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## Appeal Decision

Hearing Held on 10 January 2018

Site visit made on 10 January 2018

by **S J Lee BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15<sup>th</sup> February 2018

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**Appeal Ref: APP/A4710/W/17/3185542**

**Land to the east of Brighouse Road, Hipperholme, Halifax, West Yorkshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr David Heywood of Crosslee Plc against the decision of Calderdale Metropolitan Borough Council.
  - The application Ref 16/01381/OUT, dated 17 October 2016, was refused by notice dated 10 July 2017.
  - The development proposed is residential development of up to 50 dwellings, including details of means of access.
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### Decision

1. The appeal is allowed and planning permission is granted for residential development of up to 50 dwellings, including details of means of access at Land to the east of Brighouse Road, Hipperholme, Halifax, West Yorkshire in accordance with the terms of the application, Ref 16/01381/OUT, dated 17 October 2016, subject to the conditions in the attached schedule.

### Application for costs

2. An application for costs was made by Mr David Heywood of Crosslee Plc against Calderdale Metropolitan Borough Council. This application is the subject of a separate Decision.

### Procedural Matters

3. The application was made in outline with all matters reserved apart from access. I have considered the appeal on this basis. Other than those identifying the location and nature of the access, I have treated all plans as indicative only.
4. The description of development given above is taken from the application form. I have amended this to remove the superfluous reference to the site's location as this does not relate to the act of development.

### Main Issues

5. The main issues in this case are the effect of the development on (i) highway safety and the efficient operation of the transport network in the vicinity of the site, and (ii) air quality and public health.

## Reasons

### *Background and policy context*

6. The appeal relates to a mixture of open grassland and woodland located on the eastern side of Brighthouse Road in the village of Hipperholme. To the north of the site is a railway line, beyond which is a row of dwellings. There are dwellings on the opposite side of Brighthouse Road and industrial development to the south. The site creates an open break in an otherwise relatively high density built-up area. The site is around 60 metres south of the Hipperholme Crossroads.
7. The relevant development plan for the area is the Replacement Calderdale Unitary Development Plan (CUDP) (2006). Policy NE11 protects the western part of the site from development that would prejudice its consideration for housing in any review of the development plan. Policy E1 allocates the eastern part of the site as a primary employment area. This only allows for development within the B1, B2 or B8 use classes. The site is also within a wildlife corridor identified under Policy NE15. This seeks to ensure development would not damage the continuity or harm the function or nature conservation value of the corridor.
8. The Council acknowledges that they cannot demonstrate a five year supply of deliverable housing land as required by paragraph 47 of the National Planning Policy Framework (the Framework). There is no dispute that the current supply is around 2 years and there is nothing before me to suggest I should come to a different conclusion. The relevant policies for the supply of housing are therefore not up-to-date<sup>1</sup> and the tilted balance and thus the fourth bullet point of paragraph 14 of the Framework is triggered. This states that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when considered against the Framework as a whole, or specific policies in the Framework indicate development should be restricted. I have considered the appeal on this basis.
9. The site has been identified as a potential housing site within the emerging Calderdale Local Plan (CLP) for 50 dwellings. An initial draft was consulted on in September 2017. The results of the consultation are not before me and the plan is at a stage where I can give it only little weight in my decision. Nonetheless, part of the evidence base for the allocation is before me and I have given consideration to this below.
10. On the basis of the housing supply, the Council raises no objections in relation to CUDP policies NE11 and E1. However, the development of the site prior to any review of the Local Plan would arguably be in conflict with Policy NE11. While the site may have been identified for residential development in the emerging plan, this is still subject to change. Development prior to the review would seemingly be contrary to the policy's aim of being able to consider the site's future in the context of this process.
11. CUDP Policy E5 allows for non-employment development on allocated sites only if certain criteria are met. The Council consider this policy to conflict with the Framework as it places the onus on an applicant to demonstrate that the site is no longer suitable for such uses and that there is no demand. Nonetheless,

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<sup>1</sup> See Paragraph 49 of the Framework

while the evidence that the site is needed or suitable for employment uses is not strong, there is nothing before me to suggest the necessary evidence in relation to Policy E5 has been submitted. Irrespective of the weight to be given to these policies, there would still be some conflict with policies E1 and E5. These are matters I shall return to in the planning balance.

