

## Minutes of a meeting of the Regulatory and Appeals Committee held on Thursday 7 December 2017 at City Hall, Bradford

Commenced 10.05 am  
Concluded 4.15 pm

### Present – Councillors

CONSERVATIVE	LABOUR	LIBERAL DEMOCRAT AND INDEPENDENT
Rickard Ellis	Amran S Hussain Warburton Wainwright	Griffiths

Observers: Councillors M Pollard (Minute 50), Reid (Minute 48) and Thirkill (Minute 47)

### Councillor Warburton in the Chair

#### 43. DISCLOSURES OF INTEREST

In the interests of transparency, Councillor Ellis disclosed that he was a member of the Yorkshire Regional Flood and Coastal Committee and the Airedale Drainage Commissioners.

In the interests of transparency, Councillor Rickard disclosed that he was a member of the Airedale Drainage Commissioners.

**NO ACTION**

#### 44. MINUTES

Resolved –

That the minutes of the meetings held on 10 August 2017, am and pm, and 28 September 2017 be signed as a correct record.

**ACTION:** *City Solicitor*

#### 45. INSPECTION OF REPORTS AND BACKGROUND PAPERS

There were no appeals submitted by the public to review decisions to restrict

documents.

#### **46. MEMBERSHIP OF SUB-COMMITTEES**

No resolution was passed on this item.

#### ***NO ACTION***

#### **47. LAND AT HOLTS LANE, BRADFORD**

The Assistant Director - Planning, Transportation and Highways presented a report (**Document "X"**) in relation to a full planning application for a residential scheme of 99 dwellings, with associated works, on land at Holts Lane, Bradford – 17/05251/MAF. Various plans and photographs were displayed.

The Assistant Director made a correction to his written report explaining that the site was located within the Clayton and Fairweather Green Ward. He also reported on the matters raised by two additional representations received since the publication of his report; one of which was from the Keep Clayton Green Action Group (KCGAG) and one from a consultancy, on behalf of local residents, in relation to drainage and flood risk issues.

In response to the issues raised he explained:

- In respect of public consultation and the level of information available; the relevant information had been available to the local community and a meeting had taken place with a representative of KCGAG to discuss and explain various issues.
- In relation to the concerns expressed about the construction of an embankment and the potential diversion of a Right of Way; these proposals related to land which was outside the red line boundary of the site and therefore not part of the application under consideration. The drainage works in the adjacent field were proposed to be located underground and would be classified as permitted development.
- The highway implications had been assessed and it was considered that the network could safely accommodate the additional traffic from the development.
- Conditions were proposed to secure the use of appropriate materials and the recommended bio-diversity enhancements.
- In terms of surface water and a concern that this would be diverted; his professional opinion was that the development, as proposed, would not alter the direction of flow and this water would leave the site along the same path as it had prior to development; to the north onto the Green Belt land.
- Waste water would be discharged to the public sewer by pump into the existing Yorkshire Water network. Yorkshire Water had agreed to a rate of 5 litres per second of surface water and it was their responsibility to assess capacity.
- The pumping arrangements would include an underground attenuation tank and retaining well located in an adjacent field. Yorkshire Water would adopt this equipment and would implement a system of regular maintenance. It was considered that there was a low likelihood of failure but they would have contingency arrangements in this eventuality. Even if the new drainage

systems became blocked the water would drain to the Green Belt land to the North as previously.

- The water storage/pumping system would have to be designed and constructed in accordance with the relevant regulations and to accord with rules on the generation of noise.

He responded to questions from Members as follows:

- The proposed surface water attenuation tank of approximately 1000 cubic metres and wet well for foul water were still subject to detailed design but would be located in a compound below the ground on land to the east of the development site.
- When the Replacement Unitary Development Plan (RUDP) had been adopted in 2005 land allocations had been made for various uses. Phase 1 and 2 housing sites were those expected to come forward for development within the period of the plan with 'safeguarded' sites being, in effect, Phase 3 residential sites. The RUDP was now 12 years old and the majority of the Phase 1 and 2 sites had been developed; the principle of development of this 'safeguarded' site was therefore acceptable. He indicated the land allocations in the immediate vicinity of the site, which included some 'greenfield' and some Green Belt land.
- This site was not within the Green Belt. It may have been so prior to the adoption of the RUDP in 2005 but had been allocated as 'safeguarded' at this point, further to scrutiny by an Inspector. The boundaries of the Green Belt could only be changed when a new Local Plan came into force. A wholesale review of the district's Green Belt would be undertaken over the next three years as part of this process. Building was only permitted in the Green Belt in very special circumstances.
- A minimum density of 30 houses per hectare was required in order to ensure the most efficient use of the site and to avoid more pressure being brought to bear on other land such as that within the Green Belt. Although it was accepted that the existing houses in this locality had quite large gardens this was not expected to be the case for newer dwellings.
- The majority of housing in the area was two storey and there was a mix of detached, semi detached and terraced units; it was considered that the proposed layout was in keeping with the local character. A condition was proposed in respect of the use of appropriate materials to ensure that these were in keeping with surrounding properties.
- The separation distances met the relevant policy requirements with the exception of a couple of instances within the development, but the buyers of these properties would be aware of this relationship when purchasing the property concerned.
- The existence of the railway tunnel would have been identified as part of the Phase 1 and 2 Site Investigation Reports and had not been raised as an issue of concern.
- A condition was proposed in respect of remediation to address any contamination identified to ensure that it was dealt with in an appropriate manner.
- The Highways Development Control Section had considered both the existing and the forecast traffic conditions in detail, including those figures submitted on behalf of KCGAG. A full Transport Assessment had also been submitted

with the application; this had not given rise to any concerns in respect of impact on highway safety. The calculations to predict the number of vehicle movements that would be generated had been done in accordance with the accepted industry standards and he was satisfied that the conclusions were robust. The accident database had been checked and there had been 4 accidents in the vicinity since 2009; 1 serious and 3 slight. There were no patterns that might indicate a failure of the network. The Avenue was well within its capacity.

