

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO:	DM/15/00793/OUT
FULL APPLICATION DESCRIPTION:	Construction of 55 residential dwellings comprising 22 affordable dwellings and 33 open market dwellings with associated infrastructure, landscaping and engineering works (outline, all matters reserved except access)
NAME OF APPLICANT:	Hellens Group Limited
ADDRESS:	Land to the east of Prospect Place, Commercial Road East, Coxhoe
ELECTORAL DIVISION:	Coxhoe
CASE OFFICER:	Henry Jones Senior Planning Officer 03000 263960 henry.jones@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

The Site:

1. The application site relates to a parcel of land of 1.56ha. The site has previously been used as a limeworks. This was removed in the late 1970's. The site is considered to be Greenfield as identified within the Council's Strategic Land Availability Assessment. The site now comprises a range of grasses and shrubs. The site is generally level, gradually sloping from east to west.
2. Turisdale Beck is located to the north of the site and this is bordered by woodland. Coxhoe Ponds Local Wildlife Site (LWS) and Crow Trees Nature Reserve (LNR) border the application site to the east. To the south lies a road whilst to the west is the "The Limes" residential development which is nearing completion and has been in the process of construction since 2008.

The Proposal:

3. Planning permission is sought in outline for the construction of 55 residential dwellings comprising 22 affordable dwellings and 33 open market dwellings with associated works and landscaping. All detailed matters except access are reserved.
4. Access to the development site is proposed via the road which borders to the south with the access point situated in the south-west corner of the site.

5. Whilst final details of the proposed dwellings is at this stage unknown, the application documents propose a range of houses including the provision of eight bungalows.
 6. The application is accompanied by a biodiversity management plan which proposes management measures to the land within the ownership of the applicant though outwith of the application site which forms part of the Coxhoe Ponds Local Wildlife Site.
 7. The application is being reported to Planning Committee as the development constitutes a major residential development comprising of more than ten dwellings.
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PLANNING HISTORY

8. The land to the west of the site (land to the south and north of Commercial Road East), was granted outline planning permission for 80 new dwellings and 2,400m² of employment space in 2008. A reserved matters application was subsequently approved for 80 new dwellings in 2009 which have now been constructed. An application to vary condition 7 on the 2008 outline permission was approved in 2009 which restricted occupancy until a scheme for the treatment of foul flows from the development had been completed. In 2010 planning permission was granted for a substitution of a housetype within the development originally approved in 2008.
 9. The employment use approved in the 2008 planning application was not implemented and instead planning permission was granted in 2011 for an additional 47 houses.
 10. Further variation of condition applications to permit the substitution of housetypes were approved in 2012 and 2013.
 11. In December 2014 an application for the erection of 103 dwellings and associated works on the application site and additional neighbouring land was withdrawn (DM/14/01858/OUT).
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PLANNING POLICY

NATIONAL POLICY

12. The Government has consolidated all planning policy statements, guidance notes and many circulars into a single policy statement, the National Planning Policy Framework (NPPF). The overriding message is that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three topic headings – economic, social and environmental, each mutually dependant. The presumption in favour of sustainable development set out in the NPPF requires local planning authorities to approach development management decisions positively, utilising twelve ‘core planning principles’.
13. 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. The relevance of this issue is discussed, where appropriate, in the assessment section of the report. The following elements of the NPPF are considered relevant to this proposal.

14. *NPPF Part 1 – Building a Strong, Competitive Economy.* The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future.
15. *NPPF Part 4 – Promoting Sustainable Transport.* The transport system needs to be balanced in favour of sustainable transport modes, giving people a real choice about how they travel. It is recognised that different policies and measures will be required in different communities and opportunities to maximize sustainable transport solutions which will vary from urban to rural areas. Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion.
16. *NPPF Part 6 – Delivering a Wide Choice of High Quality Homes.* To boost significantly the supply of housing, applications should be considered in the context of the presumption in favour of sustainable development. Local Planning Authorities should seek to deliver a wide choice of high quality homes, widen opportunities for home ownership and create inclusive and mixed communities.
17. *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. Planning decisions must aim to ensure developments; function well and add to the overall quality of an area over the lifetime of the development, establish a strong sense of place, create and sustain an appropriate mix of uses, respond to local character and history, create safe and accessible environments and be visually attractive.
18. *NPPF Part 8 – Promoting Healthy Communities.* Recognises the part the planning system can play in facilitating social interaction and creating healthy and inclusive communities. Access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities and planning policies and decisions should achieve places which promote safe and accessible environments. This includes the development and modernisation of facilities and services.
19. *NPPF Part 10 – Meeting the Challenge of Climate Change, Flooding and Coastal Change.* Planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy.
20. *NPPF Part 11 – Conserving and Enhancing the Natural Environment.* The planning system should contribute to, and enhance the natural environment by; protecting and enhancing valued landscapes, recognizing the benefits of ecosystem services, minimising impacts on biodiversity and providing net gains in biodiversity where possible, preventing new and existing development being put at risk from unacceptable levels of soil, air, water or noise pollution or land instability, and remediating contaminated and unstable land.
21. *NPPF Part 12 – Conserving and Enhancing the Historic Environment.* Local planning authorities should set out in their Local Plan a positive strategy for the conservation and enjoyment of the historic environment, including heritage assets most at risk through neglect, decay or other threats. In doing so, they should recognise that heritage assets are an irreplaceable resource and conserve them in a manner appropriate to their significance.

22. The Government has consolidated a number of planning practice guidance notes, circulars and other guidance documents into a single Planning Practice Guidance Suite. This document provides planning guidance on a wide range of matters. Of particular relevance to this application is the practice guidance with regards to; air quality; conserving and enhancing the historic environment; design; flood risk; health and well-being; land stability; housing and economic development needs assessments; housing and economic land availability assessment; light pollution; natural environment; noise; open space, sports and recreation facilities, public rights of way and local green space; planning obligations; travel plans, transport assessments and statements; use of planning conditions and; water supply, wastewater and water quality.

<http://planningguidance.planningportal.gov.uk/>

LOCAL PLAN POLICY:

The City of Durham Local Plan (2004) (CDLP)

23. *Policy E7 – Development outside of Settlement Limits.* Development outside of settlement boundaries will only be permitted when it accords with other policies in the plan.
24. *Policy E14 – Protection of Existing Trees and Hedgerows.* Views hedgerows and trees as a valuable resource to be protected when new development is being considered.
25. *Policy E15 – New Trees and Hedgerows.* Tree and hedgerow planting is encouraged.
26. *Policy E16 – Nature Conservation – the Natural Environment.* Is aimed at protecting and enhancing nature conservation assets. Proposals outside protected sites will be required to identify significant nature conservation interests that exist on or adjacent to the site. Unacceptable harm to nature conservation interests will be avoided, and mitigation measures to minimise adverse impacts should be identified.
27. *Policy E17 – Sites of Special Scientific Interest.* States that development that would adversely affect a SSSI will only be permitted where the development is of overriding national importance, the development cannot be located elsewhere and remedial and compensatory measures are undertaken.
28. *Policy E18 – Sites of Nature Conservation Importance.* Seeks to safeguard such sites by resisting development which would be detrimental to their nature conservation interest unless it is demonstrated that the benefits from the development would outweigh the nature conservation interest of the site, that there are no appropriate alternative sites for development, that commensurate measures are undertaken to minimise adverse effects and that appropriate habitat creation or enhancement in the vicinity of the site to compensate unavoidable damage undertaken.
29. *Policy E24 – Ancient Monuments and Archaeological Remains.* Ancient monuments and other nationally significant archaeological remains and their settings will be preserved in situ and damage would not be permitted. Archaeological remains of regional and local importance will be protected in situ and where preservation in situ is not justified by, ensuring that in areas where there is evidence that significant

archaeological remains exist, or reasons to pre-suppose they exist, pre-application evaluation or archaeological assessment will be required and requiring as a condition of planning permission, that a programme of archaeological investigation, recording and publication has been made.

