



john newton & partners

jnpgroup

Consulting Engineers

Report on

Flood Risk Assessment:
Proposed Development
Thirstin Road
Honley
West Yorkshire

For

North Park Homes Ltd

Prepared by

Chris Yates

Approved by

Date

20th May 2011

Ref.

NG1607/CAM/FRA

Chesham
Brighouse
Midlands
Sheffield
Teesside

REPORT ON ENVIRONMENTAL IMPACT ASSESSMENT (FLOODING) ON PROPOSED DEVELOPMENT OF THE FORMER THIRSTIN MILLS SITE, HONLEY, HUDDERSFIELD

Appended documents:

- Appendix A Requirements of PPS25
- Appendix B Site Location Map
- Appendix C Photographs of Existing Pre Demolition Site & Site
- Appendix D Proposed Development Layout
- Appendix E Environment Agency Indicative Groundwater & Flood Map
- Appendix F Strategic Flood Risk Assessment Individual Flood Zone Map
– Fig. B2-3 Honley & Neiley
- Appendix G Environment Agency Correspondence
- Appendix H Culvert Diversion Drawings
- Appendix I Yorkshire Water Sewer Records
- Appendix J Sequential Test Report
- Appendix K Topographical Survey

1. INTRODUCTION

1.1. Terms of Reference

- 1.1.1. JNPG Group was commissioned by North Park Homes Ltd to undertake a Flood Risk Assessment (FRA) for the proposed former Thirstin Mills site, Honley, Huddersfield. The proposed Development layout is shown in Appendix D.
- 1.1.2. The flood risk proposals are to be prepared in accordance with the Planning Policy Statement 25 (PPS25) Development and Flood Risk. See summary in Appendix A.
- 1.1.3. An assessment on the drainage proposals for the site will be conducted and reference to this will be included throughout this report.

1.2. Site Description

- 1.2.1. The site covers an area of approximately 1.44ha.
- 1.2.2. Circa 1875 a woollen spinning mill known as Thirstin Mill was built on the proposed development site. Over the years buildings were added to the site to an extent where the majority of the site was occupied by buildings, except the south west corner where a mill pond was located (which has since been filled in).
- 1.2.3. A water course runs through the site entering at the southern end as an open channel. It is then culverted through the site and exits to the north where it continues to be culverted under Thirstin Road, before reappearing as an open channel approximately 30 metres further down stream.
- 1.2.4. Outline planning permission was granted for a proposed development scheme in 2007. The mill and associated buildings were demolished in phases between 2003 and 2007 as part of the works.
- 1.2.5. After gaining all necessary planning approvals for the scheme, the developer went into administration in 2008 and construction ceased.

1.2.6. Works that were approved by the necessary governing bodies and that were completed during the previous applications time span include:

- Demolition of all existing buildings on the site, with the exception of an electricity substation
- Diversion of the line and length of the original culvert
- Improvement works to the open channel part of the watercourse
- Remediation works to the existing ground make-up
- Erection of a new fence to the public footpath on the western boundary

1.2.7. The eastern boundary of the development site is formed by Thirstin Road.

1.2.8. Thirstin Road also forms part of the northern boundary as it veers in a north westerly direction at the northern end of the site.

1.2.9. The western and southern boundary is formed by a steep slope that has been partially stabilised. A public footpath cuts across the slope. Above the public footpath is a further steep slope with vegetation and rock outcrops prevalent.

1.2.10. The site co-ordinates are as follows:

OS X (Eastings)	413444
OS Y (Northings)	41286
Nearest Post Code	HD9 6JL
Lat (WGS84)	N53:36:19 (53.605165)
Long (WGS84)	W1:47:54 (-1.798300)
LR	SE134120
mX	-200185
mY	7061311

1.3. Proposed Development

1.3.1. The proposed development for the site comprises of 23 new dwellings.

1.3.2. A new highway is proposed for the site which will be positioned over the culvert which was diverted as part of the previous application works.

1.3.3. The residential development will comprise the following:-

- Impermeable areas such as roofs, roads and car parking areas.
- Permeable areas such as private gardens and soft landscaped areas.

1.3.4. Refer to Appendix D for overview of proposed development layout.

2. FLOOD RISK ASSESSMENT

2.1. Flood Risk from Watercourses

2.1.1. General Observations

2.1.1.1. A watercourse flows through the development site in the direction of south to north.

2.1.1.2. The final outfall position for this watercourse is into an ordinary watercourse known as Mag Brook which is approximately 120metres from the development site boundary.

2.1.1.3. Mag Brook is a tributary of the River Holme and enters at a position north of Honley, approximately 700meters from the development sites boundary.

2.1.2. Further Investigation

2.1.2.1. The Environment Agency

2.1.2.1.1. The Environment Agency indicative flood outline map shows part of the existing site to be located in **Flood Zone 3**. This land is assessed as having an annual probability of 1% or greater for flooding from rivers. Refer to Appendix F for The Environment Agency's indicative flood map.

2.1.2.1.2. The Flood Zone 3 indicated on the Flood Zone Map is along the length of the watercourse as it ran through the site pre demolition and up to the outfall into Mag Brook.

2.1.2.2. The Strategic Flood Risk Assessment

2.1.2.2.1. The Strategic Flood Risk Assessment¹ (SFRA) carried out for Kirklees Council in November 2008 includes a Flood Zone Map for Honley & Neiley, Kirklees.

2.1.2.2.2. This replicates in greater detail the information shown on The Environment Agency's Flood Zone Map.

2.1.2.2.3. Mag Brook is shown to be in Flood Zone 3a for the length of its duration to where it outfalls into the River Holme, with the exception of a small area which is denoted as Flood Zone 3b a functional Floodplain.

2.1.2.2.4. On the map The River Holme around the area where Mag Brook discharges, is shown to be surrounded by Flood Zone 3 areas including functional floodplains. This clearly highlights areas as prone to flooding around the River Holme.

2.1.2.3. Yorkshire Water

2.1.2.3.1. In an attempt to determine the origin of the watercourse which flows through the site, during a chance meeting with Yorkshire Water the question was put to them to see if they had any records of the water course.

2.1.2.3.2. It was shown that the watercourse is culverted for a considerable distance upstream of the development site, under roads which go back through the village of Honley for a minimum of 1.2km.

2.2. Flood Risk from Groundwater

2.2.1. General Observations

1.KIRKLEES COUNCIL
CALDER VALLEY
STRATEGIC FLOOD RISK ASSESSMENT
STAGE 1
NOVEMBER 2008
FINAL REPORT

- 2.2.1.1. The site is a brownfield site which consisted of mill buildings and during its previous use a mill pond was formed to the south of the site.
- 2.2.1.2. There is a natural spring located on the site. The spring had a manhole construction over it prior to site demolition and it discharged via a pipe to the culvert on the site.
- 2.2.1.3. Part of the works during the previous development application was to reconstruct the manhole over the spring and reconnect it to the proposed culvert diversion directly.
- 2.2.1.4. A site investigation was carried out where groundwater was evident. It was thought that this water was perched groundwater within the landfill area.
- 2.2.1.5. The site is not located in a groundwater source protection zone.
- 2.2.1.6. The Environment Agency bedrock designation aquifer map shows the site and its surrounding area to be classified as a Secondary A aquifer.
- 2.2.1.7. Ground water is known to collect and flow freely through the banking to the west of the site. Prior to demolition of the site this would have been collected via land drains which connected into the culvert at various points along its length.
- 2.2.1.8. Refer to Appendix E for The Environment Agency's groundwater maps with descriptions.

2.2.2. Further Investigation

- 2.2.2.1. The Strategic Flood Risk Assessment¹ (SFRA) carried out for Kirklees Council in November 2008 does not indicate the area of Honley to be at risk from groundwater flooding.

2.3. Flood Risk from Public Sewers

2.3.1. General Observations

- 2.3.1.1. There are no public sewers currently on the site. The nearest public sewer runs along Thirstin Road to the east which is a 450mm diameter combined sewer.
- 2.3.1.2. Any water from a surcharged public sewer in Thirstin Road will take the route along Thirstin Road and flow north to the area where the culvert through the site emerges downstream.
- 2.3.1.3. Any proposed site entrances from Thirstin Road will have to ensure that any run off from the existing highway will continue to take the current route.

2.3.2. Further Investigation

- 2.3.2.1. Public sewer maps were obtained from Yorkshire Water to establish the position and size of any public sewers on the site or in close proximity to the site.
- 2.3.2.2. We do not foresee any physical flooding issues from public sewers. The natural fall of the land is away from our site and leads down Thirstin Road.
- 2.3.2.3. Refer to Appendix I for Yorkshire Water sewer maps.

2.4. Environment Agency Comments

- 2.4.1. The Environment Agency were consulted as part of the process for the realignment of the culvert. This was done as part of the previous application works. These proposals were examined and approved by The Environment Agency.
- 2.4.2. The correspondence associated with the application for the works to the diverted culvert from the previous development on the site can be seen in appendix G of this Flood Risk Assessment.
- 2.4.3. The Environment Agency raised concerns to the potential for increased flood risk to the development site from the site watercourse. Factors giving rise to these concerns were the removal of a water break in the form of the old mill building and overtopping of the open channel prior to the culverted part of the watercourse.
- 2.4.4. The Environment Agency accepted the proposals put forward and gave their consent for the development.

2.5. Sequential and Exception Tests

- 2.5.1. A sequential test has been requested by the Local Planning Authority.
- 2.5.2. The sequential test has been compiled by another party and is appended to this document for reference.
- 2.5.3. The sequential and exception test can be found in Appendix J

2.6. Flood Flow Path from Water Course

- 2.6.1. The identified risk of flooding from the watercourse through the site is from the open channel part to the south of the site.
- 2.6.2. Should the flow of water become too much for the diverted culvert to manage due to reasons such as blockage or extreme flows, the path of the flood water would be directed along the proposed highway.
- 2.6.3. Flood flows along the highway would discharge back into the culvert or if the culvert was full to capacity, the flow would make its way downhill towards Thirstin Road, where the road levels indicate the flow would be directed towards the open channel of the watercourse to the north of the site.
- 2.6.4. See Appendices E & F for The Environment Agency Flood Map and the Strategic Flood Risk Assessment Flood Map.

2.7. Safe Means of Escape

- 2.7.1. The dwellings to the west of the site are proposed to be in Flood Zone 1. This should not pose any problems with regards to a safe means of access, which consequently would be along pedestrian routes to pedestrian footpath links, which are on higher ground.
- 2.7.2. The proposed highway will be the flood route for the site should the culvert back up or block. This means a physical barrier will need to be placed between the proposed highway and the dwellings to the east of the site, which will most likely take the form of a wall. A safe means of access will be available via the Thirstin Road side of the plots which will be a path from the dwelling to Thirstin Road. The gradient of Thirstin Road means that Thirstin Road is not at risk from flooding.

2.8. Floodplain Mitigation/Compensation

2.8.1. Although no work is being carried out on a floodplain on the development site, the watercourse does outfall into Mag Brook which does have floodplains associated with it down stream. The works which have taken part on the development site in the form of the culvert diversion will provide extra volume for water passing through the culvert. This will help alleviate the rate of water that discharges from the watercourse into Mag Brook.

2.8.2. The last 30 metres of culvert have purposely been left in their original state to help slow down water flows from the diverted culvert that might have increased otherwise from the new diverted route. This is explained more in depth in the submission that was sent to The Environment Agency during the planning of the culvert diversion works.

2.8.3. See Appendix G for Environment Agency correspondence.

3. RUN OFF ASSESSMENT

3.1. Existing Site Run-Off

3.1.1. The site prior to demolition was made up from mostly hardstanding areas including yard areas and roof areas. There was an area of land to the south which was vegetated where the filled millpond was located.

3.1.2. All drainage from the pre demolition site was directed into the existing culvert running through the site.

3.1.3. The steeply sloping banking to the west of the site had a series of land drains which outfalled into the existing culvert.

3.2. Proposed Site Run-Off

3.2.1. *Discharge to Sustainable Urban Drainage System (SUDS)*

3.2.1.1. The proposed development will have less impermeable areas than the existing due to gardens being part of the proposed scheme.

3.2.1.2. In accordance with Environment Agency guidelines, the Building Regulations and Water Authorities advice, the preferred means of surface water drainage for any new development is into a suitable soakaway or infiltration drainage system. Draining to SUDs, such as soakaways, storage tanks and permeable paving, reduces the impact of urbanisation on watercourse flows. This ensures the protection and enhancement of water quality and encourages recharge of groundwater in a manner which mimics nature.

3.2.1.3. A Phase I report has been carried out for the site, which identified large areas of possible contaminated land on the site. A Phase II site investigation took place in which testing of soil samples around the site concluded that contamination was present in the ground. A remediation strategy was formed which involved capping off the site with a layer of inert material. The following forms of sustainable drainage options have been evaluated to establish which solutions may be best suited to the site (See Table 2).

Table 2: Evaluation of sustainable drainage options

Component	Recommendation
Swales	Swales are used on site to convey and/or store runoff, as well as infiltrate water into the ground. The size of the proposed development means that swales would be impractical for a drainage solution on this site.
Infiltration structures – basins, soakaways, etc.	Infiltration devices are used on site to store surface runoff and infiltrate water into the ground. The use of infiltration devices is dependent upon a suitably free draining sub-soil. Due to possible contaminated ground issues, testing at the specific location of the soakaway will have to be completed to establish if soakaways are viable.
Wet ponds	The potential for a small pond would be unsuitable for a site of this size.
Pervious surfaces	The use of pervious surfaces could be a possible sustainable option to incorporate into the proposed development if infiltration into the ground at the particular location is in non contaminated ground.
Green roofs	Green roofs are more suited to large buildings such as apartment block and offices due to the need for large relatively flat areas of roof space.

N.B It should be noted that PPG 3 (DETR 2000) calls for higher density housing developments, but also requires all developments to provide sufficient provision for open space and playing fields where such places are not already adequately provided for within easy access of new housing. Therefore, a balance needs to be found whereby appropriate SUDS solutions reflect the available space, in order for them to work effectively.

3.2.2. Discharge to a Watercourse

3.2.2.1. The watercourse which runs through the site is available to receive surface water

3.2.3. Discharge to Public Sewers

3.2.3.1. Discharge into the public sewer in Thirstin Road has been discounted due to Yorkshire Water stating that there is not sufficient capacity in their sewer system.

4. PROPOSED DRAINAGE ASSESSMENT

4.1. Surface water drainage

4.1.1. A Geo-environmental Report for the site is recommended to be carried out for the site to determine the suitability of the ground for soakaways with respect to contaminated ground.

4.1.2. Soakaway tests should be carried out for any suitable areas of the site. If soakaways are viable in a particular location then this should be the preferred option for surface water drainage for the site.

4.1.3. Where an area is unsuitable for soakaway, the preferred method of discharge will be to the watercourse flowing through the site.

4.1.4. The diverting works carried out to the culvert during the previous development should be utilised for this development also. Connections were made to the culvert during the diverting works to allow surface water drainage from the proposed site to discharge into the culvert.

4.1.5. The overall site volume will be less than the previous use of the mill buildings on site due to the increased area of permeable ground.

4.1.6. Land drainage systems need to be set up to drain the sloping boundary face on the west of the site. A lot of water collects behind this slope face which needs to be dealt with in a manner so as not to allow springs or leaks in other areas of the site.

4.2. Foul water drainage

4.2.1. Foul water from the proposed development should be drained to the 450mm diameter combined sewer running along Thirstin Road.

4.2.2. See Appendix I for Yorkshire Water Sewer Records.

5. CONCLUSIONS AND RECOMMENDATION

- Due to part of the subject site being in Flood Zone 3, the development of the site requires a Flood Risk Assessment which reviews all aspects of flood risk to the site and proposes a strategy for the discharge of surface water runoff in a manner which will not increase the risk of flooding either on or off site.
- A Sequential Test has been carried out under a separate commission and is appended to this report.
- In accordance with PPS25 Table D.3 “More Vulnerable” development in Flood Zone 3 requires an Exception Test which is included in the Sequential Test.
- The preferred means of surface water drainage for any new development is into a suitable soakaway or infiltration drainage system. SUDS, such as soakaways, storage tanks and permeable paving, can reduce the impact of urbanisation on watercourse flows. This ensures the protection and enhancement of water quality and encourages recharge of groundwater in a manner which mimics nature.
- A site investigation report has ruled out the feasibility of soil infiltration methods of drainage due to contaminated land on the site.
- The overall site impermeable area is less for the proposed site than it was when the original mill buildings occupied the site.
- The proposed development has an acceptable flood risk within the terms and requirements of PPS 25.
- The comments stated above are based on information received from other consultees. The flood risk classification of this site has been based on the above observations, and the recommendations stated. This report is intended for the use of the developer of the site in support of their planning application for the site only.

Signed by:

Chris Yates

Signed by:

Neil Taylor
BEng (Hons) CEng MICE MIStructE

FOR AND ON BEHALF OF JNP GROUP

Date: 20th May 2011

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APPENDIX A: Requirements of PPS25

Summary

1. The guidance states that:
2. The susceptibility of land to flooding is a material planning consideration;
3. The Environment Agency has the lead role in providing advice on flood issues, at a strategic level and in relation to planning applications;
4. Planning decisions should apply the precautionary principle to the issue of flood risk, using a risk-based search sequence to avoid inappropriate development on undeveloped and undefended flood plains etc;
5. Developers should fund flood defences and warning measures required because of the development;
6. Planning policies and decisions should recognise that the consideration of flood risk and its management needs to be applied on a whole-catchment basis and not only be restricted to flood plains.
7. With regard to PPS25, those proposing particular developments are responsible for;
8. Providing an assessment of whether any proposed development is likely to be affected by flooding and whether it will increase flood risk elsewhere and the measures proposed to deal with these effects and risks;
9. Satisfying the local planning authority that any flood risk to the development, or additional risk arising from the proposal will be successfully managed with the minimum environmental effect thus ensuring the safe development and secure future occupancy of the site.
10. After this has been addressed, it is then the local planning authority's responsibility (advised as necessary by The Environment Agency) to determine an application for planning permission after taking into account all material considerations, including the issue of flood risk and how it might be managed or mitigated. Local planning authorities are required to adopt a risk-based approach to proposals for development in flood risk areas. The assessment of risk should take into account:
 - a. The area liable to flooding;
 - b. The probability of it occurring, both now and over time;
 - c. The extent and standard of existing flood defences and their effectiveness over time;
 - d. The likely depth of flooding;
 - e. The rates of flow likely to be involved; and
 - f. The nature of the development proposed and the extent to which it is designed to deal with flood risk.
11. Local planning authorities in conjunction with The Environment Agency are responsible for determining that the threat of flooding should be managed. This is to ensure that the development is and remains safe throughout its lifetime (i.e. it has an **appropriate** degree of protection) and does not increase flood risk elsewhere.
12. Following flooding in December 2000 The Environment Agency provided indicative flood plain maps to all authorities and published them on the EA web site. In addition to these indicative maps (following a national programme adopted by the Agency in 1996), detail data and maps for priority areas at risk are available, to provide precise information for building developments.

13. The Government looks to local planning authorities under PPS25 to apply the risk-based approach to their decisions on development control through a sequential test. Under the test, sites are to be categorised under the following.
14. **Areas with little or no potential risk of flooding (annual probability less than 0.1% for rivers, tidal & coastal)** - These areas would have no constraints on development other than the need to ensure that the development does not increase run-off from the site to greater than that from the site in its undeveloped or presently developed state.
15. **Areas with low potential risk of flooding (annual probability between 1.0% - 0.1% for rivers and between 0.5% - 0.1% for tidal & coastal)** - These areas would be suitable for most developments including the current proposals for residential with nursery and surgery.
16. **Areas with high potential risk of flooding (annual probability greater than 1.0% for rivers and greater than 0.5% for tidal & coastal)**. - These areas will generally be suitable for residential, commercial and industrial uses, provided there are adequate flood defences in place that ensure buildings are designed to resist flooding, there are suitable warning and evacuation procedures in place and the new development does not add to flood risk downstream.
17. **Areas at highest risk from flooding (including those areas behind defences that offer a standard of defence less than 1% for rivers and less than 0.5% for tidal & coastal or where there is a significant risk that failure could lead to rapid inundation by fast flowing water)** - These areas may be suitable for recreation, sport, amenity and conservation use.

APPENDIX B
SITE LOCATION MAP

APPENDIX B: Location Map



www.ordnancesurvey.co.uk/getamap

Image produced from Ordnance Survey's Get-a-map service.
Image reproduced with permission of Ordnance Survey and
Ordnance Survey of Northern Ireland.

