

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO:	3/2003/0267
FULL APPLICATION DESCRIPTION:	Outline application for up to 38 dwellings with all matters reserved
NAME OF APPLICANT:	G and B Batson
ADDRESS:	Land North Of Smith Street Tow Law
ELECTORAL DIVISION:	Tow Law
CASE OFFICER:	Tim Burnham Senior Planning Officer 03000 263963 tim.burnham@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

1. The site lies to the north west of Smith Street in Tow Law, within the development limits identified in the Wear Valley District Local Plan. The site is partly former agricultural land and partly previously developed having hosted a poultry farm and currently hosting landscape and other businesses associated with the applicant. It is understood these business are seeking to locate to a site elsewhere in Tow Law.
2. The application seeks outline approval for the erection of up to 38 dwellings with all matters reserved.
3. The application has previously been recommended for approval by Wear Valley Planning Committee a long time back in 2003, subject to the conclusion of a S106 agreement for open space contributions, however the S106 was never completed. As such, due to the passage of time an updated suite of information has been supplied including revised S106 offerings to allow the development to be reviewed against the current planning policy framework.
4. The application is being reported to the committee as it constitutes a major development.

PLANNING HISTORY

5. Outline approval for residential development at the site was granted in 1994 (ref 3/1993/0688).
6. As already mentioned, Wear Valley Planning Committee gave authority to approve this current application in 2003 subject to completion of a S106 agreement.

PLANNING POLICY

NATIONAL POLICY

7. On March 27th 2012 the Government published the National Planning Policy Framework (NPPF). However, the NPPF does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused, unless other material considerations indicate otherwise.
8. In accordance with paragraph 215 of the National Planning Policy Framework, the weight to be attached to relevant saved local plan policy will depend upon the degree of consistency with the NPPF. The greater the consistency, the greater the weight.
9. *NPPF Part 4 – Promoting sustainable Transport* This part of the NPPF states that Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.
10. *NPPF Part 6 – Delivering a Wide Choice of High Quality Homes.* Local Planning Authorities should use evidence bases to ensure that their Local Plan meets the needs for market and affordable housing in the area. Housing applications should be considered in the context of the presumption in favour of sustainable development. A wide choice of homes, widened opportunities for home ownership and the creation of sustainable, inclusive and mixed communities should be delivered. Where there is an identified need for affordable housing, policies should be met for meeting this need unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified and such policies should also be sufficiently flexible to take account of changing market conditions over time.
11. *NPPF Part 7 – Requiring Good Design.* The Government attaches great importance to the design of the built environment, with good design a key aspect of sustainable development, indivisible from good planning.
12. *NPPF Part 8 – Promoting Healthy Communities.* The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. To deliver the social, recreational and cultural facilities and services the community needs, planning policies and decisions should plan positively for the provision and use of shared space, community facilities (such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments;
13. *NPPF Part 10 – Meeting the Challenge of Climate Change, Flooding and Coastal Change.* Planning plays a key role in helping shape places to secure Local Planning Authorities should adopt proactive strategies to mitigate and adapt to climate change. Local Planning Authorities should have a positive strategy to promote energy from renewable and low carbon sources. Inappropriate development in areas at risk of flooding should be avoided.
14. *NPPF Part 11 – Conserving and Enhancing the Natural Environment.* The Planning System should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests, recognising the wider benefits of ecosystems, minimising the impacts on biodiversity, preventing both new and existing development from contributing to or being put at unacceptable risk from pollution and land stability and remediating contaminated or other degraded land where appropriate.