30. *Policy E26 - Historic Parks and Gardens.* States that development will only be permitted at such locations where it would not detract from the enjoyment, layout, design, character, appearance or setting of the park/garden or result in the loss of its integral features.
31. *Policy H3 – New Housing Development in the Villages.* New housing development comprising windfall development of previously developed land will be permitted within settlement boundaries.
32. *Policy H5 – New Housing in the Countryside.* In the countryside new housing development will be permitted only when it is; required by persons employed in agriculture or forestry where there is a functional need and the enterprise is financially viable, the size is commensurate with the established functional need; adequate provision cannot be made within the settlement/existing buildings and it respects the character of its landscape setting.
33. *Policy H12 – Affordable Housing.* Requires residential schemes of 25 units or more, of 1 ha or more, to provide a proportion of affordable housing where a local need exists.
34. *Policy H12A – Type and Size of Housing.* States that the type and size of dwellings will be monitored with where appropriate negotiation with developers to provide the right housing types and sizes to ensure balance.
35. *Policy H13 - Residential Areas – Impact upon Character and Amenity.* States that planning permission will not be granted for new development or changes of use which have a significant adverse effect on the character or appearance of residential areas, or the amenities of residents within them.
36. *Policy T1 – Traffic – General.* States that the Council will not grant planning permission for **development** that would generate traffic likely to be detrimental to highway *safety* and/or have a significant effect on the amenity of occupiers of neighbouring property.
37. *Policy T10 – Parking – General Provision.* States that vehicle parking should be limited in amount, so as to promote sustainable transport choices and reduce the land-take of development.
38. *Policy T21 – Walker’s Needs.* The Council will seek to safeguard the needs of walkers by ensuring that: existing footpaths are protected; new footpaths are provided; and footpaths are appropriately signed.
39. *Policy R2 – Recreational and Amenity Space in New Residential Developments.* *Seeks to ensure that the provision of open space for outdoor recreation is evenly distributed and is maintained at a level that meets the needs of its population.*
40. *Policies Q1 and Q2 - General Principles Designing for People and Accessibility.* States that the layout and design of all new development should take into account the requirements of all users.

41. *Policy Q5 – Landscaping General Provision.* Sets out that any development which has an impact on the visual amenity of an area will be required to incorporate a high standard of landscaping.
42. *Policy Q6 – Structural Landscaping.* Development located on the edge of settlements or in exposed sites will be required to use peripheral structural landscaping in order to minimise adverse visual impact.
43. *Policy Q8 – Layout and Design Residential Development.* Sets out the Council's standards for the layout of new residential development. Amongst other things, new dwellings must be appropriate in scale, form, density and materials to the character of their surroundings. The impact on the occupants of existing nearby properties should be minimised.
44. *Policy Q15 - Art in Design.* States that the Council will encourage the provision of artistic elements in the design and layout of proposed developments. Due regard will be made in determining applications to the contribution they make to the appearance of the proposal and the amenities of the area
45. *Policy U5 – Pollution Prevention – General.* States that development that may generate pollution will not be granted if that pollution would have an unacceptable adverse impact upon the quality of the local environment, upon the amenity of neighbouring occupiers or would unnecessarily constrain the development of neighbouring land.
46. *Policy U7 – Pollution Prevention.* Development Sensitive to Pollution states that developments which are sensitive to pollution will not be permitted on land which is subject to unacceptable levels of contamination, pollution, noise or vibration.
47. *Policy U8a – Disposal of Foul and Surface Water.* Requires developments to provide satisfactory arrangements for disposing of foul and surface water discharge. Where satisfactory arrangements are not available, then proposals may be approved subject to the submission of a satisfactory scheme and its implementation before the development is brought into use.
48. *Policy U10 - Development in Flood Risk Areas.* States that proposals for new development shall not be permitted in flood risk areas or where an increased risk of flooding elsewhere would result unless it can be demonstrated that alternative less vulnerable areas are unavailable, that no unacceptable risk would result, that no unacceptable risk would result elsewhere, or that appropriate mitigation measures can be secured.
49. *Policy U11 – Development on Contaminated Land.* Development will only be permitted where the nature and extent of contamination is established, the development would not add to the level of contamination, proposals include remedial measures and that there is no detrimental effect on the environment.
50. *Policy U13 –Development on Unstable Land.* Development will be permitted provided that there is no risk to the intended occupiers from stability or that satisfactory remedial measures can be undertaken.
51. *Policy U14 – Energy Conservation.* States that the use of energy efficient materials and construction techniques will be encouraged.

RELEVANT EMERGING POLICY:

The County Durham Plan

52. 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 in April 2014 and stage 1 of that Examination has been concluded. However, the Inspector's Interim Report which followed, dated 18 February 2015, has raised issues in relation to the soundness of various elements of the plan. In the light of this, policies that may be relevant to an individual scheme and which are neither the subject of significant objection nor adverse comment in the Interim Report can carry limited weight. Those policies that have been subject to significant objection can carry only very limited weight. Equally, where policy has been amended, as set out in the Interim Report, then such amended policy can carry only very limited weight. Those policies that have been the subject of adverse comment in the interim report can carry no weight. Relevant policies and the weight to be afforded to them are discussed in the main body of the report. Relevant policies are listed below, and the weight to be afforded to them is discussed in the main body of the report.
53. *Policy 15 – Development on Unallocated Sites in Built Up Areas.* This policy sets out that development on unallocated sites that are in built up areas will be permitted provided that; they are appropriate to the character and function of the settlement; would not result in the loss of the settlements last community or facility (unless there are exceptional circumstances) and the development is compatible with and does not prejudice any intended use of adjacent land.
54. *Policy 35 – Development in the Countryside.* States that planning permission in the countryside will only be granted where the development accords with other relevant policies and exceptional circumstances apply such as; being necessary for agricultural or rural based enterprise; directly supporting services and facilities; enhancing the County's environmental or tourism assets or representing the acceptable re-use of a dis-used building or heritage asset.

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/ldf> (City of Durham Local Plan)
<http://durhamcc-consult.limehouse.co.uk/portal/planning/> (County Durham Plan)

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

55. *Coxhoe Parish Council* – Express concerns with regards to the cumulative impacts of housing developments in the area and the ability for Coxhoe Primary School to cater for the school places need. Comments are provided regarding the allocation of S106 monies emerging from the development and it is requested that monies are equally divided amongst the primary school, Future Leisure in Coxhoe and the village hall. The upgrade of the bridleway on land owned but not sought for development by the applicant would be welcomed and it is considered appropriate that the land be transferred to the Parish Council.

56. *The Highway Authority* – Raise no objections. The content of the submitted transport assessment is acceptable with the level of traffic generation from the development considered to have no material impact on the surrounding highway network. The access point is suitable. Whilst a matter for the reserved matters stage it is commented that revisions to the layout to improve connectivity should be made. Although a travel plan has been supplied a condition is requested to ensure it is effectively delivered.
57. *Natural England* – Raise no objections with regards to the potential for the development to affect statutory nature conservation sites. General and standing advice is provided with regards to protected species, green infrastructure, locally designated nature conservation sites, landscape and biodiversity enhancements.
58. *Environment Agency* – Raise no objections. Given the proximity of the site to Coxhoe East landfill site it is stated that there potential for migrating gas from the landfill to affect the site. It is therefore considered that a gas risk assessment to determine ground gas conditions is undertaken and a condition could resolve this. General and standing advice is provided with regards to foul water disposal, land contamination and in regards to Great Crested Newts.
59. *Northumbrian Water* – Raise no objections. The development should be implemented in accordance with the submitted flood risk assessment.
60. *Coal Authority* – Confirm that the site is located within the defined Development High Risk Area. The application is accompanied by a coal mining risk assessment and a preliminary site investigation. However, it is considered that intrusive site investigation works should be undertaken prior to development in order to establish the exact situation regarding coal mining legacy issues on the site and condition is recommended to this effect.
61. *Drainage and Coastal Protection* – Raise no objections. Final details of the proposed drainage arrangements for the development should be agreed in accordance with the hierarchy of preference for surface water disposal and the Council's surface water principles. Officers advise that discharge from the development should be restricted to greenfield run-off rates.

