

PLANNING APPEAL STATEMENT

LAND OFF WAKEFIELD ROAD, TOWN END,
PONTEFRACT, WEST YORKSHIRE, WF8 4HW

OUTLINE PLANNING APPLICATION FOR THE DEMOLITION OF
EXISTING DERELICT DWELLING AND ASSOCIATED
STRUCTURES, AND DEVELOPMENT OF 22 DWELLINGS
(ACCESS AND LAYOUT DETAILS SUBMITTED)

PLANNING APPLICATION REFERENCE: 19/02277/OUT

PLANNING APPEAL REFERENCE: APP/X4725/W/21/3268490

Statement of Mr J Everett BSC Hons MRTPI Director,

Addison Planning Consultants Ltd on behalf of

Mr Duffy, Mr Duffy & Mr Davies

8th FEBRUARY 2021



CONTENTS

1.	QUALIFICATIONS AND EXPERIENCE	5
2.	INTRODUCTION & BACKGROUND INFORMATION	6
3.	SITE DESCRIPTION AND PLANNING HISTORY	9
4.	PLANNING POLICY CONTEXT.....	11
5.	ASSESSMENT OF PLANNING CASE.....	15
6.	CONCLUSIONS	36

REFERENCE SOURCES

JAY EVERETT

THE APPLICATION SUBMISSION DOCUMENTS

CD1a:	APC Covering Letter 23-09-2019
CD1b:	Planning Application Form 23-09-2019
CD1c:	Residential Dwelling Supplementary Info 23-09-2019
CD1d:	CIL Questions Form 23-09-2019
CD1e:	3132-1-000 - Site Location Plan
CD1f:	Site Plan as Existing (topographical survey)
CD1g:	3132-1-002- Existing Site Layout 21-11-2019
CD1h:	Design and Access Statement 3132-1 05-08-2019
CD1i:	Planning Statement 23-09-2019
CD1j:	Affordable Housing Statement 12-08-2019
CD1k:	FRA and Drainage Strategy 31-07-2019
CD1l:	19269-DR-C-0100 P1 (Drainage Strategy) 11-12-2019
CD1m:	Micro Drainage Calcs 26-11-2019
CD1n:	Phase 1 Geo-Environmental
CD1o:	Arboricultural_Impact_Assessment Rev A 18-03-2020
CD1p:	Preliminary Ecological Appraisal 08-11-2018
CD1q:	Transport Statement 16-1104V2 06-08-2019
CD1r:	Drawings: Dwg 16-1104-001A-Access Arrangement Dwg 002-Access 11.85m Refuse Tracking 03-04-2020 Dwg 3132-1-001 -M- Proposed Site Layout 23-03-2020 Dwg 3132-1-002 -A- Boundary Details 18-03-2020 Dwg R-2305-1B Landscape Masterplan 500@A1 20-03-2020
CD1s -	Financial Viability Assessment re 03-12-2019
CD1t -	FVA App A - Boultons Valuation Report
CD1u -	FVA App B - Boultons Valuation Report Comparables

CD1v - FVA App C - HCA Development Appraisal Spreadsheet 03-12-2019

THE APPLICATION CONSULTATION RESPONSES

CD2a - The Coal Authority 23-10-2019
CD2b - WYPALO 04-11-2019
CD2c - West Yorks Ecology Services 6-11-2019
CD2d - WMDC Housing 31-10-2019
CD2e - Yorkshire Water 7-11-2019
CD2f - WMDC Streetscene Services 11-11-2019
CD2g - LLFA 12-11-2019
CD2h - WMDC Land Contam 19-11-2019
CD2i - WTPE 28-11-2019
CD2i - WYPTE Map
CD2j - WMDC Tree Officer 29-11-2019
CD2k - WMDC Highways 17-02-2020
CD2l - WMDC Land Quality 16-03-2020
CD2m - WMDC Strategic Housing 17-03-2020
CD2n - The Coal Authority 18-03-2020
CD2o - Yorkshire Water 01-04-2020
CD2p - Wakefield Badger Group 4-04-2020
CD2q - WMDC Tree Officer 6-04-2020
CD2r - WMDC Highways 6-04-2020
CD2s - WMDC Drainage 6-04-2020
CD2t - WMDC Streetscene Services 6-04-2020
CD2u - WMDC Conservation Officer 6-04-2020
CD2v - WMDC Highways 15-07-2020

THE APPLICATION DECISION DOCUMENTS

CD3a: WC Ack Ltr 19-02277-OUT 22-10-2019
CD3b: Officer Report to Planning Committee 16-07-2020
CD3c: Planning Committee Minutes 16-07-2020
CD3d: Refusal Notice 11-08-2020

REFERENCE DOCUMENTS

CD4a - 2020-01-31 Wakefield Rd - Report
CD4b - 2020-01-31 Wakefield Rd - Appraisal
CD5a - Decision Notice 13-02705-OUT
CD5b - Site Location Plan
CD5c - Reserved Matters Site Layout Plan PL001 Rev B
CD5d - Officer Report 14-01310-REM
CD5e - Decision Notice 14-01310-REM
CD6 - Core Strategy DPD 2009
CD7 - Development Policies DPD 2009
CD8 - Site Specific Policies Local Plan 2012
CD9 - Policies Map
CD10 - TPO no 111 1996

CD11 - DRAFT Section106 - Wakefield Road Pontefract - Final (Counterpart)
CD12 - Residential Design Guide Part 1 Jan 2018
CD13 - 2020 December Guidance to Developers for Achieving Net Gain for Biodiver...
CD14 - Tree Constraints Report_Land off Wakefield Road_Pontefract_Feb2021
CD15 - Dwg 16-1104-001B-Access Arrangement.

QUALIFICATIONS AND EXPERIENCE

- 1.1 My name is Jay Everett and I have been a Chartered Member of the Royal Town Planning Institute since 1993. I hold a degree in Town and Regional Planning, and I am Managing Director of Addison Planning Consultants Ltd.
- 1.2 I have 29 years of experience of working in the field of town planning, including 12 years in local government working in both planning policy and development control and 17 years acting for landowners, developers, occupiers, and investors throughout the North of England. My involvement in the property market involves the preparation of complex planning applications, strategic promotion of land and property through the local planning policy system; and acting as an expert witness in planning appeals.
- 1.3 This Planning Appeal Statement deals with the planning policy context relating to the site. I then consider the planning case for the proposal.
- 1.4 In relation to Highway matters, my assessment is informed by a separate Appeal Statement from my colleague Toan Chau, a specialist consulting engineer from CoreIHT, upon which I rely.
- 1.5 **Chapters 2 to 4** introduce the appeal. Chapter 2 sets out the nature of the proposal. Chapter 3 describes the site and its environs, and the planning history. Chapter 4 examines the planning policy context for the consideration of the appeal proposals.
- 1.6 **Chapter 5** of my Statement of Case examines the planning case for the proposal.
- 1.7 **Chapter 6** summarises the principal conclusions from Chapter 5.

INTRODUCTION & BACKGROUND INFORMATION

- 2.1 This Planning Appeal Statement has been prepared on behalf of Mr Duffy, Mr Duffy & Mr Davies – owners of the Application site.
- 2.2 Outline Planning Permission for the erection of 22no. Dwellings on this site was granted by the Council on the 11th of February 2014 (13/02705/OUT). A subsequent Reserved Matters approval was issued on the 13th of October 2014 (14/01310/REM). An Application to delete Condition 30 of the Outline Planning Permission (relating to a requirement for Affordable Housing) was granted on the 2nd of April 2015 (14/02376/FUL).
- 2.3 The period for the implementation of that Planning Permission has lapsed although the Permissions have established the principle of development on this site. The landowners are effectively seeking to renew the previous Planning Permission with the objective of delivering the development of new housing.
- 2.4 The Application that is the subject of this Appeal was submitted to Wakefield Council (the Council) on the 9th of October 2019 and given reference 19/02277/OUT. The Application was validated, and a formal acknowledgement letter issued on the 22nd of October 2019. A copy of the acknowledgement letter is included with the submissions under reference **CD3a** - WC Ack Ltr 19-02277-OUT 22-10-2019.
- 2.5 The proposed description of development set out in the Application Form (**CD1b**) is:
- “OUTLINE PLANNING APPLICATION FOR THE DEMOLITION OF EXISTING DERELICT DWELLING AND ASSOCIATED STRUCTURES, AND DEVELOPMENT OF 22 DWELLINGS (ACCESS AND LAYOUT DETAILS SUBMITTED)”*
- 2.6 The Council however changed the Description of Development (**CD3a**) to:
- “Twenty-Two (22) Dwellings including associated works (Outline including access and layout)”*
- 2.7 The proposed development is for twenty-two family dwellings with a mixture of house types and sizes. The proposed access makes use of the existing established gateway serving this land.
- 2.8 The Application process was significantly delayed principally due to the Covid19 pandemic and Council resourcing issues. The proposal was however recommended for approval by Planning Officers. See the Officer Report and recommendation reference **CD3b** - Officer Report to Planning Committee 16-07-2020.

