

**North Yorkshire Council  
Community Development Services  
Richmond (Yorks) Constituency Area Planning Committee**

**11 May 2023**

**19/01779/OUT - Application for outline planning permission for approximately 70 residential dwellings and associated infrastructure with all matters reserved other than access into the site (as revised by information received on the 10 February 2023).**

**At Land Adjacent Bungalow Farm, Birkby Lane, East Cowton  
For Mr Brian Robinson**

**Report of the Assistant Director - Planning**

**1.0 Purpose of the Report**

- 1.1 To determine a planning application for Application for outline planning permission for approximately 70 residential dwellings and associated infrastructure with all matters reserved other than access into the site at Land Adjacent Bungalow Farm, Birkby Lane.
- 1.2 This matter is brought to Planning Committee owing to the complexity of the Planning Policy issues and other material considerations raised by the application.

**2.0 Summary**

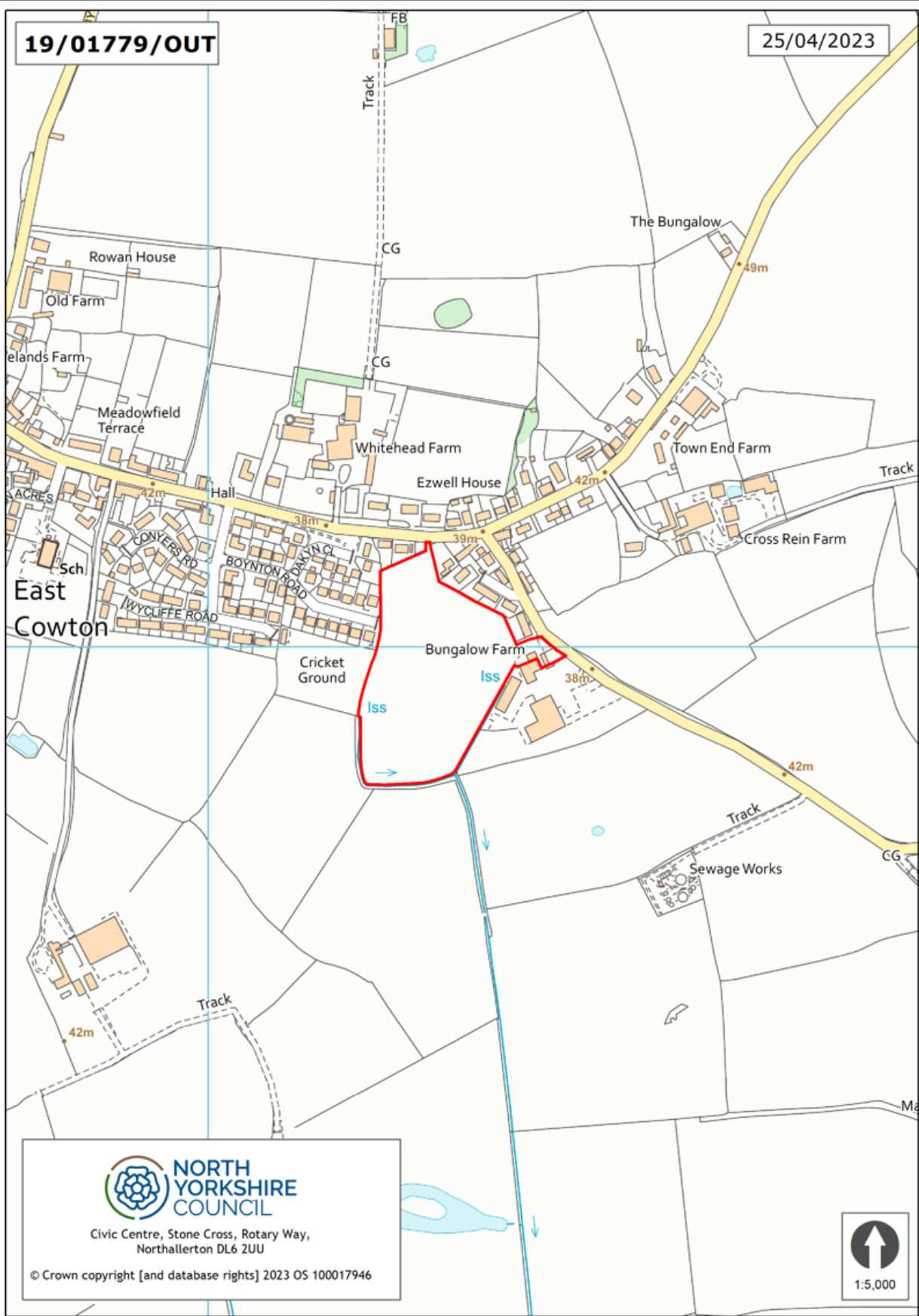
**Recommendation: That planning permission be GRANTED subject to conditions listed below and completion of a S106 agreement with terms as detailed in Table 1.**

- 2.1. The application is for outline planning permission for 70 dwellings on a site on the edge of East Cowton. The site is currently an agricultural field. There is existing housing development adjacent to parts of the site and as such the development is considered to be located adjacent to the development form of the settlement.
- 2.2. The application is in part supported by policy S5 and HG5. However, the development fails to meet all of the requirements of policy owing to the scale of the proposed development resulting in a harmful impact on the character of the settlement.
- 2.3. On this basis for the development to be approved, support must be gained from other material considerations. In this case, that weight comes from improvements to be made to surface water management in the village, providing relief from a long term issue of surface water inundation to the foul sewer resulting in local flooding in homes and gardens.

- 2.4. It is considered that the benefits of the proposed development outweigh the identified harm.
- 2.5. The main determining issues in this case are therefore the balance between the requirements of Local Plan policy versus the benefits resulting from the proposed improvements to surface water management in the village.

19/01779/OUT

25/04/2023



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### **3.0 Preliminary Matters**

3.1. Access to the case file on Public Access can be found here:

[Documents for reference 19/01779/OUT: Public Access](#)

3.2. The main focus of the former allocation and the current application has been the delivery and quantification of water management benefits resulting from the proposed development and the resultant benefits to the village.

3.3. There is 1 relevant planning application for this application which is detailed below.

3.4. 10/01716/FUL - Demolition of existing shop/office, formation of new access, construction of 45 dwellings, SUDS pond and associated drainage infrastructure. Granted 01 August 2008. (Note that this permission was not commenced and as such has expired)

### **4.0 Site and Surroundings**

4.1 The application site is currently an open agricultural field, largely flat but with a gentle downward slope to the south west. The field has most recently been planted with arable crops. The boundaries of the site are largely hedged with a mixture of native hawthorn and residential boundary hedges. The boundaries vary in height between approximately 1.5m and 4m. The entrance to the site is located between an existing bungalow and a farm machinery sales business.

