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**Assistant Director, Governance and
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Wednesday 5 October 2016

Notice of Meeting

Dear Member

Planning Sub-Committee (Heavy Woollen Area)

The **Planning Sub-Committee (Heavy Woollen Area)** will meet in the **Reception Room - Town Hall, Dewsbury** at **1.00 pm** on **Thursday 13 October 2016**.

(A coach will depart the Town Hall, at 10.45am 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".

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 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
C Scott
M Sokhal
S Ullah

Liberal Democrat

R Eastwood
A Marchington
L Wilkinson

Agenda

Reports or Explanatory Notes Attached

Pages

1: Membership of the Committee

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

2: Minutes of Previous Meeting

1 - 8

To approve the Minutes of the meeting of the Committee held on 1 September 2016.

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.

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.

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.

6: Site Visit - Application 2016/91767

Erection of 2 dwellings at The Nook, 43, Forge Lane, Liversedge

Estimated time of arrival at site: 11.00am

Contact Officer: Emma Thompson, Planning Services

Wards

Affected: Heckmondwike

7: Site Visit - Application 2015/92627

Erection of place of worship and educational centre (within a conservation area) at land at the corner of Nowell Street & West Park Street, Dewsbury

Estimated time of arrival at site: 11.25am

Contact Officer: Emma Thompson, Planning Services

Wards

Affected: Dewsbury West

8: Site Visit - Heybeck Lane, Woodkirk

To visit the site of an Application to delete public footpath Batley 49 (part)

Estimated time of arrival at site: 11.50am

Contact Officer: Giles Cheetham, Definitive Map Officer

Wards

Affected: Batley East

9: Local Planning Authority Appeals

11 - 22

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.

Contact Officer: Julia Steadman, Planning Services

Wards

Affected: Dewsbury South; Heckmondwike; Mirfield

10: 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

23 - 58

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.

Contact: Giles Cheetham, Definitive Map Officer

Wards

Affected: Batley East

11: Planning Applications

59 - 112

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 Monday 10 October 2016. To pre-register, please contact andrea.woodside@kirklees.gov.uk or phone 01484 221000 (extension 74995).

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Contact Officer: Richard Dunne

KIRKLEES COUNCIL

PLANNING SUB-COMMITTEE (HEAVY WOOLLEN AREA)

Thursday 1st September 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 Cathy Scott
- Councillor Andrew Pinnock
- Councillor Richard Smith
- Councillor Kath Taylor
- Councillor Graham Turner
- Councillor Mohan Sokhal

1 Membership of the Committee

Councillor Sokhal substituted for Councillor O'Neil.

2 Minutes of Previous Meeting

RESOLVED - That the Minutes of the meeting held on 21 June 2016 be approved as a correct record.

3 Interests and Lobbying

In connection with Item 11 – Planning Applications, Members declared interests and identified Planning Applications in which they had been lobbied as follows:-

All Members of the Sub Committee declared that they had been lobbied on Application 2015/91005.

Councillors Dad and Kane declared they had been lobbied on Application 2016/92276.

Councillor Kane declared that he had been lobbied on Application 2016/92102.

Councillor G Turner declared an 'other' interest in Application 2015/91005 on the grounds of his role as Portfolio Holder for Asset Strategy, Resources and Creative Kirklees (Arts).

Councillor Grainger-Mead declared an 'other' interest in Application 2015/91005 on the grounds that she used the applicants business to purchase goods for her business.

4 Admission of the Public

All items on the agenda were taken in public session.

Councillor Kane agreed to the addition of two late urgent items that were scheduled as:

Item 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 on the grounds that the Council had been directed to determine the definitive map modification order by the Secretary of State by 4 August 2016.

Item 13 – Erection of a temporary mast at Emley Moor Television Broadcast Site, Jagger Lane, Emley Moor on the grounds that the Sub Committee be informed as soon as possible that the certificate of lawfulness granting the erection of a temporary mast at Emley Moor Television Broadcast site had been issued.

5 Deputations/Petitions

No deputations or Petitions were received.

6 Site Visit - Application 2016/91054

Site visit undertaken.

7 Site Visit - Application 2015/91005

Site visit undertaken.

8 Site Visit - Application 2016/92102

Site visit undertaken.

9 Site Visit - Application 2016/92276

Site visit undertaken.

10 Local Planning Authority Appeals

RESOLVED - That the report be noted.

11 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 2015/91005 - 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 - Shabbir Shaikh, Abdul Rawat, Salma Rawat and Faizal Rawat (objectors), Francis Walker and Mr Sheikh (in support), Yousuf Mulla (applicant) and Nick Willock (agent)
- (b) Application 2016/91054 - Erection of a single storey rear and first floor side extensions at The Orchard, Far Common Road, Mirfield - Councillor David Hall (speaking on behalf of the applicant)
- (c) Application 2016/92102 - Erection of single storey side and rear extensions (within a Conservation Area) at 4 Linefield Road, Batley - Stuart Hartley (speaking on behalf of the applicant)
- (d) Application 2016/92276 - Erection of single storey rear extension at 258 Headfield Road, Thornhill Lees, Dewsbury - Mr Hussain (applicant)

RESOLVED - That the Applications under the Planning Acts 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.

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)

The Sub Committee considered a report that outlined details of an Application for a definitive map modification order to delete part of public footpath Batley 49 at Hey Beck Lane from the definitive map and statement and to add a public footpath over a different route.

The report contained details of the background to the Application, implications for the Council and officer recommendations and reasons.

RESOLVED – To defer the Application to allow the Sub Committee more time to study the contents of the report.

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

The Sub Committee considered a report that outlined details for granting of a certificate of lawfulness for the proposed erection of a temporary mast adjacent to Emley Moor Television Broadcasting site, Jagger Lane, Emley Moor.

RESOLVED – That the report be noted.

KIRKLEES COUNCIL
LIST OF PLANNING APPLICATIONS DECIDED BY
PLANNING SUB-COMMITTEE (HEAVY WOOLLEN AREA)
01 SEPTEMBER 2016

APPLICATION NO.	DESCRIPTION, LOCATION OF PROPOSAL AND DECISION
2015/91005	<p data-bbox="523 219 1433 365">Y Mulla - 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</p> <p data-bbox="523 405 1377 584">DEFERRED (TO PROVIDE THE APPLICANTS AN OPPORTUNITY TO FURTHER DEVELOP A TRANSPORT AND SERVICING MANAGEMENT PLAN, TO BE CONSIDERED BY THE SUB COMMITTEE AT A FUTURE MEETING).</p> <p data-bbox="523 624 1412 696">A RECORDED VOTE WAS TAKEN IN ACCORDANCE WITH COUNCIL PROCEDURE RULE 42(5) AS FOLLOWS;</p> <p data-bbox="523 736 1425 842">FOR: Councillors Akhtar, Bellamy, Dad, Grainger-Mead, Kane, Lawson, Pervaiz, A Pinnock, Scott, Smith, K Taylor and G Turner (12 votes)</p> <p data-bbox="523 882 1066 913">AGAINST: Councillor Sokhal (1 vote)</p>
2016/91054	<p data-bbox="523 954 1361 1025">Mr Dhesi - Erection of single storey rear and first floor side extensions - The Orchard, Far Common Road, Mirfield</p> <p data-bbox="523 1066 1401 1317">CONDITIONAL FULL PERMISSION – CONTRARY TO OFFICER RECOMMENDATION (THE SUB-COMMITTEE CONSIDERED THAT THE DESIGN AND APPEARANCE OF THE FIRST FLOOR EXTENSION WOULD NOT ADVERSLY IMPACT ON THE VISUAL AMENITY OF THE HOST DWELLING AND WAS IN-KEEPING WITH SURROUNDING BUIDINGS).</p> <p data-bbox="523 1357 1412 1429">A RECORDED VOTE WAS TAKEN IN ACCORDANCE WITH COUNCIL PROCEDURE RULE 42(5) AS FOLLOWS;</p> <p data-bbox="523 1469 1441 1574">FOR: Councillors Akhtar, Bellamy, Dad, Grainger-Mead, Lawson, Pervaiz, A Pinnock Scott, Smith, Sokhal, K Taylor and G Turner (12 votes)</p> <p data-bbox="523 1615 1034 1646">AGAINST: Councillor Kane (1 vote)</p>
2016/92102	<p data-bbox="523 1688 1425 1760">Mr M Mulla - Erection of single storey side and rear extensions (within a Conservation Area) - 4, Linefield Road, Batley</p> <p data-bbox="523 1800 1433 2085">REFUSAL – 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</p>

APPLICATION NO.	DESCRIPTION, LOCATION OF PROPOSAL AND DECISION
2016/92102 cont...	<p data-bbox="523 219 1445 439">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.</p> <p data-bbox="523 477 1414 546">A RECORDED VOTE WAS TAKEN IN ACCORDANCE WITH COUNCIL PROCEDURE RULE 42(5) AS FOLLOWS;</p> <p data-bbox="523 584 1374 654">FOR: Councillors Bellamy, Grainger-Mead, Kane, Lawson, A Pinnock, Scott, Sokhal, K Taylor and G Turner (9 votes)</p> <p data-bbox="523 692 815 725">AGAINST: (0 votes)</p> <p data-bbox="523 763 1350 797">ABSTAINED: Councillors Akhtar, Dad, Pervaiz and Smith</p>
2016/92276	<p data-bbox="523 840 1386 909">Mr I Hussain - Erection of single storey rear extension - 258, Headfield Road, Thornhill Lees, Dewsbury.</p> <p data-bbox="523 947 708 981">REFUSAL –</p> <ol data-bbox="523 1019 1461 1536" style="list-style-type: none"> <li data-bbox="523 1019 1461 1238">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. <li data-bbox="523 1245 1461 1536">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. <p data-bbox="523 1574 1414 1644">A RECORDED VOTE WAS TAKEN IN ACCORDANCE WITH COUNCIL PROCEDURE RULE 42(5) AS FOLLOWS;</p> <p data-bbox="523 1682 1453 1794">FOR: Councillors Akhtar, Bellamy, Grainger-Mead, Kane, Lawson, A Pinnock, Scott, Smith, Sokhal, K Taylor and G Turner (11 votes)</p> <p data-bbox="523 1832 1238 1865">AGAINST: Councillors Dad and Pervaiz (2 votes)</p>

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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: **13 OCTOBER 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 Council's Forward Plan ?	No
Is it eligible for "call in" by Scrutiny ?	No
Date signed off by <u>Director</u> & name	4 October 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 portfolio	Economy, Skills, Transportation and Planning (Councillor McBride)

Electoral [wards](#) affected: Mirfield; Dewsbury South; Heckmondwike;
Ward councillors consulted: No

Public or private: **Public**

1. **Purpose of report**
For information
2. **Key points**
 - 2.1 2016/62/90586/E - Demolition of existing dwelling and erection of two detached dwellings at 114 West Royd Avenue, Mirfield, WF14 9LE. (Officer) (Dismissed)
 - 2.2 2015/62/91961/E - Redevelopment of farm building to create 2 dwellings with associated parking at Mug Mill Farm, Mug Mill Lane, Thornhill, Dewsbury, WF12 0QE. (Strategic Committee in accordance with officer recommendation) (Dismissed)
 - 2.3 2016/62/91232/E - Erection of two storey side extension at 11, Fisher Way, Heckmondwike, WF16 0BU. (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 19 July 2016

by David Cross BA (Hons), PGDip, MRTPI

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

Decision date: 22nd August 2016

Appeal Ref: APP/Z4718/W/16/3148709

114 West Royd Avenue, Mirfield, West Yorkshire WF14 9LE

- 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 Brooke against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2016/62/90586/E, dated 18 February 2016, was refused by notice dated 14 April 2016.
 - The development proposed is demolition of existing dwelling and formation of two detached dwellings.
-

Decision

1. The appeal is dismissed.

Main Issues

2. I consider the main issues to be:
 - The effect of the proposal on the character and appearance of the area; and
 - The effect of the proposal on the living conditions of the occupiers of nearby residential properties, having regard to outlook and light.

