

Public Document Pack



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

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Wednesday 25 September 2019

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 3 October 2019**.

(A coach will depart the Town Hall, at 10.00am to undertake Site Visits. The consideration of Planning Applications will commence at 1.00 pm in the Council Chamber at 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', on a light-colored background.

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 Nell Griffiths
Councillor James Homewood
Councillor Mohammad Sarwar
Councillor Mohan Sokhal
Councillor Sheikh Ullah
Councillor Harpreet Uppal
Councillor Donald Firth
Councillor Paul Davies
Councillor Andrew Marchington
Councillor Anthony Smith
Councillor Nigel Patrick
Councillor Bernard McGuin

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
V Lees-Hamilton
M Thompson
R Smith
J Taylor

Green

K Allison
S Lee-Richards

Independent

C Greaves

Labour

S Hall
A Butt
E Hill
M Kaushik
W Simpson

Liberal Democrat

A Munro
A Pinnock
J Lawson

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 - 6

To approve the Minutes of the meeting of the Committee held on 22 August 2019.

3: Interests and Lobbying

7 - 8

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: Public Question Time

The Committee will hear any questions from the general public.

7: Site Visit - Application for order to add a public footpath to the definitive map and statement, Miry Lane to St Mary's Rise, Netherthong

(Estimated time of arrival at site – 10.20am)

Contact Officer: Giles Cheetham Definitive Map Officer - Public Rights of Way

Wards Affected: Holme Valley South

8: Site Visit - Application No: 2018/93453

Erection of two storey rear extension and front dormers 39, Springdale Avenue, Thornton Lodge, Huddersfield.

(Estimated time of arrival at site – 10.45am)

Contact Officer: Neil Bearcroft, Planning Services

Wards Affected: Crosland Moor and Netherton

9: Site Visit - Application No: 2019/92566

Change of use of parts of 3rd and 4th floors to laboratory (B1) and training facility with ancillary overnight accommodation (D1), with engineering operations including the formation of car parking (Listed Building within a Conservation Area) Titanic Mill, Low Westwood Lane, Linthwaite, Huddersfield.

(Estimated time of arrival at site – 11.00am)

Contact Officer: Nick Hirst, Planning Services

Wards Affected: Colne Valley

10: Site Visit - Application No: 2019/91365

Erection of extensions and alterations to existing dwelling Greenroyd Farm, 4, Chapel Street, Scapegoat Hill, Huddersfield.

(Estimated time of arrival at site – 11.25am)

Contact Officer: Emma Thompson, Planning Services

Wards Affected: Colne Valley

11: Local Planning Authority Appeals

9 - 42

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

Contact Officer: Mathias Franklin – Development Management Group Leader

Wards Affected: Almondbury; Ashbrow; Holme Valley North; Holme Valley South; Lindley; Newsome

Planning Applications

43 - 44

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 Monday 30 September 2019.

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 prior to the meeting.

12: Application for a definitive map modification order

45 - 158

Application for order to add a public footpath to the definitive map and statement, Miry Lane to St Mary's Rise, Netherthong.

Contact Officer: Giles Cheetham, Public Rights of Way

Wards Affected: Holme Valley South

13: Planning Application - Application No: 2018/93453159 -
168

Erection of two storey rear extension and front dormers 39, Springdale Avenue, Thornton Lodge, Huddersfield.

Contact Officer: Neil Bearcroft, Planning Services

Wards Affected: Crosland Moor and Netherton

14: Planning Application - Application No: 2019/92566 169 -
190

Change of use of parts of 3rd and 4th floors to laboratory (B1) and training facility with ancillary overnight accommodation (D1), with engineering operations including the formation of car parking (Listed Building within a Conservation Area) Titanic Mill, Low Westwood Lane, Linthwaite, Huddersfield.

Contact Officer: Nick Hirst, Planning Services

Wards Affected: Colne Valley

15: Planning Application - Application No: 2019/91365 191 -
198

Erection of extensions and alterations to existing dwelling Greenroyd Farm, 4, Chapel Street, Scapegoat Hill, Huddersfield.

Contact Officer: Emma Thompson, Planning Services

Wards Affected: Colne Valley

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 22nd August 2019

Present: Councillor Terry Lyons (Chair)
Councillor Nell Griffiths
Councillor James Homewood
Councillor Mohammad Sarwar
Councillor Mohan Sokhal
Councillor Donald Firth
Councillor Paul Davies
Councillor Andrew Marchington
Councillor Bernard McGuin
Councillor Steve Hall
Councillor Alison Munro

Apologies: Councillor Sheikh Ullah
Councillor Harpreet Uppal
Councillor Nigel Patrick

1 Membership of the Committee

Councillor Steve Hall substituted for Councillor Harpreet Uppal.

Councillor Alison Munro substituted for Councillor Anthony Smith.

2 Minutes of previous meeting

The Minutes of the meeting held on 18 July 2019 were approved as a correct record.

3 Interests and Lobbying

Councillors Lyons, Griffiths, P Davies, Homewood and S Hall declared they had been lobbied on application 2019/90085.

Councillor Griffiths declared she had been lobbied on application 2019/91048.

Councillor Lyons declared an "other interest" in application 2019/90811 on the grounds that he knew the applicant.

4 Admission of the Public

All items on the agenda were taken in public session.

5 Deputations/Petitions

No deputations were received.

6 Public Question Time

No questions were asked.

7 Site Visit - Application No: 2019/91048
Site visit undertaken.

8 Site Visit - Application No: 2019/90811
Site visit undertaken.

9 Site Visit - Application No: 2019/92128
Site visit undertaken.

10 Site Visit - Application No: 2019/90085
Site visit undertaken.

11 Local Planning Authority Appeals
That the report be noted.

12 Planning Application - Application No: 2019/90811
Cllr Sokhal took the chair for this item.

The Committee gave consideration to Planning Application 2019/90811 Erection of 10 dwellings Springfields, Mill Moor Road, Meltham, Holmfirth.

Under the provisions of Council Procedure Rule 37 the Committee received a representation from Jeremy Child (on behalf of the applicant)

RESOLVED – Delegate approval of the application and the issuing of the decision notice to the Head of Development and Master Planning in order to:

(1) Complete the list of conditions including those contained within the considered report including:

1. Time limit for commencement of the development (3 years)
2. Development to be in accordance with the approved plans.
3. Approval of samples of materials.
4. Intrusive site investigations and scheme of remediation and a validation report (as may be necessary).
5. Ecological Design Strategy including planting schedule and bat and/or bird boxes.
6. Detailed drainage design including restriction of surface water discharge to 3 litres per second.
7. Detailed design of diverted land drain.
8. Details of boundary treatment including rockery/retaining wall.
9. Drystone wall to Mill Moor Road and Matthew Lane site frontages.
10. Details of lockable gates to prevent unrestricted access to rear of plots.
11. Remove permitted development rights for rear extensions on plots 1, 4 and 8-10.
12. Surfacing of parking areas.
13. Nothing to be planted or erected within 2m of the carriageway edges to maintain acceptable sightlines.
14. Construction management plan.

Planning Sub-Committee (Huddersfield Area) - 22 August 2019

- 15. Footway to Matthew Lane.
- 16. Electric vehicle recharging points

(2) Secure a S106 agreement to cover the following matters:

- i. Open space provisions comprising of an off-site commuted sum of £18,850.
- ii. Sustainable travel contribution (Metro Cards) - £5,000.
- iii. Arrangements for the future maintenance and management of surface water drainage infrastructure.

(3) That, pursuant to (2) above, 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 Development and Master Planning 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 Development and Master Planning 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 P Davies, Firth, Griffiths, S Hall, Homewood, McGuin, Sarwar and Sokhal, (8 votes)

Against: Councillor Munro (1 vote)

Abstained: Councillor Marchington.

13 **Planning Application - Application No: 2019/90085**

The Sub Committee gave consideration to Planning Application 2019/90085 Erection of 10 dwellings Land at, Lancaster Lane, Brockholes, Holmfirth.

RESOLVED – That consideration of the application be deferred in line with the reasons detailed in the update list.

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

For: Councillors P Davies, Firth, Griffiths, S Hall, Homewood, Lyons, Marchington, McGuin, Munro, Sarwar and Sokhal, (11 votes)

Against: (0 votes).

14 **Planning Application - Application No: 2019/92128**

The Sub Committee gave consideration to Planning Application 2019/92128 erection of extensions and alterations to dwelling, erection of detached garage and related landscape works (within a Conservation Area) Eastwood House, 14, Green Cliff, Honley, Holmfirth.

Planning Sub-Committee (Huddersfield Area) - 22 August 2019

Under the provisions of Council Procedure Rule 37 the Committee received representations from Liz Oldfield and Val Javin (objectors) and Elaine Bedford (applicant).

RESOLVED – Delegate approval of the application and the issuing of the decision notice to the Head of Development and Master Planning in order to complete the list of conditions including those contained within the considered report including:

- (1) Development to be within 3 years.
- (2) In accordance with the approved plans.
- (3) Matching materials.
- (4) Construction in accordance with Arboricultural Method Statement.
- (5) Garage cannot be converted from approved use without prior consent from LPA.
- (6) Withdraw Permitted Development (PD) Right for additional windows in garage. (PD rights for extensions and buildings already removed under 1992 application).

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

For: Councillors P Davies, Firth, S Hall, Homewood, Munro, Sarwar and Sokhal, (7 votes)

Against: Griffiths, Lyons, McGuin and Marchington (4 votes).

15 **Planning Application - Application No: 2019/91048**

The Sub Committee gave consideration to Planning Application 2019/91048 Change of use of land to domestic curtilage and erection fences to the sides (within a Conservation Area) 2, Garfield Place, Marsden, Huddersfield.

Under the provisions of Council Procedure Rule 37 the Committee received representations from Eddy Underwood (objector), Luke Evans, and Donna Bellamy (in support)

RESOLVED – That the application be refused in line with the following reasons outlined in the considered report:

The change of use proposed, by reason of its impact on the width and layout of the highway and the displacement of on street parking, would detrimentally impact on the highway safety of Garfield Place and Oliver Place. The development would cause conflicts between pedestrians, cyclists and vehicles by the narrowing of Garfield Place compromising the safe and efficient flow of traffic within the land forming the application site and on the surrounding highway network. This conflict would cause more dangerous manoeuvres to be required for vehicles to pass one another due to the narrowing of the highway. The proposal also disperses parking in an area where off-street parking is at a premium and does not satisfy the parking need of the area. For these reasons the proposal is deemed to be contrary to LP21

Planning Sub-Committee (Huddersfield Area) - 22 August 2019

(a) and LP22 of the Kirklees Local Plan and Chapters 9 and 12, Paragraphs 110 (c) and 127 (a) of the National Planning Policy Framework respectively.

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

For: Councillors P Davies, Homewood, Lyons, Munro, Sarwar and Sokhal, (6 votes)

Against: Councillor Firth (1 vote).

Abstained: Councillors S Hall, McGuin and Marchington

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KIRKLEES COUNCIL

DECLARATION OF INTERESTS AND LOBBYING

Planning Sub-Committee/Strategic Planning Committee

Name of Councillor

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

LOBBYING

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

Signed:

Dated:

NOTES

Disclosable Pecuniary Interests

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

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

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

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

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

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

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

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

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

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

(b) either -

the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

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

Lobbying

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

Name of meeting: PLANNING SUB-COMMITTEE (HUDDERSFIELD)

Date: 3 OCTOBER 2019

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.

**Electoral wards affected: Almondbury; Holme Valley North; Holme Valley South; Lindley; Ashbrow; Newsome;
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 2018/60/92969/W - Outline application for erection of detached dwelling Adj 49, Sharp Lane, Almondbury, Huddersfield, HD4 6SS. (Officer) (Dismissed)
- 2.2 2018/62/94154/W - Erection of detached dwelling (within a Conservation Area) adj, Hillcrest, Whitegate Road, Honley, Holmfirth, HD9 6RB. (Officer) (Dismissed)
- 2.3 2018/62/92860/W - Erection of detached dwelling adj, 42a, Station Road, Fenay Bridge, Huddersfield, HD8 0AD. (Officer) (Dismissed)
- 2.4 2017/61/94120/W - Reserved Matters application for erection of 2 dwellings pursuant to outline permission 2015/92993 for erection of residential development at land off, Butt Lane, Hepworth, Holmfirth, HD9 1HT. (Sub-Committee contrary to Officers recommendation) (Allowed)
- 2.5 2018/62/93784/W - Erection of detached dwelling and garage at Land at, 2, Romsey Close, Lindley, Huddersfield, HD3 3GU. (Officer) (Dismissed)
- 2.6 2018/62/94133/W - Erection of two storey side, single storey rear extensions and front porch at 8, The Crest, Bradley, Huddersfield, HD2 1QN. (Sub-Committee in accordance with Officer recommendation) (Dismissed)

- 2.7 2019/62/90646/W - Erection of single storey attached garage (within a Conservation Area) at 3, Cromwell Court, Almondbury, Huddersfield, HD5 8ZH) (Officer) (Allowed)
- 2.8 2019/62/90351/W - Erection of conservatory (within a Conservation Area) at 7, Lake View, Armitage Bridge, Huddersfield, HD4 7NX. (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



Appeal Decision

Site visit made on 8 April 2019

by William Cooper BA (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 15th August 2019

Appeal Ref: APP/Z4718/W/18/3218911

49 Sharp Lane, Almondbury, Huddersfield HD4 6SS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant outline planning permission.
 - The appeal is made by Mr Cowen against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref: 2018/60/92969/W, dated 11 September 2018, was refused by notice dated 23 October 2018.
 - The development proposed is outline application for erection of a detached dwelling.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The new Kirklees Local Plan (2019) (LP) has been adopted since the Council issued its decision. This supersedes the Kirklees Unitary Development Plan (2007) (UDP). The main parties have had the opportunity to comment on the new LP policies in relation to the proposal.
3. The description of development in the heading above is taken from the decision notice and appeal form, as it is more accurate than that on the application form.
4. The appeal proposal relates to an outline planning application with all matters reserved. The indicative layout plan submitted as part of the application has been taken into account insofar as it is relevant to my consideration of the principle of the development on the appeal site.

Main Issues

5. The main issues are:
 - a) whether or not the proposal would be inappropriate development in the Green Belt, having regard to the revised National Planning Policy Framework (the Framework¹) and any relevant development plan policies
 - b) the effect of the proposed development on the openness of the Green Belt, and

¹ Published on 19 February 2019.

- c) would any harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it.

Reasons

Background

6. The appeal site is a field. It fronts onto Sharp Lane and is bounded on two sides by residential properties, with fields to the rear. The site is located in the Green Belt, within the Huddersfield sub-area, as illustrated in Policy LP2 of the LP.
7. The Council cannot demonstrate a five-year supply of deliverable housing sites in the district. As a result, Policy LP3 of the LP, which concerns the location of development including housing within the countryside, is considered to be out of date, under the terms of paragraph 11 of the Framework, which sets out the presumption in favour of sustainable development. Under paragraph 11, permission should be granted unless policies in the Framework that protect land designated as Green Belt² indicate otherwise, or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Whether inappropriate development

8. Paragraph 145 of the Framework sets out a small number of exceptions to inappropriate development in the Green Belt. One such exception is 'limited infilling in villages'. The LP policies cited by the Council in relation to the appeal do not specifically include policy on infilling in villages in the Green Belt. Nonetheless, Policy LP3 of the LP requires, amongst other things, that development reflects the settlement's function. As such, LP3 is broadly consistent with the Framework.
9. Whether the appeal site is within the village of Almondbury is disputed. There is no evidence before me of definition of a village envelope within the LP, or a Village Design Statement. Accordingly, whether the appeal site is within the village is a matter of planning judgement.
10. From what I saw on my site visit and the aerial view, Almondbury's main built-up area is recognisably separated spatially from the area to the south of the 'spine' of Kaye Lane, Westgate and Fenay Lane by fields and wooded areas, much of which has a rural character. It is recognised that the southern area described above, in which the appeal site is located, includes clusters and ribbons of residential development. However, the pattern of development in this southern area is more sporadic than that in the main built-up area of the village. Moreover, the ribbon of development in which the appeal site is situated lacks facilities including shops, a village hall or church, which can be typical of a settlement.
11. The appellant considers that the appeal site is located within a continuum of development, which includes school grounds and playing fields, and links to the centre of Almondbury. However, the combination of factors described above leads me to find that the appeal site is situated outside the village.

² As per footnote 6 of the Framework.

12. For the above reasons, the appeal site would not fall within the exceptions listed in paragraph 145e) of the Framework. Accordingly, in this respect, the proposal would be inappropriate development in the Green Belt and would conflict with the Framework.

Openness of the Green Belt

13. The appeal site is an open field with overgrown vegetation around its edges. Whilst details of layout, scale, appearance, landscaping and access are reserved, it is likely that a new dwelling, with domestic paraphernalia including cars, and engineering works to create access, would deplete the openness of the site. As such, it is considered that the proposal would result in harm to the openness of the Green Belt. With regard to the effects on the aim and purposes of including land within the Green Belt, the proposal would contribute to urban sprawl south of Almondbury, encroach into the countryside and undermine the recycling of urban land. As such, the proposal would conflict with Green Belt policy, as set out in paragraphs 133 and 134 of the Framework.

Other considerations

14. The appeal site is a field with a substantial area of fields behind, which contributes to a prominent, verdant view from the junction of Sharp Lane and Lumb Lane of fields and rising woodland beyond. Within this context, the proposed development would have an urbanising impact on the site and contribute to the consolidation of sporadic built development in the area. This would harm the character and appearance of the area. As such, the proposal would conflict with Policy LP2 of the LP which seeks to ensure that development protects and enhances the character of the area.
15. There is a need for additional housing in the borough. Within this context, the proposal would, on a small scale, make a positive contribution towards reducing the deficit of housing in the borough. This would carry some weight in favour of the scheme.
16. The appeal site is situated a short drive away from the main built up area of Almondbury, which has a range of services. As such, occupants of the proposed development would realistically make some use of and contribute to sustaining them. There would also be a minor economic benefit from construction phase activity. Given the modest scale of benefit, I attach limited weight to it.

Conclusion

17. The proposal would be inappropriate development in the Green Belt which is, by definition, harmful. There would also be loss of openness of the Green Belt. The Framework establishes that substantial weight should be given to any harm to the Green Belt. I conclude that the potential harm to the Green Belt by reason of inappropriateness and other harm is not clearly outweighed by other considerations. Consequently, very special circumstances do not exist. As a result, the proposal would be contrary to the Framework policy on Green Belt, and Policy LP3 of the LP in respect of the settlement's function. For the reasons given above I conclude that the appeal should be dismissed.

William Cooper

INSPECTOR



Appeal Decision

Site visit made on 15 July 2019

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 15 August 2019

Appeal Ref: APP/Z4718/W/19/3224617

Land at Hillcrest, Whitegate Road, Honley, Huddersfield HD9 6RB

- 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 J Taylor against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2018/62/94154/W, dated 13 December 2018, was refused by notice dated 19 February 2019.
 - The development proposed is the erection of a detached dwelling (within a Conservation Area).
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. Since the Council's report on the application was written, the Kirklees Local Plan ('the LP') was adopted on 27 February 2019. This pre-dated the submission of the appellant's appeal documents and the notification to interested parties of the appeal, and so I am satisfied that there has been an adequate opportunity for those interested in the appeal to address the updated policy position.
3. The adoption of the LP has superseded the policy position as it prevailed when the Council determined the application, and in particular the reference to Policy BE5 of the former Unitary Development Plan ('the UDP') found in the Council's second reason for refusing permission. Although addressed in some of the appeal documents, I have not had regard to the policies of the UDP, given the updated position.

Main Issues

4. The appeal proposal is a resubmission of a proposal previously dismissed on appeal under reference APP/Z4718/W/15/3132624 ('the First Decision'). As in the First Decision, the main issues arising in the appeal are:
 - Whether or not the proposed development is inappropriate development within the Green Belt for the purposes of the National Planning Policy Framework ('the Framework') and the policies in the development plan;
 - The effect of the proposed development on the openness of the Green Belt;

- The effect on the character and appearance of the area with particular regard to whether the development would preserve or enhance the character or appearance of the Honley Conservation Area; and
- If the development is inappropriate development in the Green Belt, whether the harm arising from inappropriateness and any other harm is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether inappropriate development in the Green Belt

5. As noted by the Inspector in the First Decision ('the First Inspector') the site lies on the valley side on the outskirts of Honley and not within the village itself. For the purposes of the Framework's definition of 'previously developed land', the site is a residential garden but not in a built-up area. Paragraph 145(g) of the Framework excepts the construction of new buildings as being inappropriate development in the Green Belt where the development involves the redevelopment of previously developed land, subject to the effects on the openness of the Green Belt.
6. However, having viewed the site and considered the *Calderdale* factors¹ I respectfully disagree with each of the main parties that the appeal site amounts to previously developed land capable of attracting the 'brownfield' exception of paragraph 145(g) of the Framework. It follows that LP Policy LP59, dealing with brownfield sites in the Green Belt, has no application to the proposal.
7. Neither party has suggested what 'permanent structure' the land is claimed to lie within the curtilage of. The site itself has 2 buildings sited upon it, a dilapidated garage and a garden shed. Neither party contends that either building attracts a curtilage in its own right, and they do not appear to me to do so.
8. The layout of the appeal site is that it can be accessed in two ways. From the adjoining road to the north there is a chain link fence in a gap in the boundary wall, leading to the garage. Boundary walls line the site on its two sides, and a retaining wall binds the site to its southern end. A small gap in the western boundary wall links to the principal garden area of 'Hillcrest'.
9. Although no 'blue line' plan was submitted with the application, which would normally indicate other land within the ownership or control of the applicant, the appeal site presently appears to lie within the ownership of the property at 'Hillcrest', which lies to its western side beyond a detached garage and large lawn. I have therefore considered whether the appeal site lies within the curtilage of that dwelling. The appeal site carries its own Land Registry Title Number, YY4266, used as the 'red line' plan for the planning application, and the supporting letter from the occupants of the neighbouring Whitegate House states that the title was transferred by their own predecessors in around 1980.
10. The site is well-wooded and the First Inspector then described the site, in early 2016, as an area of garden, although 'somewhat overgrown' and having a

¹ *Attorney-General ex rel Sutcliffe v Calderdale BC* (1982) 46 P. & C.R. 399 as recently explained in *Challenge Fencing Ltd v SSHCLG and Elmsbridge BC* [2019] EWHC 553 (Admin)

'semi-natural appearance'. More recently it appears that steps have been taken to cultivate the site, although it has not obtained a particularly manicured appearance. At the time of my visit there were a number of produce and flower beds, a polytunnel, a bathtub, a rope swing and a compost heap. Whilst I have no reason to depart from the First Inspector's observation that the appeal site is a domestic garden area for the adjoining property at 'Hillcrest', it does not appear to me to form part of the curtilage of that dwelling. Rather it is a separate enclosure presently forming a secondary garden area to the property at 'Hillcrest'.

11. The *Dartford* case² referred to by the parties confirms that residential gardens lying outside built-up areas are not excluded from the Framework's definition of previously developed land, and thus they may attract the paragraph 145(g) exception to when new buildings amount to inappropriate development in the Green Belt. The prior criterion however is that the garden land must lie within the curtilage of an existing or previous permanent structure, and there is insufficient evidence to conclude that such is the case here.
12. Therefore, no other exception applying, as the proposal constitutes the construction of a new building it amounts to inappropriate development in the Green Belt. Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to harm to the Green Belt, including harm by reason of inappropriateness.

Effect of the proposal on the openness of the Green Belt

13. The First Inspector noted that the design of the proposed dwelling takes account of the topography of the site and would be largely underground, although with some externally visible features such as the gabion wall. With no volume or massing of the building visible, the First Inspector found there would consequently be no reduction in openness, with an overall neutral effect on this issue having regard to the removal of the small-scale garage and shed.
14. Since the First Decision, the factors to be taken into account when determining the impact of a proposal on the openness of the Green Belt have come before the Court of Appeal for analysis on several occasions³. It is clear from those judgments that the openness of the Green Belt has a spatial aspect as well as a visual aspect, and the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt as a result of the location of a new building. As the First Inspector noted, there would seem to be little visual difference as a result of the proposal, although the section drawings (rh/120/14/7 and rh/120/14/4) do not appear to be drawn to the same scale, with the result that I am uncertain as to the extent of earthworks required. However, there would be a house where presently there is none (and in this respect the proposal differs from those other appeal decisions brought to my attention by the appellant, which relate to replacement, rather than new, buildings with subterranean elements).
15. The essential characteristics of Green Belts are their openness and their permanence, and 'openness' in this context means an absence of development.

² *Dartford Borough Council v SSCLG* [2017] EWCA Civ 141

³ Particularly in *R (Oao Lee Valley Regional Park Authority) v Epping Forest DC* [2016] EWCA Civ 404, *Turner v SSCLG* [2016] EWCA Civ 466 and *Samuel Smith Old Brewery (Tadcaster) and anor v North Yorkshire CC and anor* [2018] EWCA Civ 489

The appeal site lies close to open fields, to the north of Honley, within whose Conservation Area it lies, and to the south of Netherton. Green Belt purposes that appear to be served by the designation of the appeal site include checking unrestricted sprawl, safeguarding the countryside from encroachment and preserving the setting and special character of historic towns.

16. Given the very limited visible effects of the built development, I agree with the First Inspector that the visual openness of the Green Belt would not be harmed by the building itself. However, the introduction of a residential dwelling into the appeal site would necessarily harm the spatial openness of the Green Belt in this location, by introducing development where there is presently none (save for the small garage and shed) for a purpose that does not align with the purposes of Green Belts. As to the overall visual effect on openness, as a domestic garden the site could attract an amount of domestic paraphernalia in its present form but, as the First Inspector noted, the site would be likely to be used much more intensively in association with a new dwelling compared with its existing function. Visible manifestations of the use of the proposed building, such as parked cars or waste bins, would evidence the fact of the development and so also reduce the openness of the Green Belt in this location.
17. Therefore, on this issue I depart from the conclusions of the First Inspector and find that there would be harm to the Green Belt by reason of the loss of openness. This harm also carries substantial weight against the proposal.

Effect on the character and appearance of the area

18. The appeal site lies within the designated heritage asset that is Honley Conservation Area, and accordingly special regard is to be had to the desirability of preserving or enhancing the Conservation Area when considering development proposals. The Framework advises that great weight should be given to the conservation of heritage assets, and this advice is reflected in LP Policy LP35 that seeks to ensure that heritage assets are appropriately conserved to the extent warranted by their significance, having regard to wider development benefits.
19. The parties do not demur from the First Inspector's assessment of the significance of the Conservation Area as deriving from the spacious pattern of development in the area which, together with the extent of tree cover, gives the impression of the built-up area 'thinning out' when approaching along Whitegate Road from the south and contributes to the rural character of the area.
20. The appellant's case is that a material change in circumstances has arisen since the First Decision in that the appeal site has been cultivated, with a change in character from the 'semi-natural' character described by the First Inspector to a garden of domestic appearance. Although no doubt more cultivated in appearance than it was 5 years ago, as evidenced by the photographs appearing in the Architect's Statement of December 2014, the changes at the ground level to the site do not alter its contribution to the tree cover. Although the Council considers that the trees do not warrant a tree preservation order, there is no indication of any intention to remove any trees from the site save in order to implement the appeal proposals, if permission is granted. The significant reduction in tree cover required to construct the dwelling would result in harm, albeit limited, to this element of the Conservation Area's significance.

21. The appellant's Statement of Significance refers to the landscaping proposals to change the character of the land from essentially garden land to a more natural state through ecological/landscape planting. Although the landscaping proposals show the seeding of wildflower and grassed areas of meadow, and the retention of a large number of trees, I do not consider that it would be reasonable to require the occupiers of a residential dwelling to maintain permanently their garden area in the ways put forward in the appellant's Ecological Report, particularly the aspects concerning when the grass may be mown and the requirement to remove cuttings. Despite the changes over the past few years, like the First Inspector I consider that overall the appeal site would acquire a more manicured and developed appearance than it has at present, and the increased density of residential development in the area would also harm the spacious pattern of development in this part of the Conservation Area.
22. Therefore, there would be conflict with LP Policy LP35, requiring proposals within Conservation Areas to conserve those elements that contribute to their significance, as well as with Policy LP33 which seeks to avoid the loss of trees or woodlands of significant amenity value. Where 'less than substantial harm' arises to a heritage asset, as it would do here, the Framework requires that the harm should be weighed against any public benefits of the proposal. This will be addressed below in my conclusions.

Other considerations

23. Although not adverted to by the appellant, the Council's officer report states that there is (or was, at the time of writing) a shortage of deliverable housing land in the local area, although the quantum of this shortfall was not specified. The published Housing Delivery Test 2018 measurement states that over the relevant 3 year period prior to publication, 3,399 houses had been delivered in the area against a requirement of 4,516, suggesting that the shortfall is reasonably acute. The Government's policy objective of significantly boosting the supply of housing would be assisted by the proposed development, but by only 1 house and so the matter attracts limited weight.
24. Some of the ecological enhancements proposed by the development are rather uncertain as a long-term prospect for the reasons explained above. The Ecological Report proposes a number of measures to improve the biodiversity of the appeal site. The absence of a garage from the appeal proposals however negates the proposed planting and bat roost elements. The Report does not explain what ecological benefits the meadow seeding would bring. I do not find any conflict with LP Policy LP30, requiring biodiversity harms to be minimised and gains to be provided, or with Policy LP24 requiring development to contribute to the enhancement of the natural environment, but give limited weight to the benefits of this element of the proposal.
25. The appellant also seeks support from Paragraph 79 of the Framework in asserting that the design of the proposed dwelling, to meet Passivhaus standards, is of 'exceptional quality'. The First Inspector found that the dwelling would meet the first of the two relevant tests (in what was then Paragraph 55) but not the second. The first test relates to the architectural standard, and the second to the context.
26. Although the Council does not consider that there is anything particularly exceptional about a dwelling designed to Passivhaus standards, I see no reason

to depart from the First Inspector's conclusions on these tests for the reasons she gave. The reference to Passivhaus in the supporting text to the newly-adopted Policy LP24 concerning good design, at paragraph 11.7, reads rather as an aspiration than as an expectation.

27. Therefore, with the First Inspector, I consider that the dwelling would be of an innovative design and would reflect the highest standards in architecture, so meeting the first test, but that it would not be sensitive to the local area or enhance its immediate setting, so failing the second test.
28. In any event, Paragraph 79 applies to the development of 'isolated homes' in the countryside, and thus⁴ does not apply to the present proposal at the appeal site, which is surrounded by dwellings on three sides and lies on the outer edges of the settlement of Honley, around half a mile from the centre. Therefore, although its design and sustainability credentials attract support from LP Policy LP24, the proposal draws no specific support from Paragraph 79 of the Framework.

Conclusion

29. The appeal proposal does not amount to the redevelopment of previously developed land, and is inappropriate development in the Green Belt. I give substantial weight to the harm by reason of inappropriateness as well as to the harm to openness that would arise. The character and appearance of the Conservation Area would also be harmed by the proposal as a result of the increased residential density and the unavoidable tree loss. The benefits of the development include a high standard of design, some biodiversity gains and a small contribution to the housing supply. These benefits do not outweigh the harm to the Conservation Area, the conservation of which I accord great weight. Nor do they outweigh the overall harm caused by the proposal including that to the Green Belt.
30. Even without the additional harm to the openness of the Green Belt that I have found would arise, the inappropriateness of the development in the Green Belt produces such substantial harm, together with the harm to the Conservation Area, that it is not outweighed by the benefits of the proposal. Very special circumstances to justify the proposed development do not exist and the appeal is dismissed.

Laura Renaudon

INSPECTOR

⁴ *Braintree DC v SSCLG* [2018] EWCA Civ 610, also decided since the First Decision



Appeal Decision

Site visit made on 18 June 2019

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 12 August 2019

Appeal Ref: APP/Z4718/W/19/3226584

42A Station Road, Fenay Bridge, Huddersfield HD8 0AD

- 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 Gary Oldroyd against the decision of Kirklees Council.
 - The application Ref 2018/62/92860/W, dated 29 August 2018, was refused by notice dated 19 March 2019.
 - The development proposed is erection of single dwelling.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The Kirklees Local Plan (KLP) was adopted on 27 February 2019. During the appeal process the final document was published. The KLP has superseded the Kirklees Unitary Development Plan (KUDP). There are no saved policies from the KUDP. This represents a material change in circumstances. I will therefore determine the appeal on the basis of the relevant policies contained in the final version of the adopted KLP.
3. The appeal site has been the subject of two previous outline applications for a detached house. Application ref 2017/91544 was granted in March 2018. Application ref 2016/91893 was refused in November 2016. The application was submitted with all matters other than access and layout reserved for future consideration. Indicative plans were submitted showing two alternative schemes, one for a two-storey house, and the other for a dormer bungalow. This decision was appealed, ref APP/Z4718/W/16/3164940 and dismissed in March 2017. The evidence submitted for this appeal is materially different to that considered previously, in that it includes full and detailed plans of the proposed development and I will consider the appeal on this basis.

Main Issues

4. The main issues are:
 - The effect of the form, scale, massing and design of the proposed development on the character and appearance of the area; and
 - The effect of the proposed development on the living conditions of the occupants of No 44 Station Road and future occupants of the proposed dwelling.

Reasons

Character and appearance

5. The appeal site is located in an established residential area on the outskirts of Huddersfield. Its elevated hilltop position provides short views out over roofscapes and long views out over the town when looking north west.
6. The site is a section of hardstanding and garden beside No 42A Station Road which is a split level detached house accessed by a narrow driveway from Station Road. The hardstanding sits above the terraced garden area to the rear and side of No 42A Station Road. Due to the topography of the area, the properties to the south, Nos 44 and 46 Station Road, sit above the appeal site. Whereas the properties to the north further along Station Road and to the west on Fenay Drive sit well below the appeal site.
7. I agree with the previous Inspectors' comments in that there is no particular uniform pattern of development or layout to the buildings in the area and that there is a mix of house types, sizes, designs and use of materials. Therefore, even though a property at this location would reduce the openness of the site, it would not appear unduly at odds with the pattern of development nearby or unsympathetic to the surrounding character. On this basis, and in line with the grant of outline planning permission by the Council in 2018, I would agree that the site is appropriate for the erection of a single dwelling and the access and layout of the proposed development would not harm the character and appearance of the area.
8. The proposed development is a two-storey detached house in an 'L' shape. It would have a hipped roof to one side and gable to the other and facing materials of render and stone with concrete tiles to the roof. I accept that the building would be set back from Station Road, the footprint would provide some space around it and the materials would not be out of keeping in this context. However, I consider that the dwelling's two-storey form, its large scale and substantial massing would be unduly prominent on the townscape when viewed from Station Road. In addition, it would be very dominant on the skyline at the edge of the slope high above Fenay Drive. Combined with the uncommon gable and hipped roof design, the proposed dwelling would visually conflict with adjacent properties and would not integrate well into the townscape. In these respects, it would harm the character and appearance of the area.
9. I acknowledge that the previous Inspector found the erection of a detached house would cause no harm to the character and appearance of the surrounding area. However, that was in relation to an outline proposal and it does not follow that a dwelling of any form, scale, massing and design would necessarily be appropriate or acceptable on the site.
10. Accordingly, I conclude that the form, scale, massing and design of the proposed development would cause harm to the character and appearance of the area. As such, it conflicts with policy LP24(a) of the KLP (2019) which promotes good design by ensuring that the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape; and Section 12 Achieving well-designed places, in the National Planning Policy Framework (Framework).

Living conditions

11. The proposed dwelling would be located to the north west of No 44 Station Road. Its front elevation, which would have a large window to a bedroom at first floor, would be at an oblique angle to the rear elevation of No 44 Station Road, which has windows to bedrooms at first floor. I acknowledge that there would be no direct window to window views and no views would be fully blocked. However, due to the limited separation distance between the elevations and the relationship of habitable rooms, I believe that there would be an unacceptable level of overlooking and some overbearing impact to both the occupants of No 44 Station Road and future occupants of the proposed dwelling.
12. Therefore, I conclude that the proposed development would be harmful to the living conditions of the occupants of No 44 Station Road and future occupants of the proposed dwelling. As such it conflicts with policy LP24(b) of the KLP (2019) which promotes good design by ensuring that proposals provide a high standard of amenity for future users and neighbouring occupiers, including maintaining appropriate distances between buildings; and Section 12 Achieving well-designed places, in the Framework.

Conclusion

13. For the reasons given above, I conclude that the appeal should be dismissed.

F Cullen

INSPECTOR



Appeal Decision

Site visit made on 7 June 2019

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 29 August 2019

Appeal Ref: APP/Z4718/W/18/3217917

Land off Butt Lane, Hepworth, Huddersfield

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Acumen against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2017/61/94120/W, dated 29 November 2017, sought approval of details pursuant to condition No 1 of a planning permission Ref 2015/60/92993/W, granted on 9 September 2016.
 - The application was refused by notice dated 24 September 2018.
 - The development proposed, and the subject of the outline planning permission, is the erection of residential development, particularised by the reserved matters application to mean the erection of 4 dwellings, and further particularised during the course of the reserved matters application to mean the erection of 2 dwellings.
 - The details for which approval is sought are the reserved matters of the access, appearance, layout, scale and landscaping of the site.
-

Decision

1. The appeal is allowed, and the reserved matters are approved, namely the access, appearance, layout, scale and landscaping details submitted in pursuance of condition 1 to planning permission Ref 2015/60/92993/W dated 9 September 2016, subject to the conditions listed in the Schedule at the end of this decision.

Application for costs

2. An application for costs was made by Acumen against the Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The scope of the outline planning permission for the 'erection of residential development' is rather broad, and the reserved matters application as submitted was to erect 4 dwellings on the site. During the course of the application this proposal was reduced to 2 dwellings, and it is the details of these 2 dwellings that form the subject of the Council's decision notice now under appeal. A large number of documents and plans were submitted with the appeal, some of which have been superseded as a result of the amendments made during the course of the application. As a result, the main parties have agreed a more limited list of plans for my consideration.

4. The reserved matters application was the subject of a site and press notice in December 2017, at which point the application was to erect 4 dwellings. Whilst there is evidence of some reconsultation during the course of the application having taken place as the result of amendments, this may not have extended to further publicity having been given (although the Council's committee report suggests that this did take place). There were no public representations made in support of the proposal. Neighbours and interested parties have been notified of the appeal. Given the reduction in the scale of the proposal since the original publicity exercise, and the opportunity for public participation in the appeal proceedings, I am satisfied that the appeal, consisting of the proposal to erect 2 dwellings on the site, may be considered without prejudicing the interests of third parties.

Main Issue

5. Although the Council's decision notice does not expressly specify any objection to any one or more of the particular reserved matters, it identifies flooding risk to future occupiers of the development as a concern, with an asserted flood having occurred in 2002 over 'large parts of the application site including the position of the proposed dwellings'. The Council in its appeal statement identifies 'the layout and its impact on flood risk' as important considerations. The Council also confirms that in its view, subject to the use of appropriate planning conditions, the reserved matters of access, scale, appearance and landscaping are acceptable. From this I conclude that the main issue in the appeal concerns the layout of the proposed development, with particular regard to flooding risks to the proposed occupiers.
6. Several other concerns have been raised by interested parties including the appearance of the proposed dwellings, their effect on neighbouring living conditions by reason of privacy impacts, highway safety risks, the effect of the proposed development on nearby trees, and future flooding risks elsewhere.

Reasons

Layout and flooding risks to the proposed occupiers

7. The appeal site lies to the eastern edge of the small settlement of Hepworth, at the base of a steep hill and adjoining the Rakes Dike watercourse to the east. The site is presently open grass land, sloping eastwards toward the dike and its surrounding mature tree cover, with a public footpath beyond on the other side of the dike. To the west of the site are properties on Carr View Road, and the site is accessed from Butt Lane to the north.
8. Outline planning permission was granted in 2016 for the erection of residential development on the site. A number of planning conditions were imposed on that permission, including No 5 that precluded development in Flood Zone 3 and any changes to ground levels, as set out in section 8 of the approved Flood Risk Assessment, and required finished floor levels to be set 150mm above ground levels, flood resilience measures to be installed up to 600mm above ground levels and the provision of overland flow routes through the site.
9. The Council does not dispute that the proposed details of the development would comply with this condition. It is also common ground that the Environment Agency and the Lead Local Flood Authority have no objection to the proposal. The Environment Agency report that the development would be

- located outside Flood Zone 3 and within Flood Zone 1. The Council in its case relies on photographs of a 2002 flooding event in the vicinity, and on information provided by existing and former ward councillors for the area.
10. The photographic evidence of the 2002 event shows that an area in Jackson Bridge, approximately 370m downstream of the appeal site, was subject to flooding notwithstanding that it lies within Flood Zone 1. Other photographs, appearing to be of more recent provenance, are not readily attributable to the appeal site, although some of them appear to show the Rakes Dike in spate and with areas of standing water on the appeal site. It is not apparent that this standing water is the result of fluvial flooding, or which Flood Zone it is in.
 11. The information apparently given by the ward councillors is that in 2002 the footpath on the other side of the Rakes Dike was destroyed by a flood, that buildings on the appeal site were damaged or destroyed, and that animals on the appeal site had to be restrained on higher ground. It is further stated, although unsupported by any evidence from planning or building control records, that the houses to the west of the appeal site, on higher ground, were required to be constructed on raised levels, as a flood resilience measure, when built.
 12. Although the Council's stated reason for refusing to approve the reserved matters refers to a history of flooding over the application site including the particular position of the proposed dwellings, the information submitted during the appeal is rather more vague. No evidence has been supplied as to the specific extent of the 2002 flooding event, and there is no express assertion, other than in the Council's reason for refusal, that the sloping site has flooded in the particular area where the dwellings are proposed to be sited.
 13. The Environment Agency provides flood maps showing areas at risk of flooding, principally from rivers and the sea. These are not necessarily precise, being based, in many cases, on modelled assessments. I have not been provided with any Strategic Flood Risk Assessment by the Lead Local Flood Authority that might refine the Environment Agency's information. There is evidently considerable local concern that the Environment Agency's information is outdated. One of the neighbours making representations in the appeal has helpfully supplied drawings of the likely extent of flooding on the site if the river levels were to rise to the level of the public footpath, and if they were to rise to a level 0.5m above that. The latter drawing shows that such a flood would encroach on to 'Plot 1'. However there is no evidence, rather than assertion, before me of any unacceptable risk of such an event.
 14. The principle of developing the appeal site for housing was established by the outline planning permission, at which stage the susceptibility of the site to flooding was considered and addressed. The information now supplied concerning the 2002 flood would reasonably have been available to the Council at the time of granting that outline planning permission. The current proposal meets the requirements of condition No 5 attached to the outline planning permission, and there is insufficient evidence to permit of a conclusion either that the proposed siting of the dwellings would be unacceptably exposed to the risk of flooding, or that any such risk would be avoided by a different layout.
 15. Therefore on this issue I conclude that the development has been directed to an area at the lowest probability of flooding and the layout complies with the requirements of Policy PLP 27 of the Kirklees Local Plan adopted in February

2019 concerning development and flood risk, as well as with policies in Chapter 14 of the National Planning Policy Framework.

Other matters

Appearance

16. The proposed dwellings would be detached properties amply spaced from each other and the nearby dwellings on Carr View Road. Those dwellings on Carr View Road have the appearance of single-storey dwellings to their fronts, with 2 storeys to the rear as they overlook the appeal site. The appeal dwellings would be larger, but as the land levels fall away they would not appear out of context, with their ridge heights some 3m or more below those of the dwellings on Carr View Road. Construction materials would be in keeping with the local vernacular. Concern is expressed that the dwellings would appear unduly overbearing to users of the public footpath on the other side of the dike, as the patio areas would be raised to the ground floor levels, with the properties' eastern rear elevations on top of those giving a tall appearance overall. However, I consider the sloping land levels could accommodate these heights and the dwellings would not appear out of character in the vicinity. A condition would secure appropriate boundary treatments.