4.2 The north-east boundary and the southern boundary are bounded by existing residential development, which is mainly brick built and of one and a half and two storey forms. The site is bounded to the west, north and east by residential developments. To the south east is a farm machinery sales business, Brian Robinson Machinery. The remainder of the site adjoins open farmland.

4.3 The village's largest housing estate is located immediately to the west of the site. The properties are detached and date from the 1960's / 1970's. The estate roads connect to Meadowcliffe Terrace via Wycliffe Road. None of the residential development surrounding the northern end of the site exceeds two storeys in height. However, the properties date from various periods.

4.4 The site was formerly identified by the Council as a housing site within the LDF Allocations DPD (Policy NH4). This allocation has not been taken forward into the Local Plan and as such can be given no weight in the determination of the application.

### **5.0 Description of Proposal**

5.1. This application is in outline and is a revised scheme for 70 dwellings. The site has a previous approval for 45 dwellings. However, since the approval, due to the onerous drainage requirements, which included the building of a new pumping station, no developer has offered to take the site forward.

5.2. The matters for approval at this stage are access only. The remaining matters, i.e. appearance, landscaping, layout and scale would be for a later application if this is approved.

## **6.0 Planning Policy and Guidance**

- 6.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that all planning authorities must determine each application under the Planning Acts in accordance with Development Plan so far as material to the application unless material considerations indicate otherwise.

### Adopted Development Plan

- 6.2. The Adopted Development Plan for this site is the Hambleton Local Plan adopted February 2022.

### Emerging Development Plan – Material Consideration

- 6.3. The Emerging Development Plan for this site is listed below. It is considered of no weight due to being in the early stages of development.

### Guidance - Material Considerations

- 6.4. Relevant guidance for this application is:
- National Planning Policy Framework 2021
  - National Planning Practice Guidance
  - National Design Guide 2021
  - Supplementary Planning Document - Open Space, Sport and Recreation. Adopted 22 February 2011

## **7.0 Consultation Responses**

- 7.1. The following consultation responses have been received and have been summarised below.
- 7.2. Parish Council: Councillors noted the increased number of properties for which outline planning permission is sought when compared to the number previously approved under reference 10/01716/FUL and suggest that a development of this size within the village must include a significant number of affordable homes, providing accommodation suitable in particular for first time buyers and the elderly. In light also of historic problems in the village concerning flooding, they stress that drainage calculations must be robust and accurate with a view to ensuring adequate drainage design and infrastructure.

The Parish Council has also provided a letter of support to the applicant following a meeting with the developer. The Parish states that they are seeking a good proportion of affordable housing, access to housing for first time buyers, the drainage issues to be addressed. It was stressed that drainage calculations should be robust. Subject to the necessary consents from pertinent authorities, the Parish were supportive of the proposals.

- 7.3. Highway Authority: In assessing the submitted proposals and reaching its recommendation the Local Highway Authority has taken into account the following matters: The proposed site has a single priority junction onto Birkby Lane as the vehicular access, which meets the visibility requirements set out in Manual for Streets for a 30mph speed limit. Whilst a single point of access is considered satisfactory, it would be expected that an emergency link be provided for site as it serves over 50 dwellings. Such a link could be incorporated into the footpath

connection either onto Main Street or Boynton Road. There are no Highway Authority objections to the proposed development. Conditions are recommended.

Discussion has taken place with regard to a requirement for local road widening and the provision of a footpath along the road frontage. This is detailed in the Highways Section of this report.

#### 7.4. Yorkshire Water: Waste Water

Yorkshire Water does not wish to make any change from previously imposed conditions, however there are the following comments: -

- 1.) The drainage details submitted on drawing 000-09 (initial issue) dated 15/12/2022 that has been prepared by Portland Consulting Engineers require amendments, but if planning permission is granted, the matter can be dealt with via condition. The following points should be addressed:
  - a.) the submitted drawing should show the proposed rate of foul water pumped discharge
  - 2.) If the developer is looking to have new sewers included in a sewer adoption agreement with Yorkshire Water (under Section 104 of the Water Industry Act 1991), he should contact our Developer Services Team (telephone 0345 120 84 82, email: [technical.sewerage@yorkshirewater.co.uk](mailto:technical.sewerage@yorkshirewater.co.uk)) at the earliest opportunity. Sewers intended for adoption should be designed and constructed in accordance with the WRc publication 'Sewers for Adoption - a design and construction guide for developers' 6th Edition as supplemented by Yorkshire Water's requirements.

7.5 Teesside Airport: I refer to your consultation email dated 24th February 2023. The airport safeguarding team has assessed the proposal in accordance with the CAA ADR - Aerodromes Regulation 139-2014 and it does not conflict with the safeguarding criteria for the airport.

7.6 Ministry of Defence : No safeguarding objections.

7.7 North Yorkshire Police Designing out Crime: No objections but sets out recommendations to be incorporated at the Reserved Matters stage. The report also comments on the need to be tenure blind in the development to increase social cohesion.

7.8 Natural England: No objections raised but sets out standard advice.

7.9 Swale and Ure Drainage Board: Sets out the requirements of the Board, including a controlled run off rate of 1.4ls/ha along with there permission requirements.

#### Local Representations

7.10 15 local representations have been received of which 4 in support and 11 are objecting. A summary of the comments is provided below, however, please see website for full comments.

#### 7.11 Objections

- Flooding
- Scale of development

- No demand for houses to meet an employment need
- Sewerage/drainage system is at capacity/overloaded
- Increased traffic/congestion
- Road safety/suitability for scale of development
- Local facilities exaggerated in planning statement
- Limited post office and village shop, play areas and school not big enough
- Poorly designed layout and dwellings
- Biodiversity and habitats should be enhanced
- Smaller homes required for local workers and downsizing
- The development will block the watercourse and exacerbate issues
- Design of dwellings should be future proof/carbon neutral
- Issues of infrastructure including electricity provision
- Creation of a “rat run” between proposed development and Boynton Road
- No justification for increased number of houses

Owing to the length of time that the application has been live and due to the changes to the scheme since the original submission a full re-notification was undertaken. The following is a summary of the comments received following the re-consultation.

