



SOUTH AND WEST PLANS PANEL

**Meeting to be held in Civic Hall, Leeds on
Thursday, 7th March, 2024
at 1.30 pm**

MEMBERSHIP

Councillors

C Campbell
R Finnigan
T Smith
E Taylor
J Garvani
H Bithell (Chair)
E Bromley
L Buckley
N Manaka
A Rontree
P Wray

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**Agenda compiled by:
Tasha Prosser
Governance Services
Civic Hall**

Enquiries specific to planning applications on the agenda should be directed to Panel Team; Phone 0113 3786980 Email; planspanel@leeds.gov.uk

A G E N D A

Item No	Ward	Item Not Open		Page No
1			<p>APPEALS AGAINST REFUSAL OF INSPECTION OF DOCUMENTS</p> <p>To consider any appeals in accordance with Procedure Rule 15.2 of the Access to Information Rules (in the event of an Appeal the press and public will be excluded)</p> <p>(*In accordance with Procedure Rule 15.2, written notice of an appeal must be received by the Head of Governance Services at least 24 hours before the meeting)</p>	
2			<p>EXEMPT INFORMATION - POSSIBLE EXCLUSION OF THE PRESS AND PUBLIC</p> <p>1 To highlight reports or appendices which officers have identified as containing exempt information, and where officers consider that the public interest in maintaining the exemption outweighs the public interest in disclosing the information, for the reasons outlined in the report.</p> <p>2 To consider whether or not to accept the officers recommendation in respect of the above information.</p> <p>3 If so, to formally pass the following resolution:-</p> <p>RESOLVED – That the press and public be excluded from the meeting during consideration of the following parts of the agenda designated as containing exempt information on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press and public were present there would be disclosure to them of exempt information, as follows:-</p> <p>No exempt items or information have been identified on the agenda</p>	

Item No	Ward	Item Not Open		Page No
3			<p>LATE ITEMS</p> <p>To identify items which have been admitted to the agenda by the Chair for consideration</p> <p>(The special circumstances shall be specified in the minutes)</p>	
4			<p>DECLARATIONS OF INTERESTS</p> <p>To disclose or draw attention to any interests in accordance with Leeds City Council's 'Councillor Code of Conduct'.</p>	
5			<p>APOLOGIES FOR ABSENCE</p>	
6			<p>MINUTES OF PREVIOUS MEETING - 11 JANUARY 2024</p> <p>To receive and consider the attached minutes of the previous meeting held Thursday, 11th January 2024.</p>	7 - 14
7			<p>23/06049/FU - 28 LINGWELL AVENUE, MIDDLETON, LEEDS, LS10 3SU</p> <p>To receive and consider the attached report of the Chief Planning Officer regarding an application for permission for a change of use from a single family dwellinghouse (Use Class C3) into a Residential Care Home (Use Class C2) and the erection of a fence above the existing boundary wall at 28 Lingwell Avenue, Middleton, Leeds, LS10 3SU.</p>	15 - 28
8			<p>23/06050/FU - 178 TOWN STREET, MIDDLETON, LEEDS, LS10 3TH</p> <p>To receive and consider the attached report of the Chief Planning Officer regarding an application for permission for a change of use from a single family dwellinghouse (Use Class C3) into a Residential Care Home (Use Class C2) at 178 Town Street, Middleton, Leeds, LS10 3TH.</p>	29 - 42

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9			<p>23/03322/FU - SITE OF THE FORMER WHITE BEAR, DEWSBURY ROAD, TINGLEY WF3 1JY</p> <p>To receive and consider the attached report of the Chief Planning Officer regarding an application for electric vehicle charging facility (Sui Generis) and retail unit (Use Class E) with associated access, parking, servicing, and landscaping areas at the site of the former White Bear, Dewsbury Road, Tingley WF3 1JY.</p>	43 - 58
10			<p>23/06663/FU - FORMER HOUGH SIDE HIGH SCHOOL SITE, HOUGH TOP, SWINNOW, LS13</p> <p>To receive and consider the attached report of the Chief Planning Officer regarding an application for erection of 82 affordable dwellings and associated open space and infrastructure at Former Hough Side High School Site, Hough Top, Swinnow, Leeds, LS13.</p>	59 - 72
11			<p>PREAPP/23/00376 - LAND AT EVOLUTION HOUSE, 34 - 36 SPRINGWELL ROAD, HOLBECK, LS12 1AW</p> <p>To receive and consider the attached report of the Chief Planning Officer regarding a pre-application presentation of proposed development comprising demolition of existing buildings; and erection of a multi-storey (up to 27 storeys) residential development with multi-purpose internal and external amenity spaces, associated car parking, public open space and landscaping at land at Evolution House, 34 - 36 Springwell Road, Holbeck, LS12 1AW (PREAPP/23/00376).</p>	73 - 82

Item No	Ward	Item Not Open		Page No
12			<p>APPLICATION TO REGISTER LAND AT SUNNYBANK LANE RECREATION ROUND, SUNNYBANK LANE, THORNBURY, BRADFORD, BD3 7DG AS A TOWN OR VILLAGE GREEN UNDER THE PROVISIONS OF SECTION 15(1) OF THE COMMONS ACT 2006</p> <p>To receive and consider the attached report of the Chief Planning Officer and Head of Legal Service regarding an application to Application to Register Land at Sunnybank Lane Recreation Ground, Sunnybank Lane, Thornbury, Bradford, Bd3 7dg as a Town or Village Green under the provisions of Section 15(1) of the Commons Act 2006.</p>	83 - 94
13			<p>DATE AND TIME OF THE NEXT MEETING</p> <p>To note the date and time of the next meeting as Thursday, 4th April 2024 at 1.30pm.</p> <p><u>Third Party Recording</u></p> <p>Recording of this meeting is allowed to enable those not present to see or hear the proceedings either as they take place (or later) and to enable the reporting of those proceedings. A copy of the recording protocol is available from the contacts named on the front of this agenda.</p> <p>Use of Recordings by Third Parties– code of practice</p> <ol style="list-style-type: none"> a) Any published recording should be accompanied by a statement of when and where the recording was made, the context of the discussion that took place, and a clear identification of the main speakers and their role or title. b) Those making recordings must not edit the recording in a way that could lead to misinterpretation or misrepresentation of the proceedings or comments made by attendees. In particular there should be no internal editing of published extracts; recordings may start at any point and end at any point but the material between those points must be complete. 	

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SOUTH AND WEST PLANS PANEL

THURSDAY, 11TH JANUARY, 2024

PRESENT: Councillor H Bithell in the Chair

Councillors C Campbell, R Finnigan,
T Smith, E Taylor, J Garvani, E Bromley,
L Buckley, N Manaka, A Rontree and
P Wray

SITE VISITS

Councillors Campbell, Taylor, Garvani, Bithell, L Buckley, Manaka and Rontree attended the site visit earlier in the day.

It was noted that Councillor Smith made best efforts to attend the site visit, but unfortunately could not make it due to being stuck in traffic.

63 Appeals Against Refusal of Inspection of Documents

There were no appeals.

64 Exempt Information - Possible Exclusion of the Press and Public

There were no exempt items.

65 Late Items

There were no formal late items.

66 Declarations of Interests

No interests were raised.

67 Apologies for Absence

No apologies were received.

68 23/06479/FU - 13 Farfield Avenue, Farsley, Pudsey, LS28 5HD

The report of the Chief Planning Officer presented an application for a first-floor side and rear extension at 13 Farfield Avenue, Farsley, Pudsey, LS28 5HD.

Photographs and slides were shown throughout the officer presentation, and the following information was provided:

- The application is submitted in a personal capacity, by or on behalf of Members, Directors or any other officer who carries out development management functions.

- The dwelling is not in a Conservation Area nor is it a Listed Building. There are also no tree preservation orders on or abutting the site.
- The property affords a single storey wrap around side/rear extension at present which is to be retained.
- The topographical feature is consistent among neighbouring properties and across the rear boundary are further residential dwellings.
- The property is set at a higher ground level than the adjacent property at No.11 causing the rear elevation to be higher than its frontage.
- There are no extensions on the adjoining neighbour property.
- The dwelling retains good distances to all boundaries and the proposal will create an additional 2 bedrooms. The property is set back and there is no over-looking or harmful over-dominance.
- All the proposed materials match the existing streetscape.
- The application is considered compliant in terms of planning policies.

Further to clarity regarding paragraph 23 of the submitted report, officers confirmed that the phrase ‘terracing’ is when semi-detached properties are removing the gap between the dwellings.

Upon voting, a motion was put forward to move the officer recommendation. This was moved and seconded. Therefore, it was unanimously **RESOLVED** – To grant planning permission.

69 23/05968/S106 - Former Airedale Mills, Moss Bridge Works, Town Street, Rodley, Leeds, LS13 1HP

The report of the Chief Planning Officer presented an application under S106A for the modification or discharge of Planning Obligations pursuant to Section 106A of the Town and Country Planning Act 1990 to vary the existing S106 Agreement to application 18/01501/OT to remove the build to rent and PRS covenants at Former Airedale Mills, Moss Bridge Works, Town Street, Rodley, Leeds, LS13 1HP.

Photographs and slides were shown throughout the officer presentation, and the following information was provided:

- The application is referred to Panel due to the significance of the proposal to vary an existing S106. The existing S106 Agreement was completed on 01/07/2019 for planning application 18/01501/OT.
- Members were provided with some brief history of the site, as previously discussed at the Panel meeting held on Thursday, 26th October 2023.
- The proposal seeks to remove the standard restrictions within the current S106 Agreement, paragraph 2 of the First Schedule of the Deed of Variation, as the applicant is seeking flexibility to provide standard affordable housing provision of 15%, in line with the approved scheme or additional affordable housing via a scheme which would deliver 100% affordable housing.
- The applicant will continue to provide 15%, and this is considered policy compliant. Further to this, officers have suggested a clause to

the applicant in that confirmation of the level of provision will be provided.

Further to questions from Panel Members, the following was confirmed by officers:

- A clause has been suggested to the applicants, in that, confirmation be provided to the Local Planning Authority the level of affordable housing provision that will be provided; prior to commencement with the intention of proceeding with the scheme.
- There are recent reports of issues with the swing bridge and the provision of the bridge remains in the extant planning permission that has already been provided and has been signed off by engineers.
- The applicant will either provide 15% affordable housing or 100%. There will not be a 'floating' figure in-between that. Both options provide policy compliant schemes.

Further to comments from Panel Members, the following was relayed:

- The importance of ensuring any variations with the application are brought back to a Plans Panel for consideration.
- Concerns over the safety of the swing bridge and its operation, as well as the impact on the nature reserve.
- To consider including more socially rented properties in the future.

Upon voting, a motion was put forward to move the officer recommendation. This was moved and seconded and therefore it was **RESOLVED** – To grant permission.

70 23/03467/OT - Field off Westerton Road, Tingley, WF3 1AE

The report of the Chief Planning Officer presented a report for an Outline Planning Application for the erection of nine dwellings, with some matters reserved except for access at Field Off Westerton Road, Tingley, WF3 1AE.

Photographs and slides were shown throughout the officer presentation, and the following information was provided:

- The development will be accessed off the new road and junction from Westerton Road (currently being constructed) serving part of the adjacent Redrow Homes development, the latter being built out pursuant to SAP allocations HG2-168 and HG2-169, under outline planning permissions references 17/08262/OT (for up to 299 dwellings) and 21/07156/RM (for 289 dwellings).
- The site is a small agricultural piece of land that forms part of a wider area of open land that sits within the built-up area of West Ardsley. The application site is within designated land under saved UDP Policy N11, which restricts uses within the land to open uses only, such as agriculture or recreation.
- The current proposal for up to 9 dwellings is an outline planning application, seeking to establish the principle of residential development in that location. It does not include its design, layout, appearance of houses etc.

- The application site was not put forward as a site for SAP allocations at the time the other parcels of land were. Only open land uses are permitted on the application site. The proposal for residential development does not come into the use of UDP Policy N11 and it is considered to impact on the openness and character of the area. Therefore, officers are putting forward a recommendation to refuse the application.
- Additional cars will also be using the access point, creating access and highway safety issues.

The applicant and representatives were invited to make representation. The following was highlighted:

- Language used refers to Greenbelt determination rather than small windfall sites.
- There is confusion regarding Policy N11, and Panel Members were asked to defer the matter.
- Officers previously advised that the application would be presented at Plans Panel with a recommendation of approval, until 13th October where the applicant was advised that they had investigated Policy N11 in greater detail and discussed with landscape and ecology colleagues and therefore the recommendation changed to refusal. Further to discussions with senior landscape and ecology officers, they also presented support for the application.
- The land will be surrounded with new and future development and there are no long-distance views to be protected because of such development.
- There is a benefit in approving a small windfall site rather than a field full of houses.

Further to a question regarding affordable housing, it was confirmed that there is no requirement to provide affordable housing on a proposal for 9 dwellings.

Further to questions to officers, the following information was confirmed:

- Officers cannot answer whether the parcel of land would have been determined as part of the SAP process in determining land. It was reiterated that the Local Planning Authority do have an allocated SAP and Core Strategy and forms part of development documents and a designation within the Local Plan.
- It is not unusual for officers to have different opinions. The original recommendation was to refuse the application, and the applicant convinced officers otherwise. Officers have since then reverted to their original decision and is recommending the application for refusal.

Further to comments from Panel Members, the following was relayed:

- The local community are already impacted by the addition of 299 dwellings and the community are not benefiting from the development and will not want any additional housing.
- There is an increased impact on local infrastructure, local schools, and health centres.

- The Panel should not deviate from existing policies and the site does not form part of the SAP. The site sits within UDP Policy N11, and it is not considered a reasonable loss of open land.
- It is 9 dwellings with 4-bedrooms, and it does not suit the housing mix.
- The proposal will create another loss of greenspace and amenity.

Upon voting, a motion was put forward to move the officer recommendation. It was moved and seconded to refuse planning permission. Therefore, it was unanimously

RESOLVED – To refuse planning permission.

71 23/01733/FU - Land Off Bradford Road East Ardsley

The report of the Chief Planning Officer presented an application for a residential development comprising of 56 no. dwellings with associated landscaping and infrastructure at Land Off Bradford Road East Ardsley.

Photographs and slides were shown throughout the officer presentation, and the following information was provided:

- The application relates to a greenfield site that is currently allocated for a new school in the Site Allocations Plan (SAP) under SAP Ref: HG5-8 which is located in the Outer South West Housing Market Characteristic Area (HMCA).
- The application proposes a development of 56 new dwellings.
- The application is a full planning application seeking permission for all details and follows the approval of detail planning reference 17/04308 which provided consent for 299 dwellings on the adjacent land by the same applicant.
- To the south-east of the site is where the listed St. Michael's Church is visible above some of the existing houses and tree canopies.
- The application site is bound to the west by Bradford Road, with residential properties along Woodlands Drive. The Copse and Woodlands Close adjoining the sites southern boundary.
- There is a good mixture of parking to the front of properties and drives provided.
- The dwellings are arranged off a single spine road with a small cul-de-sac at the mid-point and terminating in short private drives towards the eastern end.
- The area to the front of the application site is public open land.
- The development does not over-dominate neighbouring sites.
- Officers provided an overview of the different house-types to be provided on-site as well as confirmation that there is a single bungalow proposed.

Councillor Foster attended the Panel meeting and provided the following information:

- The council originally considered the site for a new school, and this highlights a geographical importance for East Ardsley.

- There has been no effort to establish a community space in East Ardsley for its residents.
- Most people must use their car to get places and there is already a failing public transport system.
- It is believed that there is a drive to install high value properties rather than closing the gap of deprivation and providing affordable housing.
- The application site has education land uses until 2028 and there is a legal obligation to allow an application to come forth for that need.
- The land has significance importance to the community, and it is an ideal school location.

The applicant informed the Panel, providing the following information:

- Paragraph 72 of the submitted report should read 'Flood Zone 1' and not '2'.
- Paragraph 52 should read '21 2-beds 37.5%' which would mean this sits above the relevant policy in terms of housing mix.
- A CIL contribution of 321k is considered reasonable and will be provided.
- Birth rates for 2022 have been looked at, and they are falling and continue to fall. Therefore, it is considered that education land is not required.
- The remitted SAP meant that there are allocations not going ahead, and there are 1,137 dwellings less than the SAP originally expected.
- The site is not suitable for alternative uses such as retail and employment.
- It is considered that it would be a missed opportunity for Barratt Homes if they do not move onto this piece of land. There is an existing workforce on-site and it is a natural progression for the applicant.
- There are several benefits in terms of the CIL contribution bettering local community facilities, and the provision of affordable housing.

Further to questions to officers, the following was confirmed:

- There will be a single point of access for 355 dwellings. There is not a figure on the limit for a single point of access. The junction has been assessed and it is considered that it has met the transport capacity assessment and there is spare capacity at the junction.
- It is reported that over a 5-year period, births across Ardsley have dropped 22%. The existing schools in the area have capacity to take on new children as a result of the development.
- If the application site was used for a school, this would currently impact on other primary schools in the local area, and it would not be financially viable.
- Other members raised concern regarding the possible demographic implications in the future and were concerned regarding a changing demographic.
- The layout of the application site is considered 'uninspiring' and there are very few trees proposed in the open greenspace. It is believed that there is a missed opportunity in terms of the layout.

- The community has already accepted 299 dwellings and the proposals are in addition to that figure.

At this point in the meeting, a motion was put forward to defer and delegate approval to the Chief Planning Officer subject to officers having conversations with the applicant regarding design and layout. Officers requested that additional information on specific requests are relayed to officers to be able to undertake discussions with the applicant.

Prior to a vote being taken on the motion above, further comments were made by Panel Members on the following:

- Members requested that an alternative layout is provided to better utilise the greenspace and to provide additional tree planting / options for community use such as a 'community orchid'.
- Members commented on the single access and explained it would be better if there were 2 points of access. Officers confirmed that advice has already been received from the Highways department and this has been assessed.
- Figures for EN1 to understand how the applicant will meet their obligation to meet renewable targets.

An amended motion was made, to include specific details regarding landscaping and the segregation of pedestrian and vehicular movement and to minimise vehicles parking on grass verges. It was also requested that the Chairs approval is gained on the final proposal before permission being granted.

Upon voting on the amended motion for the reasons as set out above, it was subsequently moved and seconded and therefore it was **RESOLVED** – To defer and delegate approval to the Chief Planning Officer for approval subject to gaining the Chairs approval, as well as the addition of:

- Reference to Departure added to recommendation.
- Case officer to negotiate improved planting including trees to greenspace to improve appearance and biodiversity.
- Case officer to negotiate measures to be added to layout to separate pedestrian and vehicular movement and to minimise vehicles parking on verges.

72 Date and time of the next meeting

RESOLVED – To note the date and time of the next meeting as Thursday, 8th February 2024 at 1.30pm.

(The meeting ended at 15:15).

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Originator: Emer Byrne

Tel: 0113 3367331

Report of the Chief Planning Officer

SOUTH & WEST PLANS PANEL

Date: 07/03/2024

Subject: 23/06049/FU – Permission for a change of use from a single family dwellinghouse (Use Class C3) into a Residential Care Home (Use Class C2) and the erection of a fence above the existing boundary wall at 28 Lingwell Avenue, Middleton, Leeds, LS10 3SU

APPLICANT

Mabida Company

DATE VALID

14/11/2023

TARGET DATE

09/01/2024 (ext. of time agreed until 09/03/2024)

Electoral Wards Affected:

Middleton

Yes (Ward Members consulted referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION: Approval subject to conditions

- Time limit on full permission
- Development to be carried out in accordance with the approved plans
- Management Plan Provision and Adherence
- Parking Implementation and Retention
- Details of Waste Collection Provision
- Boundary Treatment Height Retention
- Details of Additional Security Measures (Informative)

INTRODUCTION:

1. This application has been brought to plans panel at the request of Cllr Dixon, who has raised concerns that the following proposal will have a negative impact on public and highway safety and lead to an increase in anti-social behaviour. Cllr Dixon also expressed that the proposal would cause for there to be a saturation of care facilities within the area and that the introduction of a care facility will impact property values in the area.

2. The applicant seeks permission for a change of use from an existing single family dwellinghouse (Use Class C3) into a Residential Care Home (Use Class C2). From the supporting cover letter, it notes that the proposed care home will provide accommodation for a maximum of two children, up to the age of 18 who will be receiving care.
3. In addition to the proposed change of use the applicant has also proposed the erection of a close board timber fence above the existing southern boundary wall adjacent the public highway of Mount Pleasant to a height of 1.8m.
4. As will be outlined below the proposed change of use is considered to be acceptable in principle and will not cause adverse harm to residential amenity or highway safety. As such the application is recommended for approval.

PROPOSAL:

5. The applicant seeks permission for a change of use from a single family dwellinghouse (C3(a)) to a Residential Care Home for children with special and learning disabilities between the ages of 8 -17 years old (C2).
6. The applicant states within their supporting statement that the property will provide accommodation for 2 children who will be receiving care and will be a place of work for 3-4 members of staff who will be providing care for the children residing there. It goes on to note that a member of staff will be at the premises 24 hours a day, with the care staff operating on a shift basis.
7. Furthermore, the applicant has proposed the construction of a 1.8m close board timber fence behind the existing boundary wall and vegetation. The proposed fence will stretch along the side boundary line, behind a line of existing conifers, for approximately 26.0m.