*Highway safety and the efficient operation of the transport network*

12. I have been provided with a Transport Statement (TS), a VISSIM Modelling Report and a report by WSP/Parsons Brinkerhoff (WSP) that was produced for the Council as part of their evidence base for the emerging CLP. This also included consideration of two larger sites in the vicinity of the appeal site. All three sites were identified in the CLP consultation as housing sites. While my observations of the site can act only as a snapshot of normal highway conditions, I saw the site and crossroads in both the morning and evening peak periods, as well as in the mid-afternoon. What I observed was consistent with the evidence in terms of capacity at the junction and the extent of queuing on all arms at different times of the day. There is no dispute that this is a constrained junction which is either close to, or over, capacity at peak periods.
13. Based on the use of TRICs data, the TS estimates the development would generate around 28 additional two-way trips during the AM and PM peaks. The WSP study estimates 21 two way journeys in the AM and 22 in the PM peak periods. The Highway Authority's initial estimate suggested around 40 additional trips, but this was revised to 35 by the time the application was decided. It was confirmed at the hearing that this figure was based on their own assessment of TRICs data. Although no detailed justification for this figure was produced for the appeal, I am satisfied that it constitutes the highest figure based on any kind of objective analysis.
14. It is not necessary for me to pick any one particular figure as the exact level of trip generation is likely to fluctuate over time. While a range of between 21 and 35 trips might appear quite large, the figures are nevertheless based on robust sources of data and are not unreasonable. The majority of these trips are likely to pass through the crossroads. While based on one day's survey only, the VISSIM study observed an AM peak flow of 506 vehicles on Brighthouse Road and a PM flow of 491 vehicles. The total flow through the crossroads was 2559 vehicles in the AM peak and 2773 in the PM. Local residents consider the VISSIM data to be optimistic, so it may be possible that these numbers are generally higher. In any event, even if I were to focus on the higher end of the range, this would still represent a relatively small number of additional trips when compared to existing volumes of traffic using Brighthouse Road or the crossroads.
15. The site is also located in a relatively accessible location with a number of important local services within a reasonable walking distance. There is access to a regular bus service that runs into nearby Halifax. Part of the proposed mitigation for the development would also be to improve the pedestrian route to the nearest bus stop which may help to facilitate its use. It was put to me that public transport use is low from the village because it is an affluent area with high levels of car ownership. Nonetheless, seeking to locate development in accessible locations conforms to paragraphs 29 and 32 of the Framework and future occupants would have a reasonable and realistic choice of more sustainable transport modes. There remains a reasonable prospect that such

- accessibility may serve to reduce what is already a relatively low level of trip generation from the site over time.
16. It was confirmed at the hearing that queue lengths and the time it takes to get through the crossroads can vary considerably. It is possible therefore that the baseline position in the VISSIM study is not reflective of all queuing that takes place. However, whatever the baseline position, there is no reason that the assessment of the impact of the development, and any associated increase in queue lengths or delays, is not robust. Whatever the length of the queue, it would be reasonable to assume the number of vehicles being added to it from the development would remain reasonably constant. No substantive evidence was provided which suggests this would not be the case.
  17. The VISSIM output concludes that by any measure of delay, the development would result in an increase of less than 1%. In terms of queue length, the development would add around 5.5 cars in the AM peak and 3.8 cars in the PM peak. This was based on the 28 two way trips identified in the TS. Even if I were to conclude a higher level of trip generation and take into account the fact that any model is subject to some margin of error, the effects shown at the crossroads would have to be substantially greater to have a materially adverse impact on the existing situation. Moreover, it is likely that much of the effect of traffic from the development would be subsumed within normal daily variations that already occur.
  18. The WSP report concludes that the cumulative effect of 320 additional dwellings would result in the worsening of the situation at the crossroads to the extent that trips would be rerouted onto other roads. This assessment also included the anticipated background growth and mitigation along the A629 corridor. The outcome of this was that the effect of the sites tested would have only a 'limited' impact on the crossroads over and above general anticipated growth in traffic in the district up to 2030. Importantly, it concluded that the modelling did not provide sufficient evidence to support the rejection of the sites. This study has acknowledged limitations, including that it was not produced to consider the effect of the development alone and may underplay the number of journeys directed to the crossroads. Nevertheless, it does not conclude that a significantly greater level of development in the area would be unacceptable in highway terms. It would be reasonable to assume that the lower level of development proposed in this appeal would have far less impact than the report identified. This report does not therefore provide strong evidence that the development should be resisted on highways grounds.
  19. The peak hours considered by the evidence also does not perhaps reflect the period for which there are significant queues at the crossroads. These were described as starting at around 0700-0730 in the AM peak and lasting beyond 0900 and starting at around 1530 in the afternoon to coincide with school traffic, followed by a lull before growing again at around 1630 until around 1900. The development is therefore likely to contribute additional trips to these queues outside the peak hours described. However, it would still be reasonable to assume that as a proportion of existing traffic, any increase in trips at these other times of the day would still be relatively small and would not result in any material change to the current situation.
  20. Local residents questioned the outcome of the models on the basis that they do not reflect real life, particularly in terms of the spreading of trip generation

across the peak hour. Rather than trips trickling onto the network over the peak period, it is considered more likely that most drivers would wish to exit the site at the same time. I do not fully accept this. While largely anecdotal in nature, several references were made at the hearing to people altering their journey times and, to a lesser extent, their routes in order to avoid the worst times for queuing. In my experience, this is entirely normal and may contribute to the extended period over which queuing takes place at the crossroads. This is often referred to as 'peak spreading'. It would not necessarily be the case that drivers from the site would all seek to join the queue at the same time and may well choose to travel at different times to avoid the worst of any delays.

