



Appeal Decision

Site visit made on 31 October 2023

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 February 2024

Appeal Ref: APP/W4515/W/23/3327828

Land at Backworth Business Park, Eccleston Close, Station Road, Backworth, Newcastle upon Tyne NE27 0RX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by The Northumberland Estates against the decision of North Tyneside Council.
 - The application Ref 21/00304/FUL, dated 3 February 2021, was refused by notice dated 16 February 2023.
 - The development proposed is Construction of 57 residential dwellings (Use Class C3(a)) and 14 No. commercial units totalling 650 sqm (Use Class E(g)), with associated road infrastructure, car parking spaces, open spaces, gardens, and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for Construction of 57 residential dwellings (Use Class C3(a)) and 14 No. commercial units totalling 650 sqm (Use Class E(g)), with associated road infrastructure, car parking spaces, open spaces, gardens, and landscaping. at Land at Backworth Business Park, Eccleston Close, Station Road, Backworth, Newcastle upon Tyne NE27 0RX in accordance with the terms of the application, Ref 21/00304/FUL, dated 3 February 2021, subject to the conditions set out in the attached schedule.

Applications for costs

2. The appellant has submitted an application for costs against North Tyneside Council. This application is the subject of a separate decision.

Preliminary Matters

3. The Council has withdrawn both of reasons for refusal and did not present evidence to defend the appeal. Instead relying on the Officer's report to committee that recommended approval of the application subject to appropriate conditions and a planning obligation. I have determined the appeal on this basis.

Background and Reasons

4. The Council refused planning permission for the appeal scheme for two reasons:

"The proposal would adversely impact upon existing business' ability to operate contrary to the advice in National Planning Policy Framework (NPPF) (2021) and policies S1.4 and DM5.19 of the North Tyneside Local Plan (2017)."

And,

"The proposed development would by virtue of increase in traffic on Station Road (B1322) have an unacceptable impact on highway safety contrary to the advice in National Planning Policy Framework (NPPF) (2021) and policy S1.4 of the North Tyneside Local Plan (2017)."

5. In refusing to grant planning permission the Council had regard to representations from the operator of the neighbouring business premises, including technical information from a noise consultant. However, the acquisition of the neighbouring business premises by the appellant, the withdrawal of their objection and planned cessation of the operations at the business premises amounts to a material change in circumstances. The effect of which is that there will no longer be any adverse effect of the appeal scheme on the ability of the neighbouring business to operate because those operations will have ceased in any event.
6. Additionally, evidence submitted by the appellant demonstrates that the mitigation measures proposed would in any event ensure that "internal and external noise levels will now be within standards for all dwellings with windows opened"¹ and I have no substantive evidence that would lead me to conclude otherwise.
7. Moreover, since the decision to refuse to grant planning permission advice has been sought by the Council from an independent highways consultant that concludes, as detailed in correspondence from the council, that there is no robust evidence to substantiate the reason for refusal. Furthermore, the appellant has submitted a Transport Assessment, which "demonstrates that the appeal proposals are acceptable in terms of highway safety and do not result in a severe impact on the road network"². I have no substantive evidence that would lead me to conclude otherwise.
8. The site, being approximately 6.08 hectares (ha) in area, is designated as a mixed-use site (Map Ref: 29 Backworth Business Park and Cottages, Backworth) in the North Tyneside Local Plan (2017) (LP).
9. The Officer's report details that the developer has proposed on-site mitigation measures and off-site compensation to mitigate for the loss of the 3.3ha of species rich grassland within Eccles Colliery Local Wildlife Site and 1.8ha of semi-improved grassland to the northeast. It is not at dispute that the proposed mitigation adequately mitigates the harm resulting from the appeal scheme and I have no substantive evidence before me that would lead me to conclude otherwise.
10. The appellant has submitted a signed planning obligation in relation to affordable housing provision, a Travel Plan bond, an off-site habitat compensation site and a coastal mitigation contribution. As such I am satisfied that the proposal would make adequate provision for affordable housing, travel planning and habitat compensation.

Conditions

11. I have had regard to the conditions suggested by the Council, and as detailed in the Statement of Common Ground, the appellant has agreed to these. I have amended these conditions where necessary and have had regard to the

¹ Statement of Case paragraph 1.10

² Statement of Case paragraph 6.12

guidance set out in the Planning Practice Guidance and the National Planning Policy Framework.

