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# Appeal Decision

Site visit made on 19 June 2018

**by Gareth Wildgoose BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 July 2018**

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**Appeal Ref: APP/H0738/W/18/3195847**

**Land to the West of St Martins Way, Kirklevington**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Banks Property Ltd against the decision of Stockton-on-Tees Borough Council.
  - The application Ref 16/3035/OUT, dated 25 November 2016, was refused by notice dated 16 August 2017.
  - The development proposed is an outline planning application with access details (all other matters reserved) for the development of approximately 90 dwellings.
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## Decision

1. The appeal is allowed and planning permission is granted for an outline planning application with access details (all other matters reserved) for the development of approximately 90 dwellings at Land to the West of St Martins Way, Kirklevington in accordance with the terms of the application, Ref 16/3035/OUT, dated 25 November 2016, subject to the conditions set out in the attached schedule.

## Procedural Matters

2. The application was submitted in outline with all detailed matters other than means of access reserved for future approval. The appeal is determined on that basis and, therefore, the plans and illustrative material submitted in so far as they relate to appearance, landscaping, layout and scale are taken into account for indicative purposes only.
3. A signed and dated planning obligation by unilateral undertaking under Section 106 of the Town and Country Planning Act 1990 (UU) has been provided as part of this appeal. It includes obligations relating to affordable housing, education, transportation and employment and training. I consider the UU in relation to the Regulatory tests of the Community Infrastructure Levy (CIL) in my decision.

## Main Issues

4. The main issues are:
  - whether the development proposed would be consistent with the objectives of policies relating to the location and supply of housing, and;
  - the effect on the living conditions of occupiers of neighbouring properties, with particular regard to noise and disturbance relating to the proposed new access and associated traffic movements.

## Reasons

### *Location and supply of housing*

5. The appeal site consists of undeveloped land comprising agricultural fields partly enclosed by existing hedging that lie to the west of properties facing St Martins Way, Moor Close and Hall Moor Close, to the south of properties facing Westlands and to the east of buildings associated with Knowles Farm. Part of the site also adjoins land to the south of Kirklevington and to the west of Thirsk Road where an outline planning permission has been previously granted for 145 dwellings and remains extant<sup>1</sup>. A railway line with a broadly north-south alignment runs close by in a cutting to the west of Knowles Farm and there are overhead power lines that cross part of the southern extent of the site. The land beyond the southern boundary of the site consists of open agricultural fields with scattered groupings of other farm buildings visible in the distance.
6. Based upon the evidence before me, the site lies outside of the development limits of Kirklevington village as currently defined by Saved Policy EN13 of the Stockton-on-Tees Local Plan 1997 (LP) and, therefore, is an open countryside location. Whilst it has not specifically been referred to in the Council's decision notice, a proposed development of up to 90 dwellings, 15% of which are proposed to be affordable housing as part of the UU, would not fall within the developments listed as permitted by Saved Policy EN13 of the LP. However, although the proposal would result in a loss of open countryside, the site itself contributes little to the openness and separation between settlements as it adjoins the built envelope of the village and from public vantage points to the south is viewed against the backdrop of existing built form on three sides. Furthermore, it is currently screened from closer views on Thirsk Road (A67) by mature hedging on the eastern boundary and should the adjacent development for 145 dwellings be built out, those dwellings would project further to the south when viewed from public vantage points.
7. The construction of dwellings on the site would result in built development on greenfield land that has been recently used as a grazing paddock. Nonetheless, when taken together with the existing development in Kirklevington and the presence of Knowles Farm to the west, the development would not consist of new isolated homes in the countryside. In its setting, there is some scope to absorb development adjoining the existing settlement boundary by utilising the existing built form as a backdrop with appropriate landscaping to soften its appearance beyond the southern boundary. In that respect, a suitably designed development to assimilate with the varied character of properties in the area could be achieved as part of the reserved matters relating to appearance, landscaping, layout, and scale. Consequently, the conflict with Saved Policy EN13 of the LP and its development strategy relates specifically to the existing designation of land as open countryside.
8. Policy CS2 of the Stockton-on-Tees Core Strategy Development Plan Document (CS), adopted March 2010, is also relevant to the proposal in so far as it seeks that accessibility will be improved and transport choice widened. In doing so it seeks to ensure that all new development is well serviced by an attractive choice of transport modes, including public transport, footpaths and cycle

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<sup>1</sup> Council ref: 15/1643/OUT

