

**Item No:** 5.2  
**Application No:** 18/01374/LBC  
**Date valid:** 29 October 2018  
**Target decision date:** 24 December 2018  
**Author:** Aidan Dobinson Booth  
**☎:** 0191 643 6333  
**Ward:** Valley

Application type: listed building consent

**Location: Holywell Engineering, Station Road, Backworth, NEWCASTLE UPON TYNE, NE27 0AE**

**Proposal: Demolition of several existing buildings. Conversion of existing Backworth Lodge, Dairy Cottage and Ivy Cottage to form 4no flats and 2no. dwellings. Erection of new apartment building (13no apartments) and 27no dwellings (Amended Plans received 04.03.19)**

Applicant: David Little Pension Trust Fund Mr Andrew Little, C/o Agent Holywell Engineering Limited Station Road Backworth Newcastle Upon Tyne NE27 0AE

Agent: IDPartnership Northern, Hugh Daglish St Jude's Barker Street Shieldfield Newcastle Upon Tyne NE2 1AS

**RECOMMENDATION:** Application Permitted

## **INFORMATION**

### **1.0 Summary Of Key Issues & Conclusions**

#### 1. Main Issues

1.1 The main issue in this case is the affect upon the character and setting of Dairy Cottage, which is a Grade II Listed Building. This is a building that is considered to be of special architectural or historic interest. It was listed on 19 February 1986.

#### 2. Description of the Site

2.1 The application site is Dairy Cottage, which is a currently vacant dilapidated Grade II listed building. It was built in the early 19<sup>th</sup> century from sandstone rubble with tooled quoins and Welsh slate roof. It is situated to the eastern side of B1322 and has other existing dilapidated buildings to its north and south. Dairy Cottage is part of a larger development site that measures 1.97 hectares in area. To the north is Ecclestone Close with the access road to Backworth Business Park that consists of Keenan Vegetable Processing Plant, Offices and a series of workshop units further to the north. The surroundings are

characterised by mature trees, which also contribute to mature landscape setting of the Backworth Conservation Area, which the site is located within.

### 3. Description of the proposed development

3.1 This application seeks listed building consent for the conversion and restoration of Dairy Cottage into a residential dwelling.

3.2 This is part of a larger development for the wider site involves the demolition of several existing buildings. Conversion of existing Backworth Lodge, Dairy Cottage and Ivy Cottage to form 4no flats and 2no. dwellings. Erection of new apartment building (13no apartments) and 27no dwellings.

### 4. Relevant Planning History

18/01373/FUL - Demolition of several existing buildings. Conversion of existing Backworth Lodge, Dairy Cottage and Ivy Cottage to form 4no flats and 2no. dwellings. Erection of new apartment building (13no apartments) and 27no dwellings.

Pending Consideration.

### Backworth Business Park

18/00881/FUL – Construction of 67 residential dwellings (C3) including 17 affordable homes (25%) and 14no. B1, B2 and B8 commercial units totalling 650 sqm, with associated road infrastructure, car parking spaces, open spaces, gardens and landscaping.

Pending Consideration.

12/00637/FUL - Change of use of existing vacant employment land to residential (C3) and construction 65 residential units (including 13 affordable homes) with associated road infrastructure, structural landscaping, gardens and public amenity space (Amended Description 04.08.14).

Appeal Dismissed 31.08.16

### 5. Development Plan

North Tyneside Local Plan 2017

### 6. Government Policy

6.1 National Planning Policy Framework (February 2019)

6.2 National Planning Policy Guidance (as Amended)

6.3 Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework is a material consideration in the determination of this application. It requires local planning authorities to apply a presumption in favour of sustainable development in determining development

proposals. Due weight should still be attached to Development Plan policies according to the degree to which any policy is consistent with the National Planning Policy Framework.

## **PLANNING OFFICERS REPORT**

### 7 Main Issues

7.1 The main issue in this case is the impact of the proposed works on the character and setting of the Grade II Listed Building, Dairy Cottage.

### 7.2 Character and Appearance

7.3 Paragraph 184 of NPPF advises that heritage assets are an irreplaceable resource, which should be conserved in a manner appropriate to their significance.

7.4 Paragraph 189 of NPPF requires an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting.

7.5 Paragraph 190 of NPPF expects local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal.

7.6 Paragraph 192 of NPPF states that in determining applications local planning authorities should take account of amongst other matters the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation.

7.7 Paragraph 193 of NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

7.8 Paragraph 194 of NPPF states any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification. Substantial harm to or loss of grade II listed buildings should be exceptional.

7.9 Paragraph 195 of NPPF advises that where a proposed development will lead to substantial harm to a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm of total loss is necessary to achieve substantial public benefits that outweigh that harm of loss.

7.10 Paragraph 196 NPPF state that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this

harm should be weighed against the public benefits of the proposal including where appropriate, securing its optimum viable use.

7.11 Paragraph 197 of NPPF states that the effect of an application on the significance of a non-designated heritage asset should be taken in account in determining the application.

7.12 Paragraph 199 states that local planning authorities should require developers to record and advance understanding of the significance of any heritage assets to be lost in a manner proportionate to their importance and the impact and to make this evidence publicly accessible.

7.13 Paragraph 200 of NPPF states that local planning authorities should look for opportunities for new development within Conservation Areas and within the setting of heritage assets, to enhance and better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset should be treated favourably.

7.14 Local Plan Policy S6.5 seeks to pro-actively preserve, promote and enhance its heritage assets.

7.15 Policy DM6.6 states that proposals that affect heritage assets or their settings will be permitted where they sustain, conserve and where appropriate, enhance the significance, appearance, character and setting of heritage assets in an appropriate manner.

