed Building **BE18** Development within Conservation Areas **T18** Maximum Parking Allowances **T19** Bicycle Parking Guidance **NE17** Biodiversity Enhancement **NE21** Trees and Development Sites **EP8** Other Incompatible uses **EP9** Development of Contaminated Sites **EP10** Development of Sites with Potential Contamination **EP14** Protection of Groundwater **EP17** Protection of Indicative Floodplain **EP20** Protection from Flood Risk **EP22** Sustainable Drainage Systems **EP 25** Energy Efficient Development **EP 26** Encouraging the Use of Combined Heat and Power Systems **EP27** Renewable Energy in New Development **OS4** The Provision of Sports and Recreation Facilities
National Planning Policy Framework	2. Achieving sustainable development

Paragraphs	8 Promoting healthy and safe communities 9. Promoting sustainable transport 11. Making effective use of land 12. Achieving well-designed places 14. Meeting the challenge of climate change, flooding and coastal change 15. Conserving and enhancing the natural environment
Other relevant planning constraints	Flood Zones 2 and 3 Bat Alert Area
Other Material Planning Considerations	Calderdale Climate Emergency Declaration Emerging Local Plan (Policy CC1 Addressing Climate Change)

Publicity/ Representations:

The application was publicised with site and press notices because it is a major development.

121 letters of objection were received.

Summary of points raised:

- These plans do not take into consideration the needs of existing users of Halifax pool. The proposed swimming pool is too shallow for existing Halifax synchronised swimming team and diving club who need 3m water depth. Existing pool users should not have their facilities taken away. Other pools are unsuitable in the district due to location (further travelling time), depth or training times available. Artistic swimming is an Olympic sport and should be encouraged.

- The pool is not suitable for competitions or spectators meaning schools / clubs cannot use it for galas, this means no competition pool in Calderdale.

- The current leisure centre plans include soft play area which is already generously catered for in Halifax. A climbing wall which in the new Huddersfield leisure centre has already closed due to not being financially viable. A cafe, there are more cafes in the immediate area than already needed, the nearest 50 yards away in Sainsbury's. Cafes have already failed in every leisure facility in Calderdale and been replaced by vending machines.

- There is no squash courts provision.

The concerns raised by objectors are well made. However, their comments relate to the service provision and do not relate directly to the acceptability of the development and are therefore not valid planning objections to the current planning application.

Sport England have been consulted and raise no objection as it is considered to meet Objectives 'Provide' and 'Enhance'.

Parish/Town Council Comments

The development is not located within a parished area.

Assessment of Proposal

Principle of Development

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) compliments this requirement. The revised NPPF was updated in July 2021 and sets out the Government's planning policies for England and how these are expected to be applied, alongside other national planning policies. Paragraph 219 of Annex 1 (Implementation) of the NPPF advises to the effect that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. The closer the policies in the plan to the NPPF policies, the greater the weight they may be given.

At the heart of the NPPF is a presumption in favour of sustainable development. Paragraph 11 of the NPPF establishes that for decision taking this means:

- approving development proposals that accord with an up-to-date development plan without delay; or
- where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
    - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; [*for example…land designated as Green Belt…designated heritage assets])* 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.

The development is a reconfiguration and extension of an existing Leisure Centre facility.

RCUDP Policy OS4 supports new or replacement sports and recreation facilities or extensions to existing facilities subject to six criteria. Criterion (v) seeks to locate major recreation facilities in accordance with the following sequence of locations:- 1. within town centres as defined on the Proposals Map; 2. Edge-of-centre locations; 3 in out-of-centre locations which are, or can be made accessible by, a choice of means of transport and where no other suitable sites or buildings in either of the first to areas are available.

The site lies within the defined Halifax Town Centre as shown on the Proposals Map. The proposed development is therefore acceptable in principle subject to the consideration of its local impact.

Layout, Design & Materials

RCUDP Policy BE1 calls for development to make a positive contribution to the quality of the existing environment or, at the very least, maintain that quality by means of high standards of design.

Paragraph 130 of the NPPF sates that decisions should ensure that developments should; function well; are visually attractive; sympathetic to local character; establish and maintain a strong sense of place.

The development is a part refurbishment, part new build Leisure Centre on the existing site and within the constraints of the existing site boundaries. The external finishes are considered to respect the surrounding pallet and are visually attractive and would contribute to improving the quality of the local area. The height of the building is not considered imposing in any way on the surrounding buildings.

In comparison to the existing building, the proposed design provides modern, additional architectural and visual interest in the built form, complementing the wider townscape in long range views. Given its location in the valley bottom, important views will incorporate the roofscape and the use of a green roof provides greater visual interest.

The success of the design solution will be particularly dependent on the quality of the proposed materials and as such details and samples of the proposed cladding material are to be required by condition.

The building incorporates a degree of lighting on its facades, particularly the large feature window on the east elevation, which has the potential to further enhance its environs. Details of the proposed lighting scheme for the building needs to be sensitive to ensure its is not overbearing on the surrounding townscape. A condition is proposed for a lighting scheme to be submitted.

Subject to approval of materials and façade lighting the proposals are considered to accord with RCUDP Policies BE1, EP25 and EP26.

<u>Sustainability</u>

RCUDP Policy EP25 Energy Efficient Development
New development should be energy efficient. Where possible and appropriate, development proposals must incorporate energy efficiency and conservation techniques/technology in terms of design orientation, layout and materials, provided that in addition they must be consistent with other UDP policies.