SITE AND SURROUNDINGS

8. The application site relates to a detached bungalow style property which is constructed out of a mixture of red brickwork with elements of buff-coloured rendered stonework on the front elevation, all of which is covered by a hipped tiled roof.
9. The application property is located on a corner plot, with the site being at the intersection of Lingwell Avenue and Mount Pleasant. Due to the corner nature of the property, the associated amenity space of the property is relatively open to the public, with the current boundary treatment consisting of a 0.8m high boundary wall with additional vegetation behind it. It should also be noted that there are level differences between the main public highway and the rear amenity area of the application site, with the ground level along the public footpath being much higher.
10. Overall, the property is current used as a single dwellinghouse within a predominantly residential area, with the surrounding properties varying in terms of size, scale and design. Furthermore, the application site is located in an area which benefits from good public transport links and is in close proximity to public amenities.

RELEVANT PLANNING HISTORY:

- Planning applications:
11. Reference: 23/04150/CLP

Proposal: Certificate of Proposed Lawful Development for change of use to a residential care home.

Status; Refusal

Date: 25-08-2023

Pre-application enquiries:

12. None

Planning Enforcement cases:

13. None

HISTORY OF NEGOTIATIONS:

14. The applicant previously applied for a certificate of proposed lawfulness for the change of use from a single family dwellinghouse into a residential care home in August 2023 (23/04150/CLP). But the certificate was not granted due to officers considering that a change of use from a C3(a) to C2 would amount to a material change of use and would therefore require planning permission.
15. During the course of the current application officers have requested from the applicant additional information in order to overcome concerns which have been raised by the public. For example, on the 2nd January 2024 the applicant provided a proposed block plan in order to demonstrate that there will be sufficient parking on site for members of staff and visitors.
16. In addition to this the applicant also provided on 21st December 2023 an example of the staff shift patterns in order to show that the changing of staff will not occur at unsocial hours which will disrupt neighbouring residents.
17. On the 19th February the applicant submitted a copy of the Management Plan created by the care home company (Madiba), in order to address some of the concerns raised through third party comments. The applicant also provided revised plans at the request of officers which places the proposed fence along the side line, behind the existing vegetation in order to reduce its visual impact on the streetscene, whilst also allowing the fence to be in line with the requirements set by OFSTED and West Yorkshire Police.

CONSULTATION RESPONSES:

Statutory and Non-Statutory Consultees:

18. Flood Risk Management: No objection
Highways: No objection, subject to conditions
West Yorkshire Police: No objection, subject to conditions

PUBLIC/LOCAL RESPONSE:

19. A site notice was put on display in the immediate vicinity of the application site on the 14th December 2023. In response to the notice going up the follow comments have been made by third party individuals:

Comments in Support:

20. 5 letters of support were received in relation to this application. The following is a summary of the points raised in these letters of support:

- Benefit to residents of development and their families.

- Brings employment opportunities to the area.

The Agent dealing with a neighbouring application (23/06050/FU) also provide comments stating that the change of use would create a space place for all children in need.

Comments in Objection:

21. 30 letters of objection were received in relation to this application. The following is a summary of the points raised in these letters of objection:

- Was not informed by the Council of this development – site notice was removed.
- The proposed fence is not in keeping with the character of the streetscene.
- The proposed fence will cause overshadowing issues.
- Concerns raised surrounding the internal layout of the property and how it would be inappropriate for users.
- Noise and disturbance raised due to movement happening at the property.
- The proposed change of use would give rise to crime and anti-social behaviour, due to the occupants of the property. Thus, having an impact on the safety of local residents.
- Lack of sufficient parking on-site to cater for both staff and visitors and would cause further traffic congestion.
- The proposed development is considered inappropriate as it will change the general residential character of the area.
- Inappropriate locations should be in a more affluent area of Leeds.
- Overwhelm the Police and other services.
- Impacts on the drainage system.
- Concerns that permission will be given to one set of vulnerable individuals but the actual end user will be different.
- Decrease in property values.
- General objection to the type of development and residents who will reside in the property.

Comments from Ward Members:

22. Ward Members from the Middleton Area also submitted comments in relation to this application. The following is a summary of the points raised in Ward Members Letters.

- High saturation of care facilities within the area.
- Decrease in property values within the area.
- Gives rise to anti-social behaviour.
- Highway concerns regarding; On street parking, road safety concerns.
- The residents would not be rooted in the community (Lack of community cohesion)

PLANNING POLICIES:

LOCAL PLANNING POLICY AND GUIDANCE

The Development Plan

23. Section 38(6) of the Planning and Compulsory Purchase Act states that for the purpose of any determination to be made under the Planning Acts, the determination must be in accordance with the plan, unless materials considerations indicate otherwise. The development plan currently comprises the adopted Local Development

Framework Core Strategy (as amended 2019), those policies saved from the Leeds Unitary Development Plan Review (2006), the Aire Valley Leeds Area Action Plan (2017), the Natural Resources and Waste Local Plan (as amended 2015), the Site Allocations Plan (as amended 2024) and any made Neighbourhood Plan.

24. **Core Strategy (as amended by the Core Strategy Selective Review 2019)**- The Core Strategy (as amended) is the main strategic document within the Local Plan for Leeds and sets out the strategic policy framework for the district to 2028 and a housing requirement to 2033. It comprises a long-term spatial vision and strategic objectives, a spatial strategy, thematic policies and a monitoring and implementation framework. The following Core Strategy (as amended) policies are relevant:
- P10: Design
H9: Minimum Space Standards
T2: Highway Safety
25. **Unitary Development Plan (UDP) adopted in 2006**- The UDP sets the spatial strategy for the Leeds Metropolitan district and allocates sites within the area for specific uses. Many of the UDP policies have been superseded by the Core Strategy, Natural Resources and Waste Local Plan, The Aire Valley Leeds Area Action Plan and Site Allocations Plan. However, there are 'Saved Policies' which remain relevant for Development Management purposes. The application site is not designated for any specific purpose within the UDP Review (2006) although it lies within an area for neighbourhood renewal. The following saved policies are of relevance:
- GP5: General Consideration
BD5: Amenity Consideration
N25: Boundary Treatments
26. **The Site Allocation Plan (SAP) as amended in 2024** – This allocates land following for housing and employment and designates green space and retail centres within the Metropolitan District of Leeds (except for the AVLAAP area). *The Site Allocations Plan was adopted in July 2019. Following a statutory challenge, Policy HG2, so far as it relates to sites which immediately before the adoption of the SAP were within the green belt, has been remitted to the Secretary of State and is to be treated as not adopted. All other policies within the SAP remain adopted and should be afforded full weight.* The application site is not specifically referenced in the SAP.
27. **Natural Resources and Waste Local Plan (NRWLP) amended 2015** – This comprises of policies and allocations relating to climate change, air quality, flood risk, mineral and waste. The following policies are relevant to the submitted proposal:
- WATER 7: All Developments are required to ensure no increase in the rate of surface water run-off into the existing formal drainage system and development expected to incorporate sustainable drainage techniques.
28. **Made Neighbourhood Plans** – Planning applications need to take into account any made Neighbourhood Plans in addition to the plans adopted by the Council. There are no made Neighbourhood Plans relevant to this site.

Relevant Local Supplementary Planning Guidance/Documents

29. **Supplementary Planning Documents (SPDs)**- SPDs and supplementary guidance provide additional planning guidance to policies in the adopted Local Plan. SPDs and supplementary guidance considered of relevance:

SPD Neighbourhoods for Living (2003 – updated 2015)
SPD Transport (2023)

NATIONAL PLANNING POLICY AND GUIDANCE

National Planning Policy Framework

30. The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are expected to be applied. It sets out the Government's requirements for the planning system. The NPPF must be taken into account in the preparation of local and neighbourhood plans and is a material consideration in planning decisions.
31. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise (section 38(6) Planning and Compulsory Purchase Act 2004). The National Planning Policy Framework is an important material consideration in planning decisions.
32. The following sections of the NPPF are most relevant for the purposes of determining this application:
- Section 2: OBJ Achieving Sustainable Development.
 - Section 8: OBJ Promoting healthy and safe communities.
 - Section 9: OBJ Promoting sustainable transport.
 - Section 12: OBJ Achieving well-designed and beautiful places.

National Planning Practice Guidance

33. The Planning Practice Guidance (PPG) provides commentary on the application of policies within the NPPF. The PPG also provides guidance in relation to the imposition of planning conditions. It sets out that conditions should only be imposed where they are necessary; relevant to planning and to the development to be permitted; enforceable; precise and reasonable in all other respects.

CLIMATE EMERGENCY:

34. The Council declared a climate emergency on the 27th March 2019 in response to the UN's report on Climate Change.
35. The Planning Act 2008, alongside the Climate Change Act 2008, sets out that climate mitigation and adaptation are central principles of plan-making. The NPPF makes clear that the planning system should help to shape places in ways that contribute to radical reductions in greenhouse gas emissions in line with the objectives of the Climate Change Act 2008.
36. As part of the Council's Best City Ambition, the Council seeks to deliver a low-carbon and affordable transport network, as well as protecting nature and enhancing habitats for wildlife. The Council's Development Plan includes a number of planning policies which seek to meet this aim, as does the NPPF. These are material planning considerations in determining planning applications.

PUBLIC SECTOR EQUALITY DUTY:

37. The Equality Act 2010 requires local authorities to comply with the Public Sector Equality Duty. Taking into account all known factors and considerations, the requirement to consider, and have due regard to, the needs of diverse groups to eliminate discrimination, advance equality of opportunity and access, and foster good relations between different groups in the community has been fully taken into account in the consideration of the planning application to date and at the time of making the recommendation in this report.

MAIN ISSUES:

- Principle of Development
- Impact on Visual Amenity
- Impact on Residential Amenity – Amenity of Occupants and Amenity of Neighbours
- Impact on Public and Highway Safety
- Drainage and Flood Risk Management
- Public Sector Equality
- Representations

APPRAISAL:

Principle of Development

38. Spatial Policy 1 of the Leeds Core Strategy relates to the location of development and confirms that the overall objective is to concentrate the majority of new development within and adjacent urban areas, taking advantage of existing services, high levels of accessibility, priorities for urban regeneration and an appropriate balance between brownfield and greenfield land, to promote sustainable development.
39. The proposal seeks to change the use of No.28 Lingwell Avenue from a dwellinghouse within Use Class C3 (a) into a Residential Care Home for children/young adults within the Use Class of C2. The existing property is located within a popular and sustainable residential area with good links to highway networks and public transportation. However, concerns have been raised that the proposed development would be inappropriate in this location, due to it having an impact on the residential character of the area.
40. Whilst this concern is noted, the residential character of the immediate area would not be disturbed by the introduction of a care home, such that there would be an unsustainable impact. The care home is a low intensity use, with the manner of occupation similar to that of a standard C3 family dwelling. The home will have 2 resident children and 2-4 adult staff being present for each shift, depending upon the needs of the individual children. The number of individuals at the property and the ratio between adults and children is therefore akin to many residential dwellings with two adults and two children, or if greater staffing ratios are required, those where multiple generations live under one roof (child, parents, grandparents). Furthermore, the change of use and the resulting movements which will occur around the property, such as shift changes for staff and the children being taken out for school and extra activities, would not alter the residential character of the area. As these movements would be similar to the patterns of movement that would happen on an average day for a normal C3 dwellinghouse, e.g. parents going to work, children going to school and after school activities and the comings and goings of general visitors to a dwellinghouse.

41. There are many scenarios within a standard C3 dwelling where a range of movements occur at different times of day. Those working shift patterns will leave and return from work at non-standard hours, and where people are receiving visits from carers there will be multiple vehicle movements to and from the property, throughout the day. Therefore the proposed end use would not result in an unsustainable impact upon the immediate area, and accords with the aims of Spatial Policy 1, and there is no policy context that could reasonably prevent a change of use from a C3 use to a C2 use. Therefore, the principle of the change of use is considered to be acceptable, subject to a consideration of other issues such as impact upon residential amenity and highways, which will be discussed in further details below.

Impact on Visual Amenity

42. The National Planning Policy Framework states that “good design is indivisible from good planning” and authorities are encouraged to refuse “development of poor design”, and that which “fails to take the opportunities available for the improving the character and quality of an area and the way it functions, should not be accepted”. Leeds Unitary Development Plan Policy GP5 states that “development proposals should seek to resolve detailed planning considerations including design” and should seek to avoid “loss of amenity whilst Policy BD6 states that “all alterations and extensions should respect the form and detailing of the original building”, whilst N25 relates specifically to boundary treatments and requires that they are contextually appropriate.
43. As stated within the site and surroundings section of this report, the application property is set on a corner plot at the intersection of Lingwell Avenue and Mount Pleasant, with both its front and side boundary being adjacent to the highway. It was also highlighted within this section that the current boundary treatment encircling the property is a 0.8m high brick wall, with the wall along Mount Pleasant having stepped down design towards the rear in order to accommodate the change in land levels along this street.
44. Within the immediate area there is a sense of space and openness which is considered to be an attractive characteristic feature of the streetscene. This sense of space and openness is strengthened by the large majority of dwellings within the surrounding area being bounded to the front by low walls and vegetation or benefiting with no boundary treatments at all, which helps soften the divide between public and private spaces.
45. Initial concerns were raised through third party comments that the proposed boundary fence would disrupt the establish character within the streetscene by introducing a large and defensive boundary treatment. Justification for the placement and height of the fence was given by the applicant, stating that the 1.8m height was a requirement set by OFSTED. Considering both comments officers sought to compromise with the applicant, noting that there was a drastic level difference between the rear garden and the boundary wall, as well as there being a row of decorative conifers behind the existing wall. It was therefore requested and later agreed upon that the proposed fence be repositioned behind the existing conifers. This allows for the requested height of 1.8m to be retained and for there to be a minimal impact of the visual amenity of the streetscene.
46. In addition to the proposed boundary treatment, officers consider that the proposed change of use from a C3 dwelling to a C2 care home is unlikely to cause harm to visual amenity of the property and the locality. This is because the proposed change

of use will not drastically alter the dwelling's established character as the building will continue to appear as a single family dwellinghouse within its residential setting.

Impact on Residential Amenity

47. Core Strategy Policy P10 notes that developments should protect amenity, and this is also reflected in saved UDP policies GP5 and BD5, with the latter noting that "all new buildings should be designed with consideration given to both their own amenity and that of their surroundings." Regarding this officers consider that the amenity of both the occupants and the surrounding neighbours will not be harmed by the proposed development, with full explanation for this judgement being set out below.

Amenity of Occupants:

48. The proposed floor plans show that there will be two bedrooms, kitchen/dining room, staff officer and a sensory lounge. Although Policy H9 of the Core Strategy (minimum space standards) only applies to new homes, it is considered to be a useful guide for ensuring that the property can comfortably accommodate its occupants. Therefore, a 2-bedroom bungalow property should have a minimum gross floor area of 70sqm, the application property is seen to have a floor area of approximately 90.5sqm which is considered to be a sufficient amount of floor space.
49. Notwithstanding this, a concern was raised by a neighbour that the proposed layout of the care home is inappropriate and would not be suitable for its proposed use, with the comment paying attention to the proposed bathroom in the staff office. Officers do recognise that there is a bathroom facility located within the staff office and consider this to be appropriate as this will not only be a home for those individuals seeking care but also a place of work for those providing care. Therefore, it is reasonable and appropriate for staff to have their own sperate bathroom. The submitted plans also show that there is a large central bathroom (labelled shower room on the plans) which will be used by the children.
50. In addition to the internal layout of the care home it is considered that the outdoor amenity space of the care facility is acceptable. Similar to above, while the guidance set in the Neighbourhoods for Living SPG (2003) relates to family dwellings its content is useful, especially in this case where the application site will operate like a C3 dwelling. Page 31 of the Neighbourhoods of Living SPG states that private gardens should have a minimum area of 2/3 of the total gross floor area of the dwelling. From the submitted site plan, the rear garden has an area of approximately 368sqm, thus complying with the guidance. As such the proposed development is consider by officers not to have a harmful impact on the amenity if its occupants, and thus acceptable in this regard.

Amenity of Neighbours:

51. Several concerns have been raised by public with regards to this application, with the issues stemming from the overshadowing impact created by the proposed boundary treatment and the level of noise and disturbance created by the development, to the possible fear that the end users will cause there to be a rise in anti-social behaviour and crime levels. The following section will aim to address each of these concerns in turn.
52. In terms of the proposed boundary treatment, initially plans showed the closed board timber fence to be placed on top of the existing boundary wall to a maximum height of 1.8m. Whilst the proposed fence would be visually obtrusive it was not considered to

have an overshadowing impact on the properties along Mount Pleasant. This was because the fence is situated to the south, meaning that throughout the day the shadow casted by the sun will be over the applicant own private amenity space and will thereby no prevent light from shining into the main windows of the properties along Mount Pleasant. Since the initial submission of the scheme, revised plans have been provided (date: 19th February) which shows the proposed fence to be situated behind existing vegetation and to be lower down, due to land level differences. This in turn further minimises the presence of the fence and eliminates any possible overshadowing harm. Furthermore, as there are little to no alterations to the exterior of the original dwellinghouse, it is considered by officers that the proposed development would not have an impact on the amenity of neighbouring residents through over-dominance nor overlooking.

53. One of the primary concerns express by neighbours was that the proposed change of use would lead to an increase in noise and disturbance, especially from the comings and goings of staff members and children (school and additional activities). As stated within the Principle of Development section in this report, it is believed that the care home will share similar characteristics to that of a traditional residential property, which includes the movement of its inhabitants and level of noise which it will produce.
54. In order to demonstrate that proposed care home will not cause adverse harm to neighbours, officers requested from the applicant to show how typically shift patterns will fall in a 24-hour period. From this it was demonstrated that the shifts would start and finish at points in the day when ordinary family movements may occur. For example, the day shift starts at 07:30, a similar time to when people may be leaving for work and ends at 23:00. While officers acknowledge that vehicle movement at 23:00 may not be considered typical behaviour, it could be akin to the movements those who work night shifts and other unsociable hours. This combined with their only being 2 members of staff who will leave at this hour is considered to be reasonable and would not result in excessive noise and disturbance which would be harmful to the living conditions of neighbouring occupants.
55. Another concern mentioned within third party comments is that the proposed development, particularly the end users of the development would cause for there to be an increase in anti-social behaviour and crime in the area, with some even going on to state that the development would be a strain on public services, like the police, or that it should be located in a more "affluent area" of Leeds.
56. Due to these concerns regarding the increase of anti-social behaviour and crime, officers thought it would be reasonable to consult with West Yorkshire Police on this application. In response to this consultation West Yorkshire Police stated that the proposed change of use is acceptable in principle and will not cause adverse impact on the living conditions of neighbouring residents, subject to the attachment of conditions relating to increasing the security of the residential care home. Besides from confirming that the proposed change of use would not give way to an increase in anti-social behaviour, the consultee also confirmed that the proposed development is unlikely to put a strain on existing police resources.
57. It should also be noted that the applicant has provide a management plan which highlights the protocol taken if concerns around noise and anti-social behaviour do arise (referral process and Emergency Support). Furthermore, as this is a care facility it is likely to be regulated and managed the appropriate associated bodies (i.e. OFSTED). Therefore, it can be viewed that a C2 property (care home) would be managed and regulated in a way that standard C3 dwellinghouse would not be, as

people are employed to ensure that no harm will come to both the residents of the care home and the surrounding neighbours.

58. Finally, regarding the comments made by members of the public that state that the proposed care home should be relocated into a more “affluent area” of Leeds, due to it having a negative impact on the area. There are a range of care homes across Leeds, serving the needs of children and adults, and recent applications identify that similar proposals to the current application are located in Wetherby, Adel, Halton, Cross gates, Moortown and Roundhay. It is thus the case that care homes are distributed across the city. It should also be noted that there is no evidence showing a correlation between the introduction of care homes for those with physical disabilities and a rise in anti-social behaviour.
59. Concern has also been raised regarding the possibility that the occupants of the care home will change in future years. It is the case, that planning permission would be granted for a C2 care home, which includes all types of possible care. Whilst it is difficult to envisage a lawful planning condition which restricted occupation to specific persons or children, the imposition of the management plan condition does provide some surety for those living with the area. As it will be necessary for the applicant to comply with the management plan, and this plan is specifically tailored to refer to children with physical and learning disabilities, should a different provider, offering a different type of care, take over the home, the management plan could no longer be adhered to. The council would then be able to take enforcement action. Thus, it is considered there are reasonable safeguards to protect the amenity of near neighbours in perpetuity.
60. As such the Council considers the proposed change of use to be acceptable as it will not cause undue harm to the living conditions of neighbouring residents.

Impact on Highway Safety

61. The Core Strategy Policy T2 states that new development should be located in accessible locations that are adequately served by existing or programmed highways, by public transportation and within safe and secure access for pedestrians, cyclists and people with impaired mobility. When consulting with highway colleagues, the accessibility of this application site is not a cause for concern, and it is in fact regarded to be in a highly sustainable location with the dwellinghouse being accessible to pedestrians as well as other forms of sustainable transportation.
62. However, a concern which has been raised in a few neighbour objection letters is that the application site will be unable to adequately accommodate staff and visitor’s vehicles onsite, thus giving way to the potential of increased on-street parking on the adjacent highway. Highway officers consider that the parking provisions within the application site are acceptable as it complies with the parking space guidance set out within the Transport SPD (2023), with the applicant demonstrating through additional plans that 3 vehicles can be accommodated within the application site.
63. Table 3-17 of the Transport SPD (page 130) states that for Residential Institutes, like a care home, there needs to be a ratio of 1 parking space per 3 residents. However, as the proposed care home will be a children’s residential institute, it is believed to be more akin to that of a secure residential institute which the vehicle parking ratio is determined individually, often based on the application’s own merits. Therefore, in this case, officers consider the guidance relating to a dwellinghouse to be the most acceptable with there needing to be a minimum of 2 off-street car parking spaces provided, which has clearly been provided on site. As such officers consider the level

of off-street parking at the application site to be acceptable for its intended use and will be conditioned to be retained.