7.16 The Tyne and Wear Archaeology Officer states that the site is of industrial archaeological interest. It lies on the western fringe of Backworth Colliery and includes the last standing buildings of the mine. Backworth A Pit, which was located immediately north of the development site, opened circa 1813. It was renamed Maude Pit in 1872 and eventually closed in 1960. Backworth Colliery as a whole ceased in 1980. She goes onto state that Dairy Cottage was originally a residential property, but that it was probably incorporated into the colliery buildings complex, associated with the yard and railway tracks.

7.17 The Tyne and Wear Archaeology Officer recommends a number of conditions, the majority of which relate to the wider development of the site associated with the planning application. It is not necessary to duplicate these conditions as part of the listed building consent. However, Dairy Cottage should be recorded to provide an archive record of the building and this can be conditioned.

7.18 The Council's Design Officer described Dairy Cottage as an important feature, the restoration of which is a highly positive aspect of the proposed



scheme. The proposal retains a large part of the original room layout, which includes the fireplace opening. An existing low quality extension would be removed and a new extension would be constructed, which is sensitive to the design of the original layout. A proposed schedule of works is required, but this can be conditioned.

7.19 The Council's Design Officer has also stated that the new units around Dairy Cottage are proposed to be 1.5 storeys (living in roofspaces) in height. This is considered to be an appropriate height and will help to maintain the prominence of Dairy Cottage on Station Road. Some larger two storey dwellings are proposed, however these would be set back within the site, which would reduce their impact on the setting of the listed building.

7.20 Historic England has been consulted and do not object.

#### 7.21 Other Matters

7.22 Whilst Keenan's object to the proposal, this is on the basis of the effect that the development would have on their business. They do not object to the works to the listed building.

#### 7.23 Conclusion

7.24 In conclusion, it is considered that the proposals are acceptable. They would restore a currently vacant listed building, improving its significance, character and setting that would accord with the advice in NPPF and policies S6.5 and DM6.6 of the Local Plan. It is recommended that listed building consent should be granted subject to conditions.

**RECOMMENDATION:     Application Permitted**

#### **Conditions/Reasons**

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

Planning Application Form dated 28.09.18.

Location Plan, Drawing No. LP01

Proposed Site Plan, Drawing No. PL01(A)

Proposed Roof Plan, Drawing No. PL02(A)

Proposed Streetscenes, Drawing No. PL03

Elevation Treatments, Drawing No. PL04

Proposed Boundary Treatment Plan, Drawing No. PL05

Proposed Hard Surfaces Plan, Drawing No. PL06(A)

Dairy Cottage Proposed Plans, Drawing No. HT-DAIRY(A)

Dairy Cottage Proposed Roof Plans, Drawing No. HT-DAIRY

Dairy Cottage, Proposed Elevations, Drawing No. HT-DAIRY

Accommodation Schedule, Rev 10, dated 22/02/2019

Reason: To ensure that the development as carried out does not vary from the approved plans

2. The works to which this application relates shall be begun before the expiration of three years from the date of this consent.

Reason: To comply with the requirements of Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

3. Prior to the works hereby approved commencing a detailed schedule of works shall be submitted to and approved in writing. This shall include details of the proposed demolitions, alterations and repairs. The schedule shall refer to the approved plans and include method statements where necessary. Thereafter the works shall be carried out in accordance with the approved details.

Reason: The condition needs to be pre-commencement to enable the local planning authority to control the work in detail on the interests of preserving the historic character of the listed building in accordance with policy DM6.6 of the North Tyneside Local Plan 2017.

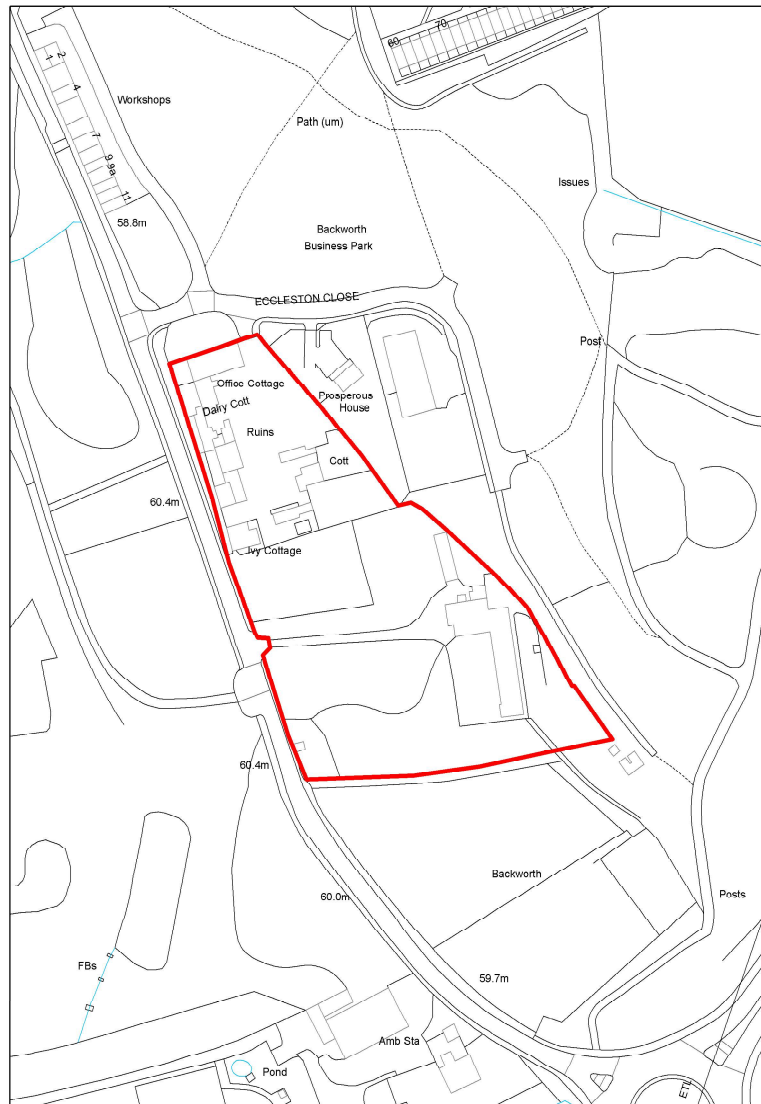
4. No demolition/development to Dairy Cottage shall take place until a programme of archaeological building recording has been completed in accordance with a specification provided by the Local Planning Authority. A report of the results shall be submitted to and approved in writing by the local planning authority prior to any development or demolition work taking place.