RCUDP Policy EP 26 Encouraging the Use of Combined Heat and Power Systems
Developments incorporating Combined Heat and Power Systems or other energy efficient systems of operation or building designs will be permitted providing there would be no harm to the amenity of users of the site or the surrounding area

The Emerging Local Plan Policy CC1 Climate Change (as modified)
The Council has declared a Climate Change Emergency and are committed to reducing carbon dioxide emissions as a council and borough with a target of net-zero by 2038.

Development proposals should aim to mitigating be net zero emitters of Green House Gases such as Carbon Dioxide and *must* demonstrate appropriate mitigation and adaptation measures to address the predicted impacts of climate change by:
• Ensuring energy efficiency is maximised and regarded as a priority outcome in development planning;
• Using Sustainable Design and Construction methods, meeting national standards as a minimum;
• Increasing levels of Renewable and Low Carbon Energy Generation, through both a range of technologies and domestic, community and commercial scale schemes, whilst taking account of cumulative and environmental impacts; wherever possible energy demand should be met by onsite renewable energy or a low carbon energy distribution network.
• Supporting Active and Sustainable Transport through travel planning and providing facilities for active low carbon travel contributing to a reduction in travel demand, traffic growth and congestion;
• Locating development in areas accessible by public transport, and safe, attractive well linked cycling and walking routes, whilst recognising the different needs of rural areas
• Protecting and enhancing Green and Blue Infrastructure Networks, acknowledging the benefits these can bring;
• Minimising flood risk, limiting surface water run off;
• Creating, protecting and enhancing biodiversity habitats including the wildlife habitat network, taking care not to create barriers to the movement of wildlife over the wider landscape;

• Reducing the amount of waste produced through a reduction in the consumption of materials and resources and maximising the recycling/reuse of waste whilst minimising that going to landfill.

The applicant states in the planning supporting documents that the proposed development seeks to maximise the renewable energy contribution from using Combined Heat and Power (CHP) technology and air source heat pump heating in some areas. Leisure facilities that include swimming pools are energy intensive. The CHP generates both heat and power for the building. The CHP is not compatible with other forms of renewable technology such as PV or Solar thermal panels that will compete for the same thermal and electrical loads. The use of a sedum roof to enhance the ecology of the site and weight restrictions to the existing roof further prevent the installation of photovoltaic and solar thermal panels limiting the renewable energy contribution.

The development includes a large open plan glazed atrium that provides high levels of natural light and a controlled amount of solar gain into the centre of the building. An entrance lobby provides a buffer space between external conditions and the warm internal environment. The building fabric would be highly insulated. Windcatchers to provide natural ventilation to the large existing sports hall and adventure play area would be mounted on the roof.

LED lighting throughout the building with daylight harvesting and 'occupancy sensing' utilised where appropriate.

The Council's Environmental Management Team have provided the following comments:

"It's is recognised that current relevant policy is outdated in relation to latest analysis on climate change and recent Climate Emergency declarations made locally, regionally and nationally. 5 years ago, a Combined Heat and Power (CHP) heating system would have been the most suitable and efficient type of system for this building; however, our understanding has moved on. Low carbon heat sources are a fundamental requirement of any net zero carbon building. In practice this means space heating and hot water should be provided by heat pumps and/or direct electrical heating. No combustion of carbon containing fuels to produce heat should take place.

Due to the protracted design period; the proposed heating technology used by this building is no longer in line with Government's Net Zero Strategy, the Heat and Buildings Strategy or the Council's Climate Emergency priorities and targets (Net Zero by 2038 with significant progress by 2030).

A gas CHP plant is not considered to be a renewable or low carbon technology. If built, it would lock the Council into using fossil fuel gas for the next 15-20 years, unless retrofitted. It seems counterintuitive to construct a building now that will require a major system retrofit before end-of-life in order to meet our Net Zero targets - especially when it is understood that capital costs for installing zero carbon measures up-front are much lower than installing measures via retrofit.

It is acknowledged that a change in design to an alternative low carbon heating technology would bring challenges in terms of accommodating zero carbon plant (space requirement and noise issues would need to be addressed for an air source heat pump, and new ground condition surveys undertaken for ground source heat pumps). There are CHP technologies on the market that could switch over to Biogas to generate renewable heat and power later down the line. These could be explored as a short-term solution but the market for green gas is currently very weak and there is uncertainty whether a robust supply of these green fuels would be available in the medium-long term.

It is also important to note that the gas market prices are currently extremely volatile and predicted price increases in gas costs of 55% and electricity costs 38% have been forecast for next year. The upward trend in fossil fuel gas prices is set to continue as the Government progresses its agenda to decarbonise heating across the UK in the coming years. Progressing a gas fossil fuel heating

system has financial risks as the price for natural gas is forecast to increase significantly compared to electricity, which has revenue implications for the Council.

No solar PV or solar thermal generation has been proposed for the site. For a building to qualify as Net Zero Carbon, renewable energy generation should be at least equal to the energy use of the building. And although a green roof is visually appealing, Sedum has low biodiversity compared to some other types of green roofs such as wildflower. A mix of seed with a high biodiversity count should be considered as an alternative to Sedum, if the scheme goes ahead."

The applicant has confirmed that they have reviewed options for the heating strategy for Halifax Leisure Centre.

"In summary, due to the constraints of the site and the requirement for constant hot water demand throughout the year, we have been advised by the professional team that CHP is the preferable solution. We cannot accommodate PVs or solar thermal on the roof, as the energy generated would compete with the CHP for the same thermal and electrical loads. The existing Sports Hall also has very limited loading capacity to the roof which means we cannot add any additional weight. This matter has been the subject of extensive review with the design team and we are satisfied with the current proposal. The use of CHP is in line with Calderdale planning policy EP26.

