



Appeal Decision

Inquiry held on 21- 24, 28, 29 October and 21 November 2025

Site visit made on 29 October 2025

by **John Dowsett MA DipURP DipUD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23/06/2026

Appeal Ref: APP/M4510/W/25/3367599

Newcastle City Heliport, Railway Street, Newcastle upon Tyne NE4 7AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by MB European Limited against the decision of the Council of the City of Newcastle upon Tyne.
 - The application Reference is: 2021/2349/01/EIA.
 - The development proposed is described as: Demolition of existing structures on the site and its redevelopment for up to 356 dwellings in a series of 4 to 7 storey high blocks with associated underground car parking, landscaping and engineering works.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for an award of costs was made by Newcastle City Council against MB European Limited. This is the subject of a separate decision.

Preliminary Matters

3. The planning application was submitted in outline with all matters reserved for future approval. The application was accompanied by a series of parameters plans showing, among other things, maximum building heights, building footprints, site levels and movement through the site. I have had regard to these drawings in reaching my decision, insofar as they provide an indicative framework for assessing the proposal.
4. Notwithstanding that access is a reserved matter, the submitted parameter plans show access points to the site from Tyneside Road to the north, Dunn Street to the west and a potential to connect to a future link road through the adjacent site to the east.
5. On receipt of the planning application, the Council notified the appellant under the terms of Article 5(2) of the Town and Country Planning (Development Management Procedure)(England) Order 2015 that in this instance, due to the circumstances of the case, the application ought not to be considered separately from all or any of the reserved matters. The Council advised that it was unable to determine the application unless further details in respect of access, landscaping, layout, and scale

were submitted¹. The appellant declined to submit these as the appellant is not intending to develop the site themselves and does not wish to constrain potential developers, or to bear the cost of preparing a detailed scheme. The proposal has therefore been considered as an outline application.

6. The application was also accompanied by an Environmental Statement (ES). The Council have questioned the adequacy of the ES in terms of the proposed use of an existing sewer outfall, the effect on birds and other protected species and the extraction of soils from the site. It is also argued that some findings of the ES are out of date. Having reviewed the ES, I am satisfied that the ES, when read together with other information submitted in connection with the appeal allows for reasoned conclusions to be made regarding the effects of the proposal on the environment.
7. As originally submitted, the proposal sought permission for up to 480 dwellings in a series of blocks from 4 to 10 stories high. Prior to the application being determined, the scheme was amended to a proposal for up to 356 dwellings in a series of 4 to 7 storey high blocks. It is this scheme which is the subject of this appeal.
8. The Council's fifth reason for refusal related to climate change. Before the Inquiry, the parties reached agreement that these matters could be addressed by way of planning conditions. I have therefore not considered this matter further.
9. A signed and dated legal agreement in the form of a Unilateral Undertaking was submitted on 19 November 2025. I have had regard to this in reaching my decision.
10. Prior to the Inquiry opening, I undertook an unaccompanied visit to the area surrounding the site. This visit was timed to coincide with the low tide at Newcastle in order to be able to see the extent of the mudflats in the River Tyne. The visit was also timed to occur at a time when a gas governor adjacent to the site was likely to be operating to accommodate a period of peak demand. I also viewed the site from the south side of the river in the vicinity of the former coal staithes at Dunston, from the footpath that runs along the south bank of the river from the coal staithes towards the Redheugh and King Edward VII Bridges, and from the abutment of the former Redheugh Bridge adjacent to the current road bridge over the river.

Main Issues

11. The main issues in this appeal are:
 - Whether the appeal site is a suitable location for residential development having regard to the provisions of the development plan, and in particular access to the site for pedestrian and cyclists and access for future occupiers to public transport;
 - The effect of the proposed development on the character and appearance of the area;
 - Whether the proposed development would provide suitable living conditions for the future occupiers of the dwellings, with particular regard to noise;

¹ Core Document COM/1 Planning Officer's report to Committee - Paragraph 2

- Whether the proposed development makes suitable provision for drainage, with particular regard to water quality and capacity in the foul drainage system;
- The effect of the proposed development on the biodiversity value of the site;
- Whether the proposed development is at risk from contamination arising from previous and historic land uses; and
- Whether the proposed development makes appropriate provision for infrastructure.

Reasons

Whether the appeal site is a suitable location for residential development

12. It is common ground that the principle of residential development on the site is accepted. However, the accessibility of the site, particularly for pedestrians and cyclists, is a disputed matter.
13. The appeal site is included within an area referred to as the Forth Banks Development Opportunity Site and identified by Policy D3 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2015 (the CSUCP). It is allocated for mixed use development comprising office, leisure and residential use.
14. CSUCP Policy D3 expects developments at the wider Forth Yards site to maintain and improve access to the site improve through it. Policy DM11 of the Newcastle City Council Development and Allocations Plan 2020 (the DAP) sets out that major development will be required to promote and facilitate the use of public transport and demonstrate accessibility by public transport to the Urban Core and other key local facilities.
15. Several other Development Plan policies also seek to make walking and cycling a more attractive option than the private car. CSUCP Policy CS13 promotes sustainable travel choices, and CSUCP Policy UC10 and DAP Policy DM12 seek to restrict the availability of car parking in accessible locations.
16. There is published guidance for this area, the Forth Yards Opportunity Site Development Framework (the FYDF), a guidance document covering an area that includes the site. This document has been through a number of iterations since it was first produced. References in this decision are to the January 2020 version unless stated otherwise. This does not formally have the status of a supplementary planning document, although I am advised that it was subject to consultation before it was published. Shortly before the Inquiry opened, the Council published a consultation on a new Supplementary Planning Document for the Forth Yards² area, although this is at an early stage and carries little weight. The current version of the FYDF is, however, the only current planning and design guidance that covers the appeal site.

² Core Document POL/38 Forth Yards Newcastle upon Tyne Masterplan Supplementary Planning Document - Vision and Principles September 2025.

17. The FYDF indicates that residential development of the site is constrained until the link access road from the former Calder's Metals site, which lies immediately to the east of the site, is delivered³. The FYDF shows an indicative vehicular route running through the wider development area from Dunn Street in the west to join Pottery Lane before continuing on to Forth Banks in the east⁴. Whilst this is not a development plan policy requirement, it does indicate that access is not currently straightforward and that the preferred design solution is to provide a new route which, in due course, could also accommodate public transport.
18. The National Planning Policy Framework (the Framework) seeks to ensure that in new development sustainable transport modes are prioritised, taking account of the vision for the site, the type of development and its location, and that safe and suitable access to the site can be achieved for all users. The Framework also expects new development to function well over the lifetime of the development, create places that are safe, inclusive, and accessible, and where crime and disorder, or the fear of crime, do not undermine quality of life or community cohesion and resilience.
19. The site comprises approximately 2.08 hectares of land to the south west of the city centre on the north bank of the River Tyne. The site is currently in use as a heliport although that use has diminished in recent years. Prior to its current use, which was granted planning permission in the early 1990s, the site was a gasworks producing town gas. This use continued until the latter part of the twentieth century. There is still gas distribution infrastructure in the vicinity of the site, and two gas governor buildings are located just beyond the northern boundary of the site.
20. The site is located on the south western edge of the city centre as it transitions into the more residential West End of the city and the narrow belt of industrial and commercial development along the banks of the river, to the south of Scotswood Road. The site is bounded to the south by Skinnerburn Road, to the west by Dunn Street and to the east by Tyneside Road, the latter being for much of its length a gated road, not open to the public. To the north of the site, beyond a gas governor building and its associated hardstanding, which that are remnants of the site's previous use as a gasworks and latterly as a gas storage facility, is a further gated road that provides access to the car park for Newcastle Arena. Further to the north again is the elevated route of the former Newcastle to Carlisle Railway line. The former railway is carried on bridges over Tyneside Road and Dunn Street.
21. To the north of the former railway line, along Railway Street and Scotswood Road is an established mixed-use commercial and light-industrial area comprising a range of trade, retail, automotive, and service-based uses. Fronting Scotswood Road are some more varied commercial uses, albeit more specialised uses that do not attract a particularly high footfall. At this point, Scotswood Road is a dual carriageway with two running lanes in each direction. An additional one-way single lane access road runs south of the westbound carriageway serving commercial premises on Scotswood Road.
22. Much of the south side of Railway Street is dominated by high stone walls which are remnants of the former goods yard/railway sidings that used to be present. The

³ Forth Yards Opportunity Site Development Framework Page 29

⁴ *ibid* Pge 23 and Page 31

opposite side of Railway Street is predominantly blank building frontages to commercial premises and automotive related uses. Maiden Street, which links Railway Street to Scotswood Road, similarly lacks active frontages. Railway Street in particular is also heavily used for on street-parking, including parking taking place in less frequently used access points and obstructing the footway.

23. Routes to and from the site via Dunn Street and Tyneside Road both pass under bridges carrying the former Newcastle to Carlisle Railway line. These present poorly lit, enclosed, spaces with lengths of approximately 32m and 75m respectively. Use of the underbridge areas by roosting birds has also led to an accumulation of bird droppings under the bridges. Dunn Street, to the south of the railway bridge, is characterised by high walls to the appeal site and the walls and security fencing to the plant hire business on the west side of the road.
24. At the time the proposal was submitted, there was an extant planning permission for development of the Former Calder's Metals site which included this link road. However, that permission has lapsed and there are no current proposals for this site. The issue is, therefore, whether the site can be developed and function as designed utilising the existing highway network.
25. My attention has been drawn to a previous appeal decision for residential redevelopment of the same site⁵. That appeal was dismissed for several reasons, one of which concerned accessibility. The Inspector concluded that accessibility was "relatively poor and absent significant environmental improvements, both unappealing and potentially threatening."⁶ The physical environment around the site has only altered slightly in the intervening time. New lighting has been installed under the bridges and parking restrictions have been introduced to attempt to address issues of pavement parking⁷. A small section of rail bridge that used to cross Tyneside Road to the north of the current bridges has also been removed.
26. The submitted parameters plans indicate that the site would primarily be accessed from two points. The first is from the north via Tyneside Road from Railway Street and the second is from Dunn Street, where there was a historic access to the site. It is also proposed to create a third, pedestrian only, access at the south east corner of the site via a flight of steps leading to Skinnerburn Road. An indicative number of approximately 174 car parking spaces is shown in an underground car park below one of the blocks. Although these numbers are not fixed, this car parking ratio would be less than 1 space per dwelling.

Public Transport

27. Bus services to Newcastle city centre, Cobalt Business Park in North Tyneside, Throckley, and to Winlaton, south of the River Tyne, run along Scotswood Road north of the site. Bus stops are located to both sides of Scotswood Road. Those stops for westbound services are closer to the site whilst the eastbound stops, serving the city centre, are further away on the north side of the road.