- This site is subject to flooding and is not suitable for development
- The existing drainage networks are at capacity
- Local pump station is not suitable
- The original response from Yorkshire Water suggested that a new pump station is needed
- Entrance to the site is not suitable for the development
- Local road network is not suitable for the envisaged traffic
- Bus services are inadequate
- Few employment opportunities in the village resulting in most commuting
- This development is too big for the village
- This development will not resolve the drainage issues
- Local electricity supply is inadequate
- Brian Robinson Machinery has expanded and the combined traffic is not acceptable
- There is no longer any proposal for upgrade to the local pump station
- The current proposals include development on what was envisaged as a SUDS pond
- There are insufficient services in the village for a development of this scale

Letters of support outline the need for affordable homes for young local people and new families to support local services such as the school

## **8.0 Environment Impact Assessment (EIA)**

- 8.1. The development proposed does not fall within Schedule 1 or 2 of the Environmental Impact Assessment Regulations 2017 (as amended). No Environment Statement is therefore required.

## **9.0 Main Issues**

9.1. The key considerations in the assessment of this application are:

- Principle of development
- Drainage
- Affordable Housing
- Residential amenity
- Highways
- Ecology and Biodiversity Net Gain
- Heritage matters
- S106 Agreement

## **10.0 Assessment**

### Principle of Development

- 10.1. The principle of residential development on much of the site was formerly established by the allocation of the site for housing under policy NH4 of the Local Development Framework. Following the adoption of the Local Plan, this policy cannot be given weight in the Planning Balance. That said it is of note that this application was submitted in 2019 and at that time the site was allocated for housing development being at a density of approximately 30 dwellings per hectare, resulting in a capacity of around 48 dwellings (of which a target of 40% should be affordable). Importantly the allocation included a requirement for improved sewerage and sewage disposal infrastructure to serve the settlement as a whole.
- 10.2. Consent was granted in 2011 under application 10/01716/FUL for 45 dwellings which included a SuDS pond and associated drainage infrastructure. Whilst permission had been granted (now expired) the landowner found that, due to the relatively small size of the development and the onerous infrastructure requirements, no developer came forward to develop the site in line with the permission.
- 10.3. As a result of this, this application proposes to increase the number of dwellings from 45 to 70 and to incorporate land to the south of the former allocation into the application site. In this way it is anticipated that the viability improves sufficiently to facilitate development. A developer is now on board and is looking to develop the site for 100% affordable housing. The question of the necessity of the quotient of development has been put to the applicant and they have responded that a smaller development would not be viable. No specific evidence has been provided on this basis.
- 10.4. The Local Plan Policy position is effectively described by Policy S5 and HG5 as set out below
- 10.5. Policy S5 states that the Council will seek to ensure that new development recognises the intrinsic beauty, character and distinctiveness of the countryside as an asset that supports a high-quality living and working environment, contributes to the identity of the district, provides an attractive recreational and tourism resource and is a valued biodiversity resource. The countryside is defined as land outside the existing built form of a settlement identified in the settlement hierarchy in policy S3.



- 10.6. The built form is defined as the closely grouped and visually well related buildings of the main part of the settlement and land closely associated with them. The built form excludes:
- a. any individual building or group of dispersed buildings or ribbon developments which are clearly detached from the main part of the settlement;
  - b. any ribbon development attached to the main part of the settlement where the buildings relate more to the surrounding countryside than to the main part of the settlement;
  - c. gardens, paddocks and other undeveloped land on the edge of the settlement where this land relates more to the surrounding countryside than to the main part of the settlement;
  - d. agricultural buildings on the edge of the settlement; and
  - e. outdoor sports and recreational spaces on the edge of the settlement.
- Development in the countryside will only be supported where it is in accordance with national planning policy or other policies of the development plan and would not harm the character, appearance and environmental qualities of the area in which it is located.
- 10.7 Policy HG5 sets out the Council's position with regard to windfall housing more specifically and states that within the built form of defined settlements a proposal for housing development within the main built form (defined in policy S5: Development in the Countryside) of a defined settlement (see policy S3: Spatial Distribution) will be supported where the site is not protected for its environmental, historic, community or other value, or allocated, designated or otherwise safeguarded for another type of development.
- Adjacent to the built form of Service, Secondary and Small Villages a proposal for housing development on a site adjacent to the built form of a defined village will be supported where the proposal demonstrates that:
- a. a sequential approach to site selection has been taken where it can be demonstrated that there is no suitable and viable previously developed land available within the built form of the village; and
  - b. it will provide a housing mix in terms of size, type and tenure, in accordance with the Council's Housing and Economic Development Needs Assessment (HEDNA) and Strategic Housing Market Assessment (SHMA) or successor documents.
- All proposals will individually or cumulatively;
- c. represent incremental growth of the village that is commensurate to its size, scale, role and function;
  - d. not result in the loss of open space that is important to the historic form and layout of the village; and
  - e. have no detrimental impact on the character and appearance of the village, surrounding area and countryside or result in the loss of countryside that makes a significant contribution to the character or setting of that part of the village.
- 10.8 It is considered that the application site falls on the edge rather than within the built form of the settlement and as such weight can be given in favour of the proposed development in accordance with policy HG5.
- 10.9 In officers view the proposal in its totality can not be supported by Policy HG5. The scale of the proposed development, in relation to the size, character and form of the settlement does not represent incremental growth of the village commensurate to its size, scale, role and function. Owing to this conclusion, it is also considered that the

proposed development will have a degree of harmful impact on the character and appearance of the settlement.

- 10.10 It is considered that a smaller development could be wholly compliant with policy HG5. The question then moves to other material considerations set out elsewhere in this report.