We have air source heat pumps that serve the first floor studios and fitness suite, and natural ventilation wherever possible. We have also included wildflower planting and fruit trees within the landscaping strategy and are including a micro filtration system for the pools which uses less water and power than traditional systems. Based on the comments from the Environmental Management Team, we would be happy to consider wildflower in lieu of the sedum roof, and could agree to a condition that we submit a biodiversity report and agree any additional measures with the local authority in advance of occupation."

It is acknowledged that the proposed development was designed, and specification agreed prior to the Council's declaration of a Climate Change Emergency. The choice of a CHP was taken as it was considered the most appropriate technology for the unique features of the development which include a swimming pool which requires significant heating and at the time of design met RCUDP Policy EP26. The development incorporates low carbon energy features and other features to combat climate change. The applicants' agreement to a planning condition so that a change from a sedum roof to a wildflower roof can be considered during final design is welcomed.

Policy CC1 is the subject of modifications. These were set out in the Council's Hearing Statement and essentially strengthen the Policy's approach to mitigating and adapting to Climate change. At the hearing session the Inspector commented that she agreed with them.

Given the likelihood of CC1 being adopted as modified the modified policy could be attributed significant weight. It can perhaps be viewed in a different context to other polices where modifications are proposed as its direction of travel reflects the agenda of mitigating and adapting to Climate Change. Given the Climate Emergency this is a significant consideration. Furthermore, there is a requirement in Section 19 of the Planning and Compulsory Act 2004, to ensure that, taken as a whole, plan policy contributes to the mitigation of, and adaptation to, climate change. This clearly signals the priority to be given to climate change in plan making. It should also be noted that the Section 19 duty is much more powerful in decision-making than the status of the NPPF, which is guidance, not statute.

Notwithstanding the comments from the Council's Environmental Management Team, it is considered that the development is acceptable. National policy changes have taken place between the development's design and determination of this Planning Application which now classify CHP not being a renewable or low carbon technology, the applicant has justified their choice of

technology, furthermore the design incorporates many features which will contribute to lower energy use such as natural ventilation and air source heat pumps. Following conversations with the Environmental Management Team changes have been made to the landscaping and agreement to revisit the sedum roof specification for a wildflower roof is welcomed. The development is considered to accord with RCDP Polices EP25 and EP26 and apart from the use of CHP technology the thrust of emerging Local Plan Policy CC1, the development incorporates Air Source Heat pumps, natural ventilation, is located in a sustainable location accessible by public transport and safe cycle and walking routes, and includes biodiversity enhancements.

Highway and Movement

RCUDP Policy BE5 seeks to ensure that new development provides for safe and efficient movement by pedestrians, vehicles and cyclists.

RCUDP Policy T18 sets out maximum parking allowances for new development.

Paragraph 112 of the NPPF establishes that development should give priority first to pedestrians and cycle movements, facilitating access to public transport and be designed where practical to incorporate facilities for charging plug-in and other ultra-low emission vehicles. In accordance with this, a condition is proposed requiring the installation of a suitable facility to permit the recharge of an electrical battery powered vehicle that may be used in connection with that dwelling.

Assistant Director – Strategic Infrastructure (Highways) has been consulted and raised no objections. Additional information has been provided by the applicant addressing concerns raised regarding the pedestrian route from the west to North Bridge and Northgate via the steps and ramp to the south of the building at the end of North Bridge Street; Secure staff cycle parking provision; and further details regarding the Construction a site compound plan.

The following comments are noted "The site is in a sustainable town centre location with bus and rail services within walking distance.

The vehicular access would be unchanged from the existing arrangements. The car park entrance at the bend on Bowling Dyke has restricted visibility and drivers are observed to position their vehicles forward of the marked give-way line to achieve sufficient visibility. The junction has an unusual layout and new drivers to the leisure centre may be confused by the priority to Bowling Dyke traffic as it appears that the road continues into the leisure centre. Bowling Dyke serves as a key route to Dean Clough and the centre line road marking are not very conspicuous.

Given the increased traffic expected, a proportion of which will be new users, a condition is needed that a 'lining and signing scheme' is submitted for approval and implemented prior to opening. This should include refreshed road markings are and additional signage highlighting the vehicular priority. The give-way markings should also be pulled forward to reflect driver behaviour.

There will be a reduction in car parking spaces. No analysis has been made of the effect of the additional parking demand on capacity. However, given the sustainable town centre location and other nearby public car parking there are no concerns on this matter.

The traffic calculations that convert the annual predicted use to hourly figures are too simplistic. They assume the same users on each day of the week and in each hour of a day. Surveys at Leisure Centres indicate distinct peak periods in weekdays in the late afternoon and early evening and on Saturdays. However, given that the overall car parking provision will be reduced there is no requirement for a revised analysis.

The refuse and delivery arrangements are acceptable. Swept paths have been submitted and there is sufficient manoeuvring area.

A condition will be required that the car and cycle parking is provide prior to opening."

The applicant has confirmed that they will undertake a scheme of lining and signage renewal at the junction with Bowling Dyke.

The Assistant Director – Strategic Infrastructure (Highways) has been reconsulted and is satisfied that the submitted details address the points raised.