⁵ Core Document COM/03 Appeal Reference: APP/M4510/W/15/3139684

⁶ *ibid* Paragraph 34

⁷ Core Document PA/33 TPS Transport Consultants Ltd Technical Note February 2024 Para 1.10

28. The eastbound bus stops are approximately 500m from the site and the westbound stops around 450 – 500m, although the distance to both varies depending on where the starting point is located. Published guidance varies on what are considered acceptable walking distances to bus stops with the Chartered Institute of Highways and Transportation (CIHT) suggesting between 400 and 500m depending on the number and frequency of services on the route⁸, and Active Travel England suggesting that all buildings should be within 400m of a bus stop. Although there is some slight disagreement between the parties as to whether these bus stops are served by “high frequency services”, it is not disputed that there are approximately 10 buses an hour on weekdays and Saturdays provided by two bus services. There is a substantially lower frequency of just 4 buses an hour on Sundays⁹.
29. The CIHT guidance recognises that the acceptability of the walking distance is not a stand-alone consideration, adding that people will accept longer walks to reach bus services that are fast and direct, or more frequent. It also notes that the quality of the walking route itself may affect people’s judgement of an acceptable walking distance¹⁰. Although the current bus services may not wholly meet the CIHT guidance in respect of a core bus route in terms of frequency and timetabling, and the services are run by two different operators, 10 buses an hour is nonetheless a good level of service.
30. Scotswood Road is wide and heavily trafficked much of the time, especially during the day. There are, however, light controlled pedestrian crossings which facilitate crossing what would otherwise be a barrier to pedestrians. The distance to the bus stops from the site may slightly exceed the distances recommended by Active Travel England but they are no so great that potential passengers would be dissuaded from using public transport by distance alone. This notwithstanding, future occupiers of the site would need to walk a distance to access public transport.

Access for pedestrians and cyclists

31. It is common ground that there are a range of key amenities within what would be considered acceptable walking distances of the site. However, the key question is not so much around the proximity, or availability, of public transport, shops, or other facilities, but whether the routes to these are safe, attractive, and convenient, as these factors determine how likely it is that the routes would be used as a first preference. This necessary for the development to function as intended and achieve the development plan objectives.
32. Some of the local facilities are to the north and west of the appeal site and there are employment opportunities in the business parks along north bank of the Tyne which could be accessed from the site. Nonetheless, the majority of services and facilities that future residents might wish to access lie to the east of the site, within the city centre. Accessing the city centre requires either negotiating a complex series of pedestrian crossings at the end of the Redheugh Bridge, or continuing on Railway Street, under the road bridge and through an area of inactive street frontages, formed by a car park and hotel, to reach the vicinity of the Centre for Life.

⁸ Core Document NCC/LC/01/E Buses in Urban Developments CIHT 2018

⁹ Core Document PA/33 TPS Transport Consultants Ltd Technical Note February 2024 Page 10

¹⁰ Core Document NCC/LC/01/E Buses in Urban Developments CIHT 2018 Page 18

33. In the area around Railway Street there is little natural surveillance or overlooking of pedestrian routes. At the time of the site visit there was little activity, and in the evenings, there is likely to be even less. When I visited the site on a Sunday morning, there was virtually no activity in this area.
34. To the south, Skinnerburn Road, although provided with street lamps, is a long, isolated, route bordered by trees to one side and high retaining walls to the other for most of its length from Forth Banks to the appeal site. Skinnerburn Road, whilst providing an access route to the Quayside, is unlikely to be an attractive alternative route to get to the city centre either via Forth Banks, or streets further east, due to the steep level changes on the sides of the Tyne Gorge.
35. There is general agreement between the parties that, as they presently stand, and as concluded by the previous Inspector, the routes to the site are not of a good quality¹¹. Walking behaviours are very much influenced by the built environment. Psychological factors as well as physical factors determine whether alternative modes of transport such as walking or cycling, or public transport are used. Whilst people may be willing to walk or cycle further where their surroundings are more attractive, safe, and stimulating, the converse also applies. Surroundings that are perceived as unattractive, unsafe, or inconvenient will discourage walking or cycling.
36. The appellant proposes a package of improvement measures to the area in the vicinity of the appeal site including:
 - Traffic Regulation Orders (TROs) to prevent obstructive parking;
 - Widening the footway on Dunn Street;
 - Improved lighting and footway widening under the bridges;
 - Public realm enhancements under the Tyneside Road bridge;
 - Dropped kerbs, tactile paving, and wayfinding signage;
 - An improved crossing at Redheugh Bridge Road east of the site;
 - A new crossing on Skinnerburn Road to the south; and
 - A ramped connection from Skinnerburn Road to the riverside route replacing an existing stepped access.
37. Many of these works are within the public highway and could be the subject of a Section 278 agreement under the Highways Act. Improvements to the Tyneside Road bridge would require working with Network Rail who are responsible for the structure. No draft Section 278 agreement has been submitted. However, a condition has been proposed requiring a scheme incorporating the proposed highways improvements to be submitted for approval. The implementation mechanism for those improvements within the highway could form part of that submission. TROs are subject to consultation and objections. This does introduce an element of uncertainty as to whether this aspect of the proposals is deliverable, although the Council has previously successfully made some TROs in the same area.
38. With regard to proposed improvements under the Tyneside Road and Dunn Street bridges, no detailed scheme has been submitted. The Council is sceptical about lighting solutions under the bridges because of height restrictions and maintenance issues with ground mounted lighting. Works to implement public realm improvements

¹¹ Appellant's Closing Submissions Para 48 and Council's Closing Submissions Para 11

under the railway bridges outside the adopted highway would require a licence from Network Rail. Whilst Network Rail have indicated that there is scope to look at possible improvements, this is some way from agreeing to a particular scheme. At this time, any public realm improvements under the railway bridges are possible rather than probable.

39. Whilst railway bridges are a feature of the townscape and highway network in the city centre, I saw when I visited the site that the bridges at Forth Banks, Clavering Street, and Orchard Street are more regularly trafficked and less isolated. In particular, Orchard Street is used as a waiting area for taxis before joining the taxi rank serving the railway station and the Clavering Street underbridge is both wider and higher than those serving the appeal site. This is a very different context from the bridges on the approach to the appeal site.
40. The appellant points out that a lesser package of measures was approved by the Council in respect of the previous scheme for the Quayside West site. However, that was in conjunction with the west to east spine road within that site. Because that scheme has lapsed, and there is no longer a clear timescale for the provision of the spine road, the improvements proposed as part of the appeal scheme have to be considered in isolation.
41. The measures proposed may make the walking routes to the site physically easier to use. Nevertheless, these measures cannot fundamentally alter the character and environment of the area through which they pass. The FYDF sought the removal of redundant railway bridges at among other places, Tyneside Road and Dunn Street. The more recent consultation document in relation to a forthcoming supplementary planning document for the site¹², however, identifies the former railway line as a linear park and the illustrative material shows these bridges retained. Consequently, it is uncertain whether the redundant bridges will remain or not. In the short term, it can be assumed that they will.
42. There is no indication that the essential character of the commercial/industrial area to the north is going to change in the immediate future, or even in the medium or long term. It would remain an unwelcoming pedestrian environment. I accept that the proposal has the potential to introduce a greater degree of potential pedestrian activity into the area but walking behaviours are very much influenced by the built environment. Given the character and nature of the area around Railway Street, its resulting appearance, and the perceptions arising from this, the built environment in the vicinity of the site would actively deter residents from walking or gaining access to public transport.
43. There is no policy requirement in the development plan for the link road through the wider Forth Yards site to be constructed prior to the appeal site being developed for residential use. However, the FYDF clearly recognises that there is an impediment to developing the site in the absence of this link road.
44. The proposed new spine road through the site would provide a longer walking and cycling route to the city centre, than the present routes are. Nevertheless, this route would be properly lit and pass through residential areas and would avoid

¹² Core Document POL/38 Forth Yards Newcastle upon Tyne Masterplan Supplementary Planning Document - Vision and Principles September 2025

psychological barriers to movement such as the underbridges on Dunn Street and Tyneside Road and busy roads such as Scotswood Road and the complex crossings at the end of the Redheugh Bridge. The previous Inspector also noted that the value in environmental terms of having routes through a developed Calder's Metals site would be unmistakable given the nature of those north from the appeal site along Dunn Street and Tyneside Road¹³. Although such a route would be longer, it would provide a more secure and overlooked walking environment.

45. The appellant argues that provision of the link road is not necessary prior to the development of the site as the link road would be delivered in due course and the use of the current routes would, therefore, be temporary. Notwithstanding the announced funding for facilitating the development of the adjoining site, there is no indication of when a new planning application for the Calder's Metals site would be forthcoming. There is no clear picture of how long occupiers of the site would be expected to use routes which both parties agree are currently not good quality.

Conclusions on accessibility

46. Drawing these strands together, this matter is not one that can be considered purely in terms of what could be called physical accessibility. It is clearly possible to access the site by alternative means to the private car and its proximity to the city centre and the accessibility of shops, services, and employment opportunities is such that, in broad terms, the location is appropriate for residential development. The question is whether, at this time, the development would function as intended, to reduce car dependence and encourage alternative travel modes. It is not so much a matter of can you get to and from the site without a car, but would people be willing to do so.
47. Although the improvements proposed would have some benefits, they would not materially alter the underlying character of the surrounding area where there is an unwelcoming atmosphere for pedestrians. Pedestrians and cyclists coming from the city centre would still be required to access the site from beneath one of two railway bridges. Although it may be possible to achieve some environmental improvements to these, they would still be perceived as threatening, especially during the hours of darkness. This would be a strong psychological barrier to pedestrians and cyclists. There is no guarantee that any public realm improvements to these bridges would be forthcoming, or effective. From the evidence before me, and from what I saw when I visited the site, what is currently proposed in terms of improvements falls some way short of the significant environmental improvements that the previous Inspector found would be required¹⁴ to make the site accessible.
48. For the above reasons, I conclude that the appeal site is not a suitable location for residential development at this time. It would not comply with the relevant requirements of Policies D3, CS1, CS13, CS15, UC12 of the CSUCP and DAP Policies DM11 and DM14. Collectively these policies seek to ensure that new development reinforces and creates linkages to its surroundings, provides safe and secure pedestrian and cycling links, is well connected and accessible by sustainable modes of transport promoting and maximises sustainable travel choices whilst reducing unnecessary traffic through the urban core and creating a safe environment. It would also conflict with the requirements of the Framework that new

¹³ Core Document COM/03 Appeal Reference APP/M4510/W/15/3139684 Paragraph 14

¹⁴ Core Document COM/03 Appeal Reference: APP/M4510/W/15/3139684 Paragraph 34

development should provide safe and suitable access for all users, function well over the lifetime of the development, and create places that are safe, inclusive, and accessible.

