

# Public Document Pack



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Wednesday 24 August 2016

## Notice of Meeting

Dear Member

### **Planning Sub-Committee (Heavy Woollen Area)**

**The Planning Sub-Committee (Heavy Woollen Area) will meet at  
Dewsbury Town Hall at 1.00 pm on Thursday 1 September 2016.**

(A coach will depart the Town Hall, at 10:30am to undertake Site Visits. The consideration of Planning Applications will commence at 1.00 pm in the Reception Room.)

This meeting will be webcast live.

The items which will be discussed are described in the agenda and there are reports attached which give more details.

A handwritten signature in black ink, appearing to read "Julie Muscroft", on a light-colored background.

**Julie Muscroft**

**Assistant Director of Legal, Governance and Monitoring**

Kirklees Council advocates openness and transparency as part of its democratic processes. Anyone wishing to record (film or audio) the public parts of the meeting should inform the Chair/Clerk of their intentions prior to the meeting.

## **The Planning Sub-Committee (Heavy Woollen Area) members are:-**

### **Member**

Councillor Paul Kane (Chair)  
Councillor Mahmood Akhtar  
Councillor Donna Bellamy  
Councillor Nosheen Dad  
Councillor Michelle Grainger-Mead  
Councillor John Lawson  
Councillor Marielle O'Neill  
Councillor Mussarat Pervaiz  
Councillor Cathy Scott  
Councillor Andrew Pinnock  
Councillor Richard Smith  
Councillor Kath Taylor  
Councillor Graham Turner

When a Planning Sub-Committee (Heavy Woollen Area) member cannot be at the meeting another member can attend in their place from the list below:-

### **Substitutes Panel**

#### **Conservative**

B Armer  
L Holmes  
B McGuin  
N Patrick  
K Sims

#### **Green**

K Allison  
A Cooper

#### **Independent**

C Greaves  
T Lyons

#### **Labour**

G Asif  
E Firth  
M Sokhal  
S Ullah

#### **Liberal Democrat**

R Eastwood  
A Marchington  
L Wilkinson

# Agenda

## Reports or Explanatory Notes Attached

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Pages

**1: Membership of the Committee**

This is where Councillors who are attending as substitutes will say for whom they are attending.

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**2: Minutes of Previous Meeting**

1 - 8

To approve the Minutes of the meeting of the Committee held on 21 July 2016.

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**3: Interests and Lobbying**

9 - 10

The Councillors will be asked to say if there are any items on the Agenda about which they might have been lobbied. The Councillors will also be asked to say if there are any items on the Agenda in which they have disclosable pecuniary interests, which would prevent them from participating in any discussion of the item or participating in any vote upon the item, or any other interests.

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**4: Admission of the Public**

Most debates take place in public. This only changes when there is a need to consider certain issues, for instance, commercially sensitive information or details concerning an individual. You will be told at this point whether there are any items on the Agenda which are to be discussed in private.

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## **5: Deputations/Petitions**

The Committee will receive any petitions and hear any deputations from members of the public. A deputation is where up to five people can attend the meeting and make a presentation on some particular issue of concern. A member of the public can also hand in a petition at the meeting but that petition should relate to something on which the body has powers and responsibilities.

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## **6: Site Visit - Application 2016/91054**

Erection of single storey rear and first floor side extensions at The Orchard, Far Common Road, Mirfield

Estimated time of arrival at site: 10.50am

Contact Officer: Nia Thomas, Planning Officer

### **Wards**

**Affected:** Liversedge and Gomersal

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## **7: Site Visit - Application 2015/91005**

Change of use from warehouse to a mixed use comprising warehouse, food processing, cash and carry and specialist retail foodstore and formation of car park at Wellington Mills, 7, Purlwell Lane, Batley

Estimated time of arrival at site: 11.20am

Contact Officer: Louise Bearcroft, Planning Officer

### **Wards**

**Affected:** Batley East

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**8: Site Visit - Application 2016/92102**

Erection of single storey side and rear extensions (within a Conservation Area) at 4, Linefield Road, Batley

Estimated time of arrival at site: 11.40am

Contact Officer: Nia Thomas, Planning Officer

**Wards**

**Affected:** Batley East

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**9: Site Visit - Application 2016/92276**

Erection of single storey rear extension at 258, Headfield Road, Thornhill Lees, Dewsbury

Estimated time of arrival at site: 12.05pm

Contact Officer: Louise Bearcroft, Planning Officer

**Wards**

**Affected:** Dewsbury South

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**10: Local Planning Authority Appeals**

11 - 26

The Sub Committee will receive a report detailing the outcome of appeals against decisions of the Local Planning Authority, as submitted to the Secretary of State.

**Wards**

**Affected:** Birstall and Birkenshaw; Dewsbury South; Dewsbury West; Heckm

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## 11: Planning Applications

27 - 80

The Planning Sub Committee will consider the attached schedule of Planning Applications.

Please note that any members of the public who wish to speak at the meeting must have registered no later than 5.00pm (via telephone), or 11.59pm (via email) on Tuesday 30 August 2016. To pre-register, please contact richard.dunne @kirklees.gov.uk or phone 01484 221000 (extension 74995).

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## 12: Application for a definitive map modification order to delete public footpath Batley 49 (part) from the definitive map and statement, and to add a public footpath at Hey Beck Lane, Woodkirk, Dewsbury. (late/urgent item)

81 - 116

To consider an application for a definitive map modification order (“DMMO”) to delete part of public footpath Batley 49 from the definitive map and statement and/or to make a DMMO to add a public footpath to/from the definitive map & statement.

W/A: Batley East

Contact: Giles Cheetham, Definitive Map Officer

### Wards

Affected: Batley East

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## 13: Erection of a temporary mast at Emley Moor Television Broadcast Site, Jagger Lane, Emley Moor

117 -  
122

Erection of a temporary mast at Emley Moor Television Broadcast Site, Jagger Lane, Emley Moor.

Contact : Julia Steadman, Planning Officer

### Wards

Affected: Denby Dale

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Contact Officer: Andrea Woodside

## KIRKLEES COUNCIL

### PLANNING SUB-COMMITTEE (HEAVY WOOLLEN AREA)

Thursday 21st July 2016

Present: Councillor Paul Kane (Chair)  
Councillor Mahmood Akhtar  
Councillor Donna Bellamy  
Councillor Nosheen Dad  
Councillor Michelle Grainger-Mead  
Councillor John Lawson  
Councillor Mussarat Pervaiz  
Councillor Andrew Pinnock  
Councillor Richard Smith  
Councillor Cathy Scott  
Councillor Kath Taylor  
Councillor Eric Firth  
Councillor Fazila Fadia

Observers: Councillor Bill Armer  
Councillor John Taylor

#### **1 Membership of the Committee**

Councillor E Firth substituted for Councillor O'Neill.

The Sub Committee noted the following permanent membership changes;

Councillor C Scott to replace Councillor Fadia.

Councillor G Turner to replace Councillor Stubley

#### **2 Minutes of Previous Meeting**

**RESOLVED** – That the Minutes of the Committee held on 14 June 2016 be approved as a correct record.

**3 Interests and Lobbying**

It was noted that all Sub Committee Members had been lobbied in respect of Application 2016/91033.

**4 Admission of the Public**

It was noted that all agenda items would be considered in public session.

**5 Deputations/Petitions**

No deputations or petitions were received.

**6 Public Question Time**

No questions were asked.

**7 Site Visit - Application 2016/91013**

Site visit undertaken.

**8 Local Planning Authority Appeals**

The Sub Committee received a report which set out decisions that had been taken by the Planning Inspectorate in respect of decisions submitted against the decisions of the Local Planning Authority.

**RESOLVED** - That the report be noted.

**9 Planning Applications**

The Sub Committee considered the schedule of Planning Applications. Under the provisions of Council Procedure Rule 37, the Sub Committee heard representations from members of the public in respect of the following applications;

- (a) Application 2015/90578 – Erection of detached dwelling adjacent to 6 Barnsley Road, Flockton, Huddersfield – Paul Bailey (applicant's agent)
- (b) Application 2016/91013 - Formation of wheel park at Recreation Ground adjacent to Burton Acres Lane, Highburton, Huddersfield – Geoff Barnard, Stewart Brook, Julie Troop (on behalf of David Sykes) (local residents), Alan Saunders (on behalf of local residents), Inspector Mark Trueman (on behalf of West Yorkshire Police), Minnie Ainley (Isaac Nash Trust Committee)



**Planning Sub-Committee (Heavy Woollen Area) - 21 July 2016**

member), Katie Bowker (local resident), Karen Rowling (on behalf of Paula Sheriff MP) and Maryke Woods (Kirklees Council – on behalf of the applicant)

Under the provisions of Council Procedure Rule 36(1) the Sub Committee received representations from Councillor Armer on Applications 2005/90578 and 2016/91013, and from Councillor J Taylor in respect of Application 2016/91013.

**RESOLVED** - That the Applications under the Planning Act included in the list submitted for consideration by the Sub Committee be determined as now indicated and that the schedule of decisions be circulated to Members.

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**KIRKLEES COUNCIL**  
**LIST OF PLANNING APPLICATIONS DECIDED BY**  
**PLANNING SUB-COMMITTEE (HEAVY WOOLLEN AREA)**  
**21 JULY 2016**

**APPLICATION NO.                      DESCRIPTION, LOCATION OF PROPOSAL AND DECISION**

2015/90578                      B Green, Erection of detached dwelling, adj 6, Barnsley Road, Flockton, Huddersfield

DELEGATE TO OFFICER TO APPROVE (CONTRARY TO THE OFFICERS RECOMMENDATION THE SUB COMMITTEE RESOLVED TO DELEGATE THE APPLICATION TO OFFICERS TO APPROVE SUBJECT TO THE INCLUSION OF CONDITIONS INCLUDING A REQUIREMENT FOR THE DWELLING TO BE NATURAL STONE, BOUNDARY TREATMENT, SURFACING OF PARKING AREAS AND OBSCURE GLAZING TO WINDOW (S) IN SIDE ELEVATION(S).

A RECORDED VOTE WAS TAKEN IN ACCORDANCE WITH COUNCIL PROCEDURE RULE 42(5) AS FOLLOWS;

FOR: Councillors Athtar, Bellamy, Dad, Fadia, E Firth, Grainger-Mead, Kane, Lawson, Pervaiz, Smith, Scott and K Taylor (12 votes)

AGAINST: Councillor A Pinnock (1 vote)

2016/91013                      Maryke Woods, Kirklees Council, Streetscene, Recreation Ground adj, Burton Acres Lane, Highburton, Huddersfield

GRANTED UNDER REG.4 GENERAL REGULATIONS

1. The development shall be begun not later than the expiration of three years beginning with the date on which permission is granted.
2. The development hereby permitted shall be carried out in complete accordance with the plans and specifications schedule listed in this decision notice, except as may be specified in the conditions attached to this permission, which shall in all cases take precedence.
3. Development shall not commence until details of the appearance and layout of the wheel park hereby approved have been submitted and approved in writing by the Local Planning Authority. The development shall then be undertaken in accordance with the approved details.
4. Development shall not commence until details of the proposed boundary treatment have been submitted and approved in writing by the Local Planning Authority. The development shall then be completed in accordance with the approved details before the wheel park is first brought into use and thereafter retained.
5. Any structure to be erected to form the wheel park shall not exceed 1800mm in height from the existing ground levels and

<b>APPLICATION NO.</b>	<b>DESCRIPTION, LOCATION OF PROPOSAL AND DECISION</b>
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any required excavation shall have a maximum depth of 1000mm from the existing ground level.

6. Notwithstanding the submitted plans and information, development shall not commence until a landscaping scheme, along with timetable for the planting, has been submitted to and approved in writing by the Local Planning Authority. This shall include low level planting surrounding the wheel park and replacement tree planting within the wider recreation ground. The development shall then be undertaken in accordance with an approved scheme and be thereafter retained as such.

A RECORDED VOTE WAS TAKEN IN ACCORDANCE WITH COUNCIL PROCEDURE RULE 42(5) AS FOLLOWS;

FOR: Councillors Akhtar, Dad, Fadia, E Firth, Kane, Lawson, Pervaiz, A Pinnock and Scott (9 votes)

AGAINST: Councillors Grainger-Mead and Smith (2 votes)

ABSTAINED: Councillors Bellamy and K Taylor

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**KIRKLEES COUNCIL**

**DECLARATION OF INTERESTS AND LOBBYING**

Planning Sub-Committee/Strategic Planning Committee

Name of Councillor			
Item in which you have an interest	Type of interest (eg a disclosable pecuniary interest or an "Other Interest")	Does the nature of the interest require you to withdraw from the meeting while the item in which you have an interest is under consideration? [Y/N]	Brief description of your interest

**LOBBYING**

Date	Application/Page No.	Lobbied By (Name of person)	Applicant	Objector	Supporter	Action taken / Advice given

Signed: ..... Dated: .....

## **NOTES**

### **Disclosable Pecuniary Interests**

If you have any of the following pecuniary interests, they are your disclosable pecuniary interests under the new national rules. Any reference to spouse or civil partner includes any person with whom you are living as husband or wife, or as if they were your civil partner.

Any employment, office, trade, profession or vocation carried on for profit or gain, which you, or your spouse or civil partner, undertakes.

Any payment or provision of any other financial benefit (other than from your council or authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out duties as a member, or towards your election expenses.

Any contract which is made between you, or your spouse or your civil partner (or a body in which you, or your spouse or your civil partner, has a beneficial interest) and your council or authority -

- under which goods or services are to be provided or works are to be executed; and
- which has not been fully discharged.

Any beneficial interest in land which you, or your spouse or your civil partner, have and which is within the area of your council or authority.

Any licence (alone or jointly with others) which you, or your spouse or your civil partner, holds to occupy land in the area of your council or authority for a month or longer.

Any tenancy where (to your knowledge) - the landlord is your council or authority; and the tenant is a body in which you, or your spouse or your civil partner, has a beneficial interest.

Any beneficial interest which you, or your spouse or your civil partner has in securities of a body where -

(a) that body (to your knowledge) has a place of business or land in the area of your council or authority; and  
(b) either -

- the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
- if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you, or your spouse or your civil partner, has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

### **Lobbying**

If you are approached by any Member of the public in respect of an application on the agenda you must declare that you have been lobbied. A declaration of lobbying does not affect your ability to participate in the consideration or determination of the application.





**Name of meeting: PLANNING SUB-COMMITTEE (HEAVY WOOLLEN AREA)**

**Date: 1 SEPTEMBER 2016**

**Title of report: LOCAL PLANNING AUTHORITY APPEALS**

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	No
Is it in the <a href="#">Council's Forward Plan</a> ?	No
Is it eligible for "call in" by <a href="#">Scrutiny</a> ?	No
Date signed off by <u>Director</u> & name	22 August 2016 Jacqui Gedman
Is it signed off by the Director of Resources?	No financial implications
Is it signed off by the Acting Assistant Director - Legal & Governance?	No legal implications
Cabinet member <a href="#">portfolio</a>	Economy, Skills, Transportation and Planning (Councillor McBride)

**Electoral [wards](#) affected: Heckmondwike; Dewsbury South; Birstall and Birkenshaw; Dewsbury West;**  
**Ward councillors consulted: No**

**Public or private: Public**

1. **Purpose of report**  
For information
2. **Key points**
  - 2.1 2015/62/93308/E - Erection of two storey side extension, single storey rear extension, alteration of hip roof to gabled roof and increase in height, formation of two dormers in the rear roof plane and erection of a detached outbuilding at 127-129, Leeds Old Road, Heckmondwike, WF16 9AQ. (Officer) (Part allowed/part dismissed)
  - 2.2 2014/62/93055/E - Alterations to convert first floor to non-residential institution mosque and madrassa (D1) and external alterations at 2, Thornton Road, Thornhill Lees, Dewsbury, WF12 9HR.  
(Sub-Committee in accordance with officer recommendation)  
(Dismissed)

- 2.3 2016/62/90024/E - Erection of fence at New Hall, 1, Nova Lane, Birstall, Batley, WF17 9LD. (Officer) (Dismissed)
- 2.4 2015/62/93467/E - Erection of one detached dwelling (within a Conservation Area) at Brentwood, 36 Oxford Road, Dewsbury, WF13 4LL. (Officer) (Dismissed)
3. **Implications for the Council**  
**Not applicable**
4. **Consultees and their opinions**  
**Not applicable**
5. **Next steps**  
**Not applicable**
6. **Officer recommendations and reasons**  
**To note**
7. **Cabinet portfolio holder recommendation**  
**Not applicable**
8. **Contact officer and relevant papers**  
**Simon Taylor – Head of Development Management**
9. **Director responsible**  
**Jacqui Gedman**



## Appeal Decision

Site visit made on 4 July 2016

**by Sue Glover BA (Hons) MCD MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 11 July 2016**

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**Appeal Ref: APP/Z4718/D/16/31459959**

**127-129 Leeds Old Road, Heckmondwike, WF16 9AQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr M Abbas against the decision of Kirklees Metropolitan Council.
  - The application Ref 2015/62/93308/E was refused by notice dated 17 February 2016.
  - The development is the erection of a 2 storey side extension, single storey rear extension, alteration of hipped roof to gabled roof and increase in height, formation of 2 dormers in the rear roof plane and the erection of a detached outbuilding.
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### Decision

1. The appeal is dismissed insofar as it relates to the erection of a detached outbuilding.
2. The appeal is allowed and planning permission granted insofar as it relates to the erection of a 2 storey side extension, single storey rear extension, alteration of hipped roof to gabled roof and increase in height, and formation of 2 dormers in the rear roof plane at 127-129 Leeds Old Road, Heckmondwike, WF16 9AQ in accordance with the terms of the application, Ref 2015/62/93308/E and the plans submitted with it so far as relevant to that part of the development hereby permitted.

### Clarification

3. The development has taken place. Permission has been granted by the Council for a 2-storey extension with a hipped roof. The development that is subject to this appeal differs from that permission with the raising of the walls by about 0.8m, the alteration of the hipped roof to a gabled roof, 2 dormer windows, a single storey rear extension, and a detached outbuilding at the rear.
4. The description in the banner heading above is as amended by the Council and accepted by the appellant. It accurately describes the development that has taken place.

### Main Issues

5. The main issues are firstly, the effect of the wall and roof extensions on the character and appearance of the area, and secondly the effect on the living conditions of nearby residents in respect of outlook. Regarding the second issue there are 2 matters; the effect of the enlarged 2-storey extension on the residents of no. 131 Leeds Old Road, and in respect of the outbuilding the effect on residents at no. 38 Berwick Avenue.

## **Reasons**

### *Character and appearance*

6. There is a mix of dwelling types in the street, with a row of bungalows on the north-east side of the single dwelling house at nos. 127-129, and houses lower on the hill to the south-west. The pattern is repeated on the opposite side of the street. The dwellings are set back from the street in a spacious setting.
7. The appeal dwelling is a distinctive dwelling house of a substantial size clearly visible in an elevated position. The gable end of the side extension appears prominent from a north-easterly approach beyond the bungalows, but there is a similar prominent gable wall to the end house on the opposite side of the street where the row of houses meets bungalows.
8. The height of the gable wall is mitigated to an extent by the lower level of the appeal dwelling compared to the adjacent bungalow. The gable wall does not appear incongruous in the street scene since it is paired with a similar gable wall opposite, and it is not an unusual feature in the street scene.
9. The appeal dwelling differs from most other buildings nearby in that it is larger and there is a greater depth of wall between first floor windows and the eaves. However, the increase in massing is not so significant that it appears out of place or obtrusive. The greater depth of wall does not appear unduly disproportionate given the mix of dwelling designs in this part, and in particular the house adjacent with a prominent front gable wall. There is no significant effect on the spacious quality of the street scene.
10. Whilst the additional height and massing of the extensions are clearly visible at an elevated level from the rear of dwellings in Berwick Avenue, there is sufficient distance and separation that the extended dwelling does not appear unduly disproportionate from these perspectives. In respect of the outbuilding, it is located at the rear and appears subservient to the host dwelling.
11. Taking all these matters into account, there would be no material harm to the character and appearance of the area. There is no conflict with saved Policy BE1 of the Kirklees Unitary Development Plan (UDP), which expects all development to be of a good quality of design, and with saved UDP Policy D2, which indicates that proposals should not prejudice visual amenity and the character of the surroundings.
12. The development plan policies are compatible with paragraphs 17 and 60 of the National Planning Policy Framework that seek to secure a high quality of design, and to reinforce local distinctiveness. The proposal meets the objectives of the Framework in these respects.

### *Living conditions – no. 131 Leeds Old Road*

13. The adjacent bungalow at no. 131 is separated from the side extension by a single vehicle width driveway at a higher level than the appeal dwelling. The bungalow has 2 side facing windows with clear glazed windows, one at ground level and one at first floor in the roof space.
14. I am mindful that there is permission for a 2-storey side extension to the side boundary, albeit with a hipped rather than the existing gable end roof. Both of no. 131's side facing windows face the new 2-storey extension wall, and would do so even without the raised side wall and gabled roof.

15. Nevertheless, there is some additional effect on the outlook from the 2 side windows, particularly the first floor window where the wall and gable end rises beyond the level of the approved hipped roof. The additional effect however is small and not sufficient in my view to warrant dismissal of this appeal on these grounds.
16. Given the permission that already exists, I therefore conclude that there is no material harm to the living conditions of no. 131 Leeds Old Road in respect of outlook. The development in this respect does not conflict with saved UDP Policy D2, which indicates that permission will be granted provided that proposals do not prejudice residential amenity.
17. The development plan policy is broadly compatible with the objectives of the Framework in this respect. Paragraph 17 of the Framework indicates that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. The proposal meets the objectives of the Framework in this respect.

*Living conditions – no. 38 Berwick Avenue*

18. There are a pair of semi-detached houses, nos. 38 and 40 at the rear of the appeal dwelling, with no. 38 having been extended at the rear. The detached outbuilding has been built so that it is next to the rear boundary with no. 38. Seen from no. 38's small rear garden the end gable wall of the outbuilding with a height to the apex of about 3.8m appears overly prominent, overbearing and obtrusive.
19. The prominent gable of the outbuilding would also be visible above a 2m high boundary fence, as proposed by the appellant. There is some vegetation screening on the boundary, but this is at the side of the outbuilding at the rear of the garden of no. 40. There is limited space between the outbuilding and the boundary with no. 38 for any effective new planting to screen the outbuilding.
20. On account of the significant increase in size over a previous outbuilding, combined with the position next to the boundary, I conclude that there is material harm to the living conditions of the residents of no. 38 Berwick Avenue in respect of outlook. The outbuilding conflicts with UDP Policy D2 that seeks to protect residential amenity, and the objectives of the Framework in this respect.

*Other matters and conclusions*

21. There is sufficient separation between the dormer windows and dwellings at the rear so that there is no material harm to the privacy of nearby residents. The enlarged dwelling is at a sufficient distance so that there is also no significant loss of daylight or sunlight to dwellings at the rear or side. Given the availability of off-street parking at the appeal property, I have no substantive evidence to indicate that any increase in parking on the street would lead to additional highway safety risk.
22. In respect of the finish of the rear elevation of the outbuilding, a condition could be imposed should permission be granted to ensure a satisfactory external appearance. I have taken into account all other matters, including all the policies in the Framework, and other national planning policy and guidance.
23. In respect of the outbuilding, notwithstanding my findings on character and appearance and the other matters, I find material harm to the living conditions

of some nearby residents in Berwick Avenue in respect of outlook. This matter is significant and overriding. The appeal does not succeed in respect of this part of the development.

24. In respect of the 2 storey side extension, single storey rear extension, alteration of hipped roof to gabled roof and increase in height, and 2 dormers in the rear roof plane, I find no material harm to the character and appearance of the area, the living conditions of nearby residents, or any other material considerations. In respect of this part of the development, the appeal is allowed. As the development has taken place, no conditions are necessary.

*Sue Glover*

INSPECTOR



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# Appeal Decision

Site visit made on 23 June 2016

**by Gary Deane BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 14 July 2016**

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**Appeal Ref: APP/Z4718/W/15/3132074**

**2 Thornton Road, Dewsbury WF12 9HR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Yakub Patel against the decision of Kirklees Metropolitan Council.
  - The application Ref 2014/62/93055/E, dated 25 September 2014, was refused by notice dated 10 February 2015.
  - The development proposed is a change of use of first floor to D1 non-residential institution to create a mosque and madressah together with external alterations to building.
- 

## Decision

1. The appeal is dismissed.

## Main issues

2. The main issues are the effect of the proposed parking arrangement on highway safety and the operation of existing businesses, and the effect of the proposed use on the living conditions of nearby residents, with particular regard to potential noise and general disturbance.

## Reasons

3. The proposal is primarily to change the use of the first floor of a 2-storey building in an area of mixed character to a mosque and a madressah. The new use would operate between 0100 until 2300 hours on any day. According to the appellant, prayers would be held 5 times a day, with each session lasting up to 15 minutes apart from early Friday afternoon, which would last about 30-minutes. The madressah would generally operate between 1630 and 1830 hours, 5-days a week. However, some flexibility could be applied to the operating times of the new use to ensure that people coming to and going from the site do not coincide with those of a nearby mosque on Dale Street.

### *Highway safety*

4. A total of 11 off-street parking spaces are shown on the site layout plan to serve the proposed use. According to the appellant's Transport Statement (TS), this level of provision would comfortably exceed the Council's relevant parking standard, which would be a maximum of 6 off-street spaces to serve
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- users of the main prayer hall with an additional 2 off street spaces if the entire first floor accommodation of the host building is taken into account.
5. However, independent access to 2 of these spaces denoted 6 and 7 on the plan could not be achieved, as their use would require the spaces marked 5 and 8 to be unoccupied. While the appellant indicates that only staff would use the spaces numbered 6 and 7, it is unclear exactly how this would be achieved.
  6. The spaces shown as 7 and 9 would be immediately in front of the external staircase that would provide pedestrian access to the appeal premises. Drivers using these spaces would, in all likelihood, need to reverse into or out of the proposed parking area given the limited space available within it to enter and exit in forward gear. This arrangement would cause a significant conflict between people using the staircase and motorists especially if parked vehicles on this part of the site also restricted visibility of pedestrians. In addition, the host building and other parked vehicles on the site would obstruct views of footway users for drivers turning into or out of this part of the site particularly in reverse. This arrangement would cause an obvious and significant hazard to footway users, some of which may be visitors to the ground floor retail and commercial premises of the appeal building.
  7. As the number of spaces to be provided on-site exceeds the Council's parking standard, which is a maximum, it is possible that the layout could be amended to include fewer spaces that are arranged in a different way to address some of the difficulties to which I have referred. The appellant also states that the proposed mosque would be attended by up to 19 families, of which 18 families live within 500-metres of the site and thus would be likely to walk or cycle to and from the site. Cycle stands would be provided as part of the proposal and there would also be a bus-stopping place with regular services within convenient walking distance of the appeal property. On that basis, the TS considers that few people attending the mosque and madressah would use the car. In addition, I acknowledge that not all of the 19 families would be likely to attend the new use at the same time. Taken together, these factors indicate that the likely demand for on-site parking from the new use would be modest.
  8. However, there is nothing before me to indicate exactly how the attendance would be restricted to 19 families, or how many people that would involve, or what would happen if others were also to visit. This is relevant because the proposed floor plan shows that the main prayer hall would have a capacity of 133 people for the purposes of building regulations. Furthermore, as a planning permission runs with the property the proposed use would not be tied to the appellant and others may choose to operate the proposed use in a different way. While the new use may not operate at capacity at first, from the evidence before me I cannot rule out this possibility in the longer term. If that were to occur, the number of people attending the new use by car could be much greater than the TS and the appellant suggest even with alternative travel options available.
  9. For these reasons, it cannot be assumed that the parking arrangement, as proposed or with the potential to be adjusted, would be safe and adequate to serve the proposal. I also note that the Council and others state that motorists associated with the nearby mosque on Dale Street already use a number of the proposed parking spaces. Therefore, the appeal scheme could increase the



demand for on-street parking, which is likely to arise along those sections of Dale Street and Thornton Road that are closest to the site. However, there are parking restrictions along parts of Dale Street including the site's highway frontage in the form of single and double yellow lines. Bollards would also be introduced to prevent the use of the forecourt to the main building for parking.