64. In addition to the above, the Council's highway team have acknowledged that refuse bins will be stored alongside the house on the side elevation. Whilst this is acceptable in principle further details need to be provided regarding the bin store itself and its collection location, which can be obtained through the attachment of relevant conditions.

Drainage and Flood Risk Management

65. A concern which was raised through a neighbour objection letter is that the change of use would potentially lead to the intensified use of the properties drains and could then impact the sewage system which is connected to the neighbouring properties.
66. When consulting with the Council's Flood Risk Management Team it was considered that the change of use from C3 to C2 is unlikely to cause harm to existing drainage works. This is due to there being no identified risk of surface water flooding as well as there not being a need for new drainage connections. Nevertheless, due to the scale of the development if issue were to arise, they would be dealt through building regulations.

Other Considerations: Public Sector Equality

67. The application is accompanied by supporting information which states that the Change of Use would be of benefit to residents who have a protected characteristic under the Equality Act 2010 (age and disability).

Public Sector Equality Duty

68. In determining the planning application, the Council has to comply with the public sector equality duty. Section 149 of the Equality Act 2010 sets out the Public Sector Equality Duty whereby a public authority must, in the exercise of its functions (which includes planning) have due regard to the need to –
- a) Eliminate discrimination, harassment, victimization and any other conduct prohibited by the Act.
 - b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c) Foster good relations between persons who shared a relevant protected characteristic and persons who do not share it.
69. With regard to b) above, due regard must be given to the need to:
- a) Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - b) Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - c) Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The relevant protected characteristics include age, disability, gender, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

70. This Public Sector Equality Duty is in part support by policy H10 of the Core Strategy, which whilst this relates only to new build residential development, is nonetheless a policy which acknowledges the need to provide accessible and adaptable dwellings as part of the city's growing housing stock. Whilst there is no specific Development Plan policy that explicitly supports adaptations to existing dwellings to ensure they are accessible, and meet the needs of those with reduced physical mobility, this is nonetheless a matter that the Framework highlights in Section 8, noting that the housing needs of all sections of society should be considered.
71. As stated above, the proposed change of use will help provide accommodation for individuals with protected characteristics (age and disability). Planning seeks to create mixed and balanced communities, and as set out above the Council has a duty to reduce inequalities and disadvantages within our communities. Members must pay regard to this duty in their decision making.
72. As set out within supporting documentation the care home will house vulnerable children with additional needs (physical and/or learning disabilities) and this will not include those who may have a behavioural disorder. Children in care are those whose needs cannot be met within their birth family. Providing a care home to meet the needs of children with disabilities, and thereby seeking to minimise the disadvantages arising from their disabilities and family situation is a duty which can be given weight in the planning balance. The introduction of a care home to the area will not result in harm to the balance of housing stock within the area, and will also provide a much needed opportunity for these children, who without this facility could be subject to further disadvantage.
73. The Public Sector Equality Duty is an 'other consideration' which therefore weighs in favour of the application. The final balance of all material considerations and whether these clearly outweigh any potential harm is set out in the final planning balance below

Representations

74. The following comments are made in respect of the representations made:

A site notice was put on display within the local area on 14th December 2023. The following address's the material and non-material planning considerations which have not already been addressed in the main appraisal.

- Another concern raised in the received public response was that the proposed development would have a negative impact on property values in the immediate area. This is not a material planning consideration.
- An issue raised by many objectors was that the Council did not provide enough notification to the proposed development. It was stated that the site notice advertising the application was removed after the officer put it on display. Officers became aware of this issue and put up a new site notice within the immediate vicinity of the application site on 20th February 2024, and prior to this it is clear that people within the area were aware of the application and have had the opportunity make representations, which have been addressed within this report.

CONCLUSION:

75. The proposed change of use is considered to be acceptable in principle and will not cause harm to residential amenity or highway safety, these are considered to be

neutral matters which weigh neither for nor against the proposal. The application will also meet the needs of individuals who have a protected characteristic under the Equality Act; this benefit is given significant weight.

76. Furthermore, the proposed boundary fence in terms of its size, scale and siting would not cause adverse harm to visual or residential amenity. This is therefore considered to be a neutral matter which weighs neither for nor against the proposed.
77. The identified significant benefit combined together with neutral matters highlighted above ensure that the proposed change of use is an appropriate form of development. And thus, in accordance with paragraph 11 of the National Planning Policy Framework, the presumption in favour applies, and the application is recommended for approval.

BACKGROUND PAPERS:

Application file reference: 23/06049/FU

Certificate of ownership: Certificate B has been provided with the application form.



Originator: Emer Byrne

Tel: 0113 3367331

Report of the Chief Planning Officer

SOUTH & WEST PLANS PANEL

Date: 07/03/2024

Subject: 23/06050/FU – Permission for a change of use from a single family dwellinghouse (Use Class C3) into a Residential Care Home (Use Class C2) at 178 Town Street, Middleton, Leeds, LS10 3TH

APPLICANT

Mabida Company

DATE VALID

14/11/2023

TARGET DATE

09/01/2024 (ext. of time agreed until 09/03/2024)

Electoral Wards Affected:

Middleton

Yes

Ward Members consulted (referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION: Approval subject to conditions

- Time limit on full permission
- Development to be carried out in accordance with the approved plans
- Management Plan Provision and Adherence
- Parking Implementation and Retention
- Details of Waste Collection Provision
- Details of Additional Security Measures (Informative)

INTRODUCTION:

1. This application has been brought to plans panel at the request of Cllr Dixon, who has raised concerns that the following proposal will have a negative impact on public and highway safety and lead to an increase in anti-social behaviour. Cllr Dixon also expressed that the proposal would cause for there to be a saturation of care facilities within the area and that the introduction of a care facility will impact property values in the area.
2. The applicant seeks permission for a change of use from an existing single family dwellinghouse (Use Class C3) into a Residential Care Home (Use Class C2). From

the supporting cover letter, it notes that the proposed care home will provide accommodation for a maximum of two children, up to the age of 18 who will be receiving care.

3. As will be outlined below the proposed change of use is considered to be acceptable in principle and will not give rise to residential amenity harm, nor will it have a negative impact on public or highway safety. For this reason, the Local Planning Authority recommend this application for approval.

PROPOSAL:

4. The applicant seeks permission for a change of use from a single family dwellinghouse (C3(a)) to a Residential Care Home for children with special and learning disabilities between the ages of 8 -17 years old (C2).
5. The applicant states within their supporting statement that the property will provide accommodation for 2 children who will be receiving care and will be a place of work for 3-4 members of staff who will be providing care for the children residing there. It does on to note that a member of staff will be at the premises 24 hours a day, with the care staff operating on a shift basis.
6. Furthermore, the applicant states that there will be no external or internal alterations made to the property.

SITE AND SURROUNDINGS

7. The application site relates to a two-storey detached dwellinghouse constructed out of red-brickwork with elements of mock Tudor render on the principal elevation of the projecting front gable end. The hipped and gable roofs of the property are covered in dark coloured pan tiles.
8. The dwellinghouse is set back from the public highway by an area of hardstanding which is used to provide off-street parking from the residents of the property. The area of hard standing also extends down the side of the property leading towards a detached outbuilding within the rear amenity space.
9. The property is currently used as a single dwellinghouse within a predominantly residential area and benefits from good public transportation links.

RELEVANT PLANNING HISTORY:

Planning applications:

10. Reference: 23/04149/CLP
Proposal: Certificate of Proposed Lawful Development for change of use to a residential care home.
Status; Refusal
Date: 25-08-2023

Pre-application enquiries:

11. None

Planning Enforcement cases:

12. None

HISTORY OF NEGOTIATIONS:

13. The applicant previously applied for a certificate of proposed lawfulness for the change of use from a single family dwellinghouse into a residential care home in August 2023 (23/04149/CLP). But the certificate was not granted due to officers considering that a change of use from a C3(a) to C2 would amount to a material change of use and would therefore require planning permission.
14. During the course of the current application officers have requested from the applicant additional information in order to overcome concerns which have been raised by the public. For example, on the 2nd January 2024 the applicant provided a proposed block plan in order to demonstrate that there will be sufficient parking on site for members of staff and visitors.
15. In addition to this the applicant also provided on 21st December 2023 an example of the staff shift patterns in order to show that the changing of staff will not occur at unsocial hours which will disrupt neighbouring residents.
16. On the 19th February the applicant submitted a copy of the Management Plan created by the care home company (Madiba), in order to address some of the concerns raised through third party comments.

CONSULTATION RESPONSES:

Statutory and Non-Statutory Consultees:

17. Flood Risk Management: No objection
Highways: No objection, subject to conditions
West Yorkshire Police: No objection, subject to conditions

PUBLIC/LOCAL RESPONSE:

18. A site notice was put on display in the immediate vicinity of the application site on the 14th December 2023. In response to the notice going up the follow comments have been made by third party individuals:

Comments in Support:

19. 3 letters of support were received in relation to this application. The following is a summary of the points raised in these letters of support:

- Benefit to residents of development and their families.
- Brings employment opportunities to the area.

Comments in Objection:

20. 7 letters of objection were received in relation to this application. The following is a summary of the points raised in these letters of objection:

- Noise and Distribution raised from the inhabitants of the property.
- Gives rise to anti-social behaviour, due to the occupants of the property.
- Lack of sufficient parking on-site to cater for both staff and visitors.
- Inappropriate locations should be in a more affluent area of Leeds.
- High density of this type of development within the area.
- High council Tax and decrease in property values.

Comments from Ward Members:

21. Ward Members from the Middleton Area also submitted comments in relation to this application. The following is a summary of the points raised in Ward Members Letters.

- High density of this type of development within the area.
- Decrease in property values within the area.
- Gives rise to anti-social behaviour.
- Highway concerns regarding; On street parking, road safety concerns.
- The residents would not be rooted in the community (Lack of community cohesion)

PLANNING POLICIES:

LOCAL PLANNING POLICY AND GUIDANCE

The Development Plan

22. Section 38(6) of the Planning and Compulsory Purchase Act states that for the purpose of any determination to be made under the Planning Acts, the determination must be in accordance with the plan, unless material considerations indicate otherwise. The development plan currently comprises the adopted Local Development Framework Core Strategy (as amended 2019), those policies saved from the Leeds Unitary Development Plan Review (2006), the Aire Valley Leeds Area Action Plan (2017), the Natural Resources and Waste Local Plan (as amended 2015), the Site Allocations Plan (as amended 2024) and any made Neighbourhood Plan.
23. **Core Strategy (as amended by the Core Strategy Selective Review 2019)-** The Core Strategy (as amended) is the main strategic document within the Local Plan for Leeds and sets out the strategic policy framework for the district to 2028 and a housing requirement to 2033. It comprises a long-term spatial vision and strategic objectives, a spatial strategy, thematic policies and a monitoring and implementation framework. The following Core Strategy (as amended) policies are relevant:
- P10: Design
H9: Minimum Space Standards
T2: Highway Safety
24. **Unitary Development Plan (UDP) adopted in 2006-** The UDP sets the spatial strategy for the Leeds Metropolitan district and allocates sites within the area for specific uses. Many of the UDP policies have been superseded by the Core Strategy, Natural Resources and Waste Local Plan, The Aire Valley Leeds Area Action Plan and Site Allocations Plan. However, there are 'Saved Policies' which remain relevant for Development Management purposes. The application site is not designated for any specific purpose within the UDP Review (2006) although it lies within an area for neighbourhood renewal. The following saved policies are of relevance:
- GP5: General Consideration
BD5: Amenity Consideration
25. **The Site Allocation Plan (SAP) as amended in 2024** – This allocates land following for housing and employment and designates green space and retail centres within the Metropolitan District of Leeds (except for the AVLAAP area). *The Site Allocations Plan was adopted in July 2019. Following a statutory challenge, Policy HG2, so far as it relates to sites which immediately before the adoption of the SAP were within the green belt, has been remitted to the Secretary of State and is to be treated as not adopted. All other policies within the SAP remain adopted and should be afforded full weight.* The application site is not specifically referenced in the SAP.

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WATER 7: All Developments are required to ensure no increase in the rate of surface water run-off into the existing formal drainage system and development expected to incorporate sustainable drainage techniques.

27. **Made Neighbourhood Plans** – Planning applications need to take into account any made Neighbourhood Plans in addition to the plans adopted by the Council. There are no made Neighbourhood Plans relevant to this site.

Relevant Local Supplementary Planning Guidance/Documents

28. **Supplementary Planning Documents (SPDs)**- SPDs and supplementary guidance provide additional planning guidance to policies in the adopted Local Plan. SPDs and supplementary guidance considered of relevance:

SPD Neighbourhoods for Living (2003 – updated 2015)
SPD Transport (2023)

NATIONAL PLANNING POLICY AND GUIDANCE

National Planning Policy Framework

29. The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are expected to be applied. It sets out the Government's requirements for the planning system. The NPPF must be taken into account in the preparation of local and neighbourhood plans and is a material consideration in planning decisions.
30. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise (section 38(6) Planning and Compulsory Purchase Act 2004). The National Planning Policy Framework is an important material consideration in planning decisions.
31. The following sections of the NPPF are most relevant for the purposes of determining this application:
- Section 2: Achieving Sustainable Development.
 - Section 8: Promoting healthy and safe communities.
 - Section 9: Promoting sustainable transport.
 - Section 12: ~~Obj~~Achieving well-designed and beautiful places.

National Planning Practice Guidance

32. The Planning Practice Guidance (PPG) provides commentary on the application of policies within the NPPF. The PPG also provides guidance in relation to the imposition of planning conditions. It sets out that conditions should only be imposed where they are necessary; relevant to planning and to the development to be permitted; enforceable; precise and reasonable in all other respects.

CLIMATE EMERGENCY:

33. The Council declared a climate emergency on the 27th March 2019 in response to the UN's report on Climate Change.
34. The Planning Act 2008, alongside the Climate Change Act 2008, sets out that climate mitigation and adaptation are central principles of plan-making. The NPPF makes clear that the planning system should help to shape places in ways that contribute to radical reductions in greenhouse gas emissions in line with the objectives of the Climate Change Act 2008.
35. As part of the Council's Best City Ambition, the Council seeks to deliver a low-carbon and affordable transport network, as well as protecting nature and enhancing habitats for wildlife. The Council's Development Plan includes a number of planning policies which seek to meet this aim, as does the NPPF. These are material planning considerations in determining planning applications.

PUBLIC SECTOR EQUALITY DUTY:

36. The Equality Act 2010 requires local authorities to comply with the Public Sector Equality Duty. Taking into account all known factors and considerations, the requirement to consider, and have due regard to, the needs of diverse groups to eliminate discrimination, advance equality of opportunity and access, and foster good relations between different groups in the community has been fully taken into account in the consideration of the planning application to date and at the time of making the recommendation in this report.

MAIN ISSUES:

- Principle of Development
- Impact on Visual Amenity
- Impact on Residential Amenity – Amenity of Occupants and Amenity of Neighbours
- Impact on Highway Safety
- Drainage and Flood Risk Management
- Other Considerations: Very Special Circumstances – Public Sector Equality and The Best Interests of the Child
- Representations

APPRAISAL:

Principle of Development

37. Spatial Policy 1 of the Leeds Core Strategy relates to the location of development and confirms that the overall objective is to concentrate the majority of new development within and adjacent urban areas, taking advantage of existing services, high levels of accessibility, priorities for urban regeneration and an appropriate balance between brownfield and greenfield land.
38. The proposal seeks to change the use of No.178 Town Street from a dwellinghouse within Use Class C3 (a) into a Residential Care Home for children/young adults within the Use Class of C2. The existing property is located within a popular and sustainable residential area with good links to highway networks and public transportation.

39. Whilst there could be some concern that the proposed will interrupt the residential character of the area, officers consider that this will not be the case. This is primarily due to how the care home being a low intensity use, as it will only have 2 children under its care and a maximum of 4 adult staff being at the property at one time. The number of individuals at the property and the ratio between adults and children could possibly be akin to some residential dwelling where multiple generation live under one roof (child, parents, grandparents). Furthermore, the change of use and the resulting movements which will occur around the property, such as shift changes for staff and the children being taken out for school and extra activities, would not alter the residential character of the area. As these movements would be similar to the patterns of movement that would happen on an average day for a normal C3 dwellinghouse, e.g. parents going to work, children going to school and after school activities and the comings and goings of general visitors to a dwellinghouse.
40. There are many scenarios within a standard C3 dwelling where a range of movements occur at different times of day. Those working shift patterns will leave and return from work at non-standard hours, and where people are receiving visits from carers there will be multiple vehicle movements to and from the property, throughout the day. Therefore, the proposed end use would not result in an unsustainable impact upon the immediate area, and accords with the aims of Spatial Policy 1, and there is no policy context that could reasonably prevent a change of use from a C3 use to a C2 use. Therefore, the principle of the change of use is considered to be acceptable, subject to a consideration of other issues such as impact upon residential amenity and highways, which will be discussed in further details below.

Impact on Visual Amenity

41. Section 12 of the Framework emphasises the need for good design, and at a local level Core Strategy Policy P10, saved UDP Review policies GP5 and BD6 seek to ensure that development is contextually appropriate and does not cause harm to visual amenity.
42. The proposed change of use from a C3 dwelling to a C2 care home is unlikely to cause harm to visual amenity of the property and the locality. This is because the applicant has not proposed any external alteration thus no alterations to the physical appearance of the property will occur. Furthermore, it is considered by officers that the proposed change of use will not alter the dwelling's established character as the building will continue to appear as a single family dwellinghouse within its residential setting. As such, the application is considered to be acceptable in this regard.

Impact on Residential Amenity

43. Core Strategy Policy P10 notes that developments should protect amenity, and this is also reflected in saved UDP policies GP5 and BD5, with the latter noting that "all new buildings should be designed with consideration given to both their own amenity and that of their surroundings." Regarding this, officers consider that the amenity of both the occupants and the surrounding neighbours will not be harmed by the proposed development, with full explanation for this judgement being set out below.

Amenity of Occupants:

44. The proposed floor plans show that there will be two bedrooms, kitchen/dining room, staff officer and a sensory lounge. Although Policy H9 of the Core Strategy (minimum space standards) only applies to new homes, it is considered to be a useful guide for

ensuring that the property can comfortably accommodate its occupants. Therefore, a 2-bedroom 2 storey property should have a minimum gross floor area of 79sqm, the application property is seen to have a floor area of approximately 98.6sqm which is considered to be a sufficient amount of floor space.

45. In addition to the internal layout of the care home it is considered that the outdoor amenity space of the care facility is acceptable. Similar to above, while the guidance set in the Neighbourhoods for Living SPG (2003) relates to family dwellings its content is useful, especially in this case where the application site will operate like a C3 dwelling. Page 31 of the Neighbourhoods of Living SPG states that private gardens should have a minimum area of 2/3 of the total gross floor area of the dwelling. From the submitted site plan, the rear garden has an area of approximately 147sqm, thus complying with the guidance. As such the proposed development is considered by officers not to have a harmful impact on the amenity of its occupants, and thus acceptable in this regard.

Amenity of Neighbours:

46. Several concerns have been raised by public with regards to this application, with the issues stemming from the level of noise and disturbance created by the development to the possible fear that the end users will cause there to be a rise in anti-social behaviour and crime levels. The following section will aim to address each of these concerns in turn.
47. One of the primary concerns expressed by neighbours was that the proposed change of use would lead to an increase in noise and disturbance, especially from the comings and goings of staff members and children (school and additional activities). As stated within the Principle of Development section in this report, it is believed that the care home will share similar characteristics to that of a traditional residential property, which includes the movement of its inhabitants and level of noise which it will produce.
48. In order to demonstrate that proposed care home will not cause adverse harm to neighbours, officers requested from the applicant to show how typically shift patterns will fall in a 24-hour period. From this it was demonstrated that the shifts would start and finish at points in the day when ordinary family movements may occur. For example, the day shift starts at 07:30, a similar time to when people may be leaving for work and ends at 23:00. While officers acknowledge that vehicle movement at 23:00 may not be considered typical behaviour, it could be akin to the movements of those who work night shifts and other unsociable hours. This combined with their only being 2 members of staff who will leave at this hour is considered to be reasonable and would not result in excessive noise and disturbance which would be harmful to the living conditions of neighbouring occupants.
49. Another concern mentioned within third party comments is that the proposed development, particularly the end users of the development would cause for there to be an increase in anti-social behaviour and crime in the area, with some even going on to state that the development would be a strain on public services, like the police, or that it should be located in a more "affluent area" of Leeds.
50. Due to these concerns regarding the increase of anti-social behaviour and crime, officers thought it would be reasonable to consult with West Yorkshire Police on this application. In response to this consultation West Yorkshire Police stated that the proposed change of use is acceptable in principle and will not cause adverse impact on the living conditions of neighbouring residents, subject to the attachment of conditions relating to increasing the security of the residential care home. Besides

from confirming that the proposed change of use would not give way to an increase in anti-social behaviour, the consultee also confirmed that the proposed development is unlikely to put a strain on existing police resources.