- The Community Infrastructure Levy (CIL) had been introduced on 1 July 2017 and certain areas of the district, such as this one, had been deemed to generate nil levy. In developing the CIL scheme, the Council had been required to take account of the viability of development and the final proposals had been reviewed by an Inspector appointed by the Government. Educational infrastructure needs across the district would now be addressed with money paid into a central CIL account. The Education Department did monitor planning consents to inform their planning for new or expanded schools, but it should be noted that it was not always the nearest school to a development that would be expanded.

A Ward Councillor put forward the following concerns:

- Hundreds of local people had objected to the proposals. She had the full backing of the other Ward Councillors in asking the Committee to reject the application.
- Clayton was a welcoming community and the need for new housing was understood but this was not the right location.
- The development of this site would lead to a loss of part of the village's heritage.
- There was a single track road when travelling in the direction of Thornton and no footpath along the main route to the high school that many children from this area attended.
- There would be an impact on the Conservation Area.
- The local roads were already gridlocked; the route between Thornton, Clayton and Bradford had very high levels of traffic and the amount of traffic would be increased by this development.
- There were concerns about the availability of health facilities; residents already had to wait two weeks to get an appointment and there were queues outside the surgery on a daily basis.
- Both residential and visual amenity would be detrimentally affected by the proposals.
- The wildlife survey had been undertaken in February. There were a number of species of bird that were known to use the site.
- Local residents were concerned that amendments to the adjacent Green Belt site for the drainage equipment would have a detrimental impact on their amenity.
- The public footpaths were used on a daily basis for recreational activities including by dog walkers and horse riders; they also linked to the Bronte Way.
- The three local primary schools were all full; some children from Clayton were travelling as far as Denholme to school.
- The access and egress for the development were restricted and were not considered to be suitable. There had been four relatively severe accidents on

The Avenue.

- There was no open space provision and there would be nowhere for local children to play; the amenities at the local park were outdated.
- There were already problems with anti-social behaviour in the village.
- No mention had been made of the new housing being made accessible for people with disabilities; there were no such properties in Clayton.

The Assistant Director explained that:

- The footpath was not a bridleway. The section of the footpath that crossed the top of Westminster Avenue would be affected but signs would be provided to indicate the route.
- No significant wildlife features had been identified on the site and although birds might feed on the site they were unlikely to nest there. Bio-diversity enhancements were proposed and these would be secured through the imposition of a relevant condition.
- The provision of play space within residential sites was not now generally encouraged due to past associations with anti-social behaviour. Money would be available through the CIL scheme to improve recreational facilities in this area if the Council decided to allocate funding for this purpose.
- The new dwellings would be required to comply with Part M of the Building Regulations (in terms of accessibility).
- Access to health facilities was a concern across the district but this was not an issue upon which refusal of an application could be substantiated.
- The Council did not have a five year supply of housing land and there was a significant need for new houses. This was an allocated, safeguarded site.
- In respect of the narrow section of Town End Road, the forecast indicated 10 vehicle movements down this road during the a.m. peak hour and 5 during the p.m. peak hour with a return flow of 4 an hour. The Westminster Avenue junction had visibility in excess of what was considered to be acceptable. A 'traditional estate road' was considered to be able to accommodate 200 properties; Westminster Avenue had grass verges and would serve approximately 130.

In response to a question from a Committee Member, the Ward Councillor explained that the Conservation Area was adjacent to the roundabout heading out of Clayton towards Thornton and there were two or three listed buildings in the village.

A Parish Councillor addressed the Committee as follows:

- The development would cause severe traffic issues.
- Proposals for similar developments had been refused in the past, in part due to issues in respect of congestion and traffic.
- An independent traffic survey had been undertaken. The Avenue was the main thoroughfare connecting this site, the village and the City Centre; over half the traffic heading towards the City Centre originated from The Avenue and drove down Bradford Road. The current proposals would add a further 149 vehicles.
- The access to the village was via a single track road with a chicane coming from Thornton and a narrow road from the City Centre. Although it was

accepted that The Avenue was a wide road these features further away from the site caused a 'bottleneck' for traffic that could not be overcome.

- Westminster Avenue would be the sole access and there would be problems with congestion and parking.
- None of the traffic studies took account of new developments in Thornton.
- Clayton St John's Primary School was located on the opposite side of Bradford Road. It was understood that a Council study had shown that a school crossing patrol was necessary due to the volume of traffic using this road, but these proposals would increase the amount of traffic.
- Encouraging the use of electric vehicles would not resolve the issue of congestion. The Council had deviated from its policy in respect of the provision of a charging point for each dwelling in this development as the affordable properties had been excluded.
- Travel to school was already problematic for local children as there was no continuous footpath to the high school.
- It would be a long walk to the nearest bus stop to access the City Centre.
- The Parish Council could not support the application.

In response and further to additional questions from Members, the Assistant Director explained that:

- A condition was proposed in respect of the provision of Electric Vehicle Charging points (EVCs) and the Local Planning Authority would endeavour to ensure that as many as possible were installed. Robust negotiations were undertaken with developers on this issue and the majority of new developments now had these facilities installed on a very high percentage of properties. In some instances, however, there could be practical issues with installation.
- Vehicles would not all leave/return to the site at the same time so the impact had been calculated on the basis of the average movements in the locality at the present time and using the busiest peak hours. This had forecast roughly one vehicle movement a minute. It was not considered that the limited number of vehicles that would be using Town End Road would give rise to highway safety concerns. In terms of congestion, people would adapt their pattern of travel if they considered that they were being delayed for too long.
- Government advice was that capacity on roads was there to be used; there would be cases where development would take the network over capacity and in those cases highway improvements would be required or the application concerned would be refused. In this case the capacity was there.
- The use of the busiest peak hours for the basis of calculating the future impact was the accepted industry standard.
- An average of 1½ parking spaces per dwelling would be provided.
- Key highway issues and main routes were addressed through a programme of works in conjunction with the West Yorkshire Combined Authority.

A representative of KCGAG and local residents spoke in opposition to the proposed development:

- The argument had been put forward that the Bradford district had to meet housing delivery targets but this site was not appropriate for development.
- A 1300 signature petition and 300 letters of representation had been

submitted in objection to the proposals and these figures could have been trebled.