- routes, fully integrating into existing networks to provide alternatives to the use of all private vehicles and promote healthier lifestyles.
9. The development would adjoin Kirklevington village where there are limited services and facilities available consisting of a church, a primary school, a village hall, a public house, a post box, an equipped children's play area and a car repair garage. It is, therefore, reasonable that future occupiers of the proposed dwellings would have to travel out of Kirklevington in order to access other services and facilities such as healthcare, secondary schools and higher education, shops and other retail and recreation facilities, and for employment.
  10. With regard to the above, Kirklevington is located approximately 1.2 miles from the edge of the larger village of Yarm that lies to the north along the A67, and around 2 miles from its High Street. I observed that Yarm has a much wider range of services, facilities and employment opportunities. In particular, a railway station, small supermarket, shops and other services, a secondary school and sixth form college and recreation grounds are located at its southern extent that lies closest to Kirklevington.
  11. The site would be served by continuous highway and footway links to Yarm via St Martins Way, The Green and Strathmore Drive which are estate roads built to adoptable highway standards, then via Forest Lane and Thirsk Road. Some sections of the footways on Forest Lane are relatively narrow, particularly close to the primary school due to the close proximity of boundary walls, and also alongside Thirsk Road on sections with overgrown vegetation. However, there is no evidence before me of resultant accidents involving pedestrians. In that respect, there are wider sections of footpath on Forest Lane opposite to the school and the Council retains powers under other legislation to cut or fell vegetation if it would endanger or obstruct the passage of vehicles or pedestrians. Based upon my observations, I am, therefore, satisfied that the facilities and services in Yarm would be within a suitable distance with footways and highways between that could enable accessibility via walking and cycling. Nonetheless, given the presence of unlit sections of the routes and the distances involved it is reasonable that at the present time, residents of Kirklevington would be less likely to regularly access services and facilities in Yarm and elsewhere by walking and cycling, particularly during periods of darkness, in inclement weather or when carrying shopping or bulky goods.
  12. There are bus stops located on Thirsk Road. However, based on the evidence before me and observations during my visit, there are no regular bus services from those stops that link Kirklevington to neighbouring villages. It has been drawn to my attention that a Community Bus Service has been introduced and provides a free transport option for individuals who are unable to, or have difficulty accessing local bus services. The Community Bus Service includes connections with Yarm, Maltby and Thornaby, but the evidence before me suggests that the bus service is limited as it is indicated as operating only hourly between 1018 to 1418 hours on Tuesdays and Thursdays.
  13. A planning obligation associated with a separate outline planning permission granted nearby on land to the west of Thirsk Road would secure a bus service to and from Yarm, Stockton and Thornaby for a period of five years upon occupation of the 60<sup>th</sup> dwelling of that development and would provide a retail shop or shops after the 100<sup>th</sup> dwelling. However, during my visit, I observed

that the development had yet to commence and therefore, there is no certainty that those services would come forward at the present time.

14. Notwithstanding the above, to account for future circumstances if that neighbouring development is not delivered, the UU submitted as part of this appeal includes the potential for provision of the bus service and funding for a five year period with commencement occurring prior to occupation of the 60<sup>th</sup> dwelling. In that respect, it is also reasonable that a development of up to 90 dwellings would make a positive contribution to the long term viability of such a bus service, if other developments that have been granted planning permission in Kirklevington are built out. The proposal, therefore, includes improvements to accessibility and transport choice to serve the development and Kirklevington as a whole and accords with Policy CS2 of the CS.
15. When having regard to all of the above, I have found conflict with Saved Policy EN13 of the LP and the associated objectives relating to the location of housing and the protection of the countryside. However, in order to boost significantly the supply of housing, paragraph 47 of the National Planning Policy Framework (the Framework) requires local planning authorities to identify and update a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements.
16. The Council has identified that it considers that it can now demonstrate a five year housing land supply as part of the Stockton-on-Tees Publication Draft Local Plan (September 2017) which has been submitted for Examination in Public. However, as the objectively assessed need and housing land supply upon which the policies of the Emerging Local Plan are based have yet to be tested and are subject to unresolved objections, the Council has not sought to rely upon it and have indicated that paragraph 14 of the Framework should apply. I have no reason to take a different view and consider that such an approach should necessarily apply to this appeal, given that I can afford little weight to the Emerging Local Plan in current circumstances.
17. Having regard to all of the above, I conclude that the development would conflict with Saved Policy EN13 of the LP in terms of the objectives relating to the location and supply of housing. However, the restrictions in that policy are not consistent with national policy objectives in the Framework to boost significantly the supply of housing in circumstances where a deliverable five-year supply of housing land has not been demonstrated and therefore, they are not up-to-date. In that respect, to conclude on the compliance of the proposal with the development plan and the Framework as a whole as part of the planning balance, it is necessary to firstly consider the other main issue and then any other relevant matters.