Site boundary shown in red

APPENDIX C

PHOTOS OF EXISTING SITE PRE DEMOLITION

PHOTOS OF SITE DURING PREVIOUS WORK APPLICATION

PRE DEMOLITION



Photo 1 - View of Thirstin Road, the old mill complex on the left



Photo 2 – View of the mill complex to the front of Thirstin Road



Photo 3 – View of the mill complex from the public footpath on the western boundary



Photo – 4 View of Thirstin Road and the mill complex from the north of the site

PREVIOUS WORK APPLICATION



Photo – 5 Improvement works to west side of watercourse open channel



Photo 6 – New entrance to culvert



Photo 7 – site clearance to south of site, open channel to the left of picture

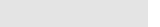
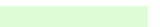
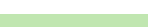


Photo 8 – site clearance to north of site showing new culvert manhole. Culvert continues under Thirstin Road to the left for approximately 30 metres

APPENDIX D

PROPOSED DEVELOPMENT LAYOUT



	single storey house in reclaimed natural stone		private drives with tegular block paving
	two storey house in reclaimed natural stone		private gardens with turf & planting beds, see landscape plan for further details
	three storey house in reclaimed natural stone		managed natural landscape
	natural dry-stone walling forming plot boundaries		private precast concrete paving forming footpaths & patios within plots
	600mm service margin formed in Marshalls Tumbled Heritage Stone Setts		macadam road and pavement surface
	retaining walls		approx. center line of underground culvert
111,000	proposed road, garage & house floor levels		

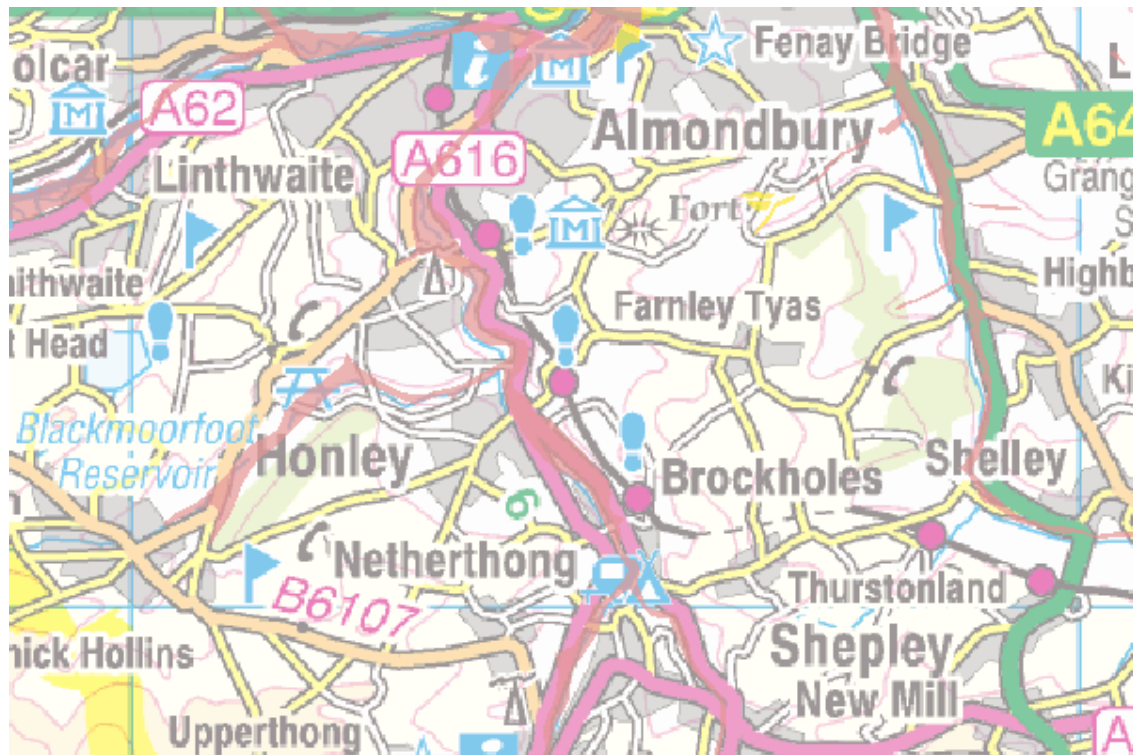
S C A L E	D A T E	D R A W I N G N R
1:500	08 Jun 2011	11016D-13-P03

APPENDIX E

**THE ENVIRONMENT AGENCY INDICATIVE
GROUND WATER AND FLOOD MAP**

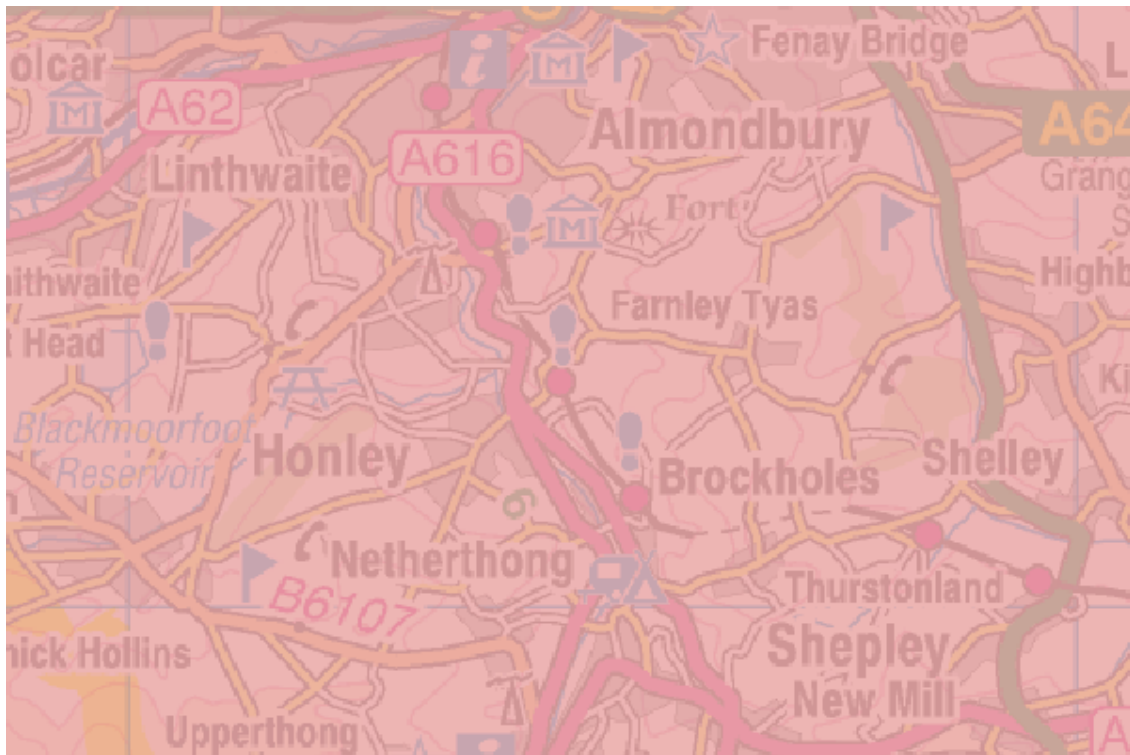
APPENDIX E: Environment Agency Indicative Groundwater map (Website)

Aquifer Maps - Superficial Deposits Designation



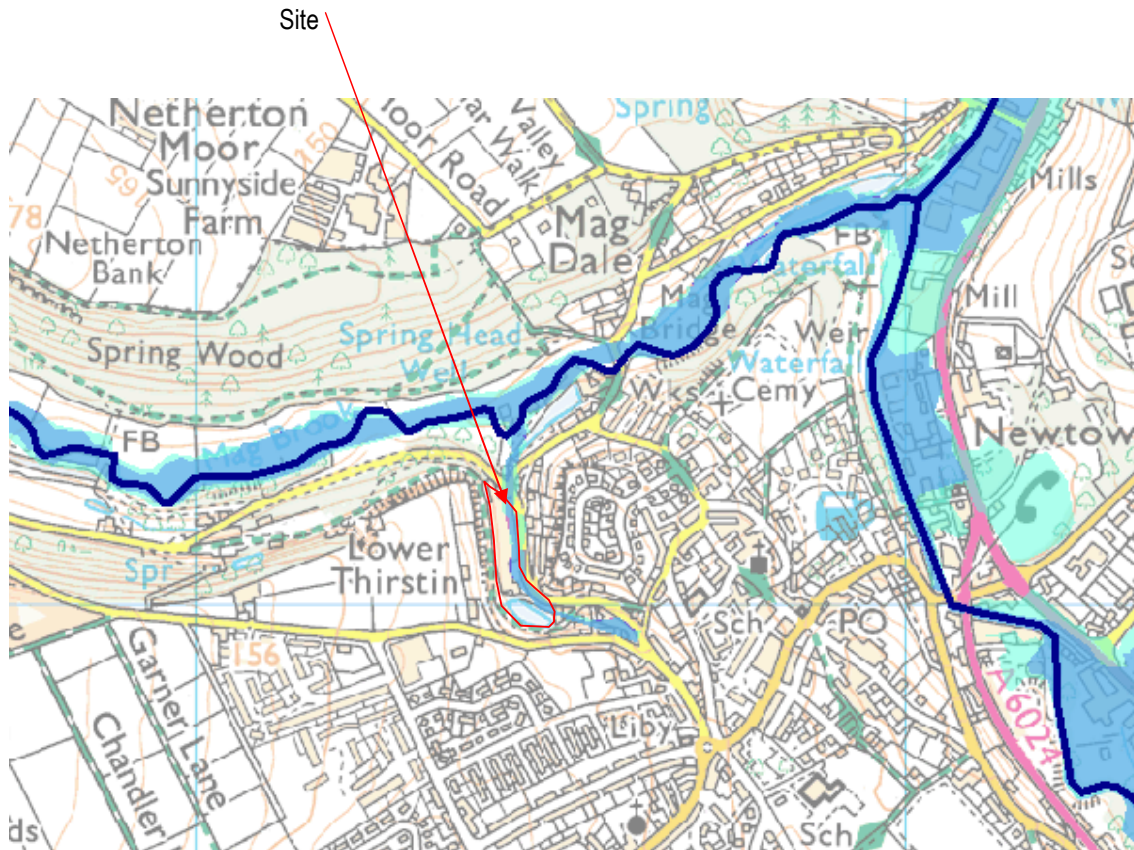
Secondary A - permeable layers capable of supporting water supplies at a local rather than strategic scale, and in some cases forming an important source of base flow to rivers. These are generally aquifers formerly classified as minor aquifers

Aquifer Maps - Bedrock Designation



- **Secondary A** - permeable layers capable of supporting water supplies at a local rather than strategic scale, and in some cases forming an important source of base flow to rivers. These are generally aquifers formerly classified as minor aquifers

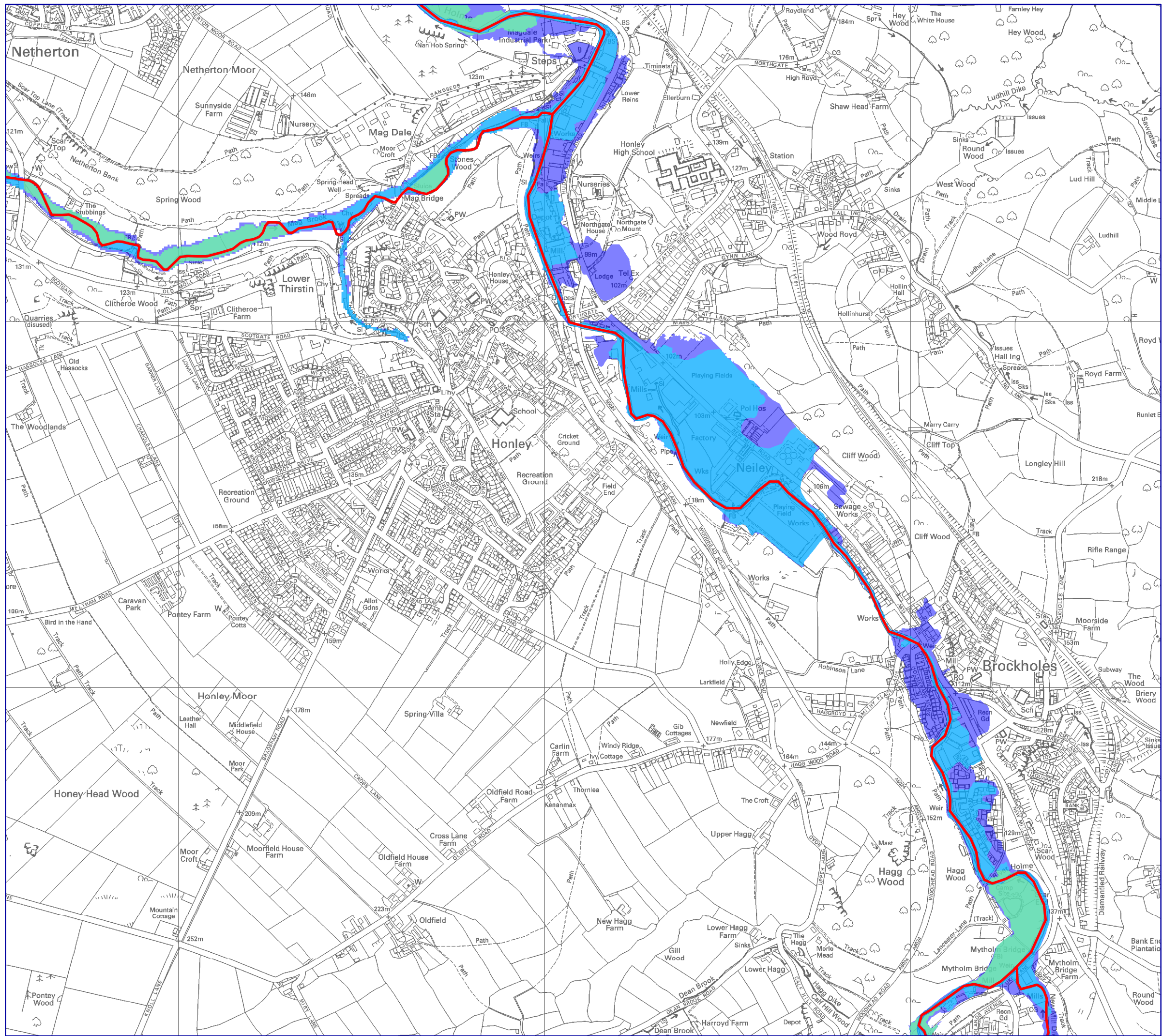
Environment Agency Indicative Flood Plain map (Website)



-  Flooding from rivers or sea without defences
-  Extent of extreme flood
-  Flood defences
-  Areas benefiting from flood defences

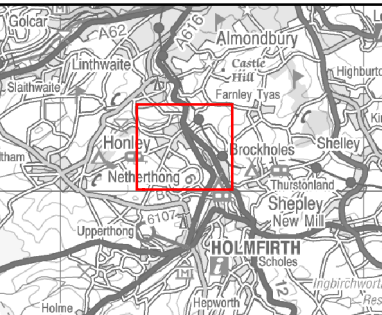
APPENDIX F

STRATEGIC FLOOD RISK ASSESSMENT INDIVIDUAL FLOOD ZONE MAP FIGURE B2-3 HONLEY AND NEILEY



Legend

- EA Flood Zone 2 (v3.8)
- EA Flood Zone 3a (v3.8)
- Flood Zone 3b
(Functional Floodplain)



Notes:
This map has been produced to facilitate the Sequential Test. For locations outside of this area, please refer to the key plan for alternative locations or to the main council wide Flood Zone Map.

The Functional Floodplain has been devised from a number of data sources:

- Designated Washlands
- Environment Agency Flood Zone 3
- Defended and urban areas

It is combined to show land that should be safeguarded for future flood management purpose.

Please note that the functional floodplain has not been shown outside administrative boundaries.

Please see the Section 4.4.5 and 6 of the SFRA for further details.

[Scale1:10,000]

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FIGURE B 2-3
FLOOD ZONE MAP
HONLEY & NEILEY, KIRKLEES

APPENDIX G
ENVIRONMENT AGENCY CORRESPONDENCE

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Sheffield
Teesside
Thames Gateway



www.jnpgroup.co.uk

Our Ref: NG1607HON/L016/st

Chkd: *AST*

Date: 20 October 2006

Authorisations Unit
Environment Agency
Phoenix House
Global Avenue
Leeds
LS11 8PG

Dear Alice

Re: Replacing Culvert at Thirstin Mills, Thirstin Road, Honley

Further to our meeting on the 20th September 2006, to discuss and agree in principle the approval of the above scheme, please find enclosed the following information:

1. Application form
2. Fee
3. Existing culvert reports (Culvert Survey by JNP and 'Up and under' survey)
4. Three copies of drawings of existing and proposed culvert
5. Sequence of Construction

I have also included a summary of the proposals, to be read in conjunction with the drawings.

As you suggested, we have discussed and agreed in principle the scheme with Kirklees Land Drainage Department, who will be taking over maintenance of the majority of the culvert.

I trust you will find the enclosed information to your satisfaction and, should you wish to discuss any of the above, please do not hesitate to contact me. Your earliest response would be much appreciated.

Sarah Tang
Graduate Engineer

Residential • Industrial • Commercial • Retail • Leisure • Education & Health • Rail • Sewerage • Highways • Contaminated Land

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BSc CEng MICE MInstCE

Registered Office:
Bourton Court
Nightingales Corner
Little Chalfont
Bucks

1980
25
Years
2005



Registered in England No. OC302348

JNP Group is the trading name of JNP Northern LLP

JNP Group Brighouse
Woodvale House
Woodvale Road
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Email. brighouse@jnpgroup.co.uk

Also at: Amersham
Leamington Spa
Sheffield
Teesside
Thames Gateway



www.jnpgroup.co.uk

Encls:
Summary of proposals
Application form
Fee
Culvert Survey by JNP
'Up and under' survey
3 copies of drawings, as per drawing issue sheet
Sequence of Construction (includes Sketch SK02)

Cc: Gordon Behrens, DeLacy Construction

Residential • Industrial • Commercial • Retail • Leisure • Education & Health • Rail • Sewerage • Highways • Contaminated Land

Members

John A Wood
BSc CEng MSc MICE
Stuart W Evans
BEng (Hons) CEng MICE MSc MSc MICE
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JNP Group Ltd

Associates

Mike Walters
BSc CEng MICE
Neil D Taylor
BSc CEng MICE MSc MSc MICE

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Thirstin Mills Culvert 1607HON: Summary of Proposals

From site and CCTV surveys carried out on the existing culvert, it is generally agreed that the existing culverted watercourse at Thirstin Road, Honley is in poor repair and due to the proposed residential development on the site; this may cause collapse of the culvert. Therefore, we are proposing to betterment the system by upgrading and re-aligning the existing culvert. We are proposing to replace the existing box culvert with a 1350mm diameter concrete pipe (The area being 0.11m² larger than the existing box culvert). Our client intends to pass the majority of the ownership and maintenance of the culvert over to Kirklees Land Drainage Authority, with the remainder owned by the appropriate house owners.

Upstream of the culvert

The wall to the south west of the open channelled watercourse upstream of the culvert will be built up to suit the wall on the north east. The existing north east wall of the channel will be repaired and any debris in the channel be cleared. A screen will be located at the entrance of the culvert to screen any debris and to prohibit access. An additional screen will be located upstream of the culvert inlet, this has been agreed with the Kirklees Land Drainage Department, and will create an easy access from the new mews court. The entrance and exit of the culverted water course will be benched, ensuring there is a smooth transition between the existing open channel watercourse/existing culvert and the new pipe culvert.

The Culvert

The existing culverted watercourse cascades down steps for 14.5m where there is then an abrupt change in direction of the culvert. We intend to replace this culvert with a 1350mm diameter concrete pipe at approximately 1:5 gradient. We have also re-aligned this section of the culvert, to achieve a smoother bend at Manhole A.

A pipe from a natural spring manhole also branches into the culvert at this change in direction and from inspection, the manhole is in poor repair. We propose that this natural spring manhole be re-constructed and the outlet pipe into the manhole be replaced. The design of the capping of the natural spring has been agreed with Kirklees Land Drainage Department.

From manhole A, the culvert will be constructed of a concrete pipe and run in a straight line for approximately 110m until manhole C where there is a change in direction. Manhole will be constructed between manholes A and C, to reduce the 110m span of inaccessible culvert.

The culvert is to be re-aligned to ensure it is not located under the proposed properties and instead, under the highway. Any existing pipes branching into the existing culvert will be extended or shortened and re-connected to the new culvert.

Manhole D will connect the new culvert to the existing. Manhole D, where there is the transition between the new 1350mm diameter concrete pipe (slightly larger) and the existing (smaller) box culvert, there may be a 'bottle neck' effect. This could cause the water to back up in storm conditions. However, it would mean the water would have to back up 162m until it would flood the open channel upstream.

There will be four new manholes constructed over the culvert in total, providing access into the culverted watercourse. The manholes are to be constructed of 2.4m diameter concrete rings. Manhole A, B, C and D will be approximately 7.4m, 6m, 5.3m and 4.7m deep, respectively.



APPLICATION FOR CONSENT FOR WORKS AFFECTING
WATERCOURSES AND/OR FLOOD DEFENCES

IMPORTANT NOTE. We ask you to read this form and the attached notes before you fill it in. Please take care in answering the questions. If the form is fully and accurately completed, it will ensure as little delay as possible in processing your application. If you have any queries, ask us. Please complete the form in block letters.