INTRODUCTION & BACKGROUND INFORMATION

2.9 The applicants were expecting a delegated decision from the Officers given the lack of substantive interest in the application from third parties during the formal consultation process (one Representation was received during the formal consultation exercise). The application was referred to Planning Committee for determination by Councillor David Jones. Councillor David Jones is a Member of the Planning Committee and the local Ward Councillor for the area that includes the Appeal site. Prior to the Planning Committee meeting a flurry of third-party Representations were submitted.

2.10 A virtual Planning Committee meeting was held on the 16th of July 2020 at which Councillor Jones spoke against the proposal in his role as Ward Councillor. A copy of my notes of the debate, which was heavily influenced by an extensive question and answer session afforded to Councillor Jones, are include at **CD3e** - JE Record of Planning Committee Meeting 16-07-2020.

2.11 The Application was subsequently refused by the Planning Committee against Officer recommendation for the following reasons as set out in the Committee minutes (reference **CD3c** - Planning Committee Minutes 16-07-2020) and on the Decision Notice referenced **CD3d** - Refusal Notice 11-08-2020.

"1. By virtue of the existing levels of traffic upon, and the congested nature of, Wakefield Road (A645) the proposed development would have a detrimental impact upon access and highway safety for vehicles and pedestrians contrary to policy D14 of the Council's adopted Local Development Framework Development Policies Document and the NPPF.

2. The proposed development would result in the unacceptable loss of protected trees and lead to the loss of an important ecological asset with no suitable mitigation or replacement measures proposed and no clear need for the development demonstrated to justify the loss and the harm caused to the ecological value of the site contrary to policy D7 of the Council's adopted Local Development Framework Development Policies Document and the NPPF."

2.12 During the application process, several changes were made to the proposed layout following discussions with the case officer and documents were also updated. The following is the list of Application drawings and documents as updated during the application and against which the Appeal falls to be determined:

CD1a: APC Covering Letter 23-09-2019

CD1b: Planning Application Form 23-09-2019

CD1c: Residential Dwelling Supplementary Info 23-09-2019

CD1d: CIL Questions Form 23-09-2019

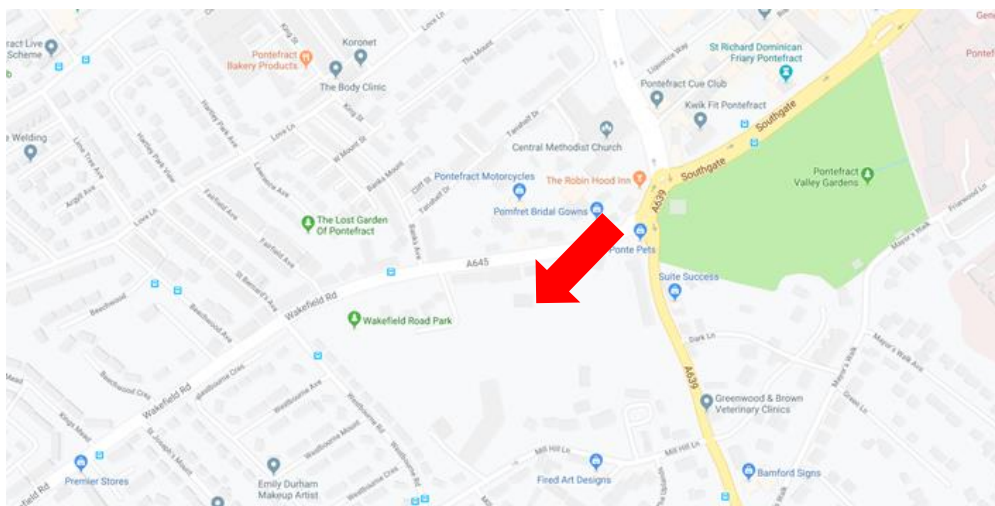
CD1e: 3132-1-000 - Site Location Plan

INTRODUCTION & BACKGROUND INFORMATION

CD1f: Site Plan as Existing (topographical survey)
CD1g: 3132-1-002- Existing Site Layout 21-11-2019
CD1h: Design and Access Statement 3132-1 05-08-2019
CD1i: Planning Statement 23-09-2019
CD1j: Affordable Housing Statement 12-08-2019
CD1k: FRA and Drainage Strategy 31-07-2019
CD1l: 19269-DR-C-0100 P1 (Drainage Strategy) 11-12-2019
CD1m: Micro Drainage Calcs 26-11-2019
CD1n: Phase 1 Geo-Environmental
CD1o: Arboricultural_Impact_Assessment Rev A 18-03-2020
CD1p: Preliminary Ecological Appraisal 08-11-2018
CD1q: Transport Statement 16-1104V2 06-08-2019
CD1r: Drawings:
 Dwg 16-1104-001A-Access Arrangement
 Dwg 002-Access 11.85m Refuse Tracking 03-04-2020
 Dwg 3132-1-001 -M- Proposed Site Layout 23-03-2020
 Dwg 3132-1-002 -A- Boundary Details 18-03-2020
 Dwg R-2305-1B Landscape Masterplan 500@A1 20-03-2020
CD1s - Financial Viability Assessment re 03-12-2019
CD1t - FVA App A - Boultons Valuation Report
CD1u - FVA App B - Boultons Valuation Report Comparables
CD1v - FVA App C - HCA Development Appraisal Spreadsheet 03-12-2019

SITE DESCRIPTION AND PLANNING HISTORY

- 3.1 The appeal site comprises approximately 0.78 ha land close to the centre of Pontefract which is partially the residential curtilage of The Priory (a former dwelling now vacant/derelict). There are storage containers located to the west of the site and the remainder of the site is open land/scattered with self-seeded trees.
- 3.2 Part of the site was previously a sand quarry and the levels to the southern boundary rise steeply with a quarry face to the south west of the site.
- 3.3 There are several trees within the site which are protected by Tree Preservation Order and Friarwood and Button Park Conservation Area is located to the east together with several Buildings of Local Interest. The plan below shows the approximate position of the site relative to Wakefield Road/A645.



- 3.4 The Aerial photograph below shows the site is closer detail:



SITE DESCRIPTION AND PLANNING HISTORY

- 3.5 The site is in a mixed-use area with residential development directly abutting the northern and eastern boundaries. There is an area of woodland to the south and west of the site with allotments and further residential development beyond.

PLANNING APPLICATION HISTORY RELATING TO THE APPLICATION SITE

- 3.6 The Council's Public Access database shows the following relevant planning history for the site – a full Land Search has not been undertaken and there may therefore be other older planning applications relating to the site.
- 3.7 Ref. No: 13/02705/OUT: Outline Application for 22no. Dwellings (access only) together with demolition of existing dwelling and removal of commercial uses approved 11th February 2014. A copy of the Decision Notice is included with the submissions reference **CD5a** - Decision Notice 13-02705-OUT.
- 3.8 Ref. No: 14/01310/REM | Residential development 22 no dwelling (reserved matters pursuant to outline approval 13/02705/OUT for appearance, landscaping, layout, and scale) | Land Off Wakefield Road Town End Pontefract West Yorkshire WF8 4HW approved 13th October 2014. A copy of the site location plan (**CD5b** - Site Location Plan); proposed layout (**CD5c** - Reserved Matters Site Layout Plan PL001 Rev B); Officer Report (**CD5d** - Officer Report 14-01310-REM) and Planning Permission (**CD5e** - Decision Notice 14-01310-REM) are included with the submissions.
- 3.9 Ref. No: 14/02376/FUL Removal of condition 30 (affordable housing) pursuant to application 13/02705/OUT (Outline Application for 22no. Dwellings (access only) together with demolition of existing dwelling and removal of commercial uses) Land Off Wakefield Road Town End Pontefract West Yorkshire WF8 4HW approved 2nd April 2015.