12. I have attached the standard timeframe condition, as well as a condition specifying the relevant plans in accordance with which the development is to be carried out in the interests of certainty and proper planning.
13. In the interests of highway safety, I have included conditions relating to the completion of highway works, a scheme for access and vehicle turning, driveways and visitor parking and for the storage of refuse, recycling and garden waste bins and cycle storage.
14. Also, in the interests of highway safety, the environment and the living conditions of occupiers of neighbouring properties I have included a condition relating to a Construction Method Statement. For the same reasons I have included conditions relating to EV charging infrastructure and a Travel Plan.
15. In the interests of the environment, I have included conditions relating to the details of drainage, including surface and foul, Sustainable Drainage Systems and culverts.
16. To protect the living conditions of future occupiers and the environment I have included conditions relating to gas emissions from underground workings and other sources, detailed site investigations, remediation works, a validation statement and unexpected contamination. In the interests of the living conditions of neighbouring occupiers I have included a condition relating to working hours on the site.
17. In the interests of the environment, I have included conditions relating to protected species, invasive species, measures to protect local waterways, measures to protect amphibians, otter, voles and badgers. I have also included conditions requiring the provision of bat boxes and hedgehog gaps.
18. I have included conditions relating to Public Rights of Way, in the interests of the environment. For the same reason I have included conditions relating to trees, landscaping, a litter management strategy, ecological management and monitoring plan and a condition relating to external lighting. I have also included conditions relating to the retention of trees, shrubs and hedgerows, tree felling and pruning.
19. To ensure archaeological remains are not destroyed and are properly recorded during the construction phase I have included a number of conditions relating to archaeology. To define the permission and in the interests of good planning I have included conditions relating to finished floor levels, materials, housing standards and to remove permitted development rights.
20. In the interests of aviation safety, I have included condition regarding the provision of photovoltaic panels within the development.
21. I have included conditions relating to the noise levels of external plant in the interests of the living conditions of the occupiers of neighbouring properties and for the same reasons I have included conditions relating to the hours of operation of, and deliveries to, the commercial units of the appeal scheme.

22. In the interests of the living conditions of future occupiers of the properties I have included conditions relating to a noise scheme, noise mitigation for residential dwellings and acoustic screening.
23. I have not included a condition preventing the use of sound reproduction equipment which is audible outside of the curtilage of the property because such a condition is ill defined and thus fails the tests set out in the PPG and Framework.

Conclusion

24. For the reasons given and having had regard to all other matters I conclude that the appeal should succeed.

Mr M Brooker

INSPECTOR

Richborough

Schedule of Conditions

1. The development to which the permission relates shall be carried out in complete accordance with the following approved plans and specifications:

Site location plan LP-01 Rev P2
Proposed site layout Dwg No. 102 Rev P7
Proposed external finishes Dwg No. 103 Rev P8
Housetype booklet (August 2022 Rev I)
Landscape proposals Dwg No. 145059/8001E
Commercial unit 1-14 floor plan and elevation Dwg No. CU-02A
Sub station plan and elevation Dwg No. SBS-01

2. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
3. Notwithstanding Condition 1, the following highway works shall be carried out within six months of final occupation and subject to Technical Approval and Road Safety Audits which shall be submitted to and approved in writing by the Local Planning Authority:
Provision of suitable pedestrian crossing point on Station Road
Associated highway drainage
Associated street lighting
Associated road markings
Associated signage
Associated legal orders
Thereafter, these agreed works shall be carried out in accordance with the agreed timescales and retained thereafter.
4. Notwithstanding Condition 1, the scheme for access and vehicle turning shall be laid out in accordance with the approved plans, Proposed site layout Dwg No. 102 Rev P7, and permanently retained and maintained thereafter.
5. Notwithstanding the Condition 1, the scheme for driveways, private parking spaces, visitor parking spaces and garages associated with the residential use and the scheme for parking associated with the commercial use shall be laid out in accordance with the approved plans, Proposed site layout Dwg No. 102 Rev P7. All garage doors, serving residential dwellings, shall be up and over as per the specification shown on 'Garage Door Opening' Dwg No. GDL001 P1

These parking areas shall not be used for any other purpose and shall be permanently retained thereafter.

6. No part of the development shall be occupied until a scheme for Electric Vehicle (EV) charging points for each dwelling has been submitted to and approved by in writing the Local Planning Authority. This scheme shall be implemented in accordance with the approved details before the development is occupied and retained thereafter.

