

# COMMITTEE REPORT

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### APPLICATION DETAILS

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<b>APPLICATION NO:</b>	DM/18/01298/FPA
<b>FULL APPLICATION DESCRIPTION:</b>	Erection of 28 dwellings for over 55s
<b>NAME OF APPLICANT:</b>	Holmside Developments Ltd
<b>ADDRESS:</b>	Land to the North of St Johns Mews Burnhope
<b>ELECTORAL DIVISION:</b>	Lanchester
<b>CASE OFFICER:</b>	Steve France Senior Planning Officer Telephone: 03000 264871 <a href="mailto:steve.france@durham.gov.uk">steve.france@durham.gov.uk</a>

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### DESCRIPTION OF THE SITE AND PROPOSALS

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#### The Site

1. The application site is 1.5 ha. of land, to the north of Burnhope, a village sited north of and on top of the escarpment above Lanchester and the A691, 6 miles north-east of Durham City. The village has a small range of services and facilities proportionate to its size, including a community hall, small shops, café, church and school, relying on the hierarchy of surrounding settlements for others. Buses between Stanley and Lanchester connect the village to the sustainable transport network via the 18 bus stops in the settlement.
2. The land is currently used for grazing as improved grassland, subdivided with wooden fences. The west boundary is formed by a small treed embankment, formerly a mineral railway line, now a public footpath. The eastern boundary is mostly open, with some short remnants of hedging, with surrounding countryside mostly also in grazing use. A second public footpath crosses the northern extent of the site. To the south of the triangular site is St. John's Mews, a modern development of 9 large detached dwellings in a cul-de-sac. The proposed access to the development is through this development, and as the cul-de-sac is unadopted, the application's 'development boundary' includes this road as far as the public highway – the main road through the village. This is to assist in preventing the new housing becoming 'landlocked' – although access rights would also need to be ensured through appropriate legal negotiation - and make sure that the new development is connected to the adopted highway and further to allow improvement works to take place within the red line boundary within the scope of the application.

## The Proposal

3. The application proposes the erection of 28 detached and semi-detached bungalows (including dormer units) as a development for 'over 55's'. This would take the form of 20 2-bed, and 8 3-bed dwellings including 6 affordable units with associated services, infrastructure and landscaping. One of the affordable dwellings would be reserved for a 'Residents Warden/Caretaker' who would serve the development. The main site is triangular in shape, reflecting the site boundaries, served by an extended cul-de-sac. A central communal area with a feature covered shelter is part of the proposal.
4. The existing cul-de-sac at St. John's Mews is included within the development site to connect the proposed housing development with the existing public highway on Holmside Lane. Whilst serving the existing dwellings, the roadway and its drainage system, have not been adopted as a result of its technical specification. This application seeks to bring this to a standard capable of adoption as part of the proposals. This is to ensure it is fit for purpose in service of the new development, and functions appropriately when serving existing residents within the red line of the defined development site.
5. This application is reported to Committee as a 'major' development.

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## **PLANNING HISTORY**

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6. In 2007, an 'outline' application by Barratt Homes for 39 dwellings was refused on the basis that it was outside the village development limit and in open countryside, contrary to Policies EN1, EN2 and BI1 of the Derwentside District Local Plan. A second reason was that visibility from St. John's Mews east was substandard and any intensification of the use of the junction was likely to be prejudicial to highway safety, contrary to Policy TR2 of the Plan.
7. Similar applications for residential development were submitted in 2015 and 2017, both of which were withdrawn prior to determination

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## **PLANNING POLICY**

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### **NATIONAL POLICY**

8. The Government has consolidated all planning policy statements, guidance notes and many circulars into a single policy statement, the National Planning Policy Framework (NPPF), although the majority of supporting Annexes to the planning policy statements are retained. The NPPF was updated in July 2018. The overriding message remains 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.
9. In accordance with paragraph 48 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 below.

10. The following elements of the NPPF are considered relevant to this proposal;
11. *NPPF Part 2 - Achieving sustainable development.* The purpose of the planning system is to contribute to the achievement of sustainable development and therefore at the heart of the NPPF is a presumption in favour of sustainable development. It defines the role of planning in achieving sustainable development under three overarching objectives – economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways. The application of the presumption in favour of sustainable development for plan-making and decision-taking is outlined.
12. *NPPF Part 5 – Delivering a sufficient supply of homes.* To support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.
13. *NPPF Part 6 - 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 a low carbon future.
14. *NPPF Part 8 - Promoting healthy and safe communities.* The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.
15. *NPPF Part 9 - Promoting sustainable transport.* Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.
16. *NPPF Part 11 - Making effective use of land.* Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land.
17. *NPPF Part 12 - Achieving well-designed places.* The Government has attached great importance to the design of the built environment, with good design a key aspect of sustainable development, indivisible from good planning, with this section of the revised Framework document expanded.
18. *NPPF Part 14 - Meeting the challenge of climate change, flooding and coastal change.* The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.
19. *NPPF Part 15 - 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.