INTERNAL CONSULTEE RESPONSES:

62. *Spatial Policy* – The principle of developing the site as an extension to Coxhoe is in conflict with the existing Local Plan (Policy H3). Policy H3 which establishes a settlement boundary to Coxhoe is considered only partially compliant with the NPPF, however, and less weight should be attributed to the proposal's conflict as a result. This revised application proposes a smaller quantum of development than previously submitted and as a result the degree of incursion into the open countryside and visual and landscape impact has lessened. The ecological implications of the development in regards to both protected species and County Wildlife Site are a key consideration. The site is not allocated within the emerging County Durham Plan and the most relevant County Durham Policies are therefore Policies 15 (Development on Unallocated Sites) and 35 (Development in the Countryside). These policies carry only very limited weight. Should the development be deemed an intrusion into the countryside of an acceptable degree without significant landscape or townscape impact then the development could be viewed favourably against these policies.

63. The Local Planning Authority can demonstrate a 5 year housing land supply. However, it is not the intention to resist schemes solely on the grounds a five-year supply can be demonstrated, but instead recognise that it enables the LPA to be more selective over which sites it does release, to ensure that the most sustainable and appropriate sites in the context of the NPPF are brought forward for development.
64. Support to the revised scheme could be offered should the impacts of the extension of the development beyond the settlement boundary and ecological impacts be considered acceptable and that the proposal can demonstrate further benefits (by way of the delivery of 40% affordable housing) in a finely balanced planning application.
65. *Design and Conservation* – No objections are raised to the impacts of the development upon heritage assets but consideration should be given to matters of archaeology having regards to the age of the former Steetley Lime works.
66. *Ecology* – Raise no objections to the development subject to the submitted habitat management plan conditioned and site maintained in perpetuity.
67. *Landscape* – The development would have some adverse landscape and visual effects and the extent of which would depend on whether some final modest amendments to the layout could be achieved. Landscaping to ease the transition from the built environment to a rural one is advised.
68. *Tree Officer* – No objections.
69. *Environment, Health and Consumer Protection (Air Quality)* – Raise no objections. Taking into account the scale of the development and likely vehicular movements as a result there is no requirement for the application to be accompanied by an Air Quality Assessment.
70. *Environment, Health and Consumer Protection (Contamination)* – Raise no objections but due to the fact that the proposed development constitutes a change of use to a more sensitive nature a contaminated land condition should be applied to any approval.
71. *Environment, Health and Consumer Protection (Noise, Dust, Light, Smoke and Odour)* – Raise no objections. The submitted noise assessment is considered appropriate, the mitigation measures proposed should be implemented. Noise from the construction phase could occur and a condition to control such noise is recommended. A condition to control the lighting scheme having regards to proximity to existing property is recommended. A construction management plan to control dust and the potential for smoke is advised. No concerns are raised with regards to odour.
72. *Archaeology* – No objections and no matters of archaeological interest are raised.
73. *Access and Public Rights of Way* – No objections. The proposed contribution to upgrade the Limestone LinX Bridleway is welcomed.
74. *Housing Delivery* – The development seeks to deliver in excess of the 20% affordable housing requirement for the area. The affordable housing should be provided on a split of 70% affordable rent and 30% affordable home ownership with a mix of 2, 3 bed and 2 bed bungalows. Details are requested in relation to the percentage discount of the affordable home ownership units.

75. *School Organisation Manager* – Raise no objections. At this point in time there are sufficient primary and secondary school places for the additional pupils likely to emerge from the development having regards to current need and existing committed development in the area.
76. *Sustainability* – Object to the application due to the potential impacts upon ecology and the distance from services, facilities and public transport services.

PUBLIC RESPONSES:

77. The application was advertised within the press, on site and letters were sent to neighbouring properties. A total of 6 letters of objection to the development have been received. The matters raised are summarised below.

Principle of the Development

- The need for the housing is questioned with existing properties being slow to sell

Design and Layout

- The development is of too high density
- Absence of landscape buffer between the proposed development and existing houses
- The open space design and positioning is considered to be poor

Residential Amenity

- Loss of privacy from property
- Harmful impacts of overshadowing from the development
- Disruption and noise from the construction phase

Ecology

- Impacts on Great Crested Newts
- Impacts upon a range of other species within the nature reserve
- Impacts upon yellow-wort and autumn gentian

Other issues

- Devaluing of property
- Loss of view from property
- The site is used for dog walking
- Understood that the developer of previous phases of The Limes had provide assurances that this land would not be developed
- Inadequacy of the parking provision and the access arrangements to the site
- Lack of public access to the wildlife site adjacent

78. The following comments have also been received;
79. *The Durham Constabulary Architectural Liaison Officer* – The crime risk assessment for the development is considered low. The only concern within the layout is highlighted as being the area of open space which has the potential to generate nuisance complaints. Approaches to landscaping for the open space such as

defensive planting could reduce the potential for such nuisance. General advice with regards to the principles of “Secured by Design” is provided.

80. *The Campaign to Protect Rural England* – Reference is made to the Planning Inspector’s Interim Report on the County Durham Plan and that the objective assessment of housing need is too high and planned growth is not realistic. It is considered that the Inspector left open whether Coxhoe and Parkhill could accommodate more development. Reference is made to High Court judgements considered applicable to the application in regards to 5 year housing land supply and the weight to be attached to Local Plan Policies. It is also considered that weight can be attributed to emerging County Durham Plan Policies which have not been identified as unsound by the Planning Inspector with particular reference to Policies 15 and 35.

APPLICANTS STATEMENT:

81. Hellens Group have already successfully delivered much new housing for the village of Coxhoe brought forward at the Limes Developemnt which represented one of the bestselling sites in the County and indeed the Region. That development brought forward a contaminated vacant site with much needed market and affordable housing including bungalows for which there is an overwhelming demand locally. They have a track record of delivering quality sustainable development.
82. The current application site would further remediate the land and make a logical and moderate addition of new housing for the village and meet with a high demand recognised by Durham
83. County Council Choice Based Letting Service for affordable housing in the village, including further bungalows. Following detailed pre-application discussions with the Council an application was submitted and subsequently amended and reduced in scale to seek to address ecological and landscape concerns. Following discussions with the Council a further revised application was submitted which has now fully addressed all technical issues and previous objections.
84. The scheme will deliver much needed affordable housing which represents 40% of the housing proposed. The scheme will also deliver much needed new family homes that will provide housing at an affordable price in a sustainable location with benefits to the local community through employment during construction and a boost to the local economy from increased spending in local services.
85. In summary, we consider that the scheme will bring overall benefit to the village, in particular much needed housing in a sustainable location and there are significant benefits of the scheme, particularly the delivery of affordable housing that should be given substantial weight in the determination of the application

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://publicaccess.durham.gov.uk/online-applications/search.do?action=simple&searchType=Application>

PLANNING CONSIDERATIONS AND ASSESSMENT

86. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out that if regard is to be had to the development plan, decisions should be made in accordance with the development plan unless material considerations indicate otherwise. In accordance with Paragraph 212 of the National Planning Policy Framework (NPPF), the policies contained therein are material considerations that

should be taken into account in decision-making. Other material considerations include representations received. In this context, it is considered that the main planning issues in this instance relate to: the principle of the development, landscape, visual impact and layout, residential amenity, viability and planning obligations, ecology, highway safety, heritage impact and matters of flood risk and drainage.

Principle of Development

The Development Plan

87. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material planning consideration. The CDLP remains a statutory component of the development plan and the starting point for determining applications as set out at paragraph 12 of the NPPF. However, the NPPF advises at paragraph 215 that local planning authorities (LPAs) are only to afford existing Local Plans material weight insofar as they accord with the NPPF.
88. Furthermore, paragraph 14 of the NPPF establishes a presumption in favour of sustainable development. For decision taking this means (unless material considerations indicate otherwise);
- approving development proposals that accord with the development plan without delay; and
 - where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
 - i) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - ii) specific policies in this Framework indicate development should be restricted.
89. The application site lies adjacent to but outside of any settlement boundary as identified by Policies E7 and H3 of the CDLP. The direction of Policy H3 is that housing may only be approved where it lies inside of the settlement boundary, to help to contain settlements and prevent sprawl into the surrounding countryside. Additionally, Policy H5 of the CDLP establishes a general presumption against allowing housing development beyond a settlement boundary unless it is required to fulfil an employment role. The proposal, seeking a residential estate beyond the settlement boundary of Coxhoe is therefore in conflict with Policies E7, H3 and H5 of the CDLP.
90. Nationally, recent planning case law has found that policies within existing Local Plans that refer to settlement boundaries can be considered to be policies for the supply of housing. Furthermore, the Secretary of State has previously concurred with a Planning Inspector who considered that where policies for the supply of housing are based on housing figures of some age, which did not represent an objectively assessed need, are "out of date" irrespective of the position on 5 year housing land supply (discussed separately below).