Living conditions

17. The site section drawing 2397-04E shows that the house on 'Plot 2' will face on to existing houses on Carr View Road. The land slopes significantly downwards from Carr View Road towards the application site, and the section drawing suggests that there will be a difference in levels of approximately 3 metres. Although details of the boundary treatments are scant, these can be secured by condition and there is adequate separation distance between the dwellings, both from each other and from existing houses, to avoid unacceptable impacts on the occupiers' living conditions by reason of overlooking or other privacy concerns.

Highway Safety

18. Proposed site plan 2397-03G shows 2.4m x 70m visibility splays in each direction at the site entrance, with a 2m footway on either side. The visibility for drivers exiting the site would not be unduly affected by the presence of the telegraph pole sited at the side of the road towards Jackson Bridge. Potential conflict with pylons and overhead power lines is a matter for other legislation, but there is no evidence to suggest that this could not be resolved.
19. Concern has also been expressed about the potential for overspill parking on Butt Lane. Although the proposed dwellings are large, I consider that the provision of double parking areas, garages, and a visitor parking area for the proposed dwellings would be adequate without undue risk to the safety of highway users on adjoining roads as a result of parking outside the site.

Effect on trees

20. A 'Woodland' Tree Preservation Order was made and confirmed in early 2018, and the application was amended in order to account for concerns about the possible effects on nearby trees. The plans show a limited amount of tree removal, and it appears that the plans reducing the number of dwellings on the site to 2 were submitted after the receipt of public responses. Two silver

birches and an ash are marked for removal, as detailed in the appellant's arboricultural report, as being in poor condition. The remaining trees would be adequately protected by compliance with the arboricultural method statement, secured by condition.

Other flooding risks

21. Condition No 6 of the outline planning permission restricts surface water discharge from the site to a maximum of 5 litres per second, and concern is expressed that the discharge opening to the dike has been sized so as to exceed this. Concern has also been raised about the potential for using a road drain overflow within the site. Rather than being a concern of the reserved matters submission, however, as the Council points out, the drainage from the site has to be secured through a separate application to obtain the planning authority's approval of the details required by condition No 6 of the outline permission. These matters are more appropriately considered at that juncture, and accordingly I do not impose a requirement to comply with the drainage plans that have been submitted, which would require revisions to reflect the number of houses now under consideration.
22. Objectors also raise the question of whether retaining walls or structures within the site would affect the holding capacity of the floodplain. Walls to the road and raised patio areas are shown on the plans, although the principal parties are agreed that no retaining structures would be erected within the garden areas of the proposed dwellings. No development would take place within Flood Zone 3, and the Council and the Environment Agency are content with the information submitted. Although it is asserted otherwise, I have insufficient evidence to conclude that the proposed development would unacceptably affect the holding capacity of the floodplain or increase flood risks elsewhere.

Conditions

23. The Council has suggested a number of planning conditions, although without detailed reasoning or extracts from the development plan in support of its limited reasons. A condition requiring compliance with the approved plans is required for certainty about what has been approved. This includes the Arboricultural Method Statement, which does not require a separate condition. Details of the proposed external surfaces should be subject to approval in advance of building above slab level, in order to ensure an acceptable finish to the development that is in keeping with the area. A scheme for the boundary treatment of the site is required because of the privacy and overlooking concerns of neighbours and the views from the public footpath, and because the landscaping details submitted as part of the reserved matters application are lacking in abundant detail. The approved access arrangements should be secured by requiring their provision, including the adjoining footway, at an appropriate stage of the development, and their future maintenance thereafter. Similarly, arrangements for the collection of wastes, and the provision and retention of appropriately surfaced parking areas, are related to the access arrangements hereby approved.
24. The Council also suggests that the overall method of construction of the development will need to be secured by the details of a construction management plan, to be submitted and approved before development commences. This however goes beyond the scope of the matters reserved for approval at this stage and I do not impose it.

25. The proposed requirement for bat and bird boxes for ecological reasons also appears to go beyond the scope of the reserved matters for which approval is sought, and I do not consider this condition to be necessary or reasonably related to the details before me. The details of any external lighting of the proposed dwellings, although proposed for ecological reasons, do however obviously relate to the appearance of the development, and I accept that such a condition is reasonably related to what is now proposed. No detailed evidence is before me as to the necessity of such a condition, but I accept that the wildlife corridor of the adjoining dike could be susceptible to adverse impacts from night-time lighting and so it is a reasonably necessary condition to impose.
26. Condition No 8 of the outline permission restricts the application of the Town and Country Planning (General Permitted Development) (England) Order ('GPDO') concerning the erection of walls or other means of enclosure within part of the site. This relates to the part of the site lying within Flood Zone 3 only. Whether or not the construction of retaining walls would already require permission (with or without the application of the GPDO), the Council seeks to prevent them without prior written consent, in furtherance of flood mitigation objectives. This matter refers to both the layout and the appearance of the proposed development, and I concur that such a restriction is necessary. I acknowledge that there are local concerns about flood risk, but moreover a number of representations have referred to the adverse visual impacts of any proposed retaining walls when viewed from the recreational footpath on the other side of the dike. Such a condition is therefore necessary for this reason.
27. As to the further prohibition on permitted development rights sought by the Council, however, I do not think that this is necessary. Classes A and E of Part 1 of the GPDO are already restricted by the outline permission, and so the Council's suggested condition is unnecessary in these respects. As to Classes B and D, there is no clear evidence before me as to the flooding risks that might materialise from any alterations to the roof of a property, and the proposed dwellings would be largely surrounded by areas of hardstanding, including in the areas in which any porches might reasonably be expected to be constructed. It is not explained how the exercise of these permitted development rights might reasonably be expected to obstruct flood mitigation measures.

Conclusion

28. For the reasons given above, and subject to the imposition of appropriate conditions, the Council's reason for refusing to approve the reserved matters is not substantiated. There is insufficient evidence that the proposed layout of the development would be unacceptable on flood risk grounds, especially given that the principle of the development has already been established with regard to such matters. The proposal complies with the development plan for the area and so the appeal is allowed and reserved matters approved in accordance with the Schedule of Conditions set out below.

Laura Renaudon

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans and specifications:
 - Location Plan Ref 2397-LOC
 - Existing Site Plan Ref 2397-01
 - Existing Site Levels Ref 2397-02
 - Proposed Site Layout Ref 2397-03G
 - Proposed Site Sections Ref 2397-04E
 - Plot 1 House Type – Proposed Plans & Elevations Ref 2397-05
 - Plot 2 House Type – Proposed Plans & Elevations Ref 2397-06A
 - Flood Plan Ref 2397-09A
 - Arboricultural Report Ref 13978/AJB
 - Arboricultural Method Statement Ref 13978-A/AJB incorporating Appendix 5: Tree Protection Plan
- 2) Before any development above slab level takes place in the construction of the hereby approved dwellings, details of the materials to be used in the external surfaces of the dwellings shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved materials.
- 3) Prior to the occupation of the hereby approved dwellings, a scheme detailing the boundary treatment of the all the site shall be submitted to and approved in writing by the Local Planning Authority. The dwellings hereby approved shall not be occupied until the works comprising the approved scheme have been completed, and it shall be retained thereafter.
- 4) Prior to the occupation of the hereby approved dwellings, the sightlines as set out on the hereby approved Dwg. No. 2397-03G shall be provided with no obstructions above 1 metre in height. The sightlines shall thereafter be retained.
- 5) The development shall not be brought into use until a scheme of design and construction details for the provision of a 2 metre wide footway across the frontage of the application site and as detailed on the hereby approved plan Dwg. No. 2397-03G has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before either of the dwellings are first occupied and retained thereafter.
- 6) The development shall not be brought into use until all areas indicated to be used for the parking of vehicles as set out on Dwg. No. 2397-03G have been marked out, and laid out with a hardened and drained surface in accordance with the Communities and Local Government; and Environment Agency's 'Guidance on the permeable surfacing of front gardens (parking areas)' published 13th May 2009 (ISBN 9781409804864) as amended or any successor guidance. These areas shall be so retained, free of obstructions and available for the use specified on the plan and retained thereafter.
- 7) Prior to the occupation of the hereby approved dwellings details of any external lighting to be installed on the dwellings shall be submitted to and approved in writing with the Local Planning Authority. No external lighting other than that approved shall be installed on the hereby approved dwellings.
- 8) No retaining walls other than those indicated on hereby approved site layout plan Dwg. No. 2397-03G and site sections plan Dwg. No. 2397-04E shall be erected in the site outlined in red on the hereby approved Location Plan,

Dwg. No. 2397-LOC without the prior written consent of the Local Planning Authority. For the avoidance of doubt there shall be no development in Flood Zone 3 as identified on Dwg. No. 2397-03G.

- 9) Before the hereby approved dwellings are first occupied, details of storage and access for collection of wastes from the premises shall be submitted to and approved in writing by the Local Planning Authority. The works comprising the approved details shall be provided before the dwellings are first occupied and shall be so retained thereafter free of obstructions and available for storage.



Appeal Decision

Site visit made on 2 July 2019

by Kate Mansell BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 August 2019

Appeal Ref: APP/Z4718/W/19/3227094

2 Romsey Close, Lindley, Huddersfield, West Yorkshire HD3 3GU

- 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 and Mrs Polzin against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2018/62/93784, dated 9 November 2018, was refused by notice dated 11 January 2019.
 - The development proposed is a new dwellinghouse on land at 2 Romsey Close.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council adopted the Kirklees Local Plan (Kirklees LP) on 27 February 2019. I am required to determine the appeal on the basis of the development plan that is in force at the time of my decision. Accordingly, the proposal should now be considered against Policy LP24a of the adopted LP, which is cited as PLP24(a) in the reason for refusal. The parties have had the opportunity to comment on the effect of the Kirklees LP on the proposed development and I have taken any comments into account in reaching my decision.
3. On 19 February 2019, the Government published an updated revised version of the National Planning Policy Framework (the Framework). In relation to the main issue in this appeal, Government policy has not materially changed. Accordingly, no parties have been prejudiced by my having regard to it.

Main Issue

4. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

5. Romsey Close is a small residential cul-de-sac principally comprising two-storey semi-detached dwellings. They have a mostly uniform appearance, set back from the road behind a driveway/garden along a broadly consistent building line. The houses typically have a longer garden to the rear.
6. The appeal site at No 2 Romsey Close is different to this established pattern, sitting within a large irregularly shaped plot with an extensive front garden so that the house, a double fronted detached property with a long single storey side extension, is substantially set back from the road. It has further garden areas to the side and rear.

7. The proposal would introduce a detached two-storey house with a separate garage accessed from the existing driveway on land that is presently the lawned front garden of No 2. A new driveway would also be created along the eastern edge of the site, adjacent to a public footpath. This would serve No 2, as well as a detached dwelling set back behind the rear elevation of No 2 that was approved in June 2018¹ but not yet constructed.
8. A previous application for 2 dwellings within the garden of No 2, one effectively in the same location as the June 2018 approval cited above, and the other to the front of the site, was refused in February 2018². The appeal proposal would be set further into the site in comparison to this previous scheme and it would provide a larger garden. Consequently, I acknowledge that the Council, in its officer report, accept that the proposed dwelling would provide acceptable living conditions for both existing residents and future occupiers.
9. However, No 2 is distinct within the cul-de-sac as a consequence of being a large house that is set back generously within the site. Its front garden provides an attractive landscaped opening as the road curves. This contributes to the quality of the street scene and provides a visual break between the properties on Crosland Road and the more 'tight-knit' houses from No 4 Romsey Close onward. Even though the appeal site is not within a Conservation Area, the proposal would introduce a dwelling within this space, and it would be visually conspicuous as a result.
10. Furthermore, with the exception of No 2, the existing houses along the street, including the two detached properties to the north of the site, are of a broadly consistent design. They are modest in their width and depth and present largely flat fronted elevations, detailed with small projecting porches with simple and repetitive proportions to provide a coherent street scene. Because the appeal proposal would broadly align with the front building line of dwellings on the south side of Romsey Close, it is within the context of these houses, rather than No 2, that the proposed dwelling would be seen.
11. I appreciate that the proposal would be two storeys with a comparable set back from the site frontage and a similar rear garden depth to neighbouring properties. It would also be constructed in brick with a tiled roof. Nevertheless, it would be noticeably wider than the existing houses along the street frontage. It would also have a projecting front gable and bay detail. Taken together, its scale and design would be at odds with the established form of development along the road. Given its prominent location on a bend close to the entrance of the cul-de-sac, it would therefore be incongruous within the street scene.
12. For these reasons, I conclude that the proposal would be harmful to the character and appearance of the area. It would therefore conflict with Policy LP24(a) of the Kirklees Local Plan (2019). This policy seeks to ensure that all development respects and enhances the townscape having regard to, amongst other matters, the form, scale and details of the development. It would also fail to accord with guidance in Chapter 12 of the Framework in respect of seeking to achieve well-designed places.

¹ Council Ref: 2018/90760

² Council Ref: 2016/92466

Other Matters

13. The Council identify two Grade II Listed Buildings at Nos 80 and 82 Cowrakes Road to the south-east of the site. In accordance with the statutory duty set out in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have to consider the impact of the proposal on the special architectural and historic interest of the Listed Buildings affected, and their settings. In this case, the proposal would be some distance away from these listed cottages. As a result, it would have no perceivable effect on either the Listed Buildings or their setting, which would be preserved.

Planning Balance and Conclusion

14. From the evidence before me, it is apparent that the Council is not able to demonstrate a 5-year supply of deliverable housing sites. Therefore, having regard to the Framework, the presumption in favour of sustainable development applies and relevant policies that are most important for determining the application should be considered out-of-date.
15. However, in the context of the development plan, the Local Plan is very recently adopted, and I have found that the proposed development would be contrary to Policy LP24(a). Moreover, the overall high-quality design objectives of this policy are consistent with the Framework. As such, it can be afforded substantial weight.
16. Nonetheless, I recognise that the Government seeks to significantly boost the supply of homes. Furthermore, the site is within an accessible location for housing, with bus services to Salendine Nook and Lindley where the principle of residential development would be acceptable. This is evidenced by the recently approved dwelling to the south-east of the site.
17. The benefits arising from one new dwelling and its contribution to housing supply would, however, be limited. Consequently, the harm to the character and appearance of the area would, in my view, significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. Therefore, the proposal would not represent sustainable development.
18. For this reason, I conclude that the appeal should be dismissed.

Kate Mansell

INSPECTOR



Appeal Decision

Site visit made on 5 August 2019 by Darren Ellis MPlan

Decision by Susan Ashworth BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2019

Appeal Ref: APP/Z4718/D/19/3229098

8 The Crest, Bradley, Huddersfield, HD2 1QN

- 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 Aurangzeb Hussain against the decision of Kirklees Metropolitan Council.
 - The application Ref 2018/62/94133/W, dated 14 December 2018, was refused by notice dated 14 March 2019.
 - The development proposed is a two-storey side and single-storey front and rear extensions.
-

Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary Matters

3. Planning permission was granted in 2018 for single-storey side, front and rear extensions¹. The front and rear extensions have been built in accordance with the approved drawings, however the side extension has been built higher than was approved. The proposal before me effectively seeks to regularise the matter. As the Council has no objection to the single storey elements of the proposal, my determination of the appeal concentrates on the two-storey element.

Main Issue

4. The main issue is the effect of the development on the character and appearance of the property and the area.

Reasons for the Recommendation

5. The street is characterised by detached two-storey dwellings and bungalows that are traditionally designed with regular proportions and similar materials. The consistent appearance of the properties contributes positively to the character and appearance of the area.

¹ Application ref: 2018/62/92485/W

6. The side extension is set back from the front elevation of the main dwelling and has a ridge height that is lower than the existing roof. The exterior materials match those of the dwelling. However, the extension is neither fully two storeys in height nor single storey and its form has resulted in a design that includes a disproportionate amount of unrelieved masonry between the top of the windows and the roof. Consequently, the extension appears to be disproportionate and thereby discordant with the original dwelling and as such detracts from its character and appearance.
7. Furthermore, the appeal property is located on a corner plot and when viewed from the rear, and in particular from the junction with Park Hill, the side extension is a highly prominent feature that protrudes beyond the established building line. The height of the side extension adds to the prominence of the dwelling and as such the extended building appears bulky on its plot. In addition, its awkward design is highly visible in the street scene. Consequently, the development also detracts from the character and appearance of the area.
8. I acknowledge that the existing hedge when fully grown would soften and partially screen the appearance of the extension and that climbers could be encouraged on the rear and side walls. However, such planting would take some time to become established and could be cut down or removed at any point in the future. I am unconvinced therefore that such planting would negate the harm I have identified.
9. I note that other properties in the street have previously been extended. However, no documents have been submitted regarding any planning permissions for these extensions and it seems to me that in any event they are of designs that are not necessarily directly comparable with the appeal proposal. In any case I have determined this appeal on its own merits.
10. For these reasons, the side extension causes significant harm to the character and appearance of the appeal property and the surrounding area and is therefore contrary to Policy LP24 of the Kirklees Local Plan, which seeks to protect appearance and character through high quality design including through ensuring that the scale, form and appearance of a proposal ensures that it respects and is in keeping with its surroundings.

Other matters

11. No concerns were raised by the Council with regards to the effect on the neighbouring properties or highway safety, and I have no reason to disagree.
12. I acknowledge the appellant's reasons to provide an additional bedroom in the side extension as built. However, this private benefit does not outweigh the harm to the character and appearance of the building and surrounding area.

Conclusion

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

Darren Ellis

APPEAL PLANNING OFFICER

Inspector's Decision

14. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

S Ashworth

INSPECTOR



Appeal Decision

Site visit made on 5 August 2019 by Andreea Spataru BA (Hons) MA MRTPI

Decision by Susan Ashworth BA (Hons) BPL MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 August 2019

Appeal Ref: APP/Z4718/D/19/3231408

3 Cromwell Court, Almondbury, Huddersfield HD5 8ZH

- 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 Blyth against the decision of the Council of Kirklees.
 - The application Ref 2019/62/90646/W, dated 28 February 2019, was refused by notice dated 7 May 2019.
 - The development proposed is a single storey garage.
-

Decision

1. The appeal is allowed and planning permission is granted for a single storey garage at 3 Cromwell Court, Almondbury, Huddersfield HD5 8ZH in accordance with the terms of application ref: 2019/62/90646/W, dated 28 February 2019 and subject to the following conditions:
 1. The development hereby permitted shall begin no 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: 100; 101; 102.
 3. The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary matter

3. The appeal statement refers to a revised scheme, which appears to constitute a second application to the Council. I can only determine the appeal based on the original proposal, thus the alternative plans included within the appeal statement have not been considered.

Main Issues

4. The main issues are whether the proposal would preserve or enhance the character or appearance of the Conservation Area and the effect of the proposal on the character and appearance of the streetscene.

Reasons for the Recommendation

5. 3 Cromwell Court is a detached, two-storey dwelling located in a small cul-de-sac, within the Almondbury Conservation Area (CA). The appeal dwelling has a two-storey side extension to the north and a first-floor side extension to the south. It also has a shed next to the southern side boundary. This cul-de-sac is formed of four detached properties, which appear to be originally built with a single storey garage/structure to the side. They are similar in terms of design and materials and are located in close proximity to each other. They form a small residential estate, which is a more recent addition to the CA, and occupy a secluded position at the edge of the CA.
6. The proposed garage would replace the existing shed and would infill the gap between the host dwelling and the southern side boundary. Given the shape of the appeal site, the garage would be at an angle with the dwelling. It would have a pitched roof and would match the materials of the original dwelling.
7. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.
8. The Council found that the proposal would not harm the character and appearance of the CA, as the development would not have a prominent position within the CA and would match the materials of the host dwelling. I am satisfied from all I have seen and read that for those reasons the proposal would preserve the character of the Conservation Area. However, the Council is concerned that the proposal would appear as a cramped addition that would lead to overdevelopment of the site, thus would harm the character and appearance of the streetscene.
9. Although the development would infill the gap between the host dwelling and the southern boundary of the site, there would still be a clear separation between the appeal dwelling and the neighbouring property. From what I have seen, neighbouring property no 4 Cromwell Court has a single-storey structure that is slightly set-in from the side boundary shared with the appeal site. In addition to the gap between the proposal and the neighbouring dwelling, the garage would also be set back from the front elevation of the neighbouring dwelling. Furthermore, I noted that neighbouring properties located on the northern side of Cromwell Court also have single-storey garages next to the side boundary shared with their adjoining property.
10. I note that the dwelling has been previously extended and that the garage would further extend the dwelling towards the southern boundary of the site. The existing shed, although not attached to the dwelling, occupies a significant area to the south of the dwelling. Whilst the garage would completely infill this gap and thus increase the mass of the dwelling, it would not appear out of context, as neighbouring dwellings also project significantly along the width of their plot. I acknowledge that the appeal site is wider than neighbouring sites, however given the corner plot location of the appeal property and the siting of the garage in relation to the host dwelling and neighbouring properties, the proposal is acceptable.

11. The garage would be single-storey; its eaves would be in line with the ground floor level of the host property and its ridge line would be slightly below the eaves of the first-floor side extension. Whilst the roofline of the garage would not be in line with that of the front porch, or with the eaves of the first-floor extension, the development would be sufficiently in keeping with the host property as to not adversely affect its character and appearance, or the character and appearance of the area. The matching materials, roof style, and the eaves height would ensure that the garage is in keeping with the host dwelling and the streetscene.
12. In light of the above, I conclude that the appeal development would preserve the character of the Conservation Area and would not adversely affect the character and appearance of the streetscene. Consequently, the development would meet the statutory tests set out in the Act and would accord with Policy LP 24 (a) and (c) of the Kirklees Local Plan, which amongst other things, supports developments that are designed to be in keeping with existing buildings, and that respect the character and appearance of the area.

Other matter

13. I note that the garage would not meet the standards to be considered a parking space. Given that the proposal would not reduce the existing number of off-street parking spaces for the appeal dwelling, and would not be detrimental to highway safety, the Council found it acceptable in terms of impact on highway safety. I have no reasons to disagree.

Conditions and Recommendation

14. In the interests of proper planning and to provide certainty I have recommended the standard time limit condition and have specified the approved plans. In order to protect the character and appearance of the area a condition that specifies that matching materials are used in the development is necessary. These conditions have also been suggested by the Council in the event that the appeal was allowed.
15. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be allowed subject to these conditions.

Andreea Spataru

APPEAL PLANNING OFFICER

Inspector's Decision

16. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is allowed.

S Ashworth

INSPECTOR



Appeal Decision

Site visit made on 19 June 2019

by F Rafiq BSc (Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th August 2019

Appeal Ref: APP/Z4718/D/19/3227847

7 Lake View, Armitage Bridge, Huddersfield, HD4 7NX

- 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 Gloria Gough against the decision of Kirklees Metropolitan Council.
 - The application Ref 2019/62/90351/W, dated 6 February 2019, was refused by notice dated 5 April 2019.
 - The development proposed is the erection of a conservatory.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal development is for a conservatory to the north-east elevation of the property. The development had already been carried out at the time of my visit and I have considered the appeal accordingly. I was also able to see the fence enclosing the garden area that the Council have stated requires planning permission. Although, there are references to it on the appeal application form, it does not form part of the description of development and therefore is not before me in the determination of this appeal.
3. The Kirklees Local Plan was adopted on the 27 February 2019 before the Council made its decision. It forms part of the development plan and I have proceeded to determine the appeal accordingly.

Main Issue

4. The main issue is the effect of the extension on the character and appearance of the host dwelling and the area and whether it preserves or enhances the character or appearance of the Armitage Bridge Conservation Area (Conservation Area).

Reasons

5. The appeal property is a mid-terrace dwelling which is within a Conservation Area. It is constructed in natural stone with the roof formed of stone slate material. The surrounding area in the vicinity of the site is predominantly residential although to the north of the appeal property is a mill pond and allotments, which provide an open setting. This, alongside the historic form of the modest two storey terraces, including the generally low boundary walls, contribute to the attractive and cohesive character of the area.

6. The conservatory projects around 3m from the main two storey wall of the dwelling and has a similar width to its projection. It is separated from the neighbour at No. 5 by a distance of around 1.5m, but does extend across most of the width of the dwelling. At the time of my site visit, I was able to see that the terrace along the north-eastern frontage retained its original form, with projections forward of the main two storey facade limited mainly to some porch structures around entrance doors. In contrast to this, the scale of the appeal proposal, despite its construction in wall materials that are sympathetic to the existing property, as well as having gutters in a traditional style, has resulted in a large addition to the dwelling. The extension detracts from the generally uniform and consistent character of the terrace row and has intruded into a largely open garden area.
7. The roof materials, although formed of slate, are different to the stone slate materials of the main dwelling. This along with the shallow hipped roof form, which also differs from the simple pitched roof form of properties in the area, draws attention to the development, resulting in it appearing conspicuous in its surroundings.
8. I conclude therefore that the appeal development has an unacceptable adverse effect on the character and appearance of the host dwelling and the area and also fails to preserve or enhance the character and appearance of the Conservation Area. It is contrary to Policies LP 24 and LP 35 of the Kirklees Local Plan, which seek, amongst other matters, good design that enhances the character of the townscape and development that preserves or enhances the significance of the heritage asset. It would also be contrary to paragraph 193 of the National Planning Policy Framework (Framework), which states that great weight should be given to a heritage asset's conservation. In relation to paragraph 196 of the Framework, this states that where there would be harm that is less than substantial, as in this case, it must be weighed against the public benefits of the proposals.
9. I acknowledge the extension has replaced a run-down timber structure, however, from the information provided, this was a smaller porch like others that exist on the terrace row. In any event, this does not overcome my concern regarding the visual impact of the development.
10. The conservatory provides additional living space to meet the needs of the Appellant and her family and benefits from improved insulation. The Appellant has stated that she acted on advice that planning permission was not required for the appeal development. I also note the comments that the Appellant and her neighbours consider the elevation where the Conservatory is built, to be the rear. The Appellant has further raised concern on the consistency of communications from the Council and the length of time taken for them to respond stating that planning permission was required. Whilst I sympathise with the Appellant, I am required to deal with the appeal before me on its own merits. These matters do not outweigh the harm I have identified in respect of the main issue.

Other Matters

11. The development has not resulted in an unacceptable effect on the living conditions of neighbouring occupiers or on wildlife. There has also been no increase in localised flooding. These are, however, neutral considerations and not benefits of the proposal.

Conclusion

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

F Rafiq

INSPECTOR

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

PLANNING POLICY

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 statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019).

National Policy/ Guidelines

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 19th February 2019, the Planning Practice Guidance Suite (PPGS) first 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 54 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.

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

Date: 3 October 2019

Title of report: Application for a definitive map modification order to add a public footpath to the definitive map and statement, Miry Lane to St Mary's Rise, Netherthong.

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. An application has been received for a definitive map modification order to record a public footpath.

Members are asked to make a decision on making an order and forwarding any order made to the Secretary of State, if opposed.

| | |
|--|---|
| 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 | Karl Battersby 23 September 2019 |
| Is it also signed off by the Assistant Director for Financial Management, IT, Risk and Performance? | Yes: James Anderson on behalf of Eamonn Croston 23 September 2019 |
| Is it also signed off by the Service Director (Legal Governance and Commissioning)? | Yes: Sandra Haigh on behalf of Julie Muscroft 23 September 2019 |
| Cabinet member portfolio | N/A |

Electoral wards affected: Holme Valley South

Ward councillors consulted: Cllrs. Davies Firth & Patrick.

Public or private: Public

1. Summary

- 1.1 The council received an application (at App A, with plan) from Mr S Cook in July 2017 for an order to modify the definitive map and statement of public rights of way to record a public footpath between St Mary's Rise and Miry Lane.(DMMO file ref: 200).
- 1.2 The council initially received 27 user evidence forms. These forms are generally used by witnesses to describe their personal knowledge and experience of routes. (App J & K). A number of further responses is described at section 4 below.
- 1.3 The council has received representations from landowners, "Yorkshire Country Properties" (YCP) as well as statements from former owners and occupiers, opposing the application.
- 1.4 Part of the land between Miry Lane and the tarmac carriageway of St Mary's Rise is owned by the owners of 7 St Mary's Rise, Mr & Mrs F. Yorkshire Country Properties, ("YCP") which owns the former field, has identified that the application form plan completed by Mr Cook does not include a route across this land and that it falls short of the extent of public highway 'adopted' by the local highway authority when the estate roads became maintainable at public expense. YCP makes a number of points about this aspect of the application.
- 1.5 Mr & Mrs F, the owners of 7 St Mary's Rise supported the application to record a public footpath and submitted evidence relating to public use. Since planning consent was given for residential development of the neighbouring land, they have withdrawn support for the application, as has the applicant who has sought to withdraw the application. Mr & Mrs F now state that access was taken across their land by permission. The applicant, a number of the 29 witnesses to complete user evidence forms, and another person have recently written to the Council stating that their use of the land between the tarmac road surface and the field was by permission of the landowners. Officers have subsequently interviewed a number of witnesses in relation to permission to cross Mr & Mrs F's land, asking whether they crossed the land, whether they were aware who owned it, and whether permission was sought or granted. (App N)
- 1.6 The plan submitted with the application (App A) does not have a pen stroke over this land between the field wall and the tarmac road. However the evidence of users appears to indicate that the route used was slightly longer and reached the tarmac part of carriageway at St Mary's Rise, via the opening/stile in the boundary wall, i.e. over a slightly different alignment.
- 1.7 Mr Scanlon's NSCL correspondence on behalf of his client Yorkshire Country Properties (appended at App C) cites a number of witnesses.

- 1.8 Mr E of Yorkshire Country Properties has completed a landowner evidence form. Mr C was one of four co-landowners before YCP and has completed a landowner evidence form. Mr B, a former occupier, has completed a former occupier form. Mr E has completed a statutory declaration relating to his submission of a form on behalf of former owner, Mr A. Mr B met officers on site and answered supplementary queries regarding his evidence.
- 1.9 Mr Scanlon of NSCL, states: “the application is vexatious. The WCA8 evidence, the user evidence, is not credible. Based on the evidence submitted and what has arisen since, the Council could not now rationally, or more importantly, lawfully make an order, because a public right of way cannot lawfully exist. The application should be and must now be rejected. There is now no recourse for appeal to the Secretary of State by the applicant, because the application has purported to be ‘withdrawn’. In basic terms, but importantly, ‘as of right’ is established to mean that a way is used without force, without secrecy and without permission. This is often quoted in latin: *nec vi, nec clam, nec precario*. More recently, in more modern parlance, a leading Judge has helpfully put it more basically: not by force, nor stealth, nor the licence of the owner.”
- 1.10 “Where at any point in its history this is not the position and for example a way has been used by stealth, or more blatantly by trespass, then in the absence of information dedicating the way by other means, a public right of way cannot be established. Such a way cannot be deemed a public right of way in accordance with s.31 HA 1980. Case law has also established that ‘without interruption’ means just that. To close a way just once is sufficient to negate it becoming a public right of way.
- 1.11 “Landowners will often close a way just one day a year to preserve the position of their land assets in order to prevent the suggestion of or coming into being of a public right of way.”
- 1.12 Former occupier of the land Mr B states that there has never been a footpath across the land.
- 1.13 Former landowner Mr C states that there was a barbed wire fence around the site when purchased in 2006 and signs saying the land was private property. Mr C also stated that there is no public right of way. Officers were not able to check Mr C’s evidence at this stage. Photos of 2014 and 2017 are appended at App M. There is a barbed wire fence in the 2017 photo but not the 2014 photo, all taken by Council officers.
- 1.14 Former landowner Mr A’s statement, obtained by Mr E of the current owners YCP, identifies that the land was in his family from the early 1950s to 2006. It stresses that there was not ever any right of access across the land. It notes that the estate

was built in the late 1970s. He employed Mr G who worked on the land and was involved in fencing, signing etc. The statement notes that there was no stile or throughway from St Mary's Rise during his ownership, and that there was barbed wire fencing all the way round the field perimeter throughout the family's ownership of the land. He notes that he became aware of trespass in the late 1980s/early 1990s, and was made aware of deliberately cut or damaged fencing. He notes that Mr G made up signs and these were erected along the boundary with St Mary's Rise, including "private", "no public access" etc. Officers were not able to contact Mr A about his evidence statement and regrettably, Mr G is deceased.

- 1.15 Further to matters raised by the landowner and his representative, officers have contacted users who had submitted witness evidence, sending out a number of supplementary questions to try to clarify various points.
- 1.16 Generally, the supplementary questions were:
 - 1.16.1 Did you and the other people you describe seeing using the route take access between the tarmac road at St Mary's Rise and the stile?
 - 1.16.2 If so, where did you/they go to get from the tarmac road to the stile?
 - 1.16.3 Did those people take access from the gate you describe to the tarmac surface of Miry Lane?
- 1.17 It was sent in May 2019 to witnesses to clarify where they went and how far.
- 1.18 No deposit has been made relating to the land under section 31(6) of the Highways Act 1980 regarding establishment of public rights of way – the deposits were made after the date of the DMMO application and do not have retrospective effect on this application.
- 1.19 The council should identify a date when the use of the route was brought into question. There is a dispute demonstrated by the conflicting evidence regarding this, but it is clear that the way was blocked by barbed wire prior to Mr Cook's application.
- 1.20 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. If the council makes an order, it must be advertised and notice given, with a period for formal objections to be made. If opposed, it would have to be submitted to the Secretary of State at DEFRA to determine.
- 1.21 Even though the applicant and the owners of no 7 have changed their minds about wanting a public footpath, the council must decide what, if any, rights have been shown to satisfy the relevant test(s). This means that the council may make an order, a different order or none at all, after appropriate consideration of the available evidence.

- 1.22 For example, if there is sufficient evidence only to record public footpath rights, then an order should be made for a public footpath.
- 1.23 The evidence and comments of the landholders objecting to the application and any recording of any public right of way are to be noted as well as those describing use and wishing to see a way recorded.
- 1.24 When considering additions to the definitive map and statement of public rights of way, the council must make an order
 - 1.24.1 If a public right of way is shown to subsist on the balance of probabilities,
 - or
 - 1.24.2 If the right of way is shown to be reasonably alleged to subsist.

2. Information required to take a decision

- 2.1 Members are asked to consider the report, the available evidence for and against the recording of public rights, 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).
- 2.4 The application is made under the Wildlife & Countryside Act 1981.
- 2.5 The council should consider the available evidence and make an order to modify the record of public rights of way when it is requisite in accordance with section 53 of the Wildlife & Countryside Act 1981.
- 2.6 The statutory provision in Section 53(3)(b) (WCA81), requires the Surveying Authority (Kirklees Council) to modify the Definitive Map and Statement following: *"the expiration in relation to any way in the area to which the map relates of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or restricted byway."*
- 2.7 Section 53 (3) c (i) requires the council to make an order to modify the definitive map when evidence is discovered which shows *"a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic;"*.
- 2.8 Unrecorded public rights of way may come into being in a number of different ways, such as a result of a legal event such as a creation or diversion. Further, Section 53(3)(b) of the 1981 Act requires the Council to modify the Definitive Map and Statement on expiration of any period of public use if it can be shown that the public have used the path for a sufficient length of time to raise a presumption that

the path has been dedicated as a public path. This presumption, detailed in the Highways Act 1980 section 31, states “*where a way over any land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption for a full period of 20 years the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it*”. In identifying a relevant 20 year period for the purpose of section 31, we have to work retrospectively from this date of challenge.

- 2.9 The 20 year period is taken to run backwards from the date when the use of the path was first “brought into question”, whether by a notice or otherwise (HA Section 31 (2)). Section 69 of The Natural Environment and Rural Communities Act 2006 (NERC) clarified that the submission of an application to modify the Definitive Map was sufficient to call the use of the route into question by inserting subsections 7A and 7B into Section 31 HA 1980.
- 2.10 Section 31 states that only ways that are capable of being public highways are able to be considered under the statutory test. In the case of Moser v. Ambleside U.D.C. (1925) 89 J.P. 118, it was determined by Lord Justice Atkins that:
- 2.11 “*One of the first questions that one always has to enquire into in such a case as this is from whence does the highway come and whither does it lead? It has been suggested that you cannot have a highway except in so far as it connects two other highways. That seems to me to be too large a proposition. I think you can have a highway leading to a place of popular resort even though when you have got to the place of popular resort which you wish to see you have to return on your tracks by the same highway*”.
- 2.12 In Kotegaonkar v SSEFRA (2012) EWHC 1976 (Admin), Mr Justice Hickinbottom looked at the establishment of public rights of way, particularly regarding a route not connecting to an existing highway. At paragraph 72 he concluded “*In my judgment, to be a highway, it is insufficient for a way to be linked to a place to which “the public would have a reasonable expectation to go” or “a place to which the public may resort”, as the Inspector considered to be the case: a highway, by definition, requires to be linked to a highway or to other land to which the public have a right of access.*” That decision described the consideration of the existence and establishment of *cul-de-sac* public highways
- 2.13 <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2012/1976.html&query=kotegaonkar&method=boolean>

- 2.14 In this case, the circumstances may be considered to be quite different from Kotegaonkar for a route between the two roads. In Kotegaonkar, the application was for a route from a public street to a parade of shops via a health centre car park. Bury Council determined that there was no public right of way route demonstrated by the evidence to run over the car park, so made an order showing a route shown in appended App Z plan, which connected at neither end to the public highway or any place to which the public had a right to go. Conversely, in this Netherthong case, the route used and widely described in evidence runs from/to St Mary's Rise and Miry Lane, two public ordinary roads. This is the route shown to Kirklees PROW by the applicant and (the landowner) Mrs F on council officer's first visit before the application was made, running over land from the tarmac road of St Mary's Rise to Miry Lane, including the land immediately before the front garden area of no. 7 St Mary's Rise, that the householders now dispute, now that they have changed their mind about having a footpath. It is the route identified by witnesses both originally and in supplementary responses. It must be considered whether use of the route has been "as of right".
- 2.15 The Committee must consider whether there is sufficient evidence to raise the presumption of dedication. The standard of proof is the civil one that is the balance of probabilities. Members must weigh up the evidence and if, on balance, it is reasonable to allege that there is a public right of way, then the presumption is raised. The onus would then be on the landowner(s) to show evidence that there was no intention on his/her part to dedicate. This must be by some overt act on the part of the landowner to show the public at large that there was no such intention.
- 2.16 Such evidence relied upon may consist of notices or barriers, or by blocking of the way, and drawing this to the attention of the public, or by the deposit of a Statutory Declaration under Highways Act 1980, Section 31 (6) to the effect that no additional ways (other than any specifically indicated in the Declaration) have been dedicated as highways since the date of the deposit.
- 2.17 "Intention to dedicate" was considered in Godmanchester, which is the authoritative case dealing with the proviso to HA80 s31. In his leading judgment, Lord Hoffmann approved the obiter dicta of Denning LJ in *Fairey v Southampton County Council* [1956] who held "*in order for there to be 'sufficient evidence there was no intention' to dedicate the way, there must be evidence of some overt acts on the part of the landowner such as to show the public at large – the people who use the path....that he had no intention to dedicate*".
- 2.18 Lord Hoffmann held that "*upon the true construction of Section 31(1), 'intention' means what the relevant audience, namely the users of the way, would reasonably*

have understood the owner's intention to be. The test is...objective: not what the owner subjectively intended nor what particular users of the way subjectively assumed, but whether a reasonable user would have understood that the owner was intending, as Lord Blackburn put it in Mann v Brodie (1885), to 'disabuse' [him] of the notion that the way was a public highway".

2.19 For a landowner to benefit from the proviso to section 31(1) there must be 'sufficient evidence' that there was no intention to dedicate. The evidence must be inconsistent with an intention to dedicate, it must be contemporaneous and it must have been brought to the attention of those people concerned with using the way. Although s31 ss (3), (5) and (6) specify action which will be regarded as "sufficient evidence", they are not exhaustive; s31 (2) speaks of the right being brought into question by notice "or otherwise".

2.20 Dedication of a public path at Common Law should also be considered. The main principles of establishing a highway under common law are:

2.20.1 Use by the public should be as of right; without force, secrecy or permission.

2.20.2 The landowner should know of the use but do nothing to prevent it. No minimum period of use is required (unlike the statutory process where a minimum of 20 years is required).

2.20.3 The more intensive and open the use and the greater the evidence of owners knowledge and acquiescence the shorter the period required to raise a presumption that the way has been dedicated.

2.20.4 Each case is judged on the facts available.

2.20.5 The onus of proof lies with the person making the claim to show that there was use and that the owner knew of it and did nothing to stop it.

2.21 Interruption – "With regard to Section 31 of the 1980 Act, an interruption in use must be some physical and actual interruption which prevents enjoyment of the path or way and not merely some action which challenges that use but allows it to continue. For any action taken to qualify as an interruption of use there must be some interference with the right of passage. Whether any action can be regarded as an interruption is also dependent upon the circumstances of that action; temporary obstructions of a minor nature such as the parking of vehicles on a road (Lewis v Thomas [1950] 1KB 438), or the storage of building materials on a path (Fernlee Estates Ltd v City & County of Swansea [2001] EWHC Admin 360) have been held not to amount to relevant interruptions." As noted by DEFRA inspector,

Alan Beckett, in his decision for the Secretary of State on order ref: FPS/P2745/7/38.

- 2.22 Although, in this Netherthong case, there has been suggestion of parking of cars and caravans and the presence of items including a bathtub in front of 7 St Mary's Rise, none of the users report finding any obstruction or impediment to their ability to pass and repass along the route during the relevant period. Interruption needs to be meaningful, intended to prevent use, not incidental, and that actually interrupted user.
- 2.23 In considering the addition of unrecorded footpaths, there are two tests to be applied, as identified in the case of *R v Secretary of State for the Environment ex parte Mrs J Norton and Mr R Bagshaw*, and clarified in the case of *R v Secretary of State for Wales ex parte Emery*.
- 2.23.1 Test A: Does a right of way subsist? This requires clear evidence in favour of public rights and no credible evidence to the contrary.
- 2.23.2 Test B: Is it reasonable to allege that a right of way subsists? If there is a conflict of credible evidence but no incontrovertible evidence that a right of way cannot be reasonably alleged to subsist, then a public right of way has been reasonably alleged.
- 2.24 If the council were to make a decision to make an order adding a public right of way only on the basis of Test B, members may note that the public rights of way provisions of the Deregulation Act 2015, which are yet to come into force, will remove Test B, so any such authorised order could only be made prior to commencement of any such relevant provisions.
- 2.25 Section 32 of the Highways Act 1980 states "*A court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was made or compiled, and the custody in which it has been kept and from which it is produced.*" Whether determination is by the Inspectors appointed by the Secretary of state, the highest courts or the council as surveying authority for public rights of way, it is appropriate and correct for those deciding such matters to consider documents that form part of the available evidence, and to decide the weight of that evidence in reaching a decision.

- 2.26 Government guidance to local authorities is contained in DEFRA'S Rights of Way Circular 1/09, version 2
- 2.27 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69304/pb13553-rowcircular1-09-091103.pdf
- 2.28 Members are advised that if a definitive map modification order is made, which then attracts objections which are not withdrawn, then the council would have to forward it to the Secretary of State at DEFRA for determination. The DMMO consistency guidelines, are issued to the Secretary of State's inspectors in the planning inspectorate
- 2.29 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/517495/Full_version_February_2016_consistency_guides_2_.pdf
- 2.30 The user evidence identifies use by 25 original witnesses. Of these, most reported use ending in 2017.
- 2.31 Evidence from users noted seeing others and described use on foot, dog walking, shortcut, access to bus at Oldfield. Such use would be appear open, notorious and of a nature similar to that expected of public rights of way.
- 2.32 The submitted user evidence demonstrates substantial and frequent use over many years. App J and App K shows WCA8 user evidence summary and timeline.
- 2.33 The landholders' statements claim that the way has been blocked, that relevant notices have been posted regarding access by the public. The NSCL statement argues that it is not legally possible for an order to be made, that the evidence of users is not credible, that the evidence against the application is clear.
- 2.34 The various evidence discovered is contradictory and unclear, and members are reminded of the test described at 2.23.2 above for making an order where the two sides may have credible evidence but there is not incontrovertible evidence to show that no public way subsists.
- 2.35 A decision on the appropriate status of any route alleged to subsist here would have regard to the user evidence. For this route, there is evidence of pedestrian user. If sufficient, and if it is "as of right", the pedestrian user may give rise to an order recording the route as a public footpath, if landowner(s) have not done enough to demonstrate an intention not to dedicate.