#### Drainage

- 10.11 Policy RM2 and RM3 look at matters relating to flood risk and state that development proposals will not be permitted where they would have an adverse effect on watercourses or increase the risk of flooding elsewhere. Development will only be permitted if it has an acceptably low risk of being affected by flooding, assessed against the Environment Agency's flood zone maps and other local information, and where all necessary mitigation measures on or offsite are provided. To be considered for approval, development proposals advanced on land that has any risk of flooding will need to demonstrate that the sequential and exceptions tests required by national guidance have been undertaken, ie. that all sites with less potential for flooding have been examined first, and if necessary a Flood Risk Assessment has been undertaken. Mitigation and relief measures will be supported which reduce the risk of flooding of existing development (and permission granted for related development, if also acceptable in terms of other LDF policies).
- 10.12 At the moment the combined drainage system for the village ends at the pumping station on Main Street, from where it is pumped to the treatment works. When surface water inundates the system the pumps cannot cope with the flows and the storage tanks become full after a period which backs up the drains in Dakyn Close. Yorkshire Water has tried to resolve this problem by building a tank below the green. This tank has improved the situation but it remains a problem during times of heavy rainfall. This is a very pressing situation for local residents who have sought improvements to the system for a number of years owing to inundation of foul waters on relative regular occasion.
- 10.13 Surface water runoff from the fields to the north has been partially intercepted by a drain the Parish had installed in 2000. However, there are areas where run-off bypasses the drain and flows towards Dakyn Close down Main Street. These areas are at Lilac Cottage and at the access to Whitehead Farm.
- 10.14 Neither of the above issues are caused by runoff from the proposed development site. The affected properties on Dakyn Close were built in a 'bowl' ie a low point in the village, so when the drainage system overflows nearby, there is nowhere for the water to flow to. Ideally those properties should have been raised when built in this location. In addition, a watercourse which ran along the rear of properties in Dakyn Close was piped as part of that development, which restricts flows and further exacerbates the problem.
- 10.15 Paragraph 5 of the explanatory text to Policy NH4 within the Local Development Framework Allocations DPD states that *"This development in the settlement is best placed to resolve these sewerage and sewage disposal issues due to its topographical position below the Main Street, which will assist in draining excess surface water. By upgrading the drainage and sewerage infrastructure adjacent to and through the allocated site and increasing its capacity to accommodate the new housing identified, incidences of surface water and the backing up of foul water pipes will be reduced in the village as a whole"*.

- 10.16 Paragraph 6 explanatory text to Policy NH4 within the Allocations DPD identifies that *“Upgrades will be required for the upsizing / diversion of the public sewage pumping station on Main Street and any other necessary drainage and sewerage infrastructure upgraded.”*
- 10.17 Therefore, in part, NH4 was allocated with the objective of delivering improvements to the existing sewerage and drainage infrastructure and can be delivered by the approval of this development. As such it is considered that improvements to drainage and the resultant benefits to the village, should be given significant weight in the determination of this application.
- 10.18 The current proposals have been revised from the original proposals. The Lead Local Flood Authority (LLFA) was consulted on this revised application. An extract from the comments returned is provided below:
- 10.19 The site is predominantly located within Flood Zone 1, with the southern extent shown to be in Flood Zone 2. The LLFA is satisfied that the development platform layout has been designed with a sequential approach. The risk for flooding from surface water maps does indicate an area of high risk to the north of the site on Main Street and an area of risk in the southern extent of the site.
- 10.20 It is understood that as part of the local plan allocation, that the development of the site must provide betterment in the form of a flood alleviation scheme for Main Street. It is understood from the FRA that "a comprehensive scheme for mitigating the pluvial flood risk from the north was agreed as part of the previous planning approval. Subject to obtaining necessary highways approvals this scheme will be implemented by the development. The pluvial flood risk area to the south is within the Flood Zone 2 area which will be maintained as public open space".
- 10.21 Details for the flood alleviation works are limited at this stage. The scheme potentially involves, in addition to the Local Highway Authority, input and agreements between the Parish Council, the Applicant, NYCC as Lead Local Flood Authority, and the IDB. Issues such as highways approvals, maintenance responsibilities, funding mechanisms for ongoing maintenance, access rights and liability for design will all have to be considered prior to any approval of the site layout as part of a reserved matters application or discharge of conditions. The LLFA welcomes the proposal to provide a flood alleviation scheme as part of the development proposals and will provide support in its capacity as LLFA to ensure successful delivery of the scheme.
- 10.22 The LLFA also recommends that the off-site flood alleviation works are commenced prior to or concurrently with the residential element of the scheme and must be complete prior to first occupation.
- 10.23 Surface water must be discharged in line with the drainage hierarchy. A review of Soilscape mapping and BGS borehole logs indicates that infiltration is not likely to be viable in this location owing to the clay substrata impeding drainage across much of the site. There is the potential that freely draining soils meeting poorly draining substrata is contributing to existing drainage issues within the site.

- 10.24 Discharge to watercourse is the next option within the drainage hierarchy. The site is bounded to the west and south east by tributaries to the river Stell which converge in the south east of the site. The topography falls from the north to the south therefore making a gravity discharge to the watercourse viable. Therefore, it is proposed to discharge the surface water to a tributary to the River Stell to the South East of the site at a restricted rate of 5l/s. The proposals are broadly acceptable though consent must be sought from the Swale and Ure drainage board under Section 66 of the Land Drainage Act 1991.
- 10.25 The Swale and Ure drainage board accept a peak runoff of 1.4l/s per hectare. Therefore the design should be amended for a discharge of no greater than 4.2l/s, taking into account the site area. With regard to the proposed 5l/s discharge rate. The statement in section 10.11 - "This rate is applied by Yorkshire Water to achieve a minimum 75mm orifice opening in the flow control" is disputed by the LLFA and is unlikely to be accepted by the IDB. The indicative drawing suggests a maximum design head of 1.5m. It is possible to achieve the required discharge without reducing the hydrobrake orifice to less than 75mm. The LLFA recommends that the IDB is consulted and agrees to the proposed rate of 5l/s prior to the granting of planning permission. The IDB has agreed to this principle.
- 10.26 Micro Drainage quick storage estimates have been provided to demonstrate the required Surface water attenuation volume. It is noted that a Cv Value of 0.75 summer and 0.84 winter have been applied. This can be acceptable on flat sites, where runoff from pervious areas is likely to be significantly reduced, if not negligible, and the developer can demonstrate that no runoff occurs from permeable surface. If the consulting engineers can demonstrate that there is no runoff from the previous areas (gardens etc) due to the landscaping, then a Cv value of 0.75(Summer) and 0.84 (Winter) can be used in the model. Since an external works plan has not been provided at this time and the topography of the site indicates a North to South fall it is recommended that a Cv Value of 1 is utilised in the calculations. As such the storage requirements are likely to change from those illustrated on outline drainage strategy plan 4971-FRA-008.
- 10.27 The proposed SuDS attenuation features should be able to provide the 1 in 100 year design flood event plus with an allowance for climate change and for urban creep. This should be incorporated into the detail drainage design.
- 10.28 In addition, the Swale and Ure Drainage Board were consulted. Following the comments received from the LLFA regarding the surface water discharge rate the Drainage Board agreed that the proposed 5l/s from the complete proposed site is acceptable in principle however separate consent from the Drainage Board will be required. Utilising this rate creates a betterment, and allows the drainage infrastructure to be adoptable for an ongoing maintenance regime & monitoring.
- 10.29 The Drainage Board also confirmed that the proposals relating to the surface water and flood relief outfalls are acceptable in principle, however, again consent from the Drainage Board will be required.