91. In relation to this case, policies for the supply of housing within the CDLP, which includes Policies H3, H5 and E7, were based upon housing supply figures derived from the former County Structure Plan which considered housing need up to 2006.
92. The housing requirement identified within the CDLP found that 3000 new dwellings were required in the period 1991 – 2006. By the time of the plan's adoption in 2004, the vast majority of this requirement had already been achieved, and as a consequence, only one housing allocation was proposed for the entire former district. As a result, the settlement boundaries within the CDLP are drawn very tightly around settlements. Where there was an allocation, at West Rainton, the settlement boundary was expanded to include the allocated site.
93. In contrast, the most recent objectively assessed need for housing to 2030, which informs the CDP, has identified a level of need that cannot be provided only within existing settlement limits. Indeed, the CDP proposes that a number of greenfield sites, within the former City of Durham district are allocated for residential development. It is clear therefore, that the settlement limits approach taken within the CDLP is not consistent with, or reflective of, current housing needs.
94. Therefore, housing supply policies within the CDLP do not reflect an up to date objective assessment of need. These policies must now be considered "out of date", for the purposes of Paragraph 14 of the NPPF and no weight can be afforded to Policies E7, H3 and H5 in relation to their advice on housing supply.
95. Consequently, it is considered that in this instance, the proposal should not be assessed against its compliance with Policies H3, H5 and E7 of the CDLP, but instead should be subject to the planning balance test as contained within Paragraph 14 of the NPPF. Clearly, whether any adverse impacts of approving the development would significantly and demonstrably outweigh the benefits or whether there are any specific policies in the NPPF that indicate development should be restricted can only be considered following an examination of all of the planning issues.

The County Durham Plan

96. The Council has now received the Inspector's Interim Report on the Legal Compliance and Soundness of the CDP. The findings of the report means that the weight which can be afforded to the conflict with the emerging plan is limited at present, and the Council has launched a Judicial Review to have the Inspector's Report quashed, and a new Examination in Public (EiP) carried out. Until such time as the Courts arbitrate over the dispute, the authority needs to be considering application in the intervening period in the context of the recently Cabinet endorsed (10th June 2015): "Assessing Development Proposals in County Durham - Council Policy Position Statement following receipt of the Interim Inspector's Report into Stage 1 of the Examination of the County Durham Plan".
97. The application site does not form part of a proposed housing allocation under CDP Policy 30. To ensure that the CDP is flexible over its intended timeframe and resilient to changes which take place within that period, the CDP contains policies to enable proposed development on unallocated sites to be assessed on their merits and individual circumstances.
98. Policies 15 and 35 are relevant in this regard and are criteria based policies which are permissive of development provided that it is appropriate in scale, design and location to the character and function of the settlement; and it would not involve development in the countryside.

99. Policy 15 provides guidance on development on unallocated sites within the built up area. Development, including housing, can be compliant with CDP Policy 15 where it meets a number of criteria and where it is considered to be located within the “built up area”. The built up area is defined within the CDP and this definition includes reference to land on the edge of a settlement. The definition explains that land on the edge of a settlement can be considered to be part of the built up area where; it is physically very well contained by existing built development; its development would not result in coalescence with neighbouring settlements; or result in encroachment into the countryside such that it would cause significant adverse landscape or townscape impact.
100. The site is not well contained by existing built development in that there are, for instance, no buildings or roads that border the site to the immediate east. However, the scale of the development is much reduced from the previously withdrawn proposal (ref DM/14/01858/OUT). The extent to which the application encroaches into the countryside is more limited.
101. Both policies 15 and 35 of the CDP have unresolved objections which have been debated at the recent EiP and consequently only very limited weight can be applied to them at this time. Therefore, whilst some weight can be attached to these policies, they should not alone be a decisive factor in assessing this application.

Neighbourhood Plans

102. Coxhoe does have an emerging Neighbourhood Plan, however, this is at an early stage in development and not at the submission stage which is the stage at which the PPG advises prematurity is more likely an issue to be considered.

Five Year Housing Land Supply

103. The National Planning Policy Framework (NPPF) outlines the Government’s objective of ensuring that the planning system delivers a flexible, responsive supply of land. The NPPF requires Local Planning Authorities (LPAs) to maintain a five-year supply of deliverable sites (against housing requirements); however there is also an additional buffer of 5% to ensure choice and competition in the market for land. Where there has been a history of persistent under delivery of housing, LPAs should increase the buffer to 20% to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land. Based on completion rates in recent years it is accepted that 20% is currently applicable in County Durham.
104. The Council has recently reviewed its position to establish whether there is sufficient land supply for the five-year period from 1 April 2015 to 31 March 2020 across County Durham in recognition that the housing completions data for 2014/15 are now known, and the supply position is constantly evolving in terms of new schemes receiving permission and other permissions lapsing during the last financial year.
105. Despite the ongoing legal situation surrounding the emerging CDP, it is considered that for the purposes of assessing the 5-year supply, the Council is to have regard to the Inspector’s conclusions as to the housing land supply requirement (1,435 dpa), even though the Council may disagree with it. Unless and until the Court has determined the judicial review claim, the Inspector’s conclusions as to what the five year housing land requirement is may rationally be adopted. This is a reasonable and supportable approach for the Council to take with respect to the five year supply of housing land.

106. Therefore by assuming the OAN contained within the Inspector's Interim Report there would be a housing requirement of 7,175 units over the next 5-year period of 2015-2020 (i.e. 1,435 units x 5 years), and taking account of the shortfall since 2011, and the application of the 20% buffer, a 5-year housing requirement of 9,912 dwellings is identified.
107. A revised housing trajectory has been prepared which sets out the anticipated completions from sites across the County. It demonstrates that 11,097 (net) new homes could potentially be built within County Durham over the next five-years. This is 1,185 more than required when taking account of the historic shortfall, and application of the 20% buffer. This means that the County has 5.60 years supply of deliverable sites as required by the NPPF, and confirms that there is sufficient potential capacity within the County to maintain a 5-year supply of deliverable sites. Whilst the Council's current position on 5 year supply has not been tested through an Examination in Public, it is noted that the matter was considered in a recent planning appeal in relation to a site at Middlestone Moor. In that case, the Inspector considered that the Council had 'around about a five year supply of deliverable sites'.
108. It is therefore concluded that sufficient sites have been identified to maintain a 5-year supply of deliverable housing sites. Paragraph 49 advises that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the LPA cannot demonstrate a five-year supply of deliverable housing sites.
109. However, as discussed above, it is considered that in this instance, that the relevant policies for the supply of housing contained with the CDLP are out of date in any event. The presence, or otherwise of a 5-year supply is considered not to be a determinant in how the application is considered, as the authority finds itself in the position of having to apply the planning balance as contained with paragraph 14 of the NPPF regardless.
110. The absence of a 5-year housing supply would potentially count as a benefit of the development when considering the paragraph 14 balancing exercise, in that it would boost the supply of housing. In this case, it is considered that as a 5-year supply can be demonstrated, that this would not form a significant benefit, although the development would contribute towards the maintenance of the supply, and this could still be considered to be a benefit, albeit not one of overwhelming significance. Equally however, the presence of a 5-year supply is not a ceiling, and is not a reason in itself, to resist housing development.

Locational Sustainability of the Site

111. The County Durham Settlement Study is an evidence based document in support of the CDP which assessed the services, facilities and transport modes of settlements so as to inform the formation of a settlement hierarchy to establish where new development such as housing, employment and community facilities should be located. This Settlement Study identifies Coxhoe as a "smaller town/larger village" and as a result within the second tier of settlements behind main towns such as Durham, Consett and Bishop Auckland. Coxhoe is considered to have a range of services and facilities that in principle can support the addition of a further 55 dwellings.