51. It should also be noted that the applicant has provide a management plan which highlights the protocol taken if concerns around noise and anti-social behaviour do arise (referral process and Emergency Support). Furthermore, as this is a care facility it is likely to be regulated and managed the appropriate associated bodies (i.e. OFSTED). Therefore, it can be viewed that a C2 property (care home) would be a lot safer for neighbouring occupants than a standard C3 dwelling house, as people are employed to ensure than no harm will come to both the residents of the care home and the surrounding neighbours.
52. Finally, regarding the comments made by members of the public that state that the proposed care home should be relocated into a more “affluent area” of Leeds, due to it having a negative impact on the area. There are a range of care homes across Leeds, serving the needs of children and adults, and recent applications identify that similar proposals to the current application are located in Wetherby, Adel, Halton, Cross gates, Moortown and Roundhay. It is thus the case that care homes are distributed across the city. It should also be noted that there is no evidence showing a correlation between the introduction of care homes for those with physical disabilities and a rise in anti-social behaviour.
53. Concern has also been raised regarding the possibility that the occupants of the care home will change in future years. It is the case, that planning permission would be granted for a C2 care home, which includes all types of possible care. Whilst it is difficult to envisage a lawful planning condition which restricted occupation to specific persons or children, the imposition of the management plan condition does provide some surety for those living with the area. As it will be necessary for the applicant to comply with the management plan, and this plan is specifically tailored to refer to children with physical and learning disabilities, should a different provider, offering a different type of care, take over the home, the management plan could no longer be adhered to. The council would then be able to take enforcement action. Thus, it is considered there are reasonable safeguards to protect the amenity of near neighbours in perpetuity.
54. As such the Council considers the proposed change of use to be acceptable as it will not cause undue harm to the living conditions of neighbouring residents.

Impact on Highway Safety

55. The Core Strategy Policy T2 states that new development should be located in accessible locations that are adequately served by existing or programmed highways, by public transportation and within safe and secure access for pedestrians, cyclists and people with impaired mobility. When consulting with highway officers, the accessibility of this application site is not a cause for concern, and it is in fact regarded to be in a highly sustainable located with the dwellinghouse being accessible to pedestrians as well as other forms of sustainable transportation.
56. However, a concern which has been raised in a few neighbour objection letters is that the application site will be unable to adequately accommodate staff and visitor’s vehicles onsite, thus giving way to the potential of increased on-street parking on the adjacent highway. Highway officers consider that the parking provisions within the application site are acceptable as it complies with the parking space guidance set out

within the Transport SPD (2023), with the applicant demonstrating through additional plans that 3 vehicles can be accommodated within the application site.

57. Table 3-17 of the Transport SPD (page 130) states that for Residential Institutes, like a care home, there needs to be a ratio of 1 parking space per 3 residents. However, as the proposed care home will be a children's residential institute, it is believed to be more akin to that of a secure residential institute which the vehicle parking ratio is determined individually, often based on the application's own merits. Therefore, in this case, officers consider the guidance relating to a dwellinghouse to be the most acceptable with there needing to be a minimum of 2 off-street car parking spaces provided, which has clearly been provided on site. As such officers consider the level of off-street parking at the application site to be acceptable for its intended use and will be conditioned to be retained.
58. In addition to the above, the Council's highway team have acknowledged that refuse bins will be stored alongside the house on the side elevation. Whilst this is acceptable in principle further details need to be provided regarding the bin store itself and its collection location, which can be obtained through the attachment of relevant conditions.

Drainage and Flood Risk Management

59. When consulting with the Council's Flood Risk Management Team it was considered that the change of use from C3 to C2 is unlikely to cause harm to existing drainage works. This is due to there being no identified risk of surface water flooding as well as there not being a need for new drainage connections. Nevertheless, due to the scale of the development if issue were to arise, they would be dealt through building regulations. As such the proposed development is considered to be acceptable in this regard.

Other Considerations: Public Sector Equality

60. The application is accompanied by supporting information which states that the Change of Use would be of benefit to residents who have a protected characteristic under the Equality Act 2010 (age and disability).

Public Sector Equality Duty

61. In determining the planning application, the Council has to comply with the public sector equality duty. Section 149 of the Equality Act 2010 sets out the Public Sector Equality Duty whereby a public authority must, in the exercise of its functions (which includes planning) have due regard to the need to –
- a) Eliminate discrimination, harassment, victimization and any other conduct prohibited by the Act.
 - b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c) Foster good relations between persons who shared a relevant protected characteristic and persons who do not share it.
62. With regard to b) above, due regard must be given to the need to:
- a) Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

- b) Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- c) Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The relevant protected characteristics include age, disability, gender, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

- 63. This Public Sector Equality Duty is in part support by policy H10 of the Core Strategy, which whilst this relates only to new build residential development, is nonetheless a policy which acknowledges the need to provide accessible and adaptable dwellings as part of the city's growing housing stock. Whilst there is no specific Development Plan policy that explicitly supports adaptations to existing dwellings to ensure they are accessible, and meet the needs of those with reduced physical mobility, this is nonetheless a matter that the Framework highlights in Section 8, noting that the housing needs of all sections of society should be considered.
- 64. As stated above, the proposed change of use will help provide accommodation for individuals with protected characteristics (age and disability). Planning seeks to create mixed and balanced communities, and as set out above the Council has a duty to reduce inequalities and disadvantages within our communities. Members must pay regard to this duty in their decision making.
- 65. As set out within supporting documentation the care home will house vulnerable children with additional needs (physical and/or learning disabilities) and this will not include those who may have a behavioural disorder. Children in care are those whose needs cannot be met within their birth family. Providing a care home to meet the needs of children with disabilities, and thereby seeking to minimise the disadvantages arising from their disabilities and family situation is a duty which can be given weight in the planning balance. The introduction of a care home to the area will not result in harm to the balance of housing stock within the area, and will also provide a much needed opportunity for these children, who without this facility could be subject to further disadvantage.
- 66. The Public Sector Equality Duty is an 'other consideration' which therefore weighs in favour of the application. The final balance of all material considerations and whether these clearly outweigh any potential harm is set out in the final planning balance below

Representations

- 67. The following comments are made in respect of the representations made:

A site notice was put on display within the local area on 14th December 2023. The following address's the material and non-material planning considerations which have not already been addressed in the main appraisal.

- Concern raised in the received public response was that the proposed development would have a negative impact on property values in the immediate area. This is not a material planning consideration.
- An issue raised by many objectors was that the Council did not provide enough notification to the proposed development. It was stated that the site notice advertising the application was removed after the officer put it on display. Officers became aware of this issue and put up a new site notice within the immediate vicinity of the application site on 20th February 2024, but prior to this

it is clear that people within the area were aware of this applicant and have had the opportunity to pass comments which have been address within this report.

CONCLUSION:

68. The proposed change of use is considered to be acceptable in principle and will not cause harm to residential amenity or highway safety, these are considered to be neutral matters which weigh neither for nor against the proposal. The application will also meet the needs of individuals who have a protected characteristic under the Equality Act; this benefit is given significant weight.
69. The identified significant benefit combined together with neutral matters highlighted above ensure that the proposed change of use is an appropriate form of development. And thus, in accordance with paragraph 11 of the National Planning Policy Framework, the presumption in favour applies, and the application is recommended for approval.

BACKGROUND PAPERS:

Application file reference: 23/06050/FU

Certificate of ownership: Certificate B has been provided with the application form.

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Originator: Mike Howitt
Tel: 0113 378 7994

Report of the Chief Planning Officer

SOUTH & WEST PLANS PANEL

Date: 7th March 2024

Subject: 23/03322/FU – Electric vehicle charging facility (Sui Generis) and retail unit (Use Class E) with associated access, parking, servicing and landscaping areas at the site of the former White Bear, Dewsbury Road, Tingley WF3 1JY

APPLICANT	DATE VALID	TARGET DATE
BP Pulse & Darwen Investments Ltd	31.05.2023	03.08.2023

Electoral Wards Affected:

Morley South

Yes Ward Members consulted (referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION:

DEFER and DELEGATE to the Chief Planning Officer for approval subject to the specified conditions (and any amendment to these and addition of others which he might consider appropriate) and the completion of a Section 106 agreement to include the following obligations:-

- **Contribution of £108,000 towards the provision and and future maintenance of off site tree planting**

In the circumstances where the Section 106 Agreement has not been completed within 3 months of the resolution to grant planning permission, the final determination of the application shall be delegated to the Chief Planning Officer. Subject to the conditions set out below (with amendments or addition to the same as deemed appropriate).

Conditions

1. Time Limits
2. Approved plans

3. Materials to be approved
4. Drainage in accordance with approved details
5. Parking spaces to be laid out, sealed and drained
6. Hours of shop opening
7. Hours for deliveries and waste collection
8. Hours for valet (air and vacuum area) use
9. Lighting Scheme
10. Signage (In and Out)
11. Sightlines / Visibility Splays
12. Maintenance of Forward Visibility Splay
13. Details of Cycle/Motorcycle Facilities
14. Control of On-street Parking
15. Vehicle Space to be Laid Out
16. Car Park and Servicing Management Plan
17. Provision for Contractors
18. Specified Off-site Highway Works
19. Electric Vehicle Charging Points
20. Statement of Construction Practice
21. Details of waste collection
22. Construction Environmental Management Plan
23. Landscape Scheme to be implemented
24. Protection of retained trees
25. Landscape Management Plan
26. Replacement planting (if required)
27. Contamination conditions

INTRODUCTION:

1. The application relates to a full application for an electric vehicle charging facility (Sui Generis) and retail unit (Use Class E) with associated access, parking, servicing and landscaping areas. The application is reported to Plans Panel following a request from Local Ward Members Cllr Oliver Newton, Cllr Jane Senior and Cllr Wyn Kidger to be heard at Plans Panel, due to its impact upon highway safety, harm to residential amenity through noise and disturbance and the 24 hour use and the lack of a construction management plan.

PROPOSAL:

2. This application seeks full planning application for an electric vehicle charging facility (Sui Generis) and retail unit (Use Class E) with associated access, parking, servicing and landscaping areas.
3. The proposals includes 18 standard sized ultra-rapid charging points to be located on the eastern side of the site, with a small retail unit to be located to the west, within the footprint of the previously demolished White Bear Public House. The retail unit will front on to the charging bays, with standard parking bays located at the front and south of its entrance. An enclosed service compound is to be located to the rear of the retail unit. A one-way road will provide access from Bradford Road to the north, extending through the site to Dewsbury Road to the southeast. The proposed layout has been revised at the request of the LPA and by moving the proposed retail unit to the east of the site has enabled 13 more trees on site to be retained in comparison to the previous layout. The revised layout has also allowed technical constraints on the site, in relation to easements, to be addressed in order to maintain the ground levels

across the utilities and also enabled the incorporation of a long-vehicle EV charging bay.

SITE AND SURROUNDINGS

4. The application site is located north-west of Tingley Centre and accommodates the site housing the former White Bear public house in the northern part of the site addressing the A650. To the north of the site is the M62 Motorway, with the site sitting adjacent to Bradford Road, Dewsbury Road and Tingley Common roundabout. Vehicular access to the site can be gained from Dewsbury Road and Tingley Common. The building and site have been vacant for a number of years and the appearance reflects a lack of use. The former public house was two storeys in height constructed in brick with timber cladding to its upper parts and is a prominent building on the junction with the M62 and A650. The public house was demolished in 2017.
5. The whole site is subject to two tree preservation orders: TPO 2011–001 & TPO 2011–018. There are good levels of fringe tree coverage that line the edge of the site facing the roundabout and within the site adjacent to residential properties which are located to the south of the site. The closest residential properties are on Oban Close, 7m from site boundary, and 132 Dewsbury Road, 8m from site boundary. The site access is currently blocked off for vehicular use to Dewsbury Road and the A650.

RELEVANT PLANNING HISTORY:

Planning applications:

18/03736/FU – Development of a fuel filling station with associated roadside services. Refused 19th October 2018

17/01803/DEM - Determination for demolition of former public house. Approved 22nd May 2017

14/03390/FU - Demolition of public house and erection of two storey restaurant, with drive thru and associated car parking and landscaping - Refused and subsequently dismissed at appeal 11th May 2016.

12/02957/FU - Demolition of public house and construction of two storey restaurant and drive thru - Refused and subsequently dismissed at appeal 11th March 2014.

12/01072/FU - Demolition of public house and construction of two storey restaurant and drive thru – Refused 3rd May 2012.

11/02941/FU - Single storey restaurant with drive thru, car parking and landscaping – Refused 25th October 2011

As shown in the planning history, there is a long history of relevant planning applications, initially with the submission of a number of applications by the McDonalds restaurant group, starting in 2011, for the addition of a single storey drive through proposal to that existing public house that was refused for four reasons, The reasons for refusal were

1. Customer noise generation leading to residential amenity concerns
2. A lack of off street car parking for both the restaurant and public house
3. Out of centre retailing
4. Lack of landscaping provision

This was followed in 2012 by a modified proposal by the same applicant that proposed demolition of the existing public house and the erection of a two storey

restaurant that was refused and immediately re-submitted and again refused for the following reasons

1. Customer noise generation leading to residential amenity concerns
2. Scale and location of outside areas would have led to overlooking, a lack of privacy and noise and disturbance to neighbouring residential properties from customers

This refusal was appealed in 2013 through the written representations process and a decision dismissing this appeal on the grounds of harm to residential amenity was made in 2014.

A further application was made by this applicant in 2014 and following refusal on the following grounds,

1. Customer noise generation leading to residential amenity concerns
2. Scale and location of outside areas would have led to overlooking, a lack of privacy and noise and disturbance to neighbouring residential properties from customers
3. Inability to satisfactorily accommodate an articulated service vehicle, an inadequate level of forward visibility on the internal two- way access road and the location of the service vehicles.

Another appeal was made and determined through a Public Inquiry. The conclusion of the Inspector was to dismiss this appeal once again on grounds of residential amenity but not on highways safety grounds that could have been mitigated for.

The final and most recent application to be refused was for a fuel service station and convenience store and was refused on the following grounds,

1. Customer noise generation leading to residential amenity concerns
2. Development would be sited over Yorkshire Water sewerage and water mains pipes
3. Internal car parking and road layouts giving rise to highway safety issues.
4. Loss of trees

The above applications, whilst including some highway safety matters within the reasons for refusal, were all focused around the internal layouts of the site and not access and egress onto the A650 or A653. The size of the retailing elements of the restaurant schemes and the convenience store meant that they were considered destinations in themselves that brought residential amenity issues that could not be overcome.

The current scheme provides a store that is considered of such a small scale that it would not operate as a destination in itself and would essentially operate as an ancillary service to the primary use of the charging station. This makes this application distinctly different from the previously refused applications that should not produce the residential amenity issues that were previously of concern.

CONSULTATION RESPONSES:

Statutory Consultees:

6. None

Non-Statutory Consultees:

7. Policy and Plans – No objection.
Landscape – Changes to the plans have retained a large number of the existing trees but still object to the loss of a number of trees on the boundary of the site.
Highways – No objection subject to conditions.
Contaminated Land – No objections subject to conditions.
Flood Risk Management – No objection
Morley Town Council – No response
Access Officer – No response
Environmental Health – No objection subject to conditions
Public Rights of Way – No objection
Ramblers Association – No response

PUBLIC/LOCAL RESPONSE:

8. The application was advertised by the posting of site notices on 27th June 2023 and again on 27th October 2023 and advertised within the Yorkshire Evening Post on 27th June 2023. To date, the following comments have been received.

Representations:

9. A total of 9 letters of representation have been received, 3 of support, one of general comment and 5 (5 from 2 separate addresses) objecting to the application on the following grounds:
10. The objections relate to the following issues:
- Highways issues
 - internal layout issues
 - impact on Tingley roundabout
 - entrance safety for cars and pedestrians
 - issues with regard to large vehicles using the site
 - u-turns on the A653/Lowry road junction
 - signage issues causing confusion
 - no safety audit
 - parking may become displaced onto old Dewsbury Road
- Loss of TPO protected trees
- No construction management plan

PLANNING POLICIES:

LOCAL PLANNING POLICY AND GUIDANCE

The Development Plan

11. As required by Section 38(6) of the Planning and Compulsory Purchase Act 2004 this application has to be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan currently comprises the adopted Local Development Framework Core Strategy Selective Review (as amended 2019), those policies saved from the Leeds Unitary Development Plan (Review 2006), the Site Allocations Plan (2019), the Natural Resources and Waste Development Plan Document (2013 and 2015) and any made neighbourhood plan.

12. The following policies from the Core Strategy are considered to be of most relevance to this development proposal:

SP1 - Location of development

SP2 - Hierarchy of Centres and Spatial Approach to Retailing, Offices, Intensive Leisure and Culture

P1 – Town and Local Centre Designations

P3 – Acceptable Uses in and on the Edge of Local Centres

P8 – Sequential and Impact Assessments for Main Town Centre Uses

P10 - Design and Context

P12 - Landscape

T2 - Accessibility requirements

EN1 - Climate change

EN2 - Sustainable design and construction

EN5 - Managing flood risk

EN8 - Electric Vehicle Charging Infrastructure

13. The following saved policies from the Unitary Development Plan are considered to be of most relevance to this development proposal:

GP5 - General planning considerations

BD2 – Design and siting

BD5 - New buildings and amenity

LD1 - Landscaping

14. The following policies from the Natural Resources and Waste Local DPD are considered to be of most relevance to this development proposal:

AIR 1 – Management of Air Quality

WATER 1 – Water Efficiency

WATER 4 – Effect of proposed development on flood risk

WATER 6 – Flood Risk Assessments

WATER 7 – Surface Water Run Off

LAND 1 – Land Contamination

LAND2 – Development and Trees

15. The site is not part of adopted Neighbourhood Plan.

Relevant Local Supplementary Planning Guidance/Documents

16. The most relevant local supplementary planning guidance (SPG), supplementary planning documents (SPD) are outlined below:

SPD Transport (2023)

SPD Accessible Leeds (2016)

Other relevant documents

NATIONAL PLANNING POLICY AND GUIDANCE

National Planning Policy Framework

17. The National Planning Policy Framework (NPPF 2023) sets out the Government's planning policies for England and how these are expected to be applied. It sets out the Government's requirements for the planning system. The NPPF must be taken into account in the preparation of local and neighbourhood plans and is a material consideration in planning decisions.
18. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise (section 38(6) Planning and Compulsory Purchase Act 2004). The National Planning Policy Framework is an important material consideration in planning decisions.
19. The National Planning Policy Framework (NPPF) gives a presumption in favour of sustainable development and has a strong emphasis on achieving high quality design. Of particular relevance, the national planning guidance attaches great importance to the design of the built environment, for proposals to add to the overall quality of the area and that are attractive places to live and respond to local character (section 12, NPPF). In addition, advice is contained within section 9, NPPF (Promoting sustainable transport) that deals with sustainable transport modes and avoiding severe highway impacts; and, section 14 (Meeting the challenge of climate change and flooding) which includes matters of flood risk and promote renewable energy sources.

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20. The Planning Practice Guidance (PPG) provides commentary on the application of policies within the NPPF. The PPG also provides guidance in relation to the imposition of planning conditions. It sets out that conditions should only be imposed where they are necessary; relevant to planning and to the development to be permitted; enforceable; precise and reasonable in all other respects.

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Public Sector Equality Duty:

24. The Equality Act 2010 requires local authorities to comply with the Public Sector Equality Duty. Taking into account all known factors and considerations, the requirement to consider, and have due regard to, the needs of diverse groups to eliminate discrimination, advance equality of opportunity and access, and foster good

relations between different groups in the community has been fully taken into account in the consideration of the planning application to date and at the time of making the recommendation in this report.

25. In this instance it is considered that the proposals do not raise any specific implications in these respects and therefore it is not considered that a full Equality, Diversity, Cohesion and Integration Impact Assessment (EDCI) is required.

MAIN ISSUES:

Principle of Development
Design
Highways and Access
Drainage
Amenity
Landscaping
Climate and Energy
Representations

APPRAISAL:

Principle of Development

26. Sustainable Development is a key aspect of the current planning policy framework at both national and a local level. Spatial Policy 1 of the Leeds Core Strategy Strategic Review (CSSR) seeks to ensure that new development is concentrated in the main urban areas in order to ensure that shops, services and public transport are easily accessible. The application site is located within a wider established area of a residential settlement and the site is close to local facilities and as such is considered to be in a sustainable location.
27. The National Planning Policy Framework (NPPF) identifies one of its core principles as encouraging the effective use of land by reusing land that has been previously developed (Brownfield land). This application refers to land that has had a former public house demolished whilst retaining a sizeable area of hard-standing and can be regarded as previously developed land.
28. In accordance with Policies P2 and P3 of the Leeds Core Strategy the proposed A1 retail function is one that is appropriate within and on the edges of local and town centres. Policy P8 of the Core Strategy would require a Class E application of this size and location (within a residential area) to provide a sequential test covering local centres within a 5-minute drive time. For this application, this would cover Morley edge and town centre only. The applicant has submitted a sequential test that covers Morley Town Centre and its fringe areas and has identified several sites that are either unsuitable or unavailable. There is no further knowledge of any other sites within the Morley area that may be suitable or available for this proposal and therefore the proposal passes the sequential test approach stipulated by Policy P8.
29. As such, it is considered that the principle of re-developing the site for the proposed purpose is acceptable.

Design

30. The proposed charging station comprises structures typically associated with such facilities and the main building is of a design typical of such uses. The gross external

area of the shop will have a maximum gross external area of 216 sqm and a maximum height of 5.48 metres. The individual charging bays will be covered by a canopy at height of 3.79 metres. It is a simple single storey building using materials that are appropriate to the site's location, with the retail unit clad in red brick and a dark grey aluminium framed glazed shop front. The building will have a green roof and small canopy over its entrance. The EV charging canopies will be constructed of aluminium sheeting, with green, white and grey finishes. Such design is acceptable, located as it is on a very busy motorway roundabout, being typical of the sort of development that is likely to be found in such a location and as a result, it will not visually detract from the area and consequently it is considered acceptable in terms of design.