#### **NATIONAL PLANNING PRACTICE GUIDANCE:**

20. The National Planning Practice Guidance (NPPG) both supports the core government guidance set out in the NPPF, and represents detailed advice, both technical and procedural, having material weight in its own right. The advice is set out in a number of topic headings and is subject to change to reflect the up to date advice of Ministers and Government.
21. *Climate change* - Addressing climate change is one of the core land use planning principles which the National Planning Policy Framework expects to underpin both plan-making and decision-taking. Planning can also help increase resilience to climate change impact through the location, mix and design of development. Reflecting the 'golden thread' of the NPPF, sustainable development is key.
22. *Natural Environment* - Section 40 of the Natural Environment and Rural Communities Act 2006, which places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. A key purpose of this duty is to embed consideration of biodiversity as an integral part of policy and decision making throughout the public sector.
23. *Design -The importance of good design.* Good quality design is an integral part of sustainable development. The National Planning Policy Framework recognises that design quality matters and that planning should drive up standards across all forms of development. As a core planning principle, plan-makers and decision takers should always seek to secure high quality design, it enhancing the quality of buildings and spaces, by considering amongst other things form and function; efficiency and effectiveness and their impact on wellbeing.
24. *Flood Risk and Coastal Change* - The general approach is designed to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. Application of the sequential approach in the plan-making process, in particular application of the Sequential Test, will help ensure that development can be safely and sustainably delivered and developers do not waste their time promoting proposals which are inappropriate on flood risk grounds.
25. *Land Stability* - The guidance provides advice to local authorities and developers to ensure that development is appropriately suited to its location, and that there are no unacceptable risks caused by unstable land or subsidence.
26. *Air Quality* – sets out the national European and National legislative framework and a local air quality management (LAQM) regime which requires every district and unitary authority to regularly review and assess air quality in their area. Whether or not air quality is relevant to a planning decision will depend on the proposed development and its location.
27. *Land affected by Contamination* - When dealing with land that may be affected by contamination, the planning system works alongside a number of other regimes including Building Control and Environmental Protection. To ensure a site is suitable for its new use and to prevent unacceptable risk from pollution, the implications of

contamination for a new development would be considered by the local planning authority to the extent that it is not addressed by other regimes.

28. *Planning obligations* - Planning obligations mitigate the impact of unacceptable development to make it acceptable in planning terms. Obligations should meet the tests that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind. These tests are set out as statutory tests in the Community Infrastructure Levy Regulations 2010 and as policy tests in the National Planning Policy Framework.
29. *Noise* - Noise needs to be considered when new developments may create additional noise and when new developments would be sensitive to the prevailing acoustic environment. Consideration should be given to whether significant adverse effect or an adverse effect occurs or is likely to occur; or whether a good standard of amenity can be achieved. Paragraph 180 of the NPPF provides policy support to this aspect.

#### **LOCAL PLAN POLICY:**

30. The following are those saved policies in the Derwentside District Local Plan 1997 relevant to the consideration of this application:
31. *Policy GDP1 – General Development Principles* – outlines the requirements that new development proposals should meet, requiring high standards of design, protection of landscape and historic features, protection of open land with amenity value, respecting residential privacy and amenity, taking into account ‘designing out crime’ and consideration of drainage. In terms of paragraph 11 of the Framework this is considered the ‘most important policy’ for determining the application.
32. *Policy EN1 – Development in the Countryside* – will only be permitted where it benefits the rural economy / helps maintain / enhance landscape character. Proposals should be sensitively related to existing settlement patterns and to historic, landscape, wildlife and geological resources.
33. *Policy EN2 – Preventing Urban Sprawl* – Except where provision has been made in the plan, development outside built up areas will not be permitted if it results in: the merging / coalescence of neighbouring settlements; ribbon development or; and encroachment into the countryside.
34. *Policy EN11 – Trees and Development* – states that throughout the district existing trees should be retained where possible.
35. *Policy HO22 – Recreational Public Open Space within Housing Layouts* - this Policy covers open space provision within housing sites. It states that provision should be made on site where possible, or via a financial payment in lieu of direct provision, where sufficient provision cannot be made on site. The OSNA (2010) sets out the most up to date position in respect to open space provision across the county and provides a formula for calculating requirements on a site specific basis. This is a relevant material consideration in conjunction with Policy HO22 and paragraph 96 of NPPF.
36. *Policy TR2 – Development and Highway Safety* – relates to the provision of safe vehicular access/exit, adequate provision for service vehicle manoeuvring, access for emergency vehicles and access to the public transport network.
37. *Policy TR3 – Cycling* – Requires cyclists’ needs to be taken into account when considering proposals for new traffic management, road improvements and new

developments. Permission will only be granted if safe and convenient access and cycle parking facilities such as racks or wall bars are provided.

## RELEVANT EMERGING POLICY:

38.Paragraph 48 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. An 'Issues & Options' consultation was completed in 2016 on the emerging the County Durham Plan (CDP) and the 'Preferred Options' was approved for consultation at Cabinet in June 2018. However, the CDP is not sufficiently advanced to be afforded any weight in the decision making process at the present time.