10.30 The Environment Agency was consulted. The response received refers the Council to the standing advice for vulnerable developments. Much of this advice refers to finished floor levels and escape routes etc where development is below flood levels. It is considered that these requirements cannot be met until the reserved matters stage when detailed layout and design plans are submitted. However, noting that the site is in Flood Zone 1 and 2 and taking into consideration the detailed work undertaken to date, it is clear that the full requirement can be met.

#### Affordable Housing

10.31 Local Plan Policy HG2 seeks 30% affordable housing on developments of this scale. The application proposes 98% affordable housing with just one of the units as market housing. The remainder of the development will be delivered in accordance with the Government definition of affordable housing.

10.32 Officers seek to control 30% of the total offer (23 units) through a S106 agreement in order to achieve compliance with policy. In this case the developer is predicating their scheme on the delivery of affordable housing and the associated grant. On this basis whilst the S106 only seeks to control a portion of the development, the remainder is effectively controlled through the requirements of the grant and as such it is considered reasonable for Member to apply a degree of weight to the additional affordable housing to be delivered, over and above the policy requirements.

10.33 Table showing tenure split. 30% Controlled by S106 agreement

|  |          |
|--|----------|
| Social Rent  | Number   |
| 1 Bed quarter Homes                                    | 4        |
| 1 Bed bungalows  | 3        |
| <b>Total</b>   | <b>7</b> |
|  |          |
| Affordable Rent  |          |
| 2 Bed bungalows  | 3        |
| 2 Bed houses   | 4        |
| <b>Total</b>   | <b>7</b> |
|  |          |
| <b>Shared Ownership</b>                                |          |
| 3 Bed Houses   | 3        |
| 4 Bed Houses   | 4        |
| Total  | 7        |
|  |          |
| Total Number of Affordable Units within S106 agreement | 21       |

70% not controlled by S106 agreement

|                 |          |
|-----------------|----------|
| Affordable Rent |          |
| 2 Bed Bungalows | 2        |
| 2 Bed Houses    | 6        |
| <b>Total</b>    | <b>8</b> |
|                 |          |
| Rent to Buy     |          |
| 3 Bed Houses    | 25       |
| 3 Bed Houses    | 8        |

|  |           |
|--|-----------|
| 4 Bed Houses                                     | 6         |
| <b>Total</b>                                     | <b>39</b> |
|  |           |
| Total number of affordable units not within S106 | 47        |

10.34 The Council seeks a mix of smaller dwellings in order to meet the identified local need. Clearly, the application proposing a majority of affordable units is a little unusual in a location such as East Cowton. However, as can be seen from the tables above, the proposals set out a significant number of rent to buy units which in effect replace what would normally be market development. In this case, in total 83% of the development comprises 1, 2 and 3 bed properties. The number of 1 and 2 bed properties is perhaps particularly significant in this case, comprising 31% of the development.

10.35 In conclusion, it is considered that despite the high percentage of affordable homes proposed in this location, the mix of proposed tenures and the proposed size of homes leads to a mix that the Council is able to support.

#### Residential Amenity

10.36 Policy E1 requires that all development proposals must adequately protect amenity, particularly with regard to privacy, security, noise and disturbance, pollution (including light pollution), odours and daylight. Development must make provision for the basic amenity needs of occupants and/or users, including where appropriate, provision for an adequate level of open space for the use of occupants/users of the development.

10.37 The indicative layout submitted with the application demonstrates that the proposed number of dwellings could be accommodated within the site without significant impact on the existing neighbouring dwellings. Subject to details to be submitted at the reserved matters stage, it is considered that the proposed development is capable of completion without significant harm in terms of daylighting, overshadowing or loss of privacy and as such capable of compliance with Development Policy E1.

#### Highways

10.38 Policy IC2 states that development proposals must ensure that safe and easy access is available to all potential users, regardless of disability, age or gender. Proposals must identify all possible barriers to access by different users, and demonstrate where appropriate how specific measures have been incorporated to ensure high standards of access for all.

10.39 Policy IC2 states that all proposals for new development must include provision for sustainable forms of transport to access the site, and within the development. Measures commensurate with the development proposed must be incorporated as an integral part of the design of all development proposals, and could include where appropriate: i. footpaths, cycleways, safe provision for cycle parking and cycle shelters; ii. bus stops/shelters and transport information; iii. support for sustainable forms of transport (eg community transport schemes, workforce buses); iv. preparation and implementation of Travel Plans; v. minimum levels of car parking, commensurate with road safety, the reduction of congestion, and the availability of alternative means of transport.

- 10.40 The accompanying text with Policy NH4 indicated that access to the site should be gained from Main Street and Birkby Road. The layout plan submitted in support of the application indicates that vehicular access will be taken from Birkby Lane between Bungalow Farm and Brian Robinson Machinery. Pedestrian access will be provided from Main Street between The Rowans and the existing pump house. North Yorkshire County Council Highways Officer has been consulted and has raised no objection to the scheme. Conditions relating to road and footway layout, construction details, discharge of surface water, visibility splays, approval of works in the highway, travel plan and construction management are recommended. Additional consultation will be carried out at reserved matters stage in relation to the layout and parking provision for the development. It is considered that the proposed development will not result in any significant impact on road safety and is capable of compliance with policy EC2.
- 10.41 The Highway Authority has requested a footway to be formed from the site entrance, leading back into the village approximately 100m in length. The applicant has stated that there is insufficient available width within the scope of the Highway Authority to allow this to happen. The applicant has also stated that there is no necessity for the footway as additional connectivity is being provided through the development to the centre of the village.
- 10.42 Clearly a new footway would be beneficial. However, on balance officers consider that there is no necessity for the provision, given the alternative routes provided through the proposed development.

#### Ecology and Biodiversity Net Gain

- 10.43 Policy E3 of the Local Plan states that 'Permission will not be granted for development which would cause significant harm to sites and habitats of nature conservation...Support will be given...to the enhancement and increase in number of sites and habitats of nature conservation value'.
- 10.44 A preliminary ecological assessment was carried out by Brooks Ecological. The assessment found that most of the site is occupied by habitat of low conservation significance, with only the boundary hedgerows and drainage ditches being identified as features of ecological value which should be retained, protected and enhanced.
- 10.45 Great crested newt has been confirmed present within two off-site ponds and the likely presence of this species on site must be assumed. Great crested newts can disperse over 1km from breeding ponds.
- 10.46 A Natural England Rapid Risk Assessment was carried out which identified an 'Amber Warning of an offence likely' should the development go ahead without a European Protected Species Mitigation License (EPSML) which details site specific mitigation measures. Brooks Ecological has concluded that the license will be required prior to work commencing. Further information will also need to be collected on the two ponds (relating to population sizes etc) to support the license application. In addition the site has been designed with likely sufficient greenspace retained along the southern boundary to allow for mitigation. It is recommended that a condition be included which requires appropriate survey work and mitigation as set out in the Brooks report. The license is required prior to commencement as land

clearance, removal of topsoil, storage of materials etc can impact on Great Crested Newts.