Character and appearance

49. The proposal is in outline with all matters reserved. An outline planning application can establish whether the scale and nature of a proposed development would be acceptable, although the Planning Practice Guidance (the PPG) notes that design quality cannot be achieved through an outline planning application alone¹⁵. The principal question is whether there is a realistic prospect that the development proposed could be accommodated on the site in a manner that meets the requirements of the development plan and other planning requirements.
50. Although there is not a detailed design for the scheme, as was observed by the previous Inspector, the visual impact of development on the Tyne Gorge is a factor that prompts greater consideration of the design and scale at this stage¹⁶.
51. Policy D3 of the CSUCP expects development on the Forth Yards site to provide a high quality landmark entrance respecting and responding sensitively to the Tyne Gorge and the scale and setting of the Redheugh and King Edward Bridges. CSUCP Policy CS15 seeks, among other matters, to ensure that new development is of a high quality design that responds positively to local distinctiveness and character and responds to the unique character of the River Tyne and its setting. CSUCP Policy CS18 seeks to protect green infrastructure assets including distinctive landscape character and the importance of the river. Policy UC11 of the CSUCP identifies Forth Yards as a gateway site and expects development to improve and enhance the area. CSUCP Policies UC11 and UC12 respectively seek to ensure development delivers high quality locally distinctive places and prevents harm to public views from, across, or into the Tyne Gorge.
52. DAP Policy DM20 builds on CSUCP Policy CS15 and expects development to deliver high quality design by taking advantage of positive site features, improving the character and quality of an area, and demonstrating a positive response to topography, natural and, built landscapes. Likewise, DAP Policy DM27 follows Policy CS18 in seeking to protect and enhance green infrastructure. DAP Policy DM28 requires that new development protect, enhance and manage existing tree and landscape features.
53. The Framework expects new development to be of a high quality; to be sympathetic to local character and history, including the surrounding built environment and landscape setting; and to establish or maintain a strong sense of place.
54. The National Design Guide advises that well designed new development is influenced by *inter alia* an understanding of vernacular local or regional character including built form, landscape, local architectural precedents, and other features of the context that are particular to the area. It further states that where the character of an existing place has limited or few positive qualities, then a new and positive character will enhance its identity, and that where the scale or density of new

¹⁵ Planning Practice Guidance - Design: process and tools Paragraph: 010 Reference ID: 26-010-20191001

¹⁶Core Document COM/03 Appeal Reference: APP/M4510/W/15/3139684 Paragraph 22

development is very different to the existing place, it may be more appropriate to create a new identity rather than to scale up the character of an existing place in its context¹⁷.

55. The FYDF sets out broad development principles for the area including the appeal site. The FYDF also makes reference to the Urban Landscape Study of the Tyne Gorge 2003¹⁸ (the Tyne Gorge Study) which was produced to set the context for managing future change within the Gorge. It sets out the importance of different areas of the Gorge, identifies threats and opportunities and indicates principles for the protection of the Gorge in the future.
56. Due to the sloping topography, the site has a number of levels, with the upper level comprising of hardstanding areas and the hangar for the heliport. The mid-level has a grassed area, and beyond this is a steep escarpment running down to Skinnerburn Road. The site is bounded to the east west and south by a high retaining wall. To the east of the appeal site is a larger cleared site that was formerly occupied by a leadworks, railway sidings and a small area of terraced housing. More recently a large gasometer, was also located on this land. To the north and west, nearby streets have an industrial and commercial character.
57. To the east, the built environment context currently consists of the Newcastle Arena building and the Redheugh Bridge. The first residential development to the east of the site is the two blocks of flats currently under construction at Pottery Lane. These sit next to high stone retaining walls around part of the former Forth Banks Goods Station. Combined with the former railway line and the industrial and commercial area to the north of the former railway line, and the plant hire yard occupying a site containing remnants of former industrial buildings to the west side of Dunn Street, the appeal site has no immediate residential context. The wider context to the south includes the River Tyne, the Staithes South Bank residential development and Dunston Coal Staithes. The site therefore has a complex context within which the proposal has to be considered.

Landscape

58. The Tyne Gorge Study identifies the Skinnerburn Area, which includes the escarpment, as visually sensitive but not highly sensitive to new built development. The Elswick area, which includes the majority of the site, is identified as highly visually sensitive. However, the Tyne Gorge Study also notes that the character of the existing townscape is not sensitive to change and there is some capacity for this large scale landscape to absorb new development.
59. Threats to the character of these areas are identified as newbuild development that is large in scale and masks the topography of the Gorge sides, and newbuild that dramatically alters the skyline or has overbearing effect on remaining historic buildings. The Tyne Gorge Study sets out development principles for these areas, including ensuring that any new development maintains a close relationship with the topography, and visual linkages with the river.

¹⁷ Core Document POL/07 National Design Guide pp 15-16

¹⁸ Core Document POL/27

60. Although all matters of detail are reserved for future approval, it is necessary at this stage to consider the indicative form of the proposal, which has implications for the landscape of the Tyne Gorge and on key views of the city. The Environmental Statement included a Landscape and Visual Impact Assessment based on parameters plans that set out an indicative form of the proposed development.
61. The supporting material included in the proposal indicates that the development would take the form of flats in five blocks of four to seven storeys high, with an access road passing through the site from Tyneside Road to exit to Dunn Street. The three blocks to the south of the site would incorporate a communal parking area for the site beneath them. This would result in a platform, or podium, being formed across the southern section of the site that the three southern blocks would sit on. This podium would cut across the existing topography of the site to create a level surface.
62. Whilst the site's existing topography is largely man-made, the FYDF expects new buildings on the site to step down appropriately with the topography. The redevelopment of the site would require some modification of the landform to address the abrupt level change of approximately 4m that effectively bisects the site. However, the proposal, rather than addressing the existing topography, would result in extensive re-engineering of the site to accommodate parking.
63. The current submitted parameters plan illustrating maximum building heights¹⁹ shows blocks arranged broadly in accordance with the diagram on page 18 of the FYDF with the tallest building in the north east and lower buildings on the south and western parts. Whilst the parameters plans shows some stepping down of overall height within the blocks, this amounts to only one or two storeys at a time with the south end of the blocks being at most three storeys lower than the rear, with the central block on the southern part of the site still being shown as relatively monolithic. The nearby new development at Pottery Lane, also within the Forth Yards development area, has greater variations in height in the blocks of five and six storeys between the highest and lowest parts. This more closely resembles the complex visual layering on the north side of the Gorge further east towards the Central Station and along Sandhill and the Quayside.
64. Although the illustrative information shows some variation in height across the site and the proposed development blocks, this is not pronounced and overall, when combined with the re-engineering of the site to create the parking provision, would obscure rather than reveal the underlying topography. This would be contrary to the guidance in the FYDF and the principles for accommodating new development set out in the Tyne Gorge Study.
65. The FYDF identifies a number of features to be retained as part of the overall development of the area including the various stone retaining walls and the escarpment edge to the Tyne Gorge. The proposal would not affect the stone retaining walls around the site and the escarpment edge would be unaltered with the development proposed to be set back from it.
66. Both the Tyne Gorge Study and the FYDF refer to reintroducing an urban grain which is human in scale. These terms are not defined in the documents. From the

¹⁹ Core Document PA/57 Drawing Number NHD-NOR-XX-XX-DR-A-90015 Revision P06

information I have, the spacing between the blocks in the southern part of the site identified as Blocks A, B, and C on the site strategy plan²⁰, would be approximately 21m. The proposed buildings would be between 12m and 18m high above the podium level giving a height to width ratio to the space of less than 1:1. As a consequence, these spaces would not feel unduly enclosed due to the building heights being less than the distance between them.

67. The tallest block, Block E, would be approximately 21m above the proposed finished ground level. However, due to the shape of the site, a large proportion of this block would be opposite land to the west, which is outside of the control of the appellant. This area currently contains the larger of the two gas governor buildings and the remainder comprises waste land with a number of trees. The future use of this area of land is yet to be determined, although the east/west spine road proposed in the FYDF is likely to pass through part of it and the gas governor is likely to be relocated to another part of it as this facility has to remain. Nonetheless, due to the largely open land currently to the west, the greater height of Block E would not make this space feel unduly enclosed.
68. From the proposed footway along the top of the escarpment, the buildings in the central block would be some 18m high above ground level and in the two flanking blocks 12m and 12.5m high respectively. Although these blocks would be sited on a podium approximately 3m high to accommodate the car parking area, the submitted drawings indicate that there would be flats, or parts of flats, within the periphery of the podium. As a result, this would not present an entirely blank wall to this path but would be articulated by windows to these dwellings at ground level. The indicative form of the blocks shown would also break up the massing of the three blocks sitting above the podium.
69. Although the access road into the site from Dunn Street would be perceived as being more enclosed due to it being set below the level of the buildings to accommodate the differing ground levels, this is just one small part of the site.
70. Whilst the proposal would result in a fairly coarse grained development consisting of a small number of large blocks, it would be consistent with the emerging pattern of development along the riverside, where older industrial or warehouse building have been replaced by modern flats, offices, hotels, and commercial buildings. In addition, the illustrative material for the now lapsed permissions on the adjacent Calder's Metals site shows buildings of a similar or slightly greater height than those proposed on the appeal site. The flats currently being constructed at Pottery Lane, also within the wider Forth Yards area comprise of large blocks of up to 12 storeys in height.
71. Within this context and having regard to the indicative heights and spacing of the buildings on the site, the proposal would meet the requirement to create an urban grain that is human in scale. Although this counts in favour of the proposal, it does not overcome the more fundamental matter of the broader effect on the topography of the Gorge.

²⁰ Core Document PA/13 - Drawing No: 90 SK201 Revision J

Visual effects

72. A new visual assessment was submitted as part of the appellant's appeal submissions which disagrees with the conclusions of the ES. The Landscape and Visual Impact Assessment (LVIA) in the ES notes that the development would in its operational phase have moderate to major adverse visual effects to key views from south of the Tyne Gorge especially from the Tyne and Wear Trail (National Cycle Network Route 14) which runs along the south bank of the river. The appellant's new Townscape and Visual Impact Assessment concludes that the proposal would have no significant adverse effects from the development on the landscape character and key viewpoints. The ES was not updated as part of appeal, leading to a contradiction between the planning application documents and the appellant's evidence at the Inquiry. I attach greater weight to the original LVIA because this formed part of the planning application and there was no update to the ES as part of the appeal submission. Nor was it indicated in the appellant's Statement of Case that a new assessment would be submitted.
73. It is, however, clear from CSUCP Policy D3 and the FYDF that the appeal site is in a part of the city that is in a state of transition from a primarily industrial/commercial area with railway infrastructure and small pockets of residential development, towards a mixed use area of offices, leisure and residential development. As a result, it is inevitable that there will be a change to the visual character of the area, albeit over an extended period of time as the previous large industrial buildings have mostly been removed and the sites have been left vacant, or have been used for other purposes including the heliport and the plant hire yard.
74. The submitted Design and Access Statement set out some broad general design principles which are reflected in the submitted parameters plans. The PPG does, however, note that parameters plans are not a substitute for a clear design vision and masterplan²¹.
75. The proposed development, as outlined in the parameters plans, would result in a coarse urban grain. This would be consistent with the existing context of the site which typically consists of larger buildings, particularly in the areas that have been redeveloped to the south of the railway station and along Close and Forth Banks. On the opposite side of the river at Staithes South Bank there are blocks of flats approximately seven storeys high which front onto the river, albeit at a lower ground level. The tallest parts of the proposal would be of a similar scale to these.
76. The evidence at the Inquiry focussed mainly on the effects of the development when viewed from a point adjacent to the Dunston Coal Staithes²². This is just one key viewpoint identified in the FYDF, nevertheless, it is a very important one. From here there are panoramic views across the river to the site and downstream towards the bridges over the river. The view across the river to the site comprises the tree cover on the north bank of the Tyne between the riverside walkway and Skinnerburn Road with parts of the heliport hangar building and the gas governor building visible above these. Beyond these are further trees in an elevated position on the former railway line. Skyline features include the Utilita Arena building, the upper parts of Hadrian Tower, two buildings on the Newcastle College campus and three tower blocks next

²¹ Planning Practice Guidance Paragraph: 011 Reference ID: 26-011-20191001

²² Identified as Viewpoint 3 in the LVIA

to Westgate Road. Part of the wider panoramic view from Dunston Staithes also includes the three tower blocks at Cruddas Park to the north of Scotswood Road and the tower block above Cruddas Park shopping centre further up the hillside to the north and west of the site.