Procedural Matter

3. I have been referred to a previous appeal decision on the site dated 15 January 2016 (ref. APP/Z4718/W/15/3133151). The proposal considered by this previous appeal is broadly similar to the case currently under consideration, in that it consisted of a detached two storey dwelling to the front of the site (house 01) and a bungalow to the rear (house 02). The significant difference between the schemes is that the design of house 02 has been changed to remove rooms in the roof space of the bungalow and to reduce the ridge height by approximately 1.3m. However, house 02 is in the same location and has a similar footprint in both appeals. Due to the similarities between the schemes I have had regard to the previous decision when reaching my conclusions.

Reasons

Character and Appearance

4. The appeal site is located in a residential area which has a mixture of house types including Victorian terraced houses and more recent detached properties. The appeal site consists of a detached dwelling with a plot extending to the

rear which is predominantly surrounded by the gardens of adjacent dwellings. It is proposed to demolish the existing dwelling and erect a new two storey dwelling to the front (house 01) and a bungalow on the plot to the rear (house 02). House 02 would be accessed via a driveway adjacent to house 01 and which would lead to a parking and turning area.

5. House 01 is of a design that would be typical for the area and it would be located in a manner that reflects the street scene along West Royd Avenue. However, due to the need to accommodate house 02 and the associated amenity and parking area, house 01 would have a limited garden/amenity area to the rear which would give the site an unduly cramped appearance for a dwelling of this size.
6. Due to the constrained size and arrangement of the rear plot, house 02 would be located in very close proximity to the boundary of the site to the north, east and south. There would be minimal amenity area to the rear, with the main amenity area for house 02 being located to the front and which would have limited privacy as it would be overlooked by adjacent dwellings.
7. I note that the appellant refers to a significant reduction in the gross internal floor area of house 02 compared to the scheme which was the subject of the previous appeal. However, the footprint of house 02 is very similar to that considered in the previous appeal and I agree with the concerns expressed by the previous Inspector in that the dwelling would cover a significant area of the plot and would appear cramped within the appeal site.
8. I therefore conclude that the proposed dwellings would be a discordant feature in this residential area due to the limited amenity space around the proposed dwellings, and in particular due to the close proximity of house 02 to the boundaries of adjacent residential plots. The proposal would represent a cramped scheme on an overdeveloped site which would harm the character and appearance of the area.
9. The proposal is therefore contrary to policy D2 of the Kirklees Unitary Development Plan (UDP) which seeks to avoid overdevelopment. The proposal is also contrary to policy BE1 of the UDP which states that development should be of a good quality design which retains a sense of local identity and includes space around buildings. These policies are broadly consistent with the National Planning Policy Framework (the Framework) which seeks to secure high quality design.

Living Conditions

10. House 02 would be located in very close proximity to the boundary with No 56 Lee Green. Although there is a stone wall between the properties which offers a degree of screening, the proposed bungalow would be higher than this boundary wall and would be readily visible from No 56. The reduction in height of the bungalow compared to the previous scheme would lead to a commensurate reduction in the degree of overshadowing of No 56. However, due to the close proximity of house 02 to the boundary between the properties, the proposal would have an overbearing appearance and create a sense of enclosure to the rear of No 56.
11. The proposed house 02 would also be located in close proximity to the boundary with Freshfields. However, due to the size of the garden area of

Freshfields and the relationship between the dwelling and house 02, I consider that the proposal would not have an unduly adverse effect on the living conditions of residents. The lack of rooflights in the rear roof slope of House 02 would also address concerns in relation to privacy and overlooking highlighted in the previous appeal.

12. The rear boundary of No 116 West Royd Avenue would also be in close proximity to house 02. No 116 is a bungalow with an outlook to the rear which would look directly onto the gable wall of house 02. Despite the reduction in the height of the ridge of the roof from the previous proposal, the proximity of house 02 to the boundary with No 116 would create an overbearing appearance and a sense of enclosure to the rear.
13. I note that the appellant has made reference to the separation distances specified in policy BE12 of the UDP and that he considers that the proposal complies with these, as indicated on the proposed site plan. However, whilst I have had regard to the provisions of policy BE12, I consider that the close proximity of house 02 to the boundaries with adjacent properties raises concerns about the impact on the living conditions of neighbouring residents which are not addressed by the separation distance between dwellings.
14. I conclude that the proposal would be harmful to the living conditions of the residents of nearby properties due to an overbearing effect, impact on outlook and the creation of a sense of enclosure. The proposal would therefore conflict with policy D2 of the UDP which seeks to protect residential and visual amenity. This policy is broadly consistent with the Framework which seeks to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

Other Matters

15. The appellant has stated that a building with a larger footprint could be erected on the site under the property's permitted development rights. However, I have no substantive evidence to indicate that there is a significant probability that such a building would be constructed should this appeal be dismissed. This limits the weight I can attach to this as a fallback position.
16. I am mindful of the personal circumstances cited by the appellant, particularly in relation to the preferred accommodation required for his relative. I am also aware of the benefits arising from the provision an extra dwelling in this area. However, these matters do not outweigh the harm I have identified above.

Conclusion

17. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

David Cross

Inspector

Appeal Decision

Site visit made on 27 June 2016

by Geoff Underwood BA(Hons) PGDip(UrbCons) MRTPI IHBC

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

Decision date: 24th August 2016

Appeal Ref: APP/Z4718/W/16/3147247

Mug Mill Farm, Mug Mill Lane, Wakefield WF12 0QE

- 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 Richard Dawson against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2015/62/91961/E, dated 19 June 2015, was refused by notice dated 28 September 2015.
 - The development proposed is redevelopment of dilapidated farm building to create two dwellings with associated car parking.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. Although the dwellings and car parking would be situated within Kirklees Metropolitan Borough Council, that part of the site including the access which would run through the farm yard of Mug Mill Farm would be within the Wakefield Metropolitan District Council area.

Main Issues

3. The main issues raised by this appeal are:
 - i) whether the proposal would be inappropriate development in the Green Belt;
 - ii) the proposed development's effect on the openness of the Green Belt and the purposes of including land in it;
 - iii) whether the proposed development would provide a suitable site for housing, having regard to the proximity of services;
 - iv) the proposed development's effect on highway safety, and;
 - v) if it is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether inappropriate development

4. The appeal building is located between two streams to the west of a dispersed group of farm buildings. The building is largely unroofed, has missing walls and has vegetation growing within parts of its footprint. Although some of the

- upstanding parts are tall, overall it has the appearance of a ruin set within the landscape.
5. The National Planning Policy Framework (the Framework) considers that some forms of development are not inappropriate in Green Belt provided they preserve its openness and do not conflict with the purpose of including land in Green Belt. This includes the re-use of buildings provided that they are of permanent and substantial construction. The structure on site evidently has a degree of permanence given its apparent age however it would not be capable of re-use without significant work to create the proposed dwellings.
 6. The appellant considers it is dilapidated and whilst of the view that about 50% of the walls remain acknowledges that some existing walls may have to be taken down and rebuilt. In the absence of any evidence to the contrary, it would therefore appear likely that in order to create the proposed dwellings there would need to be significant new build where walls and roofs are missing as well as rebuilding those parts of the extant structure which are not capable of being repaired. As such the structure overall cannot reasonably be considered as being of substantial construction or the intended development a re-use.
 7. Although the Framework considers that the partial or complete redevelopment of previously developed sites is not inappropriate (subject to caveats on impact on openness and Green Belt purpose) it excludes land that is or has been occupied by agricultural buildings from its definition¹ of previously developed land. The Council consider that the building is, or was, part of an agricultural building and there is no suggestion that this is not the case.
 8. Therefore, from the evidence before me, the proposal could not be considered as not inappropriate development when considered against the Framework's exceptions.

Effect on openness and Green Belt purpose

9. The site currently has a high degree of openness albeit limited to a degree by the upstanding elements of the dilapidated building. This corresponds with the wider surroundings of the site which consists of open fields on two sides although there are farm buildings and associated hardstandings to the south and east.
10. The amount of additional structure which would be required to create the appeal development would add significant size, mass and bulk to the current structure. This would include raising the height of walls, or adding them where missing, and adding a roof which overall would add a substantial mass to what is currently effectively an open shell. Whilst the proposed building may well be of a similar configuration, footprint, size and mass to that of the original buildings before they fell into disrepair, the significant additional building required to implement the development would, by virtue of a more substantial structure being on site, reduce and consequently harm the openness of the Green Belt.
11. In addition, although partially set behind an existing stone wall, the proposed forecourt incorporating parking spaces and a turning head would further reduce the openness of the Green Belt. The resulting effect would be that of encroachment into the countryside, the safeguarding from which is one of the Green Belt's purposes.

¹ Annex 2: Glossary.

Suitability for housing

12. Mug Mill Farm is situated in a rural location with no facilities or services in the immediate vicinity. The nearest shops, schools, recreation facilities and other services would be in Thornhill Edge which, whilst not a great distance away, is only accessible by ascending steep gradients. The combination of distance, topography and the lack of footways and lighting along Mug Mill Lane is such that only dedicated walkers or cyclists would be likely to regularly make such a journey particularly in the dark or in poor weather. Consequently, the likelihood would be that occupiers of the proposed dwellings would rely on the use of private cars to serve most of their day to day needs.
13. Taking into account the Framework's core planning principle of actively managing patterns of growth to make the fullest use of public transport, walking and cycling, the likely reliance on private car journeys would mean that the proposal would not constitute sustainable development which the Framework presumes in favour of, even considering the modest economic and social benefits of constructing two additional houses.

Highway safety

14. Mug Mill Lane is narrow with no provision for vehicles to pass one another other than two recessed field entrances approximately mid-way along. The junction with Edge Road is at a very sharp angle and Mug Mill Lane rises up at a steep gradient to meet it. From what I observed when on site it currently only serves two dwellings, one adjacent to that junction and Mug Mill Farm house.
15. The level of vehicle movements associated with two dwellings might be expected to be modest, even allowing for the likelihood of most occupiers' journeys being made in private vehicles. However, in absence of evidence to the contrary this would be a significant proportionate increase over that which could be reasonably expected to currently use the Lane. Whilst some of deficiencies of the width and condition of Mug Mill Lane highlighted in the Council's officer's report would be likely to lead to inconvenience or a reliance on car use rather than harm to safety, the restrictions to visibility at the junction with Edge Lane combined with the skewed junction and steep, narrow lane would be of a more severe nature.
16. There would appear to be the potential for the safety of users of both Edge Road and Mug Mill Lane to be harmed arising from vehicles coming into conflict with other users, whether in other vehicles or on foot, cycle or horse. Therefore, in the absence of any evidence to the contrary, it has not been demonstrated that the proposed development would not create or materially add to highway safety problems. This would be contrary to saved Policy T10 of the Kirklees Unitary Development Plan, 2007.
17. In support of his appeal, the appellant has referred to two planning permissions (Ref 12/01008/FUL and 12/01010/FUL) for dwellings at Mug Mill Farm granted by Wakefield Council, who also provided highways advice in respect of the appeal scheme. I note that both these consents have now expired. I also note that in the officer's report for the former, the highways concerns which appear to be similar to those raised in this appeal, were considered to be overcome as the proposal was for a replacement dwelling rather than an additional one. I can therefore only attach very limited weight to these decisions which do not,

therefore, lead me to a different conclusion on highway safety or locational matters.

Other considerations

18. Although the adjoining authority have in the past permitted the abovementioned replacement dwelling and a barn conversion to a dwelling adjacent to the appeal site, the fact that one of those was a replacement dwelling appears from the Wakefield Council Development Control Manager's report to have been a determinative factor in its acceptability. I have not been provided with the same level of information regarding the barn conversion and so cannot be certain that the circumstances, including the permanence and substantive nature of that barn's construction were the same as those of the appeal case.
19. Therefore, notwithstanding that they will have been considered in light of a different development plan, it is not certain that the circumstances of either of these decisions are the same as those in this appeal. I find that other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.

