

**Item Number:** 7  
**Application No:** 16/01658/OUT  
**Parish:** Kirkbymoorside Town Council  
**Appn. Type:** Outline Application  
**Applicant:** Thomas Crown Associates  
**Proposal:** Erection of 6no. three bedroom terraced dwellings (site area 0.21 ha)  
**Location:** North Yorkshire Highways Depot Manor Vale Lane Kirkbymoorside YO62 6EG

**Registration Date:** 13 October 2016                      **8/13 Week Expiry Date:** 8 December 2016  
**Case Officer:** Alan Hunter                              **Ext:** Ext 276

## CONSULTATIONS:

<b>Housing Services</b>	Affordable Housing Contribution required
<b>Land Use Planning</b>	Recommend condition
<b>Sustainable Places Team (Yorkshire Area)</b>	No views received to date
<b>Historic England</b>	No comments to make
<b>Countryside Officer</b>	Recommend conditions
<b>Flood Risk</b>	As it not for major development no comments will be provided
<b>Tree &amp; Landscape Officer</b>	Recommend condition
<b>Property Management</b>	No views received to date
<b>Archaeology Section</b>	No views received to date
<b>Public Rights Of Way</b>	Adjacent to PROW applicants to contact the County Council's Access and Public Rights of team
<b>Highways North Yorkshire</b>	Recommend conditions
<b>Environmental Health Officer</b>	Object
<b>North Yorkshire Fire &amp; Rescue Service</b>	No objection/observations to make at this stage
<b>Parish Council</b>	Support - comments made

**Neighbour responses:** Brian Bancroft, Mrs Elizabeth Banks, M J Bowsher, Mr John Wright, Mike & Andrea Cooper, Mr John Barrett, Mr Paul Birchall, Mr & Mrs Anji & Malcolm Dowson, Helen Beaumont, Norma Collins, Mr James Holt, Mr Brian Bancroft, Mr Joe Coughlan, Holt Farms, Test, Ravenswick Estate, David And Judith Turnbull, Miss Polly A Baldwin, Liz And Paul Banks,

**Overall Expiry Date:** 30 March 2017

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## SITE:

This site is located towards the northern end of Kirkbymoorside, and at the northern end 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 North Yorkshire County Council offices associated with the Kirkbymoorside Area Highways depot operations. 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 car park.

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 recently 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 west of the application site. To the east of the application site is further residential development. 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.

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 and Ancient Woodland.

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

### **PROPOSAL:**

This is an Outline planning application which seeks outline planning permission for only the proposed Access, Layout, and Scale of the development. External Appearance and Landscaping are proposed to be Reserved Matters.

The proposal is for 6 no. 3 bed dwellings, arranged as a pair of 3 no. terraced 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 6 no. dwellings each measure 6.9m in width and 8m in depth and are 4.8m to the eaves and 8.3m to the ridge heights. As stated above, the external appearance of these proposed dwellings is not submitted for consideration at this stage.

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:

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 SP 1 - General Location of Development and Settlement Hierarchy

Policy SP 2 - Delivery and Distribution of New Housing

Policy SP 3 - Affordable Housing

Policy SP 4 - Type and Mix of New Housing

Policy SP 11 - Community Facilities and Services

Policy SP 12 - Heritage

Policy SP 13 - Landscapes

Policy SP 14 - Biodiversity

Policy SP 16 - Design

Policy SP 17 - Managing Air Quality, Land and Water Resources

Policy SP 19 - Presumption in favour of sustainable development

Policy SP 20 - Generic Development Management Issues

Policy SP 22 - 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.

This application was deferred from the March Planning Committee meeting in order for a Committee Site Inspection. A detailed appraisal of the proposal is contained below.