Reason: This condition needs to be pre-commencement to provide an archive record of the historic building or structure and to accord with policies DM6.6 and DM6.7 of the North Tyneside Local Plan 2017.

5. Notwithstanding condition 1, no development shall take place until a schedule of materials including natural stone and natural slate has been submitted to and approved in writing by the local planning authority. Thereafter the building work hereby approved shall be carried out using the approved materials.

Reason: This condition needs to be pre-commencement to ensure that the materials used to restore the listed building are appropriate in accordance with policy DM6.6 of the North Tyneside Local Plan 2017.

**Statement under Article 35 of the Town & Country (Development Management Procedure) (England) Order 2015):**



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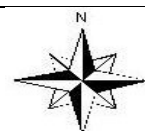
**Location: Holywell Engineering, Station Road, Backworth, NEWCASTLE UPON TYNE**

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Not to scale

Date: 27.06.2019

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**Appendix 1 – 18/01374/LBC**  
**Item 5.2**

**Consultations/representations**

Internal Consultees

1. Highway Network Manager (Highways)

1.1 This application is for the demolition of several existing buildings, conversion of the existing Backworth Lodge, Dairy Cottage & Ivy Cottage to form 4 flats and 2 dwellings, erection of a new apartment building (13 apartments) and 27 dwellings. The existing access from Station Road is being utilised and a new access will be provided to the north. Parking has been provided in accordance with current standards and suitable areas for turning a refuse vehicle. Improvements to sustainable links to schools and public transport will be required to make the site safe to access by pedestrians. Conditional approval is recommended.

1.2 Recommendation - Conditional Approval

1.3 The applicant will be required to enter into an appropriate legal agreement with the Local Authority for the following works:

1.4 Alterations to existing access

New access

Upgrade of footpath abutting the site

Provision of traffic calming to 20mph in the vicinity of the site on Station Road

Provision of suitable pedestrian crossing point on Station Road

Associated highway drainage

Associated street lighting

Associated road markings

Associated signage

Associated legal orders

1.5 Conditions:

ACC11 - New Access: Access prior to Occ

ACC15 - Altered Access Access Alt Prior to Occ

ACC17 - Exist Access Closure: Misc Points, By \*6 months

ACC25 - Turning Areas: Before Occ [refuse vehicle]

PAR04 - Veh: Parking, Garaging before Occ

REF01 - Refuse Storage: Detail, Provide Before Occ

SIT07 - Construction Method Statement (Major)

SIT08 - Wheel wash

1.6 No part of the development shall be occupied until a scheme to manage refuse collection has been submitted to and approved by in writing the Local Planning Authority. Thereafter, this scheme shall be implemented in accordance with the approved details and retained thereafter.

Reason: In the interests of highway safety.

1.7 No part of the development shall be occupied until a scheme to manage parking has been submitted to and approved by in writing the Local Planning Authority. Thereafter, this scheme shall be implemented in accordance with the approved details and retained thereafter.

Reason: In the interests of highway safety.

1.8 No development shall commence until a scheme for the provision of secure undercover cycle parking shall be submitted to and approved by in writing the Local Planning Authority. Thereafter, this scheme shall be implemented in accordance with the approved details before the development is occupied.

Reason: In the interests of highway safety.

1.9 Informatives:

I05 - Contact ERH: Construct Highway Access

I08 - Contact ERH: Works to footway.

I10 - No Doors/Gates to Project over Highways

I12 - Contact ERH Erect Scaffolding on Rd

I13 - Don't obstruct Highway, Build Materials

I45 - Street Naming & Numbering

I46 - Highway Inspection before dvlpt

1.10 The applicant is advised that they should enter into an agreement indemnifying the council's refuse, recycling & garden waste collection vehicles against any claims for damages to the internal road and parking layout.

## 2. Manager of Environmental Health (Contaminated Land Officer)

2.1 The site is within an area of known mining and unknown filled ground. Due to the sensitive end use and historical use of the area the following must be applied:

Con001

Gas 006

## 3. Design Officer

3.1 Ivy Cottage, Dairy Cottage and Backworth Lodge are important features of the conservation area and their restoration is a highly positive aspect of the proposed scheme. Dairy Cottage is grade II listed. The proposal retains a large part of the original room layout which includes fireplace openings. An existing low quality extension would be removed and a new extension would be constructed which is sensitive to the design of the original building. A proposed schedule of works is required to support the LBC application for Dairy Cottage. This should include details of proposed demolitions, alterations and repairs. The schedule should refer to the submitted plans and include method statements where appropriate.