10. Consequently, the on-street car parking that would arise from the proposal would be likely to take place close to the junction between Dale Street, Thornton Road and Brewery Lane, which is generally unrestricted or along Dale street near to existing houses. However, from numerous representations before me, local residents, nearby businesses and users of the nearby mosque on Dale Street already use these roads for on-street parking, which can cause congestion at certain times. Additional demand for on-street parking, coupled with cars waiting and turning off Dale Street to gain access to and from the site, would be likely to exacerbate these problems.
11. The appellant considers that the operating times of the new use could be managed so that these do not coincide with those of the nearby mosque on Dale Street. However, I am not convinced that such a restriction could be properly enforced given that operating hours could alter at short notice. That there has been only 1 reported road accident close to the site, which appears to have been unrelated to on-street parking, is not a reliable indicator that the highway can therefore be regarded as safe with the new use in place.
12. Taken together, I conclude on the first main issue that the proposed parking arrangement would be materially harmful to highway safety. Accordingly, it conflicts with Policies BE1, BE2, D2, T10 and T19 of the Kirklees Unitary Development Plan (UDP), which aim to ensure that development does not prejudice highway safety and provides adequate parking.

#### *Existing businesses*

13. The proposal would reduce the opportunities for off-street parking associated with the ground floor retail and commercial units of the host building if the proposed spaces were occupied or their use were to be discouraged. The proposed bollards would also largely prevent forecourt parking in front of these ground floor units. The lack of available off street parking could deter some customers to these premises especially if their visit coincided with a significant number of people coming to or going from the appeal premises.
14. The proposed parking spaces could be shared with these businesses, as the appellant suggests. However, as the new mosque and madressah would be open at the same time as these units, the demand for parking would not necessarily occur at different times. Nevertheless, it is unclear from the evidence whether the existing businesses currently rely on parking provided on the site and the appellant's survey also indicates that the level of parking demand may be limited. Overall, I am not convinced that a reduction in off street parking provision available to these businesses or additional activity in and around the site would necessarily harm their viability and vitality.
15. Consequently, I conclude on the second main issue that the proposed parking arrangement would not unduly harm the operation of existing businesses. Therefore, I find no material conflict with UDP Policy D2 and the National

Planning Policy Framework (the Framework) insofar as they seek to promote a strong, responsive and competitive economy.

*Living conditions*

16. As the past use of the appeal unit appears to be ancillary storage, the proposal would lead to a significant increase in comings and goings to the site. These movements would include worshippers, staff and people dropping off and collecting children. Many attendees of the new use will arrive on foot or cycle. However, for the reasons given earlier, others will be likely to arrive or depart by car especially if children are being brought to and picked up, in winter months when the weather is inclement, or during the hours of darkness. The proposal would therefore generate extra vehicle movements on the road network. It would also increase activity around the site especially during peak attendance times, during which there would be noise generated by people entering and leaving the premises, including getting out of and into vehicles. During the day, these kinds of activities would not be unexpected in this mixed-use area with retail and commercial uses nearby.
17. However, the proposal would also operate at other times and it is during the late evening, night and early morning that local residents are more likely to be at home and can reasonably expect quieter conditions in which to sleep and relax. Over this period, the coming and going of users has the potential to cause noise and disturbance especially if extra vehicle movements add to local parking and congestion problems to which many interested parties refer. In that context, the increase in vehicle movements and activity, coupled with the site's close relationship with residential properties, would cause unacceptable additional noise and general disturbance to nearby residents.
18. Therefore, I conclude on the third main issue that the proposal would be materially harmful to the living conditions of nearby residents. Accordingly, it conflicts with UDP Policies D2 and BE2 insofar as they aim to safeguard residential amenity. It would also be at odds with a core planning principle of the Framework, which is to ensure a good standard of amenity for all occupants of land and buildings.

*Other matters*

19. The proposal would bring back into use part of the building that appears to have been underused. It would provide a convenient place of worship and learning for the local community and, according to the appellant, relieve congestion associated with the use of mosques elsewhere. However, these benefits do not outweigh the harm that I have identified.

**Conclusion**

20. For the reasons set out above, I conclude that the appeal should be dismissed.

*Gary Deane*

INSPECTOR

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## Appeal Decision

Site visit made on 14 July 2016

by **Helen Heward BSc (Hons) MRTPI**

a **Planning Inspector** appointed by the Secretary of State for Communities and Local Government

**Decision date: 28 July 2016**

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**Appeal Ref: APP/Z4718/D/16/3151368**

**New Hall, Nova Lane, Birstall, Batley WF17 9LD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr S Wilson against the decision of Kirklees Metropolitan Borough Council.
  - The application Ref 2016/62/90024E, dated 5 January 2016, was refused by notice dated 20 April 2016.
  - The development is erection of 3 fences.
- 

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The application is retrospective.
3. The description of development given on the application form goes beyond describing the fences. The Council's decision notice refers to erection of a fence. However, there is no dispute between the parties that the development consists of 3 fences. Accordingly I have described it as such.

### Main Issues

4. The main issue in this case are:-
  - 1) Whether the fence facing Nova Lane preserves or enhances the character or appearance of the Birstall Conservation Area (the CA) and the setting of New Hall, a Grade II listed building (New Hall), and
  - 2) Whether the fence facing Field Head Lane preserves or enhances the character or appearance of the CA.

### Reasons

5. New Hall is a Grade II listed building constructed in the late 18th/early 19th century with later additions. The copy of the statutory listing provided refers to the architectural design and detailing of the building. It is within the CA and, I am informed, an area known as 'The Mount'.
6. On my visit I observed a feature gateway with ornate pillars at the junction of Nova Lane and Field Head Lane. To either side there are stone walls along large sections of the roadside boundaries, the exception being the northern section of the eastern boundary along Field Head Lane where only a few courses of a low stone wall can be seen. However, the majority of the roadside

boundaries are enclosed by substantial walls. The height of the walls rise/fall and in a couple of places there are feature changes in height, emphasising the hillside location. Together with the access these walls provide a formal and significant demarcation to the setting of the dwelling in the public realm.

7. On my visit I observed that these walls are typical of stone walls, often quite tall, and built close to the highways, which are characteristic features of this part of the CA. They create a strong sense of built form and enclosure. They emphasise the general hillside topography and have a unifying effect in the locality. They make a significant contribution to the character and appearance of the CA along Nova Lane and Field Head Lane in the vicinity of the appeal site.

#### *Nova Lane*

8. The fence facing Nova Lane is approximately 1.45m high and 12.7m long and has been erected on ground on the inside of a section of the stone boundary wall. It is located close to a bend at the junction of Field Head Lane and Nova Lane. It is a close boarded timber construction with a strong vertical emphasis and appears to have a roughly uniform height. It appears to sit above the wall. The length, height, construction and materials of this section of fence draw the eye. In some views from Field Head Lane it can be seen together with the gateway and glimpsed views to New Hall beyond. In other views it is seen in the context of feature stone walls which enclose and characterise both sides of Nova Lane. In the available views the fence appears uncharacteristic and incongruous. In these ways it detracts from the character and appearance of this section of boundary wall to New Hall, fails to preserve the setting of the LB and is harmful to the character and appearance of the CA in the locality.
9. The wall in front of the fence appears physically unchanged by the installation of the fence. It may be that there are other fences in the Birstall area, but I did not see any other similar fences within the CA or along Nova Lane in the vicinity of the appeal site.
10. The appellant offers to stain the fence dark green. This would reduce its visual impact but this would not fully mitigate the impacts, and this limits the weight I attach to this. The appellant also offers to accept a condition requiring the planting of a hedgerow along this section and the removal of the fence once the hedgerow is mature, or after 5 years, whichever is the sooner. However, there are no proposals for hedgerow planting in front of me, and I have no way of knowing if the position of the fence would prejudice the positioning or establishment of a hedgerow, therefore I attach little weight to this proposal.
11. I conclude that the fence along Nova Lane fails to preserve the setting of the LB and is harmful to the character and appearance of the CA in the locality. As such it is contrary Policy BE5 of the Kirklees Unitary Development Plan (UDP) which, amongst other things, seeks to ensure that new development within conservation areas respects the architectural qualities of surrounding buildings and contributes to the preservation or enhancement of the character or appearance of the area.

#### *Field Head Lane*

12. The fence facing Field Head Lane is approximately 1.6m high and 28m long. It is also a close boarded timber construction with a strong vertical emphasis.

For the most part it is positioned behind the section of low stone wall and alongside a wide section of footpath. It appears to have a variable height and there is a slight kink in the alignment at one end. These characteristics make it appear both prominent and incongruous. A set back behind a section of wall and the wide footpath restrict and limit views of the fence from the south. Nonetheless it is seen in close views within the CA and in views along Field Head Lane from the north.

13. The fence aligns with a similar tall close boarded timber fence at the front of an adjacent property, 2B Field Head Lane which can also be seen in the available views. However, the Council informs me that the fence at 2B does not have consent and this limits the weight I attach to this matter. It may be that there are other fences too, but I did not see any other similar fences within the CA along Field Head Lane in the vicinity of the appeal site.
14. The appellant offers to stain the fence a dark colour. This would reduce its visual impact, but I am not persuaded that these matters fully mitigate the impacts.
15. I conclude that the fence along Field Head Lane fails to preserve the character and appearance of the CA in the locality. As such it is contrary to Policies BE1, BE2 and BE5 of the UDP which, amongst other things, seek to ensure new development is of a good quality design, and that within conservation areas new development contributes to the preservation or enhancement of the character or appearance of the area.

### **Other Matters**

16. I am informed that members of the public have been entering the garden and that the property has been the subject of some vandalism, including throwing stones at original windows of the New Hall, and damage to the wall and coping stones along Nova Lane. My attention is also drawn to very large changes of levels adjacent to retaining walls within the property, where the appellant fears a fall could result in permanent injury or death. To maintain safety and security, temporary measures which do not require planning consent such as a "Herras" type fencing or crowd control barriers could be used which would not be permanently fixed but which would have a greater visual impact.
17. The appellant submits that the positioning of the fences have the least impact on New Hall and that they are required to enable them to prevent unauthorised access, to make the site secure for people and the protection of the listed building and walls, and to fulfil their statutory duty for the health and safety of both the users of the property and would be trespassers. However, there is little to explain what other options have been considered, and why the fences are the only means of making the site secure. This limits the weight I attach to these considerations.
18. An Arboricultural Statement has been submitted and there is nothing to say the fences harm existing trees, however this does not weigh in favour of the proposal, rather it is neutral.
19. I am informed that the Council raised no objection to the fences in a phone call in April 2016, when the appellant was informed there would be a condition requiring staining the fence a dark colour. However, there is scant evidence of

this. In any event, I have concluded that whilst a dark stain would make the fences less visually prominent, it would not fully mitigate the adverse impacts.

20. The Council do not raise any objection in respect of the picket fence, approximately 120cm high and erected along the driveway within the site. I agree that this fence would not harm the character or appearance of the CA or the setting of New Hall.

### **Conclusions**

21. The fences to Nova Lane and Field Head Lane are prominent and incongruent features harmful to the character and appearance of this part of the CA which is particularly characterised by stone boundary walls. The fence to Nova Lane also detracts from the setting of New Hall, a Grade II listed building. The development fails to satisfy requirements of UDP Policies BE1, BE2 and BE5 and is contrary to advice in the National Planning Policy Framework that planning should always seek high quality design and to conserve heritage assets in a manner appropriate to their significance.
22. Although these harms are less than substantial, I attach only limited weight to matters raised concerning public benefits and personal circumstances in relation to the securing of the site for the protection of the LB and its walls, and for the safety of people. I find that they do not outweigh the harms. Nor am I persuaded that staining the fences dark colours or planting a hedgerow and removing the fence to Nova Lane would fully mitigate the adverse impacts.
23. Therefore, and taking all other matters raised into consideration, I conclude that the appeal should be dismissed.

*Helen Heward*

PLANNING INSPECTOR

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# Appeal Decision

Site visit made on 28 July 2016

**by Elaine Gray MA(Hons) MSc IHBC**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 16<sup>th</sup> August 2016**

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**Appeal Ref: APP/Z4718/W/16/3150356**

**Brentwood, 36 Oxford Road, Dewsbury, West Yorkshire WF13 4LL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Imran Akhtar against the decision of Kirklees Metropolitan Borough Council.
  - The application Ref 2015/62/93467/E, dated 29 October 2015, was refused by notice dated 18 March 2016.
  - The development proposed is erection of dwelling.
- 

## Decision

1. The appeal is dismissed.

## Main Issue

2. The appeal site is located in the Northfields Conservation Area (CA). I am therefore required to have regard to the statutory duty to preserve or enhance the character or appearance of the CA.
3. Therefore, the main issue is the effect of the proposal on the long-term health and viability of the protected trees, particularly in terms of post development pressure for felling or pruning and the consequent effect on the character and appearance of the conservation area.

## Reasons

4. The appeal site is located in a predominantly residential area. The scheme would divide the garden plot of 36 Oxford Road and create a new detached dwelling. The Council is concerned that the proximity of the new house would lead to unacceptable post development pressure from occupants of the new house to prune or fell the nearby protected specimens, which are located to the north and west of the site.
5. The trees mainly comprise a mixture of sycamore and ash, as well as a horse chestnut, a birch and a lime. According to the Arboricultural Impact Assessment (AIA) submitted by the appellant, their condition is generally considered fair to good. I consider that they make a positive contribution to the character and appearance of the CA, particularly where they are most visible on Reservoir Street. There would be no tree losses to allow for the construction of the building, although part of the hedge would be removed to form the proposed new access to the site.

6. The Shadow Prediction Plan in the AIA shows that the trees would shade the new dwelling and much of its garden area from mid-day into the afternoon. I note that the trees are deciduous, and so the impact of shadowing would be less during the winter months. Nonetheless, the effect would be significant whilst the trees were in leaf during the spring and summer months, when the occupants would wish to use make greater use of the garden. Furthermore, given the proximity of the tree canopies particularly to the west of the location of the new dwelling, it is highly probable that future occupants would experience maintenance problems caused by falling leaves and other tree debris.
7. The siting of the new dwelling and its main outdoor space close to a significant number of trees would be highly likely to lead to future occupiers being concerned about the impact of shading on living conditions, and also the inconvenience of leaf and debris fall. In the light of such concerns, there is some doubt as to whether it would be reasonable to resist subsequent applications to fell or heavily prune the trees. The latter course of action would have an inevitable impact upon the trees' health and longevity, and short or long term removal would fail to preserve or enhance the character or appearance of the CA, contrary to the provisions of the National Planning Policy Framework.
8. As no trees are proposed to be felled as part of the development proposal, Policy NE9 of the Kirklees Unitary Development Plan (UDP, September 2007) does not strictly fit with the appeal case. However, the proposal would be contrary to the general thrust of the policy, which is to retain and protect mature trees. As such, Policy NE9 is broadly consistent with the NPPF, which requires the planning system to contribute to and enhance the natural and local environment by protecting valued landscapes and minimising the impacts on biodiversity. This is a material consideration which lends significant support to my conclusion in this case.
9. The appellant argues that future occupants would be aware of the potential issues posed by the proximity of the protected trees. However, there is a significant possibility that potential occupiers might not fully appreciate the implications of having the trees nearby until they had occupied the property and experienced the issues at first hand. This matter has therefore not led me to a different conclusion on the main issue.
10. I accept that the development would be designed so as to keep in with its surroundings. It would add one dwelling to the housing supply, making a social and economic contribution, however modest, to the local area. However, these benefits would not outweigh the harm I have identified.

### **Conclusion**

11. For the reasons above, and taking all other matters into consideration, I conclude that the appeal should be dismissed.

*Elaine Gray*

Inspector



**KIRKLEES COUNCIL**

**PLANNING SERVICE**

**LIST OF PLANNING APPLICATIONS TO BE DECIDED BY  
PLANNING SUB-COMMITTEE (HEAVY WOOLLEN AREA)**

**01-Sep-2016**

**LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985  
BACKGROUND PAPERS**

**There is a file for each planning application containing  
application form, plans and background papers.**

**Simon Taylor – 01484 221000**

**NOTE: For clarification the page numbering referred to  
shall be those set out in the contents page**



**In respect of the consideration of all the planning applications on this Agenda the following information applies:**

### **PLANNING POLICY**

The statutory development plan comprises:

The Unitary Development Plan (UDP). These reports will refer only to those policies of the UDP 'saved' under the direction of the Secretary of State beyond September 2007.

The statutory development plan is the starting point in the consideration of planning applications for the development or use of land unless material considerations indicate otherwise (Section 38(6) Planning and Compulsory Purchase Act 2004).

The Local Plan will provide the evidence base for all new and retained allocations including POL. The Local Plan process will assess whether sites should be allocated for development or protected from development including whether there are exceptional circumstances to return POL sites back to Green Belt. The Local Plan process is underway and the public consultation on the draft local plan took place between 9<sup>th</sup> November 2015 and 1<sup>st</sup> February 2016.

Annex 1 of the National Planning Policy Framework explains how weight may be given to policies in emerging plans. At this point in time, the draft local plan policies and proposals are not considered to be at a sufficiently advanced stage to carry weight in decision making for individual planning applications. The Local Planning Authority must therefore rely on existing policies (saved) in the UDP, national planning policy and guidance.

#### **National Policy/ Guidelines**

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 27<sup>th</sup> March 2012, the Planning Practice Guidance Suite (PPGS) launched 6<sup>th</sup> March 2014 together with Circulars, Ministerial Statements and associated technical guidance.

The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

### **REPRESENTATIONS**

Cabinet agreed the Development Management Charter in July 2015. This sets out how people and organisations will be enabled and encouraged to be involved in the development management process relating to planning applications.

The applications have been publicised by way of press notice, site notice and neighbour letters (as appropriate) in accordance with the Development Management Charter and in full accordance with the requirements of regulation, statute and national guidance.

## **EQUALITY ISSUES**

The Council has a general duty under section 149 Equality Act 2010 to have due regard to eliminating conduct that is prohibited by the Act, advancing equality of opportunity and fostering good relations between people who share a protected characteristic and people who do not share that characteristic. The relevant protected characteristics are:

- age;
- disability;
- gender reassignment;
- pregnancy and maternity;
- religion or belief;
- sex;
- sexual orientation.

In the event that a specific development proposal has particular equality implications, the report will detail how the duty to have “due regard” to them has been discharged.

## **HUMAN RIGHTS**

The Council has had regard to the Human Rights Act 1998, and in particular:-

- Article 8 - Right to respect for private and family life.
- Article 1 of the First Protocol - Right to peaceful enjoyment of property and possessions.

The Council considers that the recommendations within the reports are in accordance with the law, proportionate and both necessary to protect the rights and freedoms of others and in the public interest.

## **PLANNING CONDITIONS AND OBLIGATIONS**

Paragraph 203 of The National Planning Policy Framework (NPPF) requires that Local Planning Authorities consider whether otherwise unacceptable development could be made acceptable through the use of planning condition or obligations.

The Community Infrastructure Levy Regulations 2010 stipulates that planning obligations (also known as section 106 agreements – of the Town and Country Planning Act 1990) should only be sought where they meet all of the following tests:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

The NPPF and further guidance in the PPGS launched on 6th March 2014 require that planning conditions should only be imposed where they meet a series of key tests; these are in summary:

1. necessary;
2. relevant to planning and;
3. to the development to be permitted;
4. enforceable;
5. precise and;
6. reasonable in all other respects

**Recommendations made with respect to the applications brought before the Planning sub-committee have been made in accordance with the above requirements.**



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Ward: Batley East Ward	
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Agent: Robert Halstead Chartered Surveyor	
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Agent: Stuart Hartley	
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Applicant: Mr I Hussain	
Agent: Raja Riaz	
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Recommendation: RF1 - REFUSAL	

Application No: 2015/91005

Type of application: 62 - FULL APPLICATION

Proposal: *Change of use from warehouse to a mixed use comprising warehouse, food processing, cash and carry and specialist retail foodstore and formation of car park*

Location: *Wellington Mills, 7, Purlwell Lane, Batley, WF17 5BH*

Grid Ref: 424023.0 423994.0

Ward: *Batley East Ward*

Applicant: *Y Mulla*

Agent: *Robert Halstead Chartered Surveyor*

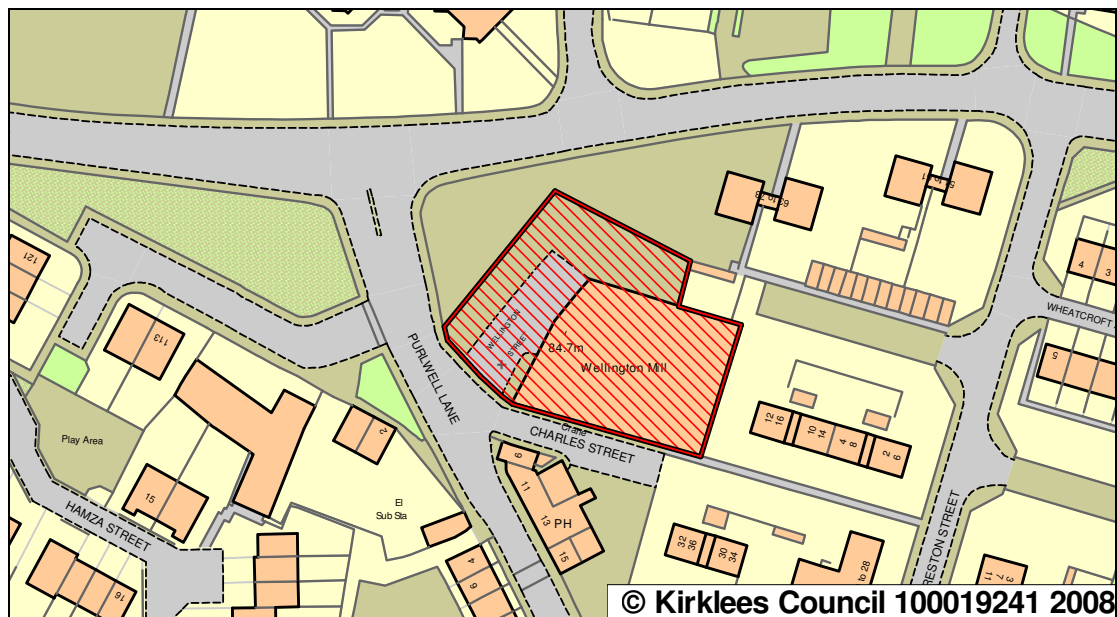
Target Date: *15-Sep-2016*

Recommendation: *RF1 - REFUSAL*

Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

<http://www.kirklees.gov.uk/beta/planning-applications/pdf/public-speaking-committee.pdf>

## LOCATION PLAN



Map not to scale – for identification purposes only



## **1. SUMMARY OF APPLICATION**

The principle of the change of use of the warehouse building to a mixed use comprising warehouse, food processing, cash and carry and specialist retail food store is considered, on balance, to be acceptable in principle. The applicant has failed to demonstrate however, that adequate servicing and off-street parking facilities can be provided to serve the intensified use, and without such facilities there would be a detrimental impact on highway safety and the amenity of local residents. To approve the application would be contrary to Policies T10 and D2 of the Kirklees Unitary Development Plan which stipulates that new development should not prejudice highway safety or amenity.

**RECOMMENDATION:** Refusal of the planning application and recommend enforcement action is taken to remove the unauthorised uses on the site.

## **2. INFORMATION**

The application is brought to Heavy Woollen Planning Sub-Committee due to the significant number of representations that have been received.

This is in accordance with the Council's Scheme of Delegation.

## **3. SITE DESCRIPTION / PROPOSAL**

### **Site Description:**

The application site comprises a warehouse building occupied by Mullaco Foods. The principal use of the building is as a warehouse for the storage and distribution of convenience goods, together with a cash and carry operation for the supply of Asian food to schools, restaurants, caterers, hot food takeaways and other eating establishments. In addition there are other uses operating within the building which include a food processing unit for the cutting and de-boning of halal meat, and a retail food store which retails specialist Asian food to the general public. To the west of the mill is a parking area secured by 2m high security fencing. The surrounding area is of mixed use with residential properties to the south and east and retail properties to the west. The site is unallocated on the Unitary Development Plan Proposals Map.

### **Proposal:**

The application seeks retrospective planning permission for the change of use of the warehouse building to a mixed use comprising warehouse, food processing, cash and carry and specialist retail food store. The application form states the proposed opening hours are unknown.

Permission is also sought for the formation of an extension to the existing car park to the north of the site to provide 27 parking spaces including 1 disabled

space, and 12 bike stands. It is proposed the car park would be surfaced in bitmac and secured by a palisade fence.

#### **4. BACKGROUND AND HISTORY**

2015/90211 – Change of use from warehouse to mixed use comprising warehouse, food processing, cash and carry and specialist retail food store – Withdrawn

2013/90907 – Erection of 2m high security fence and gates – Conditional Full Permission

2010/92229 – Certificate of lawfulness for a proposed use of part of building as a wholesale cash and carry warehouse – Granted

2004/91879 – Change of use to extend wholesale business and to include retail sales area and erection of new entrance – Withdrawn

96/91759 – Change of use of part of ground floor from wholesale to retail use, formation of associated car park and closure of highway – Refused

95/90867 – Change of use of redundant warehouse to retail outlet with associated car parking - Refused

#### **5. PLANNING POLICY**

The site is unallocated on the Unitary Development Plan Proposals Map.

##### **Unitary Development Plan:**

D2 – Unallocated Land  
S1 – Town Centres/Local Centres shopping  
T10 – Highway safety  
EP4 – Noise sensitive development  
NE9 – Retention of mature trees

##### **National Planning Policy Framework:**

Chapter 1 – Building a strong, competitive economy  
Chapter 2 – Ensuring the vitality of town centres  
Chapter 11 – Conserving and Enhancing the Natural Environment

#### **6. CONSULTATIONS**

The following is a brief summary of Consultee advice (more details are contained in the assessment section of the report, where appropriate).

**K.C Highway Development Management** – Object

**K.C Environmental Services** – No objections

**K.C Policy – No objections**

## **7. REPRESENTATIONS**

140 objections and a petition with 24 printed names have been received. This includes a number of photographs and videos which show deliveries to the site being made by large articulated vehicles, at early times in the morning, and the use of forklift trucks on the highway.

The main concerns raised are as follows:

### **Highway Safety Concerns**

- The proposed parking area would not be sufficient for the proposed operations. Customers currently park on-street and on third party land, obstructing access for residents.
- Concern about unsafe deliveries which include fork lift trucks unloading in the highway and lorries reversing out into the wrong lane causing tailbacks and obstructions on Purlwell Lane.
- Forklift trucks run on the road, concern about the safety of pedestrians and children.
- Parking on Purlwell lane is not safe, concern there has been a number of road traffic accidents
- Concern pallets are left on the footpath obstructing passage for pedestrians and vehicles.
- Delivery vehicles park dangerously on footpaths.
- Parking facilities are inadequate for staff and customers which who park on in surrounding streets.

### **Residential Amenity Concerns**

- Use of the loading bay affects the amenity of neighbouring residents through loss of privacy.
- Vehicles obstruct the front doors of neighbouring properties.
- Flood lights are on during the night
- Concern about noise pollution from delivery vehicles reversing into Charles Street and from the freezers.
- Concern the development is disturbing the peace of the elderly retired people living at Wellington Court Shelter Homes

### **Other Concerns**

- The proposed retail and mixed use is not appropriate in a built up residential area.
- Concern about the cumulative impact of the proposal with Blakeridge Mills for a petrol station, a supermarket and 181 apartments which will create 150 jobs and it has more than 300 car parking spaces.
- The Council have set a precedent since 1990 in refusing retail activity.
- There is a strong opposition to the disposal of public space which will not solve highway and parking issues.