### 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.

### Flooding 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 last year. 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. It is considered that the applicant's Flood Risk Assessment clearly articulates the reasons why the site is at risk of flooding, when it states:

*'It is noted that the existing properties at Manor Vale Lane, including Little Orchard, are susceptible to surface water flooding. An analysis of Ordnance Survey mapping indicates that Manor Vale Lane is at the foot of a valley with a large catchment (over 200 ha). The greenfield runoff from a catchment of this size is significant, 250l/s->1000 l/s dependent upon ground conditions and rainfall. The southern extent of Manor Vale Lane sits in a depression and floodwater is unable to escape. The existing dwellings to the east of Manor Vale Lane including Little Orchard are at a lower level than the road, which is the main exceedance route. They are at risk from surface water flooding in extreme rainfall events due to their position at the low point of a large catchment. The catchment is predominantly greenfield. Flooding will occur both when the ground is already saturated following back to back storms or long periods of rainfall and during 'flash' high intensity rainfall events.'*

It is noted that the buildings on site are in a poor state of repair and this brownfield site would benefit from being developed. However, this is not considered to outweigh the requirements within national and Local Planning Policy to steer residential development away from sites that are at a higher risk of flooding. The agent has dismissed the requirement for the sequential test, and a mitigation strategy has been submitted to reduce the risk of flooding to the proposed properties. Officers do not consider this to be consistent with National and Local Planning Policy. Both National and Local Planning Policy require the application Sequential Test regarding the location of the development to be met, before considering the Exception Test (effectively how to mitigate flood risk as much as possible). Without meeting the Sequential test it is not possible to jump to the Exception Test. In this case, given that the Council does not have an Housing Allocations Document, the areas to be sequentially tested are not restricted to land within the development limits of Kirkbymoorside. Officers consider that there are other sites at Kirkbymoorside that are capable of providing 6 dwellings that are at a lower risk of flooding than this site. As such Officers consider the sequential test is not met, and residential development should not be developed where there are sites available at a lower risk of flooding.

Notwithstanding the above, the mitigation proposed by the agent to raise the floor levels between 0.2m to 1m above current levels (depending on which drawing is assessed) could serve to increase the risk of flooding elsewhere in the locality by displacing surface water and exacerbating flood risk to other dwellings.

In view of the above, it is not established that the Sequential Test is met. The principle of residential development on this site is not established. Furthermore, the mitigation proposals may increase the flood risk to existing properties.

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

The 2008 application that was dismissed on Appeal, proposed residential development along the western 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 SP 16 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, 2 pairs of 3 terraced properties are proposed, with parking areas to the northern and southern sides. It is noted that at this stage only Layout and Scale are to be considered. The indicative elevations submitted show 2 storey properties with 2 no. dormer windows on the front of each property and accommodation in the loft areas. There is concern at the number of dormer windows, and consequent number of down pipes required on the front elevation. The steep roof pitch is also a concern. That said, the exact details of the external appearance of the application would be the subject of a separate application should this proposal be granted planning permission.

There is some concern at the form and layout of the proposed development and its relationship with the traditional vernacular of Kirkbymoorside, a historic Market Town. The traditional character of the settlement comprises mainly terraced properties at the back edge of the footpath in an 'organic' form, with variation in heights and materials. As compared to the proposed scheme, which comprises a very regular and regimented arrangement of dwellings which appears suburban in its form and layout. Furthermore, it is not considered that this form of development would successfully relate to the industrial heritage on this site, a point made by the Inspector in 2008. However, given that this proposal only relates to the site within the development limits of the Town and is limited to 6 dwellings, and sufficient views would be retained elsewhere of the outer valley sides. It is considered, on balance, that the Layout and Scale proposed is acceptable.

#### 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'*

There are concerns in respect of the following issues:

- 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

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 adjacent to the Band Hall and 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 Noise Assessment has been submitted. The Environmental Health Officer (EHO) has objected and considers the assessment to be inadequate. The EHO is particularly concerned at the inter-relationship of housing and the band hall. The Environmental Health Officer has stated:

*'An application for housing on this site has previously been to appeal and the inspector refused it. The inspector was not persuaded that if double or triple glazing were to be effective at 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 in the summer evenings without disturbance of the band.'*

*The proposal as a block of houses provides better screening to the gardens than previous proposals, however despite the large size of the site, the proposal is for a block of houses directly opposite the existing band room. As the site is in a quarry there is the likelihood that any noise breakout will echo around the site.'*

Additional noise information has been submitted, however the Environmental Health Officer has maintained his objection.