7. Notwithstanding Condition 1, the scheme for the provision of and storage of refuse, recycling and garden waste bins shall be laid out in accordance with the approved plans prior to the occupation of each residential dwelling hereby approved and the provision of and storage of refuse and recycling (if required) shall be laid out in accordance with the approved plans prior to the occupation of each commercial unit hereby approved. These storage areas and refuse shall not be used for any other purpose and retained thereafter.
8. Notwithstanding Condition 1, the scheme for storage of cycles shall be laid out in accordance with the approved plans and prior to the occupation of each dwelling. These storage areas shall not be used for any other purpose and retained thereafter.
9. Notwithstanding Condition 1, no development shall commence until a Construction Method Statement, including details of wheel washing facilities and mechanical sweepers, for the duration of the construction period has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall: identify the access to the site for all site operatives (including those delivering materials) and visitors, provide for the parking of vehicles of site operatives and visitors; details of the site compound for the storage of plant (silos etc) and materials used in constructing the development; provide a scheme indicating the route for heavy construction vehicles to and from the site; a turning area within the site for delivery vehicles; dust suppression scheme (such measures shall include mechanical street cleaning, and/or provision of water bowsers, and/or wheel washing and/or road cleaning facilities, and any other wheel cleaning solutions and dust suppressions measures considered appropriate to the size of the development); include tree protection measures for the trees to be retained and retention and protection of woodland, scrub and grassland habitat areas marked as such on approved drawings. Cabins, storage of plant and materials and parking are not to be located within the root protection area (RPA) of retained trees or woodland areas as defined by the Tree Protection Plan. Species rich grassland areas should be avoided where possible and should be maintained for the duration of the works. Where this is not possible then vegetation/top soil must be stripped and stored or translocated as agreed with the Council. Details of site security fencing to include hedgehog gaps and their locations on the exterior fence line. The scheme must include a site plan illustrating the location of facilities and any alternative locations during all stages of development and shall include details of how the compound, storage area and haul roads will be removed and habitats restored upon completion. The approved statement shall be implemented and complied with during and for the life of the works associated with the development.
10. Notwithstanding the details submitted in the Travel Plan, no part of the development shall be occupied until a Full Travel Plan in accordance with the council's Travel Plan Scope, has been submitted to and approved by in writing the Local Planning Authority. Thereafter, the development shall be

carried out in full accordance with the agreed Travel Plan. The Travel Plan will require the Travel Plan Coordinator to be in place three months prior to first occupation until at least five years from first occupation and will also include an undertaking to conduct annual travel surveys to monitor whether the Travel Plan targets are being met with a Monitoring Report submitted to the council within two months of surveys being undertaken.

11. Notwithstanding Condition 1, prior to the commencement of any part of the development hereby approved a detailed drainage design/plans of the wetland areas/Sustainable Drainage System, including details of permeable paving for driveways and parking spaces, ditches, swales and attenuation ponds, and a timetable for their implementation shall be submitted to and approved in writing by the Local Planning Authority in consultation Newcastle International Airport Limited (NIAL). Details shall include profiles, cross sections, size, depth and planting of SuDS features. Any ditches, swales or attenuation ponds shall be designed to provide ecological benefits and shall provide native planting. Thereafter, the development hereby approved shall be carried out in full accordance with these agreed details which shall be permanently retained and maintained.
12. Notwithstanding Condition 1, prior to the first occupation of any part of the development hereby approved details of the appointed SUDS management company, to manage the SUDS and any associated infrastructure is managed and maintained in perpetuity, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development hereby approved shall be carried out in full accordance with these agreed details. Following the appointment of the SUDS management company, if any changes to the appointed SUDS management company are required the Local Planning Authority must be informed in writing before any changes occur.
13. Notwithstanding Condition 1, prior to the commencement of any part of the development hereby approved details of the proposed culvert improvement works identified within the submitted Flood Risk Assessment are submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be carried out in full accordance with these agreed details and shall be permanently maintained and retained. Thereafter, the development hereby approved shall be carried out in accordance with the agreed details.
14. The development hereby permitted shall not be constructed above damp proof course level until the details of a scheme of site investigation and assessment to test for the presence and likelihood of gas emissions from underground workings, historic landfill, unknown filled ground or made ground has been submitted to and agreed in writing by the Local Planning Authority.

Upon approval of the method statement:

- a) In the event that remediation is required following the assessment of the ground gas regime using current guidelines, then a method statement must be submitted to and approved in writing by the Local Planning Authority.
- b) The detailed design and construction of the development shall take account of the results of the site investigation and the assessment should give regard to results showing depleted oxygen levels or flooded monitoring wells. The method of construction shall also incorporate all the measures shown in the approved assessment.
This should provide details of exactly what remediation is required and how the remediation will be implemented on site; details including drawings of gas protection scheme should be included.
- c) Where remediation is carried out on the site then a validation report will be required.
This report should confirm exactly what remediation has been carried out and that the objectives of the remediation statement have been met. The validation report should include cross sectional diagrams of the foundations and how any gas protection measures proposed in the remediation method statement are incorporated. In the event that integrity testing of membranes is required then any test certificates produced should also be included.
A verification report shall be submitted to and approved in writing by the Local Planning Authority before the development is occupied/brought into use.
- d) In the event that there is a significant change to the ground conditions due to the development, for example grouting or significant areas of hard standing; then additional gas monitoring should be carried out to assess whether the gas regime has been affected by the works carried out. In the event that the gas regime has been altered then a reassessment of remediation options shall be submitted to the Local Planning authority to be agreed in writing before the development is occupied/brought into use.

Thereafter the development shall not be implemented otherwise than in accordance with the scheme referred to in c) above.