*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.cartoplus.co.uk/durham/text/00cont.htm>.*

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## CONSULTATION AND PUBLICITY RESPONSES

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### STATUTORY RESPONSES:

39.*Highways* – The parking scheme was significantly redesigned during the application process at the request of Highways Engineers. However, further amendments are required to the internal layout to allow the scheme to meet adoption design layout highway standards

40.Ongoing discussions on the works required to bring the existing cul-de-sac of St. John's Mews to a standard capable of adoption are still under way as this report is being prepared. Highways Engineers write,

- *'The applicant has discussed the proposed development with myself and the Councils Highways Adoption Engineer Jon Hogarth, the proposed site is currently served by the unadopted road of St Johns Mews. In the past St Johns Mews was not adopted by the Council because of a problem with the sewers, NWL could not conclude an easement through some of the residents' gardens and therefore not adopt them.*
- *The Highways Adoption engineer and myself have advised the applicant the course of action to be taken to progress the Section 38 adoption of St Johns Mews, the main issue being the Section 104 Sewers Adoption Certificate needs to be concluded with the Water Authority before further development would be supported by the Highways Department.*
- *In summary the proposed development would not be supported by the Highways Department unless St Johns Mews is adopted as public highway. No further development should be brought forward either and as such a planning condition should not be attached to any future planning permissions being granted to this current application until this matter has been dealt with'.*

41.*Northumbrian Water* – ask for a condition to be attached to any approval requiring development to be implemented in line with the latest submitted drainage scheme.

### EXTERNAL CONSULTEE RESPONSES:

42. *The Coal Authority* – recommends that the LPA impose a Planning Condition should planning permission be granted for the proposed development requiring site investigation works prior to commencement of development. In the event that the site investigations confirm the need for remedial works to treat any areas of shallow coal mine workings or any mine entries to ensure the safety and stability of the proposed development, this should also be conditioned to ensure that any remedial works identified by the site investigation are undertaken prior to commencement of the development.

#### **INTERNAL CONSULTEE RESPONSES:**

43. *Spatial Policy* – have confirmed that in terms of the Open Space needs assessment (OSNA) that no contribution would be sought for play space, due to the nature of the development. A scheme of 28 units would generate 62 residents, generating an off-site demand for Parks and Recreation and Allotments. The OSNA assesses that each resident would generate a requirement of £639, therefore a requirement from the overall scheme of £39,618.

44. In terms of the relevant policies they confirm:

- Policy EN1 is largely up-to-date and not connected with housing supply,
- Policy EN2 seeks to prevent encroachment into the countryside, which as an established planning principle is Framework compliant,
- Policy HO7/BI1 is a useful starting point for consideration but is out-of-date,
- Policy HO22 can be given some weight when assessed in conjunction with an up-to-date evidence base,
- PolicyTR2's general aims are consistent with the Framework.

The scheme proposes older persons housing and (potentially) affordable units in accordance with numerical local requirements. This would help to satisfy local housing need and weight can be given to this (albeit dependent upon the final model agreed for the affordable element).

45. *Drainage and Coastal Protection* – Engineers offer no objection to the scheme, requesting that the surface water drainage implications of the scheme should ideally be dealt with through a sustainable drainage system, the details of which should be agreed before the approval of the scheme. Engineers' response to the detailed scheme is still outstanding as the report is written, and will be verbally reported to Members.

46. *Design and Conservation* - The original scheme scored well against BLF 12 principles at internal design review in terms of character, creating well defined streets and spaces, the arts and crafts style of the bungalows etc. The submitted revised layout addresses a number of points from the amber scorings by virtue of a reduction in the amount of hard standing in the SW corner of the site replaced with green space, providing rumble strips to encourage lower vehicle speeds, adding a footpath link in the north to connect into the existing public right of way network, breaking up the parking bays and providing these in-curtilage etc. As such the revised scheme represents an improvement compared to the original and as a consequence no design based objection is raised.

47. *Landscape* – acknowledged the lack of formal designations on or around the site. Regretting the lack of a tree survey of the specimens adjoining the site and their proximity to dwellings on the west boundary. The intrusion into the countryside was objected to.

48. *Ecology* – rues the lack of detailed information on biodiversity delivery within the site boundaries, given that the development of the land will result in a net bio-diversity loss.
49. *Environment, Health and Consumer Protection (Air Quality)* – There are no known sources in the vicinity of the proposed properties of emissions of one or more of the eight air quality pollutants that are subject to review and assessment under Local Air Quality Management. This covers emissions from vehicle exhaust fume (Nitrogen Dioxide and Particulates) and from point sources e.g. combustion plant, industrial installations. The proposal will not therefore give rise to the exposure of receptors (residential dwellings, care homes, schools, hospitals.) to levels of one or more of the eight air quality pollutants that are close to or exceed the national air quality objectives. Therefore, no mitigation measures to reduce the exposure of the future occupants of the dwellings to emissions of air quality pollutants is required.
50. *Contamination* – Environmental Health Officers accept the findings of the submitted reports and appraisals including localised remediation of areas with high arsenic and lead levels, suggesting monitoring conditions be attached to any approval.
51. It is suggested however that a condition to require the submission and approval of a Dust Action Management Plan should be included as a requirement in the event of an approval.
52. *Affordable Housing* - Taking the relevant policies into account the site falls within a MEDIUM viability area. This means that 15% of properties on the scheme would need to be affordable. Where a discounted sale home ownership product is being considered, we would require the developer to provide an indication of the open market price of the discounted units, to allow this proposal to be supported. This information is required to allow the percentage discount to be determined to ensure the units comply with the affordability criteria. Where affordable rent is being considered the developer should seek a registered provider partner as soon as possible to determine interest in the site. There is a requirement to provide 10% of the private and intermediate properties for older people. We therefore would welcome bungalow or Building for Life provision.
53. *Education* – Confirm the development should not impact on the amount of school places available in the area.
54. *Footpaths* - Public footpath nos. 40 and 26 Burnhope Parish abut the west and north site boundaries respectively. The application documentation refers to an outdated version of the definitive map from 2011 which does not show footpath no. 40. This is an attractive and locally valued path which follows the route of a former mineral line. It is noted that the proposal to provide a link path between the development and footpath no. 26. The Officer is unable to find any information regarding the intended status of the footpath or future maintenance responsibilities. The merits of providing the link path on the above grounds is questioned, plus possible implications for resident privacy and security (unit 15 will have footpaths to three sides) and any clear benefits to the wider public.
55. *Archaeology* – note that their ‘best-practice’ requests an assessment prior to the submission of an application that exceeds 1ha in size, as an interpretation of paragraph 189 of the Framework. No survey has been submitted.