3.2 New units around Dairy and Ivy Cottage are proposed to be 1.5 storeys in height. This is considered to be appropriate around the single storey heritage assets and will help to maintain their prominence on Station Road. Some larger scale two storey dwellings are set back within the site to minimise their impact on the wider area. This is also considered acceptable.

3.3 The proposed new build apartment building compliments the design of Backworth Lodge. Although the building has a larger footprint than the Lodge, it is set back from the building line of the Lodge so that it is subservient in nature and maintains the setting and views towards the Lodge. The eaves height of the apartments also matches the existing Lodge.

3.4 The site entrance maintains the view corridor and approach to Backworth Lodge. The central wooded area of trees are also retained which maintains the setting of Backworth Lodge and the conservation area.

3.5 New dwellings are proposed in southern paddock area of the site which are 1.5 storeys in height to minimise the impact on the approach into Backworth. There is a landscaped buffer to the rear of the properties although the size and maintenance arrangements for this area need to be confirmed.

3.6 High quality materials are required for this site to ensure the development sits well within the context of the heritage assets on the site and the Backworth Village conservation area. Within Eccleston Yard character area, natural stone and natural slate is required to be used. Some brick may be acceptable behind Station Road. Within the Paddock character area, natural stone, natural slate and brick will be acceptable. The use of natural stone and natural slate should be conditioned.

3.7 Overall, the application preserves the heritage assets on the site and preserves the character and appearance of the conservation area. New development is sympathetic and the size and scale of properties considered acceptable throughout. The further information outlined above is expected to be submitted during the determination of the application.

#### 4. Local Lead Flood Authority

4.1 This application is for the demolition of several existing buildings, conversion of the existing Backworth Lodge, Diary Cottage & Ivy Cottage to form 4 flats & 2 dwellings and the erection of a new apartment building consisting of 13 apartments and 27 dwellings.

4.2 The applicant is proposing to use a variety of attenuation techniques within their site to store and control the surface water which includes an attenuation pond, underground storage tank, large diameter sewer & permeable paving. They are also proposing two points of discharge from the site, one which will discharge into an existing surface water sewer located within Eccleston Close at a restricted discharge rate of 5 litres per second and the other point of discharge being via a newly constructed 225mm diameter surface water sewer on Station Road which will then discharge into the Brierdene Burn at a restricted rate of 5 litres per second. Details of the proposed maintenance schedule for all the surface water features within the site have also been submitted. Whilst there are potential issues with the highway drain, in all likelihood it would be more cost effective to repair this drain rather than installing a whole new drainage run. This approach has been used with other sites where the applicant has carried out a

CCTV survey of the highway drain and supplied the LLFA with the survey results. Following these repairs the applicant will be able to discharge into this drain which we could then look to alter its designation to a surface water sewer so it becomes a Northumbrian Water asset. Conditional Approval is recommended.  
Recommendation - Conditional Approval

#### 4.3 Conditions:

4.4 Notwithstanding the details submitted, the proposed drainage scheme including maintenance of the system shall be set out in accordance with the approved details. Thereafter, this scheme shall be implemented in accordance with the approved details before the development is occupied.

Reason: In the interests of surface water management.

4.5 No development shall commence until a scheme & methodology for pollution control during the construction period has been submitted to and approved by in writing the Local Planning Authority. Thereafter, this scheme shall be implemented in accordance with the approved details and retained for the entire duration of the construction period.

Reason: In the interests of surface water management

4.6 Notwithstanding Condition 1, prior to the commencement of any development details of a scheme to reinstate the culvert to the west of the site, including a timetable for the submission of a CCTV survey following completion of the culvert reinstatement works, shall be submitted to and approved in writing by the Local Planning Authority. The agreed scheme shall be implemented in full accordance with these agreed details prior to the occupation of any dwelling.

Reason: In the interests of managing flood risk having regard to NPPF.

#### 5. Tyne and Wear Archaeology Officer

5.1 I am delighted to read that Backworth Lodge and Ivy Cottage are being retained and converted along with the Grade II Listed Dairy Cottage. I am also pleased to read that the tree lined avenue will be retained.

5.2 In my pre-application comments I asked that the archaeological assessment and Heritage Statement aimed to ascertain the date and original function of the non-listed buildings and I am pleased to see that this has been done.

5.3 The site lies just south of East Backworth medieval village. There are broad ridge and furrow earthworks and at the southern end of the site relating to ploughing during the medieval or early post-medieval period. Early archaeological remains could potentially underline the ridge and furrow.

5.4 The site is of industrial archaeological interest. It lies on the western fringe of Backworth Colliery and includes the last standing buildings of the mine. Backworth A Pit, which was located immediately north of the development site, opened circa 1813. It was renamed Maude Pit in 1872 and eventually closed in 1960. Backworth Colliery as a whole ceased in 1980.

5.5 Backworth Wagonway forms the eastern boundary of the site. Railway branch lines are shown on early mapping crossing the site and there is a chance that these survive.

5.6 Backworth Lodge, which is mid-19<sup>th</sup> century in date, it was the home of the manager of Backworth Colliery and his family from at least the end of the century. The building was later used as colliery offices by the National Coal Board. A two-storey strong room for mining drawings and cash was built onto the rear northern elevation and a large single storey office annexe added to the south-east. The single storey annexe is of no architectural merit and is proposed for removal which is welcomed. Backworth Lodge is of historical and architectural merit and social history interest. It should therefore be deemed a non-designated heritage asset refer to paragraph 197 of the NPPF.

