

Public Document Pack



**Service Director – Legal, Governance and
Commissioning**

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Wednesday 15 November 2017

Notice of Meeting

Dear Member

Planning Sub-Committee (Huddersfield Area)

The **Planning Sub-Committee (Huddersfield Area)** will meet in the **Council Chamber - Town Hall, Huddersfield** at **1.00 pm** on **Thursday 23 November 2017**.

(A coach will depart the Town Hall, at 9.40am to undertake Site Visits. The consideration of Planning Applications will commence at 1.00 pm in the Council Chamber, Huddersfield Town Hall.)

This meeting will be webcast live and will be available to view via the Council's website.

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

Service Director – Legal, Governance and Commissioning

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 (Huddersfield Area) members are:-

Member

Councillor Terry Lyons (Chair)
Councillor Donna Bellamy
Councillor James Homewood
Councillor Bernard McGuin
Councillor Mohammad Sarwar
Councillor Ken Sims
Councillor Mohan Sokhal
Councillor Sheikh Ullah
Councillor Rob Walker
Councillor Linda Wilkinson
Councillor Andrew Marchington

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

Substitutes Panel

Conservative

B Armer
N Patrick
G Wilson
J Taylor
D Firth

Green

K Allison
A Cooper

Independent

C Greaves

Labour

E Firth
S Hall
C Scott

Liberal Democrat

J Lawson
A Pinnock

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 12 October 2017.

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 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.

In accordance with Council Procedure Rule 10 (2), Members of the Public should provide at least 24 hours' notice of presenting a deputation.

6: Site Visit - Application No: 2017/91505

Application 2017/91505 Outline application for erection of residential development Land off, Huddersfield Road, Meltham, Holmfirth

(Estimated time of arrival at site – 9.55am)

Contact Officer: Matthew Woodward, Planning Services

Wards

Affected: Holme Valley North

7: Site Visit - Application 2017/92605

Application 2017/92605 Change of use and alterations to wc to form revised public toilets, A1 (shops/retail), A2 (professional services) , A3 (cafe/restaurant) and A5 (hot food and takeaway) (within a Conservation Area) Public Conveniences, Station Road, Holmfirth,

(Estimated time of arrival at site – 10.15am)

Contact Officer: Neil Bearcroft, Planning Services

Wards

Affected: Holme Valley South

8: Site Visit - Application 2017/92825

Application 2017/92825 Change of use of part of bakery to gymnasium 1, Ruth Street, Newsome, Huddersfield

(Estimated time of arrival at site – 10.40am)

Contact Officer: Nick Hirst, Planning Services

Wards

Affected: Newsome

9: Site Visit - Application 2017/92274

Application 2017/92274 Formation of off street parking 90 A, Radcliffe Road, Wellhouse, Huddersfield.

(Estimated time of arrival at site – 11.05am)

Contact Officer: Laura Yeadon, Planning Services

Wards

Affected: Colne Valley

10: Site Visit - Application 2017/92422

Application 2017/92422 Erection of single storey side and rear extensions to dwelling, erection of machinery store and engineering operations 9, Clough Head, Slaithwaite Gate, Bolster Moor, Huddersfield.

(Estimated time of arrival at site – 11.20am)

Contact Officer: Adam Walker, Planning Services

Wards

Affected: Colne Valley

11: Site Visit - Application 2017/91132

Application 2017/91132 Erection of two storey side extension to form enlarged Class A1 shop at ground floor with A2 office unit and residential flat above Fix It Supplies, 12b, Hillhouse Lane, Fartown, Huddersfield.

(Estimated time of arrival at site – 11.45am)

Contact Officer: William Simcock, Planning Services

Wards

Affected: Greenhead

12: Local Planning Authority Appeals

11 - 30

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: Mathias Franklin, Planning Services

Wards

Affected: Almondbury; Colne Valley; Newsome; Holme Valley South

Planning Applications

31 - 34

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 register no later than 5.00pm (for phone requests) or 11:59pm (for email requests) on 20 November 2017

To pre-register, please contact richard.dunne@kirklees.gov.uk or phone Richard Dunne on 01484 221000 (Extension 74995)

An update, providing further information on applications on matters raised after the publication of the Agenda, will be added to the web Agenda.

- 13: Modification of the definitive map and statement. Determination of Public rights of way and their status at Huddersfield 231, Nether moor, South Crosland, Huddersfield. Definitive Map Modification Order Application to Record a Public Footpath (Add Footpath and Vary Particulars).** 35 - 90

To consider the report.

Wards

Affected: Crosland Moor and Netherton

- 14: Planning Application - Application No: 2015/91664** 91 - 108

Application 2015/91664 Outline application for residential development with details of access and provision of car parking and bin storage for previously approved adjacent apartments under application no. 17/90375 rear of 1A, St Johns Avenue, Newsome, Huddersfield.

Contact Officer: Farzana Tabasum, Planning Services

Wards

Affected: Newsome

- 15: Planning Application - Application No: 2017/92605** 109 - 116

Application 2017/92605 Change of use and alterations to wc to form revised public toilets, A1 (shops/retail), A2 (professional services) , A3 (cafe/restaurant) and A5 (hot food and takeaway) (within a Conservation Area) Public Conveniences, Station Road, Holmfirth.

Contact: Neil Bearcroft, Planning Services

Wards

Affected: Holme Valley South

- 16: Planning Application - Application No: 2017/92230** 117 - 132

Application 2017/92230 Outline application for residential development Rodgers Plant Hire, Riverside Works, Woodhead Road, Honley, Holmfirth.

Contact: Nick Hirst, Planning Services

Wards

Affected: Holme Valley North

- 17: Planning Application - Application No: 2017/92825** 133 - 144
- Application 2017/92825 Change of use of part of bakery to gymnasium 1, Ruth Street, Newsome, Newsome, Huddersfield.
- Contact Officer: Nick Hirst, Planning Services
- Wards**
Affected: Newsome
-
- 18: Planning Application - Application No: 2017/93282** 145 - 154
- Planning Application 2017/93282 Outline application for erection of one dwelling 80, Cliff Road, Holmfirth.
- Contact Officer: Nick Hirst, Planning Services
- Wards**
Affected: Holme Valley South
-
- 19: Planning Application - Application No: 2017/91505** 155 - 178
- Application 2017/91505 Outline application for erection of residential development Land off, Huddersfield Road, Meltham.
- Contact Officer: Matthew Woodward, Planning Services
- Wards**
Affected: Holme Valley North
-
- 20: Planning Application - Application No: 2017/92274** 179 - 188
- Application 2017/92274 Formation of off street parking 90 A, Radcliffe Road, Wellhouse, Huddersfield.
- Contact Officer: Laura Yeadon, Planning Services
- Wards**
Affected: Colne Valley
-
- 21: Planning Application - Application No: 2017/92422** 189 - 200
- Application 2017/92422 Erection of single storey side and rear extensions to dwelling, erection of machinery store and engineering operations 9, Clough Head, Slaithwaite Gate, Bolster Moor, Huddersfield.
- Contact Officer: Adam Walker, Planning Services
- Wards**
Affected: Colne Valley
-

22: Planning Application - Application No: 2017/91132

201 -
212

Application 2017/91132 Erection of two storey side extension to form enlarged Class A1 shop at ground floor with A2 office unit and residential flat above Fix It Supplies, 12b, Hillhouse Lane, Fartown, Huddersfield.

Contact Officer: William Simcock, Planning Services

Wards

Affected: Greenhead

Planning Update

The update report on applications under consideration will be added to the web agenda prior to the meeting.

Contact Officer: Richard Dunne

KIRKLEES COUNCIL

PLANNING SUB-COMMITTEE (HUDDERSFIELD AREA)

Thursday 12th October 2017

Present: Councillor Terry Lyons (Chair)
Councillor Donna Bellamy
Councillor James Homewood
Councillor Bernard McGuin
Councillor Mohammad Sarwar
Councillor Ken Sims
Councillor Mohan Sokhal
Councillor Sheikh Ullah
Councillor Rob Walker
Councillor Linda Wilkinson
Councillor Andrew Marchington

1 Membership of the Committee

All members of the Committee were present.

2 Minutes of previous meeting

The Minutes of the meeting held on 21 August 2017 be approved as a correct record.

3 Interests and Lobbying

Members declared interests and identified planning applications on which they had been lobbied as follows:

Councillor McGuin declared an 'other interest' in item 10 on the grounds that he had been involved in a local group that had wanted to establish a village green on the land at Clayton Fields.

Councillor Ullah declared an 'other interest' in item 10 on the grounds that he had been involved in facilitating a number of meetings between the developer and objectors.

Councillor Sokhal declared an 'other interest' in item 10 on the grounds that he had previously commented on and supported local residents to maintain the public rights of way footpath.

Planning Sub-Committee (Huddersfield Area) - 12 October 2017

Councillor Bellamy declared an 'other interest' in applications 2017/90516 and 2016/93243 on the grounds that she was a member of Holme Valley Parish Council.

Councillors Sims and Wilkinson declared that they had been lobbied on application 2016/93243.

Councillor Sims declared that he had been lobbied on application 2017/90516.

Councillor Sims declared that he had previously been involved in considering development on the Castle Hill site in his capacity as Cabinet Member for Regeneration and Planning.

Councillor Ullah declared that he lobbied on application 2015/91664 on application 2015/91664.

Councillor Sarwar declared that he had been lobbied on application 2017/91555.

Councillor Homewood declared that he had been lobbied on Item 10.

4 Admission of the Public

All items on the agenda were taken in public session.

5 Deputations/Petitions

No deputations or petitions were received.

6 Site Visit - Application No: 2015/91664

Site visit undertaken.

7 Site Visit - Application No: 2016/93243

Site visit undertaken.

8 Site Visit - Application 2017/92220

Site visit undertaken.

9 Local Planning Authority Appeals

That the report be noted.

10 Application for extinguishment of Claimed Footpaths at Clayton Fields, Edgerton Road, and Provision of Alternative Routes

The Committee considered an application for an order to extinguish claimed public footpath rights over land at Clayton Fields and to provide alternative pedestrian routes.

The report outlined the context and background to the matter, information required to take a decision, next steps and officer recommendations and reasons.

Under the provisions of Council Procedure Rule 37, the Committee received representations from Jonathan Adamson, Bill McGee and Caroline Cole (Objectors) and Michael Johnson (speaking on behalf of the applicant).

RESOLVED –

Delegate authority to the Service Director, Legal, Governance and Commissioning to:

- 1) Determine the precise order alignment of the Woodland Walk path (indicatively shown Y-Z on plan 2 in the considered report) and;
- 2) Make and seek confirmation of an order under s257 of the Town & Country Planning Act 1990 in accordance with report Plans 1 and 2, and (1) above.

For: Councillors: Homewood, Lyons, Marchington, Sarwar, Sims, Walker and Wilkinson (7 votes)

Against: Councillor Bellamy (1 vote).

11 Planning Application - Application No: 2017/90516

The Sub-Committee gave consideration to Planning Application 2017/90516 Reserved matters pursuant to outline permission 2015/91726 for erection of 10 dwellings Land adjacent to 38, Broad Lane, Upperthong, Holmfirth.

Under the provisions of Council Procedure Rule 37, the Committee received a representation from Andrew Windress (Agent).

RESOLVED –

That the application be refused.

Contrary to the Officer's recommendation, the Committee considered that the layout of the submitted scheme, together with the proposed scale and appearance of the dwellings would be an over development of the site and out of keeping with the character of the wider locality and streetscene.

A Recorded Vote was taken in accordance with Council Procedure Rule 42 (5) as follows:

For: Councillors: Bellamy, Lyons, Marchington, McGuin, Sims and Wilkinson (6 votes)

Against: Councillors: Homewood, Sawar, Sokhal, Ullah and Walker (5 votes)

12 Planning Application - Application No: 2017/91555

The Sub-Committee gave consideration to Planning Application 2017/91555 Formation of driveway through ground floor of 35/37, alterations to form flat above and change of use of land to form parking and turning area 35, Upper Mount Street, Lockwood, Huddersfield.

Under the provisions of Council Procedure Rule 37, the Committee received a representation from Javid Hussain (Applicant).

RESOLVED –

That the application be refused in line with the following reasons that were included in the considered report:

1. The comings and goings associated with the use of the driveway and parking spaces would result in a level of disturbance that would not retain a good standard of amenity for existing occupiers of neighbouring dwellings, in particular those to the south east of the application site. This would be contrary to a core planning principle of the NPPF, Policy D2 (v) of the UDP and Policy PLP24 (b.) of the Publication Draft Local Plan.
2. 2. The formation of the driveway through the ground floor of the host dwelling would appear incongruous in the Upper Mount Street streetscene, disrupting the strong linear character of stepped terraced properties which presently exists. This would be detrimental to visual amenity and would not accord with Policies D2 (vi, vii) and BE1(i, ii) of the Unitary Development Plan, advice within paragraph 64 of the National Planning Policy Framework and Policy PLP 24 (a.) of the Publication Draft Local Plan.

A Recorded Vote was taken in accordance with Council Procedure Rule 42 (5) as follows:

A vote to approve the application.

For: Councillors: Sarwar, Sokhal and Ullah (3 votes)

Against: Councillors: Bellamy, Homewood, Lyons, Marchington, McGuin, Sims, Walker and Wilkinson (8 votes)

A vote to refuse the application in line with the officer's recommendation.

For: Councillors Bellamy, Homewood, Lyons, Marchington, McGuin, Sims, Walker and Wilkinson (8 votes)

Against: Councillors Sarwar, Sokhal and Ullah (3 votes)

13 Planning Application - Application No: 2015/91664

The Sub-Committee gave consideration to Planning Application 2015/91664 Outline application for residential development with details of access and provision of car parking and bin storage for previously approved adjacent apartments under application no. 17/90375 rear of 1A, St Johns Avenue, Newsome, Huddersfield.

Under the provisions of Council Procedure Rule 37, the Committee received a representation from Stewart Smith (Applicant).

Under the provisions of Council Procedure Rule 36 (1) the Committee received a representation from Cllr Julie Stewart-Tuner (Local Ward Member).

RESOLVED -

That consideration of the application be deferred to allow officers an opportunity to verify details of the access including meeting the required width of access from St John's Avenue to the proposed development site.

A Recorded Vote was taken in accordance with Council Procedure Rule 42 (5) as follows:

For: Councillors :Homewood, Lyons, Marchington, Sarwar, Sokhal, Ullah, Walker and Wilkinson (8 votes)

Against: Councillors: Bellamy, McGuin and Sims (3 votes).

14 Planning Application - Application No: 2016/93243

The Sub-Committee gave consideration to Planning Application 2016/93243
Erection of 17 dwellings (within a Conservation Area) Thirstin Mills, Thirstin Road, Honley, Holmfirth.

Under the provisions of Council Procedure Rule 37, the Committee received representations from Richard Slade (Objector) and Rachael Martin (Agent).

RESOLVED -

1) Delegate approval of the application and the issuing of the decision notice to the Head of Strategic Investment in order to complete the list of conditions contained within the considered report including:

1. 3 year time limit condition to implement the permission.
2. Development to be in accordance with approved plans.
3. Approval of samples of materials.
4. Landscape scheme to be implemented in accordance with submitted scheme and to be retained for 5 years.
5. Development to be completed in accordance with sections provided showing relationship with neighbouring properties.
6. Vehicle parking areas to be surfaced and drained in accordance with details to be submitted.
7. A scheme detailing the footway to be provided along Thirstin Road.
8. Bin storage area to be provided prior to occupation of development in accordance with revised plan.
9. Highway works conditions.
10. Details of drainage proposals to include proposed means of disposal of surface water drainage, the new watercourse within the site, any

balancing works and off-site works as suggested by the Council's LLFA.

11. Environment agency conditions.
 12. Yorkshire Water conditions.
 13. Details of regrading works to embankment along western boundary.
 14. Details of temporary and permanent retaining walls.
 15. Works to be carried out in accordance with submitted Phase I Geo-environmental investigation report.
 16. Details of remediation and validation strategy/reports.
 17. Provision of electric vehicle charging points.
 18. Removal of permitted development rights.
 19. Construction Management Plan
- 2) Secure a Section 106 Obligation (Unilateral Undertakings) to cover the following matters:
1. The long term maintenance and management of:
 - a) The watercourse including all associated ancillary structures (access chambers and trash screens) on site, and
 - b) The regraded embankment along the full western boundary,

Both of which shall be agreed to be set up through management companies on behalf of the future occupants of all the dwellings/plots. These are to be in accordance with details to be approved under conditions relating to all works associated to a and b above, implementation of these and prior to occupation of any of the dwellings.

- 3) That, pursuant to (2) above, In the circumstances where the signed and dated Unilateral Undertakings for both a and b above have not been received within 3 months of the date of the Committee's resolution then the Head of Strategic Investment shall consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of suitable management and maintenance responsibilities being secured; if so, the Head of Strategic Investment is authorised to determine the application and impose appropriate reasons for refusal under Delegated Powers.

A Recorded Vote was taken in accordance with Council Procedure Rule 42 (5) as follows:

For: Councillors Bellamy, Homewood, McGuin, Sarwar, Sims, Sokhal, Ullah, Walker and Wilkinson (9 votes)
Against: Councillor Lyons (1 vote)
Abstained: Councillor Marchington

15 Planning Application - Application No: 2017/92220

The Sub-Committee gave consideration to Planning Application 2017/92220 Reserved matters application pursuant to outline permission 2015/91640 for residential development (16 dwellings) Mill Moor Road, Meltham, Holmfirth.

Under the provisions of Council Procedure Rule 37, the Committee received a representation from David Storrie (agent).

RESOLVED –

Delegate approval of the reserved matters and the issuing of the decision notice to the Head of Strategic Investment in order to:

1. Obtain a detailed drainage design based on the proposed draft drainage layout to the satisfaction of Kirklees Lead Local Flood Authority and to satisfy condition 14 of the outline planning permission; secure a revised layout plan showing a minor amendment to the alignment of the internal access road to the satisfaction of Highways Development Management; and
2. ensure the reserved matter of 'layout' is acceptable and;
3. complete the list of conditions contained within the considered report including:
 1. Development to in accordance with the approved plans.
 2. Obscure glazing to bedroom windows in the western elevations of plots 5 and 6.
 3. Drystone wall constructed of natural stone and to re-use material from existing boundary wall.
 4. Garden Sheds to be provided for plots with sub-standard garages prior to first occupation.
 5. Details to show how plots 1-4 can be accessed from the rear

A Recorded Vote was taken in accordance with Council Procedure Rule 42 (5) as follows:

For: Councillors Bellamy, Lyons, Homewood, Marchington, McGuin, Sarwar, Sims, Sokhal, Ullah, Walker and Wilkinson (11 votes)

Against: (0 votes).

16 Planning Permission No: 2016/91900

The Committee received an update in respect of The Pink Link's adherence to the terms of the planning permission in respect of Planning Application 2016/91900 Change of use and alterations from B2 (general industrial) to B8 (storage or distribution) The Pink Link Ltd, Crosland Road, Oakes, Huddersfield.

RESOLVED –

That the actions outlined in the report and update list be noted.

17 Pre Application - Enquiry for the erection Cafe/restaurant and associated facilities at Castle Hill site, Almondbury

The Committee received a pre-application report and presentation in respect of a potential planning application for the erection of café/restaurant and associated facilities at Castle Hill Side, Almondbury, Huddersfield.

Planning Sub-Committee (Huddersfield Area) - 12 October 2017

Under the provisions of Council Procedure Rule 37, the Committee received the presentation from Malcolm Sizer and Kevin Drayton.

RESOLVED –

That the pre-application presentation be received and noted.

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 (HUDDERSFIELD)

Date: 23 NOVEMBER 2017

Title of report: LOCAL PLANNING AUTHORITY APPEALS

The purpose of the report is to inform Members of planning appeal decisions received in the Huddersfield area since the last Sub-Committee meeting.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports)?	No
The Decision - Is it eligible for "call in" by Scrutiny?	No
Date signed off by Service Director - Economy, Regeneration & Culture	Paul Kemp 14 November 2017
Is it also signed off by the Assistant Director for Financial Management, IT, Risk and Performance?	No financial implications
Is it also signed off by the Assistant Director - Legal Governance and Monitoring?	No legal implications
Cabinet member portfolio	Economy (Strategic Planning, Regeneration & Transport) (Councillor P McBride)

Electoral wards affected: Almondbury; Newsome; Colne Valley; Holme Valley South;

Ward councillors consulted: No

Public or private:

1. Summary

This report is for information only. It summarises the decisions of the Planning Inspectorate, in respect of appeals submitted against the decision of the Local Planning Authority. Appended to this Item are the Inspector's decision letters. These set out detailed reasoning to justify the decisions taken.

2. Information to note: The appeal decision received are as follows:-

- 2.1 2017/62/90776/W - Erection of two storey side extension and associated works at 12, Mereside, Fenay Bridge, Huddersfield, HD5 8SX. (Officer) (Allowed)

- 2.2 2016/62/93669/W - Demolition of existing dwelling and erection of two storey take-away/restaurant at 98, Lockwood Road, Lockwood, Huddersfield, HD1 3RF. (Officer) (Appeal Dismissed and Award of Costs refused)
- 2.3 2016/64/93670/W - Erection of illuminated signs at 98, Lockwood Road, Lockwood, Huddersfield, HD1 3RF. (Officer) (Appeal Dismissed and Award of Costs refused)
- 2.4 2017/62/90417/W - Erection of dormer window to front at Rose Cottage, Rose Hill, Meltham Road, Marsden, Huddersfield, HD7 6EH. (Officer) (Dismissed)
- 2.5 2016/62/90477/W - Alterations to convert outbuilding to holiday accommodation adj 1, Wheat Close, Holmbridge, Holmfirth, HD9 2QL. (Sub-Committee contrary to Officer recommendation) (Appeal allowed and Award of Costs allowed)
- 2.6 2017/62/90625/W - Erection of first floor extension to front at 33, Cliff Road, Holmfirth, HD9 1UY. (Officer) (Dismissed)

3. Implications for the Council

3.1 There will be no impact on the four main priority areas listed below

- Early Intervention and Prevention (EIP)
- Economic Resilience (ER)
- Improving outcomes for Children
- Reducing demand of services

4. Consultees and their opinions

Not applicable, the report is for information only

5. Next steps

Not applicable, the report is for information only

6. Officer recommendations and reasons

To note

7. Cabinet portfolio holder recommendation

Not applicable

8. Contact officer

Mathias Franklin –Development Management Group Leader (01484 221000) mathias.franklin@kirklees.gov.uk

9. Background Papers and History of Decisions

Not applicable

10. Service Director responsible

Paul Kemp



Appeal Decision

Site visit made on 18 September 2017

by Elizabeth Pleasant DipTP MRTPI

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

Decision date: 18 October 2017

Appeal Ref: APP/Z4718/D/17/3181620

12 Mereside, Fenay Bridge, Huddersfield HD5 8SX

- 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 & Mrs Scott against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2017/62/90776/W, dated 6 March 2017, was refused by a notice dated 22 May 2017.
 - The development proposed is a two storey side extension and associated works.
-

Decision

1. The appeal is allowed and planning permission is granted for a two storey side extension and associated works at 12 Mereside, Fenay Bridge, Huddersfield HD5 8SX in accordance with the terms of the application, Ref 2017/62/90776/W, dated 6 March 2017, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Block Plan; Option 2 Plans & Elevations 16-075 01 Rev G.
 - 3) The materials to be used in the external surfaces of the extension hereby permitted shall match those used on the existing building.

Main Issue

2. The main issue in this case is the effect on the living conditions of No 22 Mereside, with particular regard to outlook and sunlight.

Reasons

3. No 22 Mereside is a mid-terraced three-storey dwelling which is situated immediately to the north of the appeal premises. The outlook from the rear elevation of this property is directly towards the existing rear elevation of 12 Mereside which is situated some 10 metres away from the windows in No 22's ground floor extension. The first floor facing living room window and French style doors are slightly further away.
4. The proposed side extension would be constructed flush with the appeal property's rear elevation. Consequently, it would be no closer to No 22 than the existing property. It is clear that the extension would be visible from both the garden area and rear elevation windows of No 22 and it would

- restrict existing views across the side garden area of No 12 from those upstairs windows. However, in view of its distance from those windows, the proposed extension would not be overbearing, or have a significantly enclosing effect.
5. The outlook from the windows in the rear elevation of No 24 is currently towards and over the side garden area of the appeal property. The proposed extension would alter that outlook as the blank wall of the proposal would be situated alongside the site's common boundary and would be clearly visible from No 24. However, No 24 has a large rear and side garden area and the proposed extension would only extend partially along the common boundary. It would not therefore have a substantial enclosing effect. Furthermore, it would be no closer to No 24 than the existing property is to No 22 and would be a sufficient distance away to ensure it would not be overbearing.
 6. I recognise that the garden area of No 22 currently experiences some shading, particularly in spring and late summer. It is also clear, from the evidence provided by the appellant in their grounds of appeal, that the proposal would result in some further shading of this garden during the early morning hours. However, the effects would not be significant, and nor would they occur during the afternoon or at the height of summer. Furthermore, the shading would be to the garden area only and there would be no loss of direct sunlight to the house.
 7. I therefore conclude that the proposed development would not have a significantly harmful effect on the living conditions of the existing occupiers of No 22 Mereside, with particular regard to outlook and sunlight. It would not conflict with the development plan and in particular with Policies BE14 and D2(v) of Kirklees Unitary Development Plan, 2007 which seeks to ensure, amongst other things, that new development, including extensions to dwellings, do not prejudice residential amenity.

Other Matters

8. I have taken into consideration concerns relating to the proximity of mature trees. However, the Council are satisfied that the proposal would not have a harmful impact on their health. From what I saw on the site and in the absence of any substantive evidence to indicate otherwise, I concur with the Council's view.
9. I have not been made aware of any adopted policy that would prevent an occupier from extending their house just because of its original size. I therefore give this consideration limited weight.
10. I have considered the concerns raised by third parties regarding potential risks to health and disturbance during the construction phase, and in the circumstances put to me I understand those concerns. However, personal circumstances rarely outweigh planning considerations, and in this case the proposal is not for a major development where the construction period is likely to be lengthy. The weight that I can afford this consideration is therefore limited.

Conclusion

11. For the reasons given above and taking into account all other matters raised, I conclude that subject to conditions required to provide certainty and safeguard the character and appearance of the area, the appeal should be allowed.

Elizabeth Pleasant

INSPECTOR



Appeal Decisions

Site visit made on 3 October 2017

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

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

Decision date: 19 October 2017

Appeal A Ref: APP/Z4718/W/17/3174127 **98 Lockwood Road, Huddersfield HD1 3RF**

- 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 Ali Anwar (Fashion Empire) against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2016/62/93669/W, dated 16 November 2106, was refused by notice dated 16 March 2017.
 - The development proposed is described as demolition of house and erection of takeaway restaurant.
-

Appeal Ref: APP/Z4718/H/17/3174090 **98 Lockwood Road, Huddersfield HD1 3RF**

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
 - The appeal is made by Mr Ali Anwar (Fashion Empire) against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2016/64/93670/W, dated 16 November 2016, was refused by notice dated 9 March 2017.
 - The advertisement proposed is described as roadside sign as 2442-04 and fascia sign as 2442-03.
-

Decisions

Appeal A: Ref. APP/Z4718/W/17/3174127

1. The appeal is dismissed.

Appeal B: Ref. APP/Z4718/H/17/3174090

2. The appeal is dismissed.

Application for costs

3. An application for costs was made by Mr Ali Anwar (Fashion Empire) against Kirklees Metropolitan Borough Council in respect of both appeals. These applications are the subject of a separate Decision.

Procedural Matters

4. These appeals by the same appellant relate to the same site with appeal Ref APP/Z4718/W/17/3174127 being for the demolition of an existing dwelling and the erection of a two storey takeaway/restaurant and appeal

Ref APP/Z4718/H/17/3174090 being for the associated illuminated signage. Consequently, I have dealt with them both in this one decision letter.

5. The Council changed the description of the development in planning application Ref 2016/62/93669/W to 'demolition of existing dwelling and erection of two storey take-away/restaurant.' The description of planning application Ref 2016/64/93670/W was also changed to 'erection of illuminated signs.' I consider that these descriptions more accurately reflect the development proposed.

Main Issues

6. The main issues in respect of both appeals is the effect of the proposals on the character and appearance of the surrounding area; and in the case of Appeal A, the effect of the proposal on the living conditions of the occupants of nearby residential properties with particular regard to noise and disturbance.

Reasons

Character and appearance

7. The appeal site comprises a two-storey end terrace dwelling and associated curtilage at No 98 Lockwood Road. It is located in a block of four similar designed stone built, gable roof properties having small front gardens and set slightly back from Lockwood Road. To the north is a small block of stone built properties that have been amalgamated into a commercial unit on the ground floor. The 'Palm Court' residential home is located to the west.
8. The western side of Lockwood Road in the vicinity of the appeal is characterised by predominantly stone built dwellings, some of which have had the ground floors converted to a variety of commercial units. The opposite side of the road has a considerably varied character comprising predominantly of commercial units of varying scale and construction materials.
9. The proposal would involve the demolition of No 98, the construction of a new gable to No 100 and the erection of a two storey, flat roof unit having a glazed frontage and cladding on the other elevations. It would occupy the existing rear and side garden/yard areas of No 98 and as such would be set back from the frontages of the blocks of properties on either side which would facilitate three customer car parking spaces accessed off Lockwood Road. At the eastern side of the building would be two car parking spaces for staff and a bin storage area that would be accessed via an existing access off Garden Street that also provides access to the rear of Palm Court.
10. The ground floor of the unit would be used as a hot food takeaway with a small restaurant area with the upper floor being used for storage. The unit would be open for the sale of food between the hours of 1200 to 2300 Monday to Friday and 1200 to midnight on Saturday, Sunday and Bank Holidays.
11. An illuminated fascia sign is proposed to be provided running the full width of the unit and would be approximately 1m high. An illuminated roadside sign is also proposed that would be positioned on a pole approximately 1.8m above ground level with the sign being approximately 3.5m high and 1.5m wide. The roadside sign would be sited adjacent to the pedestrian footway on Lockwood Road and close to the end gable of No 96.

12. Owing to the proposed modern design with a flat roof, a low height and expansive use of frontage glazing and cladding materials, the scale, mass and design of the proposed unit would appear markedly and unacceptably at odds with the prevailing appearance of the traditional designed stone built terraced properties with gable roofs on this side of the street. As such, it would detract from the prevailing character of this side of the street.
13. In addition, the juxtaposition of the proposed unit in being set back from frontage of adjacent properties and with car parking to the front would erode the existing prevalent character of blocks of terraced properties positioned relatively uniformly in close proximity to the road. As such, the proposed position of the unit would unacceptably contrast with the existing appearance of the street scene and the established relationship of the position of buildings to the road.
14. Taking these factors into account, the proposed building would fail to harmonise with the existing architectural vernacular and the appearance of the street scene. Consequently, the proposal would harm the character and appearance of the surrounding area, contrary to Saved Policies BE1(i, ii), BE2(i), BE11(i) and S14(iv) of the Kirklees Unitary Development Plan (1999) (UDP). These policies, amongst other things, require new development to be in keeping with surrounding development, not prejudice the visual amenity of the area and respect the design, materials, scale, building height and layout of existing buildings. In addition, new buildings should be constructed in natural stone in an area where stone is the predominant material of construction and hot food takeaways should not prejudice the visual amenity of the area.
15. The proposed fascia sign by virtue of its size, design and illumination would contrast markedly with the residential character of properties to the south. Owing to its position between two end gables and set back from adjacent blocks of properties it would be a stark contrast, isolated and prominent and as such drawing the eye. Although, the block to the north has commercial signs these appear as being more understated and subtle.
16. There are roadside signs on the opposite side of Lockwood Road. However, there are none on the western side of the road in the vicinity of the appeal site. As such, given the position, height and size of the proposed roadside sign it would appear as an alien feature on this side of the street and would be an unduly prominent and strident feature in the street scene. Even taking into account its proximity to the commercial unit and signage at No 96, the isolated roadside sign would appear as a stark commercial feature that would be at odds with the appearance of the predominantly residential character of this side of the street.
17. Appearing as incongruous additions to the street scene, the proposed signs would result in unacceptable harm to the character and appearance of the surrounding area. As such, the proposed signs would be contrary to Saved Policies D2 and BE1 of the UDP. These policies, amongst other things, require that proposals should not prejudice the character and visual amenity of the surrounding area and should retain a sense of local identity.

Living conditions

18. The proposed position of the unit and car parking area would result in customers arriving by foot and by cars passing in close proximity to both the

front and rear façade of No 100 Lockwood Road. Although this property, and others in the terraced block, are positioned on a relatively busy main road and as such experience a certain amount of noise generated by the sound of traffic, the existing rear of the properties form a relatively quiet back street, with the majority of noise generated by the comings and goings of the residents who live there.

19. The proposed opening hours of the takeaway/restaurant would mean that the business would continue to operate late into the evening. Customers arriving at the premises would be likely to generate a range of different noises including talking outside on the street, the opening and closing of car doors, the starting up and revving of car engines and the sound of music from car stereos. This would be at a time when the ambient background noise will be likely to be less and the majority of residents will be in their homes and should reasonably expect some respite from the noise associated with the road.
20. It is therefore in the evenings, when residents are entitled to expect a quieter environment that external noise or disturbance particularly when experienced at close quarters at both the front and rear of properties as a result of customers visiting the appeal premises will be more harmful to the living conditions of residents. In particular, given the close proximity of front and rear of No 100 to the front and side of the proposed unit, there is great potential for noise and general disturbance to arise from customers' frequent comings and goings either on foot or by car, which would be exacerbated by groups of customers.
21. Furthermore, the rear facades and gardens of other properties in the terraced block and residential units in the rear of Palm Court would be exposed to noise emitting from the use of the proposed bin storage area and associated staff comings and goings which could extend well beyond the proposed closing times.
22. Taking the above factors into account, the proposal would cause unacceptable harm to the living conditions of the occupants of nearby residential properties as a consequence of noise and disturbance. Consequently, the proposal would be contrary to Saved Policies BE1(iv), D2(v) and s14(iii) of the UDP. These policies, amongst other things, require that development should not prejudice residential amenity, not cause excessive exposure to noise and that proposals for hot food takeaways should have regard to the effect on residential amenity.

Other matters

23. The appellant has drawn my attention to other business in the vicinity of the appeal site which are alleged to have no restrictions on opening times. Whilst this may be the case, many of the examples provided are predominantly commercial and professional services that traditionally do not open during in the late evenings. None of the examples provided relate to hot food takeaways. As such, I have attached little weight to the fact that there are other business premises in the vicinity of the appeal site.
24. I have also taken into account the fact that there are other takeaways on Lockwood Road that remain open late in the evening. I also accept that there are other buildings along Lockwood Road that have fascia signs and roadside signs. However, many relate to commercial and professional services that are located on the opposite side of the street from the appeal site and where there

is a cluster of such commercial uses as oppose to the predominant residential character on this side of the street. Moreover, I do not have any evidence of the planning circumstances that led these to be considered acceptable by the Council and therefore I cannot be certain that they are representative of the planning circumstances in these cases. In any event, I have determined these appeals on their own individual merits.

Conclusions

25. I have taken into account the fact that the proposal would make a modest contribution to the local economy in terms of employment during construction of the unit and during its subsequent use. However, these benefits do not outweigh the harm that would be caused to the character and appearance of the area and to the living conditions of the occupants of nearby properties. For the above reasons, taking into account the development plan as a whole based on the evidence before me and all other matters raised, I conclude that the appeals should be dismissed.

Stephen Normington

INSPECTOR



Appeal Decision

Site visit made on 17 October 2017

by **J D Westbrook BSc(hons) MSc MRTPI**

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

Decision date: 23 October 2017

Appeal Ref: APP/Z4718/D/17/3179247

Rose Hill Cottage, Meltham Road, Marsden, Huddersfield, Yorkshire, HD7 6EH

- 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 Kendrick Whitehead against the decision of Kirklees Metropolitan Council.
 - The application Ref 2017/62/90417/W, dated 5 February 2017, was refused by notice dated 19 May 2017.
 - The development proposed is described as the erection of a dormer window to the front.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The submitted plans show the overall development as including both front and rear dormer windows. The application form refers only to the front dormer and the Council has taken the view that this relates to the fact that the rear dormer could be constructed using permitted development rights. I concur with this view and the main issue therefore reflects this.

Main Issue

3. The main issue in this case is the effect of the proposed front dormer on the character and appearance of the area around Meltham Road, and the setting of the adjacent Marsden Conservation Area.

Reasons

4. Rose Hill Cottage is a small detached bungalow situated on the south side of Meltham Road, close to its junction with Manchester Road and Brougham Road. The properties on the north side of Manchester Road, including those on Brougham Road lie within the Marsden Conservation Area (CA). Rose Hill Cottage, along with the row of terraced houses to the west of the appeal property, is not included in the CA, although the detached house immediately to the east of the bungalow is within the CA. There is a row of more modern brick-built terraced houses to the rear of the bungalow.
5. By virtue of the topography of the area, Rose Hill Cottage is set well above the road. It is partly hidden behind a front hedge but the roof in particular is readily visible in the street scene from around the road junction, and especially

when approaching from Brougham Road where it forms something of a terminal vista. It is stone-built with a shallow slate roof that has a gable at the eastern end and a hipped roof at the western end. It has a small front garden below the level of the dwelling, and another small garden to the eastern side. At the rear there is an open area of land that appears to relate to the more modern houses behind.

6. The proposed development would involve the construction of a large flat-roofed dormer to the rear roof slope, extending between the gable end and the start of the hipped element. It would also involve the construction of a smaller flat-roofed dormer to the front roof slope that would be set in a little from the gable end and up a little from the eaves. It would also be set in from the western end of the ridge. This front dormer would have a large, wide front window and a small window in each of the side cheeks. It would appear that the dormer would be some 3 metres wide with a forward projection of around 3.7 metres and a height of 2 metres extending up to ridge level.
7. Other than a small front dormer within the steep roof slopes of Brougham Road, there would appear to be no dormers of the scale and design of that proposed for the appeal property in the vicinity, whether inside or outside of the CA. The front dormer proposed at Rose Hill Cottage would, therefore, be significantly out of character with the surrounding area. Moreover, given the scale and design of the dormer on what is a relatively small bungalow with a shallow pitched roof, it would appear out of scale with the host property, while the large horizontally aligned front window would appear out of character with the small vertically aligned windows in the front elevation of the bungalow.
8. On the basis of the above, I find that the proposed front dormer would not respect the design features of the existing bungalow and adjacent buildings, nor those features creating the wider local identity. It would also be detrimental to the visual amenity of the local area. It would therefore, conflict with Policies BE1, BE2, BE5, BE13, BE14 and BE15 of the Council's Unitary Development Plan, which relate to the design of new developments, including the design of developments in Conservation Areas and the design criteria for the construction of dormers.
9. In conclusion, the proposal would be harmful to the character and appearance of the area around Meltham Road and it would also, therefore, fail to preserve or enhance the character or appearance of the surrounding CA.

J D Westbrook

INSPECTOR



Appeal Decision

Site visit made on 19 October 2017

by D Guiver LLB(Hons) Solicitor

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

Decision date: 6 November 2017

Appeal Ref: APP/Z4718/W/17/3181496

1 Wheat Close, Holmbridge, Holmfirth HD9 2QL

- 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 D Trueman against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2016/62/90477/W, dated 9 February 2016, was refused by notice dated 27 June 2017.
 - The development proposed is conversion of outbuilding to form holiday accommodation.
-

Decision

1. The appeal is allowed and planning permission is granted for conversion of outbuilding to form holiday accommodation at 1 Wheat Close, Holmbridge, Holmfirth HD9 2QL in accordance with the terms of the application, Ref 2016/62/90477/W, dated 9 February 2016, subject to the conditions in the attached Schedule.

Application for costs

2. An application for costs was made by Mr D Trueman against Kirklees Metropolitan Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The appellant has submitted an executed unilateral undertaking (UU) pursuant to section 106 of the Town and Country Planning Act 1990, which would secure restrictions on parking at, and occupancy of, the proposed development. I will address this issue below.

Main Issue

4. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework);
 - the effect of the proposed development on the openness and the character and appearance of the surrounding area; and
 - whether a planning obligation to restrict parking at, and occupancy of, the proposed development is necessary.

Reasons

5. Wheat Close comprises a short terrace of nine or so stone built houses in a rural setting and is in designated Green Belt land and part of the Yateholme Reservoirs and Plantation Local Wildlife Site. The appeal site is a largely stone built single-storey detached outbuilding adjacent to 1 Wheat Close. The building has a grey slate roof and an attached timber-built store and dog pen. The site overlooks the Brownhill Reservoir and its dam and is rural in character.
6. The proposal is to remove the dog pen and to change the use of the existing building to form a single-bedroom holiday accommodation. This would involve the designation of a vehicle hardstanding and the addition or replacement of windows and doors. Internal reconfiguration would also require the relocation of an existing flue on the rear pitch of the roof.

Whether the Proposal would be Inappropriate Development

7. The Council contends that a proposed change of use of an outbuilding to form holiday accommodation does not fall within any of the exceptions to inappropriate development in paragraphs 89 and 90 of the Framework. As paragraph 89 relates to construction of new buildings the relevant exceptions would be in paragraph 90.
8. Paragraph 90 of the Framework provides that certain forms of development are not inappropriate in Green Belt provided they preserve the openness, and do not conflict with the purposes, of the Green Belt. The fourth category is the re-use of buildings provided that the buildings are of permanent and substantial construction.
9. There is no reference in paragraph 90 to the specific use to which a building might be put and I consider that the reference to the re-use of buildings implies the potential for a change of use.
10. Paragraph 80 of the Framework identifies the five purposes of Green Belt policy. The proposal does not involve any extension to the existing building but rather involves the removal of an existing structure attached to the building. I consider that the scheme would not conflict with any of the purposes in Paragraph 80.
11. This structure to be removed is presently visible and somewhat bulky in appearance and its removal would increase the openness of the Green Belt in the location of the appeal site by eliminating its visual impact. While the scheme also shows the creation of a designated parking space, that space is already available for the parking of vehicles and this part of the scheme would have a neutral effect.
12. Because the scheme would satisfy the purposes of Green Belt policy and would reuse an existing building while preserving the openness of the Green Belt, I conclude that the proposal would not be inappropriate development.

Character and Appearance

13. The external works associated with the re-use of the building would improve the appearance of the area by the removal of the bulky timber dog pen to create a more open aspect at the appeal site. The minor alterations to windows and doors would have no detrimental impact on appearance. The use

of the building as holiday accommodation would not conflict with the rural character of the area.

14. Therefore, I conclude that the proposed development would be in accordance with Policies BE1 and BE2 of the Kirklees Unitary Development Plan 2007 (the Local Plan), which seek to ensure that developments preserve the character and appearance of the area where they are situated.

Section 106 Planning Obligation

15. Paragraph 203 of the National Planning Policy Framework (the Framework) states that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.
16. Paragraph 204 of the Framework states that planning obligations should only be sought where they meet the following three tests:
- they are necessary to make the development acceptable in planning terms;
 - they are directly related to the development; and
 - they are fairly and reasonably related in scale and kind to the development.
17. In the UU the appellant covenants that the appeal property would not be used as holiday accommodation in the months of November, December and January. The UU would restrict the duration of any single occupancy to a maximum of 28 days and would impose a 14-day period that must elapse before any person is permitted to return following a period of occupation.
18. The UU would also require the appellant to keep a register of occupants that could be requested by the Council at any time on reasonable notice. Finally, there would be a requirement that occupants of the appeal property park only in the dedicated parking space defined in the UU.
19. The proposed obligations relating to the months and duration of lettings, the time that must elapse between re-lettings and parking restrictions are by nature prohibitions. These could be achieved by the imposition of planning conditions that would be sufficient to address the Council's concerns. Therefore these proposed obligations would not satisfy the preliminary test in paragraph 203 of the Framework.
20. The proposed obligation to keep a register of occupants that the Council can request to see does have a positive requirement. However, I consider that such a requirement is more akin to a licensing matter or to provide evidence for the enforcement of conditions. I consider that such a requirement would not meet any of the tests in paragraph 204 of the Framework. For these reasons I give the UU no weight in reaching my decision.

Conditions

21. The conditions set out in the accompanying schedule are based on those suggested by the Council and for the reasons set out at paragraph 19 above, the proposed obligations in the UU. Where necessary I have amended the wording of these in the interests of precision and clarity in order to comply with the advice in the Planning Practice Guidance.
22. In the interests of proper planning I have imposed the standard condition in respect of time limits. For certainty I have imposed a condition requiring

compliance with the plans. In the interests of highway safety I have imposed conditions ensure that a designated parking space will be provided and to prevent water from encroaching onto the road.

23. To preserve the openness of the Green Belt in compliance with Policy D12A of the Local Plan, I have imposed a condition removing permitted development rights for alterations, extensions and outbuildings. To ensure that the appeal property is used for holiday accommodation I have imposed conditions restricting the months and duration of occupation.
24. Amongst other things, paragraph 109 of the Framework seeks to ensure that developments do not create or contribute to an unacceptable risk of air pollution. There is no evidence before me that the proposed development poses such a risk. The Council has requested a condition requiring the installation of a charging point for electric vehicles. While a charging point would provide an opportunity for future occupiers who drive electric cars to charge vehicles, there is no certainty that such vehicles would be used and the impact is therefore impossible to ascertain. Therefore, as neither the risk nor the need are made out I consider it unnecessary to impose the condition sought.

Other Matters

25. There is a reference in the papers to historical enforcement action in respect of the appeal building. An omission of this reference was apparently one of the reasons that an earlier decision granting planning permission was referred back to members for reconsideration.
26. However, it is clear from the evidence before me that the Council's enquiries did not proceed to enforcement action and there is no issue before me of the lawfulness of the building. I therefore attach very little weight to any reference to enforcement action.
27. Third parties have raised issues about traffic and parking on the access road for the properties. However, the road is currently used by residents and visitors and an additional vehicle would result in a negligible increase in traffic on the access road. Parking by future occupants of the proposed development would be controlled by a planning condition.

Conclusion

28. For the reasons given above, and taking into account all other matters, I therefore conclude that the appeal should be allowed.

D Guiver

INSPECTOR

Schedule

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Tru.15/01b, Tru.15/06d, Tru.15/07d and Tru.15/08c.
- 3) The building shall not be occupied until the area shown marked 'parking space' on drawing no. Tru.15/08c has been drained and surfaced in accordance with details that shall first have been submitted to and approved in writing by the local planning authority, and that area shall thereafter be kept available at all times for the parking of vehicles.
- 4) No vehicle used by occupants of the building shall be parked at any place shown on drawing no. Tru.15/01b other than on the parking space referred to in condition 3.
- 5) The development hereby permitted shall not be used as holiday accommodation between 1 November in any one year and 31 January in the succeeding year.
- 6) No person occupying the building as holiday accommodation shall remain as an occupier for a continuous period of more than 28 days. Having vacated the building no person shall return to occupy the building overnight until a minimum period of 14 days has elapsed.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no alterations, extensions or outbuildings included in Classes A to E of Part 1 of Schedule 2 to that Order shall be carried out.



Appeal Decision

Site visit made on 23 October 2017

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

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

Decision date: 9th November 2017

Appeal Ref: APP/Z4718/D/17/3178751

33 Cliff Road, Holmfirth HD9 1UY

- 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 Mrs J Coe against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2017/62/90625/W, dated 17 February 2017, was refused by notice dated 25 April 2017.
 - The development proposed is new roof extension and internal alterations.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. I note that the appellant is particularly concerned that the Council did not seek amendments in design or materials during its consideration of the application. However, I have to consider the appeal on the basis of the scheme on which the Council made its decision and I have done so.

Main Issue

3. The main issue raised by this appeal is the effect the proposed roof extension would have on the character and appearance of the host building and the area.

Reasons

4. The appeal property is a mid-terraced house of traditional appearance with stone walls and roof. As a result of its situation set down from Cliff Road, the roofs of the appeal property and its neighbours in the terrace are prominent in the streetscene and form a strong linear feature. These aspects contribute to the positive contribution the host building and the terrace make to the character and appearance of the area.
5. The appeal proposal would extend an existing single storey extension to the front vertically with a full width extension with a predominantly glazed, oak framed gable forming a prominent feature facing Cliff Road. Its ridge would be just below that of the existing roof and run perpendicular to it. From my observations, extensive glazing or timber framing of the type proposed is not a feature which predominates in surrounding traditional buildings, particularly at roof level.
6. As a result of its height, scale and extent, the extension would fundamentally change the appearance of the front elevation of the host building and interrupt

the linear character of the terrace, in particular its front roof slope and result in a dominant feature. Its design would appear at odds with the more solid and traditional character of the host building and its neighbours.

7. The extension would be considerably larger than, and materially different to, existing front extensions to other properties in the terrace which rise above eaves level. That at 39 Cliff Road (referred to me by the appellant) only extends to approximately half the width of the house and has a notably smaller perpendicular roof and that at 29 Cliff Road is smaller still, albeit with a modest timber and glass gable element. As a result I do not consider that these other extensions have altered the front elevations or roofscape to such a degree that the proposal would appear less incongruous.
8. As a result the extension would materially harm the character and appearance of both the host dwelling, the terrace in which it is situated and the area. It would consequently be contrary to the good design, visual amenity and character protection requirements of saved UDP¹ Policies D2, BE1 and BE2. In particular it would conflict with the requirements of saved UDP Policies BE13 and BE14 that extensions to the front or main elevation should be relatively small in scale and should respect design features and materials of the existing house and adjacent buildings.
9. It would not accord with the National Planning Policy Framework's (the Framework) aims of always seeking to secure high quality design which responds to local character and reflects the identity of local surroundings and materials. I do not consider that planning conditions could effectively mitigate the harm I have identified above or make the proposal acceptable.

Conclusion

10. For the above reasons, the proposal would harm the character and appearance of the host building and the area contrary to the development plan and the Framework. The appeal is therefore dismissed.

Geoff Underwood

INSPECTOR

¹ Kirklees Unitary Development Plan, 1999.