- There were considered to be inaccuracies in the Assistant Director's report; there were objections from the Rights of Way Officer and it also stated that there were no objections by Education but letters had been submitted by local schools about overcrowding and being filled to capacity.
- Clayton was a unique historic village and its layout could not be changed.
- Residents' concerns about the proposals had been made clear.
- Although it had been said that the 'safeguarded' allocation led towards approval in principle the evidence against development should not be ignored.
- Westminster Avenue was not wide enough to accommodate the additional traffic. Photos had been provided to illustrate the issues.
- There were poor sight lines at the access onto The Avenue.
- This development would add significantly to existing congestion; again photos had been provided to illustrate the present problems. Local residents had to sit in queuing traffic on a daily basis.
- There was a flooding risk and a report had been submitted on behalf of the action group to highlight the issues.
- Wildlife was present on the site; at the correct time of year skylarks nested there.
- In 2004 a report had stated that development should not go ahead on this site as the local infrastructure could not cope, nothing had changed since that time.
- The application should be refused or at least deferred until all the evidence, including that provided by KCGAG, had been properly assessed and work undertaken with the local community to develop sustainable solutions.

The Committee agreed that they had sufficient information to determine the application and that there was no need to defer the decision.

In response to the issues raised and further questions from Members the Assistant Director said that:

- The Education Department had not objected to the application but had stated that it would increase pressure on local schools.
- The Right of Way was on adjacent land and was therefore not part of the application.
- There had been no previous planning applications affecting this site; the allocation of the land had been discussed as part of the 2004 Inquiry for the Replacement Unitary Development Plan (RUDP) which had resulted in an allocation as 'safeguarded'.
- Any proposals to divert the Right of Way would be dealt with through a separate procedure.
- In terms of any proposals to construct an embankment (on the adjacent site) planning consent would not be required if no material was being imported to the site. As far as he was aware there were no plans to undertake any such works.
- The National Planning Policy Framework (NPPF) clearly stated that any highway impact had to be serious to sustain refusal of an application.
- The Parish Council was undertaking consultation in respect of raising funds for the production of a Neighbourhood Plan.

The applicant's representative spoke in support of the application:

- The applicant was the UK's largest house builder with a good track record, including a number of schemes in the Bradford district.
- This was a safeguarded site and the Council did not have a five year supply of housing land.
- The scheme would provide 99 dwellings with a good mix of 2, 3 and 4 bedrooms and detached, semi-detached and terraced units and 20% of which would be affordable.
- There would be one access to the site and a Highway Impact Assessment had been submitted alongside the application.
- Although it was not a standard requirement a CCTV traffic survey had been undertaken due to residents' concerns and it was therefore considered that the figures were very robust. The Action Group's independent survey aligned with these numbers.
- Public consultation had been undertaken.
- The site was in a sustainable location and funding would be provided to undertake improvements to bus stops.
- No Registered Provider (for the affordable housing) had been identified at this stage.
- There were proposed to be a number of two and a half storey properties and these would be located centrally within the site.
- Clayton had a mix of densities and the character of the locality had been taken into consideration in developing the scheme.
- A detailed Phase 2 (contamination) investigation had been undertaken and no radon detected but protection measures were included as a matter of course.
- The schools in the village may be oversubscribed but were taking children from over 2 kilometres away. There were 5 or 6 schools within a 2 kilometre radius and 2 out of the 6 were not oversubscribed.
- The Right of Way would be retained and connections provided to/from the site.
- The Phase 1 Ecology Report had deemed the proposals acceptable.
- EVCs were always provided on the applicant's developments but there were health and safety implications to be borne in mind in some circumstances.
- The application was in accordance with the provisions of the NPPF and local policy and would provide much needed housing for the district. Approval would be subject to a number of conditions.

He responded to questions from Members:

- The applicant's designers and architects had determined the number of units to be provided on site taking account of the Council's requirements in terms of adequate separation distances, the road network and the wish to provide a range of dwellings.
- He was not able to say if the scheme would be unviable with fewer dwellings but pointed out that the applicant had a duty to the landowner to bring forward the optimum scheme.
- Although there could be no absolute guarantees he was confident at this point that the scheme would be viable with the proposed affordable housing provision.

Members made the following comments:

- The scheme met all the requirements of the NPPF.
- Highways Development Control had explained the traffic implications.
- Despite the information provided it was considered that on a day to day basis; the traffic conditions would be exacerbated and there would be a detrimental impact on the local community.
- The traffic would feed onto a main highway artery and would certainly have an impact.
- The highway issues were a concern; inadequate consideration had been given to the impact of the narrow roads.
- There had been no justification for the proposed density which was double that of the surrounding area.
- The amount of housing proposed and the removal of this open space would have an impact on the local community with no mitigation provided.
- Although it was felt that the resultant increase in traffic would cause issues, the highways officer had confirmed that the development met the current requirements. In addition, this was a safeguarded site and there was the potential for costs to be awarded against the Council in the event of an appeal. There would be a detrimental impact on residents of Westminster Avenue but the Committee had to make a judgement under planning law.
- It would be difficult to substantiate any reasons for refusal.
- There was sympathy for the local community but there was no legitimate planning reason to refuse the application.
- Reassurance had been provided that the more remote impact of additional traffic had been taken into account.
- An additional condition should be imposed to ensure that the integral garages were retained for parking purposes and not converted to extra accommodation.

Further to which it was:

**Resolved –**

- (1) That the application be approved for the reasons and subject to the conditions set out in the Assistant Director - Planning, Transportation and Highways' technical report together with an additional condition relating to:**

**Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any subsequent equivalent legislation) the integral garages within the dwelling(s) hereby permitted shall remain available for the purposes of garaging and no subsequent alterations to convert these garages to primary residential accommodation addition shall be carried out without the express written permission of the Local Planning Authority.**

- (2) That the grant of planning permission be subject also to the completion of a legal planning obligation under Section 106 of the Town and Country Planning Act 1990, or such other lawful**

**mechanism for securing the heads of terms as may be agreed in consultation with the City Solicitor, in respect of:**

**On-site affordable housing provision of 20 two bed houses,**

**the legal planning obligation to contain such other ancillary provisions as the Assistant Director - Planning, Transportation and Highways (after consultation with the City Solicitor) considers appropriate.**

***ACTION: Assistant Director - Planning, Transportation and Highways***

#### **48. UNION MILLS, HARROGATE ROAD, BRADFORD**

A report was submitted by the Assistant Director - Planning, Transportation and Highways (**Document “Y”**) in respect of a full application for the demolition of existing buildings and infill of an existing mill pond and the construction of seven retail units including a discount food store (Class A1), five retail units (Class A1) and one sub-divisible unit (Class A1, A3, A5), with access, car parking, landscaping and associated works, at Union Mills, Harrogate Road, Bradford – 17/04007/MAF. Various plans and photographs were displayed.