1 DETAILS OF APPLICANT

NAME: NEP HONLEY LTD
CONTACT PERSON: CLIVE LLOYD
POSTAL ADDRESS: RIVERSIDE
JUBILEE WAY
GRANGE MOOR
WA KEFIELD
POSTCODE: WF 4 4TB
TELEPHONE NO. (Office hours): 01924
TELEPHONE NO. (Out of hours):
FAX NO: 01924

2 AGENTS DETAILS

(eg. Consultant/land agent - if applicable)

NAME: JNP Group
PROFESSION: CONSULTING ENGINEERS
POSTAL ADDRESS: WOODVALE HOUSE
WOODVALE ROAD
BRIGHOUSE
WEST YORKSHIRE
POSTCODE: HD6 4AB
CONTACT: SARAH TANG
(PERSON DEALING WITH APPLICATION)
TELEPHONE NO: 01484 400691
FAX NO: 01484 400696

OFFICIAL USE ONLY

MAIN RIVER
FEE APPLICABLE
FEE RECEIVED

YES/NO	

DATE/FEE APPLICATION RECEIVED:
WRA91/LDA91/BYELAW/HA80:
FILE/OFFICE REFERENCE:

3. APPLICANTS INTEREST IN LAND

Owned

4. LOCATION

LOCATION OF PROPOSED WORKS: THIRSTON ROAD, HOWLEY, HUDDERSFIELD

NAME OF RIVER/WATERCOURSE (if known): NOT KNOWN

DISTRICT COUNCIL/UNITARY AUTHORITY: KIRKLEES METROPOLITAN COUNCIL

PARISH/COMMUNITY COUNCIL:

OS GRID REFERENCE:

5. DESCRIPTION AND PURPOSE OF PROPOSED WORKS

TO UPGRADE & RE-ALIGN THE EXISTING CULVERT TO RUN UNDER THE NEW HIGHWAY.

(PROPOSEALS SHOWN ON ATTACHED DRAWINGS)

NUMBER OF STRUCTURES

1

6. DESCRIPTION AND REFERENCE NUMBERS OF ALL PLANS AND SECTIONS SUBMITTED

AS LISTED ON ATTACHED DRAWING ISSUE SHEET

7. CONSTRUCTION DETAILS

STATE WHETHER WORKS ARE TO BE PERMANENT OR TEMPORARY: PERMANENT

IF TEMPORARY, STATE DURATION REQUIRED:

FOR ALL WORKS STATE ANTICIPATED CONSTRUCTION START DATE: NOVEMBER 2006

8. OTHER ENVIRONMENT AGENCY INTERESTS

YES/NO

DO THE PROPOSED WORKS INVOLVE OR AFFECT:-

a) DISCHARGE OF TRADE EFFLUENT

	NO
--	----

b) DISCHARGE OF SURFACE WATER

YES	
-----	--

c) AN IMPOUNDMENT OF A WATERCOURSE

	NO
--	----

d) ABSTRACTION OF WATER

	NO
--	----

e) FISH OR FISHERIES

	NO
--	----

f) THE DISPOSAL OF WASTE MATERIAL

	NO
--	----

PLEASE TICK APPROPRIATE BOXES

9. IF PLANNING APPROVAL HAS BEEN GRANTED STATE:

PLANNING AUTHORITY: KIRKLEES METROPOLITAN COUNCIL

APPLICATION NO: 2003/61/94656/W3

APPROVAL DATE: 04/08/2004

**10. NAME OF PERSON OR ORGANISATION RESPONSIBLE FOR
MAINTAINING THE STRUCTURE ON COMPLETION**

11 BRIEF DETAILS OF ENVIRONMENTAL IMPACT OF WORKS TOGETHER WITH ANY PROPOSALS FOR AMELIORATION AND/OR COMPENSATORY ENHANCEMENT

IMPROVEMENT OF CULVERT IN PUGL REPAIR.

12 DECLARATION

I/We:

- 1 Apply for consent to carry out works as described in this application form and on the attached plan(s).
- 2 Enclose a cheque for £ 50 to cover the cost of this application.
(Cheques should be made payable to "Environment Agency").
- 3 Enclose three copies of suitable plans sufficient to show clearly the location of the proposed works together with three copies of plans and sections showing details of the proposed works to a scale appropriate to the nature of the works and any relevant calculations.

Name: SARAH TING

Signed:

On behalf of: NEP HUNLEY LTD.

Date: 20/10/2006

Please return this form to:

Authorisations Unit
Environment Agency
Phoenix House
Global Avenue
Leeds
LS11 8PG

Further information may be obtained from the above office:

Telephone: (0113) 2134656
Facsimile: (0113) 2134864

Culvert Survey Report

Wednesday 30th August 2006

Weather: Sunny and Dry

Survey carried out by: Sarah Tang and Joe Hinchliffe

Residential Development at Thirstin Mills, Thirstin Road, Honley

The unnamed watercourse at Lower Thirstin approaches the site from the south east. It emerges from under number 21 Thirstin Road, Honley and remains an open channel watercourse for approximately 59m, where it then steps down and becomes culverted. The size of the culvert at the opening is 1.85m wide x 0.7m high. The watercourse is a smooth bottomed open channel generally 1.5-1.6m wide, with some debris. Little flow was present during the survey, approximately 10mm deep water, and the gradient of the open channel is approximately 1:27. The structure of the culverted watercourse is a 'masonry arched and concrete soffit slab construction' *Up and Under Ltd survey dated June 2003*. The existing topography of the land in this area is 2m high wall and banking to a road to the north east side of the watercourse and a steep banking to the south west. At the opening/inlet to the culverted watercourse are a number of screens and screenings such as bricks, tyre and vegetation were present.

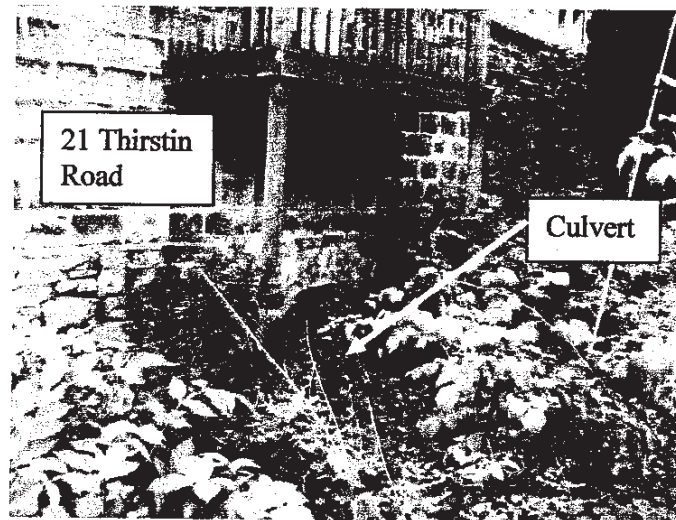


Fig 1: Culvert emerging from number 21 Thirstin Road

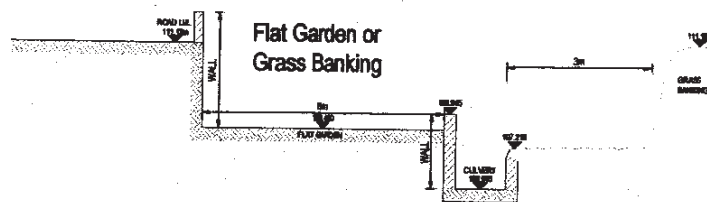


Fig 2: Typical Sections of topography upstream

From previous inspections, the culverted watercourse cascades down the steps for 14.5m where there is a change in direction of the culvert. This change in direction is abrupt, approximately 90 degrees bend and the culvert heads in a northerly direction towards Hall Dike. At this abrupt change, a 300mm diameter pipe from a natural spring branches into the culvert. This natural spring is fed from a manhole south west of the bend. The manhole is 5.2m deep and constructed of 1200mm diameter pre-cast concrete rings. From inspection, it could be seen that the majority of the flow was incoming from a joint in the concrete rings.



Fig 3: Watercourse steps down and becomes culverted

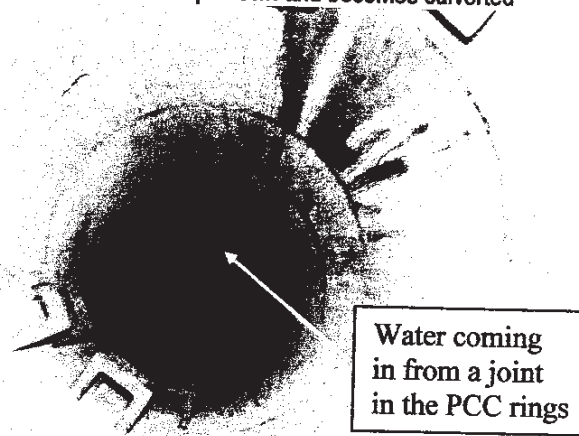


Fig 4: Natural Spring Manhole

In total, the watercourse is culverted for 194m along the site, and from inspection, a number of surface water pipes branch into the culverted watercourse along this length. These are thought to come from the now demolished industrial buildings.

The culvert then emerges (becoming uncovered) over the road from the junction of Thirstin road and Old Moll Road, to the rear of number 29 Thirstin Road. The size of this opening here is 1.2m wide by 1.1m high. The opening here is constructed of a 10mm steel plate top. Approximately 8m downstream from where the culvert becomes uncovered, there is a gate valve, which is currently fully open and a weir wall to another gate valve, leading to a mill pond. The topography of the land in this area is relatively flat. A further 30m downstream of the gate valves, the watercourse falls into Hall Dike.

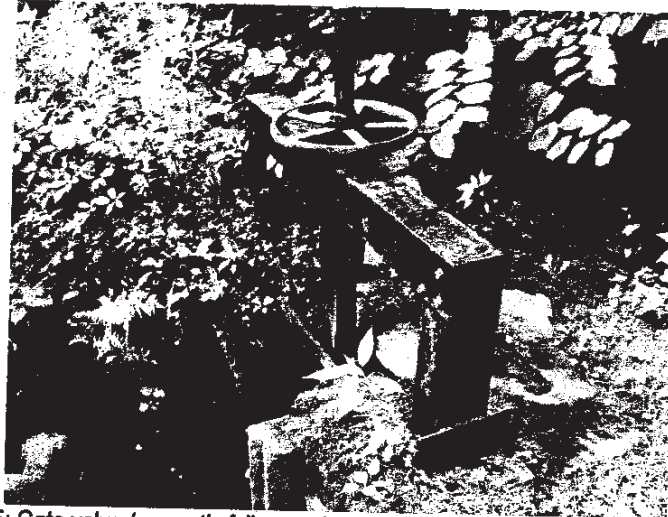


Fig 5: Gate valve (currently fully open) to the rear of number 29 Thirstin Road

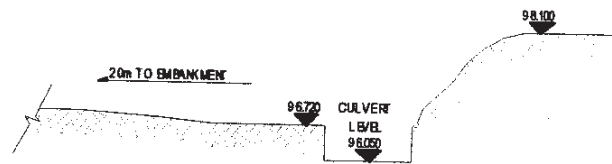


Fig 6: Typical topographical section of culvert downstream

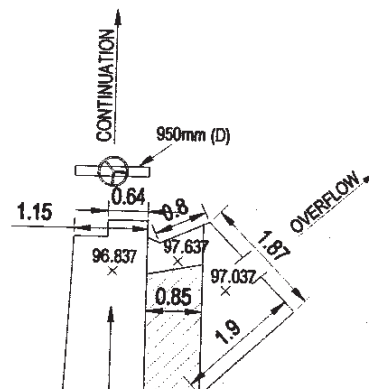


Fig 7: Plan of Gate Valves

Two other pipes run along side the watercourse as it outfalls into Hall Dike. These are the old overflow (now blanked off) and continuation pipe from the Combined Sewer Overflow (CSO).

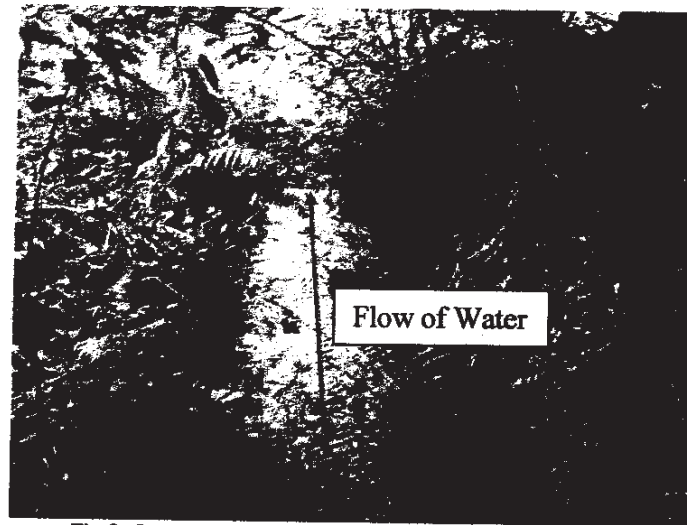


Fig 8: Open channel watercourse as it falls into Hall Dike

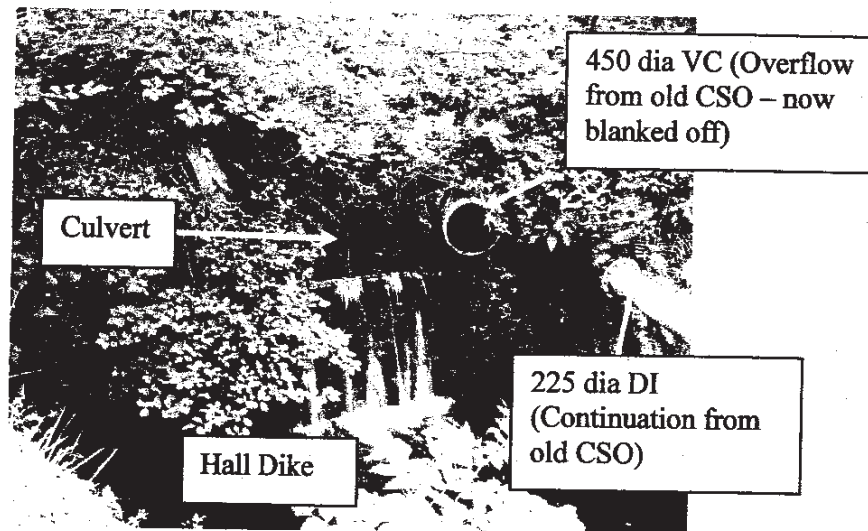
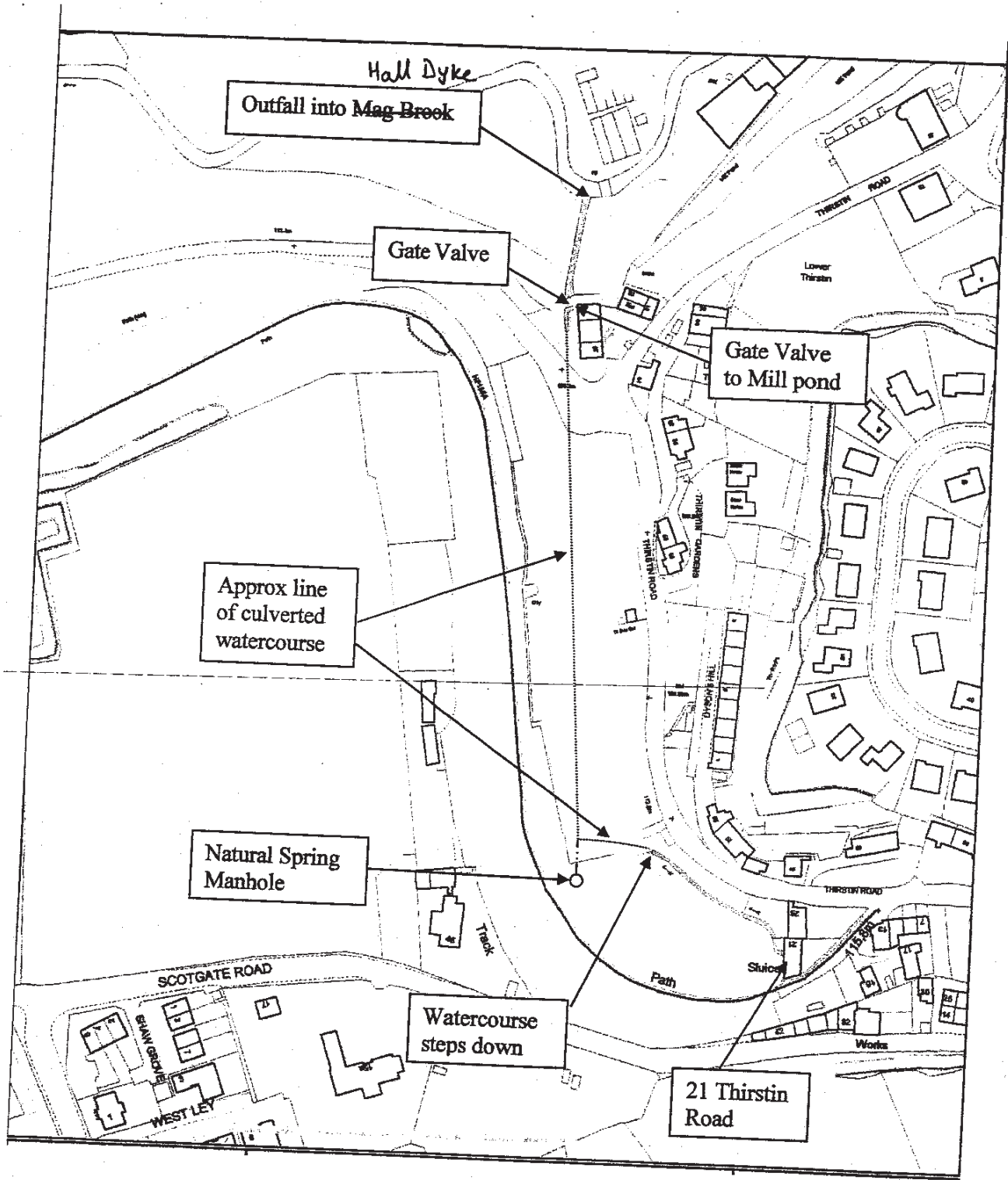


Fig 9: Watercourse outfalls into Hall Dike

Summary

The open channel watercourse emerges from number 21 Thirstin road and remains open for 59m. It then steps down and becomes culverted. The culvert cascades for 14.5m, until there is an abrupt change in direction, where a 300mm diameter pipe branches into the culvert from a natural spring. In total the watercourse is culverted for 194m and a number of pipes branch into the culvert along this length. The culvert re-emerges over the road from the junction of Thirstin Road and Old Moll Road, to the rear of number 29 Thirstin Road. Approximately 8m downstream from where the culvert becomes open, there is a gate valve and a weir wall to another gate valve, leading to a mill pond. A further 30m downstream of the gate valves, the watercourse falls into Hall Dike.



Thirstin Mills Culvert: Sequence of Construction

NG1607HON

Sequence of construction	Disruption to watercourse?	Duration of Disruption	Description of Disruption
1. Existing culvert to be fully exposed to establish line and level. Lid of the culvert to be removed at strategic locations to determine existing connections.	No	N/A	N/A
*2. Construction of the south west wall of the open channel watercourse	Yes	2 Weeks	Over-pumping from A to B to ensure construction materials do not fall in and pollute the operational watercourse
3. Construction of manhole 'D' (manhole to allow for existing and proposed culverts to run simultaneously)	Yes	3 days	Over-pumping
4. Construction of manholes and 1350mm diameter culvert starting from manhole D to manhole A. Construction to allow for any existing connections to be maintained	No	N/A	N/A
5. Construction of 300mm diameter pipe starting from manhole A to natural spring manhole	No	N/A	N/A
6. Construction of natural spring manhole	No	N/A	N/A
7. Construction of 1350mm diameter concrete pipe from inlet of culvert to manhole A. (Where gradient of pipe is 1:5) Once this length of the culvert has been constructed and screens fitted, then the flows will be diverted into the new culvert	Yes	5 weeks	Over-pumping from E to manhole A
8. Existing culvert connection into manhole D to be blanked off	No	N/A	N/A
9. Existing culvert to be removed and backfilled with suitable material	No	N/A	N/A

* Item 2 can be carried out simultaneous to other construction items
To be read in conjunction with sketch 'SK02: Sequence of Construction'

Track



PLAN OF PROPOSED CULVERT Scale 1:500

☒ - CULVERT 'LID' REMOVED
LOCALLY TO ALLOW FOR
OVERFLOWING.

SK02: SOURCE
OF CONSTRUCTION

2010/06 ST.

creating a better place

Jnp Group
Woodvale House
Woodvale Road
Brighouse
HD6 4AB

jnpgroup BRIGHOUSE	
02 JAN 2007	
Project no. NG1607/H02	
Info.	Action
☒	☒



Environment
Agency

Our ref:

FD1iss2/TS

Your ref:

Date:

19 December 2006

Dear Sarah

Application for works affecting watercourses or flood defences at Thirstin Road, Lower Thirstin, Huddersfield. In accordance with the Method Statement and drawing numbers NG1607-07, NG1607-24, NG1607-25, NG1607-32 and NG1607-33

We approve your application to work in or near a watercourse. I enclose a formal notice of consent for the works with the details of our approval.

Starting work

We need to know when you plan to work on site. I have sent you pre-paid envelopes and forms to return to us with details of when you will start and finish work.

- **Before you start work** - Send us the Notice of Start form at least seven days before you start work. Please tell us the expected start date and how long you expect the works to last.
- **Before you finish work** - Send us the Notice of Finish form no later than seven days before you expect to finish on site.

Environmental advice

Bats are known to occur in this area and may use this structure for roosting, as we have recent records adjacent to the proposed site.

You should have the culvert surveyed, by a suitably experienced and licensed surveyor for evidence of use by bats. If bats are found to use the structure you will need a licence from the Wildlife Administration Unit, Department for Environment Food and Rural Affairs (DEFRA) before carrying out the work. The DEFRA licence is separate to this consent.

