

**Item Number:** 11  
**Application No:** 17/01450/FUL  
**Parish:** Kirkbymoorside Town Council  
**Appn. Type:** Full Application  
**Applicant:** Thomas Crown Associates  
**Proposal:** Erection of 6no. three bedroom terraced dwellings along with parking areas and shared amenity space  
**Location:** North Yorkshire Highways Depot Manor Vale Lane Kirkbymoorside YO62 6EG  
  
**Registration Date:** 30 November 2017  
**8/13 Wk Expiry Date:** 25 January 2018  
**Overall Expiry Date:** 15 March 2018  
**Case Officer:** Alan Hunter **Ext:** Ext 276

**CONSULTATIONS:**

<b>Environmental Health Officer</b>	Await response
<b>Housing Services</b>	Comments
<b>Yorkshire Water Land Use Planning</b>	Recommend conditions
<b>Sustainable Places Team (Environment-Agency Yorkshire Area)</b>	Recommendations made
<b>Historic England</b>	No comments to offer
<b>Countryside Officer</b>	Comments and recommendations
<b>Flood Risk</b>	Recommend conditions
<b>Archaeology Section</b>	No objection
<b>Public Rights Of Way</b>	Informative
<b>Parish Council</b>	Support with some concerns and comments
<b>Highways North Yorkshire</b>	Points require addressing and conditions
<b>North Yorkshire Fire &amp; Rescue Service</b>	No objections
<b>Flood Risk</b>	Further comments
<b>Environmental Health Officer</b>	Recommend conditions
<b>Sustainable Places Team (Environment-Agency Yorkshire Area)</b>	No further comments
<b>Lead Local Flood Authority</b>	Recommend further analysis
<b>Yorkshire Water Land Use Planning</b>	Await response
<b>Vale Of Pickering Internal Drainage Boards</b>	Await response
<b>Environmental Health Officer</b>	Noise response - concerns
<b>Parish Council</b>	Comments made but support in principle

**Neighbour responses:** Liz And Paul Banks, Mr Keith Stevenson, Mr John Barrett, Mr Michael Gray, Ms Helen Beaumont, , Mr Brian Bancroft, David And Judith Turnball, Miss Polly A Baldwin, Mrs Elizabeth Banks, Mr Paul Birchall, Ravenswick Estate, Kirkbymoorside Town Brass Band (Mr John Wright), Mrs Ann Gray,

**SITE:**

This site is located towards the northern end of Kirkbymoorside, and to the north of Manor Vale Lane. Manor Vale Lane runs through the application site and becomes a single track road which provides vehicular access to the Kirkbymoorside Golf Club (located further north of the application site).

The application site was previously used as a Highway Depot for North Yorkshire County Council. The site also comprises a former quarry. Various buildings and structures occupy the eastern part of the site which lies beneath a cliff face. These buildings consist of offices, stores and garaging, whilst to the

north of the buildings is a hard-surfaced area. At present that site is derelict, and with the exception of the roadway, it has security fencing around its inner sides.

To the west of the application site, are two community halls, one of which is used as a Scout Hut and the second of which is a Band Hall. The Band Hall has been granted planning permission to extend onto the site occupied by the Scout Hut to create a Concert Hall.

Residential development is located on top of the cliff to the western and eastern sides of the application site. To the south, there are dwellings of varying styles located on Manor Vale Lane. These properties comprise the approach to the site from the town.

Part of the site lies immediately within the development limit for the town but to the north of the Kirkbymoorside Conservation Area. The land immediately to the north is within the Area of High Landscape Value (Fringe of the North York Moors), and contains a designated Site of Importance for Nature Conservation, along with Ancient Woodland. A small area of the site is located outside of the development limits of the Town, this area is proposed to be used as communal garden area.

An area to the north-east and immediately adjacent but outside the application site is designated as an Scheduled Ancient Monument (Neville Castle)

### **PROPOSAL:**

The proposal is a Full application for 6no. 3 bed dwellings, arranged as a terrace dwellings. All of the dwellings are in the form of frontage development which runs along the eastern side of the roadway, with a central access to the Golf Club running through the application site. The communal area of garden is to be located to the northern side of the proposed dwellings, and measures approximately 10m by 12m.

The building comprising the 6no. terraced dwellings in total will measure 41.2m in width and 7.8m in depth, the proposed dwellings measure 4.5m to the eaves and 8m to the ridge height. The agent has confirmed the dwellings are proposed to be constructed from 100mm bed random coursed stone under a clay pantile roof with timber windows and doors. Parking areas are proposed to the south and north of the proposed dwellings with permeable paving.