*Living conditions – neighbouring properties*

18. The Council and local residents have raised concerns relating to the increase in vehicle movements on local roads and consider that there would be an adverse impact on the amenity of the existing residents through additional vehicle noise and general disturbance. It is inevitable that the proposed access road between No 2 St Martins Way and No 1 Moor Close would increase the vehicle movements and associated activity experienced by occupiers of those properties, those immediately surrounding and along the route from Thirsk Road via Forest Lane, Strathmore Drive, The Green and St Martins Way. In

- that respect, the appellant has submitted a Road Traffic Noise Assessment for Proposed Residential Development dated February 2018 as part of the appeal.
19. The methodology of the Road Traffic Noise Assessment for Proposed Residential Development included monitoring positions representative of locations likely to be affected by the development, whilst reflecting the existing influence of occasional rail traffic, aircraft noise and distant and local road traffic. It also included a baseline traffic assessment carried out by SYSTRA<sup>2</sup> for a period of a week at three locations to establish existing two way traffic flows on the local roads that form the route to the proposed residential development as informed by automatic traffic counters on Forest Lane, Strathmore Drive and The Green in October 2017 outside of the school half term. In that respect, I am satisfied that the methodology identified typical highway conditions experienced in the local area and reflects a reasonable approach that accounts for daily fluctuations in traffic flows.
  20. The above data was also used to assess the likely traffic movements that would be generated by the proposed new homes. I am satisfied that the bespoke traffic generation identified for the development in terms of 1 vehicle every 1.2 minutes at peak time, or 1 vehicle every 40 minutes during the more sensitive night time period (2200 - 0600) is broadly representative of the effect of the development. Based on the evidence before me, that level of traffic generation and associated traffic flows resulting from up to 90 houses would fall below a level that would considerably alter existing highway conditions and could be accommodated within the highway capacity of the surrounding roads and junctions in Kirklevington.
  21. With regard to the above, it is apparent that the most noticeable change would be the closest section of St Martins Way which has the lowest level of through-traffic as it currently provides only access to properties nearby, including those within Moor Close. Nonetheless, the highway conditions that would be experienced close to the point of access would be similar to those that are currently experienced by properties on The Green and Strathmore Drive closer to the junctions with Forest Lane and, therefore, would not be unacceptable. An increase in traffic would be experienced along Strathmore Drive given that it is the most convenient route to and from Forest Lane when travelling to and from Thirsk Road, which are the predominant traffic movements in the village. However, based on the evidence before me, the cumulative effect of the development and existing traffic flows along each route would not have a severe impact on current highway conditions or the transport network.
  22. In reaching the above view, I have taken into account that the development proposes to avoid construction traffic using Strathmore Drive and would alternatively use the more lightly trafficked junction of The Green with Forest Lane, which is necessary and can be secured as part of a Construction Management Plan condition. I have also noted that interested parties have suggested that traffic generation could be higher given the likelihood of future occupiers being predominantly young families. Nonetheless, even if such demography of future occupiers were to occur, I am mindful that the primary school is in walking distance and that there is potential for a reduction in car borne journeys when accessing other services and facilities should a regular bus service be delivered. Consequently, it is reasonable that any uplift in

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<sup>2</sup> As set out in the Addendum Transport Report relating to Appeal dated February 2018

traffic generation would not be so significant that it would undermine the findings and forecasts of the SYSTRA Transport Report or the associated conclusions of the Road Traffic Noise Assessment. I address the more detailed matters and concerns of interested parties relating to highway and pedestrian safety separately in the other matters section.

23. The findings of the Road Traffic Noise Assessment demonstrate that the development would result in an increase in road traffic noise of 3.3 dB LAeq 16 hours during the day and 3.1 dB LAeq 8 hours on Strathmore Drive which as mentioned would be the primary access route for the site to and from Forest Lane and currently serves in excess of 120 dwellings. The resultant noise increase for properties on Strathmore Drive would reflect a moderate effect at the time it occurs and a minor effect in the long term based on the Department of Transport's Design Manual for Roads and Bridges. However, the evidence demonstrates that external daytime sound levels for external amenity areas for properties on Strathmore Drive would fall well below the desirable 50 dB LAeq 16 Hours in accordance with World Health Organisation (WHO) guidelines and will continue to achieve desirable indoor ambient noise levels for dwellings as set out in BS8233:2014<sup>3</sup>. Consequently, I am satisfied that that the noise experienced by occupiers of properties on Strathmore Drive arising from the development both individually and in cumulative with existing traffic would not result in a significant observed adverse impact or have an unacceptable effect upon their living conditions.
24. With regard to the above, the evidence before me indicates that existing properties on The Green and Forest Lane would experience more minor increases in traffic noise, which would be negligible in the long term. Based on my observations of local traffic conditions I have no reason to take a different view to the evidence in that respect. Consequently, the traffic noise arising from the development and when taken in cumulative with those existing would not result in a significant observed adverse impact or have an unacceptable effect on the existing living conditions of occupiers of those dwellings.
25. The proposed access road between No 1 Moor Close and No 2 St Martins Way would change the character of noise and activity experienced by occupiers of those properties and those surrounding where more limited vehicle movements are currently experienced in the cul-de-sacs. However, in the particular circumstances of this case, I do not consider that the extent of those effects would result in significant harm or disturbance to their existing living conditions. The noise environment is currently influenced by frequent rail noise and distant traffic noise was audible during my visit. Furthermore, the traffic flows associated with the development that would be experienced would be no greater than currently experienced on Strathmore Drive and based on the evidence before me, would not exceed the WHO guidelines for external amenity areas and desirable indoor ambient noise levels for new dwellings as set out in BS8233:2014. I am, therefore, satisfied that the proposal would not result in a significant observed adverse impact or have an unacceptable effect upon the living conditions of occupiers facing St Martins Way or Moor Close as a consequence of traffic noise generated by the proposal.
26. In reaching the above findings, I have taken into account that potential mitigation measures could be provided at reserved matters stage or by