The above represents a summary of those policies considered most relevant in the Development Plan the full text, criteria, and justifications of each may be accessed at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

LOCAL PLAN POLICY:

15. The following saved policies of the Wear Valley District Local Plan as amended by Saved and Expired Policies September 2007 are considered to be consistent with the NPPF and can therefore be given weight in the determination of this application as it is a core principle of the NPPF that decisions should be plan led:
16. *Policy GD1: General Development Criteria* All new development and redevelopment within the District should be designed and built to a high standard and should contribute to the quality and built environment of the surrounding area.
17. *Policy H3: Distribution of Development* New development will be directed to those towns and villages best able to support it. Within the limits to development of towns and villages, as shown on the Proposals Map development will be allowed provided it meets the criteria set down in Policy GD1 and conforms to the other policies of this plan.
18. *Policy H15: Affordable Housing:* The District Council will, where a relevant local need has been established, seek to negotiate with developers for the inclusion of an appropriate element of affordable housing on development sites.
19. *Policy H22 Community Benefit* On sites of 10 or more dwellings the local authority will seek to negotiate with developers a contribution, where appropriate, to the provision and subsequent maintenance of related social, community and/or recreational facilities in the locality.
20. *Policy T1 General Policy – Highways* All developments which generate additional traffic will be required to fulfil Policy GD1 and i) provide adequate access to the developments; ii) not exceed the capacity of the local road network; and iii) be capable of access by public transport networks.

The above represents a summary of those policies considered most relevant in the Development Plan the full text, criteria, and justifications of each may be accessed at <http://www.durham.gov.uk/media/3403/Wear-Valley-local-plan-saved-policies/pdf/WearValleyLocalPlanSavedPolicies.pdf>

RELEVANT EMERGING POLICY:

The County Durham Plan -

Paragraph 216 of the NPPF says that decision-takers may give weight to relevant policies in emerging plans according to: the stage of the emerging plan; the extent to which there are unresolved objections to relevant policies; and, the degree of consistency of the policies in the emerging plan to the policies in the NPPF. The County Durham Plan was submitted for Examination in Public and a stage 1 Examination concluded. An Interim Report was issued by an Inspector dated 15 February 2015, however that report was quashed by the High Court following a successful Judicial Review challenge by the Council. As part of the High Court Order, the Council has withdrawn the CDP from examination. In the light of this, policies of the CDP can no longer carry any weight.

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

21. *Northumbrian Water*: No objections, drainage condition requested.
22. *Highways Authority*: No objection, highways access point should be provided to Smith Street towards the south of site.
23. *Coal Authority*: No objections subject to condition requiring intrusive site investigations.
24. *NHS*: No response.

INTERNAL CONSULTEE RESPONSES:

25. *Landscape Section*: There are no landscape designations on the site. There will be limited visual and landscape impacts arising, and these will be localised and the development has the opportunity to enhance the site and immediate surrounds. The impact upon the open countryside, in particular the fell, is likely to be negligible.
26. *Environmental Health*: No objections. The proposed site relates to the introduction of a noise sensitive receptor to an otherwise undeveloped site. The site is approximately 50m from an existing industrial estate, which is considered a potential noise source. Upon visiting the site it is considered that the industrial use is generally B1 with no external plant/noise sources noted, therefore it is not considered likely that the properties will significantly impact on the proposed development in relation to noise.
27. *Sustainability section*: No objections, sustainability condition required.
28. *Contaminated Land*: No objections but a contaminated land assessment will be required by condition.
29. *Drainage and Coastal protection*: No objection. According to the EA and Durham County Council SFRA data there does not appear to be a risk of flooding to the development site.
30. *Education*: No objection, there are sufficient primary and secondary school places available to accommodate pupils from this development.
31. *Public Rights of Way*: No objection, there are no recorded Public Rights of Way through the application site.
32. *Ecology*: No objections, conditions recommended.
33. *Affordable Housing*: The site is located in the South area of the county and based upon the Strategic Housing Market Assessment (SHMA) there is a need that any development in the South area should include a minimum affordable housing requirement of 10% equating to 4 units on this development.
34. *Design and Conservation*: The site contains no known heritage assets and does not fall within the immediate setting of other assets within the village. The principle of development therefore in relation to impact upon, or harm to the setting of, heritage assets is considered acceptable.

PUBLIC RESPONSES:

35. The application has been publicised by way of press and site notice, and individual notification letters to neighbouring residents. There were no comments received in relation to the latest consultation. It is understood that two letters were received in 2003 relating to concerns over drainage and site access.