The application is accompanied by the following reports:

- Planning Statement;
- Landscape and Visual Appraisal;
- Noise Assessment;
- Tree Survey;
- Asbestos Demolition Survey Report;
- Archaeology assessment;
- Contaminated Land Report - Phase 2 report;
- Drainage details;
- Flood Risk Assessment;
- Design & Access Statement; and
- Ecology surveys.

These reports are able to be viewed on the Council's website.

### **HISTORY:**

Recent planning history includes:

2017: Planning application refused for the erection of 6 dwellings. Appeal lodged and due to be determined in April by the Planning Inspectorate. The agent has recently confirmed that this appeal has been withdrawn, confirmed from PINS is awaited.

2015: Planning application for residential development withdrawn.

2014: Planning application for B1 and B8 use- dismissed on appeal.

2014: Change of use of office to a dwelling refused - dismissed on appeal.

2014: Two planning applications for residential development withdrawn.

2013: Demolition Consent granted to demolish the redundant buildings on the site.

2008: Planning permission refused for residential development - dismissed on appeal. (NOTE: This was a larger site than is currently proposed)

## **POLICY:**

### National Policy

National Planning Policy Framework 2012 (NPPF)

National Planning Practice Guidance 2014 (NPPG)

### Local Plan Strategy

Policy SP1 - General Location of Development and Settlement Hierarchy

Policy SP2 - Delivery and Distribution of New Housing

Policy SP3 - Affordable Housing

Policy SP4 - Type and Mix of New Housing

Policy SP11 - Community Facilities and Services

Policy SP12 - Heritage

Policy SP13 - Landscapes

Policy SP14 - Biodiversity

Policy SP16 - Design

Policy SP17 - Managing Air Quality, Land and Water Resources

Policy SP19 - Presumption in favour of sustainable development

Policy SP20 - Generic Development Management Issues

Policy SP22 - Planning Obligations, Developer Contributions and the Community Infrastructure Levy

## **APPRAISAL:**

The main considerations in relation to this application are:-

- The principle of the proposed residential development;
- Flood Risk;
- The siting, scale and design of the proposed scheme;
- Whether the proposed dwellings will have a satisfactory level of residential amenity;
- The impact of the proposed development upon surrounding properties;
- Heritage impacts;
- Drainage;
- Archaeology;
- Highway safety;
- Affordable Housing;
- Contaminated land and ground stability;
- Ecology and the impact of the proposal upon protected species and the Manor Vale SINC;
- Tree and Landscape Impact;
- Other Issues; and
- CIL.

A previous application for 6 dwellings, comprising a pair of 3 terraced dwellings, was refused planning permission last year, by Planning Committee. The reasons for refusal related to absence of a flood risk Sequential Test and possibility of increased flood risk to other properties; the impact of the development upon the Band Hall; and the limited amenity for the occupiers of the dwellings as a consequence of the close proximity of the development to the outer sides of the quarry and the Band Hall. This current planning application has been submitted alongside an appeal against the previous refusal.

This application was been submitted with new information; a new Noise Assessment; a Drainage Site Plan; Surface Water Drainage Calculations; Updated Flood Risk Assessment and Updated Design and Access Statement. Revised Plans have also been submitted showing a single building block comprising 6 terraced dwellings.

The same new information was also been submitted with the appeal. The Local Planning Authority has objected to the introduction of the new information with the planning appeal, as it has not been the subject of consultation with interested parties and could fetter the judgement of the Local Planning Authority in the first instance to determine this planning application. The Planning Inspectorate has since confirmed that the appeal is to be heard only against the scheme as originally refused by Planning Committee, the deadline has also been extended for the Appeal Statements until 20 March 2018, to enable a decision by Planning Committee on 13 March 2018. The applicant has informed the LPA that the appeal has now been withdrawn, confirmation from PINS is awaited.

Following discussions with the agent, the current planning application has been further amended; to be a FULL application; an additional area of communal amenity space for the 6 dwellings has been proposed to the northern side of the dwellings, a revised internal layout is proposed with all habitable rooms on the rear elevation; additional drainage information; a schedule of external materials; and a Sequential Test. The application has been re-consulted upon and the consultation deadline is 15 March 2018. Members will appreciate this is 2 days after the Committee date and any decision made by Committee will be subject to any further issues raised before the expiry of the consultation period.

#### The principle of the proposed development

The proposed 6 no. dwellings are located within the development limits of Kirkbymoorside. In accordance with Policy SP2 of the Local Plan Strategy, it is considered that the development of the application site within development limits can be regarded as 'infill' development and acceptable in principle.