77. From this viewpoint the Council contend that the three blocks in the south part of the site will visually merge into a solid “wall” of development. This is borne out in part by the images in the LVIA and in the appendices to the appellant’s design proof of evidence²³. The images in the LVIA and the appellant’s landscape evidence also show that the proposed scheme would partially or wholly obscure the buildings at Newcastle College and part of Hadrian Tower. This would diminish the effect that these buildings currently have of being skyline features and punctuating the background of views across the river.
78. It is, nonetheless, also important to bear in mind that whilst the LVIA looks at specific, fixed, viewpoints, from the south side of the river the site is experienced in sequential views moving along the Tyne and Wear Trail footpath/cycleway on the riverside. People may linger in the area at the end of the coal staithes, where there is a wider area on the riverside route formed from part of a historic wharf which includes seating and is in the vicinity of a café. However, the site and any future development on the wider Forth Yards site would more usually be visible in sequential views in both directions along the path on the south side of the river for a considerable distance, especially when approaching from the east. I saw when I visited the site prior to the Inquiry opening that this route was well used by both pedestrians and cyclists. Although the proposed development would be very visible from the riverside path, the sequential nature of the views would result in changing perspectives, and the perception of the frontage blocks would progressively alter and the gaps between the frontage blocks would become more apparent. Nonetheless, the development would still be perceived as large blocks set above the river.
79. Although the sequential nature of the views would help to break up the impression of a wall of development, these views from the south of the river are important in determining the effect of the proposal because of their physical extent, forming a large proportion of the immediate context of the site, and effect on a large number of receptors.
80. To the west of the site, the built development at Newcastle Business Park is perceived as stepping up the slope and set amongst trees. Further established trees on the former railway line formed a wooded backdrop to this existing development. To the east the perception of a wooded riverbank persists across the site frontage past the Redheugh and George IV Bridges to the junction of Skinnerburn Road and Forth Banks beyond which the Quayside becomes built up along the riverbank. Retained trees on the escarpment provide a wooded foreground to the new flats at Pottery Lane.
81. At the site the escarpment has little in the way of established tree cover and there is just the narrow band of tree cover, between Skinnerburn Road and the riverside footpath. The submitted visualisations of the proposal included in the LVIA and the appellant’s other evidence indicate that the height of the proposal would obscure the

²³ Core Document PA/34 LVIA Photomontages – Existing & Proposed and Core Document PKL/CK/04/A Catharine Kidd Proof Appendices - Appendix 7.

tree cover along the former railway line to the north of the site. As a result, when viewed from across the river, the proposal, irrespective of its final design, would lack the arboreal setting of other buildings along the river bank that assists in integrating these buildings into the riverside scene. It would appear as imposed upon its setting rather than part of it.

82. The FYDF does not provide any prescriptive guidance on the scale or form of development that would be acceptable on the heliport site. Neither the FYDF, nor the draft Forth Yards Newcastle upon Tyne Masterplan Supplementary Planning Document - Vision and Principles document sets a limit on building heights beyond the reference to development being at a human scale as discussed above.
83. The FYDF does set out general principles including, that buildings should step down appropriately with the topography of the site. With regard to the heliport site itself, the FYDF sets out that the form of development should be a series of blocks set in a landscape setting, with a vehicle access road through centre of site; commercial noise buffer uses on the northern boundary of site; create a *bella vista*²⁴; provide an escarpment edge footway for public use; and retain and enhance the landscaped southern edge to the site²⁵.
84. There is some disagreement between the parties in respect of the accuracy of the visualisations of the development which in certain images show elements of development beyond the site which are not present or approved and so not accurately reflect changes in ground level on the site. These images are illustrative only although other aspects of the appellant's design evidence which shows the building heights in relation to buildings on the adjoining site²⁶ do have to be treated with some caution as there is no approved scheme for the Calder's Metals site.
85. The Council are critical of the appearance of the proposed flats shown in the Design and Access Statement and other illustrative material as generic building designs. The Framework expects new development to be sympathetic to local character and history, establish a strong sense of place, creating attractive and distinctive places to live²⁷. The Design and Access Statement set out a number of design principles. However, local distinctiveness is given little or no consideration. In terms of sense of place, the contextual basis for the "central hub" is in large part reliant on the relationship to the proposed layout of the now lapsed development on the Calder's Metals site. There is no elucidation on how the proposed development blocks would contribute to framing or forming a coherent or distinctive space.
86. It was accepted at the Inquiry that the carriageway through the site would be tarmac rather than paving. This together with the surface level disabled parking bays shown on the indicative drawings would undermine the appearance of a shared space in the centre of the scheme, diluting the scheme's focus, regardless of the final layout and design.

²⁴ It is, however, not clear what this term means in practice. The general design principles for the wider Forth Yards site refer to the development of the remnant of the load out, a structure built into the escarpment, at the adjoining former Calder's Metals site to form a "*bella vista*" (a point from which there is a beautiful view) but no such equivalent feature exists on the heliport site

²⁵ Forth Yards Opportunity Site Development Framework January 2020 Page 29

²⁶ Core Document PKL/SB/01 Simon Bell Evidence reproducing pages from the Design and Access Statement Core Document Core Document PA/30

²⁷ National Planning Policy Framework Paragraph 135

87. The building heights and block sizes set out in the submitted parameters plans are to accommodate the quantum of development proposed for the site. The FYDF identifies that the overall site has the potential to deliver approximately 2500 dwellings and the heliport Site 280. The appeal proposal is for 356 dwellings. Although there is a proposed condition that a Design Code be agreed for the site²⁸, the proposed quantum of development leaves little room for manoeuvre within the parameters shown on the drawings and which would effectively be fixed if outline planning permission were to be granted. The Council are in the process of preparing supplementary planning document for the wider Forth Yards Area, the initial draft of which indicates a different form of development on the heliport than that proposed by the appeal scheme. Whilst little weight can be given to this early phase of the supplementary planning document, allowing the appeal proposal in isolation would have a knock on effect for the overall masterplan for the site and the potential to create a new, locally distinctive, character for this regeneration area.
88. The historic walls around the site are to be retained and the historic pony track from the Dunn Street entrance is to be re-instated. The steep escarpment would also be retained. However, whilst these are features of the site they would not of themselves make a development on the site locally distinctive. The Design and Access Statement does not indicate how the proposal would either reflect the existing character or set out principles for creating a new character. Although the appellant is not intending to develop the site themselves, it is nevertheless necessary in order to comply with development plan policies to demonstrate at this stage that an appropriate form of development for the site would, or could, be achieved.
89. From what I have read and from what I saw when I visited the site, the proposed development would not take advantage of the existing topography and there is little to indicate that the development would be locally distinctive or result in a new or unique character for the area. The question becomes whether the harm that would result could be mitigated in order to make this acceptable or achieve the beneficial effect suggested by the ES.
90. Although the appellant no longer agrees with the finding of their own LVIA they, nonetheless, still rely on the mitigation proposed in the ES. The ES sets out embedded mitigation in the scheme as:
- the building layout following the natural form of the site;
 - the built form rising gently to reflect the topography of the site;
 - the building mass designed to ensure the enhancement of intimate external living spaces;
 - the proposed vegetation to include low shrubbery and other low growing plants rather than substantial trees to preserve views over the river; and
 - the scheme includes potential for external terraces and roof gardens.
91. The ES sets out that in addition to an appropriate design of the buildings, a structural approach to landscaping similar to that of the Newcastle Business Park would be adopted; that advantage should be taken of the level changes within the site in relation to landscape and tree planting; and that green roofs should be incorporated where appropriate.

²⁸ Document ID12 - Suggested Condition 29

92. I have found that the proposal would cut across the topography of the site and the massing of the buildings as shown on the parameters plans would not compensate for this. The proposed form of the development would make echoing the landscaping approach taken at Newcastle Business Park difficult to achieve. The Council have questioned whether the proposed form, with a large podium over low level parking would be able to accommodate the level of landscaping and planting envisaged by the landscape strategy plan²⁹. Whilst there may be technical challenges, including designing the roof structure to support the additional loading resulting from the weight of soil required to support tree planting and other planting, and accommodating drainage and irrigation, these are not insurmountable, although there would be an additional cost. No substantive evidence was advanced which would indicate that the proposal would be structurally impossible or impractical.
93. The above notwithstanding, I have doubts over whether trees planted in such conditions would readily become established or achieve their full potential growth. This would further undermine the landscape strategy aims to integrate the scheme with the surrounding landscape and visual character of the area.
94. Planting in front of the podium and on the escarpment is proposed on the landscape strategy plan as generally low growing, or small to medium ornamental trees which would be lost in comparison to the size of the buildings. Sedum, moss, or wild flower blankets that are typically used on green roofs would largely be unseen in longer views, particularly those from the Tyne and Wear Footpath. Although they may be more visible from elevated viewpoints such as the Redheugh Bridge, the distances and relative heights involved would mean that any contribution that these might make to the visual appearance of the proposal would be slight.
95. Overall, whilst it may be technically possible, the suggestion that the proposed landscape strategy would suitably integrate the scale of the proposed development into a similar landscape structure to that of the neighbouring business park is not a persuasive one. Consequently, the proposed development would be visually incongruous within the otherwise wooded setting when viewed from a long stretch of the footway/cycle path along the south side of the river.
96. In views from the old Redheugh Bridge abutment viewpoint on the south side of the river, proposal would be part of a more constrained view. Initially the proposal would appear as an isolated large scale feature on the periphery of the view, although in time if the former Calder's Metals site is developed this would become more prominent, and the proposal would be perceived as part of a larger overall development.
97. From the Redheugh Bridge itself, the visual effect would be similar but would generally be seen from a moving viewpoint and when crossing from the south. This would only be for the duration of the crossing itself. Drivers of vehicles would be less aware of the view although passengers in vehicles and buses would have more opportunity to see the development. Whilst there is a pedestrian footway on the bridge, this is to the east side of the bridge. Due to the height, length, and design of the bridge it is exposed to the weather, particularly high winds. As such pedestrian and cyclist traffic across the bridge is not particularly high. This again limits the effects on receptors using the bridge.

