CALDERDALE METROPOLITAN BOROUGH COUNCIL

PLANNING COMMITTEE

WARDS AFFECTED: MORE THAN THREE

Date of meeting: 15 February 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 15 February 2022

Time & No.	App No.	Location	Proposal	Ward	Page No.
1400 - 01	22/01415/C	Land at the top of Southowram Bank Halifax	Proposed Tree Preservation Order on Council Land	Town	6 - 8
1400 - 02	21/00731/OUT	Former Crosslee Factory Brighouse Road Hipperholme Brighouse Calderdale	Mixed used development for a retail foodstore, industrial units, care home, retirement village, residential development and access works (Use Classes B2, B8, E(a), E(g) (iii), C2 and C3) The application seeks to secure the principle of development and the means of access. (Outline)	Hipperholme And Lightcliffe	9 - 46
1400 - 03	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	47 - 69
1500 - 01	19/00759/HSE	142 Roils Head Road Halifax West Yorkshire HX2 0NQ	Single storey extension to rear, porch to front, canopy to side and front and dormer windows to rear and side elevations (Part Retrospective)	Warley	70 - 80
1500 - 02	21/00437/VAR	The Brooksbank School Sports College Victoria Road Elland Calderdale HX5 0QG	Variation on condition one on planning app: 18/01462/FUL to substitute drawings (new information - Noise Impact Assessment inc acoustic fence)	Elland	81 - 99
1500 - 03	21/00963/VAR	Tower House Hotel	Variation of condition 1 (List of approved	Sowerby Bridge	

		Master Lane Halifax Calderdale HX2 7EW	plans) on planning consent 20/00053/FUL in order to make a minor material amendment to the housing design and layout.		100 - 117

CALDERDALE MBC

WARDS AFFECTED: TOWN

PLANNING COMMITTEE

15 February 2022

PROPOSED TREE PRESERVATION ORDER ON COUNCIL LAND (22/01415/C).
LAND AT THE TOP OF SOUTHOWRAM BANK, HALIFAX

Report of Director of Regeneration and Strategy

EXECUTIVE SUMMARY

1. **Issue**

1.1 To consider the serving of a provisional Tree Preservation Order (TPO) affecting trees on land presently within the ownership of Calderdale MBC, which is proposed to be sold.

1.2 The sites which is to be sold to an adjacent landowner and is known as:-

(i) Land at the top of Southowram Bank, Halifax

2. **Need for Decision**

2.1 The constitution requires the serving of TPOs on Council land to be approved by Committee.

2.2 The trees subject to the proposed order, are considered to be of public amenity value, and are in a reasonably healthy condition to warrant protecting before the land is sold.

3 **Recommendation**

3.1 That the proposed Tree Preservation Order is served without modification.

4. **Background**

4.1 Following the Estates Officer, Corporate Asset and Facilities Management (CAFM) advising the Development Management that they proposed to sell a piece of land with trees on it, an inspection of the trees was carried out by the Tree Officer with the purpose of assessing whether the trees were in a healthy condition and of public amenity value.

4.2 Following the inspection of the site, a proposed Tree Preservation Order has been drawn up (see attached map), which identifies trees, which are of public amenity value and worthy of retention. Due to the number and mixture of trees (species, age, condition), it is considered that the appropriate designation is “Woodland”.

4.3 The woodland category’s purpose is to safeguard a woodland as a whole. So it follows that, while some trees may lack individual merit, all trees within a woodland that merits protection are protected and made subject to the same provisions and exemptions. In addition, trees and saplings which grow naturally or are planted within the woodland area after the Order is

made are also protected by the Order. (From Government guidance - Tree Preservation Orders and trees in conservation areas).

4.4 The sites and reason for the Order: -

(i) Land at the top of Southowram Bank, Halifax

The trees are readily visible from the adjacent highway and contribute to the local street scene by proving an attractive green feature. It is considered that the trees form important features of the local landscape, and their loss would be detrimental to the visual amenity of the area.

The trees are of mixed species including Sycamore, Birch, Willow, Hawthorn Ash and Holly. From a roadside inspection the majority appear to be in a reasonably healthy condition at the present time although defects may have been missed. During the inspection however some poor trees were noted and consideration to removal could be considered under a formal application should the trees become the subject of a TPO.

5 Equal Opportunities Implications

5.1 The retention of these trees in this locality will enhance the amenities of the area for the benefit and enjoyment of all sections of the community.

6 Financial Implications

6.1 There are no immediate financial implications within this report but should any subsequent appeal for refusal of consent for any future TPO application give rise to an award of costs against the Council, they would have to be met from existing budgets and/or compensatory savings to be found.

7 Conclusion

7.1 The trees on this site are considered to be in a healthy condition and of public amenity value to warrant being protected by a TPO, and the serving of the proposed Order is recommended.

Richard Seaman
For and on behalf of
Director of Regeneration and Strategy
Date: 17 January 2022

Further Information

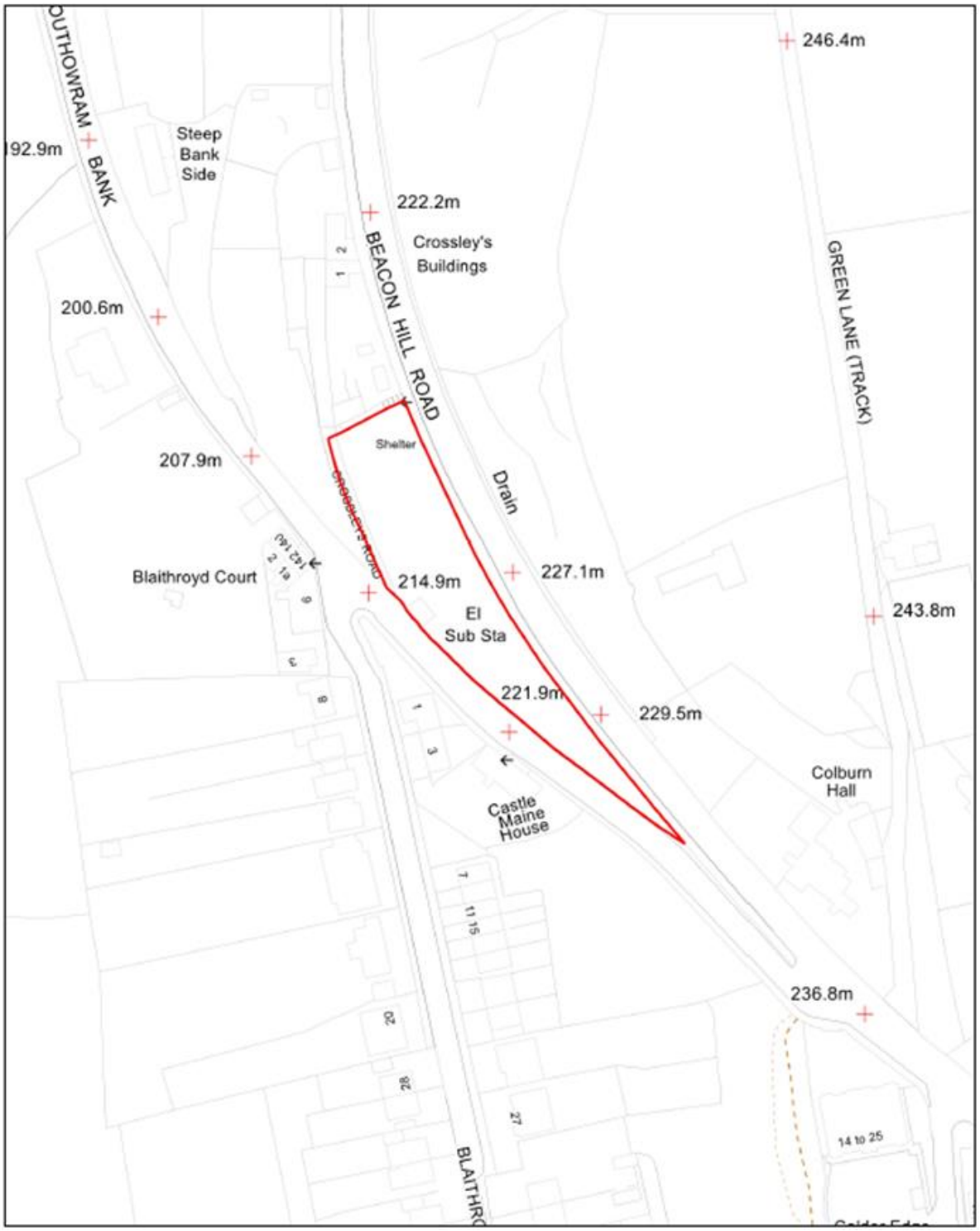
For any queries on this application report, please contact

Keith Grady on 07702 656838 or Lauren Clarkson 07702657078

Calderdale Council

www.calderdale.gov.uk

Land at the top of Southowram Bank, Halifax	Regeneration & Strategy Corporate Asset and Facilities Management (CAFM) Drawn By: Sopiah Miah	© Crown copyright and database rights 2020 Ordnance Survey 0100023069. Date: 28 October 2020 Scale: 1:1250 Map Centre: 410232, 424702



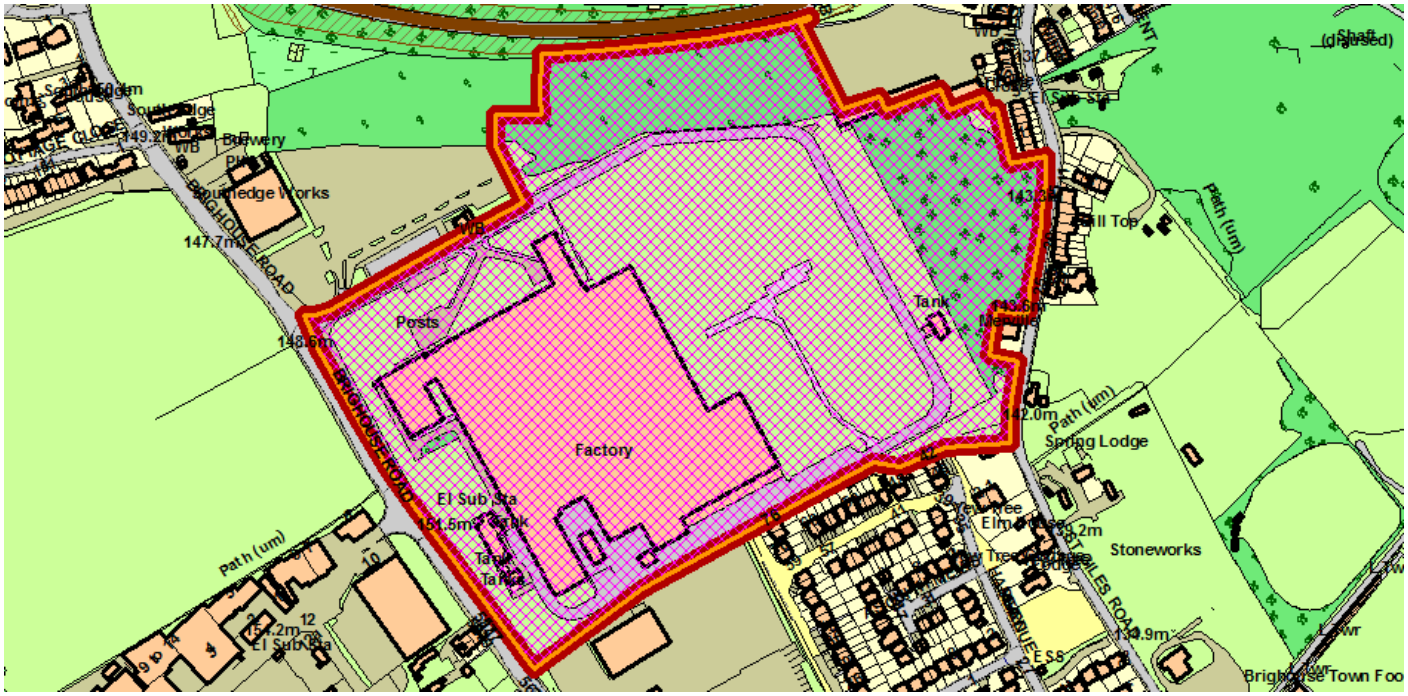
Time Not Before: 1400 - 02

Application No: **21/00731/OUT**

Ward: **Hipperholme And Lightcliffe**
Area Team: **North Team**

Proposal:
Mixed used development for a retail foodstore, industrial units, care home, retirement village, residential development and access works (Use Classes B2, B8, E(a), E(g) (iii), C2 and C3) The application seeks to secure the principle of development and the means of access. (Outline)

Location:
Former Crosslee Factory Brighouse Road Hipperholme Brighouse Calderdale



Applicant:
Crosslee Properties Limited

Recommendation: **PERMIT (SUBJECT OF A LEGAL AGREEMENT)**

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

Consultations:

Highways Section
Environmental Health Services - Pollution Section (E)
Lead Local Flood Authority

The Coal Authority
Education Services
Environment Agency (Waste & Water)
Business And Economy
Conservation Officers
Community Engagement
West Yorkshire Police ALO
West Yorkshire Passenger Transport Exec
Yorkshire Water Services Ltd
Northern Gas Networks
Countryside Services (E)
Network Rail, North West Zone
Housing Services
Highways Section
West Yorkshire Combined Authority
The Coal Authority
Highways Section
Countryside Services (E)

Description of Site and Proposal 21/00731/OUT

The site is located to the east of Brighouse Road (A644). The District Centre of Hipperholme is approximately 500m to the north of the site.

To the north, the site is part-bounded by the Halifax-Bradford railway line, and the former Crosslee employee car park, which is currently being developed for housing (planning ref: 20/01510/FUL). To the north-east corner of the site is a haulage yard. To the east, the site adjoins a small number of residential properties on St Giles Road. To the south, the site adjoins a Persimmon Homes development on Harley Head Avenue, along with industrial uses comprising of warehousing and open storage. There is a public footpath along the southern boundary of the site, which links St Giles Road with Brighouse Road. To the west, the site adjoins Brighouse Road, beyond which are a number of small industrial uses on Brow Mills Industrial Estate, and a large greenfield area known as Southedge Quarry, recently granted planning permission for 176 dwellings (planning ref: 21/00555/FUL).

The site measures approximately 10.95 hectares and is broadly rectangular in shape, extending to the north and east. It comprises a large area of previously developed land that has become available for development following the closure of the Crosslee tumble dryer factory (now demolished). The main access to the site is from Brighouse Road with a priority right turn ghost island arrangement and with a second private access onto St Giles Road.

There are areas of woodland in the north of the site and towards the eastern boundary, and some individual tree specimens close to the existing access from Brighouse Road.

The site is generally level; there is a fall towards the south east. The site levels are below the level of Brighouse Road.

‘Yew Trees’ is a Grade II listed building is located approximately 30m south east of the application site boundary. There are no protected trees on the site. However, the north easter quadrant of the site is designated Wildlife Corridor.

The application seeks to secure the principle of development for a mixed-use development for a retail foodstore, industrial units, care home, retirement village, residential development and access works (Use Classes B2, B8, E(a), E(g) (iii), C2 and C3). All other matters are reserved for later approval apart from means of access.

The primary access to the residential development and residential care living uses would be by the existing access from Brighouse Road. The existing ghost island T junction arrangement would be retained, and the junction modified/downgraded to reflect the residential nature of the access. A secondary residential access would be provided in the form of a simple T junction onto St Giles Road to the east of the site. A third access south of the residential access would be created from Brighouse Road to serve the retail and employment uses; the form of this access would be a priority ghost island T junction access.

The application is accompanied by the following supporting documents:

- Retail Assessment;
- Transport Assessment and Travel Plan;
- Design and Access Statement;
- Phase 1 Ground Report;
- Phase 2 Contaminated Land Investigation Report
- Mine Shaft Investigation report;
- Heritage Statement;
- Ecological Appraisal;
- Arboricultural Survey and Impact Assessment;
- Air Quality Assessment;
- Noise Assessment;
- Employment Demand Report;
- Economic Benefits Statement;
- Statement of Community Involvement;
- A plan showing connectivity between various uses within the scheme, and the accessibility of it to the surrounding areas;
- Cross sections drawing;
- Landscape Strategy and Framework document.

Revisions to the scheme have been submitted including:

- landscape framework including tree-lined streets in accordance with the 2021 NPPF;
- Amendments to the residential layout to allow for natural surveillance and ownership of the main area of public open space;
- Integration of the existing PROW to the south of the scheme within the site layout;
- Amendment to the St Giles Road access to a shared surface to create a more informal less attractive means of access / egress at this point;
- Inclusion of a small strip of left over land on the frontage of the adjacent Taylor Wimpy scheme as landscaping;

An Environmental Impact Assessment Screening Opinion was issued on 10 June 2021, which stated that the application is not EIA development (planning reference 21/06003/EIA).

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

The planning history of the site is concerned with applications for extensions to, and operational development at, the former Crosslee factory, which was constructed in the 1970s. Prior to operation by Crosslee the site had a history of quarrying and accommodated a stone works with various mineral railways lines.

Key Policy Context:

Replacement Calderdale Unitary Development Plan Designation/Allocation	Wildlife Corridor Primary Employment Area New Employment Area
Replacement Calderdale Unitary Development Plan policies	**E1** Primary Employment Areas **E3** Sites Allocated for Employment Use **E5** Safeguarding Employment Land and Buildings **H9** Non-Allocated Sites **H10** Density of Housing Developments **H11** Mix of Housing Types **H15** Lifetime Homes **GBE1** The Contribution Of Design To The Quality Of The Built Environment **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 **BE6** The Provision of Safe Pedestrian Environments **BE15** Setting of Listed Buildings **GT4** Hierarchy of considerations **GT5** Transport Assessments **T1** Travel Plan **T18** Maximum Parking Allowances **T19** Bicycle Parking Guidance **NE15** Development in Wildlife Corridors **NE16** Protection of Protected Species **NE17** Biodiversity Enhancement **NE21** Trees and Development Sites **EP1** Protection of Air Quality **EP8** Other Incompatible Uses **EP9** Development of Contaminated Sites **EP10** Development of Sites with Potential Contamination **EP11** Development on Potentially Unstable Land **EP14** Protection of Groundwater **EP20** Protection from Flood Risk **EP22** Sustainable Drainage Systems **EP25** Energy Efficient Development

	EP27 Renewable Energy in New Developments
National Planning Policy Framework Paragraphs	2. Achieving sustainable development 5. Delivering a sufficient supply of homes 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 16. Conserving and enhancing the historic environment
Other relevant planning constraints	PROW Brighouse 051 runs along the southern boundary and proposed eastern access PROW Brighouse 54 which crosses the railway line to the northeast of the site
Other Material Planning Considerations	Calderdale Climate Emergency Declaration Emerging Local Plan (Policy RT3 Criteria for Assessing Retail Developments) West Yorkshire Low Emissions Strategy – Air Quality & Emissions Technical Planning Guidance

Publicity/ Representations:

The application was publicised with 4 site and a press notices because it is major development. In addition, 30 neighbour notification letters were sent.

28 letters of objection and 11 letters of support were received.

Summary of points raised

Against:

- Not in accordance with local Plan – conflict with Employment Allocation
- There has not been a sufficient or complete scrutiny of this proposal through the Local Development Plan
- The proposed development is not in keeping with the area and the scale of development is inappropriate for this area.
- Concern about Health and Safety of residents in regard to road safety
- Increased queuing at Hipperholme crossroads causing delays
- ‘Rat running’
- St Giles Road not suitable for additional traffic
- There should be a cul-de-sac entrance on St Giles Road for access to the residential part of the development, and separate entrances from Brighouse Road to the care home, supermarket and commercial areas.
- More traffic would slow down bus services resulting in people using their cars
- Pavements on Brighouse Road are quite narrow, with sections of it being unsuitable, or unusable by wheelchair or mobility scooter users
- Adverse Impact on Air Quality

- Increase in light pollution
- Increase in noise pollution
- Lack of capacity in local sewers
- Flooding
- Insufficient primary school capacity
- Insufficient doctors or dentists surgery capacity
- Adverse impacts on local businesses
- Will result in the loss of important habitats for wildlife. Approximately 40% of the broadleaved deciduous woodland to the north and east of the development site will be lost. An area of lowland acidic grassland to the east of the site, of high conservation value, containing locally rare plant species will be lost
- Will cause harm to the integrity and functioning of the wildlife corridor
- There has been no mention of this site having been used to house a munitions factory during World War 1, or bitumen road coatings having been manufactured there.
- The type of housing currently identified is not sufficient to satisfy local needs. There are no proposals for the provision of Supported Living for local disabled people. The proportion of Affordable Housing is insufficient
- Overlooking of existing properties
- Trade will be diverted from Town Centre

In support

- Improve aesthetic of the area
- Local Job creation
- Reduce travel to supermarkets outside the area
- Affordable houses are needed
- Secure accommodation for aging community
- Development would be focal point for Hipperholme
- Can walk to supermarket
- The local economy will be massively boosted
- Industrial units would help create more businesses and jobs for people.
- An opportunity for residents of Hipperholme and the surrounding area
- Development will look better that the old factory
- Good Use for brownfield site

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. [my highlighting]

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.

The requirement to maintain a rolling 5-year supply of deliverable land for housing is set out in the NPPF and the accompanying Planning Practice Guidance (PPG). The current position is that Calderdale has a 2-year housing land supply.

As such Policy H9 of the RCUDP, which is the principal policy, is not considered up to date for the purpose of this application and the tilted balance is triggered, which means that the development should be considered with a presumption in favour of sustainable development and approved without delay, unless there are adverse impacts that would significantly and demonstrably outweigh the benefits.

<u>Housing</u>

RCUDP policy H9 is relevant to residential development on non-allocated sites and sets out a number of criteria that development should comply with. As well as the tilted balance, the policy is non-compliant with the NPPF because it restricts development on greenfield land, whereas the NPPF does not preclude development of greenfield sites.

The presumption in favour of the development applies and the proposed development is acceptable in principle.

The site is considered to be within a sustainable location as it is within walking distance of bus stops on Brighouse Road, which are served by regular buses going between Halifax and Huddersfield, and also Hipperholme town centre where residents would have access to local services.

As discussed further under the headings below, it is considered that the infrastructure, with some mitigation, can cater for the development i.e. a contribution towards school places. Objectors raise concerns about doctors and dentists being oversubscribed; there is no specific evidence provided to establish that they would not be capable of accommodating the development, and in any case, it is considered that the addition of 106 dwellings, 82 retirement homes and care home would not result in a significant demand beyond existing.

With mitigation, as discussed under the headings below, it is considered that there are no constraints to development, and it would not create any unacceptable problems. Nor would it harm any heritage assets.

As discussed above, the development would comply with most of the criterion of policy H9, however the policy also requires that development complies with other relevant UDP policies. Given that the development does not comply with RCUDP Policies, E1, E3 E5, due to the inclusion of residential uses it would also not comply with policy H9.

Loss of Employment Land

This application concerns the site of the former Crosslee tumble dryer factory which closed in 2020. The site is allocated as a Primary Employment Area RCUDP Policy E1. A further 3.6ha of land covered by this application is allocated as a New Employment site under RCUDP Policy E3 (Ref EM68) as extension land for the former Crosslee Factory.

RCUDP Policy E1 Primary Employment Areas states that development proposals for Use Classes B1, B2 and B8 will be permitted subject to four criteria set out in the policy. Proposals for other employment uses, including retail will be determined having regard to the criteria in the policy and other UDP policies.