#### Flood risk

The site is located within Flood Zone 1, in terms of its risk of flooding from coastal and river flooding. The site was originally within Flood Zone 3 of the Strategic Flood Risk Assessment, however that was subsequently amended to Flood Zone 1, being the lowest risk of Flooding. That was because surface water flooding and coastal and river flooding were separated. A separate Surface Water Flood Map was developed and the advice from the Environment Agency was to consider all the maps and designated areas together. The Environment Agency Surface Water Flood Map identifies the application site within an area at high risk of flooding from surface water.

It is understood the surface water flows from higher land to the north, and at times of heavy rainfall flows through the application site and pools to the south of the application site. Photographs and videos of a serious flood event involving the flooding of the dwelling immediately to the south have been submitted in response to an earlier application for residential development on this site previously. There is strong concern locally regarding the flooding of this area. The agent has submitted photographs of the previous flood event, and these are appended to this report for Members information.

Para. 101 of NPPF states:

*'The aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The Strategic Flood Risk Assessment will provide the basis for applying this test. A sequential approach should be used in areas known to be at risk from any form of flooding.'*

and para. 103 of NPPF states:

*'When determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere and only consider development appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment following the Sequential Test, and if required the Exception Test, it can be demonstrated that:*

*- within the site, the most vulnerable development is located in areas of lowest flood risk unless there are overriding reasons to prefer a different location; and*  
*- development is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed, including by emergency planning; and it gives priority to the use of sustainable drainage systems.'*

Para. 101 and para. 103 of NPPF and Policy SP17 of the Local Plan do not exclude surface water flood risk from the sequential test. In this case, the site does flood and surface water comes from the higher land to the north down through the steps at Manor Vale Wood (eastern side) and across the application site. The water is then known to pool to the south of the site in Manor Vale. A map provided to the Local Planning Authority in 2011 annotated the whole site as flooding at that time. The photographs annotated to this report clearly show the access road that runs through the application site to flood. There has also been a Court decision that confirms even where part of the site is at risk of flooding the entire proposal has to be sequentially tested.

After initially disputing that it is required, the agent has submitted a Sequential Test. The Test is whether the development, in this case 6 terraced dwellings can be located on any other sites in Kirkbymoorside that are at a lesser risk of flooding. NPPG requires a pragmatic approach to this test and to take account of the type of development proposed. The relatively high density and urban form of development is considered to be more appropriate in a built-up area as opposed to a Greenfield location. The Sequential Test has, however, analysed sites in an around Kirkbymoorside to establish if there are any suitable and available sites for this type of development. The Test has been discussed in detail internally with colleagues working on the Sites Document. It is considered that the Sequential Test has been met and there are no other site's available or suitable for this type of development proposal.

With the Sequential Test met, it is now appropriate to consider the Exception Test for this proposed use. Turning to the first part of the Exception Test as outlined above in Para 103 of NPPF, it is noted that the buildings on site are in a poor state of repair and this is a brownfield site that would benefit from being developed. Officer's regularly received complaints about the condition and appearance of this site. The opportunity to provide an appropriate redevelopment of this Brownfield site that is located in a sustainable location is considered to be a significant material planning consideration.

Regarding the second stage of the Exception Test, the mitigation proposed by the FRA is to raise finished floor levels above current levels by 0.3m. Evacuation is proposed towards the steps to the north through Manor Vale Wood. The means of escape is not considered appropriate given that the steps are a source of flowing surface water from higher land. The Lead Local Flood Authority (LLFA) has been re-consulted and pursuant to the Exception Test they have been asked, in addition to surface water drainage, to comment on:

- Whether the levels of the development are acceptable or need to be raised to take account of climate change and future events?
- What means or escape should be provided and to comment on the proposed use of the steps;
- Whether the development of the site would funnel the water so it increased flood risk to other

- properties ;
- If any further mitigation is required to make the development flood resilient?

The LLFA has confirmed that the FRA does not contain sufficient information about exceedance flows, risk to other properties to the south, whether the surface water drainage system takes account of and flood risk mitigation. The agent has been advised of this. Additional information has been received on these points and the further views of the LLFA are awaited. At present, it is not considered possible to confirm the second part of the Exception Test is met. Without confirmation of the above points, the Exception Test cannot be met. Members will be updated when the views of the LLFA are known either in the late pages of at the meeting.