5.7 Dairy and Ivy Cottages were residential dwellings, both built in the early 19<sup>th</sup> century. By the middle of the 19<sup>th</sup> century the cottages were probably incorporated into the colliery buildings complex, associated with a yard and railway tracks. Dairy Cottage is listed grade II and is thus a designated heritage asset refer para 193 to 195 of NPPF. Ivy Cottage should be deemed to be a non-designated heritage asset ref para 197 of the NPPF.

5.8 The buildings to the north part of the site are believed to have formerly houses ancillary support facilities for the colliery. The group may have been originally built as a farmstead (the name of Dairy Cottage suggests a dairy farm). In the 20<sup>th</sup> century the buildings became colliery workshops.

5.9 The following buildings (numbered as per the archaeological assessment) are the most interesting historically:

Building 1 - an L-shaped building fronting onto Station Road, rubble sandstone with a slate roof, single storey, early 19<sup>th</sup> century domestic re-used for individual purposes.

Building 3 – rubble sandstone with squared and tooled quoins, two storeys, roofless

Building 4 – rubble sandstone with crick insertions and abutments, single storey, roofless.

The retention of early architectural features in Backworth Lodge such as architraves cornices and principal staircase should be encouraged.



5.10 The stone boundary walls wounded coping should be retained as part of the development.

5.11 I accept that the dilapidated buildings are proposed for demolition, but they do merit archaeological recording beforehand, as they form part of the colliery's history.

#### 5.12 Archaeological Buildings Recording Condition

No demolition/development shall take place until a programme of archaeological building recording has been completed, in accordance with a specification provided by the Local Planning Authority. A report of the results shall be submitted to and approved in writing by the Local Planning Authority prior to any development or demolition work taking place.

Reason: To provide an archive record of the historic building or structure and to accord with paragraph 199 of the NPPF, Local Plan S6.5 and policies DM6.6 and DM6.7.

#### 5.13 Archaeological Excavation and Recording Condition

No groundworks or development shall commence until a programme of archaeological fieldwork (to include topographic survey of ridge and furrow earthworks, evaluation, trenching and where appropriate mitigation excavation) has been completed. This shall be carried out in accordance with a specification provided by the Local Planning Authority.

Reason: The site is of potential archaeological interest. The investigation is required to ensure that any archaeological remains on the site can be preserved wherever possible and recorded in accordance with paragraph 199 of NPPF, Local Plan S6.5 and policies DM6.6 and DM6.7.

#### 5.14 Archaeological Post Excavation Report Condition

The buildings shall not be occupied/brought into use until the final report of the results of the archaeological fieldwork undertaken in pursuance of condition ( ) has been submitted to and approved in writing by the Local Planning Authority.

Reason: The site is of potential archaeological interest. The investigation is required to ensure that any archaeological remains on the site can be preserved wherever possible and recorded in accordance with paragraph 199 of the NPPF, Local Plan S6.5 and policies DM6.6 and DM6.7.

#### 5.15 Archaeological Publication Report Condition

The buildings shall not be occupied/brought into use until a report detailing the results of 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 the submission to the editor of the journal.

Reason: The site is of potential archaeological interest and the publication of the results will enhance understanding of and will allow public access to the work undertaken in accordance with paragraph 169 of the NPPF, Local Plan Policies S6.5 and policies DM6.6 and DM6.7.

I can provide a specification for the archaeological work when required.

#### External Consultees

##### 6. Historic England

6.1 Thank you for your letter of 4 March 2019 regarding further information on the above application for planning permission. On the basis of this information, we do not wish to offer any comments. We suggest that you seek the views of your specialist conservation and archaeological advisers, as relevant.

##### 7. Natural England

7.1 This development falls with the 'zone of influence' for coastal sites designated at a national and international levels as Sites of Special Scientific Interest and Special Protection Areas/Special Areas of Conservation/Ramsar Sites. Sites the application will result in a net increase in residential accommodation, impacts to the designated sites may result from increased recreational disturbance.

7.2 Northumberland and North Tyneside operate a Coastal Mitigation Service to mitigate for potential impacts from increased recreational disturbance resulting from increased residential development and tourism activities within this zone.

7.3 Subject to appropriate mitigation being secured in line with the details of this Service, Natural England is satisfied there will be no damage or disturbance to the interest features of these sites.

7.4 Although your authority has measures in place to manage these potential impacts through the agreed strategic solution which we consider to be ecologically sound, Natural England's advice is that the proposed development, and the application of these measures to avoid or reduce the likely harmful effects from it, may need to be formally checked and confirmed by your Authority, as the competent authority, via an appropriate assessment in view of the European Site's conservation objectives and in accordance with the Conservation of Habitats and Species Regulations 2017.

7.5 This is because Natural England notes that the recent People Over Wind Ruling by the Court of Justice of the European Union concluded that, when interpreting article 6(3) of the Habitats Directive, it is not appropriate when determining whether or not a plan or project is likely to have a significant effect on a site and requires significant effect on a site and requires an appropriate assessment, to take account of measures intended to avoid or reduce the harmful effects of the plan or project on that site. The ruling also concluded that such measures can, however, be considered during an appropriate assessment

to determine whether a plan of project will have an adverse effect on the integrity of the European site. Your Authority should have regard to this and may wish to seek its own legal advice to fully understand the implications of this ruling in this context.