APPLICANTS STATEMENT:

36. It has been 13 years since Wear Valley District Council's planning committee resolved to grant planning permission for houses at the application site, a decision which was never issued by the then Local Planning Authority. Owing to the passage of time, the applicant was asked to bring the application up to date with the submission of a suite of reports and information which have demonstrated that the development of the site as proposed in the application for planning permission will comply with national and local planning policies and will give rise to no adverse impacts on the site or its surroundings. Identified as a "housing commitment" in the adopted Wear Valley District Local Plan, it is recognised that the proposed residential development will instead bring real and sustainable improvements, environmentally and economically to the town of Tow Law.

The above represents a summary of the comments received on this application. The full written text is available for inspection on the application file which can be viewed at http://plan-1:8080/IDOXSoftware/IG_search?app_id=1002&FormParameter1=DM%2F15%2F00373%2FOUT

PLANNING CONSIDERATIONS AND ASSESSMENT

37. Having regard to the requirements of Section 38(6) of the Planning and Compulsory Purchase Act 2004 the relevant Development Plan policies, relevant guidance and all other material planning considerations, including representations received, it is considered that the main planning issues in this instance relate to principle of development, impact on character and appearance of the area, highway safety, public open space and affordable housing, ecology and other issues.

Principle of Development

38. The application site falls within the settlement boundary of Tow Law as identified within the Wear Valley Local Plan and is shown as an existing housing commitment on the inset map because of the 1994 permission. The Development is therefore in accordance with Wear Valley Local Plan Policy H3.

39. However, the housing policies and commitments of the Wear Valley Local Plan are out of date and there are currently no other up to date housing policies. Policy H3 cannot therefore be afforded any weight. In these circumstances the NPPF advises that developments should be approved unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF as a whole.

40. The main purpose of the NPPF is to achieve sustainable development. As a general principle there is support for reuse of previously developed land. Section 6 of the NPPF seeks to significantly boost the supply of housing. Local planning authorities should seek to deliver sustainable, inclusive and mixed communities, while avoiding isolated homes in the countryside. Section 4 requires development to be located where the need to travel will be minimised.

41. Tow Law is classed as a Tier 3 Local Service centre, reflective of the reasonable range of services and facilities on offer. It is a suitable location for the scale of development proposed. The development will help support local services and improve the housing offer in the town, while also contributing to overall housing supply, thereby delivering social and economic benefits.
42. Environmentally, the dwellings would occupy a semi-derelict site hosting some ramshackle former poultry sheds, which currently detract from the character and appearance of the area. The redevelopment of the site would accord with one of the core principles of the NPPF which is to encourage the effective use of land that has been previously developed, provided that it is not of high environmental value. The removal of the existing unsightly buildings would have a strong environmental benefit.
43. Having regard to all of the above, it is considered that the principle of housing development represents an acceptable use of the site and accords with the aims of NPPF Parts 4, 6 and core principles in relation to reuse of previously developed land and sustainable patterns of development.

Impact on character and appearance of the area

44. The site relates well to the developed framework of the town, being surrounded by existing development on all but its northern side. The development would therefore sit comfortably within a built up area, rather than intruding into open countryside and the Landscape Section has raised no objection.
45. The application is in outline format with all matters reserved and therefore details of the siting, type, size and orientation of dwellings will be finalised at reserved matters stage. Nevertheless an indicative layout demonstrates the potential for the site to accommodate the scale of development proposed. The area has a mixed character of housing and business units and the only real unifying character is the common use of stone as a building material for housing. It is very likely that a suitably designed housing scheme, in keeping with the character of the area, can be achieved on the site.
46. There is no conflict with Wear Valley Local Plan policy GD1 and the general principles of NPPF part 7.

Highway Safety

47. The exact details relating to access are reserved for future consideration. As recommended by the Highway Authority it is anticipated that a suitable vehicular access can be achieved to Smith Street and this would form part of a reserved matters application. The Highways Authority has offered no objection to the development in terms of the ability of the local road network to be able to accommodate the anticipated traffic flows.
48. There is no conflict with NPPF Part 4 and Wear Valley Local Plan Policies GD1 and T1.