31. A number of existing trees and vegetation around the perimeter of the site have been retained where possible and incorporated into the landscaping scheme, with additional new trees, native hedgerow shrub planting provided throughout the site to supplement the existing landscaping and the overall visual appearance of the site.
32. The site will be enclosed by a 1-metre-high post and rail timber fence which will be installed around the perimeter of the site on its open boundaries. A 2.4m acoustic fence is proposed along the western, south-western and south-eastern edge of the site in accordance with mitigations set out in the Noise Assessment

Highways and Access

33. Policy T2 of the UDP of the Core Strategy advises that new development should be served adequately by existing or programmed highways and will not create or materially add to problems of safety, environment or efficiency on the highway network. The NPPF notes at Paragraph 115 that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.
34. The Core Strategy supports development of infrastructure for new low carbon technologies and provision for electric vehicle charging infrastructure. The Council promotes the use of ultra-low emission vehicles due to their carbon reduction and air quality benefits. A shift towards cleaner mobility is necessary to create a healthier city and respond to the Climate Emergency
35. The site is relatively accessible to different forms of travel with continuous street lighting and footways and advisory cycle routes and other paths extending into and through the site. There are bus stops within 400m of the site; although the most frequent services are half hourly and below the recommended threshold and enhancements to nearby bus stops nos. 10347 and 11459 would be proposed. A Public Right of Way, non-definitive Footpath/Morley and the proposed site plan indicates pedestrian access through the site would be retained. PROW have confirmed that the revised scheme aligns with the existing PROW and a diversion is not required. Tactile paving is required at each side of the entry and exit. The footway along the internal access road should be 2m wide.
36. The proposed access to the site is via modified existing accesses off A650 Bradford Road and A653 Dewsbury Road. Plan 14170-22-2 Rev B shows an entry from A650 Bradford and exit on to A653 Dewsbury Road.
37. The area highlighted in blue as shown on plan 14170-22 Rev. B will need to be maintained so that any vegetation does not exceed 1.0m in height. This is to ensure that forward visibility towards the A650 Bradford Road and the proposed site access is

protected until such time the highway scheme (approved as per Pell Frischmann drawing A13398-T-146) is implemented. This can be secured by condition. Once the highway scheme is implemented, the forward visibility would be maintained within the adopted highway boundary as shown on plan VN222471 - D101 Rev. B included in the Highways Technical Note dated 17 October 2023.

38. Vehicle swept path analysis for a 16.5m articulated vehicle has been undertaken. Plan VN222471 - TR100 Rev. D shows the swept paths with the future highway scheme in place. Plan VN222471 - TR101 also shows the swept path analysis for a large car, which would be able to enter and exit the site in forward gear.
39. The Highways Technical Note dated 15 February 2024 provides details of ATC survey and visibility splay assessment following a further request from LCC highways. The ATC survey was undertaken on the A653 Dewsbury Road to record the 85th percentile speeds of vehicles travelling northbound. The location of the ATC survey is acceptable.
40. The highest 85th percentile speed was recorded at 36.70 mph. This is below the posted speed limit of 40mph on the A653 Dewsbury Road. The corresponding Stopping Sight Distance (SSD) in accordance with DMRB would therefore be 90m with a perception-reaction time of 2 seconds and deceleration rate of 0.25g. The 90m SSD is achievable within the adopted highway boundary (i.e. to the south of the A653 Dewsbury Road) from a driver position of 2.4m set back at the junction.
41. Plan VN222471 - TR100 Rev. E included in Appendix B in the Highways Technical Note shows the visibility splay based on the identified 85th percentile speeds, hence the splay represents accurate measurement. A planning condition would be necessary to ensure that any hedges / vegetation encroaching onto the visibility splay is cut back / maintained.
42. The junctions have been tightened to minimise the possibility of drivers convoluting the proposed one-way arrangement within the site. With suitable signage in place, which could be secured by condition, these arrangements are acceptable. The bin store location should be indicated on a revised plan. This could however be secured by condition.
43. The car parking arrangements as shown on Plan 14170-22-2 Rev B are acceptable. The provision includes parking spaces for customers who might visit the retail unit but not to use the charging facilities.
44. The Transport Assessment indicates there is no adverse impact on the highway network. The additional Technical Notes submitted on 17 October 2023 and 15 February 2024 address the highway comments previously raised in relation to the internal layout, access arrangements and how the committed highway scheme sits with the proposed development.
45. The proposal includes amendments to the two existing access points to provide an entry and exit at A650 Bradford Road and A653 Dewsbury Road, respectively. The highway works will require a S278 Agreement (likely to be under minor S278 procedure) with the works to be fully funded by the developer.
46. An independent Stage 1 RSA has been undertaken. This is included in Appendix D of the Highways Technical Note dated 17 October 2023. The designer response is included in Appendix E. The Stage 1 RSA did not highlight significant concerns with the access arrangements or the internal layout of the proposed development. The

issues highlighted in relation to tactile paving and signage for the access and exit junctions will be addressed as part of detailed design and planning conditions.

47. It is considered the proposals do not adversely affect highway and pedestrian safety and are deemed acceptable in this regard. In summary, the proposal raises no highway and pedestrian safety issues and will provide a well laid out development. The proposal is considered compliant with Core Strategy Policy T2 as well as guidance within the Transport SPD.

Drainage

48. The application site is located within Flood Zone 1 and there have been no records of any recent flooding within the property or adjacent areas. An initial review has also identified that there are known surface water flood risks to the north of the site which may require specific mitigation and could impact on the proposed development.
49. The applicant submitted a Surface Water Drainage Assessment which after review, raised a number of issues, including the requirement of written confirmation from Yorkshire Water as to acceptance and agreed point of connection to the public sewer system for the proposed foul and surface water flows and the proposed discharge rates, full details of the proposed attenuation feature and flow controls and details of overland exceedance routes in the event of a failure of the drainage system or storm event in excess of the 1% AEP plus required climate change storm event.
50. Following re-consultations and revisions of the surface water drainage assessment, all the issues have been satisfactorily resolved and the Local Flood Authority have no objection to the proposed development subject to the development being undertaken in accordance with the Surface Water drainage Assessment, Final Report v1.4, Dated 31st October 2023 and this will be conditioned accordingly.
51. The site as shown on the Statutory Sewer Map, has a 6 (six) metre deep 229mm diameter public combined sewer recorded to cross the site and that the presence of this infrastructure must be taken into account in the design of the scheme. In this instance, a stand-off distance of 5 (five) metres is required at each side of the sewer centre-line and therefore with the submitted scheme, any proposal by the developer to alter/divert a public sewer will be subject to YW requirements and formal procedure in accordance with Section 185 Water Industry Act 1991. The drainage details acknowledge this easement and these matters will need to be agreed with Yorkshire Water.
52. Additionally records indicate that 2 no. 6" and 2 no. 12" water mains cross the red line site boundary. The presence of the main may affect the layout of the site and Yorkshire Water consider it to be a material consideration in the determination of this application, recommending that no obstruction encroaches within 3 (three) metres on either side of either of the 6" water main i.e. a protected strip width of 6 (six) metres and no obstruction encroaches within 6 (six) metres on either side of either of the 12" water main i.e. a protected strip width of 12 (twelve) metres. Again, the drainage details acknowledge this easement and these matters will need to be agreed with Yorkshire Water and that the exact lines of the mains will have to be determined on site under Yorkshire Water Services supervision. It may be possible for the mains to be diverted under s.185 of the Water Industry Act 1991.

Amenity

53. This type of operation can be associated with issues regarding residential amenity in terms primarily of hours use of the site and from the noise and disturbance at unsocial hours and the lighting of the site. Towards the south of the proposed development site are residential properties along Dewsbury Road and Oban Close. Some of the residential properties side onto the site with some having rear gardens attached to the boundary of the site. In light of these impacts, a noise report has been submitted and considered by the Environmental Health department of the Council.
54. This noise assessment has provided predictions of noise during operation, assuming 100% of bays in use during the daytime and 20% use at night-time represented by 3 charge points in use. This estimate was based on current usage patterns at similar sites although it is not known whether this will remain the case as EV ownership increases in future years and demand for charge-points grows. Currently EV ownership nationally is reported as being around 1.4% of private vehicles registered but a site such as this is generally understood to be used mid-journey given its location on the strategic road network. The predictions of night time usage may be conservative at the moment but this is likely to increase in future years.
55. The noise report details acoustic-grade fencing along the boundary to the dwellings to provide necessary reductions in operation noise level during the daytime. A noise management plan required by condition is recommended to place a responsibility on the site operator to ensure that users of the facility are considerate of nearby residents by erecting signage reminding users to be considerate at night and taking action where loud car radios in the car park are playing for example.
56. Additionally, the Environmental Health Officer would seek conditions that limit the times of use of the jet wash bays and vacuum cleaner and deliveries and waste collections. These sources of noise are more intermittent and likely to create adverse impact at night time by virtue of the character of the noise i.e. cages of fresh produce being unloaded. The noise assessment predicted that noise from fixed plant serving the shop and sub-stations was sufficiently lower than other noise sources in operation at the site therefore we do not have concerns regarding this element.
57. However, it is clear that further detail on the impact of artificial light is needed given the 24hr operation to show that this has been carefully designed to avoid impact upon residents and this will be secured by condition.
58. The development, due to its use and the single storey nature of the building, set away from residential properties will have no significant impact on overlooking, overdominance or overshadowing of neighbouring residential properties and is considered acceptable in this regard

Landscape

59. The site is covered by two tree preservation orders: TPO 2011–001 & TPO 2011–018 and the site clearly benefits some amenity value from the mature planting that is on the site. Whilst some tree loss on the site can potentially be mitigated by replacement off site, it was initially proposed to lose all of the frontage trees on the site. This was considered unacceptable and the applicant was asked to look at the site again to see if this matter could be addressed.
60. The site has a number of significant existing constraints and some tree loss is likely to be necessary to facilitate any redevelopment of the site, and that the applicant made clear that they would be willing to meet policy LAND2 with on and off-site tree planting and/or financial contribution. In accordance with the mitigation hierarchy, the last resort is offsetting tree loss, the first step is avoiding and reducing tree loss. It is

accepted that the development of a derelict site and the proposed EV charging use are positive in principle and desired by the Council and stakeholders, but the quantum of good quality mature and protected tree removal was not initially acceptable. There was scope to adjust the layout and potentially reduce the footprint of development to retain more trees. Highest priority for retention has been given to protected trees in the most prominent locations, particularly those along the east boundary on the corner of Bradford Road and Dewsbury Road at Tingley Interchange. Retaining trees in this location was also considered valuable to provide screening between the EV charging station and busy roads, benefitting those waiting for vehicles to charge and road users. Following significant revisions to the plans moving the whole layout around, improvements to the screen not only in terms of layout, but also in terms of tree retention were made.

61. The revised layout has retained additional trees to the southeast of the site which was a positive improvement on the original proposal. Further investigation into the possibility of retaining the trees to the North of these were made, but due to significant issues, this has proved impossible. There are a number of issues that have dictated the layout including an existing Public Right of way across the site that has been retained, a sewer and two water mains that require easement distances across the site, significantly restricting where development can take place on the site. As such, this has required that the location of the pumping station that is proposed as part of the drainage scheme be where these trees are located and furthermore, trees in this location have the potential to conflict with the electric vehicle charging equipment (i.e roots) and their associated canopies. However, perhaps of most significance, a 1 metre high retaining wall and fence will be required to the boundary of the site where these trees are located along the road frontage, with associated ground raising works within this particular area of the site. These works are required as a result of a Council traffic improvement scheme to be implemented on the Tingley roundabout as part of the Capitol Park employment scheme (20/08521/OT) where the Dewsbury Road arm will gain an additional lane and thus widened westwards to accommodate this plus a new pedestrian / cycle lane, which would have major implications for existing trees in that the embankment will be removed by the proposal and as such potentially cause significant harm to these trees in any case.
62. This tree removal includes 24 trees including of 19 moderate quality, 4 trees of low quality, and 1 tree that requires removal regardless of the proposals due to structural issues. Although many of the trees required for removal are classified as Category B trees of moderate quality, it should be noted that most are lacking significant stature and that individually their quality is generally low – being classified as of higher value due to their group aspect.
63. Whilst the landscape officer continues to object to the loss of these trees, for the reason given above for which it appears that the Landscape team were not consulted about, it is considered that whilst the loss of these trees is regrettable, the likelihood is that their loss will be inevitable due to the highways works proposed in the future. On balance, and with the agreement of the applicant to provide significant off site mitigation in the form of tree planting schemes (within the Morley Ward in conjunction with Ward Councillors and Morley Town Council), it is considered that bringing this derelict site back into use in an appropriate sustainable manner, would offset the loss of these trees.
64. The Council require replacement in conjunction with Policy LAND 2 and this would be at a ratio of three trees replaced for every one tree lost on site. Given the loss of 24 trees on the site, this would require a replacement of 72 trees. These would be expected to be extra heavy standard trees (14-16cm girth), with a clear stem up to

1.8m from ground level with a head of branches and a section 106 agreement would be required to facilitate the provision of these off-site works at a cost of £1,500 per tree, a figure that also includes a three year maintenance programme after planting. This would equate to a contribution of £108,000. This is an obligation which is deemed to be necessary to make the development acceptable in compliance with Policy LAND 2 and Core Strategy Policy ID2.

65. It will also be necessary to include within any approval, conditions to ensure that protection of the other retained trees on site throughout the construction process.

Climate Change

66. Policies EN1 and EN2 of the Core Strategy relates to climate change, carbon dioxide reduction, as well as sustainable design and construction but given the size of the development is under 100 square metres, the proposal falls outside of the catchment of these policies. Policy EN8 which relates to electric vehicle charging infrastructure is applicable and it is considered that the proposal, by its very nature as providing a vehicle charging facility accords with the policy.

Representations

67. 9 letters of representation, 3 of support, one of general comment and 5 (5 from 2 separate addresses) objecting as well as issues raised within the referral to Plans Panel from Ward Members were received with the material considerations addressed in the report above.

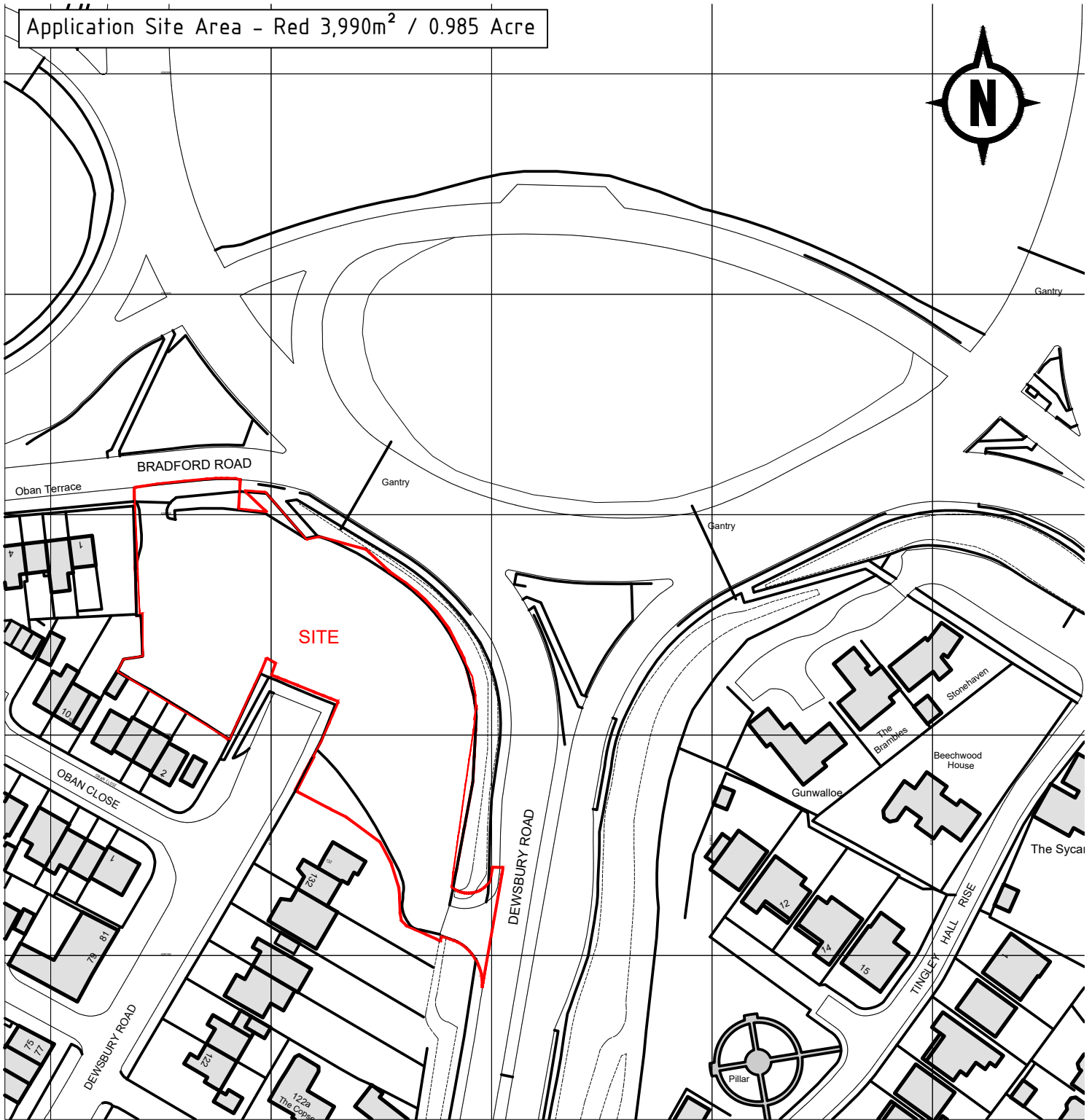
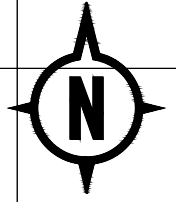
CONCLUSION:

68. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, it is determined that the proposed development is in accordance with the development plan and as there are no overriding material planning considerations that weigh in favour of the proposal, the application is therefore recommended for approval.

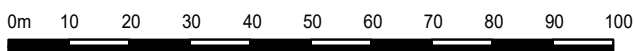
BACKGROUND PAPERS:

Application file reference: 23/03322/FU

Application Site Area - Red 3,990m² / 0.985 Acre



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1:1250 Scale Bar

SITE LOCATION PLAN

SCALE 1:1250 @ A4

DATE March 2023

DWG NO. 14170-OS REV A

Tingley Interchange
Bradford Road / Dewsbury Road
Leeds
WF3 1JX

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Originator:	Laura Bromley
Tel:	0113 3368663

Report of the Chief Planning Officer

SOUTH & WEST PLANS PANEL

Date: 7th March 2024

Subject: 23/06663/FU – Erection of 82 affordable dwellings and associated open space and infrastructure at Former Hough Side High School Site, Hough Top, Swinnow, Leeds, LS13.

APPLICANT
Leeds City Council

DATE VALID
17.11.2023

TARGET DATE
05.04.2024

<p>Electoral Wards Affected:</p> <p>Pudsey</p> <p><input type="checkbox"/> Yes Ward Members consulted</p>
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<p>Specific Implications For:</p> <p>Equality and Diversity <input type="checkbox"/></p> <p>Community Cohesion <input type="checkbox"/></p> <p>Narrowing the Gap <input type="checkbox"/></p>

<p>POSITION STATEMENT: Members are requested to note the contents of this report on the proposal and to provide views in relation to the questions posed to aid the progression of the application.</p>
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INTRODUCTION:

1. The application is presented to South and West Plans Panel. This report is a Position Statement meaning that the application is not being reported for determination at this point in time. The purpose of this Position Statement is to inform Members of the proposal, to report on the progress of the application and to seek Members comments on key planning issues associated with this development.

PROPOSAL:

2. The proposal is for a new residential development comprising 82 affordable rent dwellings with associated parking and amenity space; construction of new adoptable highway, and public open space.

The proposed development consists of the following:

- 28 – Two-bedroom, four person houses
- 23 – Three-bedroom, five person houses
- 4 – Four-bedroom, 7 person houses,
- 17 – One-bedroom, 2 person apartments,
- 10 – Two-bedroom, 3 person apartments.

SITE AND SURROUNDINGS

3. The site comprises a 2.5 Ha area of land to the north of Hough Top road. The site was formerly occupied by a school until 1992, and then used as Council offices. The building was demolished in 2021/2022.
4. The site slopes gently from the west to the east and comprises a mix of grassland and hardstanding. Boundaries are mature trees, particularly to the eastern and southern boundaries, hedgerows and scrub. An access point remains from Harley Drive and the former access from Hough Top Road is closed off.
5. The site is surrounded by residential properties to the north, east and south. Properties are red brick houses to the north, stone houses to the south and 3 storey brick and red flats to the east. To the west are playing fields. To the north east corner is the vacant Swinnow Public House.
6. The application site is an allocated housing site in the Local Development Framework Site Allocation Plan (2019) with a suggested site capacity of 76 units. Site Allocations reference HG2-207. The Site Requirements indicate that the site is affected by a gas main along the south of the site.

RELEVANT PLANNING HISTORY:

7. Planning applications:
21/00510/DEM: Determination for demolition of former school building.
Approved 17.08.2021

Pre-application enquiries:

Erection of 82 affordable dwellings and associated open space. Advice given 14.03.2023.