- Local businesses are suffering from the lack of parking for customers and staff
- Concern about vehicle damage due to slates falling off the roof of Mullaco
- Mullaco trespass on third party land

## **8. ASSESSMENT**

### **Background:**

Mullaco is predominately a wholesale operation that sells to schools, caterers and restaurants. Wellington Mills has been used as a warehouse for Mullaco for over 25 years, with approximately 1,060sq m of storage space on the ground floor. The business also has a retail outlet at 35 Oxford Street, Mount Pleasant, approximately 500m to the south of Wellington Mills. Mullaco have more recently introduced a meat cutting plant where halal meat is boned, cut and packaged for sale and a retail shop. The business has now expanded into the upper floor of the building which was previously occupied by Premier Beds.

### **General Principle/Policy:**

The site has no specific allocation on the Unitary Development Plan Proposals Map. Policy D2 of the Unitary Development Plan (UDP) states “planning permission for the development (including change of use) of land and buildings without specific notation on the proposals map, and not subject to specific policies in the plan, will be granted provided that the proposals do not prejudice [a specific set of considerations]”. All these considerations are addressed later in this assessment.

The mixed use development comprises the following uses:

#### Ground Floor

- Meat cutting, boning and preparation area
- Butchers area
- Wholesale cash and carry/retail sales area
- Food packaging area

#### First Floor

- Warehouse area
- Offices and administrative area

Chapter 1 of the National Planning Policy Framework states that significant weight should be placed on the need to support economic growth through the planning system. To help achieve economic growth, local planning authorities should plan proactively to meet the development needs of business and support an economy fit for the 21<sup>st</sup> century. The site however, is located approximately 200m from the edge of Batley Town Centre.

Paragraph 24 of the NPPF states Local Planning Authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date local plan. They should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available, should out of centre sites be considered. When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre. Applicants and Local Planning Authorities should demonstrate flexibility on issues such as format and scale.

The applicant has provided a supporting retail statement prepared by Compass Planning. The applicants report note that most uses within Wellington Mills are considered appropriate in this location, however the Council consider that some products sold within the cash and carry fall outside of that category and constitute A1 retail activity. It is noted that the Cash and Carry operation at Wellington Mills has been regularised by the granting of a Certificate of Lawful Development.

Whilst Mullaco sell to companies direct from its warehouse and online to customers, it is common for trade customers to make purchases off the shelf in a shop type environment. The applicants report note that the majority of goods sold fall within a category that could be described as bulky goods for sale to trade. However, some goods are suitable for domestic purchases, particularly for large family's e.g. fizzy drinks and crisps, cooking oil sold in bulk, rice and pulses, and spices packaged on site. There are also product ranges that fall outside what could be considered to be bulky in nature, such as table sauces, smaller cuts of meat and pre-packed fermented and cured meats. These can be purchased by trade, who may need to purchase a few smaller items for a single event but they are also suitable for the general public. Members of the public therefore use the store for convenience goods purchases.

The applicants report note the goods sold serve a specific Asian Market, which they state are not readily available from wholesale/cash and carry operations or most convenience goods stores. They note the only similar specialist Asian retailers are Mullaco at Mount Pleasant, Kolla Brothers on Warwick Road, and Dadipatel on Banks Street. They consider that the store at Mount Pleasant can no longer meet the demands of its customer base and there is a need for more retail floor space for specialist Asian foods to save people travelling further afield to purchase specialist Asian food products. They consider that as the storage, butchers, packaging and wholesale operations take place at Wellington Mills, there is a strong business case for additional sales to the public to take place at Wellington Mills. This however, is not sufficient to satisfy planning policy.

## **Sequential Test Assessment:**

The operational requirements set the parameters when assessing the suitability, availability and viability of sequentially preferable sites. In business terms The applicants report considers there are benefits in having all uses in one location. Whilst the retail element has to be considered in isolation they argue that it is not reasonable to disaggregate items that fall within non-bulky ranges as the business will not be able to meet to requirements of its trade customers, nor will it be viable to set up a separate shop to sell these items. They note the number of product lines is low and provide quantity and value for money rather than a wide choice, such that the demand for less bulky items alone would be insufficient for a small shop. To demonstrate the necessary flexibility whilst applying the sequential test the applicants report has searched for available units with a range from 280 sq m to 480 sq m. The existing cash and carry area is 380 sq m (net).

In terms of search area, the applicants report note that a non-wholesale trade would be local as the range of goods sold are fairly limited, and the area of search that they have undertaken includes Batley Town Centre, the Local Centres of Mount Pleasant and Batley Road, and Neighbourhood Centres of Batley Carr, Healey, Lower Soothill, Lower Staincliffe and Staincliffe.

The applicants report refer to The Council's Shopping Centre Occupancy Survey 2014, although this was later updated in November 2015. This assessment therefore, refers to the conclusions of the report by Compass Planning, together with the updated Council's Shopping Centre Occupancy Survey 2015.

Their conclusions of the sequential test are that there no vacant units between 280 – 480 sq m in or around Batley Town Centre or the Local or Neighbourhood Centres. The largest vacant unit is 197 sq m at 82 Commercial Street in Batley Town Centre.

There are a number of vacant units in and around Alfred's Way, including 82 Commercial Street that could be combined to provide sufficient floorspace however Compass Planning note that there are issues preventing them being suitable or viable.

The applicants report note that if 82 Commercial Street were combined with the 4 adjacent units on Alfred's Way the combined floorspace would be 372 sq m (net). Compass Planning note that whilst this would be large enough, the footprint of the units would be 'L' shaped which would prevent ease of display of products and wide isles for customers to manoeuvre shopping trolleys. The conversion would also incur costs and make relocation unviable. Additionally, the floor levels of each unit are at different heights such that a stepped floor area would be inevitable making it very difficult for shoppers with shopping trolleys, as well as not meeting accessibility standards. There is a lack of immediate parking which is a prerequisite as trade customers need to be able to move their purchases easily from store to a van or car, usually in a trolley. There is no immediate parking, with the nearest available being Tesco's car

park. The change in levels from the store to the car park would be difficult to overcome and controlling a full trolley difficult, especially down the slope in Alfred's way. This would make the location unattractive for customers and it is concluded the units in Alfred's Way are unsuitable and unviable.

The applicants report note the same arguments exclude the units on the other side of Alfred's Way which have a combined floorspace of 357 sq m (net). The units would combine to make an irregular shaped unit, the floor plates are on different levels, there would be large conversion costs and there is no immediate car parking for customers. The applicants report therefore consider these units are unsuitable and unviable.

In looking at the assessment by Compass Planning, together with the updated Council's Shopping Centre Occupancy Survey 2015, it is concluded that at the present time there are no sequentially preferable premises that are suitable, available, and viable for the proposed retail development. The proposed development is 200m from the edge of Batley Town centre, and the applicants report consider there are significant opportunities for linked trips whilst people are visiting Batley Town Centre, which is one of the objectives of the application of the sequential test. It is considered that the applicant has met the requirements of the sequential test.

### **Retail Impact:**

The retail floor space of the proposed development falls well below the threshold of 2,500 sq m above which the NPPF states that an impact assessment is required. However it is useful to understand the impact of the proposed retail development on Batley town centre.

The proposed development caters for the sale of Asian food, groceries, fresh produce, fresh halal meat and poultry, and Mullaco sell Asian brands from India, Pakistan and the Middle East. The applicants report note's therefore that any trade diverted to the development would come from specific stores selling a similar range of goods and products. There go on to say that there are very few shops in the area specialising in the sale of such products, the main ones being Kolla Brothers on Warwick Road and Dadipatel in Mount Pleasant. There are additional smaller shops in Mount Pleasant. They note these shops show they are struggling to cope with demand as they have expanded where possible but operate in tight restricted units.

The proposed development has been trading for several months, and the applicants report notes there has been no discernible impact on existing stores, and that due to the range of shops and services in Batley town centre there will be no impact on Batley town centre.

### **Conclusion of the retail assessment:**

In applying the sequential test, no alternative premises have been identified that are in sequentially preferable locations, and which would be suitable, available, and viable for the retail element of the proposed development.

Furthermore, there is some difficulty in disaggregating the bulky and non-bulky items, with the latter deemed insufficient to make a stand-alone shop for the sale of these items financially viable. In terms of trade diversion, due to the nature of the goods sold, it is considered that it would be unlikely that there would be a significant impact on the vitality and viability of Batley town centre. In conclusion therefore, whilst the NPPF requires applications for main town centre uses to be located in town centres, it is difficult to substantiate an objection in this particular case.

If the planning application was to be considered acceptable in all other regards, it is considered appropriate that the retail activity be limited to the area currently used for the wholesale cash and carry operation, which shall not exceed 380 sq m and that not more than 30% of floor space shall display goods that are not bulky in nature.

### **Impact on highway safety:**

Policy T10 of the UDP sets out the matters against which new development will be assessed in terms of highway safety. To accommodate the proposed expansion, permission is sought for the formation of an extension to the existing car park to the north of the site to provide 27 parking spaces including 1 disabled space, and 12 bike stands. The existing dropped crossing access from Charles Street would be retained.

A significant number of concerns have been raised in the representations about the impact on highway safety, in particular with regard to car parking capacity and safe delivery of goods. Evidence has been provided via photographs and videos which show deliveries to the site being made by large articulated vehicles, and the use of forklift trucks on the highway. The impacts of this on the amenity of local residents are also expressed, and include the disruption arising from customers and delivery vehicles parking indiscriminately on the road, obstructing the free flow of traffic and blocking access for residents, together with the risks to residents walking and driving within the vicinity of the site.

The application is supported by a Transport Assessment and Addendum by HY Consulting.

### Car Parking

The area of the warehouse is 2124sqm, which includes 380sqm of cash and carry / retail sales, 522sqm of food preparation, office and ancillary areas, and 1222sqm of retained storage and distribution. UDP Standards for the proposed use classes require a total of 27 spaces for customers and staff. The existing parking arrangement on site currently do not provide sufficient space to accommodate 27 car parking spaces, there is estimated to be about 14 spaces currently laid out on site. The amount of car parking required to meet the UDP requirement relies on the applicant acquiring land in third party ownership to expand the car parking area. If the applicant could use the additional land required to provide the parking area then the plan supplied by



the applicant showing 28 spaces provided would be acceptable from a parking requirement. This is subject however, to it being available for parking at all times and not being blocked by delivery vehicles, or used as external storage (goods /pallets) which in the event the land was available to extend the hard standing area could be controlled by planning condition. As the Use of the building has already commenced, for a planning condition to be used to ensure the extra parking area is provided a degree of certainty that the third party land can be acquired is necessary in meeting the tests of a planning condition.

### Servicing

Servicing and deliveries currently take place via the car park and the loading bay at the side of the building of Charles Street. The applicants advise that 40% of deliveries are made by Mercedes Sprinter size vans, with the remainder using 7.5T or 12T rigid vehicles. Larger vehicles amount to about two vehicles per week and average loading / unloading takes between 10 to 30 minutes.

Residents have provided evidence of service deliveries being unloaded on-street, with fork lift trucks are used to transport goods into the premises. Wooden pallets and other materials have also been observed to be stored within the car park.

The applicant was asked to provide a detailed car park and servicing management plan to include measures to ensure that deliveries are undertaken off the highway (fork lifts are not allowed to load or unload on the highway) details of the size of delivery vehicles, and confirmation that the car park will be available for use by customers.

The applicant has provided a brief document setting out a number of intentions. It is proposed that there would be a total of 28 car parking spaces, with 4 designated for staff, and a disabled parking space. It is the applicants intention to that no storage of materials / pallets will be allowed within the car park, and for goods delivered by HGV to be stored at Global Storage and Logistics in Soothill Lane, Batley and collected by Mullaco in their own van, with the size of vehicles being used to collect and transport goods being limited to a 3.5 to 7.5T goods vehicle. It goes on to say that the delivery area in the car park would be marked out using yellow hatching, although some deliveries may need to take place on Charles Street and that signs will be erected in the car park to advise customers of use of the fork lift truck. A letter has also been submitted from Global Storage & Logistics Ltd to confirm Mullaco have storage facilities at their premises.

However, whilst these stated intentions are credible, there is insufficient information as to how the car park will be efficiently managed for customer and staff parking, and for deliveries and safe access. It also requires on the applicant acquiring third party land. The Car Park Management Plan is required to be a stand alone document which clearly sets out how it would be operated, and against which enforcement action could be clearly taken. There

are no details of how reversing movements of delivery vehicles would be safely managed within the customer parking area, or details of how fork lift trucks will operate in the car park area and how they will be managed. Furthermore, there are no details of the suitability of the alternative depot for managing vehicle deliveries from Mullaco, and how delivery drivers will be informed of the second depot and that there are no turning facilities within the parking area for HGV vehicles. A maximum of four spaces for staff parking are proposed but there are no details of how Mullaco will promote none car trips to reduce staff parking. There are also no proposed waiting restrictions for customer car parking.

The applicant has failed to demonstrate that adequate servicing and off-street parking facilities can be provided to serve the intensified use. In light of the compelling evidence supplied by local residents showing the current servicing arrangements which are causing disruption to the amenity of the surrounding area it is necessary to ensure that the applicant's permanent servicing solutions are robust and deliverable. Without a proper solution, there would be an unacceptable impact on the amenity of local residents as presently experienced, and on the basis of the inadequate car park management plan submitted, amenity issues could not be adequately mitigated against by imposing conditions.

To approve the application would be contrary to Policy T10 and D2 of the Unitary Development Plan which stipulates that new development should not prejudice highway safety and to not affect amenity.

#### **Impact on visual amenity:**

The external alterations include the provision of an expanded car parking area on land to the north of the existing car park. This is an area of grassed land with mature trees. It is proposed the car park would be laid out and surfaced with bitmac and secured with a palisade fence.

The proposal would result in the loss of landscaped land surrounding the building, however it is considered that this would not have a detrimental impact on visual amenity as a reasonable portion of the grassed / landscaped area would be retained. The mature trees would be unaffected by the proposal.

#### **Impact on residential amenity:**

The surrounding area is of mixed used, with the nearest neighbouring properties being located off Charles Street and Purlwell Lane to the south, Preston Street to the east and properties off Wellington Street to the north. A number of concerns have been raised in the representations received regarding residential amenity as précised above.

The impact on these surrounding residents arises from the change of use introducing a retail use into the premises which results in an increase in an intensification of the use of the premises. The aspect that would be most likely

to impact on nearby residents would be increased vehicle movements to and from the premises causing noise disturbance. This would most likely affect the residents of neighbouring properties off Charles Street and Purlwell Lane to the south whose properties are located within close proximity to the entrance to the car park, and the existing loading bay. Environmental Services have advised that they consider that the current activity is unlikely to give rise to significant adverse effects on these occupiers, particularly during the day time if suitable parking provision and servicing is provided on site. However the use of the site was to continue throughout the night-time then the potential to cause noise disturbance to nearby residents would increase. It is considered that as the current use of the site is causing harm to the amenity of residents and the applicant has not produced satisfactory car parking management proposals to overcome the concerns about impacts on the surrounding residents that it is reasonable to recommend refusal of the application on this material planning consideration.

It would be possible to overcome noise disturbance concerns by the imposition of conditions that restrict the hours of use relating the activities that have the potential to cause noise disturbance. Potential hours of use conditions would restrict the premises to not be open to customers outside the hours of 08:00 to 21:00 Monday to Saturday and 10:00 to 18:00 Sundays, and that there is no deliveries to or dispatches from the premises and no external fork lift truck movements outside the hours of 08:00 to 20:00 Monday to Saturdays, with no deliveries or external fork lift truck movements on Sundays or Bank Holidays. Subject to conditions residential amenity issues could be addressed. However in light of the lack of certainty or detail around the proposed car park management plan which is necessary to mitigate the retail use of the site which presently cannot be adequately addressed through planning conditions, the current operations of the site are causing harm to the amenity of neighbouring residents which is contrary to Policy D2 of the adopted UDP.

### **Enforcement:**

The authorised use of the site is as a warehouse and distribution centre, and a cash and carry. It is advised that in the absence of sufficient information as to how the proposed car park will be efficiently managed for customer and staff parking, and for deliveries and safe access, that enforcement action is taken to remove the retail use to the general public in the interests of highway and public safety. Members should note that should enforcement action be successful in removing the unauthorised elements that the site could operate lawfully as a warehouse and distribution centre, and a cash and carry which has no planning conditions or restrictions outside of the lawful use.

## **Representations:**

140 objections and a petition with 24 printed names have been received. In so far as they have not been addressed above:

Use of the loading bay affects the amenity of neighbouring residents through loss of privacy.

**Response:** The loading door is located off Charles Street directly opposite neighbouring properties with windows which look onto the site. This is an established warehouse building which has operated for over 25 years. The loading area therefore is lawful but it is acknowledged there are no current planning conditions restricting its use which is causing harm to residents.

Vehicles obstruct the front doors of neighbouring properties.

**Response:** There is insufficient information as to how the car park will be efficiently managed for deliveries and safe access or for customer and staff parking. The issue of the impact on amenity from the current operations of the site will be the subject of enforcement action.

Flood lights are on during the night

**Response:** The issue of the impact on amenity from the current operations of the site will be the subject of enforcement action but this would only relate to the retail use of the site. Planning Enforcement will investigate the concerns about flood lighting

Concern about noise pollution from delivery vehicles reversing into Charles Street and from the freezers

**Response:** The issue of noise pollution from deliveries could be controlled by operating hours suggested. However as this application is recommended for refusal Planning Enforcement will investigate where in the premises the freezers are located and whether they are subject to planning control.

Concern the development is disturbing the peace of the elderly retired people living at Wellington Court Shelter Homes

**Response:** If the application was considered to be acceptable, delivery times and opening hours would be restricted so as not to have a detrimental impact on the amenity of residents at Wellington Court. However as this application is recommended for refusal the retail element will be likely the subject of enforcement action.

The proposed retail and mixed use is not appropriate in a built up residential area.

**Response:** The use of the premises is acceptable in sequential testing terms but the impacts on the amenity of the surrounding neighbours will be reviewed by planning enforcement to determine what elements are subject to planning control. It is considered that it would be possible subject to conditions about opening times and delivery times to overcome these concerns if the car park management plan could be agreed.

Concern about the cumulative impact of the proposal with Blakeridge Mills for a petrol station, a supermarket and 181 apartments which will create 150 jobs and it has more than 300 car parking spaces.

**Response:** The acceptability of the development in this location has been assessed in respect of a retail impact and impact on highway safety.

The Council have set a precedent since 1990 in refusing retail activity.

**Response:** Each application is assessed on its own merits.

There is a strong opposition to the disposal of public space which will not solve highway and parking issues.

**Response:** The proposal would result in the loss of landscaped land surrounding the building, however it is considered that this would not have a detrimental impact on visual amenity as a reasonable portion of the grassed / landscaped area would be retained.

Local businesses are suffering from the lack of parking for customers and staff

**Response:** This has been addressed in the request for additional car parking surveys as presented in the addendum to the Transport Statement. The proposal would need to ensure there were 27 parking spaces available for use at all times.

Concern about vehicle damage due to slates falling off the roof of Mullaco

**Response:** This is a not a matter which is material to this assessment of this application.

Muallo trespass on third party land

**Response:** This matter concerns the deliveries being undertaken. There is insufficient information to demonstrate that safe deliveries can be undertaken safely.

### **Conclusion:**

The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice. This application has been assessed against relevant policies in the development plan and other material considerations.

It is considered that the development proposals do not accord with the development plan as the applicant has failed to demonstrate that adequate servicing and off-street parking facilities can be provided to serve the intensified use. It is considered that the adverse impacts of granting permission would have an unacceptable impact on the amenity of local residents and this would significantly and demonstrably outweigh any benefits of the development when assessed against policies in the NPPF and other material considerations. Furthermore, on the basis of the inadequate car park management plan submitted, amenity issues could not be adequately mitigated against by imposing conditions.

## **9. RECOMMENDATION:**

### **Refusal**

1. The proposal has failed to demonstrate that adequate servicing and off-street parking facilities can be provided to serve the intensified use. There is insufficient information as to how the car park will be efficiently managed for customer and staff parking, operational requirements, deliveries and safe access. Without this information, the proposal would have an unacceptable impact on the amenity of local residents arising from disruption from customers and delivery vehicles parking indiscriminately on the road, obstructing the free and safe flow of traffic and blocking access for residents, together with the risks to residents walking and driving within the vicinity of the site. Furthermore, on the basis of the inadequate car park management plan submitted, these issues could not be adequately mitigated against by imposing conditions. To approve the application would be contrary to Policies T10 and D2 of the Kirklees Unitary Development Plan which stipulates that new development should not prejudice highway safety or residential amenity.

This recommendation is based on the following plans and specifications schedule:-

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Location Plan			09.04.15
Ground Floor Layout	'Scheme as proposed'		09.04.15
Proposed Car Park Extension	'Scheme as proposed'		27.10.15
Proposed car Park Layout			18.08.16
Transport Assessment	15110 / October 2015		21.12.15
Transport Assessment Addendum	15110/December 2015		12.01.16
Letter from Mullaco re Delivery Vehicles			12.01.16
Swept Path Analysis			27.10.15
Retail Statement			09.04.15
Letter from Global Consulting			21.07.16
Car Park / Servicing Management Plan			18.08.16

**Application No: 2016/91054**

**Type of application: 62HH - FULL APPLICATION**

**Proposal: *Erection of single storey rear and first floor side extensions***

**Location: *The Orchard, Far Common Road, Mirfield, WF14 0DQ***

**Grid Ref: 419247.0 421893.0**

**Ward: *Liversedge and Gomersal Ward***

**Applicant: *Mr Dhesi***

**Agent: *Zeshan Khawaja***

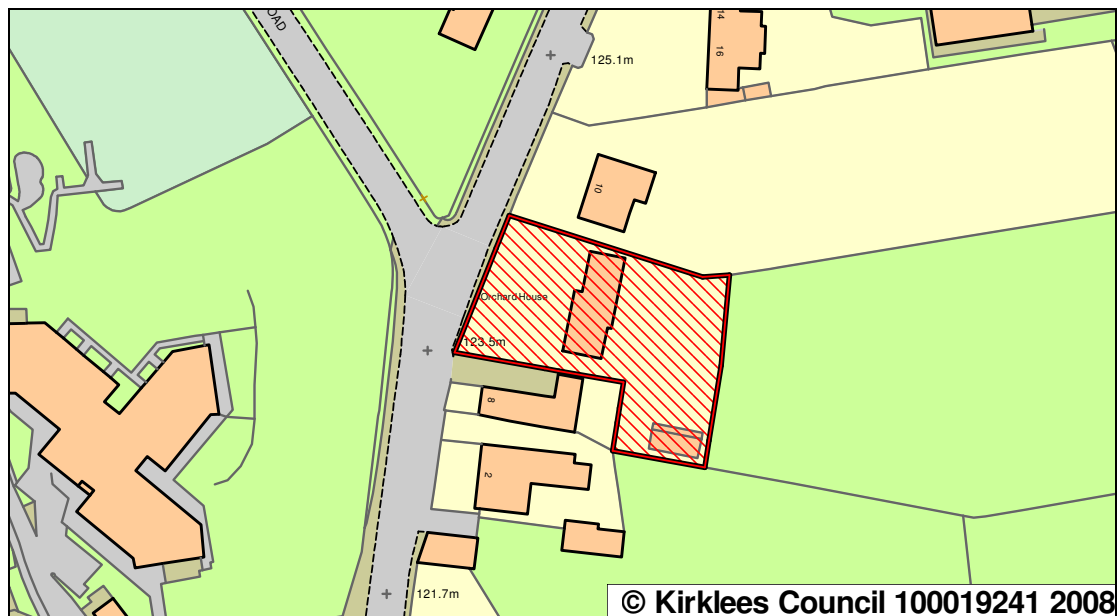
**Target Date: *01-Jun-2016***

**Recommendation: *RF1 - REFUSAL***

**Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.**

<http://www.kirklees.gov.uk/beta/planning-applications/pdf/public-speaking-committee.pdf>

## **LOCATION PLAN**



**Map not to scale – for identification purposes only**

## **1. SUMMARY OF APPLICATION**

The application seeks permission for the erection of a single storey rear extension and a first floor side extension of a detached two storey dwelling at The Orchard, Far Common Road, in Mirfield. The application site is located within the Green Belt but following research on the original permission for the dwelling, these extensions are not considered to be disproportionate additions. The principle of extending the property is acceptable.

The single storey rear extension is acceptable by reason of its scale and design. However, the first floor extension, by virtue of its design and scale is considered by officers to be unacceptable as it would result in harm to the visual amenity of the host dwelling, contrary to the aims of policies BE1, BE2, BE13, and BE14 of the Unitary Development Plan, as well as the National Planning Policy Framework.

**RECOMMENDATION:**

**REFUSE**

## **2. INFORMATION**

The application is brought to the Heavy Woollen Planning Sub-Committee at the request of Councillor David Hall who states:

“My reasons are that I find the design of the first floor above the garage acceptable and in keeping with other buildings, and would not detract from the amenity of the Green Belt in any way. Also that there have been no objections from any neighbours to this application”.

The chair of the Sub-Committee has confirmed that Councillor Hall’s reasons for making this request are valid having regard to the Councillor’s Protocol for Planning Sub-Committees.

## **3. SITE DESCRIPTION / PROPOSAL**

### **Site Description**

The application relates to a two storey detached dwelling known as The Orchard, which is located on Far Common Road in Mirfield. The dwelling is set back a significant distance from Far Common Road and is on a similar level as the road. The property is faced in natural stone and has Marley tiles for the roofing material and uPVC openings.

To the front of the property there is large amount of amenity space with is block paved and grass. To the rear of the property there is a significant amount of grassed space (over 20 metres which gently slopes upwards). The dwelling benefits from a conservatory to the rear and a detached garage to the south-east on the boundary with no. 8 Far Common Road.



To the north of the site is no. 10 Far Common Road, a detached dwelling located in a large plot. This dwelling is set slightly further forward than the application site with a distance of approximately 3 metres between the sites. There is dense hedging on the boundary between these sites.

To the south of the site is no. 8 Far Common Road, a detached dwelling located approximately 5.5 metres from the application site and is located in a large plot. This dwelling projects forward of the application site.

Both of the above neighbouring dwellings have a different character and appearance to the host dwelling.

### **Proposal**

Planning permission is sought for the erection of a single storey extension to the rear of the dwelling and a first floor side extension above the existing attached garage.

The resultant extensions would provide ground floor accommodation to serve a sunroom and first floor accommodation to serve a bedroom and en suite. The proposal includes the demolition of the existing conservatory to the rear.

The single storey extension would project from the rear of the original dwelling by 7 metres, would be 7.5 metres in width and 4.1 metres in overall height (2.7 metres to eaves). The extension would include glazing panels, bi-fold doors and rooflights in the side roofslope.

The first floor side extension would project above the existing garage. The first floor side extension would project 6.1 metres from the side of the original dwelling, would be 8.2 metres in length and the garage (including the extension) would be 8 metres in overall height (5.5 metres to eaves). The extension would have an eaves and ridge height that is consistent with that of the host dwelling.

The walls of the extensions would be constructed from natural stone, the roofing materials would be Marley tiles, and the openings would be white uPVC to match the existing.

### **4. BACKGROUND AND HISTORY**

2015/94009 – Erection of boundary wall and installation of railings  
APPROVED (No. 10)

87/05185 – Erection of detached dwelling and integral garage APPROVED  
(land adj. 10 Far Common Road)

## **5. PLANNING POLICY**

The application site is allocated as Green Belt on the Kirklees Unitary Development Plan proposals map.

### **Kirklees Unitary Development Plan**

D11 – Green Belt  
BE1 – Design principles  
BE2 – Quality of design  
BE13 – Extensions to dwellings (design principles)  
BE14 – Extensions to dwellings (scale)  
NE9 – Retention of mature trees  
T10 – Highway safety  
T19 – Parking Provision

### **National Planning Policy Framework**

Chapter 7 - Requiring good design  
Chapter 9 – Protecting Green Belt land

### **Other relevant guidance**

Mirfield Design Statement 2002

## **6. CONSULTATIONS**

No consultation responses were required to be carried out.

## **7. REPRESENTATIONS**

No representations have been received from any members of the public.