#### The siting, scale and design and materials of the proposed development

The 2008 application that was dismissed on Appeal, proposed residential development along the eastern part of the site and opposite the Band Hall. The Inspector in 2008 stated:

*'The appellant argues that the layout would 'break up' the development although in my view its suburban estate style layout would appear alien in its disused quarry setting, neither reflecting its industrial heritage nor enhancing its landscape setting.'*

*'∴ I conclude that the proposal would be harmful to the character and appearance of the site, including both parts within Kirkbymoorside's defined development limits and parts of it within Kirkbymoorside's development limits and the parts within the AHLV'*

Policy SP16 of the adopted Local Plan Strategy requires:

*'Development proposals will be expected to create high quality durable places that are accessible, well integrated with their surroundings and which:*

- *Reinforce local distinctiveness*
- *Provide a well-connected public realm which is accessible and usable by all, safe and easily navigated*
- *Protect amenity and promote well-being. To reinforce local distinctiveness, the location, siting, form, layout, scale and detailed design of new development should respect the context provided by its surroundings including:*
  - *Topography and landform that shape the form and structure of settlements in the landscape*
  - *The structure of towns and villages formed by street patterns, routes, public spaces, rivers and becks. The medieval street patterns and historic cores of Malton, Pickering, Kirkbymoorside and Helmsley are of particular significance and medieval two row villages with back lanes are typical in Ryedale*
  - *The grain of the settlements, influenced by street blocks, plot sizes, the orientation of buildings, boundaries, spaces between buildings and the density, size and scale of buildings*
  - *The character and appearance of open space and green spaces including existing Visually Important Undeveloped Areas (VIUAs) or further VIUAs which may be designated in the Local Plan Sites Document or in a Neighbourhood Plan. Development proposals on land designated as a VIUA will only be permitted where the benefits of the development proposed significantly outweigh the loss or damage to the character of the settlement*
  - *Views, vistas and skylines that are provided and framed by the above and/or influenced by the position of key historic or landmark buildings and structures*
  - *The type, texture and colour of materials, quality and type of building techniques and elements of architectural detail'*

In this case, 6 terraced properties are proposed, with parking areas to the northern and southern sides. The scheme is now a FULL application and includes elevations to be considered. The proposed dwelling are designed as 2 storey properties with 2 no. dormer windows on the front of each property and accommodation in the loft areas. There is some concern at the number of dormer windows, and consequent number of down pipes required on the front elevation. However, this form of development

is considered to be acceptable in this location and to respect the traditional form of development in the wider area. It is considered that this form of development is more appropriate than detached or suburban type housing.

On the whole it is not considered that the design and appearance of the development would warrant a recommendation of refusal. As the site relates to 6 dwellings, there is considered to be sufficient views retained elsewhere of the outer valley sides. It is considered, on balance, that the development is acceptable and to meet the requirement of Policy SP16 and Policy SP20 of the Local Plan Strategy.

Whether the proposed development will have a satisfactory level of residential amenity

Policy SP20 of the Local Plan Strategy states:

*'New development will not have a material adverse impact on the amenity of present or future occupants, the users or occupants of neighbouring land and buildings or the wider community by virtue of its design, use, location and proximity to neighbouring land uses. Impacts on amenity can include, for example, noise, dust, odour, light flicker, loss of privacy or natural daylight or be an overbearing presence.*

*Developers will be expected to apply the highest standards outlined in the World Health Organisation, British Standards and wider international and national standards relating to noise'*

The following issues are considered to be particularly relevant in this case:

- The potential for noise and disturbance from the adjacent Band Hall
  - The position of the cliff faces on the western and eastern sides measuring up to 10m above the site level proposed for the houses
- (i) Noise and the Band Hall implications

Kirkbymoorside Band Hall is located opposite the site, together with an existing Scout Hut. Planning permission (15/00644/FUL) was granted last year for an extension of the band hall onto the site of the Scout Hut to create a Concert Hall. The Band Hall is an important community and recreational facility that is afforded protection within the Local Plan Strategy.

Policy SP11 of the Local Plan Strategy states:

*'Existing local retail, community, cultural, leisure and recreational services and facilities that contribute to the vitality of the towns and villages and the well-being of local communities will be protected from loss/redevelopment unless it can be demonstrated that:*

- there is no longer a need for the facility or suitable and accessible alternatives exist, or*
- that it is no longer economically viable to provide the facility, or*
- Proposals involving replacement facilities provide an equivalent or greater benefit to the community and can be delivered with minimum disruption to provision'*

There is considered to be a significant an issue with the co-existence of housing and the Band Hall. Particularly the degree of noise that future occupiers will be subject to, and the likelihood that this will create complaints about the operations of the Band Hall. As noted above in Policy SP20, the Local Planning Authority requires the highest standards in relation to noise for new residential developments.