PLANNING POLICY CONTEXT

RELEVANT ADOPTED PLANNING POLICY

- 4.1 The Development Plan consists of the following development Plan Documents:
- 4.2 Local Development Framework Core Strategy (LDFCS) (adopted April 2009). A copy is referenced with the submissions as **CD6** - Core Strategy DPD 2009. Policies likely to be of relevance to the Application proposal include:
 - Policy CS1 - Location of Development
 - Policy CS3 - The Scale and Distribution of Additional Housing
 - Policy CS4 - Sustainable Transport
 - Policy CS6 - Housing Mix, Affordability & Quality
 - Policy CS9 - Transport Network
 - Policy CS10 - Design, Safety and Environmental Quality
 - Policy CS11 - Leisure, Recreation and Open Space
 - Policy CS13 - Mitigating and Adapting to Climate Change and Efficient Use of Resources
 - Policy CS14 - Influencing the Demand for Travel
 - Policy CS15 - Waste Management
 - Policy CS16 - Minerals
- 4.3 Local Development Framework Development Policies Document (LDFDPD) (adopted April 2009). A copy is referenced with the submissions as **CD7** - Development Policies DPD 2009. Policies likely to be of relevance to the Application proposal include:
 - Policy D4 - Sites Designated for Biological or Geological Conservation
 - Policy D5 - Ecological Protection of Watercourses and Water Bodies
 - Policy D6 - Wildlife Habitat Network
 - Policy D7 - Protection of Trees and Woodland
 - Policy D8 - Landscape Character
 - Policy D9 - Design of New Development
 - Policy D12 - Landscape Design
 - Policy D14 - Access and Highway Safety
 - Policy D15 - Safety and Security Through Design
 - Policy D20 - Pollution Control

PLANNING POLICY CONTEXT

Policy D22 - Contaminated Land

Policy D24 - Flood Risk

Policy D25 - Drainage

Policy D27 - Renewable Energy Generation Technology

Policy D28 - Sustainable Construction and Efficient Use of Resources

- 4.4 Local Development Framework Site Specific Policies Local Plan (LDF SSPLP) (adopted September 2012). A copy is referenced with the submissions as **CD8** - Site Specific Policies Local Plan 2012. Policies likely to be of relevance to the Application proposal include:

SSP1 – Presumption in Favour of Sustainable Development

- 4.5 The site is located within the urban area of Pontefract in the Council's adopted Site-Specific Policies Local Plan. The Friarwood and Button Park Conservation Area (CA29) abuts the site to the eastern boundary and there is a row of Locally Listed buildings (BLIs) within the Conservation Area to the east of the site. The extract below from the Policies Map (referenced as CD9 - Policies Map) shows the appeal site is not allocated for any specific land use. i.e., it is 'white land'.



- 4.6 There is a Tree Preservation Order on the woodland to the rear of the site. A copy of the TPO is included with the submissions referenced **CD10** - TPO no 111 1996. This shows that the southern part of the appeal site and the land beyond is covered by the TPO as the extract below shows:

PLANNING POLICY CONTEXT



- 4.7 Many trees covered by the TPO lie outside of the appeal site proposed development area (red line area). This issue is examined in detail in my assessment of case.
- 4.8 The site is in an Air Quality Management Area, a mineral safeguarding area and a Coal Authority Standing Advice Area.
- 4.9 The Site-Specific Policies Local Plan also includes Policy SSP1 regarding the presumption in favour of sustainable development.
- 4.10 ***NB. It should be noted that the Development Plan policy context described above is the same Development Plan that the previous Planning Permission on the site was assessed against and which the Council deemed the proposal was in accord with.***
- 4.11 The application site is located adjacent to a Conservation Area for a small section of its eastern boundary. Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 requires the Local Planning Authority to have special regard to the desirability of preserving and enhancing the character and appearance of the Conservation Area.
- 4.12 Local Development Framework Waste Development Plan Document (adopted December 2009). Policies likely to be of relevance to the Application proposal include:
 - W1 Strategic Approach to Waste Management
 - W7 Waste Facilities within Development
- 4.13 Supplementary Planning Guidance
 - Wakefield Residential Design Guide (adopted 31 January 2018)
 - (Wakefield Council Street Design Guide (adopted 18 January 2012).

PLANNING POLICY CONTEXT

- 4.14 Other material considerations to be considered include the National Planning Policy Framework (the Framework – 2019); the planning guidance published in March 2014 to support the Framework; and the Community Infrastructure Levy (CIL) Regulations 2010 (as amended).

EMERGING LOCAL PLAN AND EVIDENCE BASE

- 4.15 The Council is in the process of writing a new Local Plan for the District. An initial Draft Local Plan Consultation was undertaken in January 2019.
- 4.16 The consultation follows on from the Early Engagement consultation, which took place in October to December 2017.
- 4.17 The Initial Draft Plan sets out the Council's planning policies for securing growth, investment, sustainable development and improving the environment in the district. The Local Plan will cover the period to 2036 and will provide a comprehensive, updated planning framework of policies, site allocations and designations. The Local Plan will be used to promote development and to assess development proposals.
- 4.18 The emerging Local Plan is at an early stage in the plan making process and as such is not a material consideration for this proposal.
- 4.19 The following chapter of my Statement therefore examines the case for planning within this Development Plan and planning policy context which includes the NPPF and NPPG, and the evidence base (where available) that has been completed to inform the emerging Local Plan.

ASSESSMENT OF PLANNING CASE

- 5.1 Having regard to the two stated Reasons for Refusal the two main issues to be considered in this case are:
- 1) Whether the proposal would have a significant adverse impact on highway safety
 - 2) Whether the proposal would have a significant adverse impact on established protected trees and the ecological value of the site.

- 5.2 Prior to considering those main issues I first assess the principle of the proposed development.

THE PRINCIPLE OF DEVELOPMENT

- 5.3 The proposal is for the provision of housing and should therefore be assessed against Policies CS1, CS3, CS4 and CS6 of the Core Strategy which set out the principles against which the scale and distribution of additional housing will be determined.
- 5.4 The National Planning Policy Framework (NPPF) states that at the heart of the NPPF is a presumption in favour of sustainable development and highlights the importance of balancing economic, social, and environmental elements.
- 5.5 The Council's Local Development Framework Site Specific Policies Local Plan (Policy SSP1) confirms that the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework.
- 5.6 The Council's Local Development Framework Core Strategy sets out the overall framework and policy context within which local Planning Decisions should be made. The Core Strategy sets out a Spatial Vision which describes the Wakefield District in 2026. Based upon this Spatial Vision Policy CS1 of the Core Strategy sets out a broad strategy for the location of development which confirms that:
- Most new development, including most housing, employment, retail, and mixed-use development, will take place within the urban areas taking advantage of existing services and high levels of accessibility, with:
 - the largest amount of development located in the Sub Regional City of Wakefield;
 - smaller, but significant, amounts in the Principal Towns of Castleford and **Pontefract**;
- 5.7 Policy CS1 also gives priority to the use of previously developed land and buildings within the settlement for new developments, followed by suitable infill sites within the settlement, and finally sustainable extensions.