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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 Kirklees Unitary Development Plan (saved Policies 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 Council is currently in the process of reviewing its development plan through the production of a Local Plan. The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

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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Name of meeting: Planning sub-committee (Huddersfield Area)

Date: 23 November 2017

Title of report: Modification of the definitive map and statement. Determination of public rights of way and their status at Huddersfield 231, Nether Moor, South Crosland, Huddersfield. Definitive map modification order application to record a public footpath (Add footpath and vary particulars).

Purpose of report: Members are asked to consider the evidence and decide on the requisite modification of the definitive map and statement of public rights of way. The status and existence of public right of way Huddersfield 231 has been questioned, and an application has been received for a definitive map modification order to record only part of the route, as a public footpath only. **Members are asked to make a decision** on making an order and seeking its confirmation.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports?)	Not applicable If yes also give date it was registered
The Decision - Is it eligible for call in by Scrutiny?	No – council committee
Date signed off by <u>Director</u> & name	Naz Parkar 13 November 2017
Is it also signed off by the Assistant Director for Financial Management, IT, Risk and Performance?	Yes – Phil Deighton on behalf of Debbie Hogg 9 November 2017
Is it also signed off by the Service Director (Legal Governance and Commissioning)?	Yes – Deborah Wilkes on behalf of Julie Muscroft 8 November 2017
Cabinet member portfolio	N/A

Electoral wards affected: Crosland Moor & Netherton

Ward councillors consulted: Cllrs. E Hill, M Kaushik & M Sarwar.

Public or private: Public

1. Summary

- 1.1 The council received an application (at Background Document C) from the landowner at Nether Moor Farm in February 2014 for an order to modify the definitive map and statement of public rights of way to record the western part of Hud/231 as a public footpath, i.e. for that western part from Sandy Lane to public footpath 233 to be the only recorded public right of way at Hud/231. (DMMO file ref: 182).
- 1.2 The council also received a definitive map modification order application (at Background Document B) from the landowner to record the whole of Hud/231 as a public footpath. This application was originally submitted in 2009, but was returned to the applicant at their request and re-submitted to the council in Summer 2012 (DMMO file ref: 159). This DMMO application 159 was withdrawn by the landowner applicants in December 2016.
- 1.3 The evidence considered in preparation of this report includes submissions in both these applications as well as other available evidence. This includes documentary evidence, as well as user and other personal evidence
- 1.4 The depiction of Hud/231 in the current definitive map is as a solid line, which is not a notation recognised in the key. The current definitive statement describes Hud/231 as a “byway open to all traffic”. (Background Document A) The correct notation for a byway open to all traffic is a bold solid line with ‘v’ markings either side along its length. Officers recognise this anomaly.
- 1.5 The applicant alleges that there were other errors in the recording of Hud/231 by West Yorkshire Metropolitan County Council (“WYMCC”) in its production of the 1985 definitive map and statement.
- 1.6 Hud/231 was recorded in the definitive map and statement for the Huddersfield area prepared and published by WYMCC in 1975. It was shown as a “road used as a public path” in the definitive map and described as a “Footpath (CRF)” in the definitive statement. (Background Documents QQ & RR)
- 1.7 The applicant alleges that there were errors in the recording of Hud/231 by the County Council in its production of the definitive map and statement for the Huddersfield area prepared and published by WYMCC in 1975.
- 1.8 The council has to determine the definitive map modification order application. The council must consider the available evidence, before reaching a decision on making any requisite order to modify the definitive map and statement to show a correct record of public rights of way.
- 1.9 An investigation has taken place and a report with recommendations produced, in work commissioned by Kirklees council from Leeds council. The resulting report is

appended to this brief cover report, along with many associated documents listed in the appendices.

2. Information required to take a decision

- 2.1 Consider the appended report, the available evidence and decide what order, if any, to make.
- 2.2 It is the council's statutory duty to maintain the definitive map and statement and make any requisite orders.
- 2.3 Guidance for members is appended (Appendix 1).

3. Implications for the Council

3.1 Early Intervention and Prevention (EIP)

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

3.2 Economic Resilience (ER)

- 3.2.1 There is an indirect impact of a welcoming environment which helps promote and retain inward investment

3.3 Improving Outcomes for Children

- 3.3.1 See 3.1.1

3.4 Reducing demand of services

- 3.4.1 See 3.5.

3.5 Other (e.g. Legal/Financial or Human Resources)

- 3.5.1 The Council has a statutory duty to maintain the formal record of public rights of way and to respond to applications and discovery of evidence of unrecorded and mistakenly recorded public rights of way.
- 3.5.2 The Council must make a decision regarding the order application and any appropriate PROW status of this route, making any order that is requisite further to Wildlife & Countryside Act 1981, e.g. section 53. In accordance with the Council's delegation scheme, this is a decision for the sub-committee.
- 3.5.3 Any person may make an objection or representation to an order modifying the definitive map and statement. If objections are not withdrawn, any order made would be forwarded to the Secretary of state at DEFRA, and likely considered by an inspector appointed by the Secretary of State, who may or may not confirm the order.

4 Consultees and their opinions

- 4.1 Ward members have been informed about PROW matters at Hud/231 over recent years and have been informed of the report being brought to sub-committee.
- 4.2 See the appended detailed report.

5 Next steps

- 5.1 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.
- 5.2 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.
- 5.3 If the Council does not make any 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.

6. Officer recommendations and reasons

- 6.1 **Officers recommend that** members authorise the Service Director, Legal, Governance and Commissioning to make and seek confirmation of a definitive map modification order (“DMMO”) to record Huddersfield 231 as a public bridleway under section 53 (3) c (ii) of the Wildlife & Countryside Act 1981, in accordance with the conclusions in the appended report.
- 6.2 The anomaly in the notation of route Hud/231 in the definitive map and statement warrants the making of an order to modify the formal record of public rights of way.
- 6.3 The application and discovered evidence warrant an investigation into the appropriate status, to be reflected in any order made to modify the formal record of public rights of way.
- 6.4 In conclusion, the appended report commissioned by the Council states at paragraph 5.2:
“It is considered that the documentary and user evidence demonstrates, on the balance of probabilities, that particulars relating to the recorded status in the map and statement and the line style shown on the Definitive Map require modification to show Huddersfield Path No. 231 as a public bridleway. Therefore an Order to modify the Definitive Map and Statement should be made to show Huddersfield

Path No. 231 as a bridleway under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981.”

6.5 Section 53 (3) c (ii) states that an order to modify the definitive map and statement should be made upon **”(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows— (ii) that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description;”**

6.6 It is noted that the landowners’ outstanding application (DMMO file 182) sought an order to record a public footpath, limited to part of route Hud/231. The recommended order would recognise public pedestrian, as well as horse and bicycle riding rights over all of Hud/231 between Sandy Lane and Nether Moor Road.

7. Cabinet portfolio holder’s recommendations

7.1 Not applicable

8. Contact officer

Public Rights of Way publicrightsofway@kirklees.gov.uk

9. Background Papers and History of Decisions

9.1 872/1/MOD/159 & 182

9.2 Appendices

9.2.1 Appendix 1 – guidance for members.

9.2.2 Commissioned report

9.2.3 Published background documents.

<https://democracy.kirklees.gov.uk/ecCatDisplay.aspx?sch=doc&cat=13494>

10. Assistant Director responsible

10.1 Joanne Bartholomew, Service Director, Commercial, Regulatory & Operational Services

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KIRKLEES METROPOLITAN COUNCIL (Appendix 1)
AMENDMENTS (MODIFICATIONS) TO THE DEFINITIVE MAP
GUIDANCE NOTES FOR MEMBERS

Introduction

The Council is responsible for maintaining the Definitive Map and Statement of public rights of way. These are legal documents.

From time to time applications are made to amend the Definitive Map and Statement by adding previously unrecorded rights of way or deleting or altering the status of the public rights of way shown on the Definitive Map. Such applications must be accompanied by evidence. The process is often referred to as the “modification order procedure”. These notes outline the key principles which apply to this procedure.

The Legal Tests

Any decision must be based on evidence. The process is about giving official recognition to what actually already exists. It is not a question of convenience (i.e. is the application a good idea?)

If the applicant is claiming that a right of way should be added then the Council has to be satisfied that the claimed right of way subsists or is reasonably alleged to subsist.

If the applicant is claiming that a right of way should be upgraded then the Council has to be satisfied on the balance of probabilities that the right of way subsists in its upgraded form.

The test in respect of a claim for a deletion or downgrade is more onerous. The applicant has to produce clear and cogent evidence to satisfy the Council that a mistake was made when the right of way was recorded in the Definitive Map and Statement

A right of way can come into existence by being expressly dedicated by the landowner. If this is the case, then (unless there is a dispute over the dedication or its terms) there is no need for claims or evidence to be considered.

The starting point is the test set out in the Highways Act 1980 (Section 31) that the way has been used in its claimed form without let or hindrance, for a period in excess of 20 years.

In effect this means that the public has used the path or way without the landowners express permission and without having to overcome barriers. The use must also be open and not in secret. Therefore it is presumed that the landowner does not object and has accepted public use. The erection of a notice by the owner in terms that the way is private can defeat the creation of a right of way by these means, as can certain other actions by the owner (see below).

A public right of way might arise at Common Law as a result of public user for a period of less than 20 years, but the tests for the establishment of a way by this means are more onerous than those stipulated by the Highways Act 1980.

The use must also be by the general public. Use of a route to visit the landowner is not public use. Thus people cannot claim a public right over the private drive where the use was for visiting the owner, delivering post or buying produce etc.

If, however the landowner has erected notices, gates or can produce evidence that it has never been their intention that a public right be created, then this is a hindrance or evidence of contrary intention. For instance, they may have turned back all the people seen using the way or locked a gate across the way on a certain date every year. There is also a procedure for registering with the local Highways Authority, documentation stating that there is no intention to create a new way.

Making the Order

If the Council does not make an order, then the Applicant has the right of appeal to the Secretary of State. This is usually done on written representations. The Secretary of State decides whether a basic case exists. If he/she agrees with the Applicant then the Council will be directed to make an Order.

If an Order is made by the Council (whether by direction or not) then any person aggrieved by that Order can appeal. This usually leads to a Hearing or a Public Inquiry.

Report of the Principal Definitive Map Officer

Report to Definitive Map Modification Order Application Decision Meeting

Date:

Subject: Huddersfield Path 231 Status Determination

Summary of main issues

To determine a Definitive Map Modification Order Application under Section 53 (5) of the Wildlife and Countryside Act 1981 and seek authority to make a Modification Order if evidence shows that a public right of way exists or that the Definitive Map and Statement needs modifying.

Recommendations

The Members of the planning sub-committee (Huddersfield Area) are requested to consider the evidence contained within the attached reports, and the law to determine the status of the alleged public rights of way and authorise the Service Director - Legal, Governance and Monitoring either,

To make an Order in accordance with Section 53(2)(b) of the Wildlife & Countryside Act 1981 to modify the Definitive Map and Statement to correctly show the status of Huddersfield Path No. 231 and either confirm it as unopposed or, in the event of objections being received and not withdrawn after statutory notice of the Order is given, to refer it to the Secretary of State for the Environment, Food and Rural Affairs for determination,

or

Refuse authorisation for a Modification Orders to be made on the grounds that the Definitive Map and Statement does not require modifying.

And give full reasons for the decision made.

1 Purpose of this report

- 1.1 Kirklees Council is the Surveying Authority for the Huddersfield District and has a duty to keep the Definitive Map and Statement for the Area under continuous review and to make Modification Orders as necessary to take account of events requiring the map and statement to be modified.

2 Background information

- 2.1 Huddersfield Path No. 231 is shown on the West Yorkshire Metropolitan County Council Definitive Map, relevant date 30th of April 1985, with a solid black line. There are no Vs on either side which is the normal symbol for a Byway Open to All Traffic. The Statement accompanying the Definitive Map describes it as 'Byway Open to All Traffic commences in Sandy Lane at Greengate Knoll and proceeds in a north easterly direction (Path No. 233 joins from northeast at Nether Moor Farm) terminating at Nether Moor Road. The 1985 Definitive Map and Statement is shown as Background Document A.
- 2.2 A Definitive Map Modification Order Application was made in July 2009 by the landowners to downgrade Huddersfield No. 231 between Sandy Lane and Nethermoor Road to public footpath which was supported by three files of evidence. The application is shown as Background Document B.
- 2.3 A second Definitive Map Modification Order Application was made by the landowner in February 2014 to add a footpath between Sandy Lane and Nether Moor Farm to the Definitive Map and to vary the particulars in the Definitive Statement to change the status from Byway Open to All Traffic to footpath and to end the path at Nether Moor Farm instead of Nether Moor Road. Effectively this is an application to delete the section of Huddersfield Path No. 231 from the Definitive Map and Statement between Huddersfield Footpath No. 233 and Nether Moor Road. This application is shown as Background Document C.
- 2.4 The first application was withdrawn in December 2016. However, the second application remains outstanding and will need to be determined by the Council. Furthermore, the Council has a duty under Section 53 of the Wildlife and Countryside Act 1981 to make, by order, modifications to the Definitive Map and Statement as required if evidence is discovered that shows public rights of way subsist, should be shown at a different status, do not exist or that the particulars in the map and or statement require modifying. As the initial application challenged the status of Huddersfield Path No. 231 this should be considered to be the date of challenge of use of Huddersfield Path No. 231 even though it was later withdrawn. The letter withdrawing the first application is shown as Background Document D.
- 2.5 The Definitive Map Modification Order Applications were supported by various documents and evidence sheets from members of the public which the Applicant stated showed that Huddersfield Path No. 231 was not a public right of way. Additional evidence sheets were submitted by members of the public in 2015 who believed that Huddersfield Path No. 231 has public rights and who has used it on foot, horseback, bicycle and or motorised vehicle. Some of those filling in evidence sheets were interviewed to provide further information about the

disputed path and their use. The landowners were also interviewed to see if they had any information. The records at the West Yorkshire Archives Services and Kirklees Borough Council were also checked to see if there was any documentary or historical evidence concerning the claimed footpath. The evidence and its implications are considered below.

3 Main issues

- 3.1 The Wildlife & Countryside Act 1981 places statutory duty on the Council as the Surveying Authority to investigate the matters stated in an application made under Section 53(5) of the Act and to decide whether or not to make an Order to which the application relates. Under Section 53(2)(b) of the Act, Surveying Authorities are required to keep the Definitive Map and Statement under continuous review and to make such modifications to the map and statement as appear to them to be requisite.
- 3.2 Section 53(3)(b) of the Act, requires the Definitive Map and Statement to be modified by Order on the expiration of any period such that the enjoyment by the public of a way during that period raises a presumption that the way had been dedicated as a public path or restricted byway. Section 53(3)(c)(i) of the Act, requires the Definitive Map and Statement to be modified by Order if evidence is discovered which, when considered with all other relevant available evidence, shows a public right of way subsists or is reasonably alleged to subsist over land in the area to which the map relates. Section 53(3)(c)(ii) of the Act, requires the Definitive Map and Statement to be modified by Order if a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description. Section 53(3)(c)(iii) of the Act, requires the Definitive Map and Statement to be modified by Order if there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification.
- 3.3 Should an Order be authorised, the Service Director - Legal, Governance and Monitoring will make and advertise the Order and either confirm it as unopposed or, in the event of objections being received and not withdrawn after statutory notice of the Order is given, to refer it to the Secretary of State for the Department of the Environment, Food and Rural Affairs for determination.
- 3.4 Section 31(1) of the Highways Act 1980 provides that a presumption of dedication is raised where a way has been enjoyed by the public as of right (without force, secrecy or permission), without interruption for a full period of twenty years. The twenty-year period ends with an act that brings into question the public's right to use the way, and is calculated retrospectively from that time (Section 31(2) of the 1980 Act).
- 3.5 The presumption is rebuttable by proof that the landowner has erected and maintained notices visible to path users inconsistent with dedication (Section 31(3) of the Act) or that he has given notice to the highway authority, where a notice erected is subsequently torn down or defaced, denying any intention to dedicate (Section 31(5)) or made statutory declarations to the highway authority

denying the dedication of a new rights of way over the land shown in map and statement deposited with the authority (Section 31(6)).

3.6 In order to have brought the public's right to have used the alleged way in question, the landowner could have taken various measures during the claimed period of use.

These measures include:

- Locking a gate across the path.
- Putting up a notice denying the existence of a public right of way.
- Physically preventing a walker from using the way.
- Indicating that the path was for use by permission only.
- Giving an instruction to an employee or tenant to prevent people walking the path.
- Giving notice to the Highway Authority denying any intention to dedicate a public right of way over the land.
- Seeking a court declaration that the way was not public or bringing an action for trespass.

3.7 The burden of proof therefore rests with the landowner to show that there is sufficient evidence to show that there is no intention to dedicate a public right of way over the claimed path during the claimed period of use.

3.8 The decision to make a Modification Order when a claim is based on user evidence should be based on the balance of probability (not beyond all reasonable doubt, as is the case in criminal law) in the light of all relevant available evidence. Consequently if, on the balance of probabilities, it is considered that it is more likely that a right of way can be shown to subsist, then a Modification Order should be authorised. For claims where documentary evidence exists (instead of or as well as user evidence), the decision to make a Modification Order when a path is not shown on the Definitive Map and Statement should be based on if it can be shown to subsist or reasonably alleged to subsist and the decision to confirm it on the balance of probability (not beyond all reasonable doubt, as is the case in criminal law) in the light of all relevant available evidence. Consequently if it is considered that a right of way can be shown to subsist or can be reasonably alleged to subsist, then a Modification Order should be authorised. The decision to make and confirm a Modification Order when a path is shown on the Definitive Map and Statement should be based on the balance of probability (not beyond all reasonable doubt, as is the case in criminal law) in the light of all relevant available evidence. Consequently if, on the balance of probabilities, it is considered that it is more likely that a right of way can be shown to subsist, then a Modification Order should be authorised. The question of suitability or desirability, safety or maintenance is not a relevant factor when determining applications.

3.9 Public Rights of Way cannot be extinguished by disuse. Once a right of way has come into existence, it continues indefinitely and can only be brought to an end by the use of statutory powers, thus the maxim "Once a highway, always a highway". This is irrespective of any changes that have occurred on the ground in the meantime.

- 3.10 Section 32 of the Highways Act 1980 states that when determining whether a way has or has not been dedicated as a highway, any map, plan or history of the locality or other relevant document, tendered as evidence shall be taken into consideration.
- 3.11 Under the provisions contained within Section 130 of the Highways Act 1980 the Council has a statutory duty to protect and assert the right of the public to the use and enjoyment of any highway and as far as possible to prevent the stopping up or obstruction of highways.
- 3.12 Under Common Law there is no specific period of user which must have passed before an inference of dedication may be shown. However, a landowner must be shown to have intended to dedicate a right of way over the land. Public use can be used as evidence to show an intention to dedicate but it must be sufficient to have come to the attention of the landowners. If other evidence exists that showed that public rights were not intended, public use will not raise an inference of dedication.

Documentary Evidence

- 3.13 Records checked at the West Yorkshire Archives Services and Kirklees Borough Council include various township maps, maps of Yorkshire, Inclosure Awards, the Definitive Map and Statements, conveyancing documents and aerial photographs and those that showed Huddersfield Path No. 231 are described below.
- 3.14 On the 'Plan and Survey of South Crosland in the Parish of Almondbury' surveyed 1804 by Jn Johnson copied in June 1810 by Rob Leave, Surveyor, Huddersfield Path No. 231 is shown coloured brown for its full length with double solid edges from Sandy lane to the first field on the south after Nether Moor Farm. It is then shown with a solid and two dashed lines to Nether Moor Road. The majority of routes shown on the map in this way are now adopted public roads or byways open to all traffic including Sandy Lane, Nether Moor Road, those in Nethererton and South Crosland and Huddersfield Byway Open to All Traffic No. 229. Huddersfield Footpath No. 233 is shown with a dashed line across several fields, although the north east end is on a different alignment along the field edge. It is labelled 'Foot Road'. This would indicate that Huddersfield Path No. 231 was considered to have public rights at this time and most likely vehicular. The 1804 South Crosland map is shown as Background Document E.
- 3.15 On the 'Plan of the Township of South Crosland in the Parish of Almondbury in the West Riding of the County of York Belonging to R H Beaumont Esq.' made in 1822 by William Rayner the first section of Huddersfield Path No. 231 from Sandy Lane to Nether Moor Farm is shown with double solid edges separated from the surrounding fields and is parcel 697 and appears to be uncoloured. From Nether Moor Farm to Nether Moor Road it is shown with double solid edges to the end of the next field on the south and then becomes part of the field to the south which is parcel number 689 and is coloured pink. It is not clear where the boundary between 697 and 689 is and there are no lines shown across Huddersfield Path No. 231. The majority of other uncoloured routes on this map are now adopted public roads or byways open to all traffic including Sandy Lane, Nether Moor Road, those in South Crosland and Nethererton and Huddersfield Byway Open to

All Traffic No. 229. Huddersfield Footpath No. 56 is also shown uncoloured. Other roads are not numbered. This could indicate that some of Huddersfield Path No. 231 was considered to have public rights at this time. The Township Map of 1822 is shown as Background Document F.

- 3.16 In 'A survey and Valuation Book of Several Estates in the Townships of Lepton, Kirkheaton, Upper Whitley and Dalton in the Parish of Kirkheaton, South Crosland, Meltham, Honley and Lockwood in the Parish of Almondbury, Mirfield, in the Parish of Mirfield, and Kirkburton in the Parish of Kirkburton all in the West Riding of the County of York and Little Mitton in the County Palatine of Lancaster belonging to R H Beaumont Esq. made in 1822 by William Rayner' the tenants of parcels 689 to 697 are Joseph Mellor & Sons. 'The premises are stone and slate buildings containing 3 law rooms and 3 chambers and cellars rebuilt by the Tenant in 1814 on the north side is a barn, mistall and stables on the east end is a lean to stables and mistall, ash house etc.' Parcel 697 is listed as 'Lane' with an area of 24 perch with no values listed and 689 is listed as 'Long Nether Moor Close' arable in 1821, with an area of 5 acres, 1 rod and 34 perch and value per acre of 24s and an annual value of 3L, 5S, 1D. The 1822 valuation book is shown as Background Document G.
- 3.17 In a 'Survey of an Estate belonging to Richard Henry Beaumont Esquire situate in the Township of South Crosland in the Parish of Almondbury in the West Riding of York July 19th 1826' parcels 689 to 697 are all listed in the occupation of Joseph Mellor and Sons. Parcel 697 is listed as 'Lane' 24 perch and 689 is listed as 'Long Nether Moor Close' 5 acres, 1 rod and 34 perch. The survey is shown as Background Document H.
- 3.18 The 'Plan of Part of South Crosland in the Parish of Almondbury and West Riding of the County of York (Part 1)' 1848 by Joseph Hall Surveyors Huddersfield states 'we the undersigned Tithe Commissioners for England and Wales do hereby certify that this and the accompanying map together for the map of plan in two parts referred to in the apportionment of the rent charge in lieu of Tithes in the township of South Crosland in the Parish of Almondbury in the the West Riding of the County of York as witness our hands signed S. W. Buller R Jones. The full length of Huddersfield Path No. 231 is shown with double solid edges, is unnumbered and coloured brown except where it runs through the yard at Nether Moor Farm. Huddersfield Footpath No. 233 is shown with a dashed line off Huddersfield Path No. 231 at the north west corner of Nether Moor Farm and running generally north east across numbered fields which are uncoloured. The majority of other routes coloured brown and unnumbered on this map are now adopted public roads including Sandy Lane, Nether Moor Road, Nopper Road and the roads through Netheron. This would indicate that Huddersfield Path No. 231 was considered to have public rights at this time, most likely vehicular. The Tithe Apportionment of 1851 shows that fields to the north of Huddersfield Path No. 231 (numbered 16 to 29) are all in the ownership of Richard Henry Beaumont and occupied by either Crispin Mellor, Walter Bates or William Sykes (of Knowl). The parcels to the south are not shown. The Tithe Map and Apportionment are shown as Background Document J.
- 3.19 On the 1854 Ordnance Survey map Huddersfield Path No. 231 is shown with double solid edges. There is a short double edged track off it near the eastern

end is then shown with double dotted lines leading to a sandstone quarry. There do not appear to be any lines across the track to indicate gates or obstructions. Huddersfield Footpath No. 233 is shown with double dashed lines. The 1854 Ordnance Survey map is shown as Background Document K.

- 3.20 On a 'Plan of an Estate in the Township of South Crosland the Property of H F Beaumont Esquire' which is undated but listed in the archive records as between 1857 and 1913 the full length of Huddersfield Path No. 231 is shown with double solid edges, is excluded from the surrounding parcels of land and is unnumbered. The farm buildings are coloured red and numbered 520. The tenants are also detailed on the plan with Emanuel Haigh leasing most of the land and Nether Moor Farm and H & E Oldfield, Jonas Brooksbank and Walter Bates tenancing the rest of the land. The majority of other routes excluded from the surrounding parcels on this map are now adopted public roads or byways open to all traffic including Sandy Lane, Nether Moor Road, Huddersfield Byway Open to All Traffic No. 229. Part of Huddersfield Footpath No. 56 is also shown uncoloured. This would indicate that Huddersfield Path No. 231 was considered to have public rights at this time, most likely vehicular. No reference book to accompany this plan has been identified. The undated estate plan is shown as Background Document L.
- 3.21 On the 1893 Ordnance Survey map Huddersfield Path No. 231 is shown with double solid edges. There is a short double edged track off it near the eastern end is then shown with double dotted lines leading through the woods. There are quarries on either side of the track. There are lines across the track at each end which could indicate gates but could also indicate that it is a separate parcel to the roads at either end. Huddersfield Footpath No. 233 is shown with double dashed lines. The 1893 Ordnance Survey map is shown as Background Document M.
- 3.22 Two plans of quarries off Huddersfield Path No. 231 show it with double solid edges. On the undated plan the quarries are shown as parcels 343 a new, 375 old and 406 old and the quarries do not affect Huddersfield Path No. 231. On the 1910 plan the quarries are more shown as parcels, 343, 373, 374, 375, 405 & 406 and they are more extensive and appear to affect Huddersfield Path No. 231. A letter from William Mallinson & Sons to G & G H Crowther dated 18th February 1907 encloses a cheque for renting the quarry. A note on the bottom states 'Nether Moor Lane to be repaired'. A letter dated 25 September 1909 states the rent period from 1906 to 1909 and identifies the undated plan quarries as 343 Lower Nether Moor Quarry, 375 Upper Caley and 406 new quarry. These papers do not indicate if any rent charged for the use Huddersfield Path No. 231 in addition to the quarry but does indicate that the track may have been known as Nether Moor Lane at this time. The quarry papers are shown as Background Document N.
- 3.23 On the 1906 Ordnance Survey map Huddersfield Path No. 231 is shown with double solid edges, but the line of the track at the eastern end is no longer straight and it curves around into a quarry to the north and then back down into the field to the south before re-joining its original line at the track into the woods. This is likely to have been to allow material to be quarried out from under the original line of the track. There are lines across the track at each end which could indicate gates but could also indicate that it is a separate parcel to the roads at either end.

Huddersfield Footpath No. 233 is shown with double dashed lines. The 1906 Ordnance Survey map is shown as Background Document O.

- 3.24 The Finance Act Map 1910 shows that the first section of Huddersfield Path No. 231 from Sandy Lane to Nether Moor Farm is shown within Parcel 4689 PT which includes the surrounding fields. The rest of Huddersfield Path No. 231 and most of Huddersfield Footpath No. 233 are shown within Parcel 4690 PT which includes the surrounding fields and quarries. The northern end of Huddersfield Path No. 231 is shown within Parcel 4698 PT. On the base map, Huddersfield Path No. 231 is shown with double solid lines with the odd section of dashed line. Unlike earlier maps including the maps within the quarry papers, the eastern end of Huddersfield Path No. 231 is no longer straight and curves around quarries. Huddersfield Footpath No. 233 is shown with a double dashed line and labelled *F.P.* The Field Books for the Finance Act 1910 shows that Parcel 4689 was owned by H R Beaumont, occupied by W Mellor and that there were no deductions for Public Right of Way or User. Parcel 4690 was owned by H R Beaumont, occupied by Robert A B Bradley and had a deduction of £35 for Public Right of Way or User. Parcel 4698 was owned by H R Beaumont, occupied by Walter Bates and had no deduction for Public Right of Way or User. The 'Duties on Land Values' records the valuations made by the Commissioners of Inland Revenue, in accordance with the provisions of Part I of the Finance Act 1910. Parcel 4689 is listed in the ownership of H R Beaumont and occupied by Wright Mellor. There is no deduction for Public Right of Way or User. Parcel 4690 is listed in the ownership of H R Beaumont and occupied by Robert A B Bradley and there is a deduction of £35 for Public Right of Way or User. There appear to be inconsistencies within the Finance Act 1910 records as deductions were not included for a public right of way or user within parcel 4698 which includes Huddersfield Footpath No. 233. Deductions were included for a public right of way or user within parcel 4690 which could be for Huddersfield Path No. 231 and/or Huddersfield Footpath No. 233 or another path within this parcel. The Finance Act 1910 Maps, Field Books and Valuation Books are shown as Background Document P.
- 3.25 On the 1916 Ordnance Survey map Huddersfield Path No. 231 is shown with double solid edges and has reverted to its original line. There is a short double edged track off it near the eastern end is then shown with double dotted lines leading to a sandstone quarry. There do not appear to be any lines across the track to indicate gates or obstructions but there is a line across the track into the woods. Huddersfield Footpath No. 233 is shown with double dashed lines. The 1916 Ordnance Survey map is shown as Background Document Q.
- 3.26 On a 1927 plan submitted to the Council for a proposed loose box shows the farm yard and a gate across the western entrance to the farm. The 1927 loose box plan is shown as Background Document R.
- 3.27 A photograph from 1930 shows three boys on a horse which are stated to be members of the Bradley family in the farmyard with cows in the background. The 1930 photograph is shown as Background Document S.
- 3.28 The 'County Borough of Huddersfield Draft Schedule of Rights of Way Alleged to Exist on the 1st of September 1952 and Shown on the Draft Map' describes

Huddersfield Path No. 231 as '460. FOOTPATH from Nether Moor Road, leading along north side of Nether Moor Farm. Connects with F.P. 461 and carries through to Sandy Lane without obstructions. (Walked by East District Ranger in August 1951)'. This provides a description of Huddersfield Path No. 231 and clearly indicates that it was believed to carry public rights of footpath status at this time and was open and available for use. The description for Huddersfield Footpath No. 233 describes the junction with Huddersfield Path No. 231 as 'Path turns S. by W. to Nether Moor Farm on left, over stepping stile into lane N.E.-S back over adjacent stile, leading to stone lane, 12'-0" wide bounded by farm buildings. Disused quarry on east side 80 yds. from farm. From farm 200 yds. along lane to Sandy Lane at Greengate Knoll.' The 1952 Draft Schedule is shown as Background Document T.

- 3.29 A copy of the notice that appeared in the Huddersfield Examiner on Friday the 14th of November 1952 shows that the correct procedures for the advertising Draft Definitive Map and Statement were undertaken. The notice is shown as Background Document U.
- 3.30 A list of objections to the Draft Definitive Map and Statement dates 3rd of June 1953 shows that there were no objections to the inclusion of Huddersfield Path No. 231 (which on the Draft Definitive Map and Statement was Huddersfield Path No. 460). There were objections to other paths from landowners, farmers, companies, path users and other interested parties which indicate that the required procedures were carried out and that landowners and the public were aware of the process for preparing Definitive Map and Statement. The list of objections is shown as Background Document V.
- 3.31 In the 'Enquiries of Local Authorities' relating to the sale of Nether Moor Farm dated 24th of June 1954 in answer to question 1A 'are the highways (including footpaths) abutting on the property maintained at public expense?' it states yes to Sandy Lane and Nether Moor Road. It also refers to 'Cart Road (from Sandy Lane to Nether Moor Road) on N.W. side of property - No. Cart Road (from Sandy Lane to Nether Moor Road) on S.E side of property - No.' A 'highway is a public right of way over a defined route'¹ but they can be publically or privately maintained. If Huddersfield Path No. 231 was not considered to carry public rights there would have been no need to identify it in answer to this question. It also states that there is 'a field path across the property from Nether Moor and Nether Moor Road. Two field paths (leading from Nether Moor Road across Dean Wood) on S.E. corner of property'. This would imply that Huddersfield Path No. 231 carries higher rights than the field footpaths as it was described as a cart road. The part two questions were optional questions but the applicant chose not to ask these questions. Question 22 asked if 'any public path or Road Used as a Public Path over the property been shown in a draft, provisional or definitive map... prepared under Part IV of the National Parks and Access to the Countryside Act 1949?' If the person undertaking the enquiry had asked this question they would have been informed of the inclusion of Huddersfield Path No. 231, Huddersfield Footpath No. 233 and other path on the Draft Definitive Map and Statement. The 1954 Enquiries of Local Authorities is shown as Background Document W.

¹ Highway Law Sauvain 1989

- 3.32 The Abstract of Title for the sale of the land from George Fredrick Beaumont and Joseph Henry Goodhart to Robert Arthur Bradley and Herbert Knight Bradley dated 14th of September 1954 includes a plan that indicates that Huddersfield Path No. 231 was not within this property as it is excluded from the parcels H1, H2 and H3 outlined in red and R and QQ1 outlined in purple and grey. Sandy Lane, Nether Moor Road and Huddersfield Byway Open to All Traffic 230 are also excluded which could indicate that H231 was considered to carry public vehicular rights. The title also indicates that Nether Moor Farm was part of a settled estate from at least 1887 until it was sold in 1954. However, it appears to indicate that Huddersfield Path No. 231 was not part of this estate from the attached map. The Abstract Title is shown as Background Document X.
- 3.33 On the title deed map for Nether Moor Farm dated June 1954 Huddersfield Path No. 231 is mostly shown with double solid edges and is included within the red line boundary of the property. Huddersfield Footpath No. 233 is shown with double dashed lines and is labelled F.P. which would indicate that it carries footpath rights and it joins Huddersfield Path No. 231 just to the west of Nether Moor Farm. The title deed map is shown as Background Document Y.
- 3.34 On an aerial photograph of Nether Moor Farm circa 1955 the track through the farmyard can clearly be seen. Where Huddersfield Footpath No. 233 leaves the track there is a wall alongside the track on which divides the track into two at this point, into the field and into the farmyard. There is a gate on this wall which could open out across the Huddersfield Path No. 231 but is open and not across the track when the photograph was taken. The aerial photograph is shown as Background Document Z.
- 3.35 On the County Borough of Huddersfield Rights of Way Map (Draft in pencil) dated 1956 Huddersfield Path No. 231 is shown with a solid purple line which the key indicates is a public footpath. It is not numbered. Huddersfield Footpath No. 233 and part of Huddersfield Byway No. 203 were shown in the same way, although the rest of Huddersfield Byway No. 203 was shown with a dashed green line indicating a Carriage Road Used as Footpath or Bridle Road. This indicates that it was believed to carry public rights of footpath status at this time. The 1956 Draft Map is shown as Background Document AA.
- 3.36 In the 'Enquiries of Local Authorities' relating to the land at Green Gate Knoll dated 26th of June 1959 in answer to question 1A 'are the highways (including footpaths) abutting on the property maintained at public expense?' it states yes to Sandy Lane. It also states 'a Public Footpath abuts on N.W. side of Plot 471. A Public Footpath abuts at S.W. corner. No'. This clearly indicates that Huddersfield Path No. 231 was considered to be a public footpath at this time but was not maintained by the council at public expense. The part two questions were optional questions but the applicant chose not to ask these questions. Question 22 asked if 'any public path or Road Used as a Public Path over the property been shown in a draft, provisional or definitive map... prepared under Part IV of the National Parks and Access to the Countryside Act 1949?' If the person undertaking the enquiry had asked this question they would have been informed of the inclusion of Huddersfield Path No. 231 and the other footpath on the Draft Definitive Map and Statement. The 1959 Enquiries of Local Authorities is shown as Background Document BB.

- 3.37 On a letter dated 11th November 1963 from Johnson Wellfield Quarries to J H Bradley & Sons it states that they would not be 'sending much muck to the tip this autumn and winter' as it was expensive, they wanted the tip to last and they did 'not want to damage the road up to the tip and and the access road to the land. The cost of repairing the road, widening the entry into the public road and levelling the tipping area, including the site to access our tip and improving that to your other tip was £250' and they did not want to face more expense. This letter is keeping Bradley & Sons informed of the works but does not provide evidence to the status of Huddersfield Path No. 231 which is presumably the tip road or access road. The letter from Johnson Wellfield is shown as Background Document CC.
- 3.38 A 'NOTE FOR TOWN CLERK' from E. V. Hartley dated 31st July 1965 concerning the Survey of Rights of Way explains that the 'a survey was made and Draft Map prepared'. Notice of doing this was published on 12th November 1952' 20 objection were receive and dealt with but then the matter was dropped. Letters have been received from the Ministry asking about progress which had been delayed by staff difficulties. After discussions it was decided that up-to-date information should be got and we agreed to ask the Civic Society for help. The Ministry had advised that they should not start again. They considered that they should not use an out-of-date map and suggested to the Ministry that they should prepare a new map and re-consider all objections received originally as though they were objections to the new map. The Ministry advised that he would get the legal side to consider it. They had discussed if they should stop the Civic Society from proceeding but regardless of if they used the original map or a new one, they would still need up-to-date information so the Civic Society would proceed. The Note for the Town Clerk is shown as Background Document DD.
- 3.39 On the 1965 Walking Plan Huddersfield Path No. 231 is shown with a green dashed line with Vs which the key indicates is a Road Used as a Public Path. It is labelled 410 and also 460 which has been crossed out. This would indicate that at this time Huddersfield Path No. 231 was believe to carry public rights and these were higher rights than footpath. The 1965 Walking Plan is shown as Background Document EE.
- 3.40 On the County Borough of Huddersfield Rights of Way Draft Map dated 1966 Huddersfield Path No. 231 is shown with a green dashed line with Vs which the key indicates is a Road Used as a Public Path. It is labelled above it 410. Huddersfield Byway No. 230 was shown in the same way. This would indicate that at this time Huddersfield Path No. 231 was believe to carry public rights and these were higher rights than footpath. The 1966 Draft Map is shown as Background Document FF.
- 3.41 The 'County Borough of Huddersfield Draft Schedule of Rights of Way Alleged to Exist on the ~~4st of September 1952~~ 20th April 1966 and Shown on the Draft Map' describes Huddersfield Path No. 231 as '460. FOOTPATH from Nether Moor Road, leading along north side of Nether Moor Farm. Connects with F.P. 461 and carries through to Sandy Lane without obstructions. (Walked by East District Ranger in August 1951)'. This provides a description of Huddersfield Path No. 231 and clearly indicates that it was believed to carry public rights of footpath status at this time and was open and available for use. The description for

Huddersfield Footpath No. 233 describes the junction with Huddersfield Path No. 231 as 'Path turns S. by W. to Nether Moor Farm on left, over stepping stile into lane N.E.-S.W. back over adjacent stile, leading to stone lane, 12'-0" wide bounded by farm buildings. Disused quarry on east side 80 yds. from farm. From farm 200 yds. along lane to Sandy Lane at Greengate Knoll.' The 1966 Draft Schedule is shown as Background Document GG.

- 3.42 The 'County Borough of Huddersfield National Parks and Access to the Countryside Act 1949 Draft Schedule of Rights of Way alleged to exist on 20th April, 1966 shown on the Draft Map' describes Huddersfield Path No. 231 as '410. FOOTPATH (CRF) Commences in Sandy Lane at N. Side of Greengate Knoll earth and stone about 10' wide with small grass verges and dry stone walls either side. (FP. 409 joins from left at Nether Moor Farm.) Continues in N.E, direction between farm buildings. Past buildings 10'-12' wide, earth road with grass verges varying from 5'-10'. grassland. Ends a Junction with Nether Moor Road. (December, 1965 by Robert E. Clayton) (6.3.1966 by J Workman)'. This provides a detailed description of Huddersfield Path No. 231 and clearly indicates that it was believed to carry public rights of at least footpath status at this time and was open and available for use and was walked on two separate occasions. A similar detailed description is provided for Huddersfield Footpath No. 233 which was listed as '409. FOOTPATH' and stated that it ended at 'Nether Moor Farm where it ends at its junction with FP.410'. The 1966 Draft Schedule is shown as Background Document HH.
- 3.43 On the County Borough of Huddersfield Rights of Way Draft Map (Provisional crossed through in pencil) dated 1966 Huddersfield Path No. 231 is shown with a green dashed line with Vs which the key indicates is a Road Used as a Public Path. It is labelled below it 410. Huddersfield Byway No. 230 was shown in the same way. This would indicate that at this time Huddersfield Path No. 231 was believe to carry public rights and these were higher rights than footpath. The 1966 Draft Map ~~Provisional~~ is shown as Background Document II.
- 3.44 On the County Borough of Huddersfield Provisional Map Huddersfield Path No. 231 is shown with a green dashed line with Vs which indicates it is a Road Used as a Public Path. It is labelled 410. Huddersfield Byway No. 230 was shown in the same way. This would indicate that at this time Huddersfield Path No. 231 was believe to carry public rights and these were higher rights than footpath. The Provisional Map is shown as Background Document JJ.
- 3.45 Photographs from 1968 show girls on horses using using Huddersfield Path No. 231. They are claimed to be members of the Bradley family. There are no visible gates shown across the track in the photographs. The 1968 photographs are shown as Background Document KK.
- 3.46 A plan dated 31st of March 1971 of a proposed toilet Huddersfield Path No. 231 is mostly shown with double solid edges and a dashed edge where the track is wider just before Nether Moor Farm. There is also a line across the track just before Nether Moor Farm which could indicate a gate. Huddersfield Footpath No. 233 is shown across the fields with double dashed lines. The 1971 toilet plan is shown as Background Document LL.

- 3.47 A 'Note for Highways and Sewage Committee' dated 11th of May 1972 states that 'All objections to public footpaths proposed to be included in the Draft Map and Statement have now been resolved and the Draft Map and Statement can therefore be regarded as concluded. The Draft Map and Statement as amended now becomes the Provisional Map and Statement and it must be advertised in the London Gazette and Huddersfield Examiner.' The committee was asked to resolve to adopt the Draft Map and Statement and advertise it. This indicates that the correct procedures for the preparation of the Definitive Map and Statement were undertaken. The note is shown as Background Document MM.
- 3.48 The 'County Borough of Huddersfield Provisional ~~Draft~~-Schedule of Rights of Way Alleged to Exist on the ~~20th April 1966~~ 31st August 1973 and Shown on the Draft Map' describes Huddersfield Path No. 231 as '410. FOOTPATH (CRF) Commences in Sandy Lane at N. Side of Greengate Knoll earth and stone about 10' wide with small grass verges and dry stone walls either side. (FP. 409 joins from left at Nether Moor Farm.) Continues in N.E, direction between farm buildings. Past buildings 10'-12' wide, earth road with grass verges varying from 5'-10'. grassland. Ends a Junction with Nether Moor Road. (December, 1965 by Robert E. Clayton) (6.3.1966 by J Workman)'. This provides a detailed description of Huddersfield Path No. 231 and clearly indicates that it was believed to carry public rights of at least footpath status at this time and was open and available for use. Huddersfield Footpath No. 233 is described as '409 FOOTPATH' and path crosses three fields diagonally before reaching Nether Moor Farm where it ends at its junction with FP 410'. The 1973 Draft Schedule is shown as Background Document NN.
- 3.49 On a memo dated 5th of June 1974 from the Executive Director of Transportation and Traffic to the Director of Administration concerning the provisional Huddersfield Map it states 'The classification of routes as between F.P., F.P.(CRF) & B.W. appear to depend purely on the physical characteristics with no regard to historical use either probable or actual.' It was stated that 'to enable an accurate assessment to be made of the likelihood of past use of each way it would be essential to walk at least 20% of the 595 paths listed and try to get much more local information'. As this was impractical, 'a reasonable assessment be made on a logical basis and then await the outcome of the deposit.' This does indicate that for some routes assumptions may have been made but it does not indicate for which routes. The 1974 memo is shown as Background Document OO.
- 3.50 A notice dated the 10th of July 1975 informed the public that a Definitive Map and Statement for Huddersfield had been prepared and provided details of questioning its validity and this notice was advertised in the London Gazette. This indicates that the correct procedures for the preparation of the Definitive Map and Statement were undertaken and the local community, including landowners, were given the opportunity to view the maps and statement. The 1975 Huddersfield notice and London Gazette advert are shown as Background Document PP.
- 3.51 On the 'West Yorkshire Metropolitan County Council Definitive Map Relevant Date 20th of April 1966' published in 1975 Huddersfield Path No. 231 is shown with a dashed black line with Vs which the key indicates is a Road Used as a Public Path and is labelled 231. Huddersfield Byway No. 230 was shown in the same

way. This would indicate that at this time Huddersfield Path No. 231 was believed to carry public rights and these were higher rights than footpath. The 1966 Definitive Map is shown as Background Document QQ.

- 3.52 In the 'West Yorkshire Metropolitan County Council Definitive Statement Relevant Date 20th April 1966' published in 1975 Huddersfield Path No. 231 is described as 'Footpath (CRF) commences in Sandy Lane at Greengate Knoll and proceeds in a north easterly direction (Path No. 233 joins from north east at Nether Moor Farm) terminates at Nether Moor Road'. This would indicate that Huddersfield Path No. 231 was believed to have carried public rights of at least footpath status at this time with the (CRF) indicating it was a Road Used as a Public Path. The 1966 Definitive Statement is shown as Background Document RR.
- 3.53 On an aerial photograph of Nether Moor Farm, believed to be from the early 1970s, the track through the farmyard can clearly be seen. Where Huddersfield Footpath No. 233 leaves the track there is a wall alongside the track on which divides the track into two at this point, into the field and into the farmyard. There do not appear to be any gates across the line of Huddersfield Path No. 231. The aerial photograph is shown as Background Document SS.
- 3.54 On the 'Survey of Huddersfield C.B Review' 231 is listed as states 'Bridlepath-amended from CRF at Definitive. Statement remains unaltered'. This would indicate that Huddersfield Path No. 231 was believed to have carried public bridleway rights at the time of the review. The Huddersfield Review list is shown as Background Document TT.
- 3.55 On the 'Review of Public Paths recorded as C.R.F. Paths by the former Huddersfield Authority' Huddersfield Path No. 231 is listed as 'Bridlepath, Connection with main highway at each end together with character and width of path make it acceptable as bridlepath.' Under remarks it states 'Bridlepath – amended from CRF at Definitive. Statement remains unaltered.' This would indicate that Huddersfield Path No. 231 was believed to have carried public bridleway rights at the time of the review. The Review of C.R.F. Paths is shown as Background Document UU.
- 3.56 On the 'West Yorkshire Special Review Draft Revision Map 1st October 1979' Huddersfield Path No. 231 is shown with a dashed line with Vs indicating a Byway Open to All Traffic. The line style would indicate that it was believed to have carried public rights which were higher than footpath status. The 1979 Special Review Map is shown as Background Document VV.
- 3.57 In the 'West Yorkshire Statement Accompanying the Special Review of Definitive Map Draft Revision Map 1st October 1979' Huddersfield Path No. 231 is described as 'Byway Open to All Traffic commences in Sandy Lane at Greengate Knoll and proceeds in a north easterly direction (Path No. 233 joins from north east at Nether Moor Farm) terminating at Nether Moor Road. The surface is 'Earth and Grass' length 0.41 miles, 659 metres width 10 feet, 3 metres. The 1979 Special Review Statement is shown as Background Document WW.
- 3.58 In the objections to the 1970s and 1980s review of the Definitive Map and Statement there are no objections to the inclusion of Huddersfield Path No. 231

which was shown as a Byway Open to All Traffic. There were objections to other paths shown in the Draft Definitive Map and Statement from user groups, local residents, councillors and Kirklees Metropolitan Council. The objections include one for Huddersfield Footpath No. 220 (numbered 383 on some of the documents) just to the north of Huddersfield Path No. 231 between Blackmoorfoot Road and Sands House Lane which was shown the draft map. Part of the original line of Huddersfield Footpath No. 220 between Thewlis Lane and Sand House Lane was stopped up in 1970 but it was also included on the Draft Map. When the Draft Revision Map was produced then the rest of the path was also removed leading to objections. The extract of the Draft Map attached to the objections for Huddersfield Footpath No. 220 shows Huddersfield Path No. 231 (numbered 410 on some of the plans) with a solid line with Vs, the correct symbol for a Byway Open to All Traffic as does the Draft Revision Map. This would indicate that the correct procedures for the preparation of the Definitive Map and Statement were undertaken and the local community were given the opportunity to view the maps and statement. It also indicates that the landowner had the opportunity to object to the showing to Huddersfield Path No. 231 on the Draft Definitive Map and Statement as a Byway Open to All Traffic but did not do so. The objection to Huddersfield Footpath No. 383 are shown as Background Document XX.

- 3.59 A notice dated the 29th of February 1980 informed the public that a review and special review of Definitive Map and Statement had been undertaken, all roads used as public paths reclassified and that a Draft Revision Map and Statement had been prepared and provided details of where it could be viewed and where representations and objections could be sent to. It was also advertised in the London Gazette on the 25th of February 1980. This indicates that the correct procedures for the preparation of the Definitive Map and Statement were undertaken and the local community were given the opportunity to view the maps and statement. The 1980 notice is shown as Background Document YY.
- 3.60 A letter dated the 1st of October 1980 about the review of the Definitive Map and Statement refers to the Roads Used as Public Paths reclassifications. It states that there were 98 routes in the former Huddersfield borough that were 'described as "Footpath (C.R.F)" – meaning "carriage road mainly used as a footpath".' Of those 98, 32 were shown on the Revised Draft Map as byways open to all traffic, 20 as bridleway and 39 as footpath. Seven were found to have a road classification so were not shown on the map. It does not identify which paths were reclassified. An undated list of byways identifies each path by number and contains 33 paths including 231. The additional path could have been added at a later date rather than being a reclassification. The letter dated 1st of October 1980 and list of byways is shown as Background Document ZZ.
- 3.61 Reports to the Traffic and Highways Committee dated the 28th of June 1982 and 28th of April 1983 explains the review and special review of the Definitive Map and public rights of way and how it was affected by the new Wildlife and Countryside Act 1981. They explained that the review could be completed, abandoned in part or totally abandoned, identify the number of objections, explain the pros and cons of each and recommended abandonment subject to non-contentious matters being dealt with due to the time it would take to undertake the review. The 1983 report referred to the reclassification of Road Used as Public Paths which the

County Council was already doing and had objections to only one the alteration, so these would be shown in the new map and the 1982 report identified Calverley Cutting as being the disputed Road Used as a Public Path. A third report went to the committee on the 28th of July 1983 and it was resolved that the Department of Environment be advised that the County Council supports the abandonment of the review subject to non-contentious matter being placed on the new base map. The reports to the Traffic and Highways Committee is shown as Background Document AAA.