- 10.47 Brooks Ecology identified that hedgerows are likely to support small numbers of common garden/ farmland edge birds during the main nesting season, whilst the field interior may encompass one or two ground nesting bird territories. However, the site's proximity to housing will reduce its suitability for ground nesters, and the abundance of similar or better-quality habitat in the surrounding landscape means the site is highly unlikely to be of significance to any local bird populations. To prevent the proposed works impacting on nesting birds, any clearance of vegetation will need to be undertaken outside of the breeding bird season which is 1st March – 31st August inclusive. Any clearance that is required during the breeding bird season should be preceded by a nesting bird survey to ensure that the Wildlife and Countryside Act (1981) is not contravened through the destruction of nests and that any active nests are identified and adequately protected during the construction phase of the development. It is recommended that these precautions be secured by condition.
- 10.48 Paragraph 170 of the NPPF indicates that “planning policies and decisions should contribute to and enhance the natural and local environment by [...] minimising impacts on and providing net gains for biodiversity”. The Preliminary Ecological Assessment focuses on minimising impact on biodiversity but does not address biodiversity net gain. As the application is in outline it is considered appropriate to condition the submission of a Construction Ecological Management Plan (CEMP) and a Biodiversity Mitigation Plan (BMP) as recommended by Brooks Ecological. On this basis it is recommended that a condition be included to deal with these matters, in order to ensure that the development results in biodiversity net gain.

#### Section 106 Agreement

- 10.49 The following Heads of Terms have been agreed with the applicant for this applications.

| <b>Category/Type</b> | <b>Contribution</b>  | <b>Amount</b>   |
|----------------------|--|-----------------|
| Affordable Housing   | 30% with tenures as set out in the applicant's submission. | 21 units        |
| Public Open Space    | Bond for delivery in default                               | To be confirmed |

- 10.50 It is considered that the above S106 Heads of Terms are necessary, directly related to the development and fairly and reasonably related in scale and kind to the development and as such complies with the Community Infrastructure Levy (CIL) Regulations 2010

#### Public Open Space

- 10.51 Policy NH4 required a contribution towards the improvement of public open space within the village. The approved application 10/01716/FUL sought the provision of a commuted sum for the improvement of the Parish owned playground within the village. Since this application was approved, the Council has introduced



the Community Infrastructure Levy which removes the need to provide separate contributions via a S106 agreement towards the upkeep and improvement of local amenities and as such other than the requirement for on-site provision of public open space, detailed below, there is no longer a requirement for a commuted sum to be provided for off-site improvements.

10.52 The Illustrative layout provided with the application shows 0.8 hectares of public open space to be provided to the southern part of the site. The application is in outline only and therefore the detailed layout of this area can be considered as part of the reserved matters application. It is recommended that a detailed landscaping, implementation and management scheme and details of a bond for provision of the scheme be included within the S106 agreement.

## **11.0 Planning Balance and Conclusion**

- 11.1. Since the demise of the Local Development Framework the then allocation policy carries no weight. As such the principle of the development falls to policy S5 and HG5. As set out in the preceding report officers conclude that the proposed development owing to its scale, form and impact on the character of the settlement, can glean only limited support from policy.
- 11.2. In order for the proposed development to be granted Members must be satisfied that the benefits of the proposals in terms of the improvements to drainage in the village, outweigh the harmful impacts.
- 11.3. It is clear that Yorkshire Water are not in a position to resolve these issues and that they are otherwise satisfied with the performance of the foul network. However, there remains the issue of inundation of surface water into the foul network which results in foul water flooding nearby properties. This development will significantly improve this situation by removing significant quantities of surface water from the foul network, attenuating flow and discharging to the water environment at a greenfield run off rate.
- 11.4. Subject to reserved matters approval, there are no issues in terms of residential amenity, biodiversity or ecology.
- 11.5. On balance it is considered that the proposed development results in sufficient public benefits to off-set the limited harm that has been identified and as such the development can be recommended for approval.

## **12.0 Recommendation**

12.1 That planning permission be **GRANTED** subject to conditions listed below and completion of a S106 agreement with terms as detailed in Table 1.

1 Application for the approval of all of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this decision and the development hereby approved shall be begun on or before whichever is the later of the following dates: i) Three years from the date of this permission ii) The expiration of two years from the final approval of the reserved matters or in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason To enable the Local Planning Authority to properly assess these aspects of the proposal, which are considered to be of particular importance, before the development is commenced.

- 2 The development shall not be commenced until details of the following reserved matters have been submitted to and approved by the Local Planning Authority: (a) appearance (b) layout (c) landscaping and (d) scale.

Reason To enable the Local Planning Authority to properly assess these aspects of the proposal, which are considered to be of particular importance, before the development is commenced.

- 3 The permission hereby granted shall not be undertaken other than in complete accordance with the drawing(s) numbered P18 5223 02 received by the Local Planning Authority on 15.08.2019 unless otherwise approved in writing by the Local Planning Authority.

Reason In order that the development is undertaken in a form that is appropriate to the character and appearance of its surroundings and in accordance with the Development Plan Policy(ies) .

- 4 Unless otherwise approved in writing by the Local Planning Authority, there shall be no excavation or other groundworks, except for investigative works or the depositing of material on the site, until the following drawings and details have been submitted to and approved in writing by the Local Planning Authority:

- (1) Detailed engineering drawings to a scale of not less than 1:500 and based upon an accurate survey showing:
  - (a) the proposed highway layout including the highway boundary
  - (b) dimensions of any carriageway, cycleway, footway, and verges
  - (c) visibility splays
  - (d) the proposed buildings and site layout, including levels
  - (e) accesses and driveways
  - (f) drainage and sewerage system
  - (g) lining and signing
  - (h) traffic calming measures
  - (i) all types of surfacing (including tactiles), kerbing and edging.
- (2) Longitudinal sections to a scale of not less than 1:500 horizontal and not less than 1:50 vertical along the centre line of each proposed road showing:
  - (a) the existing ground level
  - (b) the proposed road channel and centre line levels
  - (c) full details of surface water drainage proposals.
- (3) Full highway construction details including:
  - (a) typical highway cross-sections to scale of not less than 1:50 showing a specification for all the types of construction proposed for carriageways, cycleways and footways/footpaths
  - (b) when requested cross sections at regular intervals along the proposed roads showing the existing and proposed ground levels
  - (c) kerb and edging construction details
  - (d) typical drainage construction details.