Other Matters

20. The appeal site lies within a high risk flood area, Flood Zone 3. Paragraph 100 of the Framework advises that development in areas at risk from flooding should be avoided by directing development away from areas at highest risk. Paragraph 101 of the Framework goes on to advise that a sequential, risk-based approach must be taken that steers development towards areas of lower risk. The Framework requires such a Sequential Test to be applied to all development in high risk areas.
21. I note that whilst the appellant's Flood Risk Assessment considers the proposal would not be at risk of flooding it acknowledges at paragraph 6.11 that a sequential Test will need to be passed. Although the Environment Agency have suggested a mitigation condition, they have not concluded that the zoning is incorrect which Kirklees Council Drainage Department considered necessary or else a Sequential Test would be required and unlikely to be passed. As such, it would appear that the proposal would fail to address flood risk in line with the Framework's approach. However, given my findings on the main issues above, I have not pursued this matter further.

Conclusion

22. In light of the above, the proposal would be inappropriate development in, and harm the openness of, and purpose of including land in, the Green Belt, would not be an appropriate location for new dwellings and would harm the safety of highway users, contrary to the development plan and the Framework. The appeal is therefore dismissed.

Geoff Underwood

INSPECTOR



Appeal Decision

Site visit made on 5 September 2016

by **P Eggleton BSc(Hons) MRTPI**

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

Decision date: **08 September 2016**

Appeal Ref: APP/Z4718/D/16/3154173

11 Fisher Way, Heckmondwike, West Yorkshire WF16 0BU

- 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 Miss L McDermott against the decision of Kirklees Council.
 - The application Ref 2016/62/91232/E, dated 14 April 2016, was refused by notice dated 8 July 2016.
 - The development proposed is a side extension.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect on the character and appearance of the area.

Reasons

3. Fisher Way is a relatively modern development of detached and semi-detached houses. The curve in the road and the intermediate turning head result in a layout that is not uniform, although there is some uniformity with regard to the set-back of the houses and their general design characteristics and materials. The majority of houses along the cul-de-sac have gaps between them of at least the width of a driveway but there is also a significantly number that are more closely spaced.
 4. This proposal would erode what is already a relatively limited existing gap between this property and its neighbour. These two houses are staggered with the appeal property set further back, beyond the turning head. The combination of the exposed side facing gable of 9 Fisher Way and the higher and extended frontage of number 11, would result in the loss of most of the perceived gap between these properties. It would also result in a substantial mass of relatively unrelieved development on the outside of this corner. I consider that it would result in a cramped appearance that would be at odds with the generally more spacious layout of this small estate.
 5. Whilst I acknowledge that a number of properties have only a limited gap between them, the differing design elements, the position of the properties in relation to each other and the spaces that have been retained, generally distinguish them from this proposal. The property opposite has a similar
-

extension but as this adjoins an area of communal open space, it does not reduce the spaciousness of its setting.

6. The design of the extension would include a slight set-back from the frontage but the roof would be of full height. Overall, the extension would add significantly to the perceived scale of development. It would not detract from the appearance of the dwelling itself but the relationship with the neighbouring property would detract from the character and appearance of the street scene.
7. The proposal would be contrary to Policies D2(vii), BE2(i) and BE14(iii) of the Kirklees Unitary Development Plan 1999 which require a good standard of design and layout and seek to avoid a terracing effect being established in relation to adjacent dwellings. As the policies generally accord with the design requirements of the *National Planning Policy Framework*, I afford them considerable weight.
8. I acknowledge that the neighbouring residents have not objected to the proposal and the works would result in improved accommodation that would bring benefits to the appellant. However, I do not consider that there are any matters that are sufficient to outweigh my concerns. I therefore dismiss the appeal.

Peter Eggleton

INSPECTOR

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Name of meeting and date:

Planning sub-committee (Heavy Woollen area) 13 October 2016 (deferred from 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: 13 October 2016 (deferred from 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 Council's Forward Plan ?	No
Is it eligible for "call in" by Scrutiny ?	Yes
Date signed off by <u>Director</u> & name Is it signed off by the Director of Resources? Is it signed off by the Assistant Director - Legal & Governance?	26 August 2016: Joanne Bartholomew on behalf of Jacqui Gedman No. See 3.4 No financial implications Yes
Cabinet member portfolio	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

- 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

- 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 26th 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 20th 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 1st 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 30th September 1971 (page 33) and in a letter from the Town Clerk of Batley Borough Council dated 1st October 1971 (page 34) and in a note to the General Works Committee dated 27th 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 9th 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 5th 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

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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KIRKLEES COUNCIL

PLANNING SERVICE

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

13-Oct-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 9th November 2015 and 1st 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 27th March 2012, the Planning Practice Guidance Suite (PPGS) launched 6th 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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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	
Ward: Batley East Ward	
Applicant: Y Mulla	
Agent: Robert Halstead Chartered Surveyor	
Target Date: 15-Sep-2016	
Recommendation: RF1 - REFUSAL	
Application No: 2015/92627.....	25
Type of application: 62 - FULL APPLICATION	
Proposal: Erection of place of worship and educational centre (within a conservation area)	
Location: Land at the corner of Nowell Street & West Park Street, Dewsbury	
Ward: Dewsbury West Ward	
Applicant: A Vania	
Agent: Hasan Dadibhai, KUFIC	
Target Date: 21-Oct-2015	
Recommendation: RF1 - REFUSAL	
Application No: 2016/91767.....	42
Type of application: 62 - FULL APPLICATION	
Proposal: Erection of 2 dwellings	
Location: The Nook, 43, Forge Lane, Liversedge, WF15 7DX	
Ward: Heckmondwike Ward	
Applicant: H Cook	
Agent: J A Oldroyd & Sons Ltd	
Target Date: 31-Aug-2016	
Recommendation: FC - CONDITIONAL FULL PERMISSION	

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

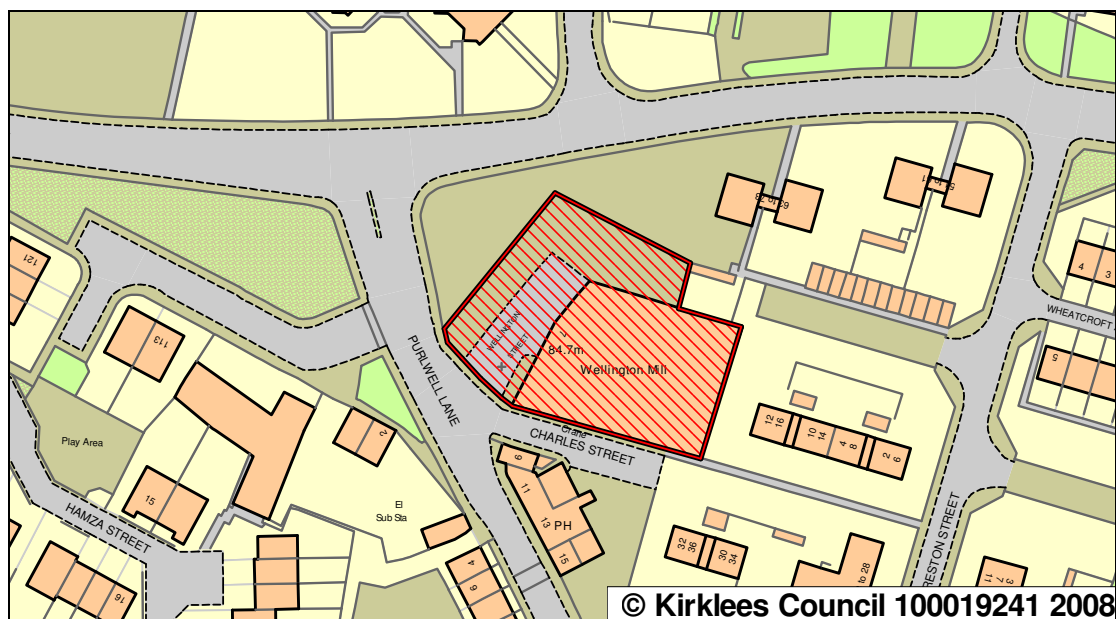
Target Date: 15-Sep-2016

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.

The application was deferred from the previous Heavy Woollen Planning Sub-Committee meeting, held on 1 September 2016, in order to provide the applicants an opportunity to further develop a Transport and Servicing Management Plan to be considered by the Sub-Committee, and to allow an opportunity for residents to meet with the applicant to discuss the concerns raised.

A meeting attended by local residents, Ward Councillors, the Applicant, Planning Agent, and Planning and Highway officers took place on 19th September at Wellington Court, Batley. The outcome of the meeting was that no resolution was reached between residents and the applicant regarding the parking and servicing arrangements. This is discussed in detail in the Highway Safety Section of this report below.

The applicant submitted a revised car park and servicing management plan including a revised car parking layout plan on the 4th October immediately prior to the publication of this report. This latest revision does make some positive moves to overcome the issues raised by Officers and the Committee about highway safety and residential amenity. At this time the proposals are being considered by officers. The revised details will be publicised and the outcome of this publicity and negotiations with the applicant will be brought to committee in the update report. The information within the report is based upon the information available to officers prior to the 4th October revision.

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 28 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

167 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.
- Concern the traffic management plan is not being followed.
- There were severe traffic problems during Qurbani

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
- There are advertisements on the building for a business: Tasneen Hijab and Makeup

8. ASSESSMENT

Main issues

The main issues for consideration are:-

- Background
- General Principle
- Sequential Test Assessment
- Retail Impact
- Conclusion on retail assessment
- Impact on highway safety
- Impact on visual amenity

- Impact on residential amenity
- Enforcement
- Representations not covered in the main assessment
- Conclusion

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:

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 21st 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 refers 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 notes 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 considers 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 is disaggregating the bulky and non-bulky items, with the later 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 28 parking spaces including 1 disabled space, and 12 bike stands. The existing dropped crossing access from Charles Street would be retained. The application is supported by a Transport Assessment and Addendum by HY Consulting.

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 was deferred from the previous meeting to provide the applicants an opportunity to further develop a Transport and Servicing Management Plan and to allow an opportunity for residents to meet with the applicant.

A meeting attended by local residents, ward Councillors, the applicant, planning agent, and planning and highway officers took place on 19th September at Wellington Court, Batley. The planning agent made an offer to restrict the movement of goods between the end of the car park and the loading hatch to between the hours of 10am to 2pm which would be subject to further details in a revised Car Park and Servicing Management Plan. The outcome of the meeting however, was that no resolution was reached between residents and the applicant regarding the parking and servicing arrangements. Officers do not consider that the restriction of deliveries between 10am-2pm is sufficient to overcome the concerns over amenity and highway safety. The applicant has now submitted a proposal which would remove on street servicing and forklift truck activity but issues with this proposal still remain. An update to committee will be brought on the negotiations with the applicant on this proposal.

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 use, 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:

167 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.

There are advertisements on the building for a business: Tasneen Hijab and Makeup

Response: It is the recommendation of officers that if Members resolve to refuse planning permission, enforcement action is taken to remove the unauthorised uses on the site. This will be investigated as part of this action.

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.

Notwithstanding the information submitted by the applicant on the 4th October 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.