112. The site is considered to be within reasonable access to public transport with bus stops located within 400m of the site. Some businesses and retail units are located on the nearest sections of Commercial Road East and are also located within 400m of the site. The main village centre is around an 800m walking distance from the site. Coxhoe Primary School which is located at the opposite end of Coxhoe is farther from the site at around a 1.7km walking distance. Therefore whilst access to a full range of services and facilities is not entirely convenient it is considered that the location of the site is not unsustainable.
113. The School Organisation Manager has raised no objections to the development. The Council has made a commitment to fund further classroom accommodation for Coxhoe Primary School (though this would be subject to a separate planning process). Based upon current need (which can be subject to change taking into account other development and sites in the catchment area) the commitment to additional accommodation would cater for the development proposed.

Landscape, Visual Impact and Layout

114. The proposal would result in the development of a parcel of land on the edge of the settlement and as a result a degree of incursion into the countryside would result. Part 11 of the NPPF seeks to protect and enhance valued landscapes, whilst CDLP Policy E7 seeks to protect countryside as a finite resource, noting that landscape character is highly valued and worthy of protection in its own right. However, as discussed above, Policy E7 can be considered to be a policy for the supply of housing as it relies upon settlement boundaries to define the extent of the countryside, and consequently is considered to be out of date, and cannot carry weight in the determination of the application.
115. The development has reduced in scale from the previously proposed development under application DM/14/01858/OUT and in turn the magnitude of visual and landscape impacts have also reduced.
116. The application is accompanied by a landscape and visual impact assessment (LVIA) and this considers the impact of the development during both the construction and operational phases and considers a range of landscape and visual impacts including upon landscape character areas, designated landscapes and settlements. The LVIA concludes that the overall landscape and visual impacts of the proposed development would not be significant within the area studied. The LVIA considers that impacts upon the range of landscape and visual receptors considered within the study would range from either no adverse impacts to moderate adverse impact.
117. Similarly, Landscape Officers conclude that the development would have some adverse landscape and visual effects and the extent of which would depend on whether some final modest amendments to the layout could be achieved and landscaping provided to ease the transition from the built environment to a rural one is advised. At this outline stage the final layout and landscaping proposals for the development are not known.
118. It is considered that the scale of the development would not result in an excessive or unacceptable sprawl into the countryside or significantly harmful landscape impact. The degree to which the development would reduce the existing green chain of open sites which stretch up to Quarrington Hill would be reduced from the previously proposed scheme.

119. With the application being in outline with the only detailed matter included being means of access the precise layout and final appearance of the development is not being sought for approval. The indicative layout proposes two main estate roads, one on an east-west axis and a second on a north-south axis around which the dwellings would be arranged. An area of public open space is indicatively identified in a northern section of the site. At this stage the precise appearance and scale of the dwellings are not known.
120. It is acknowledged that the Highway Authority raise a point that they would expect improvements in elements of the layout and connectivity of the site whilst Landscape Officers advise on final modest amendments to the layout and provision of landscaping to ease the transition from the built environment to a rural one is advised.
121. Public objection to the development raises objection on the grounds of the density, absence of a landscape buffer between the proposed development and existing housing at The Limes estate and the open space design and positioning. Ultimately at this stage the final layout, landscaping and appearance of the development is not known and detailed consideration on these matters would be made at the reserved matters stage. However, it is considered that the site in principle can cater for the quantum of development proposed.
122. Whilst the development would result in encroachment in the countryside beyond the existing built form of Coxhoe any landscape harm resultant would be limited and furthermore any adverse landscape and visual impacts must be weighed against identified benefits of the development, a balancing exercise that will be undertaken in this report's conclusion having regard to NPPF paragraph 14.
123. In terms of the layout, appearance and landscaping works of the development itself it is considered subject to the final design approach, to be resolved at the reserved matters stage, the development would be acceptable and there compliant with CDLP Policies E14, E15, R2, Q1, Q2, Q5 and Q6 and having regards to Parts 7 and 11 of the NPPF.

Residential Amenity

124. The site is located to the south west of the former Coxhoe Quarry and to the north east of the Joint Stocks Quarry and Landfill site where ongoing capping and restoration works are to be undertaken. It is located directly to the north of Commercial Road East which serves as a route to the household recycling centre, as well Joint Stocks Quarry and Landfill site. Given the use of this road by heavy vehicles and potential for other noise impacts in the locality of the site, a noise assessment has been submitted in support of the application.
125. The noise assessment identified the requirement to implement noise attenuation measures, by means of the provision of acoustic fencing to the rear of proposed properties fronting onto Commercial Road East, as well as ventilation and fenestration requirements. Environmental health officers have indicated that implementation of these measures would enable the residential amenity of residential properties to be safeguarded. These requirements could be ensured by planning condition. Environment, Health and Consumer Management Officers have raised no objections to the submitted noise assessment or development. It is not considered that future residential occupiers would be significantly impacted on by any nearby industrial or commercial properties or operations, including the operation of the recycling centre and landfill site.

126. Environment, Health and Consumer Management Officers do consider that impacts from noise, dust and smoke could potentially occur during the construction phase. A condition to control the potential for such impacts can be added to an approval.
127. Additionally, Environment, Health and Consumer Management Officers raise no objections with regards to matters of air quality with no requirement for the submission of an air quality assessment.
128. Only indicative details are provided regarding the layout of the development. As a result a detailed assessment of the separation between properties both within the development and to existing adjacent properties would be made at the reserved matters stage. However, it is considered that in principle, the residential development could be accommodated on the site without unreasonably impacting upon the level of residential amenity that both existing residents currently enjoy and future occupiers require having regards to the requirements of CDLP Policies H13 and Q8.
129. Given the proximity of the site to Coxhoe East landfill site there is the potential for migrating gas from the landfill to affect the site and this is raised within the comments from the Environment Agency. It is therefore considered that a gas risk assessment to determine ground gas conditions is undertaken to investigate the risk and where necessary propose appropriate mitigation measures and a condition can be added to any approval. With regards to other potential sources of contamination Environment, Health and Consumer Protection Officers have raised no objections, however, it is considered that a condition to investigate the potential for contamination and the need for mitigation measures can be added to any approval.
130. Officers raise no objections to the development on the grounds of any adverse impact upon the amenity of neighbouring occupiers or land users. The development is considered to result in no unacceptable levels of pollution. The development is considered compliant with CDLP Policies H13, Q8, U5, U7 and U11 and Parts 8 and 11 of the NPPF.

Viability and Planning Obligations

131. In order to widen the choice of high quality homes and widen opportunities for home ownership, paragraph 50 of the NPPF encourages the provision of affordable housing based on evidenced need. Policy H12 of the CDLP requires a fair and proportionate level of affordable housing on sites over 1ha or 25 dwellings, and Policy H12A requires proposed housing to be of an appropriate type and size.
132. Policy H12 is considered to be only partially compliant with the NPPF. It is consistent with the overall objectives of NPPF, in that paragraphs 47, 50 and 158 of the NPPF require an element of affordable housing to be provided on housing sites, based upon an up to date evidence base. Consequently, the unspecified target of a “fair and reasonable” amount specified by Policy H12, should instead be replaced by an evidence based figure.
133. The County Durham Strategic Housing Market Assessment (SHMA) update report was completed in July 2013 and supplies the evidence base for 20% affordable housing across the Central Delivery Area in which the site falls. The 20% requirement reflects an up to date needs assessment and identifies a significant requirement of approximately 189 net affordable units per annum throughout the Central Delivery Area up to 2016/17.

