

# Public Document Pack



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

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Tuesday 13 April 2021

## Notice of Meeting

Dear Member

### **Planning Sub-Committee (Huddersfield Area)**

The **Planning Sub-Committee (Huddersfield Area)** will meet remotely at **1.00 pm** on **Wednesday 21 April 2021**.

This meeting will be live webcast. To access the webcast please go to the Council's website at the time of the meeting and follow the instructions on the page.

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

A handwritten signature in black ink, appearing to read "Julie Muscroft".

**Julie Muscroft**

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

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

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

### **Member**

Councillor Terry Lyons (Chair)  
Councillor Bill Armer  
Councillor Paul Davies  
Councillor Donna Bellamy  
Councillor James Homewood  
Councillor Andrew Marchington  
Councillor Bernard McGuin  
Councillor Mohammad Sarwar  
Councillor Anthony Smith  
Councillor Mohan Sokhal  
Councillor Sheikh Ullah  
Councillor Harpreet Uppal  
Councillor Susan Lee-Richards

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**

V Lees-Hamilton  
R Smith  
J Taylor  
N Patrick  
M Thompson

#### **Green**

K Allison

#### **Independent**

C Greaves

#### **Labour**

M Akhtar  
S Hall  
M Kaushik  
W Simpson

#### **Liberal Democrat**

J Lawson  
A Munro  
A Pinnock

# Agenda

## Reports or Explanatory Notes Attached

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Pages

**1: Membership of the Sub-Committee**

To receive any apologies for absence, or details of substitutions to Sub-Committee membership.

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**2: Minutes of previous meeting**

1 - 6

To approve the Minutes of the meeting of the Committee held on 10 March 2021.

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**3: Declaration of Interests and Lobbying**

7 - 8

Sub-Committee Members will advise (i) if there are any items on the Agenda upon which they have been lobbied and/or (ii) if there are any items on the Agenda in which they have a Disclosable Pecuniary Interest, which would prevent them from participating in any discussion or vote on an item, or any other interests.

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**4: Admission of the Public**

Most agenda items will be considered in public session, however, it shall be advised whether the Sub-Committee will consider any matters in private, by virtue of the reports containing information which falls within a category of exempt information as contained at Schedule 12A of the Local Government Act 1972.

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**5: Deputations/Petitions**

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

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

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**6: Application for a Definitive Map Modification Order (DMMO) to vary the particulars of public footpath Holmfirth 60 at Wolfstones Heights Farm, Netherthong**

9 - 82

Application for a Definitive Map Modification Order (DMMO) to vary the particulars of public footpath Holmfirth 60 at Wolfstones Heights Farm, Netherthong.

Contact officer: Phil Champion, Definitive Map Officer - Public Rights of Way (PROW)

Ward(s) affected: Holme Valley South

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**Planning Applications**

83 - 84

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 to speak by 5.00pm (for phone requests) or 11:59pm (for email requests) by no later than Monday 19 April 2021.

To pre-register, please email [governance.planning@kirklees.gov.uk](mailto:governance.planning@kirklees.gov.uk) or phone Richard Dunne on 01484 221000 (Extension 74995).

As this is a virtual meeting please include in your email the telephone number that you intend to use when addressing the Committee. You will receive details on how to speak at the meeting in your acknowledgement email.

Please note that in accordance with the council's public speaking protocols at planning committee meetings verbal representations will be limited to three minutes.

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.

**7: Planning Application - Application No: 2019/93335**

85 - 110

Outline application for erection of residential development Land adj Dathan Tools, Mean Lane, Meltham, Holmfirth.

Contact officer: Christopher Carroll

Ward(s) affected: Holme Valley North

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**8: Planning Application - Application No: 2020/93654** 111 -  
124

Change of use of plant nursery and retail to garden centre and formation of new access and car parking Fenay Bridge Nurseries, Brewery Yard, Fenay Bridge, Huddersfield.

Contact officer: Emma Thompson, Planning Services

Ward(s) affected: Almondbury

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**9: Planning Application - Application No: 2021/90774** 125 -  
130

Listed Building Consent for replacement roof tiles (within a Conservation Area) 74, Huddersfield Road, Holmfirth.

Contact officer: Sue Oakley, Planning Services

Ward(s) affected: Holme Valley South

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### **Planning Update**

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

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Contact Officer: Richard Dunne

## KIRKLEES COUNCIL

### PLANNING SUB-COMMITTEE (HUDDERSFIELD AREA)

**Wednesday 10th March 2021**

Present: Councillor Terry Lyons (Chair)  
Councillor Mahmood Akhtar  
Councillor Bill Armer  
Councillor Paul Davies  
Councillor Donna Bellamy  
Councillor James Homewood  
Councillor Andrew Marchington  
Councillor Bernard McGuin  
Councillor Mohammad Sarwar  
Councillor Anthony Smith  
Councillor Mohan Sokhal  
Councillor Sheikh Ullah  
Councillor Susan Lee-Richards

In attendance: Councillor Donald Firth  
Councillor Charles Greaves  
Councillor Nigel Patrick

Apologies: Councillor Harpreet Uppal

**1 Membership of the Sub-Committee**

Councillor Mahmood Akhtar substituted for Councillor Harpreet Uppal

**2 Minutes of previous meeting**

The minutes of the meeting held on 9 December 2020 were approved as a correct record.

**3 Declaration of Interests and Lobbying**

Councillors Armer, Bellamy, Davies, Homewood, Lee-Richards, Marchington, McGuin, Sarwar, A Smith, Sokhal, Ullah and Lyons declared that they had been lobbied on application 2020/91146.

Councillors Armer, Bellamy, Davies, Homewood, Lee-Richards, Marchington, McGuin, Sarwar, A Smith, Ullah and Lyons declared that they had been lobbied on application 2020/93008.

Councillor Lyons declared that he had been lobbied on application 2019/93790.

Councillor Sokhal declared an 'other interest' on application 2020/93691 on the grounds that the applicant was a close relative.

## Planning Sub-Committee (Huddersfield Area) - 10 March 2021

### 4 Admission of the Public

All items on the agenda were taken in public session.

### 5 Deputations/Petitions

No deputations or petitions were received.

### 6 Public Question Time

No questions were asked.

### 7 A review of Planning Appeal Decisions 2020

The report was noted.

### 8 Planning Applications

The Sub Committee considered the following schedule of Planning Applications.

### 9 Planning Application - Application No: 2020/91146

The Sub Committee gave consideration to Planning Application 2020/91146 Outline application for erection of residential development land west of, Wesley Avenue, Netherthong, Holmfirth.

Under the provisions of Council Procedure Rule 37 the Committee received representations from Jason McCartney, Mel Booth, Jason Morton, Carol Booth, Neil Macleod, Susan Sykes, Rachel Palmer, Jamie Frost, Robert Francis, Eric Pye, David Sykes, Alan Davies and Judith Roberts (objectors) and Alistair Flatman and Karen Smith (on behalf of the applicant).

Under the provisions of Council Procedure Rule 36 (3) the Sub Committee received representations from councillors Donald Firth and Nigel Patrick (ward members).

### RESOLVED –

That the application be refused, contrary to officers recommendation to approve.

The Sub Committee considered that the development of the site for residential purposes would require access via Wesley Avenue, which was of sub-standard width taking into account the constant presence of on-street parking. It would therefore fail to provide an acceptable means of access into the site and would have an unacceptable impact on highway safety contrary to Policy LP21 of the Kirklees Local Plan (2019) and guidance within the National Planning Policy Framework.

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

For: Councillors: Armer, Bellamy, Davies, Homewood, Lee-Richards, Marchington, McGuin, Sarwar, A Smith and Sokhal (10 votes)

Against: Councillor Lyons (1 vote)

Abstained: Councillors Akhtar and Ullah.



**10 Planning Application - Application No: 2019/93790**

The Sub Committee gave consideration to Planning Application 2019/93790 Demolition of existing buildings and erection of two storey nursery and garden buildings, formation of associated parking, hard and soft landscaping, widening of entrance and dropped kerb for pedestrian crossing Former Eastgate Depot, Honley, Holmfirth.

Under the provisions of Council Procedure Rule 37 the Sub Committee received representations from Anastasia Murphy and Josh Molnar (on behalf of the applicant).

Under the provisions of Council Procedure Rule 36 (3) the Sub Committee received a representation from councillor Charles Greaves (ward member).

**RESOLVED –**

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

1. Development to commence within 3 years of permission.
2. Development to be undertaken in accordance with the approved plans and specifications.
3. Submission for approval of materials to be used in construction.
4. Submission for approval of crime prevention measures.
5. Restriction on hours of use for users from 7.30am to 6pm Monday to Friday only.
6. Submission for approval of details of a mechanical ventilation scheme.
7. Provision of 1no. electric vehicle recharging point.
8. Restrict the numbers of children in attendance at anyone time to no more than 58.
9. Surfacing and marking out the parking area.
10. Submission for approval of a Travel Plan before the use commences.
11. Submission for approval of details of the access improvements.
12. Development in accordance with the Bat Mitigation Strategy.
13. Provision of bat features integral to the building during the period of construction.
14. Submission for approval of details of external lighting.
15. Submission for approval of a landscape strategy and implementation plan.
16. Development to be constructed in accordance with the conclusions set out in section 5 of the Flood Risk Assessment Ref: 19022-FRA.
17. Submission for approval of a remediation strategy.
18. Implementation of remediation strategy.
19. Submission for approval of validation report.
20. Any works that directly or indirectly affect roosting bats or bat roosts shall not take place until that developer has submitted either a copy of a Licence from Natural England or an assessment by a suitably qualified ecologist that the proposal would not adversely impact on bats.
21. Travel Plan to include additional measures regarding the staggered drop off/pick up times and an annual monitoring fee

## **Planning Sub-Committee (Huddersfield Area) - 10 March 2021**

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

For: Councillors: Akhtar, Armer, Bellamy, Davies, Homewood, Lee-Richards, Marchington, McGuin, Sarwar, A Smith, Sokhal, Ullah and Lyons (13 votes)

Against: (0 votes)

### **11 Planning Application - Application No: 2020/93008**

The Sub Committee gave consideration to Planning Application 2020/93008  
Erection of outbuilding to rear 10, Plains, Marsden, Huddersfield.

Under the provisions of Council Procedure Rule 37 the Sub Committee received a representation from Stacey Webster (on behalf of the applicant).

#### **RESOLVED –**

1. That the application be refused in line with the following reasons set out in the considered report:

The proposed outbuilding, by reason of its siting, scale and design, would form an overly prominent and incongruous feature failing to respect the character and appearance of the host terrace or the local area. To approve the development would be contrary to Policy LP24a of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework.

2. Delegate authority to the Head of Planning and Development to proceed with enforcement action requiring the removal of operational development.

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

For: Councillors: Akhtar, Davies, Homewood, Sarwar, Sokhal, Ullah and Lyons (7 votes)

Against: Councillors: Armer, Bellamy, McGuin and A Smith (4 votes)

Abstained Councillors Lee-Richards and Marchington

### **12 Planning Application - Application No: 2020/93691**

The Sub Committee gave consideration to Planning Application 2020/93691  
Erection of two storey rear extension, front dormer and external alterations 84A, Crosland Road, Oakes, Huddersfield.

#### **RESOLVED –**

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

## **Planning Sub-Committee (Huddersfield Area) - 10 March 2021**

1. Development to commence within 3 years of permission
2. Development to be completed in accordance with approved plans and specifications.
3. The external walls and roofing materials hereby approved shall in all respect match those use in the construction of the existing building.
4. The dormer cheeks and front elevation to be tile hung not upvc cladding.
5. The first-floor gable window to be obscurely glazed and top opener.

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

For: Councillors: Akhtar, Armer, Bellamy, Davies, Homewood, Lee-Richards, Marchington, McGuin, Sarwar, A Smith, Ullah and Lyons (12 votes)

Against: (0 votes)

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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 Area)

**Date:** 21 April 2021

**Title of report:** **Application for a Definitive Map Modification Order (DMMO) to vary the particulars of public footpath Holmfirth 60 at Wolfstones Heights Farm, Netherthong**

**Purpose of report:** **Members are asked to consider the** evidence and determine an application for an order under section 53 of the **Wildlife and Countryside Act 1981** to vary the particulars contained in the Statement for part of footpath Holmfirth 60. It is asserted by the applicant that part of this footpath at Wolfstones Heights Farm should be recorded as having a width of between 3 and 4 metres. The current recorded width is approximately 1.2 metres or 4ft. The footpath in question is shown on the appended plan. **Members are asked to make a decision on making an Order and seeking its confirmation.**

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Not applicable
Key Decision - Is it in the <u>Council's Forward Plan (key decisions and private reports)</u> ?	Not applicable
The Decision - Is it eligible for call in by Scrutiny?	No – non-executive power rests with Council committee
Date signed off by <u>Strategic Director</u> & name	Colin Parr – 8 April 2021
Is it also signed off by the Service Director for Finance?	James Anderson on behalf of Eamonn Croston – 9 April 2021
Is it also signed off by the Service Director for Legal Governance and Commissioning?	Julie Muscroft – 8 April 2021
Cabinet member <a href="#">portfolio</a>	Not applicable

**Electoral wards affected:** Holme Valley South

**Ward councillors consulted:** Cllrs. Davies, Firth and Patrick

**Public or private:** Public

**Has GDPR been considered?** Yes. Evidence considered contains various personal data, included within witness evidence and other documents. Personal data has been redacted in documents contained within appendices to this report.

## 1. Summary

- 1.1. In September 2020 the Council received an application made on behalf of Peak & Northern Footpaths Society (PNFS) for a Definitive Map Modification Order (DMMO) to modify the Definitive Map and Statement of public rights of way ('the DMS') by varying the particulars contained in the Statement in respect of the width of part of public footpath Holmfirth 60 ('path 60') in the vicinity of Wolfstones Heights and Wolfstones Heights Farm, Netherthong. <sup>1</sup>
- 1.2. An extract from the Definitive Map is found at item 3a in appendix B. An extract from the Statement is included at item 3b in appendix B. Path 60 is currently recorded in the Statement as approximately 1.2m or 4 feet wide. The application proposed that the width of part of path 60 from Wolfstones Road at grid reference SE 1269 0911 to a point at SE 1296 0911 should be recorded in the Statement as between 3 and 4 metres. These points were described in the application and on the plan accompanying the application (item 3 in appendix c) as points A and B respectively. The application, cover letter, accompanying plan and Certificates of Service of Notice are included in appendix C. The point lettered B on the plan that accompanied the application has been marked as point E on the plan of the route found at item 1 in appendix B.
- 1.3. During the investigation of the application officers have identified various intermediate points of significance, including field boundaries and the position of limitations such as gates and stiles as recorded in the DMS. Those point are shown by letters B, C and D on the plan of the route at item 1 in appendix B. The point described by the applicant as point B is referred to hereafter as point E. Several further intermediate points are also referred to in the detailed 'discussion of evidence' accompanying this report, being points where buildings directly abut the route (A1, A2 and A3), or where there is a change in surface (B1).
- 1.4. Due to the scale of the Definitive Map and (1:10,000) and the thickness of the lines used to depict the public rights of way, the map only shows the general position of path 60 and not its exact position or width.
- 1.5. The part of path 60 that is the subject of this report is shown in the set of photographs at item 2 in appendix B. Briefly, the route commences at Wolfstones Road at point A and follows a tarmac surfaced driveway in an easterly direction towards Wolfstones Heights Farm. After passing the house, the route continues as a grass surfaced enclosed track to point E, where there is a stile. The whole route (i.e., between walls or fences) appears to have been considerably wider in the recent past than the width of approximately 1.2m recorded in the Statement. Available photographs taken in the period from 2000 to 2020 suggest a greater width showing a greater width than 1.2m may have been available for use. The length of path

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<sup>1</sup> The locality of the path in question was historically within the township of Netherthong. It is currently within Netherthong Ward within the Holme Valley Civil Parish. Wolfstones Heights is closer to the *village* of Upperthong than the *village* of Netherthong and is sometimes referred to as being in Upperthong. It was thus described as such during informal consultations regarding the present application.



in question form part of a popular walk from Netherthong to an Ordnance Survey triangulation pillar (trig point) on the high ground a short distance to the west of point A at Wolfstones Height.<sup>2</sup>

- 1.6. The route falls largely with the registered title to Wolfstones Heights Farm (acquired by the current owner in 1995) and is bordered to the north by a separate property known as Wolfstones Heights. Although possibly once a single property (Wolfstones), for many years Wolfstones Heights and Wolfstones Heights Farm had been in separate ownership. The owner of Wolfstones Heights Farm purchased the abutting property in January 2017.
- 1.7. There have been a number of planning applications in recent years for development at Wolfstones Heights and Wolfstones Heights Farm, along with many improvements under permitted development rights. Work carried out has also included the erection, possibly by the mid-1990s, of automated electric gates at point A, with a stile alongside to bypass the gates. There is no record of installation of these gates, or any stile in that vicinity, having been authorised by the highway authority.
- 1.8. In 2014 planning permission was granted for development at Wolfstones Heights Farm that would require the diversion or extinguishment of part path 60 that runs along the driveway to the property. In 2015 an application was made for diversion under s257 of Town and Country Planning Act 1990 ('the 1990 Act'). The proposed development and the specifics of the diversion subsequently changed following the purchase of Wolfstones Heights and in response to informal consultation regarding the proposed diversion. The proposed alternative route was also physically constructed on the ground and made available on a permissive basis; it is currently signed as such. It is not necessary to go into detail of the proposed diversion in this report. However, the history of diversion proposals and the Council's current stance is explained briefly by way of background information.
- 1.9. The diversion proposals attracted considerable public attention. On 30 January 2020 the Council's Huddersfield Area planning sub-committee resolved to refuse the application for a diversion order under section 257 of the 1990 Act. Having not been successful in persuading the Council to make a public path diversion order under section 257 of the 1990 Act, the agent for the landowner made an application to the Secretary of State for Transport for a separate diversion Order under section 247 of the 1990 Act.<sup>3</sup> On 19 August 2020 the Department for

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<sup>2</sup> The land at Wolfstones Height, to the west of Wolfstones Road, is understood to have been a former public stone quarry included in the Netherthong Inclosure Award of 1829. A number of exhausted stone quarries are (or have been) owned by the Holme Valley Land Charity. Holme Valley Parish Council is the sole corporate trustee. While most sites have been sold off or leased out in recent years, the land at Wolfstones has been retained for the benefit of the community – for informal recreation. Although not currently recorded as a public right of way there is a well-used path leading off Wolfstones Road immediately opposite point A.

<sup>3</sup> An application to the Secretary of State for Transport for an Order under s247 of the 1990 Act would normally only be made where it would be necessary to stop up or divert part of a public carriageway to allow the approved development to be carried out. The Council's similar powers under s257 of the 1990 Act only extend to public paths.

Transport's National Casework Team advised that a draft diversion Order had been made. Copies of that draft Order, plan and notice are included for information in appendix G.

- 1.10. On 16 September 2020 the Council's Strategic Planning Committee considered an officer report regarding the Council's stance on the Secretary of State's draft s247 Order. Members unanimously approved an officer recommendation for the Council to object. Due to the authority's objection, the Secretary of State will hold a Public Inquiry into that draft Order, should the applicant still wish to pursue the proposed diversion. The virtual Public Inquiry will commence on 24 August 2021.
- 1.11. On or shortly prior to 6 September 2020, i.e., immediately prior to the Strategic Planning Committee meeting on 16 September, fence posts were erected within the driveway to Wolfstones Heights Farm, running east from point A to approximately point A3. The fence narrows the available width to approximately 1.2m, located along the northerly side of the pre-existing driveway. This is the width currently recorded in the Statement that accompanies the Definitive Map.
- 1.12. Application forms for a Definitive Map Modification Order (DMMO) were sent to PNFS on 7 September and an application to modify the DMS dated 30 September 2020 was received by the Council on or before 6 October 2020. The requirements regarding applications and requirements to serve notice are contained in paragraphs 1 and 2 of Schedule 14 to the Wildlife and Countryside Act 1981.
- 1.13. Notice was served on the registered owner of Wolfstones Heights Farm and Wolfstones Heights, as well as other identified occupiers of Wolfstones Heights Farm, as well as any unknown occupier of Wolfstones Heights (although the property abuts the way does not include land directly affected by the claim). A Certificate of Service of Notice was sent to the Council as required by paragraph 2 (3) of Schedule 14 of the 1981 Act. It is understood that the agent for the landowner has suggested notices may not have correctly served on all owners or occupiers of land to which the application relates, or that there is some other irregularity. No further assistance has been provided. For avoidance of doubt the applicant was directed by officers to serve duplicate notice on the land itself, addressed to the occupiers. This was done and the fact certified to the Council. A certificate dated 11 December 2020 is at item 6 in Appendix C.
- 1.14. The Council has a duty to consider the evidence contained with the application and determine the application as soon as reasonably practicable after receipt of the certificate. However, it also has a standalone duty to keep the DMS under continuous review and may make any Order as appears to it to be requisite following the discovery of evidence that the Map or Statement require modification. It thus has the discretion to waive strict compliance with the requirement

on the applicant to serve notice on all owners or occupiers of land to which the application relates, (although no such deficiency has been identified).

- 1.15. In light of the considerable backlog of similar applications already received, it would be normal for there to be a considerable delay before the application would be considered. However, the position and width of footpath Holmfirth 60 are material considerations which may affect the Secretary of State for Transport's decision on whether or not a diversion Order should be made, and the area of highway to be stopped-up that might be shown on any s247 Order plan. A virtual Public Inquiry is to be held into the proposed diversion Order, opening on 24 August 2021. So, it is clearly appropriate to determine the DMMO application without delay.
- 1.16. The application was principally supported by 'user evidence statement forms' ('UEFs', otherwise 'WCA8 forms') completed by 14 individuals who claimed to have personally used footpath Holmfirth 60, collectively over several decades. Significantly, the width that was claimed to have been used was described in all cases as greater than the recorded approximately 1.2m currently recorded in the Statement. The forms also include questions regarding the presence or absence of stiles, gates or other structures or obstructions during the period of claimed use.
- 1.17. The application was also accompanied by a limited quantity of documentary evidence, including an extract from the Nertherthong Inclosure Map of 1826 and the 'walking schedule' prepared as part of the original survey of public rights of way carried out in the early 1950s under the National Parks and Access to the Countryside Act 1949. Also included was a copy of a notice served on the Council by PNFS in December 2018 under section 130A of the Highways Act 1980 in respect of an obstruction (automated electric gates at point A). The applicant also supplied copies of various other documents. This included partially redacted correspondence between various interested parties about the gates at point A, covering from the period from 2018 to 2020. This material had previously been disclosed in response to a Freedom of Information request.<sup>4</sup>
- 1.18. The Council has also considered further documentary evidence available to it, including Ordnance Survey and other maps, also other documents relating to the development and review of the DMS etc. Available photographs and aerial photographs have been also been taken into consideration. An informal consultation exercise was also carried out in November / December 2020, resulting in the receipt of various additional evidence from users of the way and other individuals. Several people also asserted that the greater width had not been used by the public as claimed, or available for such use, due to the presence of various things stored or deposits placed, along the line of the route at various times.

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<sup>4</sup> Copies of various documents released are included at item 18 in appendix D.

- 1.19. A detailed analysis of evidence discovered is found in the 'Discussion of Evidence' document at item 1 in appendix A. Appendix A also includes summaries of significant aspects of the user evidence as submitted and additional comments received in response to the consultation exercise. These focus on the width claimed to have been available and actually used and the periods of claimed use, and evidence regarding gates, stiles and similar structures that may or may not have been in situ at various locations at various times.
- 1.20. Section 56 of the Wildlife and Countryside Act 1981 provides that a Definitive Map and Statement shall be conclusive evidence as to the particulars contained therein. Where the map shows a footpath, the map shall be conclusive evidence that there was at the 'relevant date' a highway as shown on the map, and that the public had thereover a right of way on foot, without prejudice to any question of whether the public had at that date any right of way other than that right.
- 1.21. Where the map is conclusive evidence, as at any date of the existence of a highway (in this case a public footpath), any particulars contained in the statement as to the position or width thereof shall be conclusive evidence as to the position or width thereof at that date, and any particulars so contained as to limitations or conditions affecting the public right of way shall be conclusive evidence that at the said date the said right was subject to those limitations or conditions, but without prejudice to any question whether the right was subject to any other limitations or conditions at that date.
- 1.22. There is no question as to the existence, as of the 'relevant date' of the current Definitive Map (22 April 1985) of a public footpath of a width of approximately 1.2m or 4ft within the general corridor depicted by the line marked on the Definitive Map. This public right of way was subject to various limitations and conditions as described in the Statement. However, this does not preclude the actual width of the public right of way actually being greater than approximately 1.2 metres at the relevant date of the current Definitive Map and Statement (1985), or that was recognised to exist at the relevant date of the original West Riding County Council Definitive Map (1952).
- 1.23. It is also possible that even if the evidence shows that the public's rights were historically confined to a width of approximately 1.2 metres or 4 feet, public rights may have been dedicated over a greater width than 1.2 metres by virtue of a presumed dedication under section 31 of the Highways Act 1980 (use of way, by the public, 'as of right' for a full period of 20 years), or through dedication of a public right of way at common law..
- 1.24. Attention must also be given to limitations and condition such as gates and stiles that are depicted by symbols on the Definitive Map and described in the Statement. It is conceivable that if any such structures have been absent over a qualifying period a public right of way may have been dedicated (or re-dedicated) without such limitations. Should public rights have come

into existence over a greater width than 1.2 metres, any right of way might be subject to other limitations.

- 1.25. If a path runs between walls or fences there is a legal presumption that the whole area between these has been dedicated to the public, provided the fences were laid out with reference to the highway. It is necessary to decide the preliminary question of whether the walls or fences were put up with reference to the highway or for some other reason.

## **2. Information required to take a decision**

- 2.1. Members are asked to consider the report, the available evidence for and against application to vary the particulars recorded in the Statement, and the detailed discussion of evidence found at item 1 in appendix A, 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. General guidance for members is included at Appendix 1.
- 2.4. The application is made under the Wildlife & Countryside Act 1981 ('the 1981 Act').
- 2.5. The Council should consider the available evidence and, by Order make such modifications to the Definitive Map and Statement as appear to them to be requisite in consequence of the occurrence of any of several events described in section 53(3) of the 1981 Act
- 2.6. The events described in section 53 (3) include (but are not limited to) the following:
  - Section 53 (3) (b): 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
  - Section 53 (3)(c) (iii): the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows "that there is no public right of way over land shown in the map and statement as a highway of any description, or *any other particulars contained in the map and statement require modification.*"
- 2.7. Members must consider whether or not the evidence shows, on balance of probabilities that, at the relevant dates of the current or first Definitive Maps and Statements, the footpath known as Holmfirth 60 was of a greater width than approximately 1.2 metres currently recorded in the Statement.

2.8. Members should also consider whether or not a public right of way has been dedicated over a greater width than the approximately 1.2 metres or 4ft currently recorded. This may be through presumed dedication under section 31 of the Highways Act 1980 or dedication of a public right of way at common law, along with acceptance by the public.

2.9. Section 31 of the Highways Act 1980 provides that:

*“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”.*

2.10. The twenty-year period for the purposes of section 31 would be calculated retrospectively from the date that any public right of way was brought into question. Where there is deemed dedication under section 31 of the 1980 Act, an Order could be made under section 53 (2) (b) of the 1981 Act.

2.11. Members are also requested to consider whether there has been dedication, or re-dedication, of a public right of way without the various limitations or conditions currently described in the statement for path 60 and indicated on the definitive Map.

2.12. Matters such privacy and security are not relevant to the question of the width of path 60 or the possibility of the dedication of a public right of way over a greater width than that currently recorded. Nor are the merits of any proposed diversion of any part of path 60. Further, the professional standing of any owners or occupiers is of no relevance to the question of the existence of public rights or any limitations. These are not matters to be taken into consideration.

2.13. Members are advised that if a DMMO is made, which then attracts objections which are not subsequently withdrawn, then the Council would not be able to formally confirm its own Order but would be obliged to forward it to the Secretary of State for determination. However, the likelihood or otherwise of an Order attracting opposition should form no part of the decision.

2.14. After considering the evidence and the relevant criteria members have a number of options.

2.15. The first option for members is for the Council to make an Order to modify the Definitive Map and Statement to vary the particulars contained in the Map and Statement for footpath Holmfirth 60 to record a width for length A-E varying between 3 and 4 metres, between physical boundaries. With removal of reference to two stiles at points B and C, and a wicket gate at point D, and inclusion as a limitation a 1.2m gap alongside a gate at point B.

- 2.16. The second option for members is to refuse the application and to decide that the Council should not make any Order.
- 2.17. The third option is for members is for the Council to make another Order to modify the Definitive Map and Statement in line with members interpretation of the evidence.
- 2.18. Should the committee choose the first option at option at paragraph 2.15 or the third option at paragraph 2.17 it is requested that members also consider the Council's stance regarding confirmation of any opposed Order. It may actively support confirmation of its Order, or alternatively take a neutral stance.

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

#### **3.1. Working with People**

- 3.1.1. Not applicable

#### **3.2. Working with Partners**

- 3.2.1. Officers have engaged with landowners and user groups when gathering and investigating the evidence connected with this application.

#### **3.3. Place Based Working**

- 3.3.1. N/A

#### **3.4. Climate Change and Air Quality**

- 3.4.1. Work to ensure that the public rights of way network is are correctly recorded on the Definitive Map and Statement and are available for use may encourage a modal shift towards use of more sustainable forms of transport. This is consistent with Council's response to the declared Climate Emergency, the Kirklees Walking and Cycling Strategic Framework, and Council commitments to action on air quality.

#### **3.5. Improving outcomes for children**

- 3.5.1. Not applicable

#### **3.6. Other (e.g. Legal/Financial or Human Resources)**

- 3.6.1. 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 public rights of way and any other modifications that should be made to the legal record .
- 3.6.2. The Council must make a decision regarding the application and the legal width of path Holmfirth 60 making any Order that is requisite further to section of the Wildlife and

Countryside Act 1981. In accordance with the Council's delegation scheme, this is a matter for this committee.