Subject to conditions the proposed development is considered to be in general accordance with RCUDP Policies BE5 and T18 and Paragraph 112 a and e of the NPPF

<u>Flooding and drainage</u>

RCUDP Policies EP14 and EP20 establish that ground and surface water will be protected and development will not be permitted if it would increase the risk of flooding due to surface water run-off or obstruction. Applicants will need to demonstrate that adequate foul and surface water drainage infrastructure is available to serve the proposed development and that ground and surface water is not adversely affected.

Sustainable Drainage Systems should be incorporated where appropriate in accordance with RCUDP Policy EP22. For major developments, paragraph 168 establishes that sustainable drainage systems should be incorporated "*unless there is clear evidence that this would be inappropriate*".

The Lead Local Flood Authority has been consulted and raised no objections subject to conditions. They have provided the following comments:

"The applicant has supplied an updated Drainage Strategy which show the proposed Drainage plans in line with Brownfield drainage principles which are acceptable, highlighting a restricted peak flow of 18.5 l/s and a storage requirement of approximately 300m3 with existing sports hall buildings draining as existing, which is acceptable. The application is supported by MicroDrainage calculations, maintenance plans and Exceedance flow paths.

The site is partially within Flood Zone 3 due to the culverted Hebble Brook watercourse, however the FRA has demonstrated that this is approximately 8m below current ground level and is therefore not at flood risk to the site".

Yorkshire Water have been consulted and raise no objections subject to conditions to protect water infrastructure during demolition and construction and operation.

The Environment Agency has been consulted and have reviewed the information submitted with the application and we have no objection to the proposal, they have provided the following comments

"The Flood Risk Assessment (FRA), by Engenuiti, referenced 983-ENG-XX-XX-RP-C-0001 and dated June 21 has been submitted. We have reviewed this FRA and consider that the proposed development will only meet the National Planning Policy Framework's requirements in relation to flood risk a condition is included that development is carried out in accordance with the submitted Flood Risk Assessment by Engenuiti, referenced 983-ENG-XX-XX-RP-C-0001 and dated June 21) and the mitigation measures it details."

Subject to recommend conditions covering Flood Risk mitigation, the submission of drainage details the proposal complies with Policies EP14, EP20 and EP22.

Wildlife Conservation Trees and Landscaping

Section 15 of the NPPF 'Conserving and enhancing the natural environment states in Paragraph 174 (d) that planning decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

Paragraph 180 of the NPPF states that when determining planning applications, local planning authorities should apply the following principles:

a) If significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;

d) ….opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.

The site is not within or outside a Site of Special Scientific Interest or constitutes irreplaceable habitats (such as ancient woodland and ancient or veteran trees) therefore bullet points b and c of Paragraph 180 do not apply. The presence of protected species is a material planning consideration

RCUDP Policy NE16 (Protection of Protected Species) establishes that development will not be permitted where it would harm protected species.

RCUDP Policy NE17(Biodiversity Enhancement) establishes that where appropriate development will be required to enhance biodiversity.

Assistant Director – Neighbourhoods has been consulted and provided the following comments

I accept the finding of the Preliminary Ecological Assessment that bats are unlikely to roost in the buildings. Overall, the proposals are unlikely to have adverse ecological impacts."

RCUDP Policy NE21 Trees and Development Sites seeks to retain trees which are worthy of retention and protect retained trees during construction works. Replacement tree planting should be undertaken where removal of trees is proposed.

The Councils Tree Officer has been consulted and provided the following comments;

The landscaping around the current leisure centre has established well and been maintained to enhance the area and help to create an attractive green feature. A number of these trees are to be removed in order to accommodate the new building and parking alteration. The new proposals do include replacement planting. This should include native trees which are appropriate for the location and will not in time become large for the locations requiring removal or significant works in the future.

With reference to the retained trees, they should be protected as per BS5837:2012,

The development is considered to accord with Section 15 of the NPPF and RCUDP Policies NE16, NE17 and NE21 subject to conditions.

Public Health

Paragraph 93 of the NPPF states:

> *"To provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should: …*
>
> *b) take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community;"*

Paragraph 186 of the NPPF states that:

> *Planning policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and the cumulative impacts from individual sites in local areas. Opportunities to improve air quality or mitigate impacts should be identified, such as through traffic and travel management, and green infrastructure provision and enhancement. So far as possible these opportunities should be considered at the plan-making stage, to ensure a strategic approach and limit the need for issues to be reconsidered when determining individual applications. Planning decisions should ensure that any new development in Air Quality Management Areas and Clean Air Zones is consistent with the local air quality action plan.*

The proposed development is adjacent to the Calderdale No.8 New Bank Air Quality Management Area (AQMA), declared by CMBC in early 2020. The proposed development lies approximately 20 m south of the AQMA and traffic produced from the operation of the proposed development will flow through it. The proposed development will introduce new additional traffic into the local road network and will also include a Combined Heat and Power unit (CHP).

An Air Quality Assessment and additional information has been provided which assesses the construction and operational air quality impact on the AQMA for the proposed development this has been reviewed by an independent Air Quality Consultant who notes that the assessment work is considered to be largely robust and in general follows the correct guidance.

It is proposed to mitigate NOx emissions from the CHP with the use of catalyst technology. The NOx emission calculations are robust and it is agreed with the judgement that a reduction in NOx emission concentrations from 6,500 mg/Nm3 to 250 mg/Nm3 will provide mitigation for the impact on the annual mean (in-combination) to be negligible.

Impacts on the AQMA during construction will be temporary over a short term. A condition requiring a catalyst on the CHP unit is recommended.