²⁹ Core Document PA/12 Drawing Number D291.L.001 Landscape Strategy Plan

98. From other identified viewpoints including the upper floors of the Baltic Art Gallery and the footway/cycleway on the north bank of the river within the business park, views are occluded by other terrain elements and buildings.
99. I have considered whether the effect from a single viewpoint is sufficient to warrant withholding planning permission. However, it was apparent from my site visit that Viewpoint 3 in the LVIA is one small part of a much longer sequence of views. It is the most sensitive view that is affected, not just because of its content and extent, but also because pedestrians, and to a lesser extent, cyclists would spend a noticeable period of time within the affected area. In this context, the harmful effect is sufficient to make the proposal unacceptable.
100. Although the timescales for development of the wider Forth Yards site are not known, it is nonetheless a site which is allocated for development, and this will inevitably change its appearance. Although there is presently no scheme for the former Calder's Metals site and no time scale for its delivery, it is more likely than not that this will be developed in due course. This notwithstanding, the scale and massing of the proposal would cause harm to the character and appearance of the area and whilst this may be reduced if the Calder's Metals site is developed, this would not be to such an extent that it would remove the fundamental harm that would be caused.
101. At present, the site and the adjoining Calder's Metals site do not make a positive contribution to the character and appearance of the area. However, the present condition can only be seen from a limited number of elevated public view points, such as from the Redheugh Bridge and the old Redheugh Bridgehead. From most other publicly accessible viewpoints the sites are largely screened by the perimeter walls and established tree planting. The development of the site, and the former Calder's Metals site, might represent a qualitative improvement to the appearance of the area through the removal of an area of derelict land. However, this improvement is not contingent on the specific development within the proposal.
102. This is an outline scheme with all matters reserved. A planning condition has been suggested that would require the preparation of a Design Code for the site. Nevertheless, it is sought to have certain parameters plans approved as part of the application. These parameters plans would influence any subsequent Design Code. As set out above the parameters plans proposed would have an adverse effect on the landscape and visual character of the area which a Design Code based on these would not be able to rectify.

Conclusions on landscape, character, and appearance

103. Whilst the principle of development on the site accepts that there will be landscape change, the present form of the development would not meet the guidance in the FYDF, or the principles set out in the Tyne Gorge Study. There is no certainty that it would either reflect local distinctiveness or create a new locally distinctive character and generate a genuine sense of place. It would remodel the site to suit the development rather than reflect the current topography and would undermine a key view from a very sensitive viewpoint from the south side of the river.

104. As such I find that it would be harmful to the character and appearance of the area and would not comply with the relevant requirements of CSCUCP Policies D3, CS15, CS18, UC11, UC12, and UC13, and DAP Policies DM20, DM27 and DM28 and the FYDF as set out above. It would also conflict with the requirements of the Framework.

Living conditions of the future occupiers

105. The presence of gas infrastructure adjacent to the site is a source of noise that has the potential to affect the living conditions of future residents. The FYDF notes that the site is suitable for residential use only following the resolution of noise from the gas pumping station.
106. The principal noise source is the large gas governor/pumping station to the north of the site. This building has a brick lower section with a metal clad upper section and roof. The building incorporates a number of vents and louvres to provide ventilation and prevent any build-up of gas. The second, smaller, pumping station adjacent to Tyneside Road is also a noise source. However, it is significantly quieter than the larger facility and most noise generated is masked by that from the larger facility.
107. When the application was originally submitted, it was intended that the gas governor would be relocated to a new building, purposely designed to address noise, as part of the now lapsed planning permission for the Calder's Metals site. As there is now no planning permission for this to happen it must be assumed for the purposes of this appeal that the noise source will persist.
108. The operation of the gas governor is dependent on the demand for gas, which will be higher when the weather is cold. At times of peak demand there are higher noise levels from the building. When I visited the site prior to the Inquiry, it was particularly cold for the time of year with the temperature in the low single figures. Noise from the gas governor was clearly audible at the junction of Dunn Street and Red Rose Street and at the entrance gates to the heliport site. At the formal site visit, which took place on a weekday afternoon when the temperature was higher and the demand for gas lower, the perceived noise levels were lower than previously observed but noise from the gas governor was nonetheless clearly audible in the northern part of the site. In the southern part of the site, noise from the gas governor was not intrusive.
109. The noise assessment within the ES concluded that representative background noise levels for the area are 43-44dB LA90 15 min in the daytime and 39 dB LA90,15min in the night time. These figures are not in dispute. The BS4142 assessment for noise from the gas governor building in the ES concluded that at the nearest noise sensitive façade noise levels would be 63dB LAeq,1hr in the daytime and 59dB LAeq,15min in the night time.
110. This would be 20dB above background at the most exposed elevation and would be classed as a significant adverse effect. The ES sets out that attenuation measures to existing gas governor building of approximately 20 to 30 dB would be required in order to reduce the resultant impact to one that was considered 'low'.³⁰ Some works have been carried out to the gas governor building in terms of installing screens over

³⁰ Core Document PA/27 Environmental Statement Vol 1 Chapter 6

the louvre doors to the building to limit the escape of fugitive noise. There is some dispute between the parties over how effective these have been.

111. The ES was based on measurements taken in October 2021. Further measurements were taken in May 2025 which resulted in a BS4142 assessment of a daytime level of 61dB and a night time level of 59dB³¹. A further set of measurements in August 2025 produced daytime levels of 40dB and night time levels of 32dB at the closest noise sensitive façades³². A final set of measurements in October 2025 found daytime noise levels of 61dB and night time levels of 58dB³³.
112. From these it can be determined that the attenuation measures applied to the doors of the gas governor building have resulted in only a slight, if any, reduction in the level of perceived noise from the gas governor at the closest residential façade. The noise levels reduced considerably in August, a month where gas demand would be reduced. However, in the Spring and Autumn, noise levels are fairly consistently much higher. No noise measurements are available over the Winter months when demand for gas is likely to be at its highest. It would, however, not be unreasonable to assume that over the Winter months noise levels from the gas governor would be at least the same as in Autumn or Spring.
113. The proposal includes noise mitigation to flats which may be affected by noise in the form of noise insulation through the fabric of the building and window vent specifications and the installation of mechanical ventilation to avoid the need to open windows.
114. Although noting the appellant's point that daytime internal noise levels of 25dB(A) and night time levels of 20dB(A) could be achieved with open windows during the Summer months³⁴, this coincides with a lower demand for gas and hence less noise being generated by the gas governor. To maintain the intended internal noise levels at other times of the year, it would be necessary to keep the windows closed. I accept that the evidence shows that in the warmer months, when windows are more likely to be opened to prevent overheating, it may be possible to achieve an acceptable internal noise climate. Nonetheless, occupants may wish to have their windows open for ventilation at other times of the year. The appellant does not have any control over the actions of future occupiers.
115. The Council consider that the noise levels are such that, if a complaint were to be made, it would be found that there was a statutory noise nuisance which would require action to be taken against Northern Gas Networks who operate the gas governor. The appellant has not contested this position. Although Northern Gas Networks have raised objections to the scheme in respect of the potential effect on its underground gas transmission infrastructure, it has not raised the matter of noise from the gas governor. Nonetheless, the issue of noise from its equipment is a factor.
116. The 'agent of change' principle has to be considered, whereby existing businesses and facilities should not have unreasonable restrictions placed on them as a result of

³¹ Core Document PKL/RH/06/A/01 Richard Hinton Proof of Evidence Appendix 1 & Core Document PA/27 Environmental Statement Vol 1 Chapter 6 Table 6-16

³² Core Document PKL/RH/06/A/02 Richard Hinton Proof of Evidence Appendix 2

³³ Inquiry Document 13

³⁴ Core Document PKL/RH/06/A/02 Richard Hinton Proof of Evidence Appendix 2 Paragraph 6.4

development permitted after they were established. The Council consider that this would require alterations to be made to the gas governor building either by means of a substantial redesign, or by altering the equipment within and that this would be an unreasonable restriction. The agent of change principle requires that suitable mitigation be provided. The appellant does not have any control over the gas governor building which is outside of the site. The PPG sets out that mitigation can be provided by mitigating the impact on areas likely to be affected by noise, including through noise insulation when the impact is on a building. This is the route proposed by the appellant.

117. It is agreed that there would be 116 proposed flats potentially affected by noise from the gas governor. This is roughly one third of the total number of proposed units. I have noted the comments of the previous Inspector in terms of the noise climate and the likely effect on the living conditions of future occupiers of having windows that could not be opened because of noise, and also the Council's position that having to keep the windows closed would not provide acceptable living conditions for the future occupiers.
118. The PPG sets out that keeping windows closed and using alternative ventilation systems when noise is occurring can help to achieve a satisfactory living environment and help to mitigate the risk of a statutory nuisance being found if the new development is used as designed³⁵. That said, the PPG also notes that if the mitigation relies on windows being kept closed most of the time that this may have an effect on living conditions.
119. Future occupiers would have expectations regarding their quality of life, and it cannot be assumed that future occupiers would keep their windows closed, even during periods where noise was being generated by the gas governor. Whilst a planning condition could ensure that a noise mitigation scheme was put in place, it cannot thereafter ensure that it is used or operated as intended. Regardless of the provision of mechanical ventilation, future occupiers may wish to open the windows for access to fresh air or other reasons, and the actions of the future occupiers are not within the control of either the appellant or the Council. Ultimately, if the windows can be opened, this undermines the effectiveness of the mitigation scheme. There is nothing in the evidence that has been put to me which would indicate that a suitable internal noise environment would be achieved with open windows during the Spring, Autumn, and Winter months.
120. It was clear from the site visits that noise from the gas governor affects parts of the site, particularly that part where the main circulation area would be located and the route to Tyneside Road. Parts of the external space within the site would also be subject to continuous noise for much of the year. The submitted information does not suggest that the proposed flats would have any private amenity space. As a result, the future occupiers would be reliant on amenity spaces provided within the wider development.
121. The PPG sets out that where external amenity spaces are an intrinsic part of the overall design, the acoustic environment of those spaces should be considered so that they can be enjoyed as intended³⁶. Guidance published by the World Health

³⁵ Planning Practice Guidance Noise Chapter Paragraph: 009 Reference ID: 30-009-20190722

³⁶ Planning Practice Guidance Noise Chapter Paragraph: 006 Reference ID: 30-006-20190722

Organisation (WHO)³⁷ sets out that to prevent the majority of people from being seriously annoyed, outdoor sound levels should not exceed 55dB LAeq on balconies, terraces, and in outdoor living areas and to prevent the majority of people from being moderately annoyed during the daytime outdoor sound levels should not exceed 50dB LAeq. Whilst the WHO guidelines are framed as amenity spaces associated with dwellings, BS8233:2014 also sets out that the acoustic environment of external amenity areas that are an intrinsic part of the overall design should always be assessed and noise levels should ideally not be above the range 50 – 55 dB LAeq,16hr. Therefore, this suggests that these values are appropriate for the amenity spaces in the proposed development.