21. In any event, this would not alter my view that the relative number of journeys likely to be added to the network would not be significant in relation to existing levels of traffic and the effects on both queue lengths or delays would not be significant. I am not convinced that the actual effect of the development on the operation of the transport network would be discernible to most drivers who currently pass through this location on a regular basis.
22. Turning to the issue of 'rat running', it was put to me that all alternative routes in the area are already heavily used in order to try and avoid the crossroads. There was no consensus on the number of journeys that might be diverted onto other roads from the development. Nonetheless, when considering the overall level of trip generation from the development, any journeys that are diverted onto these roads are unlikely to result in either a significant increase in usage or any material increase in risk to safety. The effect on the crossroads from the development is also unlikely to be so substantial as to force existing drivers to re-route who don't already do so.
23. CUDP Policy BE5 expects development to ensure the safe and free flow of traffic. Paragraph 32 of the Framework states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. In determining whether these requirements are met, I must have particular regard to the difference between the existing situation and that which would exist when the development is in place.
24. There is little doubt that the Hipperholme Crossroads are under stress at peak hours and there is evidence of significant queuing and delay. However, even accounting for some reasonable errors in the data, it would not be realistic to assert that the number of trips likely to be generated by the development would have anything other than a negligible effect on existing queue lengths, delays through the junction or the operation of the transport network as a whole. Levels of traffic on nearby roads are also unlikely to be so much higher as to result in any discernible adverse impacts.
25. I sympathise with the concerns and frustrations of local residents. Existing levels of traffic are likely to cause delay and inconvenience. There are also associated issues of poor air quality at the crossroads and parts of approaching roads. However, with or without the development these unfortunate characteristics would remain. I do not consider that the relevant test is whether there are existing problems or whether development would lead to any increase in traffic. Moreover, it is not necessary or possible for development of this scale to seek to solve existing issues. In this case, I find that the level of



- additional trips on the network as a proportion of overall traffic would result in no material harm to the existing operation of the transport network in the vicinity of the site.
26. The mitigation proposed would result in the creation of a central reservation between two new pedestrian refuges. This would provide a right turn lane into the site and allow pedestrians to cross the road in two stages. While there may be some effect on queues, these refuges would prevent the current unsafe practice of vehicles wishing to turn right at the crossroads overtaking stationary traffic and crossing the hatched markings. The current start/end of the 30/40 mph speed limit would also be moved to south of the site access. All of these measures can be secured by condition and I see no reason why they could not result in a safe means of access or egress.
27. I do not accept the premise that the development or mitigation would be unsafe or problematic because drivers exiting the site would become frustrated and cannot be trusted to pay due care and attention or adhere to the law. Such behaviour is always more likely to lead to accidents, but I see nothing in the proposal, nature of the access or mitigation proposed that would result in any greater propensity for such behaviour than any other development. Turning right onto busy roads is not an unusual or inherently unsafe activity, and it already takes place in the area with no evidence of regular safety issues or quantitative evidence of accidents or other incidents. Anecdotal evidence of nearby accidents was discussed at the hearing, but nothing was provided to substantiate the nature or cause of these. Neither the development nor mitigation measures would make it any more difficult for existing residents to access Brighthouse Road as it is already. Having vehicular accesses on both sides of main roads is also not unusual and should not lead to any obvious conflict.
28. My attention was also drawn to the speed of cars passing the site outside peak times. However, I am satisfied there would be good visibility in both directions from the access. The presence of the access itself would also act as a deterrent to driving at excessive speed. The moving of the speed limit signage would also help in terms of slowing the acceleration of cars from the crossroads.
29. Taking all matters together, I am satisfied that the development would not have a material adverse impact on the efficient operation of the transport network, nor would it result in unacceptable risks to the safety of road users or pedestrians either in the vicinity of the site or on the roads around it. CUDP Policy BE5 seeks to ensure the safe and free flow of traffic. As the development would not lead to materially greater problems than currently exist, I am satisfied the requirements of this policy are met. There would also be no conflict with paragraph 32 of the Framework which seeks to ensure development provides safe and secure access for all and would not result in severe cumulative adverse impacts.

#### *Air quality and public health*

30. The site lies around 60 metres south of a defined Air Quality Management Area (AQMA). This was declared on the basis of emissions from traffic and associated levels of nitrogen dioxide (NO<sub>2</sub>). The AQMA is drawn relatively tightly around the crossroads and sections of approaching roads, and takes in buildings fronting directly onto parts of Brighthouse Road, Halifax Road,

Denholme Gate Road, Wakefield Road and Leeds Road. It does not, however, extend beyond buildings fronting the road. This is perhaps reflective of the relatively short distances at which pollution disperses from the source.