- 2.36 None of the user evidence forms describe equestrian or cycle use by witnesses.
- 2.37 Ordnance Survey plans showing the land over the years are appended at App L (1893, 1906, 1933, 1964, 1978, 1994). These are not demonstrative of public rights of way but indicate the physical nature of the site over the years, none is demonstrative of rights existing or not existing. Aerial photos are also at App L (2000-18) showing the land at the date of the photo.
- 2.38 As described at paragraph 1.5 above, officers recently received additional information and interviewed a number of witnesses in relation to permission to cross the land in front of no.7 St Mary's Rise, shown in App B. In summary, the results of this further examination suggest that witnesses 1,5,6,7,9,10,11,12,13,14,15,16,17,18,24,25 & 27 use was not use as of right for the part of the way between Miry Lane and the adopted highway at St Mary's Rise. One of those witnesses stated that they sought and gained permission from landowner Mr A in 1985 to cross the field. Two other witnesses, 2 & 3, did not use the path.
- 2.39 After considering the evidence and the relevant criteria members have a number of options.
- 2.40 The first option for members is to refuse the application and to decide that the council should not make any order based on the available evidence.
- 2.41 The second option for members is for the council to make an order to record a public right of way, and either confirm it or forward it to the Secretary of State if it is opposed.

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 the public footpath claims and have been informed of the report being brought to sub-committee.

4.2 Officers have contacted landowners, statutory and local user groups and the Holme Valley Parish council.

4.3 The Parish Council did not respond.

4.4 Some individual witness evidence was subsequently received in 2019, and is as follows.

4.5 Witness 28 stated "The footpath used to run from the gate on Miry Lane to St Mary's Rise where there is a stile in the wall, I used to use this footpath on a regular basis as I live on St Mary's Crescent. But the owners of the land put up a barbed wire fence straight across the stile which made it impossible to use. And told that they wasn't an official footpath they. [sic]"

4.6 Witness 29 who was informed of the matter by Huddersfield Ramblers stated "The footpath depicted in your plan WCA5 was used in the past and an access stile in the boundary wall at St. Mary's Rise still exists. In recent years the gate to Miry Lane has been secured preventing use. I assume that is why a pedestrian route

was included as shown in plan 1023/90-01 accompanying Planning Application 2018/62/90192/W.”

- 4.7 Witness 30 (no User Evidence Form) stated, “Have walked this path for many years having lived in the vicinity for over 50 years.”

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. The applicant has indicated an intention not to pursue this matter. Notwithstanding any presumption about the applicant’s potential future decision, and noting NSCL’s comments at his paragraph 3.11 etc. on application withdrawal and the *Roxlena* case, officers have contacted DEFRA/the Planning Inspectorate to ask if they have any view on whether the applicant has no right of appeal under Schedule 14; no response has been received to date.

6. Officer recommendations

- 6.1 **Officers recommend that** members choose option 1 at paragraph 2.40 above and decide not to make a definitive map modification order.

Reasons

- 6.2 There is conflict in the evidence. There is evidence from user witnesses that they have passed from St Mary’s Rise to Miry Lane. There is evidence that challenges such use. There is conflict between evidence given by different people and even between the same people. There is evidence of varying motivations and changing motivations. There are claims presented about signs and arguments put forward about certain legal cases being relevant.

- 6.3 Clarification provided by a number of witnesses relating to their and their families' evidence has undermined their evidence in terms of public use 'as of right'.
- 6.4 When allowing for the witnesses' use that is suggestive of being by permission, officers consider that there is, on balance, insufficient evidence of use 'as of right' from remaining witnesses of sufficient time duration and quality to require the making of an order on the available evidence, even on the lesser Test B described at paragraph 2.23. There is considered to be insufficient evidence to be able to infer that the landowner of the field, or other land, dedicated a public right of way at common law.
- 6.5 If members determine that there is insufficient credible evidence of public user as of right for a sufficient period of time, nor sufficient evidence to infer dedication at common law, then they should decide to refuse the application and not to authorise the making of an order, as described in option 1 at paragraph 2.40.

Summary of officer recommendation

- 6.6 Officers recommend that:

6.6.1 Members refuse the application and decide that the council should not make any order based on the available evidence.

7. Cabinet portfolio holder's recommendations

- 7.1 Not applicable

8. Contact officer

Giles Cheetham, Definitive Map Officer

01484 221000

giles.cheetham@kirklees.gov.uk

9. Background Papers and History of Decisions

- 9.1 872/1/MOD/169

- 9.2 Appendices

9.2.1 Appendix 1 – guidance for members.

9.2.2 App A – DMMO application form and plan (2)

9.2.3 App B – Land ownership plans (2)

9.2.4 App C – Representations (redacted) from NSCL on behalf of landowner YCP

9.2.5 App J - User evidence summary (UEF 1-27) (5)

- 9.2.6 App K – User evidence timeline. (UEF 1-27)
- 9.2.7 App L – Ordnance Survey plans (6) and KC aerial photos (6)
- 9.2.8 App M - photos 2014 and 2017 (3)
- 9.2.9 App N – information regarding use by permission (2)
- 9.2.10 App Z – plan of Bury order in Kotegaonkar case

10. **Assistant Director responsible**

- 10.1 Service Director, Environment

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Name of meeting and date:

Planning sub-committee (Huddersfield area) – 3 October 2019

Title of report:

Application for a definitive map modification order to add a public footpath to the definitive map and statement, Miry Lane to St Mary's Rise, Netherthong.

1. Purpose of report

Members are asked to consider the evidence and decide on any requisite modification of the definitive map and statement of public rights of way. An application has been received for a definitive map modification order ("DMMO") to record a public footpath.

2. Summary of Report

In July 2017 a DMMO application was received concerning alleged public footpath rights, between Miry Lane and St Mary's Rise, Netherthong.

Public footpaths are a category of public highway recorded in the definitive map and statement of public rights of way.

Members are asked to consider and determine the application, deciding whether the evidence demonstrates that any DMMO is requisite. An order to add the alleged public footpaths to the formal record would be requisite if the evidence demonstrates that a public right of way subsists or is reasonably alleged to subsist.

Submitted evidence in the application includes 27 user evidence forms, and two more user evidence forms have since been submitted. Overall there is conflicting evidence, however a significant proportion of the evidence of witnesses' use is suggestive of being permissive.

3. Ward Councillor comments

No evidential comments to date on the existence of public rights of way.

4. Officer recommendations and reasons

That sub-committee decides to refuse the application and that the Council does not make any order because there is insufficient evidence of public use 'as of right'* over sufficient time to demonstrate that a public right of way is reasonably alleged to subsist.

* "as of right" means without force, without secrecy, without permission – "*Nec vi, nec clam, nec precario*" is the Latin legal term.

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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.

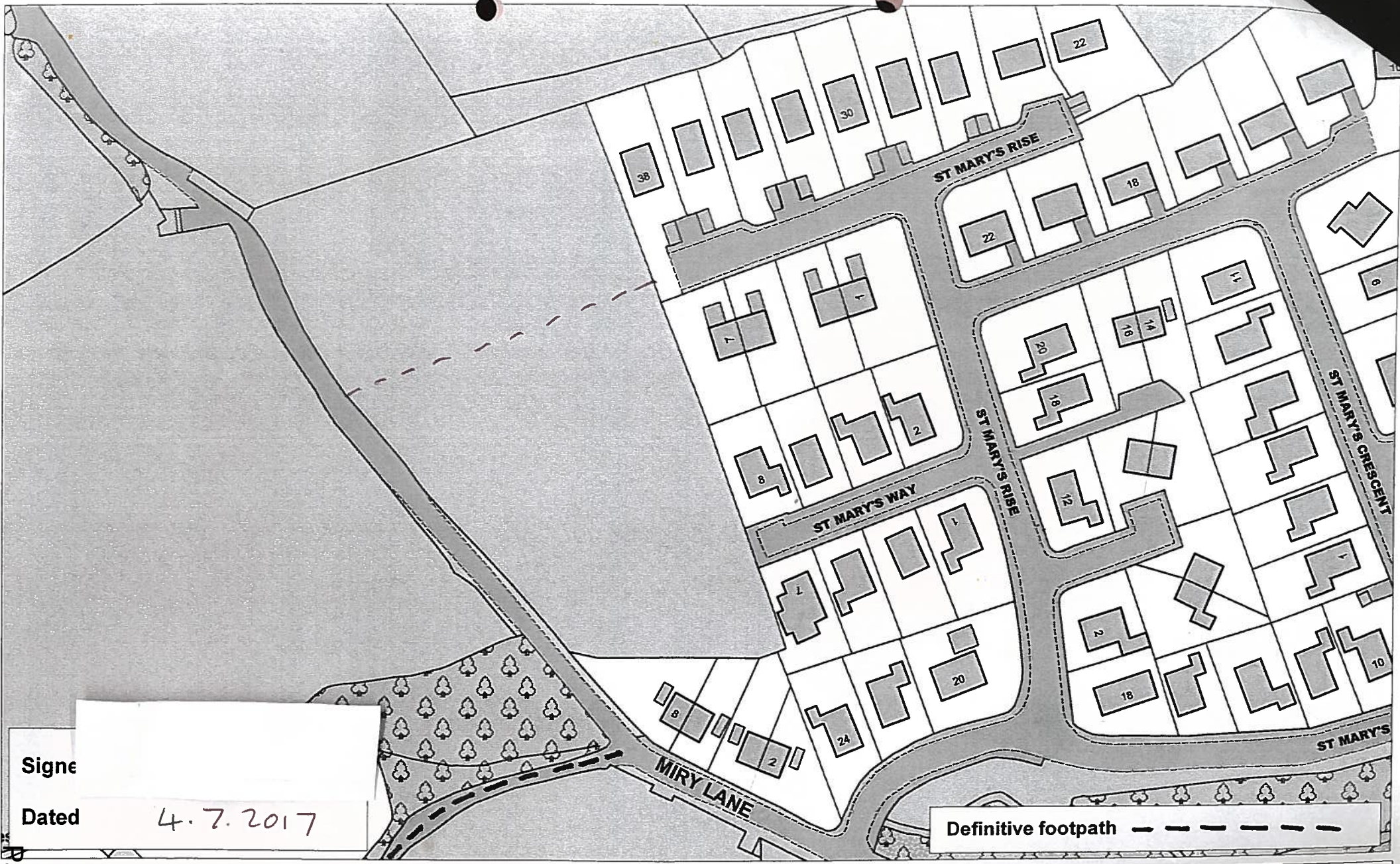
The use must also be by the general public. Use of a route to visit the landowner is not public use. Thus people cannot claim a public right over the private drive where the use was for visiting the owner, delivering post or buying produce etc.

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.



Signe

Dated 4.7.2017

Definitive footpath — — — — —

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Produced on 5 April 2017
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FORM OF APPLICATION FOR MODIFICATION ORDER

WILDLIFE AND COUNTRYSIDE ACT 1981

The Wildlife and Countryside (Definitive Maps and Statements)
Regulations 1993 (Schedule 7)WEST YORKSHIRE METROPOLITAN COUNTY COUNCIL DEFINITIVE MAP AND
STATEMENT FOR THE KIRKLEES METROPOLITAN DISTRICT AREA

To: Public Rights of Way Unit

of: Kirklees Council, Flint Street, Fartown, Huddersfield HD1 6LG

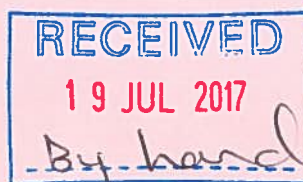
I/We: (name of applicant) Stephen Cook

of: (address of applicant) 16 ST. MARY'S CRESCENT
NETHERTHONG, HOLMFIRTH
HD9 3XP.hereby apply for an Order under Section 53(2) of the Wildlife and Countryside Act 1981
modifying the definitive map and statement for the area by:

- 1) DELETING the (*footpath/bridleway/byway open to all traffic/restricted byway)
in the District of
(*Batley/Colne Valley/Denby Dale/Dewsbury/Heckmondwike/Holmfirth/Huddersfield/
Kirkburton/Meltham/Mirfield/Spenborough)
- known as number:
which starts at:
and ends at:
- and shown on the map annexed hereto.
- 2) ADDING the (~~*footpath/bridleway/byway open to all traffic/restricted byway~~)
in the District of
(~~*Batley/Colne Valley/Denby Dale/Dewsbury/Heckmondwike/Holmfirth/Huddersfield/
Kirkburton/Meltham/Mirfield/Spenborough~~)
- known as number:
which starts at: ST MARY'S RISE
and ends at: MIRY LANE
- and shown on the map annexed hereto.

* Please delete as appropriate

HN1019REP.DOC



continued over.../

Page 67

3) (UPGRADING/DOWNGRADING) to a (*footpath/bridleway/byway open to all traffic /restricted byway)

known as number:

in the District of

(*Batley/Colne Valley/Denby Dale/Dewsbury/Heckmondwike/Holmfirth/Huddersfield/Kirkburton/Meltham/Mirfield/Spenborough)

which starts at:

and ends at:

and shown on the map annexed hereto.

4) (*VARYING/ADDING) TO THE PARTICULARS in the statement accompanying the definitive map relating to (*footpath/bridleway/byway open to all traffic/restricted byway)

known as number:

in the District of

(*Batley/Colne Valley/Denby Dale/Dewsbury/Heckmondwike/Holmfirth/Huddersfield/Kirkburton/Meltham/Mirfield/Spenborough)

which starts at:

and ends at:

by providing that:

and shown on the map annexed hereto.

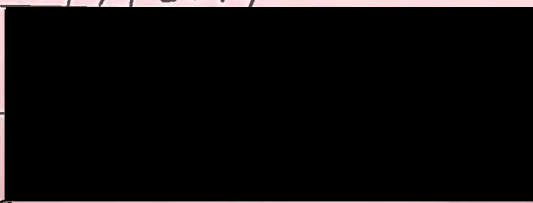
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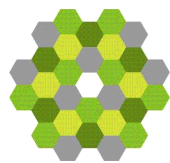
I/We attach copies of the following documentary evidence (including statements of witnesses) in support of this application:

List of documents provided:-

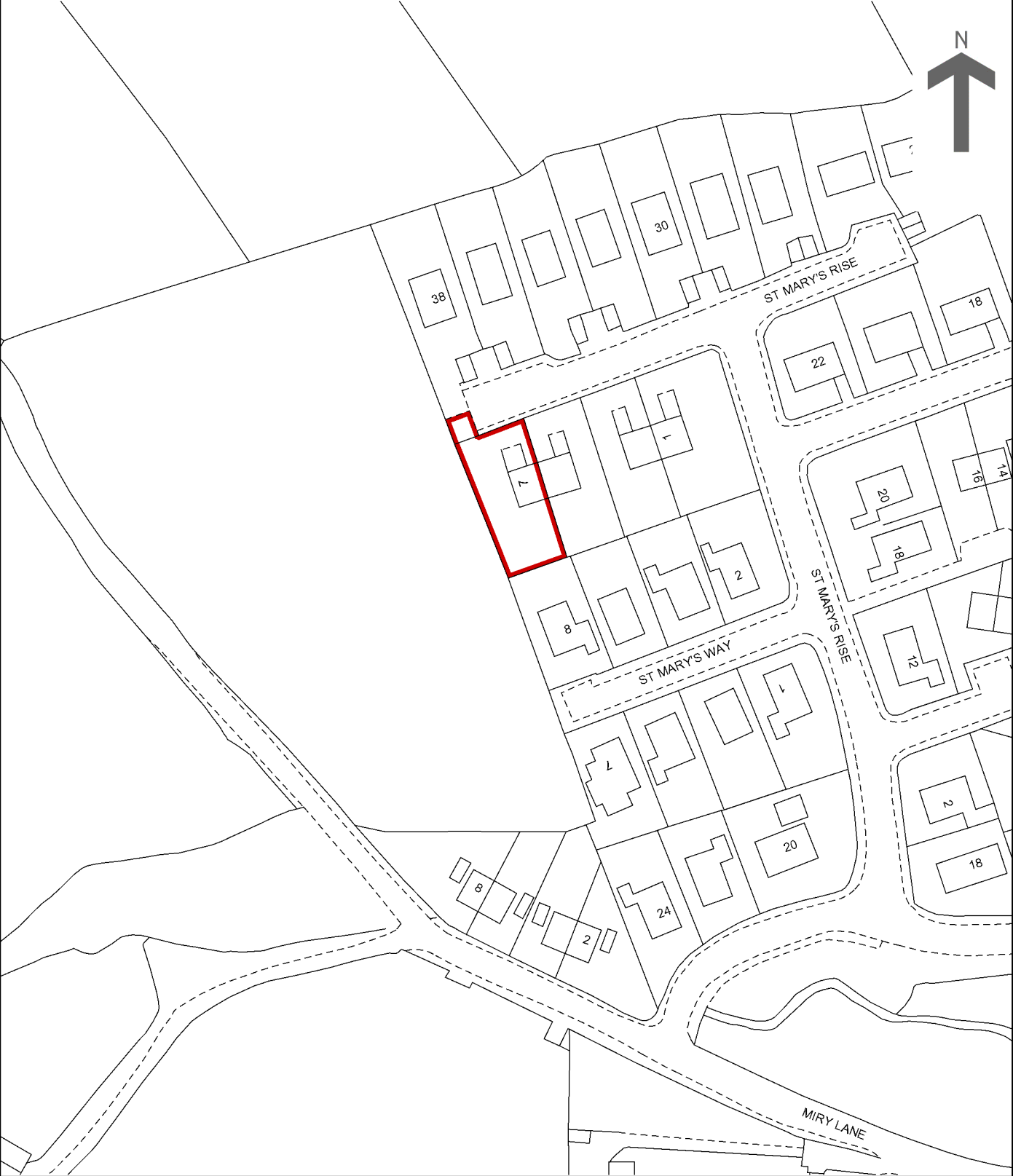
Map - attached
Statements of witnesses

Dated: 4/7/2017

Signed: 



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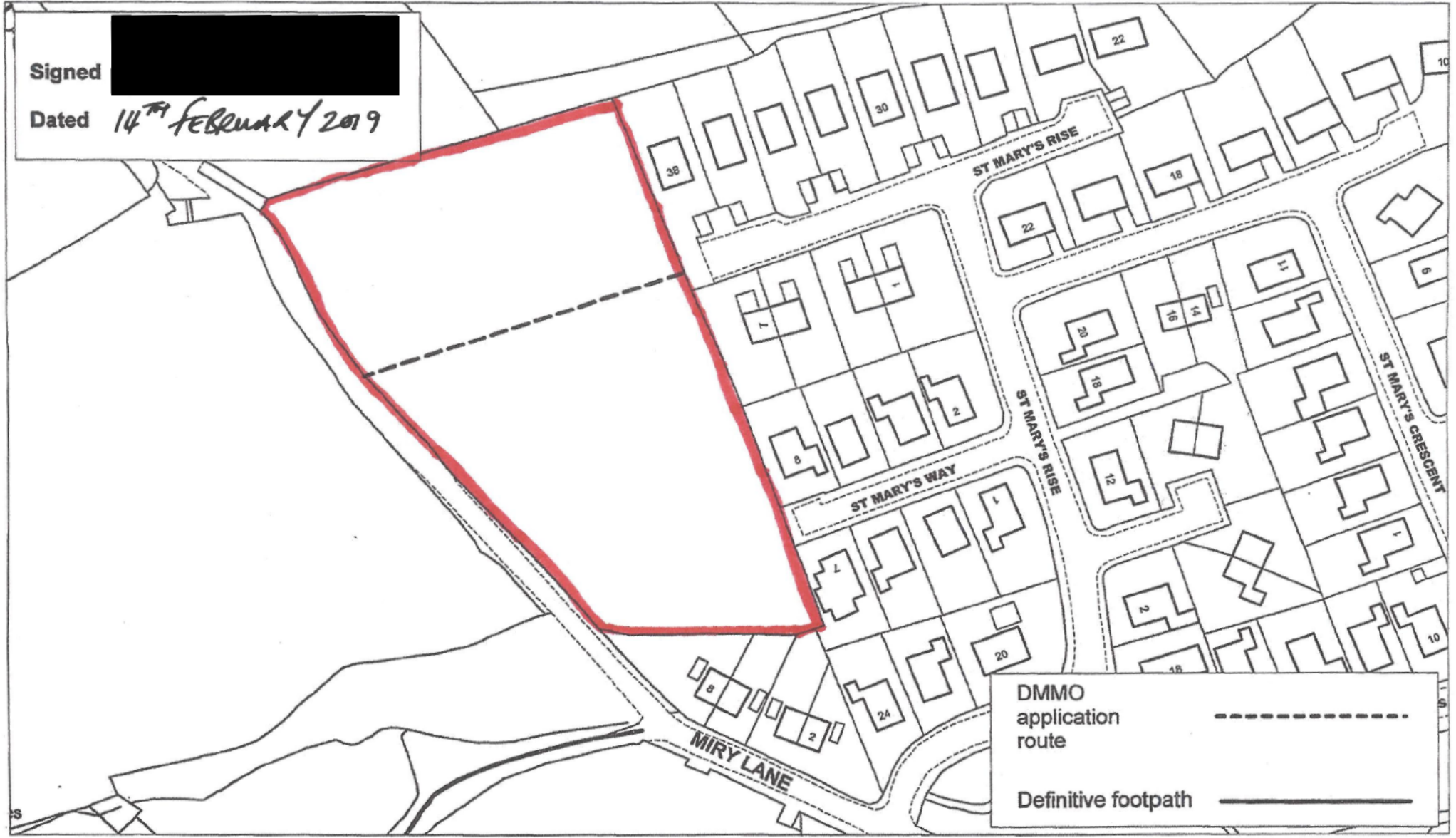
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Signed



Dated

14TH FEBRUARY 2019



DMMO application route



Definitive footpath



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Giles Cheetham
Definitive Map Officer – Public Rights of Way
Streetscene & Housing Service
Kirklees Council,
Flint Street,
Fartown,
Huddersfield,
HD1 6LG

13th March 2019

By email only: giles.cheetham@kirklees.gov.uk

Cc.: -
[.....]

Dear Giles

APPLICATION FOR DEFINITIVE MAP MODIFICATION ORDER ('DMMO') - LAND BETWEEN MIRY LAND AND ST. MARY'S RISE, NETHERTHONG

1.0 Background

- 1.1 The following information is submitted in support of the position on the part of the landowner, following submission of Form WCA9 and WCA10 evidence. This is in response to what we now know to be a vexatious application for a DMMO, or at very best, an application for a DMMO by local residents that respectfully do not understand the related law.
- 1.2 The WCA8 evidence, the user evidence, is not credible and we are now confident that evidentially, this application cannot succeed. Moreover, the following will show that based on the evidence submitted and what has arisen since, the Council could not now rationally, or more importantly, lawfully make an order, because a public right of way cannot lawfully exist.
- 1.3 Therefore, the application should be and must now be rejected. Added to this is that there is now no recourse for appeal to the Secretary of State by the applicant, because the application has purported to be 'withdrawn'. However, the application must still be determined. I explain this position shortly.

2.0 Further WCA9 Evidence – Mr. [A].

- 2.1 The Council has in response to submitted User Evidence Forms ('UEF' or Form WCA8) now received Form WCA9 (evidence from previous owners and occupiers) from Mr. [B], the farm contractor for many years and whose family have farmed this land for many decades. Further, the Council has also received a Form WCA9 from Mr. [C], who with a consortium



of three other business partners, owned the land from 2006 to 2017. Following this, the Council has also received a Form WCA10 from Mr. [E], who is a director of Yorkshire Country Properties (Netherthong) Ltd., the current landowner that purchased the land from Mr. [C] and his partners.

- 2.2 Following his WCA10 submission and subsequent correspondence, attached separately is a formal **Statutory Declaration** from Mr [E], of Yorkshire Country Properties (Netherthong) Ltd.
- 2.3 You will see that, in basic terms, this is the information that Mr. [A], the owner of the land for several decades prior to 2006, was/is due to submit. Importantly, it is also noted that the land has been in Mr. [A]'s family for many more decades before he took formal ownership. This is the evidence that Mr. [A] was submitting and still intends to submit in his own form WCA9.
- 2.4 [Personal data redacted] Mr. [E] has explained that he is preparing to obtain Mr. [A]'s final signed WCA9, given the situation [..]. Therefore, this is provided to facilitate the Council's consideration and reporting in the meantime. The fact that Mr. [E] has gone out of his way to obtain a formal Statutory Declaration should be noted and taken fully into consideration by the Council (see also 3.9, below)

3.0 The Law

- 3.1 The following is an overview of the law and procedure, so far as it is relevant to this position. We both know the s.53 position and the Council's duty as surveying authority, etc. The following are therefore the basic legal principles for those cc'd.
- 3.2 The application by Mr. Cooke was made under Section 53(2) of the Wildlife and Countryside Act 1981 ('WCA 81') as amended, which requires surveying authorities to keep their Definitive Map and Statement ('DMS') under continuous review, and to modify them upon the occurrence of specific events cited in Section 53(3).
- 3.3 Section 53(3)(b) WCA 81 provides that one of those specified events is the expiration of a period during which there has been enjoyment of the route by the public, such that this would be sufficient to raise a presumption that the way has been/can be dedicated as a public right of way (i.e. a public path).
- 3.4 A further event is established in Section 53(3)(c)(i) WCA 81. This provides that an order to modify the DMS should be made on the discovery by the authority of evidence which, when considered with all other relevant evidence available, shows that a right of way which is not shown on the DMS subsists, or is reasonably alleged to subsist, over land to which the DMS relates.



3.5 Case law has evolved¹ to establish that in considering this issue there are effectively two ‘tests’, which are:

Test 1: Does a right of way subsist on the balance of probabilities?

Test 2: Is it reasonable to allege that a right of way subsists?

You have duly pointed out in your recent email that you only need to be satisfied that the evidence meets Test 2; the so-called *lesser test*.

For this possibility to be established, it will be necessary to show that a reasonable person, having considered all of the relevant evidence available, could reasonably allege a right of way to subsist. Where there is a conflict of credible evidence, but no incontrovertible evidence that a right of way could not be reasonably alleged to subsist, then it is reasonable for a surveying authority or the Secretary of State (SoS), as the case may be, to allege that one does.

The following will clearly show that neither test is passed. The user evidence is not credible and the making of an order would be unlawful in this case, based on the evidence and the facts.

3.6 However, before moving to that, briefly and in order to provide context to the basic legal position, with respect to evidence of use of an alleged right of way, Section 31 of the Highways Act 1980 (‘HA 1980’) states that where there is evidence that any way over land which is capable of giving rise to a presumption of dedication at common law has been used by the public as of right and without interruption for a period of 20 years (i.e. a full 20 years without interruption), that way is deemed to have been dedicated as a highway **unless** there is sufficient evidence that there was no intention to so dedicate during that period (NB. my emphasis).

In basic terms, but importantly, ‘as of right’ is established to mean that a way is used without force, without secrecy and without permission. This is often quoted in latin: *nec vi, nec clam, nec precario*. More recently, in more modern parlance, a leading Judge has helpfully put it more basically: not by force, nor stealth, nor the licence of the owner².

Where at any point in its history this is not the position and for example a way has been used by stealth, or more blatantly by trespass, then in the absence of information dedicating the way by other means, a public right of way cannot be established. Such a way cannot be deemed a public right of way in accordance with s.31 HA 1980. Case law has also established that ‘without interruption’ means just that. To close a way just once is sufficient to negate it becoming a public right of way. Landowners will often close a way just one day a year to preserve the position of their land assets in order to prevent the suggestion of or coming into being of a public right of way.

¹ E.g. *R v Secretary of State for the Environment ex parte Mrs J Norton and Mr R Bagshaw* [1994] 68 P & CR 402; as upheld in *R v. Secretary of State for Wales ex parte Gordon Michael Emery* [1997] EWCA Civ2064.

² Lord Hoffman in *R. v. Oxfordshire County Council ex p. Sunningwell Parish Council* [2000] 1AC 335 at 350.



3.7 The period of 20 years referred to in 3.6, above, is calculated retrospectively, from the date when the right of the public to use the way was brought into question. Therefore, in this case, we count backwards 20 years from the date of Mr. Cooke’s application.

3.8 The Council as surveying authority will also consider whether dedication of the way as a highway could have taken place at common law. Basically, consideration of whether the use of the route by the public and the actions of the landowners or previous landowners have been of such a nature that dedication of a right of way could be shown to have occurred expressly or, alternatively, whether dedication could be inferred by the conduct of the landowner and/or the alleged users, etc. Unlike Section 31 HA 1980, no prescribed period of use is required at common law. This is because the length of time required to allow such an inference to be reasonably and conclusively drawn will depend on the circumstances. The burden of proof lies with the person or persons claiming the rights.

It transpires that a position in considering the common law arises on land not owned by the current owner, which I shall outline shortly.

3.9 Aside from the Council’s requirement to have regard to DEFRA guidance, etc., for completeness, we should perhaps identify the basics on the examination and weight of evidence. Section 32 of HA 1980 requires that, before determining whether a way has or has not been dedicated as a highway, the decision-maker (including a Court) must take into consideration any maps, plans or general history of the site and the area, or any other relevant documents that are submitted as evidence, and shall give such weight to aspects of evidence as is justified in the circumstances.

Accordingly, it is submitted that the weight to be given to the evidence of Mr. [A], submitted at present in the form of a Statutory Declaration by Mr. [E], is significant and should be viewed with parity in relation to the other WCA9 and WCA10 evidence.

3.10 Before moving to the evidence and application of the law here, for the purpose of this matter, I wanted to remind the Council of the important principle that public rights of way cannot be created where they do not connect to other highways, or places to which the public has access.

Unhelpfully, a proper statutory definition of the word ‘highway’ still does not exist. However, the common law position has relatively well-settled for almost the past 150 years, i.e. a right for all subjects at all seasons of the year, freely and at their will to pass and repass without let or hindrance³.

³ *Lewis, Ex p.* (1888) 21 Q.B.D. 191, [1888] 6 WLUK 93.



Where for example a landowner wishes to permit people to cross his land, in circumstances falling short of those necessary to create a public highway, then he may do so by other legal means, such as a licence. This may be formal or informal.

However, even where there is a wide scope of beneficiaries, where the use is restricted to the public at large (i.e. it is intended for a portion of the public to be restricted), or if the route is not sufficiently defined, this cannot become a highway. A landowner in such circumstances cannot dedicate a route across their land as a public highway. He/she cannot create a public highway, with the obligations that that imposes on the public, if that which he wishes to give away falls short of the criteria required by law for a highway to exist.

As a matter of legal principle, the concept of an *isolated highway*, being one that was unconnected to another highway, cannot exist in law. This is because such a way cannot have all the requisite essential characteristics of a highway; i.e. remaining open with a right to pass and re-pass by the public, free from obstruction, at all times.

Select groups or persons passing along a route with permission, for example as a licensee, does not constitute the public (i.e. the whole of the public and not a selection) passing along it freely and at will at any time. This is because the passage was/is at the will of the landowner, who could withdraw the permission or the licence to pass along the land, or in addition could block the way, at any time.

In more basic terms: **highways need to connect to other highways**. Where this is not the case, then, apart from a situation involving a cul-de-sac (which I shall not go into, as it is not relevant here), a public right of way cannot be lawfully established, as clearly identified in *Kotegaonkar v Secretary of State for the Environment, Food and Rural Affairs* [2012] EWHC 1976 (Admin).

3.11 I wanted to briefly identify the ‘withdrawal’ of the application by Mr. Cooke and the ‘withdrawal’ of evidence by Mrs. [F], of number 7 St. Marys Rise, immediately adjacent to the field that is most affected by the application.

We have discussed and agreed previously that the question of whether an application for a DMMO can simply be withdrawn has not yet been formally considered by the Courts. However, there is some judicial guidance in the form of something being mentioned *obiter* (meaning 'by the way', rather than a pertinent point of examination in the case) by His Honour Mr. Justice Kerr in the case known as *Roxlena*⁴.

The judge here effectively questioned whether, for the purposes of procedural requirements in Section 53(5) WCA 81, in the case where an application is purported to be ‘withdrawn’, whether this would extinguish the requirement to keep the DMS under continuous review. In more basic terms: is the Council’s Section 53 duty ended by the purported withdrawal of an application. The judge

⁴ *R (ex p. Roxlena Ltd.) v Cumbria County Council and Peter Lamb* [2017] EWHC 2651 (Admin)



identified that Section 53(5) is indeed silent on this and the Council cannot ‘unsee’ (my words) evidence of a public right of way.

A surveying authority is therefore still bound to determine an application for a DMMO, even if this may be simply going through the proverbial motions.

I am and always have been aligned with your viewpoint on this. Although it was only mentioned obiter, I think that it does stand to reason that even if the evidence of users is insufficient and there are attempts to ‘withdraw’ an application by an applicant, there is still no definitive authority on how such a ‘withdrawal’ sits against the wider duty on the DM&S (i.e. the wider s.53 duty). If this was formally tested at Court, I would have to agree that there is nothing in law to say that the Council’s s.53 duty falls away just because an application has been ‘withdrawn’.

Therefore, whilst it is possible to perhaps ‘withdraw’ an application and evidence (that is of course a person’s right), whilst this must undoubtedly dilute or even extinguish the credibility of such evidence and adjust the weight to be attributed to now ‘withdrawn’ evidence. This is compounded when considering that in this case, both the applicant and the most affected landowner have withdrawn their evidence and will not be available for future examination, the Council’s duty to determine the application remains.

4.0 Evidence and Application

4.1 We have received from Mrs. [F] of No. 37 St. Mary’s Rise, email correspondence between yourself and Mr. Cooke, the applicant. We have also seen correspondence from Mrs. [F] to local residents, attempting to garner support in order to simply stifle a development.

It is now clear, even from the correspondence sent to you from Mr. Cooke (which we have obtained through Mrs. [F]) that this application was nothing more than such a thing by his own admission to you in writing. Further, Mrs. [F] has similarly admitted to you that this was done with a view to preventing development. You will now see from the Form WCA10 of Mr. [E] that Mrs. [F] has been clear and moreover very much regrets her actions, given the detriment to her own land. I would ask that you revisit Mr. [E]’s Form WCA10.

4.2 Furthermore, it can be seen from the WCA9 evidence of Mr. [A], Mr. [C] and Mr. [B], that the field has always contained barbed wire fencing in various guises, as well as restrictive signage over the years. The signage is not ambiguous and there is no need to examine this in the context of whether there is enough clarity in accordance with the principles in *Godmanchester*⁵. The evidence on signage and details of signage is clear.

4.3 It is abundantly clear from the WCA9 and WCA 10 evidence that there was never an intention on the part of the landowner(s) and one could not be reasonably inferred, to have ever created a right of

⁵ *R (ex p. Godmanchester Town Council) v Secretary of State for Environment, Food and Rural Affairs* [2008] 1 AC. 221



way of any kind. Establishing a common law dedication across the field is therefore impossible and merits no further consideration.

- 4.4 It is also highly significant that, on the rare occasions people were caught trying to cross the field (caught in the act), they were challenged on their use of the way and have never contested this. What is also clear is that the apparent hole in the wall/stile adjacent to Mrs. [F]’s land, appears to have only appeared at some point post-2006. The vast majority of the WCA8 user evidence and indeed the identified points references the way from the stile/hole in the wall, to the farm gate leading onto/from Miry Lane. Aside from the incorrect OS grid references (see 4.7, below), as well as the defiance of signage and negotiation of barbed wire fencing, it is the case that as this stile has not come into being since after 2006, the users cannot even identify ten years of use, let alone 20 years.

Mrs. [F] has also admitted in what Mr. [B] described as a “spirited exchange” in his evidence, that she knows full well that there is no public or any other right of way across the field.

- 4.5 Whilst it is noted that 27 UEFs are submitted as part of the now ‘withdrawn’ application, one UEF purports to have been using the way going back to 1973. We can see from the evidence of Mr. [B] and now Mr. [A], evidence going back beyond 1973, that the St. Mary’s Estate was not even completed until the late 1970s/early 1980s. Following this, St. Mary’s Rise at the top of the estate was apparently one of the last phases to be built it can be seen from the WCA9 and WCA10 evidence that, even going back to a time before the St. Mary’s Estate was built, barbed wire fencing prevented access to the land and the crossing of the field. Add to this evidence of signage over many years and the challenging of users by Mr. [B], it is now apparent that users are and have been misunderstood as to the concept of ‘as of right’ (see 3.6, above).
- 4.6 Access across the field has not been done with any of the landowners’ permissions; the very contrary. Instead, if indeed this has taken place, this has been done with force and with secrecy. Crossing the field, if it has taken place, has been crossed by stealth, amounting to nothing more than trespass. Local residents have failed to distinguish where they may have been using a way across the field by stealth, rather than passing and re-passing of their free will. An important distinction in the law on determining an application for a DMMO and a misunderstanding on the part of local residents.
- 4.7 As an aside, albeit an important aside, the marking of the plans showing where the PROW is alleged to have existed is in many cases not reaching the gate on the Miry Lane end, to the east. The field gate is further north/north-east. Therefore, it is the case that the OS references/co-ordinates in the application and the Council’s publicity in relation to this application are not correct. Therefore, the Council’s own framing of the DMMO plan is incorrect.
- 4.8 It is also clear from the application, the Council’s framing of the application and the plans submitted, both as part of WCA8 evidence and even the Council’s preliminary order plan, that the vast majority of apparent user evidence does **not** include plotting a way over the land beyond the field wall at St. Marys Rise. As a result, the following will clearly show that the WCA8 user evidence is very significantly diluted, almost to the point of non-existence.



- 4.9 Following the information provided in 3.10 above, the law is clear that **highways must connect to highways, or a place to which the public has access**. Otherwise, they cannot lawfully fall within the parameters of being a highway.

For this to occur, the land at the other side of the wall (and indeed the wall itself) to the west as it meets St. Marys Rise would need to be connected with another highway.

This is significant and where the small parcel of land on St. Marys Rise needs to be addressed. This is because this is not highway land. It is in fact land owned privately by Mr. and Mrs. [F] of no. 7 St. Marys Rise under HM Land Registry freehold title ref: WYK199671, which I also attach for ease of reference. The land in question is the small square of land to the north/north west side of no. 7 St. Marys Rise, which meets the wall to the field to the west.

- 4.10 Accordingly, the way proposed is not and cannot be highway to highway, based on the user evidence and the facts. This is not highway land. Interestingly, it can also be seen from the HMLR office copy entries that this house and land was first registered in May 1980, adding to the evidence that this phase of the estate was the last to be built, as also evidenced at 4.5, above.
- 4.11 In order not to fall foul of the requirement for a highway to connect to another highway and therefore satisfy the principles laid down in *Kotegaonkar*, this small area of land would have to be considered either part of the highway, or a place to which the public has access.

This is not the position in both cases here.

- 4.12 We have established that it is simple point of fact that this is not highway land, which your highways colleagues will also be able to confirm. We are now aware that Mrs. [F], who has ‘withdrawn’ her evidence, has informed you and has informed Mr. [E], that she did not realise what she was getting into when agreeing to do this on behalf of local residents.

Furthermore, Mr. and Mrs. [F] frequently obstructed and continues to obstruct the alleged way by parking cars and more usually a caravan on this land. Photos are available to this effect.

Mrs. [F] has conveyed that she simply wants this whole situation to “go away”. We have also seen correspondence that Mrs. [F] has now “blocked up” the hole/makeshift stile on the wall (which according to WCA9 evidence appeared some time in post-2006) to the field and has informed you of this in writing (we have seen and have copies of the emails to Sharon Huddleston and yourself from Mrs. [F]).

- 4.13 Therefore, following the principles outlined in 3.10 above, in order to establish the *highway to highway* connection, where the land is not highway land, as in this case, the small area of land owned by Mr. and Mrs. [F] would have to be an area to which the public had access.

At this point, the matter turns on whether Mr. and Mrs. [F] have allowed their land to become an area to which the public has access (meaning the whole of the public, indiscriminately).



- 4.14 It is clear from the evidence and further correspondence that Mr. and Mrs. [F] of no. 7 St. Marys Rise have not, and never have had any intention of dedicating the way as a public right of way, or for that matter any other way to which the public has access.
- 4.15 I have already identified correspondence that Mrs. [F] has sent to the Council, which we have all seen and you obviously are aware of as it was sent to you. In addition, Mr. [E] has received direct email correspondence from Mrs. [F], which states:

“...Basically the reasons for withdrawing our support were:

- no of new houses rising from 5 to 21 and so possibly a lot more people walking across our land*
- we used to know most of the people using the shortcut but we wouldn't with so many new people moving in*
- wanting to use our land for parking/possible garage*
- so long since application went in that most people who used it in the past have found alternative routes...”*

(NB. **my emphasis**)

We can provide the full email if it is required.

- 4.16 Mrs. [F] has followed the above by confirming to Mr. [E] that it was only ever intended for local residents only and not the public at large. Her position in the application process was principally in an attempt for her to be an essential element in attempting to stifle the development, in that the alleged way begins in the field at the position adjacent to her property. Therefore, there was a corralling of some of the local residents, in an attempt to stifle the development. We have seen some of this correspondence from local residents that were less supportive of the DMMO application and have not submitted user evidence.

Accordingly, the evidence is clear that Mrs. [F] was allowing use of her land on licence and with permission, for select local residents only, not the wider public. Therefore, notwithstanding the shortcomings in the plans associated with the DMMO application in any event, Mrs. [F] had never intended to give her land over to the public as a right of way or anything else. This is evident in her now realising what she had got ‘carried away’, had not realised what she ‘gotten into’ to the detriment of her and her husband and their property. Mr. and Mrs. [F] have since blocked up the stile/hole and are wanting to continue as they have done to obstruct the alleged way with cars, caravans and other domestic paraphernalia, with the ultimate ambition of building a garage on this land.

In more simple terms, Mrs. [F]’s land was never a highway, nor land where the public at large enjoy a free passage that is unobstructed. For completeness, following 3.6, 3.8 and 4.3, above, a common law right of way position cannot be established across Mr. and Mrs. [F]’s land. This land has been crossed by select beneficiaries, with no intention for the wider public to use the way.

- 4.17 Therefore, in more basic terms, it is now unarguable that the land owned by Mrs. [F] is not highway land and is not (and never has been) intended as an area to which the public has access.

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Accordingly, following *Kotegaonkar* (see 3.9 and 3.10, above) the Council cannot lawfully make an order, even if the remaining WCA8 evidence was credible, which in this case it is not. The reason is that the footpath would not connect highway to highway and therefore a public footpath cannot exist in law.

- 4.18 Added to this, neither Mrs. [F], nor for that matter Mr. Cooke, will be providing further evidence, as they have ‘withdrawn’ and will not be attending a public inquiry to have their evidence tested in cross-examination. Further, on this point, it is the case that due to purported withdrawal, Mr. Cooke will not be able to appeal to the Secretary of State where the Council resolves not to make an order. This is because paragraph 4 of Schedule 14 WCA 1981 only permits an applicant to appeal to the Secretary of State. Others that have submitted evidence in the form of WCA8 have no opportunity or recourse to appeal where a Council resolves not to make an order.

Whilst the fact that the most affected landowner and the applicant have purported to withdraw, and will not be positioning themselves to be cross-examined, are in themselves are not determinative so far as the DMMO application is concerned. Nevertheless, these facts must be reported and given significant weight in the circumstances.

- 4.19 Given that the WCA9 evidence provides that there was signage and fencing, as well as challenge by Mr. [B] in the case of users ‘caught in the act’ (facts that are not denied by any alleged user), then access by residents allegedly using the right of way was done by stealth, in defiance of signage and the physical barrier of barbed wire in various guises over the years and decades, by going under, over or through fences.
- 4.20 Aside from the admissions of Mrs. [F], it is the case that the alleged user evidence is simply not credible. The applicant, Mrs. [F] and the rest of the alleged users have clearly not understood that a way needs to be established ‘as of right’ by the public. This has neither occurred across Mrs. [F]’s square of land or indeed over the field. Access, where and indeed if it has taken place, has been by stealth and with force and not with permission to the public at large in the case of the filed or Mrs. [F]’s land.
- 4.21 Added to this, because Mrs. [F]’s land is not highway land or a place to which the public has access, then a right of way cannot be established, as clearly laid down in *Kotegaonkar*.