All species of bat in Britain are protected under UK and European legislation (Wildlife and Countryside Act 1981, the Conservation (Natural Habitats &c.) Regulations 1994). It is illegal to kill, injure or disturb bats, obstruct access to bat roosts or damage or disturb bat roosts. Under the law, a roost is any structure or place used

Phoenix House, Global Avenue, Leeds, LS11 8PG
Customer services line: 08708 506 506
Email: enquiries@environment-agency.gov.uk
www.environment-agency.gov.uk

c:\tim\ldc\va1621\consr.doc



by bats for shelter or protection. Because bats tend to re-use the same roosts year after year, the roost is protected whether or not bats are present at the time.

I enclose advice leaflets to help you protect water quality, habitats, wildlife and areas at risk of flooding. Causing pollution is an offence and you could be fined or sent to prison. Any contractor may also find this information useful and you should pass it to them.

Any pollution incidents must be reported to the Environment Agency immediately on 0800 80 70 60. We can give you advice to control any pollution or take action ourselves.

You may need further advice if you are planning to transport or use waste in your works. Any contractor involved in the transport of controlled waste must be registered with us as a Carrier of Controlled Waste. We can also give advice on the correct disposal or use of waste. Please call our National Customer Contact Centre on 08708 506 506 to ask for information.

Yours sincerely

Tim Selway
Authorisations Officer

Direct dial 0113 213 4799

Direct fax 0113 213 4609

Direct e-mail tim.selway@environment-agency.gov.uk
tim.selway@environment-agency.gov.uk

creating a better place



**Environment
Agency**

JNP Group
Woodvale Road
Brighouse
HD6 4AB

Ridings Area
Phoenix House
Global Avenue
Leeds LS11 8PG

Ms Sarah Tang

Paul Tullett
Area Manager

Your Ref:
Our Ref:RA1621

**LAND DRAINAGE ACT 1991
NOTICE OF CONSENT TO WORKS**

Un-named watercourse: Temporary and permanent works for replacement and diversion of existing culvert and construction of upstream screens at Thirstin Road, Lower Thirstin, Huddersfield.

NGR: SE 1345 1208.

The ENVIRONMENT AGENCY, in pursuance of their powers under Section 23 of the Land Drainage Act 1991 HEREBY CONSENT to the execution and completion, within a period of 12 months , of works in accordance with:

- (a) the description and other particulars given on Application Form FD1 dated 20 October 2006 including:
- (b) the specifications referred to overleaf.
- (c) any plans, sections and other drawings submitted with it.

This consent is strictly limited to the execution of these works and conditional upon their completion within the above period, in accordance with these particulars, specifications and drawings.

The Agency by granting Consent under the Land Drainage Act 1991 for these works accepts no liability for any loss or damage which may arise out of their design, construction, maintenance or use.

Your attention is drawn to the notes and requirements overleaf.

Dated: 22/12/06.....

.....
Team Leader Development Control

For telephone enquiries contact.....Sarah Clarke.....Tel: 0113 2134763



ENVIRONMENT AGENCY
NORTH EAST REGION
LAND DRAINAGE ACT 1991 AND WATER RESOURCES ACT 1991
CONSENT FOR WORKS AFFECTING A WATERCOURSE
NOTES FOR APPLICANTS

BYELAW REQUIREMENTS

Consent for the works does not give exemption from the requirements of the Act or of the Agency's Byelaws beyond what is specifically consented, nor does it include any temporary works which may be required in the watercourse to carry out the consented works.

A copy of the Byelaws may be obtained from the District Engineer on request, but where the works have no exceptional features, it will suffice if the following guidelines are followed:-

1. No material intended for or arising from the works and no equipment or other item for use in executing the works should be stored or disposed of:
 - (a) in the watercourse, or
 - (b) in a position where it may fall or be washed into the watercourse.

Any such material, equipment or other item in the watercourse should be removed immediately.
2. At all times during the course of the works the bank and any floodbank and foreshore of the watercourse should be kept clear of any such material, equipment and other item unless actually in use.
3. All surplus materials and all plant and equipment must be cleared from the site to the approval of the District Engineer by the date specified for the completion of the works.

SPECIFICATION - GENERAL

4. The width between the banks of the watercourse shall not be diminished except with the prior written approval of the District Engineer.
5. At all times during the course of the works the existing bank and any floodbank of the watercourse shall be preserved, or an adequate alternative flood barrier shall be provided and maintained to the full height of the bank and existing floodbank until the original bank and floodbank have been reinstated to the written approval of the District Engineer.
6. If the execution of the works requires passage on to or over a floodbank of the watercourse, proper means for such a passage shall be provided by forming a ramp or ramps of easy gradient, surfaced with stone or other suitable material. Any such ramp shall be removed on completion of the works. The level of the floodbank crest must be reduced.
7. Every part of the banks and channel of the watercourse which has been affected by the works shall be reinstated by replacement of topsoil and re-seeding or by turf or stone pitching to prevent scour to the approval of the District Engineer.

PROCEDURES

8. The work must be completed within the time specified in the consent.
9. Written notice must be given to the District Engineer (preferably at least 7 days) before work starts.
10. The District Engineer is authorised to act on behalf of the General Manager for all purposes of these notes.

OTHER APPROVALS REQUIRED

11. Any planning or other permission required for the works must be obtained by the applicant.
12. Consent by the Agency will not authorise any obstruction or interference with a right of way, whether public or private. Approval for doing so must be obtained by the applicant from the Highway Authority or from the private owner or occupier affected as the case may be.
13. The consent relates to the flood defence aspects of the proposed works. In the case of a proposed discharge to the watercourse consent is required from the Agency under the Water Act 1989. Any alteration of a mill dam, weir or other like obstruction to flow in any watercourse, or any impounding works, consent may also be required from the Agency under the Water Resources Act 1991 Section 25.
14. The applicant must make his own arrangements with any owner or occupier of land which may be affected by the works.
15. In the case of the construction or alteration of a culvert the consent of the District Council in whose area the works lie is also required under section 263 of the Public Health Act 1939.
16. The provisions of the Salmon and Freshwater Fisheries Act 1975 and the provisions of the Water Resources Act 1991 relating to Fisheries may also apply.

Our Ref: NG1607.L028/HON/JAW/M

Your Ref:

Chkd:

Date: 05 March 2007

Sarah Clarke
Environment Agency
Phoenix House
Global Avenue
LEEDS
LS11 8PG

Dear Sarah

Re: Thirstin Mills, Thirstin Road, Honley

We are in receipt of a letter from you dated 27 February 2007 in which you have expressed concerns over flooding issues on the above site. Unfortunately, we had not previously been made aware of these concerns. However, we hope we can resolve this by expanding on the points detailed in our submission for Consent for the works on the existing water course. I have also included a marked-up extract of one of our drawings that will hopefully alleviate your concerns.

Your main concern highlighted in your letter appears to be the risk of flooding from water spilling out of the open channel at the upstream end of the site. There are a number of flood risk management solutions we have proposed in order to reduce the risk of flooding which are detailed on the drawings submitted to you previously.

Firstly, we are raising the height of the open channel wall along the western side of the channel in order to provide additional storage capacity along this section. We have equated this increase to be 133%, i.e. more than double. Secondly, we have proposed a two stage screening process along the open channel, the first one being a coarse screen and the second one being a fine screen. In our discussions with the Local Authority Land Drainage Department, they have informed us that they will be regularly inspecting and maintaining the screens in order to prevent blockage. The Client will be including rights of access to the open channel in to any relevant legal agreements should this be deemed necessary.

In the unlikely event of the coarse screen becoming blocked, the level of the water would raise locally above the screen on to the banking either side of the channel and flow back into the channel on the other side of the coarse screen. One would expect that, should this occur, it would be noticed and reported and dealt with. However, should the condition worsen and the fine screen become blocked and the water levels rise above this outlet, they would be directed through gravity towards the retaining wall separating Plots 26 & 27 as shown on the attached plan. This

retaining wall will have a small upstand above the level of the garden of Plot 26 and hence the water will be directed through the garden into the site road which has gullies discharging into the culvert. Some of this water may discharge into Thirstin Road itself due to the site levels; however, the gully system in Thirstin Road is to be upgraded as part of the development.

To summarise, we feel that the risk of flooding has significantly reduced from the existing condition and we can show that we have an overall on-site storage capacity nearly 50% greater than the existing system. In extreme conditions, the effects on the surrounding area have been improved by way of the works to Thirstin Road and the road gullies in the new estate road.

We trust this will meet with your requirements; however, should you require further details, please do not hesitate to contact me at the above.

Kind regards

Neil D Taylor
Associate

Enc: Marked-up copy drawing

c.c. Bob Barratt, KMC Planning Services + enc
Natalie Quarmby, AD+P + enc
G Behrens, Delay Construction + enc

Kirklees Metropolitan Borough Council
Planning Services
PO Box B93
Huddersfield
West Yorkshire
HD1 2JR

Our ref: RA/2007/101017/02-L01
Your ref: 2006/61/9539/WV3
Date: 16 April 2007

FAO Bob Barrett

**RESIDENTIAL DEVELOPMENT CONSISTING OF 29 DWELLINGS AND
INTEGRAAL GARAGES THIRSTIN MILLS THIRSTIN ROAD, HONLEY,
HOLMFIRTH, HD9 6JH**

Sufficient information has been submitted by the Applicant for his Flood Risk Assessment (FRA), (JNPgroup letter and drawings ref. NG1607.L028/HON/JAW/vl dated 5th March 2007). We have no objection to the proposed development provided that the following conditions are attached to any subsequent permission:

PPS25 clearly states it is the applicant's responsibility to ensure that the site can be developed and occupied safely. It is his responsibility to ensure the validity of his flood risk assessment upon the commencement of development.

The Applicant should be reminded that there will always be a residual risk of flooding in the area if flood defences are breached or overtopped.

CONDITION

No development approved by this permission shall be occupied until a scheme for the provision of the flood defence scheme detailed in JNPgroup letter and drawings ref. NG1607.L028/HON/JAW/vl dated 5 March 2007.

REASON

To reduce flood risk, as recommended by FRA.

It is recommended that the surface water discharge from the development be reduced by 20% from the existing.

Environment Agency

Customer services line: 08708 506 506
Email: enquiries@environment-agency.gov.uk
www.environment-agency.gov.uk
Cont/d

Informative

No building or other obstruction should be placed within 3 metres of the culverted watercourse, which crosses the site, to avoid damage to the culvert, and allow access for maintenance.

Should you require any additional information, or wish to discuss these matters further, please contact me on the number below.

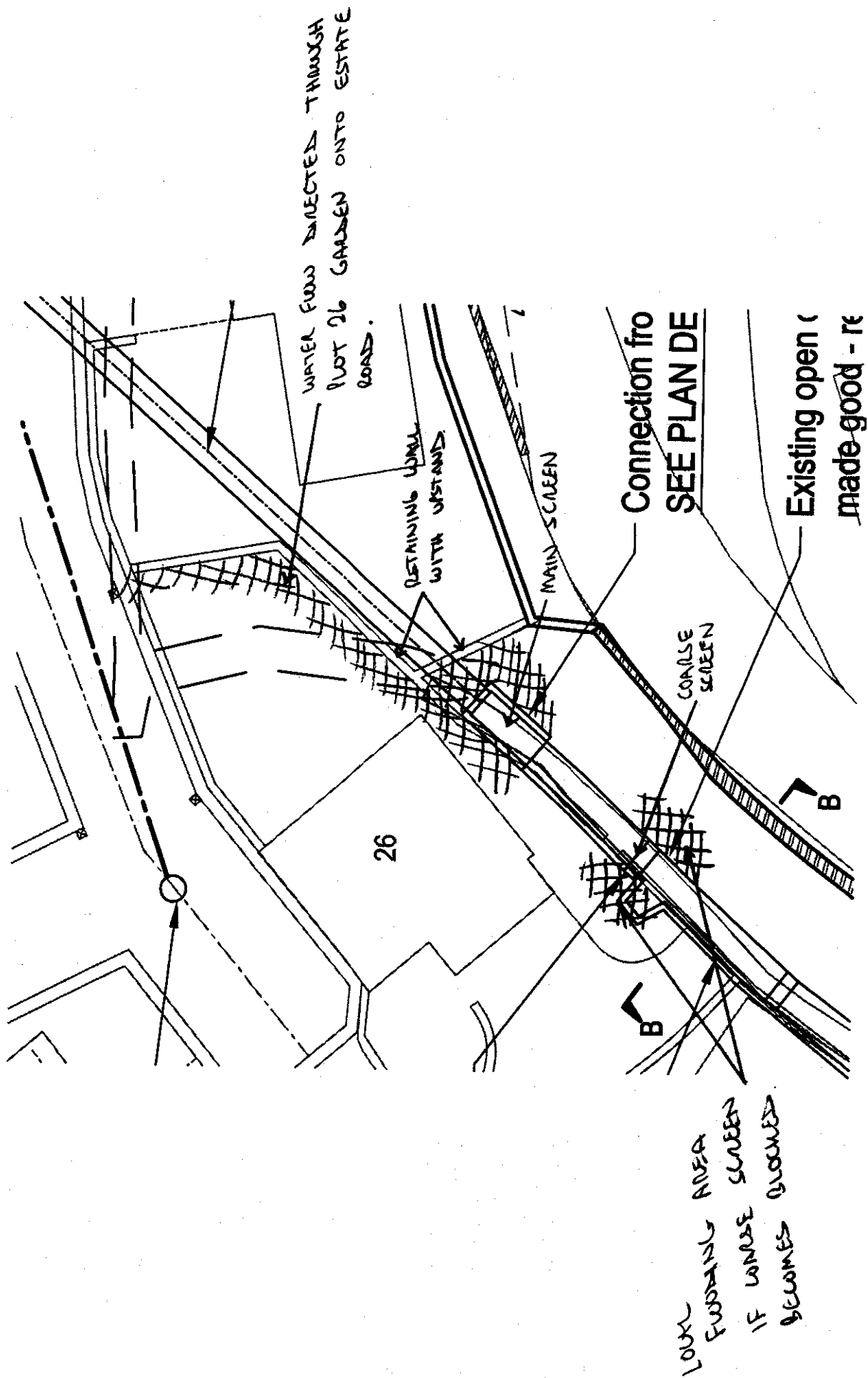
Yours faithfully

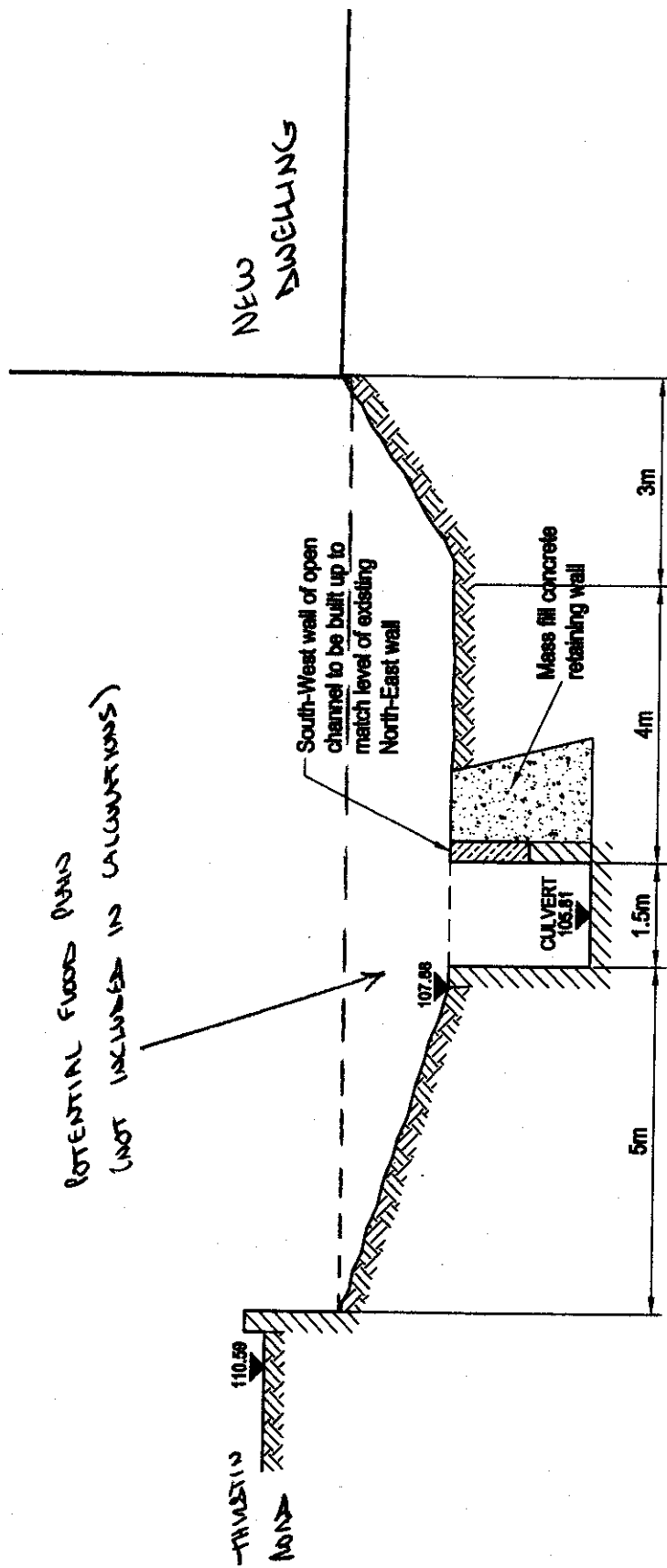
Ms Amy Heys
Planning Liaison Officer

Direct dial 0113 213 4909

Direct fax 0112 213 4609

Direct e-mail amy.heys@environment-agency.gov.uk

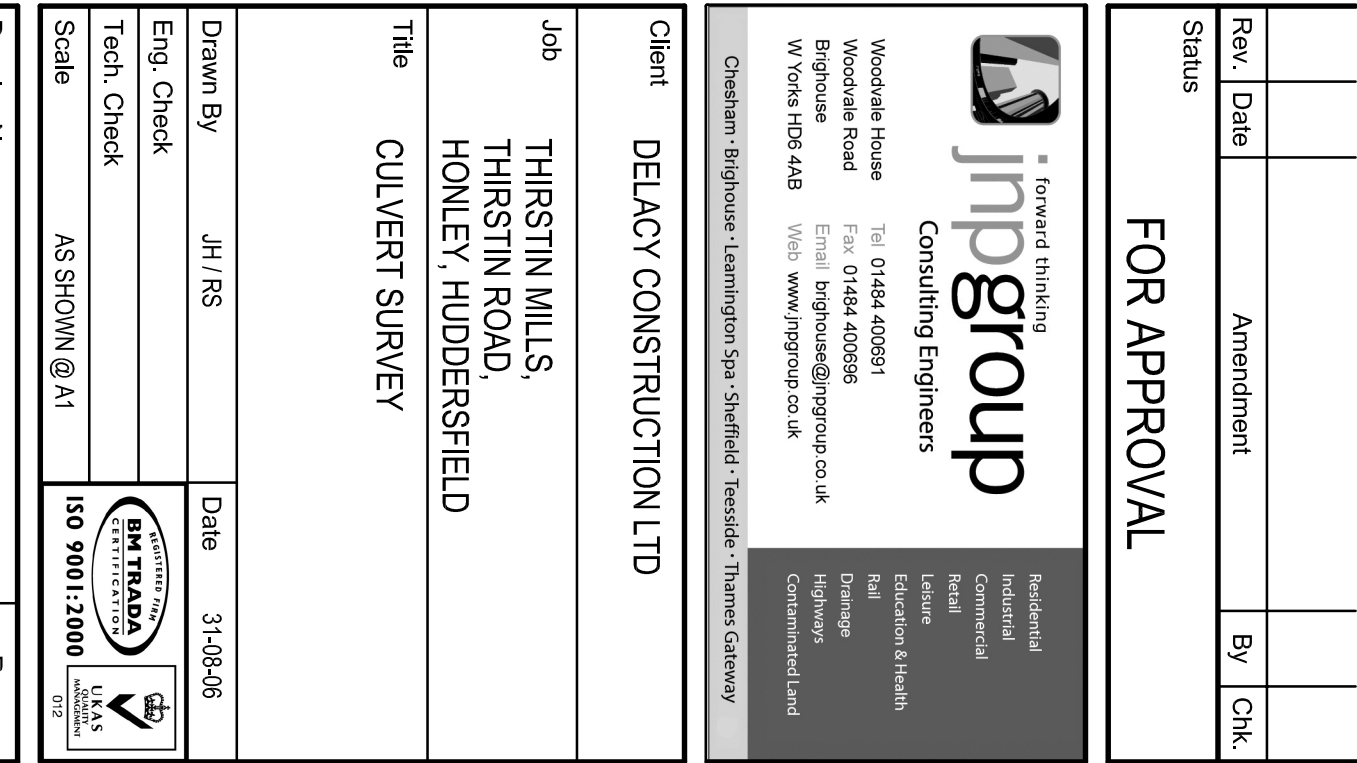
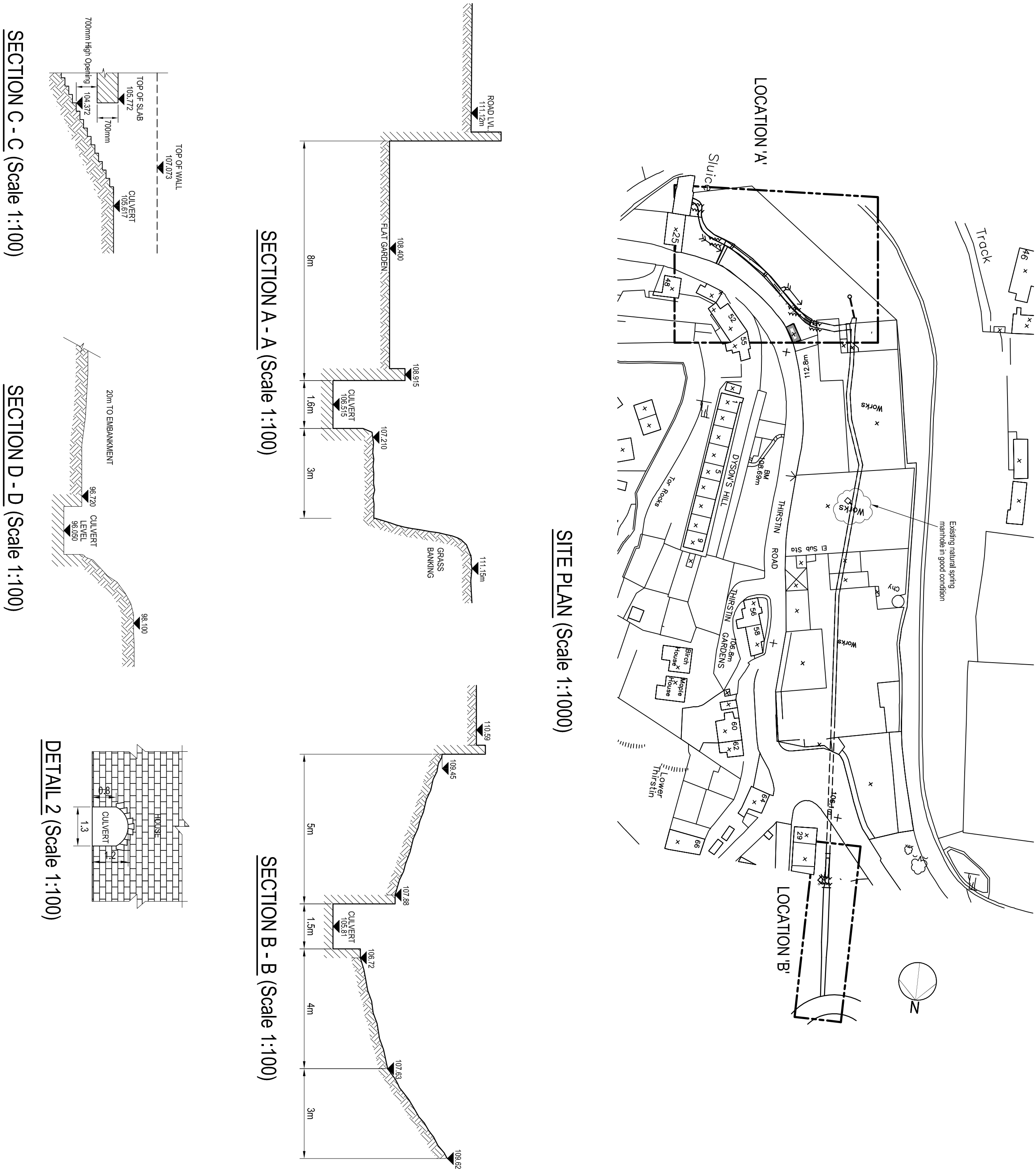