ASSESSMENT OF PLANNING CASE

- 5.8 The proposal site is located within the existing urban area of Pontefract in a mixed-use area to the west of the town centre. The site is located off a main road into Pontefract within walking distance of public transport and has access to local services and facilities.
- 5.9 The application site is partially vacant residential use (Priory house and its curtilage) towards to the north and east of the site and the site is partially used for storage to the west. The remaining site is a former quarry where several poor-quality self-seeded trees (primarily Sycamore) have grown over time. These historical and current uses coupled with the potential contamination identified within the Phase 1 Environmental Risk report (**CD1n** - Phase 1 GeoEnvironmental)- suggest that the application site should be regarded as Previously Developed Land ('PDL'). The Officer report indicates that the southern part of the site where the trees have established should be regarded as 'greenfield'. In my view that is not a tenable position to apply to the whole appeal site given the presence of existing structures and hard standings associated with the former residential use and existing storage buildings/structures present.
- 5.10 In my view the proposed development of this site therefore accords with the principles set out in Policy CS1. The Council reached the same conclusion in determining to grant the previous Planning Permission for this site (13/02705/OUT) against ***the same*** local policy context.
- 5.11 Policy CS3 confirms that the largest number of additional houses will be built in Wakefield, with smaller, but significant numbers in Castleford and **Pontefract**.
- 5.12 Core Strategy Policy CS3 also indicates that proposals for residential development should achieve a net residential density of at least 30 dwellings per hectare in urban areas outside of Wakefield, Castleford, and Pontefract.
- 5.13 The gross site area is approx. 0.78 hectares. At the proposed quantum of development (22 dwellings) the development achieves a density of 28 dwellings per gross hectare. The net developable area however (which is the usual measurement for density) is less than 0.78 Ha considering the proposed access road.
- 5.14 The site is also constrained by its topography (the steep sided quarry face) and the objective to retain the higher quality tree specimens. The proposed number of dwellings reflects the optimum use of the site considering the site constraints. I consider that the density achieved therefore accords with Policy CS3 which makes provision for slight reductions in the target densities *"In circumstances where individual*

ASSESSMENT OF PLANNING CASE

site characteristics dictate and are justified, a lower density may be acceptable”.

- 5.15 In my view the proposed developed of this site for 22 dwellings therefore accords with the principles set out in Policy CS3. The Council reached the same conclusion in determining to grant the previous Planning Permission for this site (13/02705/OUT) against **the same** local policy context. In addition, the Officer Report to Committee concludes (p8 **CD3b**):

“In view of the above comments, it is considered that the principle of 22 new dwellings on this infill site in Pontefract would accord with policies CS1 and CS3 and guidance contained in the NPPF.”

- 5.16 In relation to sustainability, taken together, Policies CS4 and D14 aim to locate development to ensure safe and convenient access; reduce the need to travel; and to allow essential travel needs to be met using transport modes other than the private car. In addition, Policy CS4 (criterion c) states that residential development will be located where it is within walking distance of essential local facilities and public transport services.
- 5.17 To demonstrate compliance with these policies a Transport Assessment was submitted with the Application (**CD1q** - Transport Statement 16-1104V2 06-08-2019) which identifies that there is good pedestrian and public transport accessibility to the site.
- 5.18 The proposed development scheme can also provide for measures to promote and facilitate sustainable transportation through the provision of cycle storage, and EV charging. These details can be secured by an appropriate planning condition to come forward as part of the detailed design at Reserved Matter stage.
- 5.19 Consequently, it is considered that the proposal site is a location where the development of new housing will not result in an unacceptable increased need to travel and which would allow essential travel needs to be met using transport modes other than the private car, in accordance with Core Strategy Policies CS4 and D14. In addition, the Officer Report to Committee concludes (p9 **CD3b**):

“It is concluded that the proposal accords with the aims of Policies CS1, CS3 and CS4 and the NPPF.”

THE PRINCIPLE OF DEVELOPMENT – HOUSING NEED AND MIX

- 5.20 Core Strategy Policy CS6 requires the housing mix provided for within residential development schemes to relate to housing needs within the

ASSESSMENT OF PLANNING CASE

area, as identified within documents such as the Strategic Housing Market Assessment. CS6 also requires that, unless otherwise agreed with the Council, affordable dwellings should be provided on the application site and 30% of new dwellings should be dwellings which can be defined as affordable. The last paragraph of the Policy states (p59 **CD6**):

“The actual amount of affordable housing to be provided is a matter for negotiation at the time of a planning application, having regard to any abnormal costs, economic viability and other requirements associated with the development. All but the smallest sites should contribute to the provision of affordable housing.”

- 5.21 The proposal provides for an indicative mix (based on the layout detail) of 9 two-bed properties, 9 three-bed properties and 4 four-bed properties.

- 5.22 The Officer Report concludes on this matter:

“The scheme proposes a mix of town houses (in terraced blocks of 3) detached dwellings and semi-detached dwellings. As such it is considered that there is a mix of housing type which would provide a suitable housing mix that is in character with that already offered within the locality.”

- 5.23 The proposed mix would contribute to achieving a mixed community with a range of house types reflected in the Housing Needs Assessment.

- 5.24 Regarding the inclusion of Affordable Housing, the site has economic challenges due to its location (in terms of end values) and construction costs (due to the nature of the site). The Planning History section of my report sets out that the viability of delivering affordable housing on this site was considered as part of the Planning Permission for 22 houses. The viability of the scheme was independently considered, and the Council agreed that the planning obligation requirement for affordable housing needed to be relaxed to ensure delivery of the scheme (see paragraph 3. 9 above).

- 5.25 It is not surprising that the same viability challenges that existed in 2015 exist in 2021. A financial viability assessment (FVA) was therefore prepared and submitted with the Application - reference **CD1s** - Financial Viability Assessment re 03-12-2019.

- 5.26 The Council arranged for the submitted FVA to be tested by an independent consultant engaged by the Council. A copy of that report is

ASSESSMENT OF PLANNING CASE

included with the submission reference **CD4a** - 2020-01-31 Wakefield Rd – Report.

- 5.27 The Report concluded that a total of £13,000 is available for the development to contribute towards the provision of Affordable Housing and maintain a development which would still be viable. The Council's Strategic Housing Team also confirmed that the provision of a commuted sum of the figure identified would be ring fenced for the provision of affordable housing within the district and could be achieved through a Section 106 Agreement.
- 5.28 Accordingly, the Appellants agreed a draft Section 106 Agreement to ensure that the development would only be undertaken on the basis that there was a payment of a commuted sum to the Council for the figure identified as being possible to provide and maintain a viable development at the site. The Agreement was signed by the Applicants and was due to be completed by the Council if the Planning Committee had agreed with the Officer recommendation to grant Planning Permission. Reference **CD11** - DRAFT Section106 - Wakefield Road Pontefract - Final (Counterpart).
- 5.29 In relation to the mix of house sizes provided, it is considered that the proposal provides for a relatively broad mix of housing, including smaller properties and larger family houses and accords with the identified housing need in the Council's SHMAA. The proposal will also make a financial contribution towards affordable housing provision. The development is therefore considered to accord with the requirements of policy CS6.

THE PRINCIPLE OF DEVELOPMENT - SUMMARY

- 5.30 In summary regarding the principle of the development, the site is previously developed land in a highly sustainable location; and has recently benefitted from planning permission for 22 dwellings. It is proposed to develop the site in an efficient manner, provide for a housing mix which relates appropriately to objectively assessed need, and is in a highly sustainable location (in terms of minimising the need to travel by car to access services and facilities). The development should therefore be considered as acceptable in principle and to be consistent with the principles of sustainable development, and in accord with key local Core Strategy Policies.
- 5.31 The following paragraphs address the two stated Reasons for Refusal and sets out the Appellant's case as to benefits of the Application scheme and why there are no other material considerations or adverse impacts that would outweigh the presumption that permission should be granted 'without delay.'

ASSESSMENT OF PLANNING CASE

ECONOMIC BENEFITS

- 5.32 The proposed development of this site would provide economic benefits associated from new residential development including the provision of construction jobs, and associated resident spend in the local economy.
- 5.33 The proposal will result in economic development benefits and this is a significant benefit and one that should be afforded significant material weight in the consideration of the Application.