The Assistant Director - Planning, Transportation and Highways reported on the substance of two additional representations received since the publication of his written report. In response to issues raised he explained that:

- West Yorkshire Ecology had been consulted and had raised no objections.
- The moving of the fish would need to be addressed with the Environment Agency.

He also clarified that the site was located within the Eccleshill Ward and reported a request from the applicants that the proposed conditions in respect of the permitted opening hours and delivery times be amended to align the hours for Unit 7 with those of Units 2,3,4,5 and 6.

The Assistant Director responded to questions from Members:

- These units were of a different scale to those proposed as part of the adjacent residential development which were just intended to be a parade of small shops.
- It would be difficult to undertake a stability assessment on the mill pond whilst it was full.

A Ward Councillor addressed the Committee in objection to the application:

- As Ward Councillor issues relating to Harrogate Road were raised with him on a very regular basis. On the photographs shown by the planning officer it looked particularly quiet.
- Local opinion was divided on the proposals; some people thought that the provision of a new budget retail store would be positive whilst others were concerned about the impact on Harrogate Road.

- The development threatened the livelihood of the existing businesses located on the site.
- Policy CR1A required a demonstration of need; it was considered that the submitted information actually demonstrated the level of threat to other retailers, which was not the same thing. He believed that there was no obvious need for this development, there were already a lot of empty retail units in the area.
- The location of retail units adjacent to housing did not always encourage people to walk and were not an antidote to anti-social behaviour.
- There was concern about the impact on residents of Wharnccliffe Drive and Ashington Close.
- Yorkshire Water considered the conclusions of the submitted Flood Risk Assessment to be unacceptable but believed that the issues could be addressed through the use of relevant conditions. There was uncertainty in relation to where the water came from and went to.
- Ecological surveys had been undertaken but local people had seen crayfish on the site.
- There was a petition to retain the pond.
- There was a proposal to build 550 homes on the Fagley Quarry site but this scheme would rule out the option of a purpose built access road through this site, which was a much better solution to the issue of access.
- A scheme to improve the site and to improve the situation for the local community would be welcomed but there was no need for a development such as this and no account had been taken of the needs of the local community.

The Assistant Director said that:

- Although there may be empty retail units either they were not of sufficient size to accommodate this development or would not be made available for this proposal.
- The Retail Impact Assessment had been reviewed by independent consultants and it had been concluded that the development would have some impact but that this would not be significant or lead to closure of existing units. A number of stores in the area were currently trading above expected levels.
- Although the potential loss of jobs was a concern the owner of the buildings could close them at any point and this issue was not a material planning consideration.
- The principle of the need for additional retail space had been accepted.
- Anti-social behaviour could take place on the site in its current format; a barrier to restrict access outside opening hours would be sought.
- Yorkshire Water had raised concerns about the proposals but were happy that the issues could be overcome through the imposition of appropriate conditions.
- It had not been possible to achieve an agreement in respect of the provision of a single access point to this development and the proposed development on the Fagley Quarry site and a 'ransom strip' had been retained around this site. However, Highway Development Control officers were satisfied that Harrogate Road could safely accommodate both potential accesses.

A local resident spoke in opposition to the development and, with the agreement of the Chair, tabled 4 photographs:

- He had lived on Wharncliffe Drive for 31 years.
- The operation of diesel pumps, to drain the mill pond, 24 hours a day would be a major source of nuisance and it was questioned where the pumps would be located.
- No statement had been made about what would happen to the fish.
- Other wildlife including ducks and geese also used this site.
- Adjoining neighbours were concerned about potential subsidence resulting from the land drying out and it was questioned who would indemnify neighbours in respect of damage; at present the cellar of his property was constantly damp and there was concern about the impact on foundations.
- There had been a lot of revisions to the plans and it was not clear where the proposed buildings would be placed.
- There was a substantial dry stone wall along the rear boundary of properties on Wharncliffe Drive adjoining the site.
- The proposals would not fit in with the surrounding development. Properties on Wharncliffe Drive would face onto a significant existing boundary wall plus another 7 metres of the new buildings.
- The photographs displayed by the planning officer did not illustrate the view from the eastern boundary and the visual impact that the proposed development would have.
- Who would compensate residents for damage to the mature plants along the adjoining boundary?
- Headlights from vehicles on the site would shine into the bedrooms of adjacent properties.
- The premises were proposed to be in use until 23.00 resulting in constant disturbance from traffic.
- There was a problem at the 'Enterprise 5' retail complex with anti-social behaviour taking place in the car park; this site would be subject to similar problems.
- The cross-sections along Wharncliffe Drive needed to be considered and the Committee should undertake a site visit to see the blight the proposal would cause.
- A number of local retail units had already closed and it was questioned why this development was necessary if there was insufficient trade to support those businesses already in the area.
- There would be a detrimental impact on the major supermarket at Greengates.
- TV reception would be affected for adjacent properties.
- The local highway network was already under pressure.

The Assistant Director said that:

- Details of the siting of the diesel pump would have to be submitted to the Council, for approval in writing, and would be placed as far away from residential properties as possible. Noise attenuation measures would also be implemented to minimise the impact.
- Any impact on the foundations of existing properties would be a private legal matter between the developer and the residents concerned, as would any impact on the existing boundary treatments.
- A condition was proposed in respect of the submission of details of boundary treatments and the impact of the use of the car park, including glare from

- headlights, would be considered in determining the appropriate provision.
- It was not considered that the impact on the supermarket at Greengates would be significant.
  - TV reception was not a material planning consideration.
  - The Local Planning Authority did have a duty to consider habitat issues but how and where the fish might be relocated would be dealt with by the Environment Agency. Ducks and geese were not afforded the same level of protection as some other species

The applicant's agent put forward the following arguments in support of the proposed development:

- The development would provide 7 new units on the site, the existing buildings would be demolished and the millpond drained.
- The site would accommodate A1, A3 and A5 uses including a well known discount supermarket.
- The access would be achieved from Harrogate Road.
- 221 parking spaces would be provided.
- Careful consideration had been given to the development of this site and its relationship with the surrounding area. The Local Planning Authority considered that there would be no significant impact and that the loss of the pond would not have a significant impact on the local ecology.
- Removal of the fish would be agreed with the Environment Agency.
- Ecological mitigation measures would be undertaken.
- There had been no objections to the proposal from the statutory consultees.
- There were no sequentially better sites and there would be no significant adverse impact on defined retail centres.
- There would be no loss of residential amenity
- There had been no objections from the Highway Officer.
- A pedestrian crossing would be provided on Harrogate Road.
- The flood risk and drainage measures proposed had been considered acceptable.
- The scheme would create over 100 jobs and represented a significant investment into the area.
- The application satisfied both national and local planning policy and would regenerate a brownfield site.
- The scale, form and design had been deemed acceptable and the permission would be subject to a number of conditions.

Members expressed the following views:

- Although it was appreciated that this particular development could not be accommodated within existing retail space, it was not considered that this meant that there was a need for additional retail floor space; not all the units in the area were fully occupied and a number of the proposed new units did not have an identified end user at this stage.
- There were biodiversity issues as a result of the loss of a large body of open water and it was not considered that the proposed mitigation was adequate.
- There would be overlooking and the use of the car park in the evening/night would affect existing residents, particularly those on Wharnccliffe Drive.
- It was questioned what would happen with the 1 metre 'ransom strip' around

- the edge of the site, would this just become neglected and overgrown?
- Whilst the advantages of the mill pond were appreciated, the potential serious consequences of a breach of this large body of water, which had not been surveyed in terms of its stability, were a significant concern.

The Assistant Director explained the policy requirements in respect of need for retail floor space; the focus being on the demonstration of there being no significant impact on existing centres. In addition, in this case, there was an expectation of significant additional residential development in this area in the near future.

Further to which it was:

#### **Resolved –**

**That the application be approved for the reasons and subject to the conditions set out in the Assistant Director - Planning, Transportation and Highways' technical report subject to the amendment of Conditions 16 and 17 to read as follows:**

#### **16. Opening times – retail units**

**Unless otherwise agreed in writing by the Local Planning Authority, the use of the premises shall be restricted to the following hours:**

**Units 1A and 1B: 05:00 to 23:00 hours Monday to Saturday and 10:00 to 18:00 on Sundays**

**Units 2, 3, 4, 5, 6 and 7: 05:00 to 23:00 hours Monday to Saturday and 10:00 to 18:00 on Sundays**

**Reason: In the interests of the amenities of neighbouring residents and to accord with policies SC9, DS1, DS2, DS3, DS4, and, DS5 of the Local Plan for Bradford.**

#### **17. Delivery times – retail units**

**No deliveries/servicing shall be taken in or dispatched from the site outside the hours of:**

**Units 1A and 1B: 05:00 to 23:00 hours**

**Units 2, 3, 4, 5, 6 and 7: 05:00 to 23:00 hours**

**Reason: In the interests of the amenities of the neighbouring properties and to accord with policies SC9, DS1, DS2, DS3, DS4, and, DS5 of the Local Plan for Bradford.**

***ACTION: Assistant Director - Planning, Transportation and Highways***

#### **49. LAND AT GAIN LANE AND WOODHALL ROAD, BRADFORD**

The report of the Assistant Director - Planning, Transportation and Highways (**Document “Z”**) considered an outline planning application for the construction of an employment development scheme comprising B1, B2 and B8 uses, including

means of access, on land at Gain Lane and Woodhall Road, Bradford – 17/02463/MAO. Various plans and photographs were displayed.

He explained that the application for the access road necessary for this development was being determined by Leeds City Council as the required land was located within its boundary.

He proposed that, if Members were minded to approve the application, Condition 26, in respect of permitted hours of use of the buildings, be replaced with one to ensure that levels of noise at the boundary of the site were controlled to ensure that they were no worse than would normally be expected within an urban area such as this.

He gave the following responses to Members' questions:

- The land required for the access road was located within Leeds City Council's Green Belt. It was not known what this Authority's intentions were in respect of Green Belt changes; it was currently progressing its site allocations process.
- He indicated, on the plan, the area of informal recreation ground that was part of the site but not designated for employment use. The details of the proposed layout for the development had not been submitted at this stage and would be considered as part of the Reserved Matters application.

A local resident put forward the following arguments in opposition to the development:

- He strongly objected to the development on behalf of his family.
- A business should not be permitted to operate storage and distribution during the night time when located so near to residential properties.
- His property was located near to the junction of the proposed access road with Gain Lane and would be affected by noise from vehicles accessing the site; this was potentially a statutory nuisance and would interfere with their human rights.
- HGVs already passed very close to properties on Woodhall Lane causing problems with noise; damage had been caused to the foundations of buildings.
- Over the preceding eighteen months the situation on Gain Lane had worsened and this was having a detrimental impact on the physical and mental health of local residents. The traffic was at standstill during the rush hour and this proposal would exacerbate the situation.
- A local bakery was operating 24 hours a day, 7 days a week and using forklift trucks during the night which affected residents' ability to sleep.
- The proposed widening of Gain Lane was of concern as the 'residents only' parking provision would be lost.
- There were many empty industrial or brownfield sites in the district and it was questioned why could these not be used instead of this green space.

The Assistant Director explained that:

- The site had been allocated for employment use since 2005.
- The potential widening of Gain Lane was an issue for Leeds City Council and

was not part of the application now before the Committee.

- The location of the site close to residential properties meant that noise at night was a particular consideration in order to protect the amenity of existing residents. Conditions were proposed to limit potential noise disturbance, particularly for those living immediately adjacent to the site.
- It was very difficult to control the impact for properties on Gain Lane as this was a main road which already accommodated a lot of traffic.
- The implications for Gain Lane had been considered; he was not aware that there had been a significant increase in traffic during the last 18 months. The main areas of concern for the Highway Authority were the junctions of Gain Lane with Fagley Lane and Woodhall Road and an increase in traffic movements of just over 3½% was forecast. Consideration had been given to whether this was an acceptable level considering the level of traffic that was already accommodated. He was not aware that 'residents only' parking would be lost but any widening of Gain Lane would be subject to detailed design and the relevant authority would consider the implications at the appropriate time. He was satisfied that Gain Lane had sufficient capacity to accommodate the extra traffic from the proposed development.
- The Local Planning Authority could only try to ensure that deliveries were not undertaken during anti-social hours.