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 submitted car park management plan, 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:-

Plan Type	Reference	Version	Date Received
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: 2015/92627

Type of application: 62 - FULL APPLICATION

Proposal: *Erection of place of worship and educational centre (within a conservation area)*

Location: *Land at the corner of Nowell Street & West Park Street, Dewsbury*

Grid Ref: 423786.0 422251.0

Ward: *Dewsbury West Ward*

Applicant: *A Vania*

Agent: *Hasan Dadibhai, KUFIC*

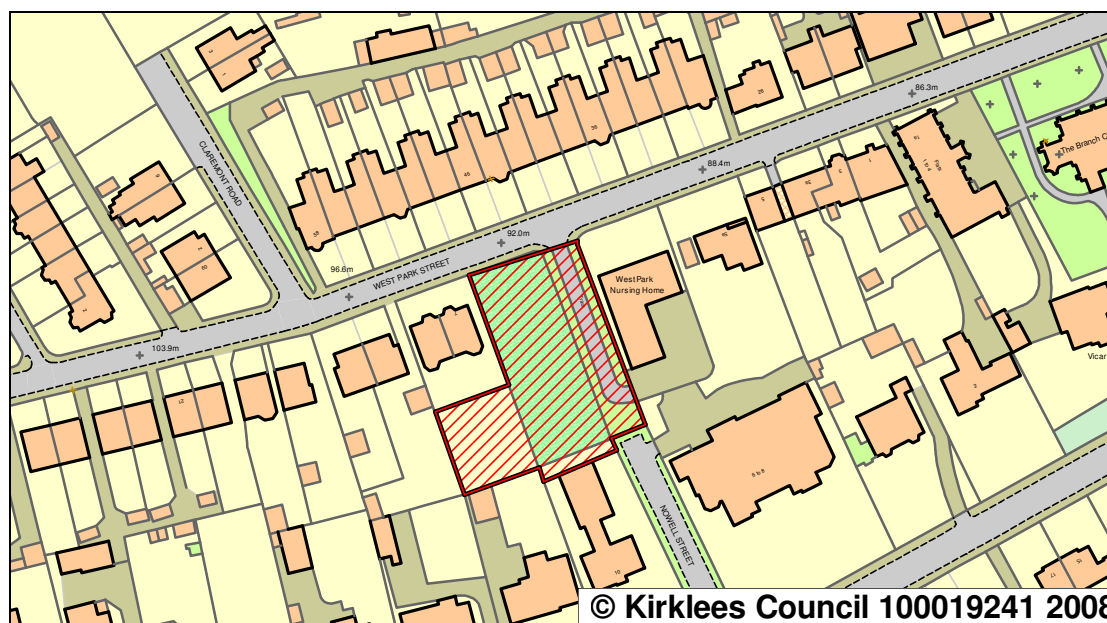
Target Date: *21-Oct-2015*

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 proposed development would, in the opinion of officers, introduce a building that would be out of scale, character, and design with the street scene and Victorian character of the area, failing to preserve the character of the Conservation Area as required by Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The proposal would therefore be contrary to Policies BE5, BE1 and BE2 of the Kirklees Unitary Development Plan, as well as the aims of chapters 7 and 12 of the National Planning Policy Framework.

The erection of a large building in close proximity to existing private amenity space would result in an overshadowing and overbearing impact which would be to the detriment of neighbouring occupants, contrary to Policy BE1 of the Kirklees Unitary Development Plan.

The proposed development would result in an intensification of use of the site. The proposed level of parking (24 spaces) for the capacity of visitors and staff at any one time is considered to be insufficient. The lack of provision for parking would result in an increase of on-street parking further exacerbating existing problems where on street parking is already oversubscribed to the detriment of highway safety and efficiency, contrary to Policies BE1, T10 and T19 of the Kirklees Unitary Development Plan.

RECOMMENDATION: REFUSAL

2. INFORMATION

This application has been brought to the Heavy Woollen Planning Sub-Committee for determination in accordance with the Council's Scheme of Delegation due to the significant level of representations received, both in support and in objection to the proposals.

3. SITE DESCRIPTION / PROPOSAL

Site description:

The application site is located on the corner of Nowell Street and West Park Street. The application site and land to the east is relatively level. West Park Street rises more steeply from east to west from the application site such that the site is around 2 metres lower than the adjacent nos.7-9 West Park Street. Nowell Street is an unmade/unadopted road linking West Park Street and Oxford Road. There is a point closure midway between the two sections of the street.

The site comprises of an "L" shaped piece of land which lies to the rear of nos. 7 and 9 West Park Street and extending alongside Nowell Street. Part of the land was garden previously forming part of the curtilage of the aforementioned dwellings. The site extends to the rear of no.10 Oxford Street which is currently used as a Mosque.

There is a single mature tree that is subject to a Tree Preservation Order (TPO) located along the eastern boundary. The remaining area of the site is very much unkempt in appearance.

The site lies within the Northfields Conservation Area. The surrounding area is characterised by a mixture of large houses which are a combination of terraced and semi-detached properties. There is a relatively modern block of flats to the east, existing two storey flat roofed mosque to the south, and large Victorian properties to the north and west.

Proposal:

The application seeks full planning permission for the erection of a place of worship and educational centre. The building proposed would be located to the rear of the site, and to the rear of the existing mosque. The new building would be subdivided into a three storey madrassa located at the rear of nos. 7 and 9 West Park Street and a three storey mosque to be located adjacent to the existing mosque.

The madrassa would measure 10.24 metres by 16.7 metres and would have a pitched roof at a maximum height of 9.3 metres. The lower ground floor of this building would be constructed below ground level, forming a basement, and would therefore not be visible.

The mosque would be three storeys and would be square in terms of footprint, measuring 15 metres x 15 metres, with a chamfered corner. Its height to the ridge of the roof would be 12.3 metres.

The two buildings would be linked by a glazed atrium which has been designed with a flat roof and would be subservient to the two main buildings, measuring 9 metres.

Access is shown as coming off West Park Street via an existing track that would be upgraded. Car parking for 24 vehicles would be provided within the site and located on the area to the front of the proposed building, adjacent no. 7 West Park Road.

The protected tree located within the site is proposed to be retained, with additional tree planting shown along the eastern boundary.

4. BACKGROUND AND HISTORY

2011/92932 – Erection of single dwelling and garage – Approved in 2014

2008/93703 - Erection of 10 apartments and studios – Withdrawn

2007/91345 - Erection of 10 no. flats with basement garaging – Refused on grounds of visual amenity, impact on Conservation Area, impact on residential amenity, highway safety and insufficient information in respect to protection of trees on site.

2005/93484 - Erection of 4 no. dwellings – Refused on the grounds of highway safety, impact on protected trees, impact on Conservation Area and overlooking of adjacent property.

2001/90608 - Renewal of previous unimplemented permission for erection of 10 no. flats with basement garaging – Approved

1995/90733 - Erection of 10 no. flats with basement garaging – Approved

1993/04301 - Erection of 4 no. town houses – Refused

5. PLANNING POLICY

The application site is located within the Northfields Conservation Area.

Development Plan:

BE1 – Design principles

BE2 – Quality of design

BE5 – Preservation/enhancement of conservation areas

BE6 – Infill sites

BE11 – Materials

BE12 – Space about buildings

T10 – Highway safety

T19 – Parking standards

NE9 – Retention of mature trees

EP4 – Noise sensitive development

National Policies and Guidance:

Chapter 7 – Requiring good design

Chapter 8 – Promoting healthy communities

Chapter 11 – Conserving and enhancing the natural environment

Chapter 12 – Conserving and enhancing the historic environment

6. CONSULTATIONS

Below is a summary of the consultation responses received; where appropriate these are expanded upon in the assessment section of this report:

K.C. Highways Development Management – Object due to inadequate parking provision.

K.C. Environmental Services – No objections subject to conditions.

K.C. Conservation and Design – Object to the proposal as it is not in keeping with the character of the Conservation Area.

K.C. Arboricultural Officer – An arboricultural method statement is required predetermination.

K.C. Ecologist – An ecological survey and assessment is required predetermination.

7. REPRESENTATIONS

9 individual letters of **support** have been received and a petition with 100 signatures.

32 individual letters of **objection** have been received and a petition with 49 signatures.

The planning issues raised are summarised below and addressed in the report where relevant.

The application is supported for the following reasons:

- The community has outgrown the existing facility and the new facility will provide adequate space and dedicated classrooms in an upgraded environment.
- The existing facilities are poor.
- The road/car park is not adequate.
- Currently no separate women's WC and prayer area.
- Landscaping of the area will be an improvement.
- The new building is sympathetic to the conservation area.
- Improved parking facilities.
- Existing site is an eyesore.

The objections are as follows:

Heritage & Amenity:

- The development is within a Conservation Area and takes no account of the building vernacular.
- The proposed development will adversely affect the street scene from Oxford Road and West Park Street.
- The development neither enhances nor preserves the Conservation Area.
- Contrary to the NPPF as it does not sustain or enhance or make a positive contribution to the local character.
- It does not enhance or reveal the significance of surrounding buildings.
- The development is out of style, scale and character with existing Victorian buildings.

- Contrary to the notion of preserving the green space and trees (now removed) which contributed to the original Conservation Area, proposed as a car park and has been garden grabbing which the Government is keen to curtail.
- There is a large combined bulk to the two connected buildings.
- The roof lines of buildings on Oxford Road and West Park Street step down responding the changes in land levels.
- The mosque façade and minaret are too high.
- Conflicting styles include asymmetric roof gable, windows and minaret.
- The design and scale of the mosque is out of scale and conflicts with the buildings in the Conservation Area.
- The minaret will be out of keeping.
- The site has been subjected to fly tipping and has become unsightly.

Highways:

- The proposals represent a serious highway concern.
- Previous road usage/safety assessments have set a precedent on this street due to the restrictive nature of the West Park Street and Nowell Street junction.
- The road usage and parking problems on West Park Street have worsened.
- Congestion/the proposed site use would aggravate the present situation further.
- 24 car parking spaces are not sufficient for the intended uses.
- The proposal relates to the removal of all the existing parking spaces.
- The area is a car park and not currently vacant.
- Gritting cannot take place in the area as the vehicles cannot get access.

Other:

- There are covenants on the land which would not allow the development.
- Opening hours are specified as unknown however the agent has provided information that suggests that hours are known. In addition the applicants should be aware when the classroom will be used.
- Bats and owls have been resident in the mature trees in the area the development would impact on these.
- There are plenty of existing mosques that can be used.
- The area was formerly a habitat for wildlife until it was spoilt by the present and preceding owners. All trees have been removed and TPO trees have not been replaced.

8. ASSESSMENT

Main issues

The main issues for consideration are:-

- General Principle
- Visual amenity and heritage considerations
- Residential amenity
- Highway issues
- Other matters, including Ecology & Trees
- Representations not covered in the main assessment
- Conclusion

General principle:

The National Planning Policy Framework (NPPF) identifies places of worship as community facilities and states that planning decisions should “plan positively for the provision and use of community facilities to enhance the sustainability of communities and residential environments”.

Policy C1 of the Unitary Development Plan (UDP) states that community facilities should be provided in accessible locations which will usually be in, or adjacent to, town and local centres.

In this instance, whilst not located within a town or local centre, the site is within an established area of residential development within a diverse community. Proposals to provide a facility separate from existing centres should be considered in relation to the needs of the community it is intended to serve. Such proposals will, however, need to be capable of accommodation without giving rise to problems of disturbance for occupiers of adjacent premises or prejudicing highway safety.

It is recognised that the development would serve a part of the community in which it is located however there are others who would be detrimentally affected by the development as a result of loss of visual amenity and impact on the Conservation Area in which they live, as well as highway safety issues.

Whilst the provision of a community facility in a sustainable location accords with the overarching aims of the NPPF, this should not be to the detriment of heritage, visual and residential amenity, or highway safety.

Visual amenity and heritage considerations:

The site is within the Northfields Conservation Area which was designated in 1978. The Conservation Area does not have the benefit of an up to date appraisal but one exists from the date of designation. The Conservation Area is a residential suburb of Dewsbury built in the latter half of the 19th century and completed, in the main, around 1890.

The character comes from the layout of the streets, the unity of styles and building materials; the styles are of typical two storey buildings of large Victorian villas constructed of stone. The roof space of some of the buildings leads them to be three storeys in height with use made of traditional dormers.