RCUDP Policy E3 New Employment Site states that "*The following sites are allocated to provide land for employment purposes within Use Classes B1 to B8 and are shown on the Proposals Map. Proposals within Use Classes B1 to B8 will be permitted provided that the proposed development:-*
i) does not create any unacceptable environmental, amenity, safety, highway, or other problems;
ii) is not for piecemeal development that would prejudice the comprehensive development of the site; and
iii) is consistent with other relevant UDP policies.

Proposals for employment uses not within Use Classes B1 to B8 will only be supported in exceptional circumstances where the proposal is justified and complimentary (in terms of size and function) to Use Classes B1 to B8. Proposals for other non-employment uses will be resisted.

Site Ref EM68 East of Brighouse Road, Hipperholme 7.43ha of previously developed and greenfield land

RCUDP Policy E3 allocation EM68 is solely within the boundary of Crosslee site and was identified specifically for expansion of the former factory which didn't come to fruition. Due to the nature of the former operations at the site the allocation was not anticipated to be developed for a third-party user.

RCUDP Policy E5 'Safeguarding Employment Land and Buildings' is considered to be out-of-date, because it places the onus on the applicant to prove that there is no demand to use the site for employment purposes, which is not consistent with paragraph 122 of the NPPF, and as such little weight is given to this policy. Paragraph 122 of the NPPF establishes that where there is no reasonable prospect of a site coming forward for the use allocated in a plan in the interim, prior to updating the plan, applications for alternative uses on the land should be supported, where the proposed use would contribute to meeting an unmet need for development in the area.

The proposal includes 2ha of new employment land; this provision is supported by an employment demand report, which concludes that there is demand from small scale local occupiers for new build units between 2,500 and 20,000 sq. ft, totalling 80,000 sq. ft plus associated facilities. The site has been extensively and appropriately marketed for a period of 1.5 years with no interest. The site is not located close to the M62 and is not considered attractive to major industrial users.

The scale of the land is not considered attractive to developers for a sole employment use. Further employment opportunities would be provided with the retail and care uses proposed, and is supported by the Assistant Director – Economy, Housing & Investment.

The site is being promoted as a Mixed Use Site allocation through the emerging Local Plan. The Council's Business and Economy Officer was consulted on the proposal and commented "*This application is supported as it retains some of the site for business use and provides much needed industrial/warehouse space replacing the former Crosslee factory. It also provides other uses which will also create new jobs and boost the local economy. The site is allocated as a Primary Employment Area but part of this was the undeveloped land to the rear of the former Crosslee factory which it was unviable to develop so this proposal is acceptable."*

Retail

Paragraph 86 of the NPPF states that development should support the role that town centres play at the heart of local communities.

Paragraph 90 of the NPPF states that Local Planning Authorities should require an impact assessment if the development is over a proportionate, locally set floor space threshold. It adds that if there is no locally set threshold, the default threshold is 2,500 sqm gross floor space. The proposals fall under this threshold at 1,801 sqm gross floorspace (19,386 sq. ft).

NPPF Paragraph 91 states that planning permission should be refused if an application fails the sequential test or is likely to have a significant adverse impact on investment within a centre, or on centre vitality and viability.

RUDP Policy GS1: Retail Strategy sets out the overarching objectives for town centres and retail development. It promotes the benefits of a modern, competitive, environmentally attractive and sustainable retailing sector and that the upgrading, modernisation and enhancement of retailing provision within town centres and locations highlighted within the retail hierarchy will be sought which meet the needs of Calderdale's residents. It adds that the vitality and viability of existing centres will be maintained to ensure that they remain attractive to shoppers and can compete effectively with other centres and other forms of retailing.

RCUDP Policy S2: Criteria for Assessing Retail Developments sets out matters to be addressed when considering proposals for retail development. The policy has two parts: Part A applies to all proposals; Part B applies to applications located outside a defined centre

RCUDP paragraph 6.22 states that the impact test applies to all retail applications more than 2,500 square metres gross floorspace in locations outside the designated town centres. It goes on to indicate that assessments may occasionally be necessary for smaller developments depending on the size and nature of the proposal in relation to the centre concerned. Current national policy is that a locally set impact threshold is necessary to support the requirement for an impact assessment for proposals smaller than 2,500 square meters gross floorspace.

Policy RT3 (Sequential Test and Retail Impact Assessments) of the emerging Local Plan, states

Sequential Test - Where the proposal is outside of the defined centres, all town centre uses will be subject to a sequential approach to development. This will require applications for town centre uses to be located firstly in town centres, then edge of centre locations, and only if suitable sites are not available should out of centre sites be considered. When considering edge of centre and out of centre proposals, preference will be given to accessible sites that are well connected to the town centre. Applicants will have to provide evidence there are no reasonable prospects of the proposed development being accommodated on an alternative town centre site(s) demonstrating a

reasonable degree of flexibility about the scale, format and design of the development and the provision of car parking.

Edge-of-centre is defined as:
•For all retail (Use Class A1) purposes, a location that is well connected and up to 300 metres of the Primary Shopping Area;

•For all main town centre uses, a location within 300 meters of a town centre boundary.

Out-of-centre is defined as anything beyond the edge-of-centre.

Retail Impact Assessments and Local Thresholds - Proposals for main town centre uses on the edge or outside of a defined centre will have to demonstrate that there would not be significant adverse impact on the delivery of existing, committed, and planned public and private investment or on the vitality and viability of any existing centre

Main town centre proposals located on the edge or outside of a defined centre will be subject to a retail impact assessment if they exceed the following floorspace thresholds….:"

The threshold set out in Table 15.2 for Hipperholme is 250 sqm gross floorspace and for Brighouse, 1,500 sqm.

Whilst the overarching policy objective of "town centre first" is central to Policy S2, several the criteria are not consistent with the NPPF. Specifically:
• There is no requirement to consider the scale of the proposal in the NPPF;
• The requirement to demonstrate need has been withdrawn; and the impact test is expressed differently in that the NPPF requires consideration of the impact on investment as well as vitality and viability, and there is no longer an express requirement to consider
cumulative impact.

Hipperholme is identified in Calderdale's Retail Hierarchy as a Local Centre.

A Retail Assessment has been submitted supporting the application, which has taken the view that an impact assessment should be undertaken in accordance with Policy RT3 of the Emerging Local Plan, as the site is located 400m outside Hipperholme Town Centre boundary, and the retail element of the development exceeds the thresholds on new gross floorspace set out in Emerging Local Plan Policy RT3.

The emerging Local Plan is at an advanced stage having reached the later part in the examination process. Town Centre policies were considered at a hearing session in December 2020. No representations were made objecting to the local impact thresholds. Furthermore, the impact thresholds are supported by evidence within the Calderdale Retail Needs Report 2016. The impact thresholds were identified as a matter for discussion by the local plan Inspector and they were considered at the hearing session in December 2020. Whilst the local impact thresholds are not "set" until the emerging plan is adopted, having regard to NPPF, paragraph 48, which states that;

"Local Planning Authorities may give weight to relevant policies in emerging plans according to:
a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given);
and c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)."

weight can therefore be attached to Policy RT3, and the local impact thresholds contained within it.

An independent assessment of the Retail Impact Assessment has been undertaken on behalf of the LPA.

Additional information regarding the site on Halifax Road pursued by Aldi in 2016 (Planning ref 16/01159) has been provided by the applicant. This site was subject to detailed technical reports. However, technical objections with regard to access and air quality were not resolved, as a result the application stalled, and was considered disposed of by the LPA on 31 December 2019. The applicant considers that the Halifax Road site is not suitable, as there is no technical solution to the site's constraints, furthermore the site is not considered available, as it has not been actively promoted by the landowner for over three years. The LPA is satisfied that the Halifax Road site is not a sequentially preferable location.

Additional information has been provided regarding sites availability in Brighouse which together with research concludes that there are no suitable site available, or likely to become available within a reasonable period of time

It is concluded that taking account the policy tests arising from the NPPF, the Development Plan and the emerging Local Plan, that the retail component of the application satisfies the sequential and impact tests.

Conclusion

The Local Plan Publication draft 2018 contained a draft allocation for 2ha of employment land to the rear of the former factory (LP0032), this site is part of a carried over unimplemented allocation from the Calderdale UDP and was originally envisaged as potential expansion land for the factory. Subsequently in 2020 all activities within the factory ceased. Demolition of the buildings at the site was completed by December 2020. In February 2021 CMBC consulted on modifications proposals to change LP0032 from a New Employment Site to a Mixed Use Site including additional land. The LPA has assessed the site as being suitable and appropriate for a mixed use development. The emerging Local Plan is at an advanced stage of preparation. However, the Examining Inspector has not issued her final decision letter and the consultation on main modifications will only take place following receipt of the decision letter and stage 4 hearings. Therefore, limited weight can be given to the allocation of this site for mixed use. It is noted however, that the Examining Inspector, whilst she has commented on some individual sites, has not commented adversely on the proposed allocation of this site for mixed use development.

Notwithstanding the conflict with the RCUDP policies, it is considered that the development would not result in any adverse impacts. The Assistant Director – Economy, Housing & Investment welcomes the provision of 2ha of land for employment uses and does not consider it necessary to retain the whole site as employment land.

The presumption in favour of the proposed development applies and so the proposed development is acceptable in principle. In practice this means any adverse impacts of permitting the application must significantly and demonstrably outweigh the benefits of the development, when assessed against the policies in NPPF taken as a whole, to sustain refusal of the application.

Layout, Design & Materials

Paragraph 130 of the NPPF states that development should function well over their lifetime; be visually attractive; sympathetic to local character; establish and maintain as strong sense of place; optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development; and create places that are safe, inclusive and accessible and promote health and wellbeing.

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.

Policy BE2 (Privacy, Daylight, and Amenity Space) 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.

RCUDP Policy BE4 establishes that the safety and security of people and property should be addressed by the design and layout of development.

RCUDP Policy H10 Density of Housing Development sets a minimum density of 30 dwellings per hectare.

RCUDP Policy H11 Mix of Housing Types establishes that development will only be permitted where provision is made for a mix of housing in terms of size, type and affordability

RCUDP Policy E1 Primary Employment Areas states that development should relate well to scale and character of the area, be accessible by all modes of transport and constant with other relevant UDP policies.

Appearance, layout and scale are reserved matters. An indicative Masterplan shows how the site might be developed which indicates the following breakdown of proposed uses:

Plot A – 24 two bedroom Assisted living bungalows 4.185 Acres / 1.694 Hectares
Plot B – Retail 2.144 Acres / 0.868 Hectares
Plot C – Industrial 5.333 Acres / 2.158 Hectares
Plot D – 106 Residential dwellings 1-5 bedroom properties (8.662 Acres / 3.505 Hectares
Plot E - Woodland A (Inc public open space) 2.396 Acres / 0.969 Hectares
Plot F - Woodland B 1.443 Acres / 0.584 Hectares
Plot G - Public open space 0.825 Acres / 0.334 Hectares
Plot H – Care Home 1.200 Acres / 0.486 Hectares

The most prominent buildings would be the assisted living facility, consisting of a three-storey building with a pitched roof situated at the location of the existing entrance from Brighouse Road; and the three-storey care home which would be located beyond the single storey assisted living bungalows complex. The smaller scale residential development in the form of detached and semi-detached dwellings would be located along the northern and north eastern boundaries, towards the back of the site. The retail and employment element would be located in the south western quadrant, a secondary access is proposed onto Brighouse Road to serve the commercial parts of the development.

A 7m wide green corridor would provide a vehicle free pedestrian and cycle route (west to east) through, the site from Brighouse Road. Additional routes would link separate uses within the site to each other and link the site to the wider area, providing existing residents easy access to the proposed retail and employment opportunities, and the future residents to education and other local facilities.

Areas of retained woodland and open space would be located to the north and east of the residential area

Residential development
The area of residential development is 3.5 ha, the indicative layout suggests that there would be 106 dwellings along a looped access road with houses on either side which would equate to a density of 30.24 dwellings per ha. There would be a mixture of detached, semi-detached and terraced houses with 1 to 5 bedrooms, approximately 68% being 2 and 3 bedrooms.
The indicative Masterplan indicates that the nearest existing residential properties lie to the south of the site on Harley Head Avenue. Plot 46 is shown orientated with its rear façade facing the gable end of 42 Harley Head Avenue distance between of approximately 20+m, Plot 39 rear elevation would be between 20-30m from 48 Harley Head Avenue and Plot 50 gable end 20m from no 58 Harley Head Avenue. It is considered that the privacy, daylighting and amenity space of existing and prospective residents would not be adversely impacted by the proposed development.

The Council is satisfied that the site can accommodate the 106 dwellings without creating any significant amenity issues for new and existing residents. Subject to detailed design, the residential layout would appear to be capable of meeting the requirements of RCUDP Policy BE2 and Annex A and be in accordance with policies H10 and H11.

Employment / Retail
The area of commercial development is 3.03 ha, the indicative layout suggests that there would be a food retail unit and ten assorted sized industrial units arranged along a cul-de-sac with dedicated servicing and turning areas. The footprint of the commercial units is consistent with the footprint of the former factory.

The indicative master plan shows the employment and retail uses would be served by a dedicated access, a landscaping buffer is indicated around this phase of the development, pedestrian and cycle access would be provided from the central access corridor to the north to connect the commercial area with the remaining site and wider area.

It is considered that the layout is acceptable, and that suitable separation can be achieved between the existing residential properties, proposed residential units and the commercial units. Furthermore, new landscaping would be provided to screen the uses. Although there are some issues to consider at reserved matters stage it is considered that these can be addressed and therefore no objections are raised with regards to RCUDP Policies BE1 and E1 at this time.

<u>Crime Prevention</u>

In considering the issue of crime, developments should incorporate the principles of 'Secured by Design' and should reflect both the safety of the people and security of the property. The West Yorkshire Police Architectural Liaison Officer (WYPALO) was consulted on the proposals and raised no objections to the scheme in principle. However, they have raised concerns regarding the proposed linkages between the site and surrounding areas which they request are removed because of potential for crime. They have asked to be consulted at all stages of the development.

Notwithstanding the comments made the WYPALO regarding removal of the connecting routes, these are considered an integral part of the design and fundamental to delivering a sustainable development, which encourages walking and cycling. This is an outline application and details of the routes (surfacing, widths and lighting) are matters for Reserved Matters stage when the WYPLO would be reconsulted.

Subject to submission of reserved matters it is considered that the development complies with Paragraph 130 of the NPPF and Policies BE1 and B4, a condition requiring the development be built to "secured by design" standards is recommended

Residential Amenity

Objectors have raised concerns about overlooking and noise from the retail and employment uses.

Paragraph 185 of the NPPF states that decisions should ensure that new development is appropriate for its location taking account of the likely effect (including cumulative) of pollution on health, living conditions, and the natural environment. Including mitigating and reducing adverse impacts resulting from noise and limit the impact of light pollution.

RCUDP Policy EP8 Other Incompatible Uses states that where development proposals could lead to the juxtaposition of incompatible land-uses they will only be permitted if they do not lead to unacceptable loss of amenity

The employment and retails units would occupy the same footprint as the former factory. The employment units would be the same distance from the existing residential units on Harley Head Avenue with a landscaping belt in between. The application is for uses within Class Uses E(g) (iii) any industrial process, being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit (Light Industrial – formerly use class B1(c)) B1 and B8). It is therefore not considered that the impacts would be greater than the former factory and appropriate mitigation could be achieved at detailed planning stage. Details would be provided at Reserved Matters Stage however, a condition restricting the use of the industrial units to Use Class E(g) (iii) appropriate for residential areas is considered appropriate.

Director of Assistant Director – Neighbourhoods (Environmental Health) has been consulted and has provided the following comments:

An acoustic barrier should be included to separate the residential, commercial and industrial units.

The proposed development will be subjected to noise from a number of sources including the Brighouse Road. I therefore suggest a noise condition is included:

I would like to see details concerning the storage of waste at the residential dwellings. These noise and waste issues can be dealt with as reserved matters.

For information: It would be better to enclose the loading area at the commercial foodstore.

We would expect the artificial light associated with the development not to excess environmental zone E3.

This is an outline application details of layout and design are reserved for subsequent approval. Conditions restricting Employment Class Uses; protection of new residents living conditions and level of artificial lighting are recommended. Subject to submission of reserved matters and the recommend conditions the proposed development is considered to be in general compliance with paragraph 185 of the NPPF and RCUDP Policy E8.

Highways and Movement

Concerns have been raised regarding, long queues at Hipperholme crossroads which still form despite the factory closing, the poor bus services to Leeds/Bradford and narrow pavements connecting the site to Hipperholme District Centre. Further concern has been raised with the proposed access onto St Giles Road, which objectors state would cause rat running and increased traffic onto an unsuitable road.

Paragraph 104 of the NPPF, requires transport issues to be considered from the earliest stages of development proposals, so that: the potential impacts of development on transport networks can be addressed; opportunities from existing or proposed transport infrastructure, and changing transport technology and usage, are realised; opportunities for walking, cycling and public transport identified and pursued; environmental impacts of traffic and transport assessed and where necessary mitigated.

Paragraph 110 of the NPPF, seeks to ensure that new development: provides opportunities to promote sustainable transport modes; have safe and suitable accesses for all users; are designed to reflect current national guidance; and any significant impacts from the development on the transport network are mitigated to an acceptable degree.

Paragraph 112 of the NPPF states that applications for development should:

"a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use;
b) address the needs of people with disabilities and reduced mobility in relation to all modes of transport;
c) create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards;
d) allow for the efficient delivery of goods, and access by service and emergency vehicles; and
e) be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations"

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

The application is in outline with all matters reserved except access. The existing Brighouse Road access to the site will be retained to serve the proposed retirement/care/residential uses, and a new access on Brighouse Road is proposed to the south with a ghost island arrangement to serve the proposed food store and industrial uses. A third vehicular access would be provided on St Giles Road located in the position of the existing access.

The site is located within the recommended 400m from the nearest bus routes that operate on Halifax Road/Brighouse Road. Bus services which operate on Halifax Road/Brighouse Road include the 548/549 which operate between Halifax and Brighouse at a 15-minute frequency,

extending to Huddersfield every hour. The bus availability for the site is therefore considered to be acceptable. The size of the development is unlikely to change the bus route or frequency.

The West Yorkshire Combined Authority (WYCA) have been consulted and note that improvements to the bus stops (shelters and real time bus information) will be required as set out below, they also note that in order to access these stops, safe and direct pedestrian links are required.

The Assistant Director – Strategic Infrastructure has been consulted and provided comments:

The residential elements are well located in terms of the proximity to local facilities and public transport within acceptable walking distances. The retail use is outside the town centre and there are few residential properties nearby, although there are consented and proposed residential developments within a short walking distance.

The proposed vehicular accesses are noted. The applicant has submitted further drawings for the proposed accesses which are considered acceptable

There is presently no nearby pedestrian crossing facility of the A644 Brighouse Road which is needed because of the bus stop and public footpath on the west side. The existing bus stop immediately south of the northern access will probably need to be moved when the pedestrian crossing location is identified. The adjacent northbound stop will need to be improved with the addition of a shelter. The nearest southbound bus stop, opposite Broad Oak Lane, does not have a bus shelter and this should be funded by the development

The proposals conjunction with consented residential schemes to the north would effectively result in the Hipperholme built-up area being moved south. The location of the 30mph / 40mph speed limit changeover will therefore also need to be moved. This could be addressed with a condition requiring the applicant pays for the costs. An entry treatment at this location to highlight the reduction to 30mph area should also be provided given the observed speeds.

Traffic Impact:

The trip rates and growth factors were discussed at the scoping stage and are acceptable. The distribution and assignment of traffic is also acceptable. A slightly higher proportion of residential traffic is likely to use the St Giles Road access rather than turn right at Hipperholme Crossroads. However, this provides a robust assessment of the crossroads so no changes are needed.

The trip generation calculations are acceptable. The pass-by and diverted rates applied to the food store reflect industry standard proportions that are based on observed behaviour at similar stores. Given the delays experienced the Hipperholme Crossroads and the fact that queues extend past the proposed food store access, I consider that the proportion of new trips in the weekday PM peak hour are likely to be an overestimate. Potential visitors will want to avoid making a primary trip (i.e. a home-shop-home journey) at these times and the majority of peak periods trips by car are likely to be drivers that are already passing the store or travelling on nearby roads.

The care home and assisted living uses will generate low traffic levels. Most visitors will be able to avoid travelling in the peak and will have the opportunity to travel by public transport.

The retail study indicates that there are journeys made to food stores outside Hipperholme such as in Brighouse. The majority of these will have been by car whereas a higher proportion of local shopping trips will be made on foot. There will of course also be new vehicular trips attracted to the store which will offset some of this benefit.

The applicant has also provided additional analysis for a scenario where the Southedge Quarry site is approved. This is because it is standard practice to account for approved developments that have not been constructed by adding the associated traffic to base flows.

The revised 'fallback' traffic scenario, is acceptable. This is the traffic that the redevelopment of the current site as an industrial estate could generate. The impact of the redevelopment was then assessed by considering the additional movements that the proposed mixed uses would generate and attract.

It is concluded that the impact of the redevelopment proposals are acceptable in traffic impact terms. Whilst there would be additional queuing and delays in the afternoon peak period they are not considered to be of a size that would raise concerns based on the guidance in the NPPF.

An amendment has been made to the submitted scheme which shows the St Giles access as a shared surface in order to create a more informal, less attractive, means of access / egress.

An indicative circulation plan has been provided to show circulation routes within the development between different uses and the neighbouring schemes and existing residential neighbourhood including;

- A 7m wide landscaped central traffic free route is shown which would prove a safe, secure and attractive route minimising conflicts between pedestrians, cyclists and vehicles connecting the main elements of the development
- A footpath/ cycle path link to the residential site currently under construction to the north
- A footpath potential link to ROW Brighouse 54 which runs between Westfield Drive to the north of the railway line and St Giles Road to the south
- A cycle/footpath link to St Giles Road
- Integration of the existing PROW to the south of the scheme within the site layout

Plans showing details of the Primary and Secondary Residential Accesses, and new Southern Access have been submitted to the satisfaction of Highways. The Assistant Director – Strategic Infrastructure has confirmed "*There are no objections to the masterplan drawing which indicates pedestrian connectivity.*

The applicant has confirmed that the footpath links to the Taylor Wimpey development were reserved by Crosslee under legal agreement. Works are ongoing regarding linking the proposed footpath to the railway bridge which requires the approval of Network Rail and potentially a third-party landowner.

Transportation colleagues have advised that a controlled pedestrian crossing is required on Wakefield Road near the St Giles Road junction given the additional pedestrian movements that will be generated by the development in particular, trips to the school from the proposed residential use, and from the existing residents of Lightcliffe to the new store. This would be in addition to the new pedestrian crossing on Brighouse Road referred to in the comments provided above.

The locations of the pedestrian crossings would be determined following a local consultation process and review of pedestrian desire lines given other local developments, and therefore it is considered that both should be secured through the Section 106 agreement rather than a planning condition. The applicant has agreed to fund the controlled crossings, bus stop improvements and speed limit changes, which will be delivered through the accompanying Legal Agreement.

Whilst this is an outline planning application, a condition is proposed requiring the installation of a suitable facility to permit the recharge of electrical battery powered vehicles that may be used in connection with the residential dwellings.