- (4) Details of the method and means of surface water disposal.
- (5) Details of all proposed street lighting.
- (6) Drawings for the proposed new roads and footways/footpaths giving all relevant dimensions for their setting out including reference dimensions to existing features.
- (7) Full working drawings for any structures which affect or form part of the highway network.
- (8) A programme for completing the works.

The development shall only be carried out in full compliance with the approved drawings and details unless agreed otherwise in writing by the Local Planning Authority.

Reason In accordance with Policy DP3 and DP4 and to secure an appropriate highway constructed to an adoptable standard in the interests of highway safety and the amenity and convenience of highway users.

- 5 No dwelling to which this planning permission relates shall be occupied until the carriageway and any footway/footpath from which it gains access is constructed to basecourse macadam level or block paved (as approved) and kerbed and connected to the existing highway network with street lighting installed and in operation.

The completion of all road works, including any phasing, shall be in accordance with a programme approved in writing with the Local Planning Authority before the first dwelling of the development is occupied.

Reason In accordance with Policy DP3 and DP4 and to ensure safe and appropriate access and egress to the dwellings, in the interests of highway safety and the convenience of prospective residents.

- 6 There shall be no access or egress by any vehicles between the highway and the application site until full details of any measures required to prevent surface water from non-highway areas discharging on to the existing or proposed highway together with a programme for their implementation, have been submitted to and approved in writing by the Local Planning Authority. The works shall be implemented in accordance with the approved details and programme.

Reason In the interests of highway safety.

- 7 There shall be no access or egress by any vehicles between the highway and the application site (except for the purposes of constructing the initial site access) at Birkby Lane until splays are provided giving clear visibility of 45m metres measured along both channel lines of the major road Birkby Lane from a point measured 2.4m metres down the centre line of the access road. The eye height will be 1.05m and the object height shall be 0.6m metres. Once created, these visibility areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

Reason In the interests of highway safety.

- 8 Prior to the development being brought into use, a Travel Plan shall have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. This shall include:
- a. the appointment of a travel co-ordinator
  - b. a partnership approach to influence travel behaviour
  - c. measures to encourage the use of alternative modes of transport other than the private car by persons associated with the site
  - d. continual appraisal of travel patterns and measures provided through the travel plan
  - e. improved safety for vulnerable road users
  - f. a reduction in all vehicle trips and mileage
  - g. a programme for the implementation of such measures and any proposed physical works
  - h. procedures for monitoring the uptake of such modes of transport and for providing evidence of compliance.

The Travel Plan shall be implemented and the development shall thereafter be carried out and operated in accordance with the Travel Plan.

Reason In order to promote a reduction in travel and a reduction in the use of environmentally unsustainable forms of travel, in accordance with the objectives of Government and the Local Development Framework Core Strategy Policy CP2.

- 9 No demolition or construction for any phase of the development shall take place until a Construction Phase Management Plan for that phase relating to the programme of demolition and construction works has been submitted to, and approved in writing by, the Local Planning Authority. The approved Construction Phase Management Plan be adhered to throughout the construction period for the phase.

The plans shall include, but not be limited, to arrangements for the following in respect of each phase of the works:

- (i) Protection of carriageway and footway users at all times during demolition and construction
- (ii) Erection and maintenance of hoardings, including decorative displays, security fencing and scaffolding on/over the footway and carriageway and facilities for public viewing where appropriate
- (iii) Protection of contractors working adjacent to the highway
- (iv) Measures to manage the delivery of materials and plant to the site, including routing and timing of deliveries
- (v) Loading and unloading of materials and plant
- (vi) Storage of plant and materials used in constructing the development
- (vii) Wheel washing facilities
- (viii) Measures to control the emission of dust and dirt during construction
- (ix) Storage of plant and materials used in constructing the development
- (x) Removal of materials from site including a scheme for recycling/disposing of waste resulting from demolition and construction works
- (xi) The protection of trees

- (xii) The parking of contractors' site operatives and visitor's vehicles; and
- (xiii) A program for the works

Reason To provide for appropriate on-site vehicle parking and storage facilities, in the interests of highway safety and the general amenity of the area.

- 10 Development shall not commence until a scheme restricting the rate of development flow runoff from the site has been submitted to and approved in writing by the Local Planning Authority. The flowrate from the site shall be restricted to greenfield runoff of 1.4/s/ha for up to the 1 in 100 year event. A 30% allowance shall be included for climate change effects and a further 10% for urban creep for the lifetime of the development. Storage shall be provided to accommodate the minimum 1 in 100 year plus climate change critical storm event. The scheme shall include a detailed maintenance and management regime for the storage facility. No part of the development shall be brought into use until the development flow restriction works comprising the approved scheme has been completed. The approved maintenance and management scheme shall be implemented throughout the lifetime of the development.

Reason To mitigate additional flood impact from the development proposals and ensure that flood risk is not increased elsewhere.

- 11 No development shall take place until an appropriate Exceedance Flow Plan for the site has been submitted to and approved in writing by the Local Planning Authority. Site design must be such that when SuDS features fail or are exceeded, exceedance flows do not cause flooding of properties on or off site. This is achieved by designing suitable ground exceedance or flood pathways. Runoff must be completely contained within the drainage system (including areas designed to hold or convey water) for all events up to a 1 in 30 year event. The design of the site must ensure that flows resulting from rainfall in excess of a 1 in 100 year rainfall event are managed in exceedance routes that avoid risk to people and property both on and off site.

Reason To prevent flooding to properties during extreme flood events and to mitigate against the risk of flooding on and off the site.

- 12 No building or other obstruction including landscape features shall be located over or within 3.5 (three point five) metres either side of the centre line of the public sewer i.e. a protected strip width of 7 (seven) metres, that crosses the site. If the required stand-off distance is to be achieved via diversion or closure of the sewer, the developer shall submit evidence to the Local Planning Authority that the diversion or closure has been agreed with the relevant statutory undertaker and that prior to construction in the affected area, the approved works have been undertaken.

Reason In order to allow sufficient access for maintenance and repair work at all times

- 13 The site shall be developed with separate systems of drainage for foul and surface water.

Reason In the interest of satisfactory and sustainable drainage.