On the earlier Appeal Decision, the Inspector stated:

*'The appellant argues that the affected houses could be designed with measures to protect their occupants from the noise, although I am not persuaded that this is practical: even if double or triple glazing in the houses were to be effective in blocking out the music, the residents would be unable to*

*have their windows open in warm weather and, in any case, they would not be able to enjoy their gardens on summer evenings without the disturbance of the band.'*

A new Noise Assessment has been submitted with this application that has sought to engage with the Band Hall representatives. The Noise Assessment has demonstrated that the rear elevations of the proposed dwelling even with windows open could meet the relevant noise standards that the Council applies. The scheme has been re-designed with all habitable rooms located on the rear elevations. The Environmental Health Officer (EHO) has been consulted and has stated:

*'I still have concerns with regard to noise disturbance to these dwellings. Whilst I acknowledge the improved internal layout in relation to noise disturbance from the band room during band practice, section 1:3 of the "YES" noise assessment executive summary states:*

*"If windows to both hall and residential properties were open whilst band practice is taking place the noise levels in the proposed dwellings would not be acceptable and would result in a significant adverse effect".*

*This development, therefore does not meet the highest standards required by Ryedale District Council that internal noise levels should be in line with the World Health Organisation (WHO) guidelines with partially open windows. The occupants will have no jurisdiction over whether the band room will have their windows open or closed and therefore cannot control the levels from the band room itself.*

*The plans show on the first floor elevation a study, I have reservations that should this be used as a fourth bedroom then noise levels would result in a significant adverse effect. I still have concerns to the outside courtyard area, this could not be used as an amenity to the dwelling as noise levels to this area would be totally unacceptable.'*

There has also been a direct objection from the Band Hall representatives and from third party objectors regarding the potential implications for the Band Hall. There is concern that the proposal could create complaints regarding nuisance which could curtail the Band's Operations. The objections raised consider the Noise Assessment to be much better than the previous Assessment but consider it to be partially inadequate. The Band Hall representatives are also keen to emphasise that they practice outside and with their doors open during warmer months. The Band Hall is 14.5m at its closest the proposed dwellings.

The applicant's Noise consultant has responded with the following:

*'In the YES Consultancy's noise report (page 23) we advise that when windows to the band hall are opened, then sound levels inside the rooms to the front facades of the property are predicted to increase such that windows to the rooms would need to be closed in order to ensure compliance with the design standards of BS8233 and the WHO guidelines, with suitable acoustically treated ventilation provided. Also if band hall windows were closed then internal levels in the proposed properties would be well below the World Health Organisation and BS8233:2014 internal criteria levels.*

*As a result I do not think it would be necessary for any mitigation to be provided in terms of sound insulation of the band hall building but it may be worth considering provision of mechanical ventilation/air conditioning for the band hall such that windows to the hall could remain closed and thus reduce noise breakout.*

*Within the objection from the brass band they make a number expressions of concern regarding numbers of band practices, times of practices, loudness of band practices (with senior bands considered to be louder). In addition they state that noise from the band would increase when band practice takes place outside during the summer months, this was not something which was mentioned during my long discussions with the band.'*

Again, in my view, the provision of any artificial ventilation/air conditioning would help control these aspects too. Obviously noise levels from outside practice wouldn't be affected by any changes to the building but I am not 100% sure that this would be classified as reasonable if they have a perfectly



adequate indoor space for practicing.

Following this, the agent has responded to state their intention to make an offer on behalf of the applicant to the Band Hall representatives to provide an air conditioning unit and to ensure the windows on their eastern elevation cannot be opened. The aim is to provide a suitable environment for the Brass band and reduce their need to open the windows for ventilation. Thereby reducing the potential impact of the occupiers of the proposed development. This is an issue between the Band Hall and the agent/applicant. If agreed between the parties and a Unilateral Undertaking to that effect is provided to the Council, it can be considered alongside the above assessment on noise and amenity impacts. However, Officers have reservations about whether this would be acceptable to the Band Hall and be a solution to the current issues. Such a solution requires the agreement of the Band Hall representatives along with the landowner, which will need to be a party to the agreement.

Regarding the comments of the Environmental Health Officer's assessment, it is correct that the study could be used as a bedroom and that the Local Planning Authority could not control this aspect. In relation to the Environmental Health Officer's comments in respect to the proposed Outdoor communal amenity area to the north of the dwellings. The agent considers acoustic fencing around this area to be unsightly and the aim was that this was an open area. Clearly these two areas of concern could be directly affected by any agreement from the applicant to the Band Hall representatives regarding ventilation and closed windows. As it stands Officers have significant concerns about residential amenity impacts for the occupiers of the proposed dwellings and the impact upon the Band Hall. Without knowing the outcome of the discussions with the Band Hall representatives it is not possible for Officers to reach a conclusion on these issues.