The submitted circulation plan shows that good connectivity for pedestrians and cyclists can be achieved. Improvements to walking cycling and public transport have been agreed. The proposals are therefore, considered to be in accordance with Paragraph 104,110 and 112 of the NPPF and RCUD Policy BE5 subject to the recommended conditions.

Public Health and Ground Conditions

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 Site is located approximately 330m south-east of Calderdale Air Quality Management Area (AQMA) No.7, which was declared by Calderdale Council (CC) due to exceedances of the annual mean air quality objective (AQO) for nitrogen dioxide (NO2). The Brighouse AQMA is located 2km south of the Site. The Site is also located in an area where air quality is mainly influenced by road traffic emissions along the A644 Brighouse Road and the local road network.

An Air Quality Assessment has been submitted by the applicant and reviewed by an independent Air Quality Consultant. Additional information has been submitted to respond to queries raised.

The assessment includes updated traffic flow figures reflecting the updated ‘fallback’ position agreed between the applicant and Highways.

The LPA Consultant concludes that the assessment shows the application is making air quality worse in the AQMA by small amounts, which is against the overall aim of the West Yorkshire Low Emissions Strategy (WYLES), which has been adopted by the Council. Taking in to account any potential error in the model (which is around 6ug/m3) this would lead to more moderate impacts in the AQMA. However, as at least one exceedance is predicted and air quality is worsened at this location, this is judged to be a significant effect. Therefore, if the application is permitted it is now incumbent on the applicant to provide an assessment of damage cost of a major development to enable the LPA to secure additional measures by condition or S106 to the default mitigation described in the WYLES Technical Guidance

The applicant has provided an Emissions ‘Damage’ Cost Calculation in line with the WYLES ‘Air Quality and Emissions Technical Planning Guidance’. The calculated emissions cost value (cost of the Development to local air quality over a 5-year period) is calculated as £57,654.69. The costed mitigation measures identified to offset the calculated cost include New Bus Shelters, Real Time Information; MCards to occupants of the proposed residential units; and planting of 277 heavy standard trees this is calculated to equate to £165,299. Additional mitigation measures which could benefit air quality, including Travel Plan measures, EV charging points are yet to be costed and the calculations do not include the two proposed controlled crossings.

The impact on air quality is a material planning consideration. The proposed development will worsen air quality in the Hipperholme AQMA; whilst it is noted that specific measures to minimise impacts in the Hipperholme AQMA are limited, the applicant has proposed mitigation measures in

line with WYLES and has agreed to delivery of them through the recommended conditions set out below and Section 106 Agreement should planning approval be granted. The mitigation measures being proposed would exceed the value of the final calculated damage cost, therefore, the development is considered to accord with paragraph 186 of the NPPF and the WYLES and its technical guidance.

Coal Mining Legacy
The applicant has submitted a Mine Shaft Investigation report which assess the safety and stability risk posed by the mine shaft to the redevelopment of the site. The Coal Authority are satisfied with the requirements of the report.

The works detailed in the supporting Mine Shaft Investigation letter report have identified a former coal mining feature which poses a potential risk in its current state to development at the site and has implications for the layout of development. The application has been made in outline with all matters reserved except for access, therefore the final layout of the development is not fixed and The Coal Authority recommends controlling conditions to ensure the safety of the development including approval of layout; remedial treatment works and confirmation that any recommended remedial works/ mitigation have been carried out satisfactorily.

Contamination

RCUDP EP8 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

RCUDP Policy EP11 Development on Potentially Unstable Land requires a stability report to be submitted. Permission for acceptable development will be conditioned to ensure the approved remediation measures are completed prior to the commencement of development

Paragraph 183 of the NPPF states that planning decisions should ensure that ‘a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation)’ However, the responsibility for securing a safe development rests with the developer and/or landowner (paragraph 184 of the NPPF).

Objectors have raised the potential contamination of the site from historic use including processes involving the use of highly toxic chemicals to process munitions of a volatile and unstable nature including Picric Acid. In response, the applicant’s technical advisors have undertaken supplementary ground investigations targeting the areas which are to be ‘cut’ during the proposed development plans, as well as those parts of the site where the existing levels are similar to the proposed finished levels and where the made ground materials will potentially be excavated to create foundations / new drainage / service runs. From the results of testing and with reference to the available information on toxicity, it is concluded that the presence of Picric Acid on the site does not pose a human health risk to the proposed end users or development workers and that no further investigation or remedial works are required with regards to this contaminant.

Phase I and Phase II land contamination reports have been provided and are considered by the Assistant Director – Neighbourhoods (Env. Health) to adequately address areas of contamination. Subject to conditions requiring submission of details to address remediation of the site and verification that remedial works have been carried out to a satisfactory standard, no objections to the proposals are raised.

Subject to submission details required by the recommend conditions below the proposed development is considered to be in general compliance with paragraph 183 and 184 of the NPPF and RCUDP Policies E8 and EP11.

Flooding and Drainage

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*".

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.

The Lead Local Flood Authority have been consulted and have provided the following observations "*It is noted that the applicant has proposed to discharge surface water at an agreed peak flow rate of 23.7l/s, this should be used in the finalised drainage design and full hydraulic calculations*." No objections have been raised subject to condition a requiring the submission of drainage details for approval being attached to any planning permission.

Network Rail have advised that *"It is imperative that drainage associated with the site does not impact on or cause damage to adjacent railway assets. Surface water must flow away from the railway, there must be no ponding of water adjacent to the boundary and any attenuation scheme within 30m of the railway boundary must be approved by Network Rail in advance. There must be no connection to existing railway drainage assets without prior agreement with Network Rail. Please note, further detail on Network Rail requirements relating to drainage and works in proximity to the railway infrastructure is attached for your reference.*

Subject to the proposed condition and informative noting Network Rail's comments, the proposals are considered to be in general accordance with Policies EP14, EP20 and EP22

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.

1 Yew Trees, St Giles Road is a Grade II listed property and is located close to the proposed access onto St Giles Road. Dating from the mid to late C17 with late C18 alterations, the building is an important vernacular survival of a Hall and cross-wing plan arrangement. Built of thin coursed hammer-dressed stone, rendered to sides and rear, with a stone slate roof, mullioned windows and other decorative features, it has a large degree of heritage significance.

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; …

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 Council's Conservation Officer has been consulted and provided the following comments

"The submitted Heritage Statement contains an assessment of the significance and setting of grade II listed Yew Trees and in general I concur with the findings in relation to the current site not contributing to the setting of the building.

However, it does not follow that as the site currently does not positively contribute, any development would not be harmful. The proposal would introduce domestic built form in close proximity to the listed building and at a higher level, which has the potential to negatively impact the wider setting of the listed building through visible development within views that are currently open, with some trees (such as that shown in figure 8). Similarly the intensification of use of the vehicular access directly adjacent to the property has the potential to impact on the remaining limited rural character of the building's historic setting.

These potential harmful impacts could be mitigated through sensitively designing the access, with emphasis on pedestrian movements, planting of street trees, use of materials and appropriate landscaping. In any reserved matters application, the layout of development, landscaping and boundary details will be important in ensuring any potential harm is removed and/or successfully mitigated."

The application is in outline with all matters reserved except access, and the conservation officer's comments regarding the new access onto St Giles Road are noted. It is considered that subject to a suitable design, the harm to the heritage asset, 1 Yew Trees, would be less than substantial, the proposed development would bring forward new development which would replace a site formally in employment use providing a positive contribution to local character, distinctiveness and economy. Subject to detailed design it is considered that the proposed development accords with Section 16 of the NPPF and RCUDP Policy BE15.

<u>Wildlife Conservation, Trees and Landscaping</u>

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 improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.

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 NE14 (Protection of Locally Important Sites) seeks to protect Local Nature Reserve or Priority Habitat and states that development that is likely to have an adverse effect will not be permitted unless it can be clearly demonstrated that there are reasons for the proposals which would outweigh the nature conservation value of the site. Where developments permitted the Council will make use of conditions to:

i. Minimise disturbance
ii. Protect and enhance the sites nature conservation value; and
iii. Where damage is unavoidable, where appropriate require the developer to provide new or replacement habitats so that the total ecological resource remains at or above its current ecological value.

Part of the site lies within the Wildlife Corridor designation of the RCUDP. Policy NE15 refers to ‘Development within Wildlife Corridors’ which states that development would not be permitted if it would damage the physical continuity of the Corridor; impair its function or harm the conservation value.

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.

The proposals will retain the majority of the existing woodland on the application site (65%), which amounts to 1.52 hectares. A landscaping strategy has been provided which shows a green infrastructure framework and landscaping vision for the development including;

- Tree lined streets
- Wildlife corridor with native tree and shrub species including fruit trees
- Wildflower verges
- Native hedges
- Translocation of the ephemeral / short perennial habitat
- Retained woodland to be protected and enhanced in accordance with a woodland management plan. Dead hedge/ brash piles adjacent to woodland paths to

protect habitat

The Assistant Director – Neighbourhoods Wildlife Biodiversity Officer has been consulted and has provided the following comments

"Although I believe that development is possible on the majority of this site, it is regrettable that it has not been possible to amend the layout to reduce ecological impacts to an acceptable level. It has not been demonstrated that the current proposals will have no significant adverse ecological impacts. Accordingly, I must register an objection. As previously commented, my outstanding concerns are as follows:

1. Loss of Lowland Acid Grassland
The ecological consultants identified an area of grassland of 0.22 ha in size in the east of the site. The consultants recorded one species (wild thyme) which is locally very rare, with only one or two other records in Calderdale, together with nine other grassland indicator species, six of which were found to have a reasonably distribution throughout the grassland. The grassland constitutes a roadside verge of over 50m in length and meets the criteria for a Local Wildlife Site under criterium Gr4a. Policy NE 14 applies, and the applicant has not demonstrated that there are reasons for the proposals that outweigh the need to safeguard the nature conservation value of the site". There is no evidence that the mitigation hierarchy has been applied or avoidance of impact on this area considered. As stated in the NPPF, translocation should be seen as a last resort. It is also often unsuccessful. Moreover, the area of acid grassland proposed for creation is 35% smaller than that lost.

Applicant's response

The grassland is not designated as a LWS in the adopted UDP or the emerging new Local Plan (nor does the associated evidence base suggest it ought to be designated). The ecology consultation response treats the grassland as though it has formal status as an LWS, but it does not have such status presently, nor should it be designated so in the future because it does not meet the Criteria referred to above.
There is therefore no conflict with Policy NE14 of the adopted UDP, which only addresses sites designated in the development plan.
Notwithstanding the above, the application proposes to safeguard the most valuable parts of the grassland by translocating an area of 0.17 ha to an area of open space within the new development…

2. Loss of Woodland and Impact on Wildlife Corridor / Wildlife Habitat Network
The proposals will result in the loss of 37% of the woodland (a UK Priority Habitat), which also lies within a Wildlife Corridor / Wildlife Habitat Network. Policy NE15 applies. Again, the mitigation hierarchy and alternative site layouts do not appear to have been considered. Greater efforts should be made to retain existing habitats before considering loss and creation /enhancement of habitats. Proposals to enhance the remaining woodland are welcomed. However, although a small amount of woodland will be planted elsewhere, the proposals will result in a permanent loss of 0.55 ha of woodland (23%). Greater efforts should also be made to improve the functional linkage between the two blocks of woodland.

Applicant's Response
The proposals will retain the majority of the existing woodland on the application site (65%), which amounts to 1.52 hectares.

…the corridor function of the woodland will be maintained, which is a requirement of Criterion ii) of Policy NE15. Whilst the depth of the woodland would be reduced, the physical continuity of the corridor would not be impaired (Criterion ii) of Policy NE15). The

nature conservation value of the corridor would not be harmed (Criterion iii) of Policy NE15) given the proposed woodland management measures that include new native woodland and shrub planting

The remaining woodland will be enhanced through the woodland management regime…

The ecology consultation response states that greater efforts should be made to improve functional linkage between the 2 blocks of woodland. Presently the two area of woodland are separated by an access track that served an outbuilding that has recently been demolished. Notwithstanding, the Landscape Strategy shows that the scheme has been designed to allow for habitat connections between the areas of woodland to be maintained and enhanced ... The corridor shown on the Landscape Strategy is at least 10m wide (with a 2m wide landscaped footway), which provides for good opportunities for movement of wildlife

3. Impact on Protected Species
Policy NE16 applies. Insufficient information has been submitted to give confidence that sufficient undisturbed habitat and habitat linkages will be provided after the removal of a third of the woodland. This is crucial, particularly given the disturbance and habitat loss resulting from the adjacent development. If it is believed that impacts on protected species will not be significant, a protected species mitigation strategy should be produced, informed by up to date and detailed surveys. It is not sufficient to simply state that impacts are considered to be minor adverse.

Objections have been received from Calderdale Badger Protection Group, who state that the application in its current form does not consider the effects on badgers. The developer has considered the impact of the proposed development on Badgers in a separate sensitive Ecological Appraisal, the Assistant Director – Neighbourhoods confirms that the mitigation measures mentioned in badger report will be covered by the production of a CEMP and BEMP, mentioned above and should approval be granted there will be a requirement for a badger licence. The report has been shared with the Calderdale Badger Group who confirm:

"This does quell many of our concerns regarding the development. Although we would still prefer the wooded areas to be left intact it seems that badgers have been well considered in the planning stages. We particularly approve of the suggestions to fence of the woodland on the western edge of the path in order to minimise disturbance (paragraph 5.3.18) and the retention of connectivity combined with the use of sensitive lighting schemes (paragraph 5.3.20) and would hope that if construction goes ahead that these suggestions are adhered to."

Applicant's Response

…With the implementation of mitigation as recommended within the Ecological Appraisal, the residual impact is considered to be minor adverse which is not considered to be significant.

Mitigation includes updated badger surveys prior to construction works commencing, and recommendations to avoid disturbance to the northern woodland once the site becomes operational, including the installation of fencing in association with proposed footpaths and interpretation boards. Recommendations also include monitoring of badger activity on site and an assessment of the status of this species once the site becomes operational. Adjustments to protection of the woodland habitat can be made following monitoring surveys, if considered necessary.

It is acknowledged there is a dispute regarding whether the acid grassland within the site constitutes a Local Wildlife Site. Notwithstanding the disagreement, the site currently has no formal designation. The applicant has proposed that the grassland is translocated and managed in accordance with an agreed Construction Environmental Management Plan (CEMP: Biodiversity) and Biodiversity Enhancement & Management Plan (BEMP).

The applicant considers that a Biodiversity Net Gain (BNG) of 11.8% can be achieved on the site including 33.77 Biodiversity Habitat Units and 9.08 Biodiversity Hedgerow Units through enhancement of the retained woodland, and provision of appropriate native landscape throughout the site which can be delivered thorough imposition of conditions on any planning permission.

Notwithstanding the comments made by the Councils Biodiversity Officer, it is considered that the applicant has demonstrated through submission of additional clarifications and information that the development accords with Paragraph 174 (d) of the NPPF by achieving 11.8% Biodiversity Net Gain. The submitted indicative Master Plan illustrates that the proposed development would improve biodiversity in and around the whole development and enhance public access to nature in accordance with paragraph 180 d) of the NPPF.

The Council's Biodiversity Officer has recommended the following conditions should Committee be mindful to permit the development; a Construction Environmental Management Plan (CEMO) to include measures to retain and protect the 1.52 Biodiversity Habitat Units to be retained and the 1.44 Biodiversity Habitat Units to be translocated; Biodiversity Enhancement & Management Plan (BEMP); Monitoring Programme & Monitoring Report; Protected Species Mitigation Strategy; Timing of vegetation removal; Bat Roosting and Bird Nesting features; Lighting Strategy.

Whilst it is acknowledged that the proposed development would impact on ecological interests on the site, it has been demonstrated that adequate mitigation can be delivered including BNG to ensure that the development complies with paragraph 180 of the NPPF. This is an outline application; details of layout and landscaping are reserved for subsequent approval. Subject to submission of reserved matters and the recommend conditions set out above the proposed development is considered to be in general compliance with paragraphs 174 and 180 of the NPPF and RCUDP Policies NE16 and NE17.

<u>Infrastructure and other needs</u>

RCUDP policy GCF1 establishes that all infrastructure and other needs, including education and open space, which arise from development should be provided by the developer either on or off site.

Open Space

Policy OS5 requires all new residential developments to provide for the recreational needs of their residents in accordance with standards set by the Council. The Assistant Director – Neighbourhoods has considered the application and states:

> *"This development incorporates good areas of open space there is therefore no requirement for payment subject to the adoption of a suitable management plan for woodland/grassland and landscaped areas."*

Education

The Assistant Director – Education advises

"*There is a shortage of places in the area with projections indicating a rise in numbers over the coming years. Demand has been identified for two additional two form entry primary schools and an additional secondary school in South East Calderdale. Due to the cumulative effect of the local plan and the need for additional provision we require a contribution of £538,710. This is based on 100, two bed plus dwellings.*"

This has been agreed by the applicant.

Affordable Housing

RCUDP policy H13, which was the development plan policy for affordable housing, was not saved when the plan was reviewed by the Secretary of State in 2009.

Paragraph 65 of the NPPF establishes that for major residential development at least 10% of the homes should be available for affordable home ownership.

The Assistant Director – Housing and Green Economy advises:

"Affordable housing is a key priority for Calderdale Council. The Council is currently in the process of adopting its 15-year Local Plan, the plan has identified a need of 997 new residential homes per annum in Calderdale and the Housing Technical Document asks for 238 affordable homes per annum. The proposed site is in Zone C, the threshold is 15+ homes and therefore the Council will be seeking a 25% on-site contribution from the housing development for affordable homes under the Council's Local Plan policy.

According to KeyChoice, which is the choice based lettings system for Calderdale run by Together Housing Association, there are just over 8,000 active applicants currently on the waiting list and seeking affordable housing with 1,300 of them wishing to live in the Hipperholme area"

The applicant has agreed the 25% contribution to affordable housing in respect of the market housing element of the scheme. With regards to the assisted living / retirement village it is agreed that a commuted sum will be calculated in accordance with the latest affordable housing guidance.

Transport

West Yorkshire Combined Authority advises:

The closest bus stops on this corridor 21279 and 21280 do not have a shelter. As part of this scheme, a bus shelter could be provided at the above named stops at a cost of £13,000 each to the developer to improve the public transport offer. In addition, bus stops 21281 and 21282 would benefit from an installation of a Real Time Information Display at a cost of £10,000 each to the developer. In addition, Highways have indicated that bus shelters are also required at bus stops 21283 and 21285

To encourage the use of sustainable transport as a realistic alternative to the car, the developer needs to fund a package of sustainable travel measures. We recommend that the developer contributes towards sustainable travel incentives to encourage the use of sustainable modes of transport. a bus only MetroCard ticket, the contribution appropriate for this development would be £54,219.00

Public Transport

A controlled crossing is required on Brighouse Road, and a further controlled pedestrian crossing is required on Wakefield Road near the St Giles Road junction given the additional pedestrian movements that will be generated by the development. In particular, trips to the school from the proposed residential use, and from the existing residents of Lightcliffe to the new store.

The cost of these two crossings would be £90,000.00

The public transport contributions have been agreed by the applicant

Planning Balance

Each decision must be a balance of all material considerations depending on the individual merits and circumstances of the application. The Council only has a two year housing land supply, which is a substantial shortfall. The “tilted balance” part of the presumption in favour of sustainable development, as set out at paragraph 11 (d) ii. Of the NPPF, therefore applies.

Whilst there is a theoretical conflict with Policies E3 and E5 and therefore the development is not in line with the Development Plan, for the reasons set out in the report, the proposals are supported despite this conflict, as it would retain some of the site for business use and provide industrial/warehouse space replacing the former Crosslee factory. It also would provide other uses which would also create new jobs and boost the local economy.

The impact of the development on air quality is a material consideration in the determination of this planning application, the applicant has demonstrated that the impacts of the development can be satisfactorily and appropriately mitigated.

The development will give rise to some impacts on ecology interests, including the identified Acid Grassland. It is however, considered that the applicant has demonstrated through submission of additional clarifications and information, that the development accords with Paragraph 174 (d) of the NPPF by achieving 11.8% Biodiversity Net Gain. The proposed development would not give rise to a significant adverse ecology impact and the mitigation hierarchy set out in paragraph 180a) of the NPPF is engaged.

The proposed development provides for a range of house types to be provided to meet the needs of present and future generations including general housing, assisted living and residential care. It is a sustainable location, within walking distance of local services and facilities including public transport. In addition, there would be social and economic benefits due to the employment opportunities (retail and business uses), and 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.

On balance the development is considered to accord with National and Local Planning Policy because there are considered to be no adverse impacts which would significantly and demonstrably outweigh the benefits of the proposed development.

CONCLUSION

The proposal is considered to be acceptable subject to the conditions specified below and the legal agreement covering Housing, Education and Sustainable Transport contributions. 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: 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) on07714 922699 or Richard Seaman (Lead Officer) on 01422 392241

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. No site enabling works until shall commence until details required under conditions 3,4,5,6,7,8,9,10,11 have been submitted to and approved in writing by the Local Planning Authority. Before completion of the site enabling works a Phasing Plan for the application site shall be submitted to and approved in writing by the Local Planning Authority. For the purposes of this conditions enabling works are defined as: site decontamination and remediation, ground improvement, plot demarcation and pegging out, construction of haul roads and associated accesses for construction and site preparation of traffic, and structural landscaping, clearance or regrading of the site, provision of security fencing, works for the provision of r mains services to prepare the site for development

3. Notwithstanding the provisions of Part 4, Class A of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, before construction works commence in any phase, details shall be submitted for the written approval of the Local Planning Authority in respect of the provision of a contractor's compound and staff car parking area within that phase. Such details shall include the provision of protective fencing to the boundaries of the construction site. The details so approved shall thereafter be implemented in advance of construction works commencing in any phase and shall be retained for the duration of construction works in that phase unless otherwise agreed in writing by the Local Planning Authority

4. Prior to the commencement of development, or as part of the first reserved matter(s) application, a Construction Traffic Management Plan (CTMP) shall be submitted to and approved in writing by the Local Planning Authority. The CTMP shall contain (but shall not be limited to) the following details:
   - Temporary traffic control measures, if required taking into account the cumulative effects of adjacent development.
   - Timing controls (e.g., limiting peak period vehicle movements);
   - Temporary and permanent access arrangements for personnel/vehicles;
   - Traffic management procedures for waste disposal vehicles;
   - Personnel and vehicle segregation;
   - Safety measures to protect the public/Public Rights of Way;
   - Equipment, e.g. road cones, temporary fencing and signage;
   - Provision to ensure that vehicles can be loaded and unloaded off the public highway where possible;
   - Measures to encourage the site labour force to use public transport to travel to and from the Site;
   - Housekeeping measures, e.g. HGV wheel washing prior to vehicles leaving the Site, use of road sweepers; and,
   - Consultation and liaison process with neighbouring developments under construction, businesses, and other stakeholders.