31. The proposal is supported by an Air Quality Assessment (AQA), prepared by the appellant. This considers both the baseline situation in the area in respect of NO<sub>2</sub> and particulate matter (PM<sub>10</sub>) and forecasts the effect of the development proposed in this respect. It also considered any potential impacts from dust.
32. Air quality limits in England in respect of NO<sub>2</sub> and PM<sub>10</sub> are set via Regulations transposing the provisions EU Directives and associated EU Limit Values. The applicable limit values here for NO<sub>2</sub> and PM<sub>10</sub>, are both 40 µg/m<sup>3</sup> measured as an annual mean. The monitoring data provided indicates that at various points within the AQMA, this level is exceeded for NO<sub>2</sub>. The most recent data from 2016 shows that apart from one location, the situation since 2014 is either fairly static or has improved slightly. The anomaly in the data which shows a significant deterioration has been attributed to the moving of the monitoring equipment closer to the crossroads. Nevertheless, this data still demonstrates there is an air quality issue at the crossroads.
33. The AQA considered the situation with and without the development as at 2017 based on the 2014 baseline. The assessment follows national guidelines and the most up-to-date DEFRA toolkit, which provides forecasts on likely future vehicular emissions. It also takes account of the emerging West Yorkshire Low Emission Strategy. The AQA includes assumptions about committed development, background traffic growth and the anticipated peak level traffic from the development based on the TS. Two scenarios were modelled; one using the DEFRA toolkit and one without. The Council raised no substantive concerns over the methodology used, the inputs to the assessment or its outputs. There is nothing before me that would lead me to conclude the AQA is not a reasonably robust and proportionate assessment.
34. In terms of existing receptors within and outside the AQMA the highest increase in NO<sub>2</sub> levels under scenario 1 would be 0.11 µg/m<sup>3</sup>. New receptors close to the site would increase by 0.13 and 0.15 µg/m<sup>3</sup> respectively. In the context of the baseline position, the development would have an average impact of around 0.3%. As a result of forecast reductions in background emissions, none of the receptors either within or outside the AQMA would be above 40 µg/m<sup>3</sup> in this scenario. For PM<sub>10</sub>, the predicted increase would be between 0.01 and 0.04 PM<sub>10</sub> µg/m<sup>3</sup>. Again, no receptors would be above 40 µg/m<sup>3</sup>.
35. Under scenario 2, the highest impact on any existing receptor for NO<sub>2</sub> would be 0.12 µg/m<sup>3</sup> and 0.20 µg/m<sup>3</sup> at proposed receptors near to the site. Under this scenario, the receptor nearest the crossroads would remain above 40 µg/m<sup>3</sup>, at 42.19, but all others would be below this limit.
36. While the DEFRA toolkit's forecasts have a clear effect on the figures, with or without the inclusion of this data, the impact of the development has been identified as 'negligible' using the most recent guidance. Even taking account for any reasonable margin of error or realistic differences in trip generation, for the development to have any more than a 'negligible' effect, the increase in NO<sub>2</sub> at the receptors would need to be four times greater than predicted by the AQA. It would need to be substantially greater than this for PM<sub>10</sub>.

37. Some concerns were raised regarding the health of people walking through the AQMA, including pupils walking to and from school. For there to be health concerns over short term exposures, the daily average for NO<sub>2</sub> must be above 200 µg/m<sup>3</sup>. For this to occur, the appellant has pointed to guidance which suggests that average annual exposure would need to be around 60 µg/m<sup>3</sup> or above. There is nothing to suggest levels of pollution are at this level or that the development would result in such levels being achieved. This is not disputed by the Council. The development would not therefore result in harm to the health of pedestrians or other non-residential users.
38. CUDP Policy EP1 seeks to resist development which would harm the health and safety of users of the site or the surrounding area and would harm the quality and enjoyment of the environment. The Council's interpretation of the policy at the hearing was that *any* reduction in air quality in the AQMA would cause harm and thus would conflict with the policy. With regard to this, the Council's Environmental Health officer referred me to S29(5) of the Environmental Protection Act 1990. This defines 'harm' as meaning harm to the health of living organisms or other interference with the ecological systems of which they form part and in the case of man includes offence to any of his senses or harm to his property.
39. I am not convinced the assertion that any increase in the amount of NO<sub>2</sub> constitutes harm in this context is correct. Neither the wording of Policy EP1 nor the definition above suggests that any and all development that increases traffic through an AQMA, and which would inevitably reduce air quality to some extent, must be refused. I also do not consider that paragraph 124 of the Framework should be interpreted in this way. When considering the scale of housing need in the district and the importance of this route for commuter traffic, it does not seem likely that there would be a situation whereby such an outcome could realistically be avoided. Local residents pointed to the reduction in NO<sub>2</sub> that would be needed to remove the area from being an AQMA and that the development would not help in that objective. However, the presence of an AQMA also does not create a moratorium on development and it is not realistic to seek to resist any and all development that might lead to some increase in traffic.
40. If I were to dismiss the appeal on this basis, then it may prejudice any development that resulted in additional traffic passing through the crossroads. This is not to say that such effects should not be carefully assessed, but to my mind, the question of harm is not whether development would reduce air quality, but the scale of that reduction and whether it would have an unacceptable effect on public health or the ability of the Council to address the problem at a strategic level. It cannot be an automatic assumption that any reduction in air quality would have such an effect.
41. I understand that residents living within and near to the AQMA are concerned about any exacerbation of an existing problem. However, the Council has not provided any evidence to demonstrate that the likely negligible reduction in air quality would have any discernible effect on public health. Moreover, the majority of dwellings in the vicinity of the site and the village are outside the AQMA and there is no evidence that air quality in these locations is in breach of the limit values. There is no reason to assume therefore that the health of occupants is at risk in these areas. Therefore, while I recognise the fears



about pollution in the village, the evidence does not lead me to conclude that there would be any material harm as a result of the development taking place.