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<sup>3</sup> BS8233:2014 "Guidance on sound insulation and noise reduction for buildings"

- condition, such as appropriate use of land levels for the access relative to the slab levels of surrounding properties, additional landscaping buffers and acoustic fencing beyond the access point and at the rear of properties facing St Martins Way, Moor Close and Hall Moor Close, and to the south of properties facing Westlands, which would assist in the reduction of existing noise experienced due to the presence of the railway line.
27. During the construction phase, it is reasonable that there would be potential to generate an increase in heavy and light goods vehicles along the route from Thirsk Road to the site, which when compared with the existing situation of low traffic of that nature would be significant. However, the actual number of such movements, at the busiest times estimated at 5 vehicles in an hour, or less than 1 vehicle every 10 minutes would not have a severe impact on local traffic conditions, provided that it is routed via the Forest Lane and The Green junction. Furthermore, the construction phase could also be suitably controlled to prevent unacceptable impacts in terms of noise and disturbance through the agreement of a Construction Method Statement which could limit such movements at sensitive time periods, together with controls upon construction hours.
28. The illustrative material submitted with the planning application demonstrates that adequate separation distances to neighbouring properties facing St Martins Way, Moor Close, Hall Moor Close and Westlands, together with Knowles Farm and the potential development nearby to the west of Thirsk Road, could be achieved to preserve the living conditions of their occupiers and future occupiers of the development in terms of outlook, light and privacy. Existing views from the rear elevations and rear gardens of the adjoining properties facing St Martins Way, Moor Close, Hall Moor Close and Westlands would be affected by the development. However, that is generally the case with development on the edge of an existing settlement. A well-designed and appropriately landscaped development would be capable of limiting the perception of the site being suburbanised, whilst providing a suitable outlook for occupiers of neighbouring properties around the site. I am satisfied that the detailed issues in those respects could be appropriately addressed through the reserved matters relating to appearance, landscaping, layout and scale, taking account of variations in topography.
29. A satisfactory relationship between the proposed dwellings and the existing railway line could also be achieved. The separation distances involved and the ability to secure noise surveys and appropriate mitigation by condition would provide appropriate safeguards with respect to the relationship between any new dwellings and the railway line prior to the submission of reserved matters. The potential flexibility of the layout and scale of development is also capable of mitigating any constraints associated with the overhead power lines given the limited section of the site affected and the possibility to secure full details of existing and proposed land levels via condition. The development also would not have a detrimental impact in terms of air quality in the local area.
30. Interested parties have expressed concerns in terms of the impact on property values. However, it is a well-established principle that the planning system does not exist to protect private interests such as the value of land and property.

31. Having regard to all of the above, I conclude that the proposal would not harm the living conditions of occupiers of neighbouring properties, including with respect to noise and disturbance relating to the proposed new access and traffic. The proposal, therefore, does not conflict with the development plan in that respect or the Framework in so far as it seeks a good standard of amenity for all existing and future occupiers of land and buildings.

## **Other Matters**

### *Planning obligation and infrastructure*

32. There is a signed and completed UU. It includes obligations relating to affordable housing, education, transportation and employment and training. The planning obligations relate to identified needs with precise financial contributions either relating to identified projects and/or dependent upon calculations relative to the details that come forward as part of the reserved matters. Based on the evidence before me, I am satisfied that the proposed contributions are necessary, directly related and fairly and reasonably related in scale and kind to the proposed development in accordance with CIL Regulation 122 and paragraph 204 of the Framework. I have, therefore, attached weight to the planning obligations in my decision.

33. Based upon the evidence before me, the other services, facilities, utilities and infrastructure in Kirklevington and nearby villages would have sufficient capacity to accommodate the development.

### *Highway and pedestrian safety*

34. The effect of the proposal on highway and pedestrian safety is not a matter contested by the Council. Nonetheless, interested parties have drawn to my attention that the site formed part of a proposal subject to a previous appeal<sup>4</sup> around 30 years ago which identified road safety concerns. However, I do not have the full details of the evidence which was before the Inspector and led to his conclusions. In that respect, I observed that traffic calming measures on Forest Lane are a modern feature that have been added since that appeal decision, there are also some parking restrictions on Forest Lane and outside of the school and the footways to either side of the road have been resurfaced since the original appeal. There have also been changes to accesses onto Thirsk Road and Pump Lane, the latter now having a one way section from Forest Lane, which includes the parts that have footways of substandard width. Based on the evidence before me and given the passage of time, I cannot conclude with any certainty that the existing traffic and highway conditions are the same as those experienced by the previous Inspector and it is, therefore, necessary that I reach my own conclusions.

