

Proposed stopping up of an unrecorded public footpath and unrecorded restricted byway and the creation of replacement alternative public footpaths at Land Adjacent Birkenshaw Liberal Club, 10 Croft Street, Birkenshaw, BD11 2HT.

Path Stopping Up Order Application - Explanatory Statement

Section 257 of the Town & Country Planning Act, 1990

Under section 257 of the Town & Country Planning Act, 1990, ('the 1990 Act') local authorities have the power to make orders to stop up or divert public rights of way if they are satisfied that it is necessary to so do in order to enable development. To make/confirm an order Kirklees Council will need to be satisfied that the proposal complies with the 'necessity' test and 'merits' test in s.257(1) of the 1990 Act and case law:

- The Council needs to be satisfied that a planning permission exists and that it is necessary to authorise the stopping up (or diversion) of the public right of way by the order so as to enable that development to take place in accordance with that permission
- The Council has discretion whether to make/confirm an Order and may refuse to do so.
- In the exercise of that discretion, the Council is obliged to take into account any significant advantages or losses flowing directly from the proposals which have been raised, either for the public generally or for those individuals whose actionable rights of access would be extinguished by the proposals.
- In such a case, the Council must also take an account any countervailing advantages to the public or those individuals, along with the planning benefits of, and the degree of importance attached to, the development.
- The Council must then decide whether any such disadvantages or losses are of such significance or seriousness that the Council should refuse to make an Order.

The proposal for the s.257 Order does not provide an opportunity to re-open the merits of the planning authority's decision to grant planning permission, or the degree of importance in planning terms to the development going ahead according to that decision.

THIS EXPLANATORY STATEMENT IS PART OF A PRELIMINARY CONSULTATION ON THE APPLICANT'S PROPOSAL AND NO DECISION OR ORDER HAS BEEN MADE BY THE COUNCIL.

On 31st July 2025, the Strategic Planning Committee delegated approval of planning application [2024/91853](#) for the erection of 21 dwellings with garages, formation of adoptable road, private road, parking spaces and new car park and beer garden for the Birkenshaw Liberal Club. The planning application is therefore still awaiting approval.

In accordance with s.257(1A), subject to section 259, the Council may by order authorise the stopping-up of any footpath, bridleway or restricted byway if they are satisfied that an application for planning permission in respect of development has been made under Part 3 of the 1990 Act and, if the application were granted it would be necessary to authorise the stopping-up in order to enable the development to be carried out.

The plan of the '[Proposed Site Layout](#)' submitted with the application shows that if the planning application is approved, and the permitted dwellings were constructed on that basis, part of the unrecorded public footpath (shown by the bold black line between Points A-B on the Map) would pass through several properties and gardens. Additionally, part of the unrecorded restricted byway (shown by the bold black line between Points B-C on the Map) would pass through car parking spaces and the estate road, which constitute "*engineering... or other operations, in, on, over or under land*" for the purposes of s.55 of the 1990 Act.

The application makes provision for a 2-metre-wide public footpath with a sealed surface commencing on Allen Croft and joining the 2-wide-wide footway adjacent to the estate road, which is to be adopted under s.38 of the Highways Act, 1980 (shown by the bold black dashes between Points D-E on the Map). The public will then be able to walk along the footway to Old Lane or to Town Street & James Street via another 2-metre-wide link public footpath to be created adjacent Birkenshaw Liberal Club (shown by the bold black dashes between Points F-G on the Map).

Any proposed stopping-up order would come into effect only after it has been confirmed/certified: this is a preliminary consultation process and simply provides an opportunity for views to be expressed.

Any comments on the proposal should be made in writing by **5th November 2025** by email to publicrightsofway@kirklees.gov.uk or by post to Kirklees Council, Public Rights of Way, PO Box 1720, Huddersfield, HD1 9EL. Enquiries only may be made by telephone on 01484 221000 and ask for Mark Drydale.