(ii) Proximity to the eastern outer side

In terms of the proximity to the outer sides of the valley. The proposed dwellings have limited rear gardens and they are in close proximity to the outer cliff sides. Officers maintain concern that this arrangement will not provide a satisfactory level of amenity for the proposed occupiers. The cliff side has the potential to reduce daylight and sun light and creating an over-dominating sense of enclosure to the rear of the proposed properties.

It is noted that the Inspector in the earlier decision stated the following:

*'The majority of the dwellings would be located in close proximity to the site's east quarry face. Given the height of the cliff and the dense line of trees on top of it, I envisage that the outlook from, and light in, the rear facing rooms of most of the properties would be so restricted as to provide unacceptable living conditions for the residents of the dwellings. I appreciate that the trees on the cliff top are deciduous, although their branches appear to be dense and I envisage that, together with the cliff face itself, they would restrict light to the properties even when not in leaf. I recognise that the positioning of windows does not form part of this outline application. However, given the shape of the properties and the presence of adjacent dwellings/garages to the side elevations of most of the houses (as shown on the layout plan), it appears to me that, despite them facing south west, it would not be possible to design the majority of the proposed properties such that all their main rooms would receive adequate light and provide a satisfactory outlook.'*

It appears the very same issues remain with the current scheme to those previously addressed by the Inspector. In this case, the application is now a FULL application with elevations and window positions. Furthermore, the majority of the trees on the upper sides to the east have now been removed. This will afford more light to the rear elevations of the proposed dwellings than when the Inspector assessed the earlier Outline scheme. The application site is also much reduced to that considered by the Inspector previously. It is considered that there will not be a particularly good outlook from these properties. In mitigation, the agent has amended the layout plan to show a shared amenity area to the north of the dwellings (as discussed above), thereby increasing the level of general amenity space available to the 6 properties. Officers still have reservations about this arrangement so close to the eastern side of the former quarry.

## The impact of the proposed development upon the amenity of the adjoining neighbours

The proposed residential properties themselves are not considered likely to be prejudicial to the amenities of surrounding properties, by virtue of the separation distances to those properties on Manor Vale and by virtue of the levels changes to those properties on higher land to the eastern and western sides of the site.

## Impact upon the setting of Heritage assets

Kirkbymoorside Conservation Area boundary lies to the south of the application site. The Scheduled Ancient Monument of the former Neville Castle is to the north eastern side. There are also 7 grade 2 listed buildings in the locality. High Hall and Low Hall to the eastern and south eastern side (and accessed via Castlegate) and No. 10,12,14,18, and 20 Dale End. S66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the Local Planning Authority to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. S72 of the Act also requires the Local Planning Authority has special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas. In addition Policy SP12 of the Local Plan Strategy also seeks to protect the significance of heritage assets.

There is not considered to be an adverse effect upon the setting of these nearby listed buildings given the levels and separation distances. The character and appearance of the Conservation Area and views from the Conservation Area looking north along the road are considered to be preserved.

Heritage England do not object to the setting of the Scheduled Ancient Monument. It is not considered that the proposed development will have an adverse effect upon the setting of the Scheduled Ancient Monument given the site's location on substantially lower ground. It is therefore considered that the Local Planning Authority has fulfilled its obligations in relation to the aforementioned legislation and Policy SP12 of the Local Plan Strategy.

## Drainage

Foul water is proposed to be drained via the mains sewer. Yorkshire Water has no objection in principle to this method of drainage.

Surface water drainage is proposed to be drained via soakaways. The LLFA has requested additional information on percolation tests and surface water drainage details. This information has recently been received and their further views are awaited. At this stage, it is not possible to conclude on whether this method of draining the site is acceptable. Members will be updating when the views of the LLFA are received.

## Archaeology

NYCC Heritage has raised no objection to the proposal.