- 3.6.3. Any person may make an objection or representation to an Order modifying the Definitive Map and Statement. If objections are made and not withdrawn, any Order made would be forwarded to the Secretary of State and most likely be considered by an Inspector appointed by the Secretary of State, who may or may not confirm the Order.
- 3.6.4. The financial costs associated with the making or confirmation of an Order, or associated with referral of an opposed Order the Secretary of State, would be met from existing budgets and should not be taken into account when considering the evidence regarding the status of the paths in question.

#### **4. Consultees and their evidence**

- 4.1. In late November 2020 ward members and others invited to provide evidence regarding the width of path Holmfirth 60 and have been informed of the report being brought to sub-committee.
- 4.2. Officers have contacted various statutory and local user groups, and the owners / occupiers of Wolfstones Heights Farm and Wolfstones Heights, requesting submission of any available evidence regarding the application. The landowner's agent was also informed of the consultation / request for evidence or further comments.
- 4.3. Also invited to offer evidence were various people who had previous contacted the Council to express a view on the merits of a previously proposed diversion of part of the path under investigation. This included people who were in favour of the diversion as well as people who were opposed to it. Such people were considered likely to be able to supply evidence regarding the width and use of the route in question.
- 4.4. Informal consultation notices / plans were also posted at both ends of the length of path 60 under investigation and on the Council's website.
- 4.5. As well as a request for general comments on the application, people were asked to provide responses to a number of specific questions. The text of the communication sent is included at items 1-3 in appendix E.
- 4.6. Responses were received from 20 individuals, including 1 person who had previously completed a UEF. 12 people described use, or availability for use, of a greater width than 1.2m. Use was over a number of years, with some people describing periods of use between 4 and 50 years. Information was also received about the presence or absence of gates, stiles and other structures along the route in question.



- 4.7. Several people who responded to the consultation did not supply evidence of relevance to the width of path 60 but instead raised other matters such as the merits of the proposed diversion, issues with other paths in the area, speculation regarding the motivations of the applicant, or about the professional or social standing of the owners / occupiers of the land. These comments are of no relevance to the matter in hand.
- 4.8. Several respondents did indicate that the part that been used was a narrower strip following the northernmost side. Further, that at various times, passage had not been available along the southern side due to presence of scaffolding and stored building materials, farming vehicles, and related equipment etc. Accounts were also given about gates and stiles on the route. The respondents who made such assertions were all associated in some way with Wolfstones Heights Farm. Several respondents who made such assertions were invited to provide any additional evidence, e.g., photographs, documents etc., that might support such claims; also, to clarify comments made about various structures. Only limited follow up submissions were received, clarifying the position of gates that were described (at point B, latterly moved to A3). No further substantive follow-up submissions have been received. <sup>5</sup>
- 4.9. An extract from a township map of 1832 was also provided by one consultee. (The original of this map is in private ownership). See items 1a-1b in appendix D
- 4.10. Anonymised summaries of the comments received regarding widths, and structures such as gates, are included in appendix A.
- 4.11. Comments and evidence received have been taken into consideration alongside other evidence discovered. Evidence is considered in the 'Discussion of Evidence' at item 1 in appendix A, which should be read in details
- 4.12. In general, comments support the applicant's case that the public right of way is 3-4m wide, or certainly between the physical boundaries indicated in photographic and map evidence. Assertions submitted regarding the unavailability of the southern side of the route are not generally supported by documentary evidence and are at odds with claims of numerous people, who indicated that the whole width between physical boundaries was generally available / used.
- 4.13. The evidence also indicates the existence of a gates / a fence, later replaced by a pair of gates, at or near point B. A stile is recorded at this location in the current DMS. While electric gates are referred to by several respondents, along with a 'bypass' stile', the gates amount to an occasional obstruction of the existing PROW, with most consultees not having encountered closed gates. Evidence regarding gates and other structures is considered at length in the

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<sup>5</sup> Several respondents who objected to the application were also asked if they were content for their detailed submissions to be included more or less verbatim in the appendices to this report, for the assistance of members. No responses have been received.

detailed 'Discussion of Evidence' at item 1 in appendix A. The submissions, when considered alongside with other evidence available, suggest that other recorded structures have been absent for several decades (including other gates and stiles at points B, C and D).

- 4.14. Any decision should be based on all the available evidence and not the level of support or opposition to proposed modification of the Definitive Map and Statement.

## 5. Next steps

- 5.1. If an Order is made, it will be advertised in the local newspaper and notices placed on site. Copies of the notice and Order would be sent to landowners and various statutory and non-statutory consultees. Anyone may submit a written objection to the Order during the relevant notice period (minimum 42 days).
- 5.2. If no duly made objections are received, or if any objections made are withdrawn, the Council could confirm its own Order.
- 5.3. If objections to an Order are received and not withdrawn an Order must be referred to the Secretary of State for Environment, Food and Rural Affairs who will make a decision as to whether or not an Order should be confirmed. That would normally involve the appointing of an Inspector and the holding of a public local inquiry to hear the evidence. Alternatively, a case may be considered through an exchange of written representations or at an informal public hearing.
- 5.4. Should the Council not make any Order, the applicant may, within 28 days of service of notice by the Council of its refusal decision, appeal the decision to the Secretary of State. The Secretary of State may direct the Council to make an Order. (Wildlife and Countryside Act 1981, Schedule 14).

## 6. Officer recommendations and reasons

- 6.1. **Officers recommend that** members choose option 1 at paragraph 2.15. The Council should make a Definitive Map Modification to vary the particulars recorded in the Map and Statement in respect of the recorded width, with the addition and removal from the Statement of various limitations, as described at paragraph 2.15.
- 6.2. **Officers also recommend that**, should the Order be opposed, and the matter referred to the Secretary of State, the Council should actively support the confirmation of the Order at any public inquiry or hearing.

## Reasons

- 6.3. In light of the requirements described at paragraphs 2.5 to 2.13 and in accordance with the conclusions in the 'Discussion of Evidence' appended at item 1 in Appendix A to his report, (in particular paragraphs 3.1 to 3.22 in the Discussion), it considered that there is sufficient evidence to conclude that part of public footpath Holmfirth 60 shown as A-E on the plan at item 1 in appendix B is of greater width than the approximately 1.2 metres or 4 feet recorded in the Statement accompanying the current (1985) Definitive Map or the approximate width of 4 feet described in the statement accompanying the first (1952) Definitive Map.
- 6.4. Further, that there is sufficient evidence to conclude that, on balance of probabilities, a public right of way on foot, with a width of 3-4 metres, between points A and E, has been deemed to have been dedicated (under section 31 Highways Act 1980, or dedicated at common law), subject only to limitations described at paragraph 2.15 above.

## 7. Cabinet Portfolio Holder's recommendations

- 7.1. Not applicable

## 8. Contact officer

Phil Champion, Definitive Map Officer  
01484 221000  
phil.champion@kirklees.gov.uk

## 9. Background Papers and History of Decisions

- 9.1. This report is accompanied by the following appendices:

Appendix 1 – Guidance to Members; Appendix A1 – Discussion of Evidence; Appendix B1 – Plan showing Holmfirth 60 at Wolfstones Heights Farm; Appendix B2 – Photographs of the route.

Details of all background papers can be found by [here](#)

Appendix A – Discussion and Summaries of Evidence  
Appendix B – Plans, Photographs and Definitive Map and Statement  
Appendix C – Application for Definitive Map Modification Order  
Appendix D – Documentary Evidence  
Appendix E – Informal Consultation  
Appendix F – Land Ownership  
Appendix G – Section 247 Order

- 9.2. Previous decisions:

- 30 January 2020: Sub-committee decision to refuse an application for an Order under s257 Town and Country Planning Act 1990 to divert part of footpath Holmfirth at Wolfstones Heights Farm.

- 16 September 2020: Strategic Planning Committee decision confirming the Council's stance regarding a Draft Order made by the Secretary of State for Transport under s247 Town and Country Planning Act 1990 proposing diversion of part of footpath Holmfirth 60 at Wolfstones Heights Farm.

## **10. Service Director responsible**

10.1. Sue Procter - Service Director, Environment, Economy & Infrastructure.

**Name of meeting and date:** Planning Sub-Committee (Huddersfield Area) – 21 April 2021

**Title of report:** Application for a Definitive Map Modification Order (DMMO) to vary the particulars of public footpath Holmfirth 60 at Wolfstones Heights Farm, Netherthong

## 1. Purpose of Report

1.1. **Members are asked to consider the** evidence and determine an application for an Order under section 53 of the **Wildlife and Countryside Act 1981** (the '1981 Act') to vary the particulars contained in the Statement for part of footpath Holmfirth 60. It is asserted by the applicant that part of this footpath at Wolfstones Heights Farm should be recorded as having a width of between 3 and 4 metres. The current recorded width is approx. 1.2 metres or 4ft. The footpath in question is shown on the plan at item 1 in appendix B to the report. **Members are asked to make a decision on making an Order and seeking its confirmation.**

## 2. Summary of Report

- 2.1. Public Footpath Holmfirth 60 (path 60') is recorded in the Statement accompanying the current Definitive Map and Statement (DMS) ('Relevant Date' of 1985) as 1.2m or 4ft wide along its whole length. Path 60 was recorded in the first DMS ('Relevant Date' of 1952) as being approximately 4ft wide.
- 2.2. In September 2020 an application was made on behalf of Peak & Northern Footpaths Society (PNFS) for a Definitive Map Modification Order (DMMO) to vary the particulars recorded in the DMS to increase the recorded width of part of path 60 to 3-4m. The application was supported by evidence of use by the public of a greater width than that currently recorded, along with a limited quantity of historical documentary evidence.
- 2.3. The way in question commences at Wolfstones Road at point A and follows a surfaced driveway in an easterly direction towards Wolfstones Heights Farm. After passing the house, the route continues as a grass surfaced enclosed track to a stile at point E. Historically the route had been an enclosed access road from point A to point B, with a field edge footpath continuing from point B to point E. More recently B-E has also been an enclosed track leading to fields.
- 2.4. On / before 6 September 2020 fencing was erected along the driveway (between A and A3) reducing the part available for use by the public to a strip approx. 1.2m wide along the northerly side. That action is considered to have brought any unrecorded right over the greater width into question; the existence of a public footpath is not in itself in doubt. The dispute principally relates to the width and exact position of the public right of way (PROW).
- 2.5. Part of the length of path 60 in question has also been proposed to be diverted. In January 2020 this sub-committee declined an application made on behalf of the landowner for a Diversion Order under s.257 Town and Country Planning Act 1990 (the '1990 Act'. An application was subsequently made to the Secretary of State for Transport for a similar Order under s.247 of the 1990 Act. A draft Diversion Order has been made and published. In September 2020 the Strategic Planning Committee formally resolved that the Council

should object to that Order. As a result, a virtual public inquiry will be held in August 2021. The actual legal width of the way proposed to be diverted will clearly be a material consideration to be taken into account by the appointed Inspector when assessing the merits of the proposed diversion. In light of this, investigation of this DMMO application has been prioritised over other cases. The Council officer handling matters related to the proposed diversion has not been involved with the investigation of the DMMO application.

- 2.6. The DMMO application was supported by 14 'user evidence forms' (UEFs) describing use by the public, since the 1960s, of greater widths than that currently recorded in the Statement. Typically, 3-4m or similar widths in feet, consistent with the full width between physical boundaries. The UEFs also include evidence regarding the presence or absence of stiles, gates or other structures during the period of claimed use.
- 2.7. The application was also accompanied by a limited quantity of documentary evidence, including an extract from the Nertherthong Inclosure Map of 1826 and the 'walking schedule' prepared as part of the original survey of PROW carried out in the 1950s under the National Parks and Access to the Countryside Act 1949. Also included was a copy of a notice served on the Council by PNFS in December 2018, under section 130A of the Highways Act 1980 (the '1980 Act') in respect of an obstruction (electric gates at point A had been observed to close automatically at dusk). The applicant also supplied copies of other documents. This included correspondence between various interested parties about the gates at point A, covering from the period from 2018 to 2020 and a letter to the parish council from 2000. (Documents previously disclosed in response to an FoI request.)
- 2.8. Officers have also considered other available documentary evidence, including various maps, other documents relating the development / review of the DMS, and available photographs / aerial photographs taken between 2000 to 2020.
- 2.9. An informal consultation exercise was carried out in November / December 2020. That resulted in the receipt of additional evidence from people in support of, and in opposition to the claim. Several people who opposed to the application asserted that the greater width had not been used by the public as had been claimed, or had not been available for such use, due to the presence of various things stored or deposits placed at various times, along the line of the route (particularly its southern side). Evidence was also received regarding the presence or absence of various structures such as gates / stiles, including electric gates, a bypass stile at point A and structures in the vicinity of point B.
- 2.10. A detailed analysis of evidence discovered is found in the 'Discussion of Evidence' document at item 1 in appendix A. Appendix A also includes summaries of significant aspects of the user evidence and additional comments / evidence received in response to the consultation.
- 2.11. Section 56 of the 1981 Act provides that a DMS shall be conclusive evidence as to the particulars contained therein. Where the map shows a footpath, the map shall be conclusive evidence that there was at the 'relevant date' a highway as shown on the map, and that the public had thereover a right of way on foot, without prejudice to any question of whether the public had at that date any right of way other than that right.
- 2.12. Where the map is conclusive evidence, as at any date of the existence of a highway, any particulars contained in the Statement as to the position or width thereof shall be conclusive evidence as to the position or width thereof at that date, and any particulars so contained as to limitations or conditions affecting the public right of way shall be conclusive evidence that at the said date the said right was subject to those limitations or conditions,

but without prejudice to any question whether the right was subject to any other limitations or conditions at that date.

- 2.13. There is no doubt as to the existence, as at the 'relevant date' of the current Definitive Map (22 April 1985) of a public footpath of a width of approx. 1.2m or 4ft within the general corridor depicted by the line marked on the Definitive Map. The PROW was recorded subject to various limitations and conditions as described in the Statement. However, that does not preclude the actual width of the PROW being of greater width than 1.2m / 4ft by 1985, or of greater width at the relevant date of the first DMS (1952).
- 2.14. It is also possible that even if the evidence shows that the public's rights were historically confined to a width of approx. 1.2m / 4ft, public rights may have been dedicated over a greater width than 1.2 metres by virtue of a presumed dedication under s.31 of the 1980 Act (use of a way, by the public, 'as of right' for a full period of 20 years), or through dedication of a PROW at common law.
- 2.15. Attention must also be given to limitations / conditions, e.g., gates and stiles, depicted in the DMS. If structures have been absent over a qualifying period, a PROW might have been dedicated (or re-dedicated) without such limitations. Should public rights have come into existence over a greater width than approx., 1.2m, any PROW might be subject to other limitations.
- 2.16. If a PROW runs between walls or fences there is a legal presumption that the whole area between these has been dedicated to the public, provided the fences were laid out with reference to the highway.
- 2.17. Members are asked to consider the report, the available evidence for / against application to vary the recorded particulars and the detailed 'Discussion of Evidence' found at item 1 in appendix A, and decide what Order, if any, to make.
- 2.18. The Council should consider the available evidence and, by Order make such modifications to the DMS as appear to them to be requisite in consequence of the occurrence of any of several events described in section 53(3) of the 1981 Act. <sup>1</sup>
- 2.19. Members must consider whether or not the evidence shows, on balance, that, at the relevant dates of the current or first Definitive Maps and Statements, path 60 was of a greater width than approx. 1.2m / 4ft.
- 2.20. Members should also consider whether or not a PROW has been dedicated over a greater width than approx. 1/2m / 4ft. That may be through presumed dedication under s31 of the 1980 Act,<sup>2</sup> or through dedication of a public right of way at common law, along with acceptance by the public.
- 2.21. Members are also requested to consider whether there has been dedication, or re-dedication, of a PROW without the various limitations / conditions currently described in the Statement for path 60 and indicated on the Definitive Map.
- 2.22. Matters such as privacy / security, the merits of any potential diversion, or the professional standing of any owners or occupiers, are not relevant to the question of the width of path 60 or the existence of a PROW. These are not matters to be taken into consideration.

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<sup>1</sup> The relevant events are described at paragraph 2.6 in the full report.

<sup>2</sup> The wording of section 31 Highways Act 1980 is included at paragraph 2.9 in the detailed report.

2.23. Members are advised that if a DMMO is made, which then attracts objections which are not subsequently withdrawn, the Council would be obliged to forward it to the Secretary of State for determination. However, the likelihood or otherwise of an Order attracting opposition should form no part of the decision.

### **3. Ward Councillor comments**

3.1. Ward members were consulted regarding the application, in November 2020. No responses were received, and no additional evidence provided.

### **4. Officer recommendations and reasons**

4.1. That the Sub-Committee authorises the Service Director, Legal, Governance and Commissioning to make a Definitive Map Modification Order to vary the particulars for footpath Holmfirth 60 to record a width for length A-E (as shown on the plan at item 1 in appendix B to the detailed report) varying between 3 and 4 metres, between physical boundaries. With removal of reference to two stiles at points B and C and a wicket gate at point D, and inclusion as a limitation a 1.2m gap alongside a gate at point B.

4.2. In addition, should the Order be opposed, and the matter referred to the Secretary of State, the Council should actively support the confirmation of the Order at any public inquiry or hearing.

### **Reasons**

4.3. In light of the requirements described at paragraphs 2.5 to 2.13 of the detailed report (summarised at paragraphs 2.18 to 2.23 above) and in accordance with the conclusions in the 'Discussion of Evidence' appended at item 1 in Appendix A to the report, (in particular paragraphs 3.1 to 3.22 in the Discussion), it considered that there is sufficient evidence to conclude that part of public footpath Holmfirth 60 shown as A-E on the plan at item 1 in appendix B is of greater width than the approximately 1.2 metres or 4 feet recorded in the Statement accompanying the current (1985) Definitive Map or the approximate width of 4 feet described in the Statement accompanying the first (1952) Definitive Map.

4.4. Further, that there is sufficient evidence to conclude that, on balance of probabilities, a public right of way on foot, with a width of 3-4 metres, between points A and E, has been deemed to have been dedicated (under section 31 Highways Act 1980, or dedicated at common law), subject only to limitations of a 1.2m gap alongside a gate at point B.



**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.

## **A1 Discussion of Evidence**

1. Documentary evidence.....	4
Netherthong Inclosure Map of 1829 and Township Map of 1831.....	4
Netherthong Tithe Map (1850) .....	5
Conclusions regarding Inclosure / Township / Tithe Maps .....	5
Ordnance Survey Maps .....	6
Conclusions regarding Ordnance Survey maps.....	7
Records relating to the development of the first Definitive Map and Statement under Part IV of the National Parks and Access to the Countryside Act 1949 .....	8
Survey Schedule (Walking Schedule).....	8
Draft, Provisional and Definitive Maps and Statements and associated documents .....	9
County Council Memos and correspondence following publication of the Draft Map and Statement .....	10
Memo from (signed by) WRCC County Engineer and Surveyor to Clerk of the County Council. 2nd December 1954 .....	10
Review of the Definitive Map.....	12
Conclusions regarding the preparation and review of the definitive map.....	12
Photographs and aerial photographs .....	13
Aerial photographs .....	13
Conclusions regarding aerial photographs .....	14
Other Photographs .....	14
Conclusions regarding other photographs .....	15
2. User evidence.....	16
Section 31 Highways Act 1980 .....	16
Date of bringing into question.....	17

Alternative possible dates for bringing into question. ....	17
‘A Way’ .....	19
‘...Actually enjoyed’ .....	19
‘...by the public’ .....	20
‘... without interruption’ .....	21
‘... as of right’ .....	22
‘...without force’ .....	22
‘... without secrecy’ .....	22
‘...Without permission’ .....	22
‘... Full period of 20 years. ....	22
Contrary intention .....	23
Conclusions regarding presumed dedication under s.31 Highways Act 190 over a greater width than that currently recorded .....	23
Common Law .....	24
Capacity to dedicate .....	24
Mortgages .....	24
Use of a greater width by the public .....	24
Conclusions regarding dedication at common law .....	25
Evidence regarding limitations (gates and stiles etc.) .....	26
Structures at / near point A.....	26
Conclusions regarding structures at point A.....	28
Structures on the eastern part of the route (points B, C, D) .....	28
Conclusions regarding structures at B, C, D.....	30
3. Overall conclusions.....	30
Historical documentary evidence .....	30

Aerial and other photographs .....	31
Section 31 Highways Act 1980.....	31
Dedication under Common Law .....	32
Structures at Point A .....	32
Structures at B, C, D .....	33
Concluding remarks .....	33

## **1. Documentary evidence**

- 1.1. In addition to completed user evidence statement forms (UEFs or WCA8s), the application to modify the Definitive Map and Statement (DMS) was accompanied by a limited quantity of documentary evidence, In particular the survey schedule from 1950 and an extract from the Netherthong Inclosure (or Enclosure) Map of 1829.<sup>1</sup>
- 1.2. The applicant also subsequently submitted redacted correspondence between various parties, generally relating to disputes regarding gates at point from 2018 onwards. Documents were previously disclosed in response to a Freedom of Information request. Additional material also includes a County Council memo from the 1950s regarding widths proposed to be recorded in the DMS. Objectors to the proposal have also referred to various correspondence with the Council over recent years, regarding the gates at A, the width of the route, and other matters. The disclosed documents are included at item 18 in appendix D.
- 1.3. Other documentary evidence available to officers has also been taken into consideration, including Ordnance Survey maps and other township, inclosure tithe maps, additional documents relating to the development and review of the DMS, and photographic evidence. The available documentary evidence will be considered first, generally in chronological order.

### **Netherthong Inclosure Map of 1829 and Township Map of 1831**

- 1.4. The application was accompanied by a low-quality extract from the map accompany the Netherthong Inclosure Award. A higher quality copy has since been located. In response to the informal consultation exercise, a member of the public has also supplied an extract from a township map of 1831. The original map is understood to be in private ownership.<sup>2</sup> The township map shows the newly enclosed land as per the Inclosure Map, as well as old (pre-existing) enclosures within the Township of Netherthong. These documents are found at items 1a / 1b and 2a /2b in appendix D.
- 1.5. The application was not accompanied by an extract from the Inclosure Award itself. Due to lockdown, it has not been possible to inspect the award as West Yorkshire Archive Service searchrooms are closed. However, there is no indication from either map that the route itself was included in the award.

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<sup>1</sup> The statutes providing for the enclosure of land use the spelling inclosure. That spelling has been used throughout the report to refer to the legal process of converting common land into private property and in relation to documents produced as part of that process. The word 'enclosure' is used in this document to routes or areas of land that have been marked off by boundaries.

<sup>2</sup> The township map of 1831 is in private ownership and is unlikely to have been taken into consideration at the time the DMS was developed in the 1950s or reviewed in the 1970s. It is therefore considered 'new' evidence for the purpose of this investigation.

- 1.6. The 1829 and 1831 maps show small areas of newly enclosed land abutting the north and south of an enclosed route at point A. This likely to be enclosure of areas of waste alongside an earlier public road (now public Wolfstones Road). The 1831 map shows in green the old (pre-existing) enclosures to north and south of an enclosed road leading to buildings in the general vicinity of the house at Wolfstones Heights Farm. This enclosed road clearly predates the inclosure award. The Inclosure map itself does not show the whole route, but shows the part abutting the modern Wolfstones Road coloured sepia, in common with other public and private roads.
- 1.7. The 1831 township map depicts a 'foot road' by means of a pecked line alongside field boundaries between points B and where the path crosses the boundary at point E to run along the north side of the field boundaries in the direction of Netherthong. The depiction of the route is consistent with the public footpath and enclosed driveway depicted later on OS maps and on the definitive map as footpath Holmfirth 60.
- 1.8. The 1829 and particularly the 1831 map do not *directly* confirm the existence of a public footpath along any part of the route under scrutiny, but the depiction is consistent with the existence of a public right of way on foot at that time. The 1831 map depicts the existence of an enclosed route from the farm to point A considerably wider than the currently recorded approximately 1.2m and gives no indication that the whole width between boundaries would not have been available for public use at that time. The map gives no suggestion of a wider enclosed route continuing between points B and E, although it does not necessarily follow that anyone using B-E would have walked very closely alongside the field boundary wall to the north.

### **Netherthong Tithe Map (1850)**

- 1.9. The Tithe Map of 1850 (item 3 in appendix D) shows the route in a very similar manner to the 1831 Township Map. The map shows an enclosed route from a pecked line from B-E annotated 'foot road'. The map was not directly concerned with public rights of way. However, the depiction of a foot road leading into an enclosed track is consistent with the later recording of a public right of way on foot. Part A-B is again depicted as an enclosed route of width significantly greater than the 1.2m / 4ft currently recorded and the map gives no indication that any public rights would only have been confined to part of the available width.

### **Conclusions regarding Inclosure / Township / Tithe Maps**

- 1.1. While not being conclusive evidence of the existence or lateral extent of public rights of way, the maps of 1829, 1831 and 1850 collectively depict an enclosed road and connecting field edge footpath. The field edge footpath B-E is consistent with the public footpath recorded in the 1950s. The maps do not provide conclusive evidence that the boundaries of A-B were set out with reference to the highway, so the fence-to-fence presumption may not apply. However, there is no indication that any public rights that might have then

existed at or prior to the dates of preparation of those maps would not have extended over the whole enclosed road A-B.

### **Ordnance Survey Maps**

**1:10560 1<sup>st</sup> Edition six-inch. Yorkshire Sheet 272. Surveyed 1850-51, published 1854. (The '1854 map')**

**1:2500 County Series 1st Edition Yorkshire [West Riding] Sheet CCLXXII.2. Surveyed 1888, published 1893. (The '1893 map')**

**1:2500 County Series 1st Revision Yorkshire [West Riding] Sheet CCLXXII.2. Surveyed 1888, revised 1904, published 1906. (The '1906 map')**

**1:2500 County Series 2nd Revision Yorkshire [West Riding] Sheet CCLXXII.2. Surveyed 1888, revised 1929 published 1931 (the '1931 map')**

**1:2500 National Grid series 1st Edition SE1209. Published 1964.**

- 1.2. The route in question is shown on successive ordnance survey maps published since 1854. Large scale OS maps are evidence of the physical existence, at the time of survey, of the features shown thereon. They do not record public rights of way. Nonetheless, they may provide useful supportive evidence of the physical existence of any ways depicted, or of their absence. Enlarged extracts of maps published in 1854, 1893, 1906, 1931 and 1963 are located at items 4 to 8 in appendix D.
- 1.3. The maps depict an enclosed route from point A towards point B, passing to north and south of various buildings at 'Wolfstones'. Maps published up to 1931 consistently show a pecked line east of point B continuing in an easterly direction along the north side of several enclosed fields to point E, where the pecked line switches to the north side of the field boundary. This is typical of a field edge footpath and is consistent with the depiction of a 'foot road' in the 1831 township map and 1850 tithe map. A single pecked line following a field boundary is a well understood cartographic convention indicating a field edge path.
- 1.4. None of the maps published between 1893 and 1964 indicate any feature at or near point A that might indicate the existence of a gate or similar structure. The 1931 map shows a broken line to the south of A-A2 and across the route at B, suggesting there were no solid boundary features at time of re-survey in 1929. None of the County Series maps give any suggestion that any public right of way over A-B would have been confined to a width narrower than the whole width between buildings or wall / fences. The maps given no indication of an enclosed track between B and D, the depiction being of a field edge footpath.
- 1.5. Parcel numbers shown on the 1931 map, and boundaries between the fields shown are referred to in the 'walking schedule' produced in 1950 as part of the survey of public rights of way under the National Parks and Access to the Countryside Act 1949. See item 9 in appendix D, discussed below.



- 1.6. The National Grid series OS map published in 1964 (The '1964 map') (item 8 in appendix D) post-dates the survey of public rights of way under the 1949 Act. The map clearly indicates that the field edge footpath between B and D shown on earlier maps, had been replaced by an enclosed track, annotated as such. Between point D and E, the route of Holmfirth 60 was still depicted by means of a pecked line. Measured from the map, there is a clear space of between 3.6 and 4.6 metres between the depicted boundary features. The new boundary on the south side is B-D is consistent with position of fencing shown in more recent photos and does not appear to have changed appreciably to this day. There is nothing to indicate that only part of the space between the boundaries would have been available / used by the public.
- 1.7. The 1964 map is marked with solid lines across the line of the track at points B and D. This is consistent with boundary features existing in those locations, e.g. walls or fences. This does not preclude there having also been stiles or wicket gates as noted in the survey of the route in 1950. (See below). There is nothing to suggest the existence of boundary features such as gates, or other structures at points A or C.

### **Conclusions regarding Ordnance Survey maps**

- 1.8. The depiction of the route in successive large-scale OS maps is consistent with physical existence of field edge footpath that continue along (within) an enclosed access road. The maps do not provide direct evidence of the existence or extent of public rights but are consistent with the existence of a field edge public footpath that continued along an enclosed access road.
- 1.9. The later map provides evidence that part of the field footpath from B-D had become a wider enclosed track by been replaced by a wider enclosed track by the early 1960s. It is possible that the boundary to the south side was set out with reference to the highway and a fence-to-fence presumption may thus apply. However, this is inconclusive. As an alternative, the map provides evidence of the provision of a wider route which the public were able to use, consistent with dedication and acceptance of public rights over a greater width
- 1.10. When an enclosed route is shown on maps, there is nothing to indicated that any public rights that might have come into existence, or people using the route on foot, would have been confined to only part of the apparently available width.
- 1.11. Successive maps give no indication of any features across the route at point A that might suggest the presence of gate or similar structures. While various maps indicate such features at field boundaries, the 1964 map suggest no such features at point C.