#### **PUBLIC RESPONSES:**

56. Seventeen letters of public consultation were sent out to nearby residents. Site notices were posted on surrounding footpaths and an advertisement placed in the local press.

There were objections from 14 properties and a neutral 'representation' from the Parish Council.

57. Burnhope Parish Council wish the County Council to consider the application 'within all existing planning policies'.
58. Local residents in St. John's Mews have expressed frustration with the drip-feed submission, omissions, quality of information and amendments during the planning process, affecting their ability to understand and comment on the proposals. Those residents have a formal relationship with the developer in regards of the private drainage system the cul-de-sac operates. Their significant concerns on this system and the unadopted roadway above it are relevant to the current application in so far as it relates to the shared roadway and footpaths that form the existing cul-de-sac and that are propose to also serve the new development. They also point out the claimed public consultation exercise by the developer happened some years ago.
59. Residents have a number of concerns, but their main focus is on these two issues.
60. The applicant's recent communications to residents regarding the implications of the new drainage scheme to them have caused distress and indignation. The applicant's history of maintenance of the existing system and inability to bring it to an adoptable standard to date gives concern for the expanded system, as does its detailed technical specification and lack of information on critical elements. Drainage concerns extend to surface water issues from the adjacent land that run onto the site, with ground conditions impermeable. The development will significantly exacerbate existing problems in this regard.
61. Highway safety in the Mews is a concern, with the additional traffic from 28 dwellings considered unacceptable. Young children who currently play in the street will not be able to do so. The proposals and their justification are inaccurate and misguided. In addition to the restricted dimensions of the existing cul-de-sac already serving 9 properties on the Mews, a 'serious visibility issue' with the junction of Holmside lane is pointed out. The lack of adoption to date and the likelihood of future adoption are of concern.
62. It is pointed out that the Council has a strong housing supply figure, and that the proposed development is in the countryside contrary to Planning Policy, being outside the settlement limit defined in the Local Plan. The site was assessed as unsuitable in the SHLAA. There is a range of property available for sale in the village. The proposals and controls as far as they relate to 'over 55s' are unclear and unenforceable. The proposed Management Committee is 'totally unworkable', if it exists. Residential amenity distances on the southern boundary of the site are below standard and not acceptable. Overhead power cables on the site are not accommodated. The triggers for implementation of the affordable housing could be abused. There is still doubt over the accuracy of the current plans and house-types. The potential noise implications of a pumping station of increased size have not been set out or considered. Wildlife using the site will be negatively affected. Ground stability conditions are of concern as shown in the mining assessment which is not of sufficient detail.

#### **APPLICANT'S STATEMENT:**

63. We began pre-application consultation with Officers on this scheme approximately five years ago and this is the third application that has been lodged; two previous applications having been withdrawn. Until relatively recently, Durham did not have an established objectively assessed housing land supply, but a previous proposal for a commercial market housing scheme by Barratt Homes had been resisted by Officers

anyway in spite of this. Presently, there is not considered to be a shortage of housing land supply, but we feel that this is not a key issue anyway, as we have always discussed potential for a scheme that delivers a speciality product that is much needed regardless, in a settlement which has a reasonable level of local facilities and services. In any event, our proposal for a bespoke development of bungalows for elderly persons appeared to us to have been supported by Officers, in principle, and our discussions over the last five years were held on that basis. We understand that, although no guarantees can ever be provided, we believed that we were engaged in meaningful discussions rather than discussions that would not lead anywhere, because this, after all, would have been a waste of everyone's time.

64. It is clear that during the time this scheme has been developed, there have been some challenges, including consultation with the residents of St. Johns Mews, even though other Burnhope residents were generally supportive, in principle, and we were encouraged by approaches from interested parties during the consultation process, who expressed an interest in potential purchase of the dwellings. We have addressed technical issues of highway and drainage adoption which we have confirmed can be resolved via a planning agreement and appropriate planning conditions, in the event of approval.