Affordable housing public open space contributions

49. Wear Valley Local Plan Policy H15 states that the authority will seek to negotiate with developers for the inclusion of an appropriate element of affordable housing on development sites. The most up to date local needs assessment suggests this should be 10%, equating to 4 properties.

50. Four affordable discount market sales properties are offered as part of this application thereby meeting the criteria. This would be secured by S106 Agreement.
51. Policy H22 of the Wear Valley Local Plan requires provision or contribution to social, community and/or recreational facilities on sites of 10 or more dwellings.
52. There is no intention to provide open space within this development and therefore, an off-site contribution would generally be sought, which in this case would equate to £38,000.
53. However, a detailed viability assessment has been submitted which shows that providing the full open space payment would render the project financially unviable, partly due to unknown build costs and concern over market values in the area. Instead a payment of £20,000 is offered.
54. Paragraph 016 of the Planning Practice Guidance requires local planning authorities to take a flexible approach in seeking planning obligations to ensure that the impact does not make a site unviable and therefore this reduced amount is considered acceptable and will be secured by the S106 agreement. There will however be a review mechanism within the S106 to consider the position at reserved matters stage to ensure that the scheme remains viable and deliverable at the point of delivery. That will also apply to the affordable housing.
55. There is no conflict with Wear Valley Local Plan policies H15 and H22, or NPPF Parts 6 and 8.

Ecology

56. The presence of protected species is a material planning consideration. The requirements of the Habitats Directive were brought into effect by the Conservation of Habitats and Species Regulations 2010. These regulations established a regime for dealing with derogations which involved the setting up of a licensing regime administered by Natural England. Under the requirements of the Regulations, it is a criminal offence to kill, injure or disturb the nesting or breeding places of protected species unless it is carried out with the benefit of a licence from Natural England.
57. The Hedleyhope Fell lies beyond the site to the north and is a heathland habitat home also to reptile, butterfly and bird species. The application has been accompanied by a protected species report. It is considered unlikely that the development will impact on protected species or other ecological interests and the Councils Ecology section has raised no objections to the application. This is on the basis that conditions are included within the application relating to the provision of a buffer zone to the Hedleyhope Nature reserve and that additional mitigation measures are incorporated in relation to reptiles.
58. Subject to conditions there is no conflict with Wear Valley Local Plan policy GD1 or NPPF Part 11.

Other issues

59. The NPPF seeks to prevent unacceptable risks from noise pollution and also seeks to ensure that existing businesses are not curtailed by new development. It is noted that Dans Castle industrial estate exists to the west of the development site. The nearest units are 3 and 4 Dans Castle. These units were granted approval for B1

Business, B2 General Industrial or B8 Storage and Distribution use. However these are small industrial units that do not have large yards that could accommodate noisy outside working. No noise has been noted from these premises during visits to the application site and it is notable that these premises already exist in close proximity to residential properties with no reported issues. There would also be an approximate 50mtr separation distance between these units and the application site. Due to these factors it is not considered that noise issues would have an unacceptable adverse impact on residential amenity for those living within the development.

60. Due to past coal mining activity in the area intrusive site investigations are required and a condition is included to request these. On this basis the Coal Authority has offered no objections. The site is also subject to existing commercial activity and therefore as advised by the Contaminated Land Section there is a need for contaminated land risk assessments to be carried out to ensure that risks from land contamination to the future users of the land and neighbouring land are minimised. As this is an outline application these requirements can be conditioned.
61. The Drainage and Coastal Protection Team have noted that this is not an area that is at risk from flooding and a full drainage scheme to deal with both foul and surface water would be required as part of a detailed scheme and therefore this has been conditioned.
62. Although the site has been in use as a chicken farm and contains existing business premises it does form part of the wider Cornsay & Hedley Hope Common and therefore the proposed development on the land would be classed as restricted works under the Commons Act 2006. Regardless of any planning permission, in order for the development to proceed, it will require separate consent from the Secretary of State, administered by the Planning Inspectorate. While this is noted, in planning terms, the proposal is considered acceptable for the reasons set out in this report.