CONSULTATION RESPONSES:

8. LCC Environmental Studies Transport Strategy:
This team was consulted on this application due to its proximity to the transportation network. On examination of Defra's strategic noise maps and the layout and orientation of the proposed dwellings, transportation noise is unlikely to be of a level that would require specific

measures over and above standard building elements. Therefore in this case we do not require an acoustic assessment to be submitted.

9. LCC Environmental Health Services

No objection subject to conditions. Noisy construction related activities should not take place outside the hours of 08.00 to 18.00 hours Mondays to Fridays 09.00 to 13.00 hours, Saturdays with no noisy activities on Sundays or Public Holidays.

10. Health and Safety Executive

No objection.

11. Refuse Collection Services

No objection.

12. The Coal Authority

No objection.

13. Northern Gas Networks

No objection.

14. LCC Flood Risk Management

Infiltration strategy is supported, however the submitted 'Overland Flow Assessment' drawing appears to indicate discharge of surface water onto the highway and Hough Top. Revised information required.

15. LCC Contaminated Land Team

No objection, subject to conditions.

16. Yorkshire Water

The submitted Flood Risk Assessment and Drainage Strategy requires amendments so no surface water discharges to YW sewers. This can be deal with via condition.

17. West Yorkshire Police

No objection.

18. LCC Design Team

Objection: A number of issues need to be addressed before the proposals can be supported from a design perspective: elevations, windows, boundary treatments.

19. LCC Landscape Team

Queries over exact number of trees to be lost and replaced. Tree Survey and AIA require updating. Some concerns over retaining wall details, further detail requested.

20. LCC Nature Team

Objection to the -23% biodiversity net loss, contrary to local policy.

PUBLIC/LOCAL RESPONSE:

21. The application was advertised as a major development. Site notices were posted around the site on 24.11.2023 and the application was publicised in the Yorkshire Evening Post on 05.12.2023.

22. General Comments:

7 neutral comments, 2 were from the same household, summarised below:

- Queries as to purpose of railings and chicanes around the POS.
- How will the grass verge area be maintained?
- Request for 1 Swift brick per house as per the British Standard
- Harley Drive is a narrow street, cars regularly hit each other. Harley Drive needs widening, more cars in the area will make this worse.
- Football field must be safeguarded from future development.
- Not against housing here but there should be an access from Harley Drive.

23. Comments in Support:

5 comments, summarised below:

- Support on the condition of detailed specification for how the project will meet its renewable energy commitments
- Fully support this development in the years of the major housing crisis, and the money it will bring into the local economy.
- Great use of unused land, mix of housing is diverse and will provide much needed housing.
- Could the development promote healthy lifestyles by including a kid's playing area, car-free walking routes to Pudsey/bus stops, a shop or community hub.
- Support provision of much needed affordable housing. But the appearance of the houses have little architectural character. Recommend more new trees to soften the streetscape and provide wind and sun mitigation.
- Concerns over ground floor layout with WC straight off the kitchen space.
- Lack of affordable social housing in the local area, there is a lot of demand in Pudsey and Bramley.

24. Comments in Objection:

43 objection comments. Of these some were multiple concerns raised by the same objector. Concerns are summarised below:

- Significant impact to road safety; there are already issues with school drop-offs and weekend football parking along Hough Top.
- Development will destroy trees and wildlife
- Parking will get worse, there are already parking issues with the nearby school and adjacent playing fields during football matches.
- Hough Top already used as a rat run, this development will increase traffic congestion
- Development will exacerbate the existing issue with cars parking on Hough Top during football matches. The Harley Walk Parking Project will not fully address this issue.
- Considerable crime and ASB in the area. This has not been given sufficient consideration in the design of boundary treatments or the Public Open Space or play area.
- Proposed boundary railings along Hough Top will make the grass verges inaccessible to dog walkers.
- Too many footpaths and vehicular access points proposed into the site. It is too permeable against crime and ASB deterrent policy.
- Play area is too close to the road and will attract older children and antisocial behaviour.
- Noise from the playing field during football matches will be intrusive to future occupants of the houses adjacent to the field.

- Overlooking into rear gardens from the playing field.
- Site too dense, no public transport near the development, traffic will become much worse.
- To many Council properties in the area already. Will place more demand on local health services, more traffic and more antisocial behaviour.
- Scheme is unimaginative, needs differing house types
- Development will have an oppressive impact on the surrounding area
- Site should be used for community allotments and trees
- Swinnow Lane and Hough Top cannot maintain 2 way traffic already.
- Concerns over flooding and sewage, no street drains on Hough Top.
- Transport Assessment conclusion based on flawed arguments
- Proposed boundary treatments conflicting
- Pre-planning consultation process was inadequate should have had a public meeting
- Should have 2 smaller apartment blocks, proposed block is too high.
- Flat height and siting is overbearing, overshadowing, and out of character. Will devalue nearby homes and increase noise and traffic.
- Block of flats is ugly, red brick is out of character.
- Houses should be in character with Hough Top, not Swinnow Estate
- Need to use Harley Drive as an access point. Fire Tender cannot pass through Hough Top during football match days.
- Increased air pollution from traffic and the homes
- Proposed substation should be re-sited well away from houses.

25. Ward Members: Objection from Cllr S Seary in support of residents. Introducing access from Harley Drive would alleviate the concerns of 2 access points along Hough Top.

PLANNING POLICIES:

LOCAL PLANNING POLICY AND GUIDANCE

The Development Plan

26. As required by Section 38(6) of the Planning and Compulsory Purchase Act 2004 this application has to be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan currently comprises the adopted Local Development Framework Core Strategy (2019), those policies saved from the Leeds Unitary Development Plan (Review 2006), the Site Allocations Plan (2019), the Natural Resources and Waste Development Plan Document (2013 and 2015) and any made Neighbourhood Plan.
27. The following policies from the Core Strategy are considered to be of most relevance to this development proposal:

General Policy: Sustainable Development and the NPPF

Spatial Policy 1: Location of Development

Spatial Policy 6: The Housing Requirement and allocation of housing land

H1: Managed release of sites

H3: Density of residential development

H4: Housing mix
 H5: Affordable housing
 H9: Minimum space standards
 H10: Accessible dwellings
 P10: Design
 P12: Townscapes/landscapes
 T1: Transport Management
 T2: Accessibility requirements and new development
 G1: Enhance and extend green infrastructure
 G2: Increase native and appropriate tree cover
 G4: Green Space improvement and new green space provision
 G8: Protection of important species and habitats
 G9: Biodiversity Improvements
 EN1: Climate change – Carbon Dioxide Reduction
 EN2: Sustainable Design and Construction
 EN5: Managing flood risk
 EN8: Electric Vehicle Charging Infrastructure:
 ID2: Planning obligations

28. The following saved policies from the Unitary Development Plan are considered to be of most relevance to this development proposal:

GP5: Seeks to ensure that development proposals resolve detailed planning considerations, including amenity.
 BD2: New buildings should complement and enhance existing skylines
 BD5: Amenity and new buildings.
 N23: Open space and retention of existing positive features
 N25: Development and Site Boundaries
 LD1: Landscaping schemes

29. The following policies from the Natural Resources and Waste Local DPD are considered to be of most relevance to this development proposal:

General Policy 1: General planning considerations
 Water 1: Water efficiency
 Water 6: Flood risk assessments
 Water 7: Surface water run-off
 Land 1: Contaminated Land
 Land 2: Development and trees
 AIR1: Air quality initiatives

Relevant Local Supplementary Planning Guidance/Documents

30. The most relevant local supplementary planning guidance (SPG), supplementary planning documents (SPD) are outlined below:

Neighbourhoods for Living (and associated addendum) (2003)
 Transport SPD (2023)
 Sustainable Design and Construction SPD (2011)
 Distances from Development to Trees (SPG13)
 Sustainable Urban Drainage (SPG22)
 Accessible Leeds SPD (2016)

NATIONAL PLANNING POLICY AND GUIDANCE

National Planning Policy Framework

31. The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are expected to be applied. It sets out the Government's requirements for the planning system. The NPPF must be taken into account in the preparation of local and neighbourhood plans and is a material consideration in planning decisions.
32. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise (section 38(6) Planning and Compulsory Purchase Act 2004). The National Planning Policy Framework is an important material consideration in planning decisions.
33. The policy guidance in Annex 1 to the NPPF is that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. The closer the policies in the plan to the policies in the Framework, the greater the weight that may be given. It is considered that the local planning policies mentioned above are consistent with the wider aims of the NPPF.

National Planning Practice Guidance

34. The Planning Practice Guidance (PPG) provides commentary on the application of policies within the NPPF. The PPG also provides guidance in relation to the imposition of planning conditions. It sets out that conditions should only be imposed where they are necessary; relevant to planning and to the development to be permitted; enforceable; precise and reasonable in all other respects.

CLIMATE EMERGENCY:

35. The Council declared a climate emergency on the 27th March 2019 in response to the UN's report on Climate Change.
36. The Planning Act 2008, alongside the Climate Change Act 2008, sets out that climate mitigation and adaptation are central principles of plan-making. The NPPF makes clear that the planning system should help to shape places in ways that contribute to radical reductions in greenhouse gas emissions in line with the objectives of the Climate Change Act 2008.
37. As part of the Council's Best City Ambition, the Council seeks to deliver a low-carbon and affordable transport network, as well as protecting nature and enhancing habitats for wildlife. The Council's Development Plan includes a number of planning policies which seek to meet this aim, as does the NPPF. These are material planning considerations in determining planning applications.

PUBLIC SECTOR EQUALITY DUTY:

38. The Equality Act 2010 requires local authorities to comply with the Public Sector Equality Duty. Taking into account all known factors and considerations, the requirement to consider, and have due regard to, the needs of diverse groups to eliminate discrimination, advance equality of opportunity and access, and foster good relations between different groups in the community has been fully taken into account in the consideration of the planning application to date and at the time of making the recommendation in this report.
39. In this instance it is considered that the proposals do not raise any specific implications in these respects and therefore it is not considered that a full Equality, Diversity, Cohesion and Integration Impact Assessment (EDCI) is required.

40. **MAIN ISSUES:**

This Position Statement will focus on the main planning issues. Other issues such as land contamination and drainage will be covered in the final report but are not considered key areas of concerns in relation to this application. The main issues are:

- Principle of development
- Design and appearance
- Biodiversity and tree loss
- Highways and parking
- Drainage

APPRAISAL

Principle of development

41. The Site Allocations Plan (SAP) identifies the site as being allocated (reference HG2-207) for housing and is therefore supported in principle being a residential scheme.
42. Policy H3 of the Core Strategy states the required densities of residential development in order to ensure a sustainable housing development and the efficient use of land. Housing development in Leeds should therefore meet or exceed the identified net densities.
43. The site is located in ‘other urban areas’ and is therefore expected to have a dph of 40. The density of the site equates to 32.5 dwellings per hectare. Given the constrained nature of the site due to the existing mature trees and presence of a gas pipeline, this is considered an appropriate balance that exceeds the indicative site capacity of 76 dwellings in the SAP.
44. Policy H4 of the Core Strategy states that developments should include an appropriate mix of dwelling types and sizes to address the needs measured over the long-term taking into account the nature of the development and character of the location. The preferred housing mix is as set out below:

Type	Max %	Min %	Target %
Houses	90	50	75
Flats	50	10	25

Size			
1 bed	50	0	10
2 bed	80	30	50
3 bed	70	20	30
4 bed +	50	0	10

45. The development proposes a total of 55 dwellings and 27 apartments. This is an acceptable mix within the target ranges shown above. The split by size of properties proposed is as follows:
- 17 one-bedroom apartments (20%)
 - 38 two-bedroom houses/apartments (46%)
 - 23 three-bedroom houses (28%)
 - 4 four-bedroom houses (4.8%)
46. The mix proposed falls between the maximum and minimum targets as set out in the above table and is therefore considered to achieve an appropriate housing mix as required by Policy H4.
47. As this scheme represents 100% Affordable Housing, the 15% that would be required in AH Zone 2 is exceeded and the Local Planning Authority fully support the delivery of a 100% AH scheme.
48. Core Strategy Policy H10 requires that new build residential developments include the following proportions of accessible dwellings:
- 30% of dwellings meet the requirements of M4(2) ‘accessible and adaptable dwellings’ of Part M Volume 1 of the Building Regulations.
 - 2% of dwellings meet the requirement of M4(3) ‘wheelchair user dwellings’ of Part M volume 1 of the Building Regulations. Wheelchair user dwellings should meet the M4(3) wheelchair adaptable dwelling standard unless Leeds City Council is responsible for nominating a person to live in the dwelling.
49. The site plan confirms that 2 one-bedroom apartments (2%) will meet the requirements of M4(3) and 30% of properties will meet the requirements of M4(2). Housing Leeds have confirmed there is no demand for a family-sized M4(3) dwelling, so one bedroom M4(3) apartments have been accepted as most appropriate in this case. The M4(2) dwellings are a proportional mix of dwelling sizes and types.
50. For these reasons the development is considered acceptable in principle subject to all other material planning considerations.
51. Design and appearance
The National Planning Policy Framework states that “good design is indivisible from good planning” and authorities are encouraged to refuse “development of poor design”, and that which “fails to take the opportunities available for the improving the character and quality of an area and the way it functions, should not be accepted”. Policy P10 of the Core Strategy seeks to ensure that new development is of high quality and is appropriate to its context.
52. The layout of the proposed dwellings is generally acceptable and responds well to the existing topography and other site constraints such as the gas pipeline to the south.

Although the location of the public open space (POS) to the south is not ideal as it could limit usability, it does enable the retention of the mature trees which are a considerable asset to the site and locality. A total of 4,630 sqm of POS is proposed which exceeds policy requirements. The inclusion of a small trim trail play area as part of the POS will be a positive facility for families living on the site and nearby. The play area has been reduced in size in response to comments from Ward members and the public about the potential for antisocial behaviour.

53. The position of the flats adjacent to the open space is positive and there is good space about the block of flats to absorb their scale. The flats are 3 storey which is no higher than the existing blocks of flats to the east. Furthermore, the block of flats has been set at an angle and set well back from Hough Top to lesson the visual impact of the flats when viewed from Hough Top.
54. Houses are a mix of detached and semi-detached properties with private gardens of an acceptable size and in curtilage parking that does not dominate the streetscape. The initial proposal included several houses with blank gable elevations facing the street and on corners. This appears harsh and overbearing and it was requested that windows are added to these gable ends to improve the appearance of houses and also introduce some passive surveillance. A revised design for house type A1 has introduced a blind window at ground floor level. This does not resolve the original concerns raised.
55. The LCC Design officer commented that the original elevations of the apartment bloc were relatively featureless and austere. The revised drawings are little different to the previous versions. The introduction of panels of different brick work does not address the earlier fundamental problems of comparatively small windows. Whilst Building Regulations Part) was previously cited as the reason for relatively small windows, insufficient justification has been provided to support this position or the alternative approaches to ventilation. There remains an objection from the LCC Design officer in regard to the appearance of the flats, dwellings and proposed boundary treatments.
56. With regard to proposed boundary treatments, the objection relates to the proposed close boarded timber fence to the western rear boundary adjacent to the playing field. This will be sited behind the existing metal palisade fencing at this boundary. Where boundaries adjacent to open space are present, they should be of an appropriate quality. It is standard good practice to provide a robust, attractive and contextual boundary as referenced in Saved UDP Policy N25.
57. The proposed western boundary treatment would be in conflict with saved policy N25. However, cross sections have been provided to show that the land slopes up higher on the open space side which will obscure much of this boundary from public view. In addition, the applicant has submitted a viability statement explaining that the site has significant abnormal development costs over £2.4 million. Adding a masonry wall would make the scheme of 100% affordable housing for rent unviable due to the additional cost of around £250,000 and delays it would add to the scheme. This is considered adequate justification for the use of a timber fence in this location.

Question 1: Do Members consider the design and appearance of the development to be acceptable?

58. Biodiversity and Tree Loss
Policy G9 of the CS relates to biodiversity improvements, with development being required to demonstrate an overall net gain for biodiversity commensurate with the scale of the development, including a positive contribution to the habitat network through habitat protection, creation and enhancement. LCC guidance seeks a net gain of 10% for biodiversity, in line with the Environment Act. Policy G9 also requires no significant adverse impact to the Leeds Habitat Network, and that the design of proposals provides new areas and opportunities for wildlife.
59. To note, the Biodiversity Net Gain: Good Practice Principles for Development document published by the Chartered Institute of Ecology and Environmental Management and others sets out that “achieving... net gains in biodiversity, where there are wider benefits for society, is more than simply outweighing losses with gains. It requires doing everything possible to avoid losing biodiversity in the first place...”. Indeed, in setting out the correct way to achieve biodiversity net gain, the professional guidance sets out ten good practice principles for biodiversity net gain. Principle Number 1 of the guidance (Apply the Mitigation Hierarchy) sets out that developers should “do everything possible to first avoid and then minimise impacts on biodiversity. Only as a last resort, and in agreement with external decision makers where possible, [should developers] compensate for losses that cannot be avoided”.
60. The Ecology Impact Assessment (EclA) and Biodiversity Net Gain (BNG) report dated October 2023, and the Biodiversity Metric 4.0 Calculation Tool demonstrate that the development would result in a loss of 4.67 Habitat Units or a Biodiversity Net Gain of -23.11%. The EclA states that the scheme is unlikely to achieve a net gain for biodiversity without off-site mitigation. No off-site mitigation has been submitted. In addition, off-site delivery will only be accepted where there is clear evidence that the mitigation hierarchy has been applied. There is a standing objection from the LCC Nature team in relation to this net loss. As such, on the basis of available information, the proposal must therefore be considered in conflict with policy G9.
61. It is also proposed to remove 16 trees and potentially some small ones in group G25 along the eastern boundary. Policy LAND2 of the Natural Resources and Waste DPD requires replacement planting on a 3:1 ratio. This would require approximately 48 replacement trees although it is noted that the Arboricultural Impact Assessment has estimated that 75 replacement trees are required. Clarification is being sought on exactly which trees are to be felled. The removal of this amount of trees does not help with the biodiversity net gain scores, indeed LCC landscape have asked for more trees to be retained. In addition, several replacement trees are sited in rear gardens. These cannot be counted as replacement trees as their future stewardship cannot be guaranteed.

Question 2: Do Members consider the wider planning benefits and 100% provision of affordable housing justify the net biodiversity loss. Do Members have any further comments on biodiversity at the site?

62. Highways and Parking
Two vehicular access points are proposed off Hough Top Road creating a loop road within the site. This road has been designed to adoptable standards. A pedestrian link is proposed out of the northern part of the site and onto Harley Drive. The existing access off Hough Top will be closed and the existing access off Harley Drive will only permit vehicular access to the new sub-station.

63. Several objections have been received from the public disputing the results of the Transport Assessment. Public representations have also suggested that a second access point should come off Harley Drive rather than just Hough Top to alleviate any potential issues with traffic. Whilst there may be an alternative highways layout that could be acceptable on the site, the applicant is proposing a layout with access only from Hough Top. Highways have maintained no objection in terms of highway safety to this layout until recently when additional local representation has raised issues with the content of the Transport Assessment (TA). An addendum to the TA has been requested and LCC highways have now asked for a further traffic survey to be undertaken on Hough Top to assess the impact of weekend traffic on the adjacent road junctions. This traffic survey has been commissioned but not yet completed.
64. For background reference, at pre-application stage, it was suggested that an access point be considered from Harley Drive. It has also been recorded in several public representations that this was formerly the main access point to the site when the school was used as offices. The applicant did explore this option and received feedback from highways that this would not be supported against today's Transport SPD standards which do not support the creation of a junction crossroads. In addition, it would create a short cut or 'rat -run' through the new development. The option of 2 cul-de-sac's with one entrance on Hough Top was explored but not considered practical due to the size of the site. In addition, there is insufficient width between 82 and 84 Harley Drive to build a road to adoptable standards.
65. Whilst there is information outstanding in relation to highways modelling, officers would like to ask:

Question 3: Do Members consider the proposed highways layout acceptable and/or do members require any additional information?

66. Drainage
The site is located in Flood Zone 1 and there have been no records of any recent flooding within the area. The drainage strategy proposes infiltration to soakaways for surface water from the dwellings, and a combined infiltration tank with some attenuation to public sewer for all other surface water. The principles of the proposed drainage strategy are supported by LCC Flood Risk Management, however the submitted 'Overland Flow Assessment' drawing appears to indicate discharge of surface water onto Hough Top Road. This is an outstanding matter that is awaiting a response from the applicant.
67. In addition, Yorkshire Water require amendments to the proposed drainage strategy as they will not accept any discharge of surface water to their drains. The applicant proposes discharge of highway surface water to an infiltration basin, which will then discharged to a public sewer at a restricted flow of 5 litres per second. The preference of Yorkshire Water is for all surface water to be managed via infiltration techniques. This creates a conflict in that the S38 Highways team will not adopt the new highway with the inclusion of a highways infiltration tank. This is due to the difficulty in maintaining the infiltration tank and the risk that it could silt up over time and then cause flooding back into the highway. Theoretically, this could be resolved via a planning condition, and Yorkshire Water have suggested this route.

Question 4: Do Members consider that the detailed drainage strategy can be resolved via condition?

68. **CONCLUDING COMMENTS:**

Although the proposed development includes a number of positive aspects, in particular the 100% affordable housing provision, there are a several issues concerning officers. They include the net biodiversity loss proposed, the design and appearance of the scheme, the representations in relation to the proposed highways layout and the surface water drainage strategy. Panel Members are therefore respectfully requested to provide answers to the questions posed in the main body of this report, all of which are reproduced below for ease of reference, and to offer any additional comments that they consider appropriate regarding this development proposal.