134. The application proposes that 22 of the 55 dwellings are affordable units which equates to 40%. This is an affordable housing contribution that would therefore be in excess of the SHMA requirements. The applicant considers that there is “a pent up demand” for affordable housing and is therefore proposing an increased provision as a benefit of the development to be taken into account in the planning balance. However, the application also seeks to demonstrate that the provision of affordable housing is unviable without grant funding.
135. The application is accompanied by a planning and affordable housing statement and separate viability assessment. This states that through receipt of grant via the Homes and Communities Agency (HCA) under their Affordable Homes Programme the affordable housing proposed can be delivered.
136. In order to acquire the grant from the HCA the applicant, within a separate process from obtaining planning permission, must demonstrate to the HCA that the development is unviable in order to acquire the grant. In general the HCA look unfavourably upon any applications for grant whereby the related planning permission includes a condition or S106 legal agreement to ensure the provision of the affordable housing. However, even in those circumstances the HCA will still consider an application for grant funding but the application must be considered at a national board and the applicant would have to demonstrate the additional benefits that the scheme would bring.
137. With regards to the viability of the development the applicant has submitted development appraisals to demonstrate the various costs and revenues of the development. These appraisals have been scrutinised with the benefit of advice from the Council’s Valuation Officers. Several development appraisals have been submitted so as to demonstrate the viability of the development with and without affordable housing and with adjustments to the inputs in line with requests from officers. This is to ensure that revenues from sales prices and costs associated with the development appear to officers as accurate as is possible. Officers do conclude that based upon the viability appraisals the development would be unable to provide the affordable housing and remain viable. This is because it would not provide a competitive return for the developer and enable the development to be deliverable. The site has previously been used as a limeworks and this was removed in the late 1970’s. The remnants of this limeworks would require remediation prior to the undertaking of the application and this would be a significant cost. Such remediation was also necessary on the adjacent housing development known as The Limes (the housing provided by the history of planning applications) and those schemes were at that time assessed as being unable to provide affordable homes on viability grounds.
138. However, despite the viability issues of the site the applicant is not seeking to develop only open market housing but demonstrate the viability argument to the HCA to acquire the grant and still deliver the proposed 40% affordable housing.
139. If the Council grant planning permission for the affordable housing without the security of a legal agreement, there would be a risk that the housing would be developed on the open market. Therefore in order for significant weight to be attributed to the applicant’s proposal to provide the affordable the Council would require a S106 legal agreement to ensure the provision of the affordable units in perpetuity. If the HCA grant is not forthcoming and the affordable housing cannot be delivered then the application would not be implementable in accordance with the S106 legal agreement and therefore not deliverable.

140. The Growth and Infrastructure Act inserted Section 106BA, BB and BC into the 1990 Town and Country Planning Act. These sections introduced an application and appeal procedure for the review of planning obligations on planning permissions which relate to the provision of affordable housing. The application and appeal procedures only assess the viability of affordable housing requirements only. They do not reopen any other planning policy considerations or review the merits of the permitted scheme. Through demonstrating that the development was unviable the applicant would through these provisions be able to release themselves from the S106 obligation to provide the affordable housing. However, discussions have been held with the applicant on the inclusion of a further clause being inserted into the S106 legal agreement whereby the applicant agrees not to submit a S106BA application to remove the affordable housing planning obligation. Such an agreement would therefore prevent the instance whereby the applicant can release themselves from the requirement to provide the affordable housing.
141. Given the viability demonstrations that have been made it is not considered appropriate to request a financial contribution towards public art having regards to CDLP Policy Q15. This is because as national advice within the NPPF and PPG is clear that where an applicant is able to demonstrate to the satisfaction of the local planning authority that the planning obligation would contribute to the development to be unviable, the local planning authority should be flexible in seeking those planning obligations.

Ecology

142. Coxhoe Ponds Local Wildlife Site (LWS) and Crow Trees Nature Reserve (LNR) border the application site to the east. Quarrington Hill and Coxhoe Bank Plantation LWS lies approximately 175m to the south of the application site. Quarrington Hill Grasslands Site of Special Scientific Interest (SSSI) lies approximately 1km from the site and Raisby Hill Grasslands SSSI 1.4km south east of the site. Cassop Vale SSSI and NNR are approximately 3km north of the site.
143. Natural England raise no objections with regards to the potential for the development to affect statutorily designated sites.
144. The previously withdrawn application site for 103 dwellings (ref DM/14/01858/OUT) was in part located within the Coxhoe Ponds LWS and as a result of the loss of this locally designated ecological site attempts to mitigate and compensate for the losses were proposed. This involved the active management of land adjacent and nearby to the site.
145. The reduction in the scale of the development now proposed under this application has resulted in the entirety of the application site being located outwith of Coxhoe Ponds LWS. With no loss of the LWS now occurring no compensatory measures in this regard are necessary.
146. The application is accompanied by a biodiversity management plan which proposes management measures to the land within the ownership of the applicant though outwith of the application site which forms part of the Coxhoe Ponds LWS. The management proposals which are provided in greater detail within the submitted management plan are broadly divided into a grassland management area, woodland, scrub and pond management area and a stream management area. This management plan is an update on previously devised management plans the implementation of which has been a requirement of previously approved development at The Limes development to the west. Public objection includes

comment that there is limited access to the LWS, however, encouraging too greater public presence within ecological sites can damage habitat.

147. Ecological submissions identify eleven ponds and three small scrapes are located to the east of the site. Surveys undertaken recorded the presence of Great Crested Newts (GCNs) within four of the ponds. Whilst none of these ponds are located within the bounds of the application site, the site is within close enough proximity that it provides terrestrial habitat for the GCNs.
148. The presence of protected species such as great crested newts is a material consideration, in accordance with Circular 06/05 and Paragraph 119 of the NPPF. The requirements of the Habitats Directive were brought into effect by the Conservation of Habitats and Species Regulations 2010 (and as amended in 2012) (referred to as the Habitats and Species Regulations hereafter). 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 license from Natural England. In this instance there will be a requirement to trap-out any GCNs within the site and this will require a European Protected Species (EPS) Licence from Natural England.
149. Notwithstanding the licensing regime, the LPA must discharge its duty under Regulation 9(5) and also be satisfied that these three tests are met when deciding whether to grant planning permission for a development which could harm an EPS. The Local Planning Authority should be satisfied that; i) the development must meet a purpose of preserving public health or public safety or other imperative reasons of overriding public interest including those of social or economic nature and beneficial consequences of primary importance for the environment ii) there must be no satisfactory alternative; and iii) favourable conservation status of the species must be maintained.
150. With regards to the first test, the development is meeting no purposes of public health/safety or safety. The development does seek, however, to make a valuable 40% contribution towards affordable housing as well as contributing towards the maintenance of housing land supply and these are social and economic benefits of the development.
151. With regards to the second test it would be a satisfactory alternative for the development to not occur at this site which would preserve the GCN habitat.
152. The ecological submissions proposed mitigation and compensatory habitat management and it is considered that the favourable conservation status of the species would be maintained.
153. It is concluded that it remains likely Natural England would grant an EPS licence. Ecology Officers have raised no objections to the development provided that the habitat management proposals submitted as ensured in perpetuity and a condition can be added to any planning permission. As a result officers raise no objections to the development on the grounds of impacts upon ecological assets and the development is considered compliant with CDLP Policies E16, E17 and E18 and Part 11 of the NPPF.

Highway Safety

154. The application is accompanied by a transport assessment (TA) which seeks to inform on and assess the key highways related implications of the development. The TA assesses matters such as the accessibility of the development; trip generation and traffic assignment; future year flows; operational assessment of junctions; highway safety; committed developments.
155. Vehicular access to the development is sought via a single point in the south-west corner of the site where the site meets the existing B6291. No off-site highway works are proposed with the submitted TA concluding none would be necessary to mitigate the impacts of the development.
156. The Highway Authority have raised no objections to the development. The submitted TA has been assessed and it is accepted that the level of traffic generation will not have a material impact on the surrounding highway network and a suitable access to the site can be formed.
157. As a result no objections are raised regarding matters of highway safety with the development considered compliant with compliant with CDLP Policies T1, T2, T21, R11 and Part 4 of the NPPF.

Heritage Impact

158. The application is accompanied by a heritage statement which considers the potential for archaeological deposits below ground and the impact of the development upon designated and non-designated heritage assets within 1.5km of the site. The heritage statement considers that no impacts would occur as a result of the development. Modern activity on the site as a result of the lime works would have removed the potential for earlier (prehistoric/Roman) deposits. A locally designated historic parkland (Coxhoe Hall Park) is located approximately 200m to the east of the site. A modern plantation screens the parkland the site of Coxhoe Hall and associated grounds from the development and no impacts are considered to result.
159. Design and Conservation Officers raise objections with regards to the potential impact upon heritage assets although the need to consider the potential for archaeological assets is referenced. Archaeology Officers have considered such matters and raise no objections. As a result no objections are raised with regards to the heritage impact of the development with the proposal considered compliant with CDLP Policies E24 and E26 and Part 12 of the NPPF.