35. The footway on Forest Lane between the primary school and Strathmore Drive is of an inadequate width and necessitates an alternative during periods of peak demand such as school opening and closing times to discourage pedestrians from using the carriageway. Nonetheless, the footway on the opposite side of the road is a convenient alternative for pedestrians as it is wider and could accommodate pushchairs and wheelchairs. I also observed that the width of Pump Lane would be sufficient to minimise the risk of conflict between one-way traffic and pedestrians that may necessarily use the

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<sup>4</sup> T/APP/W02720/A/88/112394/P5 – Dismissed – copy of decision letter undated



carriageway due to the inadequate width of sections of its footway. The inadequacy of some footways close to the school is a long standing situation and there is no evidence that it has resulted in any accidents involving vehicles and pedestrians. The development once occupied would not considerably alter the existing highway conditions. Furthermore, whilst concerns have been expressed with respect to the effect of construction traffic on Forest Lane, I am satisfied that a Construction Management Plan could be used to minimise those vehicle movements during school opening and closing times.

36. The evidence before me indicates that the only serious accident nearby was between vehicles at the A67 / Forest Lane junction in late 2012. In that respect, the evidence suggests that much fewer serious accidents have occurred close to that junction than at the time of the previous appeal, which would appear to have been influenced by speed limit reductions and changes to parking arrangements close by. The proposal would not significantly alter existing highway conditions at the junction.
37. Having regard to all of the above, the development would not result in residual cumulative impacts on local highway conditions that would be severe, subject to transport improvements such as provision of a regular bus service, temporary traffic control measures during construction and a Travel Plan to be secured by condition. Consequently, the proposal would not result in an unacceptable increase in risk of accidents and would not have a detrimental impact upon highway and pedestrian safety.
38. In reaching the above findings, I am satisfied that the additional traffic arising from the development could be accommodated on Thirsk Road, Pump Lane, Forest Lane, Strathmore Drive, The Green, St Martins Way and the surrounding highway network without a severe impact. This would be subject to certain measures, such as the formation of the proposed access. It would also require contributions to and delivery of specific highway improvements associated with the delivery of the Green Lane roundabout improvement works and Crathorne interchange works. Those improvements are necessary to mitigate the cumulative traffic generation with other developments in the wider area and are included as planning obligations within the UU.
39. I observed that the existing roads, despite some on-street parking on Strathmore Drive, The Green and St Martins Way, are of a sufficient width to ensure safe and suitable access, including for emergency vehicles, and similar arrangements are capable of being provided within the site as part of the detailed site layout to be submitted as part of the reserved matters. Parking provision for the proposed dwellings could also be accommodated within the site and, therefore, is capable of being addressed as part of the subsequent reserved matter of layout. I am satisfied, therefore, that the development would not have a detrimental impact upon highway and pedestrian safety.
40. Interested parties have suggested an alternative means of access from Thirsk Road via the adjacent development that has planning permission. However, as I have found the means of access as proposed would not be unacceptable in highway or pedestrian safety terms, I afford that matter little weight.

*Housing contribution, including affordable housing*

41. There would be economic and social benefits arising from the provision of up to 90 new homes including the potential for delivery of affordable homes to meet

local needs in Stockton-on-Tees, which are important considerations that carry significant weight. There would also be associated benefits in terms of the delivery (for a period of 5 years) and/or longer term viability of a regular bus service to nearby villages if otherwise delivered by development to the south of Kirklevington and to the west of Thirsk Road. In addition, there would be benefits in terms of job creation during construction and support for local services and facilities in Kirklevington and other villages nearby such as Yarm, which carry significant weight based on the scale of the development proposed.

#### *Ecology and open space*

42. The extended phase 1 habitat report (November 2016) and protected species and hedgerow report (November 2016) provided as part of the application found no substantive evidence of any protected species within the site or the surrounding area that would be adversely affected by the development. Based upon the evidence before me, I have no reason to take a different view. The existing trees and hedges have roosting opportunities for bats and nesting birds and the remainder of the site and trees have some suitable habitats for small mammals. However, I am satisfied that compensatory landscape planting and recommended precautionary mitigation measures would be suitable and could be secured through conditions and the detailed site layout and landscaping submissions as part of the reserved matters. I, therefore, find that the development would not have an adverse impact upon ecology and biodiversity.
43. The provision of public open space within the site can be secured as part of the reserved matters. The provision in that respect would have wider recreational benefits to the Kirklevington given that the site has no public access at present, even though the primary purpose would be to meet policy requirements.