Noise

RCUDP Policy EP8 Other Incompatible Uses states that where development proposals could lead to the juxtaposition of incompatible land-uses, they will be only permitted if they do not lead to an unacceptable loss of amenity caused by … noise… where development is permitted, appropriate planning conditions and / or obligations will be added ….

A noise assessment accompanies the application. A baseline environmental noise survey was undertaken. The assessment includes external noise ingress into the proposed development, noise break out from the new pool to the closest noise sensitive receptors, reverberation time of the existing sports hall, and noise limiting criteria for new items of fixed mechanical equipment. The report demonstrates that break out noise from the swimming pool is likely to have no impact upon

the residents on Charlestown Road. Furthermore, given that a schedule of plant items and their operational hours is not available at this stage. The report makes recommendations for the noise rating limits for mechanical equipment regarding the prevailing background noise levels for daytime and night-time.

(Environmental Health) has been consulted and provided the following comments:

"I have raised concerns regarding the windcatchers (natural ventilation) that are to be used and will serve several areas, in particular the fitness suites, rock climbing/party area. These areas will have very high levels of amplified music and voices.. A revised noise assessment dated 3rd December 2021 has been submitted with this application. I would like to advise that the comments and conditions I have previously recommended will allay my concerns relating to noise impact from the development"

Subject to recommended conditions requiring locations of the windcatchers and mechanical ventilation to be agreed, noise limits and no sound reproductive equipment which amplifies music being installed the proposed development is considered to accord with RCUDP Policy EP8 and sections 8c, 174e and 185a of the National Planning Policy Framework 2021.

Ground Conditions

RCUDP EP9 Development of Contaminated Sites states that where contamination is or where there is believed to be contamination applicants are required to carry out a site contamination survey. Development will not be permitted unless practical and effective site measures can be carried out.

EP10 Development of Sites with Potential Contamination states that Development will be permitted on sites where there is minor contamination or a slight possibility of contamination subject to contamination surveys and mitigation.

A Phase I Environmental Report has been submitted, which has suggested there is the possibility that sources of chemical contamination may exist following demolition of part of the leisure centre building and within Made Ground soils which may currently exist associated with the source of the fill and former uses of the site.

It is therefore recommended that a condition requiring submission of a Phase II Intrusive Site Investigation Report is submitted in accordance with RCUDP Policies EP9 and EP10

Impact on Heritage Assets

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in considering whether to grant planning permission for development which affects a listed building or its setting special regard must be given to the desirability of preserving the building and its setting or any features of special architectural/historic interest.

Decision makers must give importance and weight to the desirability of avoiding any harm to designated heritage assets, to give effect to the LPA's statutory duties under section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The finding of harm to a heritage asset gives rise to a strong presumption against planning permission being granted.

The requirements of Section 66 are set out legislation and as such they are legal duties rather than policy requirements that the Council can choose to attach limited weight to. This is reflected in paragraph 199 of the NPPF, which states:

"When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance."

Also, in considering the impact of development on a heritage asset regard must be had to the significance of that heritage asset, in accordance with paragraph 195 of the NPPF:

"Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal."

The site is located in close proximity to, and in the setting of, the grade II listed North Bridge. The bridge which is an important structure, of historic significance, and an iconic landmark with its dark red and white decoration and decorative metalwork. The bridge is important in views across this part of Halifax. It forms one of the main routes into town with views from it down into the valley from both sides including the impressive Dean Clough complex to the west.

The Halifax Town Centre Conservation Area is located west of the site, at its northern most point approximately 60m distance from the site.

In addition, paragraph 197 of the NPPF states that:-

"In determining applications, local planning authorities should take account of:
a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
c) *the desirability of new development making a positive contribution to local character and distinctiveness"*

Paragraph 200 of the NPPF states:

"Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of:

(a) grade II listed buildings, or grade II registered parks or gardens, should be exceptional;

(b) assets of the highest significance, notably scheduled monuments, protected wreck sites, registered battlefields, grade I and II listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional"*

In addition, paragraph 202 of the NPPF states:

"Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use."

RCUDP Policy's GEP1 and BE1 require all new development to achieve high standards of design which makes a positive contribution to the quality of the local environment. Policy BE15 states that development will not be permitted where through its siting, scale, design or nature would harm the setting of a listed building; and BE18 relates to preserving and enhancing conservation areas, including by development within the setting of a conservation area.

The Council's Conservation Officer has been consulted on the proposed development, and have provided the following comments:

"The Heritage Impact Assessment submitted with the application provides a comprehensive overview of the significance and setting implications for the nearby listed buildings and in the main I concur with the conclusions of the report particularly in regard to the limited contribution the site currently makes to the setting of nearby listed buildings.

The proximity of the Halifax Town Centre Conservation Area is slightly misrepresented as its northernmost extent lies west of the site at a distance of around 60m. The potential impact on the character of the conservation area is slightly underplayed.

I concur with the assessment that there will be no impact on the conservation area when viewed in close proximity of the new building due to the topography and intervening built form. However, the site, with the Conservation Area directly behind to the south and west, is highly visible in key long-range views from Beacon Hill and roads along its flank; and to an extent from the junction at Charlestown Road and from the listed North Bridge. As such, there is potential for the proposal to impact on the wider setting of the conservation area and nearby listed buildings.

Nevertheless, the existing buildings have little architectural merit and do not positively contribute to the townscape. The proposed redevelopment of the leisure centre addresses this lack of presence through the introduction of new build elements that are pleasingly simple in form, with architectural highlights and a palette of modern materials that sit comfortably with the surrounding historic buildings, without competing with them.