Councillor David Hall has requested the application be referred to the Heavy Woollen Planning Sub-Committee for the reason set out in section 2 of this report.

## **8. ASSESSMENT**

### **Principle of Development:**

The site is located within the Green Belt and therefore the principle of extending a property within the Green Belt needs to be considered. Chapter 9 of the NPPF states that the Government consider that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, with the essence of characteristics of the Green Belt being their openness and permanence. It also states that an extension or alteration of a building (providing that it does not result in disproportionate additions over and above the size of the original building) need not be inappropriate in the Green Belt. This is also reflected in policy D11 of the UDP.

Therefore, the principle of extending a dwelling which is located within the Green Belt can be acceptable providing that it does not have a detrimental impact on visual/residential amenity, highway safety or on the openness of the Green Belt.

In this case, following research into the size of the original dwelling (granted under application reference: 87/05185), it is considered that the proposed extensions do not represent disproportionate additions to the original dwelling, especially given that the existing conservatory is to be removed. The principle of development is acceptable.

The report will now discuss the following issues: the impact on residential amenity, the impact on visual amenity (including an assessment of Green Belt policy), and highways safety.

### **Impact on Visual Amenity:**

Firstly, the impact on the openness of the Green Belt will be considered. This section will then be split into two areas; the ground floor rear extension and the first floor side extension.

#### Impact on openness of Green Belt

Chapter 9 of the NPPF states that extensions within the Green Belt are appropriate development subject to not being disproportionate additions over and above the size of the original building.

The impact on the openness of the Green Belt is acceptable and the proposal is in accordance with policy D11 of the UDP. With specific regard to disproportionate additions to the host building, following a site visit and a review of the planning history of the site, it is considered that there are no further additions to the site following the erection of a conservatory (which is likely to have been erected under permitted development). This conservatory is to be demolished.

The original host dwelling would remain the dominant element of the site in terms of size. This is considered to be the case because the first floor extension would not enlarge the footprint of the original dwelling and the rear extension would not extend the full width of the rear elevation (and is replacing an existing conservatory). Additionally, the rear extension is likely to be permitted under the householder prior notification scheme (permitted development rights have not been removed and no neighbours have objected to this application).

The proposal is in accordance with this particular element of UDP policy D11.

Furthermore, Policy D11 also states that extensions to traditional buildings in the Green Belt need to take into account the effect on the character of the existing building. Although it is acknowledged that there are traditional

features within the appearance of the building and some of these are replicated in the proposed extension, in this case, the host building is not of a traditional appearance and therefore this element of UDP policy D11 is not given significant weight.

#### Ground floor rear extension

Although it is acknowledged that the projection of 7 metres from the rear of the site is larger than that set out in UDP policy BE14 (which states that extensions should not project more than 3 metres on closely spaced dwellings), the extension would be read as a subservient addition due to being single storey in height and having the appearance of a contemporary residential extension which harmonises with the host dwelling which is set within a reasonable sized curtilage.

Within the area, there are a variety of dwellings with different characters and appearances. The erection of the rear extension would not harm the character of the area especially given that it cannot be seen in the streetscene.

The extension would be constructed from materials to match the existing and openings of a similar style to those in the main building. The glazed elements of the extension would add a contemporary element to the proposal which would complement the appearance of the main dwelling.

The ground floor rear extension is considered acceptable from a visual amenity perspective.

#### First floor side extension

The impact of the first floor extension is considered, by officers, to be harmful to visual amenity and the proposal would not be in accordance with the relevant Kirklees UDP policies. This section of the report will assess the harm caused by the location and design of this extension in terms of its scale in relation to the host dwelling.

The principal of an extension at first floor level above the existing garage would be acceptable. However, with regards to the design, the extension is considered to not relate harmoniously to the host dwelling. Whilst the materials are proposed to match the existing, the design of the first floor extension would sit awkwardly in relation to the host dwelling by virtue of its projection and its roof form.

When considering extensions to dwellings it is important that extensions achieve some degree of subservience. The usual method for achieving this is to set the extension back from the front wall of the dwelling and thus also lower the ridge line of the roof. The set back which is needed will depend upon a number of factors including the proportions and dimensions of the extension and the prominence of the extension. A set back also helps to avoid the awkward joining of new and old materials and allows the development of the property to be read in its fabric.

By virtue of its unsympathetic design, scale and massing, it is considered by officers that the extension would relate awkwardly and detract from the character of the host dwelling as well as unbalance the appearance of the host dwelling. The extension would be an unduly prominent feature of the site, particularly due to its projection to the front, roof design, and ridge height. Whilst it is acknowledged that first floor extensions are not an unusual feature in residential areas, the proposed extension would be a dominant and inappropriate form of development in this location. It is considered that the host dwelling would lose its character and the extension would detract from its appearance.

Whilst the host dwelling is set back significantly from highway, the extension would be visible when viewing The Orchard from Far Common Road to the south-east. Given this set back and high boundary treatment along the front boundary, views of the dwelling would not be significant. Given the character of the area and the variety of dwellings, the extension would not be viewed in a uniform context and therefore is not considered to significantly harm the streetscene but, for the reasons set out above, would be harmful to the character of the host dwelling itself.

Officers have been in negotiations with the applicant to try and amend the design and siting of the extension to create a subservient addition to the host dwelling and which would not relate incongruously to the main building. However, the applicant does not wish to amend their proposal. In light of this, a determination has been requested on the basis of the originally submitted plans.

Due to the reasons stated above, the first floor side extension would dominate the front elevation of the modest host dwelling and detract from its character by virtue of its scale and design. The extension would be harmful to visual amenity with regards to the appearance of the host dwelling, contrary to policies BE1, BE2, BE13 and BE14 of the UDP, as well as the aims of chapter 7 of the NPPF.

Paragraph 64 of the NPPF states that applications should be refused which represent poor design. In this case, officers consider that the proposal, for the reasons highlighted within the report, would detract from the character of the host dwelling and would therefore be harmful to visual amenity.

#### **Impact on Residential Amenity:**

This section will assess the impact on neighbouring properties individually. No representations have been received.

### Impact on no. 8 Far Common Road

The impact on no. 8 Far Common Road is acceptable. The rear extension is set a significant distance away from no. 8 and is single storey in height. For this reason, there would be no impact on the occupiers of this neighbouring dwelling in terms of overbearing or overlooking/loss of privacy.

With regards to the first floor side extension, this would add additional bulk and massing close to this neighbouring dwelling. However, the extension would not project further than the existing dwelling, its roof would be hipped away from the boundary, and there would be no windows in the side elevation of no. 8 Far Common Road facing this site. For this reason, there would be no overbearing impact on the occupiers of this dwelling (which has a blank side elevation facing the application site).

In terms of overlooking/loss of privacy, there are two openings serving a bedroom and an en-suite which have been marked on the plan as being obscurely glazed. In order to ensure that these windows would not be changed in the future (which may lead to a loss of privacy), should the application be approved, a condition could be imposed. Any additional windows in the first floor side extension facing no. 8 would be controlled by the Town and Country Planning (General Permitted Development) Order 2015.

### Impact on no. 10 Far Common Road

The impact on no. 10 Far Common Road is acceptable. The first floor side extension is to the south of the main dwelling and therefore would not impact on the occupiers of this dwelling in any way.

With regards to the rear extension, it is acknowledged that a projection of 7 metres from the rear of the original dwelling would be relatively large, however this is not a closely-spaced dwelling and therefore, would not be contrary to the aims of UDP policy BE14. Furthermore, it is likely that the extension could be erected under permitted development rights (householder prior notification scheme). The relationship between the dwellings, in which no. 10 is set further forward, along with the fact that the extension would be set off the boundary by 0.8 metres, the roof would be hipped away and the extension would be single storey, meaning that there would be no overbearing impact on the occupiers of this neighbouring dwelling. Additionally, there is dense hedging on the boundary with this site.

With regards to overlooking/loss of privacy, there are no windows proposed in the side elevation facing this site. However, although it is acknowledged that there is dense hedging along the boundary between these dwellings, this could be removed without planning permission and windows could be inserted. This may lead to overlooking into the rear amenity space of no. 10. For this reason, should the application be approved, a condition would be required to ensure that no new openings were inserted in the northern elevation of the rear extension.

### Impact on surrounding properties

There are no dwellings to the front and rear of the site for a significant distance and therefore there would be no harm to residential amenity of the occupiers of these dwellings.

### Overall

In conclusion, it is considered that the proposal would be acceptable in terms of residential amenity. The application would be compliant with the aims of Policies D11, BE1 and BE14 of the UDP.

### **Impact on Highway Safety:**

The proposed extension would lead to an increase in the number of bedrooms from 4 to 5. For this reason, the amount of parking provision that is required (3 spaces) would not alter. In this case, there is a sufficient amount of space to the front of the dwelling to accommodate three car parking spaces and achieve internal turning.

As such, the proposal would have an acceptable impact on highway safety and be compliant with the aims of Policies T10 and T19 of the UDP.

### **Other matters:**

#### Impact on Protected Trees

Protected trees (Tree Preservation Orders - TPO34a/97/g4 and TPO34a/97/g3) are located on the opposite side of the highway and therefore there would be no damage to these trees or their roots as a result of the proposal. The proposal would therefore comply with the aims of policy NE9 of the UDP.

There are no other matters considered relevant to the determination of this application.

### **Representations**

No representations have been received.

Ward Councillor David Hall has requested the application be referred to Heavy Woollen Planning Sub-Committee for the reasons set out in section 2 of this report. His comments have been addressed in the main assessment above.

## **Conclusion:**

To conclude, the ground floor rear extension is considered acceptable however, the first floor side extension is considered to result in an adverse impact upon the visual amenity of the host dwelling.

The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice.

This application has been assessed against relevant policies in the Kirklees Unitary Development Plan and other material considerations. It is considered that the first floor element of the proposal's do not accord with the development plan and that there are specific policies in the NPPF that indicate development should be restricted.

## **9. RECOMMENDATION**

### **REFUSE**

1. The proposal, by virtue of the design and scale of the first floor extension would result in an unduly dominant extension on the principal elevation of the host dwelling. This would impact adversely upon the visual amenity of the host dwelling and therefore the proposal would be contrary to Policies BE1, BE2, BE13 and BE14 of the Unitary Development Plan as well as the aims of chapter 7 of the National Planning Policy Framework.

This recommendation is based on the following plans and specifications schedule:-

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Location plan	1:1250	-	05.04.2016
Proposed first floor plan and existing first floor plan and existing rear elevation	16/1946/D3	-	05.04.2016
Proposed elevations	16/1946/D4	-	05.04.2016
Existing side elevations and proposed ground floor plan	16/1964/D2	-	05.04.2016
Existing ground floor plan and existing front elevation	16/1946/D1	-	05.04.2016
Proposed roof plan, site plan and location plan	16/1946/D5	-	05.04.2016



**Application No: 2016/92102**

**Type of application: 62HH - FULL APPLICATION**

**Proposal: *Erection of single storey side and rear extensions (within a Conservation Area)***

**Location: 4, Linefield Road, Batley, WF17 0ES**

**Grid Ref: 424730.0 424470.0**

**Ward: *Batley East Ward***

**Applicant: *Mr M Mulla***

**Agent: *Stuart Hartley***

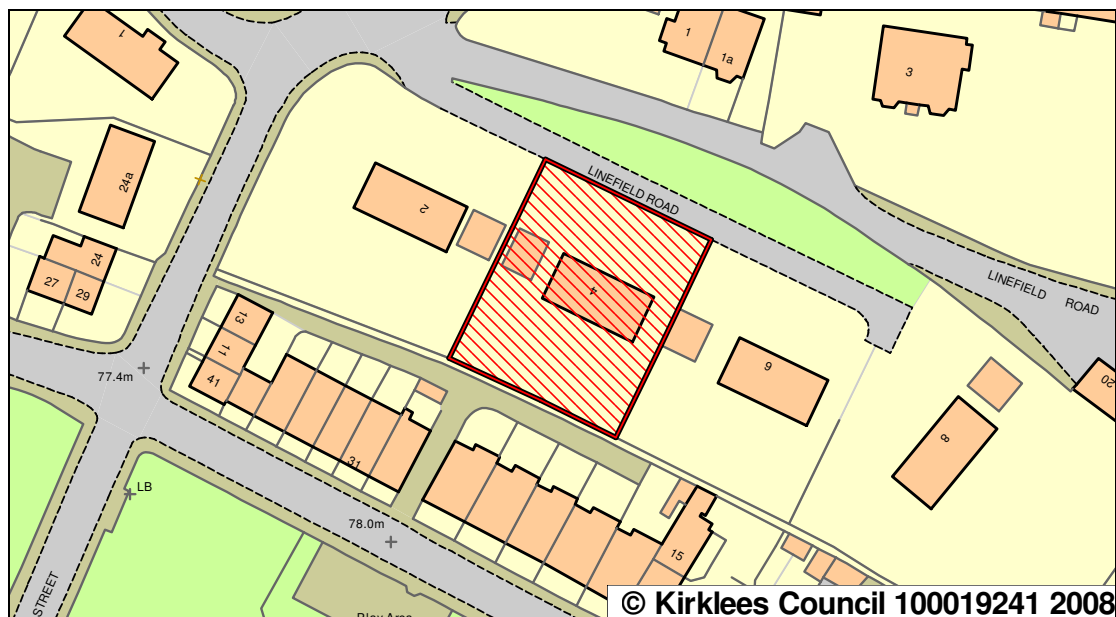
**Target Date: *19-Aug-2016***

**Recommendation: *RF1 - REFUSAL***

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<http://www.kirklees.gov.uk/beta/planning-applications/pdf/public-speaking-committee.pdf>

## **LOCATION PLAN**



**Map not to scale – for identification purposes only**

## **1. SUMMARY OF APPLICATION**

The application seeks permission for the erection of two single storey side extensions and a rear extension at no.4 Linefield Road in Batley. The application site is a detached chalet style bungalow constructed from artificial stone for the external walls, tiles for the roofing materials and upvc for the openings.

The application site is located within the Upper Batley Conservation Area. The principle of extending the dwelling is acceptable subject to the extensions harmonising with the host dwelling.

The single storey rear extension element of the proposal is acceptable. The single storey side extensions are unacceptable due to their scale and design, including their impact on the streetscene, and would be harmful to visual amenity, neither preserving nor enhancing the setting of the Upper Batley Conservation Area. The proposal is contrary to the aims of policies BE1, BE2, BE5, BE13 and BE14 of Unitary Development Plan and the Upper Batley Conservation Area Appraisal, as well as the aims of Chapters 7 and 12 of the National Planning Policy Framework.

**RECOMMENDATION:**

**REFUSE**

## **2. INFORMATION**

The application is brought to the Heavy Woolen Planning Sub-Committee at the request of Councillor Mahmood Akhtar who states:

“I request that the application be brought to HW Sub-Committee so that members can carefully consider the design of the extensions and the impact they would have upon the Conservation Area setting.”

The chair of the Sub-Committee has confirmed that Councillor Akhtar’s reasons for making this request are valid having regard to the Councillor’s Protocol for Planning Sub-Committees.

## **3. SITE DESCRIPTION / PROPOSAL**

### **Site Description**

The application relates to a detached chalet style bungalow on Linefield Road in Batley. The dwelling is set back from the highway and is on a similar level to its neighbouring dwellings. The property is faced in artificial stone and has tiles for the roofing material and uPVC openings.

To the front of the property there is amenity space which is predominantly grassed with a garage to the side. To the rear of the property there is a significant amount of grassed space which is screened by hedging to the southeast, southwest and northwest.

To the northwest of the site is no. 2 Linefield Road, a detached chalet style bungalow of a similar appearance to the applications site. This dwelling is constructed of similar materials as no. 4 and also benefits from a detached garage and a reasonable amount of amenity space to the front, rear, and western side.

To the north east of the site is no. 6 Linefield Road, a detached chalet style bungalow of a similar appearance to the applications site. This dwelling is constructed of similar materials as no. 4 and also benefits from a detached garage and a large amount of amenity space to the front and rear.

The dwellings are located within the Upper Batley Conservation Area which benefits from a Conservation Area appraisal. This will be discussed in the visual amenity section of the report.

### **Proposal**

Planning permission is sought for the erection of a single storey extension to the rear of the dwelling and two single storey side extensions.

The resultant extensions would provide accommodation to serve a utility room and proposed enlarged kitchen and dining area. It would also provide 2 en-suites, a sun room, enlargements to two existing bedrooms, and a new master bedroom.

#### **Rear extension**

The extension would project 3.2 metres from the rear of the site, it would be 11.4 metres in width and 3.9 metres in overall height (3.2 metres to the eaves).

#### **Side extensions**

The extension proposed to the northeast would project 3.15 metres, would be 10.5 metres in length, and 5 metres in overall height (2.8 to the eaves).

There are two extensions proposed to the northwest of the dwelling. Each of these extensions would project 3 metres from the side of the dwelling, would be 3.3 metres in width, and 4.9 metres in overall height (2.4 metres to eaves). These would be attached to the existing detached garage and a new corridor would provide access into the garage from within the host dwelling.

The walls of the extensions would be constructed from artificial stone, the roofing material would be tiles, and the openings would be white uPVC to match the existing.

#### **4. BACKGROUND AND HISTORY**

93/03547 – Erection of extension APPROVED (no. 4 Linefield Road)

87/00282 - Erection of detached bungalow APPROVED (plot 2, Linefield Road)

#### **5. PLANNING POLICY**

The application site is located within the Upper Batley Conservation Area on the Kirklees Unitary Development Plan proposals map.

##### **Kirklees Unitary Development Plan**

D2 – Unallocated land  
BE1 – Design principles  
BE2 – Quality of design  
BE5 – Conservation Areas  
BE13 – Extensions to dwellings (design principles)  
BE14 – Extensions to dwellings (scale)  
T10 – Highway safety  
T19 – Parking Provision  
G6 – Land contamination  
NE9 – Retention of mature trees

##### **National Planning Policy Framework**

Chapter 7 - Requiring good design

Chapter 11 – Conserving and enhancing the natural environment

Chapter 12 – Conserving and enhancing the historic environment

##### **Other relevant documents**

Upper Batley Conservation Area Appraisal – adopted document providing guidance on the character of the conservation area.

#### **6. CONSULTATIONS**

The following is a brief summary of consultee advice (more details are contained in the assessment section of the report, where appropriate).

**K.C. Conservation and Design** – Due to the lack of quality in the design and the impact upon the street scene it is recommended that the application is refused.

**K.C Environmental Health** – The existing building and proposed extension are on land that is shown to be potentially contaminated from its former use. The proposed extension is a significant enlargement to the property. The end use will be residential which is particularly sensitive to contaminate land issues. Conditions relating to contaminated land recommended.

## **7. REPRESENTATIONS**

No neighbour representations have been received.

Councillor Akhtar has requested the application be referred to the Heavy Woollen Planning Sub-Committee for the reason set out in section 2 of this report.

## **8. ASSESSMENT**

### **Principle of Development:**

The site is within the Upper Batley Conservation Area. Section 72 of the Listed Buildings & Conservation Areas Act (1990) requires that special attention shall be paid in the exercise of planning functions to the desirability of preserving or enhancing the appearance or character of the Conservation Area. This is mirrored in Policy BE5 of the Unitary Development Plan together with guidance in Chapter 12 of the National Planning Policy Framework.

The report will now discuss the following issues: the impact on residential amenity, the impact on visual amenity (including an assessment of conservation area policy) and highways safety.

### **Impact on Visual Amenity:**

The impact on the Upper Batley Conservation Area will be considered. This section will then be split into two areas; the ground floor rear extension and the side extensions.

### **Impact on Upper Batley Conservation Area**

Within the Upper Batley Conservation Area appraisal, Linefield Road is not mentioned specifically. The Appraisal at section 6 of the document references the importance of open space and tree coverage which it notes comprises an important feature of the revised Upper Batley conservation area. The conclusion of the Appraisal at section 13 states “the proposed expansion of the conservation area does not mean that new development will not permitted, but that such development will be of high quality and respect the open space and gardens which are integral to the character and setting of Upper Batley conservation area”. This development proposal would erode the space between neighbouring properties which overall is a positive feature of the Conservation Area which is contrary to the aims of the Appraisal. Following a formal consultation with the Council’s Conservation and Design team, it has been stated the bungalows are of late 20<sup>th</sup> century construction

building on land that formed the railway cutting. Whilst the buildings are within the conservation area they are of little significance to the character of the conservation area which is typified by a mix of Victorian villas and late Victorian industrial buildings and cottages. The appraisal for the conservation area makes no reference to the sites significance however, due to their inclusion any alteration needs to comply with Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Overall therefore the proposed extension would not accord with the aims of the Conservation Area appraisal as the spaces between the building, which albeit have a neutral effect upon the character and appearance of this part of the conservation area would be eroded and therefore the impact on the conservation area from the development would fail to preserve or enhance the character and appearance of this part of the conservation area.

## Design

### *Ground floor rear extension*

Although it is acknowledged that the extension has a flat roof, it cannot be seen from the streetscene and is constructed from materials to match the existing. The extension is set down from the ridge of the host dwelling and is read as a subservient addition. The openings are of a similar design, scale and materials and the glazing and roof lantern add a contemporary element to the extension. The extension is not the full width of the dwellinghouse and would only project as far as the existing dressing room/en suite. Although it is acknowledged that this is a slightly larger projection than what is generally supported on closely spaced dwellings under policy BE14 of the UDP (approximately 3.2 metres), the extension is set well off the boundary with neighbouring properties and there is a large amount of amenity space remaining at the front and rear of the site which would not result in any overdevelopment of the site.

It is likely that this extension could be erected under permitted development rights and therefore this is given some limited weight when determining whether the extension is acceptable.

### *Side extensions*

There is a uniform layout of development along this part of Linefield Road with regular gaps between the detached garages and chalet style properties. It is considered that the side extensions would break this uniformity, resulting in a development extending the full width of the site, harmful the character of the area which has been designated as being of special architectural or historic interest. Although it is acknowledged that the conservation area was designated after the dwellings were constructed, conservation policy still needs to be considered. The extensions would, in the view of officers, relate awkwardly to the host dwelling and would comprise a dominant and inappropriate form of development in this location. The host dwelling would, in

the opinion of officers, lose its character and unbalance the streetscene by virtue of elongating the host dwelling significantly.

By virtue of their unsympathetic scale and massing, it is considered that the extensions would relate awkwardly and detract from the character of the host dwelling and unbalance the appearance of the streetscene, and would neither preserve nor enhance the Upper Batley Conservation Area. Given that the extensions are to the side of the dwelling, a terracing effect needs to be considered. In this case, the extensions would close the gaps between the garages and would create a harmful terracing impact.

Proposals for new development within conservation areas, including extensions or changes of use to existing buildings, should respect the architectural qualities surrounding buildings and their materials of construction, and contribute to the preservation or enhancement of the character or appearance of the area. The side extensions would dominate the front elevation of the modest host dwelling and detract from its character by virtue of its scale and design. The extension would be harmful to visual amenity with regards to the appearance of the host dwelling, contrary to policies BE1, BE2, BE5, BE13 and BE14 of the UDP, as well as the aims of Chapter 7 and Chapter 12 of the NPPF.

Officer's has been in negotiations with the applicant to achieve an amended design and siting of the extension to create a subservient addition to the host dwelling which would not relate incongruously to the main building. However, the applicant does not wish to amend their proposal due to not achieving the desired accommodation. In light of this, a determination has been requested on the basis of the originally submitted plans.

Paragraph 64 of the NPPF states that applications should be refused which represent poor design. In this case, although the host dwelling itself is not of especially high architectural quality, paragraph 64 also discusses how development should take opportunities for improving the character and quality of an area. Officers consider that the proposal, for the reasons highlighted within the report, would detract from the character of the host dwelling and the immediate streetscene and would therefore be harmful to visual amenity and would not improve the appearance of the host dwelling within the conservation area.

Furthermore, there is no fall-back position. This is because side extensions within a conservation area do not fall under permitted development legislation.

#### **Impact on Residential Amenity:**

This section will individually assess the impact on neighbouring properties. No representations have been received from any members of the public.

### Impact on no. 2 Linefield Road

Given that there is a garage (which is a non-habitable room) on either side of the boundary as well as heavy screening and a significant distance between the neighbouring dwelling and the proposed extensions, there would be no harm to the residential amenity for the occupiers of this neighbouring property with regards to overbearing.

With regards to overlooking/loss of privacy, there is a window in the side elevation of the proposed rear extension facing this site which serves a habitable room. However, given the distance to the boundary (approximately 9 metres with a further 7 metres to the main dwelling at no. 2) and the fact that this is a secondary window (main opening in the rear elevation), it is considered by officers that this would not lead to a harmful level of overlooking/loss of privacy. The side extensions would be joined to the existing garage and therefore would be screened.

### Impact on no. 6 Linefield Road

This neighbouring dwelling benefits from a garage on the boundary to the southeast of no. 4 Linefield Road. For this reason, the side extensions would be screened by this and there would be no overbearing. With regards to the rear extension, this is set off the boundary by 4 metres and is single storey in height. The extensions would not cause harm to the residential amenity to the occupiers of no.6 in terms of overbearing.

With regards to overlooking and a loss of privacy, there are no openings proposed in the side elevation of the rear extension or side extensions. The side extension would be screened by the neighbouring garage.

Although it is acknowledged that there is heavy screening on the boundary with this site, this could be removed without planning permission and there is only a distance of 4 metres between the rear extension and the rear amenity space of no. 6. For this reason, should the application be approved, a condition would be recommended to remove permitted development rights for new openings in this elevation to avoid overlooking into this rear amenity space.

### Impact on surrounding properties

There is a significant distance between dwellings at the front of the site and dwellings at the rear of the site to avoid any impact to the residential amenity of the occupiers of these dwellings.

### Overall

In conclusion, it is considered that the proposal would be acceptable in terms of residential amenity. The application would be compliant with Policies D2, BE1 and BE14 of the UDP.



### **Impact on Highway Safety:**

The proposed extension would lead to an increase in the number of bedrooms from 3 to 4. For this reason, the amount of parking provision that is required (3 spaces) would not alter. The extension would not be erected on land used for parking and the driveway can accommodate two car parking spaces. The garage would additionally accommodate one vehicle meaning 3 parking spaces can be provided on site. The proposal is in accordance with policy T19 of the Kirklees UDP. Given the quiet nature of this part of Linefield Road, reversing onto the highway would not cause highways safety issues and the proposal is in accordance with policy T10 of the UDP.

### **Other matters:**

#### Contaminated Land

Following consultation with the Council's Environmental Health team, the site is on land that is shown to be potentially contaminated. Residential uses are particularly sensitive to contaminated land and therefore, should the application be approved, 4 conditions are recommended with regards to contaminated land. The inclusion of these conditions would ensure that the proposal would accord with policy G6 of the UDP and chapter 11 of the NPPF.

#### Impact on Protected Trees (TPO23/77/a1)

This area of protected trees is a significant distance from the application site and therefore there would not be any harm to the trees or their roots as a result of the development. The proposals are therefore considered to accord with the aims of policy NE9 of the UDP.

There are no other matters considered relevant to the determination of this application.

### **Representations**

No representations have been received from any members of the public.

Ward Councillor Akhtar's comments are considered to be addressed in the assessment above.

### **Conclusion:**

To conclude, the rear extension is considered to be acceptable however, the side extensions, would result in development extending across the full width of the site, would be harmful to the visual amenity of the host dwelling, street scene, and would fail to preserve or enhance the significance of the Upper Batley Conservation Area.

The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice.

This application has been assessed against relevant policies in the Kirklees Unitary Development Plan and other material considerations. It is considered that the side extension elements of the proposals do not accord with the development plan and that there are specific policies in the NPPF that indicate development should be restricted.

## **9. RECOMMENDATION**

### **REFUSE**

1. The proposal, by virtue of the design and scale of the side extensions would result in unduly dominant extensions on the host dwelling. This would impact adversely upon the visual amenity of both the host dwelling and the streetscene which currently has a uniform layout along Linefield Road. Furthermore, the erection of the side extensions would create a detrimental terracing effect, resulting in development extending across the full width of the application site which would neither preserve nor enhance the character of the Upper Batley Conservation Area. To approve the proposals would be contrary to Policies BE1, BE2, BE5 and BE14 of the Kirklees Unitary Development Plan and the Upper Batley Conservation Area Appraisal as well as the aims of chapters 7 and 12 of the National Planning Policy Framework.