There has also been a direct objection from the Band Hall 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 inadequate and inconsistent with earlier readings. The Band 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 to the proposed dwellings.

In view of the above, it is considered that the proposed development will not have a satisfactory level of residential amenity by virtue of its close proximity to the existing Band Hall. To approve such a proposal is considered to be likely to generate complaints regarding the Band Hall, which is a protected Community use in accordance with Policy SP11 of the Local Plan Strategy.

In terms of the proximity to the outer sides of the valley. It is considered that the limited rear gardens and the outer cliff sides will not provide a satisfactory level of amenity for the proposed occupiers. The cliff side will 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.

The proposed layout and arrangement of dwellings is considered to be detrimental to the amenities of the future occupiers of the proposed dwellings.

#### 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

Both foul and surface water is proposed to be drained via the mains sewer.

Yorkshire Water has accepted that the site is not suitable for soakaways and confirmed that there is no watercourse locally to accept surface water, also stated in the Phase 2 Report (Contaminated Land Report). As a result Yorkshire Water has accepted that surface water can drain into the public sewer. They have stated that:

*The calculation cover sheet (prepared by Dudleys - report 13139 dated 05/10/2016) confirms;*

*(i) Foul water will discharge to public combined sewer.*

*(ii) Sub-soil conditions do not support the use of soakaways.*

*(iii) A watercourse is remote from the site.*

*(iv) Therefore, surface water will discharge to public sewer, via storage, with a restricted discharge (of 10.8 litres/second).'*

Yorkshire Water also recommends standard planning conditions in respect of drainage.

The Lead Local Flood Authority has stated that as the site is below 10 dwellings they have no comment on the application. The Environment Agency has been consulted but no response has been received.

Based on the response by Yorkshire Water, a condition would need to be imposed to ensure a scheme of attenuation including the relevant climate change factors is developed on the site. Yorkshire Water also recommend a standard condition regarding surface water disposal. The maintenance and management of the surface water attenuation scheme will also need to be conditioned if not adopted by Yorkshire Water. The Council does not have its own in-house drainage engineers, but based on the response from Yorkshire Water there appears to be no grounds to object to the proposal in terms of surface water and foul water drainage, subject to the resolution of the location of the attenuation and the adoptable area of the proposed highway - see earlier comment.

### Archaeology

NYCC Heritage has not responded to the consultation on this application, however, they have raised no objections previously.

### 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:

*'Given the previous use of the site, no highway authority objections are raised in principle. However, referring to the submitted Proposed block Plan (drawing No. KWL/093/03/09), the following points should be noted and taken on board when submitting engineering drawings for the road adoption scheme:*

- (i) The proposed turning head should be included as part of the adoptable area.*
- (ii) The new road should have a layout suitable for a 20mph design speed. Whilst a speed hump/rumble strip is proposed at the application site boundary, it is considered too close to the existing cottage, and the feature should be moved further north just beyond the vehicular access to the band hall, opposite plot 5.*
- (iii) The existing road appears to have drainage gullies, but the upgrade to an adoptable standard would mean that these should be connected into a dedicated pipe system for draining surface water off the adoptable highway, and not shared with any system taking non-highway surface water. Any surface water running onto the adoptable highway will require interception and draining independently.*
- (iv) It is not accepted practice to install private drainage under the adoptable road, so the foul and surface water drains as shown need to be re-routed unless the sewerage undertaker is prepared to adopt them.*
- (v) The submitted drawing refers to attenuation tanks under the parking areas. No part of these structures should be within 5 metres of the adoptable boundary.*
- (vi) This drawing also does not appear to represent the dimensions indicated for the road. The engineering drawings should, therefore, correctly indicate what is being offered for adoption as highway.'*

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 precautions to prevent mud on the highway.