HEALTHY AND SAFE COMMUNITIES

- 5.34 The Framework states that developments should aim to achieve healthy, inclusive, and safe places and provide the social, recreational, and cultural facilities and services the community needs.
- 5.35 In this regard, Core Strategy Policy CS11 deal with 'Leisure, Recreation and open Space'. However, it is not directly relevant to the appeal proposal given the site is not an existing leisure or recreation facility.
- 5.36 Policy D9 deals with Design and New development and amongst other criteria states:
"n. provide open space and recreational facilities in all new housing developments which is related to the scale, type and density of the development, and to the nature of the site and its surroundings."
- 5.37 Each of the properties would meet the Nationally Described Space Standards as family homes, all with private garden areas of a minimum size of 75 sq. m. Indeed, this minimum standard is exceeded in all the proposed dwellings and meets the requirements for good quality private amenity space as set out in the Council's Residential Design Guide (reference section 1.03 at **CD12**).
- 5.38 The proposal also includes a new Public Open Space area in the south east corner of the site, which is well located with good natural surveillance from plots 15 and 16. In terms of the level and quality of amenity space proposed the Officer Report concludes that the proposal *'..would form a usable space which could be utilised by all residents of the development.'*
- 5.39 In my view, the proposal therefore satisfies Policy D9 regarding the provision of recreation and open space facilities which will ensure a good quality development that will meet the health and social needs of the resident community.

ASSESSMENT OF PLANNING CASE

- 5.40 Moreover, the potential improvement and enhancement of the wooded area to the south of the site (see my assessment regarding tree and ecological enhancements) will provide a betterment for the wider community and should therefore be afforded weight in favour of the scheme.

DELIVERING SUSTAINABLE DEVELOPMENT – PROMOTING SUSTAINABLE TRANSPORT

- 5.41 This subject raises the first substantive issue in this Appeal given Reason for Refusal no1 states:

“1. By virtue of the existing levels of traffic upon, and the congested nature of, Wakefield Road (A645) the proposed development would have a detrimental impact upon access and highway safety for vehicles and pedestrians contrary to policy D14 of the Council's adopted Local Development Framework Development Policies Document and the NPPF.”

- 5.42 In the first instance of course, the Council has previously accepted that a safe and convenient access to this site to serve 22 dwellings can be achieved through its determination to grant Planning Permission in 2014 (**CD5a** - Decision Notice 13-02705-OUT). The Council's case appears to be that in the six years since that Permission was granted the capacity of the local highway network has deteriorated to such an extent that adding the volume of traffic from the proposed development will create a severe highway safety issue.
- 5.43 In preparing the Application, a Transport Assessment was prepared by Cora IHT which sets out details of the proposed access works and re-assesses the local highway network. This included up to date surveys of the volume of traffic using a seven-day automated count system in October 2018. Refer to **G5a** - Transport Assessment 16-1062 V3 16-04-2019.
- 5.44 In relation to the detail of the proposed works, the assessment sets out that that access to the site is proposed off Wakefield Road and would provide a 5.5m carriageway, 2m footways on both sides and visibility of 2.4m x 43m to the west and exceeds 2.4m x 43m to the east. The provision of 2m footways represents a significant betterment over the existing situation where the footpaths are narrow in places.
- 5.45 The Assessment concluded there were no capacity issues, adequate visibility splays could be achieved and that there were no highway safety issues arising.

ASSESSMENT OF PLANNING CASE

- 5.46 The Council's Highway Department provided a consultation response on the application on the 17th of February 2020 (reference **CD2k** - WMDC Highways 17-02-2020). This concluded that the proposed access *"...junction layout provides 2.4 x 43m visibility splays in both directions and 6m entry/ exit radii in accordance with the Street Design Guide..."* and would not cause any conflicts on the highway network.
- 5.47 The consultation response does raise issues with the proposed internal layout. The Applicant responded to these issues by amending the layout to ensure each of the issues were addressed. This included ensuring the internal access had an adequate radius and that the turning head could accommodate the turning of larger vehicles.
- 5.48 The Council's Highway department provided a second consultation response to the Amended Plans (**CD2r** - WMDC Highways 6-04-2020) which confirmed the changes to the internal layout had addressed the highlighted issues and that ***"There are therefore no further highways objections to the application..."***.
- 5.49 Policies CS4 (sustainable transport), CS9 (Transport Network), CS14 (Influencing the Demand for Travel), D9 (f, g, h) (design of new development) and D14 (access and highway safety) of the Council's adopted Core Strategy and Development Policies Document, set out the standards and criteria against which the highway implications of the development are assessed.
- 5.50 It is clear from the evidence submitted with the Application, and the responses from the Council's Highway Department, that the proposed access arrangements are technically sound and meet the terms of these Policies. The case Officer reached the same conclusion in his advice to Members of the Planning Committee (refer to p17 of **CD3b**):
- "Having regard to the nature of the scheme, response of the Council's Highways Team and the details submitted as part of this application it is considered that the proposal is acceptable with regard to access and highway safety in accordance with the aforementioned policy."*
- 5.51 The minutes of the Committee meeting do not record the nature of the debate (reference **CD3c** - Planning Committee Minutes 16-07-2020). I monitored the debate and made my own notes which are referenced at **CD3e** - JE Record of Planning Committee Meeting 16-07-2020.
- 5.52 My notes of the Committee meeting show that Members were heavily influenced by Councillor Jones (speaking as Ward Councillor but a Member of the Planning Committee) who was afforded significant time to speak through an extensive question and answer session. Some of the answers to questions from Members betrayed a lack of

ASSESSMENT OF PLANNING CASE

- understanding of the proposed scheme. For example, Councillor Jones claimed that the existing footway was too narrow, ignoring the fact that the proposed development will improve the footway to 2m thereby delivering a betterment for the wider community.
- 5.53 My notes also show that the Council's Head of the Highway Department Adrian Piggott provided clear and unequivocal advice to Members that:
- Visibility splays would not be impeded.
 - A robust assessment has been made.
 - The widening of the footways is a betterment.
 - There are natural breaks in traffic flow caused by the pedestrian crossing lights which aid right turning traffic.
 - The free flow of traffic will continue.
 - The traffic generated is no more than 1 vehicle per 2/3 minutes at the peak time.
- 5.54 Mr Piggott's concluding remarks to Members stated that, based on their assessment of the information provided, he was confident the access would be safe and that he did not believe the access will present a problem.
- 5.55 Members ignored that advice and, in determining to refuse Planning Permission on highway grounds, failed to consider or refer to any technical evidence which supported their conclusion.
- 5.56 Given the Members conclusion and the stated Reason for Refusal the Appellants have commissioned CoralHT to further consider the issues raised. Accordingly, I refer to the Appeal Statement of my colleague Toan Chau which re-examines whether the proposal would give rise to any highway safety conflicts. I note and rely on his conclusions that the proposal would not.
- 5.57 As part of his evidence, Mr Chau has provided further evidence to show that larger vehicles can safely access the site by providing tracking plots of the access arrangement (refer to Appendix E of his Statement).
- 5.58 In addition, Mr Chua has provided an updated access drawing (which does not change the submitted access road position, splays, or radius) but which adds a layer of detail to show dropped kerbs and tactile paving and more certainty that the 2m continuous footway will be achieved along the site frontage. This is contained in his Statement as Appendix D. I have also included the drawing as a separate document in the submissions reference: CD15 - Dwg 16-1104-001B-Access Arrangement.

ASSESSMENT OF PLANNING CASE

- 5.59 It remains the case the proposal fully accords with the relevant Development Plan policies relating to highway standards and safety. Even if, in the event the Inspector has some sympathy with the concerns of Members, it is factual that the proposed development could not give rise to any substantial or severe harm and so passes the test at Paragraph 109 of the NPPF.
- 5.60 Accordingly, an appropriate condition is suggested that references the proposed access arrangement either as submitted with the Application, or as updated to provide greater clarity on the works that would be included as part of a subsequent Section 278 Agreement with the Council (**CD15** - Dwg 16-1104-001B-Access Arrangement).

EFFECTIVE USE OF LAND

- 5.61 As discussed earlier in my Statement Core Strategy Policy CS3 indicates that proposals for residential development should achieve a net residential density of at least 30 dwellings per hectare in urban areas outside of Wakefield, Castleford, and Pontefract. My assessment concluded that the proposed development accords with that Policy and will therefore make the most efficient use of the available land.