Flood Risk and Drainage

160. The application is accompanied by a floor risk assessment (FRA) which outlines the potential for the site to be subject to flooding and considers in principle foul and surface water disposal from the development.
161. The application site is located within flood risk zone one, essentially the land least prone to fluvial flooding. The submitted FRA proposes that foul waters are disposed of to the mains sewer and Northumbrian Water have raised no objections to this. With regards to surface waters the FRA proposes that these would discharge to Tursdale Beck which is situated to the north of the application site with discharge rates controlled to greenfield run-off rates. Drainage and Coastal Protection Officers have stated that final details of the proposed drainage arrangements for the development should be agreed in accordance with the hierarchy of preference for

surface water disposal and the Council's surface water principles. This would require a demonstration that if surface water discharge to Tursdale Beck is to be the final solution then infiltration techniques cannot be utilised which would be sequentially preferable having regards to the above mentioned hierarchy. It is considered that a condition can be added to any planning permission to agree final drainage proposals.

162. As a result officers raise no objections to the development having regards to CDLP Policies U8a and U10 and Part 10 of the NPPF.

Other Issues

163. The application site is accompanied by a low or zero carbon technology feasibility study. This recommends that the use of photovoltaic panels would be the most appropriate means of reducing carbon emissions. A condition to resolve final proposals of energy reduction for the scheme can be added to any approval having regards to CDLP Policy U14 and Part 10 of the NPPF.
164. The Coal Authority has confirmed that the site is located within the defined Development High Risk Area. The application is accompanied by a coal mining risk assessment and a preliminary site investigation. However, it is considered that intrusive site investigation works should be undertaken prior to development in order to establish the exact situation regarding coal mining legacy issues on the site. A condition can be added to any approval in this respect having regard to CDLP Policy U13 and Part 11 of the NPPF.
165. No impacts upon formally designated public rights of way would result from the development. The applicant has stated that they would implement improvement works to the Limestone LinX pedestrian and cycle routes and improvements would be welcomed by Access and Rights of Way Officers.
166. Public objections to the development include considers over a devaluing impact on property values and the loss of a view from property however neither of these are material planning considerations to be attributed weight.
167. Limited weight can be attributed to the public objection that the site in its undeveloped form can be utilised for dog walking.

Planning Balance

168. Having regards to the policy situation, whereby relevant policies for the supply of housing within the City of Durham Local Plan are now considered to be out of date, the acceptability of the application in principle now falls to be considered under the planning balance test contained within Paragraph 14 of the NPPF.
169. There are a number of benefits associated with this development which can be identified, and can be related to the three dimensions of sustainable development.
170. Although a 5-year housing land supply can be demonstrated, additional housing will assist in maintaining this supply. This has previously been identified as being able to be considered a benefit in a recent appeal decision from within the County. The maintenance of a 5-year housing land supply will in turn strengthen the ability of the authority to control residential developments in those parts of the County where housing supply policies can be considered to be up to date.

171. The development proposes to provide 40% affordable housing. This would provide a significant contribution towards affordable housing need, a need which is greatest within the central housing delivery area in which the site is situated. The provision of the 40% affordable housing can be ensured by way of the S106 legal agreement. If the HCA funding that the applicant is seeking to gain is not forthcoming then the development would not be deliverable and would not result in a development of solely open market housing coming forward which would negate the benefit of said provision.
172. To a degree the development would provide direct and indirect economic benefits within the locality and from further afield in the form of expenditure in the local economy.

Adverse Impact

173. The development would result in an encroachment into the countryside beyond the existing built-up area of Coxhoe with a degree of resultant landscape and visual harm.
174. Due to the viability of the development in addition to the open space that is proposed within the development itself no further contribution towards offsite open space provision/improvements are proposed. The Open Space Needs Assessment (OSNA) highlights that the Coxhoe Electoral Division has a deficiency in parks and gardens space and a financial contribution would normally be expected to cater for such a deficiency. Public art provision or a contribution in lieu of such provision is also not proposed under within the application having regards to CDLP Policy Q15.

CONCLUSION

175. Paragraph 14 of the NPPF requires any adverse impacts of a proposed development to significantly and demonstrably outweigh any benefits, in order justify the refusal of planning permission. In this instance, it is accepted that there would be some adverse impact as a result of the development, and primarily, this would centre around its impact upon the landscape, being located on a predominantly greenfield site on the edge of the settlement.
176. The application site is neither locally, nor nationally designated in terms of its landscape quality, and whilst the development would alter the character of the landscape, such impacts would be limited.
177. The application includes a demonstration of the lack of viability of the site in that with the inclusion of planning obligations, most significantly affordable housing, the development would not provide a competitive return for the developer and enable the development to be deliverable. However, rather than the application include no affordable housing the application still seeks (and can be ensured by a S106 legal agreement) to provide 40% affordable housing, this being – double the necessary requirement. Such a contribution to the delivery of affordable housing is considered a benefit of the development.
178. The key consideration is whether collectively, the identified adverse impacts significantly and demonstrably outweigh the benefits of the development.

179. It is considered in this instance, that the harm identified does not significantly and demonstrably outweigh the benefits that would arise. This being the case, it is considered that the proposals amount to sustainable development, in the context of Paragraph 14 and the presumption in favour of sustainable development is engaged. It is therefore considered that the application should be supported.
180. Concerns expressed regarding the proposal have been taken fully into account, and carefully balanced against the scheme's wider social, economic and community benefits. However, they are not considered to raise issues that justify planning permission being withheld.

RECOMMENDATION

That the application be **APPROVED** subject to the completion of a legal agreement pursuant to Section 106 of the Town and Country Planning Act 1990 to secure the following:

- i) The provision of 40% affordable housing
- ii) That the provisions of S106BA of The Town and Country Planning Act 1990 (as amended) are revoked in relation to the development

And subject to the following conditions:

1. 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.

2. Approval of the details of 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.

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

Plans:

Site Location Plan Rev 1 dated 10/03/15

Landscape Proposals D106.P.101

Documents:

Noise Assessment Document by ENS Ltd reference NIA/5236/14/4965/v2

Biodiversity Management Plan dated February 2015

The Limes, Coxhoe Travel Plan Report by JMP

Reason: To define the consent and ensure that a satisfactory form of development is obtained having regard to Policies E7, E14, E15, E16, E18, H13, T1, T10, R2, Q1, Q2, Q5, Q6, Q8, U5 and U7 of the City of Durham Local Plan 2004 and having regards to Parts 1, 4, 6, 7, 8, 10, 11 and 12 of the NPPF.

4. No development shall take place until the detailed design of the vehicular access to the site has been submitted to and approved in writing by the Local Planning Authority. The access shall thereafter be implemented in accordance with the approved details.

Reason: In the interests of highway safety having regards to Policy T1 of the City of Durham Local Plan 2004. Required to be pre-commencement as the final access arrangements to the site should be known prior to works commencing.

5. No development shall take place until a scheme for the management and disposal of surface water from the development has been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be implemented in accordance with the approved details.

Reason: In the interests of managing surface water disposal and reducing flood risk having regards to Policies U8a and U10 of the City of Durham Local Plan 2004 and having regards to Part 10 of the NPPF. Required to be pre-commencement as designing and potentially implementation of final surface water disposal for the site should be undertaken at an early stage.

6. No development shall take place until a scheme to minimise energy consumption has been submitted and approved in writing by the Local Planning Authority. The scheme shall consist of energy from renewable or low carbon sources provided on-site or an equivalent scheme that minimises carbon emissions to an equal level through energy efficient measures. Thereafter the development shall be carried out in accordance with the approved scheme and retained so in perpetuity.

Reason: In the interests of sustainable construction and energy generation in accordance having regard to Policy U14 of the City of Durham Local Plan 2004 and having regards to Part 10 of the NPPF. Required to be pre-commencement as the energy reduction scheme should seek to involve a fabric first approach designed and potentially implemented at an early stage.