This recommendation is based on the following plans and specifications schedule:-

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Location plan	1:1250	-	24.06.2016
Proposed front and rear elevations (and proposed side elevation)		-	15.08.2016
Existing front and rear elevations	-	-	24.06.2016
Proposed ground floor plan	-	-	
Proposed ground floor plan	-	-	
Existing ground floor plan and location plan	-	-	24.06.2016

**Application No: 2016/92276**

**Type of application: 62HH - FULL APPLICATION**

**Proposal: *Erection of single storey rear extension***

**Location: 258, Headfield Road, Thornhill Lees, Dewsbury, WF12 9JN**

**Grid Ref: 424587.0 419840.0**

**Ward: *Dewsbury South Ward***

**Applicant: *Mr I Hussain***

**Agent: *Raja Riaz***

**Target Date: *02-Sep-2016***

**Recommendation: *RF1 - REFUSAL***

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<http://www.kirklees.gov.uk/beta/planning-applications/pdf/public-speaking-committee.pdf>

## **LOCATION PLAN**



**Map not to scale – for identification purposes only**

## **1. SUMMARY OF APPLICATION**

The single storey rear extension, by reason of the excessive projection, scale and massing would result in an overbearing and oppressive relationship being formed to the residential amenity of the occupants of the adjoining, no. 260 Headfield Road. Furthermore, the scale of proposed extension, in addition to the existing extensions to the original dwellinghouse is considered to represent overdevelopment of the modest family home which would not represent good design and would therefore be detrimental with regards to visual amenity. This is contrary to policies D2, BE1 and BE14 of the Kirklees Unitary Development Plan and chapter 7 of the NPPF. The special circumstances of the applicant have been carefully considered however officers are of the view that this does not outweigh the concerns set out in this report.

### **RECOMMENDATION: REFUSAL**

## **2. INFORMATION**

This application was reported to the chairs briefing prior to Planning Sub-Committee at the request of Cllr Masood Ahmed.

“I would like to request that the planning application for 258 Headfield Road be put to the Heavy Woollen Planning Committee for a decision with a site visit.

Whilst I appreciate that the Planning Officers consider that the application should be refused given the significant projection together with the lack of explicit support from the Accessible Homes Team, I feel that the committee should consider that the accommodation needs to work for the entire family.

The Accessible Homes Team has said that they would be able to provide the accommodation required within the footprint of the existing house, but this would have repercussions on the family's living standard.

I would also request that the Planning Committee Members pay particular attention to the many various extensions and outbuildings on this section of Headfield Road and proximity on their site visit. Because of the various extensions already evident within the area, the proposal is not, in my view, considered to be harmful to the visual amenity of the area and its design would be acceptable.

Finally I think that as the applicant could build a 2m high wall on the boundary with the adjoining property and that the eaves of the extension is only 0.9m higher than this with the roof sloping up and away from the property the harm would not be so significant on the amenity of the occupants of the adjoining property 260 Headfield Road.”

*The Chair of the Sub Committee has confirmed that this reason is acceptable having regard to the Councillors' Protocol for Planning Sub Committees.*

### **3. SITE DESCRIPTION /PROPOSAL**

#### **Site Description**

258 Headfield Road is a semi-detached two storey dwelling. The property has been constructed using red brick although there are some render details on the front elevation. There is also a bay window on the front elevation of the dwelling with a canopy. The property has a small garden to the front, drive along the side leading to a shared garage to the rear, and an enclosed rear garden. The property also has an existing two storey extension to the rear of the dwelling.

The property is surrounded by similar residential properties to the front, sides, and rear. Moreover there are a significant number of extensions and alterations to the other dwellings in the area. The adjoining property, 260 Headfield Road has a single storey rear extension and a detached garage. The adjacent property, 256 Headfield Road has a shared garage with the host property to the rear and a two storey rear extension. The property to the rear, 9 Ashfield, has a large outbuilding along the common boundary with the host property.

#### **Proposal**

The applicant is seeking permission for the erection of a single storey extension to the rear to provide ground floor accommodation for a disabled member of the occupying family.

The extension is proposed to project 5m from the rear of the existing extension (overall projection 8m inclusive of the existing extension) and would extend across the full width of the dwelling. The extension is proposed to have a pitched roof form.

The walls of the extension proposed would be faced using red brick and the roof would be covered with tiles.

The existing detached garage is shown to be demolished.

### **4. BACKGROUND AND HISTORY**

2016/90839 – Erection of front, side and rear extensions – refused by reason of overdevelopment and impact on neighbour's amenities.

2012/92358 – Erection of front and rear extension formation of new roof and dormers – approved

1998/90637 – Erection of two storey rear extension – granted and built

## **5. PLANNING POLICY**

The site is unallocated on the UDP proposals map.

### **Kirklees Unitary Development Plan**

- **D2** – Unallocated land
- **BE1** – Design principles
- **BE13** – Extensions to dwellings (design principles)
- **BE14** – Extensions to dwellings (scale)
- **T10** – Highway Safety
- **T19** – Parking

### **National Planning Policy Framework**

- Chapter 7 – Requiring good design

## **6. CONSULTATIONS**

The following is a brief summary of Consultee advice (more details are contained in the assessment section of the report, where appropriate).

**K.C. Accessible Homes** – A scheme could be achieved within the existing footprint of the property which would meet the needs of the client. Therefore the Accessible Homes Team cannot support an extension as being the only option in this case.

## **7. REPRESENTATIONS**

No representations have been received.

## **8. ASSESSMENT**

### **General Principle / Policy:**

The site is unallocated within the Unitary Development Plan proposals map. As such, development can be supported providing the proposal does not prejudice the avoidance of overdevelopment, highway safety, residential amenity, visual amenity and the character of the surrounding area in line with the aims of policy D2 (specific policy for development on unallocated land) of the UDP.

These issues along with other policy considerations will be addressed below.

### **Impact on Amenity:**

#### Visual amenity

The properties on Headfield Road, although mostly of a similar age, have undergone considerable extensions and alterations, including the host property which has a two storey extension to the rear and a large shared

outbuilding to the rear. As such, it may be acceptable to extend the host property dependent upon design, scale and detailing.

The proposed projection of 5m, in addition to the previously approved and built 3m extension, would result in a significant portion of the rear garden being developed. This would form a disproportionate extension, having a total projection of 8m and extending full width across the rear elevation of the host dwelling. Whilst the extension is proposed to be constructed using appropriate materials and detailing, and also includes the demolition of the existing detached garage, the overall scale of the extension would result in significant bulk and mass relative to the modest dimensions of the original property. This is considered to amount to overdevelopment of the site which would not represent good design and would have a detrimental impact in terms of visual amenity.

Therefore the scheme is not considered to comply with Policies D2, BE1, BE13, and BE14 of the UDP and the aims of chapter 7 of the NPPF.

### Residential amenity

The single storey rear extension would have the potential to impact upon the amenities of the occupiers of the adjoining 260 Headfield Road, the adjacent 256 Headfield Road, and 9 Ashfield to the rear. For the purposes of this assessment, the impacts have been separated out as follows.

#### *256 Headfield Road*

The impact is mitigated to a degree by the presence of the existing outbuilding to the rear of the adjacent 256 Headfield Road and the adjacent neighbours own two storey rear extension. Furthermore, a degree of separation is provided and would be retained with the drives to the side of each property. Therefore, it is considered that there would not be significant harm to the amenities of the occupiers of the adjacent 256 Headfield Road.

#### *9 Ashfield*

There is a large outbuilding to the rear of the neighbouring 9 Ashfield which would block much of the single storey rear extension. As such, the rear extension would not have a significant impact on the amenities of the occupiers of the neighbouring dwelling to the rear, 9 Ashfield.

#### *260 Headfield Road*

The harm caused to the amenities of the occupants of the adjoining 260 Headfield Road will be significant for the following reasons.

The position of the extension to the north-east of the neighbour is such that there would be overshadowing caused in the early to mid-morning to the windows in the rear elevation and the garden space of the adjoining property. Although the overshadowing would not occur all day, the 5m projection along

the common boundary at a height of over 2.9m to the eaves would have a significant overbearing and oppressive impact on the amenities of the occupiers of the adjoining 260 Headfield Road. Despite the modest single storey flat roof extension to the rear of the adjoining property, which projects no further than the existing two storey extension to the rear of the application property, there are no other features on the site which would mitigate the impact of such a large extension on the amenity of these adjoining occupants.

As such, due to the significant scale of the extension and the impact it would have on the amenity of the occupants of the adjoining 260 Headfield Road, it is considered that the proposals are unacceptable from a residential amenity perspective, and fail to comply with policies D2, BE1 and BE14 of the UDP.

### **Other Matters:**

#### Personal circumstance

A member of the family has complex physical disabilities with no independent mobility and is an essential wheelchair user. The resident has been assessed by the appropriate professionals and it has been confirmed that there is a genuine need for adaptations to be made to the family home.

Members are advised that it is not unusual for larger extensions than would usually be permitted to be granted planning permission when taking account of the special circumstances of an applicant, particularly when disability and mobility issues of the occupiers are the driver behind requiring a larger extension than planning policy would normally allow. This approach is consistent with the requirements of Section 38 (6) of the Planning and Compulsory Purchase Act 2004 which states "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise".

The accommodation proposed within this application will provide ground floor bedroom and bathing facilities for the disabled member of the family. Therefore consultation has been carried out with the Council's Accessible Home's team who confirmed that they are aware of the family and the nature of the disabled resident's needs. As part of their consultation response, the Accessible Home Team have responded that they could provide for the needs of the client within the footprint of the existing dwelling through the use of a through floor lift in the living room up into a larger front bedroom and adapting the existing bathroom with a level access shower. As such, the Accessible Homes Team is not supporting the proposal as the only option to provide the required facilities in this case. Therefore, there is insufficient weight regarding this issue to override the concerns relating to the impact on the amenities of the occupants of the adjoining property and the concerns relating to overdevelopment of the site.



Officers have suggested an alternative scheme in terms of re-positioning the extension away from the shared boundary with the adjoining property and extending out past the side elevation of the dwelling. The applicant has considered this suggestion however he felt that the internal arrangements would not provide a satisfactory layout for the use of the family.

### Highway Safety

Although the proposal would result in the loss of the garage for parking, the property has two off road parking spaces within its curtilage to the front and side of the dwelling. The scheme would not represent any additional harm in terms of highway safety and as such complies with policies D2, T10 and T19 of the UDP.

There are no other matters relevant for consideration.

### **REPRESENTATIONS**

None received by any members of the public.

Ward Councillor Ahmed has requested that the application be considered by members of the Heavy Woollen Planning Sub-Committee for the reasons set out in Section 2 of this report.

The matters raised by Councillor Ahmed have been addressed in the main assessment, and it is the view of officers that the special circumstances of the applicant do not outweigh the concerns relating to visual and residential amenity.

### **Conclusion:**

This application to erect a single storey extension to the rear of 258 Headfield Road has been assessed against relevant policies in the development plan as listed in the policy section of the report, the National Planning Policy Framework and other material considerations.

Having regard to the special circumstances of the applicant and acknowledging no objections have been received to the publicity of the application, it is considered that the projection and scale of the rear extension would have an oppressive and overbearing impact on the amenities of the occupants of the adjoining 260 Headfield Road, which is considered to be unacceptable in terms of policies D2, BE1 and BE14 of the Kirklees UDP.

Furthermore, the scale of proposed extension, in addition to the existing extensions to the original dwellinghouse is considered to represent overdevelopment of the site. This would not be considered to represent good design and would therefore be detrimental with regards to visual amenity. This is contrary to policies D2, BE1 and BE14 of the Kirklees UDP and chapter 7 of the NPPF.

It is considered that the development proposals do not accord with the development plan and the adverse impacts of granting permission would significantly and demonstrably outweigh any benefits of the development when assessed against policies in the NPPF and other material consideration.

## **9. RECOMMENDATION**

### **REFUSE**

1. The single storey rear extension, by reason of the excessive projection, scale and massing, would result in an overbearing and oppressive relationship being formed to the residential amenity of the occupants of the adjoining property, no. 260 Headfield Road. This is contrary to Policies D2, BE1, and BE14 of the Kirklees Unitary Development Plan.

2. The proposed extension, by reason of its scale when viewed in addition to the existing extensions to the original dwellinghouse, would result in the overdevelopment of the application site which would not represent good design and would be detrimental with regards to visual amenity. To permit this extension would be contrary to Policies D2, BE1 and BE14 of the Kirklees Unitary Development Plan and chapter 7 of the National Planning Policy Framework.

This recommendation is based on the following plans and specifications schedule:-

<b>Plan Type</b>	<b>Ref</b>	<b>Web ID</b>	<b>Date Received</b>
Location plan	-	594446	08/07/2016
Proposed site plan	-	594445	08/07/2016
Existing floor plans	-	594456	08/07/2016
Front/rear elevations	-	594454	08/07/2016
Side elevations	-	594453	08/07/2016

# KIRKLEES METROPOLITAN COUNCIL

## PLANNING SERVICE

### UPDATE OF LIST OF PLANNING APPLICATIONS TO BE DECIDED BY PLANNING SUB-COMMITTEE (HEAVY WOOLLEN AREA)

1 SEPTEMBER 2016

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APPLICATION NO: 2015/91005

PAGE 8

**CHANGE OF USE FROM WAREHOUSE TO A MIXED USE COMPRISING  
WAREHOUSE, FOOD PROCESSING, CASH AND CARRY AND  
SPECIALIST RETAIL FOODSTORE AND FORMATION OF CAR PARK**

**WELLINGTON MILLS, 7, PURLWELL LANE, BATLEY, WF17 5BH**

#### **8. ASSESSMENT**

##### **Impact on highway safety:**

Further to the 'Impact on highway safety' section set out from page 16 of the main agenda, further information/video evidence has been provided showing two highway safety incidences. One involved a customer car whilst exiting the car park being bumped by an arriving customer car - this was considered to be a low impact event with no injuries being recorded. The second incident is considered to be a 'very serious' event at the entrance of the car park where a fork lift truck laden with 12 pallets lost its load on the footway and carriageway of Charles Street.

In terms of injury accidents within the vicinity of the site recorded over the past 5 years, there has been one (serious) accident in November 2014 (1000hrs) which involved a pedestrian being hit by a car whilst crossing Wellington Street at its junction with Purlwell Lane.

With respect to the submitted Car Park and Servicing Management Plan, the Highways Development Management (HDM) consultation dated 16th November concluded that this application provides insufficient information to allow a proper highway assessment and given the level of objections further parking surveys should be undertaken and a detailed Car Park and Servicing Management Plan should be provided.

A car parking survey was undertaken by the applicants on Thursday 10 September 2015 between 11.00 and 18.00 with the maximum numbers of vehicles in the study area being 25.

Further surveys on the Friday 11th December 2015 between 1600 and 1900 hours and on Saturday 12th December 2015 between 1100 and 1430 were undertaken, with 30 being the maximum number recorded at 1115 hours on the Saturday.

A HDM officer visited the site on Friday 13th November 2015 and Saturday 14th November with the maximum numbers of vehicles in the study area being 22 on the Saturday.

The study area included all vehicles within the existing Mullaco car park and the surrounding streets.

The parking survey demonstrates that the proposed car park with 28 spaces should be sufficient in size to accommodate the parking associated with the retail use.

The applicants have provided a revised Car Park/ Servicing Management Plan which includes the following:

**Staff Parking:** Four parking spaces are allocated for the use of staff.

The Car Park/ Servicing Management Plan includes the following comments regarding staff parking:

The Company currently employs a number of people from the local community who walk or cycle to work. Other employees use public transport and only a few (about 4) use their own car. The Company will continue to actively recruit staff from the local area to ensure that the level of parking provision is sufficient to meet demand and to avoid overspill parking. Any staff found to be parking on adjacent streets and causing a nuisance / hazard will be subject to disciplinary procedures.

**Customer Parking:** 24 parking spaces are allocated for the use of customers within the proposed car park including one disabled parking space.

**Parking Signage/Lining:** The delivery area in the car park will be marked out using yellow hatching as shown on the drawing. This will be extended across the frontage of the premises. The parking spaces will be marked out within the car park with white lining.

**Deliveries:** The Company has an agreement with Global Storage and Logistics on Soothill Lane in Batley for all goods transported in large HGV's to be delivered to that site and NOT to Wellington Mills. The goods are then collected by the Company in its own van / 3.5 to 7.5T goods vehicles all of which can turn within the proposed car park.

The levels within the building are such that some deliveries in vans may need to take place on Charles Street.

**Fork lift trucks:** The Company is in the process of purchasing a new fork lift truck. This will have the appropriate warning equipment (visual and audio) so that customers will be aware of the movements taking place. Signs will be erected in the car park to advice customers of the use of the fork lift truck.

In relation to the submitted information Highways Development Management have the following concerns are as follows:

1. The proposed document is not considered to be a standalone document which can be referenced in a 106 Agreement.
2. Fork lift trucks are still proposed to be used on the public highway.
3. Fork lift trucks are still proposed to be used within the car park during the proposed opening times for the retail unit.
4. The proposals rely on a third party land to provide facilities to accommodate the additional parking area and turning area for larger HGV's.
5. No details on refuse collection and collection facilities are provided.
6. No details of the timing of the deliveries to the site is proposed.
7. No name and contact details have been provided on who would be responsible for managing 'plan'.

#### **Representations:**

Five further letters of objection have been received. The concerns raised are detailed below:

There has been an incident of pallets falling off the forklift trucks and the concern regarding the danger to pedestrians.

**Response:** As noted, this incident is considered to be a 'very serious' event at the entrance of the car park where a fork lift truck laden with 12 pallets lost its load on Charles Street's footway and carriageway.

A traffic island bollard has been knocked over at the junction of Purlwell Lane and Wellington Street.

**Response:** This is noted although the cause of this is unknown.

The submitted Car Park and Servicing Management Plan has not already been implemented by the Company.

**Response:** This information is noted.

The Car Park Management Plan is not practical and does not work for Mullaco's business operations.

**Response:** Officers consider that the proposal has failed to demonstrate that adequate servicing and off-street parking facilities can be provided to serve the intensified use.

Concern where the waste bins will be placed.

**Response:** The waste bins are shown in their existing position adjacent to the side of the building within the car parking area.

There is a strong objection to the disposal of the land

**Response:** This is noted.

Mullaco have removed a banner advertising qurbani (a sacrifice of animal ritual). Last year Mullaco did qurbani from the site and was open late after 9pm. Concern the banner has been removed for the benefit of the site visit.

**Response:** This is noted. This advertisement would not benefit from deemed consent and would require advertisement consent.

**Other matters:**

*Land Ownership*

To facilitate the proposed extension to the car park, the applicant will need to acquire additional land to the north of the site. This land is owned by Kirklees Council. Discussion has been undertaken regarding the disposal of the site, but there is no record of an agreement being in place.

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Name of meeting: Planning sub-committee (Heavy Woollen area)

Date: 1 September 2016

Title of report: Application for a definitive map modification order to delete public footpath Batley 49 (part) from the definitive map and statement, and to add a public footpath at Hey Beck Lane, Woodkirk, Dewsbury.

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	No
Is it in the <a href="#">Council's Forward Plan</a> ?	No
Is it eligible for "call in" by <a href="#">Scrutiny</a> ?	Yes
Date signed off by <u>Director</u> & name	26 August 2016: Joanne Bartholomew on behalf of Jacqui Gedman
Is it signed off by the Director of Resources?	No. See 3.4 No financial implications
Is it signed off by the Assistant Director - Legal & Governance?	Yes
Cabinet member <a href="#">portfolio</a>	Investment & Housing

Electoral [wards](#) affected: Batley East

Ward councillors consulted: Yes

Public or private: Public

## 1. Purpose of report

- 1.1 Members are asked to consider an application for a definitive map modification order (DMMO) to delete part of public footpath Batley 49 at Hey Beck Lane from the definitive map & statement as shown by the bold dashed line marked C-D on plan 1, attached to this report, and to add a public footpath over a different route, as shown on plan 1 as a bold dashed line between A-B.
- 1.2 The decision required is whether or not the council should make an order. The council should make whatever order is requisite following consideration of the evidence, i.e. the order applied for, a different order or no order at all.

## 2. Key points

- 2.1 The council has a duty to keep the definitive map and statement of public rights of way under continuous review.

- 2.2 The public rights of way (PROW) unit receives applications from members of the public to add, delete, upgrade, downgrade or vary the details of ways recorded on the legal record of public rights of way.
- 2.3 Appendix 1 to this report: “Amendments (modifications) to the definitive map, guidance notes for members”, outlines the factors members need to consider when determining applications to amend the definitive map and statement.
- 2.4 Members must consider the evidence and decide whether it has been shown that the application routes should be deleted from and added to the definitive map. It is not a material factor whether the existence and recording of the public footpath is convenient or inconvenient, desirable or undesirable to any party.
- 2.5 The application is made under the Wildlife & Countryside Act 1981.

Section 53 (2) and section 53 (3) c (iii) require the council to make an order to modify the definitive map when evidence is discovered which (when considered with all other relevant evidence available to it) shows that “there is no public right of way over land shown in the map and statement as a highway of any description...”

- 2.6 Section 53 (3) a (i) would apply where a path has been subject to an authorised diversion or extinguishment, such as a formal public path order. Such a change to the formal record would usually be by way of a legal event modification order, (“LEMO”) which is an administrative task without the need for public consultation, rather than by way of a definitive map modification order. However, it would also be requisite to have demonstrable evidence of the alleged legal event, such as a confirmed, brought into force diversion order, to make a LEMO.
- 2.7 Additionally, section 53 (3) c (i) requires the council to make an order to modify the definitive map when evidence is discovered which shows “a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic;”.
- 2.8 Unrecorded public rights of way may come into being in a number of different ways, such as a result of a legal event such as a creation or diversion. Further, Section 53(3)(b) of the 1981 Act requires the Council to modify the Definitive Map and Statement on expiration of any period of public use if it can be shown that the public have used the path for a sufficient length of time to raise a presumption that the path has been dedicated as a public path. This presumption, detailed in the Highways Act 1980 section 31, states “*where a way over any land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption for a full period of 20 years the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it*”. In identifying a relevant 20 year period for the purpose of section 31, we have to work retrospectively from this date of challenge.
- 2.9 Dedication of a public path at Common Law should also be considered. The main principles of establishing a highway under common law are:
- 2.9.1 Use by the public should be as of right; without force, secrecy or permission.



- 2.9.2 The landowner should know of the use but do nothing to prevent it. No minimum period of use is required (unlike the statutory process where a minimum of 20 years is required).
  - 2.9.3 The more intensive and open the use and the greater the evidence of owners knowledge and acquiescence the shorter the period required to raise a presumption that the way has been dedicated.
  - 2.9.4 Each case is judged on the facts available.
  - 2.9.5 The onus of proof lies with the person making the claim to show that there was use and that the owner knew of it and did nothing to stop it.
- 2.10 In considering the addition of unrecorded footpaths, there are two tests to be applied, as identified in the case of *R v Secretary of State for the Environment ex parte Mrs J Norton and Mr R Bagshaw*, and clarified in the case of *R v Secretary of State for Wales ex parte Emery*.
- 2.10.1 Test A: Does a right of way subsist? This requires clear evidence in favour of public rights and no credible evidence to the contrary.
  - 2.10.2 Test B: Is it reasonable to allege that a right of way subsists? If there is a conflict of credible evidence but no incontrovertible evidence that a right of way cannot be reasonably alleged to subsist, then a public right of way has been reasonably alleged.
- 2.11 If the council were to make a decision to make an order adding a footpath only on the basis of Test B, members may note that the public rights of way provisions of the Deregulation Act 2015, which are yet to come into force, will remove Test B, so any such authorised order could only be made prior to commencement of any such relevant provisions.
- 2.12 The definitive map and statement is conclusive evidence as to the existence of a public right of way, unless and until it is modified by an order under the provisions of section 53 of the 1981 Act, in this case to show that the path had been included in error, there having been no public right of way over the path when it was added to the definitive map and statement or should subsequently be removed as a consequence of a legal event, such as formal diversion..
- 2.13 Public footpath Batley 49 is a recorded public highway currently shown in the definitive map and statement. An enlarged copy extract of the 1985 modified definitive map is appended with plan 1, the 1985 definitive statement copy extract is appended.
- 2.14 Section 32 of the Highways Act 1980 states “*A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.*” Whether determination is by the Inspectors appointed by the Secretary of state, the highest courts or the council as surveying authority for public rights of way, it is appropriate and correct for those deciding such matters to consider documents that form part of the available evidence, and to decide the weight of that evidence in reaching a decision.

- 2.15 Government guidance to local authorities is contained in DEFRA'S Rights of Way Circular 1/09, version 2

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69304/pb13553-rowcircular1-09-091103.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69304/pb13553-rowcircular1-09-091103.pdf)

- 2.16 Paragraphs 4.30 to 4.35 of this circular deal with deletions of public rights of way from the definitive map and statement. These paragraphs are attached to this report in full as Appendix A.

- 2.17 This guidance provides that "The evidence needed to remove what is shown as a public right of way from such an authoritative record as the definitive map and statement....will need to fulfil certain stringent requirements. These are that:

2.17.1 The evidence must be new –an order to remove a right of way cannot be founded simply on a re-examination of evidence known at the time the definitive map was surveyed and made.

2.17.2 The evidence must be of sufficient substance to displace the presumption that the definitive map is correct.

2.17.3 The evidence must be cogent."

- 2.18 Members are advised that if a definitive map modification order is made, which then attracts objections which are not withdrawn, then the council would have to forward it to the Secretary of State at DEFRA for determination. The DMMO consistency guidelines, are issued to the Secretary of State's inspectors in the planning inspectorate

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/51749/5/Full\\_version\\_February\\_2016\\_consistency\\_guides\\_2\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/51749/5/Full_version_February_2016_consistency_guides_2_.pdf)

- 2.19 They deal specifically with deletions in the guide's paragraphs 4.18 to 4.23. These paragraphs are attached as Appendix B.

- 2.20 Paragraph 4.18. of the guidelines indicates "When considering whether a right of way already shown on definitive map and statement should be deleted, or shown as a right of way of a different description, the Inspector is not there to adjudicate on whether procedural defects occurred at the time the right of way was added to the definitive map and statement (for example notice was incorrectly served). Unless evidence of a procedural defect is relevant to establishing the correct status of the right of way concerned (for example a key piece of documentary evidence indicating a different status was ignored), there can be no reason to consider it. There must be presumption that the way is as shown on the definitive map and statement, even if the procedures were defective, unless there is evidence to establish that the way should be shown as being of a different status, or not shown at all."

- 2.21 Paragraph 4.19 of the guidelines refers to the judgment in the case of *Trevelyan v Secretary of State for the Environment, Transport and the Regions* (2001) ("*Trevelyan*") and in particular the following statement by Lord Phillips M.R., "Where the Secretary of State or an inspector appointed by him has to consider whether a right of way that is marked on a definitive map in fact exists, he must start with an initial presumption that it does. If there were no evidence which made it reasonably arguable that such a right of way existed, it should not have been marked on the map. In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that such evidence existed. At the end of the day, when all the evidence has been considered, the standard of proof

to justify a finding that no right of way exists is no more than the balance of probabilities. But evidence of some substance must be put in the balance, if it is to outweigh the initial presumption that the right of way exists.”

2.22 In light of the above guidance, the starting point for a deletion is that footpath Batley 49 exists. The evidence that is available to the council for consideration must demonstrate that, on the balance of probability, no way existed over the application route when it was added to the definitive map and statement. A path may be deleted by way of a LEMO if a legal event has already extinguished or diverted it (see paragraph 2.6 above).

2.23 When considering both deletion and addition, on a basis that one route would be a corrected representation of the other route, then the case *R v Leicestershire 2003 EWHC 171* informs us that the council should decide which is the appropriate line for the recording of the path.