Therefore, a public right of way cannot be legally established in any event, which must weigh significantly and conclusively and must be reported. Consequently, the Council could not rationally or in fact lawfully make an order in these circumstances.

5.0 Determination Procedure

- 5.1 In order to hopefully assist, a final point on determination procedure before concluding, if I may.

It is unusual, but not rare, for a DMMO application to result in an order not being made due to impossibility in law. However, in such circumstances, because this is the case, unless otherwise specified in its Constitution, Councils can dispense with the requirement for a Committee



determination, because the Committee could only lawfully decline to make an order in such circumstances, because it is clear that such a way could not be established as a highway.

- 5.2 Where, as in this case, an order cannot be lawfully made based on factual evidence, as in this case (being a lack of highway to highway positions), there is nothing in the Council's current Constitution that would appear to prevent a decision being made without going to Committee for determination. For completeness, a report can be taken afterwards to the relevant Committee to explain the position.

Perhaps you may wish to take advice from the Council's Monitoring Officer or Democratic Services Manager on this point.

6.0 Summary and Conclusion

- 6.1 For completeness, we should revisit the 'tests':

Test 1: Does a right of way subsist on the balance of probabilities?

Test 2: Is it reasonable to allege that a right of way subsists?

It can now be seen that based on all of the evidence, the answer to both questions is 'no' in these circumstances.

- 6.2 Putting ourselves in the unassuming position of the reasonable person having considered all of the evidence available, the logical conclusion is that a right of way could not subsist, principally because a lawful right of way could not and cannot be established here. This is indisputable, or to follow the language used at 3.5, above: incontrovertible.
- 6.3 However, notwithstanding this position in law, contrary to what you had first thought, there is in fact no real conflict of evidence here.

This is because the evidence submitted by the users is not credible, principally because it can now clearly be seen that users have failed to understand the concept of a right of way being created and used 'as of right', as opposed to use by stealth and with force across the field, in defiance of clear signage and physical barriers, as the previous landowners and occupiers (who have since left the site and have no proverbial 'axe to grind') have identified in WCA9 evidence. In the case of Mr. and Mrs. [F]'s square of land as described, this is not highway land. In addition, whilst it has not been used by force or by stealth, it has clearly been used (if indeed it has) with permission, which in any event and aside from being frequently obstructed, evidence has now shown that this was for a select body of people and not the public.

- 6.4 It must subsequently and logically follow, that even where a select body of people, principally being local residents were using Mr. and Mrs. [F]'s square of private land, then the wider public must also have been restricted from using the alleged way in the field, given the physical connections.
- 6.5 Consequently, following Test 2, as identified above, it is not reasonable to assume that a right of way exists now or even existed in the past based on the evidence before the Council.

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- 6.6 It must be remembered, as you and the Council are aware, that the motivation for the application was one borne out of a desire to frustrate a development, which ultimately received planning permission and is now going ahead on site. The motivations have led to the admission on both the part of the applicant and Mrs. [F] that this is/was a vexatious claim attempting to do just that.
- 6.7 In addition, it has led to a misguided notion of the evidential requirements for making a DMMO, with the applicant, Mrs. [F] and alleged users clearly not understanding or appreciating the concept of establishing a use without interruption and ‘as of right’ for a period of 20 years. The WCA9 and WCA10 evidence shows that this has not occurred and cannot reasonably or logically be concluded to have occurred. All of the WCA8 evidence is misguided and has not realised or not properly understood the law in this respect. They have possibly not been advised, or appropriately advised. The WCA8 alleged user evidence is therefore not in any way credible and found wanting in any event. As such, there is no real conflict of evidence; the WCA8 alleged user evidence simply does not deal with the relevant requirements to reasonably or even lawfully enable the Council to make an order.
- 6.8 Added to the above, the user evidence becomes heavily diluted in terms of quantity, quality and efficacy when considering that the vast majority of the UEFs do not identify Mrs. [F]’s land. In addition, the application has purported to be ‘withdrawn’ and the most affected landowner, being Mr. and Mrs. [F] of no. 7 St. Marys Rise, have purported to similarly withdraw their evidence. Neither will be putting themselves up for examination and I have already identified that there is no recourse to appeal by Mr. Cooke. Similarly, the OS referenced co-ordinates are not correct, which follows through to the Council’s DMMO plan.
- 6.9 There is no possibility of establishing such a position at common law, because it can be seen from the WCA9 and WCA10 evidence that there was clearly no intention to dedicate a right of way, or that one could be reasonably inferred at any time. This applies to the field and the square of private land owned by Mr. and Mrs. [F], which is not highway or a place to which the public had/has access.
- 6.10 Use by the public, as of right, without interruption, for a period of twenty years, is simply not achievable based on the evidence submitted. The Council could not reasonably or rationally make an order based on the evidence before the Council. However, more pertinently, the Council now knows that it could not lawfully make an order based on all of the evidence.
- 6.11 Consequently, it follows that as well as being unlawful to make an order, there is no prospect of an opposed order being defended by the Council and confirmed by the Secretary of State.
- 6.12 In order to assist finally, a summary of the facts, based on all of the evidence is as follows:
- The claim and the application was made with the intention of stifling a development. The Council is aware of this.
 - The user evidence fundamentally misunderstands the law required to achieve a DMMO and is not credible.
 - The WCA9 and WCA10 evidence clearly shows that there was never any intention to create a path across the field at any time over the last six or seven decades.

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- Accordingly, there is no conflict of evidence. The user evidence is not based on the correct legal principles.
- Adjacent private land owned by Mr. and Mrs. [F] is not highway land and it is abundantly clear that there was similarly never any intention to create a public right of way.
- It is clearly established in case law that a highway must connect to another highway, which does not occur here – accordingly, an order cannot lawfully be made, because a public right of way cannot lawfully exist in these circumstances.
- Outside of the position that a lawful right of way cannot be established, in any event there is no possibility that the user evidence has established whole public usage ‘as of right’, without interruption for a period of 20 years.
- The alleged way has clearly had physical interruption in the form of barbed wire fencing, as well as informative interruption in the form of unambiguous signage.
- The plans submitted with the WCA8 evidence, as well as the prospective order plan, do not/does not contain the correct OS references and do not show the way across Mrs. [F]’s square of land in the vast majority of cases in the UEFs.
- The applicant and the main affected property owners, the two main protagonists, have ‘withdrawn’ their application and evidence respectively and will not be available for cross-examination. However, whilst an application can be withdrawn, the Council’s duty under s.53 survives and the application still needs to be determined, even if it is a formality.
- Based on all of the evidence, it is therefore not reasonable or rational to conclude that a right of way subsists on the balance of probabilities
- Based on all of the evidence, it is similarly not reasonable or rational to allege that a right of way subsists.
- The applicant in this situation has no legal recourse to appeal to the Secretary of State.
- The application in the circumstances does not have to go to Committee, because it is not lawfully possible to make an order.
- The Council can now determine the application and formally decline to make an order. It in fact has no other option in the circumstances.

6.13 Whilst it is not desirable to sign off finally in this way, in the unlikely event that the Council elect to make an order, then it is hereby on notice in relation to costs and compensation as identified in Section 8 of the relevant Guidance⁶.

6.14 Should any further clarification on anything be required, please do let me know. Otherwise, the Council are now invited to determine the application and decline to make an order as soon as possible. Your bringing this formal determination forward is very much appreciated.

Noel Scanlon
Director & Consultant
NSCL

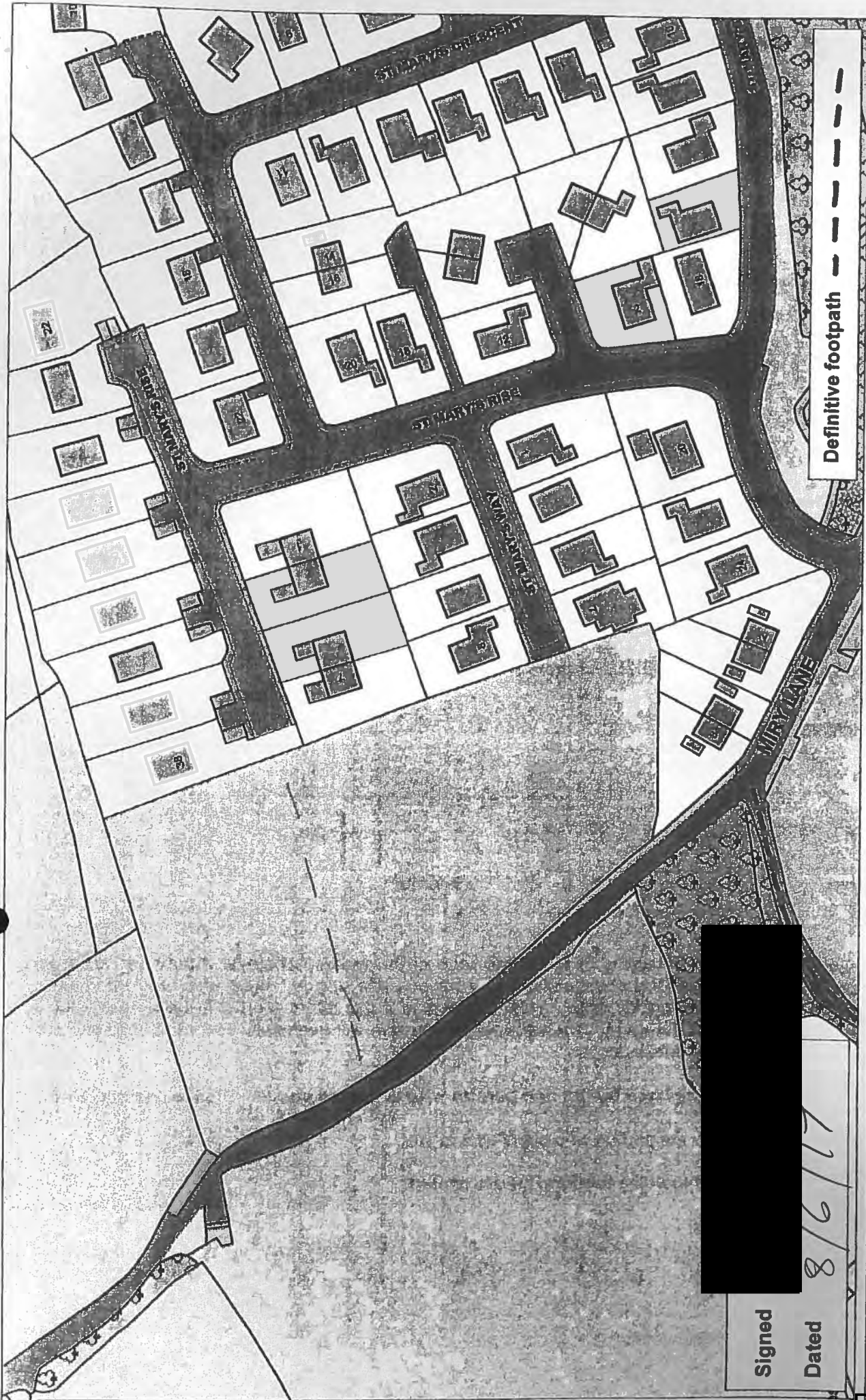
⁶Guidance on procedures for considering objections to Definitive Map and Public Path Orders in England (PINS, October 2018)



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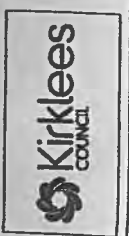
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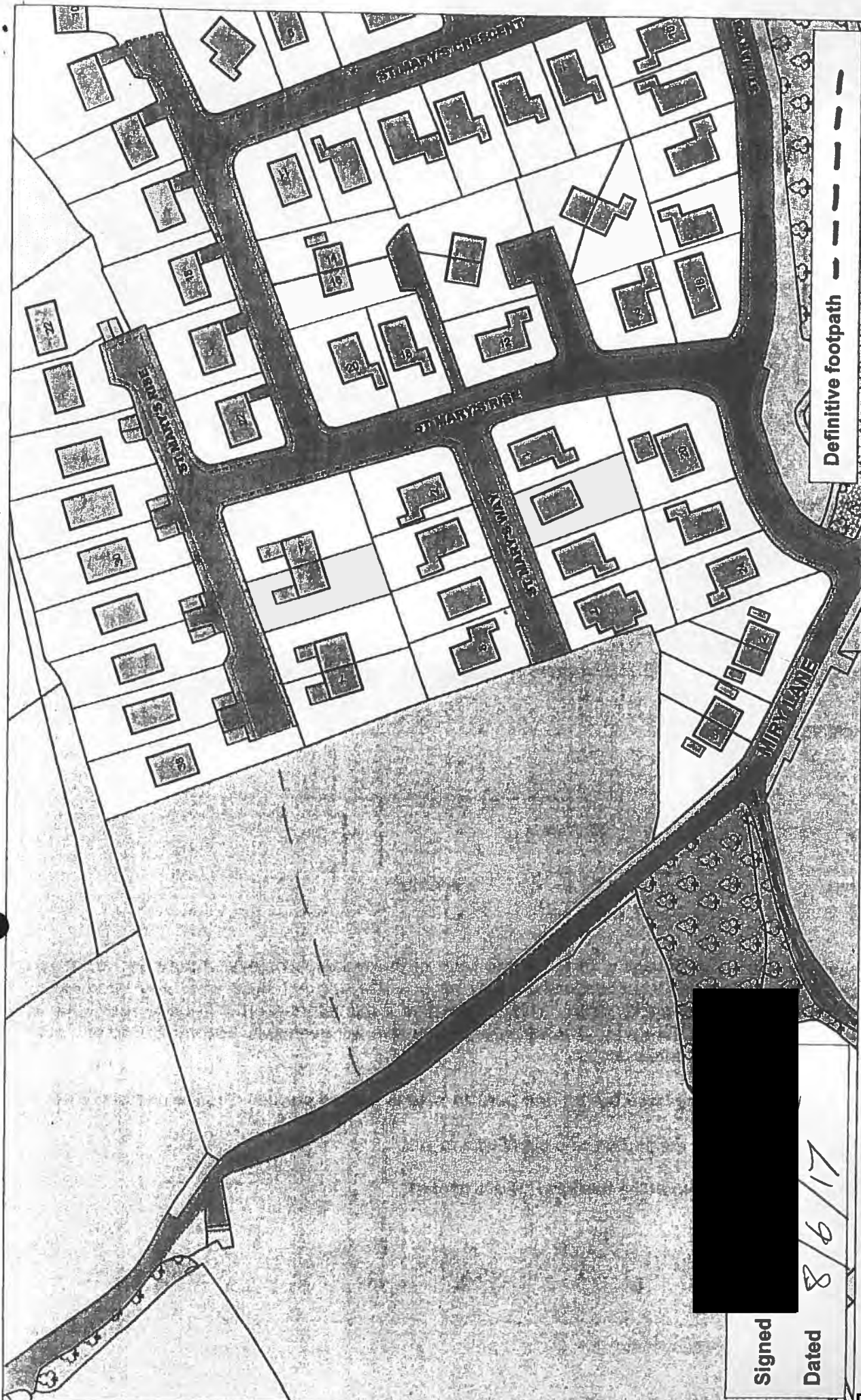
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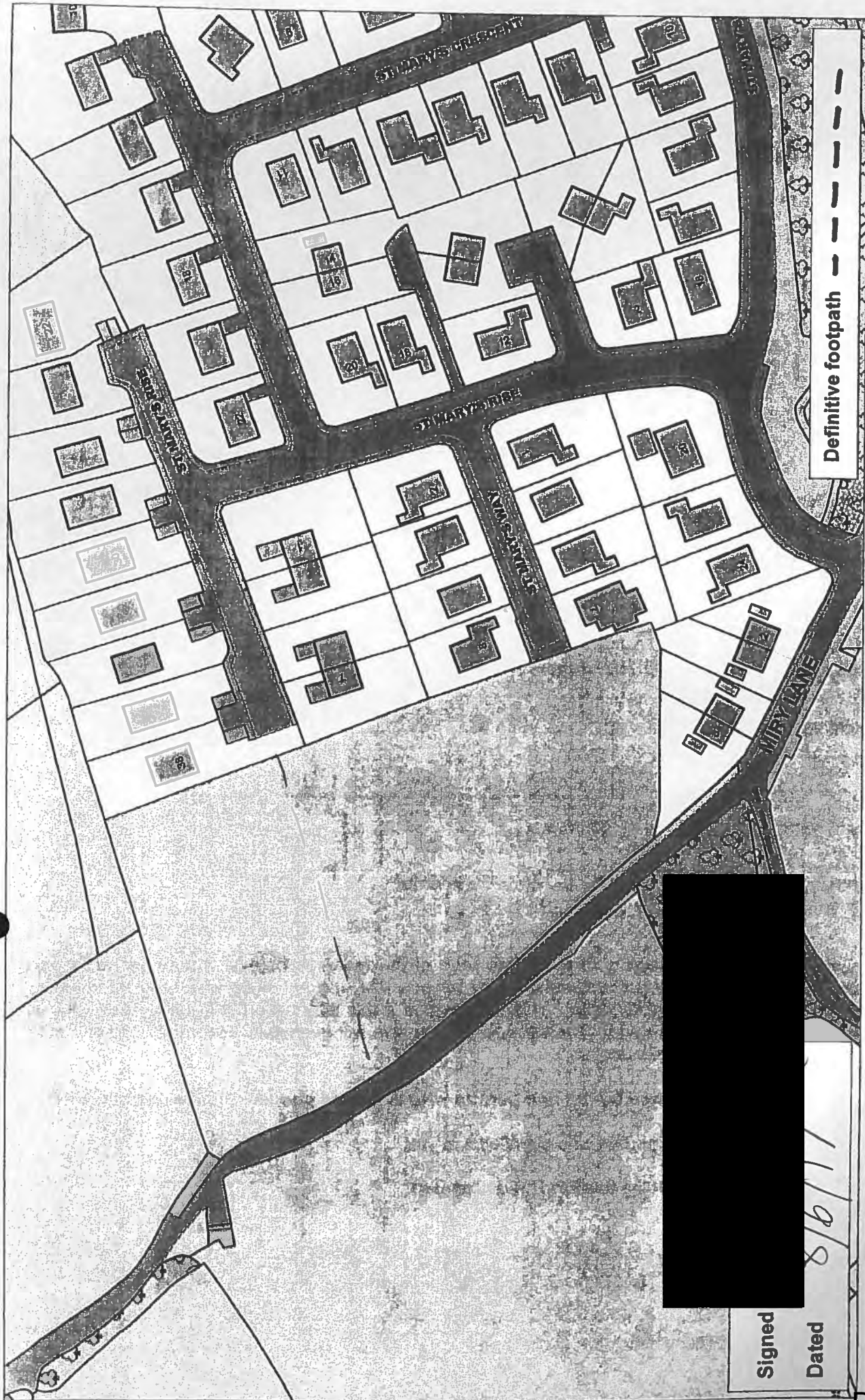
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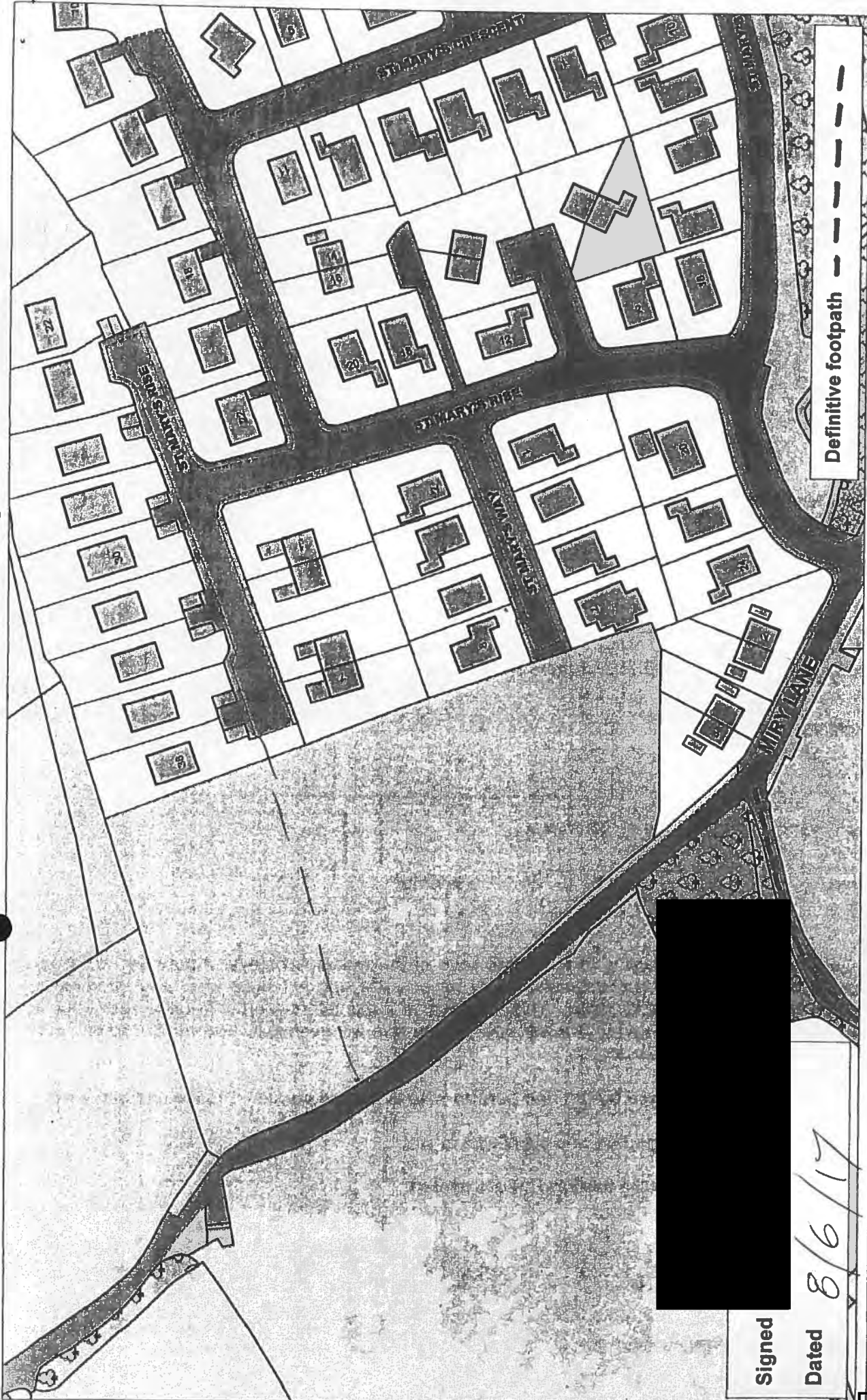
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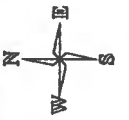
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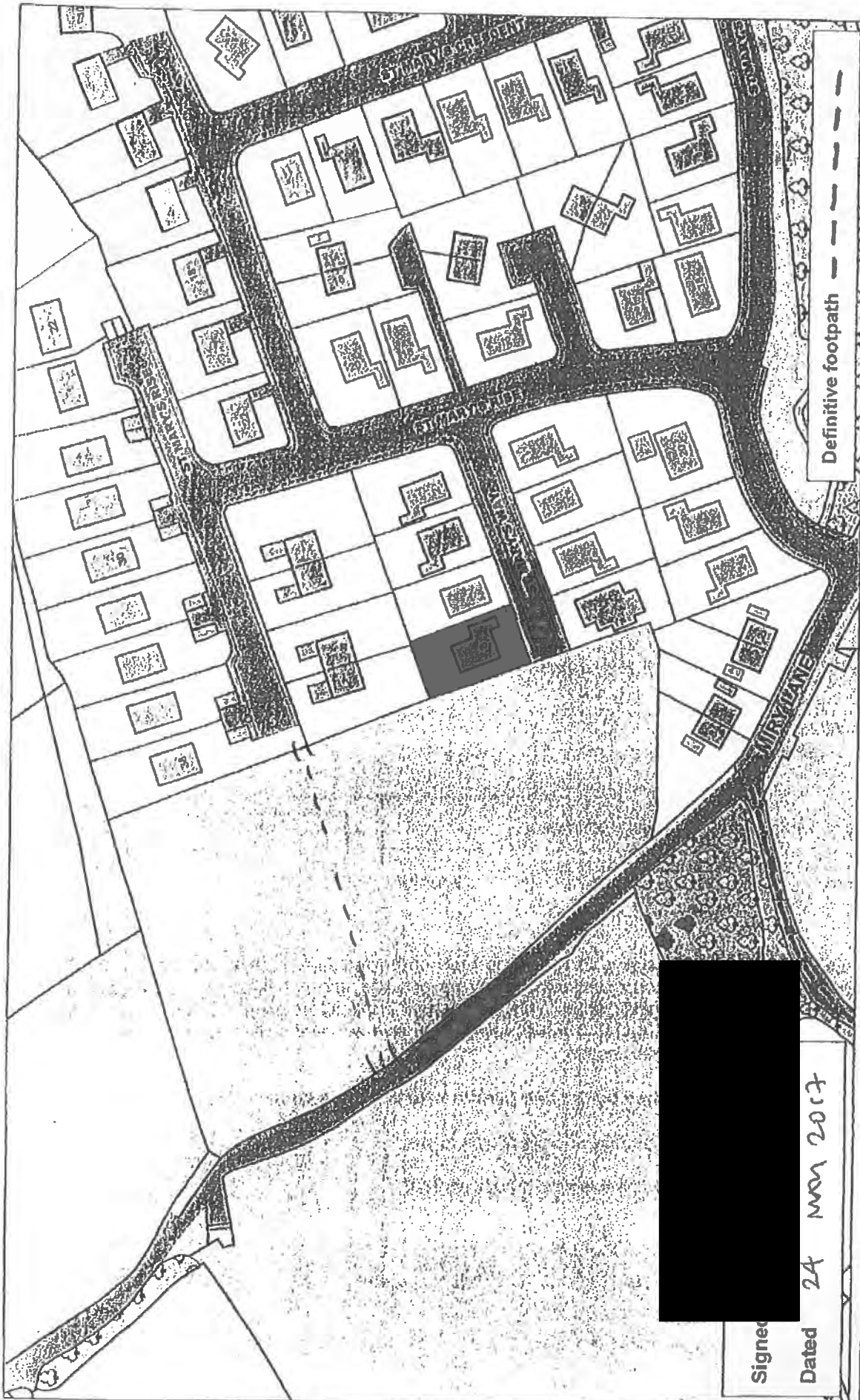
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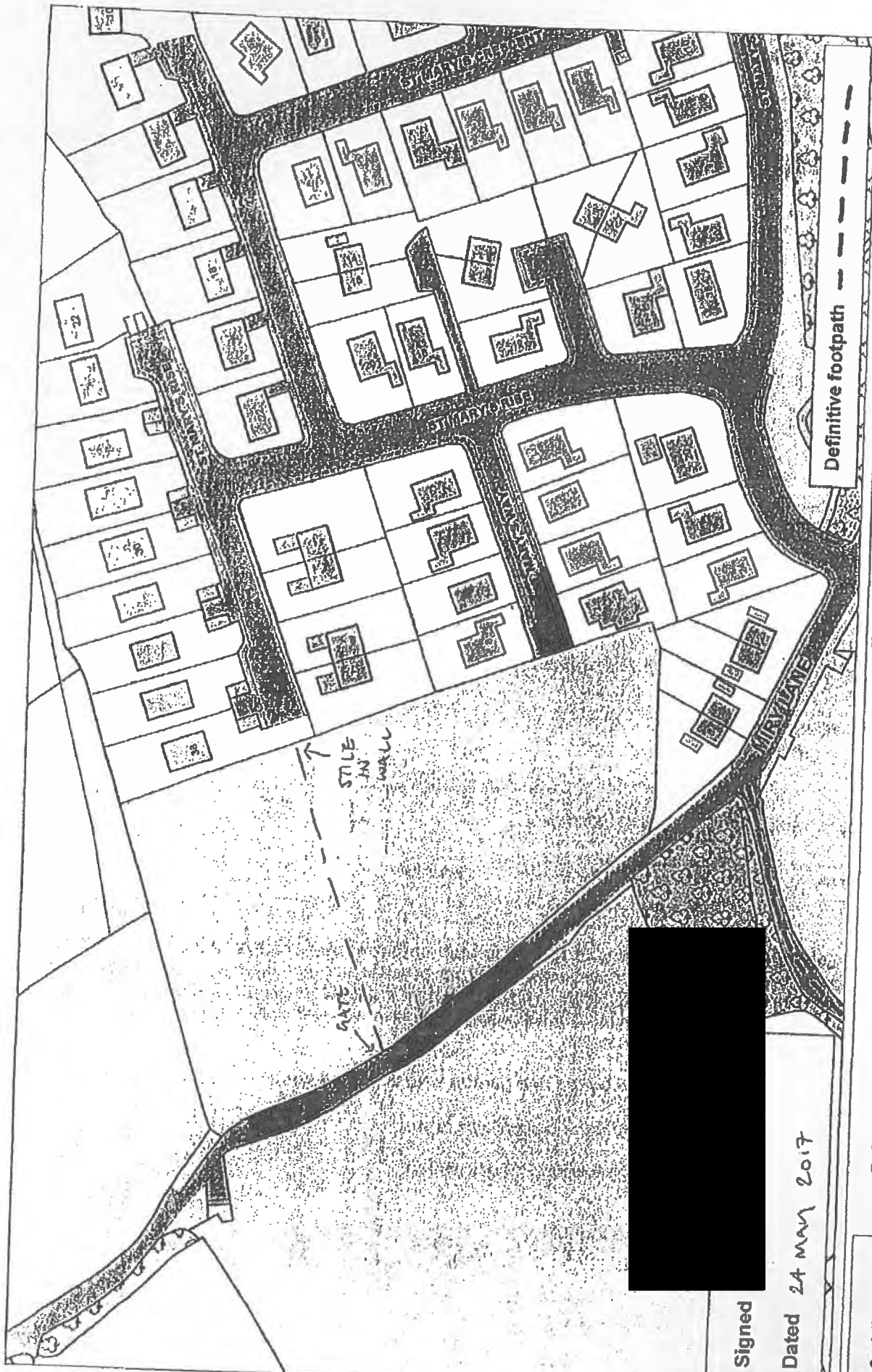
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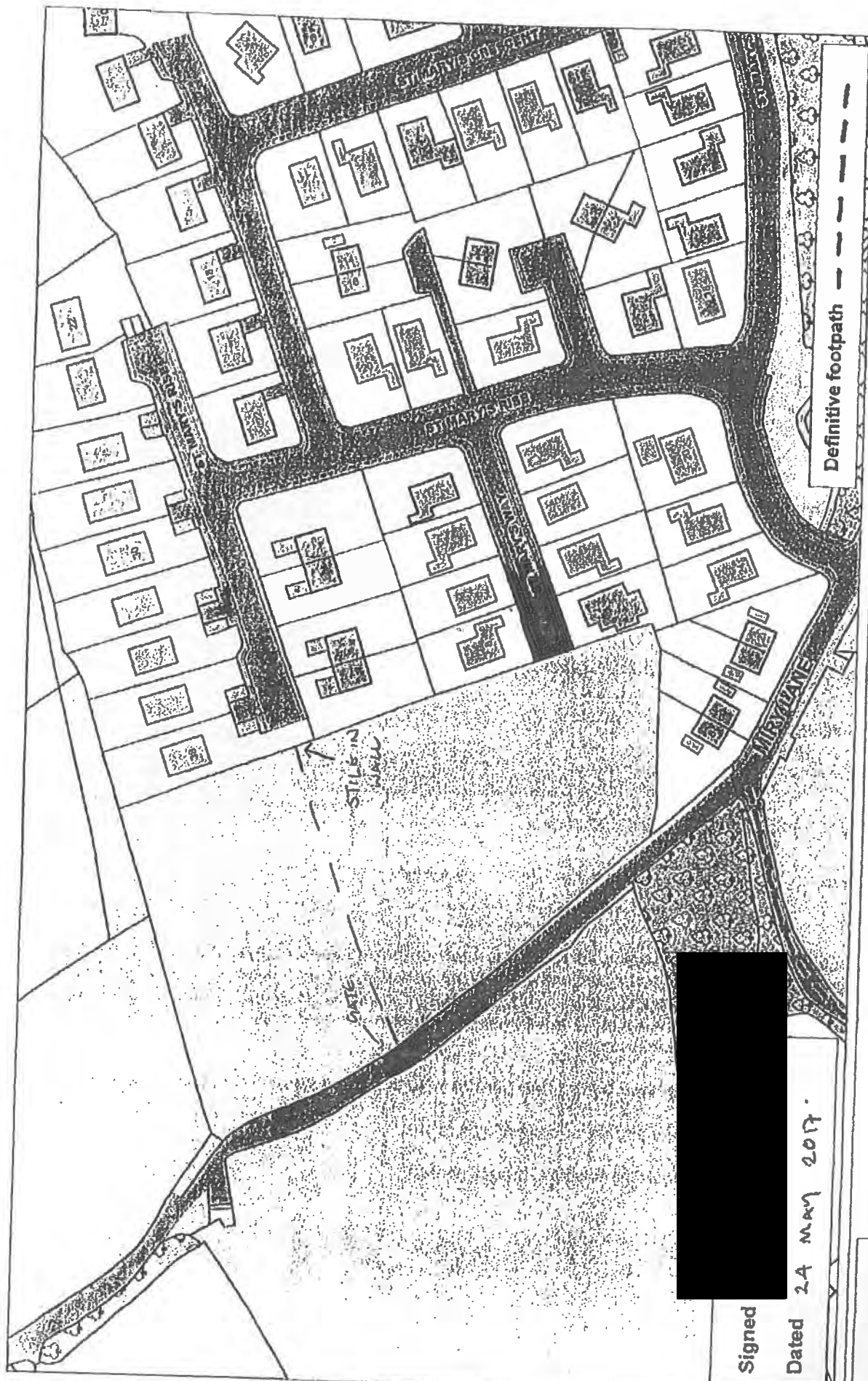


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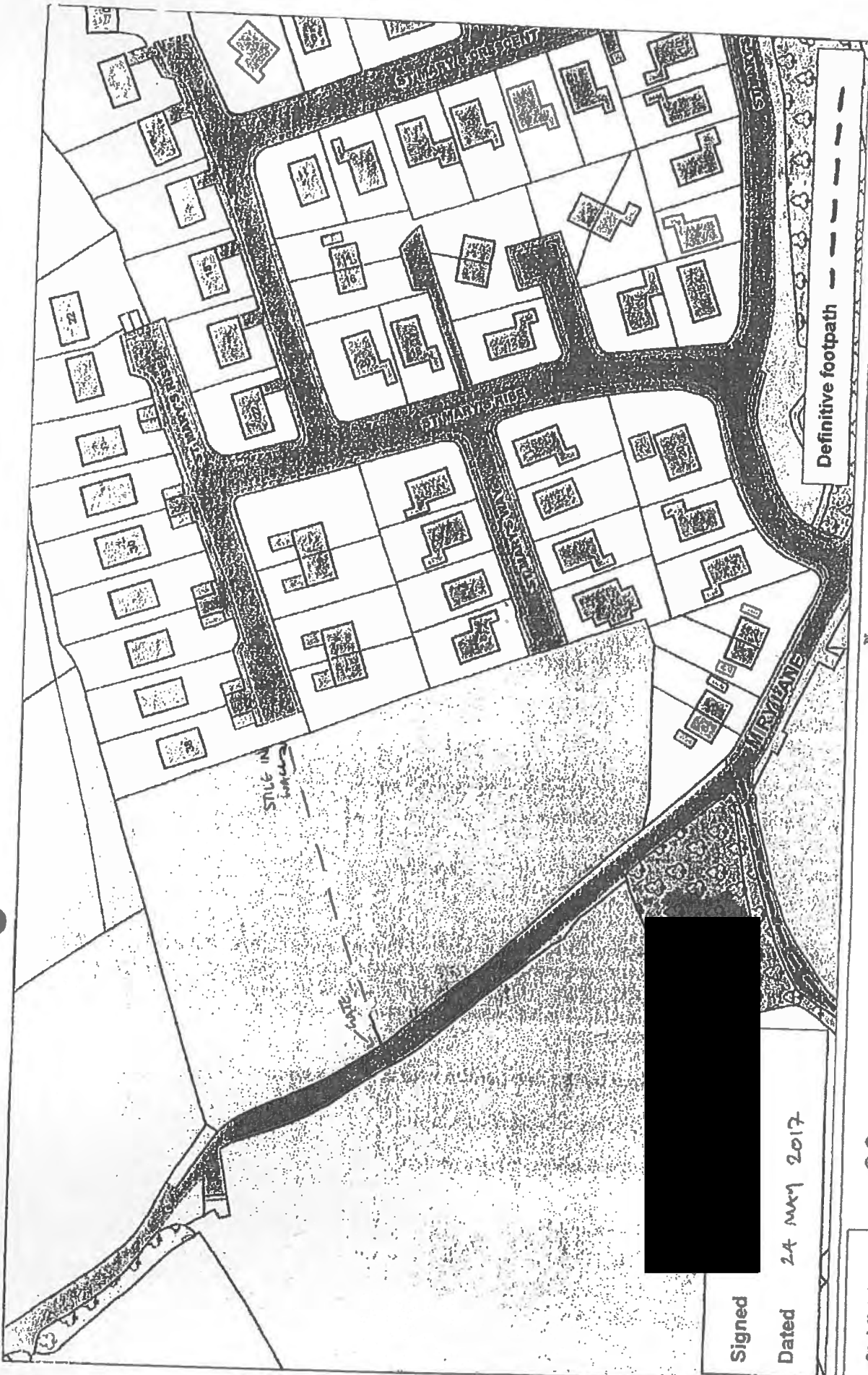
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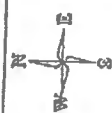


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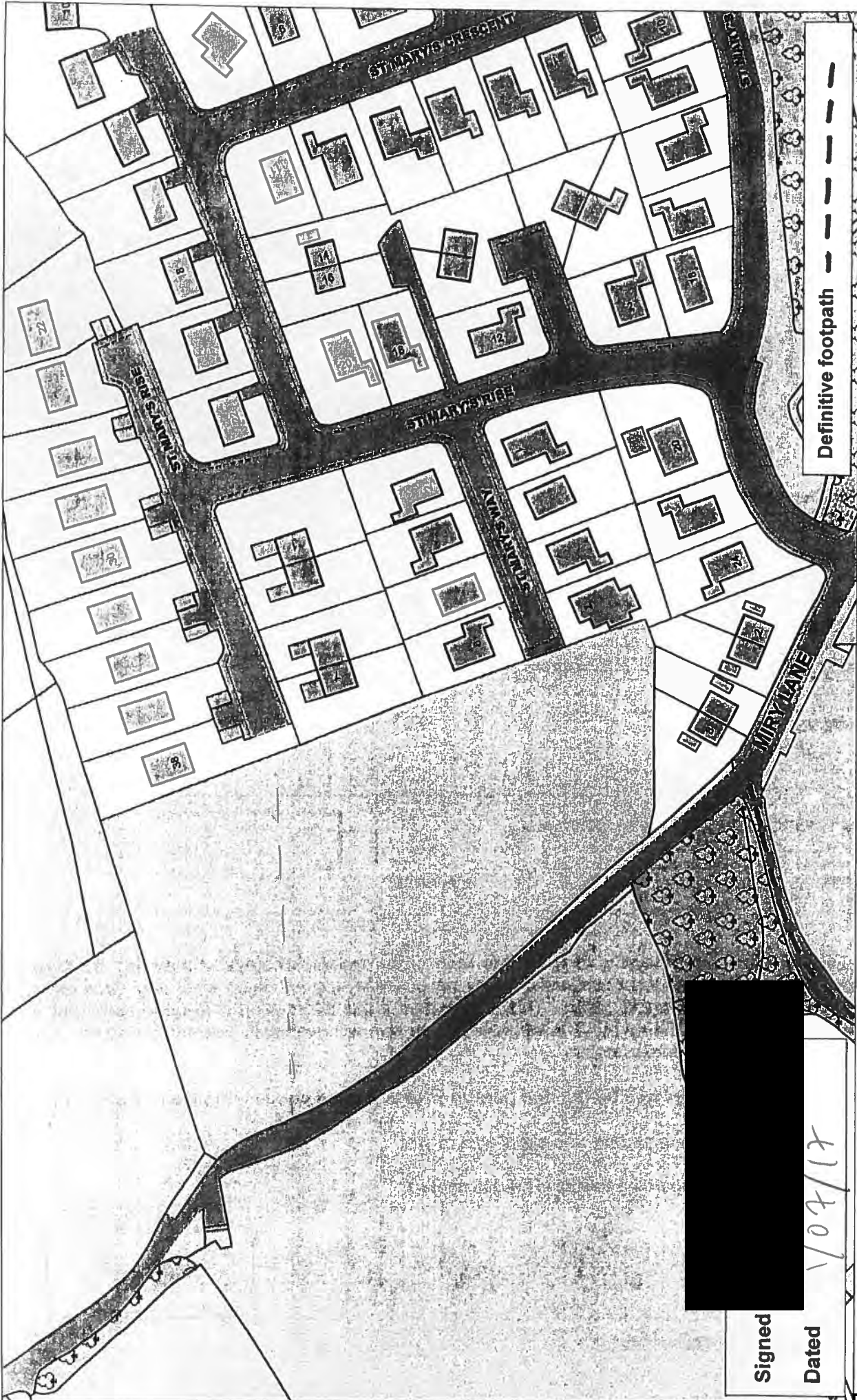