## **Records relating to the development of the first Definitive Map and Statement under Part IV of the National Parks and Access to the Countryside Act 1949**

### **Survey Schedule (Walking Schedule)**

- 1.12. The development of the first DMS under the 1949 Act commenced with a survey by the West Riding County Council (WRCC) of paths over which public rights of way were alleged to subsist. Information about paths in Holmfirth was furnished Holmfirth Urban District Council ('the UDC'). A map would have been submitted to the County Council, accompanied by schedules describing the various paths, dated December 1951. The map for the Holmfirth district appears not to have survived. The survey schedule (otherwise the 'walking schedule') corresponding with the path later recorded as footpath Holmfirth 60 is found at item 9 in appendix D.
- 1.13. The 'walking schedule' for path 240 (later numbered as Holmfirth 60) described the route as a footpath, starting at 'Footpath 239 N. of Netherthong Reservoir'. (NB 'Footpath 239' is now numbered footpath Holmfirth 58.) The destination was given as Netherthong Road. The path was surveyed in September 1950. The reason for believing the path to be public was recorded as 'Uninterrupted user by public for 50 years'.
- 1.14. The schedule records concise information about various features found along the path including gates gaps and stiles between various fields. The description should be read in conjunction with the parcel numbers recorded on the 1931 Ordnance Survey map - see item 7 in appendix D. The field boundaries referred to, where relevant to the current claim, have been indicated by letters B, C, D and E on the plan at Item 1 in appendix B
- 1.15. The description given was: "Fieldgate 504-515, Stile 515 leading into Ox Lane, Gap Ox Lane to 84. Fieldgate 84-82. Stile 82-1315. Wicket gate 1315-1332. Stile 1332-1333, 1333 into C.R.B leading into Wolfstones Road"
- 1.16. The location of the 'stile 82-1315' was point E, as indicated on the plan at item 1 in appendix B. The 'wicket gate 1315-1332' was point D. The 'stile 1332-1333' was at point C. On leaving field 1333 (at point B) the route entered the cart road between the property now called Wolfstones Heights Farm and Wolfstones Road. There was no mention, in an otherwise detailed description of the path of any stiles, gates or other structures at the junction with Wolfstones Road (point A).
- 1.17. The description 'C.R.B' for the length between B and C is an abbreviation of Carriage Road Bridleway. This was a term used on some schedules as a non-statutory description for a type of 'Road Used as a Public Path' (RUPP). RUPPs were to be included on the Definitive Map. The term CRB was included in Ministry-approved guidance from the Commons, Open Spaces and Footpaths Preservation Society as a symbol to be used when marking maps as part of the survey. This was to indicate a 'Public Carriage or Cart Road or Green (unmetalled) Lane' mainly used as a bridleway. However, it appears

likely in this case the surveyor mis-applied the term to imply a private cart road over which there was also a public bridleway, or simply as shorthand than for the physical appearance of the way, rather than in the sense of a RUPP. That the route was also described as a 'footpath' indicates the latter explanation is more likely.

- 1.18. The schedule described the average width and general condition of the path in the following manner: "*3ft. to Carriage Road Bridleway leading to Wolfstones Road. Condition fair. Natural Surface to C.R.B, then metalled*". No specific width was suggested for the part A-B. However, the description as a 'carriage road' under 'width' would suggest that a public right of way was alleged to have existed over the whole width of a way that was physically wide enough for use with the vehicles. The description and suggested width of the rest of path Holmfirth 60 (including B-E) is consistent with the way having been at that time a field edge footpath. This is also consistent with its depiction on the 1931 OS map.

### **Draft, Provisional and Definitive Maps and Statements and associated documents**

- 1.19. The survey maps and schedules were supplied to the WRCC who then prepared the Draft Map and Statement. An extract from the Draft Map is included at item 10 in appendix D. <sup>3</sup> The Draft Map and Statement showed all the public footpaths, bridleways and 'roads used as public paths' that subsisted, or were reasonably alleged to subsist, at the 'relevant date', being 22<sup>nd</sup> September 1952. The Draft Statement would have contained details as to the approximate width of path Holmfirth 60 and any limitations such as gates or stiles, such limitations also being indicated on the Draft Map.
- 1.20. There is no record of any objection or representation having been made relating to the depiction of Path 60 in the Draft Map and Statement. As a result, the route was included in the same manner in a Provisional and finally Definitive Map and Statement. Extracts from the first Definitive Map and Statement ('relevant date' 22 September 1952 and otherwise referred to as the '1952 Definitive Map and Statement') are included at items 11 and 12 in appendix D.
- 1.21. The width of path 60 was recorded in the 1952 Statement as approximately 4ft along its whole length. Importantly, it must be recognised that the recorded width is stated as *approximate* and does not preclude parts of the path having been narrower, and parts wider than 4ft. It is highly *unlikely* that public rights were confined to a uniform and strict 4ft width along the whole length of the route. It is common for actual widths to vary considerably according to the terrain, surface condition and other physical characteristics. There is no

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<sup>3</sup> The Council does not currently possess a copy of the 1952 Draft Statement. A copy *may* be held by West Yorkshire Archive Service at Wakefield. Due to lockdown officers have not been able to inspect this document, however it is not considered necessary to do so to determine this application.

indication as to where within physical boundaries (e.g. for A-B) any such 4ft public footpath might have been positioned. The width of approximately 4ft does not accord with the description of 'CRB width' given in the 'walking schedule' in respect of A-B.

- 1.22. Section 32(4) of the National Parks and Access to the Countryside Act 1949 (since repealed) provided that "A definitive map and statement shall be conclusive as to the particulars contained therein..." also that "...particulars contained in the statement as to the position or width thereof shall be conclusive evidence as to the position or width thereof at the relevant date..." However, this does not preclude the subsequent discovery of evidence that might suggest that public rights extended over a greater width than approximately 4ft or that if actually limited to a narrower width, that rights might have subsequently come into existence over a greater width.
- 1.23. The Definitive Statement also includes in the 'general' column (i.e., likely to be considered as limitations or conditions), various items of furniture, including 3 stiles, 2 field gates and 1 wicket gate. The positions of these structures were indicated on the Definitive Map and are consistent with structures described on the walking schedule of 1950. There were no structures recorded at / or in the vicinity of, point A. This is without prejudice to the possible existence of additional limitations or conditions, although the evidence does not support the existence of additional limitations.
- 1.24. Although there were no objections to the recording of all parts of Holmfirth 60 as approximately 4ft wide, this does not accord with the description of 'CRB width' in the walking schedule in relation to A.
- 1.25. The context in which objections were made (or not made) has been considered further, particularly in the light of the discovery of County Council memos and correspondence that relate to the widths of paths to be recorded in the statement.

### **County Council Memos and correspondence following publication of the Draft Map and Statement**

#### **Memo from (signed by) WRCC County Engineer and Surveyor to Clerk of the County Council. 2nd December 1954**

- 1.26. Various public rights of way in the Holmfirth Urban District were described in the walking schedules with greater widths than the approximately 4ft understood to have been recorded in the draft statement. However, a very large number of objections were submitted by Holmfirth UDC to the initially recorded width and / or status. In almost all cases it was asserted that footpaths recorded in the draft statement as having widths greater than approximately 4ft, were actually only 4ft wide. No evidence appears to have been provided to support such assertions.

- 1.27. The practice of district councils applying for blanket reductions in recorded widths, to below the widths described in the survey schedules that they themselves initially provided, appears to have been widespread within the West Riding. By contrast, the author is not aware any examples of similar objections, to increase the recorded width, where the draft Statement recorded a lesser width than that suggested in a walking schedule. In this case, no objection was received from Holmfirth UDC to the recording of a width of approximately 4 feet for the whole length of path 60.
- 1.28. The applicant for the DMMO supplied a redacted copy of a County Council memo (the '1954 Memo') which formed part of discussions between the county clerk and county surveyor's departments, and with the district councils, regarding the widths that should be recorded the Statement. The unredacted memo is included at item 13 in appendix D. <sup>4</sup>
- 1.29. The 1954 Memo refers to a discussion between an 'assistant' and two named individuals (possibly in the clerk's office) and requested confirmation of 'agreement' reached regarding the making of amendments to the draft Map and Statement to reduce the recorded widths. It was suggested that where footpaths were recorded in the draft statement with widths greater than six feet the width should be changed to 4ft, this being considered a 'normal width for a footpath'. Similarly, the memo indicated that all bridleways recorded as greater than 10ft should recorded at a standard width of 8ft. The memo went on to confirm that this was *"in order to define the liability of the highway authority [wi]thin the limits of way which in some cases are 20, 30, [??] and sometimes more feet between fences."* The proposed approach appears to have had no regard for whether the public's rights in such cases might actually extend over a greater width. A blanket approach was being proposed. This approach is highly questionable.
- 1.30. Following on from this memo and further discussions, objection to the draft map and statement were received from most, if not all District Councils in the West Riding, indicating reduced widths (and in many cases reduction in status' described earlier.
- 1.31. It has not been possible to investigate either Holmfirth UDC or the County Council's records due to Covid-19 restrictions / lockdown. However, officers are aware of correspondence between another district council (Ripponden UDC) and the WRCC that refers to similar blanket changes. Those requested changes were stated to have arisen out of discussions with the County Engineer and Surveyors Department regarding the *"...upon the implications of the excessive width previously included"*. This suggests the approach being encouraged by WRCC was to deliberately under-record widths to reduce maintenance liabilities. See memo at item 14 in appendix D.

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<sup>4</sup> The original memo is found within the WRCC Clerks Department files, held by WYAS at Wakefield. It was discovered by a British Horse Society researcher and a photograph supplied to Kirklees Council.

1.32. Although Footpath Holmfirth 60 was only ever recorded at *approximately* 4ft wide along its whole length, given the apparent attitude to the recording of greater widths (and encouragement by the County Council for district councils to object to the recording of greater widths), it is of no surprise there was no objection to the recording of a width of approximately 4ft for the whole of Holmfirth 60.

### **Review of the Definitive Map**

- 1.33. A review of the Definitive Map commenced in the late 1970s, with a Draft Revision Map being produced late in 1979 and placed on deposit for public inspection in 1980. An extract of the Draft Revision Map is included at item 16 in appendix D. Holmfirth 60 was shown and described in a similar manner to the first DMS. The annotation 'WG' (for wicket gate) on the map at point C was absent. There were no objections or representations made in respect of footpath Holmfirth 60. The review was formally abandoned following the introduction of new procedures under the 1981 Act for keeping the DMS under continuous review and the making of individual DMMOs. The Modified Definitive Map published in 1985 included the path as per the Draft Revision Map. The Modified (1985) Statement still made reference to a wicket gate. A metric width of approximately 1.2m was recorded, alongside] an imperial width of approx.4ft. <sup>5</sup> Extracts from the Modified (1985) Definitive Map and Statement are included at items 3a and 3b in appendix B. The route shown is generally within the boundary of the track, as shown in generalised form on the base mapping.
- 1.34. It is unclear whether or not the removal of the annotation WG indicated re-dedication without such a limitation as it remained in the modified statement. However, no one who submitted user evidence, or any other witnesses, recalled the existence of such a gate, so its absence by the late 1970s is considered likely. It is reasonable to presume that the removal of the annotation 'WG' was intentional, and the retention in the Draft Review Statement was accidental. It would be appropriate to remove the reference in the Statement to this limitation.

### **Conclusions regarding the preparation and review of the definitive map.**

- 1.35. It is apparent from the walking schedule of 1950 that A-B followed a vehicle width route, without any gates or stiles at point A. Although Holmfirth 60 was only recorded in the Statement as approximately 4ft wide along its whole length, analysis of other documentation and memos relating to the definitive map process indicates a concern at County Council level with limiting liabilities by

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<sup>5</sup> The Council's 'working copy' statement is based on the 1985 Statement but retyped into a database. The words approximate in relations to lengths and widths have not been included, nor have the imperial measurements. This may give the impression that the width recorded is exactly 1.2m – it is not. The map and statement have not been modified since 1985 and so the details in the 'as published' Statement at item 16 in appendix D are those which apply.

recording widths were often less than the actual legal width or status of many routes. Also, a degree of collusion with parish / district councils to ensure that happened. This lack of concern for recording the actual legal width of wider routes casts doubt on the accuracy of the recording of a width of approximately 4ft for the part A-B. This weakens the reliance that may be placed on the Statement as evidence of the actual legal width.

- 1.36. Various documents indicative the existence of a stile at points B and C as well as a wicket gate at point D, along a field edge footpath. The width of approximately 4ft recorded in the 1952 Statement for B-E is plausible.
- 1.37. There is no evidence of any structures having existed at point A. The review and modified definitive maps and statements are not consistent regarding the continued recording of a wicket gate, which may have been no longer extant by the late 1970s.
- 1.38. Although the 1952 and now 1985 Statements do provide legally conclusive evidence of the details of the public right of way recorded on the map, this does not preclude a public footpath extending over a greater width at the relevant dates of 1952 and 1985. Or having subsequently been established, or rededicated without e.g., a wicket gate or other structures. The evidence suggests it is wholly plausible that the extent of the public footpath over A-B was greater in 1950 than subsequently recorded in the statement.
- 1.39. It is also more likely than not that the continued recording of a 'wicket gate' in the 'general' column of the modified Statement was an error and it would be appropriate to vary the particulars recorded in the Statement to remove this.

## **Photographs and aerial photographs**

### **Aerial photographs**

- 1.40. Aerial photographs, taken at various dates between 2000 and 2018, are included in appendix B. <sup>6</sup> These show the route between point A at Wolfstones Road and point E at Brown Hill, both before and during the carrying out of various developments. The earliest available air photo dates from only five years after the current owner is understood to have purchased Wolfstones Heights Farm. Although parts of the driveway (A-B1) are obscured by vegetation in most of the photos, where this can be seen there is no indication of any features that would have limited public use to any particular width or position within the driveway. This observation is consistent with other available photographs of the route taken from 2007 onwards, included at item 2 in appendix B.

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<sup>6</sup> It is recognised that various works were carried out to land and buildings abutting the south side of the driveway in the period 2015 to 2017, particular due to a fire at the property. However, there are, regrettably, no available aerial photographs taken in the period between 2012 and 2018.

- 1.41. The eastern part of the route between approx. B1 and E can be clearly seen in all aerial photos. In all photographs this part of the route is seen bounded on the south side by fencing, running all the way to point E (cf the 1964 map showing the enclosed track ending at point D). The field boundary wall to the north is clearly shown in all photos except a short length removed by 2018. This part of the route is seen to have a grass surface. Worn lines of variable width and position can be seen within the enclosed corridor; these are not consistent between, not simply a narrow strip on northern side as might be expected if pedestrian use had been confined to that part as objectors have claimed.
- 1.42. Successive aerial photographs give no indication of any stored items, structures, vehicles etc. along any part of the route, with the exception of a feature seen on the north side of the route near point A in 2000.<sup>7</sup>
- 1.43. Aerial photos from 2000 and 2002 also show small areas consistent with bare earth or stone near points B1 and C, but no indication of that use of the way would have prevented.
- 1.44. Successive aerial photos give no indication of any structures across the way, although only the part from B1 to E is clear of overhanging vegetation. Aerial photos from 2006 onwards do clearly show a structure consistent with a gate, east of point E (i.e., not on the route). This structure is also seen in a photo from 2007 taken from ground level. Whereas there are no such structures visible at points B1, C or D.

### **Conclusions regarding aerial photographs**

- 1.45. The aerial photographs provide strong evidence of the availability of an enclosed route, varying between approx. 2.8 and 4.2 m between boundaries; the exact route used by any individual walking within those boundaries may have varied, but this does not mean that a consistent way had not been used overall. The aerial photographs support the user evidence that suggests a way of 3-4 metres had been available. While this evidence is not conclusive evidence that way visible was actually used by the public, it is strongly indicative that such a way was physically available between 2000 and 2018.

### **Other Photographs**

- 1.46. Various photographs taken between 2007 and 2020 are included at item 2 in appendix B.<sup>8</sup> These have been annotated to indicate locations and key

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<sup>7</sup> This observation is at odds with claims by objectors that various items, vehicles etc had been placed along the south side of the route making it unavailable.

<sup>8</sup> The set of photographs at item 1 include photos of gates at point A and B taken on 13 Feb 2007 during a survey of the whole Kirklees PROW network. Any structures found were recorded and photographed, regardless of whether they were formally authorised or recorded. See also 'Furniture Photograph Reports' at items 12 and 13 in appendix B.



features. Google Street View photos of point A are included at items 10 and 11 in appendix B.

- 1.47. As well as the route itself, the photos indicate various changes to boundary structures such as walls and fences and alterations to construction of various buildings, particularly to north and south of A-B.
- 1.48. Photographs show well-defined enclosed route extending all the way from A-B, consistent with the aerial photographs.<sup>9</sup> A-B1 can be seen to have an asphalt surface, with B-1 C being predominantly earth / grass.
- 1.49. With the exception of a limited quantity of building materials on the north side of the route near in 2014, and gates in situ at various locations, no other obstructions can be seen, and there are no parked vehicles, trailers or similar items present in any photos.
- 1.50. It is apparent from the photos that work had been carried to structures alongside the track, particularly in a period 2014/5-1017 – however there are no available pictures illustrating the impact that that work may have had on the availability of any part of the route.
- 1.51. Prior to photos from September 2020 onwards that show fence posts and netting within the driveway, there is no indication from photographs that pedestrians were confined to any particular part of the available width.
- 1.52. Various photos show a pair of security gates at point A. All available photographs, with the exception of photograph 32, taken at dusk on 24 Sep 2018, show these gates in open position. Photos no. 4 from June 2014 and the Google Street View photos from July 2009 and May 2011 indicate a stile comprised of stone flags leading off the direct route near point A. Later photos from 2018 onwards indicate the arrangement had been altered by the formation of a squeeze stile around a gatepost when a wall was built along the south side of the route, indicating a minor change in the route that might have been used if the main gates were shut
- 1.53. Various photographs also indicate a pair of wooden gates at point B, including a pedestrian gate on the north side. The appears to have since been relocated to at or near point A3 (see photo 18). There is no indication of any gates or other structures at other locations – e.g., at points C and D where a stile and a wicket gate had been recorded, nor any stile at point B.

### **Conclusions regarding other photographs**

- 1.54. Available photographs are consistent with user evidence which describes the whole available width of 3-4 metres having been available and used, from point

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<sup>9</sup> The walls and fences on the south side are not actual continuous- there is a gap between A3 and B where there is access to the area in front of the house.

A all the way to point E. Photographs do not support the suggestion by objectors that only part of the width (on the north side) was generally available due to the presence of various stored items.

## **2. User evidence**

- 2.1. The existence of a public footpath along the route in question is not in doubt. The main question regards the lateral extent of that right of way, also if of a narrower width than the whole width between physical boundaries, where within that corridor the public right of way may sit. The user evidence is of assistance when considering these questions. Users generally described the way available / used as being over the whole width between boundaries, a width of 3-4 m being a common description.
- 2.2. Should the evidence as a whole show that the way originally recorded was indeed only confined to a narrower width of 1.2 metres, as asserted by the landowner, this does not preclude the possibility that public rights over an additional width have subsequently come into existence. There may also have been re-dedication without certain limitations currently recorded in the Definitive Map and Statement. In light of this, the user evidence has been analysed in the context of the tests under section 31 of the Highways Act 1980 and in respect of dedication at common law.
- 2.3. The application was supported by user evidence forms (UEFs) completed by 14 individuals who all indicated use or availability of a width greater than the width of approximately 1.2m currently recorded in the Statement. Additional user evidence was received following the informal consultation in Autumn 2020, in which specific questions were asked regarding the width available and actually used.
- 2.4. The majority of those who submitted evidence appear to be as members of the public rather than visitors or exercising a private right of way. All public use described was on foot. Users generally described use of the route for leisure or recreation, either including walking / and running. This included use for organised group walks and use by a running group. There are frequent references to use of the route as part of a walk / run to the trig point (triangulation pillar) at Wolfstones Height, a short distance to the west.
- 2.5. Frequency and periods of use are indicated the chart at item 2 in appendix A. Other items in appendix A included summaries of the descriptions given of widths available / used and other relevant evidence including descriptions of gates and stiles.

### **Section 31 Highways Act 1980**

- 2.6. For a way to have been presumed to have been dedicated under section 31, a number of elements must be satisfied. These are set out in the section itself:

2.7. “Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of twenty 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.”

2.8. The key elements required by this section are considered in turn below.

### **Date of bringing into question**

2.9. The full period of 20 years user required under s31 Highways Act 1980 is calculated retrospectively from the date of bring into question.

2.10. In order for the right of the public to have been brought into question the right must be challenged by some means sufficient to bring it home to the public that there right to use the way is being challenged.

2.11. In absence of an earlier action, the making of an application to modify the Definitive map and Statement would have brought any unrecorded public rights into question

2.12. The application was made on 30 September 2020. This was in response to the fencing off of the majority width of the driveway (A to A3) on or shortly before 6<sup>th</sup> September 2020, also preventing access via the bypass stile. Mr Scanlon, as agent for the landowner immediately contacted the Council to advise of this work being carried out. The fencing off of part of the available width would have brought any public rights into question therefore the 20-year period to be considered under section 31 is September 2000 to September 2020.

### **Alternative possible dates for bringing into question.**

2.13. Earlier possible dates for the bring into question of public rights over the greater width have also been considered. It should be borne in mind that the mere existence of a public footpath along the route has not been brought into question and is not itself in doubt. Doubt has only been raised regarding the existence of rights extending over a width greater than approximately 4ft or 1.2 metres and / or in relation to the exact position of any public right of way if only of a lesser width.

### **April 2020**

2.14. In Spring 2020 the pair of electric gates at point A were closed with the apparent intention of discouraging use of the public right of way during the first coronavirus lockdown, with use of an alternative permissive route (the already constructed proposed diversion route). This action is documented in discussions between a Strategic Director of the Council and the landowner’s agent from mid-April 2020 onwards. This also resulted in a complaint from the

Ramblers in May 2020 and threat of legal action by PNFS.<sup>10</sup> There is no indication that the bypass stile near point A had been closed off. This action appears to have been motivated by a genuine and understandable fear of a risk to the health of the residents during early stage of the pandemic, and increased use of Holmfirth 60 by the public during lockdown; there is no indication that users of the way would have perceived that their right to use a greater width than approx. 1.2m was being challenged. This action is not considered to have brought public rights over the greater width of the route into question.

### **August 2018**

- 2.15. It is documented that a PNFS Inspector observed the electric gates automatically closing at dusk - at 9.20pm on 6 August 2018.<sup>11</sup> Following the gates again being closed at dusk on 24 September 2018<sup>12</sup>, PNFS served notice on the Council, under section 130A of the Highways Act 1980, for it to take action to secure the removal of unauthorised security gates.<sup>13</sup> There is no indication of complaint from the public in general or any indication that the public in general perceived the gates being closed as a challenge to the existence of rights over the greater width. The existence of a public footpath in general has never been in doubt. Provision had long been made for pedestrians to bypass the (unauthorised) gates. This would in any case have required members of the public to enter and travel along the greater width of the driveway near point A. Thus, it is considered that the closing of the security gates at dusk in August 2018 would not have brought rights over the wider width of the route into question.

### **May 2019**

- 2.16. There was further correspondence with the landowner's agent in May 2019 following a theft at the property. By that time, it is apparent that the agent had become aware of the recorded width. He stated that it was his client's intention to close one gate leaf, while still allowing a gap of greater than 1.2m. That was the first point that the landowner or their agent appears to have taken the view that the public right of way might not extend over the whole available width of the driveway. However, this information appears to have been employed as a

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<sup>10</sup> The landowner's agent later arranged for one gate leaf to remain open (this was done in June 2020). The agent was clearly aware by that point of the recorded width and what width the council might and might not be a strong position to enforce. See documents at item 18 in Appendix D

<sup>11</sup> Report from PNFS at item 20 in appendix D

<sup>12</sup> Second report from PNFS at item 21 in appendix D. Includes a photo showing the electric gates closed at dusk.

<sup>13</sup> This was resolved through the landowners agreeinparish

g to keep the electric security gates open. No further action legal was taken to secure their removal. See notice to PNFS at item 22 in appendix D

strategy to retain a security gate at point A to restrict vehicular access along the driveway; there is no indication of any action having been taken that would have disabused pedestrians of the notion that public rights extended over a greater width. In any case, no action was taken to alter the operation of the gates to allow only one leaf to be closed and the other to remain open, until June 2020. Nor was this intention communicated to the public. This stated intention did not bring any public rights into question.

### **November 2000**

- 2.17. Council files contain a response to an enquiry in late 2000 from the Holme Valley Parish Council. This refers to the stile alongside the gates and to a signpost.<sup>14</sup> The exact nature of this enquiry or what prompted it is unclear. However, there is little suggestion that the public's right to use a greater width might have been brought into question in 2000, for the same reasons given above.

### **'A Way'**

- 2.18. All user witnesses who completed UEFs indicated that the application route had always followed the same course and had not been altered.
- 2.19. The user evidence is consistent with photographic and map evidence discussed above that indicates the availability of a consistent well-defined route, following the enclosed driveway and following field boundaries or an enclosed track to point E.
- 2.20. The only variation from this well-defined route may have been in the vicinity of point A where, in addition to the well-defined driveway, there has been a stile on the southern side allowing pedestrian user to bypass the gates, if found closed. It is apparent from photographs that the alignment that bypass route that might have been used altered around 2015-2017 due to the construction of a boundary wall and creation of a narrow squeeze stile around the southernmost gatepost. However, the bypass route would not have been used, or more latterly available, if the gates were in open position. I.e., when most use was likely to have taken place. It may also be reasonably characterised as exercise of a common law right to deviate from the existing public right of way that is recognised to exist, but which had been possibly unlawfully obstructed by the closed electric gate(s).

### **'...Actually enjoyed'**

- 2.21. All fourteen individuals who initially completed evidence forms actually used the route themselves and described the route was having a width greater than the

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<sup>14</sup> Objectors to the application have also referred to enquiries '15 or 20 years ago' from the Council or the parish council which resulted in no action. The letter from the Kirklees Council to the parish council is at item 17 in appendix D.

approximately 1.2m currently recorded. 10 user witnesses indicated they had used the way over the full 20-year period from 2000. Much documented user commenced in the mid-1970s, with some use commencing in the early 1960s. Most use was described as monthly or every few months, with some weekly use. People generally described the way available and used as between 3 and 4 metres wide, or between 8 and 13 feet. Many people specifically referred to the route having been narrowed only recently, with a greater width previously available and actually used.

- 2.22. In response to the informal consultation exercise, 11 additional people, who had not indicated any use of the way that might be considered 'private' in nature, described use over the 20-year period. All those individuals described use of a route wider than the approx. 1.2m currently recorded. The consultation specifically asked various questions about the width available and actually used, where within the available width they walked, and if the width changed over time. In general, the width described as used by those who responded was the full width of the track, or with similar widths to those mentioned in the earlier evidence forms. Several people indicated you could 'walk where you wanted' or described walking up the centre of the track. A number of people also specifically described walking the route in the company of others or in groups, so did not always use the path in single file.
- 2.23. In addition, several people who expressed strong support for the separate proposed diversion and against the claim, described personal use of a narrower width, although two appear to acknowledge the available width had been narrowed.
- 2.24. Three objectors did claim that public use had been confined to the northernmost 1.2 metres and that the southern side of the driveway and had been unavailable due to the presence of various stored items, vehicles etc. and building work at various times. This claim is somewhat at odds with other evidence, including user evidence and photographic evidence. This is explored further below under 'interruption'.
- 2.25. Specific comments made regarding the width previously available or used are included at items 4 and 5 In appendix A. <sup>15</sup>

### **'...by the public'**

- 2.26. All those who completed evidence forms and the overwhelming majority of those who responded to the consultation were using the route as members of the public and not in exercise of private rights, or e.g., as visitors or employees.

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<sup>15</sup> These comments are anonymised and may presented in be in random order to avoid individual witnesses being identified by third parties at this stage. Should an Order be made and advertised, the documents considered (including user evidence) would then be available for public inspection. This includes the identities of user witnesses. This is in line with various Information Tribunal decisions regarding user evidence, and paragraph 8 of Schedule 15 of the Wildlife and Countryside Act 1981.

A small number of people who responded to the informal consultation had used the way in connection with premises accessed from it. It is considered that there was significant use by the public at large throughout and before the 20-year period.

**‘... without interruption’**

- 2.27. Interruption means actual and physical stopping of the enjoyment of the public use of the way by the landowner or someone acting lawfully on his behalf. Use of the way does not need to have been constant. Any interruption must have been with the intention of preventing public use of the way, and not for some other purpose such as the parking of vehicles or the carrying out of building work.
- 2.28. The overwhelming majority of people who supplied evidence of use of a greater width indicated gave no indication that use of any part of the way had been interrupted, prior to the physical narrowing of part of the route in early September 2020. One person did refer to a pile of soil on the grass part (i.e., east of B1) which was ‘cleared within days’. Several other people did refer to building works having taken place in recent years, in one case the person noting ‘that pedestrian access was always available’.
- 2.29. It is evident that some building works have taken place, particularly the reconstruction following a fire of the part of the house abutting the south side of the driveway near A2 That might have temporarily impacted on use of the full width of the driveway somewhere in the period 2014 to 2017, however such building work would not have constituted an ‘interruption’ of enjoyment for the purposes of s31.
- 2.30. Three objectors to the application did comment in detail regarding the unavailability of the southern side of the driveway due to building works, scaffolding and the parking of vehicles, while a strip along the northern side of the driveway had always remained available for public use. Objectors also asserted that the southern side of the grass surfaced track between points B1 and E had been unavailable due to the use of that side for the parking of agricultural vehicles, trailers etc and the storage of items such as feeding troughs. However, use for those purposes is not supported from available photographs and aerial photographs (2000 onwards). In any case there no indication that any such things were placed on the southern side of the route with the intention of preventing use by the public.
- 2.31. It is evident that electric gates had been in situ prior to and during the relevant 20-year period. However, these appear to have generally only been closed during hours of darkness, apparently as a security measure and did not prevent public enjoyment route as a whole.
- 2.32. In some circumstances, the closing and locking of gates might be considered an interruption to enjoyment of the way. However, given that the pedestrian provision was actively provided to the south of the gates at point A leading into

the greater width of the driveway, it is unlikely that such an action could be said to be with the intention of preventing public use of the greater width of the route in general.

**‘... as of right’**

2.33. User ‘as of right’ that might give rise to a presumption of dedication must have been *nec vi* (without force), *nec clam* (without secrecy) and *nec precario* (without permission).

**‘...without force’**

2.34. There is no suggestion in the available evidence that users of the route in question used any force in order to secure passage along any part of the way.