5. 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 and agreed phasing 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

6. The development shall not begin until a site investigation and assessment of Mine gas on the site has been carried out by a properly qualified and experienced expert(s) able to demonstrate relevant specialist experience in the assessment and evaluation of mine gas. The findings of the investigation shall be submitted in writing to the Local Planning Authority before development commences in any phase. Such investigation shall identify the mine gas concentration, the rate of emission and atmospheric conditions. The assessment shall indicate such remedial measures as are necessary, including migration measures to proposed structures within the proposed development. All mitigation measures identified under these provisions for each phase shall be implemented as the development phase proceeds and shall be completed before that phase of the development is brought into use

7. No site works shall take place until a scheme for construction dust mitigation has been submitted to, and has received the written approval of, the Local Planning Authority. The scheme shall be implemented only as approved and shall make provision for: -
a) A brief project description and likely sources of dust emissions identifying phases of the construction works.
b) Measures to be adopted to minimise dust emissions during the construction process.
c) Emergency measures to be adopted in the event of unforeseen circumstances during the construction phases.
d) Mechanism for review for each construction phase
e) A log of complaints from the public and a record of the measures taken to be kept and made available on request to the Local Planning Authority

8. Before commencement of development, a Construction Environmental Management Plan (CEMP:Biodiversity) shall be submitted to and approved in writing by the LPA. The CEMP (Biodiversity) shall put in place measures to retain and protect the 1.52 Biodiversity Habitat Units to be retained and the 1.44 Biodiversity Habitat Units to be translocated as shown in the Biodiversity metric version 3.0 submitted on 10th November 2021 by Smeeden Foreman Ltd. and include the following:
a) Risk assessment of potentially damaging construction activities
b) Identification of "biodiversity protection zones"
c) Measures to avoid or reduce impacts during construction
d) Location and timings of sensitive works to avoid harm to biodiversity features, including nesting birds
e) Timings and details of any ecological surveys required pre-commencement of and during construction.
f) The times during construction when specialist ecologists need to be present on site to oversee works
g) The name and role of a responsible person (Ecological Clerk of Works) and lines of communication
h) Use of protective fences, exclusion barriers and warning signs
The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the LPA

9. Before development commences, a protected species mitigation strategy, informed by detailed and up to date surveys, shall be submitted to and approved in writing by the Local Planning Authority. The approved strategy shall be implemented in accordance with the approved details

10. Prior to the commencement of development, an invasive non-native species protocol shall be submitted to and approved by the Local Planning Authority, detailing the containment, control and removal of Japanese Knotweed (Fallopia japonica) and Himalayan Balsam (Impatiens glandulifera) on site. The measures shall be carried out strictly in accordance with the approved scheme.

11. Before development commences a site wide high level lighting strategy to demonstrate adequate control of any glare and obtrusive light produced by artificial external lighting and to protect Biodiversity, complying with the recommendations of the Institution of Lighting Professionals (ILP) "Guidance Notes for the Reduction of Obtrusive Light" reference GN01: 2011 for environmental zone E3 (as amended) shall be submitted to and approved in writing by the Local Planning Authority

The Strategy shall:

a) Identify those areas/features on site that are "particularly sensitive for and any other nocturnal mammals" that are likely to cause disturbance in and around their breeding sites and along important routes used to access key areas of their territory and for foraging. - using an appropriately scaled map to show where these areas are

b) Show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb commuting and foraging bats and any other nocturnal mammals

c) The proposals to minimise or eliminate glare from the use of the lighting installation when viewed from windows of properties in the vicinity

12. Other than site enabling works, approval of the following details (hereinafter referred to as the reserved matters) shall be obtained from the Local Planning Authority, in writing before each phase of the development is commenced.
Layout
Scale
Appearance
The landscaping of the site
Plans and particulars of the reserved matters shall be submitted utilising a planning application form and shall be carried out as approved.
The applications for approval of reserved matters for phase one shall be made not later than the expiration of three years beginning with the date of this permission thereafter applications for approval of remaining reserved matters shall be made not later than ten years and the development must be begun not later than the expiration of two years from the final approval of reserved matters, or, in the case of approval on different dates, the final approval of the last such matters to the approved.

13. At the same time as the first reserved matters application for phase one the design of the pedestrian and cycling access through the site to Brighouse Road located between the Retail and Employment Phase of the development and the assisted Living and Care Home phase of the development shall be submitted to, and approved in writing by, the Local Planning Authority. None of the development hereby approved shall be occupied / brought into use until the pedestrian and cycle access has been delivered having regard to condition 8.

14. No drainage works shall begin until 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, and Network Rail requirements) and their phasing have been submitted to and approved in writing by the Local Planning Authority. The details so approved shall be implemented in accordance with the agreed phasing and retained thereafter

15. At the same time as the First landscaping Reserved Matters for phase one application is submitted a detailed landscape scheme, and implantation programme for the central green corridor shall be submitted to and agreed by the Local Planning Authority. The landscaping shall be carried out in accordance with the approved scheme and implantation plan.

16. A landscape management plan covering the public areas, including long term design objectives, management responsibilities and maintenance schedules shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation / use of any phase of the development. The landscape management plan shall be carried out as approved thereafter

17. Notwithstanding the provisions of the Use Classes Order 1987(as amended) and the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and any provision equivalent to these Use Classes in any statutory instrument revoking and re-enacting those Orders with or without modification the hereby approved units shall be for the purpose of Use Classes E g) i) office ii) the research and development of products or processes or iii) any industrial process, (which can be carried out in any residential area without causing detriment to the amenity of the area) B2 and B8

18. No part of the General Residential Phase of the development shall be brought into use until the design of the pedestrian and cycling access to the recently consented Taylor Wimpey site to the north of the application site has been submitted to, and approved in writing by, the Local Planning Authority. The pedestrian and cycling access to the recently consented Taylor Wimpey site to the north of the application shall be delivered upon the first occupation of the residential units on the residential phase

19. No part of the general residential or assisted Living and Care Home phases hereby approved shall be occupied / brought into use until the works to the Primary Residential Access shown on drawing number 19-357-TR-004 REV A have been completed and shall be so retained thereafter

20. Before any phases of the development hereby approved are occupied / brought into use bus shelters shall be provided for bus stop numbers 45025685, 45021283, 45021279 and 45021280 and Real Time Information Displays shall be provided to bus stop numbers 45021281 and 45021282

21. The retail and employment units herby approved shall not be occupied/brought into use until a right turn lane into the site off Brighouse Road shown on drawing number 19/357/TR/008 Rev A, the relocation of bus stop no 45021281 including the arrangements for the relocation of the existing 30/40 mph speed limit have been submitted to and approved in writing by the local planning authority. The measures shall be provided in accordance with the approved details prior to the first occupation of any retail and employment development hereby permitted and shall be so retained thereafter.

22. As part of the first reserved matter(s) application in each phase details of the construction and specification for the cycleways and footpaths, shall be submitted to and approved in writing by the Local Planning Authority. The details so approved shall be fully implemented and thereafter retained.

23. As part of the first reserved matter(s) application for the Residential Housing details of the construction and specification for the St Giles Road access as shown on drawing number 19-357-TR-006 Rev A shall be submitted to and approved in writing by the Local Planning Authority. The details so approved shall be fully implemented before the 76th dwelling of the general housing phase of the development is occupied and shall be retained thereafter.

24. Within the boundary of any dwelling hereby approved with dedicated parking, 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 that dwelling before the dwelling is brought into use. Unless otherwise required by the location, the installation(s) shall comply with IEE regulations and BSEN 62196-1 for a mode 3 system

25. At the same time as any application seeking approval of a detailed layout for any phase of development within 20m of the Coal Authority's recorded position for mine shaft 413424-013 shall be accompanied by a proposed layout plan which identifies the position of the recorded mine entry as located, and the extent of its potential zone of influence and corresponding no-build zone (as detailed in the Mine Shaft Investigation letter report, dated 2 September 2021, prepared by Arc Environmental Ltd).

26. Prior to commencement of development on any phase of development within 20m of the Coal Authority's recorded position for mine shaft 413424-013, a scheme of remedial treatment works to address land instability arising from the shaft shall be submitted to and approved in writing by the Local Planning Authority the scheme so approved shall be implemented in full in order to ensure that the site is made safe and stable for the proposed development. These works shall be carried out in accordance with authoritative UK guidance

27. Prior to the first occupation or use of any phase of development within 20m of the Coal Authority's recorded position for mine shaft 413424-013, a signed statement or declaration prepared by a suitably competent person confirming that the site has been made safe and stable for the approved development shall be submitted to the Local Planning Authority for approval in writing. This document shall confirm the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity

28. 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.

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

30. Development shall not commence within 10m of the 10m of the adjacent railway undertaker's land until a construction methodology has been submitted to and approved in writing by the Local Authority. The construction methodology shall demonstrate consultation with the Asset Protection Project Manager at Network Rail. The development shall thereafter be carried out in accordance with the approved construction methodology

31. Prior to occupation of any phase the Developer must provide a suitable trespass proof fence adjacent to Network Rail's boundary (minimum approx. 1.8m high) and make provision for its future maintenance and renewal. Network Rail's existing fencing / wall must not be removed or damaged

32. Prior to the commencement of development on the residential and care facility phases a scheme for the site layout, internal design and building specification of the development shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be such that the indoor ambient noise level within dwellings assessed in accordance with BS8233:2014, shall not exceed
35dB LAeq, 1 hour in living rooms and bedrooms between 0700 hours and 2300 hours , and
30dB LAeq, 15 mins in bedrooms between 2300 hours on one day and 0700 hours on the following day, and
40dB LAeq, 1 hour in dining rooms and dining areas between 0700 hours and 2300 hours, and
The outdoor ambient noise level shall not exceed 55dB LAeq on balconies and in gardens at any time.
If the scheme is to rely on the windows of the dwelling(s) being kept closed there shall also be submitted details as to how the dwelling(s) will be adequately ventilated without compromising the façade insulation or the resulting noise level. The details of the scheme so approved shall then be implemented before the first occupation commences and shall be retained thereafter

33. At the same time as the submission of the first reserved matters for any phase a detailed lighting scheme in accordance with details submitted and agreed under conditions 11 above, complying with the recommendations of the Institution of Lighting Professionals (ILP) "Guidance Notes for the Reduction of Obtrusive Light" reference GN01: 2011 for environmental zone E3 (as amended) shall be submitted to and agreed in writing by the local Planning Authority, the details so approved shall be implemented in their entirety and thereafter retained

34. Prior to the submission of the First Reserved Matters application for the Residential Housing a woodland management plan shall be submitted to and approved in writing by the Local Planning Authority. The approved management plan shall be implemented in accordance with the approved details.

35. At the same time as submission of First Reserved Matters together with details required under conditions 15 and 16 above, a Biodiversity Enhancement & Management Plan (BEMP) shall be submitted to and approved in writing by the LPA. The Plan shall deliver a minimum of 33.77 Biodiversity Habitat Units and 9.08 Biodiversity Hedgerow Units and include details of the following:
a) Description and evaluation of features to be managed and enhanced or translocated
b) Extent and location/area of proposed enhancement works on appropriate scale maps and plans
c) Ecological trends and constraints on site that might influence management
d) Aims and Objectives of management

e) Appropriate management Actions for achieving Aims and Objectives
f) An annual work programme (to cover an initial 5-year period)
g) Details of the specialist ecological management body or organisation responsible for implementation of the Plan
h) For each of the first 5 years of the Plan, a progress report sent to the LPA reporting on progress of the annual work programme and confirmation of required Actions for the next 12-month period
i) The Plan will be reviewed and updated every 5 years and implemented for 30 years
The Plan shall include details of the legal and funding mechanisms by which the long-term implementation of the Plan will be secured by the developer with the specialist ecological management body or organisation responsible for its delivery. The Plan shall also set out (where the results from the monitoring show that the Aims and Objectives of the BEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the Objectives of the originally approved Plan. The approved Plan will be implemented in accordance with the approved details

36. prior to the first occupation / use of any phase of the development a Monitoring Programme prepared by an appropriately qualified ecological consultant shall be submitted to and agreed by the LPA. It shall include the first Monitoring Report and specify the frequency and timing of subsequent Monitoring Reports to cover a minimum 30-year period to be submitted to the LPA. The Monitoring Report will include the following:
a) Confirmation of the number of Biodiversity Units present based on a survey at an appropriate time of year and how this compares to the Biodiversity metric version 3.0 submitted on 10th November 2021 by Smeeden Foreman Ltd.
b) Where the target condition is not yet met provide an assessment of time to target condition for each habitat and any changes to management that are required
c) Confirmation that all integral bird nesting and bat roosting features are in place as approved
The Monitoring Programme shall include details of the legal and funding mechanisms by which the long-term implementation of the monitoring will be secured by the developer with the specialist ecological organisation responsible for its delivery. Monitoring Reports will be submitted to the LPA as stated in the Monitoring Programme and where remedial measures or changes in management are required these will be referred to and addressed in the Biodiversity Enhancement & Management Plan (BEMP) annual work programmes.

37. Prior to commencement of development within 30m of the woodland the Local Planning Authority shall be provided with appropriate protected species licence issued by Natural England or confirmation it is not required

38. No removal or management of any tall vegetation, including brambles, ivy, trees and shrubs, shall 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

39. At the same time as submission of First Reserved Matters Application for the Residential Housing development, a Plan shall be submitted to and approved in writing by the LPA of the installation of at least 100 integral bat roosting and bird nesting features (for species such as House Sparrow and Swift) within buildings on the site. The agreed Plan shall show the number, specification of the bird nesting and bat roosting features and where they will be located, together with a timetable for implementation and commitment to being installed under the instruction of an appropriately qualified bat consultant. All approved features shall

be installed prior to first occupation of the identified buildings on which they are located and retained thereafter

40. Prior to the first occupation of each phase of the development details that show how 'Secured by Design' principles have been incorporated into that phase shall be submitted for the written approval of the Local Planning Authority and once approved the development in that phase shall be implemented in accordance with the approved 'Secured by Design' details prior to occupation or use of any part of that phase hereby approved

41. Prior to the first occupation of the residential phase of the development details of a management plan for open space within the development shall be submitted to and approved in writing by the Local Planning Authority. The approved management plan shall be implemented upon first occupation of the development and retained thereafter

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. 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.

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

4. In the interests of highway and pedestrian safety.

5. 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

6. To provide an appropriate scheme of remedial measures before building works commence on site is necessary to ensure the safety and stability of the development, in accordance with paragraphs 183 and 184 of the National Planning Policy Framework

7. In the interests of clarity, to protect the amenity of neighbouring occupiers having regard to RCUDP Policy EP1 and the National Planning Policy Framework

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

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

10. To avoid the spread of an invasive and prohibited species in the interests of avoiding harm to the environment.

11. In the interests of the residential amenity and Biodiversity and in accordance with RCUDP Policies EP5 NE15 and NE16 of the Replacement Unitary Development Plan

12. To ensure that suitable access is available for the development and to ensure compliance with Policy BE5 of the Replacement Calderdale Unitary Development Plan

13. In the interests of highway safety and to allow for safe pedestrian and cycle access to and from the site and to ensure compliance with BE5, of the Replacement Calderdale Unitary Development Plan.

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

15. In the interests of visual amenity and to ensure compliance with BE1 of the Replacement Calderdale Unitary Development Plan.

16. To ensure that there is a well laid out scheme of healthy trees and shrubs in the interests of amenity and to ensure compliance with Policies NE17 BE3, of the Replacement Calderdale Unitary Development Plan

17. To ensure that the level of development can be accommodated ensuring

18. In the interests of highway safety and to allow for safe pedestrian and cycle access to and from the site and to ensure compliance with BE5, of the Replacement Calderdale Unitary Development Plan.

19. To ensure the satisfactory provision of environmental improvements in accordance with policy GCF1 of the Replacement Calderdale Unitary Development Plan.

20. To ensure the satisfactory provision of environmental improvements in accordance with policy GCF1 of the Replacement Calderdale Unitary Development Plan.

21. To ensure the satisfactory provision of environmental improvements in accordance with policy GCF1 of the Replacement Calderdale Unitary Development Plan.

22. In the interests of highway safety and to allow for safe pedestrian and cycle access to and from the site and to ensure compliance with BE5, of the Replacement Calderdale Unitary Development Plan.

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

24. In the interests of the sustainability of the development and to ensure compliance with Paragraph 107 of the NPPF

25. To ensure the safety and stability of the development, in accordance with paragraphs 183 and 184 of the National Planning Policy Framework

26. To provide an appropriate scheme of remedial measures before building works commence on site is necessary to ensure the safety and stability of the development, in accordance with paragraphs 183 and 184 of the National Planning Policy Framework

27. To ensure that any ground contamination are remediated, and to ensure compliance with Policies EP9 and EP10 of the Replacement Calderdale Unitary Development Plan and Paragraphs 183 and 184 of the National Planning Policy Framework

28. 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

29. 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

30. To ensure the safety, operational needs and integrity of the railway

31. To ensure the safety, operational needs and integrity of the railway

32. In the interests of amenity and to ensure compliance with BE1 and EP8 of the Replacement Calderdale Unitary Development Plan.

33. In the interests of the residential amenity and Biodiversity and in accordance with RCUDP Policies EP5 NE15 and NE16 of the Replacement Unitary Development Plan

34. To ensure the management of existing and newly planted tree works are carried out in a manner which will maintain the health and appearance of the trees in the interests of the visual amenity of the area and to ensure compliance with NE21; of the Replacement Calderdale Unitary Development Plan.

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

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

37. In the interests of conservation and to protect the ecological species.

38. In the interests of conservation and to protect the ecological species.

39. In the interests of conservation and to protect the ecological species.

40. In the interests of Crime Prevention and in accordance with policy BE4 of the Replacement Calderdale Unitary Development Plan

41. In order to maximise the quality of provision of open space and to ensure compliance with OS5 of the Replacement Calderdale Unitary Development Plan.

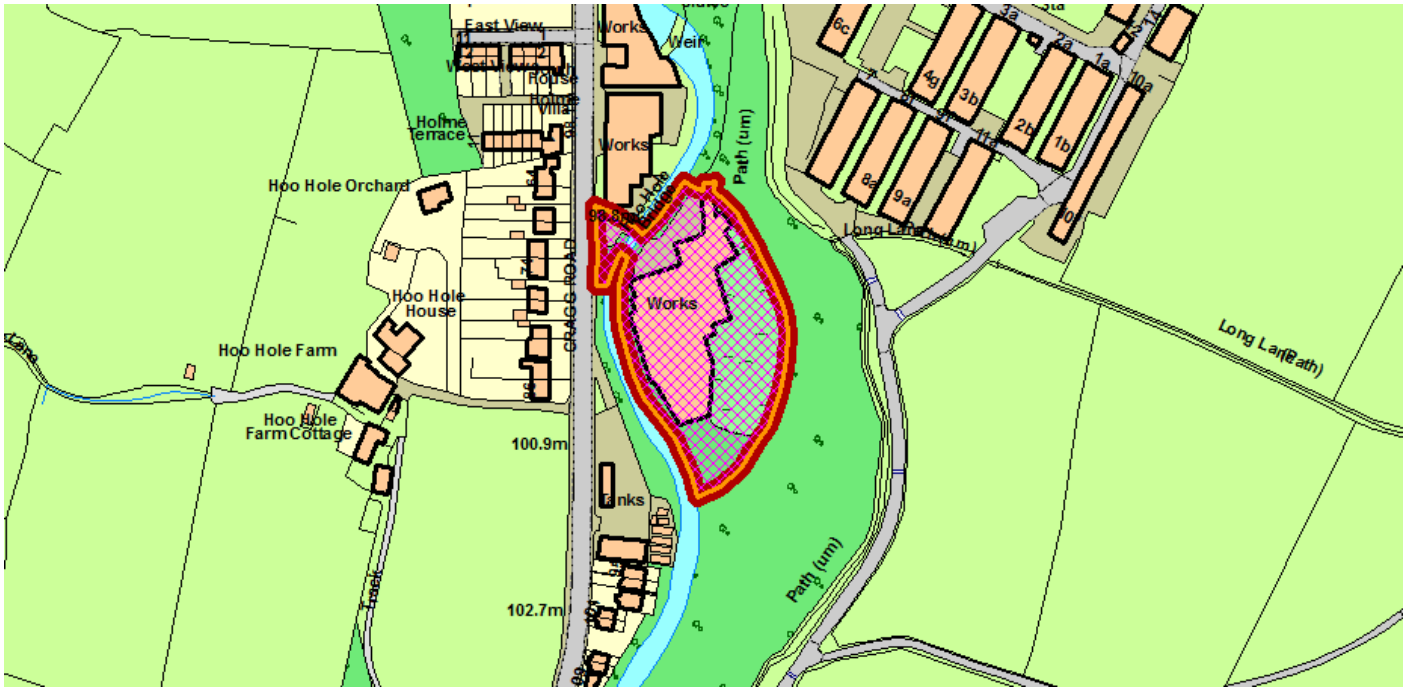
Time Not Before: 1400 - 03

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: Yes
Representations: Yes
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 the main road. Immediately to the north of the site is the Royd Ices premises (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 **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
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)

<u>Publicity/ Representations:</u>

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

Two letters of objection were 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.

<u>Summary of points raised:</u>

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

<u>Parish/Town Council Comments</u>

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 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 the Council's housing supply on a sustainably located and recycled brownfield site, close to Mytholmroyd shops, services, community facilities and public transport links.

Summary of objector's position

The Royd Ices business was established in Mytholmroyd in 1889 and operated from Stocks Estate since 1931, moving to Cragg Road in 1996. Following that move, complaints were received about the late evening and night time disturbance caused by the business. This was ameliorated by the use of the rear yard. The rear yard was improved in 2015 and now houses the workshop, cleaning stations and manufacturing equipment without giving rise to nuisance.

The use of the premises is B2 General Industrial. The name of the building was Crossley Works. Previous applications have confirmed this. The previous use of the premises was as a screw and bolt manufacturer and as an established use this operated without restriction. Similarly, the Royd Ices premises have no operating restrictions. As premises operating a manufacture, wholesale and off-site retail sales operation, the use falls squarely into the B2 General Industrial use class. This is described as B2 General industrial - Use for industrial process other than one falling within class E(g) (previously class B1) The term industrial process is defined in Article 2 of the UCO and

includes the making of any article, the packing and the adapting for sale of any article in the course of a trade or business. This covers the storage of raw materials and of the finished product, the manufacturing process and also permits the distribution and sale of the product. The B2 category is based on an acknowledgment that the process will cause disturbance to a residential area as it would otherwise be a B1c) light industrial use, now within Class E.

The premises also benefit from Permitted Development Rights under Schedule 2 Part 7 Classes H to K in which the replacement of a compressor on the site was permitted under Class I. The installation of the replacement compressor was queried by the Applicants and this information about the Permitted Development rights was supplied to them. It is to be noted that the application of Part 7 rights is to industrial premises and not specifically to B2 industrial premises. As such other categories such as Class E industrial premises or sui-generis premises would still qualify for these PD rights.

There was a query about the erection of a workshop extension, but this was completed in excess of four years ago and as it did not involve a change of use is now immune from enforcement action. These queries highlight the fact that future changes to the operation of any industrial premises are available and can occur at any time without any requirement for a planning application to be submitted to the Council. This is the purpose of having separation between industrial and residential areas. As an established industrial site with no restrictions on hours of working, no restrictions on permitted development rights and a use class for which the legal definition confirms the unsuitability of that operation for a residential area, it is not reasonable to consider restrictions to existing premises to make them become suitable for a proposed residential development on an adjacent site.

<u>Principle of Development</u>

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 19 February 2019 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.

Calderdale does not currently have a five year supply of deliverable housing sites (in advance of Local Plan adoption) and has failed to deliver sufficient new homes under the Housing Delivery Test. As such this is an application where planning permission should be granted unless *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.