CONCLUSION

63. The application represents a suitable form of development within a sustainable location. It is likely that an acceptable detailed housing scheme can be delivered on the site in keeping with the character of the area and without compromising highway safety, residential amenity and other interests in relation to ecology, coal mining, drainage and land stability. Four affordable dwellings and a £20,000 open/recreation space contribution will be secured by S106 Agreement.
64. There have been no adverse impacts identified that would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies of the NPPF as a whole, or the other relevant policies of the Wear Valley Local Plan. In accordance with NPPF Paragraph 14 and the presumption in favour of granting permission in this case, the proposal is therefore recommended for approval.

RECOMMENDATION

That the application be **approved** subject to the completion of a section 106 legal agreement to secure the provision of £20,000 open space contribution and 4 affordable discount market sale dwellings and subject to the following conditions:

1. Approval of the details of access, appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority before the development is commenced.

Reason: Required to be imposed pursuant to Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. Application for approval of reserved matters shall be made to the Local planning authority before the expiration of three years beginning with the date of this permission and the development must be begun not later than the expiration of two years from the final approval of the reserved matters, or in the case of approval on different dates, the date of approval of the last of the reserved matters to be approved.

Reason: Required to be imposed pursuant to Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

3. The development hereby approved shall be carried out in strict accordance with the following approved plans:

Red Line Location Plan received 16th February 2016.

Reason: To define the consent.

4. No development shall commence until a detailed scheme for the disposal of foul and surface water from the development hereby approved has been submitted to and approved in writing by the Local Planning. Thereafter the development shall take place in accordance with the approved details.

Reason: To prevent the increased risk of flooding from any source in accordance with Policy GD1 of the Wear Valley Local Plan and part 10 of the NPPF.

5. Prior to the commencement of the development a scheme to embed sustainability and minimise Carbon from construction and in-use emissions shall be submitted to and approved in writing by the Local Planning Authority. This should include in particular, options to heat the development by low/zero carbon technologies. Thereafter the development shall be carried out in complete accordance with the approved scheme and retained so in perpetuity.

Reason: In the interests of sustainable construction and energy generation in accordance with the aims of Policy GD1 of the Wear Valley Local Plan.

6. A Phase 1 Preliminary Risk Assessment (Desk Top Study) shall be carried out by competent person(s) and the results submitted to the Local Planning Authority before development commences, to identify and evaluate all potential sources and impacts on land and/or groundwater contamination relevant to the site.

If the Phase 1 identifies the potential for contamination, a Phase 2 Site Investigation and Risk Assessment is required and shall be carried out by competent person(s) before development commences to fully and effectively characterise the nature and extent of any land and/or groundwater contamination and its implications.

If the Phase 2 identifies any unacceptable risks, remediation is required and a Phase 3 Remediation Strategy detailing the proposed remediation and verification works shall be submitted to and approved in writing by the Local Planning Authority and thereafter carried out by competent person(s). No alterations to the remediation proposals shall be carried out without the prior written agreement of the Local Planning Authority. If during the remediation or development works any contamination is identified that has not been considered in the Phase 3, then remediation proposals for this material shall be agreed in writing with the Local Planning Authority and the development completed in accordance with any amended specification of works.

Upon completion of the remedial works (if required), a Phase 4 Verification Report (Validation Report) confirming the objectives, methods, results and effectiveness of all remediation works detailed in the Phase 3 Remediation Strategy shall be submitted to and agreed in writing with the Local Planning Authority within 2 months of completion of the development.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risk to workers, neighbours and other offsite receptors in accordance with NPPF Part 11.

7. No development shall commence until intrusive investigation works relating to coal mining risk have been undertaken at the site and the results of the investigative work and any necessary scheme of remedial/mitigation works have been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be undertaken in accordance with the approved remedial/mitigation scheme and timings.

Reason: To ensure that the site is safe and stable to accommodate the proposed development in accordance with NPPF paragraphs 120-121. The details are required before commencement as they relate to fundamental issues regarding the stability of the site which need addressing at an early stage.