65. The scheme we have now developed is a very high-quality bespoke scheme providing a category of housing that is in high demand and short supply, regardless of the pre-existing or present housing land supply situation. It is also for a specialist category of users, the over 55's; with bespoke dwellings rather than standard house builder product; mainly small two-bedroom bungalows; with a good standard of accommodation; built to "Lifetime Homes" standard; with "Secured by Design"; grouped around an attractive central greenspace and with an informal layout which was welcomed in principle via the Council's informal design review process. There is also a warden proposed to be on hand to manage the facility on behalf of the residents. We have specified the required level of affordable homes which may be delivered by a Planning Agreement and our consultation with the Council's Housing Officers confirmed that there would be very strong interest in bungalows from a range of Registered Social Landlords. Furthermore, the proposed planning agreement would restrict the development to the over 55's as has been achieved in many other developments in other Local Authority areas up and down the country. In summary, this proposal represents an opportunity to provide much needed, high quality homes in a safe environment of supported independence.

*The above is not intended to list every point made and 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 <https://publicaccess.durham.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=P81S1HGDKWH00>*

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## **PLANNING CONSIDERATIONS AND ASSESSMENT**

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### The Principle of the Development

66. 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 issue in this instance relates to the principle of development in the countryside, with highways and drainage issues of particular concern to residents.

## The Development Plan

67. 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 Derwentside District Local Plan remains the statutory development plan and the starting point for determining applications as set out at Paragraph 12 of the NPPF. However, the NPPF advises at Paragraph 213 that the weight to be afforded to existing Local Plans depends upon the degree of consistency with the NPPF.
64. The Local Plan was adopted in 1997 and was intended to cover the plan period until 2006. However, NPPF Paragraph 48 advises that Local Plan policies should not be considered out-of-date simply because they were adopted prior to the publication of the NPPF. Notwithstanding this, it is considered that a policy can be out-of-date if it is based upon evidence which is not up-to-date/is time expired depending on the circumstances.
65. The County Plan is at the beginning of the process to consider and ultimately adopt its policies. In terms of this document's relevance to the current application is dictated by this Plan's early stage, it being considered that only the position on the five year housing land supply is of relevance and material weight to this application.

## The NPPF

66. Paragraph 11 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 an up-to-date development plan without delay; or
  - where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
    - i. the application of policies in this (sic) Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
    - ii. 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.
68. Paragraph 73 of the NPPF requires Local Planning Authorities (LPAs) to maintain a five-year supply of deliverable sites (against housing requirements) thus boosting the supply of housing.

## Five Year Housing Land Supply

69. Paragraph 73 of the NPPF requires Local Planning Authorities (LPAs) to maintain a five-year supply of deliverable sites (against housing requirements) to ensure choice and competition in the market for land.
70. In September 2017, the Government published a consultation document entitled "*Planning for the Right Homes in the Right Places*", which introduced a standard methodology for calculating housing need (OAN). Applying that methodology for County Durham, the housing need figure would be 1,368 dwellings per annum (dpa).
71. The Government published its response to the consultation in March 2018, and clarified that the standardised approach is the most appropriate method for

calculating need as it meets the three key principles of being simple, realistic and based on publicly available data. At the same time, the revised draft NPPF was issued for consultation, with paragraph 61 of that document advising that, 'in determining the minimum number of homes needed, strategic plans should be based upon a local housing need assessment, conducted using the standard method in national planning guidance'.

72. The Government also issued draft planning guidance on 9 March 2018, which sets out that where a local plan is more than five years old and the housing figure needs revising, as is the case in County Durham, the starting point for calculating land supply will be local housing need using the standard methodology.
73. The Council's position on 5-year housing land supply was publically tested at a recent public inquiry (APP/X1355/W/17/3180108 – decision issued 10th May 2018) with the Inspector concluding that the use of the Government proposed standardised methodology for calculating land supply would be premature until it has formally come in to force or until the council has adopted a formal position in relation to its OAN. On the 13<sup>th</sup> June, the 'Preferred Options' of the County Durham Plan (CDP) was presented to the Council's Cabinet and endorsed for consultation. The CDP is aligned with the standardised methodology and formally endorses the use of 1,368dpa as the OAN figure. The Council is able to demonstrate in excess of 6 years supply of deliverable housing land against this figure.
74. Accordingly, the weight to be afforded to the boost to housing supply as a benefit of the development is clearly less than in instances where such a healthy land supply position could not be demonstrated. This will need to be factored into the planning balance.

## Countryside Policy

75. In terms of compliance with the Development Plan, there are no relevant housing Policies. Policies EN1 and to a lesser extent EN2, designed to protect the countryside are compatible with the NPPF and still have weight. Policy BI1, which set a development limit and control housing development in Burnhope is considered unduly restrictive and not consistent with the Framework. These are the three policies used to refuse an application in 2007, that decision being subsequently upheld at appeal.
76. Policy HO7/BI1 is a housing control policy, designed to direct housing within urban areas and of limited weight when assessed against the Framework. The site is an extension into the countryside, and one that does not relate well to the form of the existing settlement – very much an 'add-on' rather than a potential integral part.
77. The countryside potentially affected by the development is open grazing land with basic sub-division by agricultural post and wire fences. The land is not designated, but is attractive open countryside with an intrinsic value that has remained undeveloped through the settlement's mining history. In the public domain as a result of being overlooked by the public rights of way to the north and west of the site – only one of which is acknowledged by the applicant – the urban form of this north end of the village reflects to a large degree the route of Holmside Lane. The proposal reflects the route of the treed footpath on the former waggonway and historic field boundaries rather than being any logical urban extension of the urban settlement.
78. Council Landscape Officers described the arrangement and effect thus: *'This tapering field is orientated northwards at a tangent to the existing pattern of the village's footprint. A developed site would form an uncomfortable incursion into surrounding countryside with only a tenuous connection to the existing settlement. In consequence,*