Employment Issues

Policy E1 'Primary Employment Areas' sets out the type of employment uses acceptable in the designated Employment Area. It does not however address proposals for non-employment uses.

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 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 designated as a Primary Employment Area in the current Local Plan. It is also proposed to retain the Primary Employment Area designation in the emerging Local Plan, scheduled for adoption later in 2022.

The Council's Business and Economy Manager was consulted on the application 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 the original planning 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 application site buildings are currently understood to have a 10-15% occupancy rate at non-commercial rental rates.

In view of the comments above, the application is not considered to present a conflict with policy E5 of the RCUDP.

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 a measure of protection for such sites, as well as neighbouring employment land. Essentially, the draft policy establishes that development 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, <u>and</u>* [my underlining]

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. and it arguably follows that criterion b. is also met. Criterion c. is self-evidently irrelevant in this case because the site is not identified for release through the draft Local Plan (i.e., it is not proposed to allocate the site for alternative uses such as housing or mixed uses).

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. At this stage, it is important to note that there is not a criterion in RCUDP policy E5 analogous to criterion d. of draft Local Plan Policy EE1. The significance of this is that it is possible for a development to comply with policy E5 but conflict with policy EE1.

In considering policy EE1 it is important to be clear about the interpretation of the word '*and'* between criteria c. and d. In this respect, one might argue that criterion d. is only invoked in the context of criterion c. – i.e. if a. and/or b. are met there is no need to consider d. However, this would be illogical because sites have only been identified for release where the potential use *is* compatible with neighbouring uses. So it follows that criterion d. is primarily intended to be read in conjunction with criteria a. and b. – essentially providing a back stop to prevent windfall developments undermining activity on neighbouring sites.

Further assistance is provided by paragraph 14.15 of the draft Local Plan, which immediately proceeds policy EE1: *"It is accepted that some premises that are outdated and not suitable for continued employment use. In such circumstances any application for alternative uses will be considered in the context of identified criteria to test the appropriateness of the proposal".* The

clear implication of this paragraph is that irrespective of whether premises are outdated and unsuited to employment use, there are other policy criteria that still need to be satisfied. [1]

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.

It is also important to consider policy EE1 in the light of the National Planning Policy Framework. 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.*" In particular LPAs should support proposals "*to: use [retail] and employment land for homes in areas of high housing demand*". This statement is however qualified by the requirement that *"provided this would not undermine key economic sectors or sites or the vitality and viability of town centres and would be compatible with other policies in this Framework"*.

In terms of other policies in the Framework paragraph 130 goes on to state that *"…decisions should ensure that developments… create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users…".* The issue of future residents being affected by existing noise sources is addressed more specifically at paragraph 174 e): "*preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of … noise pollution"*).

NPPF Paragraph 187 states that *"Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses… 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."*

Overall, it is considered that policy EE1 and the NPPF align with one another in the sense that windfall housing proposals on poorer quality employment sites can be entertained subject to consideration of the appropriateness of the new use in its surrounding context. This is considered in more specific detail in the section of the report below relating to *Residential Amenity*. A policy conclusion in relation to EE1; and NPPF paragraphs 130, 174 and 187 is set out at the end of the residential amenity assessment.

<u>Residential Amenity</u>

[1] It is noted that there appears to be a typographical error in the first line of paragraph 14.15; however, this is not material to its interpretation and will be resolved through the Local Plan main modification process.

The key RCUDP policies relating to residential amenity are BE2 and EP8. NPPF paragraphs 130, 174 and 187 are also relevant to the issue of residential amenity (the aforementioned paragraphs have already been highlighted in the *Employment Issues* section of this report above).

Policy BE2 establishes that development should not significantly affect the privacy, daylighting or amenity space of existing and prospective residents and other occupants.
RCUDP 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."*

The relevant sections of NPPF paragraphs 130, 174 and 187 are already quoted above. In essence, when taken as a whole, they underline the importance of ensuring that future residents will enjoy an acceptable standard of amenity and existing business activities are not undermined.

The Government planning practice 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. 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" …*can help to achieve a satisfactory 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 assessment (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 objector's 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.

Conclusion

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 relevant. As in this application, the adjacent employment use had no planning restrictions on the nature of the businesses or their hours of operation. The inspector considered this flexibility an 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 (i.e., the same policy presumption as applies to Calderdale under paragraph 11 of the NPPF). 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 of the RCUDP because the development would lead to juxtaposition of incompatible uses. The development is also contrary to policy EE1 of the draft Local Plan because the proposed use is incompatible with neighbouring uses and would prejudice the continued use of neighbouring land for employment; the development would be contrary to NPPF paragraph 130 because it would not promote health and well-being and provide a high standard of amenity for existing and future users; the development would be contrary to NPPF paragraph 174 because it would not prevent new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of noise pollution; and the development would be contrary to NPPF paragraph 187 because it would not ensure that new development can be integrated effectively with existing businesses.

Housing Issues

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 Development Plan policies for the determination of this planning application are deemed out of date, triggering the application of the NPPF 'tilted balance' towards approval, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF taken as a whole.

The planning balance is addressed below; however, given the shortfall in housing delivery within Calderdale, the provision of 21 dwellings carries significant weight in favour of the proposal.

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.

Layout, Design & Materials

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.

From an aesthetic design perspective, the layout and design of the development is considered to relate acceptably to the character of the surroundings and as such there is not considered to be a conflict with the NPPF or RCUDP policy BE1 in this specific sense.

<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:

> *a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;*
> *b) safe and suitable access to the site can be achieved for all users;*
> *c) the design of streets, parking areas, other transport elements and the content of associated standards reflect current national guidance, including the National Design Guide and the National Model Design Code 46; and*
> *d) 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 would be required in the event of approval 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 Royd Ices. 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.

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."

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.

Subject to various conditions, the proposal accords with policies BE5 and T18 of the RCUDP and paragraphs 110, 111 and 112 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. 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 water by a sustainable drainage system and 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 appropriate sustainable drainage systems.

<u>Ground Conditions</u>

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.

<u>Wildlife Conservation</u>

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.

The 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>Education Provision</u>

The applicant is willing to accept a requested planning obligation for £74,468 as a contribution for necessary Secondary School places. This would be delivered through a section 106 agreement in the event of the Council being minded to permit the application.

<u>Crime Prevention</u>

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

This is a case where the tilted balance under paragraph 11 of the NPPF applies on account of a poor supply of housing land and failure of the Housing Delivery Test. In relation to this the development would if permitted make a valuable contribution to the delivery of new homes. However, this needs to be weighed against the harm arising from the proposal.

In relation to harm, it is considered that the proposal is contrary to Policy EP8 of the RCUDP because the development would lead to juxtaposition of incompatible uses. The development is also contrary to policy EE1 of the draft Local Plan because the proposed use is incompatible with neighbouring uses and would prejudice the continued use of neighbouring land for employment; the development would be contrary to NPPF paragraph 130 because it would not promote health and well-being and provide a high standard of amenity for existing and future users; the development would be contrary to NPPF paragraph 174 because it would not prevent new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of noise pollution; and the development would be contrary to NPPF paragraph 187 because it would not ensure that new development can be integrated effectively with existing businesses.

It is considered that the harm from granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies in this National Planning Policy Framework taken as a whole.

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.

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

Date: 1 February 2022

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 proposed development of houses close to an existing operational employment use 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 application is therefore contrary to Policy EP8 of the Replacement Calderdale Unitary Development Plan because it would lead to the juxtaposition of incompatible uses. The development is also contrary to policy EE1 of the draft Local Plan because the proposed use is incompatible with neighbouring uses and would prejudice the continued use of neighbouring land for employment; the development would be contrary to NPPF paragraph 130 because it would not promote health and well-being and provide a high standard of amenity for existing and future users; the development would be contrary to NPPF paragraph 174 because it would not prevent new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of noise pollution; and the development would be contrary to NPPF paragraph 187 because it would not ensure that new development can be integrated effectively with existing businesses.

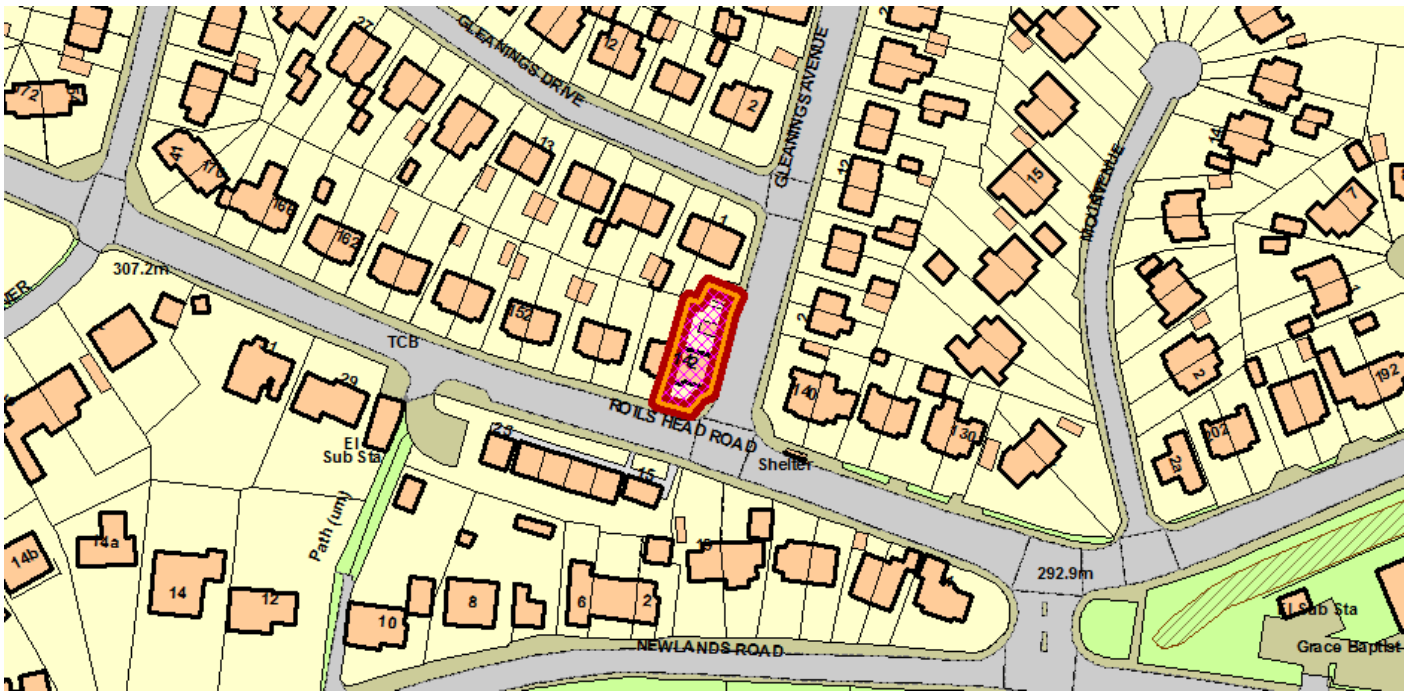
Time Not Before: 1500 - 01

Application No: **19/00759/HSE**

Ward: **Warley**
Area Team: **North Team**

Proposal:
Single storey extension to rear, porch to front, canopy to side and front and dormer windows to rear and side elevations (Part Retrospective)

Location:
142 Roils Head Road Halifax West Yorkshire HX2 0NQ



Applicant:
Mr S Ali

Recommendation: **REFUSE**

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

Consultations:

Highways Section

Description of Site and Proposal

The site is a previously extended semi-detached house of hipped roof design that is common within the vicinity. It occupies a prominent position at the junction of Roils Head Rd and Gleanings Ave and forms part of a well-established residential development of similar dwellings within the Primary Housing Area. The proposal is for a single storey rear extension, a porch to the principal elevation and dormer extensions to the rear and side elevations. The application is part retrospective, as works to the rear extension are ongoing and the porch to the principal elevation and the dormer extensions to the side and rear, which appear to be complete, are not in accordance with previous approvals.

Previous schemes were approved in 2016 and 2017 (16/01137/HSE & 17/01034/HSE) however works have been carried out that do not accord with the permitted drawings. A further application was submitted in 2019 (19/00105/HSE) whilst works were ongoing in order to regularise the profile and design of the dormer extensions together with the massing of the rear extension. This application was refused on design and private amenity of neighbours. The refusal was not appealed with the Planning Inspectorate. The current application now under consideration was initially accompanied by the previously refused plans however an additional drawing has been submitted onto this current application which compares what has been constructed with what had previously been approved and suggests alterations to mitigate the harm that was identified on assessment of application 19/00105/HSE.

The application has been referred to Planning Committee at the request of Councillor James Baker.

Relevant Planning History

15/42043/42DAYS – This was an application for prior approval for a proposed single storey extension to rear, extending out by 6 metres, maximum height 3.707 metres, 2.649 metres to eaves. Prior approval was refused as it was considered that the proposed development would create an unacceptable overbearing impact upon the main aspect room window to the rear of the adjacent dwelling, 144 Roils Head Road. The extension would be detrimental to the residential amenity of the occupier of this adjacent property.

16/01137/HSE – This was an application for a single storey extension to the rear with a pitched roof structure; a porch to the front; a canopy to side and modest dormer extensions to the rear and side elevations. Planning permission was granted for this scheme as the section of the rear extension adjacent to the boundary with 144 adjoining had been reduced in projection to meet the requirements of planning policy BE2, mitigating the impact upon a neighbouring main aspect window. Two off street parking spaces were approved on this scheme and were conditioned to be present prior to occupation of the development.

17/01034/HSE – This was a further application to regularise works that had taken place but not in accordance with the previous permission. The single storey extension to the rear would be constructed with a flat roof, the porch to front had been redesigned to incorporate cast stone pillars which further extended the porch from the principal elevation. The proportions and design of the dormer windows to rear and side elevations were amended from the plans that were permitted on application 16/01137/HSE. A marginal planning permission was granted subject to conditions again to provide the off- street parking prior to occupation and also restricting incidental use of the flat roof to avoid overlooking towards neighbouring properties.

19/00105/HSE – A further application was submitted to regularise works that had taken place not in accordance with the previous planning permission. The single storey extension to rear has been constructed with a much larger projection than previously approved and extended at full depth along the full width of the dwelling up to the boundary with the adjoining dwelling. The porch to front had been constructed wider and deeper than approved and the dormer windows to rear and side elevations have been constructed with increased massing than previously approved. Access has been provided to the flat roof which allows for that area to be used as a raised seating area against the requirements of the condition on the approved scheme. The submitted drawing showed a single off street parking area where previous schemes had shown the required two spaces. However, access to this off-street parking provision is no longer available and has been enclosed by a new boundary wall. It was considered in this instance that the changes made to previously approved elements were contrary to planning policies BE1 and BE2 in terms of respecting the established character of the streetscene and detriment to neighbouring private amenity and planning permission was refused.

17/60087/ENF - Alleged breach of conditions in respect of planning permission 16/01137 In respect of development subject of this application before members, an Enforcement Notice ('EN') was issued on 3 July 2019. In August 2019 an Appeal was made against the issuing of the EN which was dismissed by the Inspector in January 2020. Full details of the EN are listed in the body of the report.

Key Policy Context:

Replacement Calderdale Unitary Development Plan Designation/Allocation	**Primary Housing Area**
Replacement Calderdale Unitary Development Plan policies	**H2** Primary Housing Area **BE1** General Design Criteria **BE2** Privacy, daylighting and Amenity Space **T18** Maximum Parking Allowances
National Planning Policy Framework Paragraphs/ National Design Guide	**12. Achieving well designed places**
Other Relevant Planning Constraints	None

Publicity/ Representations:

The application was publicised by 13 neighbour notification letters.

There have been 2 letters of objection received.

Summary of points raised:

Objection

- Concerns with regard to potential overlooking and overbearing from the flat roofed extension
- Concerns that the applicant has continued developing the site regardless f the lack of planning permission
- Potential for similar future development on other properties owned by the applicant (not relevant to this application)

Ward Councillor Comments

Councillor James Baker requests that the application is referred to Planning Committee and makes the following comments:

"I would request that the committee considers the size and scale of this application. Also, whether it is overbearing and adversely impacts on the privacy of neighbouring properties and whether its design is in line with the policy criteria set out in the replacement unitary development plan".

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 2021 (NPPF) then sets out the Government's planning policies for England and how these are to be applied, alongside other national planning policies. The NPPF advises 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.

The NPPF has a presumption in favour of sustainable development, which 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.

The application site is located within a Primary Housing Area where RCUDP policy H2 is relevant and states that the improvement and extension of existing housing will be permitted provided no unacceptable environmental amenity, traffic or other problems are created and the quality of the housing area is not harmed.

The proposal relates to a single storey extension on the rear elevation, a large porch on the principal elevation, a tiled canopy to the side and front and dormer extensions to the rear and side elevations. Given the detailed considerations in relation to design, residential amenity and highway safety below, it is considered that the proposal fails to meet the requirements of policy H2.

Residential Amenity

Policy BE 2 states that development proposals should not significantly affect the privacy, daylighting and private amenity space of adjacent residents or other occupants and should provide adequate privacy, daylighting and private amenity space for existing and prospective residents and other occupants. Annex A of RCUDP sets out guidelines to help assess whether such impacts arise.

The current application seeks planning permission to regularise works that have taken place that were considered on application 19/00105/HSE and subsequently refused planning permission under delegated powers. A single storey flat roofed extension to the rear of the dwelling and largely complete, extends along the majority of the width of the dwelling and the whole structure projects from the rear elevation by 7.5m. This structure has considerably increased the footprint of the rear extension that was approved in 2017, particularly the projection adjacent to the neighbouring boundary which is over 5m longer than the approved scheme.

Furthermore, French doors have been installed at first floor that provide direct access to the flat roof of this extension. The 2017 permission (17/01034/HSE) approved a window with standard cill height at first floor which would allow some access to the roof to provide means of escape in an emergency. A condition restricting the use of the roof area was added to the 2017 permission in order to protect the private amenity of near neighbours.

The single storey rear extension approved in 2017 projected from the rear elevation by 5.5m but was reduced in depth to just over 2m for a section that would be adjacent to the boundary with No.144 Roils Head Road. This adjoining dwelling has a dining room window adjacent to the boundary. The approved floorplan, submitted with the 2017 submission included a line, drawn at 45^0 from the centre of that window which would cross the extension at 2.1m and just clip the corner of the deeper section that would have been pulled away from the joint boundary. This arrangement would follow the advice of Annex A and comply with RCUDP policy BE2 and as such was considered to be acceptable on assessment of application 17/01034/HSE.

During discussions with the applicant and his agent at a meeting on site, it was suggested by the agent that the overall height of the rear extension could be reduced by two courses of the facing stonework in order to minimise visual impact upon the adjacent neighbouring main aspect window. A drawing has been forwarded to be added to the application to indicate the intended mitigation. This drawing also includes dotted lines that indicate the disparity between what has been built in relation to what has been previously approved
The proposed reduction in level of the roof height of the rear extension may not be feasible in terms of Building Regulations. Irrespective of Building Regulations compliance, it is considered that the minimal reduction in height would result in little improvement in terms of the overbearing nature of the structure upon the neighbouring main aspect window, given the significant increase in size of the extension along the boundary, at 7.5m, being over 3 times greater in depth than the approved scheme.

Whilst the porch at the front of the dwelling and the dormer extensions to the side and rear are considered to be incongruous with the established character of the general streetscene, there are no concerns in terms of adverse impact upon private amenity of neighbouring dwellings as a result of these structures being constructed not in accordance with the scheme approved in 2017.

Given the previous assessment in regard to impact upon the amenity of the main aspect dining room window at No.144, it is considered that the extension, either as constructed or amended in accordance with the suggested reduction in height, is unacceptable in terms of overbearing. Furthermore, the installation of French doors, at first floor, allowing direct access to the flat roof of

this extension could result in its use as a raised sitting out area which would raise concerns in regard to potential overlooking towards neighbouring properties to the west and north of the site. It is considered that the single storey extension, in its form and potential use, is contrary to the advice of Annex A and policy BE2 of the RCUDP.

Layout, Design & Materials

Section 12 (Achieving well designed places) of the NPPF relates to ensuring the quality of design in development proposals and paragraphs 126 and 130 are relevant.

Para 126 of the NPPF concerns the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.

In line with Para 130 of the NPPF, decisions should ensure that developments 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; are visually attractive as a result of good architecture, layout and appropriate and effective landscaping; and are sympathetic to local character and history, including the surrounding built environment and landscape setting.

Furthermore, RCUDP Policy BE1 and National Design Guidance call 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.

The current application seeks planning permission to regularise a single storey flat roofed extension to the rear of the dwelling that extends along the entire rear elevation and project from the rear by 7.5m. This structure is largely in place and has evolved through additions into a considerably larger extension than that which was approved in 2017. The approved extension was designed with a section adjacent to the boundary with No. 144 reduced in depth to comply with Annex A in terms of private amenity. The larger extension now mostly constructed covers the bulk of the rear garden area and appears incongruous and out of proportion with the former standard layout of a dwelling of this style. In addition, a tiled canopy has been added to either side of the front porch and the street side elevation which has been finished in red profiled roof tiles. This element was partly approved along the streetside elevation in 2017 however a condition was attached to that permission that required the roofing materials to match the existing roof structure. The canopy along the front and side and the roof of the front porch have subsequently been finished in a bright red profiled roof tile and has formed a very conspicuous feature within the streetscene, out of character with surrounding dwellings and appears to have no practical function.

The 2016 and 2017 permissions included two dormer extensions, one to the side and one to the rear elevation. The structures that are largely completed have been linked together and, as a result have formed a most discordant feature within the streetscene with a roofscape that is completely out of keeping with the largely unchanged hipped roof arrangement of properties within the vicinity.

Furthermore, the planning permission in 2017 approved a porch with a tiled canopy supported on stone columns. This has been constructed but on a much grander scale than originally approved. The porch is a very prominent feature that is not reflective of the character of the surrounding properties or wider built form in the area. It is considered to form an incongruous and discordant feature within the streetscene.

Each design element of the application as detailed above is considered harmful to the character and appearance of the host dwelling and wider streetscene. Furthermore, the cumulative impact of these elements greatly exacerbates the dominance of the discordant and incongruous features, resulting in a design completely out of character with the built form of the surrounding area.

It is considered that the proposal would be contrary to RCUDP policy BE1 and Section 12 of the NPPF, particularly paragraphs 126 and 130.

Highways and Movement

RCUDP policy T18 relates to off street parking and sets out maximum parking allowances for new development.

The dwelling originally had provision for parking two vehicles clear of the highway. On assessment of both the 2016 and 2017 proposals, the proposed layout showed provision for parking two vehicles within the site. The depth of the single storey extension was also reduced by 0.5m on the 2017 permission to make the parking spaces more practical in terms of use. There were concerns with regard to existing street furniture (a lighting column, a telegraph pole and telecommunications inspection grate) that would need to be relocated to allow access into the parking area. A condition requiring the spaces be made available prior to use of the approved development was added to the previous permissions to ensure the parking area would be available for use before the proposal was occupied. The street furniture is still in place and a new boundary wall has been constructed essentially removing access to one of the proposed spaces. The use of a garage at the adjacent dwelling to the North East (also in the applicant's ownership) has been included within the red edge to address these concerns however, this would reduce the provision for off street parking at 1 Gleanings Drive and were this neighbouring property to change hands in the future, there would be no means of enforcing that the garage be retained by the site.