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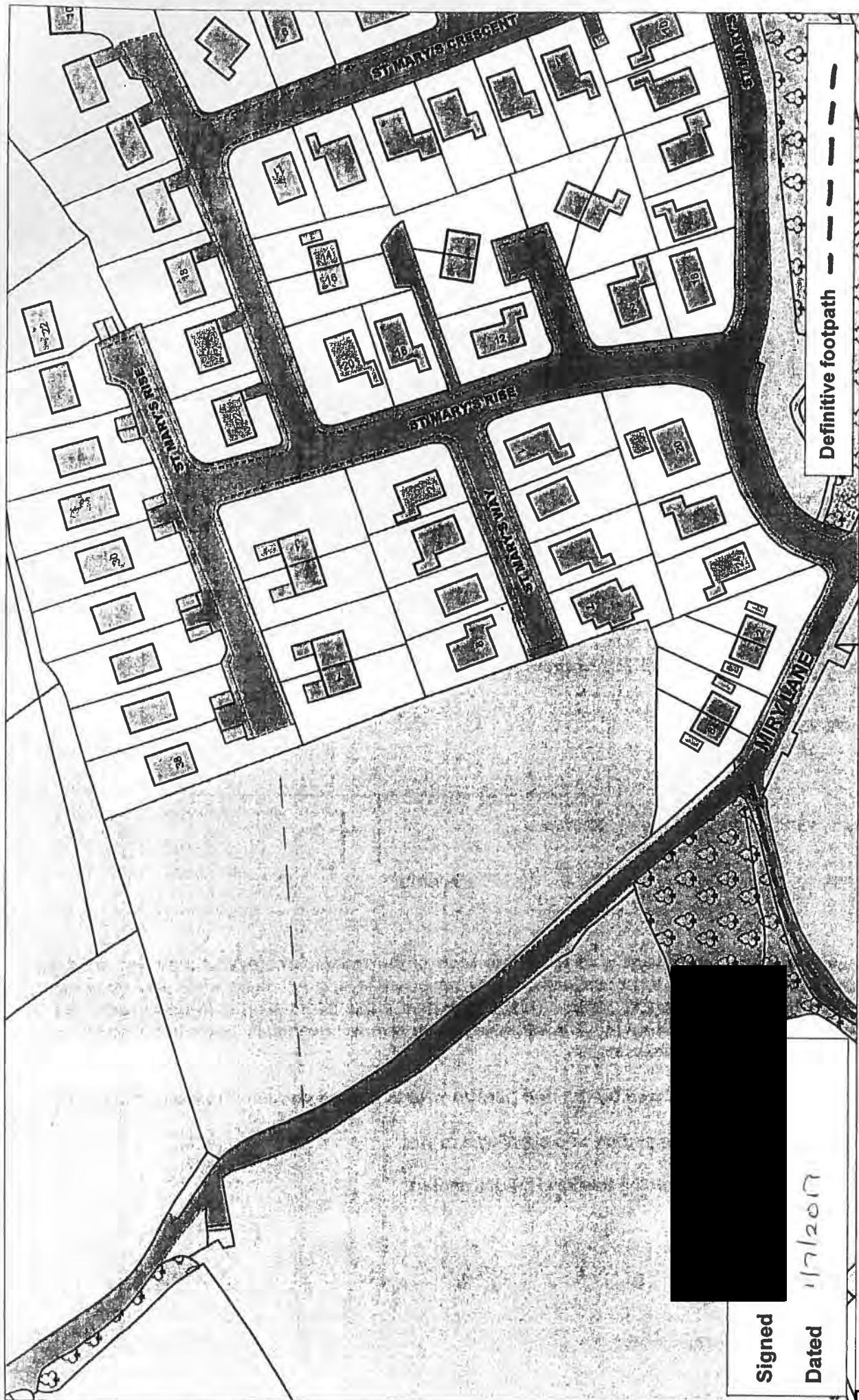
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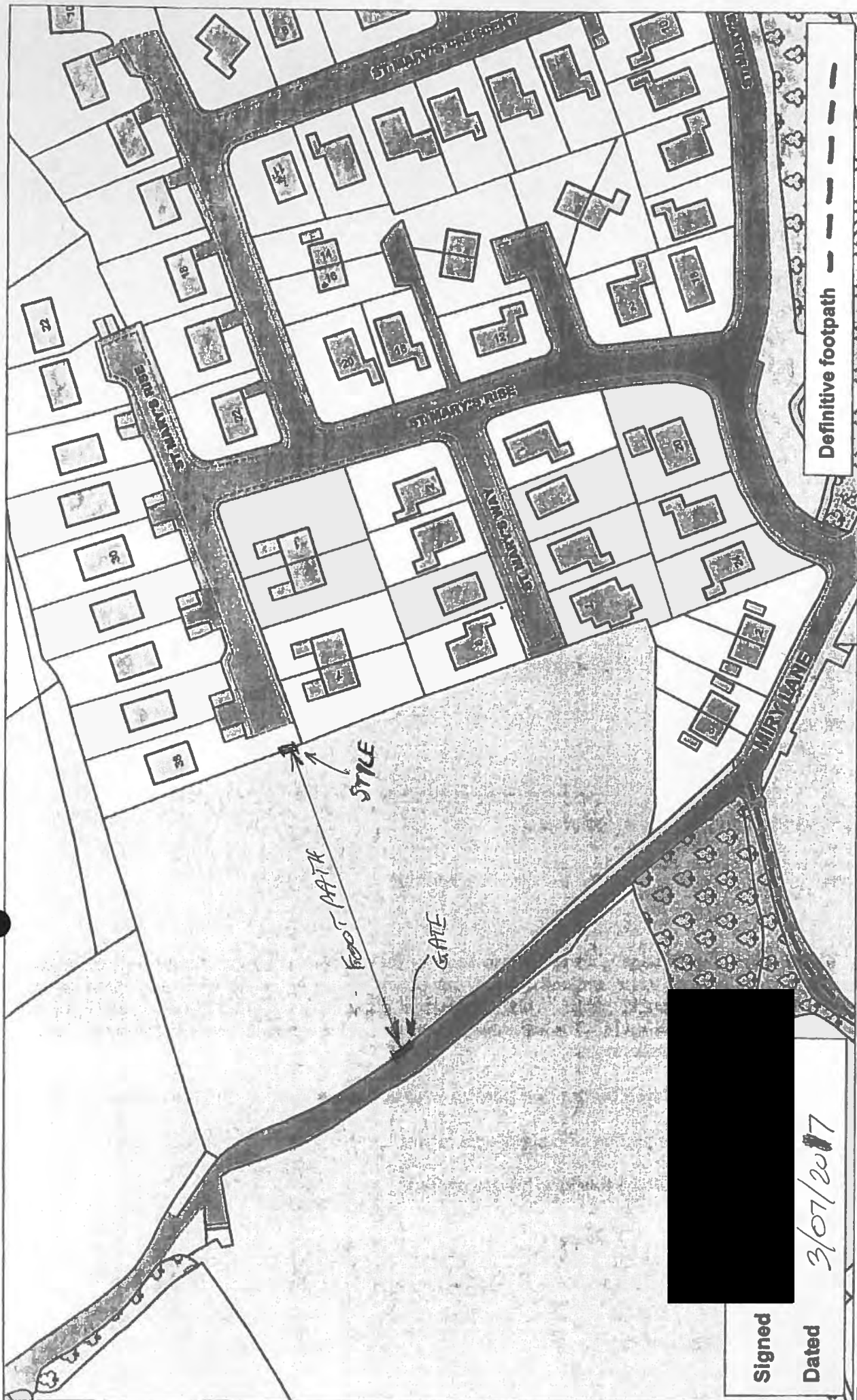
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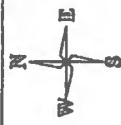


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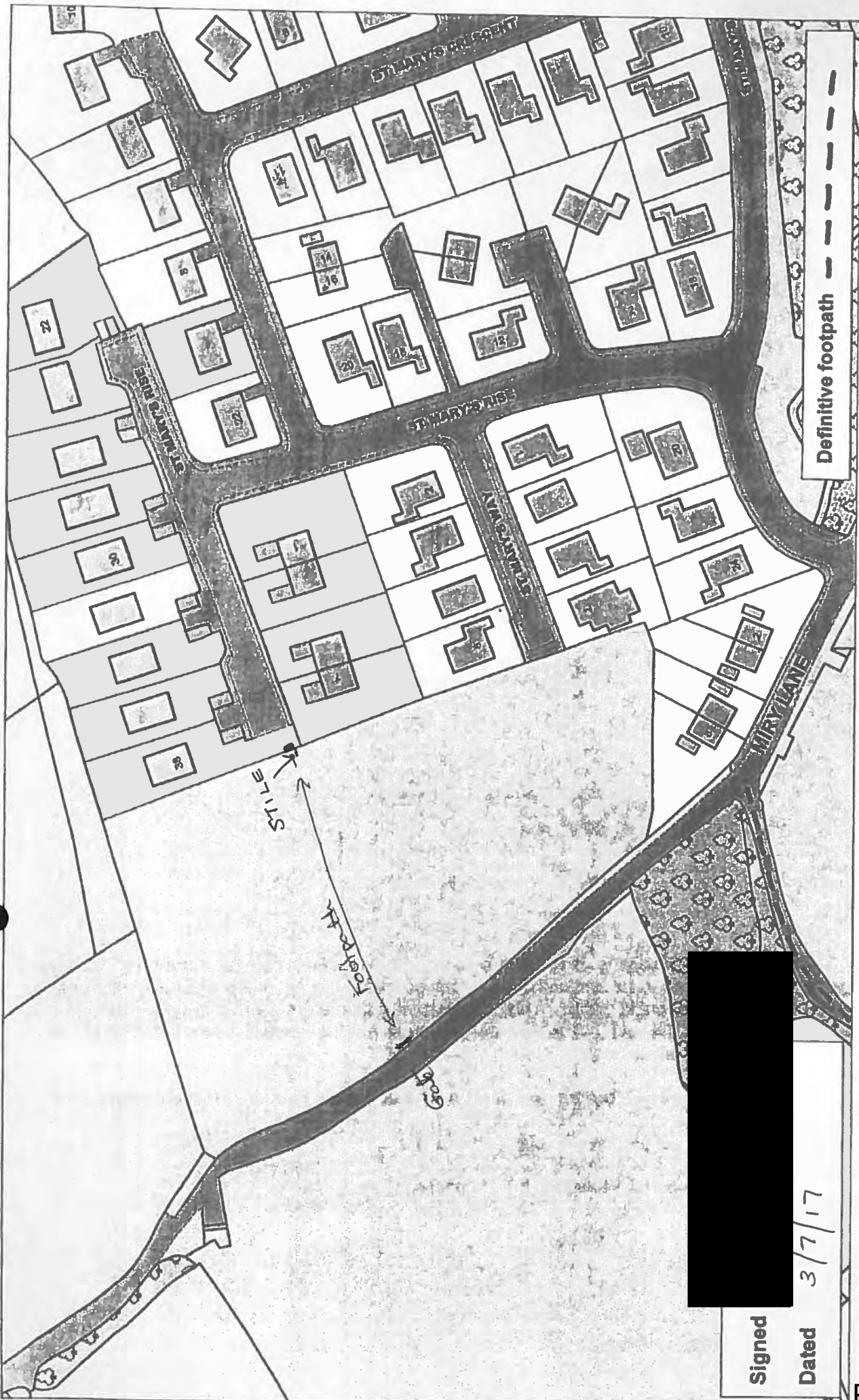
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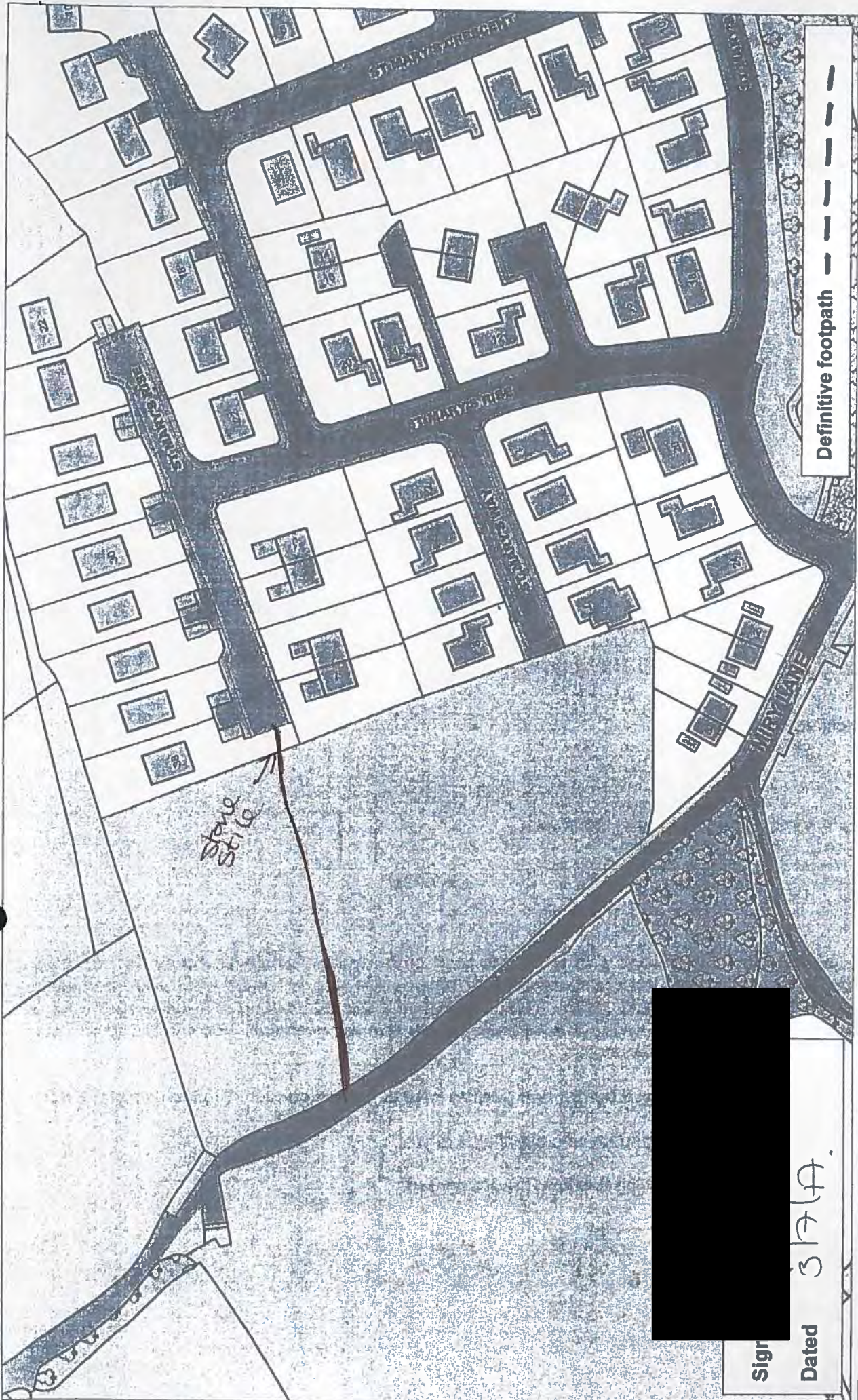
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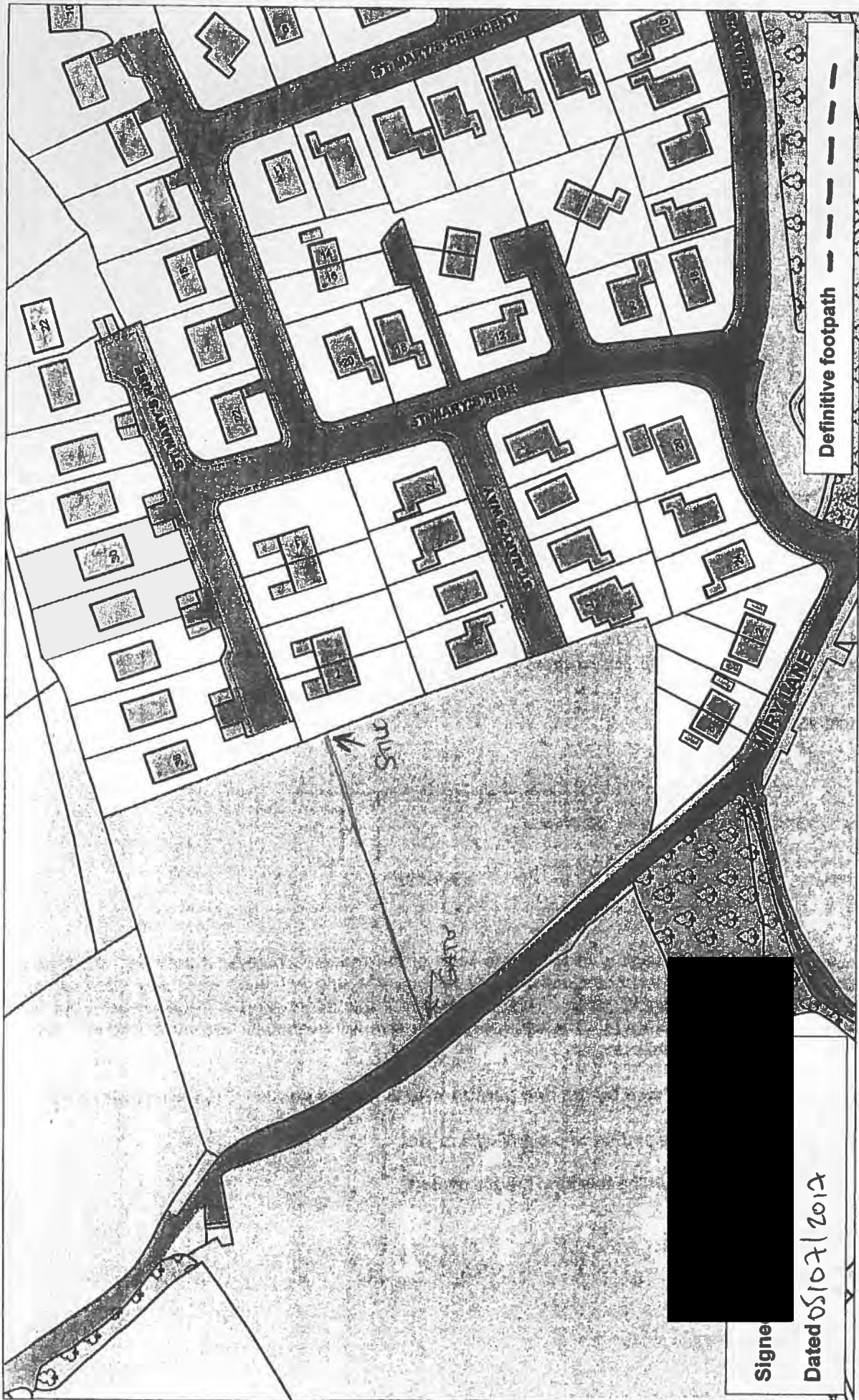
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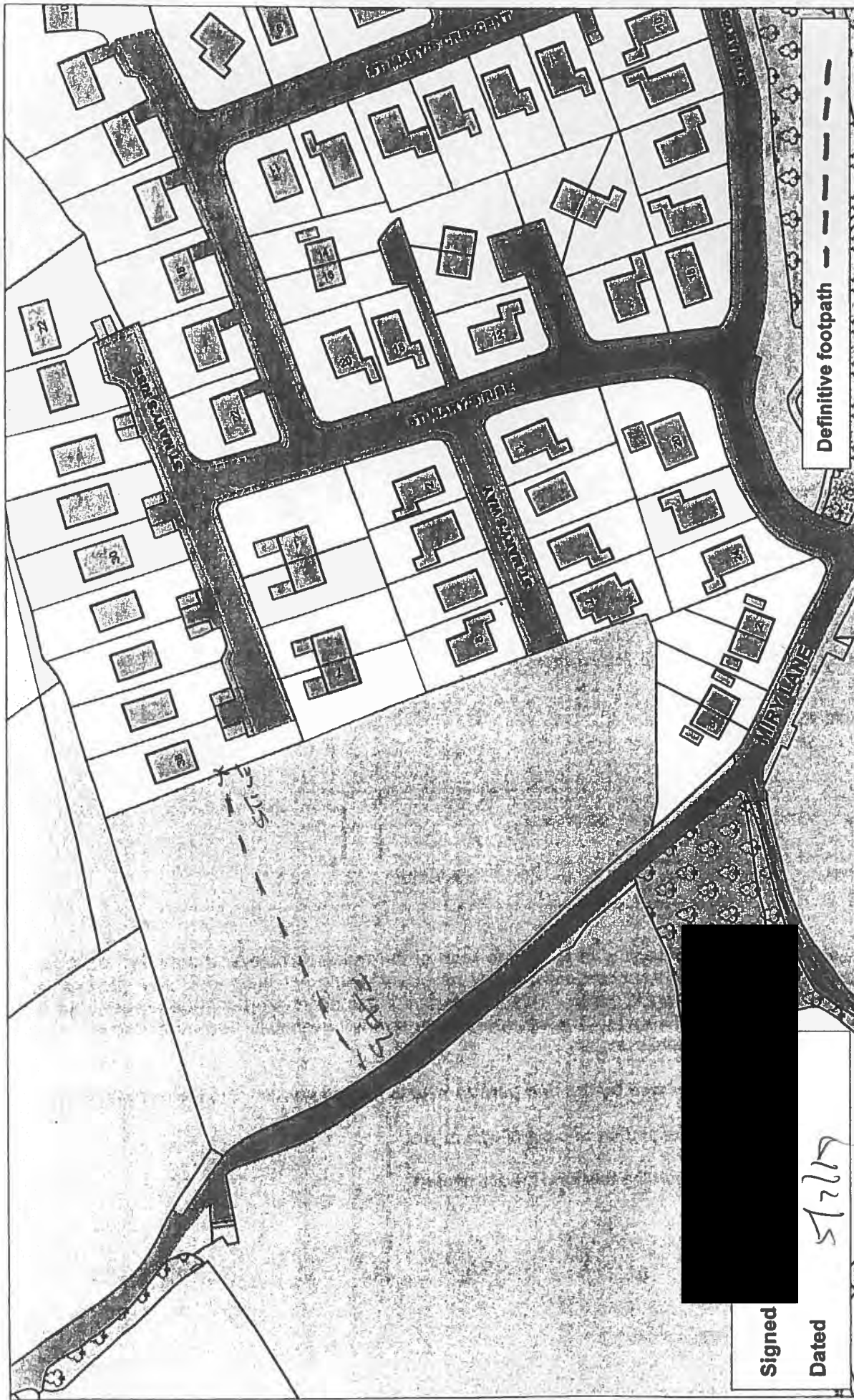
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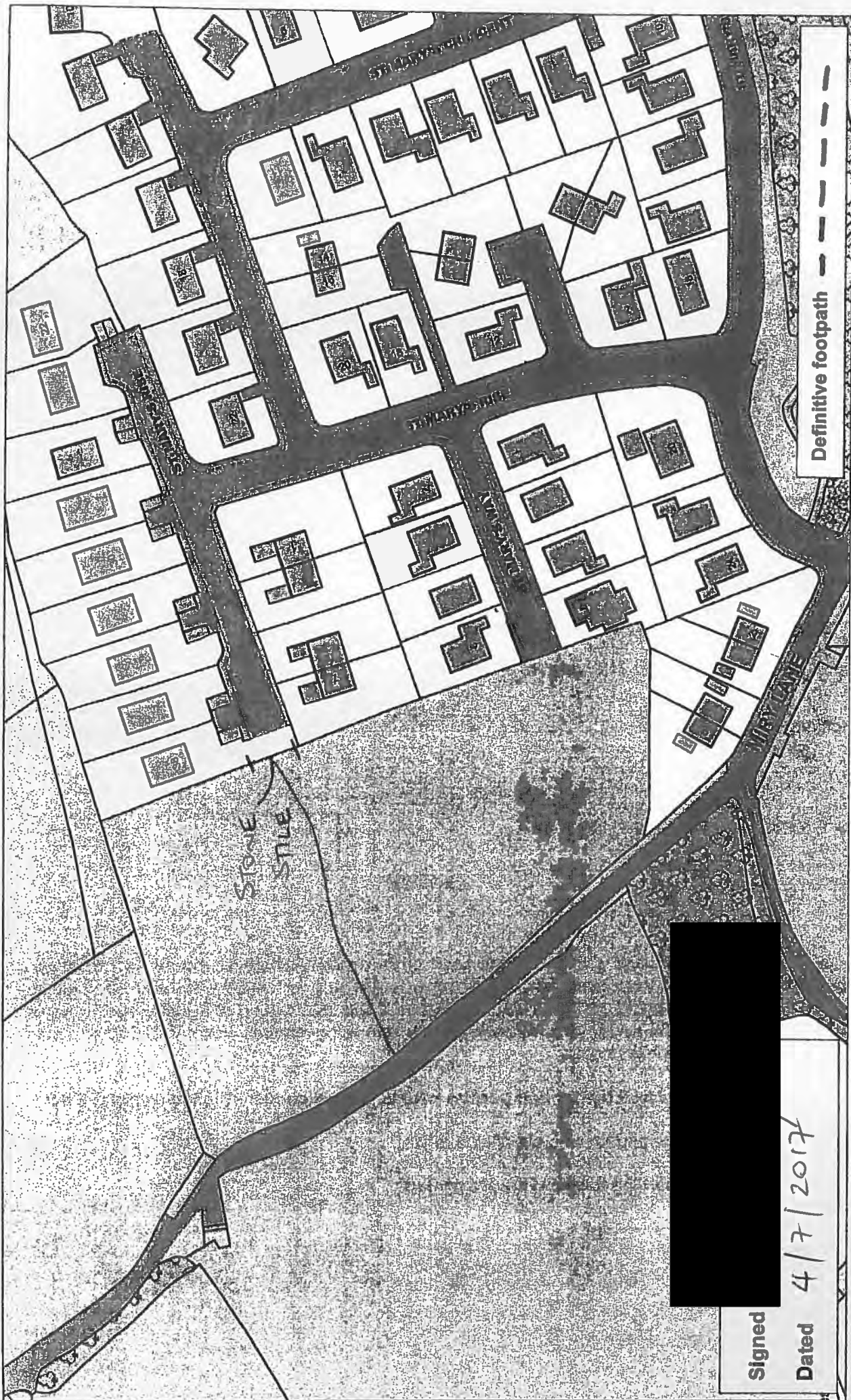
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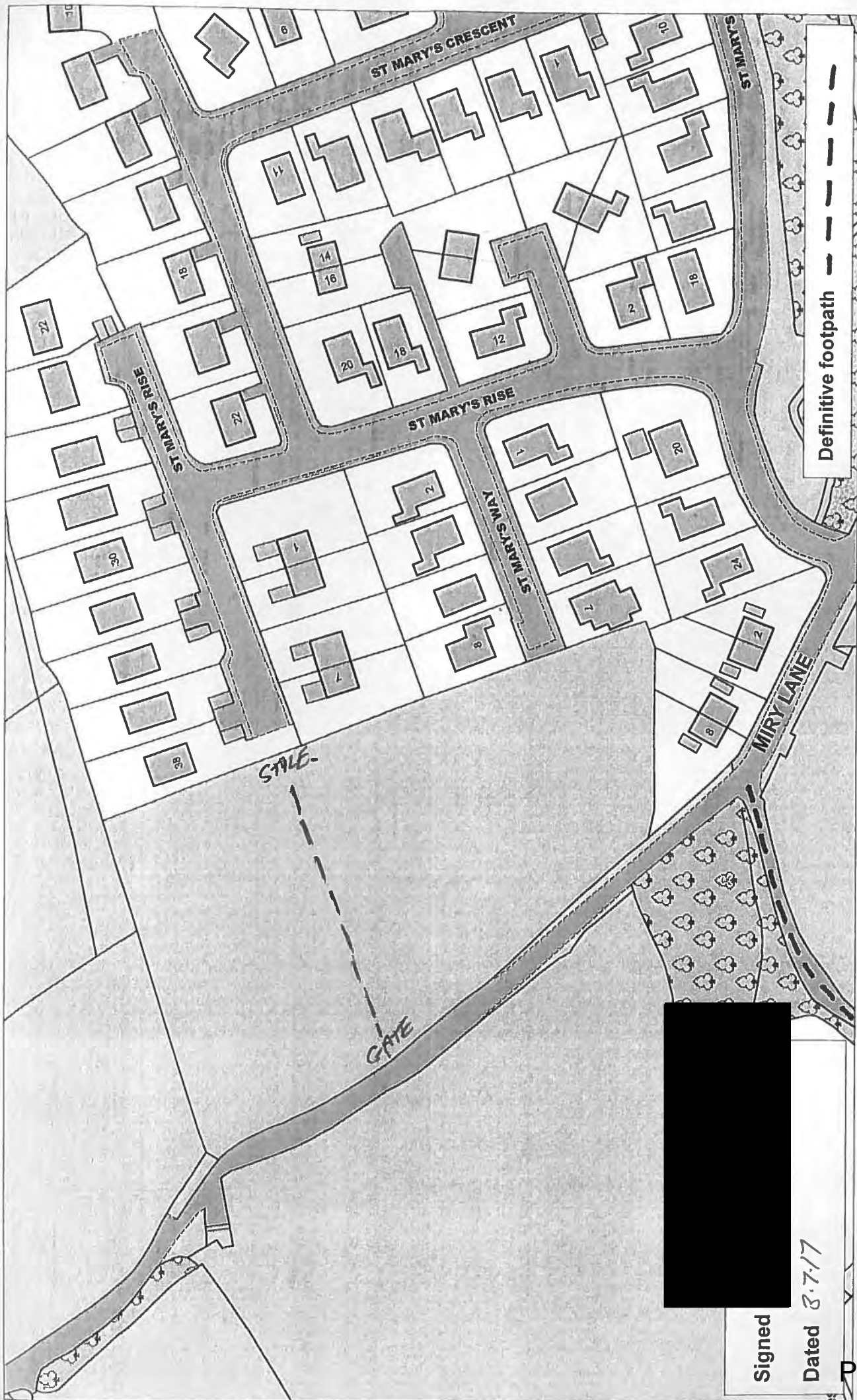
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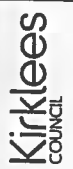
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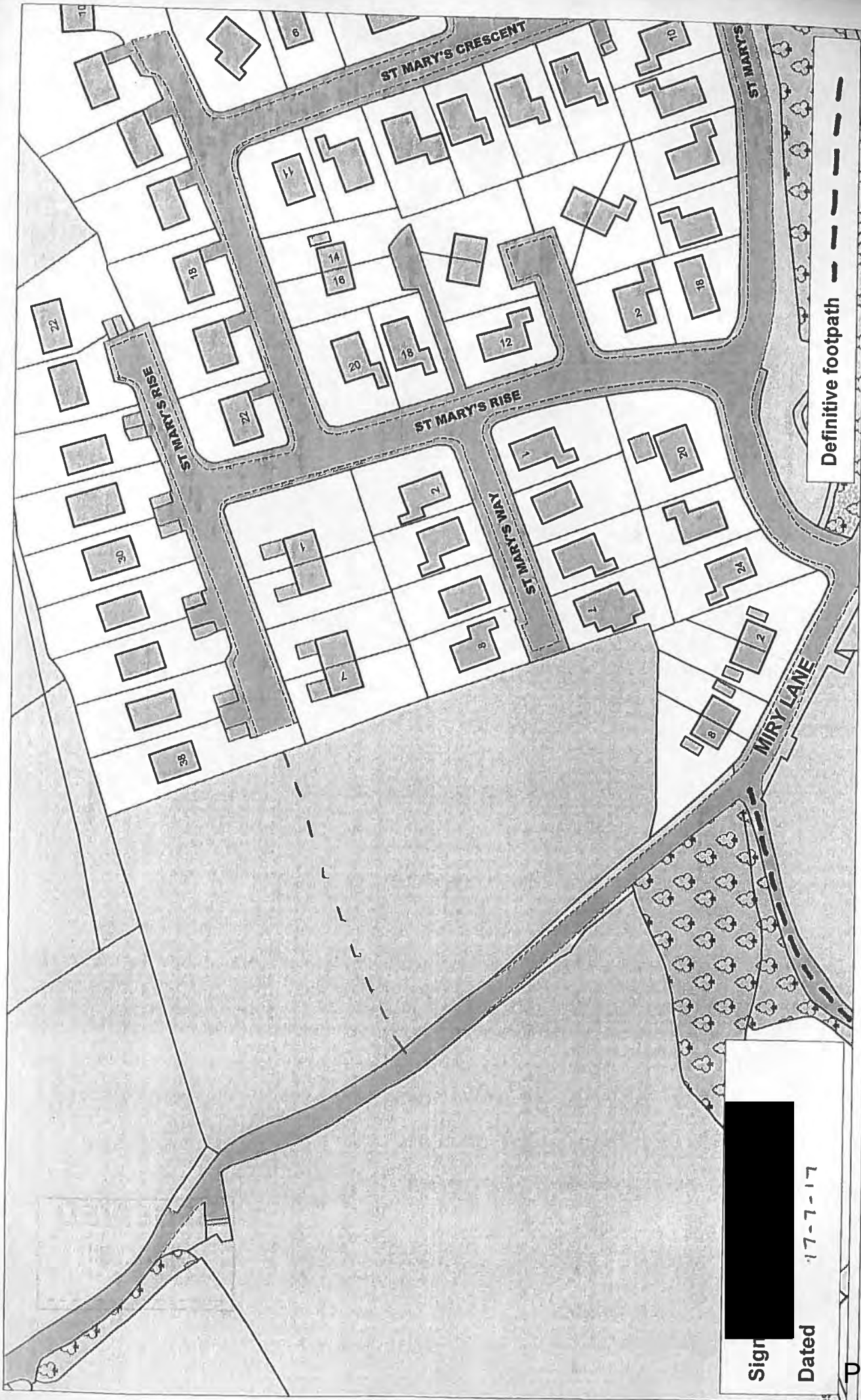
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| | FROM | TO |
|--------|----------------------------------|---|
| 200/1 | ST MARY' RISE | MIRY LANE |
| 200/2 | ST MARY' RISE | GATE IN FIELD ADJACENT WHICH GIVE ACCESS TO MIRY LANE |
| 200/3 | ST MARY' RISE | GATE IN FIELD ADJACENT WHICH GIVE ACCESS TO MIRY LANE |
| 200/4 | ST MARY' RISE | OLDFIELD |
| 200/5 | ST MARY' RISE | MIRY LANE |
| 200/6 | ST MARY' RISE | MIRY LANE |
| 200/7 | ST MARY' RISE | MIRY LANE |
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| 200/16 | STILE IN WALL OFF ST MARY'S RISE | GATE ACCESS OFF MIRY LANE |
| 200/17 | STILE IN WALL OFF ST MARY'S RISE | GATE ACCESS OFF MIRY LANE |
| 200/18 | TOP OF ST MARY'S RISE | MIRY LANE |
| 200/19 | ST MARY' RISE | MIRY LANE |
| 200/20 | MIRY LANE | ST MARY'S RISE |
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| 200/24 | END OF ST MARY'S CUL DE SAC | MIRY LANE |
| 200/25 | ST MARY' RISE (CUL DE SAC) | MIRY LANE |
| 200/26 | ST MARY' RISE | MIRY LANE |
| 200/27 | ST MARY' RISE | MIRY LANE |

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| REF | NAME | IN | AGE AT 2017 | BEL ROUTE | YEARS KNOWN | YEARS USED | PURPOSE | FREQ | SEEN OTHERS AND PURPOSE | HOW USED | WIDTH | SURFACE | STILES | GATES | LOCKED | OBSTR | NOTICES | STOPPED | PI |
|-------|------|----|-------------|-----------|-------------|-------------|--|--|--|----------|---------------------------|----------------|---|---|---|--|---------|-------------|-----|
| 2001 | | | | FP | 1989 - 2017 | 1988 - 2017 | SHORT CUT FOR BUS. DOG WALKING ACCESS FOR SLEDGING | VARIED 3/4 TIMES A WEEK TO 1 TO 2 A MONTH | SHORT CUT TO MIRY LANE, DOG WALKING, SLEDGING | FOOT | 2M | GRASS | AT END OF ST MARYS ROAD | ONTO MIRY LANE | APPROX 5 YEARS AGO | FARMER ERECTED BARBED WIRE FENCING IN 2016 AND FIELD INACCESSIBLE IN JAN 17 | NO | NO | NO |
| 2002 | | | | FP | 1997 - 2017 | | - | - | TO ACCESS MAIRY LANE | - | 8 FT APPROX | SIMPLY A FIELD | STILE IN WALL FORMING FIELD BOUNDARY | LARY METAL GATE | ONLY WITHIN LAST FEW MONTHS | NO | NO | NOT USED IT | YES |
| 2003 | | | | FP | 1997 - 2017 | | - | - | TO ACCESS MAIRY LANE | - | 9 FT APPROX | SIMPLY A FIELD | STILE IN WALL FORMING FIELD BOUNDARY | LARGE METAL GATE | ONLY WITHIN LAST FEW MONTHS | NO | NO | NOT USED IT | YES |
| 2004 | | | | FP | 1970 - 1990 | 1973 - 1990 | TO NURSEY IN OLDFIELD. VISIT PLAY AREA RECREATIONAL WALK | 3 OR 4 TIMES A WEEK | WALKING | FOOT | 1/2 M | GRASS | STEP STYLE FROM ST MARYS RISE TO FIELD | METAL GATE FROM FIELD TO MIRY LANE | NOT TO MY KNOWLEDGE | NO | NO | NO | YES |
| 2005 | | | | FP | 1987 - 2017 | 1987 - 2014 | DOG WALKING SHORT CUT TO MIRY LANE AND OLDFIELD FOR BUS SLEDGING | 5 OR 6 TIMES A WEEK | DOG WALKING, SHORT CUT TO MIRY LANE, SLEDGING | FOOT | 6 FT | GRASS | STEP DOWN STILE INTO FIELD FROM ST MARYS RISE | GATE TO ACCESS MIRY LANE | FOR APPROX LAST 6 OR 7 YEARS | BARBED WIRE ERECTED IN FRONT OF STILE IN 2015 AND TIGHTENED IN JAN 2017 | NO | NO | YES |
| 2006 | | | | FP | 1973 - 2017 | 1974 - 2005 | SHORT CUT TO MIRY LANE | FIRST 20 YEARS WEEKLY, THEN MONTHLY, NOT WHEN CATTLE GRAZING | DOG WALKERS, CHILDREN, SLEDGING | FOOT | 2 - 3 FT MORE IF WITH DOG | GRASS | NO | FIELD GATE TO MIRY LANE | LOCKED AFTER BEING LEFT OPEN WHILST ANIMALS GRAZING | LOW FENCING ADDED TO ST MARYS ROAD END, RECENTLY MADE HIGHER | NO | NO | YES |
| 2007 | | | | FP | 1974 - 2017 | 1977 - 2000 | SHORT CUT TO MIRY LANE | 1978 - 1980 WEEKLY IN SUMMER, LATES IRREGULARLY | FOOTPATH TO MIRY LANE, SLEDGING IN WINTER | FOOT | 3 - 3 FT | GRASS | NO | FIELD GATE TO MIRY LANE | FROM THE 1980'S ONWARDS | RECENTLY FENCING AND BARBED WIRE ADDED | NO | NO | NI |
| 2008 | | | | FP | 1991 - 2017 | 1991 - 2017 | WALKING DOG, EXERCISING, SLEDGING | DAILY | WALKING THE DOG, GENERAL EXERCISE | FOOT | 100 - 110 M | GRASS | STILE IN WALL | ACCESS FROM MIRY LANE | N/I | A BARBED WIRE FENCE IN FRONT OF STILE | NO | NO | YES |
| 2009 | | | | FP | 2000 - 2010 | 2000 - 2010 | SHORT CUT ST MARYS LANE TO MIRY LANE | WEEKLY | YES | FOOT | 1M | GRASS | OFF ST MARYS RISE | ON MIRY LANE | NO WHILE I WAS USING IT | BARBED WIRE FOR LAST COUPLE OF YARS | NO | NO | NO |
| 20010 | | | | FP | 2006 - 2017 | 2006 - 2017 | FOOTPATH MIRY LANE TO ST MARYS ESTATE | DAILY DOG WALKING | SHORTCUT FROM ESTATE TO MIRY LANE | FOOT | N/A | GRASS | OPENING FROM ST MARYS RISE | GATE TO FIELD ON MIRY LANE | NOT TILL LAST 2 YEARS | IN LAST 2 YEARS BARBED WIRE ACROSS THE OPENING | NO | NO | YES |
| 20011 | | | | FP | 2006 - 2017 | 2006 - 2017 | FOOTPATH MIRY LANE TO ST MARYS ESTATE | DAILY DOG WALKING | SHORTCUT FROM ESTATE TO MIRY LANE | FOOT | N/A | GRASS | OPENING FROM ST MARYS RISE | GATE TO FIELD ON MIRY LANE | NOT TILL LAST 2 YEARS | IN LAST 2 YEARS BARBED WIRE ACROSS THE OPENING | NO | NO | YES |
| 20012 | | | | FP | 2006 - 2017 | 2006 - 2017 | FOOTPATH MIRY LANE TO ST MARYS ESTATE | DAILY DOG WALKING | SHORTCUT FROM ESTATE TO MIRY LANE | FOOT | N/A | GRASS | OPENING FROM ST MARYS RISE | GATE TO FIELD ON MIRY LANE | NOT TILL LAST 2 YEARS | IN LAST 2 YEARS BARBED WIRE ACROSS THE OPENING | NO | NO | YES |
| 20013 | | | | FP | 2006 - 2017 | 2006 - 2017 | FOOTPATH MIRY LANE TO ST MARYS ESTATE | DAILY DOG WALKING | SHORTCUT FROM ESTATE TO MIRY LANE | FOOT | N/A | GRASS | OPENING FROM ST MARYS RISE | GATE TO FIELD ON MIRY LANE | NOT TILL LAST 2 YEARS | IN LAST 2 YEARS BARBED WIRE ACROSS THE OPENING | NO | NO | YES |
| 20014 | | | | FP | 2004 - 2017 | 2008 - 2017 | WALKING AND SLEDGING IN WINTER | WEEKLY WHEN DOG WALKING | WALKING, CHILDREN IN WINTER | FOOT | 1M | GRASS | IN THE WALL OF ST MARYS RISE | IN THE WALL OFF MIRY LANE | UNLOCKED UNTIL APPROX 2005/6 | FENCE ERECTED BLOCKING STILE ACCESS AROUND 2016 | NO | NO | YES |
| 20015 | | | | FP | 2004 - 2017 | 2008 - 2017 | WALKING AND SLEDGING IN WINTER | WEEKLY WHEN DOG WALKING | WALKING, SLEDGING IN WINTER | FOOT | 1M | GRASS | IN THE WALL OF ST MARYS RISE | IN THE WALL OFF MIRY LANE | UNLOCKED UNTIL APPROX 2005/6 | FENCE ERECTED BLOCKING STILE ACCESS AROUND 2016 | NO | NO | YES |
| 20016 | | | | FP | 2004 - 2017 | 2008 - 2017 | WALKING AND SLEDGING IN WINTER | WEEKLY FOR WALKING | WALKING, SLEDGING IN WINTER | FOOT | 1M | GRASS | IN THE WALL OF ST MARYS RISE | IN THE WALL OFF MIRY LANE | UNLOCKED UNTIL APPROX 2005/7 | FENCE ERECTED BLOCKING STILE ACCESS AROUND 2017 | NO | NO | YES |
| 20017 | | | | FP | 2004 - 2017 | 2008 - 2017 | WALKING AND SLEDGING IN WINTER | WEEKLY WHEN DOG WALKING | WALKING, SLEDGING IN WINTER | FOOT | 1M | GRASS | IN THE WALL OF ST MARYS RISE | IN THE WALL OFF MIRY LANE | UNLOCKED UNTIL APPROX 2005/8 | FENCE ERECTED BLOCKING STILE ACCESS AROUND 2018 | NO | NO | YES |
| 20018 | | | | FP | 2000 - 2017 | 2000 - 2017 | WALKING, RUNNING, SLEDGING | ONCE A MONTH, MORE WHEN IT SNOWS | DOG WALKING, RUNNING, GENERAL WALKING, SLEDGING | FOOT | 2 FT MORE WHEN IT SNOWS | GRASS AND SOIL | SMALL STEP DOWN STILE FROM ST MARYS RISE | ON E GATE FROM FIELD ONTO MIRY LANE | N/I | SINCE JAN 2017 TALL WIRE FENCE ACROSS THE STILE MAKING IT ALMOST IMPOSSIBLE TO ACCESS | NO | NO | NO |
| 20019 | | | | FP | 2008 - 2017 | 2008 - 2015 | SHORT CUT ACROSS THE FIELD | WEEKLY, MONTHLY | N/I | FOOT | 4FT | FIELD | NO | YES | APPROX LAST 5 YEARS | NO | NO | NO | NO |
| 20020 | | | | FP | 2007 - 2017 | 2008 - 2015 | WALKING ACROSS AS A SHORT CUT | ONCE A MONTH | WALKING ACROSS | FOOT | 3 FT | GRASS | NO | METAL WITH RUNGS | PADLOCKED SOMETIMES | NO | NO | NO | NO |
| 20021 | | | | FP | 1973 - 2017 | 1973 - 2017 | FOOTPATH ACCESS TO MIRY LANE | WEEKLY | WALKING TO WORK, BUS STOP OLDFIELD, WALKING, DOG WALKING, SLEDGING | FOOT | 2 FT | GRASS | ST MARY RISE ACCESS | OPPOSITE THE ACCESS POINT AT ST MARYS RISE ON MIRY LANE | OVER THE LAST 2 OR 3 YEARS | BARBED WIRE ACROSS STILL AND GATE | NO | NO | YES |
| 20022 | | | | FP | 1973 - 2017 | 1973 - 2017 | FOOTPATH TO MIRY LANE | WEEKLY | WALKING TO WORK, BUS STOP OLDFIELD, WALKING, DOG WALKING, SLEDGING | FOOT | 2 FT | GRASS | IN THE WALL AT THE END OF ST MARY RISE | AT MIRY LANE END OF PATH | ONLY RECENTLY | ONLY RECENTLY BARBED WIRE SINCE FIELD WAS SOLD | NO | NO | NO |
| 20023 | | | | FP | 1997 - 2017 | 1997 - 2005 | GOING FOR A WALK, TO SLEDGE | 3 - 4 A YEAR | WALKING THROUGH, WALKING DOG | FOOT | 2 FT | FIELD | AT 26 ST MARYS RISE END | NA | NA | NO | NO | NO | YES |
| 20024 | | | | FP | 1985 - 2017 | 1985 - 2016 | WALKING DOGS SAFE ROUTE TO MIRY LANE | TWICE DAILY UP UNTIL LATE 2016 | WALKING DOGS, SHORT CUT TO MIRY LANE TO OLDFIELD | FOOT | 1 M | GRASS | GAP IN STONE WALL WITH STEP DOWN INTO FIELD | 5 BAR STEEL | LAST 5 YEARS | IN 2016 TENANT FARM ERECTED A BARBED WIRE FENCE ACROSS THE STILE EFFECTIVELY STOPPING ACCESS | NO | NO | YES |
| 20025 | | | | FP | 1985 - 2017 | 1985 - 2016 | WALKING DOGS AND WALKS | DAILY | DOG WALKING WALKING, CATCH BUS IN OLDFIELD ROAD | FOOT | 2 1/2 FT | GRASS LAND | IN WALL ON FIELD SIDE ST MARYS RISE | ON MIRY LANE SIDE | PADLOCKED APPROX 5 YEARS AGO | BARBED WIRE FENCE ERECTED AT SIDE OF STILE IN LATE 2016 | NO | NO | YES |
| 20026 | | | | FP | 1997 - 2017 | 1997 - 2005 | FOOTPATH WHEN WALKING AND SLEDGING | 3 - 4 TIMES A YEAR | WALKING | FOOT | 2 FT | FIELD | AT END OF ST MARYS RISE | NO | N/A | NO | NO | NO | YES |
| 20027 | | | | FP | 1987 - 2017 | 1987 - 2016 | WALKING TO MIRY LANE, USUALLY WITH DOGS. | APPROX 3 TIMES A WEEK UNTIL ACCESS STOPPED BY FARMER | WALK DOGS, ACCESS TO MIRY LANE | FOOT | 2 FT | GRASS | STILE IN OUR BOUNDARY WALL THERE WHEN PURCHASED HOUSE IN 87 | GATE GIVES ACCESS TO MIRY LANE | GATE NEVER LOCKED UNTIL AROUND THE TIME THE FARMER ERECTED THE FENCE BLOCKING THE STILE | NO OBSTRUCTION UNTIL FARMER BUILT THE FENCE AND LOCKED THE GATE | NO | NO | YES |