7.6 Natural England advises that it is a matter for your Authority to decide whether an appropriate assessment of this proposal is necessary in light of this ruling. In accordance with the Conservation of Habitats and Species Regulations 2017, Natural England must be consulted on any appropriate assessment your Authority may decide to make.

## 8. The Coal Authority

8.1 The application site does not fall within the defined Development High Risk Area and is located instead within the defined Development Low Risk Area. This means that there is no requirement under the risk-based approach that has been agreed with the LPA for the Coal Mining Risk Assessment to be submitted or for The Coal Authority to be consulted.

8.2 In accordance with the agreed approach to assessing coal mining risks as part of the development management process, if this proposal is granted planning permission, it will be necessary to include The Coal Authority Standing Advice within the Decision Notice as an informative note to the applicant in the interests of public health and safety.

## Representations

1 letter of objection has been received on behalf of Keenan's (Vegetable) Processing

I am therefore writing to you to set out our concerns in relation to the current applications with regard to the affects that this proposed development, in combination with others in the area, will potentially have on our clients established business. Whilst an entirely separate application, these comments are required to also be considered in the context of the parallel and as yet to be determined application reference 18/00881/FUL which proposed the constriction of 67 residential dwellings and 14 no. Commercial units on land at Backworth Business Park to the north and east of our client's site.

This letter raised two areas of concern. In the first instance these are in relation to the general policy context for this application site and the wider area and what we consider to be the developments failure to comply with local plan policy. The second concern is in relation to the direct potential impacts on our client's business by virtue of the development of new residential dwellings in close proximity to their operation. We will deal with these points in turn.

In relation to the local planning policy position and in particular the site allocation, it can be noted that this application site forms part of the wider 8.5-hectare mixed used land allocation under policy S4.3 (29) of the North Tyneside Local Plan adopted in July 2017. Under that policy the 8.5-hectare parcel of land identified

as site number 29 is allocated as a mixed-use site with the potential to accommodate 65 dwellings. This application brings forward proposal for 46 dwellings with 1.97 hectares of this allocated area. It may be noted however that this planning application contains no proposals for employment uses or any other non-residential uses as may have been expected to come forward within the allocated mixed-use site. This omission is acknowledged within the submitted planning statement dated 25 June 2018 which accompanied the application.

Paragraph 5.4.1 of the statement states that

*'Given the various heritage assets which the development proposals seek to protect, retain and enhance it is not considered appropriate to encourage an employment led development on the site however, consideration has been given to how this policy requirements can be addressed.'*

The employment consideration, it may be noted from the paragraph, is limited to provision of limited office space within just 6 houses proposed on site through the provision of office space to allow home working. It must therefore be concluded therefore that that the development is in effect solely a residential development scheme and indeed this is the terms of which the development is consistently referred to within the applicant's supporting information. It is considered that this form of development is not consistent with the local plan policy for the site which clearly stipulated that this will be a mixed-use development site.

In this context of the local plan policy, it is expected that the site will bring forward a combination of both employment and residential development of appropriate proportions. This is confirmed by two relevant policies. Policy S2.2 of the Local Plan on the provision of land for employment development acknowledges at the foot of the policy S4.3 may also provide additional contribution to the supply of employment land. It states proposals for employment uses on those sites will be expected to be compatible with residential development and will be supported where they are consistent with other policies of the local plan. It is therefore envisaged clearly in the context of policy S2.2 that there will be a meaningful and quantifiable level of employment development on mixed use sites which will be compatible with any new residential development coming forward. It may therefore be expected that any development on site 29 on this context would include potentially B1 Light Industrial and Office Uses, which most suitable abut and adjoin any new residential development.

The expectation for this mixed-use site is further confirmed with reference to policy S4.3. As can be seen, although policy S4.3 addresses the distribution of housing development sites, site 29 at Backworth Business Park is separately listed outwith the residential site allocations under the separate heading of mixed-use sites. It is therefore clearly intended and envisaged within the policy that site 29 will not simply be another residential site. The proportion of residential to employment use within the site and it is also expected to be relatively modest in the context of a mixed-use site. This is further confirmed with reference to the potential homes envisaged on the 8.5-hectare site. This, as listed in policy S4.3 is just 65 dwellings which equates to an overall density of development of just 8.1 dwellings per hectare. This low level of residential development is considered to be a reflection of the policies intention for there to be a relatively low level of residential development combined with appropriate employment use. The

development as currently proposed is clearly not consistent with this policy objective and within the 1.97-hectare application site there is a density of residential development equivalent to 23.3 dwellings per hectare. The parallel application to the north and east of our client's site reference 18/00881/FUL would deliver some 11 dwellings per hectare. The two sites when combined would potentially deliver 113 dwellings with an average density of 14.1 per hectare. Although this is acknowledged to be a simplified assessment it does help to demonstrate that the level of residential development proposed on these two neighbouring application sites is far in excess of that envisaged with the local plan policy for a mixed-use site. It is acknowledged that the neighbouring application site to the north does include some employment provision and therefore does attempt to comply with the 'spirit' of the policy. In the case of this current application at the Backworth Lodge Site, there is however no genuine employment provision at all and in this respect the proposal fails to comply with the land use allocation for the site. The application provides no actual explanation for this other than to refer to the presence of historic building making an employment led scheme not possible. There is however no further explanation for this and in planning terms it is considered that the presence of a historic context is a design issue and not a land use issue. Whilst a viability justification for the absence of affordable housing is presented no actual justification is provided as to why employment provision is not deliverable on the site and why policy S4.3 is not being adhered to.