**‘... without secrecy’**

2.35. For use to be as of right it must be open and of such a nature that if any landowner would have been aware that the way (or the greater width, in this case) was being used, had they chosen to look, and so had been in a position to object.

2.36. Again, there is no indication that any use has been with secrecy. The route also passes immediately adjacent to the dwelling at Wolfstones Heights Farm and along the driveway serving the property and user of the route would have been clearly visible to the owner of the property.

**‘...Without permission’**

2.37. No users of the way who provided evidence that indicated that they had either sought or been granted permission to use any part of the way in question. Nor is there any evidence from other parties to suggest that that any use was with permission, express or implied. There is no evidence of any signs or notices having been erected indicating use of the greater width was with permission, although in 2020 notices were erected indicating use of the alternative (proposed diversion) route was only permissive.

**‘... Full period of 20 years.’**

2.38. As earlier possible dates on which any public right of way over the ‘greater width’ might have been brought into question have been discounted, the period of 20 years to be considered is September 2000 to September 2020.

2.39. There is strong evidence of use of the greater width of the route, by the public, over the full period of 20 years up to September 2020. It is also noted that *if* rights over the greater width were brought into question by earlier acts, such as the shutting of the electric gates in spring 2020 or reports of closure at dusk in August / September 2018, this would have little impact on the assessment of the user evidence, which extends as far back as the 1960s



## **Contrary intention**

- 2.40. The presumption described above may be rebutted where there is sufficient evidence that the landowner did not intend to dedicate a public right of way. There must have been some overt acts on the part of the landowner to show the public at large that the landowner had no intention to dedicate. The test is whether a reasonable user of the path would understand that the landowner was intending to disabuse the users of the notion that the way (or in the case, the whole available width of the way in question) was a public highway.
- 2.41. There is no indication from the user evidence that anyone was challenged when using any particular part of the route in question. Although several objectors have indicated that the public's rights *were* confined to a 1.2m wide strip along the northern side of the route, there is no suggestion that any action was taken to challenge people observed to be using other parts of the route, it being instead argued that the southern side of the route was not used as it was unavailable. However, any temporary parking of vehicles or storing of building materials or other items on part of the greater width that is claimed to have taken place would not have had the effect of demonstrating a contrary intention.

## **Conclusions regarding presumed dedication under s.31 Highways Act 190 over a greater width than that currently recorded**

- 2.42. There is ample evidence of pedestrian use (singly and in groups), by the public, as of right, for a full period of 20 years to September 2020. The use described extended across the full available width of the driveway from point A to Wolfstones Heights Farm and continuing over the full width between walls and fences to point E at Brown Hill. There is no strong evidence of interruption of use of the way with the intention of preventing public access to the full available width, use was without permission. There is no clear evidence of any lack of intention to dedicate having been demonstrated by the landowner prior to the first week in September 2020
- 2.43. Notwithstanding that a public right of way of a lesser width is certain to exist over part of the available width, the evidence is sufficient to satisfy the requirement of section 31 Highways Act 1980. A public right of way on foot is deemed to have been dedicated over the whole width of the driveway and enclosed continuation to point E to September 2020.
- 2.44. It is further noted that the evidence is sufficient to conclude that a public right of way on foot actually subsists over the whole width, rather than there just being a reasonable allegation that such rights exist.
- 2.45. The route is currently recorded as a public footpath, albeit with a width of only approx. 1.2m or 4ft, with limitations recorded in the Statement. Several further issues arise. Any presumed dedication under s31 of a greater width than currently recorded may be subject to additional limitations or conditions. Further, that the evidence may show that dedication over a greater width may have been without additional limitations, or that the evidence may show that

various limitations previously recorded may have been absent over the qualifying 20-year period. That might have led to re-dedication without such limitations. These possibilities are considered in detail below when looking at evidence regarding gates, stiles and other structures.

### **Common Law**

2.46. A public right of way may come into existence at common law through dedication by the landowner and acceptance by the public. There may be express dedication (rarely) or implied. Dedication may be inferred from public use, as of right, over an undefined period of time, or through overt acts on the part of the landowner that demonstrate an intention to dedicate. There is no presumption of dedication and the burden of proof is on the person asserting there has been such dedication.

### **Capacity to dedicate**

2.47. Dedication at common law also requires there to be a person with the legal capacity to dedicate. This would be the freeholder of the land and not just a tenant or lessee. Where there is mortgage, it is likely that mortgagee (lenders) consent would be required for dedication of a public right of way. This does not apply to presumption of dedication under s31.

### **Mortgages**

2.48. The ownership of Wolfstones Heights Farm has been researched and details discovered of various transfers from 1903 onwards. The property was subject to mortgages or other charges in the periods 29 January 1932 to 20 June 1941, 12 March 1953 to 17 July 1954, and from 22 Feb 1961. It is known that there was a mortgage still in place in on 24<sup>th</sup> June 1970, although it is not clear when this charge was removed. It is assumed that the term would have been no longer than 25 years – i.e., to February 1976, the property being sold again in 1978. The property then remained in the same ownership until September 1995, although the property was mortgaged in September 1993. The purchase of the property by the current owner in 1995 was without a mortgage, although the property was again subject to a mortgage from 18 January 2010. This was still in place in September 2020.

2.49. Dedication at common law might not have been possible during those periods when mortgages were in place. However, there would have been legal capacity to dedicate prior to 1932. The landowner would also have had legal capacity to dedicate a public right of way during various subsequent periods when the property was not mortgaged. In particular between 1976 and 1993, and 1995 and 2010.

### **Use of a greater width by the public**

2.50. The western part of the route has been depicted on maps in a similar manner since at least the late 1820s if not earlier, with the eastern part previously shown as a field edge path. There have been ample periods over which there

may have been public use of the whole available width from which dedication may be inferred. The walking schedule from 1950 described 'uninterrupted user by public for 50 years.', i.e., including long periods when no mortgage was in place.

- 2.51. The eastern part of the route is shown on the 1964 OS map was walled or fenced on its southern side between B and D. (This alteration may have followed a change in ownership in 1961). The making available of a wider defined width of 3-4m between B and D may have taken place during a period in which the freeholder had no capacity to dedicate without the mortgagee's explicit consent. (Photographic evidence indicates D-E had been fenced on the south side by 2000). However, there is ample evidence from user witnesses of use of a greater width along the whole route from the early 1960s onwards right through to 2020.
- 2.52. From c.1976 through to 2010 (during which period it is assumed the landowner had capacity to dedicate - excepting September 1993 to September 1995), there is, collectively, evidence of user from 19 members of the public of the whole route from A-E. The majority of users described the route available and actually used as being the whole width between the boundaries, typically 3-4 metres, or similar measurements in feet. It may be inferred that the successive landowners did intend to dedicate a public footpath over the whole available width. This use also demonstrates acceptance of dedication by the public.
- 2.53. Ignoring any earlier evidence suggesting earlier dedication of a route wider than 4ft, there is ample evidence of public use on foot over a width greater than 1.2m covering periods when the landowner did have the legal capacity to dedicate, from which it may be inferred that the landowner did intend to dedicate a public footpath of greater width than 1.2m

### **Conclusions regarding dedication at common law**

- 2.54. There is no doubt that a public right of way on foot existed along the route by 1952, although recorded at a lesser width than the full width between boundaries. There is nothing to suggest that there could not have been dedication of public rights over the whole available width of A-B in the period to 1932, the route apparently having existed in the same form for at least a century.
- 2.55. There were various periods from 1932 onwards when the landowner may not have capacity to dedicate due to mortgages being in place. This includes the period when it is likely that B-D became fenced on the south side. However there also long periods (particularly 1976-2010) when dedication would have been possible. There is also ample evidence of use over such periods of a greater width by the public (the whole width between boundaries) from which dedication might be inferred.

### **Evidence regarding limitations (gates and stiles etc.)**

- 2.56. The evidence discussed above indicates dedication of a public footpath over a greater width than the approximately 1.2m currently recorded. (Presumed under section 31 or inferred at common law). Any dedication (or re-dedication) might be subject to various limitations or conditions, or without conditions that previously existed. Attention should also be given to the limitations that are currently recorded in the statement and those that might now actually exist.
- 2.57. References made by user witnesses and consultees the presence or absence of stiles or gates at various location are summarised in items 6 to 8 in appendix A. In general, there were descriptions of witnesses noting the existence gates / a stile at point A, and gate / a gate / fence at point B (or C) and a stile at point E, but no reference to any structure at point D. Occasional reference was made to a gate having been put in place at point A43 in recent years.

### **Structures at / near point A.**

- 2.58. There is no indication from the documents relating the development of the DMS that there were any gates or other structure in place at or near point A at the date of survey in 1950 or the relevant date of the first definitive map (1952). By contrast structures described in the walking schedule as existing at various other locations were annotated on the Definitive Map and subsequently recorded in the Statement
- 2.59. Similarly, no additional structures e.g., gates or a stile at point A are indicated in the Modified DMS (Relevant Date 1985).
- 2.60. Gates across the whole width of the way at point A are unauthorised. This would apply even if the even if the evidence was *not* found sufficient to show, on balance of probabilities, the existence of public rights over the whole available. In that situation a 1.2m wide gap would be required to be retained.
- 2.61. The automated gates within the driveway at point A, accompanied by a stile leading off the line of the driveway, were described by an objector as having been in place prior to the purchase of the property by the current owner in 1995, It was asserted by the same person that the gates and adjacent stile may have been installed c1989.
- 2.62. This physical arrangement or security gates and a stile is mentioned in the letter to Holme Valley Parish Council in 2000 – see paragraph 2.17 above. Objectors have thus suggested that the gates were thus closed with permission of the Council. However, it is more likely that officers exercised discretion and took no action at that time as gates were generally open and the provision of a stile alongside would allow the gates to be easily bypassed if found to be closed.
- 2.63. There is very limited evidence to support the early existence of a gate or similar structure near point A. The Township Map of 1831 shows a line across the way a short distance east of point A. This might suggest a gate, although it is not

certain and may simply relate to the awarded parcels of land north and south of the route. The first edition 6" OS map sheet (surveyed 1850-51, published 1854) show two lines across the way in a similar location to the 1831 map and again not at point A. However, the tithe map of 1850 shows no such features. Later OS maps do not show any such features across the route between points A and B.

- 2.64. Many of those who completed user evidence forms (or responded to the consultation) referred to gates and / or stiles at point A. However, several people did not mention gates or other structures at that location, or if they did, noted that gates were always or normally open. Reference was made to the availability of the pedestrian bypass route around the gates if they were found closed / locked.
- 2.65. There are several references to the gates having been found closed during lockdown in 2020. That action by the landowner was also confirmed in correspondence with council officers in Spring 2020. <sup>16</sup>
- 2.66. There are some references to a pedestrian gate alongside a vehicle gate, although that description does not match available photograph evidence.
- 2.67. Some user witnesses also observed that the stile lead into the area of the driveway that was fenced off in September 2020.
- 2.68. It appears to have been common practice for the unauthorised electric gates to have been automatically closed at dusk, but with provision for pedestrians to bypass them. As the gates were una authorised obstructions of the recorded public right of way, use of the bypass route can be characterised as users exercising a common light right to deviate to avoid an obstruction rather than suggesting dedication of n addition public right of way. Use via the stile would not have been necessary when the gates were open.
- 2.69. The stile arrangement, consisting of a chicane of slabs leading off the south side of the driveway was altered between 2014 and 2017 when a wall was built alongside the southern side of the driveway, as seen in later photos (see item 2 in appendix B. Any route used to bypass the gates has not been consistent over the 20 years between 2000 and 2020.

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<sup>16</sup> It is documented in correspondence been various parties that Council officers were aware that the landowner had closed the gates at point A during the earlier part of the first lockdown in 2020 and objectors have argued that this action had been authorised by a Director of the Council. It is noted that the landowner had closed the gates to discourage use of the existing public right of way, apparently due to perceived risk to residents from increased public use of the way by local people taking exercise. There is no indication this action was with the intention of preventing further public rights being established. Any tolerance of this action by the Council was in the context of the pandemic and prior to it becoming clear that there was no legal basis for the temporary closure of PROW on public health grounds. By May 2020 the landowner had agreed to make arrangements for the northernmost gate leaf to be opened. See material at item 18 in appendix D.

- 2.70. Objectors also indicated that the stile was not always in the form seen now and had not always been open or passable during the period of possession by the current owner. It is apparent that there had been a change to the arrangement, although it is unclear as to what points in time the stile had been unavailable.<sup>17</sup>
- 2.71. Action regarding the gates was only taken in 2018 after the PNFS inspector observed the gates closing at dusk. Following the action by PNFS in 2018 (service on the council of notice for removal of obstruction), the landowner agreed for the gates to be fixed in the open position. That would have blocked the access to and from the squeeze still then in place. That arrangement persisted until March / April 2020 when the gates were closed during the first lockdown This is documented in the material at item 18 in appendix D.

### **Conclusions regarding structures at point A**

- 2.72. There is no documentary or map evidence for the existence of any structures having existed at point A prior to the development of the first definitive map. While there is some evidence from early maps of structures east of point A, these do not appear on later maps.
- 2.73. It is evident that electric gates and a stile (the latter leading off the line of the driveway) existed by 2000, perhaps as early as 1989. However, gates were not authorised and cannot be recorded as a limitation on the public right of way that is recognized to exist. Prior to Spring 2020 the electric gates only appear to have been closed during hours of darkness for the purpose of security and with the intention of prevent pedestrian use of the recognised public right of way or the greater width of the driveway.
- 2.74. A stile had long existed in some form allowing users to bypass the electric gates if found closed (normally only after dark). This was altered somewhere in the period 2015-2017 when a wall was erected along the southern side of the driveway. The bypass route was slightly changed to route users more closely around the southernmost gate pillar. Use of a route via any stile near A is considered deviation to avoid an obstruction in an existing recognised PROW and any stile should not be recorded as a limitation.

### **Structures on the eastern part of the route (points B, C, D)**

- 2.75. The 1950 walking schedule walking described stiles at points B and C and a wicket gate at point D. This is consistent with a footpath passing through a series on enclosed fields. These structures were annotated on the first Definitive Map and listed in the Statement. Successive maps up to the 1930s show the same arrangement of fields, with a footpath following the northern edge.

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<sup>17</sup> Clarification regarding such comments has been sought, but at time of writing no substantive response has been received regarding most assertions.

- 2.76. The 1964 OS maps shows an enclosed track between points B and D, with solid lines indicating boundary features at points B and D only. There is no indication of such a feature at point C where a stile had been recorded.
- 2.77. The Modified (1985) Definitive Map is annotated to show stiles at points B and C. The annotation 'WG' for the wicket gate at point D was not shown. However, the modified statement did the record stiles and wicket gate as per the first definitive map. It is unclear if this was simply an error, however user witnesses make no reference to such a structure.
- 2.78. Users (including respondents to the consultation) did not describe any stiles on the eastern part of the route with the exception of a stile at point E (still extant).
- 2.79. Some users described a gate or gates at either point B or point C (i.e., where stiles are recorded). One user described gates at point C having been erected 'in the last 25 years or so'. The applicant mentioned the existence of a field gate at point C when he first used the path. Others also noted that gates had been removed, with one person indicating a gate at point A3 (near the house).
- 2.80. While there is some inconsistency in the descriptions of the exact locations evidence is generally consistent in describing on one gate or set of gates, either at point B or C. There is no indication from witnesses of a structure having been in place at point D. This suggesting that may have been removed some decades ago and certainly prior to 2000.
- 2.81. Aerial photographs from 2000 onwards give no indication of any structures being in situ at points C or D, (Point B is obscured).
- 2.82. Photographs taken from 2007 onwards given no indication of any structures in situ at points C or D, with a pair of wooden gates at point B. These are seen as open in a number of photos, and there is no suggestion that gates were locked. There is no indication of any stiles being in place. The gates at B were relocated c2020 to near point A3, the wide leaf now remaining as at the end of the currently fenced in area.
- 2.83. Persons associated with associated with Wolfstones Heights Farm (since 1995) described the existence of the structures at point B, but made no mention of other structures at e.g., points C and D. This description given was of a makeshift fence / farm gate with posts that could be removed to allow access with vehicles. There was a pedestrian gate on the northern side. These structures were reported as being unlocked, and already in place in 1995. A pair of gates seen in photographs from 2007 onwards is presumably a later replacement, although it is not clear exactly when the gates were replaced / improved. However, for at least the majority of the of the 20-year period 2000-2020 there were a pair of unlocked gates at point B

### **Conclusions regarding structures at B, C, D**

- 2.84. The first DMS recorded structures at points B, C, and D. The existence of stiles and a wicket gate is supported by the walking schedule. However, the structures on the eastern part of the route have been altered at various times.
- 2.85. Taken collectively there is strong evidence that the only structures in place on the eastern part of the route (B-E), since at least 2000, would have been a gate or gates at point B (with no stile). As no gates have been authorised on the existing public right of way, a gate cannot be included as limitation on the existing public footpath.
- 2.86. The wicket gate indicated at point D is not indicated on the 1978 Draft Review Map or the Modified Definitive Map, although remains in the Statement. It is considered that this is likely to have disappeared by the late 1970s and is not described by any witnesses. Any stiles at point C also appears to have been removed several decades ago, and certainly has not been in place since at least 2000.
- 2.87. It is likely that there has been dedication / rededication of a public right of way over the full available width between boundaries, without previously recorded limitations at points B, C or D. Due to the existence of the existing recorded public right of way, it would not be appropriate to record as limitations gates over the whole width. However, it would be appropriate to record as a limitation 1.2m wide gap at point B, with an additional gate alongside.

### **3. Overall conclusions**

#### **Historical documentary evidence**

- 3.1. Historical documentary evidence in the form of maps from 1829, 1831, and 1850, and Ordnance Survey maps through to 1931 clearly indicate the route in question in the form of an enclosed lane serving what is now Wolfstones Heights farm, (section A-B), continuing as a field edge footpath towards Netherthong section B-E. The maps do not provide direct evidence of the existence of public rights (though the existence of a public footpath along the route is not itself in doubt). Nor do they clearly indicate that the boundaries of A-B were set out with reference to the highway. Nonetheless it is apparent that the route existed in more or less the same form since at least the 1820s and there is no indication that any public rights that existed did not extend over the whole available width of A-B.
- 3.2. The OS map of 1964 indicates that the field edge footpath east of point B and became an enclosed track by the early 1960s.
- 3.3. Records relating to the development of the definitive map indicate that part A-B was considered by a surveyor as being of greater width ('C R B' width), with no indication that use was confined to any particular width within the boundaries. Although the whole length of path Holmfirth 60 was recorded as being



approximately 4ft wide, there is evidence from other documents and memo relating to the process of development of the map and statement that the County and District Council were not concerned with recording accurate width. This significantly lessens the reliance that may be placed on the widths recorded in the Statements accompanying the 1952 and 1985 Definitive Maps

- 3.4. Analysis of the current Definitive Map and Statement indicates a discrepancy between the map and the statement in that the annotation WG for wicket gate previously indicated on the first Definitive Map had been removed from the current Definitive Map but remains recorded in the current Statement. It is likely that that structure was no longer extant, and the Statement should be modified to remove reference to this limitation.

### **Aerial and other photographs**

- 3.5. Available aerial photographs taken between 2000 and 2018 provide strong evidence of the availability of an enclosed route, varying between approx. 3 and 4 metres between boundaries. The aerial photographs are consistent with the evidence from users regarding the width of the way that was claimed to have been available / used. While the aerial photographs are not conclusive evidence that way visible was actually used by the public, they strongly indicate that such a way was physically available between 2000 and 2018. The parts of the route visible in successive aerial photographs are noted to have been clear of obstructions such as vehicles, farming equipment, building materials etc.
- 3.6. Available photographs taken between 2017 and 2020 are consistent with user evidence which describes the whole available width of 3-4 metres having been available and used, from point A all the way to point E. Photographs do not support the suggestion by objectors that only part of the width (on the north side) was generally available due to the presence of various stored items.

### **Section 31 Highways Act 1980**

- 3.7. There is ample evidence of pedestrian use (singly and in groups), by the public, as of right, for a full period of 20 years to September 2020. (Date of bringing into question for the purposes of section 31 Highways Act 1980 due to fencing off of part width of the driveway to Wolfstones Heights Farm). The use described extended across the full available width of the driveway from point A to Wolfstones Heights Farm and continuing over the full width between walls and fences to point E at Brown Hill. There is no strong evidence of interruption of use of the way with the intention of preventing public access to the full available width, use was without permission. There is no clear evidence of any lack of intention to dedicate having been demonstrated by the landowner prior to the first week in September 2020.
- 3.8. Notwithstanding that a public right of way of a lesser width is certain to exist over part of the available width, the evidence is sufficient to satisfy the requirement of section 31 Highways Act 1980. A public right of way on foot is

deemed to have been dedicated over the whole width of the driveway and enclosed continuation to point E to September 2020.

- 3.9. It is further noted that the evidence is sufficient to conclude that a public right of way on foot actually subsists over the whole width, rather than there just being a reasonable allegation that such rights exist.

### **Dedication under Common Law**

- 3.10. There is no doubt that a public right of way on foot existed along the route by 1952, although recorded at a lesser width than the full width between boundaries. There is nothing to suggest that there could not have been dedication of public rights under common law over the whole available width of A-B in the period to 1932, the route apparently having existed in the same form for at least a century.
- 3.11. There were various periods from 1932 onwards when the landowner may not have capacity to dedicate due to mortgages being in place. This includes the period when it is likely that B-D became fenced on the south side. However there also long periods (particularly 1976-2010) when common law dedication would have been possible. There is also ample evidence of use over such periods of a greater width by the public (the whole width between boundaries) from which dedication might be inferred.

### **Structures at Point A**

- 3.12. There is no documentary or map evidence for the existence of any structures having existed at point A prior to the development of the first definitive map. While there is some evidence from early maps of structures east of point A, these do not appear on later maps.
- 3.13. It is evident that electric gates and a stile (the latter leading off the line of the driveway) existed by 2000, perhaps as early as 1989. The closing of electric gates is not considered to have brought the rights over the greater width of the driveway into question as they could easily be bypassed. The gates on an existing PROW have never been formally authorised and cannot be recorded as a limitation on the public right of way that is recognized to exist.
- 3.14. Prior to Spring 2020 the electric gates only appear to have been closed during hours of darkness for the purpose of security and not to prevent pedestrian use of the recognised public right of way or the greater width of the driveway.
- 3.15. A stile had long existed in some form allowing users to bypass the electric gates if found closed (normally only after dark). This was altered somewhere in the period 2015-2017 and the bypass route changed. Use of a route via any stile near A is considered deviation to avoid an obstruction in an existing recognised PROW and any stile should not be recorded as a limitation.

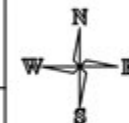
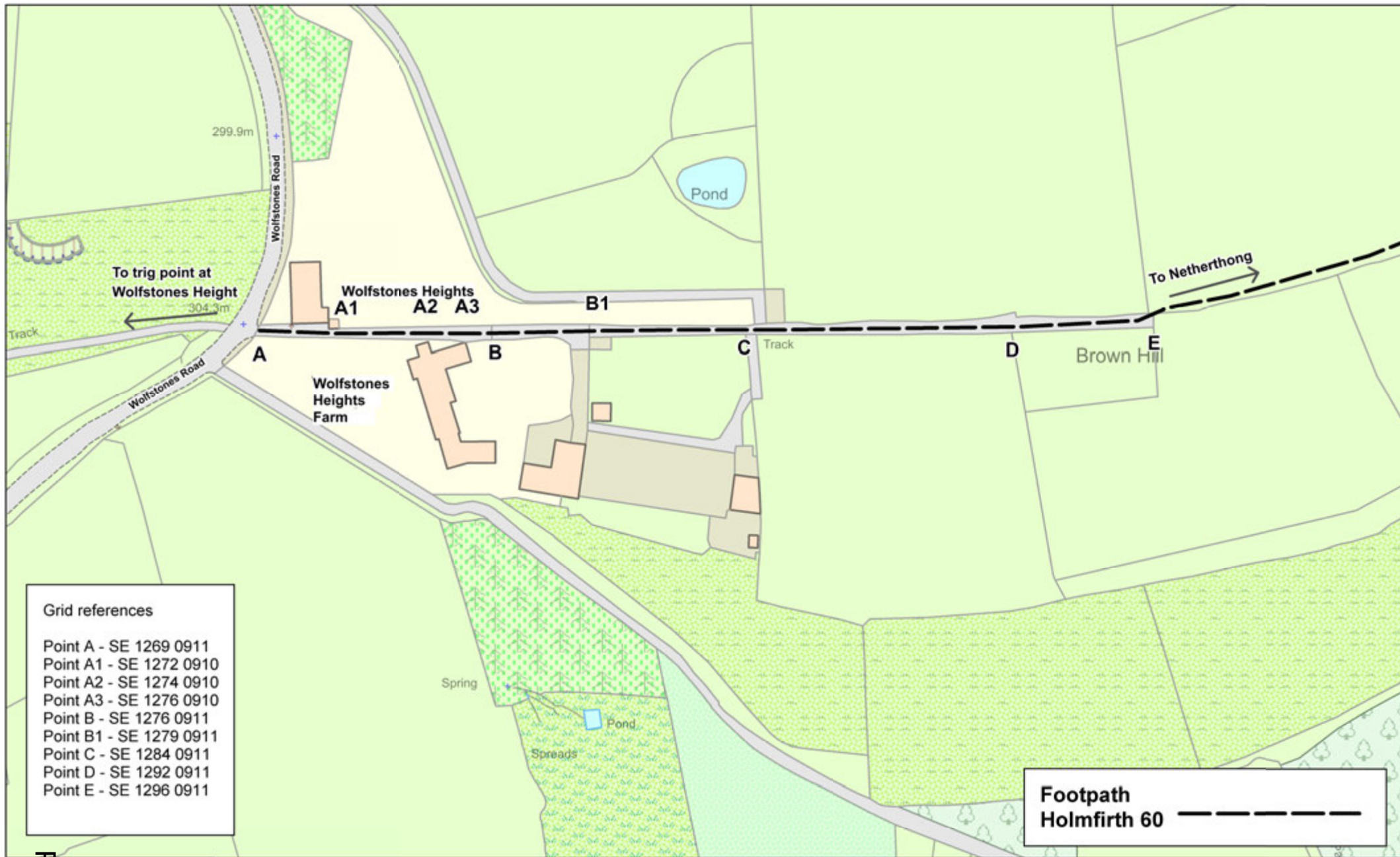
### **Structures at B, C, D**

- 3.16. The first DMS recorded structures at points B, C, and D. The existence of stiles and a wicket gate is supported by the walking schedule. However, the structures on the eastern part of the route have been altered at various times.
- 3.17. Taken collectively there is strong evidence that the only structures in place on the eastern part of the route (B-E), since at least 2000, would have been a gate or gates at point B (with no stile). As no gates have been authorised on the existing public right of way, a gate cannot be included as limitation on the existing public footpath.
- 3.18. The wicket gate indicated at point D is not indicated on the 1978 Draft Review Map or the Modified Definitive Map, although remains in the Statement. It is considered that this is likely to have disappeared by the late 1970s and is not described by any witnesses. Any stile at point C also appears to have been removed several decades ago, and certainly has not been in place since at least 2000.
- 3.19. It is likely that there has been dedication / rededication of a public right of way over the full available width between boundaries, without previously recorded limitations at points B, C or D. Due to the existence of the existing recorded public right of way, it would not be appropriate to record as limitations gates over the whole width. However, it would be appropriate to record as a limitation 1.2m wide gap at point B, with an additional gate alongside.

### **Concluding remarks**

- 3.20. Overall, there is good evidence that the width of A-B was under recorded when recorded in the first (1952) Definitive Statement at approximately 4 feet and in the Modified (1985) Statement at approximately 4ft / 1.2m. The actual width is more likely to have historically been the full available width between boundaries.
- 3.21. This conclusion does not apply to the part B-E which was an unenclosed field edge path until the 1950s. However, the evidence shows that this route was subsequently fenced to the south side to point D by the early 1950s and was fully enclosed to point E by 2000 at the latest.
- 3.22. There is plentiful evidence of the full available width of 3-4m having been available and used by the public over the full 20-year period 2000-2020 that would satisfy the requirements of section 31 Highways Act 1980 with evidence of use of a wider width than 1.2m over longer periods that would support inferred dedication at common law. Assertions that that the only part that was available and used was a 1.2 m wide strip on the north side is not supported by other evidence. Accordingly, the Map and Statement should be modified accordingly to record a greater width being the full available width between physical boundaries, varying between 3 and 4 metres, with changes to recorded limitations at points B, C and D as described above.

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## B2. Photographs of footpath Holmfirth 60 and other relevant features Holmfirth 60

NB photographs have been organised to illustrate various features along the route from west to east. Where available, photographs taken at similar locations, but on different dates, have been grouped together. Photos generally progress from west to east.



1. Point A at junction with Wolfstones Road. This is the start of the driveway to Wolfstones Heights Farm, followed by footpath Holmfirth 60. Behind the camera position an informal path leads towards the triangulation pillar at Wolfstones Height. The photograph shows automated electric gates, in open position. 2 Jun 2014.



2. Point A at junction with Wolfstones Road, showing electric gates in open position. Photograph taken by Exegesis Spatial Data Management surveyor under contract to Kirklees Council. 13 Feb 2007



3. View east from point A along the driveway to Wolfstones Heights Farm. In the open position the right-hand gate leaf blocks access to a squeeze stile around the gatepost. The wall on the right (south) was constructed between summer 2014 and summer 2017 in place of a low stone kerb. 11 Jun 2019.



4. Gatepost, electric gate and 'bypass' stile at point A. The 'bypass' around the gatepost on the southern side took users off the driveway. Neither gates nor a stile are recorded as limitations in the Definitive Map and Statement. Use of the bypass would require walking within the part of the driveway fenced off in September 2020. See also Google Street View photos from July 2009 and May 2011. 02 Jun 2014.





- Alterations to the bypass gap / stile at point A following construction of a wall along the south side of the driveway. This alteration to the access took place between summer 2014 and summer 2017. The gate was secured in an open position, so access via this gap / stile would not have been possible or necessary at the time this photo was taken. 11 Jun 2019.