122. The appellant's evidence shows that in much of the circulation area the noise levels would be between 50 and 65 dB LA eq T during the daytime and that this would only slightly reduce during the night time³⁸. It also indicates that three proposed external amenity areas identified on the parameters plans would experience noise levels of more than 5dB above background³⁹. The evidence also indicates that a large proportion of the circulation space containing the road through the site would be over 5 dB above background, and in quite large parts over 10dB above background levels⁴⁰.
123. There are amenity spaces within the site which would not be affected by noise from the gas governor. However, the likely effect of this is that those spaces that are would be less used, or not used at all, which would both put pressure on those areas which are not affected and be less convenient for residents to use as they are further from the residential units than those subject to excessive noise levels.
124. Although the external amenity spaces would be more likely to be used during periods of warmer weather when the noise levels from the gas governor would be lower, it cannot be assumed that residents would not wish to use these at other times of year. In any event, residents would need to regularly pass through the area where there are elevated noise levels to access the buildings or to travel beyond the site.
125. The previous Inspector had concerns regarding external noise levels and whether they would be acceptable, in that case, within a car parking area⁴¹. The Inspector considered whether this could be addressed by a condition requiring works to the gas governor building to be carried out but concluded that a negatively worded condition seeking noise mitigation at source would be inappropriate. I concur with that finding. Whilst the appellant may be able to work with Northern Gas Networks in order to carry out further noise mitigation works to the gas governor building, I have nothing before me which would indicate what these works might comprise or what levels of attenuation might be achieved.
126. It is possible that at some unspecified future date the gas governor building will be relocated and rebuilt, which would address the issue of noise at the site. However, this appeal has to be determined based on the present circumstances. The evidence indicates that large parts of the appeal site and roughly one third of the proposed

³⁷ Core Document POL/43 World Health Organisation Guidelines for Community Noise Page xiv and Page 47 Table 4.1

³⁸ Core Document PKL/RH/06/A/01 Richard Hinton Proof of Evidence Appendix 1 Figures 6 and 7

³⁹ *ibid* Figure 10

⁴⁰ *ibid* Figures 8 and 9

⁴¹ Core Document COM/03 Appeal Reference: APP/M4510/W/15/3139684 Paragraphs 19-21

new flats would be exposed to high noise levels for a large part of the year. The proposed mitigation is compromised by the ability of occupiers to open the windows. This would not result in a high quality residential environment.

127. I therefore conclude that the proposed development would not provide suitable living conditions for the future occupiers of the dwellings with particular regard to noise. It would not comply with the relevant requirements of Policy CS14 of the CSUCP and DAP Policy DM23 which expect development to contribute to a healthy living environment by preventing negative impacts on residential amenity from noise, particularly from surrounding land uses. Nor would it meet the requirement of the Framework for new development to create places which promote health and well-being and provide a high standard of amenity for existing and future users.

Drainage

128. When the planning application determined, it was proposed that foul water from the development would be discharged to an unspecified sewer (although there is an existing combined sewer that has a manhole within the site and runs to the west) and a new surface water outfall into the River Tyne would be created. There were unresolved issues surrounding the practicality of creating a new surface water outfall, including land ownership. Northumbrian Water had expressed concerns regarding the foul drainage proposals, noting that the foul drainage strategy needed to be in keeping with the requirements of the FYDF to provide a comprehensive drainage solution for the key sites identified within it. Although Northumbrian Water suggested that a condition could be imposed requiring details of the foul water drainage to be submitted, there needs to be at least some indication that an appropriate drainage scheme could be achieved.
129. As part of their evidence, the appellant put forward a new proposal that involved pumping foul water to the north of the site to the existing foul water sewer under Railway Street and utilising an existing combined sewer that runs beneath Tyneside Road and discharges into the River Tyne through a combined sewer overflow for surface water. The flow rate for surface water would be limited to 5 litres per second through the use of on-site detention. Although the details of this proposed new proposal are scant, the appellant suggests that this matter could be addressed by way of a condition.
130. The FYDF envisages the provision of a new pumping station within the wider development area which would pump foul water from the wider site to the sewer in Railway Street and the reclassification of an existing combined sewer running down Shot Factory Lane to a surface water sewer. The FYDF⁴² also shows that other combined sewers, including the one under Tyneside Road, could be reclassified as surface water sewers.
131. The condition of the sewer under Tyneside Road is not known. Although it may currently be discharging into the River Tyne, it is not clear whether all, or indeed any of the surface water from the site is currently discharged to this sewer or whether this is all discharged to the river. The existing outfall is a combined sewer overflow, a release point that operates during periods of heavy rainfall to discharge a mix of stormwater and untreated sewage into waterbodies to prevent flooding and sewage

⁴² Forth Yards Development Framework 2020 Page 21

backups into properties. The appellant considers that the proposal to restrict surface water discharge to the River Tyne would represent a betterment over the existing situation where flows are unrestricted. However, there is no substantiated evidence in respect of what, if any, discharges there are to this sewer at present, or the condition of the sewer itself. Within the site, there is a connection to a different combined sewer which connects to a different outfall further to the west which may collect some, if not all, of the surface water drainage from the site.

132. The proposed new drainage strategy does not identify locations for the proposed foul water pumping station or the suggested detention tank, but it was suggested that these could be located in the southern part of the site between the podium and the escarpment. Whilst this may technically be possible, a detention tank of the size specified would take up a significant proportion of this relatively narrow space and potentially limit the type of landscaping/planting that could be accommodated.
133. Although it was suggested that the pumping station would be a smaller scale, private, facility, a pumping system to accommodate foul water flows from up to 356 flats would necessarily have to be quite large and would likely also require a separate storage tank to accommodate emergency situations such as pump failure or power being lost. It is not at all clear how this could be incorporated into the design of the scheme. In addition, these works would also require the removal of a significant volume of potentially contaminated material from the site to accommodate their installation.
134. It is also unclear where the proposed surface water drainage system would connect to the sewer beneath Tyneside Road due to the differences in level between the site and Tyneside Road. This may necessitate a second pumping system to move surface water from a detention tank in the south of the site to a connection point at a higher level in the north of the site.
135. There remain uncertainties as to whether suitable drainage for the site could be practically achieved at this stage. Consequently, this could not be addressed through the imposition of a condition.
136. Concerns were also raised in connection with water quality particularly in respect of the scouring effect of water flows onto the extensive mudflats in the River Tyne adjacent to the site. Existing outfalls into the river have resulted in channels being formed across the mudflats. Increased scouring resulting from surface water flows could result in contaminants contained within the mud being liberated into the watercourse. The Geoenvironmental Appraisal⁴³ notes that samples of sediment and surface water were analysed and no significant contamination was present. Whilst this element of the appraisal relies on data from 2014, no substantiated evidence was put to me which would gainsay this. Similarly, there is no evidence that suggests active groundwater linkages between the site and the river. This, however, does not overcome the point that it has not been demonstrated that appropriate drainage arrangements would be practical.
137. In conclusion, the proposed development would not make suitable provision for drainage, with particular regard to water quality and capacity in the foul drainage system. It would not comply with the relevant requirements of Policies CSUCP Policy

⁴³ Core Document PA/36 Geoenvironmental Appraisal for Land at Newcastle City Heliport pp 14 &16

CS17 and DAP Policy DM26 which when read together seek to ensure that foul and surface water infrastructure are provided with adequate capacity and to reduce surface water runoff rates by a minimum of 50% on brownfield sites.

Biodiversity

138. The application that forms the subject of this appeal predates the requirement for mandatory bio-diversity net gain. Nevertheless, DAP Policy DM29 expects new development to provide net gains in biodiversity.
139. In addition, the FYDF identifies that populations of butterfly and species rich grassland are present and that development will require appropriate ecological enhancements, mitigation measures and provide net gains for biodiversity. The FYDF does not specifically require retention of any features.
140. The site contains an area of Lowland Meadow grassland, amounting to approximately 0.86 hectares that is identified as a priority habitat. It was also identified that scrub habitat suitable for breeding birds was present around the site boundaries. Records show the site as having a small population of Dingy Skipper butterflies and other butterfly species have been recorded at the site. The site is within an identified wildlife corridor. It is also located adjacent to the River Tyne Tidal Extent Local Wildlife Site which supports assemblages of birds using the mudflats and fish species including both River and Sea Lamprey.
141. The development of the site would result in the total loss of the Lowland Meadow grassland as a result of the works required to address contamination and the form of the development proposed could not accommodate replacement grassland within the site. The loss of the grassland and development of the site would also remove the habitat suitable for butterflies. It was accepted at the Inquiry that much of the scrub that was identified as suitable for breeding birds had been removed.
142. The appellant has stated that replacement shrub and scrub planting would be provided in the southern part of the site and on the escarpment which would replace areas suitable for birds nesting and foraging which have been lost, although the appellant does recognise that this would take time to establish. The landscaping scheme could also assist with butterflies moving through the area.
143. The area identified as a nature walk on the parameters plans⁴⁴, together with the replacement scrub planting, would assist with the continuity of the wildlife corridor, although this may be limited by the pressure that would be put on this area from recreational use by the future occupiers due to the effects of noise from the gas governor building on other areas of outdoor amenity space. Connectivity would also be limited by development to the north east and west of the site, although this is also a situation that currently prevails.
144. At the time the application was determined, there was no indication that any offsite habitat provision had been secured which would adequately compensate for the loss of habitat. As part of their appeal submissions, the appellant indicated that an approach had been made to Gateshead Council in connection with a site at Shibdon

⁴⁴ Core Document PA/05: Drawing No.: NHD-NOR-XX-XX-DR-A-90012 Rev. P02 - Parameters Plan Spatial Typology, and Core Document PA/11: Drawing No.: NHD-NOR-XX-XX-DR-A-90018 Rev. P02 - Parameters Plan Ecology Zones

Pond West where land could be enhanced to Lowland Meadow through appropriate land management. It was also stated that further compensatory provision could be made at Shibdon Pond West to enhance the habitat for Dingy Skipper butterfly populations that are already present at that site. It is suggested that this could be achieved through the use of a Grampian condition.

145. The only evidence submitted in support of this is in the form of a brief email from Gateshead Council⁴⁵ which notes that Durham Wildlife Trust (who lease and manage the site) are open to considering the use of Shibdon Pond West as an offsetting site subject to agreeing appropriate terms and conditions. It is clear that these discussions are at a very early stage. The PPG advised that a Grampian condition should not be used where there are no prospects at all of the action in question being performed within the time limit imposed by the permission. The details within the appellant's evidence are scant and whilst it is asserted that provision at Shibdon Pond West would compensate for the loss of the Lowland Meadow habitat at the appeal site, there is nothing before me that would quantify the amount of land that may be made available for this, what management would be required to enhance it to Lowland Meadow, or what the proposed terms and conditions may be.
146. This introduces a large degree of uncertainty, not least because there does not appear to have been any direct contact between the appellant and the Durham Wildlife Trust. There is sufficient uncertainty as to whether this compensatory habitat and mitigation could be achieved to cause me to conclude that such a condition would not be appropriate.
147. The appellant's evidence also sets out that Lowland Meadow biodiversity units had been reserved at a habitat bank in the Tyne Valley in Northumberland and there is clear evidence of this⁴⁶. The Council is not averse to habitat being provided outside of the city due to the lack of opportunities to provide this within the urban area. These units would be sufficient to demonstrate a net gain in biodiversity in the event that the compensatory habitat at Shibdon Pond West was realised.
148. In terms of effects beyond the site boundaries, the mudflats in the River Tyne are used by wading and overwintering birds at low tide. There is likely to be some disturbance during the construction period especially during the piling activity that would be necessary because of the ground conditions. Disturbance to the bird population during construction could be minimised by measures to control the timing and methods of piling employed and control over the types of lighting used at the site. These measures could be incorporated into a construction environmental management plan and secured by a condition in the event that permission was granted.
149. The other concern that was raised in connection with the river environment is that of potential for scouring of the mudflats which are also a priority habitat. This is related to the proposed site drainage as discussed above. As there is insufficient information regarding how the proposed site drainage would operate, it is not possible to come to an informed conclusion on what the overall effect on the mudflats in terms of additional scouring would be or what mitigation might be suitable or appropriate.