This position is more clearly demonstrated when reference is made to the Inspector's report on the local plan of May 2017. Paragraphs 148 to 152 of the Inspector report specifically considered site 29 and its allocation as a mixed use site under policy S4.3. The Inspector considered the release of land from its previous employment allocation to a mixed-use site with reference to our client's processing plant. In allowing the allocation of the surrounding land to a mixed-use site the Inspector gave careful consideration to the need to avoid housing in close proximity to our client's premises. In seeking to avoid the need to sterilise the entire site because of Keenan's plant, the Inspector concluded that it was capable of accommodating the relatively modest amount of housing proposed. Clearly it was therefore determined that the 65 dwellings proposed within the plan under policy S4.3 was deemed to be a modest amount of housing suitable for the specific considerations present on the site. To put this in further context, in relation to the expected delivery of employment use within this mixed-use site, it can also be confirmed that the Inspector in finding the plan sound, did expect that housing would be a lesser part of any mixed-use development of the site when compared to the employment elements. This is confirmed also within paragraph 150 when the Inspector stated that 'Looking at the wider site I am not persuaded that a subservient element of housing, as part of the wider mix of uses could not be satisfactorily accommodated on the large 85 hectares site.'

It is quite clear therefore from the Inspector's conclusions on the basis of their report that housing was expected to be subservient in scale to the employment use of the site. It may also be noted that if this application were to be approved and the corresponding application to the north and east for 67 dwellings were to be approved then we would be in the situation that barely any employment use had been delivered on this entire allocated site and residential development

would have been brought forward at a level nearly double that expected under the site allocation, with just 14 commercial units developed. It is clearly the case that such the case cannot be considered to be consistent with the adopted local plan policy. We should submit that this situation takes on greater significance given that the local plan is so recently adopted. The local plan in its present form was adopted only 15 months ago and therefore must be treated as a plan which must be afforded full material weight in an planning considerations. In the context of the NPPF and paragraph 11 it is considered that the development does not constitute sustainable development. As the proposal does not accord with an up to date development plan, as such the presumption in favour of sustainable development does not apply and there is no requirement for the approval of this application.

The situation outlines above leads directly onto consideration of the second issue which is the potential impact of new residential development upon the ability of our client's site to continue to operate. We consider that the presence of our clients site was central tenant of the way in which policy S4.3 was prepared and in this respect our client should not be in the position where new residential development is being proposed in locations where the proximity is likely to lead to future complaints about our clients business. It is quite clear with reference to the Inspector's plan report that the purpose of putting in place a mixed-use allocation for this area was so that the site would be bounded by appropriate employment uses which could satisfactorily neighbour both our client's business and future residential development brought forward as part of the mixed-use schemes. Effectively, the closest development to our client's site should be employment uses which provide an appropriate transition between Keenan's Processing and a new residential development. This is not the situation and we therefore have a situation where residential development is being proposed in a manner which has the potential to the impact on our client's site. This is the situation which occurred on the neighbouring site to the north and east in the context of the 2012 planning application and the subsequent 2016 appeal decision. We continue to be of the view that this situation which will arise on that site and have made separate submissions on that application to the LPA.

In the context of this application we note that the application has submitted with a full noise assessment prepared by LA Environmental Ltd. Which considers the existing noise climate surrounding the application site and in particular the noise impact of the operation of Kennan Processing. Whilst it is note that the LA Environmental report concludes that the majority of operations on our client's site may not be likely to exceed noise thresholds within the proposed development, it can be seen that this is not the case for the use of our client's land to the south of their existing processing building. This land, it is noted, may be used by Keenan's in the future and we can confirm that this land is in fact already being used and that further development is being considered on this land and is subject of pre-application consultation with the LPA. As such, any concerns in relation to this area of land within our client's control are entirely valid and are required to be given significant weight. Within the LA Environmental report, it can be seen that within paragraph 6.5.3 and 6.5.4 it is confirmed that out clients use of their land to the south of their existing building will give rise to a sound source that is expected to be 3dB(A) above the daytime background level. At night time it is predicted that for the closest dwelling within the proposed development Keenan's will

produce sound 17dB(A) above the existing night time background levels during the early morning period. This, it is stated is an indication that significant adverse impact would arise for occupiers of this new residential dwelling. We note that the submitted planning statement at 5.3.17 omits any reference to this significant night time noise issue. The LA Environmental report goes on to within paragraph 6.5.5 highlights that this significant adverse impact would be likely to arise during the early hours of the morning between 04:00 and 07:00 when it is expected residents would be sleeping in bedrooms. The LA Environmental report then goes on within section 7 to provide a number of recommended options for noise amelioration within the design of the dwellings which may ameliorate this adverse noise impact. This includes the options of enhanced glazing, enhanced roof construction and ventilation. In relation to the latter, it is confirmed in paragraph 7.3.12 that 'enhanced glazing must be closed to provide the required benefit and it is consequently necessary to provide the required ventilation by suitably sound attenuated means.' It can therefore be concluded that the success of any enhanced glazing being utilised within the affected properties is premised on the basis of windows being kept closed and mechanical or other forms of ventilation being available as an alternative. Ultimately as correctly concluded within paragraph 7.4.14 and 7.4.15 of the LA Environmental report, it is for developers to ultimately address the building solutions required to achieve the noise levels needed and the options provided within the LA Environmental report are simply recommendations.