*the negative effect on the visual amenity value and landscape character of the area can be summarised as significant. The site is overlooked from the tree lined public right of way that runs northwards along the western edge of the site and other public viewpoints at distance. ....The proposals would have significant adverse landscape and visual effects’.*

79. The policies in the Derwentside District Local Plan designed to protect the countryside are considered to be ‘the most important policies for determining the application’ (Framework paragraph 11). Policy EN1, consistent with the NPPF’s approach for acknowledging the intrinsic value of the countryside seeks to, amongst other criteria, help maintain and enhance landscape character, requiring proposals to be sensitively related to existing settlement patterns. The proposals are a pure extension into the countryside, with no justification from the existing urban form. Policy EN2 seeks to prevent urban sprawl, its third criteria precluding, and ‘an encroachment into the surrounding countryside’. Whilst this Policy is less compliant with the advice in the Framework, the proposals clearly are in conflict with it.

#### Housing Policy and Supply

80. The Council is at present able to demonstrate in excess of 6 year’s supply of deliverable housing land. Accordingly, the weight to be afforded to the boost to housing supply as a benefit of the development is clearly less than where such a healthy land supply position could not be demonstrated. This will need to be factored into the consideration of the proposals.

81. The applicant’s case is that the housing to be provided is specialist in nature – aimed at a specific and restricted demographic, where there is an apparent identified shortfall.

82. To be able to give significant material weight to the claimed specialist nature of the development the Council must be able to ensure that the proposals are precise and clear in intent and delivery, and further that if the nature of the scheme is the reason it is acceptable, that there are appropriate mechanisms to ensure that the development will be operated in accordance with the stated operation in perpetuity. The developer writes that, *‘all we can do at this juncture, is point you to some over 55’s developments in England, to demonstrate that these speciality products do exist and have been approved by a large number of local planning authorities’*. The identified examples are run by ‘not for profit’ companies and registered charities, with communal facilities and levels of care available in their offer.

83. This proposal describes the, *‘retirement/independent living village model enables independent living by residents, but nevertheless include the backstop of extra care as and when it may be needed’*. The source or definition of this extra care is not defined and this lack of clarity is a feature of the Management Plan that the applicant relies on to provide his special circumstances. For further example, a legal agreement that would needed to be administered by the Local Authority is described to restrict occupation to ‘over 55’s’. The suggested mechanism – that the legal agreement inserts the requirement into the house conveyances gives the Planning Authority no control.

84. The role of the ‘Residents Warden/Caretaker’ and the necessity for that person to live on site and occupy one of the affordable units is not justified. The role appears to be as an on-site odd job man employed by the Management Committee and possibly individual residents. There is no explained need to live on site to perform their duties. There appears no guarantee that the Management Committee might actually exist. The definition of the term ‘care’ is undefined. The development appears to be a potentially part self-managed community of over 55s who are required to finance a caretaker for general maintenance tasks. Previous iterations of the scheme had included formal

element of care and community facilities. The current proposals do not, despite including language that implies such to Officers.

85. With the applicant claiming a specialist development, Officers are concerned at the nebulous and ill-defined nature of the 'retirement village' and its potentially voluntary management and operation. It is accepted that there is a shortage of bungalows available across the County, and that provision for independent living for older people – now defined in the NPPF as 'People over or approaching retirement age, including the active, newly-retired through to the very frail elderly; and whose housing needs can encompass accessible, adaptable general needs housing through to the full range of retirement and specialised housing for those with support or care needs' – is of positive material weight.
86. With a strong justification required to outweigh those policies seeking to protect the intrinsic value of the countryside, the lack of clarity in the proposals compromises Officers ability to attribute a degree of weight to the proposals that would justify a departure from adopted policy.

### Neighbouring Amenity

87. Policy GDP1(h) seeks to protect residential amenity, and the Local Plan includes supplementary planning guidance (SPG) on residential facing distances. The SPG is seen as a useful guideline for assessing residential amenity, and can be used as a starting point for assessing amenity relationships. Proposed plots 1 and 2 have a separation distance of approximately 14.5m to numbers 6 and 7 St. John's Mews, where the SPG suggests 21m as appropriate – a significant short-fall and therefore a source of concern in terms the potential effect on residential privacy and amenity. This is considered significant enough to warrant a planning refusal reason.
88. There is a high level of residential amenity between the proposed properties within the planned estate. Residential amenity has been improved as part of the last redraft by moving the dwellings away from the trees lining the mineral railway footpath on the west boundary.

### Highways and Drainage

89. Officers insisted that the extent of the development site included the unadopted highway of St. John's Mews. Whilst additional legal agreements would be required to ensure new residents had rights through the existing cul-de-sac, this inclusion gave the opportunity for existing problems to be addressed through the current application. In terms of both the specification and finish of the vehicular public highway, but more importantly the private drainage system, local residents and the developer (consistent to both the existing and proposed developments) have serious disagreements. The current application has brought these issues into a formal process, and to the fore. Outside, but in parallel with the planning process, the developer has issued solicitor's letters to residents, some of whom have connected their own systems into the private communal network. Residents are dissatisfied with the current arrangement and the actions of the developer.
90. The applicant proposes a condition to ensure the drainage system is brought to an acceptable standard before any new property is occupied. The detailed design and implementation of the drainage system is within the remit of the Building Control Regulations and this condition would give an appropriate degree of planning control over it. At present however, Highways Engineers – who would have to ensure the highway within which the drains are contained is built to an adoptable standard – are objecting to the proposals in the absence of formal evidence that the drainage system

can be engineered to an adoptable level. They have further issues with the detailed layout of the estate roadways and parking arrangements, despite this already having been redesigned.