15. Prior to commencement of development a detailed Site Investigation (Phase 2) must be carried out including an interpretative report on potential contamination of the site. This must be prepared by an appropriately qualified person and submitted to and approved in writing by the LPA to establish:

- i. If the site is contaminated;
- ii. To assess the degree and nature of the contamination present, and an assessment whether significant risk is likely to arise to the end users and public use of land, building (existing or proposed) or the environment, including adjoining land;
- iii. To determine the potential for the pollution of the water environment by contaminants and;

- iv. an appraisal of remedial options, and proposal of the preferred option(s).

The Site Investigation report must include the following information:

- A site plan with sampling points and log;
- Results of sampling and monitoring carried out in accordance with sampling strategy, and;
- An interpretative report on potential contamination of the site, conclusions must be prepared by a competent person (a person with a recognised relevant qualification, sufficient experience in dealing with the type(s) of pollution or land instability, and membership of a relevant professional organisation).

The Site Investigation report should be written in accordance with the current government guidelines including but not exclusive of those including in the BS10175 2011+A1 2013, BS 5930 2015 +A12020, Development on Land Affected by Contamination YALPAG Version 11.2 - June 2020, Land Contamination Risk Management - Environment Agency.

16. Prior to the commencement of the development a detailed Remediation Method Statement shall be submitted to and approved in writing by the Local Planning Authority. The remediation method must include phase 1 and 2 reports in accordance with BS10175 risk assessment pre and post remediation scheme. The method statement must specify remediation for each identified contaminants giving installation or construction methods required to break pathway, or specifying disposal; or in situ treatment as deemed appropriate, the handling and disposal of contaminants to prevent spread of contaminants and the critical control checks required to ensure remediation areas, handling and deposition areas and installation drawings of gas protection scheme must be included.

The design of the remediation strategy should consider the results from the previous two phases of investigation and consider the proposed use/layout of the development.

The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protections Act 1990 in relation to the intended use of the land after remediation.

An options appraisal will only be acceptable upon the inclusion of the recommended referred option.

The Remediation Method Statement should be written in accordance with the current government guidelines including but not exclusive of those including in the BS10175 2011+A1 2013, BS 5930 2015 +A12020, Development on Land Affected by Contamination YALPAG Version 11.2 - June 2020, Land Contamination Risk Management.

17. Prior to the occupation of each dwelling on the development hereby permitted, a Remediation Validation report for the site must be submitted to and approved in writing by the Local Planning Authority. A Validation report

(sometimes referred to as a Verification report) is used to demonstrate remediation completed in accordance with submitted and approved remediation report.

This report must contain the following:

- A summary of site investigation and remediation works undertaken with accompanying site layout identifying source / treatment areas;
- Confirmation of Required Concentration of Reduction Targets, and/or Cover and Break Screens;
- Post Remediation Interpretative report of Sampling to demonstrate compliance with quantitative goals.
- An explanation / discussion of any anomalous results, or failure to meet agreed target values, alongside additional work proposed and actioned;
- Demonstrate via photographic and documentation evidence of remedial measures;
- Post-remediation contaminated land risk assessment profile;
- Cross sectional diagrams for the site and detailed plans of the site.

The Remediation Validation report should be written in accordance with the current government guidelines including but not exclusive of those including in the BS10175 2011+A1 2013, BS 5930 2015 +A12020, Verification Requirements for Cover Systems YALPAG Version 3.4 - November 2017, Land Contamination Risk Management - Environment Agency.

18. If any unexpected contamination or hotspots are encountered during the investigation and construction phases it will be necessary to inform the Local Authority within 24 hours. Work must be ceased until any risk is assessed through chemical testing and analysis of the affected soils or waters. If required remediation of any unexpected contamination or underground storage tanks discovered during the development must take place before development recommences. Thereafter the development shall not be implemented otherwise than in accordance with the scheme approved under the planning consent. Any additional reports should be written in accordance with the current government guidelines including but not exclusive of those including in the BS10175 2011+A1 2013, BS 5930 2015 +A12020, Verification Requirements for Cover Systems YALPAG Version 3.4 - November 2017, Land Contamination Risk Management - Environment Agency.
19. The construction site subject of this approval shall not be operational and there shall be no construction, deliveries to, from or vehicle movements within the site outside the hours of 0800- 1800 Monday - Friday and 0800- 1400 Saturdays with no working on Sundays or Bank Holidays.
20. Prior to any works commencing on site, a fully detailed Dingy Skipper Mitigation Strategy for the retention, translocation and creation of new dingy skipper habitat within the application site will be submitted to and approved in writing by the Local Planning Authority. The Strategy shall be in

accordance with the habitat creation and enhancement details set out within the Biodiversity Net Gain Report (BSG June 2021) and Ecological Assessment Report (BSG) to be implemented for a minimum period of 30 years and will include the following:

- Details of grassland areas retained within the site for dingy skipper
- Details of protection measures (fencing) of dingy skipper mitigation areas during construction works;
- Details of permanent protection measures along the eastern boundary of the site to protect species rich grassland/dingy skipper habitat during the operational phase of the scheme;
- Details of receptor site preparation and translocation of turf habitat;
- Details of an Ecological Clerk of Works (ECoW) to advise on dingy skipper habitat mitigation and protection for the site; and to undertake regular supervision visits to oversee the habitat creation, habitat translocation and creation work, protection of the butterfly mitigation areas and retained habitats, monitor the site and visit as required to oversee unexpected works that could affect these areas;
- Updated dingy skipper surveys to be undertaken prior to commencement of work to aid habitat creation and delivery
- Details of dingy skipper habitat creation, including types of substrate used and creation and management of bare areas
- Details of dingy skipper habitat management and monitoring measures within the site for a minimum period of 30 years

The approved mitigation areas must be completed in accordance with the approved details prior to the commencement of construction works and the removal of existing dingy skipper habitat on site.

21. Prior to the commencement of development on site, an Invasive Species Control Plan shall be submitted to and approved in writing by the Local Planning Authority, including Japanese rose *Rosa rugosa* and Montbretia *Crocasmia x crocosmiiflora* within the site. Invasive species shall subsequently be eradicated in accordance with the approved plan prior to works commencing on site.
22. Notwithstanding Condition 1, prior to the commencement of any part of the development hereby approved details of the pollution control measures to prevent contamination of local watercourses during the construction period shall be submitted to and approved in writing by the Local Planning Authority and Lead Local Flood Authority (LLFA). These agreed details shall be installed prior to the commencement of any development on-site and shall only be removed following written agreement from the LLFA.
23. Notwithstanding Condition 1, prior to the commencement of the development an amphibian precautionary working method statement, in

order to address the low risk to great crested newts, shall be submitted to and approved in writing by the Local Planning Authority.

24. Prior to any works commencing on site, an updated checking survey for badger shall be undertaken and, if required, a Method Statement shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the proposed development shall be carried out in full accordance with the agreed Method Statement, if required.
25. Prior to any works commencing on site details of the footpath that will connect to the east Public Right of Way (PRoW) including alignment, width, levels, surface treatment, boundary treatment, lighting (if required), and details of the proposed signage and fencing along the footpaths near the access points to the Local Wildlife Site to limit access to the footpaths shall be submitted to and approved in writing by the Local Planning Authority. The footpath connections to the LWS are to be reviewed to limit the number of access points, with the removal of a footpath associated with the SUD's pond. Thereafter, the footpaths and signage shall be constructed in accordance with the approved details and shall be brought into use before any of the dwellings hereby permitted are occupied. Where footpaths are constructed within the RPA's of retained trees, works shall be carried out in accordance with BS 5837:2012 using Cell web or similar. Reason: This information is required from the outset in the interests of biodiversity having regard to policy DM5.5 of the North Tyneside Local Plan 2017.
26. Notwithstanding Condition 1, prior to any works commencing onsite a revised AIA and AMS is to be submitted that retains trees within Groups 4 and 7, that include (but not limited to) kerb installation, fence post installation, lighting and drainage. Thereafter all works are to be carried out in accordance with the AIA, Arboricultural Method Statement, BS 5837:2012 and the National Joint Utilities Group (NJUG) 'Guidelines for the Planning, Installation and Maintenance of Utility Apparatus in Proximity To Trees'. This includes trenchless techniques and hand digging are to be undertaken where drainage is installed near to trees. Thereafter, the development shall be carried out in full accordance with these agreed details.
27. Prior to the commencement of any site clearance works in connection with the development hereby approved (including demolition/excavation works, tree works, soil moving, hardstandings, temporary access construction and / or widening or any operations involving the use of motorised vehicles or construction machinery, site security fencing, services), the trees within or adjacent to and overhang the site that are to be retained are to be protected by fencing and in the locations in the Tree Protection Plan (TPP). No operational work, site clearance works or the development itself shall commence until the fencing is installed and photographic evidence is to be submitted showing the fence in place. The protective fence shall remain in place until the works are complete or unless otherwise agreed in writing with the Local Planning Authority. The protective fence is not to be repositioned without the approval of the Local Authority.
28. Prior to any works commencing on site:

a) details demonstrating that the Developer has engaged the services of an arboricultural consultant shall be submitted to and approved in writing by the Local Planning Authority. This will discharge the pre-commencement part of this condition.

b) Then, within 1 month of the first occupation of the 60th house to be completed, sufficient written evidence of regular monitoring and compliance by the pre-appointed tree specialist during construction shall be submitted to and approved in writing by the LPA. This will discharge the second part of this condition.