42. There is also nothing before me to suggest that the development would prejudice the Council's attempts to address either congestion or air quality issues in the area. The Air Quality Action Plan (AQPA) (2009) encourages development in areas with good access to alternatives to the car. The site meets that requirement. The only strategic measure for either traffic management or air quality put to me was an uncommitted multi-modal scheme which would affect the whole A629 corridor. No particular detail on this was provided, but as the site is in an accessible and sustainable location, then it should be well placed to benefit from any such scheme. There is no reason for me to assume that the development would prejudice this proposal or jeopardise any anticipated benefits.
43. Other mitigation supported by the AQAP is the inclusion of electric vehicle charging points in all dwellings. This can be required by condition and the appellant is supportive of this approach. Clearly, the benefits of low emission vehicles to address the impacts of the development would rely heavily on the preferences of future occupants and evidence suggests take up in Calderdale is relatively low. Nonetheless, ensuring the infrastructure is in place to facilitate this option appears wholly consistent with the AQAP. Take up here, or in other parts of the district, would also not have to be substantial to off-set some of the pollution caused by the development. The AQAP also includes a number of other mitigation measures to address any issues of dust during construction. Taking all matters into account, I am satisfied that the development would not compromise the implementation of the AQAP.
44. In conclusion on this matter, I find that the development would not have an unacceptable impact on air quality or result in an unacceptable risk to public health. Moreover, it would not prejudice any strategies that are in place which seek to resolve existing air quality problems. Accordingly, there would be no conflict with CUDP Policy EP1 which seeks to ensure development does not cause harm to health. There would also be no conflict with paragraph 124 of the Framework, which seeks to ensure the cumulative effect on air quality is fully taken into account and development is consistent with air quality action plans.

### **Other Matters**

45. The appellant has submitted a Unilateral Undertaking (UU) which seeks to deliver 20% affordable housing. The Council are not seeking any affordable housing and the application was not refused on this basis. There is also no extant development plan policy that requires affordable housing provision. The delivery of affordable housing would bring with it recognised benefits. However, where there is no relevant development plan policy, and nothing before me to suggest the particular proportion or type of housing needed, then it would not be reasonable to withhold permission based on a lack of delivery. In this case, affordable housing would not be necessary to make the development acceptable in planning terms. Any agreement would not therefore be compliant with paragraph 204 of the Framework. As a result, I have not given the provisions of the UU any weight in my decision.
46. There is evidence of an outlier badger sett within the site and one outside, but near to the site. There is also evidence of unused setts in close proximity to

the site that could be affected by the development. Based on the indicative layout, the recommended mitigation strategy is to permanently close the outlier sett within the site and temporarily close the one outside it. The Phase 1 Habitat Survey concludes that this would not be harmful to the badger population. The survey also concludes that there would be no undue harm with regard to badgers foraging within retained or enhanced habitats or with their dispersal through the site. There is extensive habitat for badgers outside the site, and the likely location of the main sett would not be affected.

47. I accept that the introduction of new housing within an established badger territory would bring the risk of future conflicting demands of animals and residents, and would require on-going management. Although layout is a reserved matter, the site is of a sufficient size to ensure enhancement and protection measures can be included to satisfactorily minimise and mitigate any impact. The potential closure of the outlier sett would be unfortunate, but given that it is not a main sett and that both mitigation and enhancements can be secured by condition, I am satisfied this would not lead to unacceptable harm and there is no reason for me to conclude that any necessary licenses would not be granted.
48. Though none were identified, the Habitat Surveys found evidence of moderate potential for bat roosts, but low levels of actual bat activity. With the recommended mitigation measures in place, I am satisfied that the development would not have a significant impact on bat species. The same conclusion is drawn for breeding birds and, though no evidence was found in terms of reptiles, invertebrates or other protected species, precautionary measures in relation to construction, boundary treatments, layout and landscaping can ensure there would be no unacceptable impact. In more general terms, I am satisfied that the site is sufficiently large to accommodate development in such a way that would not harm the function or integrity of the wildlife corridor. These factors can be adequately addressed at reserved matters stage. As such, there would be no conflict with CUDP Policy NE15.
49. It is likely that any development of the site would result in the loss of some trees. This is unfortunate, but does not necessarily mean development cannot proceed. The appellant's Arboricultural Report (AR), which was accepted by the Council, indicates that the majority of individual trees and areas of woodland are of a medium (category B) or low quality (category C). Two category B trees would be removed in the indicative scheme, with the remainder category C. Clearly, this might be subject to change, but I am satisfied that the AR is robust and that a number of trees could be lost from the site without harm to any high quality examples or the amenity of the area. This can be addressed at reserved matters stage, but the broad mitigation measures recommended in the AR can be required by condition. The development also provides opportunities to provide replacement trees throughout the site.
50. The appellant's Phase I Geo-environmental desk study demonstrates that there are low risks of contamination from the historic use of the site or from uses in the vicinity. There is no evidence to suggest this is not a robust assessment. The study recommends a Phase II intrusive survey to confirm its findings, but I concur with the Council's view that significant ground contamination or the need for remediation is unlikely.