91. The drainage of the site in terms of the new housing development in isolation both for foul and surface water drainage appears in isolation relatively uncontentious. Northumbrian Water ask for a condition to ensure adherence to the submitted report and connection to a specified manhole. Whilst at this point of time, Council Drainage Engineers have not approved the applicant's surface water proposals, the extensive area of open land available would appear to offer opportunities for a SuDS led scheme. The details of the drainage scheme would usually be addressed through to Building Control System.
92. Contention over drainage matters has however focussed on the surface of St. John's Mews, which appears to have been a long running issue between the developer and the residents of the cul-de-sac. The existing system is privately maintained. It is contended by the developer that some properties have duplicated and bypassed the system and that some residents are not contributing the required service charge. Residents meanwhile point to a history of problems with the non-adopted system and its maintenance. That the developer indicates he will discuss and accept a trigger for the drainage system to be brought up to an adoptable standard early in the development process gives comfort that this highly contentious aspect of the proposals has the potential to be addressed.
93. The applicant proposes that a pumping station (not a package plant as set out on the forms), that would also serve existing residents, and would be completed in full before the new development is occupied, secured through the legal agreement. At present Highways Engineers object to the proposals on the basis that it has not been formally established that the drainage scheme can be brought to an adoptable standard.

#### Affordable Housing

94. Affordable housing Officers raised no objections to the scheme on the basis that the developer indicates that the 20% requirement will be provided on site. They are concerned at the lack of detail provided and the apparent lack of contact with local Registered Social Landlords. Whilst this is an issue that could be addressed through an appropriately worded legal agreement, the lack of detail is an issue. The required mechanisms for assessing the Affordable Housing implications have changed as the revised NPPF was introduced during the course of the application as detailed in the consultee response, above.
95. Just as there has been no explanation as to why the 'Residents Warden/Caretaker' has to reside on-site, there is likewise no explanation as to why one of the affordable units has been indicated to house this resident.

#### Scale and character

96. Policy GDP1 of the Plan requires developments to be in keeping with the character and appearance of the area, with form, mass, layout, density and materials appropriate to the site's location. The layout has been revised both to reflect highway engineer's requirements for a standard parking arrangement, and following the forwarded comments of the Council's Design Review meeting. The highways revisions achieve the requested in-curtilage standard parking arrangement at the expense of design quality. The other amendments are acknowledged as improvements by Design Officers in their updated response to the revised proposals, and in terms of the appearance and layout of the development (notwithstanding the residential amenity concerns outlined

above) the proposals are accepted as a high quality, attractive proposal that reflects the emphasis Government currently give to Design matters.

## Education

97. The County Education Department opines that the development should have no effect on demand for school places in the area. The scheme has therefore been appropriately assessed against paragraph 94 of the NPPF.

## Landscaping and Ecology

98. A proposed landscaping scheme has been submitted in detail, but based on an older proposed layout, causing some confusion. The developer asks that this is discounted and a landscaping scheme be conditioned. Whilst this is an issue capable of being conditioned, it compromises the ability of the applicant to demonstrate how a scheme might help off-set the net biodiversity loss that is an inevitable consequence of building on a green-field site. The developer has not provided the required estimation of the amount required to mitigate the effect of development on the natural environment. This means at present, in lieu of this detail, the proposals are contrary to paragraph 170 of the NPPF as they have not shown the scheme will result in a net bio-diversity gain. An ecology survey has however established that no species protected by law will be affected on the site.

## Open Space

80. Spatial Policy Officers have identified a requirement for a contribution of £39,618 to address demand on open and recreational space likely to be generated by the potential 62 residents of the development. This would need to be included in an appropriately worded section of a legal agreement to be signed before any development is approved.

## Legal Agreement

82. Members will be aware of the requirements for seeking and imposing an s.106 agreement for payments in mitigation of lack of provision of on-site requirements. A lack of clarity in the assessment of impacts and the specifics of on-site mitigation for the above topic and a number of others prevents the clarity required in such an agreement.

## Footpaths

99. Footpaths Officers write that they see no benefit to the wider public, and only a security issue for proposed residents from the late inclusion of a footpath link at the northern end of the estate to an existing countryside footpath. The inclusion of this link was at the request of the Council's Design Review to help pedestrian permeability and integrate the development into the existing urban and countryside environment. Footpaths Officers are part of that forum. The proposed additional footpath link is considered by Officers a positive element of the scheme, improving links to the countryside in accordance with paragraph 118 of the Framework.

## Economic Benefits

100. The applicants have indicated that the development will generate 17 equivalent full time jobs, which when pressed in the main relate to the construction process. There has been no methodology provided to show how this figure was arrived at. On this

basis whilst a degree of positive weight can be attributed to this in the planning balance in principle, its vague nature prevents detailed weighting.