PROPOSED SECTION B-B Scale 1:100

APPENDIX H
CULVERT DIVERSION DRAWING

- this drawing.

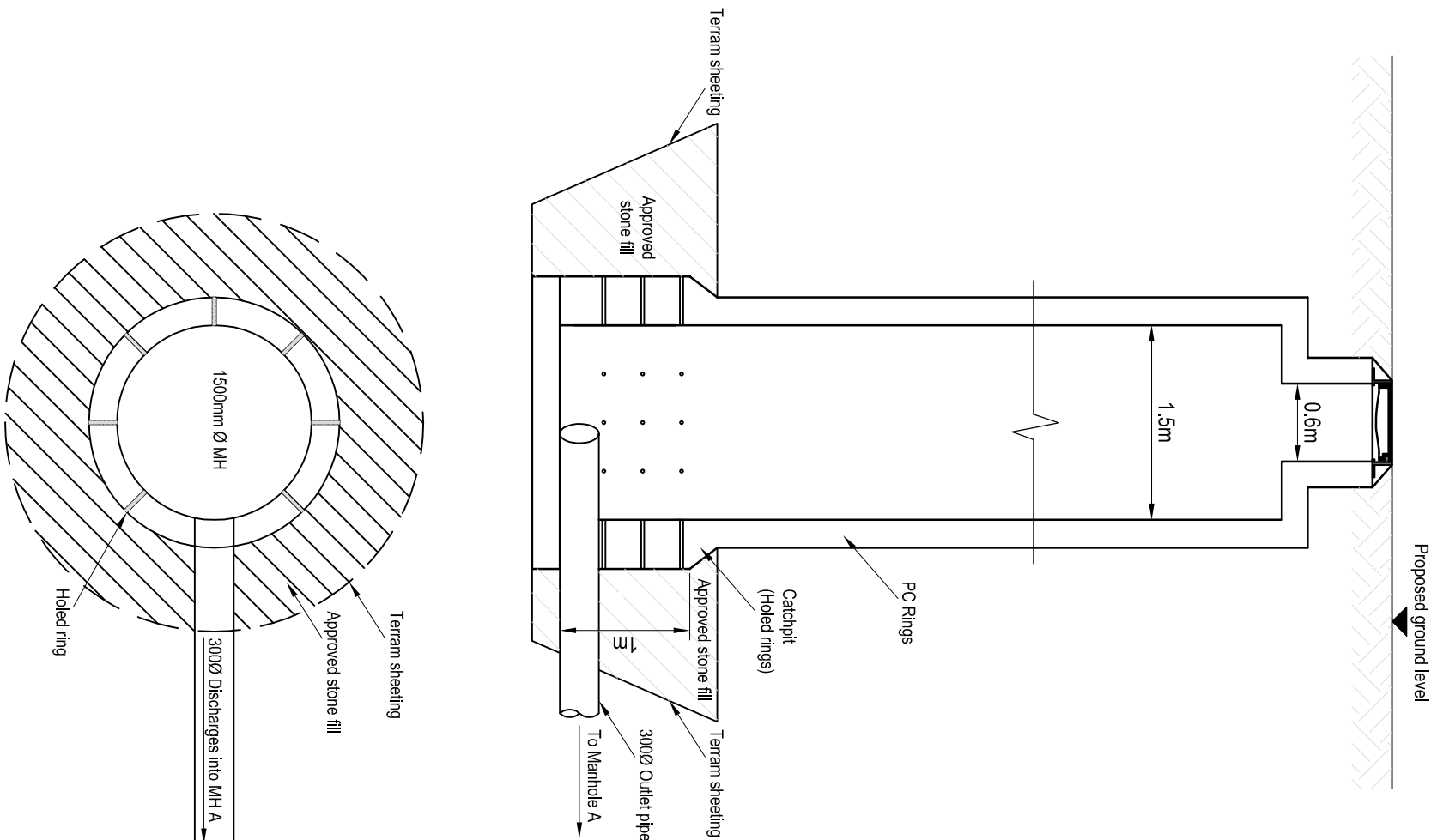


1. All drawing dimensions to be checked on site.
2. Do not scale.
3. Any discrepancies between drawings of different scales, and between drawings and specifications where appropriate to be notified to The Engineer for decision.

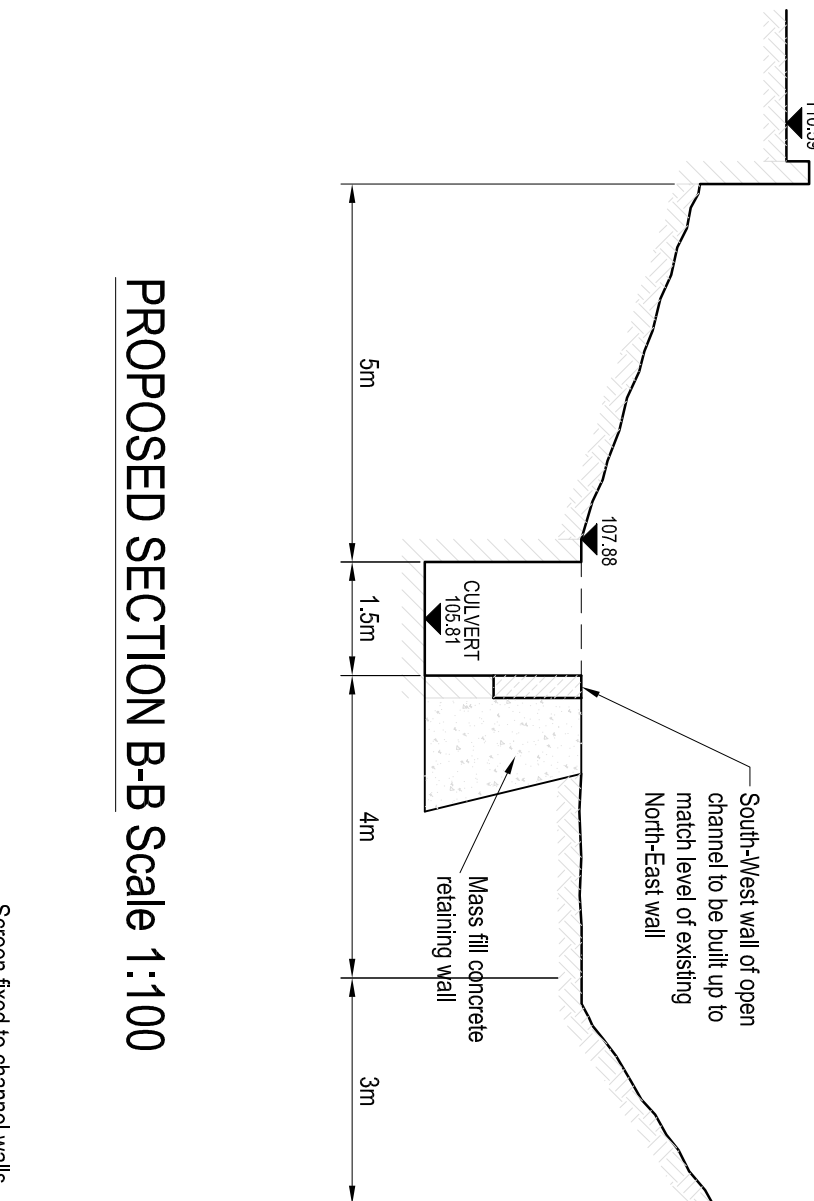
Copyright reserved: This drawing may only be used for The Client and location specified in the title block. It may not be copied or disclosed to any third party without the prior written consent of Popagard.

5. Part to which being commented on site. The Engineer should be contacted regarding the current status of regulatory. Technical approval of

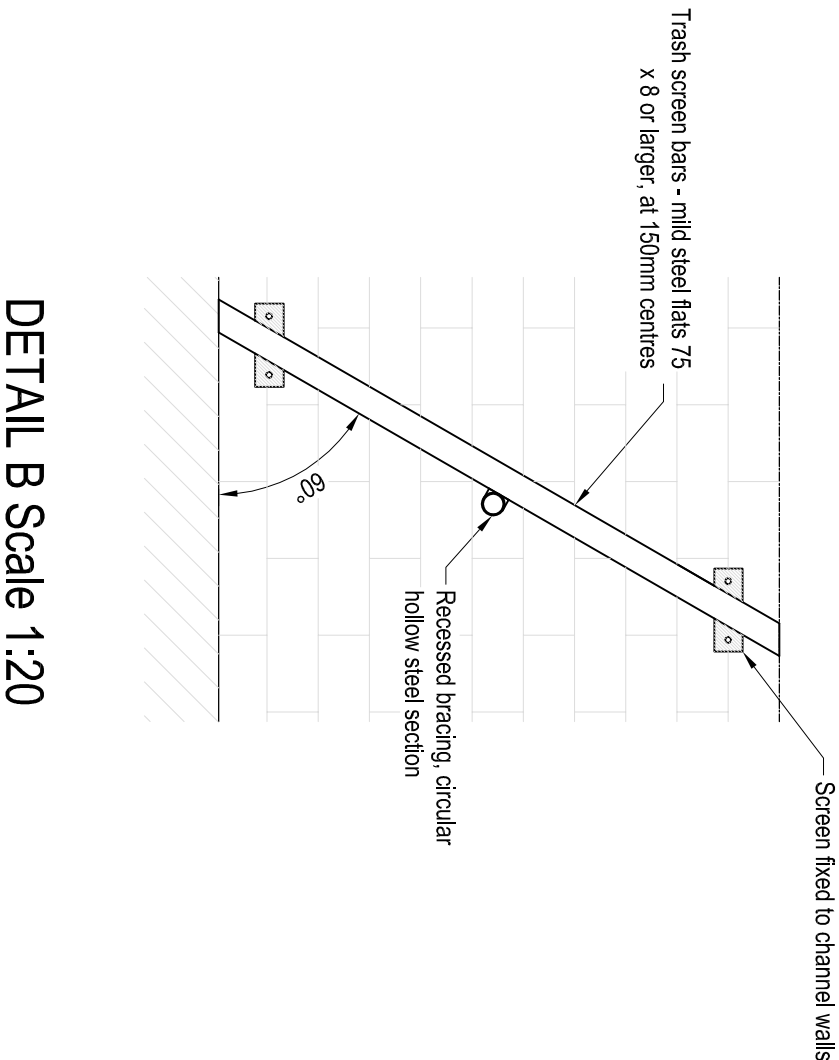
Co-ordinates given approximately for manhole D. Location of existing culvert needs establishing first.



NATURAL SPRING MANHOLE
SECTION AND PLAN Scale 1:50



PROPOSED SECTION B-B Scale 1:100



 Forward thinking jnpgrp Consulting Engineers	Residential Commercial Industrial Leisure Education & Health Highways Environmental and Civil	Woodvale House Woodvale Road Blypouse W Vales RD5 4AB W Vale, NP23 5AB Tel: 01484 400691 Fax: 01484 402698 Email: blypouse@jnpgrp.co.uk Web: www.jnpgrp.co.uk	Chester - Blypouse - Llanymyneir Spa - Shiffield - Tredegar - Thomas Gateway	Client DELACY CONSTRUCTION LTD	Job THIRSTIN MILLS, THIRSTIN ROAD, HONLEY, HUDDERSFIELD	Title PROPOSED CULVERT DETAILS
	Drawn by RS	Date 07-09-2006	Eng. Check NDT	Scale As Shown	Tech. Check CPT	ISO 9001:2000 

APPENDIX I
YORKSHIRE WATER SEWER RECORDS


YorkshireWater

JNP Group
Woodvale House
Woodvale Road
Brighouse
W. Yorks
HD6 4AB

FAO Chris Yates

jnpgroup BRIGHOUSE	
0 2 OCT 2006	
Project No. 451607	
Info.	Action
	CP4
NA	

Yorkshire Water
Waste Water - Sewerage
New Development Team
Knostrup WWTW
Knowsthorpe Lane
LEEDS
LS9 0PJ

Tel: (0113) 235 4251
Fax: (01274) 372 834

Email:
Planning.Sewerage@yorkshirewater.co.uk
For telephone enquiries ring:

Teresa Hill on (0113) 235 4251

Your Ref:
Our Ref: D008278

27th September 2006

Dear Sir/Madam,

Thirstin Mills, Thirstin Road, Honley, Huddersfield - Demolition of Existing Buildings, Erection of 35 Dwellings with Garages & 1 Block of 14 Flats (Within Conservation Area)

LPA Ref: 2003/61/94656/W3

In response to your correspondence of the 3 August 2006 regarding the discharge points for foul and surface water from the above site.

In this instance Yorkshire Water would have no objection in principle to foul water only from the site discharging into the 450mm diameter public combined sewer located in Thirstin Road at a point adjacent to the site.

Due to this sewer being upstream of a combined sewage overflow surface water discharges could not be accepted into this sewer.

Yours faithfully

New Development Team



APPENDIX J
SEQUENTIAL TEST REPORT

Thirstin Mills Thirstin Road Honley

Proposed Residential Development

PPS 25 Sequential Test

May 2011

1. This report accompanies a Flood Risk Assessment (FRA) prepared by JNP in respect of a planning application for new-build residential development on the site. The report seeks to provide the relevant information to enable the Local Planning Authority, to determine the application.
2. The application site was formerly the site of Thirstin Mills which were demolished some years ago.
3. An existing surface water culvert passes through the site.
4. A linear strip of land running through the application site falls within Flood Zone 3 on the Flood Zone Map

PPS 25

5. PPS 25 advocates that the risk-based Sequential test should be applied at all stages of planning (para D1 of Annex D to PPS 25).
- 5.1. PPS 25 is supplemented by a practice Guide (December 2009 version) which sets out further guidance on how to apply the sequential test.
- 5.2. The application site at Thirstin Mills has not been allocated as a development site as part of any LDD/LDF or other process. The site is unallocated on the Kirklees Unitary Development Plan proposals Map. The site falls within the boundaries of the Honley Conservation Area.
6. The proposed development of dwellinghouses falls within the More vulnerable classification as set out in Table D2 of Annex D to PPS 25.

Practice Guide to PPS 25 December 2009

7. Key sections of the Practice Guide are set out below:

Defining the geographical area the Sequential Test should be applied to

4.15 At the regional level the area covered will be the region and should be used to define broad locations and locational criteria for development in the Regional Spatial Strategy.

4.16 At the sub-regional level it may be possible for several LPAs to join together to review development options for a sub-region such as in the Thames Gateway. This has the potential for broadening the scope for opportunities to reduce flood risk and put the more vulnerable development in lower flood risk areas.

4.17 At the local level the Sequential Test should be applied to the whole LPA area, as there may be lower risk areas which are unsustainable for development in other ways.

4.18 For individual planning applications where there has been no Sequential Testing of the allocations in the Local Development Documents (LDD), the area to apply the Sequential Test will be defined by local circumstances relating to the catchment area for the development. For some development this is clear, for example, a school, hospital or doctor's surgery. For others it may be identified from other local plan policies such as the need for affordable housing within a town centre, or that a specific area had been identified for regeneration. For example, where there are large areas in Flood Zones 2 and 3, and development is needed in those areas to sustain the existing community, sites outside them would not be reasonable alternatives. For nationally or regionally important infrastructure the area of search to which the Sequential Test could be applied will be wider than the LPA boundary, and could extend to several regions.

4.19 When applying the Sequential Test, a pragmatic approach on the availability of alternatives should be taken in considering, for example, planning applications for extensions of existing business premises, such as farm holdings, where it might be impractical to suggest that there are more suitable alternative locations for that development elsewhere. It is for LPAs, taking advice from the Environment Agency as appropriate, to consider the extent to which Sequential Test considerations have been satisfied, taking into account the particular circumstances in any given case. In all cases the developer must justify with evidence to the LPA what area of search has been used when making the application. This will allow the LPA to undertake the Sequential Test as part of considering the application. Ultimately the LPA would still need to be satisfied in all cases that the proposed development is safe and would not lead to increased flood risk elsewhere. Advice on applying the Sequential Test is available as part of the Environment Agency's standing advice.

And

Redevelopment of an existing single property

4.40 Where an individual proposes to redevelop their property in an existing flood risk area the consideration of alternative sites is not likely to be a realistic option. The planning applicant should state why there is no alternative available to them to develop. If the site is large enough there may be options to relocate the development to parts of the site at lower risk. However, the applicant will need to show how the development passes the Exception Test. This will show how the development has been made safe through design and flood resistant and resilient construction and that it does not increase flood risk elsewhere. For example, an existing bungalow could be replaced with a building having living accommodation on the first floor (above predicted flood levels) to reduce the risk to the residents. While it will generally not be possible to change and improve access arrangements beyond the boundary of the property, and so access may not become fully safe, applicants should investigate how risks associated with access can be reduced as part of the redevelopment.

8. Paragraph 4.18 is distinct from 4.15-4.17 in that the former relates to the LDD and LDF process of site allocations and the latter to individual planning applications. This distinction is considered to be particularly important.

9. In terms of paragraph 4.18 the local circumstances of this particular site are that there is a strong local need to see this particular vacant cleared site within the Conservation Area redeveloped and thus improved. Thus, it is contended that there are no viable alternatives, in

other words, developing houses elsewhere on another site would not lead to the redevelopment and consequent improvement of the current site.

10. This contention is buttressed by the words of para 4.40. The application site is a single site and there is no realistic alternative if the wish is for this particular site to be redeveloped.

11. The scheme has been designed such that the proposed houses are located either side of a central road, under which runs the re-built culvert, such that the road provides a suitable overland flood route. It is understood that the current diverted route of the culvert was approved under the Land Drainage Act 1991 such that it was authorised. The flood route through the site (within Flood Zone 3) could thus be said to be linked to the new route of the culvert.

The fact that only a linear 'ribbon' of land running through the site is within Flood Zone 3 is considered to be important in the context of locating the proposed development of dwellings either side of the likely Flood Zone 3 land.

The Garner case

12. The decision of the High Court in *R (on the application of Garner and others) v Elmbridge Borough Council* [2011] EWHC 86 (Admin) is important in that it was held that the sequential test in PPS 25 did not apply to a development that had to be located on a particular site to achieve the regeneration of that site. Where the LPA were concerned with the regeneration of a particular site, it would have been pointless to seek to locate the development on another site.