## Highway safety

It is noted that the adopted public highway does not currently extend through the application site, the proposal is to extend the adoptable highway further north into the application site. The Highway Authority has considered the application and responded with the following comments:

*The supporting Design and Access Statement refers to the section of road within the application site becoming an adopted highway. The existing public highway limit is at the southern end of the site, and the extension proposed to serve new residential development would be in line with the county council policy whereby six or more new dwellings should be accessed off a road laid out and constructed to a standard such that its adoption as public-maintained highway could occur.*

*Given the previous use of the site, no highway authority objections are raised in principle.*

*However, referring to the proposed plans, the following will need to be addressed as part of the submission of plans for such adoption:*

- a) The proposed turning head should be included as part of the adoptable area, and be positively-drained rather than constructed in permeable paving.*
- b) The upgraded road should be engineered for a 20mph design speed, using appropriate control measures in agreed locations.*
- c) The submitted site drainage survey has identified the existing road having two gullies + connections going into the existing system which connects into a public combined sewer further down Manor vale Lane.*

*As part of the adoption arrangements, the highway drainage will need to be separated from the surface water drainage proposed for the new dwellings. There should also be a requirement to install an underground storage and attenuation structure within the blue land (under the applicants' control) to the north which could help alleviate the flood flows that have been shown to use the existing road as an overland flow route from higher ground, and thereby reduce the likelihood and/or intensity of such flows running onto the adoptable road, together with a throttle discharge into the new surface water system.*

*It is presumed that all the existing site drainage will be abandoned and replaced with separate new dwelling foul and surface water drainage subject to incorporating any existing connection from third party premises, together with a new highway drainage system as mentioned above.'*

Consequently the Highway Authority recommend that planning conditions be imposed to address the above issues. The conditions recommended cover details of the layout of the roadway and footway; construction of roads and footways prior to occupation; discharge of surface water; pedestrian visibility splays; approval for works in the highway; completion of works in the highway before occupation; details and provision of an access turning and parking area; and the provision of electric charging points for each dwelling.

In reaching this judgement the Highway Authority has considered the capacity of the road network to accommodate the additional traffic safely, and the required layout for adoption purposes. In the circumstances there are considered to be no grounds to object to the application in terms of highway safety. If the application were to be considered favourably, the applicants would need to ensure the proposed drainage works were re-located or agreement is reached for them to be located under the adopted highway. The requirement for the electric charging point is not supported by a Local Plan Policy requirement and the LPA has not sought such charging points from this scale of development previously. Neither is the site in a location with known Air Quality problems. It is therefore not considered to be reasonable or necessary to impose a condition in respect of the charging points. If approved, an informative could be added.

#### Affordable Housing

On sites for between 6-10 dwellings in locations such as Kirkbymoorside, the Planning Committee agreed at its July 2016 meeting, a financial contribution should be provided in lieu of affordable housing provision. This followed a Court case and change to National Planning Policy. In accordance with National Policy Guidance, there should also be a credit for any vacant buildings on the site. The Council's Rural Housing Enabler has calculated the contribution on this site to be £37k. If this application were to be considered favourably, this contribution will need to be delivered via a S106 agreement.

#### Contamination and ground stability issues

The Council's Environment Specialist has stated:

*The 'GEO Environmental Engineering, Revised Phase 2: Ground Investigation Report 2016', referenced 2013-512, details results of contamination testing that reveal elevated levels of organic contamination on site that poses a potential significant risk to the proposed end users. The report also details visual/olfactory evidence of fuel type contamination within the materials on site, the presence of which has been analytically confirmed in shallow soils.*

*Elevated levels of leachate contamination have also been identified that are considered as posing a potential future risk to controlled waters and the environment.*

*For the above reasons the report recommends that further risk assessment (Detailed Quantitative Risk Assessment - DQRA), remediation or protection measures are required. Consideration should be given to revealing 'hotspots' of contamination not yet identified.'*

The submitted reports identify significant ground contamination on the site, accordingly the Environmental Health Specialist recommends detailed planning conditions in regard to the Phase 2 Contaminated Land Report on this site and requires further detailed assessment of potential contaminants on the site, if this were to be considered favourably.

There are understood to be caves under or near to the site, and there are some reservations about ground stability for the construction of the proposed dwellings. However, the Local Planning Authority does not have any evidence with regard to ground stability issues on the site and there is no evidence to substantiate this as a reason for refusal. If the application is approved, a 'grampian' style pre-commencement condition could be required for the applicant to demonstrate the ground is stable and capable of accommodating the proposed development. In view of the above objections, however, this has not been requested from the applicant prior to the determination of this application. Moreover, if approved, the safe construction of the development in relation to ground conditions will be addressed in accordance with Building Regulations.

#### Ecology and the impact of the proposed development upon protected species and Manor Vale SINC

Ecological and Protected Species surveys have been undertaken. They have confirmed that there would not be a material adverse effect upon Manor Vale Woodland (SINC) to the north. Mitigation recommendations are contained within the Surveys.