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

"The dwelling originally had off street parking for 2 vehicles, one being a garage space. The current off-street parking consists of a single car parking space which is minimal in dimensions being just 5m deep. The garage has been removed and the previous car parking space has now been built upon.

Off and on street parking is in great demand in this residential area and several visits especially during the evenings, cars are parked in Gleanings Avenue, adjacent to the development, on the highway and encroaching onto the pavement. This is of course both illegal and unacceptable. There is no presumption that these vehicles belong to the applicant or residents of the development but is an indication of the demand for parking in this area. In this case, it presents a danger to pedestrians who would have difficulty passing such an obstruction without stepping into the highway.

For this reason, this authority requires such dwellings to retain 2 off street parking spaces of acceptable dimensions. I therefore object to this application as submitted.

The proposed development would not allow adequate provision within the curtilage for the parking of vehicles in connection with the use of the site. This would result in increased vehicle manoeuvring and the parking of vehicles in the highway, to the detriment of the safe and free flow of traffic of the area and, as such, would be contrary to Policy T18 of the Replacement Calderdale Unitary Development Plan"

Further comments from the Assistant Director – Strategic Infrastructure (Highways) were received:-

"To further clarify and elaborate on my objection, my previous comments regarding the single proposed parking space, shown as just 5m deep, refer solely to the proposed plans.

There are currently no off-street parking facilities with a stone feature wall blocking any potential access.

This and the proposed access would be partially blocked by the street light column and telegraph pole.

The dropped kerb remains in place and should be shown as being reformed with a full face kerb on any approved plans.

My objection remains".

It is considered that the proposed use of the garage to the north of the site, included within the red edge but currently serving number 1 Gleanings Drive, would not provide an acceptable arrangement for off street parking of two vehicles for the proposed development. Previous approvals have included two parking spaces within the curtilage of 142 Roils Head Road and this provision was conditioned to be made available for the use of the occupants of and visitors to the site prior to the proposed development being brought into use. It is considered that the proposed use of the garage currently serving the neighbouring property would be unacceptable in terms of the proposal at 142 Roils Head Road and that the off-street parking available at 1 Gleanings Drive would be compromised.

The proposed off street parking provision included within the application would fail to comply with RCUDP policy T18.

<u>Current Enforcement Position</u>

In respect of development subject of this application before members an Enforcement Notice ('EN') was issued on 3 July 2019. The breach alleged was:

Without planning permission, the carrying out of operational development on the land comprising:

- the construction of a single storey extension to rear;
- the construction of a front porch;
- the construction of a second and third storey extension to side;
- the installation of French doors at first floor level in rear elevation to facilitate access onto the roof of the single storey extension to rear;
- the use of red profiled roof tiles on the canopy to side

The EN issued requires:

(i) Permanently remove:

- Single storey extension to rear
- Front porch
- Second and third floor extension to side
- French doors at first floor level in rear elevation
- Red profiled roof tiles on the canopy to side

(ii) Remove all materials, equipment and temporary structures arising from compliance with step 5(i) from the land and reinstate the land to its condition before the breach took place.

OR

(iii) Construct the development on the land in accordance with the planning permission 17/01034/HSE granted on 13 October 2017.

Timescale for compliance with EN was two months and four months.

On 1 August 2019 an appeal against the issuing of the EN was made by Applicant on ground (f) and (g) as set out in section 174 of the Town and Country Planning Act 1990, namely:

Ground (f) - That the steps required to comply with the EN are excessive, and lesser steps would overcome the objections

Ground (g) – That the time given to comply with the EN is too short

On 15 January 2020 appeal was dismissed and EN upheld without modification. It was a finding of Inspector (paragraph 2) that *"…the development was not carried out in accordance with this permission [Ref: 17/01034/HSE]".*

Regard timescales to comply with EN the Inspector stated (paragraphs 9 and 10):

> *I have seen no evidence of financial hardship and it appears to me that 2 months is adequate time to organise and carry out steps 5(i) and 5(ii)*
>
> *The required works to carry out steps 5(iii) and 5(iv), i.e. the option of reconstructing the development as approved in 2017, are more extensive and this is recognised in the notice, in allowing a period of 4 months undertake such works. This appears to me to be a reasonable period to carry out the development, bearing in mind also the harm that is being experienced as a result of the unauthorised development*

The requirements of EN are outstanding.

If permission is refused then the LPA would have to consider its further powers, which could include direct action and/or prosecution. If the permission is granted, then the EN would cease to have effect so far as it is inconsistent with the permission.

The law makes a clear distinction between the question of whether something is a material consideration and the weight which it is to be given. The EN is a material consideration. It is a matter for members to ascribe appropriate weight.

<u>Planning Balance</u>

The site lies within the Primary Housing Area and RCUDP policy H2 states that the improvement and extension of existing housing will be permitted provided no unacceptable environmental amenity, traffic or other problems are created and the quality of the housing area is not harmed. In addition, para 130 of the NPPF seeks to ensure that developments will add to the overall quality of the area, not just for the short term but over the lifetime of the development, be visually attractive as a result of good architecture and will be sympathetic to local character including the surrounding built environment.

The applicant has been developing the site since 2016 and planning permission has been granted on two occasions to allow the extension of the dwelling to provide increased bedroom and living accommodation thus providing a well-functioning family home with the provision of suitable off street parking, whilst complying with RCUDP policies.

However, between 2016 and the current day, formerly approved elements have been substantially modified and changed in design, with a range of different materials having been introduced. The resulting structure appears over dominant and incongruous within its surroundings, unsympathetic to the established character of dwellings within the near vicinity and overly conspicuous within the streetscene. Furthermore, the residential amenity of the neighbouring property is unacceptably compromised, and the lack of parking facilities would have an unacceptable impact on highway safety. The extant Enforcement Notice, upheld by Appeal in 2019, reinforces this position, and the proposal is considered not to accord with both National and Local Planning Policy.

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 policies H2, BE1, BE2 and T18 of the Replacement Calderdale Unitary Development Plan and paragraphs 126 and 130 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 Regeneration and Strategy

Date: 11 January 2022

Further Information

Should you have any queries about this application report, please contact: -

Sally Rose (Case Officer) on 01422 392266 or Lauren Clarkson (Lead Officer) on 01422 392216

Reasons

1. The Council considers that the proposed porch, canopy and dormer extensions, and rear extension would be out of character with the existing dwelling because of their scale, form, massing and materials relative to the existing building and roofscape, and that the resulting appearance would make the building unduly conspicuous in the street scene. The resultant development because of its design, scale and massing would be incongruous with the existing buildings in the vicinity, would be obtrusive in the streetscene and harm the visual amenity of the area and, as such, would be contrary to policies H2 and BE1 (General Design Criteria) of the Replacement Calderdale Unitary Development Plan and Paragraphs 126 and 130 of the National Planning Policy Framework.

2. The proposed development would introduce a large single storey extension which would be adjacent to habitable room windows of the adjoining property at close quarters. As such it would be detrimental to the amenity of the adjoining dwelling by means of overbearing and contrary to policies BE2 and H2 of the Replacement Calderdale Unitary Development Plan.

3. The proposed development would introduce French windows giving direct access to the roof of a large single storey extension which would be adjacent to the boundaries of neighbouring dwellings to the north and west of the site at close quarters. As such it would be detrimental to the amenity of these neighbouring dwellings by means of overlooking and contrary to policies BE2 and H2 of the Replacement Calderdale Unitary Development Plan.

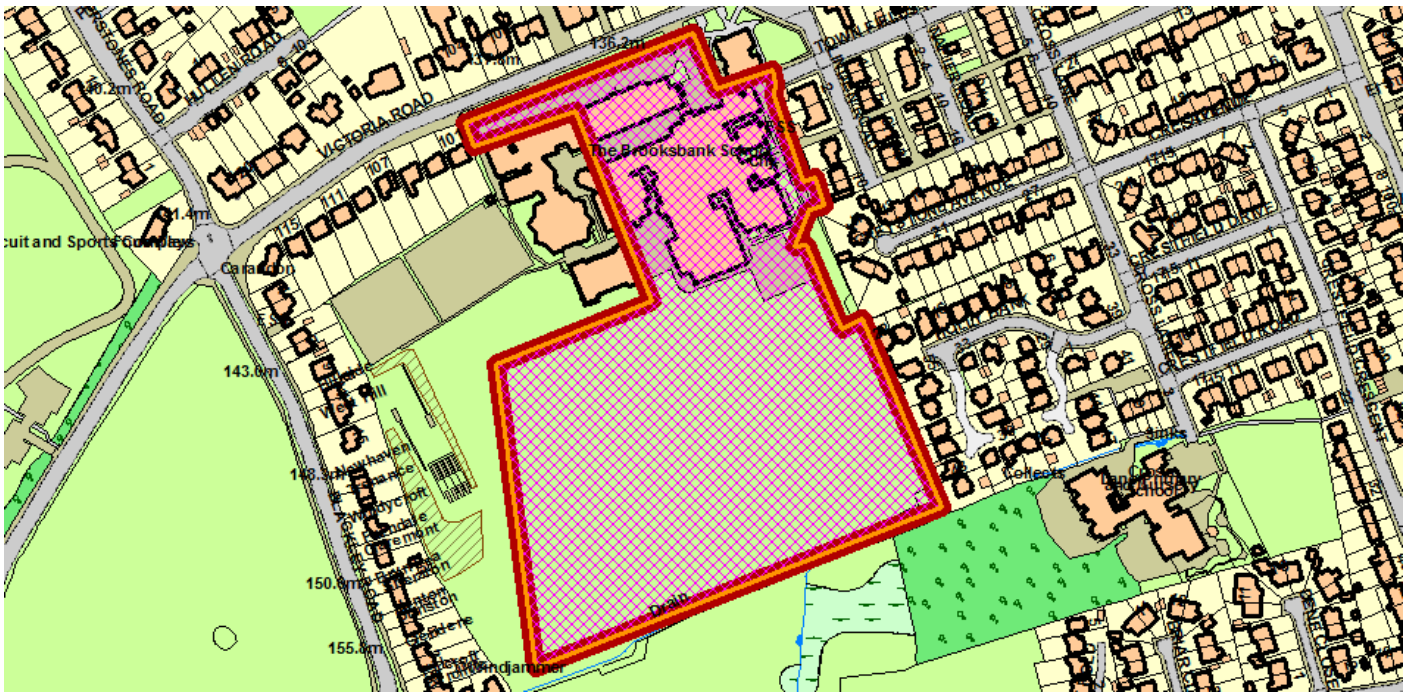
4. The proposed development would not allow adequate provision within the site for the parking of vehicles in connection with the use of the site. This would result in increased vehicle manoeuvring and the parking of vehicles in the highway, to the detriment of the safe and free flow of traffic of the area (in particular Roils Head Road and Gleanings Avenue) and, as such, would be contrary to Policies T18 (Maximum Parking Allowances) and H2 of the Replacement Calderdale Unitary Development Plan.

Time Not Before: 1500 - 02

Application No: **21/00437/VAR** Ward: **Elland**
Area Team: **South Team**

Proposal:
Variation on condition one on planning app: 18/01462/FUL to substitute drawings (new information - Noise Impact Assessment inc acoustic fence)

Location:
The Brooksbank School Sports College Victoria Road Elland Calderdale HX5 0QG



Applicant:
The Brooksbank School Sports College

Recommendation: **PERMIT**

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

Consultations:

Environmental Health Services - Pollution Section (E)
Highways Section
Sport England
West Yorkshire Police ALO
Lead Local Flood Authority
Environmental Health Services - Pollution Section (E)

Description of Site and Proposal

The application site is located at The Brooksbank School, Elland. It consists of the playing field to the south of the school building and existing car parking within the school grounds. The school is located to the south of Victoria Road, and it is within a residential area. There are houses along the eastern and western peripheries of the grounds. To the south there are enclosed fields, and the land rises up towards Blackley Road.

Planning permission was granted by Planning Committee for a new artificial grass pitch (AGP) on the school's playing field (application number 18/01462/FUL). The AGP has been installed however the grass mounds (bund) have yet to be constructed, as the developer has come across some issues.

The current application seeks approval for the variation of condition 1 in order to substitute the approved plans with amended plans. It is proposed to remove the bunds and install an acoustic fence. Permission is also sought for adjustments to the playing field, where the topsoil excavated from the AGP construction is to be placed; it will be re-graded, cultivated, stone picked and seeded.

The application is accompanied by the following supporting document:

- Noise Impact Assessment

The application is brought to Planning Committee as it would amend a previous decision of the Planning Committee.

Relevant Planning History

An application for new four court sports hall, changing rooms, classrooms & ancillary areas; new car park & access road at the school was permitted under delegated powers on 7 January 2000 (Application number 99/01344/FUL) (Permitted hours of use 08.00 to 22.00 Monday to Friday and from 08.00 to 18.00 on Saturdays and 10.00 to 16.00 on Sundays).

An application for creation of new Artificial Grass Pitch (AGP), installation of new 4.5m high ball stop fencing and entrance gates to AGP perimeter, installation of new 2.0m high and 1.2m high pitch perimeter barrier and entrance gates within AGP enclosure, installation of new hard standing areas, installation of new floodlight system, installation of new maintenance equipment store located within AGP enclosure, installation of new overspill car park, installation of new sculpted grass mounds with screen planting partially around school grounds was permitted by Planning Committee on 2 July 2019 (Application number 18/01462/FUL)

Key Policy Context:

Replacement Calderdale Unitary Development Plan Designation	Open Space in Urban Area
Replacement Calderdale Unitary Development Plan policies	**GP1** Encouraging Sustainable Development **GP2** Location of Development **OS1** Protected Open Spaces **OS4** The Provision of Sports and Recreation Facilities **GBE1** The Contribution Of Design To The Quality Of The Built Environment

	BE1 General Design Criteria **BE3** Landscaping **BE5** The Design and Layout of Highways and Accesses **BE6** The Provision of Safe Pedestrian Environments **T18** Maximum Parking Allowances **EP8** Other Incompatible Uses **EP5** Control of External Lighting **EP20** Protection from Flood Risk
National Planning Policy Framework	2. Achieving sustainable development 8. Promoting healthy and safe communities 9. Promoting sustainable transport 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	British Coal – Standing Advice

Publicity/ Representations:

The application was publicised with site and press notices because. In addition, 40 neighbour notification letters were sent.

3 letters of objection and 1 letter of support were received.

Summary of points raised:

Objection

- Noise from pitch is horrendous but won't be alleviated by a bund.
- Change hours of use – stop at 1800hrs.

Support

- *Agree with amendment; do not want bund on top of banking.*
- *Don't agree bund would stop noise.*

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 2021 (NPPF) then sets out the Government's planning policies for England and how these are to be applied, alongside other national planning policies. The NPPF advises 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.

The NPPF has a presumption in favour of sustainable development, which 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 principle of development was accepted by the original planning permission 18/01462/FUL; a copy of the original officer's report is appended for information. It is considered that the proposed amendments would not change the established principle of development.

Sport England, Lead Local Flood Authority and Highways have no objections to the proposal.

It is considered that the main issues to be considered are the noise impacts and visual amenity. All other matters are as per the original officer's report.

The Planning Practice Guidance establishes that the effect of granting an application under section 73 (variation of condition) of the Town and Country Planning Act 1990 is the issue of a new planning permission. As such it is necessary to repeat the relevant conditions from the original planning permission, except where they are amended or removed by this application or have been discharged.

<u>Residential Amenity</u>

RCUDP policy EP8 establishes that where development could lead to a juxtaposition of incompatible land-uses it will only be permitted if it does not lead to an unacceptable loss of amenity caused by odour, noise or other problems.

Policy OS4 also requires that development does not cause any amenity problems.

When the application was initially submitted it proposed earth mounds on the south and east boundaries. There was some objection from residents regarding the mound to the east, as it would be adjacent to residential properties, however the Assistant Director – Neighbourhoods (Environmental Health) considered that it was necessary in order to mitigate noise from the development.

The AGP has now been constructed, however on further investigation the developer has found that the eastern bund would not be feasible without causing drainage and stability issues.

They have explored an alternative and propose an acoustic mitigation barrier in the form of a fence close to the pitch fencing. A noise report has been undertaken by appropriately qualified consultants and they advise that there would be no observable difference in noise levels at the nearby residential properties compared to the original proposed bund.

50 dB LAeq (1 hour) within gardens is the threshold for the onset of moderate community annoyance derived from WHO1999. The predicted noise levels from the proposed AGP at the facades of the dwellings and within gardens is below this level with either the bund or the barrier.

As such it is suggested that with mitigation in place the development is unlikely to create an unacceptable level of impact to adjacent residential neighbours. A condition is proposed requiring submission of details and installation of the acoustic barrier within 4 months from the decision.

It is noted that the objections refer to noise from the development, however this is prior to installation of the acoustic barrier.

Layout, Design & Materials

RCUDP Policy BE1 and National Design Guidance call 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.

The fence would be sited around the east permitter of the AGP and part of the south. It would be 2m high and needs to be solid (no gaps) for it to be effective. Details of the appearance and materials have not been provided; however, it is considered that subject to a condition requiring submission of details, the proposal would not have a significant adverse impact on the quality of the environment.

The regrading of the playing field, which is an existing sloping area of land to the south of the AGP, would not result in visual harm once it is seeded.

It is considered that the proposal complies with Policy BE1.

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: 11 January 2021

Further Information

Should you have any queries about this application report, please contact: -

Claire Dunn (Case Officer) on 01422 392155 or Lisa Deacon (Lead Officer) on 01422 392233

Appendix - Officer's report for 18/01462/FUL

Description of Site and Proposal

The application site is located at The Brooksbank School, Elland. It consists of the playing field to the south of the school building and existing car parking within the school grounds. The school is located to the south of Victoria Road, and it is within a residential area. There are houses along the eastern and western peripheries of the grounds. To the south there are enclosed fields, and the land rises up towards Blackley Road.

Planning permission is sought for the construction of a new artificial grass pitch (AGP) enclosed by a 4.5m high ball stop fencing with entrance gates; installation of a 2m and 1.2m high pitch perimeter barrier, hard standing, floodlight system and maintenance equipment store. An overspill car park is proposed to the south of the existing sports hall car park, which is south of the school building. Grass mounds with planting are proposed on the southern boundary of the site and following comments from Environment Health they are also suggested for the east boundary.

The Design and Access statement sets out the purpose of the development:

> *"The proposed AGP will contribute to the improvement of sporting facilities for curriculum and community use football and rugby league at The Brooksbank School.*
>
> *"Equally, the AGP will substantially enhance curriculum and extra-curriculum delivery for a large, sports-orientated secondary school that is currently the official Number One rugby league school in England.*
>
> *"The AGP will be ideally suited to delivering two potential programmes at the school:*
>
> *A. A special regular course / tournament for primary school children, particularly encouraging girls' football, managed by the Schools Games Organiser who liaises with local primary schools.*
>
> *B. A Level 3 Sixth Form course in conjunction with local professional football clubs, including Halifax Town Football Club.*
>
> *"The AGP will be managed and operated as an additional amenity to current sports facilities onsite to provide sporting benefits to school pupils, local community groups and community sports clubs from the surrounding Elland area, including local junior and youth football and rugby league clubs to gain the maximum sport developmental outcomes; both during the day and during evenings and at weekends via pre-arranged and structured community access.*
>
> *"The AGP will offer a variety of football pitches and training areas within the same enclosed playing space to support The Football Association's development plans into grassroots football. …*
>
> *"Whilst this proposal will result in the loss of part of a usable grass playing field, the provision of a new AGP will provide increased usage in comparison to the existing grass surfaced playing pitches.*
> *"This intensification of use is made possible by the introduction of an artificial grass surfaced field of play which is more durable in comparison to natural turf especially during winter weather conditions, plus the provision of artificial (flood) lighting.*

The proposed AGP also avoids close season maintenance works which is a common post season requirement for fine sports turf."

The reason that the application has been brought to Committee is 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

An application for new four court sports hall, changing rooms, classrooms & ancillary areas; new car park & access road at the school was permitted under delegated powers on 7 January 2000 (Application number 99/01344/FUL) (Permitted hours of use 08.00 to 22.00 Monday to Friday and from 08.00 to 18.00 on Saturdays and 10.00 to 16.00 on Sundays).

Key Policy Context:

Replacement Calderdale Unitary Development Plan Designation	Open Space in Urban Area
Replacement Calderdale Unitary Development Plan policies	**GP1** Encouraging Sustainable Development **GP2** Location of Development **OS1** Protected Open Spaces **OS4** The Provision of Sports and Recreation Facilities **GBE1** The Contribution Of Design To The Quality Of The Built Environment **BE1** General Design Criteria **BE3** Landscaping **BE5** The Design and Layout of Highways and Accesses **BE6** The Provision of Safe Pedestrian Environments **T18** Maximum Parking Allowances **EP8** Other Incompatible Uses **EP5** Control of External Lighting **EP20** Protection from Flood Risk
National Planning Policy Framework Paragraphs	2. Achieving sustainable development 8. Promoting healthy and safe communities 9. Promoting sustainable transport 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	British Coal – Standing Advice

Publicity/ Representations:

The application was publicised with site and press notices because it is a major development. In addition, 40 neighbour notification letters were sent.

22 letters of objection and 1 letter of representation were received.

Summary of points raised:

Representation

- Floodlit pitch at Exley so why is another required close by.
- Exley pitch can be seen from miles around therefore serious concerns about light emission.
- 10pm closing time is very late and could lead to light and noise pollution.
- Contribute further to traffic congestion in the area.
- Need to ensure sufficient parking is provided.
- Increased number of people: don't want people attempting to access or leave site via neighbouring property.
- Students play on existing grass mound.

Objection

- Light, noise and air pollution.
- Traffic congestion and parking: overspill car park will not cope.
- Existing disruption from the gyms out of school hours.
- Suggested hours extends disturbance to an unacceptable level.
- School has bad form: the banking between the car park and Greystones Avenue was meant to be planted with bushes.
- Foul and abusive language from adult groups.
- Hours are same as the sport centre, and completely unacceptable.
- No objection to school use during standard hours of operation.
- Noise control should be around the pitch, not a mound above gardens.
- A mound would create a further hiding place for pupils.
- More planting increases risk of vandalism: bushes set on fire.
- Increased risk of crime due to increased number of strangers.
- Already many similar facilities in the area (Old Earth, Park Lane, Hammerstones).
- Sleep disturbance for children and shift workers.
- Loss of view and sunlight due to proposed mound.
- Planting would cause an eyesore if not maintained.
- Loss of privacy.
- Please to see removal of mounds but disappointed there are no adjustments to opening times.
- Would like to see times adjusted to school times.
- Why can't the football and rugby pitch at Hammerstones be used?
- The fence will push students further aware from the school at lunchtime, and they will be even more invisible.

Parish/Town Council Comments

The development is not located within a parished area.

Assessment of Proposal

Principle of Development

The National Planning Policy Framework was first published on 27 March 2012 and revised on 24 July 2018, with further minor revisions to the text in February 2019. The introduction of the NPPF has not changed the legal requirement that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate

otherwise. The policy guidance in Annex 1 of the NPPF is 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 policies in the NPPF, 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 site is designated as Open Space on the Proposals Map. School playing fields are designated as Open Space on the local plan because of their function as outdoor sports facilities. RCUDP policy OS1 establishes that Open Space is an area that makes "*a significant contribution to public amenity by virtue of their open space character, appearance and / or function.*"

It asserts that development will only be permitted where one of three criterion applies:

i. is for the replacement or extension of an existing building(s) currently set in open space or for a new building which supports a recreational or sports use and where the proposal does not detract from the open character of the area, maintains or enhances visual amenity, and does not prejudice the established function of the area; or
ii. is necessary for the continuation or enhancement of established uses for recreation, leisure or nature conservation which would result in community benefits and where the proposal maintains the open character of the area, and maintains or enhances visual amenity; or
iii. includes the provision of an appropriate equivalent or improved replacement facility in the locality, of at least quantitative and qualitative equal value to compensate for the open space loss, and it can be demonstrated that the open space is surplus to present and future community needs; and
iv. is consistent with all other relevant UDP policies.