It is accepted that the land to the east of nos. 7-9 West Park Street is untidy and does little to enhance the character of the Conservation Area and could benefit from development. To the south of the site is a two storey flat roofed building that equally makes no contribution, which would be adapted to provide a sports hall. Both these areas are considered to be negative factors to the Conservation Area and would benefit from some form of enhancement. It is between these two areas that the three storey mosque with attached two storey madrassa is proposed.

The madrassa is relatively low scale and so designed to be subservient to the area and as such would be fairly well hidden by the much larger Victorian villas nearby by. The mosque however would be very dominant not only in terms of the height but the style, particularly the northern elevation. It is appreciated that the architectural style would be determined by its use, but this would be at odds with the overall character of the Conservation Area and as such is considered to be unacceptable by officers.

The Planning Statement submitted with the application indicates that a great deal of consideration has been given by the architect to try and blend this building into the character of the Conservation Area. To a degree, this has been achieved, but it is not considered by officers, appropriate that a building of this scale would sit in this location. It would be more usual for a lower building that would be subservient to those around, to be located in such a position.

Taking into account paragraph 138 of the NPPF, an assessment of the development on the character of the Conservation Area should be completed and this should demonstrate whether the harm is outweighed by any public benefit. The application has been assessed against paragraphs 133 or 134 of the NPPF, where paragraph 133 relates to substantial harm and paragraph 134 is less than substantial harm. Paragraph 134 states that "Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use." In order to allow for full consideration of the proposals the agent has submitted a Heritage Impact Assessment. This report is considered acceptable under the requirements of the NPPF insofar as it allows the LPA to consider the impact of the proposal on the significance of the Conservation Area and enable the public benefits to be balanced as required under Paragraph 134 of the NPPF.

The Heritage Impact Assessment suggests that the proposed minarets would not be out of keeping with existing development as they would be located directly opposite the existing octagonal towers of the Victorian Terrace. It

goes on to recognise there have been a number of applications that have been refused for reasons such as residential/visual amenity, impact on the Conservation Area, on protected trees and highway safety. The agent argues that in the circumstances of the scheme, which would be set back from adjacent properties and thus maintain the vacant plot to the front and avoid impacting on the remaining protected tree, it would be the optimum viable option for redevelopment of the site. Officers would not disagree with this position.

The statement goes on to argue that the proposed development would provide significant public benefit without harming the setting of the Conservation Area. In this instance it is recognised that the public benefit deliverable would be providing increased accommodation for the Muslim community. The statement provided, in support of the application, sets out the need for increased accommodation as follows:

“The application site is located in Dewsbury West Ward, with a population of 20,620. The proportion of people who identify as Muslim is 47% (9,739) (Census 2011). The ward currently has nine mosques; the total capacity for these collectively is 4,395. However, only five of these mosques have provision for women. Established in 2011, Masjid Talha Trust has been providing prayer facilities and Islamic education to the community for the large part of a decade. It primarily serves the residents of Oxford Road, West Park Street, Northfield Road, Infirmary Road, and Chadwick Crescent. Having adapted the former Mormon Church annex at 10 Oxford Road, the Trust now successfully runs 5 evening classes and a place of congregation for over 100 congregants. However, the current premises were no longer able to accommodate its requirements. Aside from limited space, the classrooms run from a makeshift subdivided hall. This is overcrowded and provides an acoustic environment which is not suitable for learning and inefficient to heat. Alongside this, the internal spaces have deteriorated and suffer from roof leaks and damp, and in immediate need of renovation in order to continue. While the existing property provides a gross floor area of 600sqm, it does not have any parking provision and has large rooms with very high ceilings, not suited to teaching. Classrooms are too noisy. There is also a distinct lack of sanitary provision with 1 Accessible WC serving the entire property. The office is too small and inadequate for administrative purposes, and doubles up as a library. The building is inefficient and costly to heat. There is no lift to serve students with disabilities in the education block. The general condition of the building is deteriorating and in need of enhancement.”

The agent goes on to argue that the under provision in the immediate locality results in worshippers having to travel to other centres thereby contributing to matters of highway safety in other locations. The development proposals recognise and provides for the needs of both male and female worshippers.

To summarise, whilst it is recognised that the scale and design of the development is as a result of the requirements of the Muslim community as outlined, it is not considered, by officers, that the benefits are sufficient to outweigh the harm caused. The development proposals are not considered to

be in-keeping with the Victorian character of the area. The proposal would introduce a development that would be out of scale and character with street scene and as such fails to preserve the character of the conservation area as required under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The proposals would be contrary to Policies BE5, BE1, and BE2 of the Kirklees Unitary Development Plan as well as chapters 7 and 12 of the National Planning Policy Framework

Residential Amenity:

The application site is located within an established residential area, located in close proximity to existing dwellings. The location and scale of the development would result in a poor relationship with nearby residential properties, particularly the garden space of no. 11 West Park Street. The madrassa building would be located approximately 1.5 metres from the boundary and would have a ridge height of 9 metres. It is considered by officers that this relationship would be overbearing for the occupants of the neighbouring dwelling, resulting in detriment to the use of their amenity space. In addition, the proposed gable end would include a number of windows that serve corridors which would overlook the private amenity space, leading to a loss of privacy. It is possible that the owners do not object to the development but any development should provide space about buildings when in close proximity to existing residential spaces.

Distances from the mosque to existing habitable accommodation on Nowell Street fall short of the 21 metres normally recommended, however it is considered that due to the acute angle and juxtaposition of the development proposed this would not result in a loss of privacy to any surrounding occupants.

The application form does not include any details of hours of operation but it is understood that the buildings would be used in to the evenings. In view of the use and proximity to existing residential development, Environmental Services have been consulted. They raise no objections to the development but recommend conditions regarding land contamination and time restrictions on call to prayer. It is therefore considered that there would not be any loss of amenity due to matters arising from noise and as such the development is considered to be in accordance with Policy EP4 of the UDP as well as chapter 11 of the NPPF.

To summarise, whilst it is considered by officers that the amenity of surrounding occupants from matters arising from noise could be mitigated through the use of appropriate conditions, there is significant concern in regard to the overbearing impact that would result because of the scale and position of the proposed madrassa in relation to nearby unrelated dwellings, particularly no.11 West Park Street. The proposal is therefore considered contrary to the aims of Policy BE1 of the UDP in relation to residential amenity.

Highway issues:

The application site is situated in an established residential area of Dewsbury, on the corner of Nowell Street and West Park Street.

Nowell Street is an un-made/un-adopted road linking West Park Street and Oxford Road. There is a point closure mid-way between West Park Street and Oxford Street preventing through vehicular traffic allowing only a pedestrian link between the two sections of the street. West Park Street and Oxford Road are both part of the adopted highway. Other than double yellow lines around the junction of West Park Street and Halifax Road, there are no on streets parking restrictions on West Park Road.

Parking is restricted on Oxford Road by permit parking zones and double yellow lines around the junction of Halifax Road and along the northern side of the carriageway.

High levels of on street parking on both sides of the carriageway does occur on West Park Road and can result in access difficulties for large vehicles such as gritters. Visibility from Nowell Street onto West Park Street and Oxford Road is restricted by the height of adjacent boundary walls and hedges.

In terms of accidents, 6 injury accidents have been recorded within the vicinity of the site (in the last 5 years), 2 of which involved pedestrians crossing between parked cars.

The application proposes the erection of a mosque and madrassa. It is noted that the existing building will be used as a sports hall. A 24 space car park is proposed with direct access from Nowell Street. As part of the proposed works, Nowell Street would be upgraded.

Detailed floor plans of the mosque have been submitted which has enabled an assessment as to potential capacity in terms of visitors/worshippers at any one time. A total of 349 prayer spaces have been counted over 3 floors. The use of the prayer hall would be throughout each day and evenings, the busiest time being Friday afternoons.

The madrassa would consist of 5 classrooms, library, office and sanitary space and is intended to provide evening classes. The sports hall is intended to be ancillary.

In terms of traffic generation, neither the residential location of visitors, nor their mode of transport can be controlled through planning legislation. But it is acknowledged some would be local to the site and would use a mix of transport modes, including walking. It is considered that visitors living outside of the area and in transit would likely arrive by car in the main.

Following the UDP Parking Standards for guidance, set out in Policy T19 of the UDP, it recommends the following parking standards for the following uses.

Use Class D1 a) – Education

- Visitor: 1 space per classroom or 30 students Staff: 1 space per 3 staff
- Cycle: 1 space per 20 students

Use Class D1 c) – Place of Worship

- Visitor: 1 space per 5 seats or per 25 sq.m Staff: 1 space per 3 staff
- Cycle: 1 space per 20 students

In this instance, officers consider 1 space per 5 seats ratio to be appropriate.

Based on the information provided and again following the recommendations set out in the UDP, in total, approximately 75 visitor spaces, 2 staff spaces, and 20 cycle spaces should be provided.

From a highway perspective, the proposed development would result in an intensification of use of the site. The proposed level of parking (24 spaces) for the possible capacity of visitors and staff at any one time is considered to be insufficient and result in a significant shortfall, which would result in an increase in on street parking, exacerbating existing problems where on street parking is already oversubscribed, to the detriment of highway safety and efficiency, contrary to Policies BE1, T10 and T19 of the UDP.

To summarise, for the reasons set out above, the proposals are considered unacceptable from a highway safety perspective and would be contrary to relevant UDP policies.

Other matters:

The application was referred to the Council's Arboricultural Officer and Biodiversity Officer, both of which recommend that reports are submitted. The requirements have been discussed with the agent and in light of the recommendation they have not been forthcoming. It is not likely that the finding of either report would prevent development taking place but more a matter of providing information to ensure appropriate mitigation and enhancement opportunities are sought. As such, it is considered pragmatic by officers to request such reports should Members vote to approve the application.

Representations:

Support:

The community has outgrown the existing facility and the new facility will provide adequate space and dedicated classrooms in an upgraded environment.

Response: It is accepted that demands for a new/replacement madrassa and mosque are high but this is not justification to allow a development that is fundamentally unacceptable in terms of planning policy.

The existing facilities are poor.

Response: It is accepted that there are benefits in terms of a new/replacement madrassa and mosque but this is not justification to allow a development that is fundamentally unacceptable in terms of planning policy.

The road/car park is not adequate.

Response: It is recognised that there are inadequacies with the existing site. The erection of a new facility with lack of parking provision would also lead to congestion and parking on the streets surrounding the site to the detriment of highway safety.

Currently no separate women's WC and prayer area.

Response: It is accepted that there are benefits in terms of a new/replacement Madressa and Mosque but this is not justification to allow a development that is fundamentally unacceptable in terms of planning policy.

Landscaping of the area will be an improvement.

Response: It is probable that improvements to landscaping can be achieved through the development; however, there are significant concerns regarding the impact the proposals will have on the character of the area, residential amenity, and highway safety.

The new building is sympathetic to the Conservation Area.

Response: The proposals have been assessed by officers in K.C. Conservation & Design and it is not considered that the scale, location and design are appropriate and would cause harm to the Conservation Area thereby failing to comply with Section 72 of the Planning (listed Buildings and Conservation Areas) Act 1990 and paragraphs 138 and 134 of the NPPF.

Improved parking facilities.

Response: The application may provide improved parking and access facilities which may appear to be an improvement when compared to the existing situation on site however the development would significantly increase the opportunity for use of the site without the provision of adequate parking facilities contrary to Policies T10 and T19 of the UDP.

Existing site is an eyesore.

Response: The site has been left in a very untidy state and detracts from the wider area. This is not justification for allowing a development that is not acceptable in principle.

Objections:

Heritage & Amenity:

- The development is within a Conservation Area and takes no account of the building vernacular.
- The proposed development will adversely affect the street scene from Oxford Road and West Park Street.