- 3.62 In letters from the Department of Environment and Transport to West Yorkshire Metropolitan County Council dated the 11th June 1982, 22nd November 1983 and 27th of January 1984 the abandonment of the West Yorkshire Metropolitan County Council Review of the Definitive Footpath Map and Statement was discussed following the new Wildlife and Countryside Act 1981 legislation becoming operative. If the review was abandoned the council would be able to place uncontentious matters on a new base map and four items would also be determined by the Secretary of State. The abandonment was confirmed by a Direction to Abandon Review included with the letter dated the 27th of January 1984. The letters relating to the abandonment of the review are shown as Background Document BBB.
- 3.63 The Omnibus Modification Order 1985 (West Yorkshire Metropolitan County Footpath Definitive Map) was made on the 22 of October 1985. It contained two schedules of changes to the Definitive Map and Statement. Schedule A were modifications to the Definitive Map and Statement resulting from events which had occurred under Section 53(3)(a) of the Wildlife and Countryside Act 1981 and identifies legal orders to stop up, divert, widen or extend public right of way. It contained a list of Public Path Diversion Orders and Path Extinguishment Orders. Schedule B relates to modifications to the Definitive Map and Statement for alterations allowed under Section 55(5) of the Wildlife and Countryside Act 1981 namely to shown changes identified as part of the review that had not been objected to or where objections were withdrawn. It listed public rights of way added, changes in status and Re-Classifications of RUPPs. Huddersfield Path No. 231 was not referred to in the Modification Order. Part of Huddersfield Footpath No. 233 was upgraded from footpath to Byway Open to All Traffic. The 1985 Modification Order is shown as Background Document CCC.
- 3.64 An advert appeared in the Huddersfield Examiner and other newspapers on the 25th of October 1985 informing the public that a modified Definitive Map and Statement had been prepared for West Yorkshire dated 30th April 1985 and provided details of where it could be viewed. This indicates that the correct procedures for the preparation of the Definitive Map and Statement were undertaken and the local community were given the opportunity to view the maps and statement. The 1985 Huddersfield Examiner advert is shown as Background Document DDD.
- 3.65 On the 'West Yorkshire Metropolitan County Council Definitive Map Relevant Date 30th of April 1985' Huddersfield Path No. 231 is shown with a solid black line. This does not correspond to any of the symbols shown on the Definitive Map. The closest symbol would be that of a Byway Open to All Traffic which should be shown as a sold black line with Vs on both sides. This could be a drafting error as

it was shown as a Byway Open to All Traffic on the Special Review Draft Map (VV). This would indicate that public rights were believed to exist but the status is unclear. The 1985 Definitive Map is shown as Background Document EEE.

- 3.66 In the 'West Yorkshire Metropolitan County Council Definitive Statement Relevant Date 30th of April 1985' Huddersfield Path No. 231 is described as 'Byway Open to All Traffic commences in Sandy Lane at Greengate Knoll and proceeds in a north easterly direction (Path No. 233 joins from north east at Nether Moor Farm) terminating at Nether Moor Road.' The surface is 'Earth and Grass' length 0.41 miles and 659 metres. Width 10 feet and 3 metres. This indicates that Huddersfield Path No. 231 was believed to carry public byway rights at this time. The 1985 Definitive Statement is shown as Background Document FFF.
- 3.67 On the 1994 Ordnance Survey map Huddersfield Path No. 231 is shown with double solid edges. There is a line across the track at the eastern side of Nether Moor Farm which is likely to be a gate and there is also a line across the eastern end of the track. The 1994 Ordnance Survey map is shown as Background Document GGG.
- 3.68 A letter dated the 26th of January 1994 from Sam Watt of the Trail Riders Fellowship West Yorkshire Group states that he has enclosed 'two lists, giving full details of the lanes in the Kirklees Area, our members use and have used for many years, on fully road legal motor cycles.' They claim that these lanes have full vehicular rights. Huddersfield Path No. 231 is listed and described as 'Ref 87k from 115132 to 120135 Def. Map SE11SW Name/ Place Nether Moor Huddersfield Byway 231 - RUPP'. This clearly indicates that member of the Trail Riders Fellowship have used this route with motorised vehicles for many years. The letter from the Trail Riders Fellowship is shown as Background Document HHH.
- 3.69 A 1995 Street by Street Map shows Huddersfield Path No. 231 with double solid edges and labelled C.T. for cart track. Huddersfield Footpath No. 233 was not shown on this map but other footpaths were shown labelled F.P. Some of the other byways open to all traffic shown on this map were also labelled as C.T including Huddersfield 229. This could indicate that this route was considered to carry vehicular rights. The 1995 Street by Street Map is shown as Background Document III.
- 3.70 On the 2002 aerial photograph, Huddersfield Path No. 231 is shown as a double hedged track and there do not appear to be any obstructions or gates across the line of the path. It appears to be open and available for use to all path users. The 2002 aerial photograph is shown as Background Document JJJ.
- 3.71 On the 2003 aerial photograph, Huddersfield Path No. 231 is shown as a double hedged track and there do not appear to be any obstructions or gates across the line of the path. It appears to be open and available for use to all path users. The 2003 aerial photograph is shown as Background Document KKK.
- 3.72 On a letter dated 19th of March 2009 from Yorkshire Water to Mrs Bradley it states that 'according to our systems the road is classed as privately owned and not the responsibility of the local highway department.' Yorkshire Water's records are not

the local authorities' records so this letter provides limited evidence as to the status of Huddersfield Path No. 231. The Yorkshire Water letter is shown as Background Document LLL.

- 3.73 On the 2009 aerial photograph, Huddersfield Path No. 231 is shown as a double hedged track. There now appears to be boulders, logs or similar near the eastern end of the track, although these do not appear to obstruct the full width of the track. There also appears to be a gate across the track near the western corner of the third field from the eastern end of Huddersfield Path No. 231. There does not appear to be any other obstructions or gates across the line of the path. The 2009 aerial photograph is shown as Background Document MMM.
- 3.74 On the August 2010 Google Earth Street View image of the eastern end of Huddersfield Path No. 231 there are two boulders near the end of the track. They do not obstruct the full width of the track and there is plenty of room either side for walkers, horse riders and cyclists to pass. The location of these boulders corresponds with the position of what appear to be boulders on the 2009 and 2011 aerial photographs. There does not appear to be other obstructions on the track. The track itself is short grass with lines worn to stone along either side and the one to the north side is more worn than the one to the south side. This could be the case because the public are using this path more on the north side than south side. If the track were from vehicular use, one would expect both to be evenly worn. The 2010 Google Earth image is shown as Background Document NNN.
- 3.75 On the Highways comments for a planning application for a barn at Nether Moor Farm in 2011 reference is made to the public rights of way near to the new barn. It refers to Huddersfield Path No. 231 and Huddersfield Footpath No. 233 and the summary at the top shows both as Footpaths, although it is not clear if this is a summary of public rights of way in general with all status being referred to as footpath or if different classifications of public right of way would have a different status. Huddersfield Path No. 231 is referred to as a 'private lane off Sandy Lane at South Crosland. This is a narrow unmade land approximately 2.5 wide with narrow grassed verges to either side. A public right of way runs along this lane and through the farm building.' This clearly indicates that public rights were referred to though the buildings at this time. Specific reference is made to Huddersfield Footpath No. 233 and the effect of the development on it but not to Huddersfield Path No. 231. A footnote to say that the public footpath should not be obstructed is added. It is not clear if this footnote refers to both paths or if the status changes if the path is of a different category. The 2011 planning comments are shown as Background Document OOO.
- 3.76 The 2011 aerial photograph is less clear and only the section from Nether Moor Farm to the east is visible. Huddersfield Path No. 231 is shown as a double hedged track. There appears to be boulders, logs or similar near the eastern end of the track, although these do not appear to obstruct the full width of the track. There also appears to be a gate or similar across the track near the western corner of the third field from the eastern end of Huddersfield Path No. 231. There does not appear to be any other obstructions or gates across the line of the path. The 2011 aerial photograph is shown as Background Document PPP.

- 3.77 A Letter and map from Land Registry dated 11th November 2011 confirms that Huddersfield Path No. 231 is within title WYK900301 owned by Mr Bradley and that 'there is no entry on the register relating to any rights of way affecting the title. Had any rights of way been present in the deeds, it is normal Land Registry procedure to make an entry in the register.' There may not be any rights of way (public or private) recorded in the Land Registry title, but this would not indicate that public rights of way did not exist and it is unusual for public rights of way to be included in title deeds. There is also no record of Huddersfield Footpath No. 233 or Huddersfield Footpath No. 222 within the Land Registry Title. The Letter from Land Registry and the Title Deed and Map are shown as Background Document QQQ.
- 3.78 On the August 2012 Google Earth Street View image of the eastern end of Huddersfield Path No. 231 there are two boulders near the end of the track. They do not obstruct the full width of the track and there is plenty of room either side for walkers, horse riders and cyclists to pass. The location of these boulders corresponds with the position of what appear to be boulders on the 2009 and 2011 aerial photographs. There does not appear to be other obstructions on the track. The track itself is short grass with more central worn grass line which is likely to have been caused by pedestrian, horse or cyclist use. The 2012 Google Earth image is shown as Background Document RRR.
- 3.79 On the August 2012 Google Earth Street View images of western end of Huddersfield Path No. 231 heading along it until the farm is visible show the path as a double hedged track with no obstructions and a stone surface with some grass patches growing along the centre and grass verges and ditches on either side. The 2012 Google Earth Images are shown as Background Document SSS.
- 3.80 A Statement and Plan under Section 31(6) of the Highways Act 1980 was deposited with Kirklees Borough Council. The Statement was dated 4th of February 2013 and was signed by Robert Edward Bradley. It stated that the way shown coloured yellow on the plan, (Huddersfield Footpath No. 233 and 222) were dedicated as footpaths. It also stated that 'the way coloured orange on the said plan is recorded on the Definitive Map as a byway but I do not accept that the map and statement are correct and have applied under Section 53 of the Wildlife and Countryside Act 1981 to Kirklees Council for a Definitive Map Modification Order to amend the status of the way to a footpath'. Huddersfield Path No. 231 is shown on the map coloured orange from the eastern end to the western boundary of field number 431. The rest of the route is coloured red, presumably the edging of the extent of the land ownership. This would indicate that at the date of deposit of this Statement and Plan that the landowner accepted that this section of Huddersfield Path No. 231 was a public right of way of footpath status. An amended Statement and Plan under Section 31(6) of the Highways Act 1980 was deposited with Kirklees Borough Council. The Statement was dated 15th of May 2013 and was signed by Robert Edward Bradley. It stated that the way shown coloured yellow on the plan, (Huddersfield Footpath No. 233 and 222) were dedicated as footpaths. It also stated that 'the way coloured orange on the said plan is recorded on the Definitive Map as a byway but I do not accept that the map and statement are correct and have applied under Section 53 of the Wildlife and Countryside Act 1981 to Kirklees Council for a Definitive Map Modification

Order to amend the status of the way to a footpath'. Huddersfield Path No. 231 is shown on the map coloured orange from the eastern end to the western boundary of field number 431. The rest of the route is coloured red, presumably the edging of the extent of the land ownership. This would indicate that at the date of deposit of this Statement and Plan that the landowner accepted that this section of Huddersfield Path No. 231 was a public right of way of footpath status. A Statutory Declaration under Section 31(6) of the Highways Act 1980 dated 15th of May 2013 signed by Robert Edward Bradley states that he had deposited a Statement and Plan with Kirklees Borough Council dated the 4th of February 2013 showing ways coloured yellow which 'had been dedicated as footpaths and the way coloured orange on the said plan and on the map accompanying this Declaration is recorded on the definitive map as a byway but I do not accept that the map and statement are correct and have applied under Section 53 of the Wildlife and Countryside Act 1981 to Kirklees Council for a definitive map modification order to be made to amend the status of the way to a footpath'. Huddersfield Path No. 231 is shown on the map coloured orange from the eastern end to the western boundary of field number 431. The rest of the route is coloured red, presumably the edging of the extent of the land ownership. The law firmly believes that people do not assert things that are against their interests and if they do it is more likely to be correct. This would indicate that at the date of deposit of this Statutory Declaration that the landowner accepted that this section of Huddersfield Path No. 231 was a public right of way of footpath status. If he did not believe it carried any public rights he could have stated this on his deposits and declarations. The Deposited Statements and Plans and Statutory Declaration are shown as Background Document TTT.

- 3.81 A set of photographs show notices which were erected on the 4th of December 2013 by Mr R E Bradley. They show a notice near the Sandy Lane end of Huddersfield Path No. 231 which states 'Public Footpath Only'. Another two notices around the farm area state 'No Public Right of Way Beyond this Point'. Another notice is shown at the Nether Moor Road end but the photograph is not clear enough to show what it says. Alongside this notice there are two boulders across the centre of the path. They do not obstruct the full width of the track and there is plenty of room either side for walkers, horse riders and cyclists to pass. The notices would only challenge use and deny access along Huddersfield Path No. 231 from the date on which they were erected. They do not challenge use before this date. The photographs of the 2013 notices are shown as Background Document UUU.
- 3.82 On the 2016 aerial photograph, the boulders or similar near the eastern end of the track is no longer there but there is something similar across the track further along to the west. This appears to take up more of the width of the track than on the earlier aerial photographs. There also appears to be a gate or similar across the track near the western corner of the third field from the eastern end of Huddersfield Path No. 231. Between these two points is what appears to be a white topped caravan or truck which appears to obstruct the full width of the track preventing access. There does not appear to be any other obstructions or gates across the line of the path. The 2016 aerial photograph is shown as Background Document VVV.

- 3.83 An undated photographs show cows moving along Huddersfield Path No. 231. There are no gates across the track shown in the photographs. The photographs of the cows are shown as Background Document WWW.
- 3.84 It is clear from the historic maps and plans that Huddersfield Path No. 231 has been in existence as a track or lane since 1804 and that its line had been the same except for a short period around 1906 when its line was temporarily altered to allow quarrying to occur. Some of the records such as estate surveys, Tithe map, the 1910 Finance Act 1910 and title deeds indicate that it was in private ownership where as others such as the 1954 title and the Beaumont Estate map indicate that it was not within these parcels. The land being in private ownership is not incompatible with public rights of way, the majority of public rights of way run over land in private ownership. These documents are largely silent concerning the existence of public rights and their status with Huddersfield Path No. 231 being shown in the same way as other public roads and byways open to all traffic on some of the maps and the Finance Act 1910 map indicating that there were deductions for 'public rights of way or user' on some of the parcels through which Huddersfield Path No. 231 ran but not specifying which paths within the parcel and other parcels not showing deductions for other definitive paths not in dispute. However, the purpose of these maps was not to show the status or extent of public rights of way. Other published maps such as the earlier Ordnance Survey maps and Street by Street Maps again do not intend to show the extent or status of public rights of way with Ordnance Survey maps after around 1889 having a disclaimer which said that routes shown on is not evidence of the existence of a public right of way unless they are as shown by the symbols indicated in the key taken from Local Authority Definitive Maps.
- 3.85 The papers relating to the production of the original West Yorkshire Metropolitan County Council Definitive Map and Statement, including walking schedules, draft, provisional, objection papers and notices indicate that the correct procedures in the production of the Definitive Map and Statement were carried out. They also show that public rights were found to exist along Huddersfield Path No. 231 during this period and surveys of the route indicate that it was open and available for use in 1951, 1965 and 1966. Three documents indicate that it was considered to be a footpath, three a Footpath (CRF) and five a Road Used as a Public Path. It was recorded on the published Definitive Map as a Road Used as a Public Path and Statement as a Footpath (CRF). In *R v Secretary of State for the Environment, ex p Hood*, Lord Denning explained that when local authorities prepared their maps and statements under the National Parks and Access to the Countryside Act 1949 "they divided the last category into 'CRF' and CRB' which denoted 'cartroad footpath and cartroad bridleway, meaning respectively that there was a public footpath along a cart road or a bridleway along a cart road." It is clear that a CRF is a type of Road Used as a Public Path. Lord Denning continued "in that division the local authorities did not mean to say whether the cartroad was public or private for carts, because they did not know which it was. They only meant to say by CRF that there was a public footpath along a road: and by CRB a public bridleway along a road. That division was misleading because each of those subdivisions CRF and CRB was shown in the map as a 'Road Used as a Public Path'. That meant that it was shown as a 'highway, other than a 'public path" i.e., other than either a footway or a bridleway. Being a highway, it meant that it was a

public cartway. Thus, CRF and CRB designated a public cartway used mainly for the purposes for which footpaths and bridleways are used.” Section 32(4)(b) of the National Parks and Access to the Countryside Act 1949 included a conclusive evidence provision which stated ‘where the map shows a bridleway, or a Road Used as a Public Path, the map shall be conclusive evidence that there was at the said date a highway as shown on the map, and that the public had thereover at that date a right of way on foot and a right of way on horseback or leading a horse, so however that this paragraph shall be without prejudice to any question whether the public had at that date any right of way other than the rights aforesaid’. Therefore, on the publication of the West Yorkshire Metropolitan County Council Definitive Map Relevant Date 20th of April 1966 on the 10th of July 1975 there was conclusive evidence of public right on a horse along Huddersfield Path No. 231. There were no objections to the inclusion within the Definitive Map and Statement during its production and the public had the opportunity to question the validity of the Definitive Map and Statement within six week of the 10th of July 1975 but the validity was not questioned. Furthermore, *R V Secretary of State for Environment ex parte Hood (1975) [1 QB 891]* Lord Denning found that ‘the Definitive Map in 1952 was based on evidence then available, including, no doubt, the evidence of the oldest inhabitants then living.’ Such evidence might have been lost or forgotten by a later date so it would be unfair to reopen everything. The *Department of the Environment Circular 18/90 Par 4-6* ‘In making an application to delete or downgrade a right of way, it will be for those who contend..... to prove that the map is in error by the discovery of evidence, which when considered with all other relevant evidence clearly shows that a mistake was made when the right of way was first recorded. The authority is required... to investigate the matter stated in the application. However, it is not for the authority to demonstrate that the map is correct.’ There is not considered to be sufficient evidence to show that the original Definitive Map and Statement contained an error.

- 3.86 The Countryside Act 1968 required the review of the Definitive Map and Statement and the reclassification of Roads Used as Public Paths. As found in *R V Secretary of State for Environment ex parte Hood (1975) [1 QB 891]* A Road Used as a Public Path could only be downgraded to a footpath if there was new evidence or evidence not previously considered that justified that decision. In all other cases Roads Used as Public Paths would need to be reclassified as a Byway Open to All Traffic if vehicular rights were shown to exist or a bridleway if not. The papers relating to the review of Definitive Map and Statement, including notices, reports, objection papers and correspondence, indicate that the correct procedures were carried out. After the publication of the Draft Revised Map, the Secretary of State for the Environment directed that the review be abandoned. However, if a review was abandoned after the draft map and statement were prepared and the period of objection or representation had ended the authority could, by Order, modify the Definitive Map and Statement to show the effect of any decision by the Secretary of State for Environment or any changes shown in the Draft Map and Statement which had no outstanding objections or representations. The two earliest review documents indicate that it was believed to be a public bridleway with two other documents indicating that it was a public Byway Open to All Traffic. However, having decided that Huddersfield Path No. 231 was a Byway Open to All Traffic on the draft map, which does not appear to

have received any objections or representations, Huddersfield Path No. 231 does not appear to have been included in the Omnibus Modification Order 1985 (West Yorkshire Metropolitan County Footpath Definitive Map) which would have been required to include it in the West Yorkshire Metropolitan County Council Definitive Map and Statement indicating that a mistake was made. Huddersfield Path No. 231 was included in the Definitive Statement as a Byway Open to All Traffic, but there appears to have been a drafting error which resulted in Huddersfield Path No. 231 being shown on the Definitive Map by a solid black line, indicating it was probably intended to show it as a Byway Open to All Traffic but the v's were omitted. The omission from the Omnibus Modification Order and the drafting error on the map reduces the evidential value of the 1985 West Yorkshire Metropolitan County Council Definitive Map and Statement. However, it is clear from the review documents that Huddersfield Path No. 231 were considered to carry public right of at least bridleway status with the draft map indicating a status of Byway Open to All Traffic.

- 3.87 The two 'Enquiries of Local Authorities' in 1954 and 1959 both referred to Huddersfield Path No. 231 in answer to question 1A 'are the highways (including footpaths) abutting on the property maintained at public expense?' This indicates that it was considered to be a public highway at this time with it being referred to as a cart road in 1954 and a footpath in 1959. A 'highway is a public right of way over a defined route' (*Sauvain's Highway Law*) but they can be publically or privately maintained. In this case Huddersfield Path No. 231 was not maintained by the council but was considered to be public highway. The optional question 22 which asked if it was shown in any draft, provisional or definitive maps under the National Parks and Access to the Countryside Act 1949 was not asked.
- 3.88 Various aerial photos, photos and planning application plans show some or all of Huddersfield Path No. 231. The aerial photos, photos and plans show that there were gates along Huddersfield Path No. 231, at either side of the farm yard and between the farm yard and Nether Moor Road. They do not indicate if these were locked or the purpose of these gates. The existence of gates and other structure do not indicate that public right of way do not exist and can be erected for the purposes of stock control or public safety. On some of the aerial photographs the gates were not across the lane indicating that at the time these photos were taken the gates were open. From 2009 boulders could be seen at the eastern end of Huddersfield Path No. 231 but these did not obstruct the full width of the path and it was passible on foot or horse. The photographs do not indicate the purpose of these boulders. From 2016 the aerial photographs indicate that there were physical obstructions across the full width of Huddersfield Path No. 231, although the photos do not indicate the purpose of these obstructions. Photographs of notices erected on the 4th of December 2013 indicate that the public's right to use Huddersfield Path No. 231 was being challenged. Other photos of cows and horse on Huddersfield Path No. 231 indicate that it was possible to use Huddersfield Path No. 231 on a horse and the presence of cows is not incompatible with public rights of way.
- 3.89 The Deposited Statements and Plans and Statutory Declarations submitted by the landowner in 2013, by their own admission, state that Huddersfield Path No. 231 is recorded on the Definitive Map and Statement but that they were challenging its

Byway Open to All Traffic status with an application to downgrade to Footpath. If they did not consider that it carried any public rights of way they could have stated that in these documents. The law firmly believes that people do not assert things that are against their interests and if they do it is more likely to be correct.

- 3.90 The early maps depicting Huddersfield Path No. 231 indicate that public rights may exist as it is shown in a similar way to other public roads and paths in the area. However, they do not provide evidence to its status or sufficient evidence to demonstrate public rights can be reasonably alleged to subsist. The documents used to produce the original West Yorkshire Metropolitan County Council Definitive Map and Statement clearly indicate that public rights were found to exist and they were recorded on the Definitive Map and Statement as a Road Used as a Public Path. This provided conclusive evidence that public rights on horse existed at this date. During the review it appears to have been concluded that vehicular rights existed but due to the omission from the Omnibus Modification Order and drafting error means that this cannot be relied on to show conclusively that vehicular rights exist. Other documents such as the local authority inquiries and the landowners statutory declaration also indicate public rights exist. In conclusion the documentary evidence would indicate that public bridleway right can be shown to subsist or can be reasonably alleged to subsist along Huddersfield Path No. 231.

User Evidence

- 3.91 Public Rights of Way Information Sheets were received from sixty one people who state they are familiar with the Huddersfield Path No. 231. Fifteen of them were submitted by the applicants with the original (now withdrawn) Definitive Map Modification Order Application and were dated 2009-2011 and forty six were submitted in 2015 by people who had used the Huddersfield Path No. 231 as a public right of way following challenges to the use of Huddersfield Path No. 231. The 2009 forms were resubmitted with the second Definitive Map Modification Order Application in 2014. Interviews were also carried out to gather further information about their knowledge of Huddersfield Path No. 231. Copies of the User Evidence Forms and interviews are shown as Background Document XXX (XXX 1-61) along with a summary sheet and graphs.
- 3.92 Of the fifteen sheets submitted by the applicant most were friends or family of the landowners and used Huddersfield Path No. 231 primarily to access Nether Moor Farm. Thirteen referred to the status of Huddersfield Path No. 231 as a bridleway including the applicant and landowner (XXX 2), although when she resubmitted the sheet in 2014 she crossed out the tick in the bridleway status box and added a tick in the 'not a public right of way of any sort' box. XXX 3, XXX 5 and 14 who are all sisters of the male landowner and grew up at the farm, also stated that the route was a bridleway. In her supporting letter XXX 14 stated that her father had 'no objections to horses travelling it and people walking though'. However, if he saw a car he would 'often stride to the end of the yard to see who it was.' She also stated that the neighbours 'didn't use it as a cut through unless they first called to see her father and asked if it was ok'. XXX 5 in her supporting letter stated that they would rarely meet vehicles when going to Sandy Lane but those they did meet were going to the farm and that the 'neighbours never travelled it by horse and cart or by vehicle and for someone to drive through without stopping to

ask permission from my father was unheard of'. She also stated that her 'farther and brother have never stopped people walking or horse riding along the track' but 'the general public or even local people have never used this track as a vehicular access to anywhere'. XXX 3 in her supporting letter stated that 'as a child growing up at the farm, I remember the occasional walker and a few horses using the lane, I rode horses on the land during my teens, we never encountered motor vehicles as this was, we were told, a bridle path, not a through road. Only vehicles belonging to family friends and business associates used the land to the farm, then only from the Sandy Lane end. If anyone travelled up from Nether Moor Road it would only be a neighbour on a tractor coming to see my father.' XXX 11, another family member, stated that the land was 'private but walkers and horse riders have used it.' The Applicant and female landowner (XXX 2) also stated in her letter that vehicles not visiting the farm were always stopped and that she had herself stopped vehicles. She also stated that 'people walk up and down the track and horse riders sometimes come up and down it' and that 'we have no objection to walkers and horse riders who want to enjoy the countryside. We would never stop those user groups enjoying our property'. It is clear from members of the landowners family that walkers and horse riders did use Huddersfield Path No. 231 with no objection or challenge from them although they did challenge vehicles if they were seen. The law firmly believes that people do not assert things that are against their interests and if they do it is more likely to be correct. The fact that the landowner and other family members are stating the the route was a bridleway, used by walkers and horse riders and that only vehicles were challenged is a clear indication that they believed that Huddersfield Path No. 231 was a public bridleway.

3.93 On the remaining two who filled in the earlier sheets one, XXX 12 stated that he did not believe that Huddersfield Path No. 231 was a public right of way of any kind and had been told by his family who owned Knowle Farm that he was not allowed to walk on the land. The other, XXX 15, believe that the section west of Nether Moor Farm was a public footpath and the section east of the farm was not a public right of way of any kind and was 'never open to the public except by permission of the land owner who allowed occasional use by local equestrian groups and other foot traffic, depending on livestock movements and conditional on gates and fences being closed again afterwards'.

3.94 Of those who submitted sheets in 2015, twenty people stated that they used Huddersfield Path No. 231 for a period of twenty years or more prior to 2009 when the Definitive Map Modification Order Application was first submitted challenging the status of Huddersfield Path No. 231. Use dated back to 1965 with the longest use by (XXX 35) for forty four years. Six people did not start using Huddersfield Path No. 231 until after 2009 and the rest used it for between two and nineteen years. Eighteen people believed that Huddersfield Path No. 231 was a public bridleway, two believed it to be a public restricted byway and twenty six believed it to be a public Byway Open to All Traffic. Two people stated that they used it daily, six people several times a week, nineteen people weekly, two people several times a month, eight people once a month, seven people several times a year and one person occasionally. Forty people have used Huddersfield Path No. 231 on horse, twenty on foot, ten with a bicycle, one with motor bikes, two with a land rover, and one with a car, one with a tractor and two with an unspecified

vehicle. This level of use indicates that the public were using it and believed it to be a public right of way. Most people used it on horse with additional use on foot and bicycle. There is some evidence of occasional vehicular use. Everyone also saw other people using it on foot, bicycle and horse with occasional vehicle use with horses seen more frequently than other types of path users. Most people also used it with friends or family. Two users (XXX25) and (XXX43) owned or worked at riding schools and took groups of up to six or eight horses along here from the riding school several times a week. Another user (XXX 57) referred to her walking group using it. This would indicate that the use was of the character of a Byway Open to All Traffic.

- 3.95 Gates were referred to by thirteen people who completed the sheets with the original Definitive Map Modification Order and thirty people who filled in the sheets in 2015. There was a general consensus that there were one or two gates or bars near the farm yard and another gate, rail or bar further along Huddersfield Path No. 231 towards Nether Moor Road. Ten people referred to the gates as being bridle gates or gates with long handles that could be opened from a horse without dismounting and eight people stated there were field gates with smaller gates to the side. Two people who filled in sheets in 2015 stated that the gates had recently been locked and two other people stated that there had been a locked field gate but there was a smaller pedestrian or bridle gate to the side that was not locked. Everyone else stated that the gates were not locked, including the landowner and other members of the landowners family. Seventeen people including the landowner and other members of the landowners family stated that the gates and rails were in place for stock control and not for any other purpose. The applicant and landowner (XXX 2) stated that the 'gates were used several times a day for cattle movements' and XXX 5, sister of the landowner, stated that they were 'used only when moving cattle'. One of the path users stated that there were gates 'at side of farmyard to stop cattle from straying down the land when being brought in for milking- reopened afterwards. We were able to open them and pass through if we were there at milking time' (XXX 31). Another path user (XXX 32) stated there were two gates and a metal bar, the first gate was 'farm gate style with separate long handle gate opening for ease of horse riders' the metal bar was there 'on occasion' 'to guide livestock?' and the other gate was 'rarely closed'. Of those that arrived at milking time many referred to Old Mr Bradley opening the gate or bar for then and occasionally having to wait for about 5 minutes if the cows were crossing. XXX 23 stated 'if he [the farmer] was milking or moving the cows across there would be a bar so that the cows couldn't wander up onto the road. He would apologise if he thought he had held you up. You may have to wait for four or five minutes for the cows to cross, there were not many of them and the farmer would then move the bar for you himself'. Most people agree that the gate or bar near the farmyard were always there but the other gates with the long handles appeared at a later date of around 2007 or 2008 being given by a several path users. Ten people who filled in sheets in 2015 also referred to a tractor being used to prevent one of the gates being opened with two people stating that this was done in 2015. It is therefore clear that the gates were not in place to challenge use by the public, but to prevent cattle straying. It is also clear that they did not prevent public use and that the gates were not locked or blocked until around 2015, after the initial date of challenge in 2009 when the first Definitive Map Modification Order Application was submitted and some of the

gates were suitable for use on horse without dismounting implying that it was accepted that the public had a right to use it on horses as a bridleway.

- 3.96 Six people filling in sheets in 2009 referred to boulders or rocks on Huddersfield Path No. 231 which were there for farm security or to prevent travellers. The landowner and applicant (XXX 2) stated that 'we use boulders of stone regularly to stop gypsies/ travellers/ machinery thieves/ livestock rustlers accessing our land. All farms in this area use this method. They are moved in and out of position as necessary'. It is clear from this statement that the boulders were not put into place to stop public use but to prevent illegal use of the path and for general security reasons. *Lewis v Thompson (1950)* established that interruption means an interruption in fact but the circumstances and intention of the barring of the way are relevant. Locking a gate to stop cattle straying did not prevent dedication of a public footpath. Of those completing sheets in 2015, thirty six refer to the boulders or rocks and seven people also refer to logs. Twenty six specifically state that they block the path. Seventeen people say that they were in place before that path was blocked but access was still possible on foot, horse and bicycle. For example one user, XXX 16, stated that 'large stone blocks have been in place for years but was passable on foot/ horse. Now there are more which totally block it for horses'. Another path user, XXX 31, stated that 'big stones at end some years ago to stop travellers entering with caravans (Johnson's quarries did this). Spaces left between to allow walkers and riders to pass. This year stones moved to completely block the route and large logs laid across.' One person said that the stone blocks were there for a few years before it was blocked, another said they were there for years, another for ten years and two people stated that they were there since 2008. Of those providing dates for the boulders completely blocking the path, five people said recently, one person said 2015 and twelve people specifically stated that they were there since May 2015. From the evidence sheets it would appear that boulders were used to prevent access to vehicles from around 2008 but that use was still possible on foot, horse and bicycle until May 2015 when the boulders were moved closer together and logs and tree or hedge cuttings added completely preventing access to Huddersfield Path No. 231. The closing off of the gaps between the boulders was a clear indication to the public who used the path that their use was being challenged although this occurred after the initial date of challenge in 2009.
- 3.97 Five people also stated that a caravan was used to block Huddersfield Path No. 231 with one saying this was done in 2014. Again this was a clear indication to the public using the path that their use was being challenged although this occurred after the initial date of challenge in 2009.
- 3.98 None of those completing the original evidence sheets refer to any notices on Huddersfield Path No. 231 except for one that said 'Nether Moor Farm'. Of those filling in evidence sheets in 2015 two people, XXX 18 and XXX 19, state that there were bridleway signs at each end of the path and one, XXX 35, stated that there were byway signs 20 plus years ago. Thirty two people saw notices that challenged use with users saying they said things like 'private road' 'private track with access to footpath 233', 'no access' and 'no public right of way' or similar. Of those providing dates of their erection, two people stated recently, four people in 2014 and eight people in 2015 with two people saying there was a notice in 2014

and another in 2015. Users do not recall seeing notices that challenged use prior to 2014 and these dates are around the time of the notices that the landowner sent photos of which he states he erected in December 2013 and the wording is similar to that described by path users. The notices clearly challenge use by the public but were first erected, by the land owners admission, in December 2013 and after the first challenge date in 2009.

3.99 Of those filling evidence sheets in 2009 six people referred to use being with permission, six with vehicles and three to visit the family. Most of these were landowners or related to the landowning family so did not consider that they needed permission. Of the forty six people filling in evidence sheets in 2015 only seven of them said that they had permission to use Huddersfield Path No. 231 and two said this was not given until 2014/ 2015 after the initial 2009 date of challenge. Five people who had said they had permission were interviewed and it was clear that they had never requested or been told that they had permission to use it. One, XXX 29, stated that 'We never asked for permission, you never had to. I always thought that everyone had it because it was a public right of way. No one ever said that we couldn't use it.' Another, XXX 16, stated 'The father used to open the gate and they would wave and say hello and had no objection to us using it. I never specifically asked for permission, it was just implied permission as they never said anything about us using it. It was probably not their track. I never said can I ride up or anything like that. I saw Mr Bradley senior and Ed lots and they never said we couldn't ride it or that we had permission or anything. It was as with the other rights of access in the area open to everyone traditionally.' Another, XXX 17, stated 'We were never refused use of this route. The father was the main person there and Ed, the boy after. When I first went through you didn't have to ask, we never asked for permission to use it. You would see them when using it and Ed never stopped us using it. It was only after whatever went wrong and they blocked it. The farmer would speak to you, not a long chat, just to pass the time of day or if you were waiting for the cows to go through. If there were no cows you just went straight through, they never complained and we never requested permission.' Another, XXX 23, stated 'I have not asked for permission, it was not needed as it is a public right of way. Mrs Bradley had emailed me in 2014 to say that she had seen us riding here and is happy to give us permission to ride through. I thought this was strange as we didn't need permission and had been riding through for twenty five years'. Several of those who did not believe that they had permission stated that permission was not needed. Users XXX 33 stated that 'I've never asked them, just walked through without question' another, XXX 28, stated 'no need to as is a right of way'. It is clear that the majority of people using Huddersfield Path No. 231 did not believe that they had or needed permission to use it and those that believe that they had permission had never specifically requested or been given permission to use it, they had just assumed that they had it because it was a right of way or because nothing was ever said. In *Beresford v City of Sunderland* (2001) [ewca Civ 1218] it was established that 'there is no reason in principle why an implied permission may not defeat a claim to use as of right', but, 'such permission may only be inferred from overt and contemporaneous acts of the landowner.' There is nothing to suggest that any overt or contemporaneous acts have occurred to demonstrate to the public that they had permission to use the track until some users were given permission by one of the landowners in around 2014/ 2015 and around 2015 when some users

say that one of the notices stated that there was permissive to use the section of Huddersfield Path No. 231 from Sandy Lane to Huddersfield Footpath No. 233 on foot.

- 3.100 One of those who filled in evidence sheets in 2009 said that he was challenged. He was told by his mother and grandparents not to use this track so had never used it. However, his relatives did not own the land so their challenges would not have been valid challenges for the purposes of preventing use as established in *Moser v Ambleside Urban District Council 1925*. Of those filling in evidence sheets in 2015 six people said they were challenged when using the path and of those giving dates said that the challenges occurred in 2015. On user, XXX 27, stated 'After the path had been blocked completely the newspaper wanted to take a photograph of someone on a horse there. Mrs Bradley's son came out and said that it was not a public right of way but his mother had already said that we could ride there' another, XXX 25, stated that 'Edward's wife told me that I was not allowed to ride there after that' and a third, XXX 57, said that 'the Wednesday group were asked not to proceed along the route so they turned back'.
- 3.101 Many of the people using Huddersfield Path No. 231 said that they saw the landowners and said that they would chat about the weather and exchange pleasantries but nothing was ever said to them to say that they should not be using Huddersfield Path No. 231 or that they had permission to be there until around 2015. The older Mr Bradley was the landowner most referred to but old Mrs Bradley, Edward Bradley and the current Mrs Bradley were also referred to. Old Mr Bradley also opened the bar by the farmyard if the cows had just been taken across for many of the path users. One person, XXX 43, stated I don't go that way now, I don't like abuse and the farmers attitude. I don't want to walk somewhere where people are nasty and I can't ride anymore. The granddad would open the gates for you when he was there. The grandson doesn't say much, just the wife mostly. She wants to know why you are coming through and where you are going. It is only recently that she has started to say it is not a public right of way. We never had permission to use it, you just walked up it and past the farm. If Old Mr Bradley was there he would talk to you and he never said anything about us using it so you knew it was alright to use it.' On person, XXX 54, stated that 'I saw the old fella from the farm, he was always in the yard and would say hello and doth his cap. I rarely saw Edward. No one ever came out and said that we shouldn't be there. ' Another person, XXX 30, stated 'Old Mr Bradley and his wife used to chat to you if you saw them when using it, just passing the time of day, talk about the weather and things. I never saw any of the others but Old Mr Bradley would always say hello. I never asked for permission, they just condoned use and never asked us not to use it. Everyone used it.' It is clear from these comments that, if the landowners had wanted to make it clear to the public that they had permission to use the path, wanted to make it clear to people that they should not be using it or challenge use there was the opportunity to do so but none of the path users completing evidence sheets in 2015 recall challenge or permission prior to 2014.
- 3.102 Two people refer to an incident with a dog. It had chased one of them (XXX 27) when she was riding through on her horse. She stated that 'I spoke to the father of the farmer who now has the farm about one of his dogs. The dog had ran out

and chased after my horse one day. He said he would chain him up. I saw him again a few weeks after and he said that had had it put to sleep because the public could come through he couldn't have it chasing people or biting a kid.' The other person (XXX 29) said that 'he would not have had to do that if it had been private'.

3.103 A letter dated 23rd of June 2009 from landowners who have farmed the adjoining farm for 3 generations states that to their knowledge, the track served the fields and milk truck and delivery vehicles only access the farm from Sandy Lane. They state it 'has never been used by the general public nor locals as a drive through as it is common knowledge that it is owned and managed by the Bradleys.' They 'recall that if someone did want to come up it from Nether Moor Road to the family they had to ask permission from Mr Arthur Bradley first' and 'they were normally put off from travelling it in a normal car as it is rough in places and was only suitable for horses and carts in the old days and tractors and machinery nowadays.' 'We do know that people now use the lane to walk and horse riders travel it and the Bradleys have never had an objection to this'. They used to use it to walk to school and their children sometimes do the same. Finally they state that 'it is not right to think that it should be used as a motorists cut through which would endanger the public on foot and those on horseback.' It is clear that although these farmers do not believe this route to be used by the public in vehicles as a Byway Open to All Traffic, they do consider it to be a bridleway used by the public on foot and horse. The letter from the adjoining farmers is shown as Background Document YYY.

3.104 It is clear from the information sheets that the public have use Huddersfield Path No. 231 as a public right of way since at least 1965 without being aware that their use was being challenged until 2014 with most challenges to use in the form of notices or obstruction until Spring 2015. Additionally the surveys undertaken in 1951, 1965 and 1966 show use at this time. Use has been predominantly on horse and foot with limited vehicular use. There is evidence that vehicular use was challenged in the late 2000's by the placing of boulders at the Nether Moor Road end but these allowed those using the route on foot, horse and bicycle to continue. There is evidence of gates or bars along Huddersfield Path No. 231, but these were not locked and did not prevent use as stated by the landowners and the public using Huddersfield Path No. 231 until around 2015. Furthermore, there is evidence from path users, the landowners and other relatives of the landowners that these gates and bars were erected for stock control purposes and were not intended to prevent public use. Many of the path users met the landowners and engaged in conversation. They were not granted permission to use it or told that they should not be using it or that it was not a public right of way until after use was challenged in around 2014 or 2015. The family of the landowners also stated that the older Mr Bradley did not have any objections to the public using it on foot or horse and had not challenged these users although they did say that vehicular users were challenged. The status of Huddersfield Path No. 231 was first challenged in 2009 by the making of the first a Definitive Map Modification Order to downgrade it to a footpath. This application was later withdrawn and a second application made in February 2014 to extinguish all public rights from the farmyard to Nether Moor Road and to downgrade the section from Sandy Lane to the farmyard to footpath although the majority of

users of Huddersfield Path No. 231 were not aware of these applications. There is clear evidence of twenty years use of Huddersfield Path No. 231 on foot and horse without challenge or interruption prior to 2009 with use continuing until Spring 2015.

- 3.105 It is considered that it can be shown, on the balance of probabilities, that a public bridleway would have been presumed to have been dedicated along Huddersfield Path No. 231 following the expiration of a twenty year period of use by the public when the first Definitive Map Modification Order Application was submitted in 2009 with unchallenged and uninterrupted use continuing until around 2014/2015. It is also considered that there is not enough evidence to show that there was no intention to dedicate a public right of way along Huddersfield Path No. 231 by the landowners.

Representations Against the Application

- 3.106 Four letters were submitted date 13th June 2012 by Mr Robert E Bradley which refer to the evidence submitted with the Definitive Map Modification Order Application. The first letter states that 'upon closer examination of these maps and statements it is clear that no heed was paid to the earliest map provided which shows no more than a footpath and to the various surveys that were undertaken over a number of year indicating in the first instant a 'footpath' notation and in a later survey a 'bridle path' notation. Based on the huge discrepancies shown in the material and in the final outcome of an alleged BOAT notation it is clear that the relevant checks and surveys and discussions with landowners at the time of the collation of the 1985 Map which makes the current map unreliable.' The second letter states that 'upon closer examination of these documents it is clear that the council which existed under different titles was in a huge state of chaos. Reviews were cancelled and objections to reviews were cancelled as a result. Roads Used as Public Paths should have undergone a special review to determine their actual use and symbols on maps were misunderstood. The main RUPPS in the Huddersfield area, 98 in number, were Footpath CRF. I have clearly shown evidence in my application that this is the case for my track. There are documents in this file that discuss the lack of staffing and finance to provide the staffing to carry out the work for the Definitive Map that needed to be done.' Mr Bradley in his first letter appears to agree that there was evidence of footpath rights in the historic records and later on bridleway rights along Huddersfield Path No. 231. Mr Bradley does not say why he believes that the relevant checks and surveys and discussions with landowners were undertaken and does not specifically state how the documentary evidence shows Huddersfield Path No. 231 was only a Footpath CRF. However, it is clear from the adverts, surveys, draft provisional and original Definitive Map published in 1975 that the correct procedures for the production of the Definitive Map and Statement were carried out as required. The original Definitive Map and Statement recorded Huddersfield Path No. 231 as a CRF (Road Used as a Public Path) which under Section 32(4)(b) of the National Parks and Access to the Countryside Act 1949 provides conclusive evidence that there was a highway as shown on the map, and that the public had a right of way on foot and a right of way on horseback or leading a horse. The adverts, surveys, draft, provisional map and Definitive Maps also show that the correct procedures were carried out

for the review of the Definitive Map and Statement to a point. However, having decided that Huddersfield Path No. 231 was a Byway Open to All Traffic on the draft map, which does not appear to have received any objections or representations, Huddersfield Path No. 231 does not appear to have been included in the Omnibus Modification Order 1985 (West Yorkshire Metropolitan County Footpath Definitive Map) which would have been required to include it in the West Yorkshire Metropolitan County Council Definitive Map and Statement indicating that a mistake was made. Huddersfield Path No. 231 was shown in the Definitive Statement as a Byway Open to All Traffic, but there appears to have been a drafting error which resulted in Huddersfield Path No. 231 being shown on the Definitive Map by a solid black line, indicating the it was probably intended to show it as a Byway Open to All Traffic but the v's were omitted. The omission from the Omnibus Modification Order and the drafting error on the map reduces the evidential value of the 1985 West Yorkshire Metropolitan County Council Definitive Map and Statement. However, it is clear from the review documents that Huddersfield Path No. 231 was considered to carry public right of at least bridleway status with the draft map indicating a status of Byway Open to All Traffic. The error in the production of the 1985 Definitive Map and Statement does not affect the production of the original Definitive Map and Statement published in 1975. The first two letters from the landowner dated the 13th of June 2012 are shown as Background Document ZZZ 1 & 2.

3.107 The third letter again refers to the error made in the production of the 1985 Definitive Map and Statement and the lack of an Order for Huddersfield Path No. 231 to change the status from Road Used as a Public Path to Byway Open to All Traffic. He also refers to Huddersfield Path No. 231 being shown on the Definitive Map with a solid black line which is not a line style that should have been used to show a Byways open to all traffic. These points have been addressed above. No reference is made to errors made to the original Definitive Map and Statement published in 1975. This letter is shown as Background Document ZZZ 3.

3.108 Mr Bradley also states that he has been on the farm since 1964 and that the farm has been farmed by his family since the late 1800s so he is familiar with the farm and the history of the area. He states that 'no one has travelled the track in a vehicle in the last 24 years until the recent events that gave rise to this application, other than members of the Bradley family and agricultural vehicles coming to the farm with permission.' He states 'I consider the Definitive Map and Statement to be unreliable and know that if the council had looked at the ownership of my track and the historical use for it they would have realised that it is a private access to Nether Moor Farm with some footpath rights along it. This track from Sandy Lane to the farm buildings has always been a private access to Nether Moor Farm and the boundary markings on the map attached to my deed of ownership clearly shows this. There is a short length of footpath Number 233 which runs from a stile on my land to Sandy Lane. The track from the farm down to Nether Moor Road was put in by Whitley Beaumont Estate who were the previous owners of this land to service the fields on either side of it and has never, in my lifetime or the lifetime of my father, grandfather and great grandfather been used by motorised vehicles other than with the permission of the Bradleys'. Although the land may be in Mr Bradleys ownership, this does not preclude the existence of public rights, indeed the majority of public rights of way run over land

in private ownership, including Huddersfield Footpath No. 233 and No. 222 which are public rights of way running over land within Mr Bradleys ownership which he is not disputing the existence of. There is also some evidence of vehicular use within the user evidence and the Trail Riders Fellowship letter (HHH) without permission of the landowners, although this is limited.

3.109 Mr Bradley then goes on to explain how the farmyard and gateways off the track are designed in such a way as to ensure good farm management and that livestock goes where it should. He explains that 'the lane is used several times a day to move cattle to and from our fields and has always been used to my knowledge for over 100 years for the purpose of driving cattle along it.' He states that 'To try to make this driving gate into a public highway because someone in the council did not know what they are doing is beyond comprehension. To allow vehicles to travel this driving gate would have completely contradicted the construction of it and to have ever allocated the term Road Used as a Public Path is absolutely ridiculous.' However the use of the track for agricultural purposes and the driving of livestock does not preclude public rights of any status. There are many public rights of way, including byways open to all traffic, which are used for agricultural purposes including the driving of livestock. The use for agricultural purposes and movement of livestock relates to issues of suitability and desirability which cannot be taken into consideration when determining Definitive Map Modification Order Applications. Only evidence relating to the existence or status of the route or its use by the public during the claimed period can be taken into consideration.