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Definitive footpath - - - - -

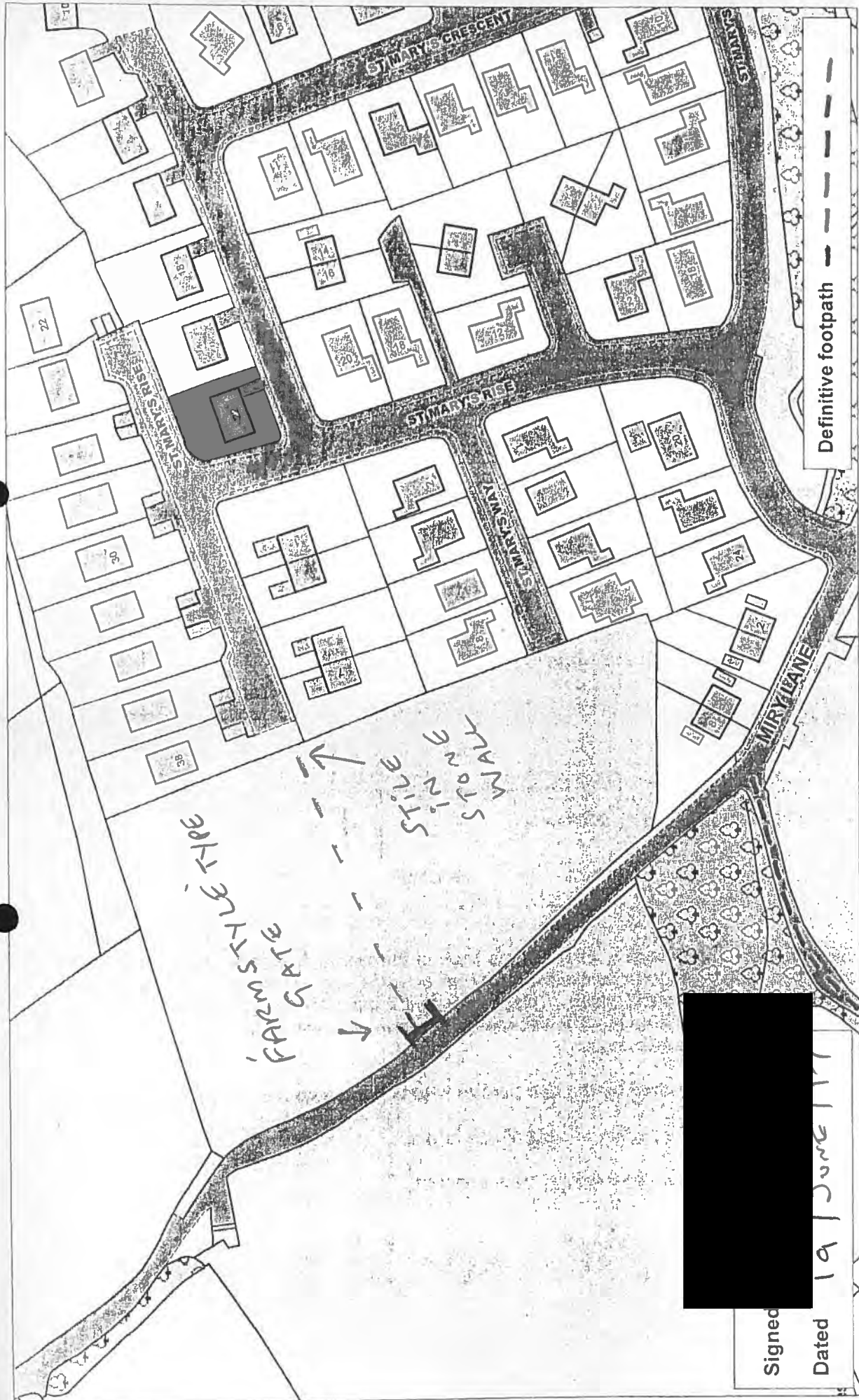


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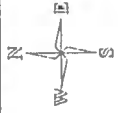
Sign [Redacted] 17-7-17
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Definitive footpath - - - - -



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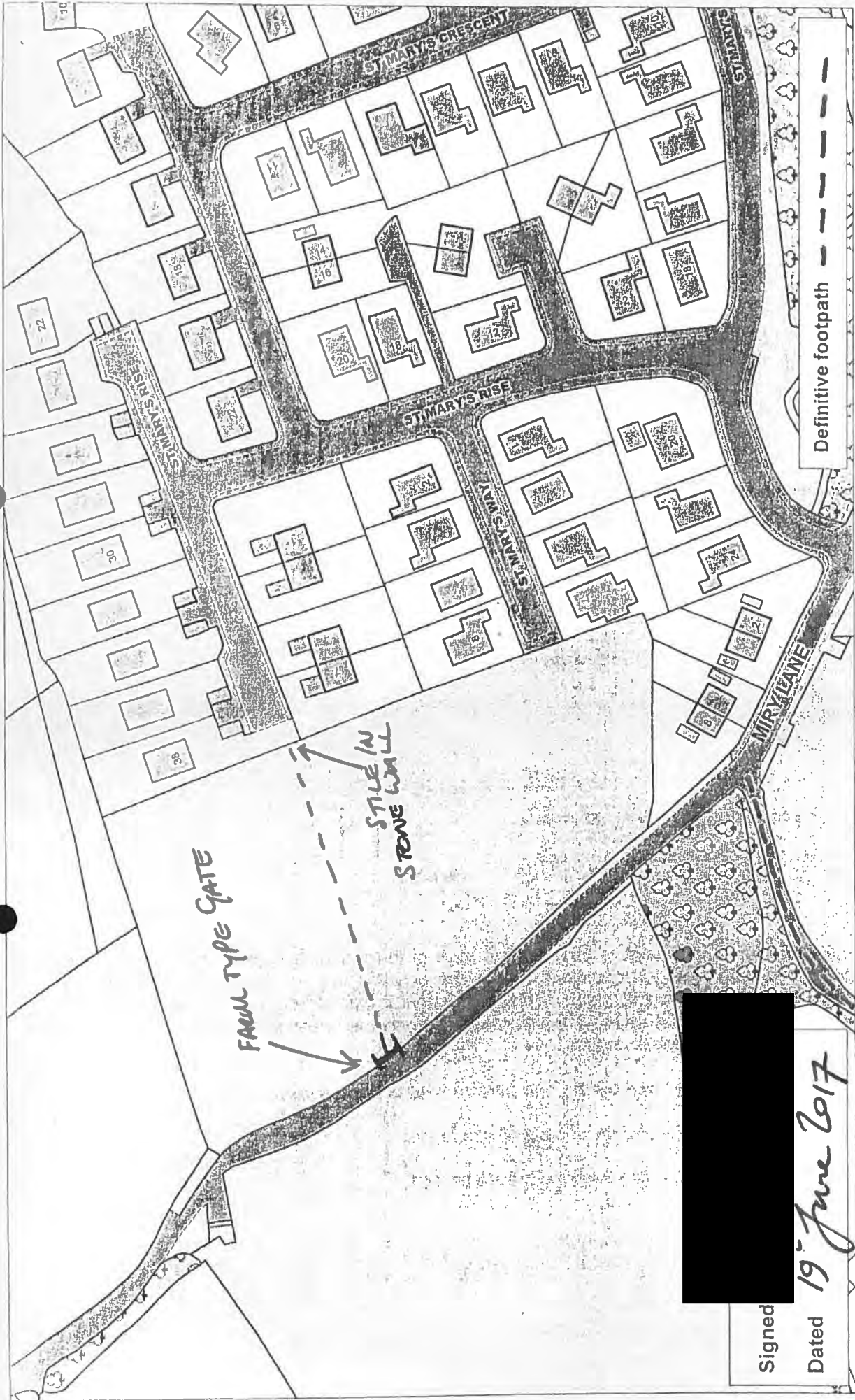
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Signed

Dated

19 June 17

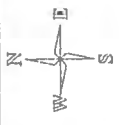




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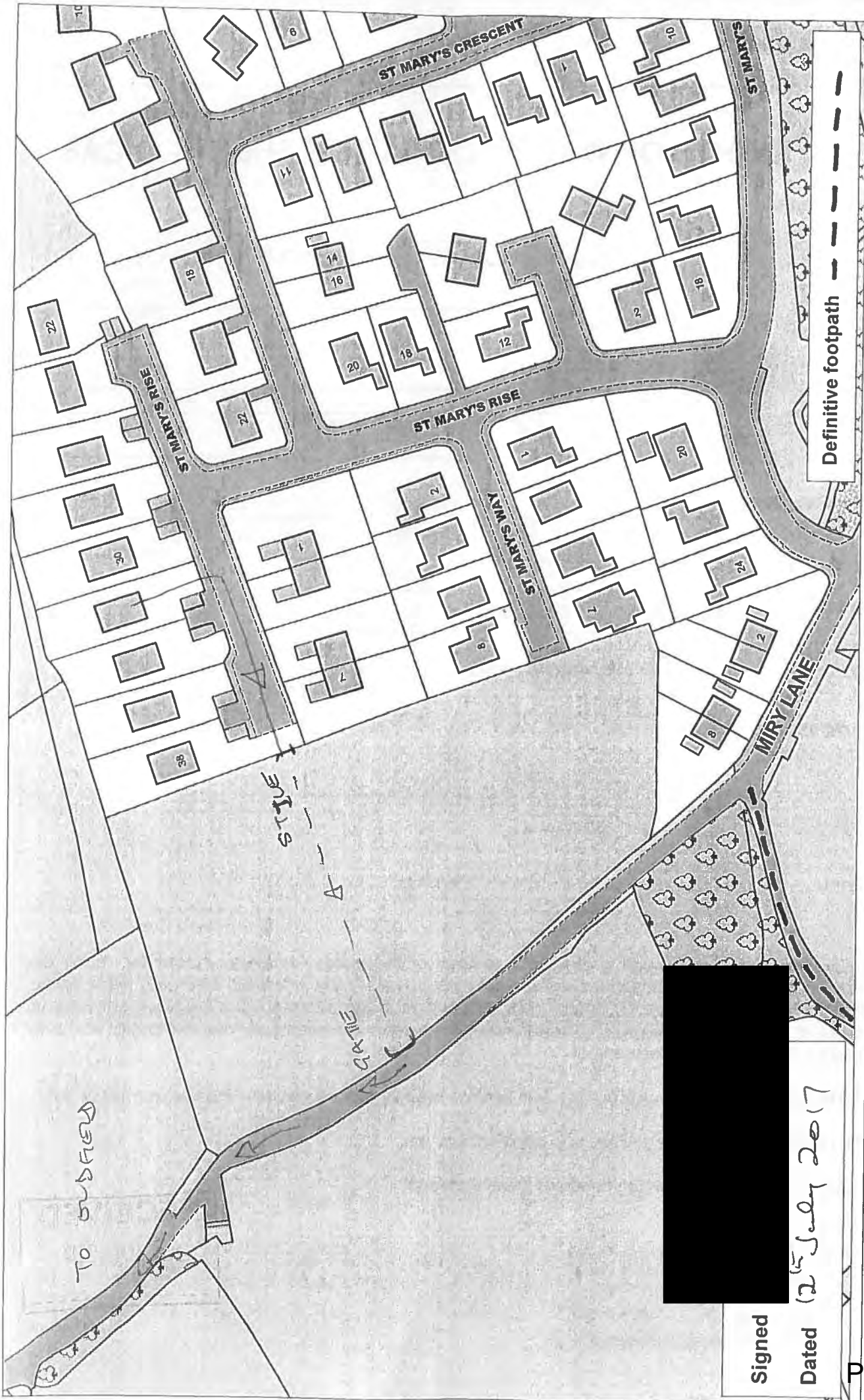
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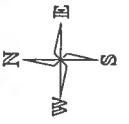
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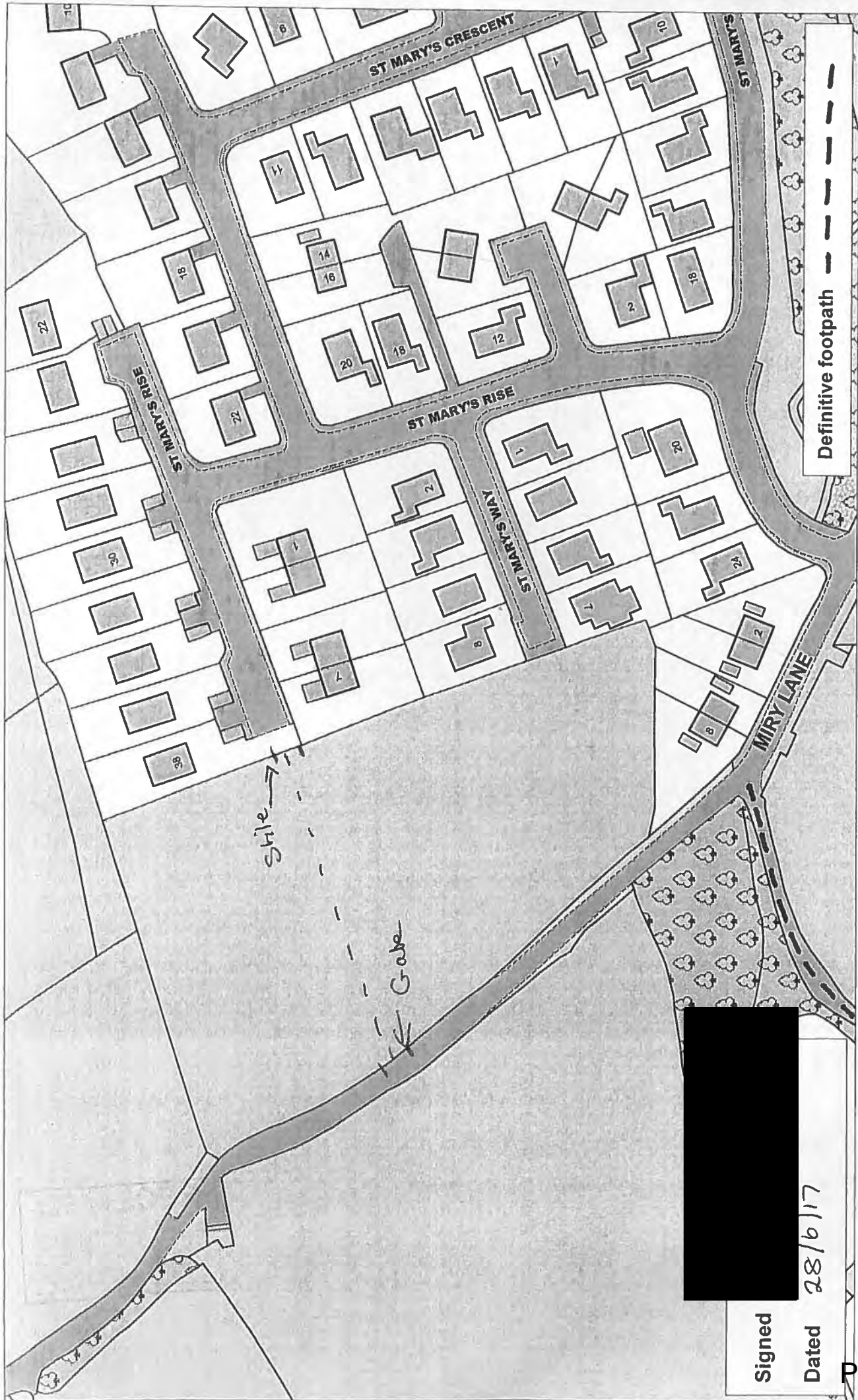
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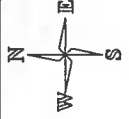
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Signed [Redacted]
Dated 12th July 2017





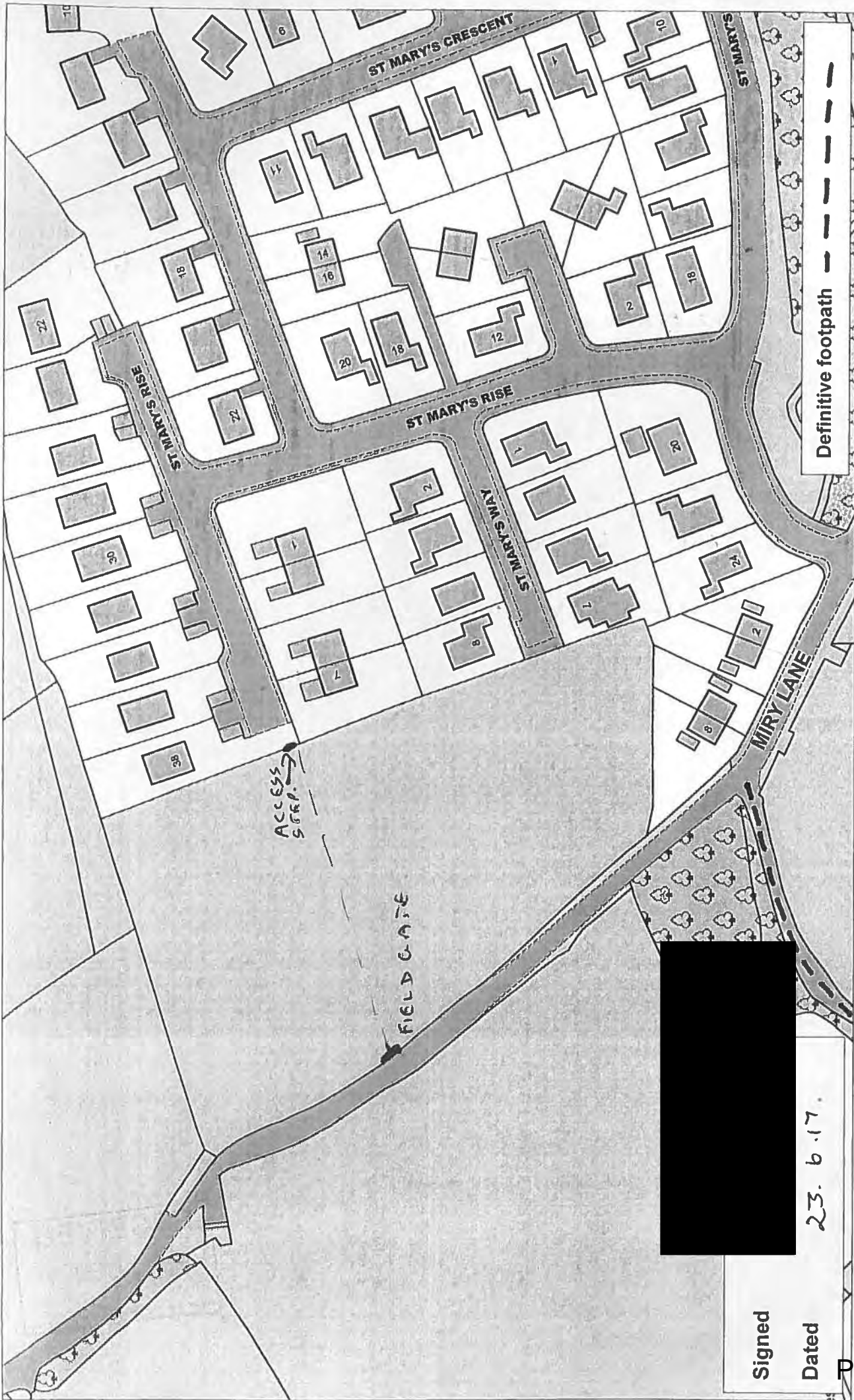
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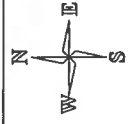
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Signed [Redacted]
 Dated 28/6/17





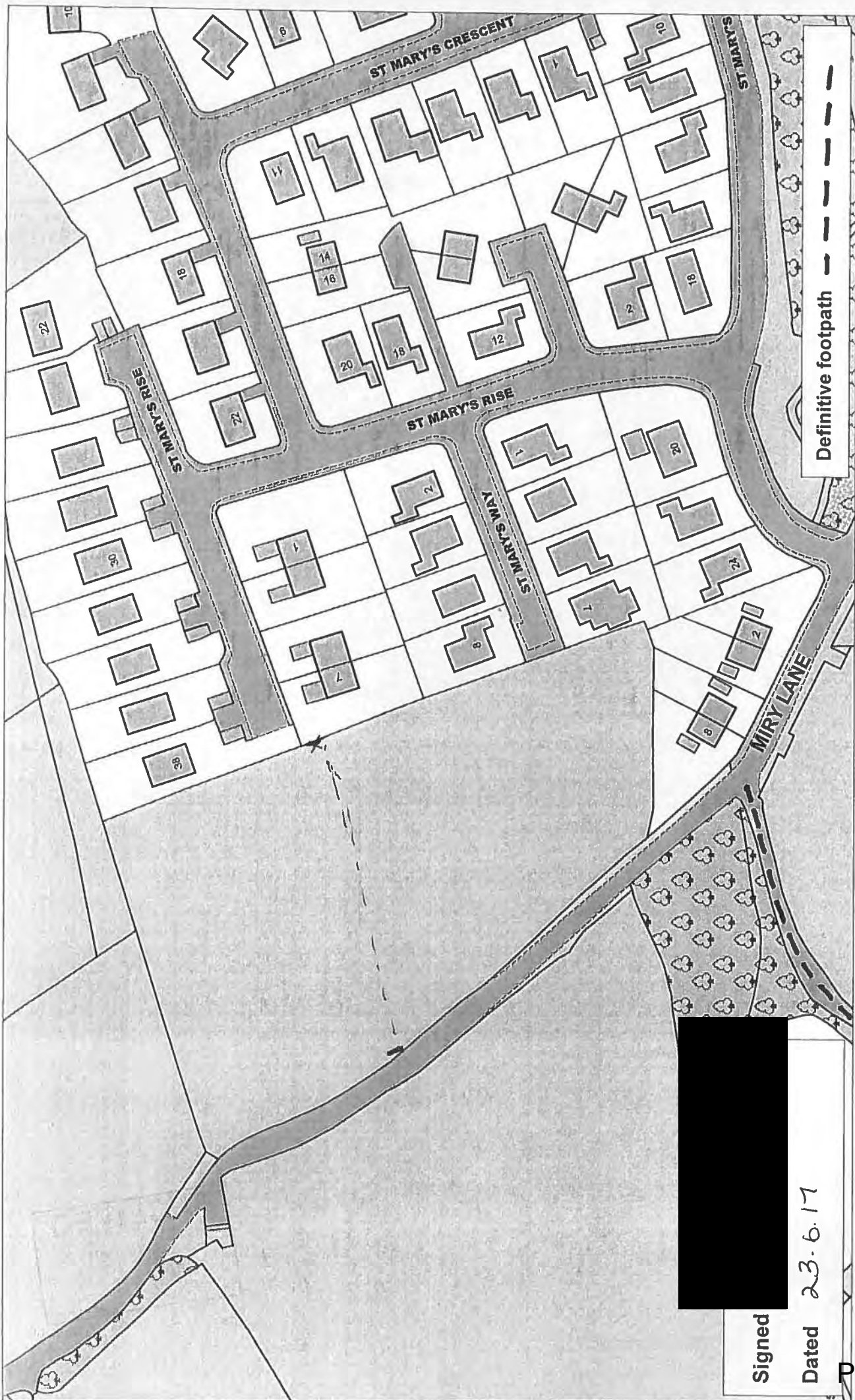
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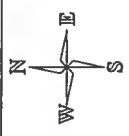
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Signed [Redacted]
Dated 23.6.17.



Definitive footpath - - - - -



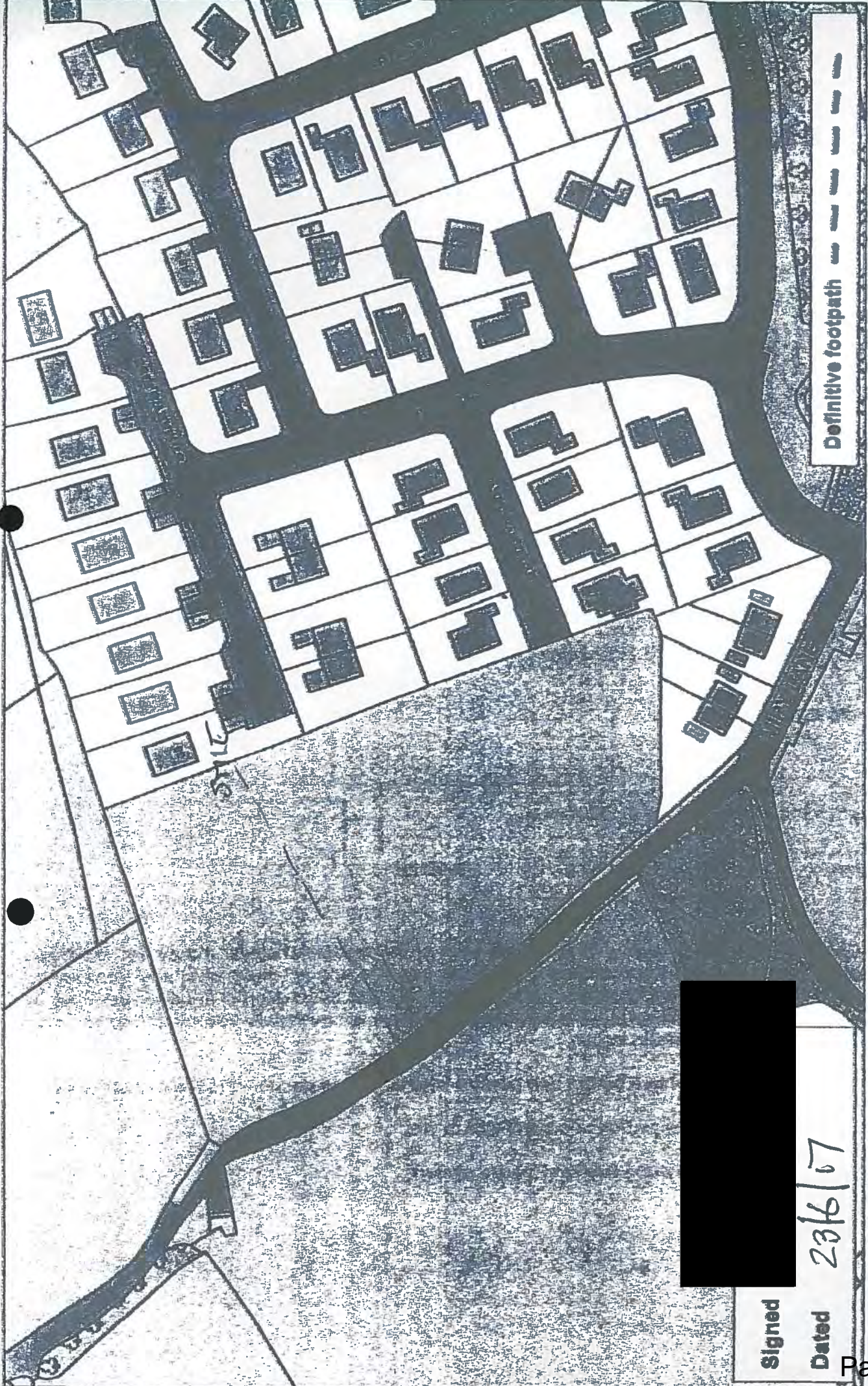
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Signed

Dated 23.6.17





Definitive footpath

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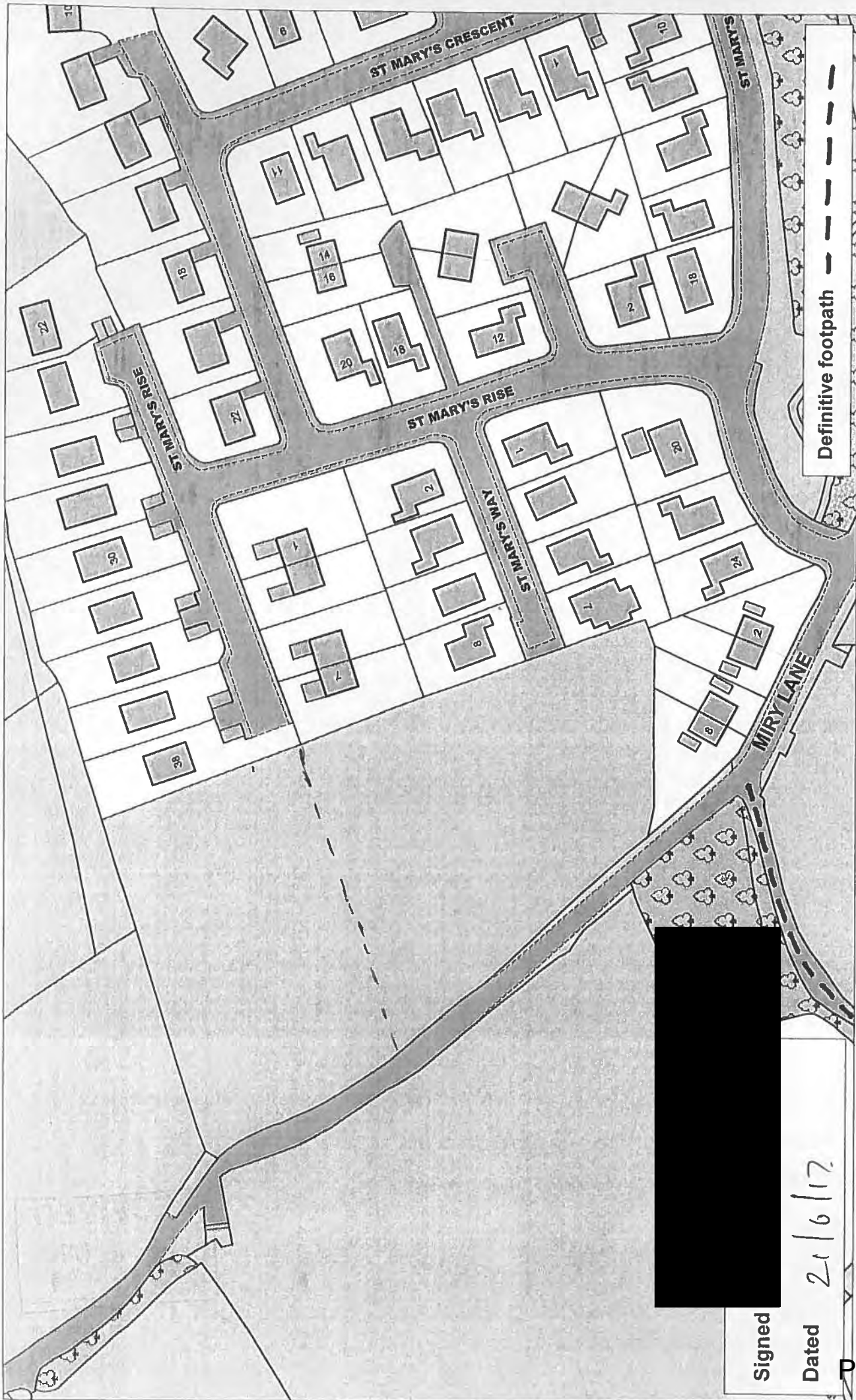


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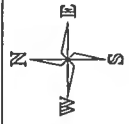
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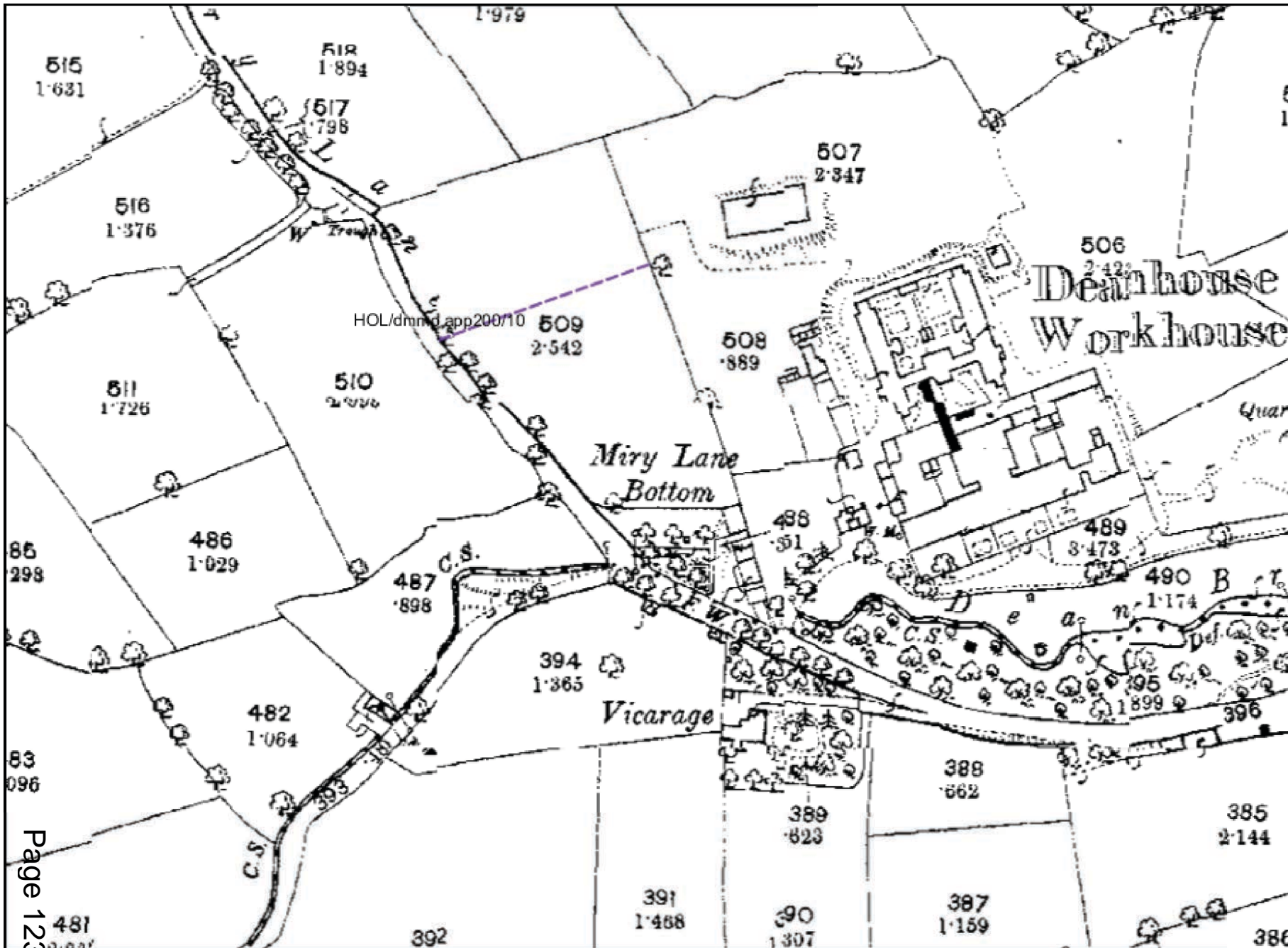
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Dated