- The development neither enhances nor preserves the Conservation Area.
- Contrary to the NPPF as it does not sustain or enhance or make a positive contribution to the local character.
- It does not enhance or reveal the significance of surrounding buildings.
- The development is out of style, scale and character with existing Victorian buildings.
- There is a large combined bulk to the two connected buildings.
- The roof lines of buildings on Oxford Road and West Park Street step down responding the changes in land levels.
- The mosque façade and minaret are too high.
- Conflicting styles include asymmetric roof gable, windows and minaret.
- The design and scale of the mosque is out of scale and conflicts with the buildings in the Conservation Area.
- The minaret will be out of keeping.

Response to the points above: The proposals have been assessed by officers in Conservation & Design and it is not considered that the scale, location and design are appropriate and would cause harm to the Conservation Area thereby failing to comply with Section 72 of the Planning (listed Buildings and Conservation Areas) Act 1990 and paragraphs 138 and 134 of the NPPF.

Highways:

- The proposals represent a serious highway concern.
- Previous road usage/safety assessments have set a precedent on this street due to the restrictive nature of the West Park Street and Nowell Street junction.
- The road usage and parking problems on West Park Street have worsened.
- Congestion/the proposed site use would aggravate the present situation further.
- 24 car parking spaces are not sufficient for the intended uses.
- The proposal relates to the removal of all the existing parking spaces.
- The area is a car park and not currently vacant.
- Gritting cannot take place in the area as the vehicles can't get access.

Response to the points above: The proposals have been assessed by Kirklees Highways Development Management. There are significant concerns regarding the development and lack of parking provision contrary to Policies T10 and T19 of the Kirklees Unitary Development Plan.

Other:

- There are covenants on the land which would not allow the development.

Response: Covenants are not considered material to the determination of the planning application. They are a private legal matter.

- Opening hours are specified as unknown however the agent has provided information that suggests that hours are known. In addition the applicants should be aware when the classroom will be used.

Response: There are no details regarding the hours of operation of the site. K.C. Environmental Services have been consulted regarding the proposals and have raised no objections subject to conditions relating to unexpected land contamination and controls regarding call to prayer. They are satisfied that the development would not result in any harm to residential amenity providing conditions are imposed.

- Bats and owls have been resident in the mature trees in the area the development would impact on these.

Response: Both an Ecological and Arboricultural survey has been requested to inform recommendations for landscaping and mitigation. It is not considered that the conclusions of the reports would prevent development of the site. As such the agent has requested that the reports be produced should Members recommend approval. Taking into account the costs involved in production of the reports, in addition to the likely conclusions of each, it is considered reasonable by officers that these are provided should the decision be taken to approve the application.

- There are plenty of existing mosques that can be used.

Response: The agent has demonstrated that there is the need/demand for an additional facility in the area.

- The area was formerly a habitat for wildlife until it was spoilt by the present and preceding owners. All trees have been removed and TPO trees have not been replaced.

Response: Both an Ecological and Arboricultural survey has been requested to inform recommendations for landscaping and mitigation. It is not considered that the conclusions of the reports would prevent development of the site. As such the agent has requested that the reports be produced should Members recommend approval. Taking into account the costs involved in production of the reports, in addition to the likely conclusions of each, it is considered reasonable by officers that these are provided should the decision be taken to approve the application.

- The site has been subjected to fly tipping and has become unsightly.

Response: It is acknowledged that the site is unkempt and that redevelopment would improve the amenity of the area however this should be an appropriate development in terms of scale and design.

To summarise in relation to representations:

It is clear that there are members of the community that the development would benefit but equally there are a number who consider the proposals to be detrimental. Therefore affording weight to public benefit is not considered to be a simple process. It is considered that the harm caused by the scale and location of development, in addition to matters of highway safety, would

not be in the interests of the community it would serve and would not comply with relevant UDP Policies or the aims of the National Planning Policy Framework.

Conclusion:

To conclude, having carefully assessed the proposals, the development is considered unacceptable by officers in terms of the impact on the visual amenity and character of the Conservation Area, residential amenity, and highway safety.

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 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 proposed development would introduce a building that would be out of scale, character, and design with the street scene and Victorian character of the area, failing to preserve the character of the conservation area as required by Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The proposal would therefore be contrary to Policies BE5, BE1 and BE2 of the Kirklees Unitary Development Plan, as well as the aims of chapters 7 and 12 of the National Planning Policy Framework.

2. The proposed development, by virtue of its scale and proximity to existing private amenity space, particularly no.11 West Park Street, would result in an overshadowing and overbearing impact, to the detriment of the residential amenity of the neighbouring occupants. To approve the proposals would be contrary to Policy BE1 of the Kirklees Unitary Development Plan.

3. The proposed development would result in an intensification of use of the site. The proposed level of parking (24 spaces) for the capacity of visitors and staff at any one time is considered to be insufficient. The lack of provision for parking would result in an increase of on street parking further exacerbating existing problems where on street parking is already oversubscribed to the detriment of highway safety and efficiency, contrary to policies BE1, T10 and T19 of the Kirklees Unitary Development Plan.

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

Plan Type	Reference	Version	Date Received
Planning Statement			27 th August 2015
Location Plan	15001-P-01		27 th August 2015
Site Plan	15001-P-02		27 th August 2015
Proposed East Elevation (sectional)	15001-P-02		27 th August 2015
Proposed West Elevation	15001-P-02		27 th August 2015
Proposed North Elevation	15001-P-03		27 th August 2015
Proposed South Elevation	15001-P-03		27 th August 2015
Proposed East Elevation	15001-P-03		27 th August 2015
Mosque Demographics			29 th September 2015
Heritage Statement			22 nd June 2016

Application No: 2016/91767

Type of application: 62 - FULL APPLICATION

Proposal: *Erection of 2 dwellings*

Location: *The Nook, 43, Forge Lane, Liversedge, WF15 7DX*

Grid Ref: 420812.0 423081.0

Ward: *Heckmondwike Ward*

Applicant: *H Cook*

Agent: *J A Oldroyd & Sons Ltd*

Target Date: *31-Aug-2016*

Recommendation: *FC - CONDITIONAL FULL PERMISSION*

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 erection of two dwellings within the site is considered to meet policy guidelines and in spite of objections, the benefit of locating development in this sustainable location would outweigh the loss of the Greenfield site in terms of visual and ecological impacts. Furthermore, the proposals are not considered to result in any highway safety implications. The proposal is considered, by officers, to be in accordance with the aims of the relevant Kirklees Unitary Development Plan policies and the National Planning Policy Framework.

RECOMMENDATION: CONDITIONAL FULL PERMISSION

2. INFORMATION

This application has been brought to the Heavy Woollen Planning Sub-Committee for determination in accordance with the Council's Scheme of Delegation at the request of Ward Councillor Kendrick for the following reason:

"I am writing to request that this application should come to the committee and that a site visit be made. My reasons for this are that Forge Lane is a very narrow lane and I believe that an application in the past was refused because Forge Lane did not meet a minimum width. The Refuse lorry and other large vehicles have to reverse out of the lane on to Norristhorpe Lane. A resident has already complained that someone has been and cut the back of his hedge away – it is suggested that this was done in an attempt to 'widen' the road.

I am also concerned that two public rights of way cross at the end of Forge Lane where this development is proposed."

The Chair of the Sub Committee has confirmed that Councillor Kendrick's reason for making this request is valid having regard to the Councillors' Protocol for Planning Sub Committees.

3. SITE DESCRIPTION / PROPOSAL

Site Description

The application site is an area of private residential garden located to the side and rear of a large bungalow known as The Nook and a detached garage. The area of land is set down from Forge Lane which provides access to the existing property and site. The site is bound by properties located along Cornmill Lane to the north, an open area of land to the east, a bungalow to the west, and a detached dwelling to the south. The area is residential in character containing a mixture of house types. A number of trees have recently been removed however there are a mixture of trees and shrubbery remaining to the periphery/boundary of the site.

Proposal

The proposed development is for the erection of two detached properties with associated parking, turning, and garden areas.

Plot 1 is proposed to be a large detached dormer bungalow with integral garage located between the existing dwelling and the existing rear boundary. It would have a large footprint measuring 13.6 by 13.8 metres and a maximum ridge height of 7.1 metres.

Plot 2 is proposed to be a significantly smaller property located between number 42 Forge Lane and The Nook. It would have a footprint measuring 9.0 metres by 9.20 metres. It would have a maximum ridge height of 5.8 metres and would include dormers to the rear elevation which would face into the site. Dormers are also proposed to the front elevation. Each property would have an area of private amenity space and would be enclosed by a 2.0 metre high timber fence.

The materials proposed are stone and brick with the use of blue slate for the roofs.

4. BACKGROUND AND HISTORY

2016/90841 – Residential development - Withdrawn

94/90596 – Erection of detached dwelling – Conditional full permission

5. PLANNING POLICY

The application is unallocated on the Kirklees Unitary Development Plan proposals map.

Development Plan:

- D2 – Unallocated Land
- BE1 – Design principles
- BE2 – Quality of design
- BE12 – Space about buildings
- T10 – Highway safety
- T16 – Pedestrian routes
- T19 – Car parking standards
- H1 – Meeting the housing needs of the district
- G6 – Land contamination
- NE9 – Retention of mature trees

National Planning Policy Framework:

- Chapter 6 - Delivering a wide choice of high quality homes
- Chapter 7 - Requiring good design

- Chapter 8 - Promoting healthy communities
- Chapter 11 - Conserving and enhancing the natural environment

6. CONSULTATIONS

The following is a brief summary of the consultation responses received. Where necessary, these consultations are reported in more detail in the assessment below:

K.C. Arboricultural Officer – No objections.

K.C. Environmental Services – No objections subject to condition regarding land contamination.

K.C. Highways Development Management – No objections subject to conditions.

7. REPRESENTATIONS

10 letters of objection have been received relating to the amended plans. The main planning issues raised are summarised as follows –

- Overlooking
- Visual impact
- Overshadowing
- Noise
- Loss of wildlife
- Loss of trees
- Drainage
- Poor access
- Increase in traffic
- Size of the bungalow
- Lack of Parking
- Conflict with pedestrians (frequently used by school children)
- Construction vehicles may block other accesses
- Refuse collection would cause further risk
- Sewerage

8. ASSESSMENT

Main issues

The main issues for consideration are:-

- General Principle
- Impact on visual amenity
- Residential amenity considerations
- Highway issues

- Other matters, including sustainable transport, Ecology & Trees, and Coal Mining Legacy
- Representations not covered in the main assessment
- Conclusion

General principle:

The site is without notation on the UDP Proposals Map and Policy D2 (development of land without notation) of the UDP states “planning permission for the development ... 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]”.

Paragraph 14 of the NPPF introduces a presumption in favour of sustainable development. For decision taking, unless material considerations indicate otherwise, this means:

- *‘approving development proposals that accord with the development plan without delay; and*
- *where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:*
 - *Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*
 - *Specific policies in this Framework indicate development should be restricted.’*

Footnote 9 lists examples where specific policies within the Framework indicate that development should be restricted. The examples include land designated as Green Belt and Local Green Space. The application site does not fall into either of these categories.

The NPPF sets out at paragraph 49 that ‘housing applications should be considered in the context of the presumption in favour of sustainable development.’ Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. At present, the Council is unable to demonstrate a five-year supply of housing land and therefore the provision of new housing to meet the shortfall is a material consideration that weighs in favour of the development proposed.

Whilst the NPPF encourages the use of brownfield land for development, it also makes clear that no significant weight can be given to the loss of greenfield sites to housing when there is a national priority to increase housing supply. The site comprises of land that is greenfield (previously undeveloped). As such, consideration needs to be given to any harm which would result from the loss of this open land.

To summarise, the specific impacts of the development, for example the visual and ecological impacts, are addressed later in this assessment but, in principle, it is considered by officers that there is no overriding reason why development on this land would be inappropriate subject to consideration of the UDP policies listed above.