WELL DESIGNED PLACES

DESIGN AND IMPACT ON CHARACTER OF THE AREA

- 5.62 Development Plan policies CS10 and D9 require that developments be of a high-quality design and that their designs are undertaken in the context of a full contextual analysis of the surroundings. This is reflective of Section 12 of the NPPF (2019) which stresses the importance of good design and (at Paragraph 127) sets out a criterion approach to assessing proposals.
- 5.63 In this regard, the design and external appearance of the dwellings is a Reserved Matter, but the details of the access and layout have been submitted for consideration. Careful consideration has however been given to the design concept for this site. The evolution of the approach is set out in the Design and Access Statement that accompanies the proposals (reference **CD1h** - Design and Access Statement 3132-1 05-08-2019). In this regard, the applicants have taken a design led approach to the scheme that fully acknowledges and responds to its context.
- 5.64 As set out in the Officer Report the scheme was amended to create a development which is less dominated by vehicular parking to the front of dwellings, provides a section of the site which is to be utilised as public open space and proposes boundaries which are a mix of brick walls and timber fencing. The layout proposes several smaller private

ASSESSMENT OF PLANNING CASE

drives creating intimacy and variation in the street scene. The dwellings to the frontage would have vehicular access and parking to the rear such that the properties fronting Wakefield Road have an appearance which would be in character with that of the street. There is parking to the side of several of the dwellings, although predominantly parking is either to the front or slightly separated from the dwelling to the rear or side.

- 5.65 The officer report concludes on this issue (p14 **CD3b**):

"In taking account of the context and character of the site and surrounding area, it is considered that the overall design concept, the layout of the site and the scale and design of the building and associated infrastructure are acceptable. Suitably worded planning conditions could be imposed to ensure that outstanding details are submitted to and approved in writing by the Local Planning Authority. Overall, it is considered that the visual and physical impact of the proposed development would be acceptable and in accordance with the aforementioned national planning guidance and local planning policy."

- 5.66 I concur with the Officers conclusions that the design of the proposed scheme accords with Policies CS10 and D9 together with Section 12 of the NPPF.

DESIGN AND IMPACT ON AMENITY OF NEIGHBOURS

- 5.67 The nature of the site, coupled with the proposed layout, orientation of the proposed dwellings and generous separation distances from neighbouring occupiers means there are no undue concerns raised about potential impact of the proposal on neighbouring occupiers. The Officer Report concludes on this issue (p18 **CD3b**):

"...it is considered that the proposal would have not be unduly oppressive / overbearing to neighbouring occupiers. The proposed development is therefore considered to be acceptable in this regard."

- 5.68 The internal arrangements and layout of the site also ensure the residents of the proposed scheme would be afforded adequate privacy and amenity.
- 5.69 The Applicant's case is therefore that the proposals will not adversely affect the residential amenity of existing occupiers adjacent to the application site.

CLIMATE CHANGE AND FLOOD RISK

- 5.70 The NPPF requires local planning authorities to adopt proactive strategies to mitigate and adapt to climate change taking full account of

ASSESSMENT OF PLANNING CASE

flood risk, water supply and demand considerations. This is reflected in the policies of the Core Strategy:

- 5.71 The site falls within flood zone 1 (areas at low risk of flooding) as identified by the Environment Agency. The Council's adopted Local Development Framework Strategic Flood Risk Assessment and policies D24 (flood risk) and D25 (drainage) are relevant.
- 5.72 Although the site is under 1ha and within FZ1 a Flood Risk Assessment and Drainage Strategy were submitted to fully assess the proposals against these policies (refer **CD1k** - FRA and Drainage Strategy 31-07-2019).
- 5.73 The initial consultation response from the Council's Drainage team (**CD2g** - LLFA 12-11-2019) raised several technical issues. The applicants responded to these and further details were provided. (reference - **CD1l** - 19269-DR-C-0100 P1 (Drainage Strategy) 11-12-2019 and **CD1m** - Micro Drainage Calcs 26-11-2019).
- 5.74 Further to this information the Council's drainage team confirmed the proposals were satisfactory as summarised in the Officer Report (p10 CD3b):

"The Council's Drainage Team have advised that they have no objection to the proposed development on the basis of the scheme which is put forward within submitted drawing DRC-0100revP1.

Taking account of the response of Yorkshire Water and the Council's Drainage Team it is recommended that any grant of permission is subject to conditions requiring the submission of a scheme relating to foul / surface water drainage and surface water flow rates."

- 5.75 Accordingly, the Council was satisfied that the proposal would not result in any risk to flooding either on or off site. The proposal therefore accords with Development Plan policies D24 (flood risk) and D25 (drainage).

THE NATURAL ENVIRONMENT

- 5.76 This section of my statement considers the second main issue raised in this case namely whether the proposal would have a significant adverse impact on established protected trees and the ecological value of the site. To recap, the Council's stated reason for refusal is:

"2. The proposed development would result in the unacceptable loss of protected trees and lead to the loss of an important ecological asset with no suitable mitigation or replacement measures proposed and no clear need for the development demonstrated to justify the loss and the harm caused to the ecological value of the site contrary to policy D7 of the

ASSESSMENT OF PLANNING CASE

Council's adopted Local Development Framework Development Policies Document and the NPPF."

- 5.77 The Council cites Development Plan policy D7 as the relevant policy to justify its reason for refusal. Policy D7 deals with the Protection of Trees and Woodland and states:

"The district's woodland, hedgerows and trees are important ecological assets identified in the Wakefield District Local Biodiversity Report. Where the Council considers that trees or woodland may be affected by a development proposal, it will require an appropriate tree survey to be submitted with the planning application."

- 5.78 Criterion 1 is not relevant to the Appeal because the appeal site cannot be considered as Ancient Woodland. Criterion 2 states:

"2. Development that would damage or result in the loss of trees, particularly veteran trees, areas of woodland or hedgerows, will only be permitted if it can clearly be demonstrated that:

a. development cannot reasonably be redesigned or located on an alternative site; and

b. the need for development clearly outweighs any harm to the ecological value and landscape quality of the area; and

c. harm can be reduced to acceptable limits through the implementation of positive environmental mitigation measures either on site or in a suitable alternative location."

- 5.79 The Council's case is in effect that the proposal would result in the **significant loss** of **protected** trees without mitigation and that there would be an adverse effect on the ecological value of the site that is also not mitigated. I deal with each of these issues in turn.

Trees

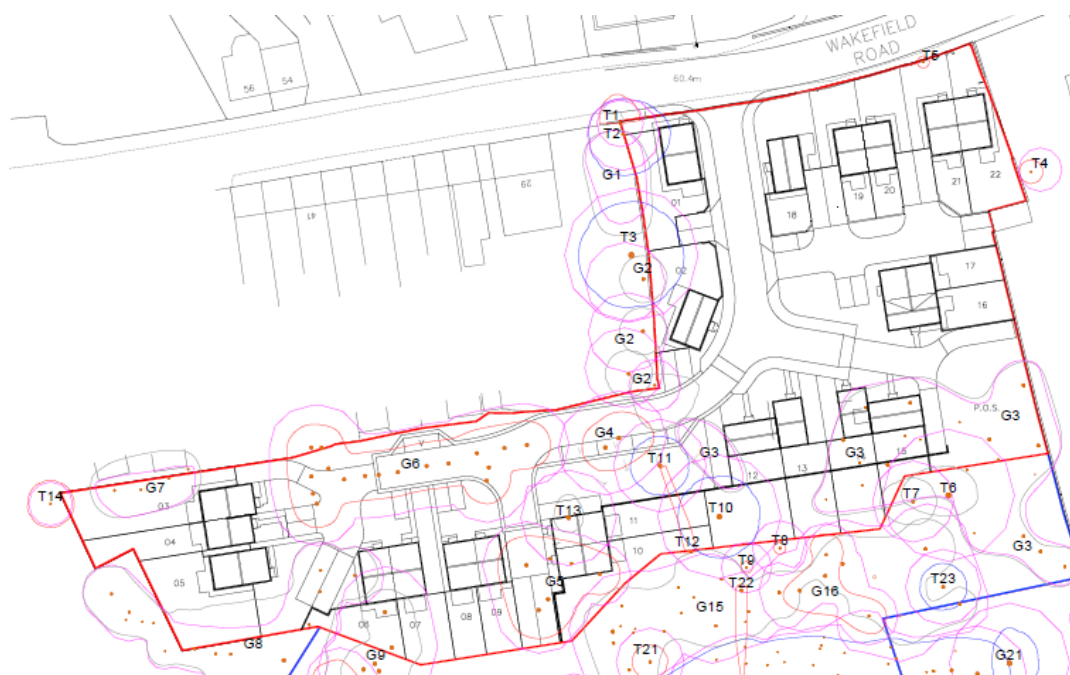
- 5.80 An Arboricultural Impact Assessment was undertaken to assess the impact of the proposals on existing trees within the site. This was included with the Application submission under Reference: **CD10 - Arboricultural_Impact_Assessment Rev A 18-03-2020**.