#### *Drainage and flood risk*

44. The development would not be at unacceptable risk of flooding or increase the risk of flooding to surrounding properties, subject to the suitability of a detailed site layout as part of the reserved matters, together with foul and surface water drainage measures. Those drainage details are capable of being secured by conditions given that there is no substantiated evidence of infrastructure constraints relating to the existing sewage treatment works in the village. Interested parties have raised concerns relating to the use of a pumping station within the site. However, I am satisfied that an appropriate relationship could be achieved which would preserve the living conditions of occupiers of neighbouring properties by avoiding a detrimental impact in terms of noise and odours associated with any infrastructure required.

#### *Archaeology*

45. An archaeological desk based assessment accompanying the application identifies potential for an archaeological resource to exist at the site and an evaluation through geophysical survey, dependent upon the results, could necessitate evaluation trenching. In such circumstances, it is necessary that a precautionary approach is taken. However, I am satisfied that a suitable methodology would prevent any harm with respect to historic assets within the site. Details in that respect are, therefore, capable of being secured by a condition.

## **Planning Balance**

46. The Framework does not change the statutory status of the development plan as the starting point for decision making. The proposal is not in accordance with Saved Policy EN13 of the LP in so far as it is relevant to the location and supply of housing and the protection of the countryside. Proposed development which conflicts with the development plan should be refused unless other material considerations indicate otherwise. In that respect, the relevant policies for the location and supply of housing are out-of-date through the operation of paragraph 49 and 215 of the Framework.
47. Paragraph 14 of the Framework states that for decision making the presumption in favour of sustainable development means where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or specific policies in the Framework indicate development should be restricted.
48. As previously mentioned, there are economic and social benefits arising from the provision of up to 90 new homes including the potential for delivery of affordable housing, which are important considerations that carry significant weight. There would also be associated economic benefits in terms of job creation during construction and support for local services and facilities in Kirklevington and other villages nearby such as Yarm, which carry significant weight based on the scale of the development proposed. The development would result in a loss of open countryside consisting of agricultural land most recently used for grazing. However, given that the site is already mostly surrounded by development, I have found no significant harm to the character and appearance of the area, landscape character and visual amenity, including views from neighbouring properties, subject to the details of the reserved matters. There would be no unacceptable impact in terms of highway and pedestrian safety, the living environment for future residents, the living conditions of existing residents, ecology, contaminated land, infrastructure, archaeology and drainage, subject to the imposition of suitable conditions and the planning obligations in the UU.
49. Having regard to the above, I find that the adverse impacts of allowing this appeal would not significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole. In that respect, there are also no specific policies in the Framework which indicate that the development should be restricted. The proposal, therefore, constitutes sustainable development when assessed against the Framework as a whole. Consequently, I find that there are material considerations which indicate that the proposal should be determined otherwise than in accordance with the development plan and planning permission, therefore, should be granted.

## **Conditions**

50. I have had regard to the planning conditions that have been suggested by the Council. Where necessary I have reordered the conditions, amended the wording to ensure consistency with paragraph 206 of the Framework and consolidated the conditions where possible. Conditions 1 - 4 relate to the submission of reserved matters, timescales, provide certainty of the outline permission granted and require compliance with approved details. Conditions 5

- 7 relate to requirements of the reserved matters of landscaping and are necessary in the interest of the character and appearance of the development and ecology and biodiversity.
51. Condition 8 requires the provision of the site access prior to the commencement of the remainder of the development which is necessary to ensure safe and suitable access from St Martins Way. Condition 9 is a pre-commencement condition that necessarily requires approval of details of existing and finished ground levels and finished floor levels relative to surrounding properties in the interest of the living conditions of their occupiers and to ensure a satisfactory relationship of the development with overhead power lines that run across part of the site. Condition 10 is a pre-commencement condition to secure a construction management plan which I consider is necessary to preserve the living conditions of occupiers of neighbouring properties in terms of noise and disturbance and to ensure safe and suitable access to the site and the surroundings during construction.
52. Condition 11 is a pre-commencement condition relating to the submission and agreement of a programme of archaeological work in the interest of the preservation of any historic assets which may be present within the site. Condition 12 is a pre-commencement condition that is necessary to secure the submission of a noise survey and agreement of any mitigation measures necessary to provide a satisfactory relationship of the dwellings hereby approved with the nearby railway line. Conditions 13 and 14 necessarily require the submission of full details of disposal of foul water and surface water drainage measures, prior to commencement. Condition 15 is a pre-commencement condition to secure renewables and energy efficiency which is necessary in the interest of sustainability. Condition 16 is also a pre-commencement condition that is required to established measures to encourage more sustainable modes of transport other than reliance upon use of a private car.
53. Condition 17 is necessary to secure the recommendations and mitigation set out in the extended phase 1 habitat report (November 2016); and protected species and hedgerow report (November 2016) in the interest of protection of wildlife and their habitat. Condition 18 imposes controls on construction hours in the interest of the living conditions of occupiers of neighbouring properties, to ensure no works take place except between the hours of 800am and 600pm on Mondays to Fridays and between 900am and 100pm on Saturdays. Condition 19 is necessary to ensure that any unexpected land contamination is appropriately mitigated if discovered.
54. The suggested condition to restrict the commencement of development until development to the west of Thirsk Road has commenced is not necessary to make the development acceptable and is not imposed.