Impact on visual amenity:

The application site is an area of garden within the curtilage of The Nook. The land appears underused and has been cleared of trees/shrubbery resulting in a more unkempt appearance. The area of land to the side and rear of the existing dwelling is of a size that can accommodate the development proposed whilst maintaining adequate space. The revised details show a large dormer bungalow located to the rear of The Nook and a smaller dwelling situated between no. 42 Forge Lane and the The Nook.

Paragraph 58 of the NPPF states that planning decisions should ensure that developments respond to local character and history and reflects the identity of local surroundings and materials. In addition UDP Policies BE1, BE2 and BE11 are considerations in relation to design, materials and layout. The NPPF echoes these policies and states that "design which fails to take the opportunities available for improving the character and quality of an area should not be accepted."

It is the opinion of officers that the land has limited contribution to the visual amenity of the area and that its loss would not detrimentally impact on the character. It is therefore considered that the benefit of development would outweigh its loss as a greenfield site.

In this instance, the development has been designed taking into account the space available in addition to the topography of the site and established character of the area. It is considered that the erection of the two dwellings proposed would be of an appropriate amount and scale and would not represent overdevelopment of the site. As The Nook is set back and down from the existing highway it is considered that the positioning of the dwellings would not be out of keeping within the environment.

The nature of existing residential development that surrounds the site is mixed in character. The properties located along Forge Lane are two storey red brick with large bay windows, no. 42 is located at the access to the site and appears two storey with accommodation at lower ground floor and both The Nook (within the application site) and no. 44 adjacent to the site are bungalows. There is therefore no single style or design of property taking precedent in the area. The two properties have been sympathetically designed and would not, in the view of officers, detract from the character or appearance of the area.

To summarise, the development proposed is considered by officers to be acceptable from a visual amenity perspective and would be in accordance with Policies BE1, BE2, and D2 of the UDP as well as the aims of Chapter 7 of the NPPF.

Residential amenity considerations:

In assessing the impact of the development on occupants of both dwellings externally surrounding the site and the dwellings proposed within the site, Policy BE12 of the UDP is of relevance because this provides some guidelines in relation to appropriate space about buildings. Policies D2 and BE1 of the UDP are also applicable, relating to general design principles.

The application proposals have been significantly revised since the original submissions. The revised details now show a large dormer bungalow (Plot 1) located to the rear of The Nook which would be set in 5 metres from the boundary with the gardens to the properties on Cornmill Lane. A distance of 12.0 metres would be achieved to the rear boundary of the application site.

A much smaller dormer bungalow (plot 2) is proposed to the side of the access between the existing dwelling and no. 42 Forge Lane.

It is considered by officers that the scale of development is acceptable and the submitted sections demonstrate that the proposed buildings can be accommodated on site without resulting in any detriment to the occupants of adjacent properties through matters of overshadowing or overbearing. Both proposed properties would be set in from the boundaries and take into account the gradient of the land.

The proposed site layout indicates habitable room windows would be positioned to the front and rear of plot 1 and only to the front of plot 2. The layout of the development would allow the proposal to achieve adequate distances between habitable room windows and to surrounding dwellings and also within the site. The internal layout to Plot 2 has been revised to show non-habitable room windows in the roof space which is 14 metres from the windows of no. 42 Nook Lane, thereby avoiding any undue loss of privacy to either future or existing occupants.

It is also considered by officers that both proposed properties provide sufficient amenity space to adequately meet the needs of future occupiers of the units.

To summarise, the proposed development is considered, by officers, to be acceptable from a residential amenity perspective and would be in accordance with Policies D2, BE12 and BE1 of the UDP.

Highway issues:

The Nook is an adopted highway up to the entrance into the development site which connects to the broader highway network via Cornmill Lane. The access into the site is currently a driveway which falls away from Forge Lane. The application is supported by a Design and Access Statement.

The development proposals include the widening of the existing driveway to 4.5 metres and the creation of an internal turning head to service the development. Parking for the development would meet the Council's standards set out in Policy T19 of the UDP.

In terms of the impact on highway capacity, the size of the development raises no undue concerns as the local highway network could easily accommodate the predicted four additional vehicle movements in the morning peak hour.

To summarise, with the inclusion of appropriate conditions relating to the surfacing and widening of the access road and the provision of the turning head, the proposals would not materially add to any undue highway safety implications, complying with the aims of Policies T10 and T19 of the UDP.

Other matters:

Sustainable transport:

Sustainable transport Paragraph 35 of the National Planning Policy Guidance (NPPG) states that "Plans should protect and exploit opportunities for the use of sustainable transport modes for the movement of goods or people. Therefore, developments should be located and designed where practical to...incorporate facilities for charging plug-in and other ultra-low emission vehicles." As such, this development should encourage the use of ultra-low emission vehicles such as electric vehicles. A condition is recommended in relation to the provision of facilities for charging plug-in electric vehicles.

Ecology & Trees:

The site currently consists of a former garden area. The existing land is of limited ecological interest. A number of trees have already been removed. There are no objections from the Council's Arboricultural Officer to the development and the proposals are considered by officers to be in accordance with Policy NE9 of the UDP. Furthermore, it is considered that there is no justification for retaining the land from an ecological perspective and the benefits of development for a dwelling outweighs any loss.

Coal Mining Legacy:

The Coal Authority recommends that the Local Planning Authority impose a planning condition should planning permission be granted for the proposed development requiring site investigation works prior to commencement of development.

In the event that the site investigations confirm the need for remedial works to treat the areas of shallow mine workings to ensure the safety and stability of the proposed development, this is also recommended to be conditioned to ensure that any remedial works identified by the site investigation are undertaken prior to commencement of the development.

As such, subject to the inclusion of appropriate conditions, the proposal is also considered acceptable from a coal mining legacy perspective, and would comply with the aims of chapter 11 of the NPPF.

To summarise, all relevant material planning considerations have, in the view of officers, been addressed.

Representations:

Officers respond to the main concerns raised in the representations as follows:

- Overlooking

Response: Taking into account the location of development and the space that would be maintained around the dwellings proposed in addition to the positioning of windows, it is considered by officers that there would not be any overlooking of any adjacent private amenity space.

- Visual impact

Response: The revised scheme has been designed taking into account the gradient of the land and space within each plot. The scale is appropriate when considering existing development and the character of each property is considered by officers to be in keeping with the area, which comprises of a mix of house types. It is not considered that the development would detract from the visual amenity of the area and is in accordance with relevant policies and the NPPF.

- Overshadowing/ Size of the bungalow

Response: The height and scale of development has been significantly reduced since the original submission. It is considered by officers that the layout of the development, which maintains adequate space to boundaries, in addition to the height of the properties proposed and gradient of land, would not result in any detriment to adjoining occupants from overshadowing.

- Noise

Response: It is not considered by officers that the erection of two dwellings on the site would give rise to an increased level of noise and disturbance which would be harmful to residential amenity. The site is within an existing residential area and provides residential accommodation. A footnote is recommended to be included, should permission be granted, regarding the hours of construction.

- Loss of wildlife & Loss of trees

Response: The trees within the site are not protected and no objections have been raised from the Council's Arboricultural Officer. The area of land is garden which is not considered to be of a level of ecological value so as to justify refusal of the development. The benefits of developing the land for residential purposes are considered to outweigh the loss of the land.

- Drainage

Response: It is not considered that the development of two properties would give rise to any matters of drainage.

- Poor access, lack of parking, increase in traffic, conflict with pedestrians (frequently used by school children), construction vehicles may block other accesses, refuse collection would cause further risk

Response: The application has been assessed by KC Highways DM who raise no objections to the development proposed. Subject to conditions it is considered that the development would not contribute to any undue matters of highway safety and would be in accordance with Policies T10 and T19 of the UDP.

- Sewerage

Response: The application form states that the site would discharge to mains sewers that are available. As such there is no justification to refuse the application in relation to sewerage.

Conclusion:

The erection of two dwellings within the site is considered to meet policy guidelines and in spite of objections, the benefit of locating development in this sustainable location would outweigh the loss of the greenfield site in terms of visual and ecological impacts.

The proposal is considered to comply with current planning policies and it is the opinion of officers that there would be no significant adverse impact in terms of visual or residential. Furthermore there would be no issues with regard to highway or pedestrian safety. For the reasons detailed above, it is considered by officers that, subject to the imposition of appropriate conditions, the proposal is acceptable.

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 would constitute sustainable development and is therefore recommended for approval.

9. RECOMMENDATION

CONDITIONAL FULL PERMISSION

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. The development shall not be brought into use until the access, vehicle parking, and turning areas on the approved plans have been laid out, surfaced, and drained in accordance with the Communities and Local Government; and Environment Agency's 'Guidance on the permeable surfacing of front gardens (parking areas)' published 13th May 2009 (ISBN 9781409804864) as amended or superseded; Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 as amended (or any Order revoking or re-enacting that Order) this shall be so retained, free of obstructions and available for the use specified on the submitted plans.
4. The development shall not be brought into use until the access road into the development has been widened to 4.5 metres as indicated on the approved plan. Thereafter, the widened access road shall be retained.
5. Notwithstanding the details shown on the submitted plans and information, a scheme detailing the boundary treatment for the entire site shall be submitted to and approved in writing by the Local Planning Authority before any boundary treatment is first erected. The boundary treatment shall then be erected in accordance with the approved details before the development is first brought into use and thereafter retained.
6. Prior to occupation of the dwelling, an electric vehicle recharging point shall be installed. Cable and circuitry ratings shall be provided to ensure a minimum continuous current demand of 16 Amps and a maximum demand of 32Amps. Thereafter the electric vehicle recharging points so provided shall be retained.

7. In the event that contamination not previously identified by the developer prior to the grant of this planning permission is encountered during the development, all works on site (save for site investigation works) shall cease immediately and the local planning authority shall be notified in writing within 2 working days. Unless otherwise approved in writing with the local planning authority, works on site shall not recommence until either (a) a Remediation Strategy has been submitted to and approved in writing by the local planning authority or (b) the local planning authority has confirmed in writing that remediation measures are not required. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures. Thereafter remediation of the site shall be carried out and completed in accordance with the approved Remediation Strategy.

Following completion of any measures identified in the approved Remediation Strategy a Validation Report shall be submitted to the local planning authority. Unless otherwise approved in writing with the local planning authority, no part of the site shall be brought into use until such time as the whole site has been remediated in accordance with the approved Remediation Strategy and a Validation Report in respect of those works has been approved in writing by the local planning authority.

8. Site investigation works shall be carried out in accordance with the Coal Mining Risk Assessment prepared by Michael D Joyce (Report 3617 dated March 2016) before development commences.

9. The Remediation Strategy shall be submitted to and approved in writing by the Local Planning Authority before development commences. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures.

10. Remediation of the site shall be carried out and completed in accordance with the Remediation Strategy approved pursuant to condition 9. In the event that remediation is unable to proceed in accordance with the approved Remediation Strategy or contamination not previously considered [in either the Coal Mining Risk Assessment or the Phase II Intrusive Site Investigation Report] is identified or encountered on site, all works on site (save for site investigation works) shall cease immediately and the local planning authority shall be notified in writing within 2 working days. Works shall not recommence until proposed revisions to the Remediation Strategy have been submitted to and approved in writing by the Local Planning Authority. Remediation of the site shall thereafter be carried out in accordance with the approved revised Remediation Strategy.

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

Plan Type	Reference	Version	Date Received
Design & Access Statement			3 rd June 2016
Coal Mining Risk Assessment	Report Number 3617 Dated March 2016		3 rd June 2016
Location Plan	Blackwells 1:1250		3 rd June 2016
Site Layout	16/3/3		20 th September 2016
Plot 2 proposed	16/3	A	22 nd September 2016
Plot 1 proposed	16/3		8 th July 2016
Proposed Site sections	16/3		8 th July 2016
Site Section Information			5 th July 2016

KIRKLEES METROPOLITAN COUNCIL

PLANNING SERVICE

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

13 OCTOBER 2016

10. Application for 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

The council has received written submissions on behalf of the applicants Mr & Mrs Bragg, which can be found at the council's planning webpage for this item's appendices.