Not only is the resultant design not harmful, the proposal would enhance the setting of the heritage assets through the quality and improvement of the design in comparison to the existing building, providing additional architectural and visual interest in the built form, complementing the wider townscape in long range views. Given its location in the valley bottom, important views will incorporate the roofscape and the use of a green roof provides greater visual interest as well as increasing sustainability of the proposal.

The success of the design solution will be particularly dependent on the quality of the proposed materials and as such details and samples should be conditioned.
Furthermore, the building appears to incorporate a degree of lighting on its facades, particularly the large feature window on the east elevation, which has the potential to further enhance its environs. Any lighting scheme for the building should be detailed to ensure the building is sensitively lit in the hours of darkness, and this is not overbearing on the surrounding townscape."

The proposed development is not considered to be harmful to the setting of the listed North Bridge or Halifax Conservation Area. When viewed from key long-range views, the new development would introduce new build elements which would positively contribute to and enhance the setting of the surrounding historic buildings through the architectural design and choice of materials. Particular attention has been paid to the roofscape which due to the development's location in the valley bottom and the surrounding topography will be viewed from a number of key locations, the inclusion of a green roof provides visual interest.

The resultant design is not considered harmful, having regard to paragraph 202 of the NPPF, the proposal is considered to enhance the setting of the heritage assets through the quality and improvement of the design in comparison to the existing building, providing additional architectural and visual interest in the built form, complementing the wider townscape in long range views. The development would provide modern sport and community facilities for the public.

Public Sector Equality Duty

The Equality Act 2010 came into force in October 2010 and a key measure of that Act was the Public Sector Equality Duty (PSED) which came into force on 5 April 2011. It means that public bodies have to consider all individuals when carrying out their day-to-day work – in shaping policy, in delivering services and in relation to their own employees.

It also requires that public bodies:

- have due regard to the need to eliminate discrimination
- advance equality of opportunity
- foster good relations between different people when carrying out their activities

The development has been designed so that access to and use of the facilities consider and provide for different user groups including the young and old, ethnic groups, parent and baby and people with different disabilities.

- The key aim of the design is to be compact, easy to navigate and understandable, and to be as welcoming and inclusive as possible for all members of society, whatever their level of fitness or ability.

CONCLUSION

The proposal is considered to be acceptable subject to the conditions specified below. The recommendation to grant planning permission has been made because the development is in accordance with the policies and proposals in the Replacement Calderdale Unitary Development Plan and National Planning Policy Framework set out in the 'Key Policy Context' section above and there are no material considerations to outweigh the presumption in favour of such development.

Richard Seaman
For and on behalf of
Director of Regeneration and Strategy

Date: 7 December 2021

- Further Information

Should you have any queries in respect of this application report, please contact in the first instance:-

Anita Seymour (Case Officer) 07714 922699

Conditions

1. The development shall be carried out in complete accordance with the approved plans, unless the variation from approved plans is required by any other condition of this permission.

2. Notwithstanding the provisions of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (or any order amending, revoking or re-enacting that order), North Bridge Leisure Centre shall not be used other than for mixed use of sport, recreation and health

3. No construction works in the relevant area (s), (including demolition) of the site shall commence until measures to protect the critical public sewerage and water supply infrastructure that is laid within the site boundary have been implemented in full accordance with details that have been submitted to and approved by the Local Planning Authority. The details shall include but not be exclusive to construction methodology (piling etc.) and the means of ensuring that access to the infrastructure for the purposes of repair and maintenance by the statutory undertaker shall be retained at all times. If any required protection measures are implemented via diversion, closure or other agreed alternative scheme i.e. an agreement to build over a sewer or water main, the developer shall submit evidence to the Local Planning Authority that the necessary arrangements have been agreed with the relevant statutory undertaker and that, prior to construction in the affected area, the approved works have been undertaken. In addition, no trees shall be planted at least 5 (five) metres either side of the centre-line of any public sewers or water mains crossing the site.

4. The site shall be developed with separate systems of drainage for foul and surface water on and off site. The separate systems should extend to the points of discharge to be agreed.

5. No piped discharge of surface water from the application site shall take place until works to provide a satisfactory outfall, other than the existing local public sewerage, for surface water have been completed in accordance with details submitted to and approved by the Local Planning Authority

6. Surface water run-off from hardstanding (equal to or greater than 800 square metres) and/or communal car parking area(s) of more than 50 spaces must pass through an oil, petrol and grit interceptor/separator of adequate design that has been submitted to and approved by the Local Planning Authority, prior to any discharge to an existing or prospectively adoptable sewer.

7. The development shall be built in accordance with the submitted documents. The development will restrict peak surface water flow rate to 18.5l/s and will reconnect to the Hebble Brook via existing connections. The details so approved shall be implemented prior to the first operation of the development and retained thereafter.
   o Drainage Strategy Report, Engenuiti, reference 983-ENG-XX-XX-RP-C-0002, Revision 01, dated 13/09/2021.
   o Below Ground Drainage Layout Plan, Engenuiti, reference 0983-ENG-ZZ-XX-DR-C-3010, Revision T2, dated 13/09/2021.
   o Proposed Catchment Plan, Engenuiti, reference 0983-ENG-ZZ-XX-DR-C-3410, Revision T1, dated 09/09/2021.
   o Micro Drainage Model Results, Engenuiti, reference 983-Surface Water Network V01, dated 13/09/2021.
   o Exceedance Flow Plan, Engenuiti, reference 0983-ENG-ZZ-XX-DR-C-3510, Revision T1, dated 09/09/2021