The role of the consultant shall be to advise on the tree management for the site and to undertake regular supervision visits to oversee the agreed tree protection and visit as required to oversee any unexpected works that could affect the trees. The supervision is to be undertaken in accordance with the approved Arboricultural Method Statement relating to the development hereby approved. If the appointed consultant changes, then the developer shall provide updated contact details to the LPA via the general planning contact email address.

29. Notwithstanding Condition 1, prior to the commencement of any part of the development hereby approved above damp proof course level a fully detailed landscape plan shall be submitted to and approved in writing by the Local Planning Authority. The landscape scheme shall be in accordance with the habitat creation and enhancement details set out within the Biodiversity Net Gain Report (BSG June 2021) and Ecological Assessment Report (BSG) and shall include details of the following:

- Details and extent of new native scrub planting, native woodland structure planting (including edge mix & infill planting) and new native hedgerows
- Details of planting to enhance existing woodland, scrub and hedgerows
- Details of wildflower meadow understorey and grassland creation and enhancement
- Details of native planting to SuDs features such as attenuation ponds, ditches and swales and the existing watercourse
- Proposed timing of all new tree, shrub and wildflower grassland planting and ground preparation noting the species and sizes for all new plant species
- New standard tree planting to be a minimum 12-14cm girth. Standard tree planting to the entrance and along the access roads to be semi mature trees.
- The landscaping scheme shall be implemented in accordance with the approved details within the first available planting season following the approval of details. All hard and soft landscape works shall be carried out in accordance with the approved details and to a standard in accordance with the relevant recommendations of British Standard 8545:2014. Any trees or plants that, within a period of five years after planting, are removed, die or become seriously damaged or defective, shall be replaced with others of

species, size and number as originally approved, by the end of the first available planting season thereafter.

30. Within 4 weeks of any of the development hereby approved commencing on site, details of a Litter Management Strategy for the development site that extends into the Eccles Colliery Local Wildlife Site (LWS) in order to reduce impacts from the housing scheme on the adjacent LWS shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall then be implemented in full on site before the first occupation of any of the dwellings or commercial units, or any such other timescale set out in the agreed details. The Strategy will cover litter management associated with the construction and operation of the site.
31. Within 4 weeks of any of the development hereby approved commencing on site, a revised Landscape Ecological Management & Monitoring Plan' (LEMMP) shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall be in accordance with the details set out within the Biodiversity Net Gain Report (BSG June 2021) and the Ecological Assessment Report (BSG) and shall be implemented on site before the first occupation of any of the dwellings or commercial units and thereafter for a minimum period of 30 years. The Management Plan will be a long-term management strategy and will set out details for the creation, enhancement, management and monitoring of landscaping and ecological habitats within the site for a minimum period of 30 years. The Plan will also include details of regular Net Gain Assessment updates that include habitat condition assessments to evidence the success of the scheme and net gain delivery. Thereafter, these areas shall be managed and maintained in full accordance with these agreed details unless first agreed in writing by the Local Planning Authority.
32. Prior to any approved drainage works associated with the existing culvert or watercourse (Brierdene Burn) taking place, an otter and water vole checking survey shall be undertaken and submitted to the Local Planning Authority for approval. All works will subsequently be undertaken in accordance with an approved working method statement.
33. Notwithstanding Condition 1, prior to the commencement of any part of the development hereby approved above damp proof course level details of 10no. bird boxes to be installed on the exterior walls of the dwellings and details of 7no. bat boxes to be installed on the exterior walls of the dwellings and 10no. Shwelger bat boxes to be installed on suitable trees within the development site, including specifications and locations, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, these agreed details shall be installed prior to the occupation of the dwelling(s) on which they are to be installed and for those to be installed on trees prior to the occupation of any dwelling hereby approved and permanently maintained and retained.
34. Hedgehog gaps (13cmx13cm) will be provided within any new or permanent fencing or construction phase fencing within the scheme. Locations of

hedgehog gaps shall be detailed on fencing plans and submitted to the LPA for approval prior to installation.

35. Prior to installation of any floodlighting or other form of external lighting, a lighting scheme, that must be designed to minimise light spill (less than 2 lux) to wildlife habitats within the site or adjacent to the site, shall be submitted to and approved in writing by the Local Planning Authority. This shall include the following information:

- a statement of frequency of use, and the hours of illumination;
- a site plan showing the area to be lit relative to the surrounding area, indicating parking or access arrangements where appropriate, and highlighting any significant existing or proposed landscape or boundary features;
- details of the number, location and height of the proposed lighting columns or other fixtures;
- the type, number, mounting height and alignment of the luminaires;
- the beam angles and upward waste light ratio for each light;
- an isolux diagram showing the predicted illuminance levels at critical locations on the boundary of the site and where the site abuts residential properties or the public highway to ensure compliance with the institute of lighting engineers Guidance Notes for the reduction of light pollution to prevent light glare and intrusive light for agreed environmental zone ;
- where necessary, the percentage increase in luminance and the predicted illuminance in the vertical plane (in lux) at key points; and
- all street lighting associated with the development should be fully shielded so as to prevent direct lighting up into the atmosphere and avoid potential distraction to pilots flying overhead.