2.24 At paragraphs 27 & 28 of the *Leicestershire* decision Mr Justice Collins notes,

2.24.1 “27 As I have indicated, it is perhaps unusual for section 53 to come into play where there is no dispute that a right of way exists but there is a dispute as to precisely the route of that right of way. In those circumstances it is not possible to look at (i) and (iii) in isolation because there has to be a balance drawn between the existence of the definitive map and the route shown on it which would thus have to be removed, and the evidence to support the placing on the map of, in effect, a new right of way.”

2.24.2 “28 As I have already indicated, section 53(3)(c)(i) is usually in play when there is a question as to whether a right of way exists at all, i.e. when there is no question of any alternative route, merely a battle as to whether the right exists. Likewise, section 53(3)(c)(iii) is normally in issue when there is a battle as to whether the right of way shown on a map should be there at all and it is apparently unusual for the battle to be about alternative routes. If it is, however, it seems to me quite clear that the alternative Test B under section 53(3)(c)(i) is the less important. Indeed, it may well be that it is of no importance because what the inspector is having to do is to decide which is the correct route. If he is in doubt and if he is not persuaded that there is sufficient evidence to show that the correct route is other than that shown on the map, then what is shown on the map must stay because it is in the interests of everyone that the map is to be treated as definitive and if the map has been so treated for some time, then it is obvious that it is desirable that it should stay in place. Hence the circular indicating that cogent evidence is needed to remove a right of way shown on the map. It would be difficult to imagine that a finding that is less than that the alternative exists on the balance of probabilities would be sufficiently cogent evidence to change what is on the map. It would be strange indeed if merely to find that it was reasonable to allege that the alternative existed was in a given case sufficient to remove what is shown on the map. I am not saying it is impossible -- it is dangerous to rule out any possibility -- but I would be surprised, I am bound to say, if in any given case that amounted to sufficiently cogent evidence to remove the route shown on the map.”

2.25 This report will cover the effect of these situations on the various potential grounds for the making of an order.

- 2.26 The application is further complicated by a change in position of the applicants, with differences between the arguments supporting their case presented before January 2016 and those contained in their legal representatives' letter of 28 January 2016 from Ramsdens Whitfield Hallam ("Ramsdens"). (Appendix G).
- 2.27 At the time of DMMO application, the applicants claimed that the originally recorded Batley public footpath 49 was no longer in existence over their landholdings as it had allegedly been formally diverted previously by the Batley Borough council. Their representatives had also argued that the route had been "*abandoned*" and that lack of use and the passage of time meant that the council could no longer take enforcement action. However, in January 2016, after engaging an additional consultant, it was submitted to the council on behalf of the applicants that the formal records of public rights of way show no public footpath across their land. This meant, in their view, that the Bragg DMMO application is "*wholly unnecessary and based on erroneous information (largely from your Rights of way Officer)*". This position was a significant change from the applicant's original claims, statements and arguments. The council has a duty to make decisions further to DMMO applications and has been directed by the Secretary of State at DEFRA to determine this one.
- 2.28 The situation that arises from the application and the January 2016 Ramsdens letter may appear somewhat contradictory, so is worth clarifying. The applicants have denied that there is any representation of a footpath shown on the definitive map and statement within their land, whilst retaining their DMMO application asking the council to make an order to delete from the DMS that same representation of a path within their land.
- 2.29 In summary, the applicants originally put forward the case that the footpath had been legally moved off their property onto Mr Lilley's property, whereas they later put forward a case that the public right of way on foot, Batley 49, has never been recorded over their property.
- 2.30 They claim, in conclusion, that, as a consequence, if the council wishes to record a footpath over the Bragg's property ("*upon the route [you] think it should run*"), then a DMMO would have to be made to record it by adding it for the first time. i.e. the Braggs claim there is no recorded path on their property so the council would have to add the same footpath - that they have make a formal application to delete - if the council's wishes any footpath to be recorded over the Braggs' land.
- 2.31 At the same time, they suggest in January 2016, that a footpath diversion application made by their neighbour Mr Lilley in the 1990s has precedence, and that the diversion order showed and moved the footpath, and that its confirmation is now unchallengeable

To best inform members and to offer reasonable and *verbatim* representation of the points raised, the January 2016 Ramsdens/Bragg letter states as following, with enclosures being representations of documents appended at L, M & N, also at Appendix G with the letter:

We refer to previous correspondence concerning the above matter and in particular our client's application to the Planning Inspectorate for a Direction.

As a result of the Local Authority's stance and actions our clients have been compelled to request the Planning Inspectorate to direct the Council to make a decision upon their application.

Notwithstanding the draconian enforcement action taken (including involvement of the Police) the Local Authority advised the Planning Inspectorate there were no particular issues of concern that merited being given urgent consideration. Pursuant to the representations of both parties a provision for an enquiry to be held within 12 months was made by the Inspector. We have not heard from your Rights of Way Officer since the date of that direction.

As a consequence of the delay in this long running issue/application, we have reviewed our file(s) and engaged consultant, Mr Andrew Dunlop to assist with our client's application.

We believe that the enforcement and as a consequence of the threat of enforcement the contentions of both parties are wholly incorrect.

Our application on behalf of Mr and Mrs Bragg proceeded on the basis that we were to make an addition to footpath 49. Given the matters that follow hereafter it would appear that that application was wholly unnecessary and based on erroneous information in any event (largely from your Rights of Way Officer).

We reserve our position with regard to the possible withdrawal of the application pursuant to you responding in respect of the balance of the points set out herein.

### **Kirklees Enforcement and Current adopted position.**

The action to date is based upon the counties provided definitive map and its interpretation. This has been expanded to compare with earlier OS maps that show a footpath. This approach is flawed.

The map was not drawn magnified but on a smaller scale and as thus created a difficulty in interpreting as to what was originally intended.

1. Its first use is on a DM, page 53 (attached hereto as enclosure 1) is unclear (even with magnification or expansion) where the mark terminates.
2. On the second DM page 54 (enclosure 2) it is clear that the path does not cross over the Bragg's holding but joins the farm track before turning north. I pause there to mention this was in accordance with the original route and the signposts that have been displayed for some three decades.
3. On the current DM page 38 (enclosure 3) it is not completely clear if it crosses the holding or runs the farm track.

We accept that it has to be borne in mind that a line indicating the route of the path is drawn with a thick pencil. If scaled that would be approximately 10 metres wide. This scale with the slightest slip of the pencil can move the path many meters to a new location.

Your Rights of Way Officer, Mr Cheetham has taken this into account and referred to the earliest large scale maps justified the location of the path on his view as running through the Braggs. He has however failed to establish that path was a public footpath and instead presuming that it was and thus concluding that the DM route must cross the Braggs land.

The whole enforcement action has been based on this incorrect assumption rather than fact.

### **Basis for Kirklees assumption and correct position**

In 1984 the Braggs purchased the plot adjacent to the contested site. They sought rights of way information from Kirklees. The search that they received confirmed no public rights of way crossed the combined plot.

Later in 1984 they sought planning permission for building upon the newly acquired plot. The Council failed again to identify a public right of way crossing the land.

In 1992 the neighbouring land owners sought and eventually gained a Section 119 Highway Diversion Order from Kirklees Council. This Order was objected to by our clients but following a statutory process and Public Inquiry, the Order was confirmed. The effect of the Order was to divert the public footpath (Batley 49) to a new road as shown on the new route as shown on the Order Map. That diversion was advertised and gave all persons a chance to object and complain to the High Court if they felt aggrieved by its confirmation. No one did and once the requisite timescale had expired the confirmation became unchallengeable.

Whilst the order does not follow the route in Mr Cheetham's current presumed interpretation of the old maps (or his magnified/blowing up interpretation of 10 metre wide pencil mark) it does fit with both the opinions of the Council in 1984 and importantly no one challenged the Order in 1992.

Accordingly the effect of the 1992 Order was to divert Batley 49 from its previous location to a new location. This was a legal decision and cannot now be challenged at this point in time.

Perhaps the most serious feature caused for our client's legitimate complaint is that the Local Authority's own definitive map was not updated upon confirmation of the 1992 Order. Indeed apparently it still isn't. Both the paper and electronic version failed to show your alterations confirmed by the Council's own Order. This is an offence in itself.

It follows from that that it is reasonable to infer that the Local Authority failed to inform the Ordnance Survey of the Order.

### **The Proposed Solution**

We require your immediate confirmation that the Local Authority will alter the map using a Legal Event Order. This will be authorised by Section 53 of the Wildlife and Countryside Act. Whilst this would be at the public expense, it takes approximately an hour and takes effect immediately.

Consequent to that you will correct your paper copy map and the electronic version.

It will then be necessary to inform the Ordnance Survey.

We then require arrangements to be made to reinstate our clients land and fence and rectify the enforcement work undertaken in providing our client with a full integrity in respect of the same.

### **Conclusion**

If you are not persuaded that the confirmed Order shows footpath 49 the Council may submit its own Section 53 modification Order to add a footpath upon the route you now seem to think it should run.

In the interim our clients will deny access to Council Officers or any member of the public pending your decision. The Council may, as a consequence of the foregoing conclude on its own to amend the route now.

Our clients reserve their position entirely with regard to costs incurred and effects upon their quiet enjoyment of the property particularly given the aggravated feature of involving the police.

Please acknowledge receipt by return and let us have your substantive response within 5 working days.

- 2.32 Before moving onto the application, a summary timeline may assist. Public footpath Batley 49 was recorded in the first definitive map and statement of public rights of way produced by West Riding County Council with a relevant date in 1952. The route of the path is shown in Ordnance Survey plans going back over a century, and is also shown on documents used in the production of the DMS. Appendices L, M & N.

- 2.33 Mr & Mrs Bragg purchased 75 Hey Beck Lane in 1981. It had previously been owned by Mr & Mrs Buckley, who had extended their land ownership in 1966, buying a triangle of land from Savile Estate. The triangle of land over time had a stable on (1965 planning application papers appended at R, with peck lines marked on). The bungalow subsequently became a garage serving 75 Hey Beck Lane and has subsequently become a bungalow further to a planning consent granted to Mr & Mrs Bragg. That bungalow planning application included submissions to the council from the applicant's agent showing the footpath Batley 49 across the Braggs' land. (Submitted plan appended at S). Mr & Mrs Bragg have sold 75 Hey Beck Lane since the application, but retain ownership of the bungalow (now 75A Hey Beck Lane) and the land carrying Batley footpath 49, before it enters Mr Rod Lilley's land to the south at the point where fence and brick wall meet.
- 2.34 The land to the rear (south) of Mr & Mrs Bragg's property is owned by Mr Rod Lilley. The route of path 49 across the Braggs' land was not open and available to the public for a considerable period of time. The Braggs state that it has not been open since they bought the property in 1981, and for many years previously. People appear to have walked over a route over Mr Lilley's land directly from the farm access track to the field.
- 2.35 Mr Lilley applied for a public path diversion order in August 1991 to move the public footpath across his lawn to the northern edge of his land. An order was made by Kirklees council in 1992 which referred to the diversion of Batley public footpath 49. The order and plan is shown at Appendix C. This is the diversion proposal mentioned above in the Braggs January 2016 letter submissions. The diversion order was opposed by Mr & Mrs Bragg (Appendix U) and others, mainly regarding the negative effect of the change on their own property, security and privacy. After a public inquiry into the merits of diverting the route shown in the order plan X-Y onto the route shown X-Z-Y, the objectors' case was successful when the order was not confirmed by the Secretary of State's inspector by letter in April 1994. The inspector's decision letter is at appendix D.
- 2.36 As it was not confirmed, the 1992 diversion order had no effect on the public footpath 49 or any other path. Proposals to divert the footpath 49 continued to be subject of discussions over the following years and in 2003 another application to divert 'path 49' was made to the council.
- 2.37 In late 2003, after changes in PROW staff responsibilities, officers informed Mr Lilley and Mr Bragg that the current and past proposals to divert the footpath 49, including those shown in the unconfirmed 1992-4 diversion order process did not actually show the definitive recorded route of Batley 49, instead showing the route that was available and used by the public on the ground at the time; whereas the definitive route was not available, being obstructed at the Braggs' property. A schematic of approximate routes with coloured lines identifying the complications (drawn up in 2003) is appended.
- 2.38 The application to divert was placed in abeyance by Mr Lilley, and there was no public complaint about the obstruction, so the situation was effectively paused. Officers met on site with Mr Bragg in December 2003 and he made it clear that he did not accept the officer view, but did not provide any information to the council to support his doubts about the alignment of footpath 49 across his land. This situation continued for some years, with the council not taking any action as a legal process was in abeyance and no public complaint about obstruction was received.



- 2.39 This changed when Mr Lilley withdrew his diversion application and blocked off the route on the ground in summer 2012 at his boundary with the track (footpath 55). This new blockage was at point X on the 1992 order plan.
- 2.40 This new situation prompted numerous public reports about obstructions preventing public passage to/from Leeds Road over Batley footpath 49. Officers considered, (just as the two landowners had been told over a decade earlier), that Batley 49 actually passes over Mr Bragg's land before reaching Mr Lilley's land. Informal requests failed to clear the whole route so the council took enforcement action and re-opened the definitive footpath to public passage.
- 2.41 The route of path 49 from the field boundary, north east across Mr Lilley's lawn, then along the north western boundary of the 1966 Savile/Buckley triangle of land, next to the brick wall, which marked the original boundary of no. 75, (before Mr Buckley bought the triangle of land from Savile Estate in 1966 for a stable) was re-opened along its length to public use.
- 2.42 Mr Bragg has disputed the existence of Batley 49 over his land, claiming that it was diverted by Batley Borough Council at the behest of Mr Buckley, so no longer runs over his land, but leaves the track (path 55) to cross Mr Lilley's land straight to the field. He also claims that as well as the footpath running across the Lilley land being a public footpath because of the 1990s diversion process, it is also a public footpath because it has been used by people for a long time.
- 2.43 Faced with the enforcement action and a future with path 49 being open to the public across their land for the first time since purchase in 1981, Mr & Mrs Bragg made a DMMO application to the council submitted by their solicitors, Ramsdens Whitfield Hallam.
- 2.44 Despite the apparent change of tack in January 2016, Mr & Mrs Bragg have not withdrawn the DMMO application to delete. Of course, the application also seeks an addition, the recording of a public footpath route across Mr Lilley's land, for which a decision is also required further to the Secretary of State's direction, as well as the council's duties under WCA 1981.
- 2.45 Since 2003 the council officers have clearly and freely expressed the view that the council's actions and correspondence in regard to the Batley public footpath 49 in the vicinity in the 1990s were based on an incorrect stance on the alignment of the recorded public footpath. Mr Lilley applied formally to move the footpath apparently available to the public across his lawn. This line appears to have been mistaken to be Batley 49 and referred to thereafter for some years. This includes the depiction of an incorrect route in the 1992-4 diversion application and order process, which ended with an unconfirmed order. As the diversion order was not confirmed by the SoS, the order had no legal effect whatsoever on Batley 49 and/or the path used across Mr Lilley's lawn to the track (path 55).
- 2.46 Mr Simon Bowett, when he lived at Heybeck Cottage, wrote a letter to the council in July 1988 about path 49. He wrote another in January 1989 that queried the council's response to the first letter about the alignment of path 49. He marked up a plan showing what he considered to be the correct alignment, going through the Bragg's property, along the northwest boundary of the triangle of land purchased by the Buckleys in 1966 from Savile. Mr Bowett was the Buckleys' son-in-law. The letters are appended at T and other evidence received from him are noted later in this report.

- 2.47 The council's path files show that between at least August 1992 and March 1993, Mr Lilley obstructed the route across his lawn from the stile at the field edge to the track. He had obstructed the route that he had applied to divert and provided a fence-enclosed route at his northern boundary along the proposed diversionary line. The council served formal notice for removal of obstructions over this unrecorded route during this time. The council's path files also note the concerns at the time about these obstructions, including from the Braggs' representatives. This obstruction occurred during the diversion order process, just after the order was made, but before the Secretary of State's 1994 decision on the 1992 diversion order. Mr Lilley had apparently acted prematurely when he had blocked off the path on the ground to public use and provided access along a fenced in route along the proposed diversionary route next to the rear wall of the gardens on Hey Beck Lane.
- 2.48 **The DMMO application.** The application was made in December 2010 by Ramsdens Whitfield Hallam on behalf of their clients Mr and Mrs Bragg, after officers responded to public requests and contacted Mr & Mrs Bragg about action to secure the removal of obstructions to the recorded public footpath 49 at Hey Beck Lane. Mr & Mrs Bragg dispute the existence of the public footpath over their land. The DMMO application form and plan are appended at E.
- 2.49 The application papers claims that the definitive map and statement incorrectly record(s) a public footpath, as shown by a bold dashed line between points C & D on Plan 1 attached to this report. The plans submitted with the application indicate a deletion just over that part of the footpath within the applicant's landholding (points C-D, i.e. would potentially leave a *cul-de-sac* path). The plan submitted shows the request for an addition of a public footpath over A-B. i.e. running over the edge of the track from Hey Beck Lane south easterly (which already carries footpath Batley 55), then turning southwest leaving the track and crossing into Mr Lilley's land to point B at Mr Lilley's western land ownership boundary.
- 2.50 The council has received or otherwise discovered or holds various pieces of evidence regarding pedestrian routes and public use at Heybeck, including submissions made by the applicant and other information submitted, which includes:
- 2.51 Application documents listed in an "index", shown here as submitted:

#### Index

- A) Statement of Ian Christopher Bragg
- B) Land Registry documents:
- 1) Official copy Title and plan for Title number WYK268995 dated 15 March 2013
  - 2) Conveyance dated 5 January 1966
- C) Photographic evidence of the footpath:
- 1) First photograph shows a garden fence and Ian Bragg's Property taken from the field at the south.
  - 2) Second photograph shows a public footpath signpost which shows the eastern end of the footpath.
- D) Letters from Kirklees Council
- 1) Letter with attached plan dated 26 November 2003 stating that footpath 49 runs across Mr Bragg's Property.
  - 2) Letter dated 20 May 2013 with 2 attached plans and a statement.
- E) Statutory Declaration of Margaret Hallas signed and dated 6 September 2013.
- F) Statutory Declaration of Simon John Bowett signed and dated 12' November 2013.
- G) Borough of Batley documents:
- 1) Copy resolution passed by the General Works Committee;
  - 2) Memorandum from the Borough Engineer Batley to The Town Clerk dated 30 September 1971;
  - 3) Letter from Blythe Town Clerk dated 1 October 1971.;
  - 4) Note for Mr I Longbottom dated 27 October 1971;

- H) Statement of Alan Firth dated 9 March 1972;
- D) Kirklees Council letters.
- 1) Letter from Kirklees Council dated 5 August 1992 regarding a proposed diversion of footpath 49.
- 2) Public Path Diversion Order, Highways Act 1980.
- 3) Kirklees Council plan for the proposed diversion of footpath 49.
- J) Letter from The Planning Inspectorate dated 26 April 1994.
- K) Letter with a plan attached from Kirklees Council dated 28 June 1994 and signed by Sandra J. Haigh.
- L) Extinguishment and Diversion Orders made by Batley Borough Council (3 pages) plus four records copied on to one page.
- M) Letter from Kirklees Council dated 11 November 2013.
- N) Photograph showing the footpath in the background.

2.52 These documents are appended in full at Appendix E for members to consider. Item A on the index is Mr Bragg's statement, which is as follows:

"I Ian Christopher Bragg of 75 Hey Beck Lane, Woodkirk, Dewsbury WF12 7QU make this statement in support of my application pursuant to the Wildlife and Countryside Act 1981 for a modification of the footpath No.49 on the Definitive Map and Statement of Kirklees Metropolitan District.

1. I confirm that the contents of this statement are true to the best of my knowledge and belief All matters set out in this statement are within my own knowledge unless indicated otherwise. There is attached to this statement an exhibit marked ICB1. All page numbers in this statement relate to pages of the exhibit unless otherwise stated.

2. I am the freehold owner of the above property which is registered with title number WYK268995 (Land Registry office copy: pages 1 to 5).

3. Part of my title on the East side of the property consists of a small triangular section of land upon which there is located a garage and outbuildings. I understand that this triangle of land, like much of the land around it, was once part of the Savile Estate. I have been provided with a copy of a conveyance dated 5\* January 1966 by which the Savile estate sold this small triangle to Stanley Brian Buckley who was then the owner of the house and land to the West, which is now my house at 75, Hey Beck Lane. (1966 conveyance at pages 6 to 11).

4. Clause 1 of the 1966 conveyance states that the land is sold subject "(c) to the footpath crossing the entire length of the North Western boundary of the property hereby conveyed as indicated on the plan annexed hereto". The attached plan clearly shows what I now know to be public path No.49 as it was then located, which cut up from the opposite field boundary to the South and then passed along the edge of the small triangle which was purchased by Mr Buckley in 1966 until it met the highway at the front of the property. It is this section of the path which I now seek to have deleted from the Definitive Map and Statement because I believe that, in the circumstances described below, there was a Modification Order made in respect the path in the late 1960s or early 1970s by Batley Borough Council and the records for that order have been lost or destroyed.

5. There is at page 12 of the exhibit a photograph of my property taken from field to the South. This shows the route of the footpath which is referred to in the 1966 conveyance. The South boundary of my property is fenced, as it ha

been ever since I acquired the property in 1981. The former route of the footpath now forms an integral part of my garden and it has always formed an integral part of the garden ever since I moved in.

6. For as long as I have lived at the property, the route of the public path has passed along the Southern boundary of the field which is to the South of my property. The line of the path is approximately straight and it joins the highway adjacent to the Eastern corner of the additional triangle that was acquired by Mr Buckley in 1966. This is the line which I wish to have added to the Definitive Map and Statement because I believe that this was the realigned route that was authorised by a Modification Order made in the late 1960s or early 1970s by Batley Borough Council, although the records for that order have been lost or destroyed.

7. The photograph at page 13 shows the Eastern end of the line which I contend should be the line of footpath No.49 where it meets the highway. As can be seen, there is a formal green Highway Authority "footpath" sign at the end of the path and for as long as I have known the property, this has always been there.

8. I was not aware that there has ever historically been a footpath through what is now our land until Kirklees Council wrote to me on 26<sup>th</sup> November 2003. This was in connection with an application which had been made by a neighbour for the diversion of another part of footpath No.49 pursuant to section 119 of the Highways Act 1980. The Council informed me that "in the course of investigating the above application, it has come to [the Council's] attention that public footpath Batley 49 runs across your property as shown on the attached plan.". The attached plan showed the old route which had been shown on the 1966 conveyance. The letter only asked me to discuss the matter with the Definitive Map Officer; it did not suggest that any action was going to be taken as a result of the view taken by the Council at the time and no action was in fact taken. A copy of the letter is attached at pages 14-15.

9. Nothing then happened for another 10 years and I assumed that the anomaly identified by the Council in their records was just an anomaly and that no action would be taken because it was obvious that the path ran across the field at the back of my property on the route which I now contend for and this had been the situation for many years. The existing and established route had indeed for many years been officially sanctioned by the Council's own sign being placed at the Eastern end of the path and the sign remained in place after 2003.

10. In 2012 I applied for planning permission to convert the existing garage into a single storey flat. Planning permission was granted but when the approved plan was returned to my architects it had the old route of the footpath marked on it. I attempted to discuss the matter with the Council but ultimately by letter dated 20<sup>th</sup> May 2013 the Council informed me that they would require me to remove the existing boundary fence so as to allow public access along the route of the path that had been shown on the 1966 conveyance and which was still shown as the official route of the path on the Council's records. A copy of this letter is at pages 16-18.

11. The Council has informed me that it has no record of the footpath having been formally re-routed and therefore I have made my own enquiries as to how the route of the path came to be changed from that which is shown on the 1966

conveyance to that which has been actually in existence ever since I bought my property.

12. There is produced at pages 22 to 25 a statutory declaration of Margaret Hallas of Scargill Farm, 58 Hey Beck Lane, Woodkirk. She says that she was a close friend of Mr and Mrs Buckley and that she remembers them purchasing the additional triangle of land so that Mrs Buckley could keep horses on it and with the intention of building a stable on the land. Mrs Hallas can specifically recall being told of the reason why Mr and Mrs Buckley decided to have the footpath formally re-routed, and being kept informed of the formal process of re-routing which had been pursued with the local council and finally being informed that official approval had been given. She believes that this occurred in the early 1970s, which she is able to establish approximately from the ages that their children would have been at the time.

13. I also attach at pages 26 to 31 a statutory declaration of Simon John Bowett who was married to one of Mr and Mrs Buckley's daughters and who lived in Heybeck Cottage, Hey Beck Lane, from 1980. He believes that the footpath will have been diverted in the late 1960s when Mr Buckley built his stables on the triangle of land that he had acquired in 1966. He describes Mr Buckley as being " a very particular and methodical man" who will always have done everything by the book. He therefore concludes that if the footpath was diverted around the side of the triangle of land, which it clearly was, then this will have been done legally and officially by Mr Buckley at the time.

14. Within the documents supplied to me by the Council, I have seen a copy of a resolution dated 1<sup>st</sup> December 1971 by the Council of the Borough of Batley (page 32). This relates to the unlawful stopping up of footpath No.49 further to the West. The resolution describes the path as "leading from "the Farm", Heybeck Lane". This is a description of the starting point to the East which has been in use since the re-routing that was made by Mr Buckley. It is not a description which could be used for the original starting point adjacent to 75 Hey Beck Lane, which was the old route shown on the 1966 conveyance. It therefore appears that as early as 1971 the Borough of Batley, which had responsibility at the time for maintaining the Definitive Map and Statement, was satisfied that the official route for the path is the one for which I now contend. This strongly supports the evidence of the above two witnesses that in the late 1960s or early 1970s Mr Buckley not only re-routed path No.49 on the ground but also obtained official sanction for the re-routing.

15. The description of the path in the above resolution is the same as a description contained in a memorandum from the Borough Engineer dated 30<sup>th</sup> September 1971 (page 33) and in a letter from the Town Clerk of Batley Borough Council dated 1<sup>st</sup> October 1971 (page 34) and in a note to the General Works Committee dated 27<sup>th</sup> October 1971 (page 35). This therefore dates Mr Buckley's re-routing to no later than [September 1971. The memorandum confirms that there had been an inspection of the path for its whole length from "the Farm". Since the purpose of the inspection was evidently to investigate signs of closure along the route, and since Mr Buckley's diversion had to have been carried out after January 1966 at the earliest, it is difficult to understand why the relatively recent stopping up of the route shown in the 1966 conveyance was not referred to at this time unless, as I believe to be the case, the diversion had been officially sanctioned by the Borough of Batley.

16. At pages 36-37 there is a statement dated 9<sup>th</sup> March 1972 from Alan Firth who

was the Building Inspector for Batley Corporation. This statement appears to relate to the same complaint which was the subject matter of the resolution referred to in the above paragraphs. The footpath here is described as running "from roughly to the rear of 75 Hey Beck Lane". This is again a good description of the current route for which I now contend but it is not a description of the path shown on the 1966 conveyance, since that route would either be described as passing to the side of 75 Hey Beck Lane or through 75 Heybeck Lane (depending on whether the triangle was seen as part of the property at the time or separate).

17. By letter dated 5\* August 1992 Kirklees Metropolitan Council, as successor to the Batley Borough Council, notified me that they had made a footpath modification order in respect of footpath No.49 (pages 38 to 41). This would have the effect of diverting the path from the Southern boundary of the field adjacent to my property to the Southern boundary of my property itself. I therefore objected to the order. By a decision letter dated 26\* April 1994 the Planning Inspectorate refused to uphold the order. At no stage during this process was it suggested that the actual route of path No.49 should run up through my property rather than along the Southern boundary of the adjacent field, (a copy of the decision letter is at pages 42 to 51).

18. By a letter dated 28\* June 1994 (page 52) I was informed by the Solicitor for Kirklees Council that the footpath had been inspected and the sign at the East end had been re-aligned so as to indicate the precise route of path No.49. There was again no suggestion at this time that the official route was anything other than that which was in existence on the ground at the time.