7. No development shall take place until the results of an intrusive site investigation of ground conditions having regards to coal mining legacy in the vicinity of the site have been submitted to and approved in writing by the Local Planning Authority. Where the results of the site investigation necessitate the need for remedial measures to be undertaken then said remedial measures must also be submitted to the Local Planning Authority and the development must thereafter be implemented in accordance with the approved details.

Reason: In the interests of land stability and coal mining legacy issues having regards to Policy U13 of the City of Durham Local Plan and Part 11 of the NPPF. Required to be pre-commencement so that any site instability issues are understood and can be catered for prior to development commencing.

8. No development shall take place until;
 - (i) A Phase 2 Site Investigation and Risk Assessment to fully and effectively characterise the nature and extent of any land and/or groundwater contamination and its implications, including the potential for any migrating

gas has been submitted to and approved in writing by the Local Planning Authority.

If the Phase 2 report identifies any unacceptable risks remediation is required and no development shall take place until;

- (ii) A Phase 3 Remediation Strategy has been submitted to and approved in writing by the Local Planning Authority detailing the proposed remediation measures to be undertaken. 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 the remediation measures.

Upon completion of the remedial works (if required) then;

- (iii) 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 and having regards to Policy U11 of the City of Durham Local Plan 2004 and Part 11 of the NPPF. Required to be pre-commencement so that the potential for contamination can be understood before disturbance.

- 9. No development shall take place until a construction management strategy has been submitted to and approved in writing by the Local Planning Authority. Said management strategy shall include but not necessarily be restricted to the following;

- i) Methods of suppressing dust emanating from the construction works
- ii) Details of methods and means of noise reduction
- iii) Confirmation that the burning of combustible material on site shall be prohibited unless it has been first demonstrated that the material cannot be disposed of in any other suitable manner.
- iv) Details of wheel washing facilities and means of reducing the potential for mud on the roads in the vicinity of the site.

The management strategy shall have regard to BS 5228 "Noise and Vibration Control on Construction and Open Sites" during the planning and implementation of site activities and operations.

The development shall be undertaken in accordance with the agreed management strategy.

Reason: In the interests of residential amenity having regards to Policy U5 of the City of Durham Local Plan 2004 and having regards to Part 11 of the NPPF. Required to be pre-commencement as construction activity mitigation must be agreed before works commence.

10. No development shall take place unless in accordance with the Biodiversity Management Plan dated February 2015. The management methods and proposals contained within the Biodiversity Management Plan shall be implemented in perpetuity.

Reason: To minimise impacts upon protected species and to preserve nature conservation assets having regards to Policies E16 and E18 of the City of Durham Local Plan and Part 11 of the NPPF.

11. No development shall take place unless in accordance with the noise mitigation proposals contained within section 5 of the submitted Noise Assessment Document by ENS Ltd reference NIA/5236/14/4965/v2.

Reason: To ensure that occupiers of the development receive acceptable levels of amenity having regards to Policies Q8 and U7 of the City of Durham Local Plan 2004 and Part 11 of the NPPF.

12. No development shall take place unless in accordance with the landscaping proposals contained within Landscape Proposals drawing D106.P.101. Trees, hedges and shrubs shall not be removed within five years. Any trees or plants which die, fail to flourish or are removed within a period of 5 years from the substantial completion of the development shall be replaced in the next planting season with others of similar size and species. Replacements will be subject to the same conditions. The approved landscaping scheme shall be carried out in the first available planting season following the completion of the development.

Reason: In the interests of the visual amenity of the area having regards to Policies E14, E15, Q5, Q6 and Q8 of the City of Durham Local Plan 2004 and Parts 7 and 11 of the NPPF.

13. No construction works shall take place outside the hours of 8am and 6pm Monday to Friday and 8am to 1pm on a Saturday. No works shall occur on any Sunday or Bank Holiday.

Reason: In the interests of residential amenity having regards to Policy U5 of the City of Durham Local Plan 2004 and having regards to Part 11 of the NPPF.

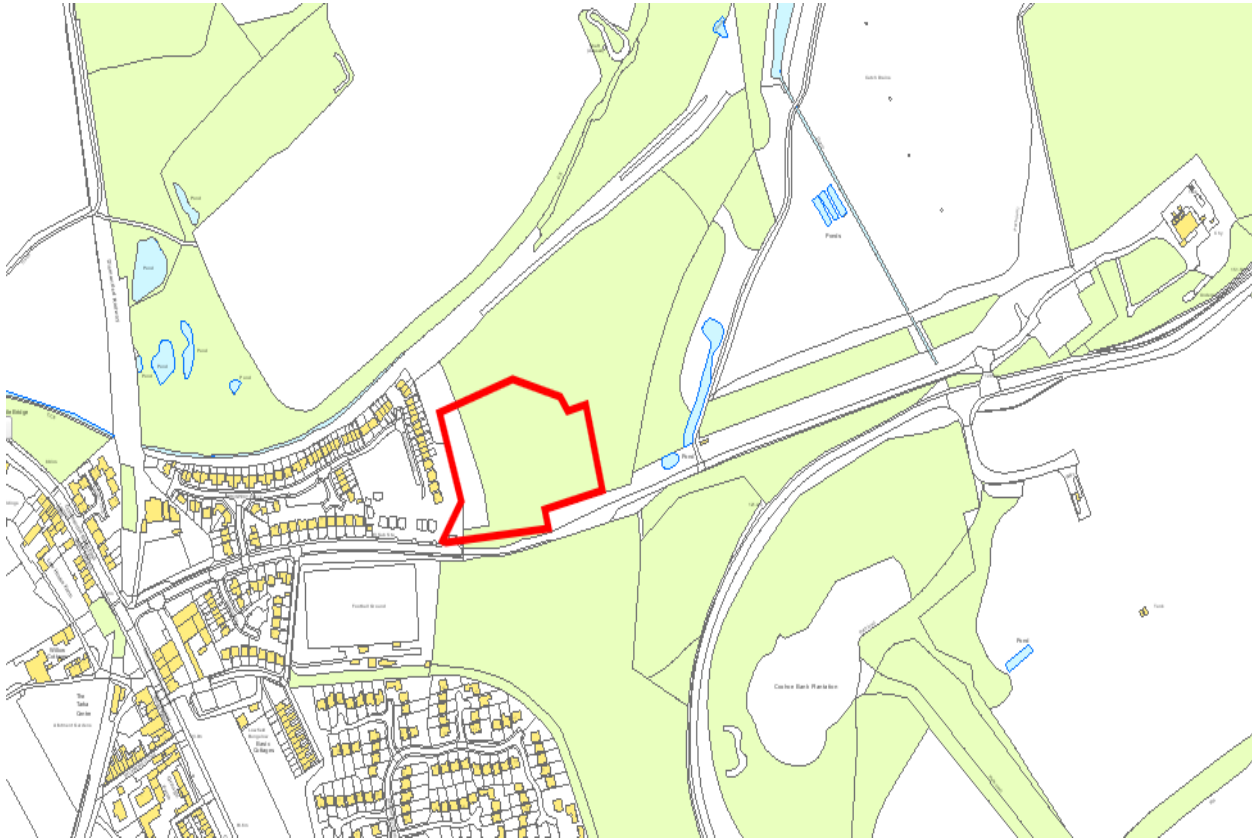
STATEMENT OF PROACTIVE ENGAGEMENT

The Local Planning Authority in arriving at its decision to approve the application has, without prejudice to a fair and objective assessment of the proposals, issues raised and representations received, sought to work with the applicant in a positive and proactive manner with the objective of delivering high quality sustainable development to improve the economic, social and environmental conditions of the area in accordance with the NPPF. *(Statement in accordance with Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.)*

BACKGROUND PAPERS

- Submitted application forms, plans supporting documents and subsequent information provided by the applicant
- The National Planning Policy Framework (2012)

- National Planning Practice Guidance
- City of Durham Local Plan 2004
- The County Durham Plan (Submission Draft)
- Statutory, internal and public consultation responses



Planning Services

DM/15/00793/OUT

Construction of 55 residential dwellings comprising 22 affordable dwellings and 33 open market dwellings with associated infrastructure, landscaping and engineering works (outline, all matters reserved except access).

Hellens Group Limited

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Comments

Date
22nd September 2015

Scale
Not to scale