It is considered that the proposal constitutes an enhancement of the existing area, and as such the proposal complies with policy OS1.

RCUDP policy OS4 refers to the provision of sports facilities, and establishes that such facilities will be permitted provided that:

i. the development relates well in scale, character and function to the locality;
ii. the proposal does not adversely affect the nature conservation value of the site;
iii. the development is accessible by good quality public transport as existing or with enhancement;
iv. the proposal does not create any unacceptable environmental, amenity, safety, highway or other problems;
v. where appropriate (such as major recreation facilities) the development shall be sited in accordance with the following preferred sequence of locations:-

FIRSTLY – within town centres as defined on the Proposals Map where sites or buildings suitable for conversion are available;

SECONDLY – in edge-of-centre locations where no suitable central sites or buildings are available;

THIRDLY – in out-of-centre locations which are, or can be made accessible, by a choice of means of transport where no suitable sites or buildings are available in either of the above areas; and

vi. the proposal is consistent with all other relevant UDP policies.

It is considered that an artificial grass pitch would be in keeping with the existing character and function of the site, which is a playing field associated with a secondary school and sports college.

The site is not of nature conservation value.

There are bus stops to the north of the site, on Victoria Road, and a number of services stop here on a regular basis. The site is also accessible on foot from Elland Town Centre, where there are other bus services available.

As discussed further under the headings below, it is considered that the development would not create any unacceptable problems, and it is consistent with the relevant UDP policies.

The site is in an edge-of-centre location but it is considered that the development could not be accommodated within the town centre. Also, as the facility will be used by the school it is considered that there is a need for it to be in this location.

It is considered that the development complies with policy OS4.

Paragraph 97 of the NPPF establishes that playing fields should not be built on unless:

"(a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or

(b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or

(c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use."

Sport England is a statutory consultee where development involves the loss of playing fields, even where an alternative sports facility is proposed. They have no objection to the application subject to conditions relating to community use. They state:

The submitted information has confirmed that revised pitch layouts for other summer and winter sports can be achieved. The information has therefore demonstrated that the loss of any area of playing field will not have an unacceptable impact on the current and potential playing pitch provision on the site

It is considered that the proposed AGP;

- *meets an identified local or strategic need, as set out in the Calderdale Playing Pitch Strategy 2017 ;*

- *fully secures sport related benefits for the local community; covered by a community use agreement which could be linked to the Football Foundation funding for this application.*
- *helps to meet identified sports development priorities;*
- *complies with relevant Sport England and NGB design guidance;*
- *improves the delivery of sport and physical education on school sites; and*
- *is accessible by alternative transport modes to the car.*

The Football Foundation on behalf of the Football Association advise that;

- *The FA data / PPS concludes there is a need for 6 additional full size 3G AGP's in Calderdale Local Authority. This proposed project has been developed on the back of the PPS recommendation and will help to address the current undersupply.*
- *We are satisfied with the playing pitch revisions.*
- *The project has been developed through the AGP Framework and fully accords with FA design guidance. The Football Foundation, on behalf of The FA, is fully supportive of this project and it has been prioritised to receive FA investment.*

In addition, the Local Football Facility (investment) Plans (LFFP) have recently been finalised for this area, this confirms that Brooksbank School has been prioritised for investment the LFFP states as part of the rationale for the investment that the AGP should deliver:

Participation growth in; junior football, senior football, BAME groups, women & girls, informal/recreational football and participation in the over 50s age group."

The Rugby Football Union has advised Sport England of the following:

"Brooksbank school have taken part in rugby union this year and as such the RFU would be keen to ensure that the proposed development doesn't result in the school losing the ability to provide a rugby union pitch to play on. With other grass pitches still remaining and the proposed AGP replacing a grass pitch the RFU can confirm there they feel the proposal will meet Sport England planning policy; however we would recommend consideration be given to the final surface selected to allow it to be used by existing users of the school.

Within the design and access statement reference is made that the proposed AGP will be built to FIFA and Rugby League standards, given the investment being made and rugby union activity at the school the RFU would recommend the surface provided also includes making it World Rugby compliant, as such maximising its use for more school and community activities."

In light of this Sport England advises that the community use agreement should make reference to use by all appropriate sports: football, rugby union and rugby league.

It is considered that the proposed development complies with RCUDP policies OS1 and OS4 and paragraph 97 of the NPPF, subject to a condition regarding community use as requested by Sport England. The proposed development is acceptable in principle.

<u>Residential Amenity</u>

RCUDP policy EP8 establishes that where development could lead to a juxtaposition of incompatible land-uses it will only be permitted if it does not lead to an unacceptable loss of amenity caused by odour, noise or other problems.

As mentioned above, criterion iv of policy OS4 also requires that development does not create any amenity problems.

The submitted Design and Access Statement (DAS) advises that avoidance of unacceptable impact to residential neighbours, such as noise, visual and artificial lighting, was considered in determining the optimum location for the proposed AGP.

It is acknowledged in the DAS that the proposal would result in extended times of use of the external sports facility due to the durability of 3G artificial grass pitch surface, compared to natural turf, and the installation of flood lights.

The World Health Organisation (WHO) guideline values for community noise advise that a level of 50 LAeq[dB] in outdoor living areas would have the effect of a moderate annoyance. A drawing has been submitted indicating the equivalent continuous noise levels created by use of the pitch, and this indicates that the noise levels reduce to 50db within the school grounds. It is proposed to fit neoprene washers to every fence post / mesh fixing point to aid noise reduction and acoustic attenuation by reducing rattle and vibration from ball impacts.

As such it is suggested that the development is unlikely to create an unacceptable level of impact to adjacent residential neighbours.

RCUDP policy EP5 establishes that in urban areas external lighting will only be permitted where it is designed to limit the lighting levels to those required, and to minimise glare and spillage of light.

In order to enable the planned usage of the development it is necessary to install flood lighting. The lighting would be operated during the evenings of permitted use, after dusk and up to an approved curfew hour.

It would consist of 6 x 15m high steel masts: 3 located on the north and 3 on the south boundary. The proposed luminaires would not create any upward light, to ensure that overspill and backward light does not create an unacceptable light impact to residential neighbours. A drawing of the vertical and horizontal illuminance indicates that the lux level will be 0 at the boundary with residents.

The Assistant Director – Neighbourhoods (Environmental Health) has considered the proposal and states:

> *"A Noise management plan should be crated prior to the artificial grass pitch being brought into use. This plan should look into potential noise sources on site as well as the nearest noise sensitive receptors. A policy should be set up and adhered to outlining steps that can be taken to minimise noise produced on site. A clear noise complaints procedure should be set up as part of this management plan. There should always be someone on site during the hours of operation to deal with any noise complaints Deliberate or excessive kicking of balls at fences should be considered as part of this plan and clearly outlined as inappropriate behaviour. We recommend the use of this AGP is kept to the times when other facilities are open at the school. these are currently up to 9pm Mon - Thurs, 8:15pm Friday, 9am-12:30 Sat and 9am - 12:00 Sun.*
>
> *It was noted that although noise had been considered by the applicant it had not been considered as an addition to the existing noise on site from the existing sports facilities that can currently be rented out.*

A scheme should be submitted, prior to the artificial grass pitch coming into use, providing full details of luminosity on site. This scheme should ensure that the artificial lights do not exceed the Environmental Zone E3 as described by 'Guidance notes for the reduction of obtrusive light' published by the institution of lighting professionals.

The lights should be of the minimum luminosity needed for the illuminating the artificial grass pitch. BS 12193 1999 contains information regarding the required luminosity according to the sports played on the pitch and the level of competition. This British standard suggests 75 Lux is appropriate for football and rugby played at a school or local level (class 3 use) and not the 200 lux lights that form part of this application.

The sculptured grass mounds should be included near the boundary with Holly Bank to block any light and act as an acoustic barrier and therefore minimise the chance of a public nuisance occurring.

The above steps should minimise the chance of a public nuisance occurring, but they cannot guarantee no disamenity to those living in the area.

The Planning Statement establishes that Brooksbank School may implement a noise management plan, and to ensure that this is brought into use a condition is proposed.

There will be a member of staff from the Lettings Team on site when the facility is in use out of school hours, and they would be available to deal with pressing and immediate complaints that arise whilst the visitors / AGP users are still on the premises. This requirement could form part of the noise management plan.

The hours of use proposed with the original submission were 09:00 to 22:00 Monday to Friday and 09:00 to 18:00 Saturday, Sunday and Bank Holidays. However, following Environmental Health's comments, the applicant has stated that they are willing to accept a reduction of the curfew time to 21:00 hours.

The applicant advises that these times are the minimum required and are necessary in order for the project to qualify for grant funding and for the school to receive a major grant award. In addition, the times are said to be vital to secure the opportunity to grow grassroots football in Elland and West Yorkshire.

"The plan is to increase grassroots football achievements and to encourage whole-life sport by providing pathways into senior football and rugby league; through an enhanced curriculum offer and via prearranged and structured community access, which continues the school's long history of providing facilities for the community."

It is proposed that the school will use the AGP up to 4pm during the week, and it will be available for community groups to use for the remaining time.

The lights proposed follow The Football Association (FA) Guide to Football Turf Pitch Design Principles and Layouts (FIFA's Class II for Non-Televised events (4)), and they will also satisfy ruby league requirements. The applicant advises that the 75 Lux lumination suggested by Environmental Health would therefore not be adequate.

The floodlights have been designed by JPP Consulting to ensure that overspill is entirely contained within the school grounds, as indicated on drawing 18-0177 BM25583 0413 05 rev 01. The light intrusion and intensity (glare) would comply with Environmental Zone E2 (ILP), which is appropriate for a rural surrounding with low district brightness. Given the sites located within an

outer suburban area it is considered that the lighting would be appropriate. It is considered that it has been designed to limit the lighting levels to those required, and to minimise glare and spillage of light.

As submitted the site plan indicated grass mounds on the east and southern boundaries of the field. Following objections from Holly Bank the eastern mound was removed, however following the comments from Environmental Health the applicant confirms that they are happy for the grass mounds to be located wherever EH considers they would be best placed to benefit neighbours. Whilst the objections are noted it is considered that the mounds will have a greater benefit in mitigating against noise from the proposed development.

It is considered that the development would not have a significant impact on the amenity of residents from noise or artificial lighting, and it would comply with policies OS4(iv), EP5 and EP8.

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.

The AGP would be located to the north of the school buildings and it would replace part of an existing grass surfaced playing field. It has been sited so as to provide convenient access to and from changing accommodation and administration facilities, and also to afford convenient pedestrian, maintenance and emergency access and provide for suitable management, supervision and security. It is c.55m from the eastern boundary which abounds the nearest residential properties.

The D&A advises that the proposal has been designed in accordance with the published Design Guidance Notes relevant to external artificial sports facilities, including The FA Guide to 3G Football Turf Pitch Design Principles and Layouts.

It consists of an artificial grass pitch area surrounded by hardstanding for spectators, access and storage and fence enclosure.

The proposal would be in keeping with the existing character of the school field, and it is considered that it would not harm the visual amenity of the area. It is considered that it would comply with policy BE1.

Highway Considerations

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.

Vehicular and pedestrian access would be taken from the existing route to the northeast, via a drive accessed from Town Fields Road on the eastern side of the school. There is also pedestrian access from Victoria Road / Linden Road.

There is an existing car park near the sports halls, and it is proposed to extend this to create an overspill grasscrete parking area with an additional 32 parking spaces. An additional 20 car parking spaces would be available on the hardstanding between the Sports Hall and G Block for community use out of school hours.

In addition, the school has 119 designated parking spaces currently on the site.

It is within a sustainable location with access by public transport, or walking.

The Assistant Director – Strategic Infrastructure (Highways) considers that the proposed car parking is acceptable. However, they recommend that a drawing showing where coaches and mini-bus parking would be provided, including swept paths, should be provided. The red line denoting the application boundary was amended to include all available parking within the school, and it is considered that mini-buses could park within the existing car parks. There is no provision for coaches to park within the site, however there is space at the Victoria Road / Linden Road junction where buses arrive and depart during school drop off and pick up times that could be utilised for events out of school hours. It is therefore considered that the proposal would not have a significant detrimental impact on highway safety.

In order to minimise the likelihood of on-street parking the ADSI recommends a condition requiring that the existing car park gates are kept open during the periods when the pitch is in use by non-school groups. They also request conditions requiring a construction compound, contractor car parking and wheel washing facilities during the construction phase.

Paragraph 110 of the NPPF establishes 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 an electrical battery powered vehicle that may be used in connection with that dwelling.

The West Yorkshire Air Quality and Emissions Technical Planning Guidance recommends charging infrastructure to facilitate 10% of parking spaces. In this case it is considered reasonable to require 10% of the new parking spaces, which would equate to 3 facilities. It is not expected that they would be sited within the extended parking area, which is proposed to have a grasscrete surface that would blend into the surroundings when not in use, but they could be provided within the exiting car park.

<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. Sustainable Drainage Systems should be incorporated where appropriate in accordance with RCUDP Policy EP22.

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. A condition requiring the submission of drainage details for approval is proposed. Subject to this condition the proposal complies with Policies EP14, EP20 and EP22.

For major developments the Secretary of State's Written Ministerial Statement, dated 18 December 2014, establishes that sustainable drainage systems for the management of run-off should be put in place, unless demonstrated to be inappropriate.

The D&A asserts that the proposal is appropriately flood resilient, it will ensure flood risk is not increased elsewhere and includes a sustainable drainage system. It will comprise a permeable construction with positive drainage scheme connected to a local sewer. It is proposed that no development shall begin until a detailed sustainable water drainage scheme has been submitted, and this is to be secured by condition.

The Lead Local Flood Authority was consulted, as they are a statutory consultee for major developments, and they recommend a condition requiring the submission of foul and surface water drainage details.

It is considered that subject to the condition the proposal complies with policies EP14, EP20 and EP22.

Public health

Paragraph 92 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 170 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, taking into account relevant information such as river basin management plans;*

Paragraph 181 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 Planning Practice Guidance establishes that when deciding whether air quality is relevant to a planning application consideration 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.

Notwithstanding this, 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".* In this case, facilities for charging plug-in and other ultra-low emission vehicles will be conditioned in accordance with paragraph 110 of the NPPF and it is considered that this would provide appropriate mitigation.

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: 28 May 2019

Further Information

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

Claire Dunn (Case Officer) on 01422 392155 or Lisa Deacon (Lead Officer) on 01422 392233

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 be carried out in accordance with the drainage details approved under application 18/01462/DISC2 and shall be so retained thereafter.

3. The development shall not be used otherwise than in strict compliance with the community use agreement approved by application 18/01462/DISC3.

4. Prior to the first use of the development the car parking indicated on the approved plans shall be installed for the use of visitors to the facility and shall be so retained thereafter.

5. Prior to the first use of the development there shall be installed within the car park at least three facilities to permit the recharge of an electrical battery-powered vehicle. 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.

6. The AGP shall operate in accordance with the noise management plan approved under application 18/01462/DISC3.

7. Neoprene washers shall be fitted to every fence post / mesh fixing point on the AGP and shall be so retained thereafter.

8. The use of the artificial grass pitch (AGP) shall be restricted to the hours from 09:00 to 21:00 Mondays to Fridays and from 09:00 to 18:00 on Saturdays, Sundays and Bank or Statutory Holidays.

9. Within 4 months of this permission a scheme of landscaping the site, which shall include details of the regrading and seeding of the playing field, shall be 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 this permission; 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. Within 4 months of this permission details of a 2m high acoustic barrier shall be submitted to and approved in writing by the Local Planning Authority, and the barrier shall be installed in accordance with the approved details. The barrier shall be so retained thereafter.

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

3. To secure well managed safe community access to the sports facility/facilities, to ensure sufficient benefit to the development of sport and to accord with paragraph 97 of the National Planning Policy Framework.

4. In the interests of highway safety and to ensure compliance with policies T18 and OS4 of the Replacement Calderdale Unitary Development Plan.

5. In the interests of the sustainability of the development and to ensure compliance with paragraph 110 of the National Planning Policy Framework.

6. In the interests of the amenity of residents and to ensure compliance with policies OS4 and EP8 of the Replacement Calderdale Unitary Development Plan.

7. In the interests of the amenity of residents and to ensure compliance with policies OS4 and EP8 of the Replacement Calderdale Unitary Development Plan.

8. In the interests of the amenity of residents and to ensure compliance with policies OS4 and EP8 of the Replacement Calderdale Unitary Development Plan.

9. In the interests of visual amenity and to ensure compliance with policy BE1 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 policy BE1 of the Replacement Calderdale Unitary Development Plan.

11. In the interests of the aural amenity of the occupiers of the nearby dwellings and to ensure compliance with Policies OS4 and EP8 of the Replacement Calderdale Unitary Development Plan.

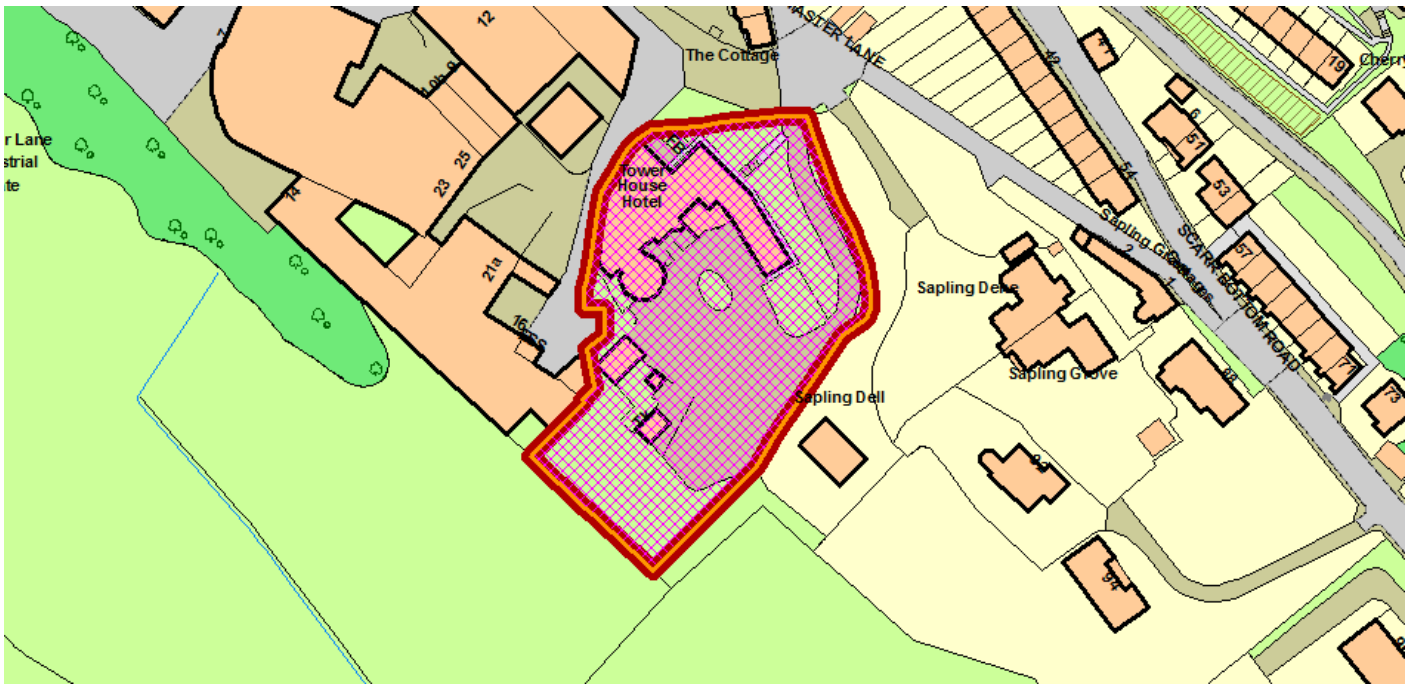
Time Not Before: 1500 - 03

Application No: **21/00963/VAR**

Ward: **Sowerby Bridge**
Area Team: **South Team**

Proposal:
Variation of condition 1 (List of approved plans) on planning consent 20/00053/FUL in order to make a minor material amendment to the housing design and layout.

Location:
Tower House Hotel Master Lane Halifax Calderdale HX2 7EW



Applicant:
Carmabel Developments

Recommendation: **PERMIT**

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

Consultations:

Countryside Services (E)
Environmental Health Services - Pollution Section (E)
Highways Section
Tree Officer
Community Engagement
Education Services
Housing Services

Lead Local Flood Authority
West Yorkshire Police ALO
Yorkshire Water Services Ltd
Business And Economy

Description of Site and Proposal

The site is located to the southwest of Master Lane. It is consists of a large detached building last used in October 2018 as a hotel and function room with private drive and hard surfaced car park. It is sited between a residential area that is to the north and east and Washer Lane Industrial Estate to the southwest, which is at a lower level. The land immediately to the south of the site is grassland.

Planning permission for the change of use of the former hotel (to five 4 bedroomed dwellings and four 3 bedroomed dwelling, involving partial demolition and new build, was permitted by Planning Committee (application number 20/00053/FUL).

Planning is permission is sought for the variation of condition 1 of the original planning permission in order to make minor material amendments to the approved plans. Development has commenced and the application is therefore part retrospective.

The application is brought to Planning Committee as it would amend a previous decision of the Planning Committee.

Relevant Planning History

An application for change of use of hotel (with function room and restaurant) to five 4 bedroomed dwellings and four 3 bedroomed dwelling, involving partial demolition and new build was permitted by Planning Committee on 18 August 2020. (application number 20/00053/FUL

Key Policy Context:

Replacement Calderdale Unitary Development Plan Designation	Primary Housing Area Wildlife Corridor Unstable Land
Replacement Calderdale Unitary Development Plan policies	**GP1** Encouraging Sustainable Development **GP2** Location of Development **H2** Primary Housing Areas **H9** Non-Allocated Sites **H10** Density of Housing Developments **GBE1** The Contribution Of Design To The Quality Of The Built Environment **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 **BE6** The Provision of Safe Pedestrian Environments **T18** Maximum Parking Allowances **NE15** Development in Wildlife Corridors **NE16** Protection of Protected Species **NE17** Biodiversity Enhancement **EP9** Development of Contaminated Sites **EP10** Development of Sites with Potential Contamination **EP11** Development on Potentially Unstable Land **EP14** Protection of Groundwater **EP20** Protection from Flood Risk **EP22** Sustainable Drainage Systems
National Planning Policy Framework	2. Achieving sustainable development 5. Delivering a sufficient supply of homes 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	Bat Alert Area Contaminated land

Publicity/ Representations:

The application was publicised with 21 neighbour notification letters.

No letters of objection or support were received.

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 2021 (NPPF) then sets out the Government's planning policies for England and how these are to be applied, alongside other national planning policies. The NPPF advises 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.