Question 1: Do Members consider the design and appearance of the development to be acceptable?

Question 2: Do Members consider the wider planning benefits and 100% provision of affordable housing justify the net biodiversity loss. Do Members have any further comments on biodiversity at the site?

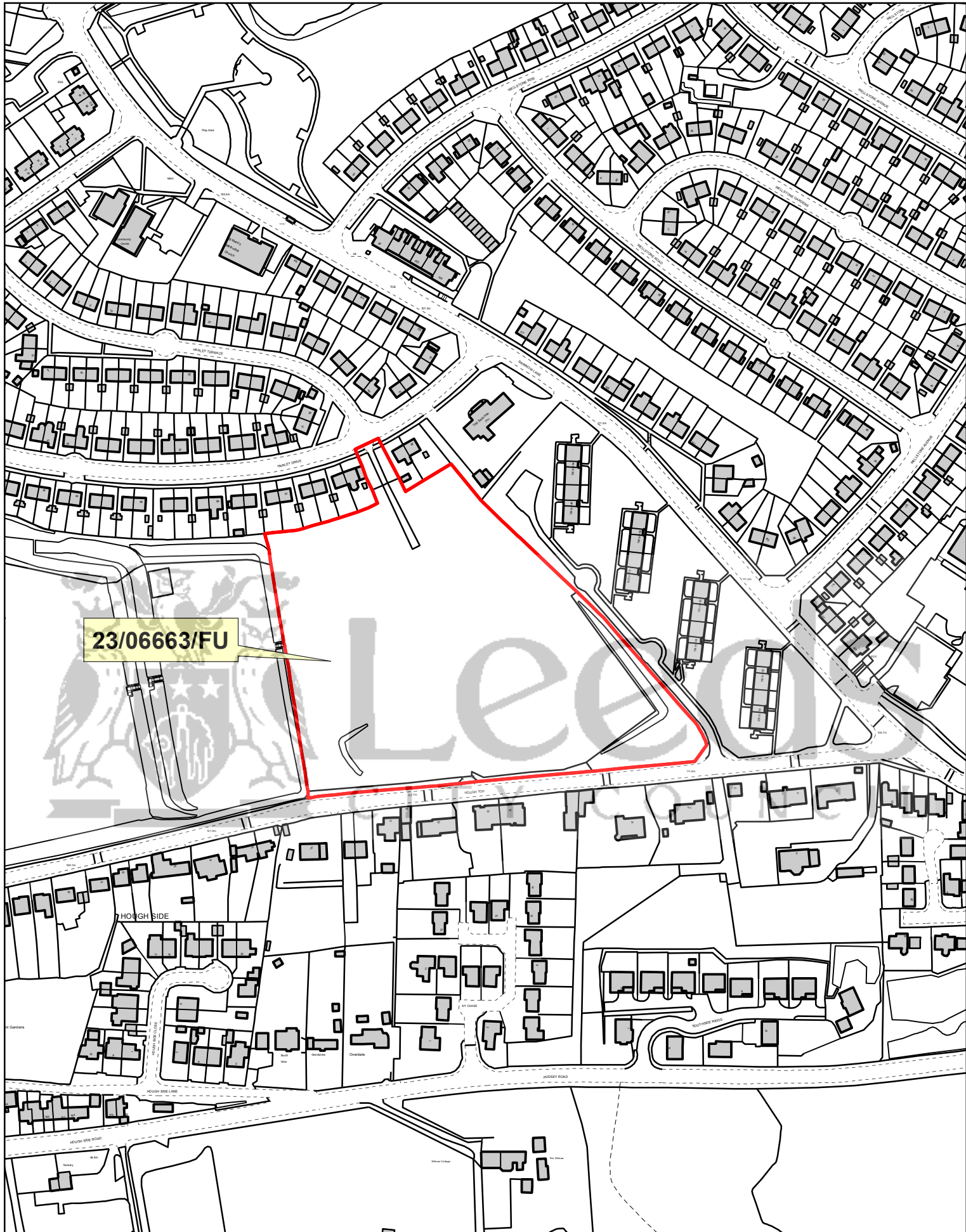
Question 3: Do Members consider the proposed highways layout acceptable and/or do members require any additional information?

Question 4: Question 4: Do Members consider that the detailed drainage strategy can be resolved via condition?

BACKGROUND PAPERS:

Application file reference: 23/06663/FU

Certificate of ownership: Signed as Applicant



23/06663/FU

SOUTH AND WEST PLANS PANEL





Originator: Laura Bromley
Tel: 0113 336 8663

Report of the Chief Planning Officer

SOUTH AND WEST PLANS PANEL

Date: 7th March 2024

Subject: Pre-application presentation of proposed development comprising demolition of existing buildings; and erection of a multi-storey (up to 27 storeys) residential development with multi-purpose internal and external amenity spaces, associated car parking, public open space and landscaping at land at Evolution House, 34 - 36 Springwell Road, Holbeck, LS12 1AW (PREAPP/23/00376)

Applicant - Drum Property Group

Electoral Wards Affected:

Beeston & Holbeck

Yes Ward Members consulted

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

RECOMMENDATION: This report is brought to Plans Panel for information. The Developer will present the details of the proposed development to allow Members to consider and comment on the proposals at this stage.

1.0 INTRODUCTION

1.1 The purpose of this report is to appraise Members of forthcoming proposals to demolish the existing office building and redevelop the site for a mixed-use development comprising commercial floorspace at ground level and residential accommodation of 387 apartments above, and to inform Members of a short presentation that forms part of the on-going pre-submission consultation regarding this proposal.

2.0 SITE AND SURROUNDINGS

2.1 The site is a wedge-shaped parcel of land currently occupied by a two-storey office block with associated surface car parking. The site is located in the middle of Springwell Road; this is part of character area 7 of the Holbeck Neighbourhood Plan, which is the area north of the viaduct. This is an area of transition just outside the boundary of the designated City Centre, the boundary of which aligns with the railway line to the north-east. It is also physically separated from the main local centre of Holbeck by the viaduct and thus has a more industrial character.

2.2 Access to the site is off Springwell Road to the west. Adjacent to the site to the north is Cartwright House, a low rise mid to late 20th century commercial building. A resolution to approve a 30 storey residential building to replace Cartwright House was granted at South

and West Plans Panel in Autumn 2023. This will form a second phase to the Springwell Gardens residential development that is now complete on the corner of Springwell Road and Whitehall Road. Springwell Road itself contains further late 20th century commercial and office blocks, generally two / three storey or similar.

- 2.3 The site lies in an area which was historically characterised by heavy industry and the railway. The Holbeck Industrial Heritage Area lies close to the site to the south. As historical industries have ceased in the locality, many nearby sites have been cleared and benefit from planning consents for large, new mixed uses which include much residential development. The area has poor landscape quality and a poor sense of identity at present.
- 2.4 To the immediate north-east side of the boundary, a Network Rail goods yard and sidings exists connecting with the Whitehall Rail junction. This is allocated in the Natural Resources & Waste Local Plan. The main part of the sidings is currently operated by Biffa Waste Services who are in effect operating a waste transfer facility which deposits Council street cleaning waste products by lorry and which is removed during the early hours of the morning by freight trains. A second part of the area is currently used by Network Rail for other uses including track maintenance trucks and signal design teams housed in portacabin blocks. An older warehouse style building also exists, which is largely unused. Should a viable further freight operation (or expansion of the current operation) be demonstrated it is possible that the use of these sidings could be further expanded.
- 2.5 Heading north-east, towards Leeds Railway Station, there are a number of large-scale office blocks currently under construction along the Whitehall Road corridor, in particular at Wellington Place (MEPC). Other recently completed developments include a new Premier Inn Hotel, and a large mixed used development ('Central Square') on the former Lumiere site. More directly south-west of the site is a relatively modern 4 storey mixed use block which accommodates a carpet and sandwich shop on the ground floor, with flats above. Further south-west along Whitehall Road, some warehouse and car showroom buildings are also evident in the locality.
- 2.6 The western edge of Holbeck Conservation Area lies at its closest point, approximately 100m to the south of the site. The Holbeck, South Bank Urban Village boundary lies at its closest point around 225m to the south-east on Water Lane. Holbeck (Lower Order Local Centre) at its closest point lies about 475m to the south.

3.0 PROPOSALS

- 3.1 The proposed development is for the demolition of the existing building and construction of a stepped residential development comprising a 12 storey rectangular block with a 27 storey tower attached. The development will include ancillary commercial space, co-working space, a gym, creche, car parking and external amenity space.
- 3.2 The development proposes 387 residential apartments with a housing mix of:
- 50% 1 bed apartments
 - 39% 2 bed apartments
 - 11% 3 bed apartments

It will also provide:

- Flexible commercial floorspace providing an active frontage at ground level.
 - Secure Cycle Storage: circa 60% provision, plus a pool bike scheme for residents.
 - Secure parking for 14 cars, of which 2 are accessible spaces. All parking spaces to have an Electric Vehicle Charging point.
 - Communal outdoor private terrace on the 12th floor
 - External Public Open Space
- 3.3 All of the residential apartments are designed to meet or exceed the nationally described space standards as set by Leeds Core Strategy Policy H9 and will include a policy compliant mix of accessible dwellings.

3.4 The proposed development would require 7% on site affordable housing units in line with CS policy H5.

3.5 The proposal will include a wind mitigation scheme

4.0 HISTORY OF NEGOTIATIONS AND PLANNING HISTORY

4.1 The developer first entered into pre-application discussions with officers in November 2023. Officers have consulted with various colleagues within the Council to seek comments on areas of specialism and have held meetings with the agent and applicants; and have involved Ward Members in this process. Since the pre-application proposals were initially submitted, the scheme has been reduced and improved in order to lessen the impact of the development, create an area of useable Public Open Space and to improve the quality of the layout.

5.0 CONSULTATION RESPONSES:

5.1 Highways

Highways advise no objections in principle subject to satisfaction of the following matters at a full planning application stage:

- Footway widening may be required to accommodate EVCP at car club spaces if required along Springwell Road. The footway widening would require land dedication at the site frontage on Springwell Road.
- The proposed accesses should accord with the Transport SPD. The access to the undercroft parking must allow for two-way passing. Any loss of Pay and display bays will need to be identified.
- All the car parking spaces should have an Electrical Vehicle Charging Point (EVCP).
- There is a shared access between the approved site to the northwest and the proposed site. Confirmation of the proposed use of this access is required to ensure impact on approved scheme is understood.
- Cycle and motorcycle parking and disabled parking should accord with the Parking SPD. Car parking provision needs to be justified and all spaces must be equipped with EVCP.
- Contributions towards wayfinding, offsite improvements including for cyclists/pedestrians, TRO alterations and future on-street parking restrictions, loss of pay and display are required.
- A Travel Plan and Transport Statement would be required with any future planning application, to include assessment of pedestrian and cycle routes.

5.2 Contaminated Land

Potentially contaminative historical activities have been identified on and adjacent to the site. To support the future full planning application the applicant should include a Phase 1 Desk Study. Depending on the outcome, a Phase 2 Site Investigation Report and Remediation Statement may also be required.

5.3 Flood Risk Management

The application site is located within Flood Zone 1. Standard advice concerning the submission of details including a Drainage Assessment that supports a SuDS based drainage design to support the future full planning application has been advised.

5.4 Design Officer

The proposals have been the subject of a series of detailed design discussions since November 2023. The design officer considers the amended scheme an improvement and commented in summary:

- The form of the building has been rationalised, though they suggest the 12 storey element could be reduced further in height

- Elevational treatment of the tower element requires revision
- Deep reveals are welcomed
- Wind mitigation structures must not encroach on the highway/footway
- Support use of red brick and a second complimentary material such as terracotta

5.5 Environmental Health (Pollution Control)

A noise assessment that considers the impact at upper storeys of the development as well as near to ground level will be required to inform on the acoustic mitigation required. The assessment will also need to consider the ramifications for ventilation and control of overheating in particular for dwellings that are single aspect, west & south facing and where windows have to remain closed to attain suitable internal sound levels.

5.6 Landscape Team

While there is very little detail of the approach to landscape at this stage, it is positive that amenity spaces are orientated south-west and so should receive good levels of sunlight. It is encouraged for tree planting to be provided along the Springwell Road frontage in accordance with the NPPF requirement for tree-lined streets.

5.7 Sustainable Development Unit

A passive design analysis needs to be supplied that should cover as a minimum - site location, site weather, microclimate, building layout, building orientation, building form, building fabric, thermal mass or other fabric thermal storage, building occupancy type, daylighting strategy, ventilation strategy, adaptation to climate change. Any future application will need to demonstrate full compliance with policies EN1, EN2, EN4 and EN8 of the Core Strategy (as amended).

5.8 Access Officer

The DAS has an extract from H10 but no information as to how the scheme would meet it. The applicant will need to complete a H10 form in due course to show us where the accessible units will be provided so we can check they include all unit types and sizes.

6.0 RELEVANT PLANNING POLICIES

6.1 Statutory Context

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the application to be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of decision making at this site, the Development Plan for Leeds currently comprises the following documents:

- The Leeds Core Strategy (Adopted November 2014 and as amended by the Core Strategy Selective Review 2019)
- Saved Leeds Unitary Development Plan Policies (UDPR 2006)
- The Natural Resources & Waste Local Plan (NRWLP 2013) including revised policies Minerals 13 and 14 (2015).
- Leeds Site Allocations Plan (SAP 2019)
- Holbeck Neighbourhood Plan (2018)

These development plan policies are supplemented by supplementary planning guidance and documents.

6.2 Development Plan

Leeds Core Strategy (CS)

Leeds Core Strategy sets out strategic level policies and vision to guide the delivery of development investment decisions and the overall future of the district. The site is located outside the City Centre boundary. The most relevant policies are set out below:

- Spatial Policy 1 Location and scale of development.
- Spatial Policy 2 hierarchy of centres and spatial approach to retailing, offices, intensive leisure and culture
- Spatial Policy 6 Housing requirement and allocation of housing land
- Spatial policy 7 distribution of housing land and allocations
- Spatial Policy 8 Economic development priorities
- Spatial Policy 9 Employment
- Spatial Policy 11 Transport infrastructure investment priorities such as pedestrian improvements
- Policy CC3 Improving connectivity between the City Centre and Neighbouring Communities.
- Policy H3 Housing Density
- Policy H4 Housing Mix
- Policy H5 Affordable Housing
- Policy P10 Design
- Policy P11 Heritage
- Policy P12 Landscape
- Policy T1 Transport management
- Policy T2 Accessibility requirements and new development
- Policy H9 Space Standards
- Policy H10 Accessible Dwellings
- Policy EN1 Carbon dioxide reduction
- Policy EN2 Sustainable design and construction
- Policy EN4 District heating
- Policy EN5 Managing flood risk
- Policy EN8 Electrical Vehicle Charging
- Policy G5 Open space provision
- Policy G8 Protection of important species and habitats
- Policy G9 Biodiversity Improvements

6.3 The Development Plan also includes the Natural Resources and Waste Development Plan Document (2013): Developments should consider the location of redundant mine shafts and the extraction of coal prior to construction.

6.4 **Leeds Unitary Development Plan Review 2006 (UDPR) Saved Policies**

Relevant Saved Policies include:

- Policy GP5 all planning considerations
- Policy N25 Boundary Treatments
- Policy BD2 / BD5 design and siting of new buildings
- Policy LD1 landscaping

6.5 **Leeds Natural Resources and Waste DPD**

The plan sets out where land is needed to enable the City to manage resources, like minerals, energy, waste and water over the next 15 years, and identifies specific actions which will help use natural resources in a more efficient way.

Relevant policies include:

- Air 1 management of air quality through new development
- Water 1 water efficiency including sustainable drainage
- Water 7 surface water run-off
- Water 2 protection of water quality
- Water 4 development in flood risk areas
- Water 6 flood risk assessments
- Land 1 contaminated land
- Land 2 development and trees
- Minerals 2 sand and gravel
- Minerals 3 coal safeguarding
- Minerals 13 Transport Modes

6.6 **Relevant Supplementary Planning Documents/Guidance (SPD/SPG):**

- SPD Tall Buildings Design Guide (2010) and Consultation Draft (2019)
- SPD Building for Tomorrow Today: Sustainable Design and Construction (2011)
- Transport SPD (2023)
- SPD Accessible Leeds (2016)
- SPG Neighbourhoods for Living (2003, 2015)

6.7 **Holbeck Neighbourhood Plan**

- R1: Continuing Regeneration
- C3: Improving Health and Wellbeing
- H1: Affordable Housing
- H2: Housing Mix
- E1: New employment uses
- G1: Strategic Green Infrastructure and Local Green Corridors (SG1 – Viaduct)
- G4: Improving the Public Realm
- HC7: Positive Design
- T1: Increasing Opportunities for walking and cycling
- T2: Reducing air pollution and congestion

6.8 **Site Allocations Plan**

The site is unallocated in the SAP.

6.9 **National Planning Policy Framework 2023 (NPPF)**

The NPPF sets out the Government's planning policies for England and how these should be applied and is a material consideration in planning decisions. It states that the purpose of the planning system is to contribute to the achievement of sustainable development. So that sustainable development is pursued in a positive way at the heart of the Framework is a presumption in favour of sustainable development. It states that decision makers at every level should seek to approve applications for sustainable development where possible (para 38).

6.10 The Framework sets policies on the following issues which are relevant to this planning application proposal:

2. Achieving sustainable development
4. Decision making

5. delivering a sufficient supply of homes
6. Building a strong, competitive economy
8. Promoting healthy and safe communities
9. Promoting sustainable transport
11. Making effective use of land
12. Achieving well-designed and beautiful places
14. Meeting the challenge of climate change and flooding
15. Conserving and enhancing the natural environment
16. Conserving and enhancing the historic environment

7.0 MAIN ISSUES

Officers have held discussions with the applicant over the proposed development and have focussed on a number of wide ranging matters. Members are asked to consider the following matters in particular:

7.1 Principle of Development

The site is unallocated in the Site Allocations Plan (SAP). This proposal consists of a mixed use development, primarily residential, with some commercial use at ground floor, a gym and co-working space. The development is anticipated to provide (approximately) 327 apartments.

7.2 The proposal would involve the redevelopment of brownfield land for housing in the inner area of the city. The site falls outside of the designated City Centre, and the development would contribute to the ongoing mix of a vibrant community in this area of the city.

7.3 Ground floor active frontages have been annotated to the front elevation which is welcomed.

7.4 The principle of the development is considered acceptable when assessed against Core Strategy Policies, the SAP allocation and the NPPF, subject to all other detailed planning considerations.

- **Do Members support the principle of the development?**

7.5 Design and Layout

Officers have met with the developer and their agents to discuss the scheme and have sought to amend the design and layout to a form of development with is acceptable in principle. Officers consider the concept of the layout is broadly acceptable, although further detail will be required, including the design of any wind mitigation structures where required.

7.6 The principle of a tall building in this area is accepted. There is the 16 storey residential development on the corner of Springwell Road and Whitehall Road. Phase 2 Springwell Gardens was also accepted by members for a 30 storey development adjacent to this site, although this is yet to be built.

7.8 At this stage wind testing has not been carried out. Due to the proposed scale of the buildings wind testing will be required in accordance with the Draft Wind and Micro-climate Toolkit SPD.

7.7 Members are asked to consider the presentation given and to have regard to the comments above. In particular:

- **Do Members support the proposed scale and form of development (subject to the outcome of wind testing at application stage)?**

7.10 Landscape and Public Open Space (POS)

Based on the size and amount of accommodation proposed, Core Strategy policy G4 requires open space provision of approximately 11,293 sqm on-site. The scheme proposes an area of public realm to south east of the site and a small triangular wedge to the front. This is estimated to be around 2,000 sqm which is a significant shortfall when compared to the requirements of policy G4. A commuted sum is therefore proposed to make up the shortfall; to be spent on the creation or enhancement of nearby greenspace off-site.

7.11 Officer discussions with the developer note that the closest existing POS is Holbeck Moor which is not considered easily accessible to future occupants of the development. The agent is willing to investigate looking for potential new open space sites closer to the proposed development where a commuted sum could be spent.

- **Do members support the proposed approach to provision of Public Open Space within the development?**

7.13 Highways Issues

The site is located within the fringe area and accessible by a varied choice of modes of transport. The proposed scheme utilises the existing vehicular access point off Springwell Road to an underground car park.

7.14 14 car parking spaces are proposed. 2 of these will be accessible spaces. For the site location, the Transport SPD sets a maximum level of car parking provision, there is not minimum requirement. However, it should be demonstrated there is no detrimental impact on the local highway. To ensure the impact upon on-street parking as a result of overspill parking associated with the development is considered, TRO contribution will be required towards any future on-street parking restrictions.

7.15 A detailed Transport Assessment and Travel Plan will be required with a full planning application. A contribution will be required towards improvements for public transport users, cyclists, and pedestrians in the site vicinity.