## **Conclusion**

55. For the reasons given above and taking all other matters into account, I conclude that the appeal should be allowed and planning permission granted subject to the conditions set out in the attached schedule.

*Gareth Wildgoose*

INSPECTOR

## SCHEDULE

### CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) This permission relates to the site as denoted by the red line on site location plan drawing nos. HJB/3864/24/1 dated 29 January 2018; PA01 - HJB/PA3864/11/1 dated 8 November 2016; PA02 - HJB/PA3864/07/1 dated 8 November 2016, and the approval of means of access only as indicated on the proposed site plan drawing no. PA06 - HJB/PA3864/15/1 dated 8 November 2016.
- 5) The submission of reserved matters relating to landscaping shall be accompanied by a soft landscape management plan for the approval in writing by the local planning authority. The soft landscape management plan shall include maintenance access routes to demonstrate that operations can be undertaken from publically accessible land, together with the long term design objectives, management responsibilities and maintenance schedules for all landscape areas/retained vegetation, other than privately owned domestic garden. The soft management plan shall have been implemented in accordance with the approved details prior to the first occupation of the development or related approved phase (if appropriate).

Any vegetation within a period of 5 years from the date of completion of the total works that is dying, damaged, diseased or in the opinion of the local planning authority is failing to thrive shall be replaced by landscaping of the same species and of a size at least equal to that of the adjacent successful planting in the next planting season. Landscape maintenance shall be detailed for the initial 5 years from the date of completion of the development, followed by a long-term management plan for a period of 20 years. The management plan shall be carried out as approved.

- 6) The submission of reserved matters relating to landscaping shall be accompanied by full details of a soft landscape buffer to the southern boundary of the site which shall be submitted to and approved in writing by the local planning authority. The soft landscape buffer shall be a minimum width of 10m and the details shall include a planting plan and specification of works indicating soil depths, plant species, numbers, densities, locations, inter relationship of plants, stock size and type, grass, and planting methods including construction techniques for pits in hard surfacing and root barriers. All works shall be in accordance with the approved plans. All existing or proposed utility services that may influence proposed tree planting shall be indicated on the planting plan. The scheme shall be completed in the first planting season following the first occupation of any part of the development, unless otherwise agreed in writing by the local planning authority.

- 7) No tree, shrub or hedge shall be cut down, uprooted or destroyed, topped or lopped other than in accordance with landscaping plans approved as part of the reserved matters, unless otherwise approved in writing by the local planning authority. Any tree, shrub or hedge that are indicated as to be retained in landscaping plans approved as part of the reserved matters or any replacement that dies or is removed, uprooted or destroyed or becomes seriously damaged or defective, must be replaced by another of the same size and species unless directed in writing by the local planning authority.
- 8) No development shall take place, except for the purposes of constructing the initial site access, until that part of the access extending 15 metres into the site from the carriageway of the existing highway has been made up and surfaced in accordance with the Council's Design Guide and Specification.
- 9) No development hereby permitted shall take place until full details of existing ground levels both on site and at adjacent properties which bound the site, together with finished ground levels and finished floor levels for the proposed development, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 10) No development hereby permitted shall take place until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. For the avoidance of doubt, the details shall include:
  - (i) the site construction access;
  - (ii) parking of vehicles of site operatives and visitors;
  - (iii) loading and unloading of plant and materials;
  - (iv) storage of plant and materials used in constructing the development;
  - (v) the erection and maintenance of any security hoarding including decorative displays and facilities for public viewing;
  - (vi) measures to be taken to minimise the deposit of mud, grit and dirt on public highways by vehicles travelling to and from the site;
  - (vii) measures to control and monitor the emission of dust and dirt during construction;
  - (viii) a Site Waste Management Plan;
  - (ix) details of management measures to be employed during the development, including the identification of suitable highway routes and timings for plant and material deliveries to and from the site, and measures to ensure that construction and delivery vehicles do not impede access to and from the site or damage existing footpaths and verges, together with means of communication with local residents.

The approved Construction Management Plan shall be adhered to throughout the construction period.