The applicant made the following comments in support of the application:

- This site had been designated for employment use in the Replacement Unitary Development Plan (RUDP) since 2005.
- It was also located within an Enterprise Zone at Leeds City Region level.
- The land was not located within the Green Belt and a wildlife corridor would be protected from development. It was also private land.
- The developer was keen to bring this scheme forward. The company had a good track record in the development of such sites across Yorkshire.
- The future occupiers of the units were of a high calibre. There was a lack of such new accommodation within the district and this provision would assist in facilitating the retention of companies in the area. Confidential negotiations were being undertaken with potential end users at the present time.
- The site was in a highly sustainable location on the boundary between Leeds and Bradford and with good potential for recruitment purposes.
- The access road was located in Leeds and would take the path of Woodhall Road apart from a small section.
- The developer had been in discussion with officers about the proposals since 2014 and, if permission was granted, intended to start work imminently. Once planning permission had been granted for the access road it was hoped to finalise the plans. The necessary relocation of the pylons on the site would take approximately 12 months and the construction of the access road approximately 18 months, with work then starting on site in 2019, subject to Reserved Matters approval.
- An independent consultant's report had been submitted in respect of noise which indicated a negligible impact internally and external plant could be controlled through conditions. The worst case scenario of 41 decibels was below the level specified by the World Health Organisation (WHO) for a good night's sleep.

In response to a Member's question about the noise impact outside the site she explained that the independent consultant had considered a number of noise receptors including on Gain Lane and the worst case was below the WHO guidance level.

**Resolved –**

- (1) That the application be approved for the reasons and subject to the conditions set out in the Assistant Director - Planning, Transportation and Highways' technical report subject to the deletion of Condition 26 and its replacement with the following:

**26. Noise levels**

The level of noise emitted from the application site (excluding vehicles on the public highway) shall not exceed: 48 dB LAr (1 hour daytime) and 38 dB LAr (15 minutes night time) at the residential dwellings off Foston Lane and 50 dB LAr (1 hour daytime) and 44 dB LAr (15 minutes night time) at the Dales Nursing Home off Woodhall Lane.

**Reason:** To protect the amenity of the occupants of nearby dwellings and to accord with policies SC9, DS1, DS2, DS3, DS4, and, DS5 of the Local Plan for Bradford.

**27. Noise and traffic management plan**

Prior to the occupation of a Use Class B2/B8 building, a noise and traffic management plan for the service yards shall be submitted to and approved in writing by the Local Planning Authority. This should consider noise generated from deliveries, loading/unloading activities, along with general service yard activities, and consideration of any mitigation measures required. The development shall be carried out in accordance with the approved details, which shall be retained and adhered to at all times.

**Reason:** To protect the amenity of the occupants of nearby dwellings and to accord with policies SC9, DS1, DS2, DS3, DS4, and, DS5 of the Local Plan for Bradford.

**28. Noise attenuation measures**

Prior to the occupation of any building hereby permitted, details of noise mitigation measures to be incorporated within the design of the building and its curtilage shall be submitted to and approved in writing by the Local Planning Authority. These measures should include, amongst other things, the positioning of any openings in the elevations and roof, the location of any associated plant, and, appropriate fencing. The approved details shall be implemented in full prior to the building being first occupied and shall be retained whilst ever the building is in use.

**Reason:** To protect the amenity of the occupants of nearby dwellings and to accord with policies SC9, DS1, DS2, DS3, DS4, and, DS5 of the Local Plan for Bradford.

- (2) That the Reserved Matters application be submitted to this Committee for determination.

**ACTION:** Assistant Director - Planning, Transportation and Highways

**50. UNIT 3A, SAPPER JORDAN ROSSI PARK, OTLEY ROAD, BAILDON**

A report was presented by the Assistant Director - Planning, Transportation and Highways (**Document “AA”**) in respect of a full planning application for a material change of use of Unit 3A at the Sapper Jordan Rossi Park, Otley Road, Baildon from Use Class B1 (Business) to Use Class B2 (General Industrial) in order to allow the chemical treatment of metal parts and the storage of associated chemicals – 17/04012/FUL. Various plans and photographs were displayed.

The Assistant Director reported on the substance of additional representations received further to the publication of his technical report; one in objection, which raised concerns in respect of toxicity and safety risks, and one in support.

Further to questions from Members he confirmed that:

- Local Planning Authorities (LPAs) should not duplicate processes that were governed by other agencies (such as the control of emissions or health and safety) and this was an application to amend the use class from B1 to B2. It was noted that an Environmental Permit would be needed if the size of the chemical bunds were increased.
- The development area had been raised above flood level and compensatory storage provided when the units had been constructed.

A Ward Councillor addressed the Committee as follows:

- When this business park had been developed it had been promoted as a clean, modern development to fulfil a need for such accommodation in the district.
- The applicant's business was just the sort of company that the district needed but the objectors to the proposal had significant and relevant concerns that the planning process was unable to address.
- There were a number of uncertainties in respect of the application; within the Assistant Director's report it stated that '....it was not possible to make a judgement as to whether there is likely to be a statutory nuisance at the application stage. It is unlikely that any damage to buildings or stored stock, were it to occur, would be classed as a statutory nuisance and if there were to be an escape of fumes or chemicals that had the potential to compromise staff health, the resolution would be secured under health and safety legislation'; this appeared to be suggesting shutting the stable door after the horse had bolted.
- It also said that '...If the anodisation line were to be implemented or the treatment vats exceed 30 cubic metres then this would require review and a permit to operate may be required.'; but the volumes of toxic chemicals permitted had not been addressed.
- The applicant had confirmed that he would not object to conditions to make

the permission personal and to restrict the chemical treatment use in line with the details of chemical quantities submitted with the application but the letter referred to did not specify the quantities and did not state how many tanks were in the series.

- The application should therefore be refused.

The Assistant Director clarified that the letter from the applicant included a schedule which stated the quantities of chemicals that would be stored and the permission would be restricted to these levels.