51. The development would clearly have an impact on the character of the site. This would be an inevitable consequence of any form of development, but change does not automatically equate to harm. The loss of a greenfield site is noted, but there are no policies before me which place a moratorium on such development. Although it appears unmaintained, the site still provides a pleasant break in the built form. Nonetheless, there is a significant amount of development to the south of the site and the development would not appear as a significant intrusion into the open countryside.
52. The site is of sufficient size to be able to accommodate the proposed number of dwellings without being over intensive and to ensure it would integrate into the existing built form. It is not unusual for housing in the area to stretch out perpendicular to Brighthouse Road and thus the development would not be incongruous. There is also no reason why an appropriate landscaping scheme could not be implemented that would soften the impact of the development, provide a pleasant residential environment and ensure biodiversity assets are not unduly harmed. These matters can be addressed at the reserved matters stage, but I am satisfied that there would be no unacceptable harm in principle to the character and appearance of the area.
53. The site lies opposite South Edge House which is a late eighteenth or early nineteenth century Grade II listed building. Other than its architectural importance, the significance of this lies in its relationship with the growth of the area in the industrial period. The Council considers that there would be less than substantial harm to the setting of the building by virtue of the replacement of an open field with modern housing. Nonetheless, they consider the public benefits of the housing would outweigh any harm caused.
54. As far as I have been made aware, the site has no historical or functional relationship with the building, though some views from it would include the site. The development would not fundamentally alter the way in which the building is experienced from publically accessible vantage points and its current physical and visual relationship with the roadside would not be affected. The replacement of an open field would clearly change the setting of the building to an extent. However, when considering the generally built-up nature of the environment, the presence of housing opposite is unlikely to result in harm to its setting or its significance.
55. There is no reason why development should result in any harmful effects on the living conditions of nearby residents. There would be sufficient separation from existing homes to ensure no harm in terms of privacy, noise or disturbance. Any concerns over anti-social behaviour or crime from future occupants are unfounded. Potential issues during construction are temporary and can be addressed by condition.
56. The Council has indicated that there is likely to be a shortfall in secondary school places in the area by 2018. A financial contribution would normally be required, but has not been requested by the Council in this case. There is no evidence before me in terms of primary school provision. The Council raises no objection to the development on this basis and I see no reason to come to a different conclusion. While the development would add some pressure, it is not of a scale to generate significant numbers of additional pupils. The overall impact of this would not therefore weigh significantly against the development. The Council's officer report indicated some concern over the level of public

open space provision. However, I consider this to be a matter that can be addressed at reserved matters stage.

57. There is no evidence to suggest that other services or infrastructure in the area, including sewerage facilities, doctors, shops or any other facility would not be capable of accommodating the development.
58. The site lies wholly within flood zone 1. The appellant's flood risk assessment sets out a number of recommended mitigation measures for surface and foul water drainage which should ensure there is no undue risk of flooding on the site itself and which would not increase the risk elsewhere. The indicative layout includes space for sustainable drainage features, which may also provide scope for biodiversity enhancements. The Lead Local Flood Authority and Yorkshire Water raised no objections subject to conditions and there is nothing that would lead me to a different conclusion. The risk of flooding is relatively low and there is sufficient scope within the site to provide adequate mitigation.
59. Interested parties argue that there are alternative locations that would be better suited to housing that would have less impact on the crossroads. However, these are matters more appropriately considered through the preparation of the development plan. I must consider whether the effect of the development proposed would be acceptable in its own right and not whether there are 'better' alternatives. In terms of precedent and the issues of other incremental increases in housing and traffic, each application and appeal must be assessed on its own merits. Should other development be proposed in the area then both the individual and cumulative effect of development would be assessed. The allowing this appeal would not alter this.
60. A concern was raised that the development had not been adequately advertised by the Council and the level of public opposition would have been higher if done differently. There is nothing to suggest any breach of procedure by the local authority and any references to the representations made by the appellant were based on the facts before them. This has not had any bearing on my decision, which I have made on its own merits based on the evidence before me and my own observations of the area.

### **Planning Balance**

61. The development would provide up to 50 dwellings. The Council has a substantial shortfall in housing land and thus this level of delivery that can be provided relatively quickly carries with it significant benefits. The site is in a sustainable location where future occupiers would have good access to a range of services and facilities within walking distance. They would also have good access to public transport and would provide residents with reasonable and realistic alternatives to using the car should they wish to do so. The development would also provide associated social and economic benefits to the area through increased expenditure potential and supporting the vitality of local services and facilities and the community in general. While only for the short term, there would also be associated benefits in terms of investment in construction and jobs.
62. In the context of the housing supply, any conflict that exists with CUDP policies NE11 and E1 carries little weight in my decision. Their strict application would prevent improvements to the large shortfall in the supply of housing with no particular benefit to be gained, particularly in terms of employment

development. As described above, the development would not be without some adverse environmental impacts. However, the effects on the operation of the transport network, highway safety, air quality, biodiversity, trees, the character of the site and infrastructure would not be significant in their own right or could be mitigated to minimise the overall effect.

63. Taken together, the adverse impacts of the development would not significantly or demonstrably outweigh the benefits when considered against the policies of the Framework when taken as a whole. Moreover, there are no policies within the Framework which indicate development should be restricted. Accordingly, the presumption in favour of sustainable development is a significant material consideration which outweighs any conflict with the development plan and indicates that planning permission should be granted for development that is not fully in accordance with it.