12.1 In circumstances where (as is believed) the Local Planning Authority are desirous of achieving some form of development on the Thirstin Mills site the *ratio* of the decision in Garner is applicable, namely that it would not be necessary to apply the sequential test in relation to other sites simply because there is an important planning need to achieve the regeneration of this prominent site within the Honley Conservation Area. This is also reflected in the 'pragmatic approach' referred to in para 4.19 of the PPS 25 Practice Guide (see above). Added to that is the limited area of the Thirstin Mills site falling within Flood Zone 3.

Area of Search

13. The developer has applied the following areas of search having regard to the guidance in 4.18 and 4.19 of the Practice Guide:

- [i] Within the boundaries of the Honley Conservation Area;
- [ii] In accordance with the points above, within the application site itself.

14. In searching within the Honley Conservation Area the land falling within the designated green belt has been discounted from the area of search on the basis that the development of 23 or 24 new-build dwellings would be contrary to planning policy and housing development would thus be inappropriate development in the Green Belt.

14.1. A search of land within the boundaries of the Conservation Area has not yielded any other suitable, developable or deliverable sites (as defined in PPS 3: Housing) for 20 or

more houses. The Conservation Area is already intensively developed and it is observed that the Thirstin Mills site is the last remaining site for development. There are no undeveloped sequentially preferable UDP site allocations.

14.2. It is also interesting to note that UDP housing allocated sites in Honley that fall outside the boundaries of the Conservation Area have been developed out.

15. As noted above the layout of the site has been designed to allow an overland flood route and locate the houses away from the areas of risk. Please refer to the FRA.

16. The catchment area for this development is considered to be the part of the urban area of Honley which falls within the Honley Conservation Area. The urban area of Honley is considered to be exclusive of land designated as Green Belt.

Exception Test

17. The wider sustainability benefit is the need to redevelop this prominent site in the Honley Conservation Area. There is known to be strong local feeling to see an improvement of the current 'eyesore' that is the cleared site of Thirstin Mills. The Local Planning Authority's Overview and Scrutiny Management Committee considered a report into the current state of the site in September 2010. Please refer to attached documentation.

17.1. The cleared site of the mills falls within the definition of previously-developed as set out in PPS 3 (2006, as amended in 2010). The site has also previously had the benefit of planning permission for redevelopment of the site with Housing.

17.2. The FRA demonstrates the issue of flood risk on the site.

Conclusion

18. There can be little doubt that this site is an important Conservation Area site requiring redevelopment. There are important local circumstances why this site, as opposed to any other, should be redeveloped. These circumstances include the fact that this site was the subject of consideration by the Overview & Scrutiny Management Committee of Kirklees Council in September 2010 (copy report attached).

The Garner case is clear legal authority for the proposition that the PPS 25 sequential test is not necessarily applicable in this type of case. This point is buttressed by the PPS 25 Practice Guide. The redevelopment of this site can only be achieved by redeveloping this site and no other.

May 2011

Name of meeting: Overview and Scrutiny Management Committee

Date: 21 September 2010

Title of report: Thirstin Mills, Honley

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
Is it in the Council's Forward Plan?	Not applicable
Is it eligible for call in by Scrutiny?	Not applicable
Cabinet member portfolio	Regeneration, Environment and Transport

Electoral [wards](#) affected: Holme Valley North

Ward councillors consulted: Not applicable

Public

1. Purpose of report

1.1 To update members of the Overview and Scrutiny Management Committee of the issues at Thirstin Mills, Honley following the Overview and Scrutiny Management Committee of 29 June 2010.

2. Key points

2.1 At the meeting on 29 June 2010, three specific issues were raised by members for further consideration -

- (i) The condition of the public footpath abutting the site and any dangers that this may present to members of the public;
- (ii) What legal powers (if any) are available to the Council to take further action on this site in respect of it's continuing deterioration;
- (iii) How can planning enforcement response times be improved on cases such as this in the future and what lessons can be learned from this case

2.2 With regard to the public footpath, Appendix 1 outlines the position of officers within Streetscene (Highway Development) as to the condition of the footpath.

2.3 Officers within Legal Services have considered whether the Council has any other powers (outside those contained within the Town and Country Planning Acts) that could be used to effect an improvement in the appearance and condition of this site. It is the opinion of officers that the Council does not have any further powers in this regard.

2.4 Also, as discussed previously, it is the advice of officers within Legal Services that any further proposals for the Thirstin Mills site should only be considered as part of a wider review of similar sites across the district. It is also confirmed that another section 215 notice under the Town and Country Planning Acts requiring further works on the site such as basic landscaping could be problematic because it could be challenged as over-enforcement given that the site was not previously “open” or landscaped.

2.5 In terms of what lessons could be learned from the point of view of planning enforcement, it is accepted that, in hindsight, the enforcement of this site fell short of what could have been expected.

2.6 In summary, it appears that –

- there were areas of confusion between the enforcement of various legislative regimes (Planning / Highways / Public Rights of Way);
- there was a lack of urgency from officers (and often different officers) when dealing with issues raised by local members and residents;
- legal difficulties of dealing with various “owners” under different company names created delays;
- a decision on whether the planning permission was implemented or not (ie the discharge of the necessary pre-commencement conditions) was only made many months into the work;
- there was the lack of real powers within the various enforcement regimes to pursue vigorous action;
- there was a lack of communication between officers and between officers and members and residents as to what was happening and why and;
- there was a lack of opportunity for members and local people to be involved in the decision-making process, primarily due to officers’ delegated powers

2.7 A number of the above issues however are not specific to the Thirstin Mills case. Whilst officers of the Council endeavour to deal with each case as efficiently and effectively as possible, the lack of communication with members and residents and the lack of opportunity for members and residents to be involved in any decision-making are recurring themes on enforcement sites across the district. However, it is contended that the main problem when dealing with this site was (and remains) the lack of real and effective legislative powers to deal with such instances of sites being blighted and then left in limbo.

2.8 As the Council is facing an unprecedented period of austerity with the likelihood of rapidly diminishing resources, it may be opportune to look afresh at planning enforcement (and other associated enforcement regimes) within the Council and to suggest ways to improve this highly sensitive area of work. This could be done via the Overview and Scrutiny process if members were so minded.

3. Implications for the Council

3.1 None

4. Consultees and their opinions

4.1 Officers in Streetscene and Legal Services – see above

5. Next steps

5.1 Officers to prepare a report on the wider issues of planning enforcement (and other associated regimes) for consideration by Overview and Scrutiny.

6. Officer recommendations and reasons

6.1 It is recommended that members note the progress made on this site and agree to Overview and Scrutiny looking at the wider issues of planning enforcement.

7. Cabinet portfolio holder's recommendations

7.1 Not applicable

8. Contact officer and relevant papers

8.1 Andy Rushby – Assistant Head of Service (Planning)

Appendix A – Structures report.

9. Head of Service responsible

9.1 Jacqui Gedman – Assistant Director - Strategic Investment Service

Neutral Citation Number: [2011] EWHC 86 (Admin)

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31 January 2011

Before :

MR JUSTICE OUSELEY

Between :

(1) KEITH GARNER
(2) KEITH GARNER LIMITED
(3) GERALD McAULLY
- and -

Claimants

ELMBRIDGE BOROUGH COUNCIL
-and-

Defendant

GLADEDALE GROUP LIMITED
-and-

1st Interested
Party

NETWORK RAIL INFRASTRUCTURE LTD

2nd Interested
Party

Mr Richard Drabble QC & Mr David Smith (instructed by Richard Buxton & Co Solicitors)
for the **Claimants**

Mr Simon Bird QC (instructed by Sharpe Pritchard & Co Solicitors) for the **Defendant**

Miss Mary Cook (SNR Denton UK LLP Solicitors) for the **1st Interested Party**

Mr Gregory Jones (Clifford Chance LLP Solicitors) for the **2nd Interested Party**

Hearing dates: 28th and 29th October 2010

Judgment

Mr Justice Ouseley :

Introduction

1. Elmbridge Borough Council granted planning permission on 16 June 2009 for a mixed development on land surrounding Hampton Court Railway Station, beside the Thames on the opposite bank to Hampton Court Palace (HCP), a Scheduled Ancient Monument and a Grade I listed building. The Grade 2 listed Lutyens Bridge over the Thames carrying Hampton Court Way passes the site to its west. The railway lines bisect the site with the terminus buildings to the west and north. The station is locally listed. The commuter car park is within the site on land to the east of the station. Between the station and the Thames is the derelict site of the former unsightly, single storey Jolly Boatman restaurant, at one time surrounded by hoardings.
2. The development permitted was the comprehensive redevelopment of Hampton Court Station, 66 residential units, retail and commercial floor space, a 46 bedroom hotel, which created the greatest controversy since it was closest to the Thames, and a 61 bedroom care home originally intended for occupation by the Royal Star and Garter Home. There was also a two storey underground car park, public open space and highway improvements.
3. The Council resolved to grant permission on 18 December 2008, the full Council approving the application by 29 votes to 24, with 5 abstentions. The reasons for the grant of permission were summarised as follows:

“The proposal follows the recommendations of a detailed Planning Brief for the site and although it has been the subject of strong objection from some quarters it has attracted a satisfactory response from English Heritage, an enthusiastic response from CABI, and would deliver the redevelopment and regeneration of one of Britain’s ‘Worst Wasted Spaces’ (CABI). The proposal has also met the technical requirements of specialist consultees such as the Environment Agency and Surrey County Council as Highways and Transportation Authority. The application has been considered against all the relevant national and local policies as well as the representations and consultation replies, and in all the circumstances it is concluded that on balance there are insufficient overriding reasons to refuse planning permission in the public interest.”
4. The Claimants were led by Mr Garner, a former employee of Historic Royal Palaces, HRP, the registered charity responsible for looking after Hampton Court Palace. He had been responsible for it until 2004, responding to previous planning applications and a planning brief on the Jolly Boatman site. The Claimants challenge the planning permission on the grounds that the Council had failed in its duty to have special regard to the setting of Hampton Court Palace and had failed lawfully to apply the sequential tests for development in a flood plain, set out in PPS 25 “Development and Flood Risk”. The Claimants also allege that the reasons for the grant of permission

were legally inadequate and that the relevant policies had not been summarised in the decision. The latter allegation in relation to the policies is undoubtedly correct.

5. This is a rolled-up hearing since permission was refused on the setting ground because of a want of standing and delay but not on its merits, and on the second ground because of a want of arguable merits as well. The issue of standing is not pursued. Delay was argued, but not strongly, as going to discretion. The background is set out in *R (Garner) v Elmbridge Borough Council* [2010] EWCA Civ 1006, dealing with a Protected Costs Order.

The statutory and policy framework for the setting of a listed building

6. Section 66 (1) of the Planning (Listed Building and Conservation Area) Act 1990 provides:

“In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”

7. Mr Drabble QC for the Claimant, in oral submissions, relied on the exposition of the significance of a similar provision in relation to Conservation Areas in *South Lakeland District Council v Secretary of State for the Environment* [1992] 2 AC 14 1, and submitted that it applied equally to listed buildings and their settings. The House of Lords held as follows:

“There is no dispute that the intention of section 277(8) is that planning decisions in respect of development proposed to be carried out in a conservation area must give a high priority to the objective of preserving or enhancing the character or appearance of the area. If any proposed development would conflict with that objective, there will be a strong presumption against the grant of planning permission, though, no doubt in exceptional cases the presumption may be overridden in favour of development which is desirable on the ground of some other public interest. But if a development would not conflict with that objective, the special attention required to be paid to that objective will no longer stand in its way and the development will be permitted or refused in the application of ordinary planning criteria.”

8. Although Mr Jones for Network Rail Infrastructure Ltd urged caution over allowing the language of *South Lakeland District Council* to become a straitjacket for the thinking of a planning authority and that the language of the House of Lords was different from the language of the statute, and I see the force of that point, *South Lakeland District Council* is authoritative if not strictly binding on me as to the approach required. In reality it is very difficult to see how a local planning authority, having special regard to the desirability of preserving the setting of a listed building, could grant planning permission for a development which harmed it, without having

strong reasons for doing so. Section 66 does not permit a local planning authority to treat the desirability of preserving the setting of a listed building as a mere material consideration to which it can simply attach what weight it sees fit in its judgment. The statutory language goes beyond that and treats the preservation of the setting of a listed building as presumptively desirable. So if a development would harm the setting of a listed building, there has to be something of sufficient strength in the merits of the development to outweigh that harm. The language of presumption against permission or strong countervailing reasons for its grant is appropriate. It is the obvious consequence of the statutory language, rather than an illegitimate substitute for it.

9. PPG15 "*Planning and the Historic Environment*" dealt with the setting of listed buildings in this way:

"The setting is often an essential part of the building's character, especially if a garden or grounds have been laid out to complement its design or function. Also, the economic viability as well as the character of historic buildings may suffer and they can be robbed of much of their interest, and of the contribution they make to townscape or the countryside, if they become isolated from their surroundings, eg. by new traffic routes, car parks, or other development."

10. Para 2.17 dealt with the publicity to be given to an application which affected the setting of a listed building, but is relevant to what constitutes the setting of a building:

"The setting of individual listed buildings very often owes its character to the harmony produced by a particular grouping of buildings (not necessarily all of great individual merit) and to the quality of the spaces created between them. Such areas require careful appraisal when proposals for development are under consideration, even if the redevelopment would only replace a building. Where a listed building forms an important visual element in a street, it would probably be right to regard any development in the street as being within the setting of the building. A proposed high or bulky building might also affect the setting of a listed building some distance away, or alter views of a historic skyline. In some cases, setting can only be defined by a historical assessment of a building's surroundings."

Did Elmbridge Borough Council pay special regard to the desirability of preserving the setting of Hampton Court Palace and the Bridge?

11. It is common ground that the duty in section 66 was not mentioned in the Committee Report for the 18 December 2008 meeting and that the Committee Report does not contain the language of that statutory provision. It does not set out the duty in the language of *South Lakeland District Council* stating that if development would harm the setting of a listed building, there should be a strong presumption against the grant of planning permission. However, Mr Simon Bird QC for Elmbridge, Miss Mary Cook for Gladedale Group Limited, the owner of the Jolly Boatman site and the

developer, and Mr Gregory Jones for Network Rail, the landowner of most of the site, contend that in reality the statutory duty was fully complied with. I accept that, provided the issue has been approached in the right way, and that special regard has in fact been had to the desirability of preserving the setting of Hampton Court Palace and Bridge, the decision would not be erroneous in law simply because the statutory language or statutory test had not specifically been referred to; see for example *R (Baker) v Secretary of State for Communities and Local Government* [2008] EWCA Civ 141, para 37 Dyson LJ:

“The question in every case is whether the decision-maker has *in substance* had due regard to the relevant statutory need. Just as the use of a mantra referring to the statutory provision does not of itself show that the duty has been performed, so too a failure to refer expressly to the statute does not of itself show that the duty has *not* been performed. The form of words suggested by Mr Drabble to which I have referred above may not of itself be sufficient to show that the duty has been performed. To see whether the duty has been performed it is necessary to turn to the substance of the decision and its reasoning”.

12. Mr Bird argued that the report and decision had to be seen in the context of the careful consideration of development on this site and its relationship to Hampton Court Palace over a number of years and in the context of the Council’s longstanding rejection of the stance of HRP, which was particularly hostile to any development on the river frontage, especially were it larger than the Jolly Boatman restaurant itself had been.
13. In essence, Mr Bird submitted that the preservation of the setting of Hampton Court Palace was what the long consideration of development issues on the site and what the officer’s report to Council were centrally focussed on. Members must have concluded that the development preserved the setting of Hampton Court Palace. There was no suggestion in the report that its setting would be harmed, but that there were other planning objectives which outweighed that harm. These submissions require some analysis of how the development proposals on this site had been considered over at least 10-15 years.
14. As far back as 1986, Elmbridge Borough Council had prepared a Planning Brief for the Hampton Court Station and the Jolly Boatman site but no scheme which was both viable and acceptable had emerged. In 1999, still keen to encourage a “*sensitive and comprehensive*” development, the Council updated the 1986 brief so as to stimulate and guide possible new developments. The aims of the brief were:
 - “1. To promote a comprehensive development of the site, to include a comprehensive solution to access.
 2. To enhance the site’s role as a transport interchange.
 3. To ensure that the development enhances the East Molesey Conservation Area and provides a scheme of the highest architectural quality which respects its

location opposite Hampton Court Palace and adjacent to Hampton Court bridge.

4. To ensure that development maximises the opportunity to improve the frontage of the River Thames and to encourage a range of uses which promote the enjoyment of the River.
 5. To encourage environmental improvement of the site and the immediately adjacent highway.
 6. To enhance the site as a gateway to the borough, particularly for tourists visiting Hampton Court.
 7. To encourage a mix of uses appropriate to the site's location."
15. The description of the site in the brief specifically referred to the importance of Hampton Court Palace and Hampton Court Bridge, concluding: *"Given the importance of the setting of Hampton Court Palace and of the Thames river frontage, the site is extremely architecturally sensitive"*.
16. The reasons for the comprehensive approach were identified, one of which specifically related to the sensitivity of the site in relation to Hampton Court Palace, and another to pedestrian routes which featured in the case because of the importance of *"the visitor experience"*, leaving the station to cross the bridge to Hampton Court Palace:
- "2. The site is extremely visually sensitive and a co-ordinated approach to design, to achieve a development of quality given the prominent location, within a conservation area and opposite Hampton Court Palace is essential.
 3. The necessity to achieve optimal pedestrian routes between the station and Hampton Court Palace through the site".
17. The first reason however was the need for a co-ordinated solution to the problems created by the existence of 4 separate access points from the site on to Hampton Court Way, creating danger for cars and vehicular/pedestrian conflicts especially for visitors. The car park was accessed to the north of the station crossing the natural route for pedestrians visiting Hampton Court Palace.
18. Planning policy included the Thames Landscape Strategy in 1994, which had the status of supplementary planning guidance, in which one of the main landscape factors was the views from Hampton Court Palace and Bridge. Design issues required a full design statement and one that supported a detailed rather than a merely outline planning application. The statement should address the impact on the setting of Hampton Court Palace among other issues. A site analysis showing the importance of views from the Palace was included in the Planning Brief. It noted:

“However, as Plan 5 shows, the Jolly Boatman site is highly visible and therefore particular regard will be paid to the Jolly Boatman site and that part of the site fronting the Cigarette Island Park, given its location opposite Hampton Court Palace, adjacent to the Grade II Lutyens Listed Bridge, on the River Thames and within the East Molesey Conservation Area. Buildings of the highest quality of design will be required for these prominent locations and the applicants are encouraged to employ the services of architects who have a track record of designing excellent buildings in historic settings.”

19. No building should exceed three storeys plus pitched roof which was likely to mean that the buildings would be substantially less than the 50ft limit imposed by the South Western Railway Act of 1913 on any building within a 1½ mile radius of the Palace.
20. The Council’s aim was to ensure that development did not dominate the station building, was below the tree canopy of the park and fitted with the East Molesey Conservation Area. To that end, a landscape appraisal and a fully illustrated comprehensive landscape scheme was required paying particular attention to the frontages and perimeters of the site. The preferred land use mix for the Jolly Boatman site acknowledged this site to be “*extremely architecturally sensitive given its location in the Conservation Area and opposite Hampton Court Palace*”. It was suitable for a mix of high quality leisure uses of a quality of design commensurate with its location on the River Thames and opposite the Palace. A small hotel was appropriate but no more than 3 storeys high.
21. So far as the station site was concerned, the Planning Brief examined 2 options, noting at paragraph 9.5:

“The most important building frontage is along the Thames, where the site is particularly visually prominent when viewed from Hampton Court Bridge and Palace.”
22. The Cigarette Island frontage to the east would also need careful design to ensure acceptability from the Park, River and Palace. Residential development on the south and east parts of the site should not exceed 3 storeys and its quality of design would be “*key given the prominence of this area of the site from views of Hampton Court Palace*”.
23. The Planning Brief was subject to public consultation. HRP, through Mr Garner made its opposition to the brief clear. In particular, except for the possibility of a small kiosk on the Jolly Boatman site, its objection was and still is to urban development on the Jolly Boatman site and east of the station in particular, because of the visual relationship between the Palace and the south bank of the Thames, the relationship of the Palace to the station, and the loss of the views of Hampton Court Palace from passengers arriving by train. Such development would interfere with the “*Arcadian setting*” of Hampton Court Palace. The Director of Planning reported on this consultation after a meeting between the Council Planners and HRP to discuss these fundamentally different approaches.

24. HRP criticised the Brief for not responding to the sensitivity of views to and from the Palace, the importance of which the Brief acknowledged. HRP were invited to address Elmbridge Planning Committee members to explain its objection which Mr Parker, the Council's Head of Planning, said was extremely unusual and was done precisely because of the special position of Hampton Court Palace and the need to protect its setting. Mr Parker pointed out correctly that the areas HRP wanted to turn into parkland had not been parkland for a very long time since before the railway came in 1849 and since then had had sidings and a coal yard before the River Thames was realigned in the 1920s.
25. English Heritage, about whose stance there was considerable debate in Court, wrote on 28 October 1999 supporting the HRP position, and saying that it would object to any planning application based on the Planning Brief. There should be no extensive development on the site. It objected in principle to the nature, scale and intensity of development envisaged by the brief:

“...few would be likely to question the desirability of a restored station building in an open parkland setting as envisioned by the Royal Palace [sic] in the long term. However, the proposal is not supported by any convincing evidence that its achievement would be financially feasible, and its long term pursuit ... would be contrary to the [Town Planning] Committee's previously expressed desire to promote an urgent and comprehensive development of the site after many years of neglect.”