In response to this application, the Council's Specialist has stated:

*'The proposed layout would not interfere with the protected species and habitats detected within the site. Provided the method statement in section 10 is followed. A badger licence may be required should the caving club license not be granted.'*

In principle there are considered to be no ecological/wildlife objections to the proposed development.

#### Trees and Landscape impact

It is noted that trees have been felled on the outer sides of the site. These trees were not protected. The Tree and Landscape Officer had been consulted on the previous application and no objections have been raised. The Tree and Landscape Officer stated the following in relation to the previous planning application:

*'These trees were not within the Kirkbymoorside Conservation Area boundary or the subject of a Tree Preservation Order. However, I understand that the Forestry Commission are investigating the felling to determine whether or not a felling license would have been required. Although the trees have been severed close to ground level their root systems have been retained which will promote extensive re-growth in the coming year, and contrary to belief by some objectors to the development the felling of the trees should not compromise the stability of the bank as the roots are retained.'*

*Should this application be approved I would recommend a condition requesting the submission of a woodland management plan for the regeneration of the woodland along the eastern boundary of the site.'*

It is understood that a Felling Licence was issued. There are therefore, considered to be no objections subject to planning conditions to the proposal, in terms of trees and landscaping on the site.

Given the surrounding topography and the site's location within the Town's development limits there is considered to be no adverse effect upon the surrounding landscape. The proposal is considered to comply with Policy SP13 of the Local Plan Strategy.

The Council's Specialist in relation to this application has also stated:

*It is unclear how the area of woodland to the East of the site is to be managed in the long term, much of the existing trees have been removed in recent years but regeneration is likely to occur and this area needs to be retained as semi natural woodland'*

It is considered therefore that a condition should be imposed on any approval to manage the eastern part of the application site in respect of landscaping and trees.

#### Other issues

North Yorkshire Fire and Rescue has not objected to the application.

The Town Council have agreed that the proposal would benefit the site on the provision that measures are implemented to reflect the detailed reports, and providing the scheme is not detrimental to the Band Hall. The Town Council are supportive of the principle of residential development on this site. The Town Council are, however, also concerned regarding surface water flooding and they have made reference to the previously submitted photographs and videos of the flooding events in Manor Vale that occurred in the winter of 2015-2016.

One letter has been received stating no objection to the development providing the existing drainage problems can be addressed. There has also been 13 third party letters raising objections/concerns.

The issues raised in the objections relate to:

- The risk of surface water flooding and increased risk to existing properties;
- The ability of the existing drainage network to accommodate the proposed additional discharge;
- Whether if approved, another application would be submitted for more housing on the wider area;
- Implications for the Band Hall facilities;
- The principle of the proposed development;
- Drainage infrastructure;
- The loss of trees on the outer sides of the quarry and possible land stability problems;
- Access and highway safety related matters;
- That vehicular charging points are not catered for;
- Noise and implications relating to the Band Hall and whether complaints about statutory nuisance could be made about the Band Hall by future occupiers of the proposed dwellings;
- Inaccuracies and discrepancies with the Noise Assessment;
- The previous history relating the location of the Band Hall;
- That the Band does practice with windows/doors opened and also outdoors in the summer months;
- The condition and appearance of the site;
- Questioning why RDC keeps accepting further planning applications on this site;
- No visitor parking spaces

- No natural surveillance of the parking areas;
- The consultation period running over the festive period; and
- Whether this housing is sustainable and questions regarding the need for the development.

The condition and appearance of the site is self-evident, the site could benefit from appropriate development. The issue of the principle of the development, noise, surface water flooding, the impact of the community facilities, trees, the principle of development, and highway safety have been addressed earlier in this report. There is no policy requirement for new dwellings to have vehicular charging points. Any future applications for residential development on the wider site would be considered on its individual merits against the development plan at that point in time. The Local Planning Authority has a statutory duty to determine planning applications, and there is no reason for the LPA to refuse to entertain this application. The Tree and Landscape Officer has previously stated that the tree felling on the outer sides has not removed the root systems so the stability of the land should not be adversely affected. The parking areas are located in areas with passing traffic and pedestrians. The level of surveillance is considered to be acceptable. The consultation period did include the festive period, like many other planning applications. It is considered that reasonable time was allowed for third party comments and re-consultation has taken place subsequently.

All of the individual comments raised can be viewed online under the application reference number.

#### Community Infrastructure Levy

Community Infrastructure Levy (CIL) is chargeable on this proposed development, at a rate of £85m2.

#### Conclusion

At the present time, given the outstanding information, it is not possible to make a final recommendation. It is anticipated that an Update Report may be included on the Late List, dependent on the timing of outstanding consultation responses.

**RECOMMENDATION:**                      **To Follow**