An Environmental Health Manager was in attendance at the meeting. He explained that:

- The concept of 'statutory nuisance' related to the effect on a plaintiff's standard of comfort and was not able to address issues such as damage to stock and building structure.
- Enforcement in relation to such processes was dealt with under the provisions of the Environmental Permitting Regulations 2016. Dependent on the amounts of chemicals being used/stored and the processes in question, the relevant enforcing authority was either the Local Authority or the Environment Agency.
- COSHH (Control of Substances Hazardous to Health) Regulations applied to businesses using hazardous substances and imposed various requirements including undertaking risk assessments and monitoring. Such businesses had onerous responsibilities to ensure that they were run safely.

Objectors to the application were in attendance at the meeting and said that:

- They represented the adjacent business and other businesses located at the Business Park.
- There were serious objections and concerns in respect of the risk to health of these proposals.
- Considerable correspondence had been submitted to the Local Planning Authority but difficulties had been experienced in getting information.
- It was considered that the initial application had been inaccurate and misleading; there had been no mention of extraction. There would be no monitoring of emissions and the drawings had been wrong.
- It was believed that the risks from the chemicals had been understated; they had been portrayed as low risk but the data sheets submitted by objectors clearly demonstrated the risks to respiratory health.
- The adjacent business was a B1 use which shared a wall with the business making the application and where these chemicals would be in use. The party wall was not a substantial structure and there was no extraction equipment in their unit. It was questioned how would they be aware if gases were entering their premises.
- They had been told that nitrogen would not be released but this was untrue.
- Even on a small scale these were very dangerous chemicals.
- Environmental Health had altered their stance; initially they had stated that they had no comment in respect of statutory nuisance now they said they could not say if nuisance would be caused.
- The issues were not just about the storage of the chemicals.
- The applicant had said that they understood the concerns being raised and

- would provide information but this had not happened.
- The Planning Department had said that these issues were not within the remit of the planning process.
  - The occupiers of the adjacent buildings needed reassurance that they were safe.
  - Extraction would not deal with 100% of the emissions from the anodising process.
  - There would be a detrimental impact on other businesses.
  - The site had always been promoted as a high tech, Use Class B1, clean environment and the company had relocated for that reason. It was considered that this proposal would downgrade the site. The continuation of the applicant company was not dependent on this process being undertaken on site.

The Environmental Health Manager explained that:

- The initial 'no comment' response had been amended to indicate that it was not possible to say at application stage whether there would be a statutory nuisance.
- Nitric and sulphuric acid were listed within EH40 (a Health and Safety Guidance Document) so it was accepted that there were issues in respect of workplace exposure levels.

He further responded to additional questions from Members:

- The user had a clear duty of care under the Health and Safety at Work Act and this extended to third parties.
- The manufacturers would produce a Product Data Sheet for the products used by the business and those products should be used in accordance with the information therein.
- Anyone using these products had to be trained; the responsibility for this lay with the person running the business concerned. Some manufacturers of chemicals did provide training on the use of their products.

A Member of the Committee commented that the National Planning Policy Framework (NPPF) stated that LPAs should 'assume regimes will operate effectively' so if a matter was the responsibility of another agency this should not be taken into consideration when determining the planning application. The City Solicitor confirmed that non planning legislation was not a material consideration and that the onus was on the Authority to grant permission if an application accorded with the development plan unless material considerations suggested otherwise.

The Assistant Director confirmed that the application had been amended from the initial submission but had consistently remained for a change from B1 to B2 with the same schedule of chemicals. Additional plans had been forthcoming further to consultee responses and issues raised through representations.

The applicant's agent made the following comments:

- This company undertook high tech manufacturing which was what the

- Business Park was intended to accommodate.
- At present the company had to send items away to allow finishing processes to be undertaken and they were then returned for checking.
  - The volumes of chemicals involved were listed on Pages 118 and 119 of the Assistant Director's report.
  - Each case had to be dealt with on its merits.
  - The company would remain a high tech business and this proposal would not derogate the site.
  - Officers had explained the issues in respect of health and safety. There had been no objection from the Environment Agency.
  - The other equipment located in the same unit was sensitive and required clean air to operate.
  - Relatively few changes were to be made externally and were deemed to be positive in effect.
  - The numbers being employed by the company were already increasing and it provided a significant number of apprenticeships and encouraged the recruitment of local people.
  - The company had thrived since moving to Baildon and was an epitome of what had been envisaged for the Park.
  - All the proposed conditions were accepted by the applicant.

The applicant also spoke in support of the development:

- He was the Managing Director of the company which had been operating since 1966.
- If the aerospace components manufactured by the company failed this could have extremely serious consequences so diligence was an absolute necessity.
- The company had been located in this unit since 2013.
- The 3D printing process undertaken required very clean air.
- The proposal was very small scale and 20 times below the level at which a permit would be required.
- The processes were very heavily monitored with 3 audits a year. If there was any breach in the process this could lead to the company going out of business; it was vital that the processes were well controlled.

In response to a Member's question he explained that the company had to work to AS9100 an aerospace standard. Revision D covered the issue of risk. The company had been the first to achieve the standard in the world; this required very strict systems and was a benchmark of how the company worked.

Members commented as follows:

- Compliance with this quality control mechanism answered the issues in respect of diligence.
- Assurance had been given that the correct procedures were in place.
- The provision of apprenticeships was welcomed.

**Resolved –**

**That the application be approved for the reasons and subject to the**

conditions set out in the Assistant Director - Planning, Transportation and Highways' technical report.

**ACTION:** *Assistant Director - Planning, Transportation and Highways*

51. **LAND TO THE NORTH OF ROYD INGS AVENUE (BETWEEN THE A629 AND THE RIVER AIRE), KEIGHLEY**

The Assistant Director - Planning, Transportation and Highways submitted a report in relation to a full planning application for the extension of Keighley Industrial Park through the formation of eight structures housing nine commercial units (B8 and B2 uses), with associated car parking, highways connection, drainage and landscaping, on land to the north of Royd Ings Avenue, Keighley – 17/05255/MAF (**Document “AB”**). Various plans and photographs were displayed.

The Assistant Director reported the receipt of an additional representation, from the local Member of Parliament, since the publication of his written report.