19. The Council has not been able to produce any evidence that an official diversion order was made at the time that Mr Buckley re-routed the footpath in the late 1960s or early 1970s. However, my solicitor has made further enquiries of the Council in regard to its records and as a result of those enquiries I would contend that the absence of any record of a formal diversion order having been made is not decisive in this case. I would therefore argue that the circumstantial evidence suggesting that an official diversion order was made should carry more weight than the mere absence of documentary records for such an order.

20. I believe that Kirklees took over as Highway Authority from Batley Borough Council in 1986. The current records of Kirklees includes a pro-forma list of various "Extinguishment /Diversion Orders" made by Batley Borough Council, (pages 54 to 56 ). Two of the three pages which have been provided contain lists of orders in reverse chronological order and one page is in chronological order. There is a handwritten note on the top of one page saying that there should be "5 pages", but only three have been supplied. In view of the absence of any consistent chronological sequencing, it is impossible to tell if anything might be missing from the records or what periods or what geographical areas might be covered by any missing records.

21. Kirklees has been unable to inform my solicitor why the records have been maintained in this way, who prepared them, when they were prepared or for what purpose. If Batley Borough Council ever made its own contemporaneous records of orders actually made by it, then such records have not been retained. The Kirklees list might therefore only include lists of orders for which copies could be found when the lists were compiled or it might just be a list of orders made under particular statutory provisions. It is

simply not possible to deduce anything from these lists except that the specific orders identified on the lists were in fact made on the dates attributed to them.

22. There is no reason at all to believe that the list which has been provided by Kirklees was intended at the time that it was made to be a complete record of all diversion orders that were made by Batley Borough Council. There is no basis on which it can be assumed that it was even possible at the time to compile such a complete list from the available information. Even if the Kirklees lists were complete when they were made, there is no reason to believe that all of the pro-forma pages which were originally created for this purpose have in fact been archived and retained. The circumstantial evidence would suggest otherwise.

23. The Council's records also contain four separate cards relating to the orders that are held in their strong room (copied onto a single page, at page 57). It will be noted that the Council does not have the original of any order made before 1974. Therefore if a diversion order was made as a result of an application by Mr Buckley before this date then the Council will not have a copy of it.

24. My solicitors wrote to the Council on 5<sup>th</sup> November 2013 asking for clarification of the origin and purpose of the above records and one other page from the Council's records which they had also produced but which was largely illegible and which is in any event irrelevant to the present case. The Council's response dated 11th November 2013 (pages 58 to 60) confirms that they are unable to provide any information which would be capable of demonstrating that the limited records that they hold are in fact conclusive as to the totality of orders made in respect of all footpaths in the Batley Borough Area in the 1960s and 1970s.

25. A photograph showing the path in the background is also attached at page 61."

- 2.53 Also submitted with the application were two WCA8 user evidence forms ("UEF") from Mrs Margaret Hallas and Mr Simon Bowett.
- 2.54 The council has received 6 other WCA UEFs, and a number of other pieces of correspondence from various parties, including letters and emails. A summary of landowner and user witness evidence is appended at Appendix Q.
- 2.55 H Morrissey sent a letter to the council which noted living at Leeds Road between 1952 and 1981 and recounted as a child walking from Leeds Road to Hey Beck, with the path coming out onto a track between High Barn and some stables about 100 feet from Heybeck Lane.
- 2.56 Ann Leach, 33 years use dog-walking from Soothill, wrote to the council to state that she had walked from the track at A between Heybeck Cottage and High Barn (i.e. Mr Lilley's house) and that walking through "76" was "*ludicrous*".
- 2.57 Stephen Brook of Heybeck Lane wrote in August 2014 to state that he had lived locally and walked his dogs on the claimed addition route for 22 years, but it had recently been blocked. Mr Brook also filled in a WCA8 user evidence form, with only scant responses.

- 2.58 Mrs H Boothroyd of Heybeck Lane for 28 years, recalls use of route A-B and no use of the route through the Bragg property, where she states no-one has ever walked.
- 2.59 Dr Richard Child of County Durham, wrote in a letter passed to the council by Mr Bragg that he lived at Leeds Road from 1956 to 1977. He recalls walks to Heybeck Lane, where they reached the track (footpath 55) 50 yards before HBL. He does not remember going through 75 HBL during these walks, mainly in the late-50s to mid-60s. He visited the area again in February 2014 and did not recognise the footpath through the Bragg's land, and the path he remembered was blocked. Dr child filled in a UEF in which he noted his use of the claimed addition path from 1960 to 1977.
- 2.60 Derek Brooksbank, a contractor working at the Braggs' property over 28 years prior to 2014 wrote to state that the path had always gone from the track over Mr Lilley's property and had gone through 75 HBL. He also noted the presence of a sign. He also completed a WCA8 UEF to the same effect.
- 2.61 Mr B Taylor of Leeds Road wrote to state that he knew of the path for sixty years and had used it weekly 1974-2014, and that it went to the track some 30 yards from HBL. Mr Taylor also stated that he had bought Ordnance Survey map 288 which showed the route as he recalled. He recalled walking the route as a child with his parents in the 1950s, to the track then along to HBL. Mr Taylor also completed a WCA8 evidence form. (OS Explorer 288 is attached at Appendix J and does show the route of the path in green dashes across the Bragg land)
- 2.62 Janet Blackledge completed a user evidence form, stating that she had used route A-B over Mr Lilley's land between 2003 and 2012 but not the route C-D over Mr Bragg's land.
- 2.63 Evidence has also been submitted from various landowners, including some who have completed the council's questionnaire for landowners.
- 2.64 Savile Estate submitted a plan showing the land, including coloured sections where their land was sold. This includes land sold to S B Buckley at 75 HBL, coloured blue – the base map used by Savile again indicates a path by peck lines across the north west side of the triangle of land sold. Savile provided some conveyance papers for the triangle of land but provided no information regarding any path diversion by Mr Buckley, either formal or informal. *"I attach a conveyance for Hey Lane to Mr Hyde. There is mention of a right of way but it is not marked on the plan. The Savile Estate Office was moved from Savile Town to Thornhill 1967. The files around this period have been destroyed. So we cannot shed any further light on the footpath history."* Appended at F.
- 2.65 Mrs Spurr of Hey Beck Lane filled in a landowner form WCA10 and answered 'no' to just about every question.
- 2.66 Mr Barker of Hey Beck Lane filled in landowner evidence form. He notes obstruction of the route by Mr Bragg and that the "correct route" has been "diverted" over Mr Lilley's land.
- 2.67 Mr Rod Lilley filled in a landowner evidence form. He owns the land that carries Batley 49 once it leaves Mr Bragg's property and also owns the land carrying the lawn part of the alleged public footpath for addition A-B. He disputes the claim that A-B is a public footpath. He notes obstructions of the path 49 by Mr Bragg.



- 2.68 Timeline summaries of the presented user and landowner witness evidence are shown at Appendix Q.
- 2.69 There have been numerous other submissions on behalf of the applicants, Mr & Mrs Bragg, including letters from Ramsdens, their legal representatives, presenting their clients' contentions and reasoning in support of their clients' case. Correspondence with officers regarding these submissions is at appendix G.
- 2.70 The papers submitted with the Ramsdens letters/emails include copies of a number of documents associated with 75 Hey Beck Lane, in connection with local searches, planning applications and other matters that have been subject of their enquiries and investigation on behalf of the Braggs. Papers have been cited in correspondence by Ramsdens which have not subsequently been provided to the council for consideration.
- 2.71 Documents provided to the council form Appendix H. It has been put to the council that the submitted papers are sufficient to conclude that no public right of way subsists over the Braggs' land.
- 2.72 Officers have considered the possibility that Batley Borough council went to the courts for an order to divert the footpath 49. Officer enquiries with the courts system has been unable to provide any evidence to support the application claim that an order was made to move the footpath by/for Batley Borough Council, further to Mr Buckley's actions. Officers have undertaken enquiries with the Batley court's successors, now in Huddersfield. The courts have provided no information to support the contention that a diversion order was made.
- 2.73 The council has searched the available London Gazette records for any evidence to support the claim that the path was diverted by order by or on behalf of Batley Borough council. Officers have not discovered any formal notification in the London Gazette of any relevant legal order to support the Bragg application claims that the footpath 49 was diverted or otherwise subject to a relevant public path order. Orders made under various statutes were required to be advertised in the London Gazette.
- 2.74 There is no apparent evidence to indicate that West Yorkshire Metropolitan County Council, the relevant surveying authority for public rights of way until 1986, were aware of, or reflected the alleged Batley council diversion order, when considering the production of the modified definitive map and statement, published in 1985. A small selection of review process maps is appended at O.
- 2.75 The DMMO applicants also served notice of the application on various landowners, and certified serving of this notice to the council.

### **Human Rights**

- 2.76 Consideration of public rights sometimes leads to questions about human rights; such as concerns that both the existence of the footpath and the council's actions with regards to a recorded public footpath may infringe the right to respect for private and family life and the right to peaceful enjoyment of property.
- 2.77 These rights are both "qualified rights", and require a balance between the rights of the individual and the needs of the wider community. Interference with qualified rights is permissible only if:
- 2.77.1 There is a clear legal basis for the interference with the qualified right that people can find out about and understand,

- 2.77.2 The action seeks to achieve a legitimate aim and is necessary in a democratic society.
- 2.78 The Ministry of Justice publish “Making sense of Human Rights – A short introduction” (DCA45/06 2006) – attached at Appendix 2

<http://www.justice.gov.uk/downloads/guidance/freedom-and-rights/human-rights/human-rights-making-sense-human-rights.pdf>

- 2.79 Article 8 of the First Schedule of the Human Rights Act 1998 aims to protect private and family life. Article 1 of the First Protocol refers to property protection. Section 2 of Article 8 states “...*There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary... ..for the protection of the rights and freedoms of others...*”. Article 1 of the First Protocol is a similar qualified right. Aware of its duty and the need to balance such competing rights, in the case of this public footpath, the council recognised its statutory duty to protect and assert the public’s rights under Section 130 of the Highways Act 1980 over a definitive public footpath, conclusively shown to exist as recognised in section 56 of the Wildlife & Countryside Act 1981. Similarly in dealing with this DMMO application, the council recognises it must comply with human rights legislation.

- 2.80 The landowner questioned the existence of the footpath 49 across their land and thereafter made this DMMO application to delete the path from the public record. They consider that there is, instead, a path along the track (path 55) then solely across the neighbour’s land, across from footpath 55 (the track) to the field.

- 2.81 The jurisprudence of the European Court of Human Rights (ECHR) recognises and takes account of the fact that the ECHR machinery is subsidiary to the national systems of various Member states safeguarding human rights, leaving to those national systems, in the first place, the task of securing the Convention rights and freedoms. Section 6(1) of the 1998 Act makes it unlawful for an Authority to act in a way which is incompatible with a Convention right.

- 2.82 Therefore in this case, officers advise that this Authority must determine this application in accordance with the primary legislation contained within Section 53 of the Wildlife and Countryside Act 1981. However, since the decision-making under Section 53 is based solely on evidence, in doing so the Authority is acting within the parameters as laid out in Section 6(2) of the 1998 Act. Section 6(2) relates to the discretion of an Authority to give effect to primary legislation, therefore a decision based on the evidence, either making or not making an order deleting a public right of way through the curtilage of Shaw Carr, would not be incompatible with the 1998 Act.

- 2.83 **Evidence of the physical existence of the route.** Prior to the long-term obstruction of the footpath 49 at 75 Hey Beck Lane, a physical route from the field towards Hey Beck Lane has existed. This was accepted by the applicants, although they disputed its current public status in the application. More latterly they have disputed any historic recorded public status. It is also acknowledged by other witnesses and documentary evidence, both now and in the first definitive map process.

- 2.84 **Ordnance Survey maps:** Ordnance survey sheets are mainly representations of the physical world. Copy extracts of Ordnance Surveys and other mapping

1840s to today are at appendix J. The deletion application route is shown on these plans as physically existing for over 100 years. A route from the track (footpath 55) directly to the field (like A-B in the DMMO application) can also be seen on Ordnance Survey plans over more recent decades.

### **The first definitive map and statement**

- 2.85 This was prepared by the former West Riding County Council (WRCC) as required by the National Parks and Access to the Countryside Act 1949. The relevant date for the first definitive map was determined as 22 September 1952. This means that the map showed public rights of way which existed on that date, not that it was published on that date.
- 2.86 The County Council had a duty to survey and map all public rights of way in their area, also classifying their status. The survey took three stages, draft, provisional and definitive. After local surveys took place a draft map and statement was published, this was open to all for objection/representation. After investigation of these, a provisional map and statement was published, this was open to further objection/representation by those with a legal interest. Finally the definitive map and statement was published. The definitive map and statement was therefore the result of a long and detailed survey process open to public consultation and scrutiny which took many years and involved investigation by local and county authorities as well as the courts.

### **2.87 Summary of process to produce the first definitive map: the “1952” process.**

- 2.87.1 Local surveys
- 2.87.2 Publishing of draft map
- 2.87.3 Objections and representations
- 2.87.4 Publishing of provisional map
- 2.87.5 Objections and representations by those with a legal interest only
- 2.87.6 Publishing of the definitive map

### **First definitive map process regarding footpath 49**

- 2.88 1950 - Batley Borough council undertook surveys in 1950 for use by WRCC prior to the production of a draft map. The survey forms for Batley are still available. Copies of two original survey sheets for definitive footpath 49 and 55 are appended to this report at K. The papers are dated 29 December 1950, signed/stamped by the town clerk. The surveys appear to have taken place in around July 1950 and to have been undertaken by Wainwright and Saxton.
- 2.89 The application route was recorded on the draft map as a footpath. Appended at L.
- 2.90 Provisional map published. Appended at M
- 2.91 First definitive map published. Appended at N.

- 2.92 Public footpath 49 was shown on the first definitive map, which has a relevant date of 22 September 1952; this means that the evidence required to delete any part of the path must:
- 2.92.1 be new, and not available to those that produced the map
  - 2.92.2 show that the path was included on that document in error
  - 2.92.3 show that no public right of way existed over the application route at that time.
- 2.93 It is important to note that any alleged lack of use of the footpath 49 during any time since 1952 would not affect its status as a public footpath. The 1985 DM&S published by WYMCC was produced further to a review of both those legal changes that had taken place since 1952 and also consideration of any additional evidence that would require modification of the DMS, e.g. leading to the recording of unrecorded PROWs, changes to recorded status etc.
- 2.94 For information, following a review process, the modified definitive map was published in 1985, with a relevant date of 30 April 1985. A copy DM extract for the area is appended with Plan 1. Officers are not aware of any subsequent order to change the footpath or modify the definitive map for the footpath. Appendix O has some extracts of maps from the process, including the draft map and a map marked up with some proposed review changes to the DMS prior to its publishing in 1985.
- 2.95 Land ownership plans of the land affected by this link of footpath 49 are appended at P.
- 2.96 A location plan is appended at P.
- 2.97 Officers asked local representatives of user groups if they had any information or comment on the application. Informal notices were posted on site to garner information about the routes involved.
- 2.98 Members have a number of options to consider, whether to add and/or delete a public footpath to/from the DMS, and on what basis such a decision is made. Any order made would have to satisfy the relevant criteria, with the relevant legislation then cited in the order. A council decision is required on both aspects of the DMMO application – “add” and “delete”, so more than one of the options below may be chosen.
- 2.99 Members are asked to consider what should be shown in the formal record after considering the available evidence, whether that is any different from what is currently shown, and make a decision on what order(s), if any, should be made to produce a correct formal record of public rights of way.
- 2.100 Option A The DELETE1 option for the sub-committee is to decide not to make an order to delete footpath Batley 49 (part), on the basis that the evidence does not demonstrate that, on the balance of probability, no way existed over the application route when it was added to the definitive map and statement and also on the basis that there is insufficient evidence that any relevant legal event has occurred which requires modification of the definitive map and statement.
- 2.101 Option B The DELETE2 option for the sub-committees is to decide to make an order to delete part of Batley 49 (part), on the basis that the evidence does demonstrate

that, on the balance of probability, no way existed over the application route when it was added to the definitive map and statement.

2.102 Option C The ADD1 option is to decide not to make an order to add a public footpath because the evidence (i) does not demonstrate that, on the balance of probability, public rights have been shown to subsist, and that (ii) it does not demonstrate that they have been reasonably alleged to subsist. (i.e. that both Tests A& B described above at paragraph 2.10 are not satisfied).

2.103 Option D The ADD2 option is to make an order to add a footpath, because the evidence does demonstrate that, on the balance of probability, public rights have been shown to subsist.

2.104 Option E The ADD3 option is to make an order to add a footpath, because the evidence does demonstrate that public rights have been shown to be reasonably alleged to subsist.

### **3 Implications for the Council**

3.1 The public rights of way network is part of the Council's Green Network. Improving the public rights of way network contributes to the Council's green ambitions by encouraging people to walk and ride rather than use the car. This can help to reduce traffic congestion and carbon emissions.

3.2 Providing better facilities for physical activity works towards local and national aims of healthy living.

3.3 The West Yorkshire Local Transport Plan highlights maintenance and improvements to rights of way within its Delivering Accessibility, Tackling Congestion and Effective Asset Management themes.

3.4 The Council has a statutory duty to consider the application in line with the legal requirements outlined above and within the guidance notes, and to determine whether to make an order. There is no power to recharge for the costs of processing the application or making and advertising a definitive map modification order.

### **4. Consultees and their opinions**

4.1 Ward members have made no comment on the application but previously noted support of the council's enforcement action on Batley public 49. This is noted for information but does not carry evidential weight in the DMMO consideration.

4.2 The blocking of public access in 2010, public report of blockages, the application for DMMO and the council's informal notices led to a number of people contacting the council and offering comments about the public pedestrian access. The DMMO process is one for evidential consideration. Most people that officers communicated with were unaware of the definitive alignment of Batley 49. Some gave information regarding their use of the path that had been blocked in 2012, across from the track to the field edge stile. This is included in the appended summaries at Q. Officers did have some telephone communication with a local resident, Mr Lumb, who reported that he disputed the blockage of the path with/by the Buckley family and he noted that no formal notices had been posted in connection with the Buckley's actions to prevent public use.

### **5 Next steps**

- 5.1 If the Council does not make an order, then the applicant may appeal by way of representations to the Secretary of State who may direct the Council to make an order. [WCA 1981, Schedule 14, 3 (4)]. The applicant has 28 days to appeal after notice is served by the council of its refusal decision..
- 5.2 If an order is made, it will be advertised on site and in the local newspaper. All owners and occupiers will receive a copy of the order as well as other statutory consultees. Anyone may submit written objections to the order during the relevant notice period.
- 5.3 If no one makes an objection the Council could confirm the order. If objections are made, and not withdrawn, the order has to be referred to Secretary of State DEFRA who will decide if the order should be confirmed. This usually involves appointing an inspector to consider the evidence from all parties at a public inquiry, hearing or by exchange of correspondence.
- 5.4 Public rights of way provisions contained within the Deregulation Act 2015 are yet to be commenced, and any relevant, associated ministerial guidance and regulations are also yet to be published. These may affect ongoing DMMO processes.

## 6 Officer recommendations and reasons

- 6.1 **Summary: Officers recommend** options A and C, that is:
  - 6.1.1 DELETE1 at paragraph 2.100 above, namely not to delete part of public footpath 49, because the evidence does not support deletion AND
  - 6.1.2 ADD1 at paragraph 2.102 above because the available evidence does not support the making of an order for addition. Full reasons and the formal recommendation are set out below in paragraphs 6.2 to 6.41.

### Reasons for recommendation

- 6.2 As highlighted in section 2 above, the council must consider whether the evidence shows that the relevant part of the recorded route of Batley footpath 49 was included as a public right of way in the first definitive map in error or if the route was included in the 1985 definitive map in error due to an omission to reflect a relevant legal order made between 1952 and 1985.. The formal processes to produce the first definitive map ran from surveys in 1950 to the published final map, and included widespread public consultation and notice, as well as formal proceedings to determine objections. Alternatively the council may consider whether a relevant legal event has taken place which requires a formal change to the record of public rights of way.
- 6.3 Officers have examined the witness and documentary evidence provided by the applicant and gathered during the investigation.
- 6.4 The applicants' own first-hand knowledge of the land only dates from 1981. **Officers believe** that their personal experience does not provide any evidence to question the inclusion of the footpath in the first definitive map.
- 6.5 **Officers believe** that the various WCA8 witness forms and WCA10 landowner forms support the claim that public use of the Batley footpath 49 (part), across the Bragg's land, subject of the deletion part of the application has not taken place for some decades. This lack of use would not extinguish this path and would not alter any recording of the public footpath.

- 6.6 **Officers consider** that the public has used a path directly from the track (path 55) to the field across Mr Lilley's lawn for some considerable period of time. Mr Lilley bought the property High Barn in 1989 and applied to divert this path in 1991 to a line along the boundaries at the back of properties on Hey Beck Lane. This diversion proposal failed, after objections from the Braggs and others after the order was made. Although the route was used, its use by the public appears to have been interrupted in 1992-3 and in 2012, effectively preventing continued public use, which was only reinstated after enforcement action by the council. The Braggs wrote to the council to report this blockage on 3 August 1992 after their return from holiday. (KC PROW files). The council secured re-opening in March 1993. The same "Lilley lawn" application addition path has been blocked to public use since August 2012.
- 6.7 In the January 2016 letter to the council (Appendix G), officers' approach to mapping data when determining the existence and alignment of public paths was criticised. The original definitive map was described as "*unclear (even with magnification or expansion) where the mark ends*" (enclosure 1), that enclosure 2 shows that the route "*does not cross over the Bragg's holding*" and that on enclosure 3 "*it is not completely clear if it crosses the holding or runs to the farm track*". The letter continues by describing the limitations of the definitive map, of its scale and of the pen strokes used to mark up the paths thereon. **Officers would note** that the enclosed documents were not necessarily precisely as described by Ramsdens, and that the Braggs' property is not shown on enclosure 3 at all. Members have before them documents from the 1952 DMS process, Ordnance Survey plans of the physical features surveyed and published in their product maps from 1894 to the 1950s, conveyancing documents, planning applications and the papers of the formal DMS which support the views formed by officers regarding the alignment of Batley footpath 49 across the Braggs property. In addition, the Braggs main contemporaneous witness presented in their DMMO application, Mrs Hallas, also supported this officer view in her statutory declaration (Appendix E). She noted the presence of the footpath, its use by the public and that the Buckleys wanted that use to cease.
- 6.8 **Officers note that** Mrs Hallas' statutory declaration makes numerous points that clarify that the footpath was as suggested by officers and appear to negate the claims of January 2016 by Mr Bragg's representatives. Mrs Hallas confirms that the path ran between the land and the house and separately notes that a gentleman, Mr Woolin, had been using the path "at the side of the field between the house", which led Mrs Hallas to believe that the Buckleys would seek to move the footpath. Officers accept that the definitive map is at a scale of 1:10000 and 1:10560, which is why officers would refer to additional material, including the source data provided in the 1952 WRCC/BBC surveys and the physical history depicted in Ordnance Survey plans. This is completely appropriate in accordance with section 32 of Highways Act 1980, (see paragraph 2.14 above). The applicants also criticise comparison of plans, but again, it is appropriate to consider the history of the physical path and compare the various documents. The OS plans are not conclusive of public status but they are supportive of other documents and the officer view in this case, as are other documents as described above. It is a commonplace tactic to raise questions about the scale and interpretation of mapping including the definitive map. It is the council's role to interpret and decide when faced with questions of enforcement and public path alignment. It is part of members' consideration of this report and officers would highlight to committee the variety of submitted plans and their depiction of path before, during and after 1952 DMS process, across what became the Braggs' property. Circumstantial evidence of path blockage and subsequent deviation by the public is not considered by officers to be sufficient in this case to demonstrate a formal

movement of the path, in conflict with the WYMCC 1985 DM process and in the absence of any formal record or note of diversion. Ramsdens also make note in their letter of 16 September 2013 of Mr Fountain's recollections being similar to Mrs Hallas, presumably regarding the change to the path by the Buckleys, but no evidence to support this has been adduced. Mr Fountain's recollections are therefore not strong evidence that the path was legally diverted but are further evidence presented by the applicants of repute of a footpath within the Buckley/Bragg holdings.

- 6.9 The January 2016 letter claims that the diversion of the path by order in the early 1990s takes precedence and is unchallengeable. **Officers note** that the path in the diversion order was not diverted because the order was not confirmed. The error of this argument is focused by the applicants' claim that "*importantly, no one challenged the order in 1992*". The Braggs themselves challenged the order, formally objecting to it, like others did, and their case was supported by the inspector when he decided not to confirm the order. The Braggs' objection letter from their solicitors (Hewison & Nixon) of 14 September 1992 is appended at U. Almost as an aside, the path in Mr Lilley's application depicted in that order, to be diverted, was the path on the ground at the time and not Batley 49.
- 6.10 The Braggs' apparent confusion expressed in the January 2016 letter and previously, may be because of the opportunity for challenge available at the time to the confirmation of an order or to the inspector's decision – in this case the order was not confirmed and the inspector's decision was not challenged. The end result of this is that the order itself had no effect on any path. It is important to note that a diversion proposal, even at the opposed order determination stage, is not an investigation or determination of public status like a DMMO process.
- 6.11 As regards the documentary evidence supplied with the application and elsewhere. Much of the volume adduced has little weight in considering the existence of public paths. Members' attention is drawn to correspondence at Appendix G.
- 6.12 As explained in Section 2 above, in the case of an application to delete a definitive footpath it is not necessary for the council or anyone else to show that the map is correct. However, during investigation into this application, officers gathered a number of documents from the first definitive map process which are worthy of note as follows:
- 6.13 Each gathered document, produced over more than a decade from the first days of that process in 1950, (the survey schedule dated December 1950 app K) through to the publishing of the definitive map and statement itself (appendix N) includes reference to the existence of public footpath 49, and do not add weight to the assertions of the applicants, including
- the survey sheets,
  - the draft map,
  - the provisional map and,
  - the first definitive map itself.
- 6.14 The modified definitive map published in 1985 also included path 49 at Hey Beck Lane. When considered together, **officers' view** is that this documentation is strong



evidence that the application route was properly considered and was correctly identified and recorded as a public footpath.

- 6.15 **Officers' comment** on Ordnance survey plans (appendix J): there is a continuity in the depiction of the physical route in plans produced to depict the physical state of the land at time of survey. Depiction of a route is not proof that it is a public right of way, but does provide evidence that supports the later records in connection with the formal recording of the 1952 and 1985 DMS. This is also backed up by the depictions of the route evident in base maps and other plans for planning applications, conveyance documents, ownership papers etc.
- 6.16 Documentation in connection with property transfer/sales is largely dealt with in previous officer replies to the applicants (Appendix G). Officers do not agree with many of the contentions put forward on behalf of the Braggs or with the alleged weight to attach to such papers in this process. Local land charge searches over some years, including one prior to the property purchase by the Braggs did not ask the relevant PROW question so did not garner a PROW response and in any case would not change the position of a path if mis-reported, as in 1998. The granting of planning permission would not divert a public footpath or in any way formalise a previous physical change of the path on the ground. In common with various dealings in the 1990s, including the erroneous depiction of path 49 in the unconfirmed diversion order, the Braggs received an incorrect local land charge response regarding the path in 1998. Again, this is dealt with in appendix G correspondence.
- 6.17 Mr Bragg's submitted application statement. **Officers note** that: Mr Bragg accepts the existence of the footpath and notes several times that this path used to be on what became his land but has allegedly been moved. This case is similar to that put forward by his legal representatives before the application was made. Mr Bragg notes that the evidence to support his diversion claim is circumstantial. There is no documentary evidence adduced or discovered from archive material, newspaper notices, the courts or the 1985 DMS process undertaken by WYMCC to support the claim that an order was made by or for Batley council. Mr Bragg's acceptance of the existence of the footpath and its subsequent movement is completely at odds with his representatives' claims of January 2016 that a public footpath has never existed within his land, i.e. over the deletion application route.
- 6.18 1966 Savile conveyance of triangle of land: **Officers note** that this document refers to the footpath that is to be retained along the north western boundary of the triangle of land. Mr Bragg's own statement notes at 4 that "*clause 1 of the 1966 conveyance states that the land is sold subject to "the footpath crossing the entire length of the north western boundary [...]"*". This is the footpath that in application, Mr Bragg claimed had been diverted by Mr Buckley so should be deleted, yet in January 2016 argued that it was not a recorded public right of way. The conveyance paper has a base OS plan which shows the peck lines of the footpath across the Buckley purchase triangle. Savile also submitted a map of sales, which also identifies the Buckley triangle sale and the base map from OS used also shows the peck .line footpath as officers describe. (Appendix F)
- 6.19 Photos at application C1 - **officers note** the continuation of the brick wall around the south east corner of the original plot of 75 HBL. The path, shown on many plans over many years including formal documentation of PROW records, runs where the camera is pointing to Hey Beck Lane. The wall to the left shows the original extent of 75 Hey Beck Lane before purchase of the Savile triangle by Mr Buckley. The distinctive shape of the wall corner replicates the distinctive shape of the

shape of the plot of 75 and the distinctive shape reappears many times in documentation before members.