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.

#### 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 Environmental Health Manager 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, it is recommended that appropriate conditions in this respect be imposed.

There are caves on 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.

The Countryside Management Officer has recommended planning conditions, and he has stated:

*In principal I have no objection to this proposal provided the mitigation, method statements and enhancements described in section 7 of the badger report and sections 9 and 10 of the main report incorporated in any permission granted. (MAB Environment and Ecology 2013 and the Supplementary Badger Survey report 2014) A badger development license is required for this development.*

*Recent clear felling has been undertaken over the full extent of the ancient woodland areas to the East and West of the proposed housing. This habitat is a LBAP habitat and a UK habitat of biodiversity importance under the Habitat Regulations. It is therefore vital that provision is made to continue to manage these areas in a sustainable way in the future to ensure the habitat is not destroyed or degraded.*

The agent has since advised that a Licence has been issued in respect of Badgers. Therefore, subject to conditions there are 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 has been consulted and no objections have been raised. The Tree and Landscape Officer has stated that:

*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 has since been 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 SP 13 of the Local Plan Strategy.

## Other issues

The Town Council are supportive of the application and consider the site would benefit greatly by the proposed development. 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. The photographs have also been submitted by the agent and are appended to this report.

One letter of support has been received considering the proposal to represent a visual enhancement to the area, but this is tempered with objection to the location of a proposed speed bump. If the application were to be considered favourably the location of the speed bump could be conditioned in conjunction with the Highway Authority as mentioned earlier in the report. North Yorkshire Fire and Rescue has not objected to the application. There has also been 18 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 Scout unit and Band Hall facilities;
- The principle of the proposed development;
- The layout and form of the development proposed;
- 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;
- The impact of the proposal upon the setting of heritage assets;
- 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; and
- The impact upon protected species.

The issue of noise, surface water flooding, the impact of the community facilities (Band Hall and Scout Hut), ecology, the layout and form of the proposed development, trees, the setting of heritage assets, 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 Tree and Landscape Officer has 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.

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

Whilst there are benefits associated with developing this brownfield site and improving the visual amenity of the area it is considered that the scheme cannot be supported. In view of the harm identified in the appraisal above in relation to the sequential test, residential amenity impacts and the potential implications for the existing community uses, the recommendation is one of refusal.

### **RECOMMENDATION: Refusal**

- 1 The site is identified as having a high risk of flooding from surface water as shown on the Environment Agency Surface Water Flood Maps, and the site has recently flooded. In this case the site does not pass the sequential test in terms of flood risk and there are considered to be other sites at Kirkbymoorside where housing could be located which are at a lower risk of flooding. The approval of this application could also put the occupiers of the proposed dwellings and existing properties at an unacceptable risk of flooding from surface water. The proposed development will therefore be contrary to the requirements of Policy SP17 of the Ryedale Plan - Local Plan Strategy and paragraphs 100 and 103 of NPPF.
- 2 The proposed residential accommodation is located in very close proximity to the Kirkbymoorside Band Hall, (which has planning permission for an extension), and is likely to create complaints regarding the noise and operations of the band hall. The Band Hall is an important community facility and a use protected in accordance with Policy SP11 of the Local Plan Strategy. Noise and activities from the Band Room will be likely to have an adverse effect upon the amenity of occupiers of the proposed residential accommodation which would be likely to generate complaints regarding the Bands' operations. The proposed development is thereby contrary to the requirements of Policies SP11 and SP20 of the Ryedale Plan - Local Plan Strategy.
- 3 The proposed residential development by virtue of its close proximity to the outer valley side, and the inter-relationship with the Band Hall is not considered to ensure a satisfactory level of residential amenities for future occupiers of the proposed dwellings and be contrary to the requirements of Policies SP4 and SP20 of the Ryedale Plan - Local Plan Strategy.

### **Background Papers:**

Adopted Ryedale Local Plan 2002  
Local Plan Strategy 2013  
National Planning Policy Framework  
Responses from consultees and interested parties