The NPPF has a presumption in favour of sustainable development, which 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 principle of development was accepted by the original planning permission 20/00053/FUL. It is considered that the proposed amendments would not change the established principle of development.

The Planning Practice Guidance establishes that the effect of granting an application under section 73 (variation of condition) of the Town and Country Planning Act 1990 is the issue of a new planning permission. As such it is necessary to repeat the relevant conditions from the original planning permission, except where they are amended or removed by this application or have been discharged.

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

RCUDP Policy BE1 and National Design Guidance call 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.

The layout is principally the same as approved, with minor alteration to the position of plots 6 to 9 and provision of patios for plots 1 to 4. These changes would not alter the overall appearance.

Units 6 and 9 are revised house types. The roof is re-orientated, and eaves and ridge height increased to create a larger second floor accommodation; the overall height increase is 800mm. It is considered that the design is out-of-character with existing dwellings in the area. The gap between the lintel of the first-floor windows and the eaves is excessive and out of proportion. On the front (northeast) elevation the small window, which is out of proportion to those below, serves to emphasise this with the void to solid ratio making the gable appear incongruous and unbalanced. On the rear the south-west elevation has bi-folding doors at second floor, which are out of scale with the fenestration below and appear cumbersome and also unbalanced.

The units are not considered to be in keeping with the character of the area, however they are substantially complete and partial demolition would be required in order to rectify the matter. Because the buildings are set down within the site, at a lower level than the adjacent road, and within a large curtilage with planting on the boundaries it is considered that the development would not be widely visible in the streetscene and as such would not have a significant detrimental impact on the character and appearance of the area. As such, it is considered that the measures required to amend the buildings would not be proportionate to the harm, and it would not be expedient to take enforcement action.

The ridge height of unit 5 is increased, the porch design altered, and bi-folding doors added to the rear. It is considered that the alterations are in keeping with the overall design.

A single storey pitched roof extension is proposed to the side of unit 4, which would be in keeping with the existing building.

Whilst it is considered that units 6 to 9 are not good design, it is considered that they would not result in a significant detrimental impact on the quality of the environment. All other alterations would respect the established character and appearance of the area and would comply with Policy BE1.

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 of RCUDP sets out guidelines to help assess whether such impacts arise.

The proposed alterations would not have any greater impact on the amenity of existing or prospective residents, and the proposal complies with Policy BE2.

Highways and Movement

The Assistant Director – Strategic Infrastructure (Highways) does not consider that the proposal would have any negative effect upon the highway or the manoeuvring and parking of vehicles within the curtilage, and as such they have no objections.

Flooding and Drainage

There would be no greater impact. To be dealt with via condition are per original permission.

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: 11 January 2021

Further Information

Should you have any queries about this application report, please contact: -

Claire Dunn (Case Officer) on 01422 392155 or Lisa Deacon (Lead Officer) on 01422 392233

Appendix – Officer's report for 20/00053/FUL

Description of Site and Proposal

The site is located to the southwest of Master Lane. It is consists of a large detached building last used in October 2018 as a hotel and function room with private drive and hard surfaced car park. It is sited between a residential area that is to the north and east and Washer Lane Industrial Estate to the southwest, which is at a lower level. The land immediately to the south of the site is grassland.

Planning permission is sought for the change of use of hotel (with function room and restaurant) to five 4 bedroomed dwellings and four 3 bedroomed dwelling, involving partial demolition and new build.

The reason that the application has been brought to Committee is because a written request, giving planning reasons, has been made by a Councillor concerning an application in their ward.

Relevant Planning History

There is planning history pertaining to the hotel however this is not considered to be relevant to the current application.

Key Policy Context:

Replacement Calderdale Unitary Development Plan Designation	Primary Housing Area Wildlife Corridor Unstable Land
Replacement Calderdale Unitary Development Plan policies	**GP1** Encouraging Sustainable Development **GP2** Location of Development **H2** Primary Housing Areas **H9** Non-Allocated Sites **H10** Density of Housing Developments **GBE1** The Contribution Of Design To The Quality Of The Built Environment **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 **BE6** The Provision of Safe Pedestrian Environments **T18** Maximum Parking Allowances **NE15** Development in Wildlife Corridors **NE16** Protection of Protected Species **NE17** Biodiversity Enhancement **EP9** Development of Contaminated Sites **EP10** Development of Sites with Potential Contamination **EP11** Development on Potentially Unstable Land **EP14** Protection of Groundwater **EP20** Protection from Flood Risk

	EP22 Sustainable Drainage Systems
National Planning Policy Framework Paragraphs	2. Achieving sustainable development 5. Delivering a sufficient supply of homes 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	Bat Alert Area Contaminated land

Publicity/ Representations:

The application was publicised with 21 neighbour notification.

One letter of objection was received.

Summary of points raised:

- Concern about use of pile foundations and impact on foundations and retaining wall.
- Masters Lane is not wide enough for two cars to pass.
- Visitors parking next to gates of Sapling Dell and restricting sight lines.
- What materials are proposed for the boundary and who will be responsible for upkeep.
- Will there be notification of schedule of works and time scales for the build.

Ward Councillor Comments

Councillor Foster requests that the application is referred to Planning Committee if the recommendation is to permit and makes the following comments:

> *"I am concerned about the effect on local infrastructure of such a significant development in an already overdeveloped area, and in particular the impact of traffic on local roads which are already at capacity.*
>
> *The road to the former Tower House Hotel is narrow, and it is not possible for two cars to pass - what steps has the developer taken to mitigate for this?*
>
> *The impact of building traffic on the local area will be significant and I would request that this be borne in mind and limitations be placed on working hours to protect the local community, including those resident nearby and those resident on the surrounding streets which will be affected by the traffic.*
>
> *9 new houses in such a small area appears to be excessive, and the outdoor space afforded to each dwelling appears to be minimal, particularly for the 3 bed houses.*
>
> *Is it possible for the developer to be asked to contribute towards the provision of a community space in the area, as mitigation for the impact his development will have locally?*
>
> *I would request that, if the planning team are minded to permit, that this application be taken to full planning committee."*

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 on 19 February 2019 and sets out the Government's planning policies for England and how these are expected to be applied, alongside other national planning policies. Paragraph 213 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.

Paragraph 11, footnote 7 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.

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

It is therefore recognised that RCUDP policies H2 and H9 are out of date with the NPPF in this context. Although these policies are not an irrelevant consideration, one can infer from paragraph 11 of the NPPF that the weight to be given to out of date policies for the supply of housing will normally be less than the weight due to policies which provide fully for the requisite supply.

Policy H9 is also out-of-date due to 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.

In this case the site is previously developed land as it consists of buildings and areas of hardstanding.

The nearest bus stop is on Rochdale Road c.626m from the entrance to the site. Whilst this is not within easy walking distance (less than 400m) it is considered that the distance is not so far that it would render the site completely inaccessible by public transport.

The Assistant Director – Education and Inclusion advises that projections indicate there will a shortage of secondary places from 2021. The addition of nine family dwellings to the area will likely result in an increased demand for school places, which schools in the area will not be able to cater for. A contribution of £37,234 towards secondary school provision is requested, the applicant has not indicated that they would make any contributions. However, it is considered that given the number of houses proposed the impact would not be significant and, as considered under the balance of considerations, the modest benefit of providing nine houses towards the supply of houses for Calderdale is considered to outweigh the harm.

It is considered that all other infrastructures could cater for the development and there are no physical and environmental constraints to development. Subject to appropriate conditions, as discussed further under the headings below, it is considered that the development would not create unacceptable environmental, amenity, traffic, safety, or other problems.

There are no Listed Buildings or Conservation Areas within the area and the development would not have any effect on such heritage assets.

Having regard to the above and the tilted balance at paragraph 11 of the NPPF it is considered that the principle of development is acceptable.

While the inability to demonstrate a 5 year supply of deliverable housing land is an important material consideration that weighs in favour of granting permission, the lack of a 5 year housing land supply should not override all other considerations. It is necessary to consider all other relevant issues and weigh these in the overall planning balance.

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

<u>Residential Amenity</u>

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.

Sapling Dene, to the east, is c.47m from the development.

Sapling Dell is c.15m and is offset from the development such that there would not be any facing windows.

Dwellings to the north are over 21m from the development and are at a higher level.

To the west of the site there are commercial / industrial units, with over 12m from the development.

Adequate sized gardens are proposed.

It is considered that the development would not create any overlooking or overbearing issues and there is private amenity space.

RCUDP policy EP8 states:

"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."

The Assistant Director – Neighbourhoods has considered the proposal and states:

> *"In principle I have no objection to the proposed development. I have had sight of the noise assessment by ENS Ltd dated 13/02/20 which identifies the site as low negligible*
>
> *Paragraph 5.04 recommends standard double glazing (rated at least 28 dB Rw + C) and standard trickle vents are considered appropriate for the entire application site.*
>
> *Paragraph 5.05 Daytime garden levels were measured at up to 50 dB LAeq, across the application site which readily satisfies the lower guideline value for external amenity areas, as recommended by BS8233 / ProPG. Therefore, no specific measures are required to protect garden amenity."*

It is considered that there is no conflict with 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 or, at the very least, maintain that quality by means of high standards of design.

The layout is a cul-de-sac arrangement in part arranged around a tree within the centre of the site that is to be arranged. The existing hotel rooms are retained on the northern side of the site and a row of detached houses aligns the southern side of the drive. In the wider environ the houses are typically terraces or detached houses that align the roads and it is considered that the proposal would respect the established character.

House types are a simple regular design and the proposed materials are natural stone for the facing and artificial stone for the roof.

It is considered that the proposal would not harm the character and appearance of the area and there would be no conflict with policy BE1.

RCUDP policy H10 establishes that housing developments should be constructed at a minimum net density of at least 30 dwellings per hectare. In this case a lower density would be achieved, 20 dwellings per hectare. The agent advises that this is due to the constraints of the site.

<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.

The Assistant Director – Strategic Infrastructure (Highways) has considered the proposal:

Whilst there are no highway objections in principle to this site being developed for residential use, there are a number of issues that will need amending, with additional information also required to support the application.

The applicant has provided a transport statement comparing the present use as a Hotel with a function room facility, to that as proposed which will include 9 separate residential properties.

The Hotel would have experienced peak traffic times especially during functions such as weddings etc. The residential development is likely to create between 6 and 8 vehicle movements, per dwelling and per day. This would create an increased burden upon Master Lane in excess of that experienced in the current use. The applicant has demonstrated through TRICS that the highway network could accommodate the additional traffic and I accept these findings in principle.

The existing junction serving the Tower House onto Master Lane is uncontrolled with a limited visibility splay which would restrict the view of traffic travelling up Master lane towards the open junction shared by dwellings such as Sapling Dene and The Cottages. I would require a detailed plan, on an accurate surveyed base plan, to show give way markings for traffic exiting the Tower House and other residential units before entering Master Lane. This would also provide a safer visibility splay for traffic travelling up Master Lane.

The proposed access to the development is not wide enough to accommodate 2 passing vehicles and as such would need to be widened to at least 4.8m. This may require additional groundworks and the removal of the existing stone wall.

The site would be unsuitable for adoption unless it adhered to the requirements of this authority. To become a Mews Court for example, the road as a shared surface would need to be 4.8m wide with an additional service margin of 600mm. The road would also require street lighting and be block paved.

Any future submission would require details and specifications of any surface treatment and would need to be submitted on a Topographical Surveyed plan showing gradients and swept paths etc.

The proposed access road which does not have a continuous footpath to Master Lane has limited forward vision and is therefore unsuitable. Either a designated path or additional works to ensure adequate forward vision is possible would be required. The centre line forward visibility of at least 17m, which is commensurate with a 15mph design speed, should be shown on a revised drawing. It is likely that planting on the bend will need to be removed to facilitate this.

The design and layout of the proposed dwellings and car parking is unsuitable. As an example, space in front of unit 1 measures just 4.8m from the front of the house to the turning area or highway. The space measures just 2.4m wide. There is no separate footpath to the house and as such the width would need to be 3.3m. The length of the driveway should take into consideration the front door of each dwelling to allow safe access where parked cars may be. This would need to be at least 6m which would provide access to the dwelling and the capacity to park a standard sized family saloon car such as a VW Passat at 4.8m in length.

The tandem parking shared by units 3 and 4 are again minimal in dimensions but of more concern is the fact that a reversing manoeuvre in excess of 25m is required which would be

difficult and dangerous, especially from such a confined space. Tandem parking also involves additional vehicle movements and a considerable amount of planning by the users to avoid cars being blocked in.

The larger detached properties need to indicate parking spaces on the submitted plan.

I am therefore unable to support this application as submitted. The proposals are not acceptable on highway safety grounds, the proposed access and parking arrangements do not offer adequate dimensions, passing places, visibility splays or necessary turning areas and therefore could result in pedestrian or highway safety issues in the vicinity of the site. The application thus fails to satisfy policy BE5 of the Replacement Calderdale Unitary Development Plan, the design and layout of Highways and access."

The applicant has submitted amended plans in an attempt to address the issue regarding the parking layout. The ADSI has considered the revised proposals and, whilst they consider that the internal parking is unlikely to operate as suggested, they do not consider that an objection would be warranted and advise that the highway authority would not adopt the road, which means it will be the responsibility of residents.

The ADSI still considers the width and lack of pedestrian footway to be unacceptable and advises that this would not be acceptable for five dwellings, and in this case nine are proposed. The agent considers that the proposed residential use would be much less intensive in terms of traffic generation than the established hotel use and that this is demonstrated by the Transport Statement. However, the ADSI does not agree and it is their opinion that in peak periods the housing use would exceed that of the hotel.

The limited visibility at the exit onto the Master Lane does raise concerns in respect of pedestrian safety, however on balance, given the former use, it is the ADSI's opinion that an objection could not be sustained at appeal.

Paragraph 109 of the NPPF states "Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety". In this case it is considered that the development would have an impact on highway safety, however having regard to the existing use it is considered that this impact would not be significantly greater than the last use as a restaurant and hotel.

Paragraph 110 of the NPPF establishes 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 an electrical battery powered vehicle that may be used in connection with that dwelling.

<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.

The application form indicates that both foul waste and surface water would be disposed of via the main sewer.

A condition requiring the submission of drainage details for approval is proposed. Subject to this condition the proposal complies with Policies EP14, EP20 and EP22.

Ground conditions

RCUDP policy EP10 establishes that where there is minor contamination, or a slight possibility of contamination planning permission will be condition to ensure that a site contamination survey is carried out and approved remediation measures are completed prior to the commencement of development.

A Phase2 report has been submitted, following comments from Environmental Health, and it identifies that there are risks from contamination and remediation will be required. It advises that a site-specific remediation strategy should be undertaken.

A condition is therefore proposed requiring the submission of a remediation strategy and subsequent verification report to demonstrate that the remedial works and provision of clean cover has been sufficiently carried out.

Subject to this condition it is considered that development complies with policy EP10.

RCUDP policy EP11 establishes that a stability report will be required for development within areas of potentially unstable land, and development will not be permitted unless there are acceptable proposals for remedying any identified problems.

Paragraph 178 of the NPPF states that planning decisions should ensure that "
a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation)"

The Geo-Environmental Report considers the matter of unstable land and provides the results of a slope stability analysis, which took into account the slope on the southwest boundary. It concludes that the short-term stability of the slope is unlikely to be affected by the new houses, assuming a piled foundation solution is used.

In areas of made ground and weak near surface soils piled foundations are recommended by the report and it suggests that advice is obtained from a specialist piling contractor.

From the information provided it is considered that a development can be achieved by remedying any problems. It will be the responsibility of the developer and/or landowner for securing a safe development rest (paragraph 179, NPPF).

Wildlife Conservation

The proposal is in a Wildlife Corridor. It is considered that the development will not damage the continuity, function or nature conservation value of the Corridor and it is in accordance with RCUDP policy NE15.

RCUDP policy NE16 establishes that development will not be permitted where it would harm protected species or their habitat. RCUDP policy NE17 establishes that where appropriate development will be required to enhance biodiversity.

The site is within a bat alert area and the proposed development will involve demolition, as such a bat survey has been carried out.

Bats were confirmed to be roosting within the building and therefore the developer will have to apply for a Bat Mitigation Licence from Natural England before carrying out the development.

As part of the mitigation and policy NE17 bat enhancement features, such as lighting schemes, bat bricks, appropriate landscaping and temporary roost boxes will be required. A condition is proposed requiring the submission of details.

Subject to appropriate mitigation it is considered that the development would not have an adverse impact on protected species, and it complies with policies NE16 and NE17.

Trees and Landscaping

RCUDP policy NE21 sets out criteria where trees are located on or adjacent to development sites, which require submission of a tree survey, retention of worthy trees, protection during construction, replacement tree planting, appropriate layout and distances between excavations.

The Council's tree officer has considered the proposal and states:

> *"The tree report has been submitted by an appropriate professional person and after reading the report it appears to be a full explanation of the trees and current condition (December 2019). A number of trees to be removed are Conifers of limited amenity and it is likely that a number of other trees are not easily visible locally but can be viewed from across the valley. Subject to the retained trees being protected as per the Arboricultural method Statement, and appropriate tree planting of appropriate native trees I would not object to the proposals."*

Conditions are proposed requiring that the development is carried out in accordance with the Arboricultural Method Statement and that a scheme of landscaping is submitted, subject to this it is considered that the development complies with policy NE21.

Other Issues raised

RCUDP policy GCF1 states "*All education, highways, sewerage, drainage, flood prevention, landscaping, open space, nature conservation, public transport or other identified needs generated directly by any development within a local area should be provided in a timely manner by the developer either on or off site."*

As previously stated, a contribution towards secondary school provision has been requested by the Assistant Director – Education and Inclusion. Also, Councillor Foster has asked whether there could be a contribution towards the provision of a community space. The Assistant Director – Neighbourhoods was consulted but has not commented on the need for any provision to mitigate the development.

Whilst it is not expressly stated in the policy the accompanying supplementary planning documents (SPDs), Developer contributions towards meeting open space, sport and recreation facilities (2008) and Developer contributions towards meeting education needs (2008)., established that with regards to education and open space contributions this only applied to major developments (10 or more houses). The SPDs were withdrawn by the Council when the government restricted collection of pooled contributions and as CIL is being prepared alongside the Local Plan, but it is still practice that contributions are only requested for major developments, where they are required.

Planning obligations should only be required where they meet the statutory tests: they must be

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

It is considered that the impact of the development without any mitigation towards education and open space would not result in a significant adverse impact and as such it is considered that planning obligations are not necessary to make the development acceptable.

Balance of Considerations

Paragraph 11 of the NPPF and the Council's lack of a five year housing land supply induces the tilted balance, which means that in the balance of consideration planning permission should only be refused if the adverse impact "significantly and demonstrably outweigh the benefits, when assessed against the policies in [the NPPF] taken as a whole."

The impact on highway safety and secondary school provision is not considered to be significant and as such modest weight is given to this harm. It is considered that the provision of nine houses will make a modest contribution towards the provision of housing and as such this is also given modest weight, however it is considered that having regard to the tilted balance this benefit does outweigh the harm.

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
Interim Director of Regeneration and Strategy

Date: 29 July 2020

Further Information

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

Claire Dunn (Case Officer) on 01422 392155 or Lisa Deacon (Lead Officer) on 01422 392233

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. Prior to the first occupation of the development full details of the foul and/or surface water 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) shall be submitted to and approved in writing by the Local Planning Authority. The details so approved shall be implemented prior to the first operation of the development and retained thereafter.

3. Before the development hereby permitted is first brought into use, the development shall be constructed in accordance with the details approved by 20/00053/DISC3 and shall be so retained thereafter.

4. In connection with any garage, driveway, vehicle hardstanding or carport hereby approved for construction within the boundary of a dwelling, prior to the occupation of that dwelling, there shall be installed a facility to permit the recharge of an electrical battery-powered vehicle. 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.

5. Prior to the first occupation of the development a scheme of landscaping the site, which shall include details of all existing trees and hedges on the land and details of any to be retained, has been submitted to and approved in writing by the Local Planning Authority.

6. 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 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.

7. The development hereby approved shall be carried out in accordance with the Sound Attenuation Scheme Proposals in the Noise Assessment by ENS (Our ref: NIA/8949/20/8935/v1/Tower House) and shall be so retained thereafter.

8. Remediation of the site shall be carried out and completed in accordance with the Remediation Strategy approved by application 20/00053/DISC2. 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.

   Following completion of all remediation measures a Validation Report shall be submitted to the local planning authority. Unless otherwise agreed in writing with the local planning authority, no part of the site shall be brought into use until such time as the remediation measures for the whole site have been completed in accordance with the approved Remediation Strategy and a Validation Report in respect of those remediation measures has been approved in writing by the local planning authority.

9. Prior to substantial completion of the development details of bat mitigation and biodiversity enhancement measures, such as lighting schemes appropriate for bats, bat bricks, appropriate landscaping and temporary roost boxes, shall be submitted to and approved in writing by the Local Planning Authority. The measures so approved shall be installed prior to the first occupation of the development and shall be retained as such thereafter.

10. The development hereby approved shall be carried out in accordance with the Arboricultural Method Statement prepared by JCA (15435-C/AJB) and 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. The development shall not be brought into use until secure cycle parking is provided at each dwelling in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority. The cycle parking so approved shall thereafter be retained

13. The access road details approved by application 20/00053/DISC4 shall be fully implemented before any part of the development is occupied and shall be retained thereafter.

14. The contractor's compound and staff car parking area within the site and provision of protective fencing to the boundaries of the construction site as approved by application 20/00053/DISC1 shall be implemented in advance of construction works commencing and shall be retained for the duration of construction works unless otherwise agreed in writing by the Local Planning Authority.

15. The scheme for scheme for the prevention of mud or other material being deposited onto the public highway approved by application 20/00053/DISC1 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. To ensure proper drainage of the site and to ensure compliance with policies EP14, EP20 and EP22 of the Replacement Calderdale Unitary Development Plan.

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

4. In the interests of the sustainability of the development and to ensure compliance with paragraph 110 of the National Planning Policy Framework.

5. In the interests of visual amenity and to ensure compliance with policies BE3, NE17 and NE21 of the Replacement Calderdale Unitary Development Plan.

6. In the interests of amenity and to help achieve a satisfactory standard of landscaping and to ensure compliance with policies BE3, NE17 and NE21 of the Replacement Calderdale Unitary Development Plan.

7. In the interests of the aural amenity of the occupiers of the development and to ensure compliance with EP8 and H9 of the Replacement Calderdale Unitary Development Plan.

8. To ensure that any ground contamination is identified and remediated, and to ensure compliance with Policies EP9 and EP10 of the Replacement Calderdale Unitary Development Plan and National Planning Policy Framework 2019 paragraphs178 and 179.

9. In the interests of protected species and biodiversity and to ensure compliance with policy NE16 and NE17 of the Replacement Calderdale Unitary Development Plan.

10. To protect the trees during the course of construction of the development in the interests of visual amenity and to ensure compliance with policy NE21 of the Replacement Calderdale Unitary Development Plan.

11. In the interests of highway safety and to ensure compliance with policies BE5 and BE6 of the Replacement Calderdale Unitary Development Plan.

12. In the interests of sustainable development and to ensure compliance with policy T19 of the Replacement Calderdale Unitary Development Plan.

13. In the interests of highway safety and to ensure compliance with policy BE5 of the Replacement Calderdale Unitary Development Plan.

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

15. In the interests of highway safety.