- 6.20 Application - Statutory declaration of Mrs Hallas - Mrs Hallas' statutory declaration makes numerous points that clarify that the footpath was as suggested by officers and appear to negate the claims of January 2016 by Mr Bragg's representatives. Mrs Hallas notes that the land outside the curtilage of 75 Hey Beck Lane was "simply open land." Mrs Hallas confirms that the path ran between the land and the house and separately notes that a gentleman, Mr Woolin, had been using the path "at the side of the field between the house", a day that led her to believe that the Buckley's were going to move the public footpath. Mrs Hallas mentions planning permissions and objections but not any order process to move the path. Mrs Hallas asserts that people she assumed to be from the Batley council put up a footpath sign down the track, sometime in the early 1970s, after Mrs Buckley had told her that they had been successful in doing so. She states that Mr & Mrs Buckley moved in 1979 and their daughter and son-in-law moved into 75 Hey Beck Lane.
- 6.21 *Simon Bowett's* statutory declaration was submitted with the application, along with a UEF. **Officers note** that Mr Simon Bowett was that son-in-law, a discovery made by officers during an interview. Mr Bowett states at paragraph 8 and 19 that in all his time there he understood the path to run along "the Lane" at the side of the Bragg's property, then cut across the field. These assertions are apparently contradicted by his own letters to Kirklees Council of 1988 and 1989 (appended at T) which identify and mark (in red ink) the route of the public footpath through Mr Bragg's land, and note that the council's position on alignment at that time is incorrect. When interviewed, Mr Bowett admitted the 1980s letters were from him but could not recall what had caused him to send them. In view of the available evidence, officers would agree with Mr Bowett's letter of January 1989; he knew the Buckley family very well, indeed was a family member, and would appear most unlikely to be truly confused about the path location.
- 6.22 Simon Bowett letters with the council July 1988 – January 1989. Mr Bowett writes to the council to report a problem on the footpath, indicating that "*the footpath sign should be some 25 yards nearer the road. This would mean that it would be nowhere near my home.*" After a reply council letter, Mr Bowett then writes to correct the council's "*incorrect*" response regarding the alignment of path Batley 49, marking up and returning a plan to show "*where the footpath goes or should go*". This marked up line is through the Braggs' property, along the boundary beside the original 75 Hey Beck Lane and in the triangle of land bought from Savile Estate for the stable. Mr Bowett knew this area well as he describes in his evidence, particularly his statutory declaration. He was the son-in-law of Mr & Mrs Buckley, the owners of 75 Hey Beck Lane until the Braggs bought it in 1981. The letters support officers current view on path 49 alignment being through the Braggs property.
- 6.23 Application submissions - Batley papers, resolution, memo, letter and note. **Officers note** that in their significant and lengthy attempts to discover evidence to support the deletion application claims, the legal representatives of the Braggs found just a few pages of Batley council records about path 49. This concerned an obstruction hundreds of metres away which left the way impassable and attracted complaint. Officers do not consider that this is significant or weighty evidence to demonstrate that the public footpath 49 at 75 Hey Beck Lane had been diverted formally. It is also noted that a public footpath sign was in place at the track (path 55), behind 75 Hey Beck Lane, pointing across what became the Lilley lawn, for some decades. There is no council record of the path sign being put up, Mrs Hallas' evidence is

noted. The placement of a path sign would not appear to be sufficient evidence to demonstrate formal diversion.

- 6.24 No evidence has been adduced from committee records, published notices, court records or other documentation, (such as that concerned with the WYMCC review of the DMS up to 1985) that may be expected to support the “diversion by Buckley” argument. **Officers note** that the Braggs’ circumstantial argument is that Kirklees council does not have a full record of all Batley council files and their claim that records held by legal and PROW may omit orders that have been made. There are a number of issues with this point. The absence of a record is no evidence that something has happened, particularly when any associated evidence of a legal event’s passing is also absent. WYMCC reviewed the DMS in the 1970s and 1980s, published the modified DMS in 1985. WYMCC do not reflect any alleged order. The courts do not have any record of an order. The London Gazette does not make any notification of an order. Officers have not and cannot reasonably be expected to check every council record from every current and predecessor authority in this matter. Officers have not claimed, as alleged by Ramsdens, to have done so. Officers do not know what may be missing and would not claim that there is a complete record of all Batley council papers currently held by Kirklees council, but the DMMO question is an evidential one and what is available shows no sign of the alleged public path diversion by Mr Buckley or anyone else in the time prior to the Bragg’s purchase in 1981 of 75 Hey Beck Lane and the land carrying the “deletion” part of Batley footpath 49. The council does not attempt to prove that it has never happened, that is not necessary; it is the modification of the DMS that requires proof. This, in the absence of any corroborating documentation of diversion and with the 1985 DMS process, is too high a hurdle for the evidence before the council, including that submitted by Ramsdens allegedly after months of investigation. KC records of changes to Batley routes by order are at Appendix V.
- 6.25 Similar comments would apply to the criticism levelled at the council’s records of orders for the Batley area.
- 6.26 **Officers’ view** is that the evidence supplied in favour of the application (witness statements and documentary,) is insufficient for an order to be made to delete the footpath 49 at Hey Beck Lane.
- 6.27 **Officers would note** that even if members consider that the footpath 49 has been obstructed since the late 1960s and has not been used by the public, this is not evidence that the path was wrongly recorded in the 1952 definitive map process, and is not evidence that the path was formally diverted by Batley Borough council; therefore it is not evidence that an order deleting the footpath should be made.
- 6.28 **Officers’ view** is that the additional documentary evidence gathered by officers and now available to sub-committee does not offer any support to any claim that this part of footpath 49 was incorrectly recorded in the first definitive map process and does not offer sufficient evidence to conclude that the footpath Batley 49 should be deleted in any part from the DMS.
- 6.29 **Officers’ view** is that the additional evidence indicates that the part of path 49 subject to the deletion application is a public footpath.
- 6.30 Although it is recognised that public use may have taken place on the addition route over several decades subsequent to actions of Mr Buckley, there is evidence in the council’s own path file records of both interruption and challenge in 1992-3 and 2012-present by Mr Lilley, the landowner of this unrecorded route. As we

consider the period before public use was brought into question for the purposes of statutory presumption under section 31 of the highways Act 1980, we then go back from the 1992 blockage (ended after the council served a formal section 143 notice on “Batley 49”) to 1992. In this period 1972 to 1992 there is little evidence from users, there is some evidence of its notoriety from landowners, as noted in appendices and above in section 2. For the purposes of dedication further to a statutory presumption, then **the officer view** is that there is inadequate evidence before the council to conclude that even a reasonable allegation has been made that use as of right has taken place by the public at large, throughout the relevant period. No person has given evidence of the full 20 year period 1972-1992.

- 6.31 When considering common law dedication, there again appears to be a lack of evidential weight of user, particularly prior to the ownership of Mr Lilley in 1989. Mr Lilley has stated that he does not consider that the ‘addition’ route is a public right of way.
- 6.32 This view is not a statement from officers that the addition route across Mr Lilley’s lawn is not and could not be a public footpath, but rather a view that there is insufficient evidence before members to demonstrate even a reasonable allegation that it is a public footpath. Similarly, officers would note that it is possible that the footpath 49 was diverted formally years ago, but there is little evidence to suggest or demonstrate that it was other than the physical relocation, such that it would justify a deletion modification order for the DMS, either as sought in the application or otherwise.
- 6.33 Even if members of the public used the application addition route over Mr Lilley’s lawn for a requisite period without challenge, leading to a presumption of dedication over that route of a public footpath – such use would not in itself mean that the public footpath Batley 49 across the Braggs’ land has been extinguished or should be deleted from the DMS for some other reason. If members consider that an adequate case has been made solely for the addition of a public footpath, then there would be two recorded paths should such an order be confirmed.
- 6.34 Mr & Mrs Bragg’s representative’s letter of January 2016 present their latest arguments – but they are at odds both with the Braggs’ application that has been made and with their previous arguments, which, like the DMMO application (that they now view as “*wholly unnecessary*”), have not been withdrawn.
- 6.35 The submitted Ramsdens view that the DMMO application is “*wholly unnecessary*” is based on an allegation that there is no public right of way shown on the Braggs’ land in the council’s formal records of public rights of way. The letter continues with claims both that council officers are to blame for providing erroneous information and that the council’s enforcement action against their client was “*wholly incorrect*”. They dispute mapping evidence from e.g. the 1952 DMS process and specifically dispute the views of the council’s definitive map officer, Giles Cheetham. The reasoning put forward variously criticises the use by officers of “*expanded*” plans (i.e. enlarged), comparison with other plans and an officer reliance on other non-definitive plans. The letter then notes the Braggs’ purchase of land in 1984 and the failure of the council to correctly answer local land charge searches. They also relate a planning application of 1984 not recognising the existence of public rights. They then continue for some paragraphs about the council failing to reflect the confirmed diversion order of 1994 in various allegations of council failure. They propose a solution whereby the council is to make a legal event modification order (“LEMO”, as described at paragraph 2.6 of the report).

- 6.36 However, **officers note** that the Braggs bought the property in 1981 and their solicitors did not ask the PROW question in the local search. The diversion order actually made in 1992 was not confirmed and therefore has had no legal effect on any path, nor required any modification of the DMS or any update to Ordnance Survey to use in its products. Officers are not aware of any relevant diversion order made in 1994. Officers do not accept the claims and allegations regarding the mapping of path 49, dating back to before it was recorded in the 1952 DMS. The use and consideration in these processes of plans and other documentation dating back over many years is backed by section 32 of the Highways Act 1980, indeed it is required. It is common practice to consider such documentation in determination of PROW issues by the inspectors appointed by the Secretary of State at DEFRA. Officers would use historic mapping as well as information from any other relevant available sources to form views and consider the right approach to PROW issues, whether for information, enforcement or consideration of applications to the council. Officers are satisfied that the available evidence supports the view that the footpath Batley 49 was and is recorded over what later became Mr Buckley's land, the triangle he bought from Savile Estate in 1966, subsequently purchased by the Braggs and carrying path 49 to this day.
- 6.37 Members may consider the mapping information over the last 100+ years appended to the report, including that from the formal recording of public rights of way in the 1952 and 1985 DMS processes. The outline of 75 Hey Beck Lane as originally laid out before the purchase of the additional triangle of land by Mr Buckley is a distinctive shape, different from the rectangles of the other plots fronting Hey Beck Lane. This plot shape and the angle of its boundary with the triangle matches the path shown in pre and post 1952 mapping, and is clearly identifiable on maps and plans and documents produced for various purposes over many decades, including the production of formal records of public rights of way. The angle of the path 49 alignment considered by officers matches these documents and is quite different from the angle of the path 49 alignment favoured by the Braggs in the application, i.e. the addition route not within their property. The definitive statements, final and as prepared at various stages of the DMS processes, refer to path 49 terminating at Hey Beck Lane (early documents refer to its old name "Batley Road"). Again, the distinctive shape of pieces of land and the north easterly direction of the route after it leaves the field would be more likely to be described so, rather than the addition route, or any other direct route across the Lilley lawn to the track. The Braggs' professional legal representatives earlier argued that the path had been "relocated" "altered" "re-aligned", and they made formal application for a DMMO to reflect their conviction that a formal change to the path 49 alignment had taken place.
- 6.38 When considering the application and taking into account the *Leicestershire* decision, (see 2.24 above) the council should decide which is the correct route. **Officers view** is that the definitive map shows the route as recorded in the 1952 process, supported by documentation and mapping over many years, including papers submitted by the applicants.
- 6.39 Mr & Mrs Bragg and more latterly their representatives have informally challenged the views of officers on many aspects of this path since 2003's Mr Bragg's fax response to PROW of 1 December. Ramsdens have disputed officers' views and actions and have noted to the council on numerous occasions their dissatisfaction and willingness to undertake various legal actions on behalf of their clients against the council in light of Hey Beck Lane PROW matters. The council received a direction from the Secretary of State to decide this DMMO application, whose inspector identified the investigations already undertaken by officers in enforcement processes. Officers have previously noted to the applicants (e.g. letter of 2

2014 at appendix G) that the evidence in support of their case appeared inadequate and that they may wish to seek and adduce further supporting evidence. Further evidence may exist which may have led to a different recommendation particularly in regard to the addition, but officers consider that insufficient evidence is currently before members to make a DMMO.

- 6.40 Officers would note to members (see 5.1 above) that if the council (sub-committee) decides not to make an order the applicants would have a right to make representations to the Secretary of State. If the officer recommendations on the DMMO application are accepted and supported by members, the applicants have a right to challenge that decision formally within 28 days of notification.

### **Formal recommendation**

#### **6.41 Officers recommend to members:**

6.41.1 **option A at paragraph 2.100** above, to not make an order to delete part of public footpath Batley 49 because the available evidence does not demonstrate that, on the balance of probability, no public right of way exists over the application route **and also**

6.41.2 **option C at paragraph 2.102** above to not make an order to add a footpath because the available evidence does not support the making of an order for addition whether on the basis that a public right of way subsists, or is reasonably alleged to subsist.

## **7 Cabinet portfolio holder recommendation**

7.1 Not applicable

## **8 Contact officer and relevant papers**

Giles Cheetham: Telephone 01484 221000 (74205)

### **Relevant background papers:**

PROW file 872/Mod/1/181/GC

Appendices

<https://democracy.kirklees.gov.uk/ecCatDisplay.aspx?sch=doc&cat=13403>

Plan 1 and 1985 Definitive map copy extract

1985 definitive statement extract for Batley footpath 49

Schematic plan of routes prepared in 2003

1 – Guidance notes for members on Definitive Map Modification Order applications

Plan A – shows the application route for deletion

2 – Human rights making sense extract

A – Paragraphs from DEFRA circular rights of Way 1/09

B – Planning Inspectorate DMMO Consistency guidelines for Inspectors

C – Unconfirmed 1992 diversion order

D – 1994 Planning inspectorate decision letter from the inspector appointed to decide the opposed 1992 diversion order. Decision is not to confirm.

E – Mr & Mrs Bragg DMMO application submissions

F – Savile Estate papers

G - Bragg/Ramsdens/KC correspondence including supporting case and responses

H - Bragg documentation further submissions

J - Ordnance Survey extracts from 1893 onwards plus other maps dating back to 1840s

K – WRCC 1952 DMS process Batley survey papers

Batley borough council footpath 49 and 55 (track) survey sheet

L – WRCC 1952 process draft map papers

M – WRCC 1952 process provisional map

N – WRCC 1952 process definitive map and statement

O – 1985 DMS review process draft review map & other extracts (one with notes of changes)

P - landownership and location plan

Q – user and landowner table summaries

R - 1966 Buckley stables planning papers

S - Bragg 2011/92466 planning application submission showing path 49

T – Simon Bowett letters to/from KC 1988-89

U – Bragg objection to 1992 diversion order

V – Batley order records

9 **Assistant director responsible**

Paul Kemp, Acting Assistant Director, Investment & Regeneration

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**Name of meeting and date:**

Planning sub-committee (Heavy Woollen area) 1 September 2016

**Title of report:**

**Application for a definitive map modification order to delete public footpath Batley 49 (part) from the definitive map and statement, and to add a public footpath at Hey Beck Lane, Woodkirk, Dewsbury.**

**1. Purpose of report**

Members are asked to consider an application and decide whether to make a definitive map modification order (“DMMO”) to delete part of public footpath Batley 49 from the definitive map & statement and/or to make a DMMO to add a public footpath to/from the definitive map & statement.

**2. Summary of Report**

The landowners of a property on Hey Beck Lane claim that the public footpath shown in the definitive map and statement across their property is not a public footpath and should not be shown in the legal record of public rights of way held by the council.

They claimed in application and other submissions that it was diverted by the former Batley Borough council several decades ago and they also claim that an unrecorded route used over some decades was where it was diverted to, has been used by the public since, is a public footpath and should be formally recorded across their neighbours’ property.

Members are asked to consider the evidence against the relevant legal criteria, noting the relevant guidance, before deciding whether to make the order to delete the footpath and/or to add the footpath.

The applicants have subsequently informed the council that their DMMO application is wholly unnecessary. The council was directed to determine the DMMO application by the Secretary of State by August 4 2016, and officers report to sub-committee for a decision.

**3. Ward Councillor comments**

No comments on the existence of public rights to date.

**4. Officer recommendations and reasons**

That sub-committee resolves not to make an order to delete the part of Batley public footpath 49 because the evidence is insufficient to show that there is no public right of way over the land in question **and** that sub-committee resolves not to make an order to add a public footpath because the evidence is insufficient to show that either a public right of way (i) subsists or (ii) is reasonably alleged to subsist.

Appendices: <https://democracy.kirklees.gov.uk/ecCatDisplay.aspx?sch=doc&cat=13403>

The applicants and their representatives have made numerous arguments and submissions presented in favour of their case, including:

- The public footpath 49 across the Bragg property was diverted by Batley Borough Council after an additional adjacent triangle of land was bought from Savile Estate in 1966 by the owner of 75 Hey Beck Lane.
- The council's records are incomplete so the council does not have a record of this change, which was effected on the ground, with the route through the Bragg's property closed and a route from the Batley footpath 55 to the field directly across Mr Lilley's land being made available in accordance with the 'lost' Batley Borough council diversion order.
- The route across the neighbouring land has been dedicated as a public right of way on foot due to unchallenged public use over the years, in any case.
- There is no public right of way shown over the Braggs' land in the council's formal record of public rights of way so the application being made was "*wholly unnecessary.*"

Officers do not consider the first three points to be impossible, but consider that none is demonstrated to a sufficient level to make any order either to add or to delete a footpath in line with the application. Officers do not consider that, further to consideration of the evidence, the council should make any other DMMO either. Further evidence may lead in future to a different opinion and conclusion, the recommendation offered is on the basis on evidence currently before the council.

In summary, officer view is simply that:

- At some point in time some decades ago the definitive path has been physically moved and obstructed and another route made available.
- At some point in time part of the land carrying the recorded path was added to the property at 75 Hey Beck Lane.
- In the 1990's Kirklees officers and others involved dealt with the path on the ground instead of the recorded public footpath 49.
- A diversion order (PPO) made 18 August 1992 was opposed and ended up at public inquiry. Like the council, the appointed inspector did not note the difference between the physical route shown in the order and the definitive recorded path when deciding the order and writing his decision letter. The inspector did not confirm the diversion order in his decision of April 1994, so the 1992 diversion order had no effect on the alignment or existence of any recorded, unrecorded or alleged public rights of way.
- The definitive public right of way has not been changed by any order since its recording on the 1952 Definitive Map & Statement ("DMS"). No other order has been adduced.
- During the 1991-94 diversion process, Mr Lilley blocked the route across his land from path 55 to public use for some months from before 27 August 1992 to March 1993, interrupting public user. He has blocked the route since summer 2012.

This view is not a statement from officers that the addition route is not and could not be a public footpath, but rather a view that there is insufficient evidence before members to demonstrate a reasonable allegation that it is a public footpath. Similarly, officers would note that it is possible that the footpath 49 was diverted formally, but there is little evidence to demonstrate that it was, such that it would justify the deletion modification of the DMS as sought in the application. Even if members of the public used the application addition route over Mr Lilley's lawn for a requisite period without challenge, leading to a presumption of dedication over that route of a public footpath – such use would not in itself mean that the public footpath Batley 49 across the Braggs' land has been extinguished or diverted or should otherwise be deleted from the DMS.



**Name of meeting: PLANNING SUB-COMMITTEE (HEAVY WOOLLEN AREA)**

**Date: 1 SEPTEMBER 2016**

**Title of report: A report for information purposes relating to the granting of a Lawful Development Certificate under Class A of Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 for the erection of a temporary mast at Emley Moor Television Broadcast Site, Jagger Lane, Emley Moor.**

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	No
Is it in the <a href="#">Council's Forward Plan</a> ?	No
Is it eligible for "call in" by <a href="#">Scrutiny</a> ?	No
Date signed off by <u>Director</u> & name	Paul Kemp, Assistant Director of Place - 30 August 2016.
Is it signed off by the Director of Resources?	No financial implications
Is it signed off by the Acting Assistant Director - Legal & Governance?	Yes Julie Muscroft - 30 August 2016
Cabinet member <a href="#">portfolio</a>	Economy, Skills, Transportation and Planning (Councillor McBride)

Electoral [wards](#) affected: DENBY DALE

Ward councillors consulted: Ward Councillors G Turner, J Dodds, M Watson

Public or private: PUBLIC

## 1. Purpose of report

- 1.1 The report is for information purposes only, to inform members that a Certificate of Lawfulness for the proposed erection of a temporary mast adjacent to Emley Moor Television Broadcasting site, Jagger Lane, Emley, has been granted.

## 2. Key points

## **2.1 Background:**

- 2.1.1 A Certificate of Lawfulness for the proposed erection of a temporary mast at land adjoining Emley Moor Television Broadcast Site, Jagger Lane, Emley Moor, was received on 18 March 2016, referenced 2016/90750. The applicant is Arqiva Ltd.
- 2.1.2 Emley Moor tower is a 330.5 metre tall concrete tower, which is a Grade II listed building.
- 2.1.3 Arqiva owns and operates the UK's terrestrial television broadcasting network and much of the radio broadcasting network. In the accompanying planning statement submitted by the applicant, it states that Arqiva operates 1154 sites covering, it is claimed, 99% of the UK population. The planning statement states that 80% of Arqiva's service is provided by 50 Main Transmitter Stations (MTS). Emley Moor Tower is an MTS, serving 1.7 million households. The Emley Moor Tower site employs approximately 178 full time staff.
- 2.1.4 Commencing in 2008, the UK Government initiated a project of installation of new radio antennae as part of the UK Government's Digital Switchover Project (DSO). The major national infrastructure project was in order to allow the UK to switch to fully digital television. The DSO occurred between 2008 and 2012. Emley Moor Tower switched in September 2012.
- 2.1.5 Arqiva has been requested by government (through OFCOM) to implement a project known as the national 700MHz spectrum clearance project ('the 700MHz Project'). The 700MHz Project will clear the terrestrial television broadcast network to allow that part of the spectrum to support other electronic communication services. The 700 MHz Project will take several years to implement.
- 2.1.6 Arqiva has stated that Durham County Council has issued a Certificate of Lawfulness for a similar temporary installation at Pontop Pike as part of the 700MHz clearance project.

## **2.2 The proposal:**

- 2.2.1 The proposal within the Certificate of Lawfulness (CLOPUD) application is for the erection of a temporary telecommunications mast and associated development next to Emley Moor Mast. The temporary structure would be of a similar height to the existing mast (310m to the top of the structure and 324.0 to the top of the antenna) and the applicants state its erection is required to carry out essential works to the Emley Moor Mast. It would be a steel structure secured by three sets of 'guy' cables.

### **2.3 Essential works to the Emley Moor Mast:**

- 2.3.1 At Emley Moor the 700MHz Project will require permanent works for the replacement antennae on the existing broadcast mast.
- 2.3.2 The replacement of television broadcast antennas and associated works on the existing mast have been granted planning permission under reference 2016/92162 and Listed Building Consent under reference 2016/92163, and were issued on 22 August 2016.

### **2.4 Relevant Legislation:**

- 2.4.1 The CLOPUD application has been made upon the basis that the development for the erection of the temporary mast is lawful pursuant to Class A of Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 ('the GPDO').
- 2.4.2 Class A of Part 4 of Schedule 2 of the GPDO states:

#### **A. Permitted Development**

The provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land.

It continues:

#### **A.1 Development not permitted**

Development is not permitted by Class A if-

- (a) the operations referred to are mining operations, or
- (b) planning permission is required for those operations but is not granted or deemed to be granted.

#### **A.2 Conditions**

Development is permitted by Class A subject to conditions that, when the operations have been carried out –

- (a) any building, structure, works, plant or machinery permitted by Class A is removed, and
- (b) any adjoining land on which development permitted by Class A has been carried out is, as soon as reasonably practicable, reinstated to its condition before that development was carried out.

### **2.5 Representations:**

- 2.5.1 Class A of Part 4 of Schedule 2 of the GPDO does not require a Certificate to be publicised. However, due to the sensitivity of this site, it was considered appropriate by officers to publicise the Certificate via site notices in order to bring the proposal to the attention of the public. The applicant also carried out their own Press release. As a result of this publicity, there have been

two representations received. A summary of the issues raised are as follows:

- Health & Safety concerns relating to ice falling from the structure and high winds.
- An increase in noise pollution because of the wind whirling round the structure.
- Increase in traffic due to staffing, and alterations, and also from members of the public coming to view this.
- Noise from unsociable hours of operation at the existing site i.e. gritting at 2.30am in the morning.
- Devaluation of neighbouring property.

2.5.2 Denby Dale Parish Council were also made aware of the Certificate and confirmed that they have 'no objection'.

2.5.3 As previously set out, the Certificate can only be considered in relation to the criteria set out in the GPDO. The matters summarised above can therefore not be taken into account.

## **2.6 Conclusion:**

2.6.1 In the context of the proposed temporary mast:

- a. The temporary mast would be a building or a demountable moveable structure.
- b. The temporary mast is required temporarily for the purposes of the 700MHz Project.
- c. The 700MHz Project material provided demonstrates that the temporary mast is required in order to carry out the works to complete the Project without breaching Arqiva's duty to maintain terrestrial television broadcasting service.
- d. Arqiva have made clear that the temporary mast is intended to be a temporary measure. If it were not removed from some reason it would fall outside the terms of the GPDO at the moment and planning enforcement action could be taken against it.

**2.6.2 In the circumstances of this case the temporary mast proposed at land adjacent to Emley Moor Tower falls within the clear terms of the GPDO Part 4 Schedule 2 on temporary buildings and structures.**

## **3. Implications for the Council**

3.1 Not applicable

## **4. Consultees and their opinions**

4.1 As set out above, a Certificate of Lawfulness is based on the limitations set out in the GPDO. However, due to the sensitive nature of this site, both the Council's Conservation & Design section and Historic England have been informed of this CLOPUD application.

4.2 Officers have also sought the opinion of Counsel. It has been confirmed that *“in the circumstances of this case the temporary mast proposed at land adjacent to Emley Moor Tower falls within the clear terms of the GPDO Part 4 Schedule 2 on temporary buildings and structures. The scale of the temporary mast (at some 310m) is simply not a consideration of limitation within the GPDO”*.

## **5. Next steps**

5.1 The Certificate of Lawfulness has been issued granting the erection of a temporary mast at Emley Moor Television Broadcast site, Jagger Lane, Emley Moor, Huddersfield, HD8 9TQ.

## **6. Officer recommendations and reasons**

6.1 As set out in section 5 above.

## **7. Cabinet portfolio holder recommendation**

7.1 Not applicable

## **8. Contact officer and relevant papers**

Julia Steadman – Team Leader – Investment and Regeneration Service  
01484 221000 – [julia.steadman@kirklees.gov.uk](mailto:julia.steadman@kirklees.gov.uk)

## **9. Director responsible Jacqui Gedman**

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