20/6/17

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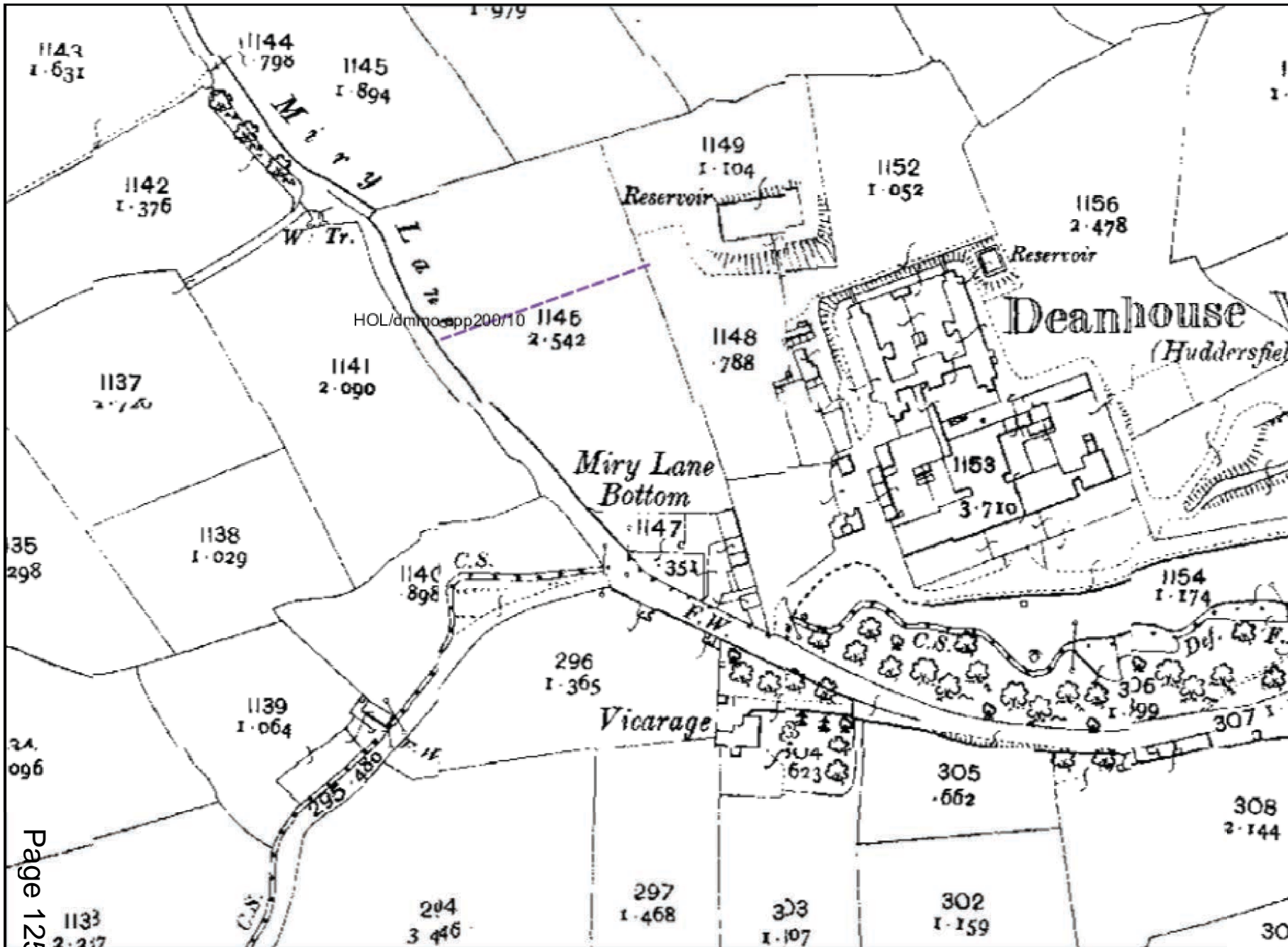
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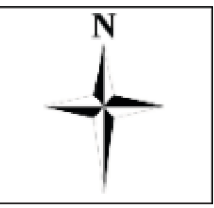
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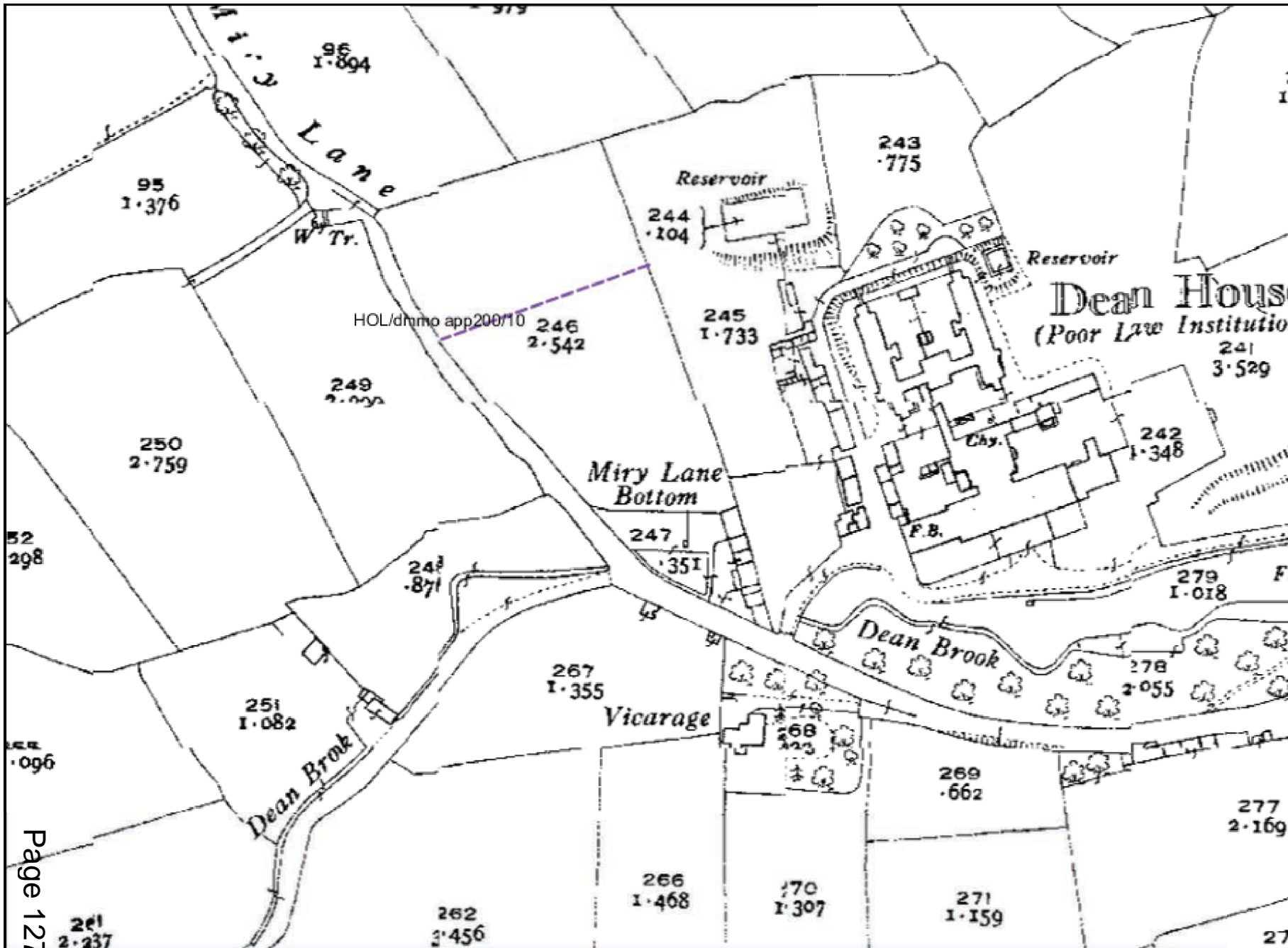
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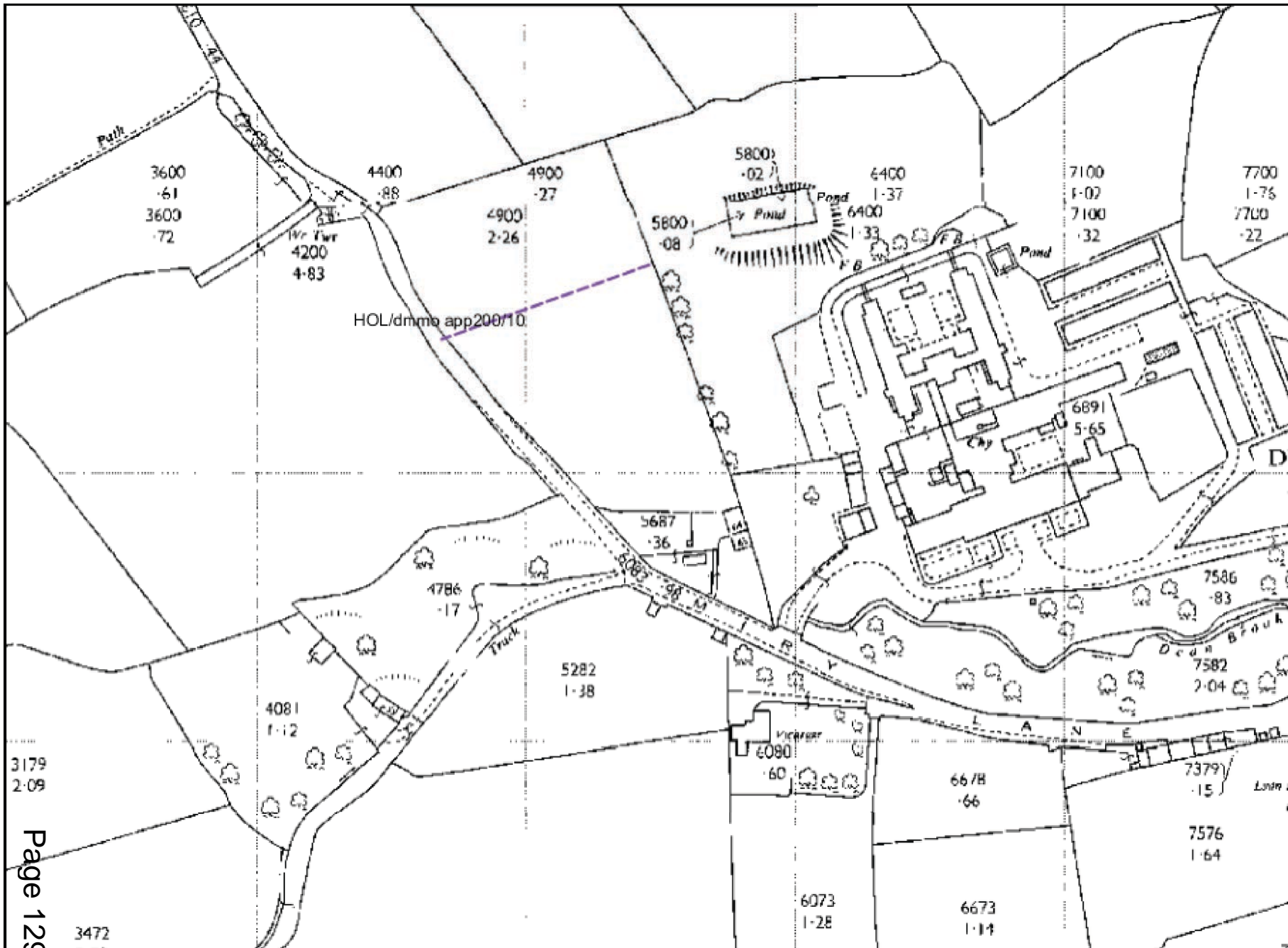
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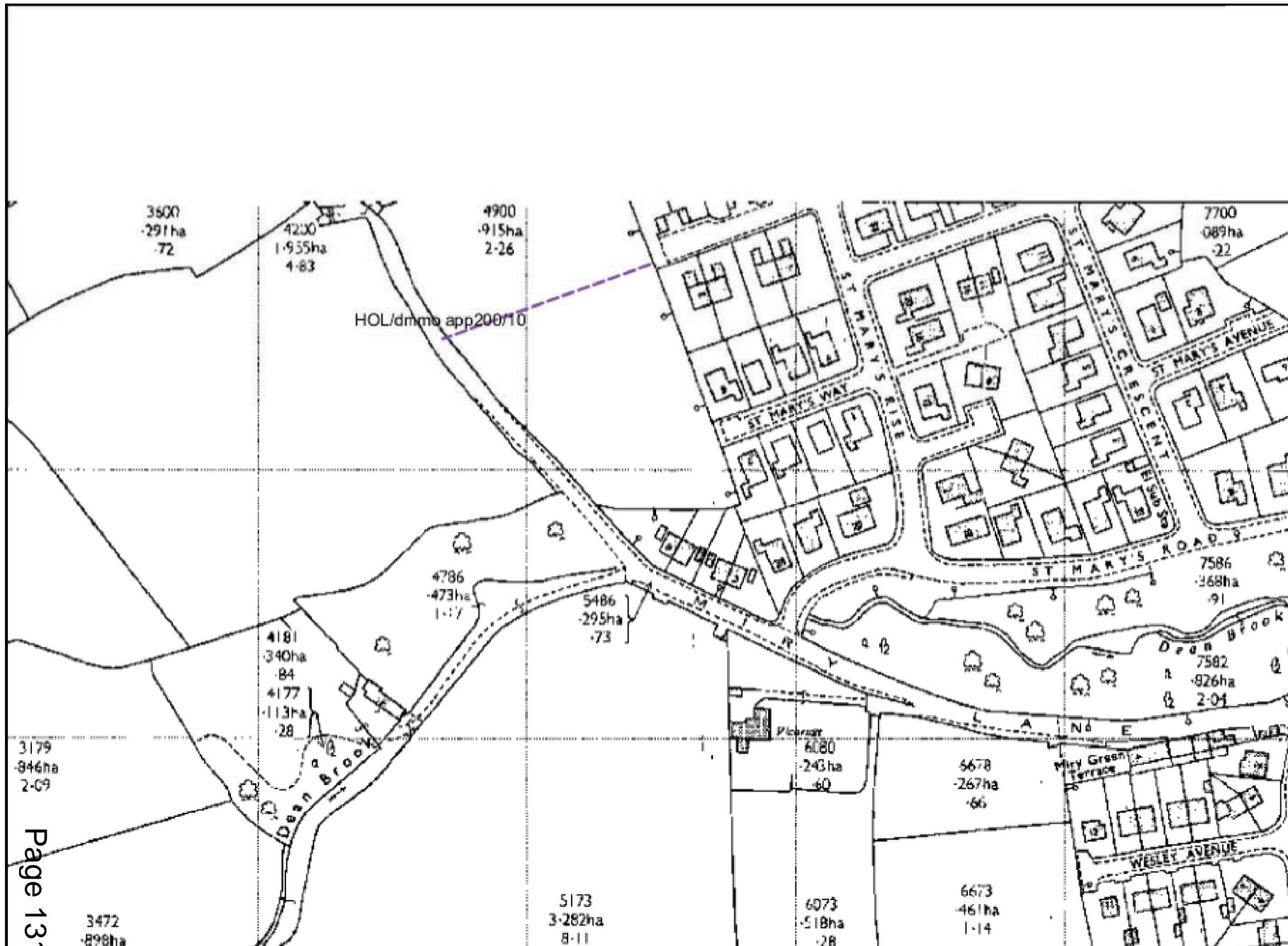
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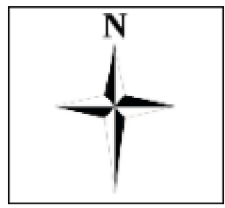


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2000 aerial photo



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2009 aerial



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Dear Mr. Battersby

I understand from [REDACTED] that you are dealing with the footpath matter at St Mary's Rise/Miry Lane, Netherthong. [REDACTED] please take this information as evidence of an accurate description of the actual position.

On 13th June 2019, we sent an email to [REDACTED] outlining the position as regards our property, which is attached. Following this [REDACTED] sent me a form and asked us to fill it in. We turned this around quickly but unfortunately, we did not keep a copy,

I [REDACTED] met with [REDACTED] on Friday 19th July 2019.

We are very concerned to hear [REDACTED] has taken our form as somehow meaning we left our land open for all and sundry to pass through at will. Everyone we let use it has always been aware that they are crossing our land with our consent and that this was never an open footpath for all and sundry to use.

Knowing what we know now, about just how complicated all this is, if we could go back, we would never have supported a footpath application. We have informed [REDACTED] of this already.

We have never allowed and do not want the general public using our land. The cut through across our land was only for people that we know, which we have been clear about over the years to everyone involved. We should have realised that by Stephen Cook applying for an official footpath, although we were trying to be helpful, we didn't appreciate that we would potentially be opening access up to everyone. We just didn't consider this at the time, nor did we or do we want it. We have been considering building a garage which would be on this land and obviously a footpath there would not work.

OUR CONSENT

[REDACTED] has explained that one of the key criteria here is how did we give our consent and managed the arrangement with our neighbours. We have not had to think about this in a while. Having given this some thought, we shall explain as follows.

We get on well with and have always chatted to our neighbours and people on the estate and villagers known to us. For those that we allow, they have always been appreciative of us letting them use our 'cut' to get to and from the field. It has come up in discussion with neighbours from time to time, but not for a few years now and I guess once someone uses it a few times with our consent, then the matter is not really mentioned again.

We are at home often and have always kept a close eye on everything going on, for our safety and security more than anything else. As per my previous email to [REDACTED] (attached) where we had not known or recognised someone, then we would have stopped them and asked them what they were doing. We would just have closed it up altogether if it ever became a persistent problem. It never was.

We have only ever had to stop and challenge people a few times over the years. In the main, on the few occasions when we had to confront people, the discussions were amicable and the vast majority understood. We would simply tell them that it was private property and that they shouldn't be using our land as a cut through to the field as neither our land nor the field had a footpath nor right of way running across them. The few people that we didn't know who have ever tried to use it, after informing them that it was actually private land, we did allow across on that occasion. We don't remember any of them ever returning. People locally, our friends and neighbours, some of whom we have known since we first moved in, understood the situation clearly, as we had told them.

Only on one occasion did things turn a bit heated. It was during the foot and mouth outbreak. There was a neighbour we know wanting to go across with his dog. Nigel confronted him and said that they shouldn't be in the field. The chap became a bit aggressive. He admitted to [REDACTED] that he knew it was not a footpath but seemed to take umbrage at being told that he couldn't walk his dog, because although he accepted it was not a footpath (either our land or the field) he said the farmer's field was not our land and had nothing to do with us. Since the foot and mouth outbreak, we haven't seen him trying to use it.

We have always been very clear that this land is not a public footpath. The only people using and crossing our land did this with our consent. Otherwise, as said, if seen we would have challenged them.

We have parked our car on the land for many years. Some years after we moved in, in 1987, the previous owners of 38 decided to fence off the land. It was on our Deeds but not on the land registry map and then we didn't know the difference between a general and a legal boundary - at this time it was all grass. When [REDACTED] moved in (approx 2004 but not sure of the exact date) they removed the fence and it was dug out for us both to use as parking, us a car and they a caravan. These used to block the cut through at times. After the farmer erected a high barbed wire fence and planning permission was eventually granted, we blocked up the hole in the wall.

I [REDACTED] do remember a few choice words exchanged with the farmer a few years ago, but that was because he was putting extra levels of barbed wire in to try and prevent people (that we knew) using the field to gain access to/from Miry Lane. He made it look like a prisoner of war camp and I said it was too much.

This whole footpath situation is much more complicated than we, and likely now the others on the estate, had realised. If we could go back, we would not have agreed to support an application for a formal public footpath knowing what we know now, given the obvious detriment to us and our property.

It doesn't really all matter now, as the field is being built on. However, we are now more aware of how important our permission/consent is in determining whether a way is what we now know to be a 'public' footpath or not. We also appreciate that this must obviously have applied to the farmer's field as well. We just didn't know all this before and likely neither did the other local residents.

We hope that this letter clarifies that we have ALWAYS restricted/approved anyone crossing our land. We spoke to neighbours about this and they were always appreciative of us allowing them to use our cut through. Nevertheless, we want to be clear we have never allowed just anyone to cross or use our land.

We just want to move on now and stop worrying about what is going to happen to our land. We apologise for any inconvenience caused, but again this whole thing seems very complicated and we just didn't realise what it all really entails.

You may share this email with anyone necessary to get this sorted as soon as possible.

We can do anything more formal if needed [REDACTED]
[REDACTED]

Yours sincerely

[REDACTED]
No. 7 St. Marys Rise
29th July 2019

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App N –see report paragraphs 1.5 and 2.38

Statements regarding use of land in front of no.7 between the tarmac surface of the road and the field boundary being by permission.

From Mr & Mrs F, owners of no. 7 St Mary's Rise June 2019 – see additional letter at App N

"I understand that you met with [YCP] last week and that you are planning to make a decision on the footpath application soon. We are pleased to hear this as we are keen to resolve this matter.

The building work in the field is underway and there is no need to continue with this. The residents we allowed to use our cut-through have obviously found alternative routes now.

As you are aware, we withdrew our evidence and Stephen Cook withdrew his application too. We now understand that it is not possible to withdraw a footpath application and you still have to officially say 'yes' or 'no' to Stephen's application, even though it has been withdrawn. This was something that we didn't know at the time.

At the time we submitted our evidence it was just neighbours and people we knew using the footpath and as the plans stood, there were only going to be five houses and we didn't think there would be lots of people we didn't know using it. As it stands, we do not want, nor did we anticipate the general public to be using the path, only people we know. We should have realised that by having an official footpath we were opening the access up to everyone and we didn't really consider that, nor did we want it.

This was never the arrangement we had with neighbours and the local residents. It was always restricted to people on the estate that we knew and trusted and they were all aware of this. This was something that we always kept a close eye on and if we had not known or recognised someone using our cut through then we would certainly have stopped them. We would likely have closed it up altogether if that was ever a problem.

This whole footpath situation is much more complicated than we, and probably the others on the estate, had realised. If we could go back, we would not have agreed to support the footpath application knowing what we know now. We didn't realise what we were getting into and agreed to do this without full knowledge of what is required for a proper footpath to occur and what that involves.

You will have probably have seen that we park cars on the land in front of the cut through and we would also like to build a garage there. Our neighbours also park their caravan there.

To clarify, we never had any intention for just anyone to use the cut through. This has never happened and was always clear and understood by the local residents. We would have never agreed to or allowed just anyone to use the cut through.

We just want to move on now and stop worrying about what is going to happen to our land. We apologise for any inconvenience caused, but again this whole thing seems very complicated and we just didn't know about what this all involves.

Could you please confirm when this is all resolved. You may share this email with anyone necessary to get this sorted as soon as possible."

From a resident that had not completed a user evidence form.

"I am led to believe that there is a consideration to allow a path onto St Marys estate from the new build estate off Miry lane in Netherthong. I was led to believe that the land across which it would pass was private land partially / fully owned by [Mr & Mrs F] Access to the field where the building is now occurring was by permission only if we were to enter the field as friends of [Mr & Mrs F].

I would certainly object if a free footpath was granted as short cut and throughway was unnecessarily created for no purpose through the estate. Its only purpose could be a short cut the Cricketers arms public house and surely creating late night noise and disruption.

I would hope that this path will not be made and at least a period of public consultation if it were to be considered

From two witnesses who completed user evidence forms

“We can confirm that we have lived at our present address since 2009 and over this time have kindly been granted permission by [Mr & Mrs F] to cross their land to access the field off Miry Lane for dog walking and sledging. We do not believe Kirklees Council should be approving a new formal footpath order on [Mr & Mrs F]’s land.”

From the applicant

“[...] I am informed that this application is meandering its way to a Committee. As the new development is being laid out it seems somewhat belated.

I moved into my house, newly built, in 1972. The houses at the top of St.Mary’s Rise were built not long afterwards but I cannot recall when they were completed.

It was around 1980 when my children were at primary school that I began to frequently enter the field with them.

Around this time the then Water Authority decided that the sewers on the estate were private. I led the residents objections and appeal which was decided by the Minister, Michael Heseltine in our favour in 1982.

In order to research our case I had to study legal texts (in Bradford Council’s legal department) and of course the original plans for the estate.

Who actually owned the sewers and the land they were in became an issue.

It was during this process that I learned the status of the land at the end of the cul de sacs i.e. it belonged to the properties on either side. I believe the technical term is ransom strip.

Anyway, in the process of consulting all residents re the sewers I ensured that my family had permission from the owners (and subsequent owners) to cross the “ransom strip” to access the field. This was never a problem as there was no disturbance in accessing the field and especially in the early 80’s there was considerable community spirit amongst the residents given the 18 month saga of the sewers. Also, many of the households contained children of a similar age whose parents knew each other.

Of course children and their parents from off the estate entered the field from Miry Lane for sledging so it was a limited number of known (to the ransom strip owners) adults and children who accessed from the Rise.

The majority of children exited the field the way they entered as they were playing in the field .It was just a small number of mainly adults (and dogs) that crossed from one side to the other.”

Summary including above and further submissions and information from interviews with witnesses regarding permissive use. (‘UEF’ identifies witnesses who completed a user evidence form)

Landownership linked to: 3 UEF witnesses.

Family stating they were given permission: 4 UEF witnesses

Family where it is stated that the parents and children were given consent: 4 UEF witnesses

Family stating that they were given permission: 2 UEF witnesses

Stating that access was taken with landowner: 2 UEF witnesses

Stating that use was by permission of Mr A: 1 UEF witness (married to another UEF witness)

Stating that they did not use the path: 2 UEF witnesses

Another witness said they had permission of landowner (no UEF).

Report of the Head of Development and Master Planning

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 03-Oct-2019

Subject: Planning Application 2018/93453 Erection of two storey rear extension and front dormers 39, Springdale Avenue, Thornton Lodge, Huddersfield, HD1 3NQ

APPLICANT

N Akhtar

DATE VALID

25-Mar-2019

TARGET DATE

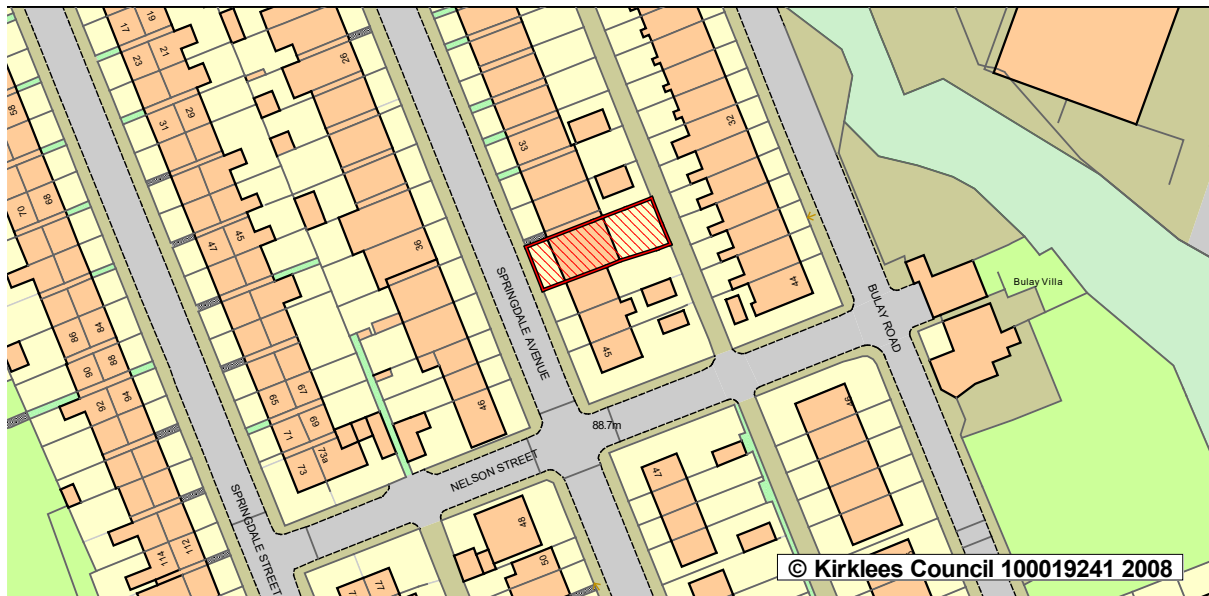
20-May-2019

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: Crosland Moor and Netherton

No

Ward Members consulted

RECOMMENDATION:

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

1.0 INTRODUCTION:

1.1 The application was originally brought to Planning Committee at the request of Cllr Kaushik for the following reasons:

- *The proposed extension complies with the usual requirements for a rear extension, with the extension projecting 1.35 metres beyond the rear wall of the adjoining house.*
- *The staggered rear elevation allows for an attractive extension to be created with two separate gable roofs which will form a less formidable extension compared to a single gabled roof.*

1.2 The Chair of the Sub-Committee confirmed that Cllr Kaushik's reason for making this request was valid having regard to the Councillor's Protocol for Planning Committees.

1.3 The application was reported to Sub-Committee on 18th April with a site visit taking place on the morning of the meeting. At that meeting members resolved to defer the application, which was at that stage recommended for refusal, requesting officers to negotiate with the applicants to overcome concerns regarding the design, scale and visual appearance of the extension.

1.4 Following this officers held two meetings with the applicant and agent to discuss the proposal and amended plan scheme was proposed as described below. The application has been assessed based on this amended scheme.

2.0 SITE AND SURROUNDINGS:

2.1 39 Springdale Avenue is a two-storey terraced property located in Thornton Lodge, Huddersfield. The property is constructed in regular coursed natural stone with a pitched roof constructed in slate roofing tiles, which are the prevailing materials locally. The property was originally semi-detached although a previous side extension has infilled the gap to no. 37.

2.2 The property benefits from a small lawn to the front of the property, with the rear benefitting from a decked area and large driveway accessed via a road that leads from Nelson Street, this separates Springdale Avenue from Bulay Road. The property is west-facing. To the rear of the properties are detached garages and outrigger extensions. Single storey extensions are not uncommon. To note, the ground is set on a lower level to the east so the properties are of a greater height to the rear. The neighbouring no. 37 is also of a greater height than to the site property. Additionally, the rear of the property is clearly visible from Nelson Street to the south and from the access road separating Springdale Avenue from Bulay Road.

3.0 PROPOSAL:

3.1 The applicant is seeking permission for a two storey and single storey extension to the rear of the property and dormer windows to the front. These extensions are to allow for an enlarged kitchen and lounge area on the ground floor, larger bedrooms on the first floor and two additional bedrooms in the converted loft.

3.2 The proposed rear extension is to project 3m at first floor level and 4 metres at ground floor level, width of 8.70 metres. The southern end is to have a maximum height of 8.50 metres with the northern end having a maximum height of 8.80 metres, each having a gabled roof with matching eaves of 7.00 metres. Two large windows are proposed on the first floor, with French doors and windows proposed to the northern end and a door and windows proposed to the southern end on the ground floor. The ground floor rear extension would add an extra 1 metre and would have a lean too roof projecting from the two storey extension.

3.3 The two proposed front dormers are to be identical in size and style, having a length of 2m and maximum height of 1.8m and eaves of 1m with a gabled roof. One is to be situated on the northern end of the roof, with the other to be placed symmetrically to the south.

3.4 The proposal also includes a rear raised decked area, being raised from the ground by 1.7m. The decking area will have a width of 5.7m and depth of 2m. A 0.8m railing is proposed, with steps accessed to the south.

3.5 The materials proposed in the development match the existing property in its entirety with stone proposed for the walls, tiles for the roof and uPVC for the windows and doors.

4.0 RELEVANT PLANNING HISTORY:

4.1 Numerous planning applications have been made for the property, as follows:

2004/95398 – Erection of two storey extension. Given conditional full permission.

2005/91961 – Erection of conservatory. Given conditional full permission, although never implemented.

5.0 HISTORY OF NEGOTIATIONS (including revisions to the scheme):

5.1 Amendments were sought in order to reduce the scale of the extension to the rear, in particular reducing the projection of the two storey rear extension and reducing the width of the raised decking area and details of parking. A final set of amended plans were received on 18 September 2019 which reduced the projection of the first floor extension to the extent that this overcame the reason for refusal in the original committee report.

6.0 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 statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019).

6.2 The site is unallocated within the Kirklees Local Plan.

6.3 Kirklees Local Plan

LP 1 – Presumption in favour of sustainable development

LP 2 – Place shaping

LP 21 – Highways and Access

LP 22 – Parking

LP 24 – Design

6.4 National Planning Guidance:

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published February 2019, together with Circulars, Parliamentary Statements and associated technical guidance. The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

Chapter 12 – Achieving well-designed places

7.0 PUBLIC/LOCAL RESPONSE:

7.1 The application has been advertised via site notices and neighbour letters.

7.2 The application was re-validated on 25th March following the receipt of a revised ownership certificate (certificate B).

7.3 The amended plans received on 18 September 2019 are currently out to public consultation which is due to close on 30 September 2019 and any comments received will be reported in the committee update.

8.0 CONSULTATION RESPONSES:

8.1 **Statutory:** None

8.2 **Non-statutory:** None

9.0 MAIN ISSUES:

- Principle of development
- Visual Amenity
- Residential Amenity
- Highway Safety
- Representations

10.0 APPRAISAL:

Principle of development:

- 10.1 The site is without notation on the Kirklees Local Plan. Policy LP1) which states that when considering development proposals, the council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF. LP1 goes on further stating:

“The council will always work pro-actively with applicants jointly to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.”

In this case, the principle of developing the site for the proposed extension is acceptable however it needs to be assessed against other material planning considerations below.

Visual Amenity:

- 10.2 The NPPF provides guidance in respect of design in Chapter 12 providing an overarching consideration of design stating:

‘124. The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities’

- 10.3 Furthermore, Paragraph 002 of the National Planning Practice Guidance (NPPG) Design states that:

“Good design should: Enhance the quality buildings and spaces, by considering amongst other things form and function; efficiency and effectiveness and their impact on wellbeing.”

- 10.4 Kirklees Local Plan Policies LP1, LP2 and importantly, LP24 are also relevant. All the policies seek to achieve good quality design that retains a sense of local identity, which is in keeping with the scale of development in the local area and is visually attractive. With specific reference to extensions it advises that:

“Extensions are subservient to the original building, are in keeping with the existing buildings in terms of scale, materials and details and minimise impact on residential amenity of future and neighbouring occupiers.”

- 10.5 The application site is located on Springdale Avenue, a residential area with properties sharing a similar traditional design and similar materials. The proposal refers to the erection of a two storey rear extension with two small dormers to the front. The property has already been extended in the past (under application 2004/95398) with a two storey side extension, infilling the gap to the neighbouring no. 37. The property was also granted permission for a large conservatory to the rear (under application 2005/91961) although this was never implemented. Therefore it is considered that there is scope for further development on the site.
- 10.6 The rear extension as amended, is to have a dual gable ended roof with a projection of 3 metres at first floor level and 4 metres at ground floor. It is considered that this extension, whilst adding considerable mass to the rear of the property, is of an acceptable scale at 3 metres with a relatively low overall height for a two storey extension given the roof design. The matching projection of both gabled ends with a lean to roof at ground floor level would ensure that a sympathetic design approach is followed and would allow the extension to be read as a simple addition to the host property. Whilst the extension would still be prominent in the street scene it is on balance considered to be acceptable. The greater projection of the adjacent property no. 37 would also help to reduce the prominence of the addition, especially from the north.
- 10.7 The proposal also includes the erection of two small dormers to the front of the property. It is considered that these dormer extensions would have an acceptable impact on visual amenity given their small scale and traditional and subservient design. In addition, the roof of the host property is still easily distinguished as a dominant feature. Similar front dormers are present at the neighbouring nos. 37 and 35 ensuring it would be in keeping with the local area. This would therefore comply with Policy LP24 of the Kirklees Local Plan.
- 10.8 The erection of decking, whilst adding additional built form at the property, it would be a lightweight structure and would facilitate the change in levels from the extension to the ground floor which is lower to the rear of the property. Furthermore the decking doesn't project the full width of the extension which ensures that it is of an acceptable scale.
- 10.9 In conclusion, the proposed development, as amended, is now considered to be of an acceptable scale and design and would be constructed from matching materials which is acceptable and will be conditioned. The proposal would therefore accord with Policy LP24 of the Local Plan and Policies in Chapter 12 of the NPPF.

Residential Amenity:

- 10.10 The NPPF seeks high quality design and a good standard of amenity for all existing and future occupiers of land and buildings. LP24 (b) of the Local Plan states proposals should:

“Provide a high standard of amenity for future and neighbouring occupiers; including maintaining appropriate distances between buildings”

This will be used to assess the impacts upon the neighbouring properties.

10.11 *No. 37 Springdale Avenue*

This property is located to the north of the site, sharing the boundary where the proposed extension is to be situated. No. 37 is set further to the rear than the host property which means that the first floor 3 metre element will project 0.8 metres beyond the rear of no.37 and 1.8 metres at ground floor level. Whilst it is noted that no.37 has windows close the shared boundary, given this limited projection beyond the rear of no.37, it is not considered that the rear extension would have a detrimental impact on the occupiers of no.37. The proposed raised decking is set in 1.6 metres from the shared boundary with no.37 which would reduce the possibility for an adverse impact to be caused.

10.12 *No. 41 Springdale Avenue*

This terraced property is located to the south and constructed in line with the host property. The proposed two storey extension would project 3 metres along the shared boundary at first floor level and 4 metres at ground floor level. Given that the adjacent windows/doors are obscurely glazed and that this property lies to the south of the application site it is not considered that there would be an undue adverse impact on amenity. The raised decking would be set 1.6 metres from the shared boundary which is considered to mitigate any adverse impact to no.41.

10.13 *Nos. 38 & 40 Springdale Avenue*

These properties are located to the west of the site, being situated across the highway. These properties directly face the front of the property and would therefore have the potential to be impacted by the proposed front dormer windows. This impact is considered to be minimal given the separation distance of 20m between the properties.

10.14 *Nos. 36 & 38 Bulay Road*

These properties are located to the east of the site, being situated across the access road to the rear and contain a number of habitable room windows. A minimum distance of over 14m would be achieved to single storey rear projecting element and 18 metres to the two storey element. Such a level of separation is considered to be acceptable to ensure that there would be no adverse impact on the amenity of the occupiers of these dwellings though undue overlooking.

Conclusion on residential Amenity

10.15 In conclusion it is considered that the development would not have a detrimental impact to the amenity of adjacent properties and would accord with the requirements of LP24 (b) of the Local Plan and Policies in Chapter 12 of the NPPF. No other neighbouring dwellings other than those above would be materially affected by the proposed development.

Highway Safety:

- 10.16 The proposals would result in intensification of the site, in particular given that two additional bedrooms would be formed in the property. The rear extension would also result in a loss of space that is currently used for parking. However it has been demonstrated that at least two off-street car parking spaces can be accommodated within the site with sufficient space for a third. It is considered on balance that there is a sufficient provision of car parking spaces for the property.
- 10.17 Therefore, the scheme would not represent any additional harm in terms of highway safety and efficiency, complying with Policy LP22 of the Kirklees Local Plan.

Other Matters

- 10.18 *Climate Change*: Chapter 12 of the Local Plan relates to climate change and states that: “Effective spatial planning is an important part of a successful response to climate changes as it can influence the delivery of appropriately sited green infrastructure and the emission of greenhouse gases. Planning can also help increase resilience to climate change impact through the location, mix and design of development”. This is also reflected in the NPPF as a core land use planning principle. The NPPF emphasis that responding to climate change is central to the economic, social and environmental dimensions of sustainable development. This application has been assessed taking into account the requirements summarised and provides opportunity for development that is considered to meet the dimensions of sustainable development. The site is located within a sustainable location and the proposal would allow the existing occupier to stay in their current home for a continuing period and meet their needs for the long term. The extension would also need to accord with current building regulations which are higher energy efficient standards than other parts of the property and would increase the building’s performance. The conversion of the roof space to habitable accommodation would further improve the energy efficiency of the overall building.

Representations

- 10.19 No representations have been received for the application so far, however the amended plans received on 18 September 2019 are currently out to public consultation which is due to close on 30 September 2019 and any comments received will be reported in the committee update.

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 and other materials considerations. It is considered that the development, as amended, 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 Development and Master Planning)

- 1. Development within 3 years**
- 2. In accordance with the approved plans**
- 3. Matching materials**

Background Papers:

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2004%2f95398>

<http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2005%2f91961>

Website Link: <http://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2018%2f93453>

Certificate of ownership: Certificate B signed and dated 22nd March 2019. Noticed served on 37 Springdale Avenue on 23rd March 2019. (notice received 25th March)

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Report of the Head of Development and Master Planning

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 03-Oct-2019

Subject: Planning Application 2019/92566 Change of use of parts of 3rd and 4th floors to laboratory (B1) and training facility with ancillary overnight accommodation (D1), with engineering operations including the formation of car parking (Listed Building within a Conservation Area) Titanic Mill, Low Westwood Lane, Linthwaite, Huddersfield, HD7 5UN

APPLICANT

David Oates, Universal
Learning Streams Ltd

DATE VALID

08-Aug-2019

TARGET DATE

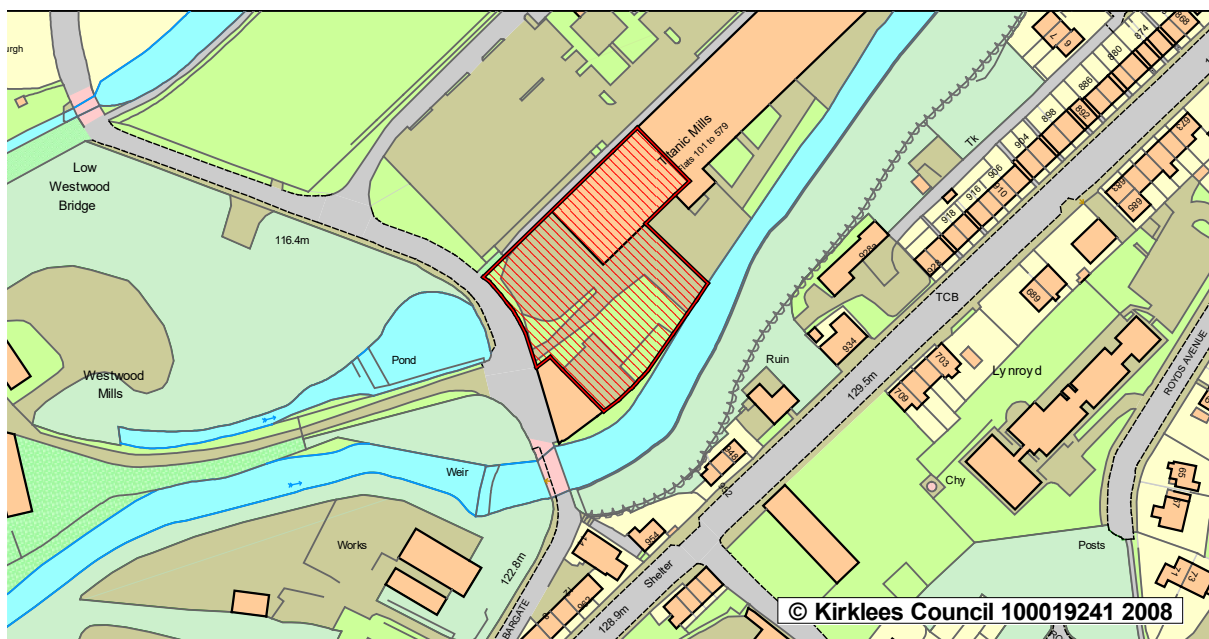
03-Oct-2019

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: Colne Valley Ward

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 and Master Planning in order to complete the list of conditions including those contained within this report.

1.0 INTRODUCTION

- 1.1 The application seeks the change of use of parts of the 3rd and 4th floors to a laboratory (B1) and training facility with ancillary overnight accommodation (D1), with engineering operations that include the formation of a car park.
- 1.2 The application is brought to committee as officers consider the volume of public representations received in opposition to the scheme to be significant, in line with the requirements of the Scheme of Delegation to Officers.

2.0 SITE AND SURROUNDINGS

- 2.1 The site forms part of the Titanic Mills complex, which hosts residential properties as well as a spa and associated sleeping accommodation. The mill was granted planning permission for conversion in 2001, with 125 residential apartments approved (amongst other uses, including a restaurant). Not all of these have been implemented however, including the restaurant, with parts of the mill remaining vacant.
- 2.2 The river Colne runs along the south and east boundary of the site, to the building's rear. Car parking for the residential and spa use is located to the front / north of the building. Access to the car park is taken from Low Westwood Lane. The immediate setting is semi-rural and open, with the Mill being located between Linthwaite and Wellhouse.
- 2.3 Titanic Mills is a Grade 2 Listed Building and also falls within the Linthwaite Conservation Area. The building has the following listing description;

Circa 1911. Massive woollen mill. Hammer dressed stone. Triple, hipped slate roof. 6 storeys. 26 bays by 6 bays of industry casements. Corner bays of paned round arched windows, break forward slightly and are surmounted by parapet. Other casements have shallow segmental head. On North West elevation, central 7 bays break forward slightly and are surmounted by ashlar parapet with dies. Near central square stair tower on south east side, which rises above eaves level and has triple round arched windows and is surmounted by bracketed cornice and parapet.

3.0 PROPOSAL

3.1 An area of circa 1800sqm evenly split between parts of the 3rd and 4th floor, is to be converted to B1 (Business) and D1 (Non-residential institutions) uses, with ancillary (to D1) sleeping accommodation.

3.2 The B1 use is to function as a Laboratory and would have a floor area of circa 150sqm on the 3rd floor. The applicant has provided the following statement on the B1 use;

The laboratory will be used for the “testing” of computers/laptops and telephones in connection with investigations by public agencies such as the Police, HSE and Trading Standards. Evidence will also be sent by Lawyers etc. in connection with investigations/cases. The testing will be related to data recovery. The applicants have confirmed that this will be the sole work carried out at this facility.

It was originally considered that some other minor materials testing could be carried out here (still B1 uses), however, this is not now considered necessary. No testing chemicals will be stored on site.

In effect the laboratory will receive computer equipment and telephones, technicians will connect these to their own equipment and work on them. It is probably a quieter use than most offices.

3.3 The D1 use would specifically be a Training Facility. It would be sited on the 3rd floor and have an area of circa 700sqm (including circulation space). The intended training includes;

1. The training of spa staff in treatments
2. Training in customer and public relations
3. Training of overseas police officers

Training would be limited to adults. Some of these will include day courses. Others, such as the oversea police officers, will take several days. To accommodate this, the fourth floor is to be dedicated to accommodation associated with the D1 use. 30no. singles bed-spaces are to be formed, with central communal area.

3.4 The proposed hours of use for the B1 and D1 uses are 9 – 6, Monday to Sunday. The D1 ancillary accommodation would operate outside of these hours.

3.5 Access to the B1 and D1 uses would be through a dedicated entrance on the south-west facing elevation, leading to a reception area. An existing staircase / lift is to be used solely by the proposed B1 and D1 uses. Doors connecting the proposed uses to residential communal circulation areas are to be fire doors and would not be used otherwise.

- 3.6 No external works are proposed to the building. However, engineering operations are proposed to form an additional 34 car parking spaces to the south of the host building. An unused existing access onto Low Westwood Lane is to be used. The existing gate would be removed and a new remote operated electric gate installed, set back circa 8.5m from the road. The car parking area will be associated with the proposed B1 and D1 uses only.
- 3.7 Please note that the proposal includes ground floor plans showing a restaurant that is not currently in place. This use is not part of this application, but has been previously approved and remains an extant permission. The plan has been submitted to show the access arrangement to the upper floors.

4.0 RELEVANT PLANNING HISTORY (including enforcement history)

4.1 Application Site (including wider Titanic Mills and Titanic Spa complexes)

2001/92048: Conversion of mill (1911 building) to 125 residential apartments (floors 1-5) mixed uses at ground floor level including public restaurant (class a3) hotel type bedroom suites (class c) offices (class b1) caretakers flat and health and fitness club (class d2) with related access car parking, landscaping and demolition of ancillary buildings (listed building) – s106 full permission (allied LBC ref. 2001/92049)

2003/92686: Formation of 5 no. additional apartments (1911 building) (listed building) (modification of approval 2001/62/92048/w1) – conditional full permission (allied LBC ref. 2003/92687)

2004/92856: Change of use of part of first floor to form 16 no. hotel rooms (listed building) – conditional full permission (allied LBC ref. 2004/92857)

2004/95450: Formation of bore hole water tank enclosure with screening (within a conservation area) – conditional full permission

2007/92120: Formation of 21 apartments on floors 1 and 5 (listed building within a conservation area) – conditional full permission (allied LBC ref. 2007/92121)

2008/91221: Change of use and alterations to convert 22 no apartments into 32 hotel suites (listed building within a conservation area) – conditional full permission (allied LBC ref. 2008/91222)

Note: This application related to the areas of the 3rd and 4th floor which are subject to this application. It also included the formation of additional parking, within part of the proposed parking area.

2011/90693: Extension of time limit for implementing existing permission number 2008/91222 for listed building consent for alterations to convert 22 no. apartments into 32 hotel suites (within a conservation area) – consent granted

2011/91051: Creation of spa garden (within a conservation area) – conditional full permission (allied LBC ref. 2011/91052)

2011/92158: Erection of temporary building (listed building within a conservation area) – conditional full permission (allied LBC ref. 2011/92159)

2012/90257: Variation of condition one on previous permission 2011/62/92158/w for erection of temporary building (listed building within a conservation area) – VOC approved (allied LBC ref. 2012/90258)

2013/93252: Certificate of lawful use for existing change of use and alterations to convert 22 no. apartments into 32 hotel suites (listed building within a conservation area) – certificate of lawfulness granted

2019/92567: Listed building consent for works to change the of use of parts of 3rd and 4th floors to laboratory (b1) and training facility with ancillary overnight accommodation (d1) with engineering operations including formation of car parking (listed building within a conservation area) – ongoing (current application's allied LBC)

4.2 Surrounding Area

Westwood Mill

2005/90819: Listed Building Consent for part demolition, conversion or redundant mill buildings and new build to form 108 apartments with ancillary facilities (within a Conservation Area) – Consent Granted

2005/90818: Partial demolition, conversion or redundant mill building and new built to form 108 apartments with ancillary facilities (listed building within a Conservation Area) – Conditional Full Permission

2010/92708: Extension to time limit to previous permission 2005/90818 for conversion of mill building and new build to form 108 apartments with ancillary facilities and partial demolition (Listed Building within a Conservation Area) – Invalid

2018/20130: Pre-application for part demolition and part conversion to form 64 apartments and 66 dwellings at Westwood Mill, Lowestwood Lane, Linthwaite – Presented to the Strategic Planning Committee as a Position Statement on the 5th of July, 2018.

4.3 Enforcement

COMP/09/0278: Erection of gazebo – NFA: application approved

COMP/12/0160: Alleged breach of planning conditions – NFA: no evidence of breach

Note: The above enforcement complaint principally related to parking restrictions imposed by the site owner upon residents, which in turn led to parking on Low Westwood Lane. This formed a private matter between the parties involved and, as ample parking was still available on site, no conditions were breached. Concerns were also raised over spa guests staying in residential units, however it was identified that there was no breach in planning control as guests were effectively using the apartments as a short term residency.

5.0 HISTORY OF NEGOTIATIONS (including revisions to the scheme)

- 5.1 Officers sought clarification on the proposed B1 use, to ensure they were satisfied that the operation of the site would not cause detriment to the amenity of nearby residents. This was provided within a statement, along with other discussions taking place providing further details on the proposed use. Based on these details, officers were satisfied that the use would fall into the B1 use class.

6.0 PLANNING POLICY

Kirklees Local Plan (2019)

- 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 statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019).

- 6.2 The site is Unallocated on the Local Plan Policies Map and falls within the Linthwaite Conservation Area.