3.110 Mr Bradley then explains how in the past when his father was on the farm, the machinery was operated by horses and these horses were used either on horseback or with carts by the farm and other farms in the area as a mode of travel as well as walking. He states that his father 'always allowed horse riders and walkers to walk along the land to the farm to visit us and in later years, as a result of his love of horses he always allowed riders and horses to travel the track. This was not with the intention of creating rights or curtailing rights but because he like to see the horses and appreciated them as part of his rural life. Horses still travel this track now and I, as my father before me, have always allowed this to happen. Our neighbours never use it as a cut through in a vehicle because it is widely known in this area by the old farming families that live here that it is a private track. If one of them wanted to call at our farm to see my parents they would telephone first to see ensure that they were agreeable to them travelling along the lane to the farm. I am still offered this courtesy, as people still know that it is a private access to my farm. My family and I have a good relationship with people who regularly walk and ride through our property and the majority respect and show courtesy to use and the job we do as custodians of this land. Those who are aware of the recent discovery of this notation are both shocked and upset that they could be faced with convoys of vehicles in an area that has never been used for that purpose previously.' It is clear from this letter that the Mr Bradley and his father were aware that horse riders and walkers were using Huddersfield Path No. 231 as a bridleway and there is no reference in this letter to informing riders or walkers that they had permission to use the path. When interviewed on the 31st of July 2017 Mr Bradley did state that both he and his father had told people using the path that they had permission to use it which appears to

contradict this letter and the Public Rights of Way Information Sheets submitted by the landowner and other members of the family in 2009. In the Public Rights of Way Information Sheets filled in by members of the Bradley family, reference is made to vehicular users being challenged but not to those using it on foot or horseback whom they had no objection to. It is also clear from the Public Rights of Way Information Sheets that members of the public using the path were not told by the Bradley family that they had permission to use Huddersfield Path No. 231 and had not asked for permission to use it. Many refer to seeing Mr Bradley's father while using Huddersfield Path No. 231 but only exchanged pleasantries. There is some evidence from those who used Huddersfield Path No. 231 in vehicles that they did ask for permission each time they wanted to use it with a vehicle. In *Fairey v Southampton County Council (1956) [2 QB 439]* L J Dennings stated that "In my opinion a landowner cannot escape the effect of 20 years prescription by saying that, locked in his own mind he had no intention to dedicate" In order for there to be "sufficient evidence that there was no intention" to dedicate a way, there must be evidence of some overt acts on the part of the land owner such as to show the public at large, the public that use the path such as local residents, that he had no intention to dedicate. If a landowner merely turns back strangers on a single occasion, it would not be sufficient to make it clear to the public that they had no right to use the way. Or, as in this case, if the landowner gives permission for vehicular users but not to those using it on horse or foot, it would not be sufficient to show a lack of intention to dedicate a bridleway, only a Byway Open to All Traffic.

- 3.111 Mr Bradley also states that 'if the track is a BOAT then again the council have been negligent in their legal responsibility to maintain it.' Although the majority of public rights of way recorded on the Definitive Map and Statement will be maintainable at public expense there will be some public rights of way that are privately maintained. The Enquiries of Local Authorities undertaken when Nether Moor Farm was sold in 1954, question 1A indicates that Huddersfield Path No. 231 was considered to be a privately maintained highway (W & BB).
- 3.112 Mr Bradley then refers to Huddersfield Path No. 231 being a narrow track with a soil and shale surface with blind corners 'which allow no viewing of oncoming walkers, riders, livestock or agricultural machinery. Visitors to the farm are asked to travel at reduced speeds to ensure the safety and wellbeing of all these users'. He then refers to use of Huddersfield Path No. 231 by vehicles that are travelling in packs at high speed risking the life of his livestock and his own, as well as damage to his property and an incident where he was threatened and pinned to a gate by the occupants of a Land Rover Defender. These issues relate to issues of suitability and desirability which cannot legally be taken into consideration of a Definitive Map Modification Order Application. Only evidence relating to the existence or status of the route or its use by the public during the claimed period can be taken into consideration.
- 3.113 The final part of this letter (ZZZ3) a list of the documents provided in support of the Definitive Map Modification Order Application with a short summary of each. Most refer only to the contents of the documents which have been examined above. When referring to some of the plans and photographs, Mr Bradley refers to the existence of several gates or stiles along the route which he states were

used for stock control purposes and were closed several times a day. They were 'not locked and walkers open and close them in order to continue through'. The existence of gates does not prevent the existence of public rights of way and gates can also be authorised for stock control purposes. Gates closed across the track for stock control purposes would also not prevent the dedication of a public right of way through presumed dedication. *Attorney General v Hemingway (1916) [81 JP 112]* established that an obstruction not done for the purpose of asserting the right to obstruct the public user were not obstructions for the purpose of showing no public right of way. Furthermore, Mr Bradley acknowledges that the gates could be and were opened by walkers. The gates were only on the section of Huddersfield Path No. 231 to the east of Nether Moor Farm that the Definitive Map Modification Order Application made in 2014 states is not a public right of way of any status and should be extinguished from the Definitive Map and Statement. This would indicate that Mr Bradley knew the public were using this section of Huddersfield Path No. 231 as a public right of way of at least footpath status.

- 3.114 Mr Bradley also refers to the maps showing Huddersfield Path No. 231 in private ownership and included within tenancy agreements. However, public rights of way can run over land in private ownership, including vehicular highways and the inclusion of land in a tenancy agreement would also not prevent the existence of public rights of way. Furthermore, it would not prevent public rights coming into existence through uninterrupted public use and presumed dedication.
- 3.115 Mr Bradley refers to occasions when Huddersfield Path No. 231 was dug up by utility companies to lay services. He states that Huddersfield Path No. 231 was closed during these periods with no access to the public, but that this was not done by an official closure through the Highways Department, only by his permission. As Huddersfield Path No. 231 is recorded on the Definitive Map and Statement it should have been closed by an official Temporary Traffic Regulation Order and no copies of the notices relating to other roads closed in the area during this time have been provided to show that Huddersfield Path No. 231 was not included. However, even if a Temporary Traffic Regulation Order was not in place the closure of Huddersfield Path No. 231 for the installation of services would not act as an interruption for the purposes of the purposes of showing no public right of way as established in *Lewis v Thompson (1950)* interruption means an interruption in fact, but the circumstances and intention of the barring of the way are relevant. The interruption must be for the purposes of preventing public user as established in *Attorney General v Hemingway (1916) [81 JP 112]*.
- 3.116 The fourth letter relates to the photographs submitted with the Definitive Map Modification Order Applications. The state that the first photograph taken in the 1930s has cattle in the background which were 'free to roam in the farmyard as they wanted to. If this had been a public highway for the use of motorised vehicles this would not have been possible.' No reference is made to whether this would have been possible if it were a bridleway or footpath. It then refers to use of the track by family members to ride ponies as shown by the 1968 photograph which they were permitted to do if they did not interfere with farm work or livestock. Mr Bradley states that he 'still expect the same courtesy from anyone riding through my property. The priority is the safety of my livestock and those

who are regular visitor appreciate and accept that is part of the countryside code. With the exception of motorised vehicles who want to travel by their own rules.' Mr Bradley seems to accept that horse riders are using this track and does not appear to object to their use of it at this time as long as they respect the countryside code. Finally, it refers to Huddersfield Path No. 231 being used to move cattle several times a day and that it is imperative that they are not upset or impeded for the safety of the herdsman. He sees no reason to change this to facilitate an error on the map. This does not relate to the status of the public right of way but suitability and desirability which cannot be taken into consideration when determining Definitive Map Modification Order Applications. However, it is worth noting that in rural areas many public rights of way are used to herd cattle, including Byways Open to All Traffic and that full public carriage roads are also used to move livestock in some areas. This letter is shown as Background Document ZZZ 4.

3.117 Another letter was received from Mr Bradley dated the 4th of December 2013. It states that 'I now seek to add a public footpath to the said Definitive Maps as no right of way is currently shown thereon at this location. The route is from Point A to B, connecting to another footpath, as shown. I deny the existence of other public rights of way. I have today erected notices to this effect.' These notices are the ones shown in Background Document UUU. In his earlier letter Mr Bradley does not refer to any notices prior to this date and neither do those members of the Bradley family filling in Public Rights of Way Information Sheets. It is also around this time that member of the public using Huddersfield Path No. 231 on horse or foot first recall seeing notices denying public use. This letter is shown as Background Document ZZZ 5.

3.118 Mr Bradley also refers to *Norfolk County Council, R v Secretary of State for Food, Environment and Rural Affairs [2005] EWHC 119 (Admin)* which found that 'in the case of irreconcilable conflict between the map and statement, there is no evidential presumption that the map is correct and the statement not correct. The conflict is evidence of error in the preparation of the map and statement which displaces the *Trevelyan* presumption. Each should be accorded the weight analysis of the documents themselves and the extrinsic evidence, including the situation on the ground at the relevant date, demonstrates is appropriate.' It is clear that an error was made during the production of the 1985 West Yorkshire Metropolitan County Council Definitive Map and Statement as there is no evidence of a reclassification Order to reclassify Huddersfield Path No. 231 from Road Used as a Public Path to Byway Open to All Traffic. However, insufficient evidence has been submitted to show that an error was made during the production of the Original Definitive Map and Statement published in 1975. The documents, notices and schedules relating to the draft, provisional and definitive map all indicate that the correct procedures were followed. In *Trevelyan v Secretary of State for the Environment (2001) [1 WLR 1264 (CA)]* it was found that if a route shown on a definitive map has its existence queried the inspector 'must start with and initial presumption that it does' exist. 'In the absence of evidence to the contrary, it should be assumed that the proper procedures were followed and thus that that such evidence existed... The standard of proof required to justify a finding that no public right of way exists is no more than the balance of probabilities. But evidence of some substance must be put into the

balance, if it is to outweigh the initial presumption that a right of way exists. Proof in the negative is seldom easy, and the more time that elapses, the more difficult will be the task of adducing the positive evidence that is necessary to establish that a right of way that has been marked on the definitive map has been marked there by mistake. In *R V Secretary of State for Environment ex parte Hood (1975) [1 QB 891]* Lord Denning found that 'the Definitive Map in 1952 was based on evidence then available, including, no doubt, the evidence of the oldest inhabitants then living. Such evidence might have been lost or forgotten by 1975. So it would be unfair to reopen everything in 1975.' The *Department of the Environment Circular 18/90 Par 4-6* states that 'in making an application to delete or downgrade a right of way, it will be for those who contend..... to prove that the map is in error by the discovery of evidence, which when considered with all other relevant evidence clearly shows that a mistake was made when the right of way was first recorded. The authority is required... to investigate the matter stated in the application. However, it is not for the authority to demonstrate that the map is correct.' No evidence of sufficient substance or weight has been produced to show that there were errors in the production of the original Definitive Map and Statement published in 1975 relating to Huddersfield Path No. 231, therefore this map provides conclusive evidence that the public had a right to walk and ride horses along Huddersfield Path No. 231. The rest of this letter raises the same points as raised in the letters dated 13th of June 2012.

- 3.119 A letter dated the 20th of February 2014 relates to the second Definitive Map Modification Order Application submitted in 2014. This letter is shown as Background Document ZZZ 6. The first point is that 'the route was held in trust from at least the late 1800s until 1954. During this time there was no means of dedicating rights of way across the held land.' The Abstract of Title from 1954 (X) does indicate that Nether Moor Farm was settled estate between 1887 and 1954, but the plan with it appears to indicate that Huddersfield Path No. 231 was excluded from this parcel. Before 1926 a tenant for life could not dedicate a highway as he did not have legal estate or any statutory power to dedicate. After 1926, under Section 56 of the Settled Land Act 1925 a tenant for life under a strict settlement could dedicate a public right of way, provided it was for the benefit of the residents of the settled lane or there was a specific power in the trust instrument. In other circumstances, all the beneficiaries must agree to the dedication, either expressly or by implication. The beneficiaries' must be at full age and capacity.² The Rights of Way Act 1932 set out that where a way has 'been enjoyed by the public as of right and without interruption for a full period of twenty years, such way shall be deemed to have been dedicated unless there is sufficient evidence that there was no intention during that period to dedicate such a way, or unless during such a period of twenty years there was not at any time any person in possession of such land capable of dedicating such a way. This would have prevented land in strict settlement becoming a public right of way. However, the act also set out that 'where any such way has been enjoyed as aforesaid for a full period of forty years, such way shall be deemed conclusively to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate such way.' Therefore, if a way was used by the public as of right for forty years it would become a highway even if the

² Public Rights of Way and Access to Land 2nd ed. Angela Sydenham 2003

land was owned by someone who did not have the capacity to dedicate, for example if the land was in strict settlement. The National Parks and Access to the Countryside Act 1949 amended this so that a twenty year period was sufficient in both cases. If land was in strict settlement at this time it would be possible for public rights to be acquired through presumed dedication if the public had used it for a period of twenty years or more. Therefore, by the time the Bradley's purchased the land in 1954 there would have been a sufficient period of time for the land to have been dedicated as a public right of way through presumed dedication or dedication by the landowners. Furthermore, although the production of the original Definitive Map and Statement was first begun in the early 1950s with the first Draft Map and Schedule produced in 1952 the original Definitive Map and Statement was not published until 1975. During this period, surveys of the path were undertaken showing it was open and available for use by the public and it was shown on the draft, provisional and definitive maps as a public right of way with no objections from anyone. The surveys indicate use by the public for over twenty years before the original Definitive Map and Statement was published in 1975 recording Huddersfield Path No. 231 as a Footpath CRF Road Used as a Public Path. No evidence has been produced to show that there were any errors in the production of the original Definitive Map and Statement. Finally, documentary evidence from 1804, 1822, 1848 and 1857 indicate that public rights may have existed before Nether Moor Farm was in Strict Settlement from 1877.

- 3.120 The next point refers to the 1910 Finance Act Map showing Huddersfield Footpath No. 233 crossing the fields to the north of Nether Moor Farm and that the footpath could only have joined Sandy Lane by using the section of track between them. This would indicate that they accept that the first section of Huddersfield Path No. 231 between Sandy Lane and Huddersfield Footpath No. 233 is a public right of way of public footpath status. The user evidence as discussed above indicates that the public were using the full length of Huddersfield Path No. 231 as a public bridleway and that they were not aware of any permission, challenges or interruption until 2014 and 2015 when users were first challenged, notices appeared and finally Huddersfield Path No. 231 was completely obstructed.
- 3.121 The next point refers to the gates being consistently gated, which has been discussed above. They then state that 'the attempted inclusion of the route in the 1950s, and following processes, show the lane was considered to be a public footpath and was indeed shown as such along its whole length. No evidence has been submitted to support this assertion. Later the route and its extension became shown as a Road Used as a Public Path but was still referred to as a Footpath, albeit with (CRF) appended after. CRF is a non-statutory term and holds no legal standing' As has been discussed above the original Definitive Map and Statement published in 1975 shows Huddersfield Path No. 231 as Road Used as a Public Path. The records indicate that the correct procedures were followed in producing the original Definitive Map and Statement and there is not considered to be sufficient evidence to show that an error was made in recording Huddersfield Path No. 231 as a Road Used as a Public Path on the original Definitive Map and Statement. Therefore, this Definitive Map and Statement provides conclusive evidence of public right on horse and foot along Huddersfield Path No. 231.

- 3.122 The next point is that ‘in 1985 the Definitive Map was generally amended but the routes owners were not consulted and it was not included in any legal order. After this process, without any legal force, the map was altered to show a non-statutory marking of a single black line and the statement referred to the route as a byway open to all traffic. The Definitive Statement of 2000 continues with the same description without any legal basis. Throughout the Definitive Map process no consultation has taken place with the owners of Nether Moor Farm.’ (ZZZ6). The adverts for the production of the original and the revised Definitive Map and Statement indicate that the correct procedures for advertising the Definitive Map process were followed. It is accepted that an error was made in the line style shown on the current 1985 Definitive Map and that the change in status from Road Used as a Public Path to Byway Open to All Traffic was not included in the Omnibus Modification Order as it should have been. However, this does not cast doubt on the original Definitive Map and Statement which provides conclusive evidence of a public right on horse and foot along Huddersfield Path No. 231. There is no Definitive Statement dated 2000. Furthermore, the user evidence shows use by the public without challenge or interruption for a period over over twenty years prior to the first Definitive Map Modification Order Application in 2009.
- 3.123 The next point is that the Highway Authority has consistently agreed in searches, planning and in consultation with statutory undertakers that the route is a private track or public footpath. The 1954 Local Authority Search indicated that Huddersfield Path No. 231 was a public highway, although it was privately maintained. The cross field footpaths were identified as footpaths, as the status of Huddersfield Path No. 231 was not referred to as a footpath it would indicate higher rights than footpath. The 1959 Local Authority Search did indicate a footpath, again privately maintained. Neither search asked the optional question about paths being shown on the draft, provisional or definitive map. The documents relating to statutory undertakers relate to the contents of the utility companies’ records which are not the records of the Highway Authority. The only planning application that relates to Huddersfield Path No. 231 with comments from the Highway Authority is in 2011 (OOO) which states that it is a ‘private lane’ with ‘a public right of way’ running along it. As this does not specify the status, unlike Huddersfield Footpath No. 233, which was referred to as a footpath, this indicates that Huddersfield Path No. 231 has higher rights than footpath. This also specifies that the public right of way runs through the farm buildings, but the landowners claim that there is no public right of way of any status here. These records do not override the original Definitive Map and Statement published in 1975 which provides conclusive evidence of public rights of foot and horse along the full length of Huddersfield Path No. 231. They also do not provide any evidence relating to the user evidence which provides sufficient evidence to show that the public have used Huddersfield Path No. 231 for a period of over twenty years without interruption or challenge on foot, horse and bicycle and would therefore have acquired public bridleway rights through presumed dedication. The rest of the letter is a list of documents provided with a brief summary of what they show which have been referred to above.
- 3.124 A final letter dated the 7th of December 2016. It largely complains that they felt they were incorrectly advised to apply for a Definitive Map Modification Order

Application to downgrade the route as that was the best they would get and that they had been misinformed and disadvantaged by Kirklees Council and had also refused to accept later amendments to the original Definitive Map Modification Order Application or for it to be withdrawn so they have submitted a second application to delete it from the Definitive Map and Statement. They have since been told that they can submit additional information. They also feel the public rights of way staff were unhelpful and that too much time had been spent emailing about the process and not determining the application. These issues do not have any relevance to the determination of the evidence submitted relating to the determination of the Definitive Map Modification Order Application. This letter is shown as ZZZ 7.

- 3.125 Mr Bradley states that they have ‘discovered that Nether Moor Farm was in Strict Settlement for the benefit of the Beaumont family beneficiaries at that time (1952) and public rights of way could not be dedicated based on that fact.’ This point has been dealt with within 3.119 above.
- 3.126 It was also stated that the Kirklees Bridleway Group had given out User Evidence Forms and told their son that they were working with the council against the landowner and were persuading the public to fill in User Evidence Forms by use of the electronic Definitive Map and they ‘couldn’t use the legal Definitive Map for obvious reasons’. He does not state what these reasons were. However, the Wildlife and Countryside Act 1981 regulations do not specify the maps to be used for User Evidence Forms. The Wildlife and Countryside (Definitive Map and Statements) Regulations 1993 state that the maps accompanying the Definitive Map Modification Order Application should not be less than a scale of 1:25,000. The maps attached to the User Evidence Form conform with this and are extracts from the Definitive Map and Statement which were scanned into a computer and printed from there. Mr Bradley also claims that one of the riders was told ‘that it didn’t particularly matter if she hadn’t ridden the farm track. She was told “just fill in the form anyway”’. His son and sons friends were then asked to fill in a User Evidence Form to say that they had ridden their bikes along it. He said that ‘manipulation and coercion are words that spring to mind’. The User Evidence Forms ask specific questions about peoples use of Huddersfield Path No. 231 and ask for details of the location of gates, notices, widths, surface, obstructions etc. Those who filled in User Evidence Forms provided details of the track and location and dates of gates and obstructions that they wouldn’t have known if they had not used Huddersfield Path No. 231. The forms also require the person completing it to sign it to state that the ‘fact that I have stated are true’.
- 3.127 Mr and Mrs Bradley were interviewed on the 31st of July 2017 and their agent Mr Dunlop was also present. Mr and Mrs Bradley said that Huddersfield Path No. 231 was a private track and that they had not allowed anyone else to use it without permission and those people were mostly friends or neighbours. They said that the only vehicles that used it were those that had taken wrong turns who were always sent back or friends or relatives who always rang for permission first if they wanted to bring a vehicle all the way through. The horse riders were from stables there for friends and family. In the past you could count on one hand the number of people who rode through but numbers had multiplied. Mr Bradley said that riders would ask for permission to use it so he assumed that they knew it was

private. They were told that they could come through but that it was private. His father like to see the horses but would have given permission to everyone and would have challenged anyone who did not ask if it was ok to ride there. Mrs Bradley said that when she came to the farm for the first time 34 years ago she had asked if it was a road and was told that it was a private track. People didn't walk it then and there was only the odd horse rider along it. If they didn't know who the people were they would ask who they were and where they were going, most were known and that it was a matter of course to challenge people. However, none of the forty six people who submitted user evidence in 2015 said that they had ever asked for permission to use the track. Seven people did say on their forms that use was with permission and five of these were interviewed and it was clear that they had never requested or been told that they had permission to use it. They had seen the landowner, mostly Mr Bradley Senior, and they had assumed they had permission because he had never said anything to them about their use of the track. Twenty people specifically refer to seeing the landowners without being challenged or told that they had permission to use it. Some people did refer to being challenged when using the route but this was not until 2014/ 2015. Some users also say that around this time they were also told by the landowners that the issue was not with horse riders using Huddersfield Path No. 231 by was because of use by vehicles. This corresponds with Mr Bradley saying in his interview that they could not stop motor bikes without stopping horses. In *Beresford v City of Sunderland* (2001) [ewca Civ 1218] it was established that 'such permission may only be inferred from overt and contemporaneous acts of the landowner.' There is nothing to suggest that any overt or contemporaneous acts have occurred to demonstrate to the public that they had permission to use the track until some users were given permission by Mrs Bradley around 2014/ 2015 and other were challenged when using Huddersfield Path No. 231. Twenty two people who filled in User Evidence Forms in 2015 were using Huddersfield Path No. 231 in the early to mid-1980s when Mrs Bradley says she first came to Nether Moor Road which indicates that use by horse riders was not as infrequent in the past as Mr and Mrs Bradley suggest. The interview transcript with Mr & Mrs Bradley is shown as Background Document ZZZ 8.

- 3.128 Mr Bradley said that the gates were always there to stop the cattle wandering onto the road. When asked if they had always been locked Mrs Bradley said yes and Mr Bradley no. This was queried and Mrs Bradley was asked why she has said that they were not locked when she filled in her 2009 User Evidence Form. She admitted they were not locked at that time and Mr Bradley said the gates were locked in April 2014. Mrs Bradley also referred to a rail being across the track at the yard end and this went across every day but was replaced with a gate when it became difficult to lift. A photograph was provided of this. The gates were closed twice a day when the cows were in the yard. The newer gate was a field gate with a smaller gate to the side. The field gate was always locked but the smaller gate was only locked later. The location of the gates and rail and type of gates and when they were locked corresponds with the dates provide by those completing User Evidence Forms. Mr Dunlop said that the route was blocked with boulders in 1998. Mr Bradley said that the boulders were used to stop gypsies and that various other tracks owned by other people also had them. They were also for security to prevent cattle theft and burnt out cars. Mrs Bradley said that they

would be moved when needed as cars had been dumbered and burnt out there at times. Again this corresponds with the dates that those filling in User Evidence Forms say they first appeared and the same reason was given by users of Huddersfield Path No. 231. They also refer to them being removed from time to time with gaps being available for use by horses, cyclists and walkers until 2015 when they were moved closer together and logs added. The Google Earth images also show that there were gaps in 2010 and 2012. The photograph provided by Mrs Bradley of the rail shows a part of the track which is open and unobstructed. On the grass verge is a long white object which Mrs Bradley said was the rail. It does not appear to be wide enough to block the full width of the track and does not look as heavy as Mrs Bradley claims. However, both the Bradleys and the path users agree that there was a bar or rail across the track which was not locked and was used to prevent the movement of cattle. Therefore, this photograph does not provide evidence for or against the Definitive Map Modification Order Application. It is clear from the evidence from Mr and Mrs Bradley and path users that the gates and boulders did not prevent use by the public on foot, horse or bicycle until 2014/ 2015 and that the gates were erected to stop cattle movement and the boulders to prevent vehicular access by travellers and for dumping or theft rather than to prevent public use. By this time the public had already used Huddersfield Path No. 231 for over twenty years and would have acquired public bridleway rights through presumed dedication. *Lewis v Thompson (1950)* established that interruption means an interruption in fact but the circumstances and intention of the barring of the way are relevant. Locking a gate to stop cattle straying did not prevent dedication of a public footpath. In the same way the boulders which were erected to stop vehicles, travellers and theft and the closing of gates to stop cattle straying would not prevent dedication of a public right of way. Furthermore, the locking of the gates and closing off of the barriers occurred after the date of challenge in 2009 when the first Definitive Map Modification Order Application was made. The photograph of the rail is shown as Background Document ZZZ 8.

- 3.129 Mr Bradley said that he put up notices saying that there was not a public right of way there in December 2013. Seventeen of those filling in User Evidence Forms state that they first saw the notices in 2014 or 2015 and the letter with the photographs of the notices says that these were put up in December 2013. The notices were put up after the date of challenge in 2009.
- 3.130 Mr Dunlop claims that the User Evidence Forms were given out by Kirklees Bridleway Group and people were told to fill out the forms even if they had not used Huddersfield Path No. 231. This point was also raised in Mr Bradley's letter of the 7th of December 2017 and has been dealt with above.
- 3.131 A Farm Survey dated September 1943, a letter dated 30th September 1949 to John Radcliffe and Sons Ltd. about tipping at Nether Moor Farm and a letter dated 1st of April 1954 to Ramsden, Sykes and Ramsden about the sale of the land by the Trustees to the Bradley's were also provide during the interview. These are shown as Background Document ZZZ8.
- 3.132 The Farm survey does not provide any information about Huddersfield Path No. 231. The letter dated 30th September 1949 to Radcliffe and Sons Ltd. appears to relate to arrangements to restore the land after quarrying. The third paragraph

states 'to leave that part of the surface on Nether Moor Lane used as an Occupation Road by the tenant, in as good a state of repair as it was before you commenced tipping.' Nether Moor Lane is assumed to be Huddersfield Path No. 231. Although it is referred to as an occupation road, this would not preclude the existence of public rights existing or coming into existence at a later date. Public rights of way often run along private occupation roads.

- 3.133 The letter dated the 1st of April 1954 Ramsden, Sykes and Ramsden relates to the sale of the land to the Bradleys. It states that 'A right of access is reserved for the owner of Greengate Knoll along the occupation road coloured brown to land tenanted by him from the Estate to the east of Nether Moor Road.' The map accompanying this shows Huddersfield Path No. 231 coloured brown. Although it is referred to as an occupation road, this would not preclude the existence of public rights existing or coming into existence at a later date. Public rights of way often run along private occupation roads.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 No statutory consultations with prescribed bodies are required prior to making a Modification Order decision. Ward members and user groups were made aware of the public right of way matters at Nether Moor Farm.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 Definitive Map Modification Order Applications can only be determined on the basis of the evidence available to show if a public rights of way subsists or can be reasonably alleged to subsist or not. Therefore, issues such as suitability, desirability, human rights, equality and diversity cannot legally be taken into consideration when determining Definitive Map Modification Order Applications.

4.3 Council Policies and Priorities

- 4.3.1 See Kirklees template report

4.4 Resources and Value for Money

- 4.4.1 Kirklees Council has a duty to investigate Definitive Map Modification Order Applications and make Definitive Map Modification Orders if requisite.
- 4.4.2 The cost of making any Orders, should one be authorised, would be met from the existing budgets.
- 4.4.3 If the Order is opposed, referred to the Secretary of State and is taken to Public Inquiry, then the additional costs are incurred.
- 4.4.4 A Modification Order recognises the existence or correct status of a public right of way and no new rights or liabilities will be created should an order be made. There are consequently no resource implications. Furthermore, Huddersfield Path No. 231 is currently shown in the Definitive Map and Statement.

4.4.5 There are no additional staffing implications resulting from the making of the Order.

4.5 Legal Implications, Access to Information and Call In

4.5.1 See Kirklees template report

4.6 Risk Management

4.6.1 As with all Definitive Map Modification Orders if the decision is taken to make an Order there will be an opportunity to object to the Order. However, if the evidence indicates that an Order needs to be made to modify the Definitive Map and Statement Kirklees Council has a duty to make an Order.

5 Conclusions

5.1 The original Definitive Map and Statement published in 1975 provides conclusive evidence that public rights on foot and horse subsist along Huddersfield Path No. 231 at this date. Other documents show that public rights exist along the full length of Huddersfield Path No. 231 and that a public bridleway subsists or can be reasonably alleged to subsist. The evidence submitted in the Public Rights of Way Information Sheets show that the public have used the full length of Huddersfield Path No. 231 as a public bridleway for over twenty years prior to 2009 when the first Definitive Map Modification Order Application was made challenging the inclusion of Huddersfield Path No. 231 on the Definitive Map and Statement. Use also continued until spring 2015 when use was physically and verbally challenged. There is not sufficient evidence to show that there was no intention to dedicate a public bridleway along Huddersfield Path No. 231 by the landowners. It is considered that it can be shown, on the balance of probabilities, that there has also been a presumption of dedication under Section 31 of the Highways Act 1980 of a public bridleway.

5.2 It is considered that the documentary and user evidence demonstrates, on the balance of probabilities, that particulars relating to the recorded status in the map and statement and the line style shown on the Definitive Map require modification to show Huddersfield Path No. 231 as a public bridleway. Therefore an Order to modify the Definitive Map and Statement should be made to show Huddersfield Path No. 231 as a bridleway under Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981.

6 Recommendations

6.1 The Members of the planning sub-committee (Huddersfield Area) are requested to consider the evidence contained within the attached reports, and the law to determine the status of the alleged public rights of way and authorise the Service Director - Legal, Governance and Monitoring either,

To make an Order in accordance with Section 53(2)(b) of the Wildlife & Countryside Act 1981 to modify the Definitive Map and Statement to correctly show the status of Huddersfield Path No. 231 and either confirm it as unopposed or, in the event of objections being received and not withdrawn after statutory

notice of the Order is given, to refer it to the Secretary of State for the Environment, Food and Rural Affairs for determination,

or

Refuse authorisation for a Modification Orders to be made on the grounds that the Definitive Map and Statement does not require modifying.

and give full reasons for the decision made.

7 Background Documents

Background Document A: Definitive Map and Statement 1985

Background Document B: Definitive Map Modification Order Application July 2009

Background Document C: Definitive Map Modification Order Application February 2014

Background Document D: Withdrawal of 2009 Definitive Map Modification Order Application

Background Document E: Plan and Survey of South Crosland 1804

Background Document F: Plan of South Crosland Belonging to R H Beaumont Esq. 1822

Background Document G: R H Beaumont Esq. Estate Valuation Book 1822

Background Document H: Survey of an Estate belonging to R H Beaumont Esq. 1826

Background Document J: Plan of Part of South Crosland 1848

Background Document K: Ordnance Survey Map 1854

Background Document L: Plan of Estate in South Crosland Property of H F Beaumont Esq. 1857

Background Document M: Ordnance Survey Map 1893

Background Document N: Quarry Papers 1907-1910

Background Document O: Ordnance Survey Map 1906

Background Document P: Finance Act Maps, Field Books and Valuation Books 1910

Background Document Q: Ordnance Survey Map 1916

Background Document R: Loose Box Plan 1927

Background Document S: Photograph 1930

Background Document T: County Borough of Huddersfield Draft Schedule of Rights of Way 1st September 1952

Background Document U: Notice in Huddersfield Examiner 14th November 1952

Background Document V: Objections to the Draft Definitive Map and Statement 3rd June 1953

Background Document W: Enquiries of Local Authorities 24th June 1954

Background Document X: Abstract Title for the Sale of Nether Moor Farm 14th September 1954

Background Document Y: Title Deed Plan for Nether Moor Farm June 1954

Background Document Z: Aerial Photograph Nether Moor Farm Circa 1955

Background Document AA: County Borough of Huddersfield Rights of Way Map 1956

Background Document BB: Enquiries of Local Authorities 26th June 1959

Background Document CC: Johnson Wellfield Quarries Letter 11th November 1963

Background Document DD: Note for Town Clerk 31st July 1965

Background Document EE: Walking Plan 1965

Background Document FF: County Borough of Huddersfield Rights of Way Draft Map 1966

Background Document GG: County Borough of Huddersfield Draft Schedule of Rights of Way ~~1st of September 1952~~ 20th April 1966

Background Document HH: County Borough of Huddersfield Draft Schedule of Rights of Way 20th April 1966

Background Document II: County Borough of Huddersfield Right of Way Draft Map 1966

Background Document JJ: County Borough of Huddersfield Provisional Map

Background Document KK: Photographs 1968

Background Document LL: Plan of Proposed Toilet March 1971

Background Document MM: Note for Highways and Sewage Committee 11th May 1972

Background Document NN: County Borough of Huddersfield Provisional Schedule of Right of Way 31st August 1973

Background Document OO: Memo from the Executive Director of Transportation and Traffic 5th June 1974

Background Document PP: Notice 10th July 1975

Background Document QQ: West Yorkshire Metropolitan County Council Definitive Map Relevant Date 20th April 1966 Published 1975

Background Document RR: West Yorkshire Metropolitan County Council Definitive Statement Relevant Date 20th April 1966 Published 1975

Background Document SS: Aerial Photograph Nether Moor Farm Circa Early 1970s

Background Document TT: Survey of Huddersfield C.B. Review

Background Document UU: Review of Public Paths Recorded as C.R.F.

Background Document VV: West Yorkshire Special Review Draft Revision Map 1st October 1979

Background Document WW: West Yorkshire Statement Accompanying the Special Review of Definitive Map Draft Review 1st October 1979

Background Document XX: Objections to the 1970s and 1980s Review of the Definitive Map and Statement

Background Document YY: Notice 29th February 1980

Background Document ZZ: Letter Date 1st of October 1980

Background Document AAA: Reports to the Traffic and Highways Committee 28th June 1982 and 28th of April 1983

Background Document BBB: Letters from the Department of Environment and Transport 11th June 1982, 22nd November 1983 and 27th of January 1984

Background Document CCC: Omnibus Modification Order 1985 (West Yorkshire Metropolitan County Council Footpath Definitive Map) 22nd October 1985

Background Document DDD: Notice in Huddersfield Examiner 25th October 1985

Background Document EEE: West Yorkshire Metropolitan County Council Definitive Map Relevant Date 30th April 1985

Background Document FFF: West Yorkshire Metropolitan County Council Definitive Statement Relevant Date 30th April 1985

Background Document GGG: Ordnance Survey Map 1994

Background Document HHH: Letter from Trail Riders Fellowship 26th January 1994

Background Document III: Street By Street Map 1995

Background Document JJJ: Aerial Photograph 2002

Background Document KKK: Aerial Photograph 2003

Background Document LLL: Yorkshire Water Letter 19th March 2009

Background Document MMM: Aerial Photograph 2009

Background Document NNN: Google Earth Street View East End August 2010

Background Document OOO: Highways Planning Comments 2011

Background Document PPP: Aerial Photograph 2011

Background Document QQQ: Letter and Map from Land Registry 17th November 2011

Background Document RRR: Google Earth Street View East End August 2012

Background Document SSS: Google Earth Street View West End August 2012

Background Document TTT: Statement, Plan and Statutory Declaration Under Section 31(6) of the Highways Act 1980 4th February 2013 and 15th of May 2013

Background Document UUU: Notice Photographs 4th December 2013

Background Document VVV: Aerial Photograph 2016

Background Document WWW: Photographs of Cows

Background Document XXX (1-61): Public Rights of Way Information Sheets, Summary Sheets and Graphs

Background Document YYY: Letter from Adjoining Farm 23rd June 2009

Background Document ZZZ (1-8) Letters, Interviews and Document from the Landowner Various Dates

Report of the Head of Strategic Investment

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 23-Nov-2017

Subject: Planning Application 2015/91664 Outline application for residential development with details of access and provision of car parking and bin storage for previously approved adjacent apartments under application no. 17/90375 rear of 1A, St Johns Avenue, Newsome, Huddersfield, HD4 6JP

APPLICANT

Newsome WMC

DATE VALID

01-Jun-2015

TARGET DATE

27-Jul-2015

EXTENSION EXPIRY DATE

16-Oct-2017

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

Electoral Wards Affected: Newsome

Yes

Ward Members consulted
(referred to in report)

RECOMMENDATION:

DELEGATE approval of the application and the issuing of the decision notice to the Head of Strategic Investment in order to complete the list of conditions including those contained within this report.

1.0 INTRODUCTION:

- 1.1 The application is brought to committee following Members recommendation to defer the application on 12th October. This was to allow officers an opportunity to verify the width of the access road as shown on the submitted plans and more importantly as previously approved under application no. 2017/90375 would form part of the on-going works to implement this permission as works have clearly commenced on site.
- 1.2 Subsequent to the committee meeting on 12th October, further evidence has now been received which verifies revised plans have been deposited to Building Control. The plans submitted indicate re positioning of the gable wall to allow a widened access. Building Control Officers have confirmed whilst a detailed plan check and further inspections have not yet been undertaken, the principles of the proposals are acceptable.
- 1.3 In view of this, Officers are of the opinion provided the widened access road is achieved under the 2017 permission for the conversion of the former working men's club to six apartments which is currently ongoing on site, the recommendation on the current proposals remain acceptable as the widened access could adequately serve an increased level of traffic movement resulting from the re-development of the application site. Should Members be minded to approve the application a condition will be included requiring the widened access to be completed prior to the occupation of any dwelling on the application site.
- 1.4 Turning to ownership of the site, Members were advised the bowling green is in private ownership at the meeting on 12th October. Consequently, it has been confirmed by the Councils Corporate Landlord that the freehold of the application site is owned by the Council. The land is however subject to 999 year ground leases for the application site and building of former working men's club, dated 14 October 1905 and 4 February 1985 respectively.

- 1.5 Finally, the applicant at the last committee meeting also provided a copy of correspondence from Environmental & Greenspace Enforcement Officers which state as of 27th/28th October 2017 the site was tidy, clear of general waste and the applicant will endeavour to keep the site secured and tidy to a point that is reasonable for a working building site. The assessment below has been amended to include the further representations received subsequent to 12th October 2017 committee meeting.

2.0 SITE AND SURROUNDINGS:

- 2.1 The application red lines relates to the site of the former Newsome bowling green and an access to this land from St. John's Avenue to the south west. The application site occupies approximately 0.25 hectares to the rear of the former Newsome Working Men's club. The site is surrounded by development to all sides with residential properties adjacent to the north east (Church Lane), west (Towngate) and south east (Newsome Road South) boundaries. There are also two public houses beyond the north western boundary, off Towngate, and a children's day care nursery and garage plot beyond the eastern and northern boundaries respectively.
- 2.2 The site is presently unused with no visual aspect of it being retained as a bowling green. The ancillary associated pavilion buildings have also been demolished, the materials of which appear to be deposited on the application site.

3.0 PROPOSAL:

- 3.1 The application is submitted in outline, as amended, seeking the principle of residential development with details of access point only to be considered at this stage.
- 3.2 The description has been amended taking out all reference to numbers of properties. Vehicular access is shown to be taken off St. John's Avenue and would be shared with the recently approved development for the conversion of the former Newsome Working Men's club into 6.no self-contained apartments.

4.0 RELEVANT PLANNING HISTORY:

- 4.1 2017/90375 – Alterations and extensions to convert public house to 6 no. self-contained apartments granted 27th April 2017
- 2015/92928 – demolition of existing extensions and conversion of the pub to a dwelling to a dwelling – granted Jan 2016

5.0 HISTORY OF NEGOTIATIONS:

- 5.1 03/11/17 – email correspondence between applicant and Building Control Officers
03/11/17 – copies of plans submitted to Building Control indicting re-positioning of gable wall
12/10/17 – copy of correspondence between applicant & Environmental & Greenspace Enforcement Officers

19/07/17 – amendment to description & final revised layout plan omitting dwellings/layout as advised by officers.
 12/07/17 – a further revised layout plan
 10/07/17 – revised layout for consideration
 28/06/17 – revised site plan & confirmation from applicant to formally apply for variation of condition no. 2 on 17/90375 should this application be approved
 26/05/16 – alternative replacement site put forward for consideration (Blue Bell Hill)
 27/11/15 – copy of certificate B to validate application
 23/09/15 – further extension of time to 31st October 2015
 25/08/15 – further extension of time requested to allow applicant to gain proof of relocation of existing members & evidence from liquidator
 13/08/17 – evidence of site not registered as an ‘asset of community value’
 30/05/15 – details of lease to address land ownerships issues
 22/07/15- agreement to extension of time to provide evidence of other bowling greens in the area

6.0 PLANNING POLICY:

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). The Council’s Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

The site is unallocated on the UDP Proposals Map and on the publication draft local plan. The site lies in close proximity of the Newsome local centre

Kirklees Unitary Development Plan (UDP) Saved Policies 2007:

D2 – Unallocated land
 BE1 – Design principles
 BE2 – Quality of design
 BE12 – Space about buildings
 EP4 – Noise sensitive development
 R7A – proposals to develop public open spaces
 T10 – highway considerations
 T19 – parking provision

Kirklees Publication Draft Local Plan

PLP1 Presumption in favour of sustainable development
 PLP7 Efficient and effective use of land and buildings
 PLP 20 Sustainable travel

PLP21 Highway safety and access
PLP22 Parking
PLP24 Design
PLP32 Landscape
PLP47 – Healthy Active & Safe Life Styles
PLP50 Sport and physical activity
PLP51 Protection and improvement of air quality
PLP52 Protection and improvement of environmental quality

National Planning Guidance:

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.
Core Planning Principles
Chapter 12 – conserving and enhancing the historic environment

Other Documents

West Yorkshire Low Emission Strategy Planning Guidance (WYLES)

Evidence Documents

Kirklees Playing Pitch Strategy & Action Plan September (2015) – *Part of the Evidence Base for the Publication Draft Local Plan*

Kirklees Open Space Study 2015 (revised)

7.0 PUBLIC/LOCAL RESPONSE:

7.1 A further five representations are received since the 12th October committee meeting. In view of these and the two reported in the update to committee on 12th October, brings the total number of representations to 182. The concerns are summarised below. A petition with 900 signatures is also received.

Residential & general amenity:

- Loss of natural light to existing dwellings
- Potential overlooking to existing dwellings from opening in new dwellings
- Loss of light to property and external amenity areas to properties on St Johns Road.
- Plot could not accommodate 7 dwellings
- Overshadowing & loss of privacy to occupants of both existing & proposed dwellings
- Inappropriate development harmful to open nature and character of site
- Proposed artificial stone not in keeping with surrounding development
- Too close to ABC nursery
- impact on listed building, conservation areas and trees
- creation of right of public right of way from site to adjacent site to north could result in anti social behaviour and security issues
- additional street lighting may affect existing properties
- drainage issues to existing properties
- would result in toilet block to public house

- refuse collection point at entrance to the site would cause environment, safety & health issues
- Housing oversubscribed in area which will be exacerbated
- proposed access road and footpath would be a potential problem for pedestrians
- siting of bins adjacent to boundary wall of no. 31 Towngate which raises potential environmental concerns including overflow of litter into adjacent gardens of neighbouring properties.

Highway safety issues:

- Proposed access is poor, too narrow and will cause problems
- Access road too narrow for refuse vehicles
- Existing parking issues on St Johns Road and surrounding highway network will be exacerbated
- St Johns not adequate to cater for additional traffic from a further 7 dwellings
- Limited visibility in both directions would cause concerns for vehicles entering and exiting site

Loss of bowling green & related issues:

- Loss of one of the best bowling /crown greens in Yorkshire
- Loss of public amenity community grounds/Newsome history and a great valuable community asset
- Nearest bowling green not accessible by pensioners due to steep road
- Contrary to national and local policies to encourage and maintain such areas
- Should not be built on unless an assessment has been undertaken which has clearly shown the open space or the buildings and land to be surplus to requirements without evidence that the land is surplus
- Site is actively in use
- Green brings in trade into area
- Indoor facilities already removed by Council now outdoor bowling under threat
- Used by many not just bowlers
- Loss of green could increase the likelihood of older generation becoming isolated
- Bowlers have not left Newsome Bowling Green and not been accommodate elsewhere.
- "They use other facilities to play bingo"
- Bowlers will remain at club until closure

Other issues/concerns:

- need more social activities/venues not housing in this area
- Seeking clarity on exact siting/ location of dwellings
- Disabled access has been removed
- Electricity been cut off to site
- Works has commenced on site prior to application being considered/decision being made
- Limited access to the proposed dwellings for essential utilities/services
- Bowling green left to become overgrown
site notices not posted on yellow boards
- No consultation with neighbouring site owners/ occupants

- Replacement site at Bluebell Public House belongs to Taylor Hill Bowling club and land belongs to Council

IN SUPPORT

- Green would be removed regardless of planning, would prefer to see houses than a derelict anti social site
- Housing is desperately needed

Petition with 900 names from J Hawdon

Club shut in January 2014 and re-opened under the name of Newsome community bowling club

7.3 None planning matters

Land ownership and covenant issues

A covenant exists which requires the site to be used a bowling green and/or for recreational purposes only

Comments are also received from Ward Councillor Julie Stewart Turner who stated:

“The bowling green is a highly valued community asset. The bowlers are part of a several leagues, with long term plans. I notice that the applicant states that the bowlers only have use of the bowling green for one more season, but that isn’t the view of the bowlers. The applicant states that the owners are subsidising the club, but the management committee weren’t aware of this till they read it is the application, they fund raise and are very self-sufficient.

The bowling club tried to buy the bowling green from the liquidators, and raised the £10,000 they were quoted, but were not able to as the ownership of the bowling green is in dispute, they are told that the green isn’t clearly identified on the deeds, and this is an ongoing issue. The committee are in the process of registering the club as an Asset of Community Value, the process was delayed as an owner couldn’t be identified till very recently, but is on track again now.

The tea room on site is also well used by other members of the local community. The applicant states there will be no loss, gain or change of use of non-residential floor space, but the application is clearly to remove the bowling green and tea room, which is a valued local asset, with a separate entrance from the old working men’s club.

The applicant ticked the no box in answer to the question, ‘Is a new or altered vehicle access proposed to or from the public highway?’ The path at the side of the old working men’s club was a narrow pedestrian path. The applicant proposes removing the toilet block to widen the path to allow vehicle access to the rear of the building, which to me means a very much altered access to the public highway. I believe that the proposed vehicle access will still be too narrow to be used by up to 20 cars in and out of the development site, onto what is already a busy junction.

You are likely to receive many objections to this application, not just from the bowling club members, but from other people who live around the site, as they are very concerned about the houses being built so close to their properties”.

Further comments were received from Cllr Julie Stewart Turner stating

“This land has a covenant on it to protect it as a bowling green for the local community, and we won’t be lifting the covenant, even if he can find a way around the complex access issues, which I doubt. Even if an alternative site was found for the bowlers, I would still be opposed to lifting the covenant on the existing site”.

Councillor Andrew Cooper confirms he fully supports Cllr Julie Stewart Turner’s view and they will both still be objecting”

8.0 **CONSULTATION RESPONSES:**

8.1 **Statutory:**

K.C. Highways Development Management - support subject to conditions

8.2 **Non-statutory:**

K.C. Environmental Services - support subject to conditions

K.C. Conservation & Design – no objections

K.C Ecology officer - advised an ecological survey and assessment of the site to be undertaken due to the presence of buildings on site and trees on the periphery. See assessment below

9.0 **MAIN ISSUES**

- Principle of development
- Urban design issues
- Heritage issues
- Residential amenity and neighbouring sites
- Highway issues
- Representations
- Other matters

10.0 **APPRAISAL**

10.1 Principle of development

The site is classified as being greenfield due to its last use as a bowling green, however the site is without notation on the UDP Proposals Map and Policy D2 (development of and 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]”. All these considerations are addressed later in this assessment.

10.2 *Five Year Land Supply*

Currently the Council is unable to demonstrate a five year supply of deliverable housing sites. In these circumstances, in accordance with NPPF paragraph 49, “relevant policies for the supply of housing should not be considered up to date”. Consequently planning applications for housing are required to be determined on the basis of the guidance in NPPF paragraph 14. This requires proposals which accord with UDP to be approved without delay or where the UDP is silent or out-of-date to grant planning permission unless the adverse impacts of doing so would ‘significantly and demonstrably’ outweigh the benefits in the NPPF.

10.3 *Loss of Bowling Green*

The application site, whilst unallocated on the UDP, was previously used as a bowling green which is classified as an area of sport and recreation land within paragraph 74 of the NPPF. Furthermore as its last use was as a public 'open space' Policy R7A of the UDP is of direct relevance to the consideration of this application. This states that proposals to develop public open space, private playing fields or land last used as private playing fields will not be permitted unless:

- i. replacement provision of equivalent community benefit is made; or
- ii. only the redevelopment of a small part of the site is involved and this provides the best means of retaining and enhancing sport and recreation facilities; or
- iii. it is demonstrated that the site will not be required in the longer term for community sport, recreation or amenity use.

Similar restrictions are set out in Paragraph 74 of the NPPF where it is stated that existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

- an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or
- the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or
- the development is for alternative sports and recreational provision, the needs for which clearly outweigh the loss.

10.4 As the application seeks to redevelop the whole site and as no replacement provision is proposed, the only relevant section of Policy R7A would be that it has been demonstrated that the site is not required in the longer term for community sport, recreation or amenity use and, in accordance with para 74, an 'assessment' has been undertaken to show the land is surplus to requirements. In a supporting statement the applicant states the bowling club was put into voluntary liquidation on 20th February 2014 by its own members and ceased to operate in January 2015. This was subsequently verified in writing to the Local Planning Authority by the liquidator in a letter dated 25th June 2015. The application is submitted in view of this and seeks the principle of an alternative use for residential development on the site.

10.5 The applicant has requested the proposals be considered in light of the club's voluntary liquidation and closure and unrealistic prospect of the continued use of the site as a bowling green. The comments by the applicant are noted and during the case officer's site visit it was clear that the bowling green had ceased to operate. Notwithstanding this an assessment needs to be made in relation to evidence set out in the Kirklees Playing Pitch Strategy Action Plan (2015) (KPPSA). KPPSA forms an evidence document which has been used to inform the Publication Draft Local Plan. In KPPSA the application site is defined as:

Newsome WMC bowling green site (ref no. 258) in private ownership, where at the time of carrying out evidence the site was identified as:

- *Current use – likely to be able to accommodate additional members*
- *Recommended actions - Sustain quality and maximise use to cater for potential future demand*
- *Site recommendation – Protect local club site.*

10.6 In light of the above assessment the applicant was asked to assess demand for bowling green facilities in the local area. The applicant states a number of nearby local bowling clubs were contacted to ascertain whether demand could be met by other facilities. The clubs contacted by the applicant are stated to be:

- Primrose (off Malvern Road) and
- Lockwood & Salford Club (off Victoria Road) bowling clubs

The applicant also states that some of the former bowlers from Newsome bowling-green have, since the closure of the Newsome site, been accommodated at these clubs. However, whilst there is no independent evidence to verify this a further representation received since the last committee states that most of the bowlers have gone to Primrose Hill.