⁴⁵ Core Document PKL/MO/04 Mark Osborne Ecology Rebuttal Proof Appendix 2

⁴⁶ *ibid* Appendix 1

150. It is not in dispute that the proposed development would result in the loss of priority habitat on the site and would result in a loss of biodiversity. Whilst it may be possible to provide compensatory habitat in neighbouring local authority areas, there is presently insufficient certainty that an appropriate area of compensatory habitat could be created at Shibdon Pond West to mitigate the loss on site. There is more certainty regarding the deliverability of biodiversity units but in the absence of the compensatory habitat at Shibdon Pond West, this would not represent the net gain in biodiversity required by the policies in the development plan. The absence of detail in respect of site drainage leaves me unable to conclude that there would not be an adverse effect on the River Tyne Tidal Extent Local Wildlife Site.
151. It has therefore not been demonstrated that the proposed development would not result in a loss of biodiversity and, consequently, it would be harmful to the biodiversity value of the site. It would not comply with the relevant requirements of CSUCP Policy CS18 and DAP Policies DM28 and DM29. These expect new development protect, enhance and manage existing trees and landscape features, to protect and enhance green infrastructure assets including biodiversity assets and designated wildlife corridors; avoid harm to local wildlife sites and adverse effects on priority habitats unless adequate mitigation is provided and provide net gains in biodiversity.

Contamination

152. The Framework expects developments to contribute to and enhance the natural and local environment by preventing new development from being put at risk from, or being adversely affected by, unacceptable levels of soil, air, water, or noise pollution, or land instability. It also expects new development to remediate and mitigate despoiled, degraded, derelict, contaminated, and unstable land, where this is appropriate.
153. The Framework goes on to state that planning decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. Responsibility for securing a safe development rests with the developer and/or landowner.
154. Prior to its use a heliport, the site housed a gasworks. The appeal site is also located in an area where there has been historical coal mining activity. These factors both give rise to potential risks from land contamination and mining legacy issues.
155. It is agreed that the site is contaminated and remediation will be required. The crux of the dispute is whether the site remediation strategy adequately assesses and sets out an appropriate mitigation and soil handling/movement strategy to ensure that there would be no risk to future occupiers and other environmentally sensitive receptors. The main receptor in this case is the River Tyne.
156. The PPG sets out that if there is a reason to believe contamination could be an issue, proportionate but sufficient site investigation information should be provided to determine the existence or otherwise of contamination, its nature and extent, the risks it may pose and to whom/what, so that these risks can be assessed and

satisfactorily reduced to an acceptable level⁴⁷. In the case of outline planning applications, the PPG sets out that the information ought to be proportionate to the decision at the outline stage. It goes on to say that the decision maker would need to be satisfied that they understand the contaminated condition of the site, that the proposed development is appropriate as a means of remediating it, and that there is sufficient information to be confident that permission in full could be granted at a later stage bearing in mind the need for the necessary remediation to be viable and practical⁴⁸.

157. The subject of land contamination is not covered in the ES. The application was, however, accompanied by a Geoenvironmental Appraisal, a Remediation Strategy, and Coal Mining Risk Assessment.
158. The evidence indicates that there was some remediation carried out on parts of the site in the 1990's to enable the current use. Any areas of hardstanding, or the foundations of former buildings, were not remediated.
159. The Geoenvironmental Appraisal sets out that significant inorganic and organic contamination was encountered in both soils and groundwater. These include arsenic, lead, and cyanide and various hydrocarbons. Asbestos was identified in the made ground that overlies the glacial till across the site. The Geoenvironmental Appraisal also identifies that gas protection measures will be required.
160. A number of coal seams are present under the site, and a geological fault is also present. Records show that at least one seam of coal has been worked beneath the site, but there is potential for unrecorded workings in another. Other coal seams are present but may not have been worked. Due to the depth of the worked seam and the potentially worked seam, and the thickness of the rock strata between and above them, it has been identified that there is potential for instability in the site. Records also indicate that there is a mine shaft in the site's south west corner and a further mine shaft within 10m of the site's south eastern corner. There is no evidence of whether these shafts have been treated or capped. The presence of mine entries raises issues of land instability. Whilst there are no records of mine gas emissions requiring action by the Mining Remediation Authority (formerly the Coal Authority), it cannot be assumed that there is no risk from mine gas as records are limited to those sites where there has been a mine gas incident. The mine entries, together with the presence of a fault crossing the site that intersects the coal seams, present a risk of mine gas emissions.
161. Both parties accept that further investigation works are required and that further remediation is necessary to make the site suitable for residential development. The appellant's position is that further site investigation and the preparation of a detailed remediation scheme could be addressed through a suitably worded condition. It was highlighted that planning permission was granted for the adjacent Calder's Metals site, which was also known to be contaminated, subject to conditions requiring further investigation and remediation schemes.
162. The Council contend that, due to the proposal's design, it will be necessary to remove a significant volume of material from the site for off-site disposal, or that it

⁴⁷ Planning Practice Guidance - Land Affected by Contamination Paragraph: 007 Reference ID: 33-007-20190722

⁴⁸ *ibid* Paragraph: 008 Reference ID: 33-008-20190722

may be necessary to install low permeability barriers to avoid deep seated contamination in ground water that may be disturbed by the development of the site from entering the River Tyne. These operations may have environmental consequences that have not been assessed. The Council suggest that this site is not comparable to the Calder's Metals site where detailed proposals for remediation were included in the proposed remediation strategy, the soil strategy was on the basis of retention on site, and these matters were included in the ES for that site.

163. Full details of that scheme are not before me and the extract from the Geotechnical and Geo-Environmental Site Investigation submitted by the Council⁴⁹ only appears to identify an area that was part of the former gasworks/gas storage facility and provides little other information regarding the site. The conditions imposed on that planning permission appear to be fairly generic in addressing land contamination rather than being bespoke to that site.
164. In the absence of a detailed scheme for the site, it is difficult to determine what volume of material may need to be excavated from the site. It appears likely that not all the excavated material could be retained or treated on site. The Council have estimated potential volumes and costs. However, these are perhaps speculative in the absence of a detailed design and confirmation of any waste classification. The Environment Agency have not raised concerns in terms of groundwater and there does not appear to be a hydraulic connection between groundwater below the site and the river with the Geoenvironmental Appraisal noting that that ground water levels were not found to vary significantly in relation to tidal fluctuations⁵⁰.
165. In terms of land stability, the Coal Mining Risk Assessment recommended that intrusive investigations are required to determine the location of the mine entries and any voids and whether there have been unrecorded workings in other coal seams. The Mining Remediation Authority have not objected to the proposal subject to conditions that require an intrusive investigation to be carried out to properly assess ground conditions and to identify any zones of influence from mine entries in order to inform any future detailed scheme.
166. The Council have suggested that the zone of influence of the mine shaft in the south west of the site may affect the ability to implement the layout shown on the parameters plans. The precise location of the mine shaft within the site is not known and it may be up to 10m from the assumed position. The assumed position is not plotted on the parameters plans. At the Inquiry the appellant was confident that even if the shaft is in a different location the development could still be constructed within the envelope set out on the parameters plans. This is an unknown variable at present. However, the outline application seeks permission for up to 356 units. A small reduction in the number of units that are ultimately built to accommodate a potential no build zone around the mine shaft would still realistically fall within the scope of any planning permission.
167. Gas monitoring was carried out for the Geoenvironmental Appraisal. Although this only covered a three month period, rather than a whole year which is preferable, it was carried out during a time of year when atmospheric pressure was lower and mine gases were more likely to be migrating upward.

⁴⁹ Core Document NCC/DB/01/H David Brooks Proof of Evidence Appendix H

⁵⁰ Core Document PA/36 Geoenvironmental Appraisal for Land at Newcastle City Heliport Page 8

168. Elevated levels of methane and carbon dioxide were detected in some of the monitoring wells. The results provided also show instances of significantly low oxygen levels which are characteristic of Stythe, or Blackdamp (oxygen deficient air resulting from the oxidation of coal). Significantly elevated concentrations of volatile organic compounds were also detected. This indicates that, as recommended in the submitted remediation strategy, gas protection measures would be required for the proposal. Protecting buildings against gas ingress is a well understood and common practice, particularly in areas on the coalfield.
169. It is not argued that the site is incapable of being developed as a result of historic contamination. The Council have suggested that the costs involved might render the scheme unviable, but it has not adduced any substantiated evidence that would support this.
170. Overall, I am satisfied that whilst the site has not been fully investigated and the submitted remediation strategy is not fully detailed, the nature of the contamination on the site is well enough understood that this matter could be addressed by conditions requiring further investigations to be carried out and a subsequent detailed remediation strategy to be submitted.
171. I therefore conclude that the proposed development could be made safe from any risks resulting from contamination from previous and historic land uses. It would comply with the relevant requirements of CSUCP Policy C14 and DAP Policy DM24 which expect new development to prevent and mitigate known or suspected land contamination or instability which would place existing or future occupiers at risk.

Infrastructure

172. A legal agreement in the form of a unilateral undertaking was provided during the appeal process. The undertaking covers provision of affordable housing, open space and sports provision, a training and local employment plan, pedestrian/cycle connections through the site, a SuDs monitoring fee, and a Travel Plan monitoring fee. Some of the matters covered by the undertaking are benefits that count in favour of the scheme and are required to be considered in the overall balance.
173. CSUCP Policy CS11 seeks 15% affordable housing on all developments of 15 or more dwellings. This is, however, subject to viability. A viability assessment was submitted at the appeal stage⁵¹. This viability assessment concludes that the scheme could not support the provision of any affordable housing.
174. The appellant has set out that with a reduced developer profit, a level of 2.5% affordable housing, or approximately 9 units could be provided, although the viability assessment is caveated in respect of abnormal costs arising from land remediation. Certain costs have not been factored in including identifying mine shafts, highways works outside the site boundary, and drainage infrastructure improvements, including pumping stations.
175. Nevertheless, the unilateral undertaking commits to providing 2.5% of the final number of units as affordable housing. There are provisions for a late stage viability

⁵¹ Core Document PKL/SH/03 Sean Hedley Planning Rebuttal Appendix 1

review to determine whether an increased level of affordable housing could be provided by way of an off-site contribution, although both parties agreed that this was unlikely to be the case.

176. The unilateral undertaking proposed a financial contribution towards the provision or improvement of open space, sport, and recreation facilities and the provision of a training and local employment plan. This is in line with guidance the Council's Planning Obligations Supplementary Planning Document 2021 (the SPD). These would also represent benefits of the scheme.
177. No evidence has been put to me which would indicate that there would be a shortfall in education capacity that this development would need to address. Although the SPD addresses education it notes that contributions are only required from the CSUCP strategic allocations, which do not include the site. The SPD also sets out that the Community Infrastructure Levy remains the main mechanism for funding development related primary school age places and two new secondary/ high schools are being delivered by the Department for Education through the 'Free Schools Program'. This is expected to meet the city's future requirements; therefore, no further contributions towards secondary school provision are sought at present⁵².
178. Provisions for monitoring fees for sustainable drainage and the Travel Plan would ensure that these would be appropriately monitored and implemented.
179. I am therefore satisfied that in the event that planning permission were to be granted, the submitted unilateral undertaking would make appropriate provision for infrastructure. This would meet the requirements of CSUCP Policies DEL 1, CS11 and CS18 and DAP Policy DM30 which seek to ensure that development provides affordable housing and new or improved facilities, promotes a range and choice of housing, and protects and enhances open spaces and sports and recreation facilities. The reason for refusal also cites CSUCP Policy CS9, which relates to preserving existing communities. It is not clear how this policy is relevant in this instance.