- Electric gates at Point A and adjacent gap / stile. Looking west to Wolfstones Road. The wall to the south (left) was constructed in the period summer 2014 to summer 2017. Photograph supplied by the applicant. 08 Sep 2018.



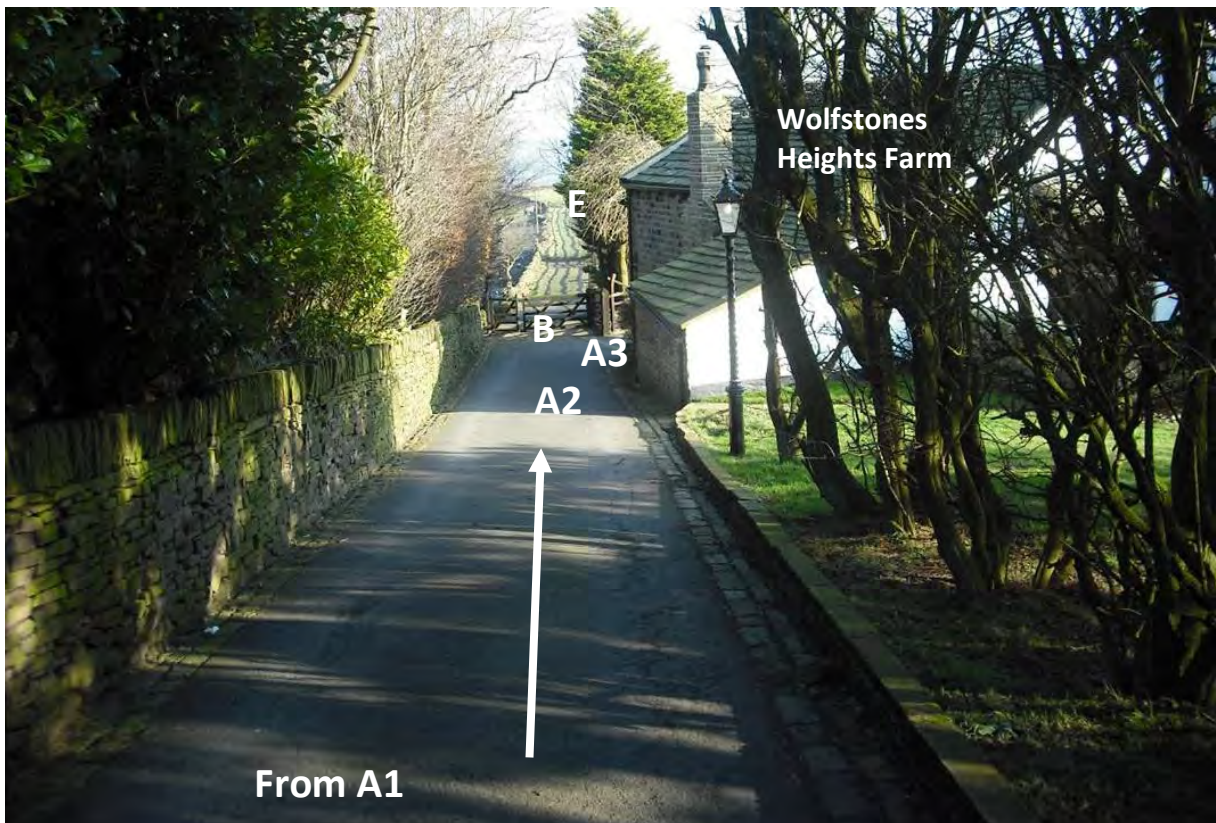
7. Fencing erected within the driveway in early September 2020. Looking east from point A. The available width had been narrowed to approximately 1.2 metres and the squeeze stile bypassing the southern gatepost had also been blocked off. Photograph supplied by the applicant. Sep 2020.



8. Southernmost gate leaf and squeeze stile at point A. Photograph supplied by the applicant. 08 Sep 2018



9. View west up driveway to electric gates at point A. Visible in this photo is an area of planting on the north side of the route, bordered by stone edging. This restricts the usable width for a length of about 20 metres. 04 Oct 2019.



10. View east from near A1 towards A2 and gates at B. This photo clearly shows two gates at point B. The gate to the left (north) is clearly unlocked and open. There are no other obstructions, stored items, vehicles, or materials visible along the length of Holmfirth 60 towards point E. The driveway is bounded on the right (south) by a low kerb and a line of hawthorn trees – possibly a former hedge. Photo taken by a Planning Officer in Feb 2012.



11. View east from near point A1, looking towards point A2. The roofs of Wolfstones Heights Farm are covered with blue tarpaulins following a fire in December 2013. 02 Jun 2014.



12. View west towards points A1 and A2. The right-angled wall to the left (at A1) is a recent construction but is in the position of an earlier structure shown on various map adjacent to the house know called 'Wolfstones Heights'. 04 Oct 2019.



13. South side of the driveway access from near the outshut at Wolfstones Heights Farm at point A2. Showing southmost side of the driveway back towards point A. This end of the building would later be taken down and rebuilt following a fire. Feb 2012.



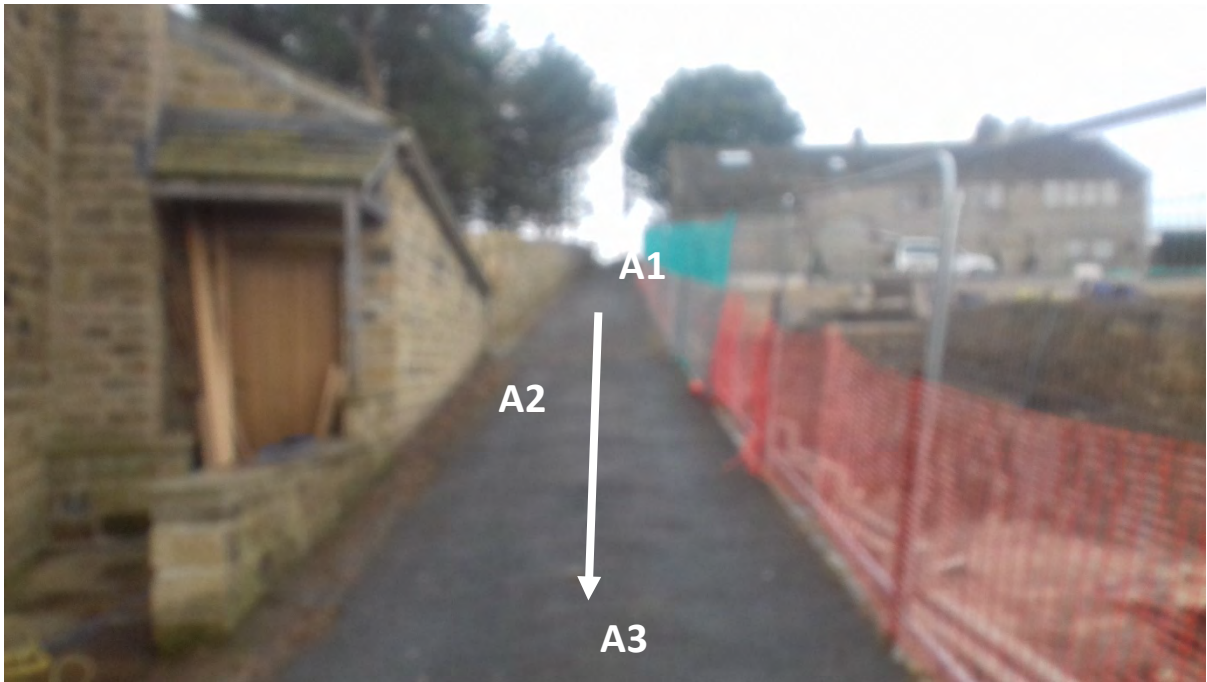
14. View west from near point A2 towards point A at Wolfstones Road. To the left (south) is an outshut forming part of Wolfstones Heights Farm. This part of the building had been damaged by fire in December 2013. 02 Jun 2014.



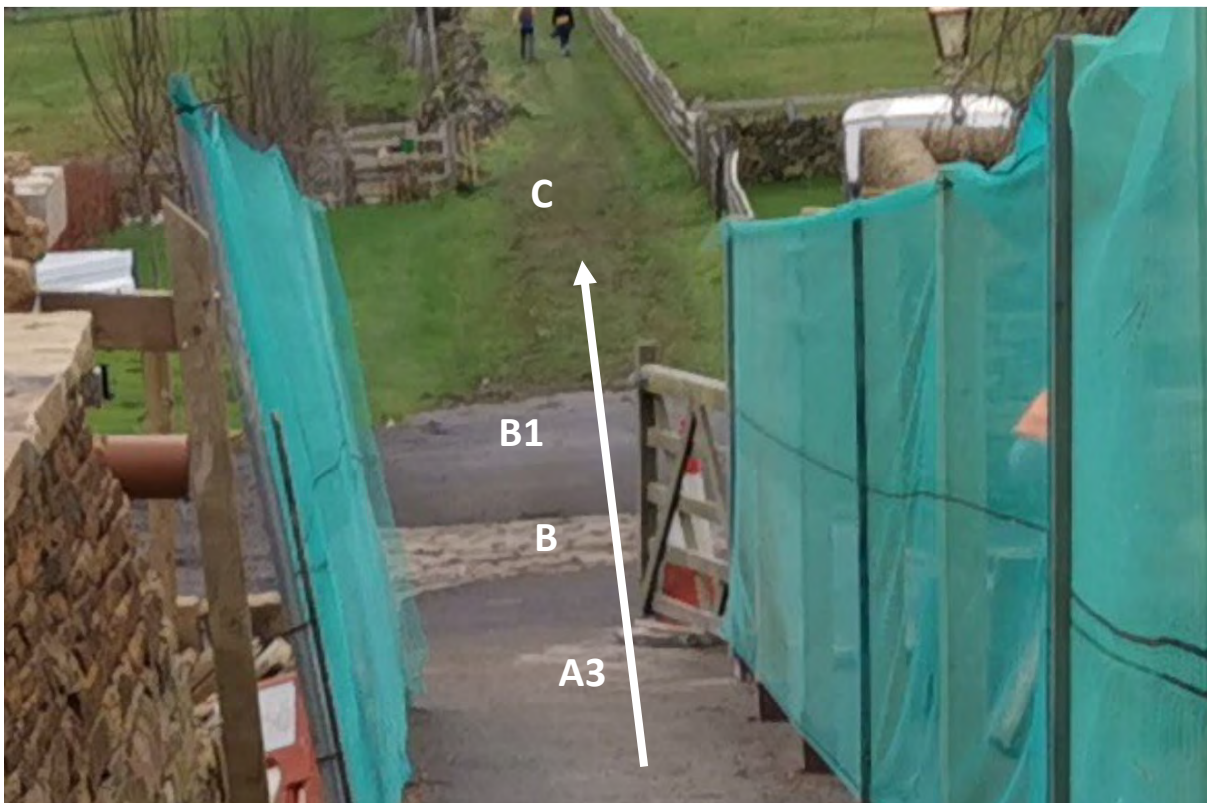
15. View from east to the rebuilt outshut at A2, corner of house at A3 and open gates at B. Work was ongoing to construct garages and related structures to the north of the driveway, however the driveway itself and the continuation to the east were free of building materials or other obstructions etc. 04 Oct 2019.



16. View east from the corner of the house at A3, looking west up the driveway toward point A point A. Similar position to above at A1 looking towards point A. The fire damaged outshut at A2 had been rebuilt. Work was underway to construct a new garage block on the north side of the driveway. 11 Jun 2019.



17. Out of focus photo showing driveway adjacent to Wolfstones Heights Farm track adjacent to house and temporary fencing on north side. The photo indicates repairs / rebuilding of the outshut had been completed and the wall constructed on the south side leading to point A. Oct 2017.



18. Foreshortened telephoto shot indicating narrowing of driveway approaching point A3 near Wolfstones Heights Farm and gate relocated from point B to point A3. 24 Nov 2020

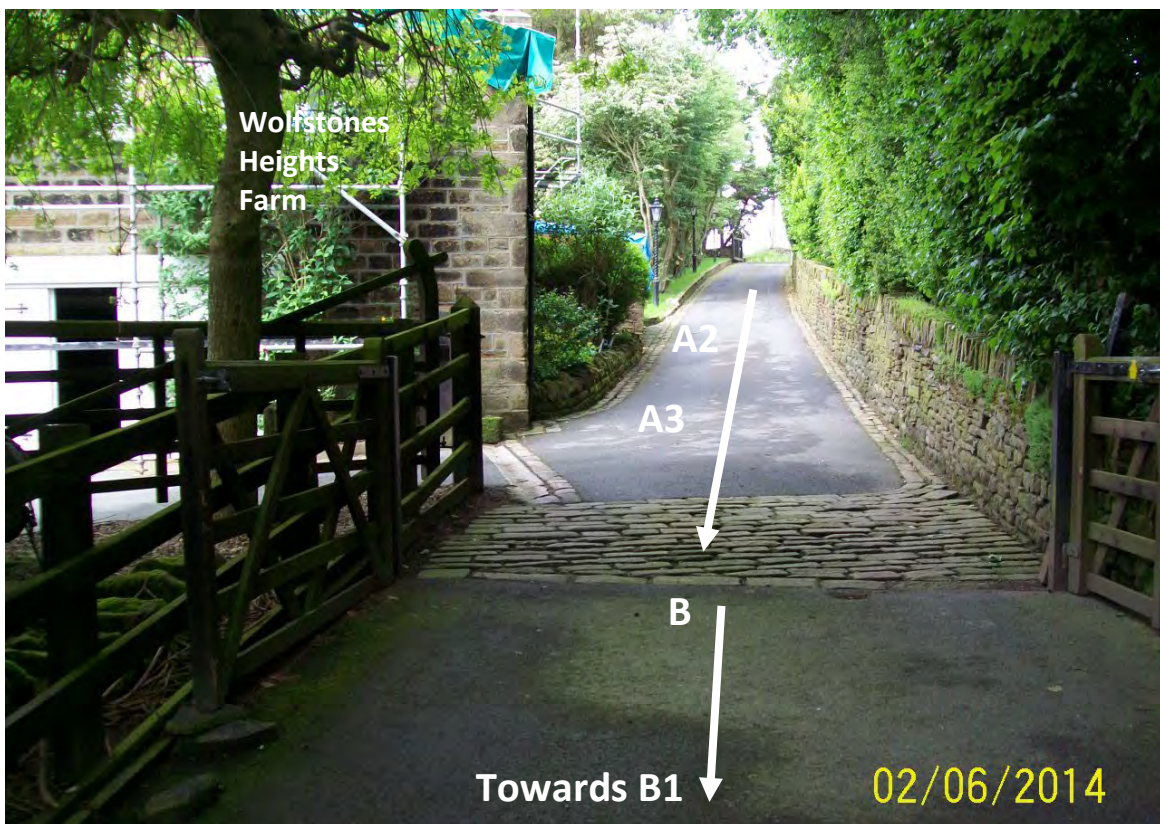


19. View west towards point A1 from near A2 showing line of fence posts erected in early September narrowing the usable width of the driveway (path Holmfirth 60) to approx. 1.2m. 21 Oct 2020.

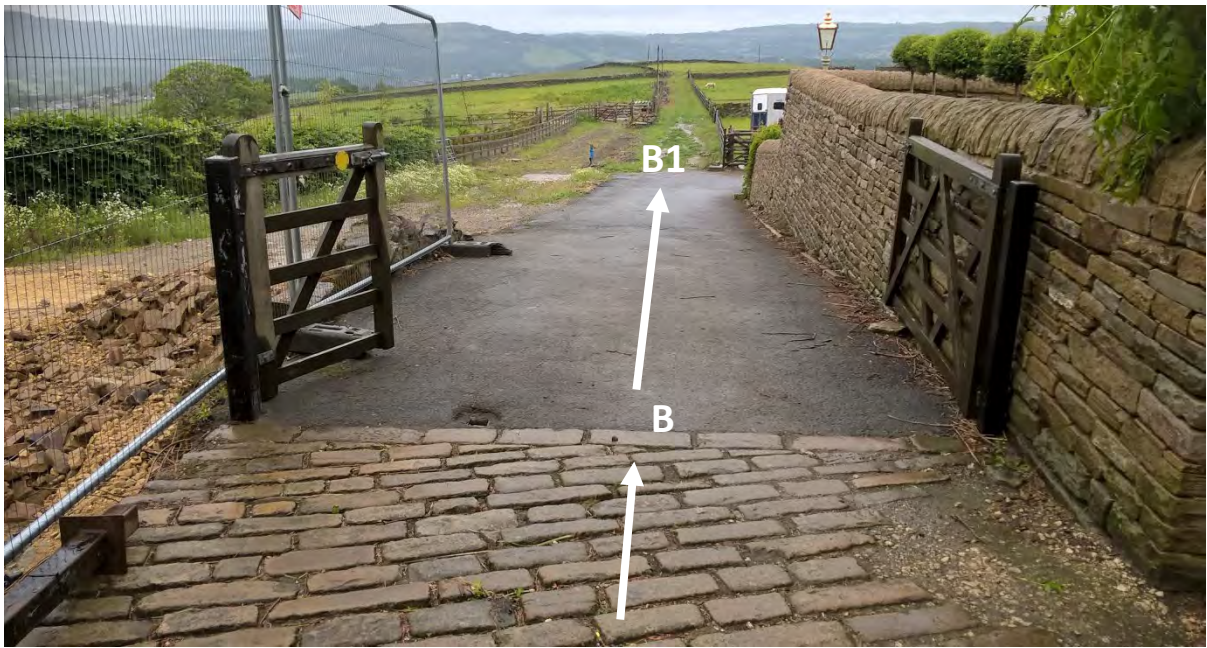




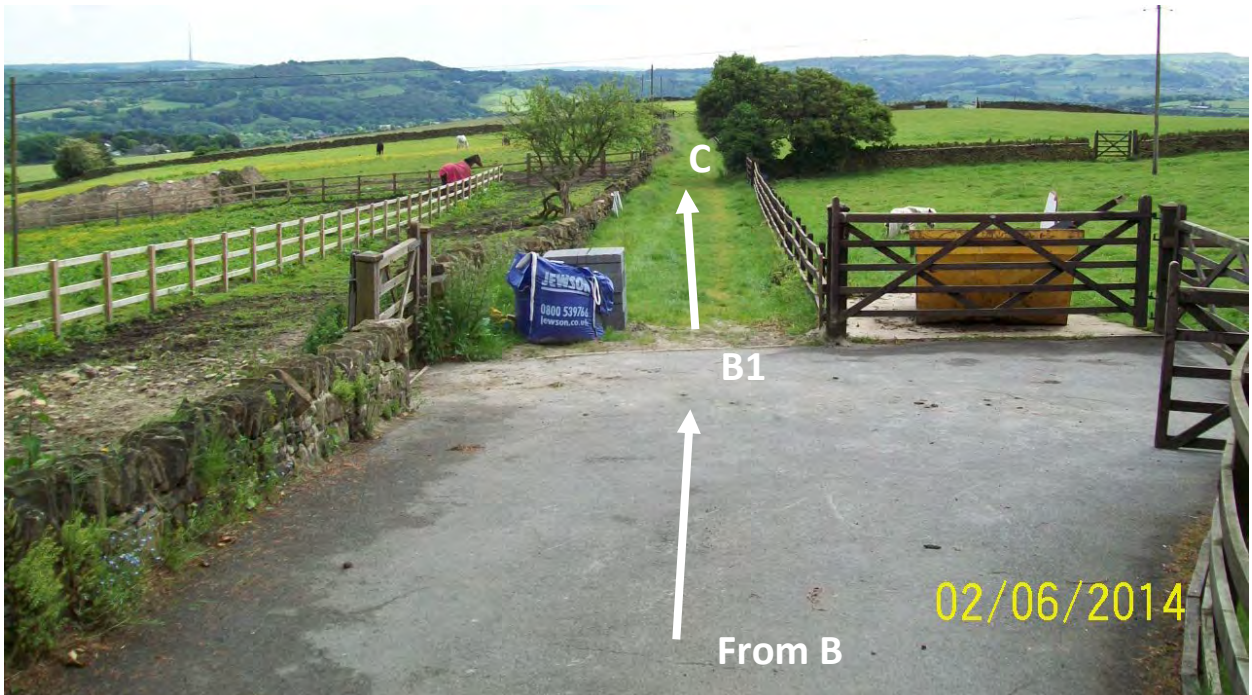
20. Pair of gates and removable post at point B. Looking west past the corner of the house at A3 towards point A. Gates in closed position but not locked. This location was the point at which a field edge footpath through field 1331 (as indicated on 1931 OS map) met the access between the farm and Wolfstones Road. Photograph taken by ESDM surveyor under contract to Kirklees Council. 13 Feb 2007.



21. Pair of wooden gates at point B. Looking west past the corner of the house at A3 towards point A. Both gates were open. Scaffolding is visible adjacent to the main part of the house but there were no obstructions on the driveway itself. The 1985 Definitive Map and Statement records a stile at this location. 02 Jun 2014.



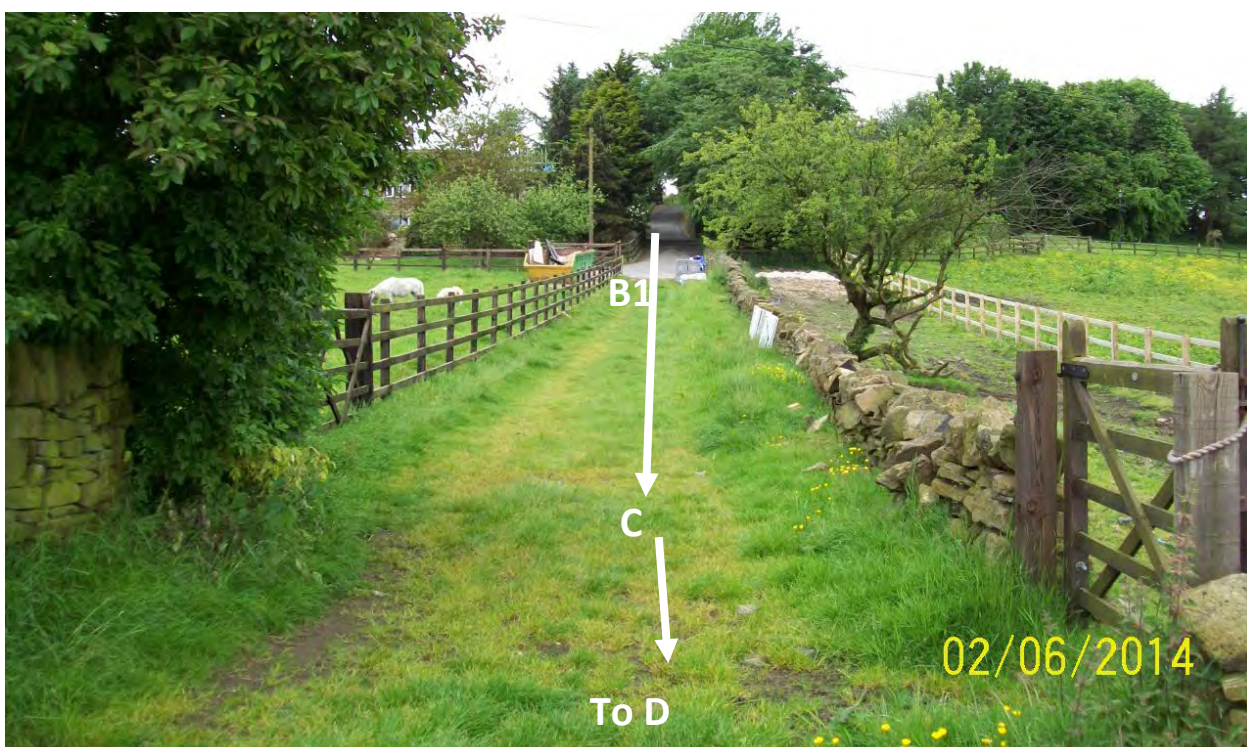
22. Wooden gates at point B. Looking east towards point B1. Both gates were open with no sign of a lock Looking east towards point B1. Dry stone walling to the north side of Holmfirth 60 had been removed. The post and rail fencing to the south side (right) seen in photos 20 and 21 above had been replaced by a dry stone wall in the same position. 11 Jun 2019.



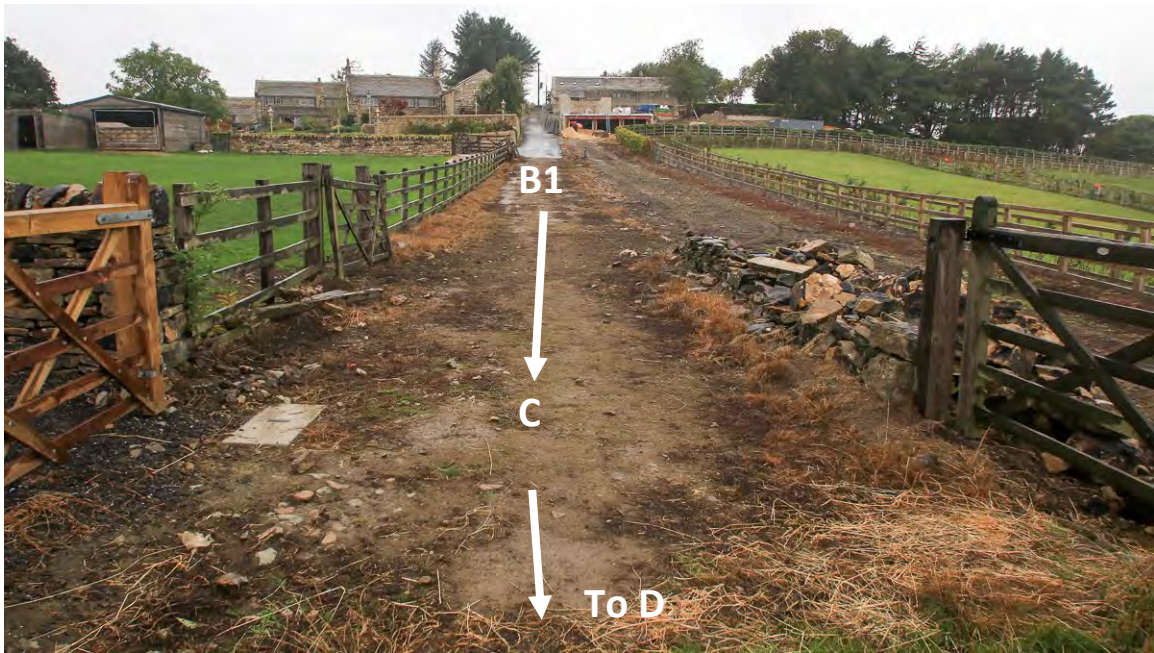
23. View west from west of point B, looking towards B1 and C. At B1 the surface changes from asphalt to grass. The photo shows building materials being stored on the north side of the route, but no deposits, obstructions or structures of any kind obstructions of any k no obstructions on the south side. 02 Jun 2014.



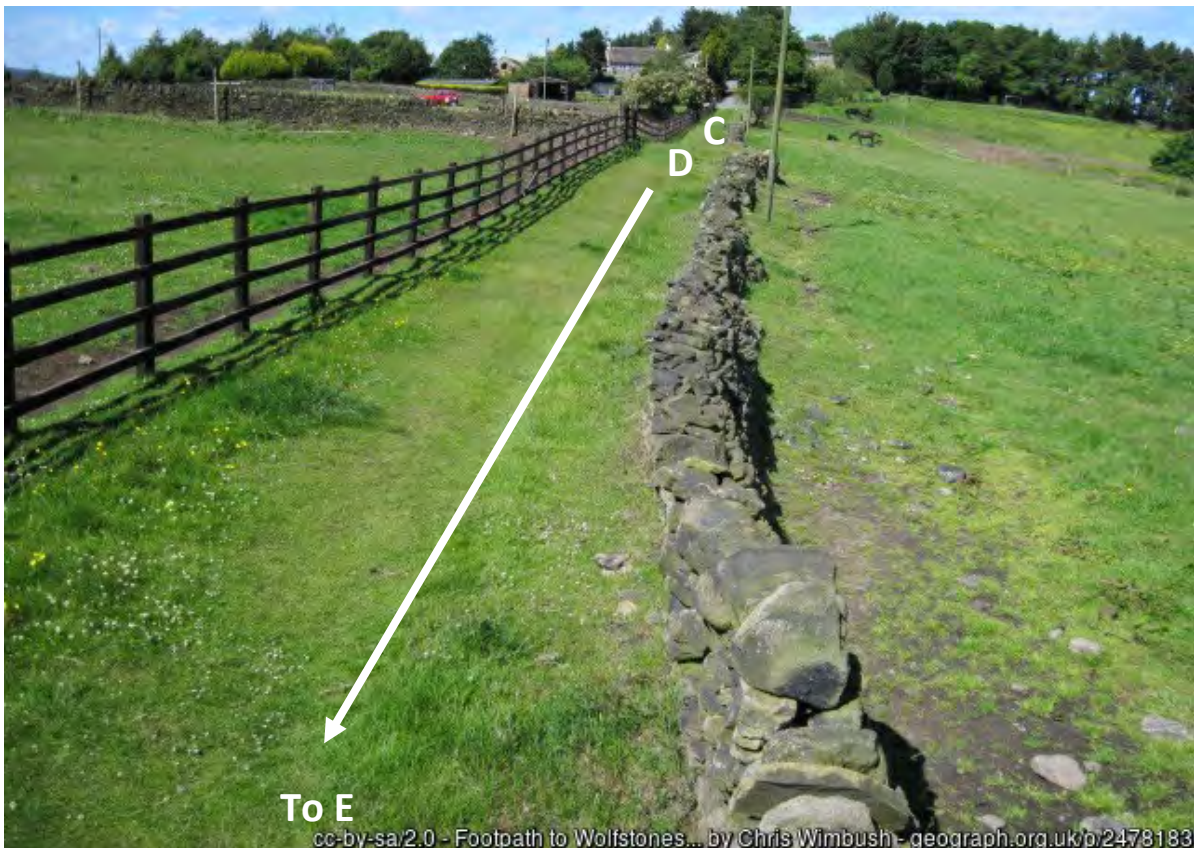
24. Looking west from a point towards point B from west of point B1. 04 Oct 2019.