The concerns for our client's perspective is that at present the LA Environmental report confirms that the use of their processing site will be likely to give rise to significant adverse impact on the closest residential receptors at the most sensitive times of the night. The significant issue which exists at present and why we must object to this application is that at present the application has not brought forward any specific proposed design solutions which demonstrate how this adverse noise impact will be satisfactorily ameliorated within the closest residential receptors. Whilst the LA Environmental report provides recommendations, these are simply recommendations and as the report states it is for the developer to bring forward specific proposals to demonstrate how the noise will be ameliorated. At present, the application does not contain any such detailed and confirmed proposals. It is simply submitted with a range of options. The issue is that at present this is not a satisfactory situation because the principle of residential development in this location is dependent on demonstrating beyond any doubt that adverse noise impact to residents will not occur in a manner which will lead to complaints against our client's operations. The application at present has failed to demonstrate the specific measures which it will incorporate to ensure this does not occur and therefore at present the principle of residential development in the form now currently proposed cannot be deemed to be acceptable. This is the very situation which arose in relation to the previous planning application on land to the north and east of our client's site and which was the subject of the 2016 appeal decision. In that appeal decision the same situation applied and the Inspector in that case concluded that, *'from a technical stand point, I am broadly satisfied that it would be possible to incorporate mitigation measures which would provide a technical solution for the reduction of external noise levels to within acceptable parameters at times when outdoor areas are likely to be in use. Furthermore, having regard to the evidence placed before me, I consider it reasonable to conclude that the ameliorative*

*measures would provide a technical basis to ensure the internal noise levels remained within acceptable parameters for bedrooms of 30 dB(a) with no exceedance of the Lmax 45 dB(a) in accordance with the WHO Guidelines*

As is known from the decision that was not however sufficient for the appeal to be allowed and the Inspector went on to find that

*Despite the conclusion on the technical submissions, I have significant concern over the impact that the proposed mitigation of noise would have on the living conditions of future occupiers. The incorporation of sealed window units and mechanical ventilation would address the technical aspect of the issue, but the inclusion of such would undoubtedly diminish the quality of the living conditions available to the affected properties...*

The Inspector went on to find that

*It would not be unreasonable for future occupiers of all dwellings to expect to be able to open windows to naturally ventilate their properties without the need for, or reliance upon technical and mechanical assistance to maintain a reasonable standard of living conditions.*

The Inspector concluded that this wish occupiers to open windows in the future in order to achieve satisfactory living conditions would be likely to have an adverse impact on our client's business. In paragraph 17, the Inspector concluded that

*It would be likely that there would be complaints regarding noise generation from Keenan's Factory, and consequently restrictions on the business would be considered as necessary. Furthermore, the introduction of a neighbouring residential use would undoubtedly place a disproportionate restriction on any future plans that Keenan's may have to extend the operation within the site, which I note includes a substantial area of open and unused land, albeit I accept that there is no evidence of such intent at this point.*

It must also be noted that the Inspector in reaching this conclusion specifically referred to the expansion land to the South and Keenan's ability to use this in the future. This is the area identified in this application, the use which would give rise to significant adverse impact during night time hours.

In this context of this decision it can be seen that there must certainly for any decision make that the technical solutions proposed to ameliorate noise impact are ones which are deliverable and likely to ensure that adverse impact and subsequent complaints will not arise. As can be seen it is not appropriate to propose permanently closed windows supplemented by a mechanical ventilation system and not is it acceptable to provide opening windows where the opening of them is likely to lead to noise complaints. In this context of the application as currently submitted the proposal simply brings forward a list of amelioration options which the detail of which is not classified as a specific scheme within the application. It is considered that due to the significance of this issue these matters cannot be simply left to be considered as part of a planning condition. The details of any noise amelioration are required to be conformed in detail at the application stage in order that they can be addressed in the context of relevant legislation and also the 2016 Inspectors appeal decision. Unless this is done it cannot be concluded that the principle of development is acceptable. As things stand, we must conclude that the proposal has not demonstrated satisfactorily



that the residential development proposed can be brought forward in a manner which will not result in either unacceptable amenity standards for future occupiers against our clients. The proposal therefore does not meet the requirements of the NPPF and specifically paragraph 182 of the revised framework which states that *'decisions should ensure that new development can be integrated affectively with existing businesses.'* It also advises that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of permitted after they were established. We consider that the proposal, in its present form, has not demonstrated compliance with this aspect of the NPPF and therefore in the absence of required detailed information on noise amelioration, it should be refused permission.

This letter sets out our concerns in relation to the current application and the wider approach to development of this allocated mixed-use site. At present it can be clearly seen that this application is not consistent with the local plan allocation as it brings forward a residential development without any employment uses within it. It runs contrary to the purpose and content of policy S4.3 as clearly demonstrated by reference to the 2017 Inspector report. The level of housing development sought is inconsistent with the levels of housing provision within the land allocation and it is clear that the form of development gives rise to noise considerations and concerns for our client which would not be present if the development were brought forward in compliance with policy S4.3. As part of a recently adopted local plan it is expected that this policy would be adhered to and this is not being adhered to it is considered that the proposal is unacceptable. Further to this and without prejudice, we consider that within the context of the scheme now proposed it has also not been demonstrated that the scheme can be developed in a manner which will not give rise to adverse noise impacts upon future occupiers which would consequently lead to complaints against our client's business operation. We consider that the application is not capable of being approved in the absence of a detailed scheme of noise mitigation to demonstrate that the amenity of occupiers can be safeguarded in a manner which is appropriate in the context of the previous 2016 appeal decision on the neighbouring site. On the basis of the above points we would therefore request that the current application is refused and we would also wish to reserve the right to speak at any forthcoming planning committee at which the application is considered.