- 5.81 The tree specimens that were identified for removal to facilitate the development are generally extremely poor specimens, including a significant number which have been graded 'U' class. 'U' category trees are those that are 'unsuitable for retention' due to their quality and/or health. That is U class trees are identified as being required to be removed **irrespective** of the development proposal. The proposal provides an opportunity through a landscape management regime to

ASSESSMENT OF PLANNING CASE

- improve the management and health of retained trees in conjunction with a new landscaping proposal that will enhance both the character and appearance the site, along with its ecological value.
- 5.82 The Tree Survey that was submitted with the Application surveyed all the trees within the application site, trees immediately adjacent to the boundary (notably the trees within the ownership of 29 Wakefield Road) and the significant volume of trees within the wooded area to the south of the Application site.
- 5.83 The Officer Report to Committee gave the impression that all the surveyed trees were within the Application site itself (p14 **CD3b**):
- “The Application has been submitted with an accompanying tree survey, this sets out that 27 individual trees, 26 groups of trees, and one woodland were surveyed at the site. The report details that 9 trees, three groups and one woodland were categorised as moderate quality, 11 trees, and 17 groups were categorised as low quality, and 7 trees, and 6 groups were classed as unsuitable for retention regardless of the development proposals.”*
- 5.84 The Officer Report fails to set out the actual number of trees within the Application site and failed to draw a distinction between the part of the site that is covered by a blanket Tree Preservation Order and the part of the site that is not. Indeed, the Officer Report erroneously advised that the entire site was covered by the TPO. Members in their debate of the application were not in possession of the correct facts.
- 5.85 Following the issuing of the Refusal Notice the applicants took the decision to remove those tree specimens not covered by the TPO and which, due to their health and or condition represented a potential health and safety liability given uncontrolled public access to the site. Several trees were therefore **lawfully** removed by specialist contractors.
- 5.86 It is therefore important that the Inspector has the correct facts in relation to the number of existing trees within the Application site itself and, importantly, the number of trees protected by the TPO. Accordingly, the survey has been updated to February 2021 to give the most accurate and up to date information. The updated survey is included with the Appeal submission with reference: **CD14**.
- 5.87 The extract below from that survey shows the actual number of trees within the Application site in February 2021.

ASSESSMENT OF PLANNING CASE



5.88 Existing protected trees within the Application site are:

- T6 – Sycamore Grade C1 (low quality)
- T10 – Sycamore Grade B1 (moderate quality)
- T11 – Sycamore Grade B1 (moderate quality)
- T12 – Common Ash – Grade ‘U’ (unsuitable for retention)
- T13 – Sycamore Grade C1 (low quality)

5.89 The survey therefore shows there are just **five** individual specimen trees within the Application site affected by the proposals. Of these individual specimens the proposed development requires the removal of all five. T12 needs removing irrespective of the development.

5.90 Turning to the surveyed Groups of trees

G3 – Comprises mixed trees all of which are classed as C1 (low quality). The proposal is to remove 50% of this Group and retain 50%.

G4 – Comprises 1no. Sycamore, and 1no. Ash – both are classed as ‘U’ (unsuitable for retention) **and should be removed irrespective of the development.**

G5 – Comprises 6 Sycamore and 1 Beech all of which are classed as ‘U’ (unsuitable for retention) **and should be removed irrespective of the development.**

G6 – Comprises 9no. Sycamore and 7no. Ash all of which are classed as ‘U’ (unsuitable for retention) **and should be removed irrespective of the development.**

G7 – Comprises approx. 2no. Sycamore and 2no. Ash – classed C1 (but do not need to be removed)

G8 – Comprises Ash, Sycamore, Whitebeam, Wild Cherry – classed as C2 – the development requires the removal of only the north-eastern extent of the group within the application red line boundary.

ASSESSMENT OF PLANNING CASE

G9 – Comprises approx. 6no Sycamore, 1no. Wych Elm – classed as C2 – the development requires the removal of two trees and two are retained.

- 5.91 In summary, the proposal removes only 2 individual specimen trees within the site of moderate quality, 2 low quality trees need to be removed to facilitate the development and one tree is 'U' grade and needs to be removed irrespective of the development. Regarding the surveyed Groups, the development proposes to remove several very poor-quality self-seeded groups the majority of which are classed as 'U' (unsuitable for retention) irrespective of the development proposal.
- 5.92 In summary, the loss of protected trees is limited, and the vast majority of those that are proposed to be removed are classed as **'U' Grade and need to be removed irrespective of the development** or classified as C Grade trees of **very low-quality**.
- 5.93 The Reason for Refusal alleges that no mitigation for tree losses was proposed in the Application. This is factually incorrect. Whilst landscaping details are a Reserved Matter a landscaping scheme was submitted with the Application to provide evidence that appropriate mitigation could be achieved.
- 5.94 The proposed landscaping plan shows an extensive landscaping scheme and sets out details of at least 52 new trees being planted (of an indigenous species) including several heavy standard trees that would make an immediate impact on the character of the development. The details set out that replacement planting will achieve a ratio of greater than 2:1 replacement for the number of trees removed. The landscaping plan also includes additional hedgerow and sets out that (in addition to the 52 specimen trees) 378 sq. m of mixed native tree and shrub planting (40% of which are trees) would be planted in the woodland to the south of the site on land within the applicant's control.
- 5.95 It is clear from the evidence with the Application that firstly, mitigation was proposed, and secondly, that the proposed mitigation far exceeds any minimum requirements. Moreover, the landscaping scheme will significantly enhance the overall quality of trees within (and adjacent to) the site.
- 5.96 Returning to Policy D7 there are clearly no veteran trees within the site and indeed no trees of any notable quality at all. Most of the trees to be removed are identified as unsuitable for retention irrespective of the development or of extremely low quality. In contrast a comprehensive mitigation and enhancement strategy has been prepared that clearly shows that criterion (c) of the policy is met. In my view, as set out in my assessment of the principle of the development regarding the

ASSESSMENT OF PLANNING CASE

importance of providing new housing, the public benefits of the scheme clearly outweigh the loss of these poor-quality trees and, moreover, the mitigation itself results in a significant betterment that is a public benefit. The case Officer reached the same conclusion in his advice to the Planning Committee (p15 **CD3b**):

"It is noted that the site has benefited from consent to be developed for residential purposes before. Whilst the Arboricultural Officer does not support the proposal it is considered that the provision of further dwellings within Pontefract, and the proposed mitigation of replacement planting, weighs in favour of the development. Furthermore the proposal would see the retention of a number of existing trees and would see removal of a number of trees which could be removed due to their quality or reasons relating to management of the existing site.

It is considered that the layout of the proposal gives greater scope for re planting within the site, than the previous consent, within public areas / adjacent to the street and which would likely mature into larger trees without the pressure for pruning / cutting back from residents arising on the basis there is a greater distance between the proposed trees and the dwellings shown upon the indicative landscaping plan than that which was approved by the 2014 consent.

*It is considered that in this case refusal of the proposal on the basis of removal of trees could not be substantiated and subject to inclusion of conditions relating to tree protection and landscaping, which require schemes to be submitted to the LPA for written approval, it is considered that **the development is acceptable having regard to the aforementioned policy.***

Subject to conditions, the development is considered to be acceptable in this regard."

- 5.97 It is suggested that an appropriate condition can be placed on a Permission for the Landscaping Detail at Reserved Matters stage to be in accordance with the submitted Landscape Plan Dwg R-2305-1B Landscape Masterplan 500@A1 20-03-2020, together with a Landscape Management Plan that can be applied to all the wooded land within the Applicants control thus guaranteeing the significant public benefit of the future management and enhancement of the retained woodland.

Ecology

- 5.98 Turning to the ecology aspect of the Reason for Refusal, the Council alleges there will be a loss of an important ecological asset and that again, no mitigation has been proposed. No Development Plan policy is

ASSESSMENT OF PLANNING CASE

referenced in the Reason for Refusal and I note there is no specific Development Plan policy that requires a minimum Ecological Net Gain to be achieved.