25. Point C looking west towards point B1. The north side of the track is bounded by a field boundary wall, with a post and rail fence to the south. This was the boundary between fields 1332 and 1333 (as per the 1930s OS map). The Definitive Map and Statement records a stile at this location, no longer extant. 02 Jun 2014.



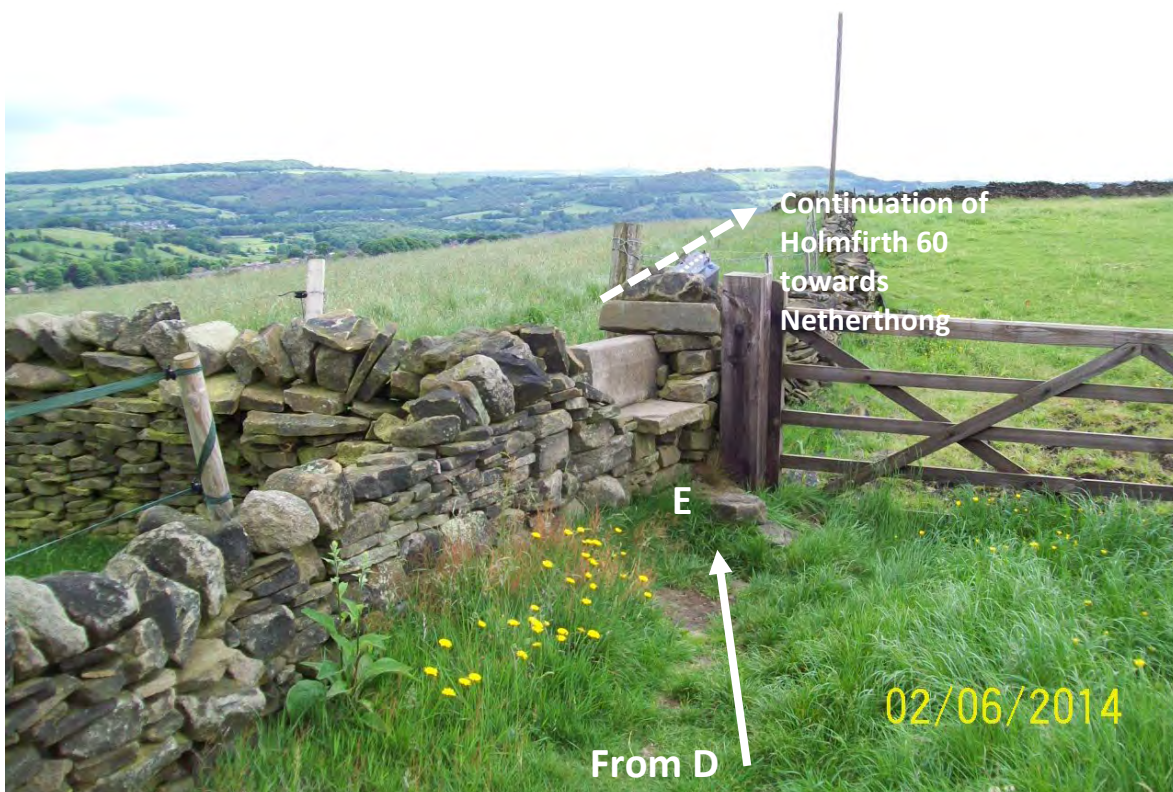
26. View west from point C. The dry-stone wall to the north side of the path had been removed. Photograph supplied by the applicant. 08 Sep 2018



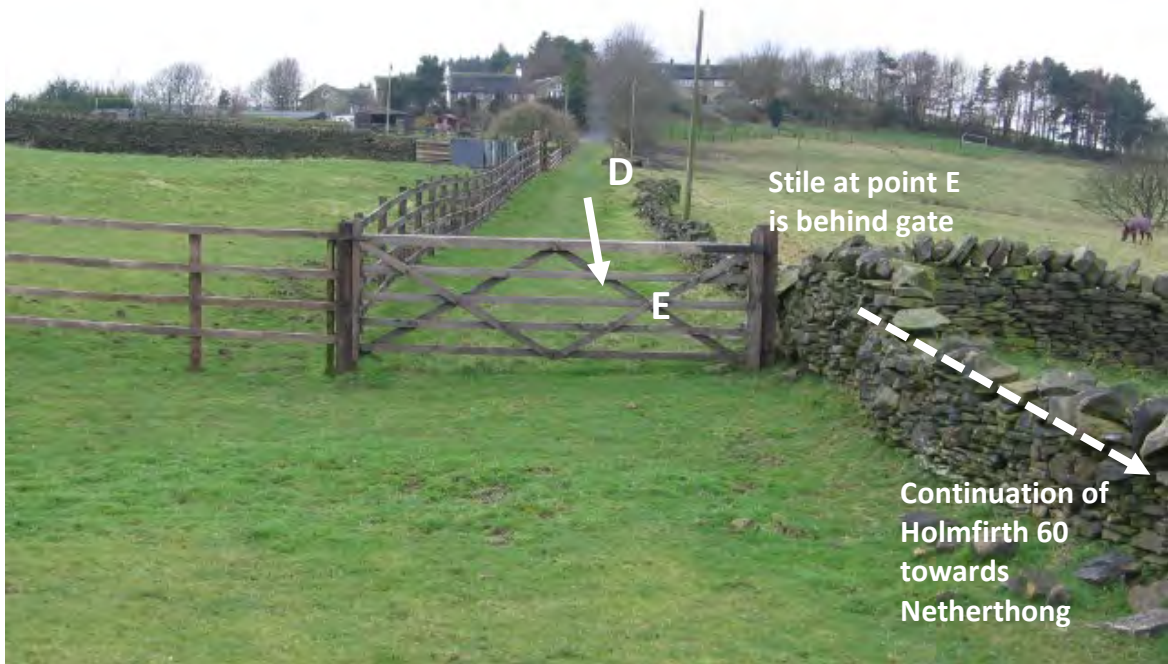
27. View west towards point D from point E at Brown Hill. The route is shown is bounded on the north side by a dry-stone wall and on the south side by post and rail fencing. Point D is at the boundary between fields 1315 and 1332 (as shown on the 1930s OS map). The first Definitive Map indicated a wicket gate at point D. This is no longer extant. Photo by a member of the public, taken 26 Jun 2011 and published at [geograph.org.uk/p/2478183](http://geograph.org.uk/p/2478183). A copy was also supplied by the applicant.



28. View west from point E towards point D. 02 Jun 2014.



29. Stile over wall at point E. 02 Jun 2014.



30. View west from near Point E. The position of the path as marked on the Definitive Map is quite generalised at this point to due to deficiencies in the OS base mapping used. However, evidence shows that the footpath continues via a stile and on the north side of the wall, not via the gate. Photograph taken by ESDM surveyor under contract to Kirklees Council. 13 Feb 2007.



31. View west from stile at point E towards point D. 05 Sep 2017



32. Electric gates at Point A. Photograph taken by a Peak and Northern Footpaths Society Inspector on finding the gates to have been closed at dusk. 24 Sep 2018.



**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 27<sup>th</sup> 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 19<sup>th</sup> February 2019, the Planning Practice Guidance Suite (PPGS) first launched 6<sup>th</sup> March 2014 together with Circulars, Ministerial Statements and associated technical guidance.

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

## **REPRESENTATIONS**

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

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

## **EQUALITY ISSUES**

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

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

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

## **HUMAN RIGHTS**

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

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

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

## **PLANNING CONDITIONS AND OBLIGATIONS**

Paragraph 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.**

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## Report of the Head of Planning and Development

### HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 21-Apr-2021

**Subject: Planning Application 2019/93335 Outline application for erection of residential development Land adj Dathan Tools, Mean Lane, Meltham, Holmfirth, HD9 5RU**

#### APPLICANT

Dathan

#### DATE VALID

20-Dec-2019

#### TARGET DATE

20-Mar-2020

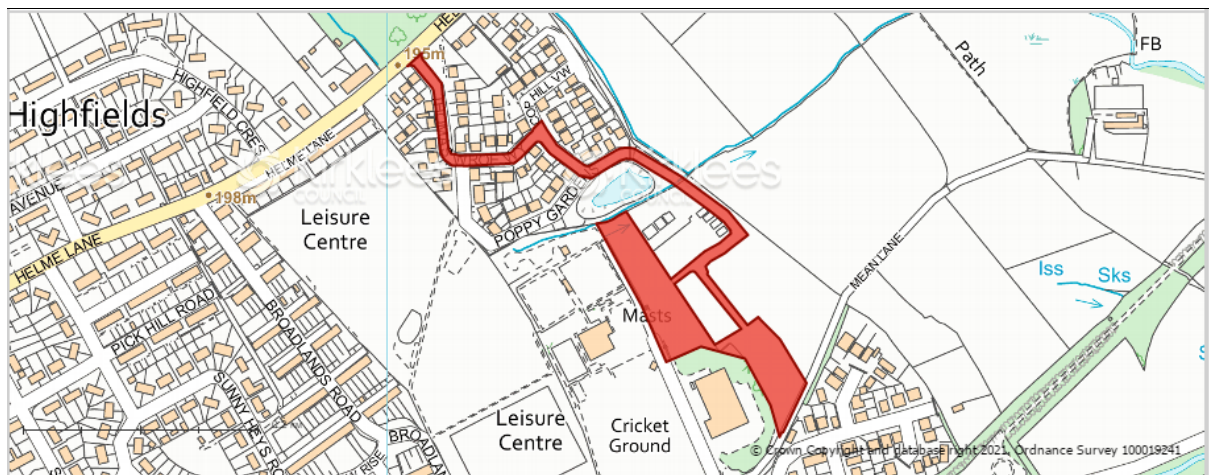
#### EXTENSION EXPIRY DATE

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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**

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**Electoral wards affected: Holme Valley North**

**Ward Councillors consulted: Yes**

**Public or private: Public**

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**RECOMMENDATION:**

DELEGATE approval of the application and the issuing of the decision notice to the Head of Planning and Development in order to complete a list of conditions, including those contained within this report and to secure a Section 106 agreement to cover the following matters:

- 1) Affordable housing – 20% of dwellings to be affordable with a preferred split of 55% social or affordable rent to 45% intermediate housing;
- 2) Open space – contribution to off-site open space to be calculated at Reserved Matters stage based upon the level of on-site provision at that time;
- 3) Education - additional places may be required at Meltham Moor Primary School and Honley High School with the contribution to be calculated at Reserved Matters stage based upon the projected numbers at that time;
- 4) Sustainable Travel - contribution to sustainable transport methods, including a contribution towards Meltham Greenway to be determined at Reserved Matters stage based upon the number of dwelling units;
- 5) Biodiversity – Contribution (amount to be confirmed at the Reserved Matters stage) towards off-site measures to achieve biodiversity net gain.
- 6) Arrangements to secure the long-term maintenance and management of on site public open space and the applicant's drainage proposals, including pumping station.

In the circumstances where the Section 106 agreement has not been completed within three months of the date of the Committee's resolution then the Head of Planning and Development shall consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the mitigation and benefits that would have been secured; if so, the Head of Planning and Development is authorised to determine the application and impose appropriate reasons for refusal under Delegated Powers.

**1.0 INTRODUCTION:**

- 1.1 This is an outline planning application for the erection of residential development, with all matters reserved except access. Two access points are shown with the approved highway under planning application reference: 2018/92937 to the east and a pedestrian only connection with Mean Lane to the south.
- 1.2 The planning application is presented to the Huddersfield Sub-Committee as the site is larger than 0.5 hectares.

## **2.0 SITE AND SURROUNDINGS:**

- 2.1 The application site is grassed with some tree features outside its boundaries. It consists of two rectangular shaped parcels of land that can be found immediately to the north and east of a small factory, occupied by a company called Dathan Tool and Gauge who is also the applicant. Both parcels of land form part of a north west – south east slope and measure 0.7 in hectares.
- 2.2 Both parcels of land form part of a housing site allocation that measures 5.5 hectares in total (Local Plan ID: HS160). The northern portion of the housing allocation has recently been developed courtesy of planning permission 2014/93959 and other associated consents. Whereas the eastern portion of the housing allocation was given permission for a residential development of 50 dwelling houses in 2019 (Reference: 2018/92937).
- 2.3 The site lies on the eastern edge of Meltham, beyond the housing allocation lies upland countryside in the Green Belt. Bowling Greens, a Sports Centre, a Cricket Ground and Football Pitches can be found to the west of the site's boundary. The site abuts a Public Right Of Way to the south (Reference: MEL/24/30) which connects the site to Broadlands open space and playing fields to the west and provides an elongated route to Meltham Greenway which lies 180m to the south. There are also a number of existing properties on the opposite side of Mean Lane public footpath.
- 2.4 Within the northern parcel of land there are two telecommunication masts sited along the western boundary edge.
- 2.5 The access would be taken through the other development sites within the site allocation to the east (Reference: 2018/92937) and then to the north (Reference: 2014/93959) which themselves are accessed from Helme Lane via a priority junction.

## **3.0 PROPOSAL:**

- 3.1 The planning application is submitted in outline and the applicant seeks permission for the principle of residential development with the means of access to the site, with all other matters reserved. The Town and Country Planning (Development Management Procedure) Order 2015 (Article 2) defines access as the following:

*“Accessibility to and within the site for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network.”*

- 3.2 Matters of layout, including the provision of access within the site, the appearance of the dwellings, their scale and landscaping (the Reserved Matters) are therefore reserved for future consideration. Accordingly, they do not form part of the assessment of this proposal.
- 3.3 An indicative site layout plan shows how 20 dwelling houses, consisting of 8 detached houses and 12 semi-detached houses, as well as a detached garage block of two. Each dwelling house would have a large driveway, as well as front and rear gardens. No information has been provided regarding the dwelling house types proposed. The houses are arranged around two culs-de-sac layout

with 6 visitor parking spaces in total. 14 dwelling houses are shown on the northern parcel of land, whilst 6 dwelling houses, together with a pumping station are shown on the southern parcel of land.

3.4 The applicant has explained that the lease of the land for the telecommunication masts will be terminated if this development is approved. Thus, the indicative site plan does not show the two telecommunication masts in the northern parcel of land.

3.5 There is a separate vehicular access for each of the parcels of land with the adjacent approved residential development to the east. There is no connection between the parcels of land. A 2.0m wide pedestrian connection is also proposed with Mean Lane to the south.

#### **4.0 RELEVANT PLANNING HISTORY (including enforcement history):**

4.1 The following planning applications are the most relevant to this proposal:

4.2 *Land to the east of the application site:*

2018/92937 - Erection of 50 dwellings and associated work – Section 106 Full Permission

4.3 *Land to the north of application site:*

2016/93630 – Erection of 5 dwellings – approved subject to conditions and S106 Agreement

2014/93959 – Reserved Matters application erection of 88 dwellings – approved subject to conditions and S106 Agreement

2014/90722 – Outline application for residential development – approved subject to conditions

4.4 There are a variety of applications to discharge planning conditions relating to the above planning applications.

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

5.1 During the course of the planning application the following changes to the application were made:

- Amendment to the red line boundary to connect with the adoptable road, Helme Lane and notice served on the relevant landowners
- Submission of an amended Transport Assessment, Travel Plan and Road Safety Audit; a Noise Impact Assessment; a Flood Risk Assessment and a Drainage Strategy; a Biodiversity Impact Assessment for Net Gain; and a Ball Strike Assessment in response to consultee comments.
- Amendments to the site layout plan showing a 2.0m wide connection with Mean Lane; the loss of an indicative dwelling unit to accommodate a pumping station and amendments to the access and indicative road layout to accommodate a refuse collection vehicle.
- Drainage strategy considerations with the neighbouring Barratts site.

## 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 27<sup>th</sup> February 2019).

### Kirklees Local Plan (2019):

- 6.2 The following policies are most relevant to the consideration of this planning application:

LP1 – Presumption in favour of sustainable development  
LP2 – Place shaping  
LP3 – Location of new development  
LP5 – Masterplanning sites  
LP7 – Efficient and effective use of land and buildings  
LP11 – Housing mix and affordable housing  
LP20 – Sustainable travel  
LP21 – Highways and access  
LP22 – Parking  
LP23 – Core walking and cycling network  
LP24 – Design  
LP27 – Flood risk  
LP28 – Drainage  
LP30 – Biodiversity and geodiversity  
LP32 – Landscape  
LP33 – Trees  
LP35 – Historic environment  
LP49 – Educational and healthcare needs  
LP51 – Protection and improvement of local air quality  
LP52 – Protection and improvement of environmental quality  
LP63 – New open space  
LP65 – Housing allocations

### Supplementary Planning Guidance / Documents:

- 6.3 Relevant guidance and documents are:
- Highways Design Guide Supplementary Planning Document (2019)
  - West Yorkshire Low Emissions Strategy and Air Quality and Emissions
  - Technical Planning Guidance (2016)
  - Kirklees Strategic Housing Market Assessment (2016)
  - Kirklees Interim Affordable Housing Policy (2020)
- 6.4 A draft Housebuilder Design Guide SPD, Open Space SPD and Biodiversity Net Gain Technical Advice Note were published by the Council in 2020. These have undergone public consultation, but have not been adopted.

## National Planning Guidance:

- 6.5 The National Planning Policy Framework (2019) seeks to secure positive growth in a way that effectively balances economic, environmental and social progress for this and future generations. The NPPF is a material consideration and has been taken into account as part of the assessment of the proposal.
- 6.6 Relevant chapters are:
- Chapter 2 – Achieving sustainable development
  - Chapter 4 – Decision-making
  - Chapter 5 – Delivering a sufficient supply of homes
  - Chapter 8 – Promoting healthy and safe communities
  - Chapter 9 – Promoting sustainable transport
  - Chapter 11 – Making efficient use of land
  - Chapter 12 – Achieving well designed places
  - Chapter 14 – Meeting the challenge of climate change, coastal change and flooding
  - Chapter 15 – Conserving and enhancing the natural environment
  - Chapter 16 – Conserving and enhancing the historic environment
  - Chapter 17 – Facilitating the sustainable use of minerals
- 6.7 Since March 2014 Planning Practice Guidance for England has been published online.
- 6.8 On 01/10/2019 the Government published the National Design Guide.
- 6.9 Many policies within the National Planning Policy Framework (NPPF), the Planning Practice Guidance and the National Design Guide are relevant to this proposal and, where relevant, are referred to in the main report text.

## Climate change

- 6.9 On 12/11/2019 the Council adopted a target for achieving “net zero” carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system, and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan predates the declaration of a climate emergency and the net zero carbon target, however it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

## **7.0 PUBLIC/LOCAL RESPONSE:**

- 7.1 The application has been advertised in accordance with the Council’s adopted Statement of Community Involvement. The end date for this initial publicity was 01/03/2020.



7.2 As a result of the initial statutory publicity period, 7 neighbour representations have been received. The concerns raised are summarised as follows:

- Potentially 896 new dwellings in Meltham since 1999
- Lack of adequate infrastructure - schools, health care, transport
- Highway safety concerns about the increase in the volume of traffic via a single access point along Thomas Wroe Way and Poppy Gardens.
- Inadequate access (particularly for emergency vehicles) via narrow estate roads on the newly completed Barratts Homes estate.
- Flood risk concerns and the Lead Local Flood Authority have objected to the planning application.
- Removing trees/building on green fields, plus the exhaust fumes from the extra cars, has a significant impact on air quality. What guarantees has the developer provided that this development will be zero-carbon?
- New Homes Bonus - believe the final tranche for 2019/2020 has been paid by Central Government to Kirklees, bringing the total to £3,863,449. Thus I understand the need to push these planning applications through without the relevant information.
- Why is there no accommodation for older people - bungalows, or social housing within the plans, which contravenes Kirklees own policy.
- Likely structural damage to neighbouring properties due to vibrations, neighbours are currently experiencing this issue with the Barratts development.
- Unacceptable impact on residential amenity, particularly during construction - noise pollution (particularly working outside the agreed construction hours) fly tipping, parking, damage to property issues, which are currently being experienced with the neighbouring Barratts site.
- On an adjacent site work has been going on for several months on the building of a pump station to accommodate the second phase of a housing development. There has been pollution of the water course and considerable drilling into the rock base to construct the facility. If permission is granted will this facility have the capacity to accommodate the extra housing or will a new facility be required? If a new facility, where would this be located and what assurances / guarantees would existing residents have that this would not have an adverse impact on the foundations/ structure of homes?
- Part of the above land is currently being used as a compound and parking area for the second phase of a housing development. Residents are currently suffering from noise and light pollution some of which has been outside the approved working times. What consideration would be given by the new developers to the residents and where would the compound area be located?
- We would also request that if approved, the privacy of existing residents would be respected and existing homes would not be overlooked and sensitive landscaping of trees and shrubs would be adopted.
- As this is an outline application, should it be granted, would the public be given further opportunity to comment on the layout once all aspects have been addressed?
- Further to this, there are concerns that heavy machinery will pass through the current development, which from experience we know damages the roads. Who would be responsible for rectifying this?
- The second phase of the Barratt development has already disrupted the drainage of surface water resulting in flooding on Mean Lane.

- The environment agency has previously been contacted as during heavy rainfall the silt that is used during construction entered local waterways. This obviously had a negative impact on local wildlife and so we do not want this event to occur again.
- 7.3 Ward Councillors were notified of the planning application on 24/10/2019 and on 20/12/2019.) Other than queries from Cllr Greaves and Cllr Lyons in relation to the information submitted and financial contributions towards Meltham Greenway, no formal comments/observations have been provided.
- 7.4 Meltham Town Council have provided the following comments in relation to the planning application:
- “That the Council supported the application subject to Section 106 contributions to improvements at the Broadlands Recreation Ground and Sports Centre and extensions to Meltham Greenway as part of improving cycling access to work.”*
- 7.5 During the course of the planning application, amendments to the indicative site layout plan and additional/amended information has been submitted to address the comments raised by consultees. As a result a further 10-day public consultation took place with neighbour representatives who had previously commented on the application which ended on 09/04/2021. To date, 3 letters of objection have been received. The concerns raised are summarised as follows:
- The transport submission doesn't include reference of Harrison Lane, Meltham (the direct route into Huddersfield). This road particularly at the junction of Crosland Edge is very narrow with school children having to walk to and from the bus. There have already been several near misses since the additional housing in Helme Lane have increased the traffic. Please consider actions to improve safety around this bottleneck if planning is approved.
  - Barratts have told prospective buyers that 'no further developments are being considered by Barratts.'
  - Future and existing residents concerned about risks further developments will have on traffic, schools, green areas, parks and community spaces.
  - Future residents are not aware of this development and residents will think that they are overlooking the playing fields and not other properties.
  - Adverse impact on residents who live at Thomas Wroe Way and Poppy Gardens (Barratts development) in terms of construction, noise, traffic, environmental impacts and highway safety. Additional access and egress is required at the bottom of the estate.
- 7.6 Responses to the above comments are set out later in this report.
- 7.7 Since the beginning of public consultation, further amendments have been made to the indicative site layout plan. Given the nature of the application, officers considered that these did not necessitate public re-consultation.

## 8.0 CONSULTATION RESPONSES:

### 8.1 Statutory:

Environment Agency: No comment.

Historic England: No comment.

Sport England: No objection.

KC Highways: No objections to the principle of residential development and points of access, subject to the necessary planning conditions and planning obligations. However, concerns have been raised regarding the proposed layout and parking, which will need to be resolved at the Reserved Matters stage.

KC Lead Local Flood Authority: Awaiting comments based on additional information submitted. Believe that a pumped solution with a final gravity feed into separate foul and surface water systems is the only recognisable solution available. Concerns raised about flood routing, drainage layout, surface water attenuation and pumping discharge rate.

Note: The application is for outline, with access only applied for. Layout and numbers are not applied for at this stage. The applicants have been advised of the above concerns, and have confirmed that they accept the indicative layout will have to be changed. As such it is not feasible to refuse the application on drainage grounds, at this stage, and drainage should be covered by appropriate conditions.

### 8.2 Non-statutory:

KC Biodiversity Officer: No objection. A biodiversity net gain plan to achieve the required uplift in habitat and hedgerow units should be secured via a condition. In addition, an Ecological Impact Assessment (EclA) informed by up-to-date surveys (including reptiles, bats and potential impacts to farmland birds) will be required at a reserved matters stage and this should also be tied into a condition.

KC Conservation and Design: No objection.

KC Education (Verbally): No comments at this stage. As the site is part of a site allocation a financial contribution is likely to be required once the scale of development is known.

KC Environmental Health: No objection, subject to conditions relating to land contamination, electric vehicle charging provision and construction site working times.

KC Landscape: No objection, subject to the necessary financial contributions secured towards Public Open Space in accordance with Local Plan policy LP63. This site is close to the wildlife and habitat network to the south and this could be more reflected in the proposed landscape scheme which should enhance the development and mitigate views of the new estate given the setting.

KC Policy: No objection. There would be a requirement for the development to provide open space in accordance with policy LP63 for recreational purposes, the provision of natural/semi-natural greenspace, amenity greenspace on-site and a Local Area of Play (LAP) is required.

KC Public Health: No comment as the planning application falls below the newly agreed thresholds for recommendations of Health impact Assessments.

KC Public Rights of Way (PROW): No objection. In line with the Council walking and cycling strategy PROW would look for this link to be a pedestrian/cycle link without a bollard. PROW welcomes the width of 2m. PROW is in receipt of a Definitive map modification application to record Mean Lane as a bridleway through to Huddersfield Road.

KC Strategic Housing: No objection, subject to the provision of 20% of affordable housing with a split of 55% social or affordable rent to 45% intermediate housing, but this can be flexible.

KC Trees: No objection. There are no protected trees on or adjacent to the site. The proposed dwellings are situated far enough away from trees in the grounds of the adjacent works. There appears to be no conflict between trees and the proposals.

KC Waste and Recycling: No objection to the principle. Detailed advice provided regarding layout, and conditions recommended.

West Yorkshire Archaeology Advisory Service: No objection. Based on records and a previous archaeological evaluation in the vicinity the WYAAS do not consider that any archaeological evaluation or fieldwork is necessary in this instance.

West Yorkshire Police Crime Prevention Design Advisor: Support principle of development. Comments made regarding indicative layout, boundary treatments and other aspects of the development. Condition recommended to incorporate measures to minimise the risk of crime and meet with the specific needs of the site and development.

Yorkshire Water: Awaiting comments on the latest drainage strategy and will be provided in the Planning Committee Update.

## **9.0 MAIN ISSUES**

- Principle of development
- Sustainability and climate change
- Urban design and heritage issues
- Residential amenity and quality
- Highway issues
- Flood risk and drainage issues
- Landscape, trees and ecology
- Ground conditions
- Environmental and public health
- Risk of ball-strike from cricket pitch
- Planning obligations
- Representations
- Other matters

## 10.0 APPRAISAL

### Principle of development

- 10.1 Planning law requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF is a material consideration in planning decisions.
- 10.2 The Local Plan sets out a minimum housing requirement of 31,140 homes between 2013 and 2031 to meet identified needs. This equates to 1,730 homes per annum.
- 10.3 The planning application site forms part of a wider site allocation for housing development, Local Plan ID: HS160, to which full weight can be given. The following site constraints have been identified as part of this site allocation:
- Improvements to local highway links may be required
  - Surface water issues
  - Noise source near site – noise from adjacent recreation ground, cricket ground and industrial works
  - Site is close to listed buildings
- 10.4 The site is not designed as Urban Green Space or Local Green Space in the Local Plan but is greenfield land. Allocation of this and other greenfield sites by the council was based on a rigorous borough-wide assessment of housing and other need, as well as analysis of available land and its suitability for housing, employment and other uses. The Local Plan, which was found to be an appropriate basis for the planning of the borough by the relevant Inspector, strongly encourages the use of the borough's brownfield land. However some development on greenfield land was also demonstrated to be necessary in order to meet development needs.
- 10.5 The planning application site would contribute towards the site allocation indicative capacity of 172 dwellings over 5.5 hectares and would contribute towards meeting the housing delivery targets of the Local Plan. Therefore, subject to highways, design, residential amenity and other matters being appropriately addressed, it is considered that residential development on this site is acceptable in principle

### Sustainability and climate change

- 10.6 The applicant's Planning, Design and Access Statement explains by virtue of the application site's sustainable location, located outside an area subject to flood risk would mean that the proposal would accord with NPPF Chapter 14 with regards to climate change. In addition, the Statement explains how a Reserved Matters application would ensure that properties would incorporate the necessary sustainable, energy efficient and renewable measures.
- 10.7 Officers consider that measures would be necessary to encourage the use of sustainable modes of transport. Adequate provision for cyclists (including cycle storage for residents), electric vehicle charging, provision of a sustainable travel fund would be secured by condition or via a Section 106 agreement, should planning permission be granted. A development at this site which was

entirely reliant on residents travelling by private car is unlikely to be considered sustainable. Drainage and flood risk minimisation measures will need to account for climate change.

- 10.8 The application site is a sustainable location for residential development, as it is relatively accessible and is at the edge of an existing, established settlement relatively close to sustainable transport options and other facilities. The site is not isolated and inaccessible.
- 10.9 The site is approximately 500m from the centre of Meltham, which provides a good range of leisure facilities, shops, services and schools. Meltham is well served by public transport with frequent bus services providing access to Huddersfield and its surrounding areas. As such many of the daily, social and community needs of residents of the proposed development can be met within the area surrounding the application site, which further indicates that residential development at this site can be regarded as sustainable.
- 10.10 Further reference to, and assessment of, the sustainability of the proposed development is provided later in this report in relation to transport and other relevant planning considerations.