26. But the Council rejected HRP's approach and adopted the Brief, though extending the East Molesey (Kent Town Conservation Area) for this reason:

“In particular, it would help to ensure that all new development within the sites were of a high standard of design and in harmony with surrounding buildings, whilst protecting the Park and its trees, together with the setting of Hampton Court Palace, the River Thames and River Mole.”

27. In 2005, HRP commissioned an Historic Landscape Assessment and Landscape Development Strategy and Views Management Plan as the formal expression of its concerns about development. The Landscape Assessment included the following:

“3.2 The appearance of the Surrey bank is a vital part of the arcadian setting of the Palace. Walking along Barge Walk, ever conscious of a backdrop of magnificent buildings and formal grounds, the observer sees the southern shore beyond the shining Thames. The ambience sought is an illusion to trees and meadow stretching away from the river. This same ambience is perceived in inviting glimpses from the West Front forecourt, the southern end of the Privy Garden or looking out from several magnificent windows within the Palace itself.

3.6 The Palace and its setting should also be enjoyed when walking from Hampton Court Station towards the bridge.

To this end views of the Palace across the river need to be opened up from the Surrey bank, framed by foreground and middle ground group of trees.”

28. Hampton Court Way had been an historic, though not always successful barrier to the eastwards spread of development apart from the railway:

“Substantial development on the Jolly Boatman and station sites, as promoted by the development brief, would effectively preclude the restoration of the historic landscape character of the area and further erode the arcadian setting of Hampton Court Palace in perpetuity.”

29. The Views Management Plan assessed the current situation thus:

“APPROACH FROM EAST MOLESEY ACROSS
HAMPTON COURT BRIDGE

Assessment

This is perhaps the most important approach today, given the high number of visitors who arrive by train at Hampton Court Station and walk across the bridge to the Palace from East Molesey. It also has the greatest potential for opening tree-framed views across the River Thames to the Tudor Palace, that would help to orientate visitors and create a positive first impression that might better meet their expectations when arriving at an internationally important historic palace.

However, the dereliction of the prominent Jolly Boatman site and the air of neglect that pervades the Hampton Court train station currently dominate the character of the approach to the Palace from East Molesey.

The busy flow of traffic on the intimidating and imposing A309 further detracts from the appearance of this area and from first impressions of East Molesey in particular.

Views across to the Palace from Hampton Court Bridge are blocked by the avenue of Norway Maples within the West Front of the Palace.”

30. It recommended an urgent review of the Planning Brief and for plans to replace the landing stage, boat stores and tree planting to be promoted. These two documents were reported to the Elmbridge Borough Council and were part of HRP’s representations on planning applications in 2007 and 2008.
31. The importance, submitted Mr Bird, of all this history was that the Council’s consideration of setting did not start and finish with the officer’s report to full Council in December 2008, but rather the report was the last in a series of stages in which the

setting of the Palace and the avoidance of harm to it had been very seriously considered.

32. Gladedale made two applications which were numbered 2007/2970 and 2008/1600. The former became known as the “Boathouse Scheme”, the latter as the “Classical Scheme”. They differed in the design of the hotel at the north end of the Jolly Boatman site. The Classical Scheme was designed by Quinlan and Francis Terry and was the application eventually permitted. The Boathouse Scheme designed by other architects was refused. Gladedale provided the documents required by the Planning Brief with these applications. Part of the Environmental Statement was a Townscape Built Heritage and Views Assessment. It had identified a number of issues in discussion with both the Council and HRP, including the impact on the setting of the Palace and its gardens and the impact on the setting of Hampton Court Bridge. It identified with the Council and HRP the views to be assessed, including views to and from the Jolly Boatman site to the Palace, and to and from the Palace gardens and Hampton Court Bridge. The assessment made it clear that HRP and English Heritage had always objected in principle to any development on the Jolly Boatman site to the north or on the station car park.
33. The body of the assessment treated the setting of Hampton Court Palace as one of the heritage assets to be considered. It set out in paragraphs 3.3.3 – 3.3.6 a sufficiently accurate description of the correct approach to be adopted to the setting of listed buildings. It summarised the three HRP reports of 2005, describing HRP’s views and objections; then it analysed 12 character areas of which Hampton Court Palace, Hampton Court Park, the River Thames, Cigarette Island and the Railway were 5. It described the effect on Hampton Court Palace and Bridge in this way:

“Hampton Court Palace (Scheduled Monument and

Grade I)

The proposed development may be seen from certain viewpoints within the palace grounds. There will be an indirect effect on the setting of the palace. The effect on the setting of the palace is considered to be minimal as generally the development would be largely obscured by existing and proposed planting on Cigarette Island and the site itself. The point at which the headland development will come into fuller view is as one becomes aware of East Molesey and the high volumes of traffic on the road bridge. Thus the development will be associated with that urban experience, not the leafier stretches around the Privy Garden. The setting of the Palace consists of the River Thames, Hampton Court Park, the bridge and the settlements to the west and on the Surrey bank. The proposed development would not therefore introduce a new urban character into the setting of the Palace. The views assessment of agreed vistas presented later in this section also indicate that the effect on the views from Hampton Court Palace is minimal change only, and increasing nearer the bridge and with the main entrance area. The proposed improvements

to the station will provide a much enhanced environment for users, many of whom will be visiting the Palace.

Hampton Court Bridge (Grade II)

The Proposed development will have an indirect effect on the setting of the listed bridge. A new public space, Riverfront Square, will be created in front of the new hotel building and adjacent to the bridge. This will be an attractive, well designed area that will enhance the bridge's setting and provide improved viewing places for the bridge and the surrounding riverside environs"

34. The assessment included wire lines and photo montages which showed views out from the Palace and grounds and back towards them, from Hampton Court Bridge looking towards the Palace and the development site, and from the edge of Hampton Court Station towards the Bridge and the Jolly Boatman site. The commentary expressed views about the effect of the proposed development which to one degree or another were beneficial in the setting of the listing buildings. The assessment concluded that there would be no adverse effect on the setting of the Palace or Bridge. This document was before the Council when it reached its decision.
35. English Heritage responded on 20 December 2007 to the Boat House scheme application saying that it was *"particularly concerned at the likely impact of this development on views to and from Hampton Court Palace, its gardens and parks, the setting of the listed Hampton Court Bridge, the banks of the River Thames and the cumulative impact on the established character of East Molesey."* English Heritage had been closely involved in pre-application discussions. It was:

"...keen to encourage proposals which will improve significantly the currently extremely poor visitor experience of those arriving at Hampton Court Station, the currently semi derelict public realm between the Station, the River Thames and Cigarette Island Park, the setting of the grade II listed Hampton Court Bridge and preserve the existing semi-rural nature of views from Hampton Court Palace across the River to the Jolly Boatman site. Particular attention during these discussions has been given to the setting of the Palace, a scheduled ancient monument and its grade I Registered Gardens and Parkland, all of outstanding national and international importance."
36. English Heritage repeated its view that those objectives would best be achieved by an *"open, landscaped public space with a number of modest and carefully considered structures"* for visitor facilities *"not comprehensive and intensive urbanisation of the site."*

37. The initial pre-application discussions had led to the formal scheme being:

“...less harmful in its impact than initially feared, but English Heritage continues to have significant and fundamental concerns regarding a number of aspects of the scheme.

The hotel building proposed between the Station and the River is in terms of its height, scale, bulk and massing entirely inappropriate to this highly sensitive location. The introduction of such a substantially scaled structure onto a site which is currently undeveloped will have a major, adverse impact upon the established character and appearance on the setting of Cigarette Island Park, the Station and Hampton Court Bridge and in cross river views. This harm is particularly exacerbated by the detailed design of the building which is entirely inappropriate to the conservation areas and the wider setting in which it sits”

38. A meeting was suggested to find an agreed solution for the design, appearance and setting of the hotel which would ensure:

“that if the principle of such development is accepted in this location, the outstanding significance of Hampton Court Palace and its environ will be preserved and protected”

39. I note that this implies that whilst English Heritage would prefer a different solution in principle, it did not regard a hotel on the Jolly Boatman site as necessarily harming the setting of Hampton Court Palace.

40. On 6 August 2008, English Heritage provided its consultation response to the Classical Scheme and to changes to the Boathouse Scheme. It remained particularly concerned at the likely impact of development and enclosed a copy of its 20 December 2007 letter which “*sets out our views upon the principle of development of this site*”. It remained keen to encourage proposals which would improve significantly the setting of Hampton Court Station and views to and from the Palace. It continued:

“English Heritage does not wish to raise any objections to the proposed residential and commercial development to either side of the railway tracks and welcomes the erection of a new Royal Star and Garter Home, which will maintain the historic links of the Royal British Legion with this part of south west London. Also to be welcomed are much needed works of improvement and restoration to Hampton Court Station and the withdrawal of the previously proposed works of hard landscaping between Hampton Court Bridge and Cigarette Island Park, which we considered to be of a scale and design inappropriate to this stretch of the Thames.

English Heritage has long felt that the objective of enhancing the setting of the Palace, the Station and the appearance of this part of East Molesey would best be achieved by creating a landscaped public park or space between the Station and the Thames, containing a number of modest and sympathetically designed structures to provide facilities for visitors and residents alike. We continue to feel, as a matter of principle, that your Council should consider this approach very carefully.”

41. English Heritage referred back to its views in the December 2007 letter that the Boathouse Scheme would be entirely inappropriate to “*this highly sensitive location*” through its height, scale, bulk and massing, and that this harm would be exacerbated by the detailed design of the hotel. Having reminded Elmbridge Borough Council of its willingness to find a solution to the hotel “*if the principle of development in this location were accepted*”, it came to the Classical Scheme saying:

“English Heritage has been working closely with Gladedale Group Ltd and Francis Terry in the evolution of this redesigned building. We recognise that the floor space of the latest, proposed hotel building remains largely the same as the building we commented upon in 2007 but we feel that its design, appearance and architectural vocabulary all respond in a significantly more sympathetic fashion to this highly sensitive location and to the prevailing character of the place. The vernacular adopted harmonises with the varied but domestic scale of the architecture along this stretch of the Thames and, if built would have an infinitely less damaging impact upon views to and from the Palace and the environs of the Jolly Boatman site than the original proposal.

English Heritage considers that the latest proposals for the hotel building respect this advice and are based on a proper understanding of the significance of the place. The design for the new hotel is appropriate to its immediate and wider setting on both sites of the Thames

Should your Council decide to approve the proposal which includes the hotel designed by Quinlan and Francis Terry Architects it is essential that the high quality of their design for the hotel building and associated structures is matched by an equally high quality of detailing and execution. There needs to be a firm commitment from the Applicants to retain the service of these architects as the scheme develops.”

42. It maintained its objection to the Boathouse Scheme and, hoping that its comments would prove helpful, concluded:

“English Heritage wishes to secure a scheme which will complement the setting of significant heritage assets identified above and consider that if development on the site between the

Station and Thames is acceptable as a matter of principle, the designs submitted by Quinlan and Francis Terry Architects for a new hotel building, in conjunction with the designs submitted by Allies and Morrison for the residential and commercial development represent the most appropriate response to the site.”

43. HRP maintained its objection particularly to the bulk and height of the proposed hotel. It regarded the differences between the Boathouse and Classical Schemes as minor and the design of the latter as doing nothing to make the hotel more acceptable. The views of visitors from the train pulling into the station and then emerging from the station to cross the bridge would be lost or damaged. The development was being driven by viability and the cost of the two level underground car park. It remained of the view that the Jolly Boatman site should largely not be developed, though improvement to the station area was “*badly needed*” and it promoted its own 2005 report as the appropriate solution.
44. The Planning Sub-Committee (North) and the Full Planning Committee both went on site visits, looking at views to and from the Palace and on one visit went inside the Palace. The matter went to the full Council and the majority of councillors also went on a further site visit. The visits each lasted about two hours. Councillors walked across Hampton Court Bridge to the Palace, along the towpath beyond the Privy Garden and returned through the Palace Grounds. HRP representatives were on hand to answer questions and to point out views.
45. The officer’s report to the Council was thorough. It summarised objections and updated them including references to a 3,000 signature petition objection to the effect of the development on Hampton Court Palace. Mr Parker, the Head of Planning, also updated members orally on the representations which had been received. The report referred to the refusal of the Boathouse Scheme by the North Area Planning Sub-Committee and its recommendation that the Classical Scheme be permitted. Unsurprisingly, the description of the site and location pointed to the importance of Hampton Court Palace, and the fact that it was a “*key landmark*” on the Elmbridge Local Plan Proposals Map even though it was outside the Borough, (though the strategic views from the Palace into the Borough were to the east of the Cigarette Island Park, i.e. to the east of the site). It recounted the detailed planning history, since the refusal of an application in 1985 of unsuccessful endeavours to develop the site. Proposals had failed either because they were unacceptable or, if acceptable, they were not viable and so were not developed.
46. The current Planning Brief was set out in some detail. Subsequent changes in respect of flooding and affordable housing were described. It was not suggested that there had been any change in the importance of the setting of Hampton Court Palace. The report then commented, leading to some argument before me:

“An adopted Planning Brief is a material consideration in the assessment of any subsequent planning application. The normal assumption is that any application that follows the specifications in the Brief would be approved, unless there had been a material change in the planning circumstances that

rendered the Brief outdated or contrary to latest adopted policies.

However, an adopted Brief does not prevent the grant of permission for a development that departs from it, so long as that alternative development accords with adopted policies in the current development plan.”

47. The two development schemes were described, making it clear that the Classical Scheme hotel was of the same overall dimensions as in the Boathouse Scheme, but with different elevational treatment and in 3 storeys plus a mansard.
48. The consultation responses were set out in some detail. The English Heritage objection to the Boathouse Scheme referred to the inappropriate height, scale, mass and bulking of the hotel which would have an adverse impact on the character and appearance of the Cigarette Island Park, the Station, Hampton Court Bridge as well as cross river views. Mr Drabble drew attention to the absence of a reference to the appearance of the hotel in the summary of the English Heritage response to the Classical Scheme. I set it out because it was said to be misleading:

“Confirms that there is no objection to the residential/commercial development either side of the railway tracks and welcomes the Royal Star & Garter home. Continues to believe that a park between the station and the river, with only modest structures would achieve the most enhancement to the Palace and the area. However, the design and appearance of the Quinlan and Francis Terry hotel building is more sympathetic to the character of the area and less damaging to the impact on views to and from the Palace. The latest proposal respects English Heritage guidance and is appropriate to its immediate and wider setting. Suggests that the Allies & Morrison hotel scheme (2007/2970) be withdrawn and states that a call-in to the Secretary of State will be requested in the event that it is recommended for permission.”

49. The East Molesey Conservation Area Advisory Committee was critical of the architecture of both schemes. The London Borough of Richmond on Thames objected to both schemes in similar terms including in large part by reference to the effect they would have on the Palace.
50. The objection of HRP to both schemes was fully set out and I extract part:

“Consider that the Jolly Boatman site should be landscaped to reinforce and extend the rural parkland character of the River Thames and the site should not be redeveloped as it is considered that any development on the site would have a detrimental effect on the immediate setting of the Palace and the historical adjoining character of the area. The hotel building would dominate the river frontage due to its

orientation, bulk, external materials and the urban style landscaping and would have a detrimental effect upon the historic setting of the Palace as it would result in a proposal much larger than the existing buildings. The buildings on the railway site are considered to be a high density, monolithic scheme that will appear as a continuous wall when viewed from Hampton Court Palace. It is considered that the views from and to the Palace are significant and should be protected and the development by virtue of its scale, massing and height would have a significant impact upon the views of the Palace from the station and surrounding areas. The scale of the proposals also fails to maintain or enhance the unique character of the river and the terrace will further fail to contribute to the riverside ambience or rural character of the area.”

51. In reality, as Mr Bird submitted, HRP’s objection was making the same point on the principle of development which it had made in response to the Planning Brief and which generated the documents it produced to explain its views in 2005.
52. The officer’s report examined the planning considerations next. The first consideration was the extent to which the proposals complied with the Planning Brief. It explained how in reality the height of the proposed buildings met it. The section headed “*Viability Constraints*” is important because of the possible significance of the topic for members’ approach, but it featured more significantly in the arguments concerning the flood plain:

“One of the reasons why the sites have remained undeveloped in over 20 years has been the unusual costs associated with a comprehensive development.”

The need to replicate a station car park and provide safe access to it, as well as the works to the Highway and the station refurbishment and the need to carry out the development while maintaining a train service all add unusual costs. These have been amplified in recent years by the additional flood mitigation measures that are now required.

All of this means that any successful scheme has to include an amount of ‘value generating’ development sufficient to pay for these unusual works. Otherwise the comprehensive scheme would be undeliverable.

This has a number of implications. Some have suggested that the idea of a comprehensive approach should be abandoned, allowing the best parts of the site to be ‘cherry-picked’ and developed independently. But this would also abandon the opportunity to resolve certain of the current problems on the site – unsafe access being the prime contender. It would also lead to the danger that some run-down parts of the site would have no possibility of resolution short of public purchase or subsidy.

If a comprehensive approach is maintained, in line with the Planning Brief, then whatever development package is permitted needs to deliver sufficient revenue to pay the usual costs of development plus the unusual costs outlined in 8.2.3 above.

When assessing this it must be remembered that these unusual costs are effectively fixed, no matter how much development is permitted. It means that for any given mix of development there is a threshold below which the amount of development proposed would be unviable, and no developer would choose to implement it.

The developer has provided figures for the viability of the current application schemes (see attached letter). The costs quoted do not include figures for finance or acquisition, and it is evident that the schemes are already fairly marginal.

If changes were to be made – for example, reducing the amount of development on the Jolly Boatman part of the site – then corresponding increases would need to be made elsewhere. Alternatively the mix would have to change to allow a greater proportion of private housing, for example.

The scheme that has evolved includes a number of compromises concerning matters such as the amount of development and the development mix, and is seen as the optimum solution that meets the aspirations of the Planning Brief, while remaining viable – i.e. a scheme that the developer would be prepared to implement”.

53. Next followed the “*Built Assessment*” which began with a list of the relevant policies and the topics they covered. It concluded:

“In policy terms, there is no reason why, in principle, a hotel would have an adverse impact on the character and amenity of the area, including taking account of its riverfront setting and the proximity to Hampton Court Palace. As such, the provision of a hotel in this location would not conflict with local or national policy. However, the hotel must be of a suitable design and scale to accord with the very special characteristics and constraints of the site. Both proposals include a hotel of the same height and scale but with different architectural treatment of the elevations. Each will be considered in turn.”

54. Against that background the report then assessed each scheme. It said of the Boathouse Scheme that:

“The visual improvement of the site would indeed have a benefit but the design of the hotel must take account of the character of the area, which in this case includes the

Conservation Area, the riverside frontage and the setting of Hampton Court Palace.”

55. It contrasted the supportive views of CABI with the strong opposition of English Heritage, pointing out that a decision on whether the Boathouse Scheme had achieved the design and heritage objectives of local and national policy:

“must be reached in light of this very strong objection from English Heritage, in its capacity as the Government’s statutory adviser on the historic environment.”

56. The officer concluded:

“Accordingly, it is considered that the appearance of the ‘Boathouse’ scheme for the hotel would not protect and enhance the historic character of the area, including the views from Hampton Court Palace.”

57. The report reminded members of English Heritage’s position, saying:

“English Heritage remains concerned over the principle of developing the site but has worked with the applicants and Francis Terry in the evolution of the latest design for the hotel. It considered that the ‘Classical’ appearance results in a significantly more sympathetic development, which responds to the sensitive character of this location and is less damaging upon views to and from the Palace than the ‘Boathouse’ scheme. In summary, English Heritage concludes that the ‘design for the new hotel is appropriate to its immediate and wider setting on both sides of the Thames”.

58. The officer conclusion is important:

“In light of the comments from both CABI and English Heritage, as the Government’s advisers on design and heritage issues, the conclusion must be that the ‘Classical’ scheme for the hotel meets the policy criteria for achieving good design that respects its historic setting. There remains objection to this scheme from other interested parties and consultees, such as Historic Royal Palaces, the Hampton Court Rescue Campaign and the East Molesey CAAC, together with many letters from local residents. Yet there are also comments from the Council’s own conservation advisers and the Strategic section of Surrey County Council, who commend the high quality design of the ‘Classical’ hotel and conclude that less visual intrusion would result.”

59. Mr Drabble submits that the last part implies acceptance of visual intrusion by at least some supporters of the Classical Scheme.

60. In its overall conclusions, the report made these observations, starting with:

“This is a highly sensitive site, which because of its location opposite Hampton Court Palace has more than local significance. But it is also important to the community of East Molesey.”

61. It continued:

“There has been a very frustrating period in excess of 29 years during which it has been run-down. No successful scheme for development and improvement has emerged that has been good enough to achieve both planning permission and viability.”

62. Having referred to the poor state of the Jolly Boatman site, the missed opportunities, and the Planning Brief specifying the position and heights of buildings that would be “*acceptable*” plus appropriate uses, the report pointed out the strong opposition of HRP to any built development on the Jolly Boatman site. It continued:

“Nevertheless, after considering representations from bodies such as English Heritage, CABI and the Thames Landscape Strategy as well as Historic Royal Palaces, the Council confirmed in the 1999 Planning Brief that it was satisfied that a 3 storey (plus roof) landmark building could be erected on the Jolly Boatman site in a forward position, so long as the architecture was of the highest quality.