- 14 No piped discharge of surface water from the application site shall take place until works to provide a satisfactory outfall, other than the existing local public sewerage, for surface water have been completed in accordance with details submitted to and approved by the Local Planning Authority.

Reason To ensure that the site is properly drained and in order to prevent overloading, surface water is not discharged to the public sewer network.

- 15 Development shall not commence until a scheme detailing foul water drainage has been submitted to and approved in writing by the Local Planning Authority in consultation with Yorkshire Water. Details shall also be provided of future maintenance responsibilities for the drainage infrastructure. The scheme shall detail phasing of the development and phasing of drainage provision and the works to accommodate the existing foul water, where appropriate. The works shall be implemented in accordance with the approved phasing and no part or phase of the development shall be brought into use until the drainage works approved for that part or phase have been completed. The drainage infrastructure shall be maintained in accordance with the approved details.

Reason This detail is required before development commences to ensure the provision of adequate and sustainable means of drainage and to ensure that the existing foul water drainage network which the site will discharge into is not compromised.

- 16 No building or other obstruction including landscape features shall be located over or within 3 (three) metres either side of the centre line of the water main i.e. a protected strip width of 6 (six) metres, that crosses the site. If the required stand-off distance is to be achieved via diversion or closure of the water main, the developer shall submit evidence to the Local Planning Authority that the diversion or closure has been agreed with the relevant statutory undertaker and that prior to construction in the affected area, the approved works have been undertaken.

Reason In order to allow sufficient access for maintenance and repair work at all times.

- 17 Prior to the commencement of the development, including site clearance or depositing of materials on site, the recommended additional surveys and investigations outlined in the "Preliminary Ecological Appraisal Report Bungalow Farm, East Cowton" conducted by Brooks Ecological and received by Hambleton District Council on 15.08.2019 shall be carried out and the results, recommendations, mitigation and enhancement proposals shall be submitted to and approved in writing by the Local Planning Authority. Any recommendations, mitigation and enhancement proposals shall be thereafter implemented in accordance with the approved details.

Reason To ensure that appropriate measures are undertaken to mitigate the impact on and preserve protected species.

- 18 No scrub, hedgerow or ground clearance shall be undertaken during the bird breeding season (March to September) unless a pre-commencement check by a suitably experienced ecologist has been carried out which demonstrates that no

actively nesting birds will be harmed as a result of such works. A written record of the ecologists findings shall be submitted to the Local Planning Authority.

Reason In the interests of biodiversity.

- 19 The reserved matters submission shall include full site levels. Levels shall include existing and proposed site levels along with finished floor levels, eaves and roof ridge levels. The development shall then be implemented in accordance with the approved levels.

Reason In order that site levels can be fully assessed at the Reserved Matters stage and in order to protect the character and amenity of the area to comply with policy E1 and E2 of the Local Plan.

- 20 Prior to commencement of development on site a scheme shall be submitted to and approved by the Local Planning Authority to demonstrate delivery of a target of 10% on-site biodiversity net gain. The scheme shall utilise the latest Natural England Metric to calculate the gain or other metric as agreed with the Council. The scheme shall set out a timetable for the delivery of the gains set out in the submitted scheme. The development shall then be implemented in accordance with the approved scheme.

Reason. In order to ensure delivery of biodiversity net gain in accordance with policy E3 of the Local Plan.

## Notes

- 1 In imposing condition number 5 above it is recommended that before a detailed planning submission is made a draft layout is produced for discussion between the applicant, the Local Planning Authority and the Highway Authority in order to avoid abortive work. The agreed drawings must be approved in writing by the Local Planning Authority for the purpose of discharging this condition.
- 2 There must be no works in the existing highway until an Agreement under Section 278 of the Highways Act 1980 has been entered into between the Developer and the Highway Authority.
- 3 An application for works within the drainage district will be required in addition to planning permission.  
Consent will be determined by the Board under Section 23 LDA and the Drainage Byelaws created under Section 66.  
Section 23 Consent Section 23 LDA prohibits obstruction etc. in watercourses and states "No person shall erect any mill dam, weir or other like obstruction (or) erect any culvert that would be likely to affect the flow of any watercourse...without the consent in writing of the drainage board concerned".  
Section 66 (Byelaw) Consent "No person shall.... introduce any water into any watercourse in the District so as to directly or indirectly increase the flow or volume of water... without the previous consent of the Board (and) no person.... shall erect any building or structure whether temporary or permanent, or plant any tree, shrub, willow.... without the previous consent of the Board, amongst other byelaws specific to each IDB.

Applications for consent will be required for both temporary and permanent works and we have a statutory 2 months determination period from the day on which the application is made or when the application fee (£50 per application or as prescribed) is discharged, whichever is the later.

- 4 i) if the developer is looking to have new sewers included in a sewer adoption agreement with Yorkshire Water (under Section 104 of the Water Industry Act 1991), he should contact our Developer Services Team (telephone 0345 120 84 82, email: [technical.sewerage@yorkshirewater.co.uk](mailto:technical.sewerage@yorkshirewater.co.uk)) at the earliest opportunity. Sewers intended for adoption should be designed and constructed in accordance with the WRc publication 'Sewers for Adoption - a design and construction guide for developers' 6th Edition as supplemented by Yorkshire Water's requirements.
- 5 On the Statutory records, there is a 150 mm Ductile Iron live water main within the main road. The submitted report and drawings indicate that the water main will be affected by the proposed flood relief drain construction. The stand-off distance of 3 (three) metres must be shown on the re-submitted plans at the reserved matters stage of the application.
- 6 The applicant is advised that prior to the initial occupation of any individual dwelling hereby permitted, the following bins and recycling box conforming to European Standard EN840 should be provided by the developer for the exclusive use of the occupants of that dwelling:
  - 1 x 240 litre black wheeled bin for general waste
  - 1 x 240 litre black wheeled bin with a blue lid for mixed household recycling; and
  - 1 x 55 litre blue recycling box for glass bottles and jars.

In order to guarantee EN840 compliance the Council will only collect from bins and boxes sourced from North Yorkshire Council (Waste and Streetscene). If the developer does not pay for bins and boxes, each new resident will be required to pay for them. In the event that no payment is made, the Council will not collect waste and recycling from the dwelling concerned. Further details of the Council's Waste and Recycling Collection Policy and the charges for bins and boxes is available at [www.northyorks.gov.uk](http://www.northyorks.gov.uk) or by telephoning 0300 1312131.

**Target Determination Date:** 02.09.2021

**Case Officer:** Peter Jones, [peter.jones@northyorks.gov.uk](mailto:peter.jones@northyorks.gov.uk)