#### Urban design and heritage issues

- 10.11 This outline planning permission seeks approval of point of access details and does not include matters of appearance, landscaping, layout and scale. As such, if outline approval was obtained these matters would be determined at the Reserved Matters stage.
- 10.12 As described in section 3.0 of this report, an indicative site layout plan shows how 20 dwelling houses could be accommodated within the two parcels of land that form the planning application site. It should be noted that based on Local Plan policy LP7 developments should achieve a net density of at least 35 dwellings per hectare (i.e. 25 dwelling units in this instance), where appropriate. The indicative layout only shows 20 dwelling houses which represents a density of 29 dwellings per hectare. In addition, Local Plan policy LP11 seeks an appropriate housing mix and tenure and the indicative site layout appears to only show the use of two house types. Any Reserved Matters must provide the necessary justification for the proposed scale, layout and housing mix of the development. However, officers acknowledge that the shape of both parcels of land and their access with the adjacent development site limits how the road layout can be designed and how the dwelling houses can be positioned. Regard will need to be given to the neighbouring approved residential development to the east, the tools factory to the south and the sports facilities to the west, in terms of positioning and design of certain dwelling plots, separation distances, and landscaping measures. In addition, due consideration needs to be given to on-site infrastructure requirements, such as roads that can accommodate a refuse collection vehicle, space for surface water attenuation, flood routing and off set distances for any pumping station, etc.

- 10.13 The site allocation box for Local Plan ID: HS160 refers to the site being close to listed buildings and subsequently states that a Heritage Impact Assessment will be required as part of any application for development. The planning application has been reviewed by the Council's Conservation and Design Officer. Conservation and Design consider the site not to be in the close proximity of the grade II listed cottage to the north on Helme Lane or close enough to the Helme Conservation Area to the north or Meltham Conservation Area to the south west to impact on the significance of these designated heritage assets. The officer has explained how the heritage requirements only affect the larger portion of the site allocation the north of this planning application site. Therefore, a Heritage Impact Assessment is considered unnecessary due to the lack of impact the application will have on nearby heritage assets. Therefore, given the intervening built environment it is not considered that there would be a material impact or harm on the setting of any heritage asset and would accord with Local Plan policy LP35 and NPPF Chapter 16.
- 10.14 Officers consider that a suitably designed scheme can be achieved at the Reserved Matters stage, in line with Local Plan policies LP2 and LP24, NPPF Chapter 12 of the NPPF and the National Design Guide.

#### Residential amenity and quality

- 10.15 Local Plan policy LP24 and NPPF Chapter 12 both seek developments that have a high standard of amenity for existing and future users.
- 10.16 The nearest existing residential dwelling units can be found to the south of Mean Lane and to the north at Thomas Wroe Way which has been recently developed. Houses would also eventually be developed along the stie's eastern edge in accordance with the approved plans as part of Reference: 2018/92937.
- 10.17 It is considered that the separation distances between the existing dwelling houses to the north and south with the application site is already sufficient to ensure that there would be no adverse impact on existing residential amenity, in terms of outlook, privacy and natural light.
- 10.18 It is considered that a Reserved Matters application would secure a design that would protect the residential amenity of future residents of the site and the neighbouring site to the east. Officers consider that all houses shown on the applicant's indicative layout would benefit from dual aspect, and are capable of being provided with adequate outlook, privacy and natural light. The proposed houses could also be provided with adequate outdoor private amenity space.
- 10.19 It is acknowledged that the proposed access with the recently built/approved developments to the east and north would result in an increase in activity and movements past these dwelling houses. However, this impact is deemed acceptable by officers and residents would not be significantly impacted. This takes into account that this land forms a continuum of a larger housing allocation in the Local Plan.

- 10.20 The proposed residential use is not inherently incompatible with the existing residential and industrial and leisure uses nearby. The applicant has submitted a Noise Assessment Report that has been reviewed by Environmental Health who have raised no objections. The report demonstrates that there is no notable effect of noise during day time from the operation of the commercial premises. Noise levels measured from the air conditioning units and phone mast, as well as from the Sports Centre hosting an event, have resulted in predicted noise levels of well below background in bedrooms at night time. Therefore, there are no concerns related to the impact of existing noise sources on the proposed development. Standard double glazing would be sufficient in the properties and no special measures are needed to control the impact of existing noise sources.
- 10.21 A condition requiring the submission and approval of a Construction Management Plan is recommended. Should planning permission be granted, the necessary discharge of condition submission would need to sufficiently address the potential amenity impacts of construction work at this site including dust management.
- 10.22 Subject to detailed consideration at Reserved Matters stage, there are considered to be no reasons why new dwellings at the application site could not be provided without having an adverse impact on residential amenity.

#### Highway issues

- 10.23 Local Plan policy LP21 requires development proposals to be accessed effectively and safely by all users, and states that new development will not be permitted if it adds to highway safety problems. NPPF Chapter 9 requires the Council to consider the potential impacts of development on transport networks, and encourages walking, cycling and public transport use.
- 10.24 Each parcel of land within the planning application site would have access via adjacent residential developments that take access from Helme Lane. These developments gained permission in October 2014 (Reference: 2014/90722) and April 2019 (Reference: 2018/92937) and are currently under construction. The indicative site layout plan shows a mixture of detached and semi-detached dwellings, with 14 dwelling houses on the northern parcel of land and 6 dwelling houses on the southern parcel of land. A pedestrian/cycle link is also shown linking the southern parcel of land with Mean Lane.
- 10.25 No details of the proposed indicative house types are provided. The accompanying Transport Statement has provided an assessment based on the indicative site layout stating that the dwelling houses consist of 4-bed dwellings with the space to park three vehicles and 3-bed dwelling with two parking spaces. The vehicular trip generation is estimated at 15 two way movements in both the AM and PM peak periods. Given the number of dwellings and the anticipated vehicular trip generation it is not considered that the proposal would have an adverse impact on highway capacity.
- 10.26 Highway Development Management have raised no objection to the proposal in terms of access. Detailed comments have been provided regarding parking, waste storage and collection that can be considered at the Reserved Matters stage. Highways Development Management have requested planning conditions are sought regarding internal adoptable roads, method of



storage/access for waste, construction management plan, access sightlines, retaining features, and any new surface water attenuation features in the proposed highway footprint. All of these requests are considered necessary to ensure that the planning application accords with paragraph 108 of the NPPF and policy LP21 of the Local Plan, if approval is granted.

#### Drainage and flood risk

- 10.27 A Flood Risk Assessment accompanies the planning application (FRA), which has been amended in response to the Lead Local Flood Authority (LLFA) comments. The FRA concludes that the site is located in Flood Zone 1 according to the Environment Agency Flood Map for Planning and is therefore at low risk of flooding. The risk of flooding from surface water is low across the site, which could increase to high during the development lifetime as a result of climate change. However, the necessary mitigation measures, including the positioning of the houses and infrastructure, as well as achieving appropriate finished floor levels for the houses can be employed to manage any potential overland flows. These matters would be secured at the Reserved Matters stage and if necessary by conditions. The risk of flooding from all other assessed sources of flooding is considered to be low.
- 10.28 The planning application is also supported by a Drainage Assessment Report (DAR), which has been amended in response to the LLFA comments. The report explains that although site investigation has not yet been carried out British Geological Survey records suggest the site would not be suitable for infiltration due to the depth of impermeable clays. Surrounding developments also support the unsuitability of infiltration methods. The nearest watercourse to the site lies directly north of the site however due to levels this watercourse would not provide a feasible point of discharge for surface water. Meltham Dike is located to the south of site, it is envisaged that the surface water from the site will eventually discharge to this watercourse via Yorkshire Water sewers. It is therefore recommended that surface water is pumped into the existing Yorkshire Water sewers south of the site at a restricted rate of 3 litres/second. The DAR proposes the use of permeable surfaces and a 900mm storage pipe underneath the proposed highways to help achieve this discharge rate. The DAR explains how this strategy takes into account the 1:100 year storm event including 30% factor for climate change.
- 10.29 The LLFA believe that a pumped solution with a final gravity feed into separate foul and surface water systems is the only recognisable solution available. However, concerns were raised regarding flood routing, drainage layout, surface water attenuation and pumping discharge rate. These comments can be found in full online. At the time of writing this report the applicant provided an amended FRA and DAR to address the comments raised. Consultation has subsequently been carried out with the LLFA and Yorkshire Water and any responses received shall be reported in the Planning Committee Update.
- 10.30 The DAR explains how the Yorkshire Water sewer records indicate there are public sewers located in Mean Lane and Pavilion Way directly south of the site. Due to the topography of the site and the distance to the public sewers, discharge from the site will require pumping. It is proposed that foul water shall discharge via gravity towards an on-site pump compound in the southern area of site. Foul water will then be discharged into the existing Yorkshire Water sewers located south of the site subject to agreement with Yorkshire Water.

- 10.31 The DAR shows that for surface and foul water to discharge towards the pump compound, the sewer shall pass through proposed private gardens and land owned by Dathan Tools with a 6-metre easement. Given, Dathan Tools is outside the red line boundary but within the blue line boundary, a Grampian-style condition would be required to secure any necessary drainage connections (outside the red line boundary) between both parcels of land.
- 10.32 It is proposed that all below ground foul water drainage is to be designed and constructed to the current Building Regulations standards or where drainage is to be adopted by the local water authority, Sewers for Adoption 7th Edition.
- 10.33 Yorkshire Water have not provided comments on the proposed drainage strategy, which includes foul and surface water pumping solution.
- 10.34 As matters of 'layout' and 'scale' are reserved it is considered that surface water proposals can be secured by condition, to be submitted with any Reserved Matters application seeking approval of such matters.' This will ensure that an appropriate drainage design and sufficient space taking into consideration climate change is provided within the site for drainage infrastructure, in accordance with Local Plan policies LP27 and LP28.

#### Landscape, trees and ecology

- 10.35 If approved, 'landscape' is a matter for consideration at the Reserved Matters stage and limited landscape details accompany this planning application. The site is in the vicinity of a number of sites of ecological interest and this could be more reflected in the proposed landscape scheme. Any future proposal would be expected to enhance the development and mitigate views of the new estate given the setting, in accordance with Local Plan policy LP32.
- 10.36 There are no protected trees on or adjacent to the site. The indicative site plan shows how dwellings can be situated far enough away from trees in the grounds of the adjacent works. As such, officers are of the opinion that a design can be secured at the Reserved Matters stage that accords with Local Plan policy LP33.
- 10.37 As all other matters are to be decided, including housing numbers and landscaping, the Ecologist is satisfied that the submitted Preliminary Ecological Appraisal (PEA) report provides an adequate baseline to determine the current application. The report makes several recommendations regarding further survey effort required to determine the impacts to reptiles and foraging bats. However, the report does not consider whether there may be any impacts on farmland birds (such as lapwing and curlew) due to the proximity to South Pennine Moors Phase 1 Special Protection Area, which will need to be addressed at the Reserved Matters stage.
- 10.38 The site is located approximately 2.0km from the Peak District Moors (South Pennine Moors Phase 1) SPA and South Pennine Moors SAC, the site is part of a larger area allocated to housing and as such was discussed within the Habitat Regulations Assessment report of the Local Plan. The report highlighted the potential for the site to be considered functionally connected to the SPA due to consisting of areas of grassland, which may be important to foraging golden plover. Although the proximity to the SPA has not been

considered within the submitted PEA report, the information within the PEA is adequate to carry out HRA Screening of the site. Since the HRA surveys were carried out in 2016, a portion of the housing allocation site is now under construction for a residential development. The grassland within the site has been partially stripped to facilitate construction of the neighbouring site and the remaining grassland is of a tall tussocky sward managed by grazing horses. Therefore, it is considered that the heightened disturbance and current management of the grassland would prevent use by foraging golden plover. This conclusion is reflected in the HRA Screening of the proposals.

- 10.39 As the HRA has not progressed to an Appropriate Assessment no consultation with Natural England is required. It has been concluded through the HRA Screening that the proposals have no likely significant effect of the South Pennine Moors Phase 1 SPA and no further survey work is necessary in this respect.
- 10.40 During the course of the application further information was requested regarding evaluating the baseline value of the site utilising the Biodiversity Metric 2.0 which has now been submitted. The Biodiversity officer has reviewed the metric and agree with the submitted Biodiversity Impact Assessment for Net Gain (BG19.269.1) which recommends that a minimum of 2.05 habitat units and 0.40 hedgerow units will need to be delivered post-development in accordance with Local Plan policy LP30 and Chapter 15 of the National Planning Policy Framework. As approval of this application would not establish a principle beyond that inferred by the housing allocation, the Biodiversity officer is satisfied that a scheme can be designed to provide a measurable 10% net gain for biodiversity. The wider allocation should be considered with biodiversity net gain provisions designed to work holistically across the entire site. Given the current indicative layout plan, it is not anticipated that a biodiversity net gain will be possible within this portion of the allocation. Therefore, the applicant will need to look at amending the layout to include larger areas of semi-natural greenspace or at offsetting biodiversity when the application is brought forward at a Reserved Matters stage. A biodiversity net gain plan to achieve the required uplift in habitat and hedgerow units would be secured via a planning condition. In addition, an Ecological Impact Assessment (EclA) informed by up-to-date surveys (including reptiles, bats and potential impacts to farmland birds) will be required at a Reserved Matters stage, which should also be tied into a condition.

#### Ground conditions

- 10.41 The application is accompanied by a Phase 1 Contaminated Land Report. The report provides an assessment of the potential contamination sources near the proposed development. The report sets out a sampling strategy which is intended to fully assess the presence of potential contaminants on site which may need to be addressed with remediation measures in the future. Environmental Health officers have reviewed the report and have no objections subject to the necessary conditions. As such, the planning application accords with Local Plan policy LP53 and NPPF Chapter 15.

- 10.42 The site is within a wider mineral safeguarding area relating to sandstone. Local Plan policy LP38 therefore applies. This states that surface development at the application site will only be permitted where it has been demonstrated that certain criteria apply. Criterion c of policy LP38 is relevant, and allows for approval of the proposed development, as there is an overriding need (in this case, housing need, having regard to Local Plan delivery targets) for it.

#### Environmental and public health

- 10.43 The proposed development would cause an increase in vehicle movements to and from the site, however air quality is not expected to be significantly affected. To encourage the use of low-emission modes of transport, electric/hybrid vehicle charging points would need to be provided in accordance with relevant guidance on air quality mitigation, Local Plan policies LP21, LP24 and LP51, the West Yorkshire Low Emission Strategy (and its technical planning guidance), the NPPF, and Planning Practice Guidance.
- 10.44 The health impacts of the proposed development are a material consideration relevant to planning, and compliance with Local Plan policy LP47 is required. Having regard to the adjacent sports and recreation facilities, the affordable housing that would be secured by condition, pedestrian connections (which can help facilitate active travel), measures to be proposed at conditions stage to minimise crime and anti-social behaviour, and other matters, it is considered that the proposed development would not have negative impacts on human health.

#### Risk of ball-strike from cricket pitch

- 10.45 Sport England is a statutory consultee where a proposal is likely to prejudice the use, or lead to the loss of use, of land being used as a playing field as defined in The Town and Country Planning (Development Management Procedure) (England) Order 2015. Sport England's playing field policy not only seeks to protect the playing field itself, but also seeks to protect it from development on adjacent land which might prejudice its use. Within their consultation response, Sport England (in consultation with the English Cricket Board) consider residential development within relatively close proximity to cricket pitches to fall into this category as potential cricket ball strike to residential properties can lead to damages and insurance claims that become unaffordable for the cricket club and ultimately lead to the closure of the ground.
- 10.46 During the course of the planning application the applicant submitted a ball strike assessment following an initial objection from Sport England regarding the potential impact on the adjacent Meltham cricket club site. The report explains that recreational cricket is played at this site and shows that the distance between the closest stumps and the boundary of the site is 53.8m. The report presents a trajectory analysis which shows that for recreational cricket, the distance to the boundary provides sufficient mitigation without the need for additional ball stop fencing or netting. This may not stop all shots from landing beyond the site boundary, but it is believed from the assessment of the ball trajectory it will significantly reduce their frequency.
- 10.47 Sport England have assessed the submitted information and do not object to the proposals.

## Representations

10.48 At the time of writing this report a total of 10 representations were received from occupants of neighbouring properties. The comments raised have been addressed in this report.

- Potentially 896 new dwellings in Meltham since 1999
- New Homes Bonus - believe the final tranche for 2019/2020 has been paid by Central Government to Kirklees, bringing the total to £3,863,449. Thus I understand the need to push these planning applications through without the relevant information.
- Future residents are not aware of this development and residents will think that they are overlooking the playing fields and not other properties.
- Barratts have told prospective buyers that 'no further developments are being considered by Barratts.'

**Response:** Noted but the site is part of a housing allocation that forms part of the Council's a minimum not a maximum housing requirement set out in the Kirklees Local Plan. Barratt Homes did not submit this planning application.

- Lack of adequate infrastructure - schools, health care, transport
- Future and existing residents concerned about risks further developments will have on traffic, schools, green areas, parks and community spaces.

**Response:** The dwelling numbers have yet to be determined, and this matter was robustly considered as part of the selection of sites to be allocated for housing as part of the Local Plan. The necessary contributions towards infrastructure will be sought as part of this application to mitigate against any adverse impact. Also, funding for health care provision is based on the number of patients registered at a particular practice, and is also weighted based on levels of deprivation and aging population. Direct funding is provided by the NHS for GP practices and health centres based on an increase in registrations.

- Highway safety concerns about the increase in the volume of traffic via a single access point along Thomas Wroe Way and Poppy Gardens.
- Inadequate access (particularly for emergency vehicles) via narrow estate roads on the newly completed Barratts Homes estate.
- The transport submission doesn't include reference of Harrison Lane, Meltham (the direct route into Huddersfield). This road particularly at the junction of Crosland Edge is very narrow with school children having to walk to and from the bus. There have already been several near misses since the additional housing in Helme Lane have increased the traffic. Please consider actions to improve safety around this bottleneck if planning is approved.
- Adverse impact on residents who live at Thomas Wroe Way and Poppy Gardens (Barratts development) in terms of construction, noise, traffic, environmental impacts and highway safety. Additional access and egress is required at the bottom of the estate.

**Response:** The applicant has provided a Transport Statement which has been reviewed by Highways Development Management who have raised no objections regarding these matters. Furthermore, in terms of the Local Plan allocation sites, the Kirklees Local Plan sets out a sustainable strategy for planned growth currently up to 2031, including proposals for planned mitigation to the local road network. This is underpinned by an extensive

district wide strategic modelling exercise of the transport network (which takes into account current local road network/public transport use and forecasts planned growth). The modelling also takes into account local, cross-boundary road network issues connecting into neighbouring authority areas.

- Flood risk concerns and the Lead Local Flood Authority have objected to the planning application.

**Response:** This matter has been addressed within the report.

- Removing trees/building on green fields, plus the exhaust fumes from the extra cars, has a significant impact on air quality. What guarantees has the developer provided that this development will be zero-carbon?

**Response:** It is understood that no trees would be removed. Highways Development Management and Environmental Health have not raised any objections in relation to these matters, subject to the necessary planning conditions to provide electric vehicle charging points and promote modes of sustainable travel.

- We would also request that if approved, the privacy of existing residents would be respected and existing homes would not be overlooked and sensitive landscaping of trees and shrubs would be adopted.
- As this is an outline application, should it be granted, would the public be given further opportunity to comment on the layout once all aspects have been addressed?
- Why is there no accommodation for older people - bungalows, or social housing within the plans, which contravenes Kirklees own policy.

**Response:** If approved, matters of appearance, landscaping, layout and scale would be determined as part of a Reserved Matters application. Therefore, housing typologies, site layout, landscaping and impact on residential amenity would be proposed and the necessary public consultation would take place.

- Likely structural damage to neighbouring properties due to vibrations, neighbours are currently experiencing this issue with the Barratts development.

**Response:** Noted. However, officers do not believe this matter is itself a reason to warrant a refusal.

- Unacceptable impact on residential amenity, particularly during construction - noise pollution (particularly working outside the agreed construction hours) fly tipping, parking, damage to property issues, which are currently being experienced with the neighbouring Barratts site.
- Part of the above land is currently being used as a compound and parking area for the second phase of a housing development. Residents are currently suffering from noise and light pollution some of which has been outside the approved working times. What consideration would be given by the new developers to the residents and where would the compound area be located?
- Further to this, there are concerns that heavy machinery will pass through the current development, which from experience we know damages the roads. Who would be responsible for rectifying this?
- The second phase of the Barratt development has already disrupted the drainage of surface water resulting in flooding on Mean Lane.

- The Environment Agency has previously been contacted as during heavy rainfall the silt that is used during construction entered local waterways. This obviously had a negative impact on local wildlife and so we do not want this event to occur again.
- On an adjacent site work has been going on for several months on the building of a pump station to accommodate the second phase of a housing development. There has been pollution of the water course and considerable drilling into the rock base to construct the facility. If permission is granted will this facility have the capacity to accommodate the extra housing or will a new facility be required? If a new facility, where would this be located and what assurances / guarantees would existing residents have that this would not have an adverse impact on the foundations/ structure of homes?

**Response:** Concerns have been raised regarding flooding, dust, noise, vibrations and disturbance associated with construction traffic. These matters would be addressed by a condition requiring the submission and approval of a Construction Management Plan and is therefore recommended. The necessary conditions-stage submission would need to sufficiently address the potential amenity impacts of construction work at this site, including cumulative amenity impacts should other nearby sites be developed at the same time.

### Planning obligations

10.49 Paragraph 56 of the NPPF confirms that planning obligations must only be sought where they meet all of the following: (i) Necessary to make the development acceptable in planning terms, (ii) Directly related to the development and (iii) Fairly and reasonably related in scale and kind to the development. Should Members resolve to approve this application, Officers recommend that it should be subject to a Section 106 agreement to cover the following:

- 1) Affordable housing – 20% of dwellings to be affordable with a preferred split of 55% social or affordable rent to 45% intermediate housing;
- 2) Open space – contribution to off-site open space to be calculated at Reserved Matters stage based upon the level of on-site provision at that time;
- 3) Education - additional places may be required at Meltham Moor Primary School and Honley High School with the contribution to be calculated at Reserved Matters stage based upon the projected numbers at that time;
- 4) A contribution to sustainable transport methods, including a contribution towards Meltham Greenway to be determined at Reserved Matters stage based upon the number of dwelling units;
- 5) Biodiversity – Contribution (amount to be confirmed at the Reserved Matters stage) towards off-site measures to achieve biodiversity net gain.
- 6) Arrangements to secure the long-term maintenance and management of public open space and the applicant's drainage proposals, including pumping station.

10.50 This application is an outline application with all matters reserved apart from access. Therefore, when a specific layout with numbers of dwellings is agreed at the Reserved Matters stage, the necessary financial contributions can be calculated and subsequently sought.

- 10.51 Local Plan policy LP11 requires 20% of units on the site to be affordable with a preferred split of 55% social or affordable rent to 45% intermediate housing. As this is an outline application with the number of dwellings unknown at this stage it is considered that the provision and type of affordable housing would be secured at the Reserved Matters stage. For example, based on the indicative site layout plan showing 20 dwelling houses, four dwelling houses would be sought, with a preference for two social or affordable dwelling houses and two intermediate houses.
- 10.52 Local Plan policy LP63 of the Local Plan relates to public open space provision. There is no public open space indicated on the layout. The Landscape Officer has provided comments on an historic proposal but not on the current proposal. Therefore, as an indication, it is calculated, without prejudice that, for example, a development of 21 dwellings would require 2016.42 sqm of greenspace, including a Local Area of Play (LAP). If this cannot be provided on-site then an offsite lump sum, £39,579.00 will be required for a scheme consisting of 21 dwellings. There are a number of existing facilities in the vicinity and liaison with the Ward Councillors and public on receipt of the contributions will be undertaken. Although, the Broadlands Rec, and Robert Ashton Memorial Park are likely recipients for improvement, being relatively destination facilities for a broad range of residents and well within the accessibility to meet Local Plan policy LP63.
- 10.53 As the site forms part of the wider site allocation, an education contribution would be sought in line with Local Plan policy LP49. Given this is an outline application with the number of dwellings unknown at this stage it is considered that the provision of education would be calculated at the Reserved Matters stage. The contribution is determined in accordance with the Council's policy and guidance note on providing for education needs generated by new housing. This confirms that The Local Authority's (LA) Planning School Places Policy (PSPS) provides the framework within which decisions relating to the supply and demand for school places are made. Contributions will only be sought where the new housing will generate a need which cannot be met by existing local facilities. This will be determined through examination of current and forecast school rolls of relevant primary and secondary schools, their accommodation capacities and consideration of the type of housing to be provided. The number of additional pupils generated from new housing developments is estimated on the basis of an additional 3 children per 100 family houses per year group for primary and pre-school numbers, (7 year groups) and an additional 2 children per 100 family houses per year group for secondary (5 year groups). This provides a consistent approach to securing the education contribution within the planning application process.
- 10.54 Highways Development Management have requested a £10,000 financial contribution towards the Meltham Greenway, which is part of the core walking and cycling network. Thus, such financial contributions towards its enhancement would be in accordance with Local Plan policies LP4 and LP23. Furthermore, the contribution to sustainable transport methods is reasonable and necessary to ensure that travel needs can be met by forms of sustainable transport other than the private car and are encouraged as a consequence of new development.



- 10.55 A net biodiversity gain needs to be demonstrated in accordance with Local Plan policy LP30 and chapter 15 of the NPPF. Given this is an outline application with all matters reserved apart from access permission, such a biodiversity net gain has not yet been demonstrated by the applicant. Net gain is measurable, and the degree of change in biodiversity value can be quantified using a biodiversity metric. A condition and Section 106 obligations are recommended, requiring the applicant to provide the necessary calculation, and to explore all options for on-site compensatory works. If adequate compensatory works cannot be achieved on-site, the applicant must look for nearby, available sites where compensatory works can be implemented with the agreement of the relevant landowner. If no such sites can be found by the applicant, a financial contribution can be made which the Council would be required to spend on compensatory measures at an available site.
- 10.56 Section 106 provisions relating to the management and maintenance of the proposed drainage infrastructure, including the management and maintenance of the pumping station until adopted by Yorkshire Water, as well as details of landscape maintenance, management and adoption would also be necessary.
- 10.57 For these reasons, these planning obligations are 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 requirement for these obligations therefore conforms to guidance within the Framework.

#### Other Matters

- 10.58 Detailed comments have been provided by the Waste Collection Authority with regards to the refuse collection vehicle requirements, bin presentation points, and bin storage facilities. These measures can be secured at the Reserved Matters stage or by planning condition.

### **11.0 CONCLUSION**

- 11.1 The application site is allocated for residential development under site allocation HS160, and the principle of residential development at this site is considered acceptable.
- 11.2 The site is constrained by the adjacent residential developments, cricket ground, drainage, ecological and highway considerations and other matters relevant to planning. While these constraints would necessitate further, careful and detailed consideration at Reserved Matters stage, none are considered to be prohibitive to the principle of residential development at this site. Therefore, it is recommended that an outline permission be granted subject to the necessary planning conditions and obligations set out in the report.
- 11.3 The proposed vehicular points of access and pedestrian points of access are considered acceptable in highways terms.

11.4 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. The proposed development has been assessed against relevant policies in the development plan and other material considerations. Subject to conditions and further consideration at Reserved Matters stage, it is considered that the proposed development would constitute sustainable development (with reference to paragraph 11 of the NPPF) 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 Planning and Development)**

1. Approval of Reserved Matters details of Appearance, Landscaping, Layout and Scale to be sought before development commences.
2. Plans and particulars relating to Reserved Matters details of Appearance, Landscaping, Layout and Scale to be submitted and approved in writing.
3. Application for Reserved Matters to be submitted within three years.
4. Time limit for commencement of development.
5. Development to be carried out in accordance with approved plans and specifications.
6. Submission of an Ecological Impact Assessment (EclA) with demonstration how the proposals will deliver a measurable biodiversity net gain of at least 10% and development in accordance with EiA recommendations
7. Submission of a Phase 2 Intrusive Site Investigation Report.
8. Submission of a Remediation Strategy.
9. Implementation of a Remediation Strategy.
10. Submission of a Validation Report.
11. Provision of Electric Vehicle Charging Points.
12. Work to be carried out in accordance with the council's set construction site working times
13. Details of storage, bin presentation points and access for collection of wastes from the dwellings.
14. Details of temporary waste collection arrangements to serve occupants of completed dwellings whilst the remaining site is under construction.
15. Construction Management Plan, including point of access for construction traffic, details of the times of use of the access, the routing of construction traffic to and from the site, construction workers parking facilities and the provision, use and retention of adequate wheel washing facilities within the site.
16. Provision of details of retaining walls and features adjacent to the existing/proposed adoptable highways.
17. Proposed design and construction details for all new surface water attenuation tanks/pipes/manholes located within the proposed highway footprint.
18. A scheme detailing the proposed internal road layout (to an adoptable standard)
19. Full detailed drainage design detailing foul, surface water and land drainage

20. Full details of the proposed means of managing surface water during the construction period including silt management to prevent blocking up of drainage systems.
21. Full detailed design of site levels including flow routing from the site including consideration of overland flow paths from drainage and gully bypass.
22. Submission of details securing land within the blue line boundary to facilitate the necessary drainage infrastructure for the application site (Grampian-style condition)
23. Any additional drainage related conditions (taking into account final comments from the LLFA and Yorkshire Water)

**Background Papers:**

Application and history files.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019/93335>

Certificate of Ownership – Certificate B signed

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## Report of the Head of Planning and Development

### HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 21-Apr-2021

**Subject: Planning Application 2020/93654 Change of use of plant nursery and retail to garden centre and formation of new access and car parking Fenay Bridge Nurseries, Brewery Yard, Fenay Bridge, Huddersfield, HD8 0AR**

#### APPLICANT

A Shepherd

#### DATE VALID

30-Oct-2020

#### TARGET DATE

29-Jan-2021

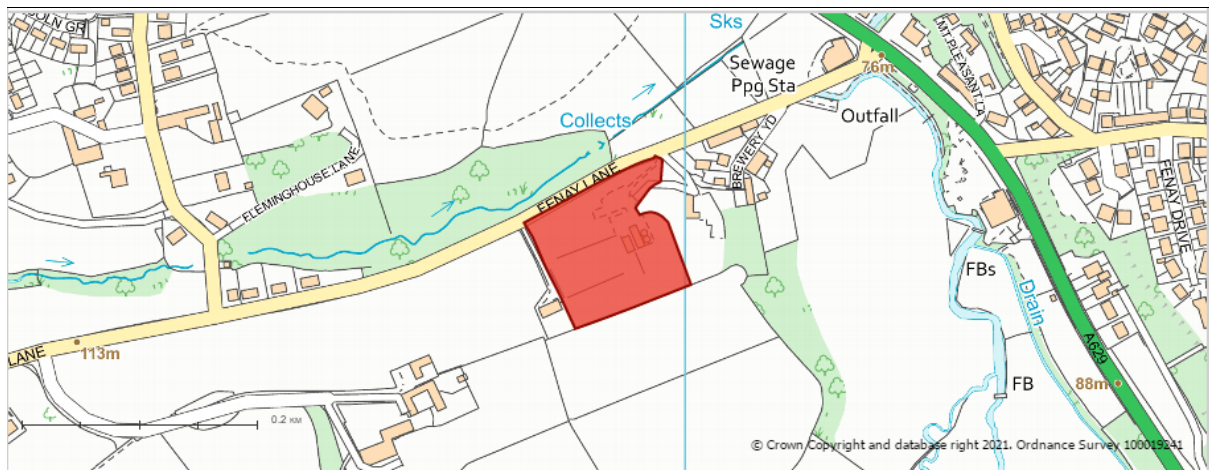
#### EXTENSION EXPIRY DATE

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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**

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**Electoral wards affected: Almondbury**

**Ward Councillors consulted: Yes**

**Public or private: Public**

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**RECOMMENDATION:**

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

**1.0 INTRODUCTION:**

1.1 The application is brought to Huddersfield Sub Planning Committee in accordance with the Council's agreed scheme of delegated authority. Although the site exceeds 0.5 hectare and relates to a non-residential use, the Strategic Director for Growth and Regeneration, in consultation with the Chair of the Strategic Planning Committee, has determined that it would be more appropriate for the planning application to be decided by the relevant Area Sub-Committee rather than the Strategic Committee.