8. The development shall be carried out in accordance with the submitted Flood Risk Assessment by Engenuiti, referenced 983-ENG-XX-XX-RP-C-0001 and dated June 21) and the following mitigation measures it details:
1.The foundations shall be located a minimum of 3m away from the culvert (section 4.1.9) to ensure there is minimal additional loading to the culvert.
2. The developer is to sign up to the Environment Agency's flood alert and warning service and Emergency Plan is to be prepared and implemented for the site. (Section 5.7.1)
These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

9. Prior to commencement of demolition / site clearance a Phase II Intrusive Site Investigation Report shall be submitted to the Local Planning Authority in writing. Where site remediation is recommended in the Phase II Intrusive Site Investigation Report development shall not commence until a Remediation Strategy has been submitted to and approved in writing by the Local Planning Authority for that phase. Remediation of the site shall be carried out and completed in accordance with the Remediation Strategy so approved. In the event of contamination not previously considered being identified the Local Planning Authority shall be notified of the extent of that unforeseen contamination and of the further works necessary to complete the remediation of the site

10. If remediation is unable to proceed in accordance with the approved Remediation Statement, or where significant unexpected contamination is encountered, the Local Planning Authority shall be notified in writing immediately and operations on the affected part of the site shall cease. An amended or new Remediation Statement shall be submitted to, and approved in writing by, the Local Planning Authority prior to any further remediation works which shall thereafter be carried out in accordance with the revised approved Statement.

11. Before development commences a completed Verification Report(s) shall be submitted to the Local Planning Authority in accordance with the approved programme. The site shall not be brought into use until such time as all verification information has been approved in writing by the Local Planning Authority.

12. The CHP unit shall not be operated without a suitable catalyst of adequate design being installed the details of which has been submitted to and approved by the Local Planning Authority, prior to any being brought into use.

13. No removal or management of any tall vegetation, including brambles, ivy, trees and shrubs, should be carried out between 1st March and 31st August inclusive unless a competent ecologist has undertaken a bird survey immediately before the vegetation has been cleared and provided written confirmation that no birds will be harmed or disturbed and/or that there are appropriate measures in place to protect nesting birds on site. Any such written confirmation should be submitted to the Local Planning Authority

14. No demolition shall not begin, nor shall any construction materials, plant or machinery be brought onto site until the trees to be retained are protected by suitable fencing as recommended in British Standards 5837:2012 Trees in Relation to Design, Demolition and Construction. This fencing shall be retained until the completion of the development and no materials, plant or equipment shall be stored, no bonfires shall be lit nor any building or excavation works of any kind shall take place within the protected fencing

15. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the development or completion of the development whichever is the sooner; and so shall be retained thereafter, unless any trees or plants within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased. These shall be replaced in the next planting season with others of similar size and species and these replacements shall be so retained thereafter

16. Notwithstanding any details shown on the permitted plans, the green roof shall not be installed until details of the Vegetation blanket has been submitted to and approved in writing by the Local Planning Authority. Before the development hereby permitted is first brought into use, it shall be constructed in accordance with the details so approved and so retained thereafter

17. Prior to the completion of the walls four permanent bat roosting features shall be installed within the fabric of the buildings as close to the SW facing roofline as possible (but not directly above any windows or doors), details of which shall be first submitted to and approved in writing by the Local Planning Authority. The bat roosting feature shall be installed in accordance with the details so approved and shall be so retained thereafter.

18. Prior to the completion of the walls four permanent swift nesting features shall be installed within the fabric of the buildings as close to the NW facing roofline as possible (but not directly above any windows or doors), details of which shall be first submitted to and approved in writing by the Local Planning Authority. The swift nesting features shall be installed in accordance with the details so approved and shall be so retained thereafter.

19. Before the development first being brought into use a lining and signing scheme shall be submitted to and approved in writing by the Local Planning Authority the scheme so approved shall be implemented prior to opening. This should include refreshed road markings and additional signage highlighting the vehicular priority in the vicinity of Bowling Dyke junction. The give-way markings should also be pulled forward to reflect driver behaviour

20. The site compound shall be implemented in accordance with the submitted drawings G190115-MLN-XX-XX-SK-W-0001(003) and fencing details BNM14-168N before commencement of development and retained for the duration of construction.

21. Prior to the opening of the facility the car and public cycle parking within the site boundary, shall be made available and thereafter retained.

22. Prior to the relevant works commencing, details of the facilities to permit the recharge of an electrical battery powered vehicles, which complies with IEE regulations and BSEN 62196-1 (as amended) shall be submitted to the Local Planning Authority for approval. Once approved the scheme shall be incorporated into the development and implemented no later than the first use of the development , and shall be retained thereafter

23. Notwithstanding the details shown on drawing number 5273-OOB-ZZ-00-DR-L-0001 Rev P08 before the building is first brought into use details of the secure staff cycle storage (conforming to Secure by Design principles) shall be submitted to and approved in writing by the Local Planning Authority. The secure staff cycle parking shall be provided before first use of the building and thereafter retained and maintained in good order.

24. The Improvements to access to rear of the retained sports hall building as shown on drawing number 5273-OOB-ZZ-00-DR-L-0001 Rev P08 Shall be implemented in their entirety before the first use of the development and thereafter retained.