5.99 However, a comprehensive Preliminary Ecological Appraisal (PEA) has been undertaken to assess the ecological value of the site and outline any necessary mitigation measures together with proposals to identify opportunities for enhancements. This is included with the application submission under reference **CD1p** - Preliminary Ecological Appraisal 08-11-2018. The PEA assesses both the Application site and the woodland area to the south of the Application site which is within the applicant's control.

5.100 The PEA sets out that the woodland (the majority of which lies to the south of the Application site) is of local level importance to nature conservation. The submitted assessment goes on to state that as the development would see the main proportion of the existing broadleaved woodland remain, it concludes that mitigation and enhancement measures detailed in the assessment can be undertaken to ensure there is no significant impact on ecology.

"It is considered that through the full adoption and implementation of mitigation and enhancement measures detailed in Section 6.3 and 6.4, the ecological impacts resulting from the scheme as proposed are not likely to be of significance to nature conservation at greater than the site level."

5.101 The proposed enhancements detailed within the submitted ecological assessment relate to the provision of bird boxes, bat boxes, sparrow boxes and hedgehog holes within the boundaries of the development to allow for the free movement of hedgehogs. These measures were further enhanced following consideration of the consultation response from West Yorkshire Ecology.

5.102 West Yorkshire Ecology advise in their initial consultation response that, having assessed the submitted ecological assessment, they consider that the development should lead to a net biodiversity gain of 10% in relation to that provided by the site already. They advise that if it is not possible to provide it within the site off site provision should be considered.

5.103 In relation to the West Yorkshire Ecology statement that a 10% Net Gain should be achieved, there is currently no legislative requirement to achieve a Net Gain in Ecology or for the applicants to prepare a Biodiversity Matrix. The Environment Act is yet to be enacted – and

ASSESSMENT OF PLANNING CASE

- even when it is enacted I understand there will be a transitional 2-year period for developers (the details of which have yet to be published).
- 5.104 The policy basis for the suggested requirement in this consultation response is therefore the NPPF and the Development Plan. The relevant Paragraph of the NPPF is Paragraph 175 which sets out the principles that local planning authorities should apply when determining planning applications. In this regard:
- P175a – there is no significant harm to biodiversity (as evidenced in the PEA and survey work that has been accepted by the Council).
- P175b – there is no SSSI that could be affected.
- P175c – there are no irreplaceable habitats on site (as evidenced in the PEA and survey work that has been accepted).
- P175d – this states: *“development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.”*
- 5.105 The NPPF therefore sets out a principle of encouraging net gains for biodiversity – but does not set out a requirement to achieve a net gain (nor is there any mention of a target 10% net gain). Similarly, the Practice Guidelines clarify that *“The National Planning Policy Framework encourages net gains for biodiversity to be sought through planning policies and decisions.”* Paragraph: 022 Reference ID: 8-022-20190721 Revision date: 21 07 2019. The suggestion that there is a current National policy that a net gain is required is simply erroneous.
- 5.106 Turning to the Development Plan there is no relevant Development Plan policy that requires Net Gain to be achieved.
- 5.107 Notwithstanding, the applicants have embraced the principle set out in the NPPF and proposed further ecological enhancements beyond those envisaged in the original PEA submitted with the Application.
- 5.108 The proposed measures have been expanded from the original submission to include the enhancement of an area of the woodland to the south of the site as set out on the proposed landscaping plan and described above. The landscaping plan includes additional hedgerow and sets out that (in addition to the 52 specimen trees) 378 sq. m of mixed native tree and shrub planting (40% of which are trees) would be planted in the woodland to the south of the site on land within the applicant’s control.

ASSESSMENT OF PLANNING CASE

- 5.109 On this basis and considering the several other enhancement measures specified, the application clearly satisfies the principle at Paragraph 175d of encouraging biodiversity improvements.
- 5.110 **N.B.** - Importantly, the proposal is not in conflict with any adopted Development Plan policy in relation to ecological matters. The case officer reached the same conclusion in his advice to Members:
- “...it is concluded that the development would have an acceptable impact upon ecology, biodiversity and protected species. Subject to conditions the development is concluded to accord to the aforementioned policy and legislation.”*
- 5.111 Importantly, the proposal clearly has the potential to achieve a Net Gain in Biodiversity including achieving the 10% target. A Net Gain matrix was not undertaken with the Application because there was no legislative or local policy requirement to do so at that time. However, the Appellants consider that a condition requiring an ecological net gain to be demonstrated and implemented would be reasonable on the basis the applicant controls all the woodland to the south which could be further improved through an ‘off setting’ arrangement if necessary.
- 5.112 In this regard, I have recently been made aware of a Council document titled 2020 December Guidance to Developers for Achieving Net Gain for Biodiversity. I have included this Document as reference **CD13**. The Document is not, however, currently available on the Council’s website.
- 5.113 The lawfulness of this Document is questionable because as far as I am aware it has not been the subject of consultation or independent testing and is not a Supplementary Planning Document. It is in effect a bottom draw policy document that is attempting to pre-empt the details of the Environment Act.
- 5.114 Notwithstanding, the appellant accepts that the principle of achieving a Net Gain in Biodiversity on the appeal site is to be embraced and that the mitigation measures proposed (as set out in the PEA and proposed landscaping plan) will achieve a Net Gain. A condition that requires a Net Gain to be achieved (an demonstrated through a Matrix) is welcomed and is reasonable if any shortfall identified by a Matrix (a less than 10% gain) could be made through ‘off-setting’ arrangements that include further enhancements to the woodland within the Applicant’s control.
- 5.115 In summary, the proposed development does not conflict with any of the saved policies of the Development Plan in relation to ecological matters and does meet the terms of the NPPF in relation to the proposed measures that will encourage an improvement in

ASSESSMENT OF PLANNING CASE

biodiversity. Furthermore, the applicant commits to achieve a minimum biodiversity net gain through an appropriate planning condition and the proposed ecological enhancement should therefore be afforded significant weight in favour of the proposal.

SUMMARY AND CONCLUSIONS

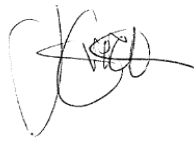
- 6.1 My intention in this Statement was to deal with the planning case for the proposal for 22 houses.
- 6.2 In relation to the principle of development, the site is within the urban area in proximity to a range of services and transport modes. The site is Previously Developed Land and has until recently benefited from Planning Permission for the development of 22 houses. Having regard to the adopted Development Plan policies, the proposal accords with those policies and is clearly acceptable in principle. Moreover, the site is in a sustainable location and accords with the basic principles of the NPPF.
- 6.3 Having regard to my assessment of the Planning Balance I have then considered whether there any other material circumstances that would outweigh the NPPF presumption that sustainable development should be permitted. I have concluded that the Application proposals will not cause any adverse effects and will deliver significant benefits including:
- Boosting the supply of market housing
 - Delivering high quality homes to a high standard of design
 - Delivering economic benefits through construction and resident spend, adding to the viability and vitality of this rural community.
 - Delivering an enhanced pedestrian footway as a betterment to the local highway infrastructure to the benefit of the wider community
 - Delivering a net gain in the ecology value of the site and securing the long-term management and enhancement of the woodland through a Landscape Management Plan
- 5.116 I also consider that the proposals will not have any significant adverse effect:
- On the residential amenity of existing occupiers adjacent to the site
 - On drainage or flood risk
 - On any known heritage assets
 - On highway safety
 - On trees or the ecological value of the site
- 6.4 Through the above assessment of the proposals against the core principles of sustainable development set out in the NPPF, it has been demonstrated how the proposals will deliver significant economic, social, and environmental benefits. As there are no other material considerations which would indicate otherwise, in accordance with the NPPF the proposed development should be approved without delay as it represents sustainable development.

SUMMARY AND CONCLUSIONS

- 6.5 I conclude that the Application proposals are in conformity with the Development Plan and the Policies of the NPPF and should be granted planning permission.

Statement of Truth

"The evidence which I have prepared and provide for this Statement is to the best of my knowledge true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions."



Signature:

Date: 8th February 2021.....

JAY EVERETT BSC HONS, MRTPI