10.7 Separately to the above, the KPPSA provides further evidence which has detailed that both the stated clubs identified have the likely potential to accommodate additional members. The KPPSA has also provided an assessment of supply and demand for bowling greens across the district. The KPPSA details that there are 83 greens in the district, where membership has generally remained static across all clubs over the last 3 years (from 2015), with vandalism highlighted as a particular issue on some sites. The KPPSA advises that existing provision should be maximised with better use of greens, and concludes by stating that it would appear that there are enough greens available for community use to accommodate both current and future demand.

10.8 Issues of vandalism and maintenance have been highlighted as issues affecting bowling greens within the KPPSA, and the proposal would support the maximisation of other provision in the local area.

10.9 Taking all the above into account and applying a balanced consideration, which includes the former club ceasing to operate following the voluntary liquidation by its members, there is no real prospect of the site continuing its use as a bowling green. This is evident on site since the closure of the club. Furthermore, the assessment for the KPPSA indicates there are enough greens available for community use to accommodate both the current and future demand, indeed recommending that the other identified clubs in the area *are “likely to be able to accommodate additional members.”* Furthermore there are no waiting lists at the bowling greens where previous members have been stated to have taken up membership.

10.10 Additionally, having considered the current status of the site, although a valuable green space in the Playing Pitch Strategy, it is unallocated on the UDP proposals maps and would remain as such on the PDLP. The current need has, as set out above, seemingly been met at other nearby clubs where there is sufficient provision in the area, to accommodate the current need.

Taking all this into account it is considered that there is sufficient information for the application to comply with Policy R7A (iii). With regards to the first bullet points of para 74 of the NPPF and of policy PLP 50 the circumstances of this case, where the use has now ceased and the loss has or can be mitigated by other clubs in the area and there being a static demand for bowling facilities across the district, shows that this site is no longer required to meet the continued use as a bowling green.

10.11 With regard to DPLP Policy PLP 47 (a) the proposals would clearly not protect the site for the continued use as an accessible open space and play sports area. In this case it is acknowledged, due to the size of the site (0.26h) it could not practically meet the current identified deficiencies for any other community sport, recreation or amenity use in the Newsome area. Officer's opinion to support the application is a balanced outcome based on the above where the site is in private ownership and the current status of the site which has removed any real prospect of the site's continued use for open space, sport or recreation use in the longer term.

10.12 To summarise, in light of the findings contained in the KPPSA and the information submitted by the applicant, the balanced recommendation is the loss of the bowling green at the former Newsome Working Men's Club is accepted by Officers. The green has been unused since January 2015 following voluntary liquidation by its members and there are a number of other greens in the local area within a short distance of the site which have the capacity to accept new members for all types of bowling. The principle of developing the site for residential development is therefore considered to be acceptable subject to an assessment of all other material planning

10.13 Urban Design issues

UDP Policies BE1 and BE2 are considerations in relation to design, materials and layout. In principle development should respect the scale, height and design of adjoining buildings/land levels and be in keeping with the predominant character of the area.

10.14 Officers had concerns with the originally submitted details of layout and scale. In light of this the proposals have been amended omitting all reference to nos. of dwellings and details, leaving only the principle and access matters for consideration at this stage. Officers are conscious of the variation in levels on site in comparison to surrounding development. Given this any submission of 'reserved matters'- should the application be approved - would take into account existing and proposed levels, scale and separation distances between existing and proposed properties. This would be to assess the full impact on visual amenity of the area as well as to avoid any potential overbearing impact on the amenities of existing residential properties. Subject to such considerations the principle of residential development on this site could comply with Policies BE1 and BE2 of the UDP, Policy PLP 24 of the PDLP and guidance in the NPPF.

10.15 Heritage issues

Given the proximity of the site to listed buildings (nos. 27- 31 Towngate) north west of the site, the application was advertised as affecting the setting of the listed buildings.

- 10.16 Officers are of the opinion the proposals where at this stage only the principle of developing the site is being sought would have a negligible impact and lead to less than substantial harm on the significance of these listed buildings. However careful consideration should be applied to the setting of these listed buildings on any future or reserved matters applications. With regards to the less than substantial harm, this is considered to be outweighed by the public benefit the proposals would provide. These being all three strands of sustainable development as defined in the NPPF but also the provision of additional housing at a time when the Council cannot demonstrate an adequate supply of housing land, in accordance with paragraph 134 of the NPPF and the duty set out in the Listed Buildings and Conservation Areas Act 1990 and Chapter 12 of the NPPF.
- 10.17 Residential amenity and neighbouring businesses:
Policy BE12 of the UDP sets out the normally recommended minimum distances between habitable and non-habitable room windows for new dwellings. New dwellings should be designed to provide privacy and open space for their occupants and physical separation from adjacent property and land. Distances less than those specified will be acceptable if it can be shown that by reason of permanent screening, changes in level or innovative design no detriment would be caused to existing or future occupiers of the dwellings or to any adjacent premises.
- 10.18 In this instance no assessment is made on the standards for space about buildings. Furthermore, achieving the distances as set out in Policy BE12 alone may not be sufficient to retain the amenity of existing and future residents. Details of reserved matters would need take account of (amongst other things) topography, building heights of surrounding development in relation to new dwellings and finished ground levels. This is so as to avoid any potential adverse effect on the amenities of both the existing and future residents. Subject to the above, Officers are satisfied that details of layout, scale and appearance could be designed so as to safeguard residential amenity of future occupants as well as those that are located within close proximity to the application site in accordance with Policies of the publication Draft Local Plan, UDP policies D2 and BE12 and guidance in the NPPF.
- 10.19 With regard to the noise from existing neighbouring businesses (public houses north of the site) Environmental Health Officers have advised these benefit from late licenses with smoking areas near to the proposed application site. Although noise from these premises should be managed there will be some noise that will affect the amenity of the new houses. As such, if the application is approved it is recommended that any future submission includes details of a ventilation scheme to show how habitable rooms to properties can be ventilated without the need to open windows. This is in addition to consideration of the future layout and appearance of dwellings and how these could be sited to avoid being adversely affected by noise and disturbance. It may be necessary to require a sound insulation scheme designed to protect the amenities of future occupants of the site as well as the ongoing future viability of the neighbouring businesses. This would be to accord with UDP policy EP4, PLP 52 and guidance within the NPPF Chapter 11.

10.20 Finally, Environmental Health Officers raise no concerns with the proposed siting of waste bins along the north western boundary. The siting is similar to that previously approved for the apartments. However, concerns are raised from the occupant of no. 31 Towngate who would share the boundary adjacent to bin storage area. Furthermore, it is established landscaping previously along this boundary has been removed and as such with the siting of bins along this boundary could potentially give rise to environmental issues from overflow of litter to the adjacent neighbouring residential garden areas. In light of this, Officers consider details of boundary treatment for the whole of the periphery of the site can form part of one of the reserved matters (landscape) should Members be minded to accept the principle of developing the site. Whilst this would ensure adequate boundary treatment to be provided between the site and adjacent neighbouring residential properties, any future environmental issues arising from overflow of bins would need to be considered through the remit of Environmental Health Legislation/Acts.

10.21 Highway issues

UDP Policy T10 states that “New development will not normally be permitted if it will create or materially add to highway safety or environmental problems or/ in the case of development which will attract or generate a significant number of journeys, it cannot be served adequately by the existing highway network ...”. Policy T19 addresses car parking in relation to the maximum standards set out in Appendix 2 to the UDP. Guidance in the NPPF states under paragraph 32 that plans and decisions should take account of whether, amongst other things, “safe and suitable access to the site can be achieved for all people”.

10.22 The site is situated in a predominantly residential area. The access road is shown to have a proposed width of 5.7m in total with a road width of 4.5m with 0.6m margins to either side. This would serve the application site and the recently approved six apartments to the south west. The revised site plan demonstrates an internal turning area sufficient to accommodate emergency vehicles along with bin storage and a bin collection area to accommodate the approved apartments. Officers consider these proposals, in particular the width of the access road together with the revised car park layout to accommodate the previously approved apartments, would be a more practical layout than the previously approved car park layout to accommodate the apartments. The details submitted demonstrate that the development proposed, together with that already approved, can be accommodated without creating or materially adding to highway safety issues in this sustainable location in close proximity to Newsome local centre. The development accords with UDP Policy T10 and DPLP PLP 21.

10.23 Representations:

Residential & general amenity:

- Loss of natural light to existing dwellings
- Potential overlooking to existing dwellings from opening in new dwellings
- Loss of light to property and external amenity areas to properties on St Johns Road.
- Plot could not accommodate 7 dwellings
- Overshadowing & loss of privacy to occupants of both existing & proposed dwellings

- Inappropriate development harmful to open nature and character of site
- Proposed artificial stone not in keeping with surrounding development
- Too close to ABC nursery
- impact on listed building, conservation areas and trees
- creation of right of public right of way from site to adjacent site to north could result in anti social behaviour and security issues
- additional street lighting may affect existing properties
- drainage issues to existing properties
- would result in toilet block to public house
- refuse collection point at entrance to the site would cause environment, safety & health issues
- Housing oversubscribed in area which will be exacerbated
- proposed access road and footpath would be a potential problem for pedestrians
- siting of bins adjacent to boundary wall of no. 31 Towngate which raises potential environmental concerns including overflow of litter into adjacent gardens of neighbouring properties.

Response: The proposals seek only the principle of developing the site for residential development with details of access only to be considered at this stage. As noted in the assessment above the finer details taking into account the impact on the surrounding development, including neighbouring buildings/dwellings, the amenities currently enjoyed by these and the characteristics of the area would need to be considered on any future applications should Members accept the principle of developing this site.

Highway safety issues

- Proposed access is poor, too narrow and will cause problems
- Access road too narrow for refuse vehicles
- Existing parking issues on St Johns Road and surrounding highway network will be exacerbated
- St Johns not adequate to cater for additional traffic from a further 7 dwellings
- Limited visibility in both directions would cause concerns for vehicles entering and exiting site

Response: See assessment above under sub heading 'Highway Issues'.

Loss of bowling green & related issues:

- Loss of one of the best bowling /crown greens in Yorkshire
- Loss of public amenity community grounds/newsome history and a great valuable community asset
- Nearest bowling green not accessible by pensioners due to steep road
- Contrary to national and local policies to encourage and maintain such areas
- Should not be built on unless an assessment has been undertaken which has clearly shown the open space or the buildings and land to be surplus to requirements without evidence that the land is surplus
- Site is actively in use
- Green brings in trade into area
- Indoor facilities already removed by Council now outdoor bowling under threat
- Used by many not just bowlers

- Loss of green could increase the likelihood of older generation becoming isolated

Response: See assessment above under sub heading 'Principle of development'

- Bowlers have not left Newsome Bowling Green and not been accommodate elsewhere.
- "They use other facilities to play bingo"
- Bowlers will remain at club until closure

Response: Officers note the above comments also acknowledge the club/site has now ceased to operate as a bowling green. Furthermore, the assessment above takes into account the current and future provision and need for such facilities and whether other nearby greens have the capacity to accommodate additional members.

Other issues/concerns:

- need more social activities/venues not housing in this area

Response: Noted. However Officer have made an assessment based on the proposals submitted taking into account all relevant material considerations

- Seeking clarity on exact siting/ location of dwellings
Response: plans revised taking out all reference to layout and nos. of dwellings
- Disabled access has been removed
- Electricity been cut off to site
- Works has commenced on site prior to application being considered/decision being made

Response: Noted. The case Officer advised the applicant during the course of the application that no works which form part of the application submitted should be carried out until a decision is made.

- Limited access to the proposed dwellings for essential utilities/services

Response: These are matters to be considered on future building regulation applications through the consultation with the relevant service providers and outside the remit of planning.

- Bowling green left to become overgrown

Response: Noted

- Site notices not posted on yellow boards
- No consultation with neighbouring site owners/ occupants

Response: plastic site notices were posted on lampposts /telegraph posts in the vicinity of the site and neighbour letters posted to properties that adjoin the application red line by the Council in accordance with standard procedure.

- Replacement site at Bluebell Public House belongs to Taylor Hill Bowling club and land belongs to Council

Response: Noted. This site was put forward during the course of the application to replace the loss of the bowling green at St Johns Avenue and subsequently withdrawn due to a number of constraints.

Comments received in support

- Green would be removed regardless of planning, would prefer to see houses than a derelict anti social site
- Housing is desperately needed

With regards to Cllr Julie Stewarts Turner's comments, these are noted and where applicable addressed in the assessment. With regards to the site being registered as an Asset of Community Value, the site is not listed as such on the Councils records for assets of community value. Turning to the widening of the path to allow vehicle access to the rear of the building, yes it would be an altered access, which as noted above has previously been approved under planning application no. 2017/90375 for the alterations and extensions to convert the former working men's club to 6 self- contained apartments.

Petition with 900 names from J Hawdon

Club shut in January 2014 and re-opened under the name of Newsome community bowling club

None planning matters

Land ownership and covenant issues

A covenant exists which requires the site to be used a bowling green and/or for recreational purposes only

10.24 Other Matters:

In terms of biodiversity paragraph 118 of the NPPF states "when determining applications Local Planning Authorities should aim to conserve and enhance biodiversity by applying a number of principles". These include the conservation and enhancement of biodiversity in and around developments which is reiterated in policy PLP 30 of the DPLP.

10.25 The site is identified within a bat alert area on the Council's mapping system. In addition, due to the (pavilion) buildings within the site and trees on the periphery of the site, the Council's Biodiversity Officer advised an ecological survey/assessment of the site should be undertaken to establish the habitats present on site, the site's ecological value and potential impacts of the development . It was recommended that the survey should include the possibility of any bat roosts occurring within the site's existing buildings or trees and potential impacts on such features.

10.26 Officer's did not request the surveys at the outset of the application as they were not deemed 'reasonable or necessary' whilst the acceptability of the principle of developing the application site was being assessed. It was also acknowledged the removal of these buildings could be carried out without consent. The pavilion buildings have since been demolished during the course of the application.

10.27 In light of the above, and as the only matter for consideration on this outline application is access, future applications would need incorporate mitigation/ enhancement measures in any detailed submissions, should Members be minded to approved the application. This should include the use of native species in a landscape scheme and the enhancement of habitat integral to the dwellings in the form of bat and bird boxes to accord with guidance in the NPPF and DPLP Policy PLP30.

10.28 In respect of air quality, the application has been assessed against the West Yorkshire Low Emission Strategy Planning Guidance. In accordance with the guidance the installation of 1no electric charging point should be sought per residential unit.

11.0 **CONCLUSION**

11.1 In conclusion the proposed loss of the bowling green at Newsome is considered acceptable. The applicant together with the information contained in the Kirklees Playing Pitch Strategy Assessment has demonstrated that the demand for the green can be accommodated at other greens in the locality of this area. Furthermore the due to the size of the site (0.26h) it could not practically meet the current identified deficiencies for any other community sport, recreation or amenity use in the Newsome area.

11.2 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.

11.3 This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development in principle would constitute sustainable development and is therefore recommended for approval.

12.0 **CONDITIONS** (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Strategic Investment)

1. Approval of the details of the appearance, layout, scale and landscaping of the site (hereinafter called 'the reserved matters') shall be obtained from the Local Planning Authority in writing before any development is commenced.

2. Plans and particulars of the reserved matters referred to in Condition 1 above, relating to the appearance, layout, scale and landscaping of the site, shall be submitted in writing to the Local Planning Authority and shall be carried out in full accordance with the approved plans.

3. Application for approval of any reserved matter shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.

4. The development hereby permitted shall be begun either before the expiration of two years from the final approval of reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

5. The access road shall be widened to achieve a road width of 4.5m with 0.6m margins to either side and completed in accordance with the approved details prior to the occupation of any approved dwellings.

6. Biodiversity mitigation/enhancement measures for bats and birds integral to new buildings or trees (if appropriate to species)

7. Reserved matter of 'landscape' to include native species of trees and/or shrubs to replace lost vegetation and enhance habitat networks.

8. landscape management plan to detail how the landscaping will be managed to encourage biodiversity interest.
9. A scheme to detailing the proposed internal adoptable estate roads to include full sections, drainage works, street lighting, signing, surface finishes and the treatment of sight lines, together with an independent safety audit covering all aspects of work.
10. The approved vehicle parking areas to be surfaced in accordance with Guidance on the permeable surfacing of front gardens' published 13th May 2009
11. Details for storage and collection of bins
12. Electric vehicle charging points.

Background Papers:

Application and history files. – see assessment above

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2015%2f91664>

Notice served on Kirklees Council Physical Resources & Procurement 27/11/15

Report of the Head of Strategic Investment

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 23-Nov-2017

Subject: Planning Application 2017/92605 Change of use and alterations to wc to form revised public toilets, A1 (shops/retail), A2 (professional services) , A3 (cafe/restaurant) and A5 (hot food and takeaway) (within a Conservation Area) Public Conveniences, Station Road, Holmfirth, HD9 1AD

APPLICANT

The Clerk, Holme Valley
Parish Council

DATE VALID

01-Aug-2017

TARGET DATE

26-Sep-2017

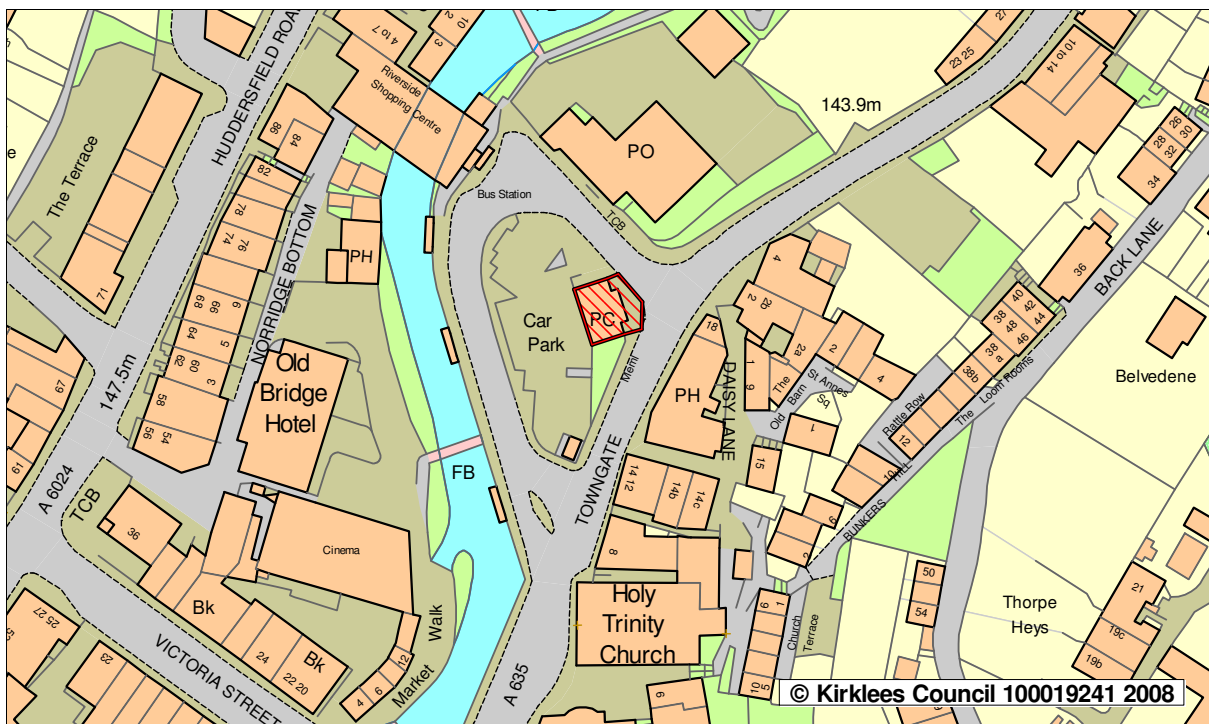
EXTENSION EXPIRY DATE

27-Nov-2017

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

Electoral Wards Affected: Holme Valley South

No

Ward Members consulted – though Cllr Patrick has made comments on the application

RECOMMENDATION:

DELEGATE approval of the application and the issuing of the decision notice to the Head of Strategic Investment in order to complete the list of conditions including those contained within this report.

1.0 INTRODUCTION:

- 1.1 This application is brought before the Sub Committee at the request Holme Valley South ward member Cllr Patrick. Cllr Patrick's reasons being as follows:

Please note I shall be asking for this application to be determined at planning committee and will request a site visit. Reason Highways and parking.

- 1.2 Cllr Patrick has considered the amended plans and confirmed his request for the application to be heard at Sub Committee stating:

Hot food takeaway will generate traffic.

2.0 SITE AND SURROUNDINGS:

- 2.1 The application site comprises of the existing public conveniences building located within Holmfirth Town Centre at the junction of Town Gate and the bus station. The building is single storey, constructed of stone with a pitched roof covered in slate tiles. The building has one main point of access with two doors either side which are currently not used. Roof lights are provided in the rear of the building. Surrounding the site to the west is a small short stay car park. To the north is Holmfirth post office.

3.0 PROPOSAL:

- 3.1 The application seeks the part change of use of the building to provide a flexible set of uses which include A1 (shops/retail), A2 (professional services), A3 (cafe/restaurant) or A5 (hot food and takeaway) use. The proposal would retain male, female and disabled in the right-hand side of the building with 20.83 square metres of the left hand side of the building changing to the proposed uses. External alterations would be limited with an existing opening on the left side of the building providing access to the proposed use(s), the

right side access being blocked up, and the existing central point of access would provide access to the public conveniences. The hours of use for the different proposed uses are not currently known.

4.0 RELEVANT PLANNING HISTORY:

- 4.1 86/01623 - Erection of block of public toilets (Within Conservation Area) - Approved

5.0 HISTORY OF NEGOTIATIONS:

- 5.1 The applicant provided amended plans to reduce the area subject to the change of use to accord with the agreement of the asset transfer from the Council to Holme Valley Parish Council.

6.0 PLANNING POLICY:

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

Kirklees Unitary Development Plan (UDP) Saved Policies 2007:

6.2

- **D2** – Unallocated Land
- **BE1** – Design principles
- **BE2** – Quality of design
- **BE5** – Development within a Conservation Area
- **BE23** – Crime Prevention
- **T10** - Highway safety
- **T19** – Parking Standards
- **EP6** – Development and Noise
- **S1** – Town Centre Uses
- **S14** – Hot Food Takeaways

Supplementary Planning Guidance / Documents:

6.3

- PLP1 Presumption in favour of sustainable development
- PLP3 Location of new development
- PLP13 Town centre uses
- PLP16 food and drink uses and the evening economy
- PLP21 Highway safety and access
- PLP22 Parking
- PLP24 Design
- PLP35 Historic Environment
- PLP48 Community facilities and services
- PLP52 Protection and improvement of environmental quality

National Planning Guidance:

6.4

- 'Achieving Sustainable Development'
- 'Core Planning Principles'
- Section 7 – Requiring good design
- Section 11 – Conserving and enhancing the natural environment
- Section 12 – Conserving and enhancing the historic environment 'Decision taking'

7.0 PUBLIC/LOCAL RESPONSE:

7.1 The application was advertised by site notice, press advert and neighbour notification letters. In response 2 representations were received which are summarised as follows:

- Object to the proposed taxi rank due to potential noise and disturbance and potential anti social behaviour issues which might occur from its operation.
- Object to the blocking up of the door on the right hand side of the building as this prevents the reintroduction of a pay as you go toilet.
- Any materials used to block up doors should be in keeping with the host building.
- Object to any operation after 6pm especially A5 takeaway or taxi office uses as the takeaway use would increase little and noise disturbance to the detriment of local amenity.

7.2 Holme Valley Parish Council – No comment as the Parish Council is the applicant.

8.0 CONSULTATION RESPONSES:

8.1 Statutory:

- KC Highways Development Management – No objections

8.2 Non-statutory:

- Environmental Services – no objections subject to conditions.

9.0 MAIN ISSUES

- Principle of development
- Heritage and Design
- Residential Amenity and Noise and Odour Pollution
- Highway Safety
- Representations

10.0 APPRAISAL

Principle of development

- 10.1 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]”. All these considerations are addressed later in this assessment. Policies S1 (town centre uses) and S14 (hot food takeaways) of the UDP and Policies PLP13 (town centre uses) and 16 (food uses) of the PDLP also need to be considered in relation to the principle of development. The site is located within Holmfirth Town Centre as defined on the proposals maps for the UDP and PDLP.
- 10.2 The host building forms a public convenience which is now operated by the Holme Valley Parish Council after it was transferred from Kirklees Council to the Parish Council. Under the terms of the transfer, part of the use of the building can be changed to alternative uses, but the majority of the building needs to be retained as a public convenience. The Parish Council have applied to change approximately one third of the building to alternative uses whilst also modernising the existing toilet provision to consolidate the toilet facilities onto one side of the building.
- 10.3 The change of use has been applied for by the Parish Council to help subsidise the modernisation and operation of the public toilets. The Parish Council considers that the existing facilities are not an efficient use of the space in the building and the toilet facilities themselves are in need of being modernised. The Parish Council have stated that from monitoring the normal usage patterns of the existing toilets they are confident that under normal conditions the revised facilities would more than meet public needs.
- 10.4 The proposal seeks a flexible planning permission to allow a possible mix of uses to operate from the building which include A1 retail, A2 professional services, A3 café and A5 hot food takeaway in order to maximise potential future occupiers. Such uses are appropriate within a town centre in accordance with the NPPF, Policy S1 and S14 of the UDP and Policy PLP13 of the PDLP, therefore the principle of changing the use of part of the building to these uses is considered to be acceptable. Whilst it is acknowledged that the area to be changed is small in scale at 20 square metres, which may make certain uses limited in terms of its size there is no principle objection to this. The proposal also allows for the retention of the existing public conveniences which provides a valuable community benefit to Holmfirth and visiting tourists.

- 10.5 The principle of changing the use of part of the building to a flexible use is considered to be appropriate for its town centre location and considered to be acceptable to Planning Officers.

Heritage and Design

- 10.6 The application site is located within the Holmfirth Conservation Area, therefore section 72 of the Listed Buildings & Conservation Areas Act (1990) requires that special attention shall be paid in the exercise of planning functions to the desirability of preserving or enhancing the appearance or character of the conservation area. Further guidance on design and heritage is set out in Policies BE1, BE2, BE5 and BE23 of the UDP and Policies PLP 24 and 35 of the PDLP and Policies in Chapters 7 and 12 of the NPPF.
- 10.7 The application includes only minor external alterations to the building which include blocking up one of the external door entrances on the right-hand side of the building with stone to match, and utilising the door on the left hand side to provide access to the new unit. These external alterations are considered to be acceptable and would not be detrimental to the appearance of the host building or the character and appearance of the wider conservation area.
- 10.8 It is noted that an A3 or A5 use would require the installation of an extract ventilation system and this would most likely require the erection of a flue to the rear of the building. No details have been provided for any such system as the future occupier of the building is currently unknown. However in order to protect the character and appearance of the host building and the wider conservation area a condition is attached to the recommendation requiring the submission of details. It is considered appropriate to secure this information by condition as the building may ultimately be occupied by a use which does not require any such system.
- 10.9 In terms of matters of crime prevention the application building is small in scale and it is not considered that the change of use would lead to any detrimental increase in anti-social behaviour given the sites town centre location. The building has been designed with limited openings which would ensure that any potential instances of crime to the building itself would be limited.
- 10.10 In conclusion due to the limited nature of alternations which are required to facilitate the change of use it is considered that the proposal would have an acceptable impact on the conservation and the appearance of the host building.

Residential Amenity and Noise and Odour Pollution

- 10.11 The impact of the proposal on amenity and noise and odour pollution has been assessed by Environmental Services and in relation to Polices D2, EP6 and S14 of the UDP and Policies PLP 16 and 52 of the PDLP and Policies in Chapter 11 of the NPPF.
- 10.12 The site is located adjacent to a car park and Holmfirth bus station, the closest residential property being the living accommodation to Brambles Bar and Café opposite the site approximately 12 metres away to the south east.

There are other residential uses within relative proximity to the site though these are all over 20 metres away.

- 10.13 Environmental Services raise no objection to the proposal; however they have advised that A3 and A5 uses should have their hours of use restricted to 8am to 10pm Monday to Saturday and 8am to 4pm on Sundays and have requested that details of any extract ventilation system is submitted before such uses operate at the site. Such hours are considered reasonable for the proposed use and can be secured by planning condition.
- 10.14 Environmental Services have also requested that the A1/A2 uses have their hours restricted, though they have requested some hours which Planning Officers considered to be overly restrictive. It has therefore been concluded that opening times of 8am to 10pm Monday to Saturday and 9am to 5 pm on Sundays is considered to be appropriate for these uses as they would be lower generators of noise compare to an A3/A5 use.
- 10.15 It is not considered necessary to attach any additional environmental conditions to the operation of the public convenes as these are existing and existing drainage arrangements would be retained.
- 10.16 Subject to the hours of use and conditions set out above the proposal is considered to have an acceptable impact on residential amenity and any disturbance from noise and odour.

Highway Safety

- 10.17 The highway impact of the proposal has been assessed by Highway DM Officer and in relation to Policies T10 and T19 of the UDP and Policies PLP21 and 22 of the PDLP. Highways raise no objection, whilst no onsite parking is provided this is not considered necessary due to its town centre location and it is not considered necessary to require any further information than what is provided in the submission. The application description was amended through the course of the application to remove an initially proposed taxi operation due to concerns with parking arrangements. In summary the application as now proposed is considered to be acceptable from a highway perspective.

Representations

- 10.18 Two representations have been received which raise the following points along with a response to each one in turn.
- Object to the proposed taxi rank due to potential noise and disturbance and potential anti-social behaviour issues which might occur from its operation.
Response: The proposed taxi rank has been removed from the proposal, and as set out above the proposal is not considered to lead to any detrimental anti-social behaviour.
 - Object to the blocking up of the door on the right hand side of the building as this prevents the reintroduction of a pay as you go toilet.
Response: The blocking up the right hand side door allows for the enlargement of the modernisation of the toilet block and planning officers have no objection to this part of the scheme.

- Any materials used to block up doors should be in keeping with the host building.

Response: It will be conditioned that the stone used to block the door up is from a material which matches the host building

- Object to any operation after 6pm especially A5 takeaway or taxi office uses as the takeaway use increase little and noise disturbance to the detriment of local amenity.

Response: As set out above the hours of use will be conditioned allowing a use until 10pm which Environmental Services considered to be acceptable to sufficiently protect local amenity.

11.0 CONCLUSION

11.1 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.

11.2 This application has been assessed against relevant policies in the development plan, the NPPF, the draft local plan and other material considerations. It is considered that the development would constitute sustainable development. The proposal is considered not to have a materially adversely impact on the character of the area, highway safety or residential amenity. It is therefore recommended for approval.

12.0 CONDITIONS (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Strategic Investment)

1. Standard 3-year deadline for commencement of development
2. Development in accordance with approved plans.
3. Materials for door blocking up to match.
4. A3/A5 hours of use.
5. A1/A2 hours of use.
6. Extract ventilation.

Background Papers:

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2017%2f92605>

Certificate of Ownership – Notice served on/ or Certificate A signed:

Report of the Head of Strategic Investment

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 23-Nov-2017

Subject: Planning Application 2017/92230 Outline application for residential development Rodgers Plant Hire, Riverside Works, Woodhead Road, Honley, Holmfirth, HD9 6PW

APPLICANT

Mr S Rodgers, Rodgers
Plant Hire

DATE VALID

30-Jun-2017

TARGET DATE

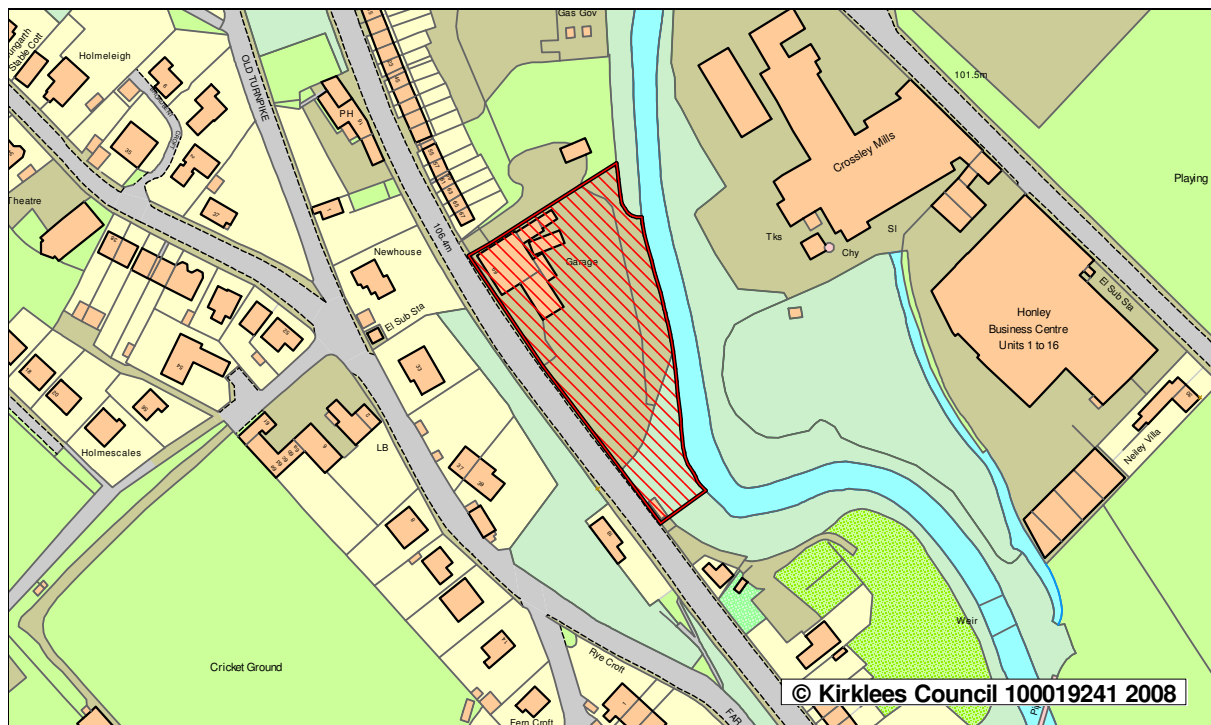
29-Sep-2017

EXTENSION EXPIRY DATE

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

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral Wards Affected: Holme Valley North Yes

Ward Members consulted

RECOMMENDATION

DELEGATE approval of the application and the issuing of the decision notice to the Head of Strategic Investment in order to complete the list of conditions including those contained within this report and to secure a S106 agreement to cover the following matters:

- The payment of a bond to cover the cost of constructing a section of footpath alongside the riverside from the site at a future date. Cost to be confirmed.

In the circumstances where the S106 agreement has not been completed within 3 months of the date of the Committee's resolution then the Head of Strategic Investment shall consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the benefits that would have been secured; if so, the Head of Strategic Investment is authorized to determine the application and impose appropriate reasons for refusal under Delegated Powers.

1.0 INTRODUCTION

- 1.1 This is an outline planning application brought to Huddersfield Planning Sub-Committee given the application is for residential development and the scale of the development exceeds 0.5 ha.

2.0 SITE AND SURROUNDINGS

- 2.1 The site extends to approximately 0.53 ha in area with frontage to Woodhead Road, Honley and is currently used to accommodate a local plant hire business. Existing buildings are sited to the north west of the site and are used for the storage and maintenance of plant and machinery with ancillary offices and trade counter facilities.
- 2.2 Adjacent, to the north of the site is a terrace of residential properties with frontage to Woodhead Road and beyond is Bridge Works Business Park which accommodates a number of business units. To the east, where the site bounds the River Holme, and to the south, with frontage to Woodhead Road, there are a number of trees protected by a tree preservation order.

3.0 PROPOSAL

3.1 The application is submitted in outline, with access as the sole consideration. All other matters; scale, layout, appearance and landscaping, are reserved.

3.2 Access is to be taken from Woodhead Road, located centrally to the site's frontage with Woodhead Road.

3.3 An indicative layout plan has not been provided.

4.0 RELEVANT PLANNING HISTORY

4.1 Application Site

2014/91511: Outline application for residential development – Conditional Outline Permission (Unimplemented, expired 06.08.2017)

4.2 Surrounding Area

The site and the surrounding area have no relevant planning history to the current proposal.

5.0 HISTORY OF NEGOTIATIONS

5.1 Negotiations have taken place between officers and the applicant in regards to conditions 11 and 27 of the previous planning application, ref. 2014/91511. Condition 11 required the enhancement of the site's existing pedestrian footpath along the frontage. Condition 27 required the provision of a path through the land to the rear. In summary the applicant disputed their need. In summary amended processes have been agreed to address the requirements of the conditions. These shall be elaborated upon within the relevant sections of the following assessment.

6.0 PLANNING POLICY

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

6.2 On the UDP Huddersfield Town Centre Insert Map the site is unallocated, adjacent to a Green Corridor.

6.3 The site is allocated as Priority Employment Area on the PDLP Proposals Map, adjacent to a Wildlife Habitat Network.

6.4 Kirklees Unitary Development Plan (UDP) Saved Policies

- **D2** – Unallocated land
- **D6** – Green corridors
- **NE9** – Development proposals affecting trees
- **BE1** – Quality of design
- **BE2** – Design principles
- **BE11** – Building materials
- **BE12** – Space about dwellings
- **EP4** – Noise sensitive locations
- **T10** – New development and access to highways
- **B1** – Business and industry: strategy
- **B4** – Premises and sites with established use, or last used for business and industry
- **T19** – Parking standards
- **H1** – Housing: Strategy
- **H6** – Sites for new housing
- **H10** – Affordable housing
- **H18** – Provision of open space for new housing
- **R13** – Rights of way and public access areas
- **R18** – Canals and rivers

6.5 Kirklees Publication Draft Local Plan: Submitted for examination April 2017

- **PLP1** – Presumption in favour of sustainable development
- **PLP2** – Place shaping
- **PLP3** – Location of new development
- **PLP7** – Effective use of land and buildings
- **PLP8** – Safeguarding employment land and premises
- **PLP21** – Highway safety and access
- **PLP24** – Design
- **PLP28** – Drainage
- **PLP30** – Biodiversity & Geodiversity
- **PLP32** – Landscape
- **PLP47** – Healthy, active and safe lifestyles
- **PLP52** – Protection and improvement of environmental quality
- **PLP53** – Contaminated and unstable land

6.6 National Planning Policy Framework

- **Paragraph 17** – Core planning principles
- **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
- **Paragraph 187** – Problem solving

6.7 Other Documents

- Kirklees Council: Interim Affordable Housing Policy 2016
- Kirklees Council: Public Right of Way – Improvement Plan
- DCLG: Technical housing standards – nationally described space standard
- West Yorkshire Low Emissions Strategy 2016 to 2021

7.0 **PUBLIC/LOCAL RESPONSE**

7.1 The application has been advertised via site notice and through neighbour letters to addresses bordering the site. This is in line with the Councils adopted Statement of Community Involvement. The end date for publicity was the 17th of August 2017.

7.2 At the time of publication no public representations have been received in regards to the proposed development.

7.3 Holme Valley Parish Council: 'Object as incomplete application'.

Ward Member Interest

7.4 Cllr Greaves has reiterated his support of previous condition 27, which required the applicant to provide a pedestrian footpath along the adjacent river. Following discussions between the applicant and officers in which the potential to amend the condition to a bond was agreed, Cllr Greaves was consulted and did not express an objection to this alternative.

8.0 **CONSULTATION RESPONSES**

8.1 **Statutory**

The Environment Agency: No objection, however requested an informative.

8.2 **Non-statutory**

Crime Prevention: General advice provided as part of previous application on site, 2014/91511. As the proposals are the same, and no material change in relevant guidance, the comments are considered up to date and are considered below.

K.C. Ecology: No objection in principle, however requested conditions relating to lighting and appropriate ecological assessments are submitted.

K.C. Education: Advised to apply standard condition if subsequent details of housing numbers exceeds threshold.

K.C. Highways: No objection subject to condition.

K.C. Landscape: No objection in principle; however requires further details to be provided at Reserved Matters stage. Provided general comment on details required. Furthermore confirmed Public Open Space required, either on site or off-site contribution.

K.C. Pollution and Noise: Advised conditions be imposed relating to ground contamination, noise and air quality, in addition to an informative regarding appropriate hours of construction.

K.C. Lead Local Flood Authority: No objection subject to condition.

K.C. Strategic Housing: Welcomes this application and is open to discussion with the applicant regarding affordable housing, in line with the Interim Affordable Housing Policy 2016.

K.C. Trees: No objection in principle, however requested a note informing the applicant that any reserved matters application will need to be supported by an arboricultural impact assessment and method statement, in accordance with BS 5837.

Yorkshire Water: No objection.

9.0 MAIN ISSUES

- Principle of development
- Urban Design issues
- Residential Amenity
- Highway issues
- Drainage issues
- Planning obligations
- Other Matters
- Representations

10.0 APPRAISAL

Principle of development

Sustainable Development

- 10.1 NPPF Paragraph 14 and PLP1 outline a presumption in favour of sustainable development. Paragraph 7 of the NPPF identifies the dimensions of sustainable development as economic, social and environmental (which includes design considerations). It states that these facets are mutually dependent and should not be undertaken in isolation (Para.8).
- 10.2 The dimensions of sustainable development will be considered throughout the proposal. Paragraph 14 concludes that the presumption in favour of sustainable development does not apply where specific policies in the NPPF indicate development should be restricted. This too will be explored.

Land allocation

- 10.3 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]'

All these considerations are addressed later in this assessment.

- 10.4 Consideration must also be given to the emerging local plan. Within the Local Plan the site is allocated as a Priority Employment Zone. PLP8 states that;

Within Priority Employment Areas, proposals for redevelopment resulting in a non-employment end use, or for the conversion or change of use of sites and premises in use or last used for employment, will only be supported where:

- a. it can be demonstrated that the site or premises are no longer capable of employment use; and*
- b. the proposed use is compatible with neighbouring uses and where applicable, would not prejudice the continued use of neighbouring land for employment.*

- 10.5 The proposal would result in a non-employment use. The impact of this shall be considered below.

Change of use from employment to residential

- 10.6 The site is in existing employment use and accommodates a well-established plant hire business employing in the order of twelve people. Policy B1 of the Council's UDP seeks to meet the employment needs of the district by providing land to accommodate the requirements of business and maintaining the stock of established business and industrial premises and sites, except where this would lead to environmental problems or where they are unsuitable for business and industrial use or there is no realistic prospect of re-use or redevelopment for such purposes.
- 10.7 NPPF paragraph 22 is clear that local planning authorities should not safeguard sites previously in employment use if there is no strong economic case for their retention. It is noted that these premises are still operational; however, the location and premises are not considered to be of strategic significance to the district's employment stock. Despite this, there still remains a requirement for the applicant to justify the change of use. This will be an important element in addressing saved UDP policy B4.
- 10.8 Policy B4 sets out considerations against which proposals for change of use of land and premises in existing employment use will be considered:
- The applicant considers that the site and buildings are not best suited for continuing employment use having regard to accessibility to local

and national road networks, the condition and layout of the existing buildings and the cost of demolition, remediation and redevelopment of the site.

- The applicant maintains that there are other employment sites available within the Holme Valley that is of equivalent quality to the application site.
- The existing company has indicated its intention to relocate to more suitable premises, which will facilitate the expansion of the plant hire operation with the potential to increase the number of employment opportunities. An alternative site has been identified, with the sale of the site required to facilitate the move.
- Residential development would be compatible with existing residential properties that adjoin the site. The applicant contends that new residential development would not adversely affect the continued operation of existing employment uses at Bridge Works Business Park and Crossley Mills Business Park.
- The development proposed would not impact adversely upon buildings of architectural or historic interest. Redevelopment of the existing site, in a prominent location with frontage to the main road running through the valley would improve the local amenity of the area.

10.9 The above considerations were assessed by officers and members during the previous application, ref.2014/91511, which was approved. Extant, and recently expired permissions, do carry weight in the decision making process unless material planning considerations indicate otherwise. The above was considered sufficient justification for the loss of employment use on site, therefore not in conflict with policy B1. Circumstances have not changed to invalidate the above, and officers maintain their support.

10.10 However the PDLP has become a material planning consideration with significant weight. Nonetheless, considering PLP8, for the reasons outlined above, the application is considered to address the criteria of PLP8 (2.a, 2.b). Further to this, while the PDLP carries significant weight, the UDP remains the principal development plan, therefore carrying greater weight than the PDLP.

10.11 Considering the above it is concluded that the principle of development is acceptable. However consideration must be given to the local impact, outlined below.

Urban Design issues

10.12 The application is made at outline with all aspects relating to design being reserved. More detailed aspects permitting a full visual amenity impact, including site layout, architectural forms and facing materials, will be addressed at the reserved matters stage. The reserved matters will also provide the required details on required levelling works and other external features, including boundary treatment details.

- 10.13 At this stage there is considered no prohibitive considerations which would prevent the proposed residential development having an acceptable impact on the area's visual amenity and preventing the reserved matters application adhering to Policies BE1, BE2 and BE12 of the UDP, PLP24 of the PDLP and Chapter 7 of the NPPF.

Residential Amenity

- 10.14 Policy D2 of the UDP and NPPF paragraph 17 seek to protect residential amenity. Policy BE12 sets out the normally recommended minimum distances between habitable room windows. As the application is at outline stage with all other matter reserved the impacts the proposed development would have on the amenities of neighbouring dwellings and the future occupiers of the proposed development cannot be fully considered at this stage.
- 10.15 Notwithstanding this concern is held over the site's proximity to Woodhead Road (A6024) and the potential for noise pollution. To protect the amenity of residents in dwellings adjacent to this road it is recommended by Environmental Health that conditions be imposed to specify the minimum sound levels to be achieved in habitable rooms of properties and the inclusion of a ventilation scheme to allow fresh air in without the need to open windows. This is deemed acceptable, in accordance with Policies EP4 and PLP52.
- 10.16 Considering the site and adjacent land, officers do not consider there to be any prohibitive reasons which would prevent an acceptable scheme, subject to the relevant reserved matters, being submitted. The residential development of the site is not anticipated to harm the amenity of neighbouring residents. This is subject to a detailed assessment of the relevant reserved matters. Nonetheless, as this stage, the proposal is considered to comply with Policy D2 of the UDP, PLP24 of the PDLP and Paragraph 17 of the NPPF in relation to residential amenity.

Highway issues

- 10.17 The application is outline with only access applied for as a consideration. Reserved matters covering detailed design will be considered later. The access applied for is covered in detail in the Transport Statement prepared by Sanderson Associates. Within this statement a workable access has been designed and is shown on the plans. The proposed access arrangements are the same as those approved via 2014/91511.
- 10.18 Currently the land and premises are used commercially for plant hire. Existing access to the site is from Woodhead Road (A6024) via an access located within the northern half of the site frontage. It serves as both vehicular and pedestrian access to the site.
- 10.19 Regarding traffic generation, consideration is first given to the existing business's arrangement. The supporting traffic assessment determines that the existing business generates 40 two way vehicle movements a day. K.C. Highways accept their methodology. Based on the TRICS information and information supplied by Rogers Plant Hire it would appear that the impact of the development will not be "severe" and as an exchange from the current

use it is likely that there will be a "balancing of traffic flows" with an improvement in favour of the proposed development with respect to the reduction in daily commercial vehicle movements to and from Woodhead Road with the removal of the current Plant Hire Use.

- 10.20 Regarding visibility, visibility at this junction will be in accordance with the guidance set out within Manual for Streets and will comprise of sight lines of 51.6m to the north and 53.6m to the south at a setback of 2.4m. These distances are in excess of those required for the 30mph Woodhead Road. It is noted that Woodhead Road increases to a 40mph road circa 250m to the south. Nonetheless, observed traffic distances from the 2014 traffic report a mean speed of 33mph. A full PIA assessment in the vicinity of the site access has been undertaken and Highways Development Management is satisfied that there are no existing accidents trends that this proposal would likely exacerbate.
- 10.21 The previous application on site, 2014/91511, included a condition requiring the existing footpath along the site frontage to be increased to a consistent width of 2.0m. This was in the interest of pedestrian safety, as the existing footway's width varies from 0.9m to 1.3m. The applicant disputes the need for this condition, as the footway to the site's south is 1.0m wide and ends approximately 250m further away. Bar five dwellings, the route leads to nothing. To facilitate the widening of the footpath would require the loss of the existing boundary wall, an attractive local feature, and new retaining works to the highway due to the level differences between the site and the road. Following discussions between officers and the agent it has been agreed that the footway to the south of the new entrance does not need to be widened. The footway to the north of the new access leads to Honley and is anticipated to have a greater footfall as residents walk towards the village and associated amenities. The applicant does not object to a suitably worded condition requiring the northern footway being widened to 2.0m.
- 10.22 In order to encourage sustainable travel, the developer; in the supporting transport statement, proposes that first time occupiers of each dwelling be provided with an information pack which sets out details of local bus and rail services and the availability of local services and facilities. In addition where garages are provided, cycle hangers for bike storage will be considered. It is also intended that in marketing the development, details of the ease by which the site can be accessed by sustainable travel and the availability of local facilities in Honley.
- 10.23 Whilst such proposals are welcomed, it is considered that they should be extended to include the provision of Metro's Residential Metro Card (RMC). The aim of the RMC is to encourage public transport use by house occupiers at new residential development sites through the provision of discounted annual Metro Cards and public transport information, thus helping to establish sustainable travel patterns from the very start. The Metro Card allows virtually unlimited travel on buses and trains throughout West Yorkshire, depending on the type of Metro Card purchased. The scheme provides an attractive benefit for new house occupiers, an incentive to purchasers of new homes and is aligned with planning guidance to encourage the use of sustainable transport. It is intended that such arrangements be secured by way of planning condition.

- 10.24 Considering the above officers are satisfied that the development would not prejudice the safe and efficient operation of the highway, subject to the abovementioned conditions. Therefore the development is deemed to comply with Policies T10 and PLP21 and Chapter 4 of the NPPF.