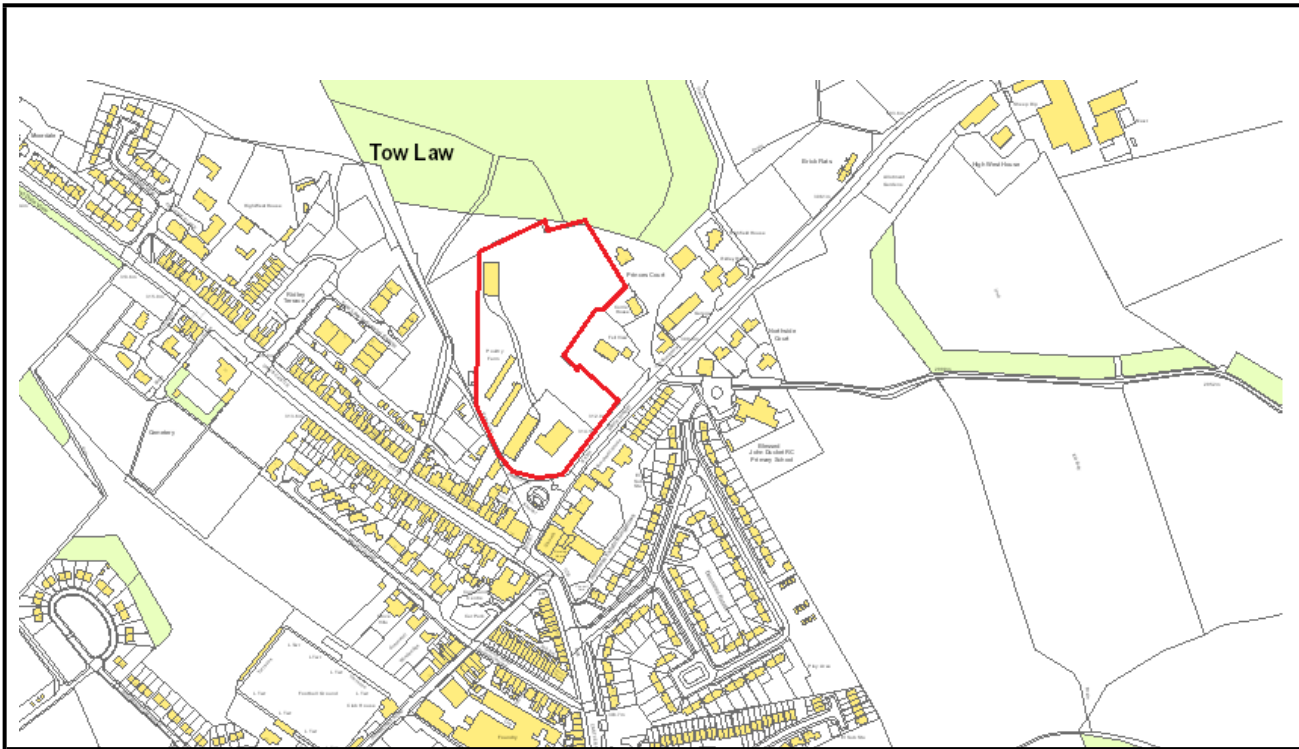
8. No development shall take place unless in accordance with the mitigation and recommendations detailed within section 7 of: Protected Species Report by Veronica Howard Revised April 2016

Reason: To conserve protected species and their habitat in accordance with Part 11 of the NPPF and Wear Valley Local Plan Policy GD1.

10. A 15 metre buffer zone shall be maintained on the application site to the adjacent Hedleyhope Nature Reserve during and after development of the site. Details of a management scheme and planting plan for this area shall be provided to and agreed in writing with the Local Planning Authority prior to the commencement of development and the buffer zone shall be maintained in accordance with the agreed scheme for the lifetime of the development.

Reason: In the interests of Ecological interests in the area and to accord with Part 11 of the NPPF. The details are required before commencement as ecological interests in the area could be harmed if adequate protection is not in place prior to the commencement of development.

Submitted application form, plans supporting documents provided by the applicant
The National Planning Policy Framework (2012)
National Planning Practice Guidance Notes
Wear Valley Local Plan
All consultation responses received



Planning Services

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22nd September 2016