25. Notwithstanding any details shown on the permitted plans, the facing of the development shall not begin until details of the facing materials, have been submitted to and approved in writing by the Local Planning Authority. Before the development hereby permitted is first brought into use, it shall be constructed in accordance with the details so approved and so retained thereafter

26. Notwithstanding the details on the permitted plans, the facing of the development shall not begin until a scheme detailing the façade lighting, have been submitted to and approved in writing by the Local Planning Authority. Before the development hereby permitted is first brought into use, the lighting scheme so approved shall be implemented in accordance with the details so approved and so retained thereafter

27. Notwithstanding the submitted approved drawings, a scheme and plan showing the location of Natural and Mechanical ventilation infrastructure shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of construction of the new build elements of the development. The ventilation as approved shall be implemented in accordance with the approved plan prior to the development first coming into use and thereafter retained

28. No plant, machinery or other equipment shall be installed and/or used within the development site until it has, where necessary, been insulated with sound proofing materials so as to ensure that Noise Rating Level in accordance with BS4142:2014 (+A1;2019 amendment) emitted from the site shall not thereafter exceed;
55 dB LAeq (1 hour) from 0700 hours to 1900 hours,
50 dB LAeq (1 hour) from 1900 hours to 2300 hours and
40 dB LAeq (15 mins) from 2300 hours to 0700 hours on any day, as measured at the boundary of the site

29. No sound reproductive equipment which amplifies music, conveys message by voice or otherwise and which is audible outside the premises shall be installed on the site

Reasons

1. For the avoidance of doubt as to what is permitted and to ensure a more satisfactory development of the site and compliance with the policies of the Replacement Calderdale Unitary Development Plan.

2. To protect the sports facility from change of use to a non-sporting use that would impact on the supply of leisure facilities in the area, affecting the ability to meet communities needs for sport and impact on their health and wellbeing in accordance with Section 8 of the NPPF

3. In the interest of public health and in order protect the public sewerage and water supply networks

4. In the interest of satisfactory and sustainable drainage

5. To ensure that the site is properly drained and in order to prevent overloading, surface water is not discharged to the public sewer network

6. To prevent pollution of the aquatic environment and protect the public sewer network

7. To ensure proper drainage of the site and to ensure compliance with EP22 of the Replacement Calderdale Unitary Development Plan.

8. o To reduce the risk of flooding to the proposed development and future occupants.
o To ensure the structural integrity of the culvert, thereby reducing the risk of flooding
In accordance with RCUDP EP20

9. To ensure that any necessary remediation works are identified to make the site suitable for use in accordance with paragraphs 183 and 184 of the NPPF (2021). and RUDCP Policy EP10

10. To ensure that any necessary remediation works are identified to make the site suitable for use in accordance with paragraphs 183 and 184 of the NPPF (2021).. and RUDCP Policy EP9

11. To ensure that any necessary remediation works are identified to make the site suitable for use in accordance with paragraphs 183 and 184 of the NPPF (2021). and RUDCP Policy EP10

12. For the avoidance of doubt and in the interest of human health

13. In order to ensure protected and priority species and habitats are safeguarded during site preparation and construction in accordance with the National Planning Policy Framework (NPPF) Section 15 and RCUDP Policy NE16.

14. In the interests of the visual amenities of the area and to ensure that all trees/shrubs not affected by the development are protected and retained in a healthy and safe condition.

15. In the interests of amenity and to help achieve a satisfactory standard of landscaping and to ensure compliance with BE3 _ NE17 of the Replacement Calderdale Unitary Development Plan.

16. To ensure the use of appropriate materials in the interests of sustainable development and to ensure compliance with NE17 of the Replacement Calderdale Unitary Development Plan and Section 14 of the NPPF.

17. To comply with policies NE16 (Protection of Protected Species) and NE17 (Biodiversity Enhancement) of the Calderdale Replacement Unitary Development Plan and section 15 (Conserving and Enhancing the Natural Environment) of the National Planning Policy Framework 2021

18. To comply with policy NE17 (Biodiversity Enhancement) of the Calderdale Replacement Unitary Development Plan and section 15 (Conserving and Enhancing the Natural Environment) of the National Planning Policy Framework 2021.

19. In the interests of highway and pedestrian safety and to ensure compliance with BE5 and Paragraph 110 of the NPPF of the Replacement Calderdale Unitary Development Plan.

20. To ensure that adequate off-street parking is available during the construction period and in the interests of visual amenity

21. To ensure that adequate off-street parking is available for the development and to ensure compliance with T18 of the Replacement Calderdale Unitary Development Plan.

22. In the interests of meeting the government's targets for radical reductions in greenhouse gas emissions, and to ensure compliance with NPPF July 2021 Paragraph 8 and 112e

23. To ensure that provision for secure staff cycle parking clear of the highway is available.

24. In the interests of pedestrian safety In accordance with RCUDP Policy BE5

25. To ensure the use of appropriate materials in the interests of visual amenity and to ensure compliance with BE1 of the Replacement Calderdale Unitary Development Plan.

26. To ensure the appropriate lighting design in the interests of visual amenity and to ensure compliance with BE1 of the Replacement Calderdale Unitary Development Plan.

27. In order to protect aural amenity of neighbouring properties and to ensure compliance with policy EP8 of the Replacement Calderdale Unitary Development Plan and sections 8c, 174e and 185a of the National Planning Policy Framework 2021

28. In order to protect aural amenity of neighbouring properties and to ensure compliance with policy EP8 of the Replacement Calderdale Unitary Development Plan and sections 8c, 174e and 185a of the National Planning Policy Framework 2021

29. In order to protect aural amenity of neighbouring properties and to ensure compliance with policy EP8 of the Replacement Calderdale Unitary Development Plan and sections 8c, 174e and 185a of the National Planning Policy Framework 2021