Drainage issues

- 10.25 The site is within Flood Zone 1 and as the site is under 1ha a Flood Risk Assessment is not required. Consultation has taken place with Yorkshire Water and The Environment Agency. Neither group object to the development, although The Environment Agency have requested an advisory note be placed on the decision notice.
- 10.26 Regarding surface water, the application proposes to drain to an existing water course. The Lead Local Flood Authority raised concern with this, with policy indicating that the hierarchy of drainage should be applied. No justification has been provided ruling out sequentially preferable drainage options. Further details are also requested relating to 1:100 flood risk and future maintenance and ownership of drainage systems.
- 10.27 The application is at outline, with only access as a consideration. At this time the concerns expressed by the LLFA are not considered prohibitive to overcome. It is considered appropriate to impose conditions requiring further details relating to drainage be provided. Subject to the relevant conditions the application is considered to comply with Policy BE1 (iv) of the UDP, PLP28 of the PDLP and chapter 10 of the NPPF.

Planning obligations

Provision of a riverside walk

- 10.28 The previous application on site, 2014/91511, included the following condition;

27. Before development commences a scheme for the provision of a pedestrian footpath through the site running parallel to the River Holme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the alignment and construction of the footpath together with arrangements for subsequent maintenance. Unless otherwise agreed in writing by the Local Planning Authority, the footpath shall be provided in accordance with the details approved before the development is first occupied.

Reason: *In the interest of promoting Sustainable Development in respect of connectivity alongside the River Holme, and in accordance with the National Planning Policy Framework.*

- 10.29 This was in the interest of enhancing sustainable development and healthy lifestyles through encouraging walking. Furthermore Policies R13 and R18 of the UDP requires the consideration of creating new links in the public right of way network and enhancing routes adjacent to the waterside environment. Policy PLP47 of the PDLP relates to promoting 'healthy, active and safe lifestyles' and PLP20 places pedestrians at the top of the hierarchy of travel.

- 10.30 Under S60 of the Countryside and Rights of Way Act 2000 the council produced a Rights of Way Improvement Plan (2010-2020). Within the document the Holme Valley Riverside Way, which includes the site, forms a promoted route.
- 10.31 The applicant has expressed concerns with the condition being carried over to the current application, including the practical viability of providing the scheme, due to it being within protected woodland, the topography and flooding concerns, as well as the lack of adjoining footpaths at this time.
- 10.32 For the abovementioned reasons, officers maintain that the footway is required and necessary to make the development acceptable in planning terms. Working proactively with the agent to attempt to overcome the applicant's concerns, officers have discussed the payment of a Bond to be used by the council to implement the footway, should plans be brought forward to implement the riverside walk. This is considered a reasonable approach, taking into account the requirements of Paragraph 187 of the NPPF. The use of a Bond is considered to comply with the three tests for planning contributions outlined within The Community Infrastructure Levy Regulations 2010 and is to be secured via a S106 agreement.
- 10.33 The applicant has agreed to the bond in principle, awaiting further details following the value of the bond being calculated by K.C. Highways.
- 10.34 Subject to the S106 agreement the proposal is deemed to comply with the objectives of Policies R13 and R18 of the UDP, PLP20 and PLP47 of the PDLP and Chapter 8 of the NPPF.

Affordable Housing

- 10.35 In accordance with Policies H10 & H12 of the UDP, PLP11 of the PDLP and the Interim Affordable Housing Policy 2016 the provision of affordable housing is a material planning consideration. Through the Interim Affordable Housing Policy 2016 a contribution of 20% of built units is sought.
- 10.36 As the application is made at outline, in order to secure this requirement, it is considered that a standard condition can be imposed.

Public Open Space

- 10.37 Policy H18 of the UDP requires the provision of POS on sites put forward for housing development which are over 0.4 hectares. The site area is approx. 0.53 hectares and therefore the requirements of Policy H18 apply.
- 10.38 In order to secure this provision, a standard condition can be imposed. The layout of this POS, if an on-site contribution is proposed, will need to be considered at Reserved Matters stage. If an off-site contribution is proposed it would be addressed through discharge of condition.

Education

- 10.39 In line with the requirements of 'Providing for Education Needs Generated by New Housing' (KMC Policy Guidance), the proposed development may attract a contribution towards additional School Places it generates.

- 10.40 Given that the number of dwellings proposed is indeterminate at this stage, it is considered that the standard education condition should be imposed and the matter examined at Reserved Matters stage, when the number of dwellings proposed is put forward.

Other Matters

Ground contamination

- 10.41 Given the history use of the site concern is held over ground based contamination. If minded to approve it is considered necessary to condition the investigation and remediation, along with other appropriate measures, to ensure the site is safe for habitation. This is to comply with the guidance of Policy G6 of the UDP and PLP53 of the PDLP.

Impact on local ecology

- 10.42 The adjacent woodland forms part of a Green Corridor within the UDP Proposal's Map and a Habitat Network of the PDLP. The application is supported by an ecological report; however it was produced in 2014 and would typically be considered insufficient/out of date.
- 10.43 Notwithstanding this, the application relates to a brownfield site with no vegetation. As such, and as detailed in the ecological report, the site consist of low value habitats. This is considered unlikely to have changed since 2014.
- 10.44 Regarding the adjacent Green Corridor and Habitat Network, these are outside of the applications redline. The principle of developing the site is not considered to come into conflict with local ecology. The development's impact on the adjacent Green Corridor and Habitat Network will be verified at Reserved Matters stage where further details, particularly layout, are known.
- 10.45 K.C. Ecology do not object to the development, subject to conditions requiring the submission of a lighting strategy, to ensure no stray lighting spills into the valued habitat of the adjacent woodland, and an ecological design strategy, exploring the opportunity for ecological enhancement of the site. This is to accord with Policy PLP30 of the PDLP and Chapter 11 of the NPPF. Officers consider this to be appropriate and accept these conditions.

Impact on adjacent protected trees

- 10.46 The adjacent woodland benefits from an area TPO order but the woodland is outside of the applications redline. At this stage, with all matters reserved, officers do not consider the principle of development harmful to the adjacent trees. The relevant reserved matters applications, layout and landscaping, should be supported by an arboricultural impact and method statement to allow officers to assess the development's potential impact upon the protected trees. An informative to this affect is to be placed on the application, if minded to approve. Subject to this K.C. Trees and planning officers do not raise concerns.

Impact on local air quality

- 10.47 In accordance with government guidance on air quality mitigation, outlined within the NPPG and Chapter 10 of the NPPF, it is considered reasonable and necessary to seek air quality enhancement as part of the application. If minded to approve a condition is to be imposed requiring details of either active or passive mitigation, in the form of electric vehicle charging points.
- 10.48 The purpose of this is to promote modes of transport with low impact on air quality, should the application be recommended for approval. Subject to this condition the development is deemed to comply with the abovementioned policies and guidance. This also conforms to the guidance of policies PLP21, PLP24 and PLP51 of the PDLP.

Representations

- 10.49 No public representations were received in regards to the proposal.
- 10.40 Holme Valley Parish Council: 'Object as incomplete application'.

Response: This is noted. Officers do not consider the submission of an outline application unacceptable in this situation.

11.0 CONCLUSION

- 11.1 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.
- 11.2 The site is unallocated within the UDP and is also considered to be previously developed (brownfield) land. The NPPF encourages the effective use of land by reusing land that has been previously developed. Giving weight to the previous permission on site and the assessed justification officers are satisfied that the proposal would not cause harm to the local economy through the loss of an employment site.
- 11.3 Access is a consideration, and the details provided have been assessed as acceptable. Regarding the reserved matters, officers do not consider there to be any prohibitive reasons which would prevent acceptable details coming forward at reserved matters application stage.
- 11.4 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.

12.0 CONDITIONS (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Strategic Investment)

1. Standard OL cond (submission of reserved matters)
2. Standard OL cond (implementation of reserved matters)
3. Standard OL cond (reserved matters submission time limit)
4. Standard OL cond (reserved matters implementation time limit)
5. Ecology (lighting strategy)
6. Ecology (design strategy)
7. Contaminated land
8. Affordable Housing (speculative)
9. Public Open Space (speculative)
10. Education (speculative)
11. Noise mitigation report
12. Ventilation Report
13. Air Quality (Charging point)
14. Drainage (scheme details)?
15. Drainage (separate foul/surface)
16. Drainage (discharge rates)
17. Drainage (storm event assessment)
18. Drainage (ongoing maintenance)
18. Highways (site access details)
19. Highways (visibility splays)
20. Highways (provision of frontage footpath)
21. Highways (metro cards + details)

Note: EA informative

Note: Tree advice

Background Papers

Application and history files can be accessed at:

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2017%2f92230>

Certificate of Ownership: Certificate A signed

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Report of the Head of Strategic Investment

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 23-Nov-2017

Subject: Planning Application 2017/92825 Change of use of part of bakery to gymnasium 1, Ruth Street, Newsome, Newsome, Huddersfield, HD4 6JF

APPLICANT

Jade Robshaw, JRSC
GYM

DATE VALID

23-Aug-2017

TARGET DATE

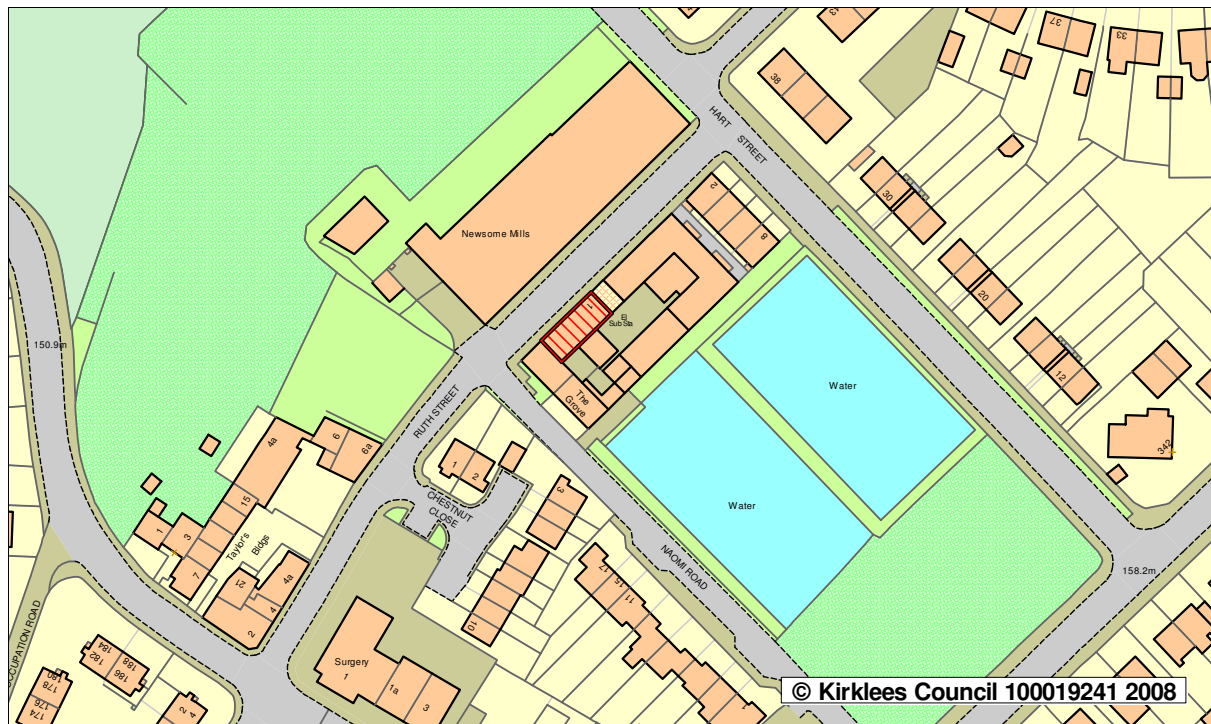
18-Oct-2017

EXTENSION EXPIRY DATE

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

Electoral Wards Affected: Newsome

No

Ward Members consulted

RECOMMENDATION

DELEGATE approval of the application and the issuing of the decision notice to the Head of Strategic Investment in order to complete the list of conditions including those contained within this report.

1.0 INTRODUCTION

- 1.1 The application is brought to Huddersfield Planning Sub Committee due to receiving a significant volume of local opinion. In all 155 representations have been received.
- 1.2 Further to the above Councillor Cooper has requested that, if officers are minded to approve, the application be brought to the Sub Committee. This is due to concerns over the impact on the adjoining residents. Councillor Cooper requested that a site visit take place.

2.0 SITE AND SURROUNDINGS

- 2.1 1 Ruth Street previously hosted a bakery. The bakery ceased trading some years ago and was left vacant. Recently the site has been split into several separate planning units.
- 2.2 This application relates to 1b, which is seeking permission for change of use to Gym. This application is retrospective, with the gym being in operation since
- 2.3 The site is on the edge of Newsome Local Centre. To the north of the site is a detached terrace row. To the south of 1 Ruth Street is an attached residential unit, The Old Coach House. To the west is the remains of Newsome Mills, a grade 2 listed building, and to the east are two mill ponds, the site of which has recently obtained outline planning permission for residential development.

3.0 PROPOSAL

- 3.1 The application seeks retrospective permission for the change of use from B1 (light industrial) to D2 (gym). The unit has an area of 90sqm.

- 3.2 The site has no dedicated parking. The applicant has given a maximum occupancy of twelve customers and one staff; although typically it is much lower with the business model principally offering personal training sessions.
- 3.3 Following negotiations the following hours of use are proposed;
- Monday to Friday: 0800 – 2000
Saturday: 0900 – 1400
Sunday: 1000 – 1400
- 3.4 No external alterations are proposed as part of this application.

4.0 RELEVANT PLANNING HISTORY

4.1 Application site

COMP/17/0104: Alleged unauthorised change of use to gymnasium and alterations to building – Ongoing

4.2 Surrounding area

2017/92607: Change of use from former bakery to adult day-care centre (D1) – Full Permission Unconditional (implemented)

2017/92716: Erection of outbuilding and alterations to cart shed – Ongoing

5.0 HISTORY OF NEGOTIATIONS

- 5.1 The application is made retrospectively, with the gym having been in use since March 2017. Prior to the application discussions had taken place between the applicant, K.C. Planning Enforcement and K.C. Pollution and Noise Control (KCPNC).
- 5.2 K.C. Planning Enforcement invited an application, and KCPNC provided advice on noise mitigation measures for the gym. Separate to the planning process, KCPNC is required to investigate potential statutory noise nuisances. It is evident that the applicant has adhered to many of KCPNC's recommendations. KCPNC offered to place monitoring devices within The Old Coach House to assess the impact; however this offer was not taken up. Also the resident of The Old Coach House's was placed on the out of hours call out service, to allow officers to witness any issues affecting them from the gym operation however this has not been used in relation to the gym. As KCPNC have been unable to substantiate the complaint they have at this time concluded that the gym use is unlikely to amount to a statutory nuisance providing it is well managed.
- 5.3 Further to the above the gym initially inhabited two units. One of the units, 1c, shares a party wall with The Old Coach House's kitchen. The other unit, 1b, shares a party wall with The Old Coach House's rear yard. However following advice from KCPNC the applicant has vacated unit 1c and the application solely relates to unit 1b.

6.0 PLANNING POLICY

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

6.2 On the UDP Proposals Map the site is Unallocated.

6.3 The site is Unallocated on the PDLP Proposals Map.

6.4 Kirklees Unitary Development Plan (UDP) Saved Policies 2007

- **D2** – Unallocated land
- **BE1** – Design principles
- **EP4** – Noise sensitive locations
- **T10** – Highways accessibility considerations in new development
- **B1** – Business and industry strategy
- **B4** – Premises and sites with established use, or last used for business and industry

6.5 Kirklees Publication Draft Local Plan: Submitted for examination April 2017

- **PLP1** – Presumption in favour of sustainable development
- **PLP2** – Place shaping
- **PLP3** – Location of new development
- **PLP21** – Highway safety and access
- **PLP24** – Design
- **PLP35** – Historic environment
- **PLP50** – Sport and physical activity
- **PLP51** – Protection and improvement of local air quality
- **PLP52** – Protection and improvement of environmental quality

6.6 National Planning Guidance

- **Paragraph 17** – Core planning principles
- **Chapter 1** – Building a strong, competitive economy
- **Chapter 2** – Ensuring the vitality of town centres
- **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

7.0 PUBLIC/LOCAL RESPONSE

7.1 The application has been advertised via site notice and through neighbour letters to addresses bordering the site. This is in line with the Councils adopted Statement of Community Involvement. The end date for publicity was the 8th of October, 2017.

7.2 155 representations have been received in response to the application. 132 are in support of the proposal and 23 are in objection. The following is a summary of the comments made.

7.3 Support

- The proposal will benefit the local area/community through;
 - Bringing the building back into use.
 - Improved health for locals, in a time of national obesity crisis, including children with the gym offering children's classes
 - Gyms provide mental benefits for local residents
 - Amenity benefit for residents
 - Makes Newsome village more attractive and interesting for residents and visitors.
 - The area has become safer and cleaner, bringing 'life' to Ruth Street, preventing the vandalism seen elsewhere nearby, particularly given the current state of Newsome Mills.
- The nature of the gym allows for greater social inclusion, as larger gyms are intimidating and scare off some self-conscious users.
- It is a small gym which is convenient for local residents, filling a need. It offers a personal touch you don't get at 'corporate gyms'.
- The gym has no detrimental visual impact and the building has been well converted. The development preserves Huddersfield's historic image as opposed to 'ugly' new developments.
- The development supports the local economy and small businesses, also creates a job in the area.
- Traffic is reasonable and the area can accommodate it, with parking on Ruth Street and on the nearby residential streets being possible.
- Claims that the noise generated is minimal and that the submitted noise report should address the concerns.
- Increasing the gym's size would allow it to provide even more benefit.
- Numerous personal recommendations of the application.

7.4 Object

- The building is inappropriate for a gym because it is adjoined to a domestic property. This is due to loud noises and vibrations caused through the gym's use e.g. shouting, grunting, music, impact from equipment (likened to an explosion). Due to the nature of the buildings (age and stone materials) and the courtyard these concerns are exacerbated.
- The application is retrospective and building regulations have not been applied for.

- In the past the gym has been open 0600 – 2130, causing early morning and late night disruption.
- The window causes overlooking of The Old Coach House. The obscure film on the window often falls off.
- A vent has been installed which comes out into The Old Coach House's yard.
- A toilet has been installed and has been linked to a private sewer and may drain into the nearby pond.
- The development causes additional parking within the area, impacting upon the efficient use of the Highway in the area.
- The area is residential and should remain so.
- There are bats within the area.
- The site was previously used for storage, which is a more suitable use for a residential area.
- Unit 1c has been omitted from the proposal and reference is made to an outbuilding which has not been built, with objections questioning why.
- A wall, with window, has been built to form unit 1b. Previously it was a wooden panel. The wall is not including within this application.
- The noise mitigation plan does not go into enough detail, is contrary to the objector's experience and does not address concerns of the objector.

8.0 WARD MEMBER INTEREST

- 8.1 Cllr Cooper contacted the case officer requesting that, should the application be recommended for approval, he would like it taken to Planning Committee with a site visit. No specific reason was given.

9.0 CONSULTATION RESPONSES

9.1 Statutory

No statutory consultees were required.

9.2 Non-statutory

K.C. Environmental Health: No objection subject to conditions.

K.C. Highways: No objection.

10.0 MAIN ISSUES

- Principle of development
- Urban Design issues, including impact on neighbouring heritage assets
- Residential Amenity
- Highway issues
- Other Matters
- Representations

11.0 APPRAISAL

Principle of development

Sustainable Development

- 11.1 NPPF Paragraph 14 and PLP1 outline a presumption in favour of sustainable development. Paragraph 7 of the NPPF identifies the dimensions of sustainable development as economic, social and environmental (which includes design considerations). It states that these facets are mutually dependent and should not be undertaken in isolation (Para.8).
- 11.2 The dimensions of sustainable development will be considered throughout the proposal.
- 11.3 Paragraph 14 concludes that the presumption in favour of sustainable development does not apply where specific policies in the NPPF indicate development should be restricted. This too will be explored.

Land allocation

- 11.4 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]'

All these considerations are addressed later in this assessment.

- 11.5 Consideration must also be given to the emerging local plan. The site is without notation on the PDLP Policies Map. PLP2 states that;

All development proposals should seek to build on the strengths, opportunities and help address challenges identified in the local plan, in order to protect and enhance the qualities which contribute to the character of these places, as set out in the four sub-area statement boxes below...

The site is within the Huddersfield sub-area. The listed qualities will be considered where relevant later in this assessment.

Change of use from B1 (light industrial) to D2 (Gym)

- 11.6 Chapter 1 of the NPPF and Policy B1 of the UDP establish a general principle in favour of economic development and supporting businesses although B4 requires the consideration of the loss of an industrial unit. Given the small size of the site, therefore limiting its modern practicality for industry, that it has been vacant for some time and that it will continue in an employment use, officer's do not considered the proposal harmful to local industry. Furthermore Chapter 8 of the NPPF and Policy PLP50 of the PDLP establish a presumption in favour of development which promotes healthy

communities and which encourages physical activity, so as to promote healthier lifestyles, where appropriate.

- 11.7 As a main town centre use the appropriate location for gyms is within the identified main town centres so as to accord with Chapter 2 of the NPPF and PLP13 of the PDLP. The site is 100.0m from Newsome Local Centre and is therefore considered an edge of centre location.
- 11.8 The applicant has claimed Newsome is the sole catchment area as the gym is to offer bespoke personal training to local clients. Giving the level of public representation in support of the proposal officers does not dispute this. However the buildings within Newsome Centre do not provide the required space or layout to facilitate a gym. In this situation it is considered reasonable to consider an out of centre location. Paragraph 24 states;

When considering edge 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.

- 11.9 The site is 80.0m away from the local centre, a brief walk along Ruth Street. This is considered to be a suitably accessible location for a gym. In terms of scale, the gym is small in size, being 90sqm. Considering the lack of suitable buildings in the centre, the accessibility of the site and the overall small scale of the proposal, it is concluded that the development would not material harm the viability of the local centre, therefore in accordance with Chapter 2 of the NPPF and PLP13 of the PDLP.

Urban Design issues, including impact on neighbouring heritage assets

- 11.10 No physical alterations are proposed to the building exterior. Therefore there will be no impact on visual amenity. Newsome Mill is Grade 2 Listed. Considering S66 of Planning (Listed Buildings & Conservation Areas) Act 1990, as the proposal is for a separate building and there are no external alterations, the proposal is not to impact upon the heritage asset.
- 11.11 The proposal is deemed to comply with Policies D2, BE1, BE2, PLP24 and Chapters 7 and 12 of the NPPF.

Residential Amenity

- 11.12 No physical alterations are proposed to the building through this application, preventing any harm to neighbouring dwelling through overbearing or overshadowing.
- 11.13 The gym shares a wall with the rear yard of the residential property The Old Coach House. The gym has been operating since March 2017 and has been the subject of an investigation from K.C. Pollution and Noise Control (KCPNC) due to complaints from residents of The Old Coach House. Complaints include the level of noise but also harm caused through vibrations (through impact of equipment/bodies). As noted within paragraph 5.3 the gym previously operated from two units, 1b and 1c. 1c shares a party wall with the dwellinghouse of The Old Coach House. The Gym no longer operates from 1c and this does not form part of the application.

- 11.14 Small gyms in residential areas are not uncommon, however the specific relationship between the proposed gym and The Old Coach House is acknowledged to be atypical. In assessing the impact on The Old Coach House it must be acknowledged that most planning approvals are likely to interfere to some extent with an adjoining occupier's enjoyment of their property. However the test is whether this is proportionate balancing the rights of the developer to develop and the rights of those affected by the development.
- 11.15 To summarise K.C. Pollution and Noise Control's investigation, they have been unable to substantiate the claims over the claimed level of noise/vibration and nuisance by the objector. Since discussions have taken place between KCPNC officers and the applicant a draft noise mitigation plan has been produced. This includes various methods of limiting noise generation and restricted hours of use. Officers accept the principle of the report, however further advice has been given by KCPNC officers which has been informally agreed. To ensure the additional agreed measures are implemented, if minded to approve, a condition can be imposed requiring an updated noise mitigation plan to be submitted, and then adhered to, within a given time period. Additional conditions would include hours of use, maximum number of clients and limiting the audible level of music.
- 11.16 Consideration must be given to the site's previous B1 use. The B1 use class includes offices, which would be unlikely given the site's format, and light industry which included the previous bakery. While vacant since the bakery ended trading, planning permission would not have been required for the site to be brought back into light industrial use. Given the historic nature of the site, there were no hours of use imposed through planning.
- 11.17 Concern has been expressed over potential overlooking from the gym into The Old Coach House's yard and windows. Currently the gym has applied an obscuring film over the windows. Officers consider this appropriate, however propose a condition that the film be retained and maintained to ensure its continued effectiveness.
- 11.18 Subject to the appropriate management of the site, which KCPNC officers are satisfied has been achieved, but can be ensured via condition; officers do not consider that the development would cause material harm to the amenity of neighbouring residents. This is giving weight to the site's existing use, with the proposed use being considered comparable, or less harmful, in terms of potential noise generation. It is therefore concluded that subject to condition the proposal would comply with Policies D2 and EP4 of the UDP, PLP24 and PLP52 of the PDLP and Paragraph 17 of the NPPF.

Highway issues

- 11.19 The site has no dedicated parking. Therefore staff and visitors are required to park on street. The maximum occupancy of the site has been given as 12 customers + 1 member of staff. This is uncommon however, with the site typically being used for smaller, or one on one, classes. Nonetheless, considering the maximum customer numbers against the space standards of T19, the site would require 7 parking spaces.

- 11.20 The site is 100.0m from Newsome local centre which has good public transport links to the area. Furthermore Ruth Street is considered capable of accommodating additional off-street parking along the frontage of the old Bakery. It is also noted that the majority of customers are stated to be local residents.
- 11.21 Discussions have been held with K.C. Highways in regards to the above considerations. It has been concluded that the development would not result in a detrimental impact upon highway safety and efficiency, with the proposal deemed to comply with Policies T19 and PLP21.

Other Matters

- 11.22 No other material planning considerations are considered relevant to the current proposal.

Representations

- 11.23 155 representations have been received in response to the application. 132 are in support of the proposal and 23 are in objection. The following are officer responses to the comments made not considered previously within this report.

Support

- The proposal will benefit the local area/community through;
 - Bringing the building back into use.
 - Improved health for locals, in a time of national obesity crisis, including children with the gym offering children's classes
 - Gyms provide mental benefits for local residents
 - Amenity benefit for residents
 - Makes Newsome village more attractive and interesting for residents and visitors.
 - The area has become safer and cleaner, bringing 'life' to Ruth Street, preventing the vandalism seen elsewhere nearby, particularly given the current state of Newsome Mills.
- The development supports the local economy and small businesses, also creates a job in the area.
- The nature of the gym allows for greater social inclusion, as larger gyms are intimidating and scare off some self-conscious users.
- It is a small gym which is convenient for local residents, filling a need. It offers a personal touch you don't get at 'corporate gyms'.

Response: The benefits of the proposal are noted, and have been given due weight where appropriate.

- Numerous personal recommendations of the application.

Response: This is noted, however does not form a material planning consideration.

Object

- The application is retrospective and building regulations have not been applied for.

Response: This is noted, however does not form a material planning consideration.

- A vent has been installed which comes out into The Old Coach House's yard.
- A toilet has been installed and has been linked to a private sewer and may drain into the nearby pond.

Response: The vent is small in scale and does not materially impact on the appearance of the building. Therefore it is not deemed to amount to development and falls outside the remit of the planning authority. Connections to sewerage pipes form a consideration of building control, not the planning system.

- There are bats within the area.

Response: Given that the application seeks a change of use it is not considered harmful to local bat populations.

- The site was previously used for storage, which is a more suitable use for a residential area.

Response: While the site may have previously included ancillary storage, the principal use is deemed to have been B1.

- Unit 1c has been omitted from the proposal and reference is made to an outbuilding which has not been built, with objections questioning why.
- A wall, with window, has been built to form unit 1b. Previously it was a wooden panel. The wall is not including within this application.

Response: Unit 1c does not form part of this permission and is no longer used by the gym. Should the applicant seek to use 1c a separate planning permission would be required. Should the 1c be used without the appropriate permission it would be subject to investigation from K.C. Planning Enforcement.

12.0 CONCLUSION

12.1 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.

12.2 Considering the merits and particulars of the application the development is not considered detrimental to the viability of local town centres. Conversely the development would provide an economic benefit for the area and bring a building back into use. In terms of social benefit, the development would provide fitness benefits for residents at a local level.

12.3 Notwithstanding this the concerns over the impact on the adjacent resident are noted. However, as assessed, subject to appropriate management of the site – securable via condition – officers conclude the development would not cause undue harm to the amenity of neighbouring occupiers. This is also taking into account the existing use class of the site.

12.4 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.

13.0 CONDITIONS (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Strategic Investment)

1. Hours of use
2. Noise mitigation plan
3. Obscure Glazing
4. Limit number of visitors

Background Papers

Application and history files can be accessed at:

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2017%2f92825>

Certificate of Ownership: Certificate B signed

Notice served upon Spike Estates Ltd.

Report of the Head of Strategic Investment

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 23-Nov-2017

Subject: Planning Application 2017/93282 Outline application for erection of one dwelling 80, Cliff Road, Holmfirth, HD9 1UZ

APPLICANT

E & A Booth

DATE VALID

21-Sep-2017

TARGET DATE

16-Nov-2017

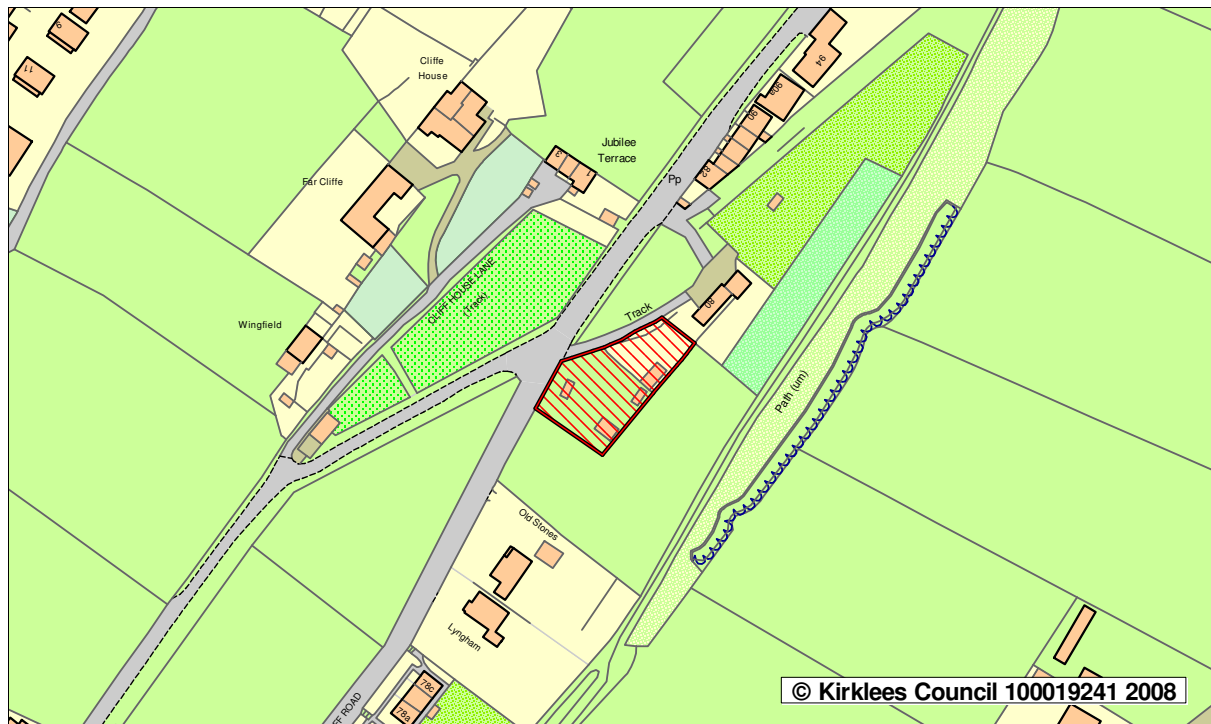
EXTENSION EXPIRY DATE

29-Nov-2017

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

Electoral Wards Affected: Holme Valley South

No

Ward Members consulted

RECOMMENDATION:

Refuse for the following reason:

1. The application site is located within the designated Green Belt, whereby, as set out in the National Planning Policy Framework, most development, subject to certain exceptions, is regarded as inappropriate. Policy D13 of the Kirklees Unitary Development Plan and Paragraph 89 of the National Planning Policy Framework sets out when 'infill' development in the Green Belt may be acceptable. However, the site is not considered to be within an existing settlement as required by Policy D13 or within a village as required by the National Planning Policy Framework. The proposed dwelling would therefore constitute inappropriate development in the Green Belt. Furthermore the dwelling would harm the openness of the Green Belt resulting in further consolidation of sporadic ribbon development. There are no very special circumstances to justify the development that would clearly outweigh the harm caused to the Green Belt by reason of its inappropriateness and any other harm. The proposal is contrary to paragraph 89 of the National Planning Policy Framework and Policy D13 of the Kirklees Unitary Development Plan.

1.0 INTRODUCTION

1.1 The application is brought to Sub-Committee as it has been submitted by a family member of a member of staff for the Investment and Regeneration Service. This is in accordance with the Council's Scheme of Delegation.

2.0 SITE AND SURROUNDINGS

2.1 The application site forms a piece of land located to the immediate south of no.80 Cliff Road, to which the site is associated. No.80 is accessed via two separate driveways from Cliff Road. Land levels for the area rise upwards steeply from Cliff Road.

2.2 The site itself hosts various small agricultural buildings, principally of timber and steel construction. The site consists of one large parcel of land a small penned area. Both are mainly grassed.

2.3 The site is allocated Green Belt. Open fields continue to the east. Across Cliff Road, to the west, is an area of Provisional Open Land.

3.0 PROPOSAL

- 3.1 The application seeks outline consent with all matters reserved for the erection of one dwelling.
- 3.2 The application is supported by a location plan and Planning Statement. The statement confirms that several agricultural buildings on site would be removed to facilitate the development.
- 3.3 Indicative plans have not been provided.

4.0 RELEVANT PLANNING HISTORY

4.1 Application Site

The application site has no relevant planning history.

4.2 Site adjacent

2014/92102: Outline application for erection of detached dwelling – Refused (Appeal Dismissed)

5.0 HISTORY OF NEGOTIATIONS

- 5.1 No negotiations have taken place between officers and the applicant as officer concerns relate to the principle of the development.

6.0 PLANNING POLICY

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.
- 6.2 On the UDP Proposals Map the site is allocated as Green Belt.
- 6.3 The site is allocated as Green Belt on the PDLP Proposals Map.

6.4 Kirklees Unitary Development Plan (UDP) Saved Policies 2007

- **D13** – Infill development within the Green Belt
- **BE1** – Design principles
- **BE2** – Quality of design
- **T10** – Highways accessibility considerations in new development
- **H1** – Housing: Strategy

6.5 Supplementary Planning Guidance / Documents

- **PLP1** – Presumption in favour of sustainable development
- **PLP2** – Place shaping
- **PLP3** – Location of new development
- **PLP21** – Highway safety and access
- **PLP24** – Design

6.6 National Planning Guidance

- **Paragraph 17** – Core planning principles
- **Chapter 1** – Building a strong, competitive economy
- **Chapter 6** – Delivering a wide choice of high quality homes
- **Chapter 7** – Requiring good design
- **Chapter 9** – Protecting Green Belt land
- **Chapter 11** – Preserving and enhancing the natural environment

7.0 **PUBLIC/LOCAL RESPONSE**

7.1 The application has been advertised via site notice and through neighbour letters to addresses bordering the site. This is in line with the Councils adopted Statement of Community Involvement. The end date for publicity was the 9th of November, 2017.

7.2 No public representations were received.

7.3 Holme Valley Parish Council: 'Concerns that proposed development in the Green Belt'

8.0 **CONSULTATION RESPONSES**

8.1 No consultations were required.

9.0 **MAIN ISSUES**

- Principle of development
- Residential Amenity
- Highway issues
- Other Matters
- Representations

10.0 APPRAISAL

Principle of development

Sustainable Development

- 10.1 NPPF Paragraph 14 and PLP1 outline a presumption in favour of sustainable development. Paragraph 7 of the NPPF identifies the dimensions of sustainable development as economic, social and environmental (which includes design considerations). It states that these facets are mutually dependent and should not be undertaken in isolation (Para.8). The dimensions of sustainable development will be considered throughout the proposal.
- 10.2 Further to the above the Council are unable to demonstrate a 5 year supply of housing land. Therefore relevant policies for the supply of housing should not be considered up to date. Notwithstanding this the site is not subject to policies which restrict the supply of housing. In addition National Planning Practice Guidance states that 'unmet housing demand...is unlikely to outweigh the harm to the Green Belt and other harm to constitute 'very special circumstances' justifying inappropriate development in the Green Belt.
- 10.3 In addition Paragraph 14 concludes that the presumption in favour of sustainable development does not apply where specific policies in the NPPF indicate development should be restricted; this includes 'land designated as Green Belt' (footnote 9).

Land allocation (Green Belt)

- 10.4 The NPPF identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. All proposals for development in the Green Belt should be treated as inappropriate unless they fall within one of the categories set out in paragraph 89 or 90 of the NPPF.
- 10.5 Paragraph 89 permits limited infilling in villages. This is in general conformity with D13 of the UDP which states that within existing settlements in the Green Belt infill development will normally be permitted subject to certain criteria. These include the site being small in scale and within a built up frontage or being small and largely surrounded by development. The PDLP does not have a Greenfield site infilling policy. The Framework does not provide a definition of what constitutes a "village", and the UDP does not provide a definition of what constitutes a "settlement". Accordingly, this is a matter of planning judgement.

Whether the proposal is inappropriate development in the Green Belt

- 10.6 Although there is no definition of village/settlement where a settlement is inset within the Green Belt on the UDP and surrounded by it, the Green Belt boundary is usually treated as being co-existent with the settlement/village boundary. This means that if a site is on the edge of the settlement/village but is designated as Green Belt on the UDP proposals map, it is not within a settlement/village and cannot qualify as "limited infill within" a village.

10.7 This approach has been called into question by a recent court case, Julian Wood -V- The Secretary of State for Communities and Local Government and Gravesham Borough Council. It was ruled that an Inspector had misdirected himself by concluding that an appeal site lay outside the village based on the village boundary on the local plan proposals map, rather than on his own assessment of the village boundary on the ground.

10.8 There is also a recent appeal decision, against refusal of permission for the erection of a single detached dwelling at Coppull Moor Lane Nurseries, Chorley (ref 3154595). The Inspector concluded that:

“Both parties accept that the site is outside of the settlement area; the appellant indicating that it is some 256m away from the boundary. That said, the site is within a clear continuum of development spreading out from the settlement.

Notwithstanding the location of the formal boundary, there is nothing to obviously separate the site from the rest of the settlement. Therefore it is my view that the appeal site forms part of the settlement”

10.9 So, the question of whether a site forms part of a village has to be assessed in each instance based on the characteristics of the site and its surroundings. A village boundary, or a line forming the boundary between Green Belt and unallocated land on an adopted Proposals Map, is not necessarily determinative.

10.10 An outline application for one dwelling was submitted 75.0m to the site's south, also accessed from Cliff Road. The application was refused and dismissed at appeal. Officers considered the site to be outside of a village/settlement. This assessment was supported by the inspector. The distance of 75.0m between the sites is not considered to change this previous assessment.

10.11 Accordingly the site is neither considered to be in a village nor settlement. Considering the other criteria of D13 the site is also noted to be part of neither a continuous built up frontage or largely surrounded by development. It is therefore concluded that the development would not comply with Policy D13 of the UDP or Paragraph 89 of the NPPF and therefore represents inappropriate development in the Green Belt. It is noted within the submitted Planning Statement that the applicant agrees with this, and does not claim that the site is within a village/settlement.

Whether there would be any other harm to the Green Belt, including visual amenity

10.12 Whilst no details of the proposed dwelling has been submitted (layout, scale, appearance, landscaping and access are reserved) it is considered that the erection of a new dwelling, plus the likely engineering works that would be required to form a suitable access (due to the site's topography) would result in a significant reduction in the openness to this part of the Green Belt.

- 10.13 Therefore the development would prejudice the objective of keeping land permanently open through the introduction of a new built form on previously undeveloped land. The application site is an area of land that is generally free from any built development and contributes to the verdant character of the wider surroundings and makes a positive contribution to the character and appearance of the area. While the existing agricultural buildings are noted, their removal would provide limited benefit to openness. Agricultural buildings are deemed appropriate in the Green Belt, and are not classed as previously developed land. Furthermore they are small in scale.
- 10.14 Considering the wider area, the proposal would also have an urbanising impact on the site and would unacceptably consolidate the sporadic built development in the area. This would be harmful to the character and appearance of the area. Furthermore, the proposal would be contrary to three of the five purposes of green belts, which is to safeguard the countryside from encroachment, *to assist in urban regeneration, by encouraging the recycling of derelict and other urban land* and to *to prevent neighboring towns merging into one another* These adverse effects would add to the harm already identified above.

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

- 10.15 In accordance with Paragraph 87 consideration needs to be given to whether there are any 'very special circumstances', specific to the application, which clearly outweigh the harm to the Green Belt by reason of inappropriateness and any other harm.
- 10.16 The application is supported by a planning statement which offers the following circumstances for the applicant;

'Mr Booth is suffering from COPD (chronic obstructive pulmonary disease) and can no longer climb stairs. Mrs Booth has arthritis and cannot move around the house without the use of a wheelchair. It is now impractical for them to continue living in the [two storey] existing house.

Their physical needs now also mean that they require additional care which at the moment requires family to visit daily (a minimum of one visit).'

- 10.17 The statement continues by considering the options for applicants; move into a care home, extend the house or (as proposed) build a new dwelling. The applicants do not wish to go to a care home, due to the cost and the presumption that the strain of moving would have a detrimental physical and mental impact. Regarding the potential for an extension, it would have to be *'significant'* to address the applicant's needs and would not comply with policy for domestic extensions in the Green Belt. Furthermore the built time to the dwelling would cause disturbance and affect the applicant's health. The reason for the erection of a new dwelling being the preferred option is given as *'it provides an adapted house, allows the applicant to remain on their own land, and provides home care from family'*.

- 10.18 In certain situations personal circumstances may form material planning considerations. However, guidance indicates that such arguments should seldom outweigh the more general planning considerations. As has been outlined above the development would cause harm to the Green Belt, impacting upon openness, permanence and being contrary to the NPPF's purposes of the Green Belt. The NPPF requires circumstances to clearly outweigh the identified harm to the Green Belt. While officers sympathise with the situation of the applicant, their circumstances are not considered to amount to Very Special Circumstances which clearly outweigh the identified harm to the Green Belt.

Conclusion

- 10.19 Whilst the council is unable to demonstrate a 5-year supply of housing sites, in this case specific policies in the NPPF indicate that development should be restricted. The proposal has been assessed against policy D13 of the UDP and Paragraph 89 of the NPPF. It is concluded that the proposal would not comply with these policies, therefore being inappropriate development. Inappropriate development is, by definition, harmful to the Green Belt. Furthermore the development would cause further harm to the Green Belt's openness and permanence.
- 10.20 In accordance with Paragraph 87 of the NPPF consideration has been given as to whether any Very Special Circumstances exist which clearly outweigh the harm to the Green Belt. While officers sympathise with the circumstances of the applicant, personal circumstances are not considered to amount to very special circumstances which outweigh the identified harm to the Green Belt.
- 10.21 The proposal is contrary to policy D13 of the UDP and Chapter 9 of the NPPF. Therefore the principle of development is considered unacceptable.

Residential Amenity

- 10.22 As the application is at outline stage with all matters reserved the impacts the proposed development would have on the amenities of neighbouring dwellings and the future occupiers of the proposed development cannot be fully considered at this stage.
- 10.23 Notwithstanding this consideration can be given to the space standards outline in Policy D12. The application's red line is large, with limited development around. Subject to appropriately addressing layout, scale and appearance, the proposal would not give rise to adverse material impacts upon the amenities of neighbouring dwellings or the amenities of future occupiers. The proposal is therefore not considered to be contrary with BE12 of the UDP at this stage, PLP24 of the PDLP and Paragraph 17 of the NPPF.

Highway issues

- 10.24 The application is made at outline stage, with all matters reserved. At layout stage consideration would be given to the provision of off-street parking. Nonetheless, at this stage, the site is considered a suitable size to accommodate a dwelling and a satisfactory level of parking.

- 10.25 Access is a reserved matter. At this stage there are considered no prohibitive reasons as to why a suitable details could not be provided at reserved matters stage. Currently the proposal is not anticipated to prejudice the safe and efficient operation of the highway, in accordance with Policies T10 and PLP21.

Other Matters

Impact on local ecology

- 10.26 The site is adjacent to the council's identified bat alert layer. However the site is grassland, with no large mature trees. Therefore it is considered to provide limited roosting potential and ecological value. This includes the buildings proposed to be removed. It is not considered that the development would detrimental impact local ecology.
- 10.27 Notwithstanding this the NPPF requires planning permissions to enhance local ecology. However opportunities for this could be explored through landscape, as a reserved matter. It is considered that, at outline with all matters reserved, the proposal complies with Chapter 11 of the NPPF.

Representations

- 10.28 No public representations were received.
- 10.29 Holme Valley Parish Council: 'Concerns that proposed development in the Green Belt'

Response: This is noted and conforms to officer concerns outlined in paragraphs 10.6 – 10.11.

11.0 CONCLUSION

- 11.1 Whilst the Council is unable to demonstrate a 5 year supply of housing sites, in this case, specific policies in the Framework (relating to Green Belt) indicate that development should be restricted. The proposal would constitute inappropriate development in Green Belt and would reduce openness in this location. The other material considerations in this case do not clearly outweigh the harm to the Green Belt. Consequently, the very special circumstances necessary to justify the development have not been demonstrated. The development would also be contrary to Policy D13 of the Kirklees UDP.
- 11.2 As a result, the application of paragraph 14 of the Framework does not indicate that permission should be granted and the proposal would not represent sustainable development. In the circumstances of this application, the material considerations considered above do not justify making a decision other than in accordance with the development plan which require the application to be refused.

Background Papers

Application and history files can be accessed at:

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2017%2f93282>

Certificate of Ownership: Certificate A signed

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Report of the Head of Strategic Investment

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 23-Nov-2017

Subject: Planning Application 2017/91505 Outline application for erection of residential development Land off, Huddersfield Road, Meltham, Holmfirth, HD9

APPLICANT

Mr J Mayo

DATE VALID

06-Jun-2017

TARGET DATE

05-Sep-2017

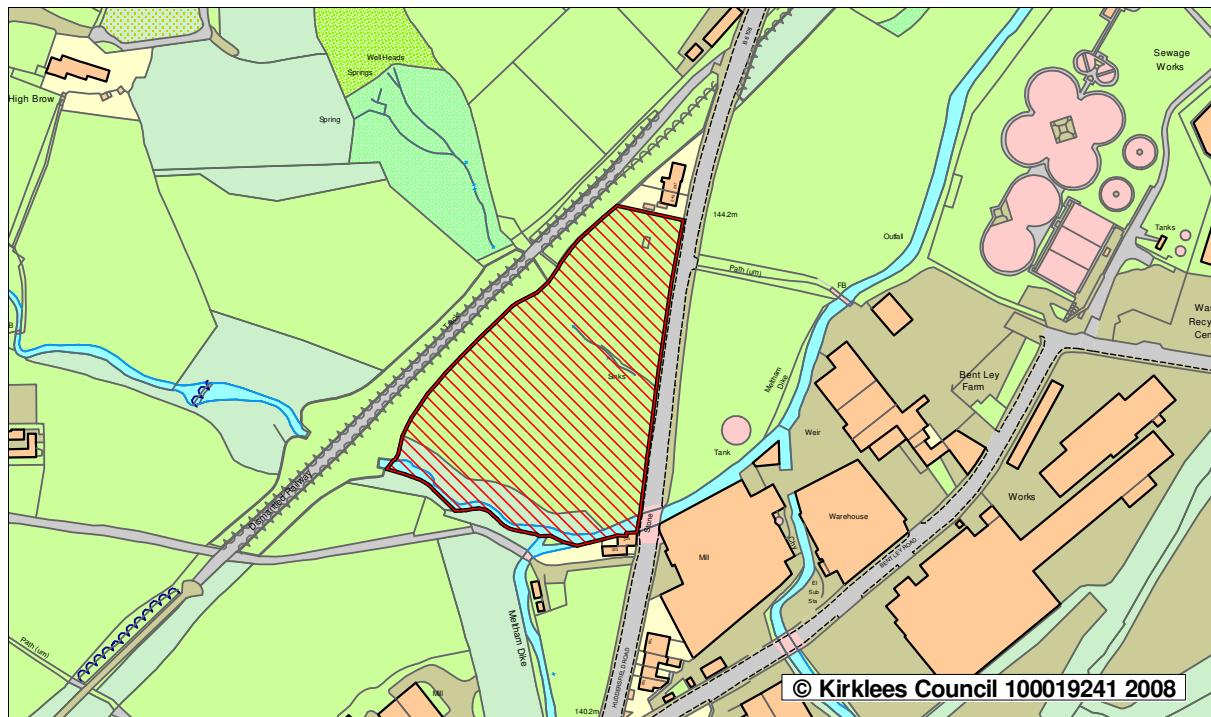
EXTENSION EXPIRY DATE

27-Nov-2017

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

Electoral Wards Affected: Holme Valley North

Yes

Ward Members consulted
(referred to in report)

RECOMMENDATION:

DELEGATE approval of the application and the issuing of the decision notice to the Head of Development Management in order to complete the list of conditions including those contained within this report and to secure a S106 agreement to cover the following matters:

1. Contribution of £20,000 towards bus stop improvements.

In the circumstances where the S106 agreement has not been completed within 3 months of the date of the Committee's resolution then the Head of Strategic Investment shall consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the benefits that would have been secured; if so, the Head of Strategic Investment is authorised to determine the application and impose appropriate reasons for refusal under Delegated Powers.