101. The 'retirement village' is proposed served by a 'Residents Warden/Caretaker' who will occupy one of the available affordable housing units. The role and necessity for this worker is not clear, whether a site manager or a convenient 'odd job' man. The role of this employee appears to be under the control of the ill-defined 'management committee' who may administer the finished development. Where examples of other developments of 'retirement villages' have been provided, they are under the management of companies who specialise in such as a formalised commercial enterprise.

#### Noise and site works

102. Specialist Officers suggest conditions to mitigate this topic through a Dust Management Plan. A condition for a Construction Management Plan that would include working hours could help mitigate the effect of development works on residents of St. John's Mews in the event of an approval.

103. A resident complains at the noise from the existing drainage pumping plant serving St. John's Mews, pointing out that the implications for the larger plant proposed has not been submitted or assessed. This would need to be formally assessed and mitigated if an approval was proposed

104. Land stability issues for neighbours would be addressed through the condition proposed imposed by the Coal Authority.

#### Heritage Assets

105. There are no Heritage Assets identified on or adjacent to the site. Planning Officers consider there is insufficient justification to insist on archaeological investigation without evidence of existing known heritage assets.

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## **CONCLUSION**

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106. The usual 'Balancing Exercise' does not come into operation in Officer's judgement, as there are relevant Development Plan policies, which are those 'most important for determining the application', that appear consistent, and therefore up-to-date in varying degrees in comparison with the advice in the Framework.

107. Policies EN1 and EN2 of the Development Plan, which seek to protect the countryside for its own intrinsic value and character, stopping encroachment of urban form into the countryside, are consistent with paragraph 170's requirement to recognise the intrinsic character and beauty of the countryside. These are the policies most important for determining an application that proposes developing a green-field countryside site (NPPF paragraph 11) which neither relates well to the existing urban form, nor the countryside surrounding the village.

108. It is acknowledged that the application could bring the benefits of adding to the County's housing supply in a settlement that could be considered proportionately 'sustainable'. It has the opportunity if properly presented to increase opportunities for home ownership and widen the variety of available housing opportunities, both market and affordable. Potential mechanisms that would ensure that the development would

be occupied as intended are weak or absent. In terms of the general housing provision, with the Council's current healthy housing land supply position the benefit is 'limited' as presented by the proposals in their current form.

109. The short term benefits to the local economy brought by the construction phase are identified as a positive aspect of the proposals. Economic activity by new residents counts in the application's favour. Neither benefit has been quantified by the applicants. An assumption has therefore been made that the effects are positive in principle in favour of the proposals, but not significant in the overall assessment.
110. There are elements of the proposal that the developer has sought to off-set for later agreement by imposition of planning conditions, or through a formal legal agreement. As yet a number of the issues, including ecology, are not resolved to a point where they meet the tests legal agreements are required to meet.
111. The objection from Highways Engineers appears a significant impasse at this time. They suggest that consent be withheld on this issue pending satisfaction of other, separate, legislative processes. The proposed highways and drainage scheme has not been presented in sufficient detail to give surety that it can be designed and operated to an adoptable standard. However withholding consent on the basis of a lack of formal Highways and Drainage agreements required under other legislation is not possible.
112. The applicant offers a legal agreement to secure the implementation of these works to an adoptable standard with a trigger early in the construction process. This is a potentially useful device that could give the Council and existing residents' confidence that this critical part of the scheme could be closely monitored and constructed to an agreed required standard.
113. However, in the absence of agreement on an acceptable basic layout, the suggested approach defers too much information until after the planning decision, particularly taking into account the history and operation of this site. This is a general weakness of the whole application, but critical to drainage and highways issues. Officers repeatedly asked for these technical issues to be resolved before an application was submitted or at worst early in the process, so that they did not distract from the main planning judgements. There are still technical discussions and arguments in process as the report for this application, which has been subject to an extended determination period, is being written. Whilst it appears an acceptable scheme could be agreed, to accept the current situation could appear premature.

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## **RECOMMENDATION**

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114. That the application be **REFUSED** for the following reasons:

1. The proposals represent an unacceptable encroachment into the countryside and does not maintain or enhance landscape character, compromising the intrinsic character and beauty of the countryside, contrary to Policies EN1 and EN2 of the Derwentside District Local Plan 1997 (saved Policies).
2. The separation shown between existing and proposed dwellings at the southern boundary is considered to fall well below that which would ensure reasonable expectations of residential privacy and amenity contrary to Policy GDP1 of the Derwentside District Local Plan 1997 (saved Policies).

3. The proposed highways and drainage scheme has not been presented in sufficient detail to give surety that it can be designed and operated to an adoptable standard, contrary to Policies GDP1(I) and TR2 of the Derwentside District Local Plan 1997 (saved Policies) and Part 14 of the NPPF.

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## **STATEMENT OF PROACTIVE ENGAGEMENT**

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The Local Planning Authority in arriving at the recommendation to refuse the application has been consistent in advice with regards the application and has considered the possibility of a positive outcome in accordance with the NPPF but it has not been possible in this instance.

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## **BACKGROUND PAPERS**

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The National Planning Policy Framework (2018)  
National Planning Practice Guidance Notes  
Derwentside District Local Plan 1997 (saved policies)  
Statutory, internal and public consultation responses  
Submitted forms, plans and supporting documents