High intensity security lights shall be avoided as far as practical and if required, these will be of minimum practicable brightness, be set on a short timer and will be motion sensitive only to larger objects. Lighting must be designed in accordance with the BCT & Institute of Lighting Professionals (ILP) Guidance Note 08/18 "Bats & Artificial Lighting in the UK' to minimise light spill to adjacent boundary features such as woodland, scrub, grassland and hedgerow habitats and should be less than 2 lux in these areas.

The lighting shall be installed and maintained in accordance with the approved scheme.

36. No trees, shrubs or hedges within the site which are shown as being retained on the submitted plans shall be felled, uprooted, wilfully damaged or destroyed, cut back in any way or removed during the development phase other than in accordance with the approved plans or without the prior written consent of the Local Planning Authority. Any trees, shrubs or hedges removed without such consent, or which die or become severely damaged or seriously diseased within three years from the completion of the

development hereby permitted shall within the next planting season, ie. October to March, be replaced by with trees, shrubs or hedge plants of similar size and species until the Local Planning Authority gives written consent to any variation.

37. All tree felling and pruning works shall be carried out in full accordance with the approved specification and the requirements of British Standard 3998: 2010 - Recommendations for Tree Works, details of which shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be carried out in full accordance with these agreed details.
38. Any excavations left open overnight shall have a means of escape for mammals that may become trapped in the form of a ramp at least 300mm in width and angled no greater than 45°.
39. No vegetation removal or building works shall take place during the bird nesting season (March- August inclusive) unless a survey by a suitably qualified ecologist has confirmed the absence of nesting birds immediately prior to works commencing.
40. Development shall not commence until a detailed scheme for the disposal of foul water from the development hereby approved has been submitted to and approved in writing by the Local Planning Authority in consultation with Northumbrian Water and the Lead Local Flood Authority. Thereafter the development shall take place in accordance with the approved details.
41. No groundworks or development shall commence until a programme of archaeological fieldwork (to include evaluation and where appropriate mitigation excavation) has been completed. This shall be carried out in accordance with a specification provided by the Local Planning Authority.
42. The building(s) shall not be occupied/brought into use until the final report of the results of the archaeological fieldwork undertaken in pursuance of condition 41 has been submitted to and approved in writing by the Local Planning Authority.
43. The buildings shall not be occupied/brought into use until a report detailing the results of the archaeological fieldwork undertaken has been produced in a form suitable for publication in a suitable and agreed journal and has been submitted to and approved in writing by the Local Planning Authority prior to submission to the editor of the journal.
44. Notwithstanding Condition 1, prior to the commencement of any construction works on the site details showing the existing and proposed ground levels and levels of thresholds and floor levels of the proposed dwelling shall be submitted to and approved in writing by the Local Planning Authority. Such levels shall be shown in relation to a fixed and known datum point.

Thereafter, the development shall not be carried out other than in accordance with the approved details.

45. Notwithstanding Condition 1, prior to the construction of any part of the residential development and any part of the commercial development hereby approved above damp-proof course level a schedule and/or samples of all surfacing materials and external building materials, including doors and windows shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not be carried out other than in accordance with the approved details.
46. Notwithstanding Condition 1, the proposed dwellings must comply with the housing standards set out under Policy DM4.9 of the North Tyneside Local Plan (2017).
47. Notwithstanding Condition 1, prior to the commencement of any part of the development hereby approved damp proof course level details of all screen and boundary walls, fences and any other means of enclosure shall be submitted to and approved in writing by the Local Planning Authority. These details shall include 1.8m high acoustic fencing to be provided on the site, to screen noise from the industrial workshops, road and rail noise. These agreed details shall be implemented prior to the occupation of any residential dwelling and any part of the commercial development. Thereafter, these agreed details shall be permanently retained and maintained.
48. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order), no development falling within Class A, B, C, D, E and F of Part 1 of Schedule 2 or within Class A of Part 2 of Schedule 2 shall be carried out without the prior, express planning permission of the Local Planning Authority.
49. Notwithstanding Condition 1, prior to first occupation of any residential dwelling or commercial unit hereby permitted full details (including samples, drawings and/or specifications) of any proposed photovoltaic panels to serve the development, including a timetable for their implementation, and a Glint and Glare Assessment shall be submitted to and approved in writing by the Local Planning Authority in consultation with Newcastle International Airport Limited (NIAL). Thereafter, the photovoltaic panels shall be installed in accordance with these agreed details and shall be permanently maintained.
50. Notwithstanding Condition 1, prior to the installation of external plant and equipment to any of the commercial units hereby approved a noise scheme shall be submitted to and approved in writing by the Local Planning Authority. These details shall include the noise rating level from the proposed combined plant and equipment to ensure that the background noise level of 46 dB LA90 T for Daytime and 31 dB LA90 T for night time at nearest façade of residential properties is not exceeded by any more than 5 dB, as detailed in noise report reference NT16157. Thereafter, the development hereby approved shall be carried out in accordance with these agreed details and any details pursuant to Condition 51 which shall be permanently retained and maintained.