1.0 INTRODUCTION:

- 1.1 The application is presented to Huddersfield Sub-Committee as it involves development on POL land of less than 61 residential units.

2.0 SITE AND SURROUNDINGS:

- 2.1 The application relates to a *circa* 1.36ha parcel of agricultural land left over to pasture located to the west of Huddersfield Road (B6106) and approximately 1.5km to the north east of the centre of Meltham. The proposal is located on a site allocated as Provision Open Land in the Kirklees Unitary Development Plan.
- 2.2 The site is located approximately 1.5km from a range of services located within Meltham centre.
- 2.3 The land rises steeply from the road to the rear of the site (west) which lies close to and below Meltham greenway which runs beyond the rear boundary of the site. A public footpath runs from Huddersfield Road through the site.
- 2.4 In context, the site lies beyond the edge of the existing built up area and is generally rural in nature. To the east on the opposite side of Huddersfield Road and beyond a belt of mature trees are a range of industrial/commercial units. To the north and west and beyond the greenway the land is mainly

open countryside. To the south at a distance of approximately 100m is a small mill complex screened from the site by trees.

- 2.5 The site generally replicates the character of the surrounding countryside. Fields are divided by dry stone walls and the area is characterised by steep valley sides with a number of mature trees screening longer distance views.

3.0 PROPOSAL:

- 3.1 The proposal is submitted in outline form with all matters reserved except for access. The application proposes housing development. Whilst the number of units has not been specified, the submitted Transport Statement indicates a quantum of up to 30 dwellings which equates to 25 dwellings per hectare.

- 3.2 The proposed access is sited in close proximity of an existing public footpath which runs from Huddersfield Road through the application site.

Amendments

- 3.3 The application has been amended whilst being processed. The proposed point of access has been moved further north east along Huddersfield Road and away from the Public Right of Way and watercourse which are positioned centrally within the site.

4.0 RELEVANT PLANNING HISTORY:

- 4.1 2001/90102 – installation of bio-disc mini sewage treatment plant – approved.

5.0 HISTORY OF NEGOTIATIONS:

- 5.1 Additional information and further clarification was sought concerning a number of issues including highways and ecology. These issues are clarified and addressed in the remainder of this report.

6.0 PLANNING POLICY:

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

Kirklees Unitary Development Plan (UDP) Saved Policies 2007:

D5 - Provisional Open Land
H1 - Housing Need
H10/12 - Affordable Housing
H18 - Provision of Open Space
BE1/2 - Design and the Built Environment
BE11 - Building Materials – Natural Stone in Rural Area
BE12 - New dwellings providing privacy and open space
BE23 - Crime Prevention Measures
EP10 - Energy Efficiency
EP11 - Landscaping
T1 - Sustainable Transport Strategy
T10 - Highways Safety / Environmental Problems
T16 - Pedestrian Routes
T19 - Off Street Parking
G6 - Contaminated Land

Kirklees Draft Local Plan Strategies and Policies (2017):

PLP3 – Location of New Development
PLP7 – Efficient and effective use of land and buildings
PLP11 – Housing Mix and Affordable Housing
PLP20 – Sustainable Travel
PLP21 – Highway safety and access
PLP22 – Parking
PLP23 - Core walking and cycling network
PLP24 – Design
PLP27 – Flood Risk
PLP28 – Drainage
PLP30 – Biodiversity and Geodiversity
PLP32 – Landscape
PLP35 – Historic Environment
PLP48 – Community facilities and services
PLP51 – Protection and improvement of local air quality
PLP52 – Protection and improvement of environmental quality
PLP61 – Urban Green Space
PLP62 – Local Green Space
PLP63 – New Open Space

6.2 Supplementary Planning Guidance:

- Providing for Educational needs generated by new housing
- Interim Affordable Housing Policy (2016)
- West Yorkshire Air Quality and Emissions Technical Planning Guidance
- Kirklees Landscape Character Assessment (2015)
- Kirklees Housing Topics Paper (2017)

- Planning Practice Guidance

Many policies within the National Planning Policy Framework are relevant to this proposal and, where relevant, are referred to in the main report text.

7.0 PUBLIC/LOCAL RESPONSE:

7.1 The application was advertised on site, in the local press and letters were sent to nearby properties. 13 objections have been received and they can be summarised as follows. These points are addressed in the remainder of the officer report unless otherwise stated:

- The land is Provisional Open Land similar to Green Belt and should be safeguarded from development.
- The land was part of a farm and to develop the site would spoil the look of the area.
- The impact on traffic on an already busy road.
- The impact on schools, doctors surgeries, sewerage and all infrastructure in the surrounding area.

Officer response – the UDP and emerging Local Plan sets out the type of infrastructure which development in Kirklees should consider. There is no requirement to make a contribution to GP's or dentists.

- Other areas in Meltham already have planning permission for housing and are not being utilised.

Officer response – there is no requirement for the applicant to demonstrate a 'need' for the development. The Council are unable to demonstrate a 5 year housing supply and have been consistently short in delivering the number of houses required throughout the Borough.

- It would lead to at least 60 additional vehicles which would lead to parking problems on a busy main road and further congestion.
- There is a septic tank for two properties next to the site.
- Impact on road safety from new junction.
- Impact on character of the village.
- Impact on wildlife.
- Meltham road is a very busy road and people don't respect the speed limit. The proposed access road is a few hundred yards past a blind bend and those speeding round the corner would have difficulty stopping for stationary traffic waiting to turn right into the new development. Increased traffic entering or leaving the development will increase the risk of a major accident. The traffic report submitted by the agent is dated 2010 and is 7 years out of date, traffic is much heavier since that time. My driveway is off Meltham road, either waiting in the road to turn into my drive or exiting my drive into Meltham road is very problematic because of the speed traffic goes past my house, traffic entering or leaving by the proposed location of the access road would be even more at risk as it is further up the road and traffic moves even faster at this point; also at this point there is reduced visibility because of the curve of the road.

- The field has a large number of mature trees I understand these are all subject to tree preservation orders. They border the field on all sides except the road side and there is a row of trees up the middle of the field around a small stream. It is difficult to envisage how any development would allow for these trees to remain in situ because their location would not allow enough space to build houses without removing them. This is a pleasant open space and home to varied wildlife – we regularly see herons and bats, there are also badgers.
- The houses are not needed as there are enough in the area.
- I am worried that when covered in concrete there will be nowhere for the heavy rain to go but into the river, the planning application states that the plan for surface water drainage is into this watercourse. If all rainwater falling on this field runs into the river it will cause flooding to my garden and water will also enter my cellar, which is lower than the field and is used as a utility room and office. My house is identified as of high risk of flooding on the environment agency website and this will be made worse by any development. The likelihood of this occurring is further evidenced by the fact that rainwater running down Meltham road has caused flooding outside my neighbours house as the current drains can't cope with the amount of rainwater produced in heavy rains.
- This is designated POL land in the 1999 UDP, and as such is safeguarded. This is written in Policy D5. We know the developer is pushing the fact that Kirklees do not as yet have evidence of a 5-year land supply, but I believe we do not need more new houses in Meltham as those already being built are not being sold, indeed, the developers of Albion Mills have dropped the price.
- Conservation - this plot is adjacent to SSI land; there are adjacent TPO'd trees. There is also a public footpath running through the land.
- Visual amenity - there is concern in Meltham that if this development is accepted, more houses will then be built on Huddersfield Road on the land both at the side and opposite this plot.
- Physical properties of the land - there would be significant problems with drainage/sewage, as indicated in the report dated 05 July 2017 by Yorkshire Water. There is already a drainage/sewage tank in the middle of one of the fields. A spring runs through the field and under Huddersfield road to join the beck on the other side.
- Amenities - the proposed site is too far away from existing shops and schools.
- Current new houses - over 200 new houses are currently being built in Meltham yet to be sold, mainly on Mill Moor Road (23 on Albion Mills, 16 in a current application (2017/92220) plus 2 x 30, plus another development; 24 in Colders Lane; and Helme Lane (80 at present, but I understand more are to be added). Planning consent was given for 31 houses on the Royd Edge development in 2010; this Brownfield Site has yet to be built on. I believe the above to be enough evidence that this proposed development is unsustainable, and must therefore be refused in accordance with the NPPF.

- *I am Treasurer of Friends of Meltham Greenway and walk it nearly every day and meet a many people along there. Local people have and still do spend a lot of time and money voluntarily on maintaining this path into the countryside, which goes directly and quickly from the centre of Meltham. To build adjacent to Meltham Greenway would be detrimental for a variety of reasons. It would: Spoil the long distant country views; add noise and pollution to a peaceful leisure path; add a pollution risk if houses which back onto the Greenway dumped garden waste and other rubbish; have an impact on wildlife, including the protected bat population that roost along the greenway and use the path as a directional guide. Added to that the road the development is next to is a fast road into Meltham with recent accidents, including a fatality. Added traffic from the development would be dangerous for traffic on the road and traffic entering and exiting the development. As there are places yet to develop within Meltham, some already with planning permission, there is not a need for this one, which will impinge on a green space and stick out like a sore thumb beyond the boundary of Meltham.*
- The Campaign to Protect Rural England (CPRE) makes the following comments:

The applicant has made no attempt to establish that there are no technical issues which would prevent development and certainly has not included any evidence to that effect in his application. In particular the applicant has not provided any evidence to show that foul drainage from the site can be connected to the main foul sewer system discharging to Meltham STW. The "technical issue" is that the site is on the wrong side of the valley from the main outfall sewer to Meltham STW, in Huddersfield Road / Bent Ley Road and any connecting sewer would have to be laid across and under the bed of Meltham Dyke. It would then be at too low a level to discharge to the main outfall sewer by gravity. In a similar way the topography of the flat valley bottom at this point means that any surface water discharge to the watercourse would have to "chase down" the valley for some considerable distance through private land before a satisfactory discharge point could be achieved. In our view the applicant should be required to show how these "technical blockers" would be resolved before the Council can even consider granting outline planning permission. If the Council are minded to grant outline planning permission, irrespective of this very serious issue, they should attach a condition to the permission which makes it subject to the later submission of a full comprehensive drainage scheme. 2. The nearest corner of the site is 1200 metres from the centre of Meltham, about 400 metres from the nearest residential properties [except the two immediately adjoining semi-detached houses] and 70 metres from the industrial premises on Bent Ley Road. This is way beyond accepted practice for the location of sustainable developments, as outlined in previous versions of the Local Plan [the LDF]. The development would therefore be completely disconnected from the village of Meltham and necessary services provision such as schools, doctors, shops etc. Any development on this site would be an isolated "stand alone" development, like a carbuncle in and amongst green fields. It is also, in effect, "ribbon development" which would extend the boundary of Meltham village by a considerable distance, in an easterly direction along Huddersfield Road. This is simply not acceptable.

Meltham Town Council:-

The proposed development is on the edge of the greenbelt and the existing Unitary Development Plan allocates the land as Provisional Open Land (POL). Planning permission should not generally be granted on sites designated as POL other than for certain development which would not prejudice the contribution of the site to the character of its surroundings and the possibility of development in the longer term which these proposals would do. The aim of the POL designation is to maintain the character of the land during the period until the plan is reviewed when it will be considered for allocation for development. The reassessment of POL will involve determining whether in the prevailing circumstances there is a case for releasing some or all of the land for development, or whether it should be maintained as POL until the next review of the plan. The land subject to this application is currently POL and is not allocated for development, consequently planning permission should only be granted following a Local Plan review which proposes development. It was noted that in fact the proposal had recently been reviewed, with the Local Plan now being reviewed by Government and the review had retained the classification of this area of land as not being needed for development at the present time. In the circumstances planning permission should not be granted. Whilst the Council recognises that this land will eventually be built on it suggests that such safeguarded sites should be there to fulfil a much longer term need - i.e. well beyond the plan period.

It fails to meet the National Planning Policy Framework principle of sustainable development being unsustainable in terms of additional traffic and school places.

The current proposal represents an inefficient use of land that is not integrated well with existing developments, there are no other developments near the proposed development and the proposal breaks a pattern of existing development within Meltham and would likely lead to further development in adjacent fields.

8.0 CONSULTATION RESPONSES:

8.1 Statutory:

Highways DM – No objection in principle. Full comments to be provided by way of an update.

Lead Local Flood Authority – Kirklees Flood Management as LLFA objects to this application as it is unclear as to whether the promoted access on drawing ref 1754/01 “Site Plan with new Vehicular Access” will result in requirements to culvert an open watercourse to gain access to the southern part of the site, contrary to planning policy.

The flood risk assessment (Initial Issue) submitted by ARP Associates, dated September 2017, incorporates a fair assessment of the risk and includes consultations with the appropriate bodies including the LLFA. Should the above objection be resolved, appropriate conditions and advice notes can be included to support the application with a further consultation at reserved matters.

8.2 **Non-statutory:**

Environmental Health – No objection subject to conditions.

Landscape – No objection.

Yorkshire Water – No objection subject to conditions.

Tree Officer – No objection.

Strategic Housing – 20% affordable contribution required.

Education – No contribution required based on 30 units.

Biodiversity Officer – No objection subject to conditions.

Police Architectural Liaison Officer – No objection.

Conservation and Design – No comments to make at this stage.

9.0 **MAIN ISSUES**

- Principle of Development
- Impact on Character of Surrounding Area and Landscape
- Residential amenity and Relationship with Surrounding Uses
- Highways and Traffic Implications
- Drainage issues
- Ecology and Biodiversity Issues
- Heritage Issues
- Planning Obligations
- Other matters
- Conclusion

10.0 **APPRAISAL**

Principle of development

10.1 The site lies on an area of Provision Open Land (POL) on the Unitary Development Plan. The site is allocated as safeguarded land as part of the Kirklees Publication Draft Local Plan.

10.2 Planning law requires applications to be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) is one such material consideration. The starting point in assessing any planning application is therefore, to ascertain whether or not a proposal accords with the relevant provisions of the development plan, in this case, the saved policies in the Kirklees Unitary Development Plan, 1999 (UDP). If a planning application does not accord with the development plan, then regard should be had as to whether there are other material considerations, including the NPPF, which indicate that planning permission should be granted.

- 10.3 The NPPF is a Government statement of policy and is therefore, considered an important material consideration especially in the event that there are policies in the UDP which are out-of-date or inconsistent with the NPPF. Paragraph 215 of the NPPF reinforces that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF.
- 10.4 It is clear that the NPPF seeks to “*boost significantly the supply of housing...*” (para 47). Para 47 then goes on to describe how local authorities should meet the full objectively assessed need for market and affordable housing. This requires a range of measures including ensuring a deliverable five year supply of housing. Para 49 states 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*”.
- 10.5 As evidenced in recent appeal decisions (eg. APP/Z4718/W/16/3147937 - Land off New Lane, Cleckheaton), the Council are falling short of the requirement to ensure a five year housing land supply by a substantial margin. This is important in the context of paragraph 14 of the NPPF.
- 10.6 Para 14 of the NPPF states that for decision-taking, the presumption in favour of sustainable development means:
- Approving development proposals that accord with the development plan without delay, and
 - Where the development plan is silent, or relevant policies are out-of-date, granting planning permission unless:
Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework when taken as a whole; or
Specific policies in the Framework indicate development should be restricted.
- 10.7 As the Council are unable to demonstrate a 5 year housing land supply as required by para 49 of the NPPF, relevant policies relating to housing are considered to be out-of-date. Indeed, the housing land supply shortfall is substantial and falls below 3 years. Whilst the Council have submitted the Kirklees Publication Draft Local Plan (PDLP) for examination which, for housing purposes, is predicated on the basis of a five year housing land supply; the examination has not conclude and the PDLP has not been adopted. Therefore, it is currently the case that the Council are unable to identify a five year supply of specific deliverable housing sites against the requirement.
- 10.8 Based on the above, there is a presumption in favour of sustainable development and planning permission should only be refused where there are adverse impacts which would significantly and demonstrably outweigh the benefits.

- 10.9 The site is allocated as Provisional Open Land (POL) on the UDP. Therefore, policy D5 is applicable in this case:

On sites designated as provisional open land planning permission will not be granted other than for development required in connection with established uses, changes of use to alternative open land uses or temporary uses which would not prejudice the contribution of the site to the character of its surroundings and the possibility of development in the long term.

- 10.10 It is considered that policy D5 is not a policy for the supply of housing in respect of the way in which it relates to paragraph 49 of the NPPF. Therefore, policy D5 is considered to be up to date.

- 10.11 The proposed development is clearly at odds with policy D5 of the UDP partly because the scheme of housing development fails to maintain the character of the land as it stands and fails to retain the open character. The proposed development constitutes a departure from the development plan.

Emerging Local Plan

- 10.12 In respect of the emerging Local Plan, the PDLP was submitted to the Secretary of State on 25th April 2017 for examination in public and the Examination process has recently commenced. The site forms a safeguarded land allocation (SL2186) within the PDLP. Given that the PDLP is now at an advanced stage, consideration needs to be given to the weight afforded to the site's allocation in the PDLP.

- 10.13 The site has been rejected as a housing allocation so far as part of the Local Plan process. In the Kirklees Rejected Site Options Report (2017), which was submitted as part of the local evidence to support the Kirklees Local Plan, the site was rejected as a housing allocation for the reasons summarised as follows:

“Development of housing here would be isolated from other residential development because of employment use to the south, south east and Green Belt on other sides of the development. Beck and woodland are UK BAP priority habitat, any development would be required to minimise disturbance to neighbouring habitats. Site access would require third party land to improve visibility and reduced traffic speeds on Huddersfield Road in this location. There is little prospect of third party land being acquired to achieve visibility splays and therefore for a deliverable housing site.”...

- 10.14 Within the Accepted Site Options – Technical Appraisal July 2017, the safeguarded allocation is recommended for acceptance for the following reasons:

“This site is not deliverable or developable during the local plan period. There is a reasonable prospect that the constraints on this site could be overcome to allow the delivery of new homes beyond the end of the local plan period. Site access achievable if necessary visibility splays can be achieved...”

10.15 These issues are explored in more detail in the remainder of this report. In respect of weight, the NPPF provides guidance in relation to the weight afforded to emerging local plans. Paragraph 216 states:

From the day of publication, decision-takers may also give weight to relevant policies in emerging plans according to:

- *the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);*
- *the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*
- *the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).*

10.15 The above is further supplemented by guidance in the Planning Practice Guidance (PPG). The PPG states that “*arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both:*

a. the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or neighbourhood planning; and

b. the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.

10.16 Given the scale of the development proposed when assessed against the wider context of the PDLP the application could not be deemed to be premature as the proposed development, by virtue of its relatively small scale and strategic importance, is not considered to be central to the delivery of the Local Plan.

10.17 It has however, been confirmed that given the advanced stage at which the Local Plan has progressed considerable weight should be afforded to the policies within the emerging Local Plan. Therefore, considerable weight is afforded to the emerging safeguarded allocation in this case.

10.18 The scheme would make a modest but valuable contribution to housing supply across the district. In the PDLP the housing requirement is set out at 31,140 homes from 2013 – 31 to meet identified needs. This equates to 1730 homes per annum. The Council’s current supply position is detailed in the Housing Topics Paper (2017) and this also includes the number of dwellings built since the emerging Local Plan base date of 1st April 2013. There has been persistent under-delivery:

Year	Net annual housing completions	Local Plan requirement	Completions compared to Local Plan requirement
2013/14	1,036	1,730	-694
2014/15	666	1,730	-1064
2015/16	1,142	1,730	-588
Total	2,844	5,190	-2,346

10.19 If the emerging Local Plan was to be adopted in its current form, the Council would be able to demonstrate a five year housing land supply. However, the PDLP has not been adopted and as it stands the Council is a substantial way off being able to demonstrate a five year housing land supply and housing delivery has persistently fallen short of the emerging Local Plan requirement. This triggers the presumption in favour of sustainable development as advocated by para 14 of the NPPF.

Other Matters of Principle

10.20 Whilst the site comprises an agricultural field, it appears to fall within Grade 4 Agricultural Land. For the purposes of the NPPF it does not constitute Best and Most Versatile Agricultural Land and therefore, the loss of this agricultural land does not conflict with the requirements of the NPPF.

Accessibility

10.21 Whilst the site lies beyond the existing settlement boundary, there is a footway along Huddersfield Road which would allow pedestrians to walk safely into Meltham town centre. The footway has a slight gradient along some its length but this is not a significant impediment to users. There are a range of shops and services all within 2km of the application site, the nearest shops and services being 1.1km along Huddersfield Road. A public footpath runs through the site and Meltham greenway can be accessed via a short walk along Huddersfield Road from the application site. The greenway provides a more direct and traffic free route to the nearest supermarket which lies at a distance of approximately 1.2km from the site. The site is comfortably within a cycling catchment area of local services.

10.22 The nearest bus stops are located on Huddersfield Road on the application site frontage which have the benefit of a flag / pole and timetable information. These bus stops provide access to the 323 and 324 bus services. There are 6 services per hour that travel to Huddersfield town centre, Meltham and Netherton. The services to Huddersfield allow easy onward travel via Huddersfield railway station.

10.23 It is acknowledged that the site lies outside a 10 minute walking distance of local services, which is typically around 800 metres, and to the location of the site to an extent would encourage the use of the private car. However, the greenway offers a safe, attractive and traffic free route for users during daylight hours which are likely to encourage occupiers to access local services by foot. Using this route, local services would be an approximate 15 minute walk away. In addition, there are two bus stops immediately outside the application site on Huddersfield Road which would allow regular public transport access to and from the site.

10.23 Overall the site offers acceptable non-car links to and from local services and Meltham town centre despite it falling outside the existing settlement boundary. On the basis of the above the proposed development is not considered to comprise an isolated development in the countryside and there would be an acceptable relationship with Meltham so residents could access local services. The proposed development is considered to be accessible by range of different modes.

Conclusion on principle of development

10.24 The overall conclusion in respect of the principle of development is that the application should be assessed against para 14 of the NPPF which sets out a tilted balance in favour of sustainable development. The Council at this stage are significantly short in terms of demonstrating a 5 year housing land supply. When this is considered in context of para 47 of the NPPF, which seeks to significantly boost the supply of housing, this is a material consideration in favour of the scheme which attracts substantial weight. Development of POL land is therefore, not necessarily unacceptable and planning permission should only be refused where there is demonstrable harm which outweighs the benefits.

Impact on Character of Surrounding Area and Landscape

10.25 Section 11 of the NPPF sets a wide context to conserving and enhancing the natural environment and requires that valued landscapes are protected and enhanced and requires that the level of protection is commensurate with the status and importance of the landscapes.

10.26 Policy BE1 of the UDP requires that all development should be of good quality design such that it contributes to a built environment. Policy BE2 states, amongst other matters, that new development should be designed so that it is in keeping with any surrounding development. Policy BE11 of the UDP requires that new development should be constructed in natural stone of a similar colour and texture to that prevailing in the area. Policy PLP24 of the PDLP requires that good design to be at the core of all planning decisions.

10.27 The application site comprises agricultural fields given over to pasture. The comments received from local residents suggest that the fields are valued in both recreational and aesthetic terms. In local landscape terms the site lies within the Holme and Hall Dyke landscape character area. This landscape area is characterised by steep incised valleys and mixed semi-natural woodlands which is reminiscent of the application site. The site is bounded by a low-set dry stone wall which abuts the footway along Huddersfield Road. The sloping nature of the site coupled with the low level boundary wall creates an open, relatively steep sided site which is prominent along this section of Huddersfield Road.

- 10.28 Centrally within the site is a partially culverted watercourse which is followed by a line of deciduous trees. The footpath within the site follows the line of the watercourse. Beyond the top of the slope of the site to the northwest is a line of mature trees which are located on the bank of the former Meltham branch railway line which is now a surfaced multi-user footpath (greenway). Beyond this the site is well screened due to the greenway and associated trees.
- 10.29 To the south east and on the opposite side of Huddersfield Road, the land falls away from the road towards fields, beyond which lie a range of industrial buildings. There is a public footpath which traverses the fields and part of the industrial estate. It can be accessed on the opposite side of Huddersfield Road. To the south west the land comprises sloping pasture land and an industrial area which is screened from the site by trees. This land is allocated as POL land in the UDP and employment land in the PDLP.
- 10.30 Immediately to the north of the site fronting Huddersfield Road are two dwellings. There are two further dwellings to the south of the site adjacent to Meltham Dike but these are well screened from the road by existing trees. Beyond this are a range of mill buildings and other industrial uses with the main cluster of housing on this side of Huddersfield Road being approximately 750m to the west and towards Meltham. Housing on the opposite side of Huddersfield Road is a similar distance away from the site to the west, although there are a handful of dwellings closer to the site and a larger number of industrial buildings.
- 10.31 The proposed development is considered to be somewhat isolated from the main cluster of housing in Meltham and given that up to 30 dwellings are proposed, it would extend the existing urban edge of the town. Given the characteristics of the site, housing would be prominent when viewed from Huddersfield Road and from the public footpath which runs in an easterly direction towards Bent Ley Road. However, the impact upon users of the greenway is limited by trees which line the greenway acting as a buffer to the application site, and the fact that the site sits on a lower level. It is likely that roofs of houses and the upper storeys would be intermittently visible in between the gaps in the trees from the greenway.
- 10.32 The land continues to rise to the north west beyond the site for a further 170m where it plateaus on a line which runs to the north west of Helme Lane. Views in the direction of the site from Helme Lane are generally representative of those experienced along the upper slopes of the valley side. The site would be positioned on the lower slopes of the valley side, views of which are obscured by the line of the existing greenway and the extensive tree cover. Views of the site from the north along Huddersfield Road would be largely obscured by a combination of topography and tree cover. Similarly, views of the site from the south along Huddersfield Road would be limited from a distance of approximately 60m due to the alignment of Huddersfield Road, existing buildings and tree cover.

10.33 Overall it is considered that, in terms of character and appearance, the proposed development would have a relatively localised impact on the character of the area, the most marked impact being on the stretch of Huddersfield Road fronting the site, the footpath which runs through the site and the footpaths which run in a south easterly direction on the opposite side of Huddersfield Road. To that extent the visual impact on the wider area would be largely contained due to the position of the site on the lower slopes of the hillside, the amount of dwellings proposed, and the intervening topography and vegetation which serves to screen views of the development from mid/longer distance viewpoints. However, it is inevitable that the proposed development would be detrimental to openness and change the character of the site, especially given that it is not located near large areas of existing development and it is surrounded by Green Belt; thus there would be conflict with policy D5 of the UDP and some conflict with paragraph 17 of the NPPF in that the scheme would fail to recognise the intrinsic character of the countryside. However, the submission of reserved matters would allow the scheme to be fully assessed against policies BE1 and BE2 and PDLP24 in ensuring that any subsequent development is in keeping with its surroundings as far as practicable. It is expected that any subsequent scheme should be constructed from natural stone and slate so that it is in keeping with the local area; this could be conditioned as a requirement of any subsequent reserved matters.

Residential Amenity and Relationship with Surrounding Uses.

10.28 Para 123 of the NPPF indicates that planning policies and decisions should aim to:

- avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development;
- mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through use of conditions.

10.29 Policy BE12 of the UDP provides guidance on appropriate separate distances for dwellings. PLP24 of the PDLP requires developments to provide a high standard of amenity for future and neighbouring occupiers.

10.30 There are two properties which lie to the north of the application site (no's 245 and 247 Huddersfield Road). As this application is in outline form, there is no reason why the impact on the amenity of the occupiers of these properties could not be mitigated at reserved matters stage. Similarly, there are properties beyond the southern boundary of the site but the impact on these properties would be fully considered at reserved matters stage.

10.31 In terms of neighbouring land uses, there is a waste water treatment plant which lies within 200m of the application site to the east. The application site lies on much higher level than the waste water treatment works. Whilst this is identified as a potential constraint to development of this site and one of the reasons for rejecting the site as a housing allocation in the PDLP;

Environmental Health have assessed the proposal in relation to potential odour impact and do not consider that there would be any odour from the waste water treatment works which would adversely affect future occupiers.

- 10.32 It has also been identified by consultees and neighbours that there are existing foul water package treatment plants associated with no's 245 and 247 Huddersfield Road within the site boundary. It is considered necessary to impose a planning condition to ensure that there is a strategy in place to deal with the existing waste water treatment plant within the site boundary prior to any works taking place on site.
- 10.33 There are a number of noise generating uses within close proximity of the site. The proposal is potentially affected by both road traffic noise from the adjacent Huddersfield Road and the nearby Meltham Mills/Bent Ley Industrial Sites. It is not considered that noise is a barrier to residential development of this site, but orientation/layout and design in terms of glazing and ventilation may need to be considered as a result of noise in the vicinity. It is therefore, recommend that a condition is imposed requiring a noise survey and mitigation measures.

Highways and Traffic Implications

- 10.34 The scheme would comprise an access taken from Huddersfield Road. As the application is in outline form, the internal layout of the site is not under consideration. However, the proposed access would not directly conflict with the existing public footpath which runs through the site. The applicant has confirmed that the internal layout would be designed so as to avoid direct conflict with this footpath as far as practicable.
- 10.35 Policy T10 of the Kirklees UDP states that new development will not normally be permitted if it will create or materially add to highway safety issues. Policy PLP21 of the PDLP aims to ensure that new developments do not materially add to existing highway problems or undermine the safety of all users of the network. Para 32 of the NPPF states:

Plans and decisions should take account of whether:

- *The opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;*
- *Safe and suitable access to the site can be achieved for all people; and*
- *Improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.*

- 10.36 The application has been accompanied by a Transport Statement and Road Safety Audit which has been assessed by Highways DM. The Transport Statement demonstrates that the proposed development would generate between 17 and 19 movements during the AM and PM peaks based on up to 30 dwellings. It is not considered that this level of movements would have a discernible impact on the highway given the nature of the surrounding road network and junctions. It is not considered necessary to restrict the site to a number of dwellings that can be built as the limited size and constraints of the

site would act as a cap on the extent of development and should more than 30 dwellings be achieved on the site it would not generate significant additional vehicle movements above those assessed within the TA.

- 10.37 In terms of the proposed junction itself; it is proposed to provide a simple priority 'T' junction onto Huddersfield Road. This stretch of Huddersfield Road has a 40mph speed limit which is in force from approximately 220m to the north east of the application site, along the site frontage, which then becomes a 30mph speed limit approximately 600m further along Huddersfield Road towards Meltham. Visibility out of the proposed junction is in excess of the guidance set out in Design Manual for Roads and Bridges (DMRB) with at least 2.4m x 120m being achievable in both directions.
- 10.38 DMRB provides guidance on the use of priority junctions and this is supported by Manual for Street 2 (MfS2) which suggests that consideration should be given to providing a right turn lane at priority junctions where the side road flow exceeds 500 vehicles per day. In this case movements proposed are significantly lower than 500 movements. In response to concerns raised by some residents regarding the speed of vehicles using Huddersfield Road, the applicant has commissioned two sets of speed survey data and a Road Safety Audit which does not reveal any significant highway safety issues associated with the junction type as proposed given the relatively low level of vehicular movements, average speed of vehicles and the nature of Huddersfield Road. Vehicle speeds along this stretch Huddersfield Road on average do not appear to be excessive.
- 10.39 The site falls outside the main built up area of Meltham within a section of Huddersfield Road which transitions from mainly open countryside to the north east, to the main town centre which lies to the south west. Whilst there are developments on the opposite side of Huddersfield Road, these are on a lower level. This stretch of Huddersfield Road therefore, has a movement and leisure function, with little in the way of a place function at the present time. The introduction of a housing scheme fronting Huddersfield Road would alter the character of the area and introduce a place element. However, the area would still retain a rural character to an extent and the proposed junction is considered to strike the right balance between place and movement and would be an appropriate solution in highway safety terms given the level of traffic the development would generate and the nature and characteristics of Huddersfield Road. However, Highways DM are considering the submitted information further and the potential for additional measures to mitigate the effects of the development on the local highway network and the proposed junction. Any such measures will be reported to planning committee as an update.
- 10.40 In respect of other potential issues; the submitted Road Safety Audit identifies that the location of the bus stop of the north of the proposed junction would obstruct visibility for drivers. Provision would also need to be made for pedestrians crossing Huddersfield Road to meet the bus stop on the opposite side of the road. These matters are being considered by Highways DM and an update will be provided to planning committee.
- 10.41 In terms of parking, the proposed development has been submitted in outline form and parking would be considered as part of the proposed layout at reserved matters stage.

Drainage issues

- 10.42 Para 100 of the NPPF states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere. On the basis that the site lies in Flood Zone 1 (lowest risk of flooding from rivers or the sea), a sequential test is not required in this case. A very small proportion of the site to the south, closest to Meltham Dike, lies in Flood Zone 3, but the proposed development would not result in any houses within this area.
- 10.43 The submitted Flood Risk Assessment (FRA) considers the risk of flooding from various sources including rivers, groundwater, artificial sources and surface water.
- 10.44 The National Planning Practice Guidance (NPPG) states that the aim of a drainage scheme should be to discharge run-off as high up the hierarchy as practicable:
- 1 – into the ground (infiltration)
 - 2 – to a surface water body
 - 3 – to a surface water sewer, highway drain, or another drainage system
 - 4 – to a combined sewer
- 10.45 The site lies in close proximity of Meltham Dike which sits on the southern boundary. The FRA considers that Sustainable Urban Drainage (SuDS) – infiltration - will be considered initially (although SuDS appear unlikely to be feasible on this site), but that there is a watercourse in close proximity which may allow a restricted discharge should SuDS not be feasible. It is considered that these matters could be conditioned. It is considered likely that the site could be drained in a manner ‘high up’ on the flood hierarchy in accordance with the NPPG. This would be fully explored at reserved matters stage and a planning condition is therefore proposed. The concerns raised by objectors concerning potential flooding would be fully assessed as part of any reserved matters submission when the number of dwellings and drainage proposals have been fully investigated and are fully understood.
- 10.46 In terms of foul water drainage, the FRA suggests that this should discharge into the 350mm combined sewer recorded to the south west of the site. Yorkshire Water raises no objections but comment that it is not possible to determine at this stage whether the whole site would be drained by gravity, or whether a pumping station. Given that there is an existing package sewage treatment facility on the site associated with the two dwellings beyond the site boundary to the north, it is understood that there is no foul water infrastructure nearby. However, the application would need to provide a connection to the existing network, details of which could be secured as part of the reserved matters submission.
- 10.47 Whilst in principle it appears that the scheme is acceptable in drainage terms, and the access location has been revised in order to avoid direct conflict with the watercourse that runs through the site, an objection has been raised by the Lead Local Flood Authority concerning the potential impact of the scheme on the watercourse and the potential for it to be culverted. It is considered

that these matters would be fully addressed at reserved matters stage in the event that the layout proposes to cross the watercourse running through the centre of the site. There appears to be sufficient space within the site on the upper slopes in order to ensure that conflict with the watercourse is lessened. However, at the time of writing this report the applicant was preparing a response to the concerns raised and these will be reported as an update.

- 10.48 In principle the proposed development offers sustainable drainage solutions in line with those advocated by the NPPF and NPPG and PDLP policy PLP28 subject to conditions and full details being considered at reserved matters stage.

Ecology and Biodiversity Issues

- 10.49 UDP policy EP11 requires that application incorporate landscaping which protects/enhances the ecology of the site. Emerging Local Plan policy PLP30 states that the Council will seek to protect and enhance the biodiversity and geodiversity of Kirklees, including the range of international, national and locally designated wildlife and geological sites, habitats and species of principal importance and the Kirklees Wildlife Habitat Network.
- 10.50 The main body of the site is agriculturally improved grassland. This habitat contains limited botanical interest and is widespread at a local and national level. The loss or modification of this habitat is not considered to have a significant adverse effect on biodiversity interests within the area. However, the development presents an opportunity to offset any impacts and enhance the botanical value of the site through the adoption of an appropriate planting scheme.
- 10.51 The adjoining woodlands are listed as priority habitats and the local authority will have due regard for these woodlands during the planning process. It is however, likely that trees will remain largely unaffected by the development aside from potential minor tree surgery works where required. Any trees in poor condition which require felling should be replaced on at least a like for like basis. The Council tree officer raises no objections.
- 10.52 No evidence of badgers was observed within the site. However, the submitted ecological report considers that badger setts could be located nearby.
- 10.53 Following the revision to the site access, the Council's ecologist is satisfied that this allows for the habitats of greater ecological value to be retained towards the centre of the site, and therefore for the mitigation hierarchy under para 118 of the NPPF to be applied. The proposals are therefore acceptable under national planning policy. The ecologist notes however, that this site is subject to significant ecological constraints due to the surrounding habitats, which contribute to the local green infrastructure resource. Any future reserved matters application will need to demonstrate how significant ecological impacts will be avoided, mitigated or compensated for. Consequently, it is recommended that planning conditions are imposed requiring the submission of an ecological enhancement plan, implementation strategy and a badger survey. Overall the outline application is considered to comply with policy EP11 of the UDP.

Heritage Issues

- 10.54 Section 66 (1) of the Listed Buildings Act states “in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses”. Para’s 126-141 of the NPPF are relevant to the determination of applications affecting heritage assets.
- 10.55 The nearest listed building comprises a Grade II listed mill located on the opposite side of Huddersfield Road. The mill building is set down with the roof being mainly visible from the application site. The setting of this building is considered to be mainly confined to land on the opposite side of Huddersfield Road. With that in mind, the impact the development would have on the setting of this building is very limited and it would be mainly the southern corner of the development site that would have any impact on the listed building. The impact is considered less than substantial in NPPF terms.

Planning obligations

- 10.56 In accordance with para 204 of the NPPF planning obligations should only be sought where they meet the following three 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.

Education Provision

- 10.57 Para72 of the NPPF states that great weight should be given to the need to create, expand or alters schools. In line with the requirements for ‘Providing for Education Needs Generated by New Housing’ (KMC Policy Guidance), the proposed development attracts a contribution towards additional school places. Education has been consulted on the proposal and they do not consider a contribution would be necessary on the basis that no more than 30 units are proposed, however should more than 30 dwellings be achieved at Reserved Matters stage then the LPA would reconsider this position.

Affordable Housing

- 10.58 Within Kirklees Rural- West, there is a significant need for affordable 1-2 bedroom housing, as well as a need for affordable 1-2 bedroom housing for older people specifically. Kirklees Rural- West has some of the highest priced housing in Kirklees with properties costing around £105,000 to £195,000. It is a popular location, with 15% of households planning to move home within Kirklees in the next 5 years, having it as their first choice destination. Kirklees’ interim affordable housing policy advises that the Council seeks to secure

20% of dwellings on sites with over 11 or more dwellings, for affordable housing. The policy also advises that on-site provision (housing) is preferred however where the Council considers it appropriate, a financial contribution to be paid in lieu of on-site provision will be acceptable. This could be secured by S106 agreement, details of which would be determined pending the submission of reserved matters.

Public Open Space

10.59 Policy H18 of the UDP requires accessible 30sqm of Public Open Space per dwelling on development sites in excess of 0.4 hectares, within which there should be play equipment provision either provided on the site or, as the site falls within an area of existing equipped play facility at Pleasure Grounds in Meltham or the Memorial Park, it would not require its own site equipped provision. A contribution towards one of these facilities would be required, calculated on the basis of the number of dwellings in line with the Fields in Trust Guidelines for England.

10.60 In terms of POS on site, it is noted that the site lies on the edge of an existing settlement and there are footpaths and routes into the open countryside both within and within close proximity of the site. In accordance with para 73 of the NPPF, the scheme provides access to high quality open spaces which can make an important contribution to the health and well-being of communities. Given the sloping nature of the site, it may not be feasible to provide accessible Public Open Space in accordance with planning policy (30m² per dwelling), in which case a financial contribution would be requested. Given that one of the potential benefits for future occupiers of the scheme would be the proximity to the greenway, it may be appropriate to seek a contribution towards improving the greenway. The section of the greenway between the application site and Meltham town centre has been surfaced and already provides a safe and accessible route for pedestrians into the town centre. However, the Council intend to facilitate an extension to the greenway in order to link from Meltham to Netherton. Financial contributions have already been sought from other housing developments near Netherton to facilitate this link and it may be appropriate to utilise any or part of the POS monies in this case to contribute to improving this link. The POS contribution could be secured by S106 agreement, this being dependent on the details submitted at reserved matters stage.

Local Transport Infrastructure Mitigation and Improvements

S278 and other works would be required to facilitate the access onto Huddersfield Road along with dropped crossings/tactile paving along Huddersfield Road close to the site. A condition is recommended to ensure that details of all additional works including lighting, crossing points etc are submitted.

£20,000 required for bus stop shelters.

Existing bus stop close to the site entrance would need to be relocated.

Other Matters

- 10.61 Conditions are recommended concerning contaminated land investigation and remediation.
- 10.62 In respect of air quality, the application has been assessed against the West Yorkshire Low Emission Strategy Planning Guidance. In accordance with the guidance the installation of 1 no electric charging point is required per unit or 1 charging point per 10 spaces and this would be secured by planning condition.
- 10.63 Concerns have been raised by the Public Rights of Way officer regarding the position of the access and the potential layout of the scheme in relation to the existing footpath which runs through the site. The access proposal has been submitted to respond to initial concerns regarding the location of the public footpath. There would be no direct conflict with the public footpath from the proposed access. There is potential that the layout would directly impact on the public footpath and this could be fully explored at reserved matters stage.

11.0 CONCLUSION

- 11.1 The application site lies beyond the established urban boundary of Meltham on an area of land currently allocated as Provisional Open Land (POL) on the UDP. In the emerging Local Plan the site is allocated as safeguarded land. It is clear that in the case of the emerging PLDP safeguarded land allocations; prevailing circumstances could permit the release of safeguarded sites but only in the event of a review of the Local Plan.
- 11.2 Whilst the PDLP safeguarded allocation carries significant weight, the current allocation of the site is POL. These allocations are predicated on the basis of a 5 year housing land supply. It is important to bear in mind emerging policy PLP3 emphasises the need to maintain a 5 year housing land supply in accordance with para 49 of the NPPF. There is a significant shortfall in housing land supply in Kirklees. The proposal would make a material contribution to addressing that shortfall. That carries substantial weight in favour of permission being granted. The tilted balance in favour of sustainable development as advocated by para14 of the NPPF is engaged in this case.
- 11.3 It is inevitable that development on any greenfield site would mean a loss of landscape quality because there would be buildings in place of open land on an attractive sloping site. The impact on local views from Huddersfield Road and local footpaths would be unavoidable and is exacerbated in this case due to the sloping nature of the site and its natural characteristics. It is sits in a position which is mainly isolated from existing residential development

However, the site lies on the lower slopes of the valley side which would limit longer distance views and the overall landscape character would be retained.

- 11.4 There would be no unacceptable harm in relation to highway safety, drainage/flood risk, living conditions and ecology, subject to the conditions proposed and subject to reserved matters submissions. Infrastructure provision would be dealt with at reserved matters stage or by S106 Agreement where the scheme is fully compliant with policy requirements.
- 11.5 In conclusion, there are no adverse impacts of granting planning permission which would significantly and demonstrably outweigh the benefits. Conflict with UDP policy D5 and other impacts identified in terms of the impact on the character and appearance of the area are outweighed by other considerations and overall, on balance, the proposal constitutes a sustainable form of development. The limited, less than substantial impact on the setting of the grade II listed mill building is considered to be outweighed by the public benefits in providing additional housing.

Background Papers:

Application and history files.

Website link to be inserted here

Certificate of Ownership – Notice served on/ or Certificate A signed:

1. 3 years
2. Approved plans
3. Reserved matters to comprise natural stone and slate roofs
4. Full drainage details to be submitted with reserved matters including percolation tests
5. Foul water drainage details to be submitted with reserved matters.
6. Flood routing
7. Badger survey prior to commencement.
8. Ecological enhancement plan and implementation to be submitted with reserved matters
9. Dwellings to be no more than 2 storeys in height
10. Removal of permitted development rights
11. Construction method statement
12. Electric charging points with reserved matters.
13. Contaminated land conditions
14. Noise report to be submitted with reserved matters.
15. Provision of Affordable Housing
16. Provision of Public Open Space

Report of the Head of Strategic Investment

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 23-Nov-2017

Subject: Planning Application 2017/92274 Formation of off street parking 90 A, Radcliffe Road, Wellhouse, Huddersfield, HD7 4EZ

APPLICANT

Paul High

DATE VALID

22-Sep-2017

TARGET DATE

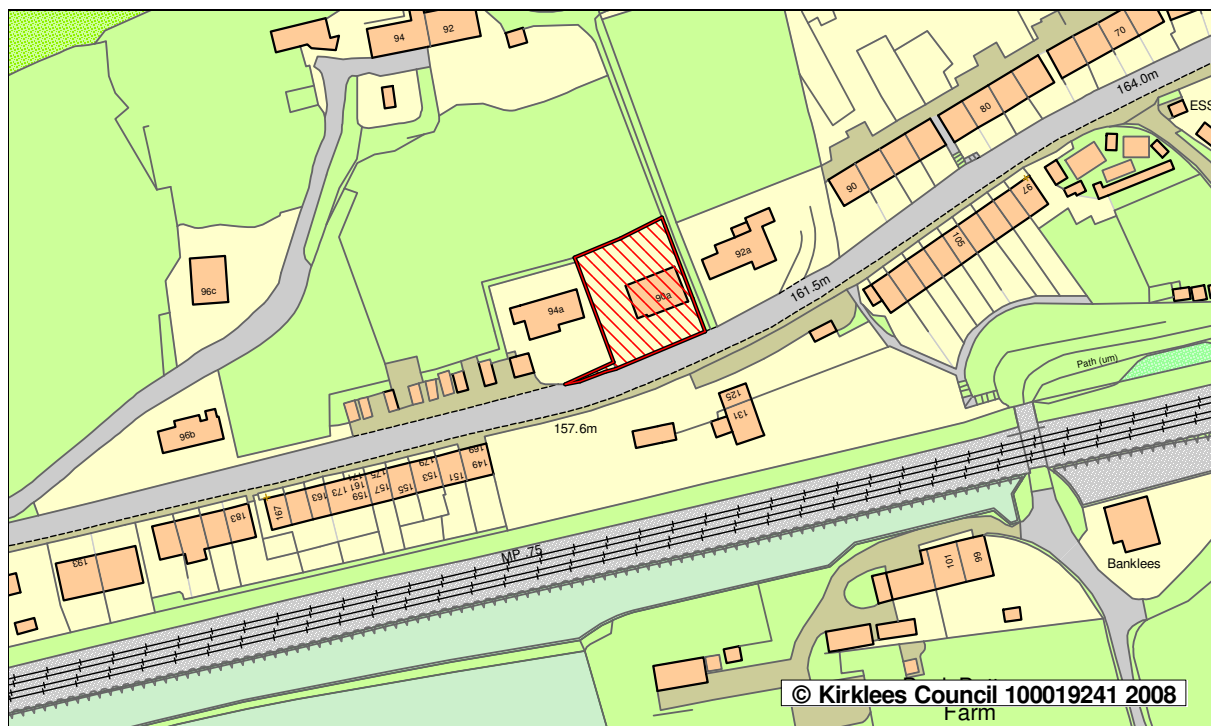
17-Nov-2017

EXTENSION EXPIRY DATE

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

Electoral Wards Affected: Colne Valley

No

Ward Members consulted

RECOMMENDATION:

REFUSE for the following reasons:

1. The application site is located within the designated Green Belt, whereby, as set out in the National Planning Policy Framework (NPPF) paragraph 90, engineering operations which fail to preserve the openness of the Green Belt are to be considered inappropriate development. The extent of the regrading works proposed, new retaining walls and hard surface would not preserve the openness of the Green Belt and would not accord with paragraph 90. The development would, by definition, be inappropriate in the Green Belt and harmful to the Green Belt. There are no very special circumstances to justify the development that would clearly outweigh the harm caused to the Green Belt by reason of its inappropriateness and any other harm. The proposal is contrary to specific policies of the NPPF which indicate development should be restricted. Furthermore it is contrary to Policy PLP57(c.) of the Publication Draft Local Plan.

2. The proposed access does not provide visibility splays to the classified C556 Radcliffe Road which comply with Manual for Streets. Furthermore the submitted details do not demonstrate that the driveway could provide a gradient of no steeper than 1:20 for the first 5 metres into the site from the highway. The consequence is that the development would not provide a safe and suitable access to the highway and would be detrimental to highway safety. This would be contrary to Policy T10 of the Kirklees Unitary Development Plan and Policy PLP21 of the Publication Draft Local Plan.

1.0 INTRODUCTION:

1.1 This application is reported to sub-committee at the request of ward councillor Rob Walker. The reason for this request is:

1.2 "I think it could potentially improve the difficult parking and road safety highways issues in the area. This view is supported by the immediate neighbours. I feel that this needs to be explored in more detail. It would make more likely the linked improvement to housing amenity".

1.3 The chair of sub-committee has confirmed that Cllr Walker's reason for making this request is valid having regard to the Councillor's Protocol for Planning Committees.

2.0 SITE AND SURROUNDINGS:

- 2.1 Bank Top, 90A Radcliffe Road is currently an inter-war bungalow located within designated Green Belt. The property is set in an elevated position to the north of Radcliffe Road. Pedestrian access to the property is via a Public Right of Way COL/82/50 which runs alongside the eastern boundary of the site. There is no vehicular access to the dwelling but the applicants own a garage in a garage court around 35 metres to the west of the site.
- 2.2 The boundary of the property with Radcliffe Road consists of a stone retaining wall with mature landscape above. This is the predominant boundary treatment along the northern boundary of Radcliffe Road in the vicinity of the application site. There is no footway to the northern side of the road and there are double yellow lines along both sides of the road. There is a footway to the southern side of the road.
- 2.3 This particular property has a bungalow to either side with the surrounding area comprised of mainly terraced properties. There is no uniform character to the street scene with the dwellings within the area differing in terms of design, scale and construction materials.