**2.0 SITE AND SURROUNDINGS:**

2.1 The application relates to a site area of approx. 1.25ha. The site is accessed via a steep drive off Fenay Lane located in the north east part of the site. Over two thirds of the site is occupied as a vacant plant nursery and accommodates a number of poly-tunnels, open growing beds and two permanent buildings at the eastern end of the site. The remainder of the site accommodates level concreted areas.

2.2 To the east of the site, is land within the ownership of the applicant consisting of a grade II listed residential property. There are open fields to the south and west with a small cluster of residential properties beyond the south west corner of the application site. The site is stated to have been vacant since June 2017.

**3.0 PROPOSAL:**

3.1 The proposals are for the change of use of the vacant plant nursery with retail sales to a garden centre, together with the formation of a new vehicular access from Fenay Lane along the north western part of the site. From the information submitted with the application it is proposed to utilise the poly-tunnels together with the two existing permanent buildings for the display and retail sales areas.

3.2 The supporting statements accompanying this application remain the same as those submitted under previous application nos. 2018/90163 and 2014/93595 which states the proposals comprise of:

- 1,160 square yards (970 sq. m) of covered retail area in the areas indicated on drawing no. MS1,

- Sales at tills and ancillary café with toilets accommodated in one or both of the two permanent buildings, with a total floor area of approximately 260 square yards (217 sq. m).
- Retention of the open growing beds in the middle of the site
- Rationalisation of existing poly-tunnels

3.3 It is intended to close off the existing vehicular access and replace this with a new vehicular access to be formed in the north-western part of the site. Given the topography of the site, which is at a higher level than Fenay Lane, this would involve the construction of retaining walls. Existing areas of hardstanding within the site would be used for car parking. The plans submitted show 49 parking spaces located off the new access.

3.4 It is anticipated that a total of 12 employees would be required.

3.5 Hours of opening are indicated to be 10:00am to 6pm Monday to Friday and 10am to 6pm on weekends including bank holidays.

3.6 The scheme before Members is identical to that submitted under application no. 2018/90163 (which expired on the 10<sup>th</sup> April 2021) and an earlier permission approved under application no. 2014/93595. The agent states that no developer has come forward to carry out the development as previously approved. An application to discharge 'pre-commencement conditions' attached to application no. 2018/90163 has been made in order to facilitate lawful commencement of that development before the permission expires. At the time of writing all but one of these conditions had been 'discharged'.

#### **4.0 RELEVANT PLANNING HISTORY (including enforcement history):**

4.1 2021/90958 – Discharge of conditions 6 (Highway Works), 8 (Visibility Splays), 10 (Highway Retaining Structures), 12 (Construction Traffic), 13 (Surface Water) on previous permission 2018/90163 for change of use from plant nursery with retail sales to garden centre and formation of new access. The details submitted for conditions 6, 10, 12 and 13 have been approved. The details submitted for condition 8 were withdrawn during the course of the application.

2020/91155 – Outline application for residential development, includes part of the application site and the same proposed access arrangements as this application – Under consideration

2019/90953 - Certificate of lawfulness for existing use of land as plant nursery with retail sales - Granted

2018/90163 – change of use of plant nursery with retail sales to a garden centre, together with the formation of a new vehicular access from Fenay Lane – Conditional full permission by Strategic Committee April 2018

2016/93230 – Outline application for demolition of existing buildings and erection of residential developments refused and dismissed on appeal for the following reason:

Inappropriate development in the Green Belt which would have a greater impact on the openness than the existing use with no very special circumstances to justify the development.

2014/93595 – change of use of plant nursery with retail sales to a garden centre, together with the formation of a new vehicular access from Fenay Lane – Conditional full permission by Strategic Committee December 2015.

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

- 5.1 No negotiations required. The submitted details are as approved under the 2018 and 2014 applications.
- 5.2 Supplementary information has recently been submitted in support of the application. This is the same information submitted for the discharge of condition application no. 2021/90958 related to proposed highway works, highway retaining structures, construction traffic and surface water drainage arrangements.

## **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 27<sup>th</sup> February 2019).

### Kirklees Local Plan (2019):

- 6.2 LP10 – Supporting the rural economy  
LP13 – Town Centres  
LP21 – Highway safety and access  
LP22 – Parking  
LP24 – Visual Amenity  
LP28 – Drainage  
LP30 – Biodiversity  
LP34 – Protection of the water environment  
LP35 – Historic environment  
LP51 – Protection and improvement of local air quality  
LP52 – Protection and improvement of environmental quality  
LP53 – Contaminated and unstable land  
LP57 - the extension, alteration or replacement of existing buildings in the Green Belt  
LP59 – Infilling & redevelopment of brownfield sites in the Green Belt

### Supplementary Planning Guidance / Documents:

- 6.3 K.C. Highways Design Guide

### National Planning Guidance:

- 6.4 Chapter 6 – Building a strong, competitive economy  
Chapter 7 – Ensuring the vitality of town centres  
Chapter 13 – Protecting the Green Belt Land  
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



## **7.0 PUBLIC/LOCAL RESPONSE:**

7.1 The application has been advertised by site notices, in the local press and letters posted to neighbours abutting the site. In accordance with Officer/Member Protocol, Ward Members were informed of the application/proposals. The publicity period expired on 16<sup>th</sup> December 2020. No representations were received.

## **8.0 CONSULTATION RESPONSES:**

### **8.1 Statutory:**

KC Highways DM: No objections

KC Environmental Health: No objections

### **8.2 Non-statutory:**

KC Biodiversity: No objections subject to conditions

West Yorkshire Designing Out Crime Officer: Support

## **9.0 MAIN ISSUES**

- Principle of development
- Impact on nearby Local Centres
- Visual and residential amenity
- Heritage issues
- Highway issues
- Biodiversity Issues
- Drainage issues
- Representations
- Other matters

## **10.0 APPRAISAL**

### Principle of development

10.1 The site lies within the Green Belt on the Kirklees Local Plan. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

10.2 In accordance with Chapter 146 of the NPPF, the proposed material change of use need not be inappropriate in the Green Belt provided that the openness of the Green Belt is preserved and the use does not conflict with the purposes of including land within it.

10.3 The site, although now stated to be vacant since June 2017, was previously used as a plant nursery with wholesaling, distribution and sales to the public since the 1980's. The site and the previous operation were well established and accommodated a number of poly-tunnels, open growing beds, two permanent buildings and areas of hardstanding within the site, with mature trees, hedges, landscaping and boundary walling.

- 10.4 Application 2019/90953 for “Certificate of lawfulness for existing use of land as plant nursery with retail sales” was granted for the area to the west of the site that includes buildings associated with the former use. This part of the wider site constitutes previously developed land.
- 10.5 Whilst visible within the landscape from more long distant views, the site in its existing form is not considered to be unduly harmful to the openness of the Green Belt. The proposed material change of use represents a similar submission to those in 2018 and 2014 where the applicant stated that the use proposed will utilise the existing growing beds and retail sales areas will be accommodated within the existing buildings and poly-tunnels. Car parking to support the change of use is to be accommodated using areas of existing hardstanding within the site. As such, officers consider that the change of use proposed from plant nursery to garden centre with car parking, excluding the new access road, would not materially alter the physical character of the site in a spatial or visual capacity nor result in harm to the openness of the Green Belt in line with paragraph 146 of the NPPF.
- 10.6 Engineering operations can be considered appropriate development in the Green Belt, provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. The formation of the proposed access from Fenay Lane would ‘dog leg’ up the existing vegetated embankment to meet an area of existing hard standing on the predominantly flat site above. Significant excavations and retaining structures will be required to accommodate the access, which in the opinion of officers, would have a significant impact upon the appearance of the embankment in the short term. This would constitute inappropriate development within the Green Belt due to the visual impact this would have on the embankment in the short term and the spatial impact of a roadway where one does not currently exist. In view of this, to lessen its affect over time, to help reduce the impact on the openness of the Green Belt and mitigate the stark appearance of the retaining structures, it is proposed to incorporate landscaping to either side of the proposed access as shown on drawing no. LD0007\_201 Rev B, the details of which are identical to that considered on the 2014 and 2018 applications and found to be acceptable. A detailed landscape scheme is necessary to mitigate harm to the openness of the Green Belt.
- 10.7 In order to accommodate the proposed car parking area, landscaping within the site would need to be removed and the banking between the existing areas of hardstanding would need to be regraded, with the construction of a retaining wall within the site, adjacent to the proposed car park area. These works are on land that forms a plateau and given most of the land is already roughly surfaced ground the works are concluded to preserve the openness of the Green Belt. The requirement for a detailed landscape scheme to support the development, as referred to in the previous paragraph, would help support this conclusion.
- 10.8 As the proposed access would not preserve the openness of the Green Belt it constitutes inappropriate development and is contrary to Policy in paragraph 146 of the NPPF. The NPPF is clear that inappropriate development should not be approved except in very special circumstances. Substantial weight is afforded to the harm to the Green Belt; very special circumstances will not exist unless the potential harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. (para 144 NPPF).

10.9 There are a number of other considerations put forward in favour of the development by the applicant. These, cumulatively, are considered to constitute very special circumstances. These are similar considerations to those put forward in support of earlier applications for the same development.

- Until the site becoming vacant in June 2017, the previous use/business was well established. This included wholesale and distribution and the sale of plants to the public without restrictions on opening hours. Historically the existing use also included an element of retail sales.
- The proposal would create additional employment opportunities (estimated by the applicant to be 12). This would be in accordance with the advice of NPPF paragraph 80 which seeks to secure economic growth stating that “decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development”. Furthermore, this would support economic growth in a rural area through the conversion of the existing permanent buildings on site and increased employment opportunities for an existing land-based rural business, in accordance with paragraph 83 of the NPPF.
- The proposals will help improve the overall appearance of the site through rationalisation of the existing buildings, poly-tunnels and planting beds and improved landscaping.
- The existing access into the site is substandard in terms of its gradient and visibility raising concerns in relation to highway safety. The development provides an opportunity to address the existing access constraints through the formation of a new access.
- A grant of planning permission would give the Local Planning Authority the opportunity to control opening hours and the way in which the garden centre would operate, including limiting the extent of retail space and providing suitable parking facilities for staff and customers.

10.10 Taking into account the nature of the recent former use and current state of the site, the very special circumstances are demonstrated to be:

- benefits to the rural economy arising from the diversification of the previous use of the site,
- opportunity to improve the overall appearance of the site through the rationalisation of existing buildings and structures,
- vehicular access improvements, and
- the opportunity to control opening hours and the operation of the business.

10.11 Officers are of the view that the very special circumstances set out above, and previously considered sufficient to clearly outweigh the potential harm to the Green Belt, remain valid and acceptable on this application as the proposals are identical to those on the previous permission no. 2018/90163. The proposals would accord with guidance in the NPPF as well as Policy LP57(c) LP59 of the Local Plan and as such does not represent a departure from the

Local Plan. Although the Local Plan was adopted after the previous application was approved, the 'Publication Draft' versions of both LP57 and LP59 were taken into account at that time.

**Impact on nearby Local Centres:**

- 10.12 Section 7 of the NPPF advises Local Planning Authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. They should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre. Policy LP13 of the Local Plan follows the national policy set out in the NPPF and sets out a strategic framework for proposals for new main town centres uses across the district.
- 10.13 The change of use to a garden centre would result in a Class E (Commercial, Business and Service) use being formed on this site. This includes a main town centre use (previously Class A1 retail) and this site is out of centre. However, in the light of the applicant's statement at para 10.9 regarding the nature of the proposed and existing business, and given that the operations of a garden centre are location specific, it was not considered necessary to request a sequential test in this specific case. Specifically, as the ancillary retail and café/toilets are to be conditioned to the areas specified and set out above. This also takes into account the recent planning history which has previously concluded the proposed use on this site as acceptable. In addition, the policy justification for Policy LP10, para 7.31 of the Local Plan, clearly indicates that the rural economy plays an important role in the wider economy of Kirklees. This cites that the characteristics of the rural economy are diverse and "supports innumerable businesses including...garden centres and nurseries...It is therefore important to continue to support and encourage the sustainable growth of these industries to maintain and enhance the opportunities for locally supplied employment".
- 10.14 The proposals, taking into account the previous use of the site, previous planning history, assessment of adopted Local Plan Policies and national policy as set out in Section 7 of the NPPF would ensure that the vitality of nearby town centres is not compromised.

**Impact on visual and residential amenity:**

- 10.15 The creation of a new vehicular access would result in part removal of the existing landscaping and embankment along Fenay Lane. Whilst this provides some amenity value along Fenay Lane it is not of a quality to be protected by way of a preservation order.
- 10.16 In light of this and the applicant's agreement to condition replacement planting as stated above, the proposals involve little change to the external appearance of the site. The removal of hardstanding associated with the existing access and its replanting will help mitigate the work to create the new access and weight is afforded to this in considering the proposed development.

- 10.17 The site is separated from residential property to the south west and north east thereby reducing any impact on nearby occupants from the proposals.
- 10.18 The provision of a formal parking area in the north east part of the site would have no greater impact on the nearest property, beyond the south west corner of the site. In addition, conditioning the opening hours as stated on the application form would further ensure the amenity of nearby residential properties is not compromised. In such circumstances the proposal would not be harmful to residential amenity of any nearby residential properties and would be in accordance with Policy LP24 of the Local Plan.

**Heritage issues:**

- 10.19 In considering whether to grant planning permission for development which affects the setting a listed building, Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the local planning authority to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Taking this into account there is a Grade II listed building, north east of the site. This is an 18<sup>th</sup> Century longhouse farmhouse. The physical works to accommodate the access would not be in close proximity to this listed building to the extent that its setting would remain relatively unaltered. Whilst it is recognised the wider site would alter in terms of its operations, this would remain similar in terms of its longstanding function. It is considered there would be no harm to the significance of this heritage asset, from either the change of use or the operational development proposed in accordance with paragraphs 193 and 194 of the NPPF and Policy LP35 of the Local Plan.

**Biodiversity issues:**

- 10.20 Policy LP30 of the Local Plan confirms that the Council will seek to protect and enhance the biodiversity and geodiversity of Kirklees. As relevant to this site, it confirms that development proposals will be required result in no significance loss or harm to biodiversity as well as providing biodiversity net gain. The application has been referred to and assessed by the KC Biodiversity Officer. Affording weight to a Preliminary Ecological Assessment (PEA) accompanying application no. 2020/91155 it is not anticipated that there will be significant ecological impacts as a result of the proposals on this site, with the inclusion of appropriate mitigation measures as recommended within the PEA. Subject to a pre-commencement condition requiring the submission of an Ecological Design Strategy addressing biodiversity mitigation and net gain and a footnote regarding works outside bird breeding season, the development would be in accordance with Policy LP30 and Chapter 15 of the NPPF.

**Highway issues:**

- 10.21 Policy LP21 states that “proposals shall demonstrate that they can accommodate sustainable modes of transport and be accessed effectively and safely by all users. New development will normally be permitted where safe and suitable access to the site can be achieved for all people and where the residual cumulative impacts of development are not severe. Proposals shall demonstrate adequate information and mitigation measures to avoid a detrimental impact on highway safety and the local highway network. Proposals shall also consider any impacts on the Strategic Road Network”.

- 10.22 The proposed highway works submitted in support of the development are identical to those submitted and considered under the 2018 application, which include closing off the existing steep drive and to provide a new access and drive into the site in the north-west part of the site, to be served from Fenay Lane. The new access is shown to measure around 12 metres where it joins Fenay Lane, decreasing to no less than 4.75 metres internally within the site. At the time of the previous application Highway Officers requested further information in the form of vehicle swept paths along the proposed drive to assess the suitability of the access to accommodate HGV and other vehicle turning manoeuvres. In addition, given the proposed development would include an ancillary café and retail areas which are likely to intensify the use of the site and vehicular movements to and from the site, the provision of on-site parking was demonstrated on an indicative car park layout. Drawing no. 03 demonstrates in part where parking provision could be accommodated on site. The formal details of car parking to serve the proposed use would need to be provided prior to the use becoming operational and can be secured by condition. This would be both in the interests of highway safety and in the interests of preserving the openness of the Green Belt.
- 10.23 It is accepted, as previously, that the parking provision relative to the ancillary café and retail areas can be accommodated along the north eastern and western part of the site. Some of that area already consists of reasonably level, concreted areas as well as disturbed gravel surfaced open plant beds. This would require some engineering works to cut/infill to level the area. KC Highways DM officers have re-examined the proposals and raise no objections subject to conditions.
- 10.24 The applicants have submitted supplementary information in support of the access arrangements. This includes a scheme detailing the layout, construction and specification of the highway works at the site access road and the site access junction with Fenay Lane, including the footway along the site frontage. These details have been assessed by Highways and found to be acceptable. Furthermore, as previously required by pre-commencement condition under application no. 2018/90163 details of the design and construction detail of all temporary and permanent highway retaining structures within the site and off-site (retaining wall at Fenay Lane) have been submitted and found acceptable 'in principle' by the Highway Structures team.
- 10.25 The activity associated with the construction of the access drive and other works within the site has the possibility to impact on the surrounding road network. The applicants have submitted details of a Construction Traffic Management Plan reference 890N dated 25th March 2021 by Paragon Highways. This has been previously assessed as acceptable by Highways as part of the discharge of conditions for application no. 2018/90163. Provided the development was undertaken in accordance with the Construction Management Plan it would mitigate any adverse impact on highway safety.
- 10.26 Taking the above into account, the recent planning history where permission of identical proposals has been granted, it is concluded, on balance, that the residual cumulative impact on highway safety would not be 'severe'. This is subject to the closing off the existing access and the provision of parking spaces before the ancillary retail and café areas are brought into use, as stated above, the development being undertaken in accordance with the construction

management plan, details of all retaining structures, details plans and arrangements for the access road. To conclude, subject to this the development would be in accordance with Policies LP21 and LP22 of the Kirklees Local Plan and advice in the NPPF.

### Drainage

- 10.27 With regards to drainage issues, the LLFA previously raised no objections to the scheme in principle. It was recommended that a condition be imposed for the drainage of vehicular areas. This is necessary to assess the quality of any surface water discharge and to determine whether attenuation is required; including use of an oil/petrol interceptor.
- 10.28 Following the imposition of a condition on the 2018 permission, the applicants have prepared and submitted detailed arrangements for drainage of vehicular areas. This has now been included as supplementary information in support of the current application. This includes details of the hierarchy of discharge, the proposed discharge point, the proposed discharge rate of 3 l/s for the car parking area via flow control and 6 l/s for the access road (free flowing) and details of a proposed oil interceptor. These arrangements have been reviewed by the LLFA and found to be acceptable.
- 10.29 Subject to the imposition of a condition requiring drainage of vehicular areas to be undertaken in accordance with the submitted plans and specifications, it is considered the site can be adequately developed in accordance with the guidance in the NPPF and Local Plan Policies LP28 and LP34.

### Representations

- 10.30 None received

### Other

- 10.31 *Climate Change* - On 12<sup>th</sup> November 2019, the Council adopted a target for achieving 'net zero' carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan pre-dates the declaration of a climate emergency and the net zero carbon target, however it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda.
- 10.32 The site re-uses, in part, previously developed land. Biodiversity mitigation and net gain in addition to the introduction of vehicle charge points (set out below) further supports sustainable transport methods both contribute to the climate change agenda.

10.33 *Sustainable Transport* - In order to mitigate impact on air quality and in accordance with the West Yorkshire Low Emissions, Policies LP24 and LP51 of the Local Plan development proposals such as this should aim to include sustainable transport methods. In an application of this nature it is expected that facilities for charging electric vehicles and other ultra-low emission vehicles are provided in accordance with the National Planning Policy Framework and *Air Quality & Emissions Technical Planning Guidance* from the West Yorkshire Low Emissions Strategy Group. A condition requiring charging points is therefore recommended.

## **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 material considerations. It is considered that the development would constitute sustainable development.

11.3 Whilst the proposals constitute inappropriate development in the Green Belt, Officers consider that very special circumstances have been demonstrated which clearly outweighs the harm to the Green Belt by reason of inappropriateness and any other harm.

11.4 The conditions imposed on the 2018 permission are still considered necessary, relevant and appropriate for this application and would include restricting the ancillary café and retail areas to the areas identified on drawing no. MS1. There would be no harmful impact on the setting of the adjacent listed building, residential or visual amenity and highway safety.

11.5 In such circumstances it is considered that there are no adverse impacts of granting permission which would significantly and demonstrably outweigh the benefits when assessed against the policies in this framework taken as a whole.

## **12.0 CONDITIONS (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Planning and Development)**

1. Development to commence within 3 years of permission
2. Development to be undertaken in accordance with submitted plans/specifications
3. Restriction on the hours of operation/use to 10:00-18:00 on any day of the week
4. Restriction on the use of the site to 'garden centre' and for no other purpose (including any other purpose within Class E of the Town and Country Planning (Use Classes) Order 1987
5. To restrict the ancillary retail sales areas/including café/toilets to the areas edged green on drawing no. MS1.
6. Scheme of highway works at site access road and the site access junction with Fenay Lane, including the footway along the site frontage (with reference to drawing no. 890/03) and all associated highway works to be undertaken in accordance with the submitted details



7. Details of formal car park layout, service areas and waste storage within to be submitted and approved before the use is first commenced
8. Visibility splays of 2.4 m x 43 m in both directions along Fenay Lane to be provided before the use is first commenced
9. The existing access to be permanently closed and the new access to be constructed in accordance with approved details before the use is first commenced
10. All temporary and permanent highway retaining structures within the site and off-site (retaining wall at Fenay Lane) to be undertaken in accordance with the submitted plans and specifications prior to the use being made operational and retained thereafter
11. Permeable surfacing of the approved vehicle parking areas
12. Development to be undertaken in accordance with the submitted Construction Management Plan
13. The treatment of all surface water flows from parking areas and hard standings to be undertaken in accordance with the submitted plans and specifications before use of hard surfaces/parking areas commence
14. Details of a landscaping scheme, including phasing, to be submitted before the use is commenced
15. Approved landscaping scheme to be carried in accordance with approved timescales & maintained for a period of five years from the completion of planting works.
16. Provision of electric vehicle charging points.
18. Submission of Ecological Design Strategy addressing mitigation and enhancement.

**Background Papers:**

Application and history files.

Website link to be inserted here:

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2020%2f93654>

Certificate of Ownership – Notice served on The Shepherd Foundation

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## Report of the Head of Planning and Development

### HUDDERSFIELD PLANNING SUB-COMMITTEE

Date: 21-Apr-2021

Subject: Planning Application 2021/90774 Listed Building Consent for replacement roof tiles (within a Conservation Area) 74, Huddersfield Road, Holmfirth, HD9 3AZ

#### APPLICANT

A Morrison

#### DATE VALID

05-Mar-2021

#### TARGET DATE

30-Apr-2021

#### EXTENSION EXPIRY DATE

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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

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**Electoral wards affected: Holme Valley South**

**Ward Councillors consulted: No**

**Public or private: Public**

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**RECOMMENDATION: GRANT LISTED BUILDING CONSENT**

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

**1.0 INTRODUCTION:**

1.1 This report relates to the installation of ridge and tile vents within the roof of 74 Huddersfield Road, Holmfirth, HD9 3AZ. It has been brought to Sub-Committee for determination as the applicant is related to a council employee who works within the Growth and Regeneration Directorate.

**2.0 SITE AND SURROUNDINGS:**

2.1 74 and 76 Huddersfield Road is a Grade II listed mid-terraced property dating to the early to mid-19<sup>th</sup> century and situated within the Holmfirth Conservation Area. It is two storeys in height on the Huddersfield Road elevation, and four storeys on the Norridge Bottom elevation. The roof is covered in natural stone slates with a short parapet wall and lead lined stone gutter on the front elevation, and a gutter on brackets to the rear.

**3.0 PROPOSAL:**

3.1 The proposal seeks Listed Building Consent to remove four roof slates and two ridge tiles and install four vented roof slates and two vented ridge tiles to improve ventilation within the roof space.

**4.0 RELEVANT PLANNING HISTORY (including enforcement history):**

4.1 No relevant planning history.

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

5.1 Clarification was sought to determine whether alternative options had been considered to allow the retention of the traditional roof covering. Eaves vents were not an option as the front of the building has a lead-lined stone gutter with no eaves and installing eaves vents at the rear would not provide through ventilation.

- 5.2 The building has been re-roofed in the past using a non-breathable roofing felt which has caused condensation build up. Re-roofing with a breathable membrane was considered as an alternative measure but the cost of this is not viable at the present time.

## **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 27<sup>th</sup> February 2019).

### Kirklees Local Plan (2019):

- 6.2 LP35 – Historic Environment

### Neighbourhood Development Plans

- 6.3 Holme Valley Neighbourhood Development Plan has been formally submitted to Kirklees Council and Peak District National Park Authority. It covers the whole of the Holme Valley Parish Area. The plan has not been subject to publicity (Regulation 16, The Neighbourhood Planning (General) Regulations 2012) at this time. There are unresolved objections between the Kirklees Council and the neighbourhood plan body therefore the plan has no weight at this stage.

### Supplementary Planning Guidance / Documents:

- 6.3 None

### 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 19<sup>th</sup> February 2019, the Planning Practice Guidance Suite (PPGS) first launched 6<sup>th</sup> March 2014 together with Circulars, Ministerial Statements and associated technical guidance.

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

- Chapter 16 – Conserving and Enhancing the Historic Environment

## **7.0 PUBLIC/LOCAL RESPONSE:**

- 7.1 The application was publicised with press notice and a site notice. The period of publicity expires on 9<sup>th</sup> April 2021. No representations had been received at the time of writing.

- 7.2 Holme Valley Parish Council – comments awaited at the time of writing. Any comments received shall be reported to members in the update.

## **8.0 CONSULTATION RESPONSES:**

### **8.1 Statutory:** None required

Officer report has been compiled by the Conservation and Design Officer.

## **9.0 MAIN ISSUES**

- Impact on the significance of the listed building
- Impact on the character and significance of the conservation area
- Representations
- Other matters

## **10.0 APPRAISAL**

### Impact on the significance of the listed building

- 10.1 This application considers the impact of the proposal on the listed building. The NPPF Chapter 16, paragraph 193, requires that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraph 194 requires that any harm to the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.
- 10.2 The proposed ventilated roof slates are manufactured from concrete artificial stone slates with flush air vents incorporated in them. The proposed ventilated ridge vents are manufactured from concrete artificial stone ridges with air vents incorporated into them. The existing ventilation in the roof is inadequate, causing a build-up of condensation and the potential decay of the roof structure. This proposal is a simple and effective solution to the problem, with minimal harm to the significance of the building, and is justified.
- 10.3 Paragraph 196 of the NPPF states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. In this case the loss of four natural stone slates and two ridge tiles, along with the insertion of artificial stone slates and ridge tiles, leads to slight harm. The roof space is suffering from condensation build up caused by a lack of ventilation and the use of an impermeable roof membrane. The public benefit of protecting the building from deterioration is considered to outweigh the slight harm.
- 10.4 The harm has been mitigated as far as possible using materials which are designed to replicate natural stone slates, with only a small number of vents so that the harm is kept to a minimum, and flush air vents which will avoid projections from the roof pitches.

### Impact on the conservation area

- 10.5 The proposal causes slight harm to the character and significance of the conservation area by alterations to a traditional roof in a prominent location. However, as noted above, the public benefit of protecting the building from deterioration is considered to outweigh this harm.

### Representations

- 10.6 No representations have been received.

### Other Matters

- 10.7 *Climate Change* - On 12<sup>th</sup> November 2019, the Council adopted a target for achieving 'net zero' carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan pre-dates the declaration of a climate emergency and the net zero carbon target, however it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda. This proposed works would extend the life of a building. As the building is within a sustainable location the continuing full economic use of the building would, in a small part, help to reduce the need to travel by private car.

## **11.0 CONCLUSION**

- 11.1 The proposal is acceptable as alternative measures have been considered and are not viable at the present time. The public benefit of protecting the building from deterioration is considered to outweigh the slight harm as required by Chapter 16 of the NPPF, and the harm is mitigated using a small number of discreet slates.

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

1. Standard 3-year timeframe for commencement of development.
2. Development to be completed in accordance with the submitted plans and specifications.
3. The existing slates and ridge tiles to be retained on site for reinstatement in the event that the building is re-roofed, with the artificial vent slates and ridge tiles removed.

**Background Papers:**

Application web page:

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2021%2f90774>

Certificate of Ownership –Certificate A signed on 24 February 2021.