51. Within one month of the installation of the plant and equipment acoustic testing shall be undertaken to verify compliance with Condition 50. These testing shall be submitted to and approved in writing by the Local Planning Authority prior to the operation of the plant.
52. The commercial units hereby approved shall only be operational between the hours of 07:00 and 20:00 hours Monday to Saturday and 09:00 to 17:00 hours on Sundays and Bank Holidays.
53. Deliveries and collections to the commercial units hereby approved shall only take place between the times of 07:00 and 18:00 hours; Monday to Saturday and 09:00 to 17:00 hours on Sundays and Bank Holidays.
54. Notwithstanding Condition 1, prior to the commencement of any part of the commercial units built above dampproof course level details of any of the following shall be submitted to and approved in writing by the Local Planning Authority:
 - the height, position, design and materials of any chimney or extraction vent to be provided;
 - any refrigeration plant to be installed in connection with the unit;
 - air ventilation systems;
 - any odour suppression system.Thereafter, the development shall not be carried out other than in accordance with the approved details which shall be installed prior to the occupation of the unit and shall be permanently maintained and retained.
55. Notwithstanding Condition 1, prior to the commencement of any part of the development hereby approved above damp proof course level details of the 2.8m high acoustic screening (fence and earth bund), running parallel to Ecclestone Close to be provided to screen industrial noise from Keenan's, in accordance with Figure 6, drawing ref NT/161157/006 of noise report NT16157, shall be submitted to and approved in writing by the Local Planning Authority. This agreed acoustic screening shall be installed prior to the occupation of any residential dwelling hereby approved. Thereafter, the acoustic screening shall be permanently retained and maintained.
56. Prior to the occupation of any residential dwelling hereby approved a noise scheme, providing details of the glazing and ventilation scheme provided to habitable rooms, as outlined in Noise Report NT16157 to ensure bedrooms meet the good internal equivalent standard of 30 dB LAeq at night and prevent the exceedance of LMAX of 45dB(A) and living rooms meet an internal equivalent noise level of 35 dB LAeq as described in BS8233 and the World Health Organisation community noise guidelines. These agreed details shall be implemented prior to the occupation of each dwelling and shall be permanently retained and maintained.
57. The fixed shut windows as shown on Housetype booklet (August 2022 Rev I) for plots 27, 28, 29, 55, 56 and 57 shall be retained as permanently maintained and retained as such.

End of Schedule



Costs Decision

Site visit made on 31 October 2023

by **Mr M Brooker DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 05 February 2024

**Costs application in relation to Appeal Ref: APP/W4515/W/23/3327828
Land at Backworth Business Park, Ecclestone Close, Station Road,
Backworth, Newcastle upon Tyne NE27 0RX**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by The Northumberland Estates for a full award of costs against North Tyneside Council.
 - The appeal was against the refusal of planning permission for the construction of 57 residential dwellings (Use Class C3(a)) and 14 No. commercial units totalling 650 sqm (Use Class E(g)), with associated road infrastructure, car parking spaces, open spaces, gardens, and landscaping.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. I note that the council's decision not to defend the two reasons for refusal occurred after the submission of the appellant's evidence. The appellant had therefore incurred some costs responding to these reasons for refusal.
4. However, regarding the first reason for refusal, the acquisition of the neighbouring business property by the appellant and the withdrawal of the objection from the occupier of that commercial unit, that included specialist noise evidence, was a material change in circumstance.
5. The council detail that they only became aware of this change in circumstance on 14 September 2023, almost a month after the appellant submitted their statement of case on 15th August 2023 and subsequently resolved at committee on 26 September 2023 not to defend reason for refusal 1.
6. As such, I am satisfied that the council's response to a material change in circumstance was reasonable and timely. As such, I do not find the council's behaviour with regards this matter to have been unreasonable.
7. Turning to the second reason for refusal, it is readily apparent that the council was unable to substantiate the reason for refusal and subsequently chose not to defend this reason for refusal at appeal. I find that this behaviour was unreasonable leading directly to the appellant incurring wasted expense.

8. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of reason for refusal two relating to highways matters and a partial award of costs is therefore warranted.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that North Tyneside Council shall pay to The Northumberland Estates, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to the second reason for refusal, relating to highway matters; such costs to be assessed in the Senior Courts Costs Office if not agreed.
10. The applicant is now invited to submit to North Tyneside Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Mr M Brooker

INSPECTOR