Planning Balance and Conclusion

180. The principle of residential development on the site is not in dispute. However, this is subject to a number of criteria and to compliance with other more general policies in the development plan. It also falls to be considered in the light of the FYDF, which although not a formal Supplementary Planning Document, is nevertheless the only extant planning and design guidance for the site and carries some moderate weight.
181. I have found that the site would not provide suitable accessibility for the future occupiers by sustainable modes of transport, particularly pedestrians and cyclists. The proposal would not result in a locally distinctive form of development and would fail to respond appropriately to the distinctive topography and visual sensitivity of the Tyne Gorge would therefore harm the character and appearance of the area. This harm would be substantial and enduring and, as such, weighs very heavily against the proposal.

⁵² Core Document POL/6 Newcastle City Council Planning Obligations Supplementary Planning Document 2021 Para 15.11 and 15.12

182. The proposal would not provide acceptable living conditions for future occupiers. A significant proportion of the proposal would be exposed to elevated noise levels arising from the adjacent gas infrastructure, and mitigation relying on building design and ventilation would be compromised by the ability of occupants to open windows. This also weighs very heavily against the proposal. In addition, there is insufficient certainty that an appropriate and effective drainage strategy could be delivered, and the proposal would result in the loss of priority habitat for which it has not been demonstrated that adequate mitigation or compensatory measures could be secured. These factors weigh moderately against the proposal.
183. I have found that the matters relating the provision of infrastructure could be addressed. Although the provision, or improvement, of open space, sport, and recreation facilities and the provision of a training and local employment plan are policy requirements, they are benefits that weigh moderately in favour of the scheme.
184. The appellant has suggested that there are some 23 benefits that would arise from the scheme⁵³. These have been set out in categories of economic, social, and environmental benefits and there does appear to be some potential double counting across categories notably in relation to housing delivery. The appellant has particularly highlighted as benefits the residential redevelopment of a brownfield site to provide for up to 356 new dwellings together with the provision of 2.5% affordable housing. Other potential benefits highlighted are, opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land; a Gross Investment Value of approximately £86.6 million together with the generation of £35.3 million additional Gross Value Added per annum during construction and £10.34 million annual additional resident expenditure following £3.3 million in occupation expenditure; and biodiversity net gain.
185. The Framework seeks to significantly increase the supply of housing. Notwithstanding that the Council has a five year supply of housing land, this is not a cap and the new homes that would be provided by the proposal would undoubtedly increase the supply of housing. The parameters plans indicate that the proposal is predominantly for 1 and 2 bedroom flats with only a very small number of 3 bedroom flats. The proposal would not make provision for larger family homes, which does cast some doubt on its ability to contribute to meeting the area's identified housing need and providing an appropriate mix of housing types for the local community. Nevertheless, this increase in housing weighs in favour of the proposal to a moderate extent.
186. The development would make provision for up to 9 units of affordable housing. Within the designated Urban Core area, there has been very low delivery of affordable housing as part of redevelopment schemes, with most schemes not providing any affordable housing. Although not reaching the development plan target of 15% affordable housing, this is a benefit of the scheme that weighs moderately in its favour.
187. The Framework at paragraph 125 c) states that substantial weight should be given to the value of using suitable previously developed land within settlements for homes. This is caveated by the statement that they should be approved unless substantial

⁵³ Core Document PKL/SH/02 Sean Hedley PoE pp 36 - 38

harm would be caused. Given that I have found substantial harm with regard to the effect of the proposal on the character and appearance of the area, it follows that I cannot give the benefit of re-using brownfield land substantial weight in this instance, having regard to NPPF 125 c). However, the use of brownfield land in this location still carries moderate weight.

188. The remediation of a contaminated site is a benefit of the proposal which weighs in its favour, and the Framework states that decisions should support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land. Nevertheless, there is nothing in the evidence to suggest that there is significant migration of contamination beyond the site boundary that requires urgent action, or issues on the site that require immediate attention, or that a different scheme which does not cause the other harms identified could not achieve the same end result. This therefore carries only moderate weight.
189. There would undoubtedly be economic benefits arising from the scheme, in terms of investment in the development, employment during the construction period, supply chain benefits and subsequently spending by the new residents in the local economy. A number of figures are quoted for job creation, additional expenditure in the local economy, and monies potentially generated with some figures. It is stated that they are sourced from the House Builders Federation Calculator. However, I have no information on the underlying data or assumptions used in this. It is also unclear how the figure for money generated for infrastructure has been arrived at as the site is in an area where the Council's Community Infrastructure Levy charges a nil rate, and the figure does not tie into the obligations in the submitted unilateral undertaking. Nevertheless, moderate weight can be given to the economic benefits of the scheme.
190. As it has not been demonstrated that the proposal would not result in an overall loss of biodiversity value due to the uncertainty of achieving mitigation through compensatory habitat, I cannot give any weight to the appellant's suggestion that biodiversity net gain is a realisable benefit.
191. There have been recent changes in the Council's housing requirements and targets. This is due to the introduction of the Standard Methodology for calculating local housing need. It also follows a review of the development plan in March 2025, which found that CSUCP Policies CS1, CS2, CS10 and UC4 are not wholly in conformity with the Framework and require updating insofar as they relate to the provision of new housing. The Council does, however, still have a five year supply of deliverable housing land, which is not disputed by the appellant. The Council has also historically had a significant oversupply of housing land⁵⁴ which, again, is not contested. This notwithstanding, the Council considers that paragraph 11 d) of the Framework is engaged.
192. Neither party has suggested that paragraph 11 d) i is triggered. Although it has not been demonstrated that the proposal would not cause harm to biodiversity, this would not constitute a strong reason for refusal. Consequently, I would agree that paragraph 11 d) i is not applicable.

⁵⁴ Core Document POL/39 Newcastle Housing and Economic Land Availability Assessment Report

193. Framework paragraph 11 d) ii states that where the policies that are most important for determining the application are out of date planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. The Statement of Common Ground identifies approximately 45 development plan policies that are relevant to the proposal⁵⁵. The Council's Decision Notice cites some 24 development plan policies in the eight reasons for refusal. From this it can be reasonably deduced that these latter policies are the most important policies for determining the application.
194. Whilst all four of the policies that the Council have identified as requiring updating are listed in the Statement of Common Ground as relevant, only one (Policy CS1) is cited in the reasons for refusal on the Decision Notice.
195. These four policies are to an extent interrelated and only Policy CS10 is solely related to housing numbers. Policies CS1 and CS10 set out the overall number of new homes to be provided in the plan area over the plan period with Policy CS1 also listing criteria against which new developments generally will be assessed. Policies CS2 and UC4 identify the number of homes planned for within the designated Urban Core Area, with Policy CS2 also setting out other criteria for development in the Urban Core and Policy UC4 identifying locations where new homes are to be included in mixed use developments. The evidence indicates that, as a result of the development plan review, the housing numbers would need to be revised upwards to meet the Council's revised housing targets⁵⁶. Only Policy CS10 would be considered wholly out of date as a consequence.
196. With the exception of the policies identified by the Council, it is not argued that any other policies relevant to the determination of the appeal are in any way out of date or inconsistent with the Framework. Nor is it argued that either of the circumstances set out in Footnote 8 of the Framework pertain.
197. No evidence has been put to me that would indicate that there have been any other changes in circumstances which would supersede the conclusions reached in the Local Plan Review in respect of the conformity of the other most relevant policies which are set out in the Appendices to the Review⁵⁷.
198. Only one policy of the group of 24 policies most relevant to determining the application is considered out of date, and this policy is only partly out of date in so far as it refers to the total number of new homes planned for over the plan period. The other aspects of the policy are still relevant and in conformity with the Framework. Although many of the other most relevant policies are policies that relate to all developments, crucially CSUCP Policy D3, which specifically relates to the development of the site, is considered to be up to date and in conformity with the Framework. Whilst the overall housing numbers in the CSUCP will need to be revised upward, there is nothing in the evidence that would suggest the Council would not still retain a five year housing land supply.

⁵⁵ Core Document APP/03 Joint Statement of Common Ground pp 6-8

⁵⁶ Core Document NCC/LR/01/A Lucille Robertson PoE Appendix A – Local Plan Review Page 7

⁵⁷ *ibid* Pages 30-81

199. Notwithstanding that the Council considered that paragraph 11d) ii of the Framework should be applied, having regard to the above, I find that, collectively and taken overall, the most important policies for determining the application/appeal are not out of date. Therefore, paragraph 11 d) ii does not need to be applied.
200. Even if paragraph 11d) ii were to be engaged, I have found that the proposal would not provide safe and suitable access to the site for all users. Nor would it function well and add to the quality of the area or establish a strong sense of place. The Framework sets out that development that is not well designed should be refused. In addition to this conflict with the Framework, as set out previously, the proposal conflicts with a number of up to date policies in the development plan. The Framework is clear that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Within this context the adverse effects of granting permission would significantly and demonstrably outweigh the benefits.
201. Although some of the above matters may be resolved in the future if the remainder of the Forth Yards area is developed, there is no clear timescale for when, or if, this will occur. In the interim any development on the site would have to function in isolation and in the current context. As set out above, from the evidence before me, I do not consider that it would do so. The development would result in some moderate benefits. However, none of these would either individually, or collectively, overcome the significant harms that would arise and the resulting conflict with the policies in the development plan and Framework. The proposal would therefore conflict with the development plan taken as a whole, and there are no material considerations that indicate that a decision should be taken otherwise.
202. Accordingly, for the reasons given, the appeal is dismissed.

John Dowsett

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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DOCUMENTS

ID1 Appellant's list of appearances
ID2 Council's list of appearances
ID3 Appellant's opening submissions
ID4 Council's opening submissions
ID5 Draft condition list dated 19 October 2025
ID6 Table referred to in Mr Carrigan's evidence in chief
ID7 Email from Northumbrian Water dated 21 October 2025
ID8 Email from Gateshead Council dated 21 October 2025
ID9 Redeswood Tree Surveying Arboricultural Impact Assessment
ID10 Email from Natalie Rutter dated 24 October 2025 – comments on ID9
ID11 Email from Phil Reddie dated 24 October 2025 – comments on ID9
ID12 Draft condition list dated 24 October 2025
ID13 Apex Acoustics October 2025 Gas Governor Noise Measurements
ID14 Updated draft Unilateral Undertaking
ID15 Table of flats where noise insulation would be required
ID 16 Signed and dated Unilateral Undertaking
ID17 Council's costs application on procedural matters
ID18 Appellant's response to procedural costs application
ID19 Council's final costs response on procedural matters

- ID20 Council's costs application on substantive matters
- ID21 Appellant's response to substantive costs application
- ID22 Council's closing submissions
- ID23 Appellant's closing submissions