3.0 PROPOSAL:

- 3.1 This is to create off-road parking for the dwelling. It would consist of the formation of a 4 metre wide vehicular access point to the western side of the property which would sweep across the front of the dwelling terminating towards the eastern boundary of the site with a 5.5m diameter turntable accommodating two vehicles. The access would include visibility splays of 24m x 2m which would, in part, require third party land to achieve. In order to form the access and drive engineering operations would be required to regrade the front garden area. This would result in the removal of existing landscape, the reduction in height of the retaining wall along the boundary to no more than 1m in height and the construction of a new retaining wall to the north of the driveway. The existing pedestrian access via the public right of way is shown to be retained.

4.0 RELEVANT PLANNING HISTORY:

- 4.1 2016/94008 - raise roof of the dwelling to form first floor accommodation and the erection of a side extension and alterations. Granted April 2017.

5.0 HISTORY OF NEGOTIATIONS:

- 5.1 Concerns were raised with the agent regarding the impact of the engineering operations on the Green Belt and highway safety implications of the scheme (gradients and lack of achievable sight lines). This resulted in amended plans which increased the proposed visibility splays, including 3rd party land. This required formal notice to be served on the owners of no. 94a to the west of the site and the application was re-validated from the date notification of this was undertaken. The appraisal is based on the amended plans received in September 2017.
- 5.2 As part of the application the applicant has submitted a supporting statement to accompany the application. This will be referred to in the appraisal.

6.0 PLANNING POLICY:

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

The site is designated Green Belt within the UDP and the Publication Draft Local Plan

Kirklees Unitary Development Plan (UDP) Saved Policies 2007:

- 6.2 **BE1** – Design principles
BE2 – Quality of design
T10 – Highway Safety
R13 – public rights of way.

6.3 Kirklees Publication Draft Local Plan: Submitted for examination April 2017 (PDLP)

PLP21 – highway safety
PLP24 - design
PLP57 – the extension, alteration or replacement of existing buildings

National Planning Policy Framework:

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

7.0 PUBLIC/LOCAL RESPONSE:

- 7.1 The application was publicised by neighbour notification letter and site notice, expiring 10th August 2017. The amended plans were not publicised but the neighbouring property, no. 94a, was formally notified of the application by the agent on 22nd September 2017. As a result 6 letters of support, from 5 addresses, have been received. The reasons for supporting the application can be summarised as:

- parking is a problem along Radcliffe Road, in particularly in the evenings and at weekends. Any proposal to create further off-street parking should be encouraged.
- there are other access points to properties in the area, for instance no 92a Radcliffe Road and the entrance/exit to Spring Terrace, that don't have clear sight lines but which don't cause highway safety issues
- the proposal would be an innovative and creative solution to the current parking issue
- support the proposal and suggest that the speed limit along Radcliffe Road is re-considered.
- the development is aesthetically pleasing and would have a positive impact on the area.
- support the proposal but raise some concerns over the visual impact of elevated cars viewed from Radcliffe Road. These should be shielded by planting.

8.0 CONSULTATION RESPONSES:

8.1 Statutory:

Kirklees Highways Development Management: Cannot support the application as the sight lines in the proposal are still below standard in both directions, minimum of 2m x 30m required.

Health and Safety Executive – do not advise, on safety grounds, against the granting of planning permission in this case (taken from the previous application to extend the property. There would be no increase in persons residing at the property as a result of this application).

9.0 MAIN ISSUES

- Principle of development
- Urban design and landscape issues
- Residential amenity
- Highway issues
- Representations
- Other matters

10.0 APPRAISAL

Principle of development

- 10.1 The proposed development would amount to engineering operations on land designated Green Belt within the statutory development plan. Paragraph 90 (Chapter 9) of the NPPF states that engineering operations are not inappropriate development within the Green Belt, provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within the Green Belt. Where it is considered a development does not preserve openness, then this would be deemed 'inappropriate'. Such development is, by definition, harmful to the Green Belt and should only be approved in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other consideration (paragraphs 87-89 NPPF).

- 10.2 Paragraph 79 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and advises that one of the essential characteristics of the Green Belt is its openness. This is a matter of its physical presence rather than its visual qualities. In this case the proposed development would result in: the regrading of land; the reduction in height of the established boundary wall to Radcliffe Road; the formation of a new retaining wall and an elevated driveway between the dwelling and the highway. In order to provide sight lines to Radcliffe Road it would also be necessary for specific areas along the frontage to be kept clear of anything over 1 metre in height. The turntable, which provides parking for two cars, would be around 1.5m above the height of Radcliffe Road and cars parked here would be a prominent feature in the street scene, and from the public footpath along the eastern boundary of the site. Given the limited space between the turntable to the southern and eastern boundaries of the site – around 1.4m and 1.7m respectively, it is unlikely that a meaningful landscape proposal could be put forward which would mitigate the impact of the parking arrangements. From this it is concluded that the development would reduce the openness of the Green Belt contrary to the NPPF and to emerging Policy PLP 57 of the PDLF. Criterion c. of this policy requires alterations to property do not result in a greater impact on openness in terms of ‘the treatment of outdoor area...hard standings....and means of access’.
- 10.3 During the course of the application supporting statements have been provided by the applicant and agent setting out the special circumstances in support of the application. The Agent has stated that the revised scheme involves reduced ground levels and that with careful landscape and use of appropriate materials it would not impact on the openness of the Green Belt – or indeed the purposes of including land within the Green Belt. There is no disagreement between the agent and the local planning authority regarding the latter point. The development would not conflict with the purposes of including land within the green belt.
- 10.4 The applicant has set out a detailed justification for the works proposed and their benefits. These are summarised in the following text. The current pedestrian access to the property is dangerous requiring individuals to walk into the road before being able to see vehicles in either direction (from the public footpath). Furthermore, having no ‘on plot’ parking results in cars parking on double yellow lines for deliveries, weekly shopping etc. To access cars parked in the garage plot (to the west of the site) can involve walking along a road with no footway, unless one crosses to the southern side of Radcliffe Road and then back to the northern side again. Substantial building works will commence at the property shortly and a temporary access will need to be formed to the property. Observations on a number of access points on the northern side of Radcliffe Road in the vicinity of the site are provided. This concludes that the majority of access points do not achieve 43m x 2.4m visibility, many are steep or have a difficult angle of access and that on-plot parking can reduce the capacity for on street parking. In support of the proposal it is stated that the proposals would:

- Make pedestrian access to Bank Top safe with clearer visibility
- Ease the already congested parking problems in the area
- Incorporate a turn-table for cars meaning vehicles will never need to reverse into Radcliffe Road
- Ensure that the building works are delivered in a safe manner with minimum disruption to the highway.
- Whilst access cannot be created to Bank Top to fully meet modern standards it can be engineered to get much closer to those standards than any of the private drives surveyed in the applicant's report.

10.5 Whilst the development would result in the physical ability to park off-road, the specifications for the scheme, as considered in detail in the 'highway issues' section below, do not provide an acceptable sight lines to Radcliffe Road, a classified route with a 30mph speed limit. The benefits of the parking spaces, in these circumstances do not clearly outweigh the harm to the Green Belt by reason of inappropriateness and harm to the openness of the Green Belt. Consequently, the very special circumstances necessary to justify the development do not exist.

Urban Design and Landscape issues

10.6 The existing boundary wall to Radcliffe Road is stone and natural stone retaining walls are a common feature of the area. The proposed scheme includes the partial retention of this front boundary wall which would preserve the consistent use of this material on the northern side of the road. The new retaining wall within the site is indicated to be 'faced externally with stone to LA approval'. It would also be possible to provide some limited soft landscape where space, and visibility, allows. Subject to the use of conditions regarding materials, including surfacing material for the driveway and soft landscape, it would ensure that the development would not significantly harm the character and appearance of the area. This would accord with Policies BE1 and BE2 of the UDP and Policy PLP24 of the emerging local plan. However, this would not overcome the harm to the Green Belt or the conflict with national and emerging local policy in this respect.

Residential Amenity

10.7 The dwelling is detached and is set in a spacious plot, when compared to terraced properties in the vicinity of the site. The proposed access point and driveway is set away and below the closest affected property, no. 94a Radcliffe Road. The area where car would park is set around 1.5m above the height of the road towards the east of the site. This would be at least 10 metres from the closest point of no. 92a Radcliffe Road and is separated from this property by the public footpath. The closest property across Radcliffe Road, no 125 is set below the level of the highway and presents a blank gable to the application site. Given these factors it is considered the scheme would not harm the amenities of existing residents.

- 10.8 The development would provide off street parking for the residents of the application property. On-site parking would, in principle, be of benefit to residents, this issue has also been raised by Cllr Walker stating that “it would make more likely the linked improvement to housing amenity”. However, the scheme does not meet current highway standards for an access onto Radcliffe Road, providing inadequate visibility. To construct a substandard access would result in highway safety issues being created which do not presently exist. This would be detrimental to future residential amenity through the hazardous access arrangements to the dwelling. It is recognised that the existing arrangements, involving a pedestrian access and crossing of Radcliffe Road to reach a garage court, are not ideal. However, the presence of existing accesses along Radcliffe Road that would not be deemed acceptable by modern design standards should not set a precedent for further such schemes; rather, these give good examples of the practices that should no longer be encouraged.

Highway issues

- 10.9 The revised plan for this application shows visibility splays over third party land and can therefore not be guaranteed. Furthermore, the visibility splays shown on drawing number 16076D-21-P06 are marked incorrectly, demonstrating only a 24m splay eastwards to the centre line of Radcliffe Road, rather than to the carriageway edge. The actual visibility splays provided, of approximately 2m x 16m to the west and 2m x 11m to the east, would only be deemed suitable for traffic speeds of 10mph, and even this is only if the situation on Radcliffe Road was considered to be, in the words of Manual for Street, “a very lightly-trafficked and slow speed situation”.
- 10.10 Radcliffe Road is subject to a 30 mph speed limit in the vicinity of the application site. Observed traffic speeds on Radcliffe Road were 30mph, and the traffic flows were moderate, in line with its expected use as a C-classified road. There are parking restrictions to both sides of the road (no waiting at any time). The road is also a bus route. The application property is set above the highway and there is a retaining wall separating the site from the highway. In order to form the access and parking it is proposed to provide a 4m wide access which would widen to 5.5m at the top of the drive and incorporate a turntable with space for 2 vehicles to park. Use of the turntable would allow vehicles to leave the site in a forward gear. The average gradient of the access formed would be 1:12 and visibility splays of 2m x 16m and 2m x 11m would be provided to the highway.
- 10.11 Amended plans were submitted during the course of the application seeking to overcome initial objections on highway safety grounds. Despite the amendments it has not been possible to provide an access with suitable visibility to Radcliffe Road (a minimum of 2m x 30m, but a recommended 2.4m x 43m). Although vehicles, using the turntable, would be able to leave the site in a forward gear it would not be possible for drivers to have adequate sight of oncoming vehicles, nor would drivers on the highway be able to see vehicles emerging from the drive until they are within 10-15m of the access. Furthermore the access details do not demonstrate that the first 5 metres of the drive could be constructed at a sufficiently shallow gradient (1:20) for vehicles to safely enter and leave the site. Altering the design to accommodate this would exacerbate the impact of the engineering operations on the Green Belt.

- 10.12 Policy T10 of the UDP, and emerging Policy PLP21 of the PDLP both consider highway safety. New development will normally only be permitted where safe and suitable access to the site can be achieved. Unfortunately in this case it cannot. It is considered that the adverse impacts of the scheme on highway safety would significantly outweigh the benefits.
- 10.13 Public footpath Colne Valley 82 is adjacent to the development site but would not be directly affected by it. Provided it is not be interfered with or obstructed, prior to, during or after development works there would be no adverse impact on the public right of way. This would accord with Policy R13 of the UDP.

Representations

- 10.14 Six representations have been received, all in support of the application. These centre on the benefits of off road parking and the design of the scheme. These matters have been addressed in the report above. As set out earlier, issues regarding current parking arrangements along Radcliffe Road are acknowledged. If a scheme could be designed preserving the openness of the Green Belt and providing a safe and suitable access then this would overcome the reasons for refusal set out in the report.
- 10.15 Cllr Walker requested the application be determined by sub-committee. His comments concur with the representations in support of the proposal in respect of parking stating the development could “potentially improve the difficult parking and road safety highways issues in the area”. This is addressed in the report (paras. 10.9-10.13). He has also commented that “it would make more likely the linked improvement to housing amenity”. The impact of the development on residential amenity has also been addressed in the report (paras. 10.7 – 10.8)

Other Matters

- 10.16 The proposal would require hard surfaced areas and retaining structures that would alter current drainage within the site. It is important to avoid an increase in flood risk and for surface water run-off onto the highway which would be an additional hazard to traffic and pedestrians. It would be possible to deal with this matter by means of a planning condition if the scheme was acceptable.

11.0 CONCLUSION

- 11.1 In conclusion the proposed development is considered to represent inappropriate development in the Green Belt which would fail to preserve the openness of the Green Belt. Furthermore the detailed scheme would not provide a safe and suitable access which would be detrimental to highway safety.
- 11.2 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.

11.3 The application has been assessed against relevant policies in the development plan, the emerging local plan and other material considerations. It is considered that the development proposals do not accord with the development plan and that there are specific Green Belt policies in the NPPF which indicate the development should be restricted. Furthermore, the adverse highway safety impacts of the development would significantly and demonstrably outweigh the benefits when assessed against development plan policy.

Background Papers:

Application and history files.

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2017%2f92274>

Certificate of Ownership – Notice served on:

94a Radcliffe Road HD7 4EZ on 22nd September 2017.

Report of the Head of Strategic Investment

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 23-Nov-2017

Subject: Planning Application 2017/92422 Erection of single storey side and rear extensions to dwelling, erection of machinery store and engineering operations 9, Clough Head, Slaithwaite Gate, Bolster Moor, Huddersfield, HD7 4NW

APPLICANT

C Friend

DATE VALID

28-Jul-2017

TARGET DATE

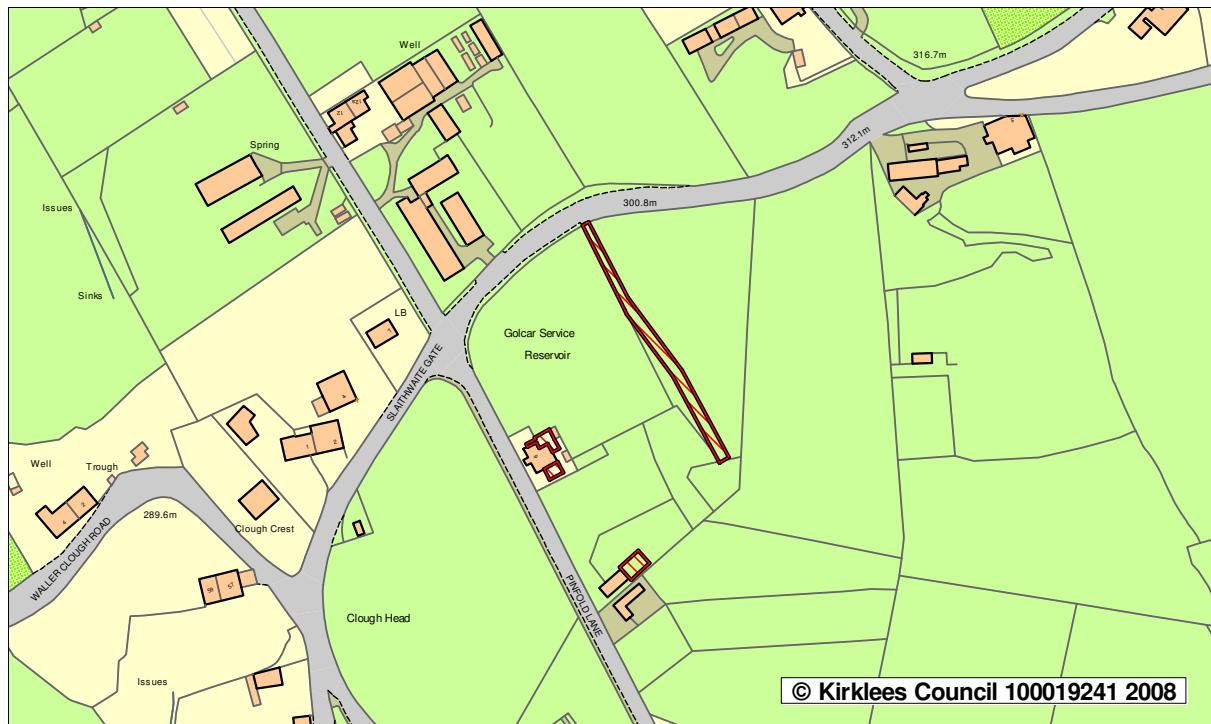
22-Sep-2017

EXTENSION EXPIRY DATE

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

Electoral Wards Affected: Colne Valley

No

Ward Members consulted

RECOMMENDATION: REFUSE

1. The site lies within an area of designated Green Belt. The proposed side and rear extensions to the dwellinghouse would result in disproportionate additions over and above the size of the original building. The extensions therefore constitute inappropriate development that would be harmful to the openness of the Green Belt. The application is contrary to Policy D11 of the Unitary Development Plan, PLP 57 of the emerging Local Plan and paragraph 89 of the National Planning Policy Framework.

1.0 INTRODUCTION:

1.1 The application is brought to the Sub Committee in accordance with the Scheme of Delegation because the applicant is related to an employee of Planning Services.

2.0 SITE AND SURROUNDINGS:

2.1 The application relates to 9 Clough Head, Slaithwaite Gate at Bolster Moor. The property forms a two storey dwelling with a detached garage to the side and amenity space to the front and rear. Associated with the property is a large field which extends to the south and northeast. The site lies in a rural area and is adjacent to a former reservoir (Golcar Service Reservoir).

3.0 PROPOSAL:

3.1 The application is for single storey side and rear extensions to the dwelling, the erection of a machinery store within the field to the south of the dwelling and engineering operations.

3.2 The engineering operations comprise the opening up of an existing culvert that dissects the field, the formation of 'grasscrete' type hard surfacing that will link an existing stable access up to a proposed ground water tank in the north east corner of the field and the formation of a path and steps within a part of the field. An existing stable building adjacent to the proposed machinery store is to be demolished.

- 3.3 The proposed rear extension would project beyond the existing two storey rear extension by 3.2m and would wrap around the single storey utility room extension to join onto the garage. Much of the gap between the dwellinghouse and the garage would also be infilled. This extension would have a flat roof.
- 3.4 The garden room extension to the southern elevation of the dwelling would project by 4.6m from the existing side wall. It would be set back from the front elevation by 2.7m and would be almost flush with the existing rear wall. A ramped access with steel and glass balustrade would be formed to the side of the extension and the balustrading would continue along the rear boundary.
- 3.5 The submitted site plan also indicates various areas of new planting within the existing field, such as an orchard, woodland, vegetable crop area and soft fruit and shrub area. Such planting does not constitute development and does not require planning permission.
- 3.6 The site plan also shows indicates two moveable polytunnels although these do not form part of the proposals.
- 3.7 Supporting information indicates that the applicant is intending on creating an eco-friendly small holding.

4.0 RELEVANT PLANNING HISTORY:

- 4.1 2013/91419 Erection of pitched roof – Approved
- 4.2 Land adjacent 9 Clough Head:
2005/93898 Erection of stable block – Approved

5.0 HISTORY OF NEGOTIATIONS:

- 5.1 The original scheme included the change of use of part of the existing field to domestic garden and this has now been removed. The applicant has also removed the proposed polytunnels from the description of development and intends to rely on the fact that polytunnels are of a type that would not constitute development. The applicant is proposing to demolish the existing stable block to compensate for the erection of the proposed machinery store.

6.0 PLANNING POLICY:

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy

Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

- 6.2 The site is allocated as Green Belt on the UDP Proposals Map and is allocated as Green Belt in the Draft Publication Local Plan.

Kirklees Unitary Development Plan (UDP) Saved Policies 2007:

- 6.3 BE1 – Design principles
BE13 – Extensions to dwellings (design principles)
BE14 – Extensions to dwellings (scale)
D11 - Extensions in the Green Belt
EP3A – Culverting and canalisation of watercourses

6.4 Draft Publication Local Plan:

- PLP24 – Design
PLP57 – Extensions within the Green Belt

6.5 National Planning Guidance:

- NPPF Chapter 7 – Requiring good design
NPPF Chapter 9 - Protecting Green Belt land
NPPF Chapter 10 – Meeting the challenge of climate change, flooding and coastal change

7.0 PUBLIC/LOCAL RESPONSE:

- 7.1 The application was advertised by site notices and neighbour notification letters.
- 7.2 One representation has been received raising an objection to the two polytunnels. Concerns have been raised with the visual impact of the polytunnels contributing to the degradation of the rural character of the area.

8.0 CONSULTATION RESPONSES:

- 8.1 No consultation was carried out.

9.0 MAIN ISSUES

- Principle of development
- Impact on the openness and visual amenity of the Green Belt
- Residential amenity
- Highway issues
- Flood risk and drainage issues
- Representations
- Other matters

10.0 APPRAISAL

Principle of development:

- 10.1 The site lies within the Green Belt and the main issue is the impact of the proposed development on the openness and visual amenity of the Green Belt.
- 10.2 Paragraph 89 of the NPPF states that a local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Exceptions to this include the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building.
- 10.3 Paragraph 90 of the NPPF states that “certain other forms of development are also not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt”. These include engineering operations.

- 10.4 Policy D11 of the UDP relates to extensions to buildings within the Green Belt and states that:

Proposals for the extension of buildings within the green belt will be considered having regard to:

- i the impact on the openness and character of the green belt;
- ii the size of the extension in relation to the existing building which should remain the dominant element;

and, in the case of traditional buildings,

- iii the effect on the character of the existing building.

in the case of proposals to extend buildings which have already been extended the proposal should have regard to the scale and character of the original part of the building.

- 10.5 Policy PLP 57 of the emerging Local Plan relates to the extension, alteration or replacement of existing buildings within the Green Belt. It states:

Proposals for the extension, alteration or replacement of buildings in the green belt will normally be acceptable provided that:

- a. in the case of extensions the host building remains the dominant element both in terms of size and overall appearance. The cumulative impact of previous extensions and of other associated buildings will be taken into account. Proposals to extend buildings which have already been extended should have regard to the scale and character of the original part of the building;
- b. in the case of replacement buildings, the new building must be in the same use as and not be materially larger than the building it is replacing;

- c. the proposal does not result in a greater impact on openness in terms of the treatment of outdoor areas, including hard standings, curtilages and enclosures and means of access; and
 - d. the design and materials used should be sensitive to the character of the green belt setting.
- 10.6 The principle of the development is accepted subject to an assessment of the above policies.

Impact on the openness and visual amenity of the Green Belt:

Extensions to the dwelling:

- 10.7 In order to assess the proposed extensions in relation to local and national Green Belt policy it is first necessary to establish what constitutes the original building. The original building is defined as a building as it existed on 1st July 1948 (if it was built before that date) or as it was built when built after 1st July 1948. The property was built in the 19th century and therefore in this case the original building means as it existed on 1st July 1948.
- 10.8 The applicant has submitted information to justify the proposed single storey extensions. This includes historic maps which show that the original building included a projecting element at the rear which resulted in the building's footprint being a shortened 'T' shape. Historic maps and aerial photographs also indicate two small outbuildings at the rear of the property which have now been demolished but existed up until relatively recently. The applicant also contends that the existing detached garage to the side of the property was erected pre 1948 although officers have not seen any evidence to support this assertion and two separate historic maps from the 1960s do not indicate the presence of the garage. On this basis the garage is unlikely to be part of the original property.
- 10.9 There is no dispute that the original building has been extended since 1948. The applicant has confirmed that a two storey rear extension with a flat roof was erected in 1967 and a pitched roof has recently been added to it under planning permission 2013/91419. There is also a small single storey utility room extension adjoining the northern side of the two storey extension. It appears that these extensions replaced part of the original building (rear projecting element) although it is not known whether this part was originally single or two storeys in height. The existing extensions have a wider footprint than the original rear projecting element because the two storey extension is flush with the southern gable and the single storey utility room extension is almost flush with the northern gable. The amount of projection at the rear is about the same.
- 10.10 Officers estimate the volume of the original dwellinghouse to be approximately 390m³ plus whatever the volume of the original rear projecting element was. If the rear projecting element was a single storey structure with a mono-pitch roof the overall volume of the original dwellinghouse is likely to have been around 490m³. If the rear projecting element was two storeys in height with a pitched roof its overall volume would have been in the region of 560m³.

- 10.11 The existing two storey rear extension and single storey utility room extension built since 1948 have a volume of approximately 200m³. These extensions effectively replaced the original rear projecting element and so this volume is offset to a greater or lesser extent depending on whether the rear projecting element was single or two storeys.
- 10.12 In the absence of any information to support the applicant's assertion that the existing garage is original and in light of historic maps from the 1960s which do not indicate its presence, officers consider the existing garage to be an addition to the property. The garage is of a reasonably substantial size (volume approximately 100m³) and is very closely associated with the dwelling with it being less than 1m from the side wall. As a result of the proposed development the garage would also become physically attached to the dwellinghouse and would therefore become an extension in its own right. The volume of the garage therefore needs to be taken into account when assessing the extent of additions to the original building.
- 10.13 Officers accept that two small outbuildings that existed to the rear of the dwelling can be taken into account when considering the original building. One of these was demolished less than fifteen years ago and the other was demolished in 2013. These outbuildings were nevertheless small in scale and the agent has estimated their combined volume at 23m³.
- 10.14 The agent has advised that the combined volume of the proposed extensions is 178.5m³.
- 10.13 Officers provide the following calculation for the purposes of assessing the volume increase to the original building. In the absence of any specific information to indicate whether the original rear projecting element was single or two storeys in height officers have accepted an upper volume for the original dwellinghouse (i.e. the original rear projecting element being two storeys in height with a pitched roof).

Volume of original building = 583m³

Volume of existing extensions/additions to original building (garage plus single storey rear utility extension) = 118m³

Volume of proposed extensions = 178.5m³

Combined volume of existing and proposed extensions = 296.5m³

% volume increase provided by existing and proposed extensions = 51%

- 10.14 It is concluded that the proposed extensions amount to disproportionate additions to the original building when combined with the extensions and additions to the property. Whilst the proposed extensions are only single storey they give the dwelling a sprawling form and the juxtaposition of the differently designed additions to the original building exacerbates this sense of sprawl. For example, the existing garage - which would become attached to the dwelling - and the new sun room mean that the width of the original dwelling would be more than doubled. The sun room extension in particular would be a prominent addition and would be located in an area that was not historically part of the property's residential curtilage. A previous owner (not

the applicant) expanded the defined curtilage into the adjoining field at some point between 2006 and 2009 without planning permission. This change of use would be lawful if it was carried out over ten years ago however the extension nevertheless accentuates the encroachment into the Green Belt that has previously occurred.

- 10.15 In summary it is considered that the proposed extensions would harm the openness of the Green Belt and would be contrary to Policy D11 of the UDP, Policy PLP 57 of the emerging Local Plan and guidance in chapter 9 of the NPPF.

Machinery store:

- 10.16 Supporting information indicates that the machinery store is required in connection with the applicant's plans to create a small holding growing fruit and vegetables. The machinery store is proposed adjacent to an existing stable block which was approved under application 2005/93898.
- 10.17 New buildings within the Green Belt are classed as inappropriate development. The building does not meet the criteria for exceptions for new buildings within the Green Belt and no very special circumstances have been put forward that would outweigh the harm to the Green Belt by reason of inappropriateness. The applicant has however indicated that they would demolish the existing stable block, which is of a comparable size to the machinery store. It is therefore considered that the machinery store would have a neutral impact on the openness of the Green Belt and in the circumstances can be accepted.

Engineering operations:

- 10.18 The engineering works include the opening up of an existing stone culvert within the field that surrounds the dwelling and former reservoir. The culvert runs to the north of the reservoir and dissects the field from east to west. A section drawing has been submitted showing what these works involve which the agent has advised will be representative of the nature of the works along the entire length. Based on this information the extent of the proposed works is relatively limited. The NPPF allows for engineering works in the Green Belt and officers consider that the visual impact of these works would not be significant and are therefore acceptable.
- 10.19 The engineering operations also include the creation of an access track using grass pavers that would extend from the existing stable access and link to a proposed ground water tank in the north east corner of the field. The grass pavers form a plastic grid that allows grass to grow through. The first 12m of this access will serve as the established easement that exists for Yorkshire Water. The applicant then wishes to extend this up to the proposed ground water tank to prevent rutting of the field by small vehicles and machinery used in connection with the growing of plants.
- 10.20 If grass successfully grows through the plastic pavers then the visual impact should be quite limited and on balance officers consider this aspect of the scheme to be acceptable.

10.21 The proposed ground water tank involves digging out a relatively shallow area of ground and installing a pond liner. This would be used for watering plants/crops. The works would not have any significant impact on the openness or visual amenity of the Green Belt.

10.22 The formation of a path and steps are very minor works and are acceptable. It is noted however that the path links to an area of land that was formerly part of the field and which has been enclosed by fencing and is currently used for growing plants as well as an area of decking for sitting out. The fencing and use of the land for growing plants would not require planning permission but its use as residential garden would result in a material change of use of the land.

Residential Amenity

10.23 The property forms a fairly isolated dwelling with no immediate neighbouring properties and as such there would be no significant impact on residential amenity.

Highway issues

10.24 The proposals do not give rise to any significant highway safety issues.

Drainage issues

10.25 The works to open up the culvert are relatively minor and there are unlikely to be any significant drainage issues associated with this.

Representations

10.26 One representation has been received raising concerns with the visual impact of the two polytunnels. The polytunnels have been removed from the application because the applicant intends to rely on the fact that the nature of the polytunnels is such that they do not constitute development and therefore planning permission is not required. The polytunnels are not therefore being considered as part of the scheme.

11.0 CONCLUSION

11.1 The proposed extensions to the dwelling would result in disproportionate additions to the original building when the existing extensions/additions to the property are taken into account. The extensions are therefore inappropriate development which would by definition be harmful to the Green Belt. The extensions result in a sprawling form of development which would harm the openness of the Green Belt. The application is therefore contrary to Policy D11 of the UDP and emerging local plan policy PLP 57 and NPPF chapter 9.

12.0 REFUSE

1. The site lies within an area of designated Green Belt. The proposed side and rear extensions to the dwellinghouse would result in disproportionate additions over and above the size of the original building. The extensions therefore constitute inappropriate development that would be harmful to the openness of the Green Belt. The application is contrary to Policy D11 of the Unitary Development Plan, PLP 57 of the emerging Local Plan and paragraph 89 of the National Planning Policy Framework.

Background Papers:

Application and history files.

Website link:

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2017%2f92422>

Certificate of Ownership – Certificate A signed

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Report of the Head of Strategic Investment

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 23-Nov-2017

Subject: Planning Application 2017/91132 Erection of two storey side extension to form enlarged Class A1 shop at ground floor with A2 office unit and residential flat above Fix It Supplies, 12b, Hillhouse Lane, Fartown, Huddersfield, HD1 6EF

APPLICANT

Mr Toheed Ahmad, Fix It Supplies

DATE VALID

03-Apr-2017

TARGET DATE

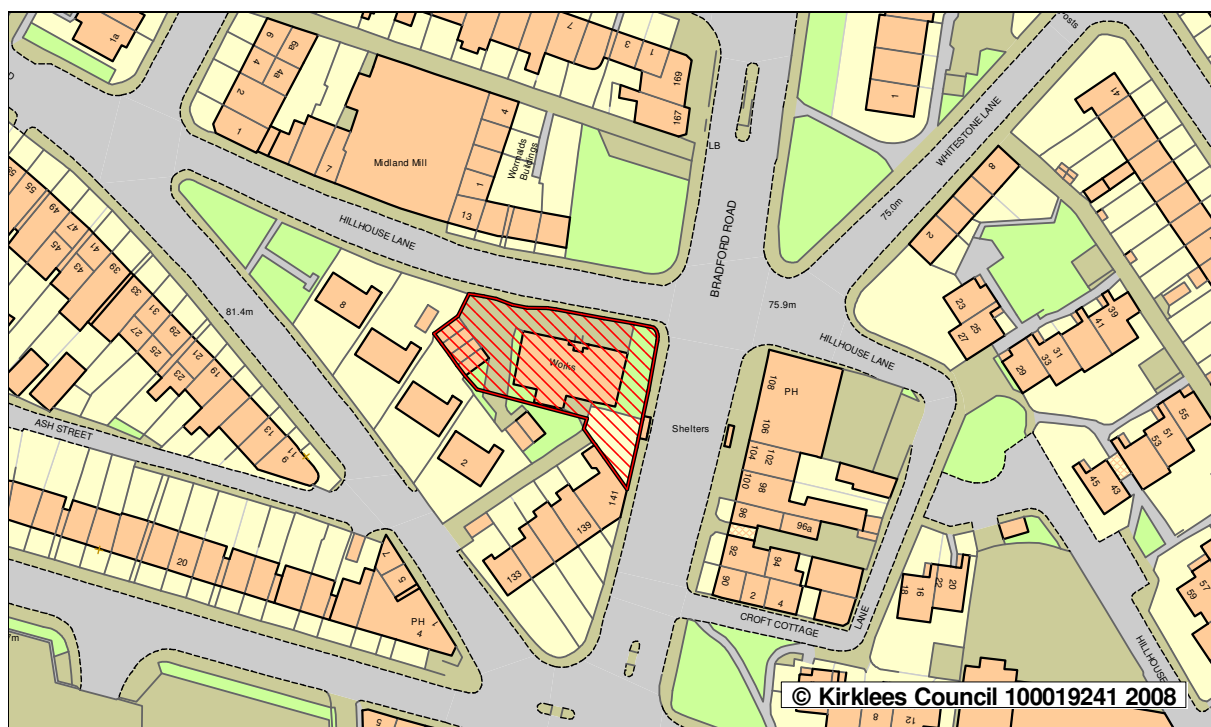
29-May-2017

EXTENSION EXPIRY DATE

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

Electoral Wards Affected: Greenhead

No

Ward Members consulted
(referred to in report)

RECOMMENDATION:

REFUSE permission

1. The proposed two-storey extension would, by reason of its mass and its position on the highway boundary to Bradford Road, amount to overdevelopment and fail to respect the appearance or character of surrounding development on Bradford Road, which is mostly of domestic scale and set back from the highway boundary. It would therefore be harmful to visual amenity and contrary to the aims of Policies B5 and BE1-2 of the Unitary Development Plan and of the National Planning Policy Framework – “Core Planning Principles” and “Requiring Good Design”.

1.0 INTRODUCTION:

- 1.1 This application is brought before Sub-Committee for determination following a request by Ward Councillor Mohan Sokhal, which states: “As a Ward Councillor I am asking that the above application is placed on the Agenda of a meeting of the Planning Sub Committee Huddersfield, so that the visual impact of the proposed extension can be considered. I would ask that Members undertake a site visit before any decision is made.”
- 1.2 The Chair of the Sub Committee has confirmed that Councillor Sokhal’s reason for making this request is valid having regard to the Councillors’ Protocol for Planning Sub Committees.

2.0 SITE AND SURROUNDINGS:

- 2.1 12b Hillhouse Lane comprises a single-storey building constructed in brick with a flat roof, which is subdivided into 2 retail units, currently vacant. These were formerly occupied by Eden LED lighting and Fix-It plumbing and electrical supplies (previously Banson Tool Hire). The building is located on a corner site at the junction of Hillhouse Lane and Bradford Road. Vehicular and pedestrian access are taken from Hillhouse Lane which bounds the site to the north. Bradford Road forms the boundary to the east. There are parking spaces laid out on the Hillhouse Lane frontage, further hard-surfacing to the west of the building providing access to a block of four garages at the western end of the site and a further two garages outside the site to the south, or rear. The site also includes a triangular area of unused land consisting of long grass on the Bradford Road frontage which is raised above the highway level and bounded by a stone wall about 1m high.

- 2.2 The wider area is in mixed residential and commercial uses. There are single storey dwellings to the rear, south and west of the site on Halifax Old Road, which are of brick construction. There are also two-storey dwellings on the north side of Hillhouse Lane with a few commercial premises. To the south is another retail unit forming the end of a terrace, while on the opposite side of Bradford Road are two storey terraced units which are of mixed commercial uses with some residential use on the upper floor.

3.0 PROPOSAL:

- 3.1 The proposal is for the erection of a two-storey side extension to the building on the side nearest Bradford Road. It is proposed that this would form a single retail unit at ground floor, and at first floor an office unit (A2 / B1) with a one-bedroomed apartment to the rear. The plans indicate that the first-floor extension approved under permission 2014/93209 would also be implemented.
- 3.2 The proposed extension would, as with the earlier side extension approved as part of 2014/93209, extend up to the highway boundary, replacing the existing stone boundary wall, and would have a gable end facing Bradford Road. There would in addition be a two-storey element extending a further 10m to the rear of the existing building beyond the extension already approved, also along the highway boundary, but with a roof pitching towards Bradford Road.
- 3.3 The ground floor would be a single retail unit, but there would be a residential one-bedroom apartment at first floor in the rear part of the development. The extension would be built in brick with a concrete tile roof. Windows and doors would be aluminium.

4.0 RELEVANT PLANNING HISTORY:

- 4.1 2014/93209 – Erection of first-floor and two-storey side extensions. Approved, not implemented.

2015/92782 – Proposed erection of two-storey building with shop at ground floor and office at first floor. Withdrawn because of officers' concerns about overdevelopment.

2017/93581 – Discharge of conditions on 2014/93209. Awaiting determination.

5.0 HISTORY OF NEGOTIATIONS:

- 5.1 03-Apr-2017: Amended plan submitted – internal layout for flat changed.
25-Jul-2017: Additional supporting statement from planning consultant.

6.0 PLANNING POLICY:

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

Kirklees Unitary Development Plan (UDP) Saved Policies 2007:

6.2

- **D2** – Unallocated land
- **S1** – Town and Local Centres
- **BE1** – Design principles
- **BE2** – Quality of design
- **B5** – Extensions to business premises
- **T10** – Highway safety

Supplementary Planning Guidance / Documents:

6.3

PLP 24: Design
PLP 21: Highway safety and access
PLP 22: Parking

National Planning Guidance:

6.4

- Core planning Principles
- Chapter 1 – Building a strong, competitive economy
- Chapter 2 – Ensuring the vitality of town centres
- Chapter 7 – Requiring good design
- Chapter 8 – Promoting healthy communities
- Chapter 11 – Conserving and enhancing the natural environment

7.0 PUBLIC/LOCAL RESPONSE:

7.1 Three letters of objection (108 Bradford Road, 2 & 6 Halifax Old Road):
Summary of issues raised:

- Loss of light to garden for 6 Halifax Old Road.
- Privacy (from first floor balcony to 6 Halifax Old Road).
- Safety and access issues during construction including that there is insufficient room for materials storage on site.
- 2 & 4 Halifax Old Road have right of way to rear.
- Insufficient space for deliveries and parking to serve the new developments.
- Inaccuracies in plans and application form – including the address being wrong and the description being misleading.
- It will not improve the area.
- If approved we would hope it will not be food outlets as there are too many on Bradford Road already.

7.2 Three letters of support (104, 143 & 171B Bradford Road). Summary of issues raised:

- It would reduce anti-social behaviour.
- It would improve the appearance of the area.
- It would bring more trade to existing businesses.

WARD COUNCILLOR COMMENTS

7.3 Ward Councillor Mohan Sokhal requests a Sub-Committee decision and site visit:

“As a Ward Councillor I am asking that the above application is placed on the Agenda of a meeting of the Planning Sub Committee Huddersfield, so that the visual impact of the proposed extension can be considered.

I would ask that Members undertake a site visit before any decision is made.”

8.0 CONSULTATION RESPONSES:

8.1 **Statutory:**

- The Coal Authority – No objections.

8.2 **Non-statutory:**

- Highways – Additional parking should be provided.
- Environmental Health – Acceptable subject to conditions.

9.0 **MAIN ISSUES**

- Principle of development
- Urban design issues
- Residential amenity
- Housing issues
- Highway issues
- Drainage issues
- Representations
- Other matters

10.0 **APPRAISAL**

Principle of development

10.1 The site is Unallocated on the UDP Proposals Map. Within the NPPF, it will be assessed having regard to the following NPPF Policies:

- “Core planning principles” – Local Planning Authorities should promote mixed use developments and make use of sustainable modes of transport.
- “Building a strong competitive economy” significant weight should be placed on the need to secure sustainable economic growth through the planning system.
- “Ensuring the vitality of town centres” – planning decisions should promote of the vitality and viability of town centres.
- “Requiring good design” – planning decisions should aim to ensure that developments will function well, add to the overall quality of the area, optimise the potential of the site to accommodate development and create safe and accessible environments;
- “Promoting Healthy Communities” - advises planning decisions ...should aim to achieve places which promote...safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion.
- “Conserving and enhancing the natural environment” – advises that planning policies and decisions should aim to prevent noise giving rise to significant adverse impacts on health and quality of life, while not placing unreasonable restrictions on businesses.

10.2 The application will further be assessed having regard to the aims of the following UDP Policies:

D2: Development on unallocated land will be granted provided that the proposals do not prejudice [a specific set of considerations];

B5: Proposals for the extension of business premises considered having regard to amenities of neighbouring occupiers, visual amenity and highway safety;

BE1: Development should be visually attractive and create or retain a sense of local identity;

BE2: Development should be in keeping with any surrounding development in terms of design, materials, scale, height and mass;

T10: Development should not create or materially add to highway safety problems;

T19: Development should provide adequate parking having regard to Appendix 2 standards.

- 10.3 The proposed A1 use is deemed to be a main town centre use. At the time of the approved 2014 application for first-floor and two-storey extensions, planning officers' view was that due to the close proximity of the site to the local centre which is within 70m of the application site, and bearing in mind the established retail uses the proposals would not be contrary to the aims of Policy S1 of the UDP or chapter 2 of the NPPF. As the additional retail space now proposed is relatively small, no sequential test is necessary. The principle of B1 use at this site has also been deemed accepted in principle by the previous approval as the site is a sustainable location.

Urban Design issues

- 10.4 The premises are situated in an area in which most buildings, especially those fronting Bradford Road, are of domestic scale and proportions and have a yard or forecourt between their own front elevation and the public highway, or at least are set back substantially from it. This applies to 13-19 Hillhouse Lane opposite and to nos. 90-108 Bradford Road.
- 10.5 The approved 2014 scheme involved a side extension coming up to the edge of the Bradford Road boundary. But the current scheme would almost double the length of the frontage compared to what it would look like if the 2014 scheme were implemented, from 11m to 21m.
- 10.6 This would look out of keeping with its surroundings and visually overbearing. This would be emphasised by the underbuild (the building would replace the boundary retaining wall and banking) and furthermore by being built in brick in an area in which stone is by far the dominant material.
- 10.7 It is considered that the proposed development would fail to respect the character of its surroundings and would be harmful to visual amenity, contrary to the aims of Policies BE1 and BE2 of the Unitary Development Plan.

Residential Amenity

Privacy and space about buildings

- 10.8 141 Bradford Road to the south of the site appears to have living accommodation at first floor. This would have no windows facing directly towards the proposed extension. There is a north-west facing window at upper floor which might experience some loss of light from the east but this would probably not result in much additional impact beyond that which would result from the extension already approved, and it would maintain a relatively open aspect to the west. The other dwelling closest to the site boundary is 2 Halifax Old Road; again this would not have an outlook directly towards the proposed extension and it is considered that it would not be significantly affected. In summary it is considered it would not have an overbearing impact on these properties.
- 10.9 The habitable room windows in the proposed flat would have an outlook towards Bradford Road. They would comply with minimum distances towards 96-104 Bradford Road opposite.

Noise

- 10.10 The proposed flat would be subject to a considerable level of traffic noise from Bradford Road. On the basis of Environmental Health advice it is considered that in the event of an approval, this concern could be addressed by a condition requiring a noise report including noise attenuation measures for the flat. Subject to this it is considered that occupants of the proposed flat would enjoy an acceptable level of amenity.
- 10.11 In conclusion, it is considered that the development would not detract from the amenities of neighbouring properties or land and would accord with the aims of BE12 and D2 in so far as these policies relate to residential amenity.

Housing issues

- 10.12 The proposed flat would make a contribution towards meeting housing requirements but as it is a single unit and only with one bedroom, only very limited weight can be placed on this benefit.

Highway issues

- 10.13 The site is located less than 1km from Huddersfield Town Centre and on the edge of Fartown Local Centre. There are frequent bus services on Bradford Road and the location is one that may encourage linked trips. The parking standards set out in UDP appendix 2 are recommended as a maximum, and can be reduced if the development would still be able to function without giving rise to highway safety problems by reason of on-street parking.
- 10.14 Highways Officer's original advice for this application was that an additional 4 vehicular off-street parking spaces should be provided to serve the A1 unit and further parking spaces for the upper floor unit (the number dependant on whether it was to be A2 or B1).

- 10.15 However, this judgement was made without fully taking into account the history of the premises including the previous approval for the first floor and side extension. The current proposal would only add a further 66 square metres of retail space, plus the apartment. This 66 sqm would be in addition to the 270 sqm of retail space and 270 of B1/A1 space that either exists or has planning permission under 2014/93209. This earlier proposal showed the provision of 9 parking spaces along the site frontage within the existing forecourt (although the steps would make it difficult to fit in more than 8 of standard dimensions). This would represent a substantial shortfall based on UDP appendix 2 standards but it was considered at the time that given the location of the site it would be able to function satisfactorily. It is also noted that a small amount of overspill parking could be provided near the western end of the frontages in front of the garage block. The garages are only used for storage so daytime vehicular access to them is not essential.
- 10.16 As the apartment is single-bedroom and located close to the town centre on a main road with a frequent bus service it is considered that it is not necessary to provide dedicated parking for it.
- 10.17 In conclusion it is considered that subject to a condition that all the parking spaces shown on the drawings are provided before the development is brought into use and thereafter retained, the development would not create or materially add to highway safety problems and would accord with the aims of Policies T10 and T19.

Drainage issues

- 10.18 It is proposed that surface and foul water disposal is to be by mains drainage. This will presumably make use of the existing mains drainage arrangements for the building and as the development would not significantly add to run-off it is not a major concern.

Ecological issues

- 10.19 The site is in the bat alert layer. A bat survey was undertaken at the time of application for the first-floor and side extensions (2014/93209) which found that the building had low to negligible bat roost potential and the Ecology Officer concluded that no further survey work was required. It is considered on this basis that an additional survey would not be justified.

Representations

- 10.20 Concerns relating to highway safety and visual amenity have already been examined in the main part of the report but are highlighted here together with other issues raised.

- Loss of light to garden for 6 Halifax Old Road.

Response: The proposed new extension would be on the Bradford Road end, away from 2-8 Halifax Old Road and would therefore not give rise to any significant additional impact on these properties.

- Privacy (from first floor balcony to 6 Halifax Old Road).
Response: The current scheme does not incorporate a balcony to the rear, only to the front or north, where it would be approximately 19m away from the nearest dwelling, 19 Hillhouse Lane, and it is considered that this would not materially affect privacy.
- Safety and access issues during construction including that there is insufficient room for materials storage on site.
Response: For a development of this scale it is not normal practice to seek to control the access and parking of construction vehicles and storage of materials on site. The developer will however need the permission of the Council acting as Highway Authority in order to work within the public highway.
- 2 & 4 Halifax Old Road have right of way to rear.
Response: Private rights of access are generally not regarded as a material planning consideration. This would not appear to be affected by the current proposal in any case.
- Insufficient space for deliveries and parking to serve the new developments.
Response: The issue of parking has been examined at length earlier in this report (10.13-10.17). Given the good visibility at the access points and the typical traffic levels on Hillhouse Lane, it is considered unnecessary to require a delivery plan or specified area for deliveries.
- Inaccuracies in plans and application form – including the address being wrong and the description being misleading.
Response: It is considered that the address of the site and the description of the development are both adequate to allow members of the public to gain an accurate idea of the nature and location of the development and to comment on it.
- It will not improve the area.
Response: It is considered that the development would not improve the visual amenity of the area for the reasons set out in paragraphs 10.4-10.7 above.
- If approved we would hope it will not be food outlets as there are too many on Bradford Road already.
Response: The current proposals would incorporate A1, B1 and C3 (residential) use. Hot food takeaways are a separate use class and do not form part of this application.
- It would reduce anti-social behaviour.
Response: The site of the proposed new extension is open to public view on Bradford Road and is unlikely to provide a haven for antisocial behaviour. In the absence of objective evidence, no significant weight can be placed on this factor. The applicant has provided photographic evidence of littering and occasional dumping of large items on the land but at the time of the case officer's site visit there were no clear signs of a littering or fly-tipping problem, and in any case these can be dealt with under other powers if they occur.

- It would improve the appearance of the area.

Response: It is considered that the development would not improve the appearance or visual amenity of the area for the reasons set out in paragraphs 10.4-10.7 above.

- It would bring more trade to existing businesses.

Response: As the site is within an edge of centre location, the proposed development could encourage linked trips. But the same argument could be made in support of the already approved development 2014/93209 which would, if implemented, result in a large increase in retail and commercial floorspace. It is considered that the harm to visual amenity and the street scene that the new proposal would cause would not be outweighed by the very limited additional economic benefits it would bring.

Other Matters

10.21 *Coal mining legacy:*

The site is located within a Coal Referral Area owing to the strong likelihood of old underground mine workings being present that could affect the development. A Mining Investigation Report was submitted with the application. The Coal Authority were consulted on this and confirmed that they have no objections to the development.

11.0 CONCLUSION

- 11.1 The proposed development would cause substantial harm to visual amenity and it is considered that this would not be outweighed by the limited additional benefits to the local economy and housing supply.

12.0 REASON FOR REFUSAL

- 12.1 The proposed two-storey extension would, by reason of its mass and its position on the highway boundary to Bradford Road, amount to overdevelopment and fail to respect the appearance or character of surrounding development on Bradford Road, which is mostly of domestic scale and set back from the highway boundary. It would therefore be harmful to visual amenity and contrary to the aims of Policies B5 and BE1-2 of the Unitary Development Plan and of the National Planning Policy Framework – “Core Planning Principles” and “Requiring Good Design”.

Background Papers:

Application and history files.

Website link to be inserted here

Certificate of Ownership – Notice served on/ or Certificate A signed:

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