He replied to questions as follows:

- No discussion had taken place with the applicant prior to submission of the application.
- The reference to Core Strategy Policy EC3 in his report concerned plans for the distribution of 30 hectares of new employment land in the Aire Valley Corridor. An Employment Land Review had been undertaken as part of the Core Strategy to determine how much would be needed over the life of the strategy. There was no equivalent of the five year housing supply requirements for employment land.
- An Inspector would be unlikely to support the development of any sites within the functional flood plain.
- It was not possible to conclude, prior to the completion of the allocation process, that the target of 30 hectares could not be accommodated outside the flood plain.
- There was a requirement for a Sequential Test in respect of development proposals on land at risk of flooding, to show that no other land was available with a lower risk, and an Exceptions Test and Flood Risk Assessment to demonstrate that the development would not be at unacceptable risk of flooding, would not increase off-site flood risk and that the development would result in overriding sustainability benefits. There were no Sequential Test or Exceptions Test reports provided by the applicant in this case.
- Although the applicant had submitted an assessment of land in Keighley and said that none could accommodate this development this information did not meet the requirements for a full Sequential Test. Sites that could potentially be released from other designations had not been considered.

Representatives of the applicant put forward the following points:

- The land had previously been designated as employment land but had been removed due to concerns about flooding.
- A Flood Risk Assessment had been submitted which showed the mitigation

- measures proposed. Yorkshire Water's comments had been taken on board.
- The site was adjacent to an existing large industrial estate.
  - The project would provide much needed economic development and would allow optimum use of this site.
  - A plan had been presented in respect of ecological enhancement.
  - The existing footpath could be re-directed and it was considered that this provision could be improved.
  - A split of B2 and B8 uses was proposed.
  - It was considered that there were no reasonable grounds to refuse the application; the highway impacts were not severe; air quality would not be significantly affected; the site had good transport links; only nine objections had been received and eight representations made in support.
  - The site was within the Green Belt but this was a deliverable scheme that would have a positive impact in terms of a significant number of jobs during the construction process and the opportunity for the creation of over 300 jobs, including apprenticeships, post construction.
  - The development would provide improvements to the existing footpath network and would have a minimal impact on the Green Belt which would be outweighed by the benefits of the scheme.
- Having worked in Keighley for 25 years he was passionate about the area and considered this to be an excellent opportunity for the town.
  - Having acted as a commercial property agency and handled local industrial schemes his company was highly qualified to advise on the demand for such provision.
  - The proposed scheme offered a unique development opportunity with the impact of an investment of £50 to £60 million, a significant number of jobs and the ongoing payment of approximately £1.25 to £1.5 million per annum in business rates.
  - This was an unusual design and the Council had a chance to either embrace this opportunity or do nothing.

In response to Members' questions the applicant's agent stated that:

- Each building would incorporate renewable energy measures and significant mitigation measures were proposed.
- The footpath diversion would make access easier.
- A large proportion of the site would be retained for ecological enhancement.
- A comprehensive warning system would be put into place in respect of flooding that would give sufficient time for people and vehicles to be removed from the site.
- He was unable to answer a question in respect of pollution escaping into the river in the case of a flood as he was not an expert on flooding issues.
- If the application was approved conditions would be imposed that would require the implementation of measures to deal with flooding.

In terms of risk to the Council/local community the Assistant Director stated that the site was, at the present time, a designated functional flood plain. If development was approved and there was a flood then the Council's decision may be open to challenge. If a development was undertaken within a floodplain and was not done in the correct manner there were relevant rules and regulations

that would refer responsibility back to the landowner.

Members commented:

- The Land Allocations Plan would not be produced for a further 3 years; this was a potential lost opportunity for Keighley.
- Under riparian law a developer had a duty not to increase flood risk downstream and the liability related to this lay with the landowner.
- Very special reasons were required to overcome the location within the Green Belt and a flood plain; there was not the same pressure for employment land as existed with housing. Although the concept sounded interesting and exciting it was risky.
- Although not fully convinced by the arguments put forward by the applicant it was considered that there was not enough information available to the Committee to allow refusal at this point.
- A Sequential Test had not been undertaken in any great depth
- It was contrary to Green Belt policy
- The district could not afford to turn away this level of investment lightly.
- The Authority needed to have a 'can do' attitude and to work with interested parties, to consider the possibilities and the economic benefits. In an adjacent authority joint meetings took place with regeneration officers, planners and drainage engineers.
- The application should be deferred for more information to be provided and for more detailed risk assessment.
- The application as proposed was not acceptable but deferral was supported in order that more information could be provided in respect of how it might be achieved.
- The Committee should determine the application before it; all aspects should have been addressed beforehand.
- There were a number of issues to be responded to including the development of a unique building and information on any other such developments that may have taken place elsewhere; how the development would affect the flood plain; what mitigation measures were possible; the undertaking of an Exception Test; habitat issues and footpath enhancement; how the proposals for car parking would work; and discussion with the Regeneration Department.

It was noted that the responsibility for justifying the approval of an application lay with the applicants not the Local Planning Authority and that there was a need to respond to all the proposed reasons for refusal.

**Resolved –**

**That consideration of the application be deferred to the meeting of the Committee to be held on 8 March 2018 and that the applicant be requested to submit further information to address the reasons for refusal set out in the Assistant Director - Planning, Transportation and Highways' technical report, with specific reference to:**

- (i) **An explanation of how the proposals for these unique buildings will not create flood risk issues, including examples of similar successful development elsewhere,**

- (ii) What mitigation circumstances may apply,
- (iii) Consideration of any flood plain works being carried out elsewhere that may assist this development,
- (iv) A Sequential Test and an Exceptions Test in accordance with the requirements of the National Planning Policy Framework (NPPF),
- (v) Habitat mitigation measures,
- (vi) More detailed proposals for flood safe car parking provision,
- (vii) The regeneration and employment benefits of the scheme; to include dialogue with the Council's Economic Development Department.

***ACTION: Assistant Director - Planning, Transportation and Highways***

Chair

**Note: These minutes are subject to approval as a correct record at the next meeting of the Regulatory and Appeals Committee.**

THESE MINUTES HAVE BEEN PRODUCED, WHEREVER POSSIBLE, ON RECYCLED PAPER