### **Conditions**

64. I have considered the suggested conditions from the Council in accordance with the Planning Practice Guidance (PPG). I have also had regard to the discussions which took place during the hearing. I have attached conditions limiting the lifespan of the planning permission and setting out the requirements for reserved matters in accordance with the Act. Subject to the measures to be agreed, I have specified the approved plans for the access as this provides certainty.
65. To ensure adequate drainage, I have attached a condition requiring the details of surface and foul water drainage to be agreed and implemented prior to occupation. I have replaced the Council's suggested conditions on drainage with a single condition which removes much of the duplication and unnecessary detail, all of which would form part of the details to be agreed in any event. Although it pertains to layout, I have imposed a condition establishing the principle that development should not interfere with the maintenance of the sewer running through the site without prior agreement.
66. In the interests of highway safety, I have attached conditions requiring the agreement and implementation of highway mitigation measures and the construction of the access. I have combined the three suggested conditions on mitigation to remove unnecessary duplication. Local residents wished to see the mitigation carried out prior to commencement of the housing. The PPG states that such conditions should only be used in exceptional circumstances. As the impact of the development on the highway, and the need for mitigation, would only occur once the dwellings are occupied, I see no reason why any works need to be completed prior to development starting.
67. Owing to the proximity of the site to the railway line, I have imposed conditions relating to lighting, noise, safety barriers and boundary treatments. These are required in the interests of the living conditions of future residents and to ensure the safety and security of the railway. In order to provide mitigation for air quality, a condition requiring the installation of electric vehicle charging points is necessary. Other mitigation measures outlined in the AQA are also required by condition in the interests of the living conditions of nearby residents.
68. Conditions are imposed requiring the recommended biodiversity and arboricultural mitigation measures to be implemented in accordance with the



relevant studies. These are necessary both in relation to the character and appearance of the site, but also the protection of biodiversity species. In addition to this, I have required the agreement of the HLMP prior to commencement as construction of the development should be consistent with it and ensure it is not prejudiced in any way.

69. A Phase II Intrusive Site Investigation Report is considered necessary to confirm the findings of the Phase I Report and to ensure any ground contamination found is identified and remediated. While I raised the possibility of an additional condition requiring a Construction Management Plan at the hearing, I am satisfied that conditions 24 and 25 provide adequate controls over any issues relating to construction traffic in the interests of the living conditions of nearby residents and highway. An additional condition is not therefore necessary.
70. I have not imposed the suggested conditions on details of off-street parking or open space as these are essentially matters to be addressed at reserved matters in relation to layout and appearance. I have also not imposed the suggested condition on broadband. It was agreed that this would not be necessary at the hearing. Conditions 5, 13, 15 and 21 are by necessity pre-commencement conditions to ensure development proceeds in accordance with the approved details. I have made minor amendments to the wording of some suggested conditions in the interests of consistency, clarity and precision.

### **Conclusion**

71. For the reasons given above, and taking all matters raised into account, I conclude that the appeal should be allowed.

*S J Lee*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Mike Ashworth	WYG
Stuart Wilkins	Bryan G Hall
Nigel Mann	WYG
David Boyle	Crosslee PLC

### FOR THE LOCAL PLANNING AUTHORITY:

Claire Dunn	Calderdale MBC
Andrew Dmoch	Calderdale MBC
Ryan Carroll	Calderdale MBC

### INTERESTED PERSONS:

Councillor Colin Raistrick	Councillor and local resident
Lindsay Milhailovic	Local resident
Ann Horsfall	Local resident
Councillor David Kirton	Councillor (did not attend post site visit session)
Susan Morten	Local resident (site visit only)

## **DOCUMENTS SUBMITTED AT THE HEARING**

1. Policies from Calderdale Unitary Development Plan
2. Calderdale Local Plan – Initial Draft Policies Map
3. Badger Survey (Confidential – October 2016)
4. Internet link to electronic vehicle data for the area

## **DOCUMENTS SUBMITTED FOLLOWING THE HEARING\***

1. Suggested condition for amending speed limit location
2. Updated Extended Phase 1 Habitat Survey December 2016
3. Updated Confidential Updated Badger Survey Report December 2016

(\* discussed and requested at the hearing)

### **Schedule of Conditions**

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan 1464-100 Rev B; Site Access Plan 14/191/TR/002 Rev D other than as required by conditions 18 and 19.
- 5) The development shall not begin until full details of a scheme for the disposal of foul and surface water have been submitted to and approved in writing by the local planning authority. The details so approved shall be implemented prior to first occupation of any of the dwellings hereby permitted and retained thereafter.
- 6) No building or other obstruction including landscape features shall be located over or within three metres either side of the centre line of the sewer that traverses 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 prior to the works taking place.
- 7) No works shall be carried out within 10m of the adjacent railway undertaker's land until a method statement including details of any excavations or earthworks within 10m of the boundary fence of the railway undertaker, a method of construction including details of the use of any vibro-impact machinery, and a risk assessment in relation to the railway has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details, and shall be so retained thereafter.
- 8) Prior to the occupation of any dwelling hereby approved an Armco safety barrier, or other similar barrier, shall be installed at locations where vehicles may be in a position to drive or roll onto the railway or damage the lineside fencing, and shall be so retained thereafter.
- 9) The development shall be constructed so that the indoor ambient noise level within living rooms and bedrooms with the windows closed, and assessed in accordance with BS8233:2014, does not exceed;
  - 30dB LAeq in living rooms and bedrooms,
  - 45 dB LAm<sub>ax</sub> from 2300 hours and 0700 hours in bedrooms, and
  - 55dB LAeq on balconies and in gardens at any time.