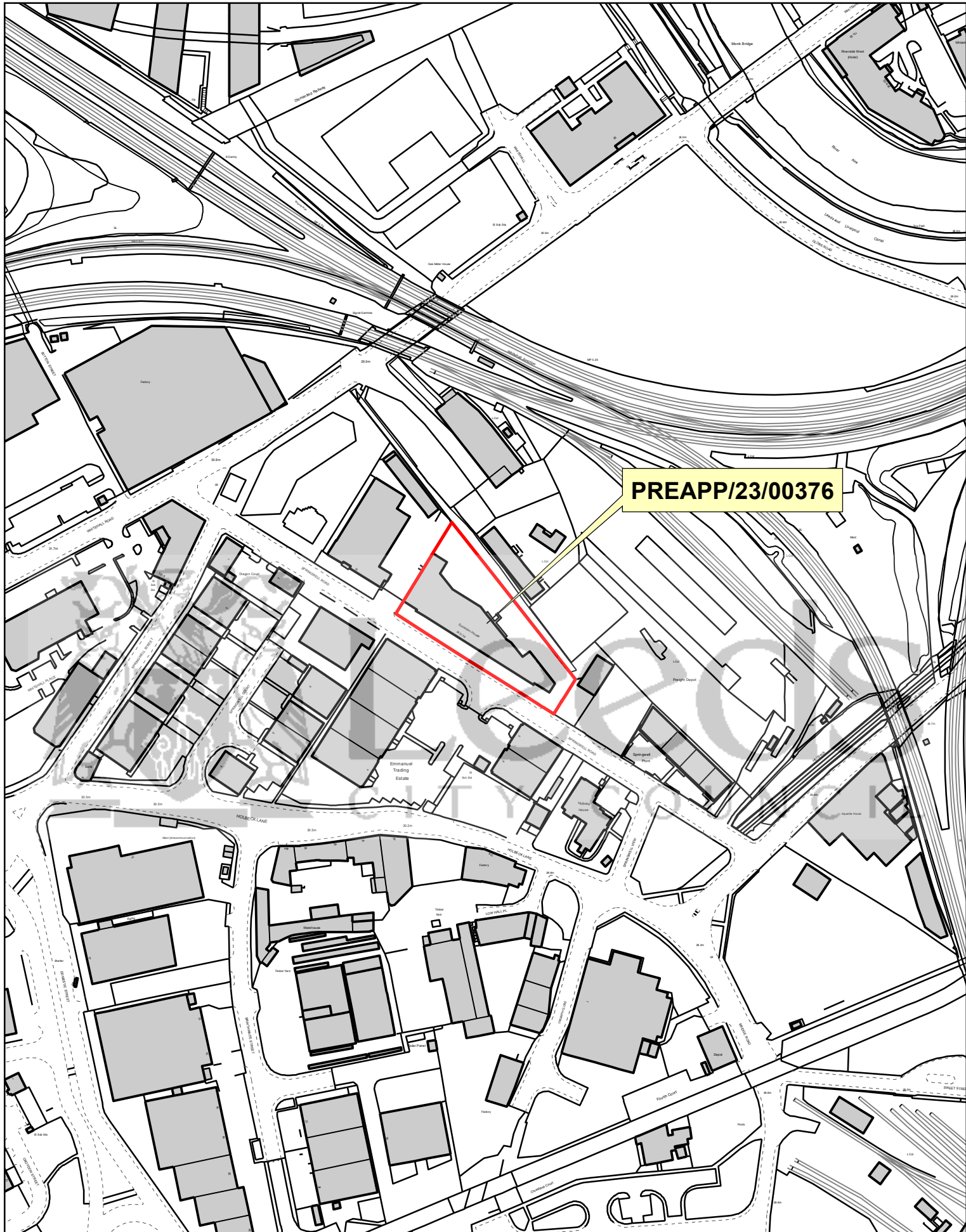
7.16 Taking into account the above and the presentation before Members:

- **Do Members consider the approach to car parking is acceptable?**

8.0 CONCLUSION

8.1 Members are asked to note the contents of the report and the presentation, and are invited to provide feedback, in particular, on the issues outlined below:

- **Do Members support the principle of the development?**
- **Do Members support the proposed scale and form of development (subject to the outcome of wind testing at application stage)?**
- **Do members support the proposed approach to provision of Public Open space within the development?**
- **Do Members consider the approach to car parking is acceptable?**



PREAPP/23/00376

SOUTH AND WEST PLANS PANEL



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Report author: David Feeney & Nikki Deol

Report of the Chief Planning Officer & Head of Legal Service

Report to Plans Panel South and West

Date: 7th March 2024

Subject: APPLICATION TO REGISTER LAND AT SUNNYBANK LANE RECREATION GROUND, SUNNYBANK LANE, THORNBURY, BRADFORD, BD3 7DG AS A TOWN OR VILLAGE GREEN UNDER THE PROVISIONS OF SECTION 15(1) OF THE COMMONS ACT 2006

Are specific electoral wards affected?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If yes, name(s) of ward(s): Bramley & Stanningley, Pudsey	
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the decision eligible for call-in?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If relevant, access to information procedure rule number:	
Appendix number:	

Summary of main issues

1. On 24 June 2019 an application was received by Leeds City Council, in its role as Commons Registration Authority (“CRA”), for registration of land known as Sunnybank Fields, Sunnybank Lane, Thornbury, as a Town or Village Green pursuant to Section 15(2) of the Commons Act 2006.

2. The Council as Commons Registration Authority (“CRA”) is legally obliged to consider such applications.

3. Bradford Metropolitan District Council as landowner, has objected to the Application.

4. Under the Council’s Constitution, Members of the relevant Plans Panel have responsibility for the determination of applications. The purpose of this Report is therefore to obtain a decision as to the procedure that should be followed in order to resolve the Application and in the circumstances outlined in this report seeks approval for the appointment of an independent inspector to review the evidence and confirm if a Public Inquiry or a non-statutory written representations procedure for the Application

should be initiated. The Chief Planning Officer is delegated to proceed with the recommendations of the Independently appointed inspector on whether the Application ought to be dealt with by way of Public Inquiry or Written Representations. The matter will be returned to Plans Panel when the Inspector has prepared his/her report with recommendations on the Application after examination of the evidence submitted to date.

Recommendations

- a. Members are requested to consider the relevant issues outlined in this Report and agree the appointment of an independent Inspector by the City Solicitor to undertake a review of the evidence and confirm whether a Public Inquiry or non statutory Written Representation procedure should be initiated to progress the Application further.
- b. Delegate authority to the Chief Planning Officer to proceed with the recommendations of the Inspector on whether a non statutory Public Inquiry or Written Representations is adopted for the Application.
- c. Subject to the Application proceeding by way of Public Inquiry or Written Representation, for the Independent Inspector to undertake an examination of the evidence submitted by the parties concerned and prepare a report in relation to his/her findings for consideration at future meeting of this Plans Panel.

1. Purpose of this report

- 1.1. To inform members of the Application submitted to the Council by Mr Kalvinder Malik ("the Applicant"), for the registration of land identified by the Applicant to be Sunnybank Lane Recreation Ground, Sunnybank Lane, Thornbury, Bradford, BD3 7DG ("the Application Land"), as shown edged red on the plan appended (as background document 7.1 below) as a Town or Village Green under the provisions of section 15(1) and 15(2) of the Commons Act 2006.
- 1.2. To advise members of the relevant issues which should be taken into account in considering the application and to seek a determination as to the procedure that should be followed in order to resolve the application and in particular whether in the circumstances outlined, a Public Inquiry or non-statutory procedure by way of Written Representations should be initiated on the advice of an independent Inspector appointed to report to the Council on that basis.

Background Information

- 1.3. The Council is the Commons Registration Authority (CRA) under the provisions of the Commons Act 2006 ("CA 2006") and is obliged to amend the statutory register where any unregistered land in the Metropolitan District of Leeds becomes a Town or Village Green (within the meaning of the CA 2006).

- 1.4. On 24th June 2019, the Council received the Application from Mr Malik for the registration of the Application Land as a Town or Village green, accompanied by photographic evidence, questionnaires and petition in support of the Application.
- 1.5. Despite the Bradford postal address given for the Application Land, it lies within the Metropolitan District of Leeds, and therefore the administrative area of the Council, although it is very close to the boundary with Bradford. The Application Land is owned by Bradford Metropolitan District Council (“BMDC”).
- 1.6. On the 10th September 2020, the Chief Planning Officer under delegated powers, gave preliminary consideration to the Application and determined that from the information received, the Application should be advertised, the landowner informed and that details of representations and objections received be reported to the Plans Panel.
- 1.7. On the 18th September 2020, a statutory notice detailing the Application was duly affixed at various locations to the perimeter of the Application Land and published in the Yorkshire Post. A copy of the Application with statutory notice was circulated to parties holding an interest in the Application Land on the same date and Ward Members were also notified.
- 1.8. In accordance with the objection period stated on the statutory notice, an objection to the Application were submitted to the CRA from BMDC on 9th November 2020. The two main planks of the objection were that recreational use of the Application Land was on the basis of permission (express, implied and “*by right*”), thereby not being “*as of right*” as required by section 15(2) of the CA 2006, and that the Application was also defeated by the doctrine of statutory incompatibility (i.e. it was held for a statutory purpose incompatible with its registration as town or a village green and could not therefore be registered as such it would be statutorily incompatible to do so. Objection was further made on the ground that the Application had not properly identified the qualifying area (whether a “*locality*” or a “*neighbourhood within a locality*”), which was relied on for the purpose of the Application. BMDC supported its objection with witness statements and documentary evidence, including material from their records, in relation to the statutory purposes of its holding of the Application Land.
- 1.9. In March 2021, the Applicant provided a detailed response, including a lengthy document in reply to the objection itself, as well as a document in reply to BMDC’s witness statements. All BMDC’s grounds of objection were contested and arguments put forward seeking to contest BMDC’s claims that the use of the Application Land was with permission or “*by right*”, that registration should fail on the ground of statutory incompatibility and that a qualifying area had not been properly identified.
- 1.10. In turn, BMDC was given an opportunity to respond to the Applicant’s response and it finalised its response in March 2022, re-emphasising its contention that the Application should fail on the basis of statutory incompatibility, as well as again

making the point that a qualifying area had not been properly established.

- 1.11. The Applicant submitted a further reply at the end of March 2023 which, in particular, returned to the “by right” and statutory incompatibility grounds of objection, arguing that neither had been made out by BMDC, and also made detailed submissions on the issue of the qualifying area, with particular emphasis placed on why the requisite degree of cohesiveness should be found to exist for the purposes of the neighbourhood limb of section 15(2). The Applicant’s further reply also raised a number of questions seeking answers from both the City Council as CRA and BMDC as objector.
- 1.12. The legal principles of the objections and replies are set out below. This report does not seek to examine or give weight to either party in their submissions to date (as this would be the role of the independent inspector) but rather sets matters out for the next stage of determination of the Application itself.

2. Main issues

- 2.1. The fact that an application site may appear to be available for public use does not automatically mean it will qualify as Town or Village Green as there are other factors to take into account as referred to later in this report. A person making an application for the registration of land as a Town or Village Green must, if they wish to succeed, prove their case. If they fail to provide sufficient and persuasive evidence in respect of any key statutory requirement, then the application will be rejected.
- 2.2. Land ownership is irrelevant to the question of potential registration of a site as a Town or Village Green. A Landowner is unlikely to want their land to be encumbered by Village Green status but this issue is unconnected to the determination by the CRA of whether an application meets the statutory test laid down by the CA 2006.
- 2.3. Planning merits and social needs are also immaterial. There may be strong social and planning arguments for the site remaining available for use by local people for recreational purposes, but these cannot be taken into account for the purpose of determining the application for registration.
- 2.4. Town and Village Green applications are in the main contentious issues and there are many recent examples of appeals being lodged as a consequence of decisions made by registration authorities. It is therefore considered prudent to ensure that all the facts pertaining to an application and any objections thereto are carefully and thoroughly examined. This is particularly relevant where there is disputable evidence, or where there is no clear and concise written evidence to be certain that either party is correct in its submissions.

3. The Statutory Test

- 3.1. In order for an Application to succeed, it must satisfy each element of the statutory test laid down under the provisions of Section 15(2) of the Commons Act 2006. The test is whether: (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and (b) they continue to do so at the time of the Application.
- 3.2. The issues, which need to be considered in respect of the Application, are therefore:
- 3.2.1. Has the site been used by a significant number of the inhabitants of any locality, or of any neighbourhood within a locality ?
 - 3.2.2. Has the user by inhabitants been “as of right” ?
 - 3.2.3. Has the site been used for lawful sports and pastimes ?
 - 3.2.4. Has this use taken place over a period of twenty years ?
 - 3.2.5. Was the use continuing at the time of the Application ?

4. Significant Number

- 4.1. The question of ‘significant number’ is not defined in the CA 2006 and has been held to be a matter of impression. In *R (Alfred McAlpine Homes Limited) v Staffordshire County Council* (2002) it was said that the number need not be considerable or substantial, but was a matter of impression for the decision-maker on the evidence and what mattered, was that the numbers involved had to be sufficient to indicate that it is general use by local people, rather than occasional use by individuals as trespassers. The issue for the decision maker is whether there was a sufficient continuance of use of sufficient intensity to bring home to a reasonable observer, and in particular to the landowner, that lawful sports and pastimes of some sort were taking place throughout the period which are attributable to the acquisition of a TVG right (see *R (Barkas) v North Yorkshire CC* [2015] AC 195). The key question is “how the matter would have appeared to the owner of the land”, and is not at all concerned with “evidence of the individual states of mind of people using [the land]”: *R v Oxfordshire CC ex p Sunningwell* [2000]

Inhabitants of any Locality, or of any Neighbourhood within a Locality

- 4.2. The issue here is what constitutes a locality and can that locality be identified. Locality has to be an area known to law. It can be an administrative area of a city

or borough, a ward, a parish (either administrative or ecclesiastical) or even an ancient manor.

- 4.3. A neighbourhood means an area with a sufficient degree of cohesiveness and that requirement for cohesiveness is not simply satisfied by drawing a line on a plan.
- 4.4. The CRA has to be satisfied that the claimed user had been by the inhabitants of an area that could be properly described as a “locality” or “neighbourhood” within a locality. It is not necessary to show user exclusively by the inhabitants of the locality or neighbourhood within a locality.
- 4.5. It should be noted, however that judicial authority appears to support the view that this is a matter for the relevant CRA to decide. This is on the basis of the evidence actually presented to it, what are the boundaries of the relevant ‘neighbourhood’ or ‘locality’; irrespective of the subjective belief of any users of the site that they were doing so as inhabitants of any particular ‘locality’ or ‘neighbourhood’.

5. Use As of Right

- 5.1. The activities undertaken on the land must have taken place; without resort to force; without secrecy; and without any express or implied licence or permission from the landowner. The use must be “as of right”, meaning that the right has become established by the use of the land, as opposed to “by right” where rights to use the land have been granted by the landowner.

6. Lawful Sports and Pastimes

- 6.1. The Commons Act 2006 contains no definition of the phrase “lawful sports and pastimes” This expression was considered by the House of Lords in the R v. Oxfordshire County Council, ex parte Sunningwell Parish Council [2000] 1 A.C. 335. Lord Hoffmann explained that “sports and pastimes” are a single composite class. Provided an activity can properly be called a sport or pastime, it falls within the composite class. It is difficult to conceive of any lawful recreational activity that would not fall within this very broad class. For example, it was expressly held in Sunningwell that dog-walking and playing with children are forms of modern recreation that would satisfy the description [at 357A-D]. Other activities that are commonly relied upon include kite-flying, fruit-picking and football.
- 6.2. It is important to distinguish the use of footpaths also from user for sports or pastimes. In Oxfordshire County Council v. Oxford City Council [2004] EWHC 12, Lightman J stated that where the public have walked over defined tracks, this will usually only go as far as to establish public rights of way, unless the user has been wider in scope or the tracks are of such character that user of them could not have given rise to a presumption of dedication at common law as a public highway. Not every part of the application land must have been used for particular sport or

pastime for that particular activity to be relevant. The question is whether the land as a whole has been used for recreation for the relevant period, taking all qualifying activities into account such evidence relating to this part of the statutory test

7. Twenty Years Use

7.1. The relevant use must continue throughout the whole 20 year period relied upon.

8. Continuing User

8.1. The House of Lords held in R-v-Oxfordshire County Council ex parte Sunningwell Parish Council, that the relevant 20 year period concerned, was the 20 years immediately before the date of the Application. The qualifying use must continue at the date of Application.

9. Determination of whether the Statutory Test has been made out.

9.1. In the 2004 case of R (Whitney) v The Commons Commissioners, the Court of Appeal considered the powers of registration authorities to decide disputes. The Court held that the duty of the CRA is to decide the Application reasonably and fairly. The duty to act reasonably requires the CRA to bear in mind that its decision carries legal consequences. It has to consider both the interests of the landowner and the possible interests of their local inhabitants. This means that there should not be any presumption for or against registration.

9.2. If the registration authority accepts the Application, amendment of the register may have a significant effect on the owner of the land. Likewise, if the authority wrongly rejects the application, the rights of the applicant and of local inhabitants will not receive the protection intended by Parliament.

9.3. In a case where there is dispute, as is the case here, it prudent for the Registration Authority to appoint an independent expert to examine the evidence and find the requisite facts, in order for the CRA to obtain the proper advice before proceeding to decide the Application.

9.4. Some relevant guidance from case law is provide in the Court of Appeal decision in

*Whitney v Commons Commissioners*¹. In that case Arden LJ said: “In cases where it is clear to the registration authority that the application or any objection to it has no substance, the course it should take will be plain. If, however, that is not the case, the authority may well properly decide, pursuant to its powers under section 111 of the 1972 Act, to hold an inquiry. We are told that it is the practice for local authorities so to do, either by appointing an independent inspector or by holding a hearing in front of a committee. If the dispute is serious in nature, I agree

with Waller LJ that if the registration authority has itself to make a decision on the application, it should proceed only after receiving the report of an independent expert (by which I mean a legal expert) who has at the registration authority's request held a non-statutory public inquiry" She also observed that "[t]he authority may indeed consider that it owes an obligation to have an inquiry if the matter is of great local interest".

Waller LJ said that, "...in any case where there is a serious dispute, a registration authority will almost invariably need to appoint an independent expert to hold a public inquiry, and find the requisite facts, in order to obtain the proper advice before registration".

- 9.5. Upon review of the application itself it appears to officers that the seriousness of the dispute in the present case lies not so much in relation to the facts (which, it is considered, is the type of dispute adverted to in *Whitmey*) but in the application of the legal principles relied on by BMDC in the main planks of their objection to the facts. On that basis it is a matter for the Independent Inspector to consider on review of the evidence whether it is necessary to examine the evidence by way of Public Inquiry or Written Representations procedure and confirm to the Council. The appointment of a barrister specialising in town and village green matters to discharge this function would therefore ensure that the Application is considered independently by an inspector with the relevant expertise and in a manner properly meeting the particular demands of the case.

10. "Statutory Incompatibility"

- 10.1. A further reason appointing an Independent Inspector is the need to examine the doctrine of "Statutory Incompatibility" which arose in the case of *R (Newhaven Port and Properties Limited) v East Sussex County Council* [2015] AC 1547. The Supreme Court found in that case that registration of Harbour Authority land as a Town or Village Green, would have been incompatible with the statutory functions required to be exercised. It was held that where Parliament has conferred on a statutory undertaker powers to acquire land compulsorily and to hold and use that land for defined statutory purposes, the Commons Act 2006 does not enable the public to acquire by user rights which are incompatible with the continuing use of the land for those statutory purposes.
- 10.2. Notwithstanding the observations made above, the leading case of *Lancashire County Council* establishes that the issue of statutory incompatibility can be fact-dependent and may not be capable of being resolved by legal argument alone but requires further evidence. The Commons Registration Authority ought to be guided by the recommendations of an Independent Inspector.

11. Corporate considerations

Consultation and engagement

- 11.1. Following initial consideration the Application was circulated to parties with an interest in the Application Land and to relevant Ward Members.
- 11.2. A statutory public notice of the Application was advertised in the Yorkshire Post and posted around the perimeter of the Application Land .

12. Equality and diversity / cohesion and integration

- 12.1. The proposal in this report has no adverse implications for the Council's Policy on Equality and Diversity.

13. Council policies and best council plan

- 13.1. As Commons Registration Authority the Council is legally obliged to determine Town and Village Green Applications impartially and with reference to the statutory provisions concerning Town and Village Green Applications and relevant case law.

14. Resources and value for money

- 14.1. Whilst it is not possible to predict the actual costs associated with a Village Green Application in the interest of ensuring the evidence is properly considered and is dependent on the recommendation of mode of Inquiry or written representation by the Inspector. The appointed Inspector will produce a report of his/her findings which are estimated to cost with or without a Public Inquiry in the region of £5,500 - £10,000. The costs will increase substantially in the event that the decision of the Council is the subject of legal challenge.

15. Legal implications, access to information, and call-in

- 15.1. The determination of the Application involves the taking of a quasi-judicial decision which may be the subject of legal challenge. This decision is not subject to call in.

16. Risk management

- 16.1. All decisions made by the Council are susceptible to legal challenge, decisions concerning Village Green Applications appear more so in view of the imprecision of certain elements of the statutory test.

17. Conclusion

- 17.1. In view of the evidence that has been submitted by both parties in relation to a complex area of law, it is concluded that it is necessary to appoint an independent inspector to confirm if a Public Inquiry or Written Representation Procedure be initiated and delegate authority to proceed based on these recommendation to the Chief Planning Officer. The recommendations are set out to ensure that the Application is dealt with transparently and impartially.

MAP: EXHIBIT (A)

10 20 30 40 50 60 70 80 90 100 110 120 130 140 150 160 170 180 190 200 210 220 230 240 250 260 270 280 290 300 310 320 330 340 350 360 370 380 390 400 410 420 430 440 450 460 470 480 490 500
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SOUTH AND WEST PLANS PANEL

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