- **LP1** – Presumption in favour of sustainable development
- **LP2** – Place shaping
- **LP3** – Location of new development
- **LP7** – Efficient and effective use of land and buildings
- **LP21** – Highway safety and access
- **LP24** – Design
- **LP27** – Flood risk
- **LP28** – Drainage
- **LP30** – Ecology and geodiversity
- **LP35** – Historic environment
- **LP51** – Protection and improvement of local air quality
- **LP52** – Protection and improvement of local environmental quality
- **LP53** – Contaminated and unstable land

National Planning Guidance

- 6.4 National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF), published 19th February 2019, and the Planning Practice Guidance Suite (PPGS), first 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.

- **Chapter 2** – Achieving sustainable development
- **Chapter 4** – Decision-making
- **Chapter 6** – Building a strong, competitive economy
- **Chapter 8** – Promoting healthy and safe communities
- **Chapter 9** – Promoting sustainable transport
- **Chapter 11** – Making effective use of land
- **Chapter 12** – Achieving well-designed places

- **Chapter 14** – Meeting the challenge of climate change, flooding and coastal change
- **Chapter 15** – Conserving and enhancing the natural environment
- **Chapter 16** – Conserving and enhancing the historic environment

Supplementary Planning Guidance / Documents

- Kirklees Local Plan Supplementary Planning Document Consultation Draft – Highways Design Guide

7.0 PUBLIC/LOCAL RESPONSE

7.1 The application has been advertised via site notice, press notice and through neighbour letters to addresses within Titanic Mills and bordering the site. This is in line with the Councils adopted Statement of Community Involvement. The end date for publicity was the 14th of September, 2019.

7.2 46 representations have been received in response to the proposal. The following is a summary of the comments made;

- The building is residential. A laboratory use is not compatible with residential units. The building was originally designed as 'green, eco-friendly'. 'This is not what leaseholders invested in' and will impact on the value of the residential units. Council taxing banding should be changed in approved.
- B1 uses are defined as being appropriate within 'residential areas' within the use class order. A distinction is made to the proposal being within a residential building.
- Question over where chemicals, flammable or otherwise, and gas cylinders are to be stored.
- Prior to 2011 Titanic Mill's existing car park included a shared area for second cars, visitors and tradesmen. This was removed, with vehicles parking in the previous shared area being fined and caused these vehicles to be parked on Low Westwood Lane. This has led Low Westwood Lane to become unsafe and visually unattractive.
- Circa 40 apartments are used by the Spa for guests, with more day guests and visitors to the bistro. It is claimed that the parking has been taken to accommodate this commercial use, to the detriment of residents.
- The existing car parking plan is marked up incorrectly.
- The 'existing access drive' is infrequently used, only a handful of times a week. Vehicles parked on the street would limit its sightlines and make it unsafe.
- The proposal does not include access to the leaseholder garden, which is being reduced in size and which has already had its access from the building restricted. Residents have legal access rights to the garden and the unimplemented over-spill car park. The way the car park is run has been taken to court. A deed of variation will be required between property owners and the landlord.
- Concerns over security – plans appear to show students / staff of the proposed uses accessing the application areas through the residential lifts. The plans show doors leading directly from the proposed uses into residential circulation spaces, which could be used by staff / students to cut through the building to the spa bistro / facilities. Concerns that hazardous waste will be kept on public hallways.

- Lifts 2 and 3 would be used by the proposed development, reducing the amenity of residents. The coming and going of visitors will impact on the living standards of local residents.
- The building has had historic problems with heating and water. The proposal would increase demand on these utilities and is a cause for concern.
- The building has issues with ventilation and extraction, with no currently working system. The proposed development would exacerbate this concern and potentially delay it being corrected. No details on ventilation have been provided. This causes issues of damp and air circulation. Users of the new facilities will not pay service charge, but use the building, increasing the pressure on residents.
- The proposed development is to increase profit and income for the owners without thought to the 'niceties contained in the original planning permission.' The building has already become too commercialised, harming the amenity of residents and local highway safety.
- The main car park typically has numerous empty spaces. Why is this not being utilised and a new car park being created over the garden-space for residents?
- Query over the cumulative impact on the local Highway of the existing Mill use, proposed uses and future development of the adjacent mill.
- The staircase to be used by the development is the largest and only way to get furniture to upper levels. Without access to it, residents will require an alternative.
- Insufficient detail has been provided on the laboratory use, including what equipment would be within and therefore safety cannot be assessed. Fears that it could pose a hazard to health (fume cupboards, x-ray equipment, weapons, toxic substances, chemicals). Also, it is anticipated to increase fire risk. What's to stop the laboratory introducing these in the future, if not currently proposed?
- The proposal would move the building towards commercial/industrial usage. There are other buildings/sites in the area that would be more appropriate, such as Globe Mill.
- The proposal would remove residential units, which contribute to the council's housing supply. These units are ideal for elderly, who are in most need.
- A forensic lab would attract crime to the area and upon local residents.
- Spa guests already caused disruption, such as on balconies on an evening. This would be exacerbated by the proposed student visitors. Students will have poor behaviour and would cause noise, litter and general inconvenience for residents. There will be no effective management of these people to control their noise. More non-residences will harm the privacy of occupiers.
- The proposed uses, operating through the day, would disproportionately impact upon those who work from home, are retired or who work night shifts.
- Disruption and noise caused during construction will harm the amenity of residents.
- The building has an 11pm curfew which may not be abided to by students.
- The coming and going of students and workers will add to the already disruptive environment and is unlikely to be consistent with the 'peaceful resident, communal living'.
- The development would harm the original character of the mill.
- The car parking will harm the setting of the listed building and the nearby setting of the Grade 2* Lower Westwood Mill. Residents sought to live in a rural listed building, and the introduction of a car park would harm their living standards.
- The car park would be within a flood zone.

- Past permissions have not complied with their conditions; therefore no new permissions should be granted as it would be supporting the developer breaching conditions.
- While noting the comments from the applicant regarding the use of the laboratory, given previous concerns about the development and the Council's inability to enforce these, 'we are not confident what will happen if this proposal is passed. It is our belief that once approved practices will drift'.
- Questions over whether the site's existing servicing and loading / uploading could accommodate the additional usage.
- Query whether any risk assessment has been undertaken as part of the laboratory proposal.
- Query over the length of the public representation period, which is considered short. Further, questions whether all the owners know. Only circa 20 owners live in the building, with other units being rented.
- Object to the development not arranging a pre-application meeting or advertisement of the proposal.

Ward member involvement

- 7.3 Following the level of public objecting becoming apparent local ward members were notified of the proposal. The site falls within Colne Valley Ward, with the members being Cllr Nell Griffiths, Cllr Rob Walker and Cllr Lesley Warner.
- 7.4 Cllr Rob Walker responded, raising concerns over the parking and highways impact of the proposal as well as highlighting planning conditions that have been breached on the site in the past. Cllr Walker indicated a desire for a committee determination, with officers confirming this would take place due to the level of public objection.
- 7.5 The office of Thelma Walker MP have expressed interest in the proposal, querying several aspects of the proposal and highlighting the concerns from local residents. Officers provided an overview of their assessment in response.

8.0 CONSULTATION RESPONSES

8.1 Statutory

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

The Environment Agency: No objection: the site falls within the Flood Risk Standing Advice category.

8.2 Non-statutory

K.C. Conservation and Design: No objection.

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

K.C. Lead Local Flood Authority: No objection.

9.0 MAIN ISSUES

- Principle of development
- Urban Design, including heritage considerations
- Residential Amenity
- Highway issues
- Other Matters
- Representations

10.0 APPRAISAL

Principle of development

Sustainable Development

- 10.1 NPPF Paragraph 11 and LP1 outline a presumption in favour of sustainable development. Paragraph 8 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. The dimensions of sustainable development will be considered throughout the proposal.
- 10.2 Paragraph 11 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 (Unallocated)

- 10.3 The site is without notation on the KLP 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 to Commercial development

- 10.4 The floor area proposed to change use is currently vacant. It has an extant permission to be converted into 12 flats, but this has not been implemented in over a decade. The site is not allocated as housing, therefore the Local Plan has no specific policies against the conversion / loss of residential units. While there is a general principle to support housing growth there is no policy against residential conversions. Given the limited number of units in question and limited prospect of them being brought forward, on the planning balance officers have no objection to the loss of the site's potential residential use.

- 10.5 Neither of the proposed uses are classified as main town centre uses. The site is unallocated land and therefore does not have any specific policies relating to business use. In general, policies contained within the Local Plan and NPPF seek to support the needs and growth of businesses, with key objectives of building upon the commercial strengths of Huddersfield. Other policies support the re-use of existing and vacant buildings; as addressed above, while a residential use has been approved, it has not been implemented and therefore the site is deemed vacant floor-space.
- 10.6 Given the above considerations, the principle of the proposed development is considered to be acceptable. Consideration must be given to the local impact, outlined below.

Urban Design, including heritage considerations

- 10.7 LP24 of the Local Plan outlines general design guidance. The Policy seeks to promote good design, by ensuring the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape. This conforms to the general guidance of Chapter 12 of the NPPF.
- 10.8 The site is located within the Linthwaite Conservation Area and the host building is Grade 2 Listed. Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 introduce a duty in respect of Listed Buildings and Conservation Areas. Special attention shall be paid to the desirability of preserving or enhancing the character or appearance of designated heritage assets. Additionally, Policy LP35 and NPPF Chapter 16 outline the principle of development and restrictions for development in Conservation Areas.
- 10.9 Paragraph 190 of the NPPF requires LPAs to identify the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset). The heritage value of Titanic Mills is deemed to be its architectural form and setting as an early 20th century mill. The Linthwaite Conservation Area's Appraisal concludes the heritage value of the area to be its high architectural quality, settlement pattern, and rural tranquillity.
- 10.10 No external physical alterations are proposed to Titanic Mills as part of this application. Internal physical works to the Listed Building would fall under consideration within the associated Listed Building Consent (ref. 2019/92567).
- 10.11 The proposal does however include external engineering operations to form additional car parking. This is to be located around the south of the building. The site already has extensive car park to the north and west of the building. Currently, the area the proposed car parking is to be located is a mixture of unused surfaced areas and soft landscaping.
- 10.12 Surfaced areas around historic mills, operating ancillary to the purpose of the mill, are not atypical. Furthermore, the proposed works are low profile and will not interfere with sightlines towards the Mill and views of the open environment around it, this includes the relationship with Westwood Mills to the north west of the site. Therefore, Planning Officers and Conservation and Design Colleagues, are satisfied that the proposed surfacing and car parking would not impact upon the setting of either the host listed building or the wider Linthwaite Conservation Area.

- 10.13 In conclusion, the proposed development would not harm visual amenity or the historic environment, in accordance with the aims and objectives of LP24 or LP35 of the Kirklees Local Plan or Chapters 12 and 16 of the National Planning Policy Framework.

Residential Amenity

- 10.14 No physical works are proposed to the building to cause harmful overbearing or overshadowing. The development is to make use of existing windows, none of which would cause materially harmful overlooking of neighbouring dwellings or private lane.
- 10.15 Consideration must be given to other harmful impacts to residential amenity, specifically in this case through pollution, negative environmental factors and disruption. Residential uses would be sited alongside to the proposed B1 and D1 uses on the 3rd floor, being adjacent to and below. The ancillary accommodation would be sited on the 4th floor and, as residential accommodation, is considered compatible with residential uses. The accommodation being ancillary to the D1 use can be secured via condition. It is noted that the 4th floor (and 3rd floor) has an extant permission for conversion to hotel suites which the ancillary accommodation would mimic in terms of use and impact.
- 10.16 First considering the B1 use, by their definition within The Town and Country Planning (Use Classes) Order 1987 (as modified) they are limited to uses which *'can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit'*. The reference of 'residential area' in the B1 description is established to be notional and is therefore irrespective of the actual location of the site in question; the test is not based on local conditions, but a general test of whether the use would impede on amenity by reason of the given criteria.
- 10.17 Officers sought confirmation that the proposed B1 use could be reasonably expected to operate within these limitations. This led to the statement which is provided in full in paragraph 3.2. In brief, the laboratory would be used principally for computer forensics and related operations, which includes carrying out data recovery in connection with investigations by public agencies such as the Police, HSE and Trading Standards. Officers are satisfied that such operations would be low impact, not materially different to the operation of an office. This, plus the relatively small floor area of the laboratory of 110sqm (excluding ancillary rooms), are considered to limit the potential for harmful pollution as per the closed list of B1 Uses, with specific consideration given to noise.
- 10.18 Representations have raised concerns of the keeping of chemicals associated with the B1 use, although the applicant has stated this will not be the case, given the intended operation (as per paragraph 3.2). Nonetheless, as confirmed by K.C. Environmental Health, the keeping of chemicals would be governed by separate legislation outside the scope of Planning (including the Health and Safety at Work Act 1974 and Control of Substances Hazardous to Health Regulations 2002) and would not form a material consideration. Given this, and the imprecision on the definition of 'chemical', a condition relating to

the control and/or management of chemicals would not be reasonable, relevant to planning or enforceable. Thus it would fail the NPPF's six tests for conditions.

- 10.19 Turning to the D1 use, to operate specifically as a training facility, would host dedicated computer rooms, a lecture hall and break out rooms. Other rooms would be dedicated to providing facilities for spa training. The operations to take place are not anticipated to be a significant noise generators. As noted previously, the associated bed space accommodation is considered compatible with adjacent residential units and would operate similar to the previously approved hotel suites (via app 2011/90693). Given its use hours of use conditions are would not be reasonable, however its operation is to be tied to the proposed D1 use via condition. Representations have raised concerns over 'noisy students', however it is noted that the training facilities are to be targeted at adults and professionals. Therefore, for planning purposes, any undue noise created beyond that typically associated with residential accommodation would be a matter for K.C. Environmental Health (or police, in extreme circumstances).
- 10.20 Representations have expressed objection to the movements and general impact of introducing commercial uses into a 'residential building'. In response, the applicant has confirmed that the proposed uses would have their own private car park, entrance and circulation spaces. Doors shown connecting the residential hallways to the proposed uses would be fire-doors that would not be used elsewhere. Therefore interactions between residents and commercial operations would be limited. Officers would also highlight that Titanic Mills has, since its residential conversion, included commercial elements. The original permission included residential alongside hotel suites, offices, a restaurant, and fitness club albeit all sited on the ground floor. Subsequent applications approved the floor space under consideration to be hotel suites. While the proposed commercial intensification is acknowledged, given the circumstances of the application outlined above, the low intensity of use and the mitigation measures proposed, on balance officers consider the proposed B1 and D1 uses compatible with adjacent neighbouring residential units.
- 10.21 Notwithstanding the above, while officers are satisfied that the proposed uses would not cause harm to the amenity of neighbouring residents through their operation, this is subject to an appropriate noise mitigation strategy being undertaken and implemented, securable via condition, alongside suitable hours of use (excluding the bed space accommodation).
- 10.22 In regards to the noise mitigation strategy, this will require the applicant to describe the likely noise that will arise from their proposed activities and determine the impact that this noise will have on neighbouring noise sensitive premises taking into consideration the existing sound insulation of the separating walls & floors. This is to ensure that, any noise be caused by the proposed uses can be appropriately mitigated.

- 10.23 Considering hours of use, the applicant seeks 0900 – 1800, Monday to Sunday. The hours of 0900 – 1800 Monday to Friday do not raise concerns. Weekend operations are necessary for the laboratory, given the nature of its work identifying evidence. The D1 use is partly intended to be tailored at overseas police officers, or other longer training events, and therefore preventing weekend use would limit the operational flexibility of the use. Given this need, it is proposed to allow the weekend hours on a temporary, one year, basis. The hours of use are not at unsocial times, and with the proposed noise mitigation officers do not anticipate the weekend operation to cause undue harm. However, as atypical working days, officers seek to retain an element of control to assess the practical impact following a period of operation.
- 10.24 The above assessment is based on the specific proposed uses; a B1 Laboratory and D1 Training Facility. However, should the development be implemented, thereafter the site could change to other uses which also fall within the approved use classes, without subsequent planning permission. This is not considered a concern for the B1 use, which would retain its requirement to not cause a detriment to amenity alongside the proposed hours of use and noise mitigation measures. It is however proposed to condition the B1 floor-space to that shown on the plans, as without such a condition an approval would allow fluidity between the uses with a potentially different impact on adjacent residents compared to that assessed. Regarding alternative D1 uses, these include nurseries, places of worship and health clinics. While the same use class, these have the potential to operate materially differently to the proposed Training Facility and could cause harm to residential amenity and/or highway safety. Therefore, if minded to approve, a condition is to be imposed limiting the D1 use to the specified Training Facility.
- 10.25 No details on external lighting within the car park have been provided. To ensure the suitable assessment and control of light pollution, to prevent harm to nearby residents, a condition requiring a lighting scheme be approved prior to installation is to be included.
- 10.26 In summary, for the reasons given and subject to the conditions detailed above, on balance the proposal is not considered unduly detrimental to the amenity of neighbouring residents. The application is deemed to comply with policies LP24 and LP52 of the KLP and Chapters 12 and 15 of the NPPF.

Highway issues

- 10.27 The proposal seeks to utilise existing floor space within the mill building. The proposed uses are not anticipated to generate highway movements materially different to the previously approved uses of the floor space, therefore not raising concern. The application includes the formation of 34 off-street car parking places, which is considered adequate for the uses sought. The parking layout is considered logical and practical, with the layout as proposed with appropriate surfacing to be secured via condition.
- 10.28 The new car park is to use an existing unused access from Low Westwood Lane. This is adjacent to an outbuilding, which abuts the highway and limits the available sightlines. The plans show a footway that is not in place at this time; the footway is required to achieve the necessary sightlines and would also provide pedestrian safety enhancements towards Linthwaite centre.

Therefore the provision of the footway is to be secured via condition. Regarding the proposed replacement gate, it is indicated to be set back 8.5m from the carriageway. This is welcomed, as it allows larger vehicles to idle off the Highway while awaiting the gates opening. A condition is to be imposed to ensure the gate is installed in accordance with this arrangement.

- 10.29 Subject to the stipulated conditions officers consider that the proposed development would not harm the safe and efficient operation of the Highway, in accordance with the aims and objectives of LP21 of the KLP.

Other Matters

Air Quality

- 10.30 In accordance with government guidance on air quality mitigation, outlined within the NPPG and Chapter 15 of the NPPF, and local policy contained within LP24 and LP51 and the West Yorkshire Low Emission Strategy Planning Guidance seeks to mitigate Air Quality harm. Given the scale and nature of the development officers seek the provision of electric vehicle charging points, in 10% of parking spaces to be created. The purpose of this is to promote modes of transport with low impact on air quality, in line with the aforementioned policies.

Contamination

- 10.31 Given the site's historic use, the site has been identified as being potentially contaminated. However the proposed uses relate to the 3rd and 4th floors of a converted building, therefore any risk of contamination has been previously addressed. Groundworks will be required for the development of the proposed car park, but the end use of a car park is not considered to be particularly sensitive to land contamination. Nonetheless, in the interest of safety, a condition is to be imposed relating to unexpected contamination, to comply with the aims and objectives of LP53.

Climate change

- 10.32 Chapter 12 of the Local Plan relates to climate change and states that: *'Effective spatial planning is an important part of a successful response to climate changes as it can influence the delivery of appropriately sited green infrastructure and the emission of greenhouse gases. Planning can also help increase resilience to climate change impact through the location, mix and design of development'*. This is also reflected in the NPPF as a core land use planning principle. The NPPF emphasis that responding to climate change is central to the economic, social and environmental dimensions of sustainable development.
- 10.33 The proposal seeks to re-use part of an existing building, in an area of floor space currently vacant. Furthermore the proposal is to provide environmental mitigation in terms of electric vehicle charging points and through seeking an Ecological Design Strategy. Socially and economically it would provide job growth and support the needs for business. The proposal is deemed to comply with the objectives of sustainable development and responds accordingly to climate change needs.

Flood Risk and Drainage

- 10.34 A flood based sequential test is not required for the development, as it relates to 'minor development' for flood risk purposes. However a site specific flood risk assessment is required.
- 10.35 The site falls within Flood Zone 2. In regards to flood risk, the proposed uses (B1 and D1) would be classified as 'less vulnerable', although the ancillary sleeping accommodation would be 'more vulnerable'. Notwithstanding this, the application relates to a 2nd and 3rd floor, which are well above the flood zone. In their consultation response, the Environment Agency raises no objection, but indicates that the site should be subject to their 'Standing Advice for Vulnerable Development'. This relates to surface water management, access and evacuation and floor levels. Given the specifics of this proposal, with the B1 and D1 uses being above the estimated flood level, officers are satisfied that there is no flood risk for the development. However, informative relating to flood risk may be placed on the decision notice, if minded to approve.
- 10.36 Notwithstanding this, the proposal seeks to increase surfacing within the flood zone through the car parking. It is intended to discharge surface water to a nearby watercourse, with the Colne River being adjacent. The Lead Local Flood Authority do not object to the proposal, however have requested formal details of drainage arrangement via condition.
- 10.37 In summary, subject to the given condition, officers are satisfied that the proposal would comply with the aims and objectives of LP27 and LP28 of the LP and Chapter 14 of the NPPF.

Ecology

- 10.38 The site falls within Bat alert layer, Twite buffer zone and the adjacent River Colne is a defined Habitat Network. Development of the site therefore has the potential to impact upon local species.
- 10.39 The internal works are not deemed detrimental to impact upon local ecology. However, the external engineering works have the potential to if not implemented accordingly. This includes through inappropriate lighting. Furthermore, Planning Policy requires development to result in a net benefit to local ecology.
- 10.40 K.C. Ecology do not object to the proposal, however to ensure appropriate management of the site and lasting enhancements are undertaken they have requested a condition requiring an Ecological Design Strategy be submitted as well as an external lighting strategy. Planning officers consider this reasonable, in accordance with the aims and objectives of LP30 of the LP and Chapter 15 of the NPPF.

Representations

- The building is residential. A laboratory use is not compatible with residential units. The building was originally designed as 'green, eco-friendly'. 'This is not what leaseholders invested in' and will impact on the value of the residential units. Council taxing banding should be changed in approved.

- B1 uses are defined as being appropriate within 'residential areas' within the use class order. A distinction is made to the proposal being within a residential building.
- Question over where chemicals, flammable or otherwise, and gas cylinders are to be stored.

Response: An assessment of the proposed development alongside residential uses has been undertaken within paragraphs 10.14 – 10.26. In brief, subject to suitable conditions relating to noise mitigation and hours of use, officers consider the proposed development suitable alongside residential uses.

A response in regards to the keeping of chemicals has been provided within paragraph 10.18. Impacts on property values is not a material planning consideration.

- Prior to 2011 Titanic Mill's existing car park included a shared area for second cars, visitors and tradesmen. This was removed, with vehicles parking in the previous shared area being fined and caused these vehicles to be parked on Low Westwood Lane. This has led Low Westwood Lane to become unsafe and visually unattractive.
- Circa 40 apartments are used by the Spa for guests, with more day guests and visitors to the bistro. It is claimed that the parking has been taken to accommodate this commercial use, to the detriment of residents.
- The existing car parking plan is marked up incorrectly.
- The 'existing access drive' is infrequently used, only a handful of times a week. Vehicles parked on the street would limit its sightlines and make it unsafe.
- The main car park typically has numerous empty spaces. Why is this not being utilised and a new car park being created over the garden-space for residents?
- Query over the cumulative impact on the local Highway of the existing Mill use, proposed uses and future development of the adjacent mill.
- Questions over whether the site's existing servicing and loading / unloading could accommodate the additional usage.

Response: Arrangements between the site manager and residents, in this case regarding car parking, are a private matter beyond the scope of this application. The proposed car parking area is similar to the overspill car parking approved as part of the original permission, but never implemented. The 'landscaped' area is to be retained.

Any impact of the proposed development's highway's impact is undertaken in paragraphs 10.27 – 10.29. It was concluded that, subject to suitable conditions, the highways arrangement is appropriate. This included providing a footpath along the frontage, to ensure the 'existing access drive' is suitable for use. The nature of the proposed developments would not necessitate large or regular deliveries and/or servicing.

- The proposal does not include access to the leaseholder garden, which is being reduced in size and which has already had its access from the building restricted. Residents have legal access rights to the garden and the unimplemented over-spill car park. The way the car park is run has been taken to court. A deed of variation will be required between property owners and the landlord.

Response: On review of the plans approved via application 2001/92048 the garden area shown corresponds to the 'landscaped' area being retained on the submitted plans. Access to and from this area forms a private legal matter between residents and the site manager.

- Concerns over security – plans appear to show students / staff of the proposed uses accessing the application areas through the residential lifts. The plans show doors leading directly from the proposed uses into residential circulation spaces, which could be used by staff / students to cut through the building to the spa bistro / facilities. Concerns that hazardous waste will be kept on public hallways.
- Lifts 2 and 3 would be used by the proposed development, reducing the amenity of residents. The coming and going of visitors will impact on the living standards of local residents.

Response: The proposed development are to have their own access and internal circulation space, via 'lift 4' and the corresponding stairwell. The doors connecting the proposed B1/D1 uses to the residential areas are to be fire-doors, without day to day use, with limited interaction between the two areas.

- The building has had historic problems with heating and water. The proposal would increase demand on these utilities and is a cause for concern.
- The building has issues with ventilation and extraction, with no currently working system. The proposed development would exacerbate this concern and potentially delay it being corrected. No details on ventilation have been provided. This causes issues of damp and air circulation. Users of the new facilities will not pay service charge, but use the building, increasing the pressure on residents.

Response: Issues regarding water and heating utilities would not form a material planning consideration.

Turning to ventilation/extraction, in the interests of preserving the significance of the listed building, it is considered reasonable and necessary to condition details of the system to serve this section of the building. As a consequence of this it would be necessary to consider whether the scheme retained a good standard of amenity for existing residents, in terms of noise mitigation. This is in accordance with Policies LP35 and LP52 of the Local Plan

- The staircase to be used by the development is the largest and only way to get furniture to upper levels. Without access to it, residents will require an alternative.

Response: This is noted, however does not form a material planning consideration. The applicant states that residents, at this time, have no access to the southern staircase. It is however, a private matter between residents and the applicant.

- Insufficient detail has been provided on the laboratory use, including what equipment would be within and therefore safety cannot be assessed. Fears that it could pose a hazard to health (fume cupboards, x-ray equipment, weapons, toxic substances, chemicals). Also, it is anticipated to increase fire risk. What's to stop the laboratory introducing these in the future, if not currently proposed?

- The proposal would move the building towards commercial/industrial usage. There are other buildings/sites in the area that would be more appropriate, such as Globe Mill.

Response: The applicant has provided clarification on the proposed use, detailed within paragraph 3.4. The application has been assessed on the basis of the details provided. Concerns regarding chemicals, health and safety are addressed within paragraph 10.18. As the principle of the proposed uses are not subject to a sequential test, the LPA is unable to consider alternative sites.

- The proposal would remove residential units, which contribute to the council's housing supply. These units are ideal for elderly, who are in most need.

Response: These comments are noted, however the units in question have not been implemented in over ten years and with the Local Plan having no policies against the change of use of residential units to other uses. Therefore officers have no objection to the proposed non-residential use.

- A forensic lab would attract crime to the area and upon local residents.

Response: Officers do not consider the scale or nature of the proposal to have a likely probability to materially increase crime risks within the area. Furthermore, the car park is to be secured by a gate, with secure access to the building to be retained.

- Spa guests already caused disruption, such as on balconies on an evening. This would be exacerbated by the proposed student visitors. Students will have poor behaviour and would cause noise, litter and general inconvenience for residents. There will be no effective management of these people to control their noise. More non-residences will harm the privacy of occupiers.
- The proposed uses, operating through the day, would disproportionately impact upon those who work from home, are retired or who work night shifts.
- Disruption and noise caused during construction will harm the amenity of residents.
- The building has an 11pm curfew which may not be abided to by students.
- The coming and going of students and workers will add to the already disruptive environment and is unlikely to be consistent with the 'peaceful resident, communal living'.

Response: The proposed layout indicated the B1 and D1 uses being separate and self-contained from the residential areas, only being connected by fire-doors. A separate access and stair-well is to be provided and therefore there is no need for access to residential areas.

For the reasons detailed within paragraphs 10.14 – 10.26 officers consider that, subject to conditions, the proposal would not cause undue harm to the amenity of neighbouring residents. It would go beyond the remit of planning and powers of planning conditions to impose a curfew and/or limit access, with these being matters for the site management company. Regarding student noise and their accommodation, any undue noise created beyond that typically associated with residential accommodation would be a matter for the Environmental Health department (or police, in extreme circumstances).

- The development would harm the original character of the mill.
- The car parking will harm the setting of the listed building and the nearby setting of the Grade 2* Lower Westwood Mill. Residents sought to live in a rural listed building, and the introduction of a car park would harm their living standards.

Response: Planning officers, alongside Conservation and Design colleagues, do not consider the proposed development detrimental to the heritage value of either the host building as a Grade 2 Listed Building or the wider Conservation Area. The Grade 2* Lower Westwood Mill is a notable distance separate and would likewise not be impacted upon by the surfacing of land or the ensuing parking of vehicles on that land

In terms of outlook upon a car park, within planning there is no right to a view. As the flats are first floor upwards, officers do not consider the car parking arrangement to be harmful to the amenity of occupiers.

- The car park would be within a flood zone.

Response: Flood risk and drainage has been considered within paragraphs 10.34 – 10.37. In summary, the car park being within a flood zone raises no concerns.

- Past permissions have not complied with their conditions; therefore no new permissions should be granted as it would be supporting the developer breaching conditions.
- While noting the comments from the applicant regarding the use of the laboratory, given previous concerns about the development and the Council's inability to enforce these, 'we are not confident what will happen if this proposal is passed. It is our belief that once approved practices will drift'.

Response: This does not form a material planning consideration and cannot be used to prejudice future development proposals.

- The proposed development is to increase profit and income for the owners, without thought to the 'niceties contained in the original planning permission.' The building has already become too commercialised, harming the amenity of residents and local highway safety.

Response: This is not a material planning consideration.

- Query whether any risk assessment has been undertaken as part of the laboratory proposal.

Response: Within the planning system a risk assessment would not be required for the proposed development. This would not prevent the need under any separate legislation that may exist.

- Query over the length of the public representation period, which is considered short. Further, questions whether all the owners know. Only circa 20 owners live in the building, with other units being rented.
- Object to the development not arranging a pre-application meeting or advertisement of the proposal.

Response: The application was subject to public representation via site notices, neighbour letters and press notice. These representation periods, which started at separate times, ran from when the neighbour letters were posted, on the 14th of August, until the 14th of September when the site notice expired. There is no requirement for the applicant to arrange any pre-application/publicity for the development

All neighbour notification letters are addressed to the 'owner/occupiers'. It is beyond the remit of planning to identify or address notification letters to specific 'owners' of land or buildings.

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 area of the building in question is currently vacant. While it has extant permission for residential units, these have not been implemented within a significant period with limited prospect of coming forward. The proposed uses, neither of which are main town centre uses, would support the economy and bring unused floor space into use. Therefore the principle of development is found to be acceptable.
- 11.3 Regarding the local impact, officers are satisfied that there would be no harm to the historic environment. The proposed highway arrangements are found to be acceptable, along with other impacts including ecology, flood risk and climate change, subject to conditions. Regarding residential amenity, the proposed hours of use, alongside noise mitigation measures to be secured by condition are, on balance, considered to be acceptable.
- 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. Time limit
2. In accordance with plans
3. Noise mitigation strategy
4. Electric vehicle charging points
5. Ecological design strategy
6. Details of ventilation/extraction scheme to serve the proposed uses in this section of the building
7. Car parking surfaced and provided in accordance with details to be submitted for approval
8. Limit D1 use to training facility
9. Restrict bed space accommodation on the 4th floor to being tied to, and ancillary to, the D1 training use.
10. Gate set back minimum of 6m
11. Footway to be provided
12. Submission of details prior to the installation of external lighting
13. Weekday hours of use
14. Temporary weekend hours of use
15. Limit B1 floor-space to that shown

Note: Flood Risk details

Note: Informative on works within the Highway

Background Papers

Application files

Accessible at;

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019/92566>

Allied Listed Building Consent accessible at;

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019/92567>

Certificate of Ownership

Certificate A signed.

Report of the Head of Development and Master Planning

HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 03-Oct-2019

Subject: Planning Application 2019/91365 Erection of extensions and alterations to existing dwelling Greenroyd Farm, 4, Chapel Street, Scapegoat Hill, Huddersfield, HD7 4NX

APPLICANT

C Quartermaine

DATE VALID

23-Apr-2019

TARGET DATE

18-Jun-2019

EXTENSION EXPIRY DATE

06-Sep-2019

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 Ward

NO

Ward Members consulted

RECOMMENDATION: REFUSE

1) The application site is within designated Green Belt. The proposed extensions, when considered cumulatively with the previous extensions to the host property, combined with their overall scale, siting and design, would result in disproportionate additions to the original building with resultant harm upon the openness of the Green Belt. The proposed development would therefore represent inappropriate development within the Green Belt by definition. No very special circumstances have been demonstrated that clearly outweigh the harm caused to the Green Belt by reason of inappropriateness or other harm. The proposal would therefore fail to accord with the requirements of Policy LP57(a) of the Kirklees Local Plan and policies within Chapter 13 of the National Planning Policy Framework.

2) The proposed extensions, by reason of their scale, design and materials would appear discordant with the agricultural character of the host building appearing as insensitive additions that fail to respect the building's original form. The proposed scheme would be an unsympathetic form of development that would harm the appearance of the host and wider rural character of the area. The total additions would result in extensions that cannot be considered as subservient to the host dominating the original building contrary to Policy LP24 (a) and (c) of the Kirklees Local Plan.

1.0 INTRODUCTION:

1.1 The application is brought to Huddersfield Planning Committee for determination in accordance with the Council's Scheme of Delegation at the request of Councillor Griffiths, for the reason outlined below:

"I would like to request that this application be brought for consideration by the Committee.

The purpose is for members of the Committee to consider whether the original building remains the dominant element in terms of size and overall appearance, and whether the proposal has a detrimental impact on the openness of the Green Belt.

I would like to request a site visit as part of this process."

- 1.2 The Chair of the Sub-Committee has accepted that the reason for making this request is valid having regard to the Councillors' Protocol for Planning Sub-Committees.

2.0 SITE AND SURROUNDINGS:

- 2.1 The application site is known as Greenroyd Farm, 4 Chapel Street, Scapegoat Hill. The building is a converted barn and is attached to number 2 Chapel Street, the original farmhouse. The property is set back from the road frontage separated by a large area of green space, part of which is used as garden associated with the building. There is driveway access from Chapel Street to a garage located adjacent to the converted barn.
- 2.2 The building subject of this application has been extended in the past extending the first floor upwards in addition to a detached garage.

3.0 PROPOSAL:

- 3.1 The application is for the erection of extensions and alterations to the existing dwelling. The extensions include a first floor over the existing single storey rear part of the building in addition to a porch and projecting canopy to new bi-fold doors in the rear elevation.
- 3.2 The materials proposed are natural stone slates and render to match the host with aluminium framed glazed enclosure.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

- 4.1 2018/20302 – Pre-application regarding erection of extensions – advised that whilst the design is acceptable the principle of further extension to the building could not be supported as it would result in disproportionate extensions to the original building contrary to Green Belt Policy.

2014/91698 Change of use of agricultural land to domestic garden
Conditional Full Permission

2014/90098 Change of use of agricultural land to domestic garden
Refused – harmful to openness with no very special circumstances

2010/93268 Erection of attached double garage
Conditional Full Permission

2005/92073 – Conversion and alterations of barn and piggery to form dwelling
– approved PD RIGHTS REMOVED

2004/95225 – Conversion and alterations of barn and piggery to form dwelling
- Withdrawn

There is a long history of applications at this site beginning with an application to convert the buildings in 2004 which was later approved in 2005. The approved application included an increase in the height of the roof to facilitate a new first floor, a stone outbuilding was removed to mitigate for the increase in volume and impact on the Green Belt. It is noted in the report that the case officer at that time considered any further extensions should be resisted.

Despite this, the application site has been further extended following the approval of a 2010 application for a double garage, albeit it is only one of these that is associated with the application dwelling. A pre-application enquiry was assessed by Officers in 2018. This was for the erection of single and two storey extensions to replace, in part, the existing single storey extension. In consideration of the proposals the Officer noted that the total volume increase of the proposed extensions combined with those carried out to convert the building into the dwelling would result in a volume increase over the original property of approximately 65%. The scheme now being considered is similar to that put forward under the pre-application albeit it does include some design changes.

5.0 HISTORY OF NEGOTIATIONS (including revisions to the scheme):

- 5.1 The agent was advised that the application could not be supported due to the cumulative impact of previous extensions over and above the size of the original building and the impact of this on the Green Belt. The detailed history was referred to outlining concerns regarding further impact on the Green Belt.

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 statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019).

Kirklees Local Plan (2019):

- 6.2 The site is allocated as Green Belt on the Kirklees Local Plan.
- 6.3 Relevant policies are:

- LP1 – Presumption in favour of sustainable development
- LP2 – Place shaping
- LP21 – Highway safety and access
- LP24 – Design
- LP57 – The extension, alteration or replacement of existing buildings.

National Planning Guidance:

- 6.4 National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 19th February 2019, the Planning Practice Guidance Suite (PPGS) first 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.

- Chapter 12 – Achieving well-designed places
- Chapter 13 – Protecting Green Belt land

7.0 PUBLIC/LOCAL RESPONSE:

7.1 The application was advertised by neighbour notification letters and by way of site notice. No representations have been received.

8.0 CONSULTATION RESPONSES:

8.1 Statutory:

None

8.2 Non-statutory:

None

9.0 MAIN ISSUES

- Principle of development
- Urban design issues
- Residential amenity
- Landscape issues
- Housing issues
- Highway issues
- Drainage issues
- Planning obligations
- Representations
- Other matters

10.0 APPRAISAL

Principle of development

10.1 The site is located within the Green Belt and therefore the principle of erecting a building within the Green Belt is to be considered. Chapter 13 of the NPPF states that the government considers the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, with the core characteristics of the Green Belt being its openness and permanence. 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 145 or 146 of the NPPF.

10.2 The erection of extensions to a dwelling in the green belt may be considered acceptable in accordance with paragraph 145 of the NPPF and Policy LP57 of the Local Plan. This is provided it does not result in disproportionate additions over and above the size of the original building. This takes into account the cumulative impact of the proposed development and previous extensions to the original building including those required to facilitate conversion. Furthermore, in the event that the development is deemed inappropriate, consideration is given to other harm the development would have on the character and openness of the Green Belt.

- 10.3. The original building was a piggery and a roof extension facilitated its conversion and inclusion of a first floor (approved under 2005/92073). Permitted Development rights for any further extension were removed at this time to prevent any additional extensions being disproportionate to the original building and resulting in detriment to the Green Belt. Furthermore it is noted in the Officer report at the time that any further extension would be unlikely to be supported. Despite these concerns a later application, submitted in 2010, granted consent for the erection of a double garage. The double garage was intended to serve the host dwelling in addition to the neighbour but remains, in part, as an addition to the host building and as such is taken into account when considering the submitted proposal.
- 10.4 It is noted that the application includes the removal of the outbuilding located in the garden area. This does not mitigate the impact of inappropriate development in the green belt. This structure is not considered comparative in terms of its construction and permanence. Furthermore there is no planning history related to the development of this structure.
- 10.5 The proposed extensions are considered to constitute inappropriate development in the Green Belt in principle as these form disproportionate additions over and above the size of the original building. The building has been extended upwards and has a single storey side extension forming a garage. The current proposal would develop a clearly subservient single storey element of the building to form a prominent two-storey extension to the rear with a further front extension to create a larger dining area. The original building would no longer be evident due to the scale and siting of these extensions.
- 10.6 In addition the development would cause further harm to the openness and character of the Green Belt. The original piggery was a subservient, vernacular agricultural structure attached to the principal farmhouse. This relationship changed when the first floor extension was added but the largely linear form of the building remained. The proposed extension would add a domestic style rear extension and an incongruous front extension with a large area of glazing which would further erode the original character of the building, especially when viewed from New Lane. The rear extension in particular would result in a larger and bulkier building. The visual impact of the extensions, when taken together with other existing additions, would cause resultant harm upon the openness of the Green Belt given that openness has both a visual and spatial aspect.
- 10.7 There are no exceptional or very special circumstances that have been demonstrated to clearly outweigh the harm caused to the Green Belt by reason of inappropriateness or other harm. As such the development, is contrary to Policy LP57 of the Local Plan and Chapter 13 of the NPPF.

Urban Design issues

- 10.8 Policy LP24 of the Local Plan and guidance contained within Chapter 12 of the NPPF requires design to be taken into account in the assessment of development.

- 10.9 Whilst the height of the original building has been increased it is considered that the conversion of the barn has been carried out sensitively, taking into account its original character and linear form. The building retains features associated with its previous use as an agricultural building. The elevation facing Chapel Street retains its flush linear format with no additions or extensions. The front is also unchanged with a single storey lean to extension (formerly garage) also retaining the general characteristics of the barn.
- 10.10 The extensions proposed include a first floor over the existing lean-to at a scale considered out of keeping with the host. Its design is also at odds with the existing agricultural character with pitched roof forming a double, linked gable between the host and the proposed extension. The addition of the lean-to the porch at the rear is small in scale but would form another addition to the original building creating another projecting element to an otherwise simple form of building.
- 10.11 A terraced area, with large glazed screening to enclose it, and projecting canopy to bi-fold doors are proposed to the south elevation. These additions would be harmful to the agricultural character and appearance of the former barn detracting from its simplistic form.
- 10.12 When considered cumulatively the extensions are not considered to be subservient to the host as required by policy LP24 (c). The additional projections would detract from the simplistic charm of the building and would dominate and detract from the original building.
- 10.13 Notwithstanding the above it is considered that, with the exception of the aluminium glazed screening, the materials proposed would be generally acceptable for this type of building but for the reasons provided the building cannot be supported in this instance. The development would be contrary to Policy LP24 of the Local Plan.

Residential Amenity

- 10.14 The property is in a small cluster of three dwellings. To the west is 2 Chapel Street. This has a two-storey rear extension and the proposed extension would project no further than this structure. The front extension is small in scale and is set well away from the boundary with this property. There would be no undue impact on the occupiers of this property as a result of this development.
- 10.15 To the north is no. 6 Chapel Street. This is set at right angles to the application property with windows in the existing single storey structure looking towards open land to the rear of this property. There would be windows serving two bedrooms at first floor looking towards this property, but there would be no direct relationship between them. Although the rear extension is to the south of this property it is no higher than the main dwelling and off set from the side elevation of this dwelling. Taking these factors into account it is considered that the proposed development would retain a good standard of amenity for the occupiers of no. 6.
- 10.16 To conclude the development complies with Policy LP24(b) of the Local Plan and Chapter 12 of the NPPF.

Highway issues

- 10.17 The application does not include any alterations to access or the highway and as such it is not considered there will be any detriment to highway safety.

Representations

- 10.18 No representation have been received.

Other Matters

- 10.19 Climate Change: Chapter 12 of the Local Plan relates to climate change and states that: "Effective spatial planning is an important part of a successful response to climate changes as it can influence the delivery of appropriately sited green infrastructure and the emission of greenhouse gases. Planning can also help increase resilience to climate change impact through the location, mix and design of development". This is also reflected in the NPPF as a core land use planning principle. The NPPF emphasis that responding to climate change is central to the economic, social and environmental dimensions of sustainable development. This application has been assessed taking into account the requirements summarised and provides opportunity for development that is considered to meet the dimensions of sustainable development. The original development re-used the agricultural building for residential development. The proposed development would result in further improvement to the insulation of element of the building, in particular the extensions, and the use of locally sourced natural building materials, or re-use of existing materials, would contribute positively to the aims of climate change.

11.0 CONCLUSION

- 11.1 The NPPF 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 adopted Kirklees Local Plan and other material considerations. It is considered that the development proposals do not accord with the development plan and the application of policies in the NPPF that protect areas or assets of particular importance provide clear reasons for refusing the development proposed.

Background Papers:

Application and history files.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019%2f91365>

Certificate of Ownership – Certificate B completed, notice served on no. 6 Chapel Street.