Upon completion of the development and before the first occupation of each of the dwellings comprised in the development commences there shall be produced to the local planning authority a written report of a suitably qualified noise consultant to show that the specified noise levels have been achieved.

- 10) None of the dwellings hereby permitted shall be occupied until details of the treatment of the boundaries of the site, including a trespass proof fence on the boundary with the rail operator, have been submitted to and approved in writing by the local planning authority. The treatments so approved shall then be provided in full prior to the first occupation of any of the dwellings comprised in the development and shall thereafter be retained.
- 11) No external lighting, including floodlights, shall be installed until details of any proposed have been submitted to and approved in writing by the local planning authority. The lighting shall be installed in accordance with the approved details and shall be so retained thereafter.
- 12) The development hereby approved shall be carried out in accordance with the recommendations, mitigation and enhancement within the following reports unless otherwise agreed in writing by the local planning authority;
  - Updated Badger Survey Report dated December 2016, job number A079689-1
  - Updated Extended Phase 1 Habitat Survey Report dated December 2016, job number A079689-1
  - Bat Survey Report dated October 2016, job number A079689-1
- 13) Development shall not commence until a Habitat and Landscape Management Plan (HLMP), which shall include a timetable for implementation, has been submitted to and approved in writing by the Local planning authority. The HLMP shall be implemented in accordance with the timetable and approved details and any works carried out in association with it shall be retained thereafter.
- 14) Within the boundary of any dwelling hereby approved, there shall be installed in an appropriate location a suitable facility to permit the recharge of an electrical battery powered vehicle that may be used in connection with that dwelling before the dwelling is brought into use. Unless otherwise required by the location, the installation(s) shall comply with IEE regulations and BSEN 62196-1 for a mode 3 system.
- 15) The development shall not begin until a Phase II Intrusive Site Investigation Report has been submitted to and approved in writing by the local planning authority.

Where site remediation is recommended in the Phase II Intrusive Site Investigation Report development shall not begin until a Remediation Strategy has been submitted to and approved in writing by the local planning authority. Remediation of the site shall be carried out and completed in accordance with the Remediation Strategy so approved. In the event of contamination not previously considered being identified the local planning authority shall be notified of the extent of that unforeseen contamination and of the further works necessary to complete the remediation of the site.

Following completion of all remediation measures a Validation Report shall be submitted to the local planning authority. Unless otherwise agreed in writing with the local planning authority, no dwelling shall be occupied until such time as the remediation measures for the whole site have been completed in accordance with the approved Remediation Strategy and a Validation Report

- in respect of those remediation measures has been approved in writing by the local planning authority.
- 16) The development hereby permitted shall be carried out in accordance with the Arboricultural Impact Assessment at section 5 of the Arboricultural Report dated October 2016, reference 60495774 unless otherwise agreed in writing by the local planning authority.
  - 17) The development hereby permitted shall be carried out in accordance with the construction phase mitigation measures in Table 7.1 of the Air Quality Assessment dated June 2017 unless otherwise agreed in writing by the local planning authority.
  - 18) None of the dwellings hereby approved shall be occupied until details of two pedestrian refuges (one to the north of the access and one to the south on Brighthouse Road), a right turn lane in the site, the relocation of bus stop 21279 and arrangements for the relocation of the existing 30/40 mph speed limit have been submitted to and approved in writing by the local planning authority. The measures shall be provided in accordance with the approved details prior to the first occupation of any dwelling hereby permitted and shall be so retained thereafter.
  - 19) Full design details and construction specifications of the access road shall be submitted to and approved in writing by the local planning authority before any works to construct an access are undertaken. The access shall be constructed in accordance with the approved scheme prior to the occupation of any dwelling hereby permitted and shall be retained thereafter.
  - 20) Notwithstanding the provisions of Part 4, Class A of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, no construction works shall be carried out until, details have been submitted to and approved in writing by the local planning authority in respect of the provision of a contractors compound and staff car parking area within the site. Such details shall include the provision of protective fencing to the boundaries of the construction site. The details so approved shall thereafter be implemented in advance of construction works commencing and shall be retained for the duration of construction works unless otherwise agreed in writing by the Local Planning Authority.
  - 21) The development shall not begin until, a scheme for the prevention of mud or other material being deposited onto the public highway, including full details of any equipment on the site used to clean the hardstanding areas, access, wheels and chassis of vehicles, equipment location and means of drainage, has been submitted to and approved in writing by the local planning authority. The permitted scheme shall be implemented on commencement of works. In the event of mud or other material being deposited onto the public highway, immediate remedial and preventative action shall be taken, including suspension of operations if necessary.