- 11) No development hereby permitted shall take place until a programme of archaeological work, including a Written Scheme of Investigation, has been submitted to and approved in writing by the local planning authority, the scheme shall include an assessment of significance and research questions, and:
  - (i) The programme and methodology of site investigation and recording;

- (ii) The programme for post investigation assessment;
- (iii) Provision to be made for analysis of the site investigation and recording;
- (iv) Provision to be made for publication and dissemination of the analysis and records of the site investigation;
- (v) Provision to be made for archive deposition of the analysis and records of the site investigation;
- (vi) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

No development shall take place other than in accordance with the approved Written Scheme of Investigation. The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the approved Written Scheme of Investigation and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

- 12) No development hereby permitted shall take place until a noise survey for proposed residential properties that are in the vicinity of the railway line has been submitted to and approved in writing by the local planning authority. The survey shall have been undertaken by a competent person, shall include periods for daytime as 0700-2300 hours and night-time as 2300-0700 hours, and identify appropriate noise mitigation measures. All residential units shall thereafter be assigned so as not to exceed the noise criteria given below:

- Dwellings indoors in daytime: 35 dB  $L_{Aeq,16 \text{ hours}}$
- Outdoor living area in daytime: 55 dB  $L_{Aeq,16 \text{ hours}}$
- Inside bedrooms at night-time: 30 dB  $L_{Aeq,8 \text{ hours}}$  (45 dB  $L_{Amax}$ )
- Outside bedrooms at night-time: 45 dB  $L_{Aeq,8 \text{ hours}}$  (60 dB  $L_{Amax}$ )

The approved details and appropriate consequential noise mitigation measures as shall have been agreed in writing by the local planning authority shall be implemented prior to occupation of any specified building on the site and shall be maintained as agreed thereafter.

- 13) No development hereby permitted shall take place, until a scheme of 'Surface Water Drainage and Management' for the implementation, maintenance and management of the sustainable drainage scheme has first been submitted to and approved in writing by the local planning authority. The scheme shall include but not be restricted to providing the following details:

- (i) Detailed design of the surface water management system;
- (ii) A build program and timetable for the provision of the critical surface water drainage infrastructure;
- (iii) A management plan detailing how surface water runoff from the site will be managed during the construction phase;
- (iv) Details of adoption responsibilities;
- (v) Management plan for the Surface Water Drainage scheme and any maintenance arrangements during the construction phase and the lifetime of the development.

No dwelling hereby permitted shall be occupied until the approved 'Surface Water Drainage' scheme has been implemented in accordance with the

approved details. The implemented scheme shall be maintained in accordance with the approved details for the lifetime of the development.

- 14) The drainage system to be adopted by Northumbrian Water Limited in relation to the proposed development shall be implemented in line with the drainage scheme contained within the submitted document entitled Flood Risk Assessment and Drainage Strategy dated May 2016 unless otherwise agreed in writing by the Local Planning Authority. The drainage scheme shall ensure that foul flows discharge to the sewer at manhole 7603, and ensure that surface water discharges to the sewer at manhole 4601 at a maximum restricted rate of 10 l/sec. No dwelling hereby permitted shall be occupied until the approved drainage scheme has been completed.
- 15) The development hereby permitted shall not take place until an energy and sustainability strategy, including details of any on-site renewable energy technology and/or energy efficiency measures, has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved strategy.
- 16) Prior to the first occupation of the dwellings hereby permitted, a Travel Plan shall be submitted to and approved in writing by the local planning authority. This shall include:
  - (i) The appointment of a travel co-ordinator;
  - (ii) A partnership approach to influence travel behaviour;
  - (iii) Measures to encourage the use of alternative modes of transport other than the private car by persons associated with the site;
  - (iv) Provision of up-to-date details of public transport services;
  - (v) Continual appraisal of travel patterns and measures provided through the travel plan;
  - (vi) Improved safety for vulnerable road users;
  - (vii) A reduction in all vehicle trips and mileage;
  - (viii) A programme for the implementation of such measures and any proposed physical works;
  - (ix) Procedures for monitoring the uptake of such modes of transport and for providing evidence of compliance.

The Travel Plan shall be implemented thereafter in accordance with the approved details and timescales agreed in writing by the local planning authority.

- 17) The development hereby approved shall only be undertaken on site in accordance with the recommendations and mitigation as detailed in the submitted extended phase 1 habitat report (November 2016); and protected species and hedgerow report (November 2016), unless otherwise agreed in writing by the local planning authority.
- 18) No construction/building works or deliveries associated with the construction phase of the development shall be carried out except between the hours of 800am and 600pm on Mondays to Fridays and between 900am and 100pm on Saturdays. There shall be no construction activity on Sundays or on Bank Holidays.



- 19) If, during the course of development hereby permitted, any contamination is found which has not been previously identified, work shall be suspended on that part of the site affected by the unexpected contamination and it must be reported in writing immediately to the local planning authority. Prior to resumption of any works on that part of the site affected by the unexpected contamination, an investigation and risk assessment must be undertaken to the extent specified by the local planning authority and a remediation scheme should be submitted to and approved in writing by the local planning authority including timescales for the completion of any mitigation and remediation measures. Following the completion of such measures identified in the approved remediation scheme, a verification report must be submitted in writing and approved by the local planning authority in accordance with the agreed timescales.