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

The submissions comprise:

Written submission for discussion at the Planning sub-committee from Mr A Dunlop

<https://democracy.kirklees.gov.uk/documents/s14846/Finalised%20written%20submissions%20of%20Andy%20Dunlop.pdf>

Mr Dunlop's submitted documents in his "schedule of documents" is on the council website at

<https://democracy.kirklees.gov.uk/documents/s14849/Final%20Submission%20-%20AD%20-%20Attachments.pdf>

Emailed statement on 1966 planning documents from Ramsdens of 11 October 2016.

<https://democracy.kirklees.gov.uk/documents/s14873/060.%20Ramsden%20e-mail.pdf>

Emailed 1960s planning documents from Ramsdens 11 October 2016.

<https://democracy.kirklees.gov.uk/documents/s14874/061.%20Ramsden%20e-mailed%20planning%20document.pdf>

The statement of Mr Dunlop identifies a number of alleged errors in the history of public rights of way recording and management in the Kirklees area of West Yorkshire. Mr Dunlop also disputes the officer report and officer views and offers his own for the benefit of the committee, which members are recommended to read and consider in full, along with his appended documents.

Issues raised are from Huddersfield (recording of byways in the production of the 1985 DMS; placement of a bridge along the byway over a quarry haul road), from Meltham (diversion of footpath 40, known to KC PROW, but yet to be subject to a legal event modification order; enforcement action) as well as from Batley (surveys for the '1952' DMS).

Officers would note that the report appendices do contain the walking schedule for what became Batley 49. Hey Beck Lane is a continuation of Batley Road westwards towards Batley and throughout the lengthy process that produced the '1952' DMS, there were opportunities to identify and amend this alleged error by the borough and county officers.

Officers would be happy to respond to any sub-committee queries on the issues raised. Mr Dunlop raises no new evidence, and officers would note the content of the officer report, including matters such as the relevant criteria to be satisfied.

Ramsdens have submitted papers from the 1966 planning process for a stable. In the email, the Braggs' solicitors claim that these documents "*confirm that Footpath number 49 was closed through 75a Heybeck Lane by, at the latest, February 1966 and thus infers at least 4 additional years to the period of use for Statutory presumed dedication of the new route as shown on the 1970 and later OS maps, confirmed as existing by the 1992 diversion attempt and not closed until 2012*"

Officers would note that these planning documents do not mention the public footpath. They do not mention diversion of the public footpath, they do not, as claimed, "*confirm the footpath was closed*" as they do not discount the possibility that any fence allegedly erected had gates, gaps or stiles to accommodate the continued public user of path 49. If the footpath was physically closed in 1966 and the public could not use it thereafter then it would contradict Mrs Hallas' report in evidence that Mrs Buckley had expressed some years after 1966 her desire to divert the footpath.

Additionally, Savile Estate conveyed the triangle of land to the Buckleys subject to the path, so **if** access did not continue along the path then he would likely be in breach of this civil requirement as well as, on the balance of probability, unlawfully obstructing the public footpath 49. A path blockage like this one alleged would be a far from unusual circumstance in the history of planning and PROWs, it does not mean the path was formally diverted or lawfully blocked.

Even if members decide to conclude that a public footpath has been reasonably alleged to have been established over the addition route by the public users, this is not the same as concluding that the original path has been diverted with legal authority. If people went elsewhere in a manner to satisfy the addition tests, a second footpath could potentially be established. Members should note that a planning consent does not authorise the obstruction or diversion of public paths. The officer recommendation remains.

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****ADDITIONAL INFORMATION FROM THE APPLICANT:**

A revised Car Park and Servicing Management Plan was received 4th October, with a further revision received 6th October. This proposes the following measures:

- A total of 23 parking spaces is proposed on site, with a further 6 spaces designated for Mullaco staff in the car park of Al-Hashim Academy on Providence Street. The parking spaces adjacent to the delivery area will be marked out for use by people with mobility difficulties. The company employs 17 staff on site. Of these employees five travel to work using a car / taxi, five use public transport, and the remainder walk.
- No storage of materials / pallets will be allowed within the car parking area.
- All refuse will be stored on site in a closed skip with collection taken place twice weekly.
- All goods transported in large HGV's will be delivered to Global Storage and Logistics on Soothill Lane, Batley. These goods will be collected in Mullaco's van / 3.5 to 7.5 T goods vehicle for transportation to the site.
- All deliveries on Charles Street will cease and be transferred to an extended area adjacent to the building. This area will be cordoned off from the public during all unloading operations using a fork lift truck. The goods will be transferred to a designated storage area and moved into the building at first floor level using a new access door. Drivers will be required to telephone the premises 30 minutes prior to arrival, to ensure the loading area is cleared of customer vehicles. This activity would take place at off peak periods when parking demand is less (before 1030am or between 1500 and 1700 hours). Appropriate warning signs will be erected.

In addition the applicant has suggested a temporary permission to allow time for the additional land to be purchased, the car park formed, and the full management plan to be implemented.

The revised plan has gone some way in addressing the concerns raised. In particular, the removal of all deliveries and fork lift truck movements from Charles Street represents a significant safety benefit.

However, the main concern is that fork lift movements within the site would still occur at times when the cash and carry / shop unit is open. Fork lift trucks would be delivering goods to a proposed first floor opening immediately adjacent to the entrance to the shop. Officers have seen video evidence of pallets falling off a fork lift truck onto Charles Street, and should such an

incident occur from a first floor height immediately adjacent to the entrance, there could be serious safety implications for pedestrians. The applicant was approached to find a possible solution where deliveries / fork lift truck movements could be restricted to times when the cash and carry / retail unit was closed, however the applicant is unwilling to make any further revisions to the plan. The management plan proposal to require delivery drivers to telephone 30 minutes prior to their arrival at Mulloca's is not considered to be practical or realistic to ensure the deliveries are managed in a systematic way to avoid conflict between different users of the car park.

The reduction in the number of parking spaces within the site to provide the fork lift truck parking area could, on balance, be considered to be acceptable provided that these were provided off-site as indicated in the plan. Officers however, have significant concerns about the safety aspect of fork lift trucks operating at first floor level immediately adjacent to the cash and carry / retail unit entrance. Officers consider that the applicant has not provided sufficient protection for pedestrians from fork lift truck movements and are unable to support the application on highway safety grounds.

The applicant has suggested a temporary permission for a period of 18-24 months to allow for the additional land to be purchased, the car park built and the full management plan to be implemented. Officers are concerned that a period of 18-24 months is too long for the retail unit to continue to operate without appropriate safety precautions. Should Members be minded to approve the application, it is advised that this be limited to no more than 12 months.

Furthermore, on the basis of the applicant's car park management plan as submitted, these issues could not be adequately mitigated against by imposing conditions. Notwithstanding the above, officers recommendation is to refuse the application in accordance with the revised reason below.

7. REPRESENTATIONS

The details of the revised Car Park and Management Plan have been re-advertised with the amended plans publicity expiring 12 October 2016.

22 further representations have been received. A number of issues previously raised have been repeated. In respect of the revised Car Park and Management Plan, the following comments have been raised.

1. Concern that the car park management plan is not being implemented as large delivery vehicles are arriving at Mullaco.

Response: Evidence has been provided to show large vehicles still accessing the site.

2. The car park management plan has increased the amount of trucks and small vehicles.

Response: Highways Development Management (HDM) has not raised an objection to the amount of deliveries on the highway network. The issue is whether safe delivery can be made within the site.

3. The proposal should be treated as a new build supermarket and there should be no forklift trucks in the car park or on the road.

Response: The proposal is for a mixed use development including a warehouse, food processing unit, cash and carry and a retail unit, and not a standalone supermarket. The proposal is therefore assessed on its own merits.

4. Acquiring additional land will not resolve the car parking and servicing issues and the intensification of traffic. The car park cannot provide servicing by vehicles entering and leaving the site in forward gear with customer vehicles parked. The delivery vehicle coming through the car park is too dangerous for the customer. The new servicing area is not enough for one delivery vehicle if a 10 metre vehicle makes a delivery, 5 parking spaces will be obstructed. On a normal day, the Mullaco car park is full with various delivery vehicles.

Response: Officers could accept the proposed layout, however there is not sufficient protection for pedestrians from fork lift truck movements and officers are therefore unable to support the application on highway safety grounds.

5. Mullaco have not provided any agreement with Al-Hashim school on Providence Street to provide the displaced parking spaces.

Response: This is set out in the Car Park and Management Plan. If permission is granted, the applicant would be required to adhere to this plan.

6. Concern the location of the skips is poor and splits up the parking bays

Response: Highway Services raise no objections to the proposed location of the skips.

7. How long is the agreement with Global Storage and Logistics.

Response: This is unknown. However, the applicant would be required to adhere to the details set out in the plan. If the plan could no longer be operated, the applicant would be open to enforcement action.

8. 15:00 to 1700 are peak school madressa times.

Response: The applicant refers to deliveries taken place at off peak periods when parking demand is less but does not specify particular times. The management plan alludes to parking demand being less before 10:30am and between the hours of 1500 and 1700, but does not propose that deliveries are restricted to such times. Officers have sought to find a solution which could restrict the hours of delivery but the applicant has been unwilling to revise the plan further.

9. Where will the shopping trolleys be kept?

Response: The layout plan does not propose any external storage of shopping trolleys.

10. Where will the fleet of Mullaco trucks and vans be parked?

Response: The agent was requested to confirm where the vans are kept. A response is awaited.

In respect of other new concerns:

11. Concern that staff of Mullaco are smoking at the entrance by the gates

Response: This is not a material consideration to the assessment of this application.

12. The search for a suitable alternative site was not done prior to submitting the revised application.

Response: The applicants report was prepared for the previous application (later withdrawn). This referred to The Council's Shopping Centre Occupancy Survey 2014, which was later updated in November 2015. The assessment in the report therefore, refers to the conclusions of the report by Compass Planning, together with the updated Council's Shopping Centre Occupancy Survey 2015. Their conclusion 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 and this is supported by the updated Council's Shopping Centre Occupancy Survey. Officers are satisfied that the sequential test has been satisfied.

13. Concern Pollution and Noise Control should have assessed the proposal before Mullaco opened the retail unit.

Response: The consultation of relevant Council and external departments is a normal part of the planning process upon receipt of an application. Environmental Services have been consulted as part of the application and advise that the current activity is unlikely to give rise to significant adverse effects, particularly during the day time if suitable parking provision and servicing is provided on site.

14. The statement that there was no demand for the upper floor of the building after Premier Beds vacated is false.

Response: The proposal is for a mixed use commercial development and there is no requirement for the developer to market the property.

15. The report fails to mention the other 2 loading bays erected without planning on the side of Charles Street.

Response: The revised parking and management plan proposes the removal of all deliveries and fork lift truck movements from Charles Street.

16. There is a very strong objection to the disposal of land.

Response: 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.

17. There is no mention of bike stands.

Response: The provision of adequate facilities for safe deliveries outweighs any desirability to provide bike stands within the site to serve the development.

9. RECOMMENDATION

Revised reason for refusal:

1. The proposal has failed to demonstrate that adequate servicing facilities can be provided to serve the intensified use and avoid conflict between different users of the car park at times of deliveries and movement of goods. The proposal would have an unacceptable impact on the safety of customers visiting the site. To approve the application would be contrary to Policy T10 of the Kirklees Unitary Development Plan which stipulates that new development should not prejudice highway safety.

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**ERECTION OF PLACE OF WORSHIP AND EDUCATIONAL CENTRE
(WITHIN A CONSERVATION AREA)**

**LAND AT THE CORNER OF NOWELL STREET & WEST PARK STREET,
DEWSBURY**

The application was withdrawn by the applicant's agent on 11 November 2016.

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