A further complication has been the unusual development costs associated with the site. This has been one of the longstanding impediments to development, and even before the ‘credit crunch’ it is evident that the scheme contained in the current application is only of limited viability. It is understood that at an early stage the applicant considered the possibility of not adding any building on the Jolly Boatman part of the site but unless significantly higher buildings had been built to the rear, the scheme would not have been viable.”

63. The development followed the Planning Brief very closely with the main deviation being at the riverfront where the hotel had been set back and angled slightly so as to be less assertive to the River Thames. Then:

“There are no significant issues that have arisen since adoption of the Brief that dictate departing from it. The flooding issue might have been one, as suggested by the Rescue Campaign. But after much work the engineers for the applicant have devised a solution that meets the requirements of the Environment Agency, and as assessed, it meets the Exception Test’ in Planning Policy Statement 25”.

64. It continued:

“ Much weight must be given to the advice of the main national and county-level consultees: CABI, English Heritage, the

Environment Agency and Surrey County Council's Highway and Transportation Section. These have all examined the schemes independently from the Planning Brief.

With the exception of English Heritage and the Boathouse scheme (see below), all these consultees are supportive of the applications.

CABE in particular is enthusiastic, commending all aspects of the schemes – the design, mix, quantum, distribution of massing, high quality and public realm improvements. This is an unusually positive endorsement of a development of this type from such a body and obviously stands in direct contrast to the objections from Historic Royal Palaces – loss of opportunity for landscaped riverside, size, loss of views, harmful to setting of the Palace, traffic etc.

English Heritage advice is more considered and reflects the fine balance that ultimately exists between those with strong views in favour and those against. They have considered the likely impact of the development upon views to and from Hampton Court Palace (including its gardens and parks), the setting of the listed Hampton Court Bridge, the banks of the River Thames and impact upon the character of East Molesey. They confirm they have no objection to the residential/commercial redevelopment either side of the railway tracks and welcome the Royal Star & Garter home. They acknowledge the aspiration to create a park between the station and river, and comment that if this could be achieved it would deliver the most enhancement of the Palace and the areas. But they also acknowledge that the design and appearance of the 'Classical' hotel building has taken account of their advice and is appropriate in its immediate and wider setting'. Conversely they still feel that the original 'Boathouse' design for the hotel would have an adverse impact upon the character and appearance of Cigarette Island Park, the station and Hampton Court Bridge as well as cross river views.

In all these circumstances, and on balance, a recommendation is made to Grant permission for the revised scheme (2008/1600) – the 'Classical' Hotel building."

65. Before members considered this report Mr Parker referred to English Heritage's full written representations, commenting on them and at full Council giving a resume of the whole background. The two Committees were shown aerial photographs and historic maps of each site, as well as scheme perspectives. There was significant debate about the setting of the Palace with views expressed both for and against the development, hostile or otherwise to the proposal's impact on views to and from Hampton Court Palace.

66. Mr Parker interpreted the debate and vote as showing that the Council did indeed pay special regard to the desirability of preserving the setting of the Palace and Bridge.

Conclusions on setting

67. Reviewing the whole sequence of events from the Planning Brief, to the consideration of the 2005 Reports from HRP, to the form and detail of the application and its accompanying documents, and the manner in which Councillors visited the site and were advised in the officer's report, I am left in no doubt but that the desirability of preserving the setting of the Palace and the Bridge was one of the key issues, if not the key issue or consideration, in the decision, to which special regard was paid. It was not treated as just one among a large number of material considerations. Indeed, it would beggar belief, as Ms Cook put it, for the Council, dealing with a site so close to the Palace and Bridge, not to have had special regard to their setting.
68. In my judgment, the Council did comply with its statutory duty under s66 when deciding to grant permission for this development. It did so even though neither the statutory provision, nor its wording, were specifically referred to in the officer's report nor in the debate. It is difficult to see how anyone considering the setting of the Palace and Bridge could have thought other than that it was desirable to preserve the setting of the Palace and Bridge, and that if the setting was harmed, that would be an adverse factor which could not be overcome without sufficiently strong countervailing factors. So the *South Lakeland District Council* formulation did not need to be set out explicitly for the necessary thought process to take place.
69. The report did not suggest that the setting was harmed, or that in consequence some particular benefit had to be shown to outweigh the harm. The report, following on from the Brief, sought a development which would not harm the setting. Mr Bird is right that the probable inference is that those members who voted in favour of the grant of permission thought that the development would preserve the setting of the Palace and Bridge. It is probable that those who voted against it took the view that the setting was harmed; either view is a reasonable one of this development in this location. But it is also possible that some who voted for it took the view that some harm was done to the setting, but it is inconceivable that they still voted for the proposal without concluding that there were sufficiently strong countervailing factors. Why else would they have voted for it? There is no especial restriction on the factors which can lawfully outweigh such harm. This approach would comply with the statutory duty as well.
70. I also regard it as a factor telling in favour of the Council's argument, that the report did not emphasise the degree of unsightliness on the site currently, so as to produce a very low baseline against which the proposed development could be measured. In that sense, the preservation of all aspects of the existing setting was not desirable on any view, as HRP themselves fully recognised. They described the existing state of the Jolly Boatman site as disgraceful, detracting from the setting of the Palace. Language such as that which the Claimant alleges should have been used, focusing on the preservation of the setting, could have led to an undue focus on the desirability of preserving the development site in its current state, which was not what HRP or anyone else thought desirable at all. Or it could have led to the view that anything else would be better. But that was not the Council's approach. Although the Council disagreed that the only acceptable alternative to the existing state was HRP's

Arcadian vision, it was asking itself whether the development was acceptable as part of the setting of the Palace and Bridge, which was at least a sensible way of approaching its duty in relation to this particular site.

71. I make a few comments on the sequence of events, which supports my view. The purpose, content and language of the Planning Brief, adopted after public consultation and consultation especially with HRP, shows that development which was acceptable in its relationship to the Palace was vital; it had to respect the setting of the Palace and Bridge. Even if members were unaware of the history of the Brief, and the HRP response to it, it was embedded in the thinking and approach of Mr Parker, and members had it before them and its content was summarised.
72. The consultation on the Brief with HRP was particularly important since it showed what HRP thought was appropriate, was considered by the Council and rejected as unrealistic. But the Council did not say that because the HRP vision was never going to happen, any development was better than what there was and would remain. It aimed for a development which would not harm the setting of the Palace, and would be acceptable in its setting. Nor could it rationally follow that its rejection of the HRP or English Heritage vision meant that alternatives would be harmful.
73. The Council again considered HRP's views when presented with its three Reports of 2005. This mattered since it would have reinforced in the minds of officers and members, just how important an issue the protection of the setting of the Palace was for the consideration of development proposals.
74. The Brief required, and Gladedale Group submitted, a detailed planning application. One of the purposes of that is to elevate design and siting to issues which go to the decision whether to permit development, and enable the effect on setting to be judged with greater precision. The developer also produced as the Brief required, but as part of the Environmental Statement, its consultant's analysis of the setting and views before and after development. The views, to and from the Palace and from the Bridge over the site and Palace, were selected with the advice of HRP; so they were likely to focus on those aspects of the setting which mattered. This was all before the members. It could not help but emphasise to members the importance of setting, and the avoidance of harm, as the consultant concluded. And if members were focusing on setting and the avoidance of harm as one of the most important issues, I do not see how they can avoid having special regard to the desirability of preserving the setting, and would expect strong reasons for the grant of any permission which harmed it. The importance of the setting of the Palace could not have been in doubt.
75. The members undertook visits to the Palace grounds, with HRP officers on hand, which must have reflected and reinforced in their minds the importance of setting and the avoidance of harm.
76. The officer's report itself, in the many parts which I have quoted, makes it obvious that setting was one of the most important issues. It sets out the evolution of the Council's thinking, and the views of HRP and other objectors in a fair manner. That inevitably put a focus on setting. It discussed how English Heritage had considered the acceptability of the Classical Scheme. Setting and acceptability is what its Conclusions are really all about. It did not suggest that the setting was harmed or that, if harmed, that was a matter of no great moment. It did not seek to strike a balance

between harm and other issues. The recommendation “on balance” at the end does not signify such an approach. Rather, as the preceding paragraph makes clear, it acknowledges, that there are strong and respectable views on either side of the debate about whether there would be a degree of harm or not.

77. The report did not misrepresent English Heritage’s views. It made clear that English Heritage would have preferred to see the HRP vision become reality, and that its acceptance of the Classical Scheme was contingent on the Council rejecting that vision, which it had always done. The fact that the two hotel designs shared a common size, height and bulk and massing, but differed in external appearance because of their different elevational treatment, led to Mr Drabble’s criticism that there was no sound basis for rejecting one as harmful and accepting the other as innocuous, and that more should have been made of the objection in principle from English Heritage.
78. But the similarities between the two schemes were clear, as were the differences; the nature and basis of English Heritage’s objection in principle to any development on the Jolly Boatman site, shared with HRP, was clear, as was the acceptability to it of the Classical Scheme and the harm which the Boathouse Scheme would do. English Heritage was clearly putting forward a preferred future; it was not treating the Classical Scheme as a harmful, albeit least bad option. It treated it as acceptable i.e. harmless, though not as beneficial as in an ideal, but unattainable, world it would have liked. There was nothing misleading at all about the report. Members also had the full text of the English Heritage letters.
79. Mr Drabble also submitted that the members ought to have been told that they could and should consider the approach of the Planning Brief afresh, that they were not bound by it, rather than being told that the normal assumption would be that development which complied with it would be permitted. In my view, what the report said about the approach to the Brief contains no legal error. The clear implication that it should normally be applied unless there were changes of circumstance, plainly leaves it open to members to reconsider its approach.
80. The report drew attention to the way in which departures from the Brief should be considered; it discussed the relationship between the height limit in the brief and the proposed height of the hotel. There was nothing unlawful in what it said.
81. For all those reasons, I regard it, on analysis, as obvious that the Council fulfilled its duty.

Flood Plain

82. PPS 25 states that local authorities, in determining planning applications, should regard the PPS as a material consideration which may supersede development plan policies, and I would add Planning Briefs. They should ensure that planning applications were supported by site specific flood risk assessments (FRA) as appropriate, as was the case here, and should apply the sequential approach at a site level to minimise risk:

“by directing the most vulnerable development to areas of lowest flood risk, matching vulnerability of land use to flood risk”.

83. The importance of the sequential approach was emphasised in paragraph 14: it is central to the policy statement and “*should be applied at all levels in the planning process.*” It is described in paragraphs 16 and 17 in this way:

“LPAs allocating land in LDDs for development should apply the Sequential Test (see Annex D and Table D.1) to demonstrate that there are no reasonably available sites in areas with a lower probability of flooding that would be appropriate to the type of development or land use proposed. A sequential approach should be used in areas known to be at risk from other forms of flooding.

In areas at risk of river or sea flooding, preference should be given to locating new development in Flood Zone 1. If there is no reasonably available site in Flood Zone 1, the flood vulnerability of the proposed development (see Table D.2. Annex D) can be taken into account in locating development in Flood Zone 2 and then Flood Zone 3. Within each Flood Zone new development should be directed to sites at the lowest probability of flooding from all sources (see Annex C) as indicated by the SFRA.

If, following application of the Sequential test in Annex D, it is not possible, consistent with wider sustainability objectives, for the development to be located in zones of lower probability of flooding, the Exception Test can be applied as detailed in paras. D9-D14. The Test provides a method of managing flood risk while still allowing necessary development to occur.

The Exception Test is only appropriate for use when there are large areas in Flood Zones 2 and 3, where the Sequential Test alone cannot deliver acceptable sites, but where some continuing development is necessary for wider sustainable development reasons, taking into account the need to avoid social or economic blight and the need for essential civil infrastructure to remain operational during floods”.

84. Most of the site to the east of the station, where the underground car park and the residential care home would be, lies within the 1:100 year flood plain, Zone 3a in PPS 25 parlance. Almost the whole site, except the northwest portion where the hotel would be sited, is within the 1:100 year flood plain after increase by 20 percent to allow for the effects of climate change.
85. Annex D to the PPS defines Zone 3a as “*High Probability*” and says that more vulnerable uses such as residential care homes and dwelling should only be permitted if the “*Exception Test*” is passed. Annex paragraph D10 says that the Exception Test

should only be applied after the Sequential Test and when the more vulnerable uses cannot be located in lower risk flood plain zones.

86. D9 provides:

“For the Exception Test to be passed:

- a) it must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risk, informed by a SFRA where one has been prepared. If the DPD has reached the ‘submission’ stage – see figure 4 of PPS12: *Local Development Frameworks* – the benefits of the development should contribute to the Core Strategy’s Sustainability Appraisal;
- b) the development should be on developable previously-developed land or, if it is not on previously developed land, that there are no reasonable alternative sites on developable previously-developed land; and
- c) a FRA must demonstrate that the development will be safe, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall”.

87. The officer’s report dealt with the need for the Sequential Test by pointing out that the applicants argued that the development at issue was driven by needs specific to the site of the development, that is to say particular improvements to the station rather than by development which could be located elsewhere. It therefore considered whether the Exception Test was met. I quote:

“The aim of the Sequential Test is to steer new development to areas at the lowest probability of flooding. The applicants argue that the development is driven by improvements to the railway station and so no alternative sites within Flood Zones 1 and 2 are suitable. There is a Planning Brief that encourages the comprehensive development of the site, which is required in order to provide visual enhancement and improvements to access. The proposed development is specific to the requirements of the application site and inextricably linked to the railway station. PPS25 states that if development is needed for wider sustainable development reasons in flood risk areas, it must satisfy the three criteria of the Exception Test. The criteria required that (a) it is demonstrated that the development provides wider benefits to the community that outweigh flood risk, (b) the development is on developable or previously developed land, and (c) the Flood Risk assessment demonstrates that the development will be safe without increasing flood risk elsewhere and, where possible, reducing flood risk overall.

In assessing Criterion (a), the Planning Brief is, again, relevant. The Council has prepared this document in order to see the site developed in a comprehensive manner to meet the conservation

and transportation needs of the area. At present, it is a 'wasted space' (CABE) and does little to enhance the very special nature of its surroundings. It is considered that the development would provide wider sustainability benefit to the community, economy, tourism and the area, in view of the advantages in visual terms and by meeting the aims of the Planning Brief, thus it meets the criterion."

88. The report then dealt with criteria (b) and (c) referring to the applicants' FRA and protective measures which would be taken, before concluding that the Exception Test had been passed and that the proposal was acceptable on flood risk grounds.

Conclusions on the flood plain and the Sequential Test

89. Mr Drabble's submissions evolved considerably between the grounds and Skeleton Argument and oral submissions. Initially, it was contended that the Council had failed to apply the Sequential Test lawfully, and should have considered whether all the vulnerable uses needed to be there. But the Council's answer is irrefutable: it was concerned with the regeneration of this particular site; finding other sites for the component parts of the development would have been pointless. The Sequential Test is not sensibly applicable to a mixed use development which has to be on a particular site to achieve its regeneration. That is why the Council could proceed swiftly to consider the Exception Test. On the face of it, the Council was entitled to find that that test was in turn satisfied.
90. Hence, the argument became that the Council should have considered whether all the elements were necessary for the viability of the regeneration of the site, and whether the vulnerable elements could be located out of the flood plain: the care home and residential uses in particular. (The hotel was a vulnerable use but not largely located in the flood plain.) The argument further evolved to the effect that in judging viability and scheme content, the Council ought to have taken, not the land price agreed between Network Rail and Gladedale, but the residual value of the land for development of what was permitted to be developed. This argument went both to the application of the Sequential Test and Exception Test.
91. The Council and Interested Parties objected to what appeared to be a wholly new and unformulated ground of challenge, alleging that the development had not been justified simply as an acceptable form of development but as one necessary for a viable regeneration. There is real force in that complaint, but the new points were answered effectively any way.
92. Viability had become an issue between Gladedale and the Council since the developer wanted to build no more than 10 percent of the residential units as affordable housing. The Council's adopted policy required 30 percent affordable housing, and its new aim was 40 percent. Gladedale provided to the Council officers and to the surveyors for the Royal Star and Garter Home, in confidence, its viability appraisal. The latter accepted, and so advised the Council, that there was no prospect of any higher percentage of affordable housing than the 10 percent offered already. The scheme was already marginal, even for a developer such as Gladedale, which was prepared to work on lower assumed costs and returns for commercial reasons. Gladedale's

viability appraisal was later provided in confidence to the Claimant, and a shortened version was used in Court.

93. It was clear, that unless that viability appraisal itself could be attacked, the officers had correctly advised members about the affordable housing percentage, and that the scheme was marginal. There was therefore no error of law, in applying the Sequential and Exception Test, in concluding that there was no scope for any profitable activities to be relocated off-site and for there still to be a viable regenerative development. The viability appraisal shows that there was no such scope.
94. So in argument, Mr Drabble attacked the viability appraisal, on the basis that it took as its starting point the agreed land price. Mr Drabble argued that the price agreed between Network Rail and Gladedale for Network Rail's land dictated the terms of the appraisal, whereas a residual price would show what the land was actually worth for the developments which could be put on the land.
95. This land price however, had been agreed some time ago, but was not yet embodied in a formal contract, although each of its parties regarded it as agreed, and not as something which either party would revisit. Network Rail needed some land price to "incentivise" it to participate in the development, otherwise it would not take part. This was the price agreed with the developer for that purpose. Network Rail was required by the Office of the Rail Regulator to achieve a return on its non operational assets, and this was re-invested for the benefit of the rail network. The Council thought that to be a fair approach, recognising that the land had been undeveloped for 25 years, and that a land owner needed an incentive to participate in development. The question for the planning authority was whether the outcome was acceptable. The proposal passed the Sequential Test as a site-specific development. It passed the Exception Test, especially since the Environment Agency had not objected to the development in the light of Gladedale's Flood Risk Assessment. Nor had it said that the Council's approach to the two tests erred.
96. Mr Drabble's argument is wrong. Neither test requires a viability appraisal or one in a particular form or on particular assumptions in order for lawful conclusions to be reached on its application. There was no need for officers to advise members that they had to make a different assumption as to land price from that which the landowner and developer had agreed, to redo the appraisal on that basis, by removing buildings and uses from their disposition in the flood plain, until some residual value was arrived at, which the Council might then, seemingly quite wrongly, assume was the minimum that Network Rail would take for selling its land to Gladedale. It was not for the Interested Parties to undertake a series of analyses showing the effect of various scheme changes and why the notional price available for the land would not persuade Network Rail to participate. The Claimant put in nothing to show some obviously worthwhile alternative had been ignored for development outside Zone 3a. This is going some way beyond an error of law on the interpretation or application of PPS 25, especially in the light of the evidence on risk. The relevant policies were considered, applied on their terms, and the relevant considerations taken into account.
97. Zone 3a, and yet more so Zone 3a increased for climate change, covered a very large part of the site. So the scope for development by redistributing uses out of the flood plain was in reality extremely limited, and the hotel was largely out of it anyway.

98. Mr Drabble also, in the same broad line of argument, attacked the two storey underground car park, because of its cost. This was not a good point. The accesses required to be re-arranged; car parking spaces were needed for commuters and visitors to the Palace. Were they to be at surface level, quite apart from the impact on any development above the enlarged car park, car and pedestrian conflict at the northern end of the site would be intensified since there was no way over the tracks, and no way round them save at that end. Underground access and parking was the obvious solution. This picking away at bits of the development in argument rather illustrated why there was a case for comprehensive development of the site as a whole, which the Brief had grasped. There is nothing in the flood plain points.

Reasons

99. The Town and Country Planning T&CP (General Development Procedure) Order 1995, as amended, requires in Article 22 that:

“(1) When the local planning authority give notice of a decision or determination on an application for planning permission or for approval of reserved matters and –

- a) planning permission is granted, the notice shall include a summary of their reasons for the grant and a summary of the policies and proposals in the development plan which are relevant to the decision;”

100. The reasons are short. The reference to there being “on balance...insufficient overriding reasons” to refuse permission, is inelegant but discloses no error of law. The fact that the reasons do not refer to s66 is not of itself an error of law. The reasons are broad but adequate. If inadequate for the statutory duty to give reasons, they are readily supplemented by reading the report to Council. I would grant no relief on that point.
101. There is no summary of policies, where there should be one. They are listed in the report but there is no summary of their import for the application, as opposed to a statement of the topics to which they relate. The relevant duty was not complied with, and is not wholly redeemable by reading the report. But it is a small omission and a waste of time to require it to be complied with now.

Overall

102. I shall grant permission on the setting point, but refuse relief. I refuse permission on the flood plain point since it is not arguable. I grant permission on the policy but not reasons point, but I refuse relief. I would not have refused relief on the grounds of delay on either main point if they had succeeded.

HSBC to be forced to clean up Honley mill site

Sep 22 2010 by Barry Gibson, Huddersfield Daily Examiner

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A BANK will be ordered to clean up a site used by drug addicts and fly-tippers.

Councillors yesterday ordered landowner HSBC to improve Thirstin Mills in Honley.

And a resident accused Kirklees Council of coming up with "clever reasons" to do nothing about the site.

The council's Overview and Scrutiny Management Committee yesterday discussed a damning report into the long-running controversy.

Thirstin Mills closed in 1998 and two years later developer NEP Honley won outline planning permission to build 29 detached homes on the site.

But the £10.5m plan was shelved in 2008 when the Grange Moor company went into receivership with lenders HBOS.



The land was then sold to HSBC. The bank is believed to have lost £1.5m on the site, which is now derelict and used by drug addicts and fly-tippers.

A report to the Overview and Scrutiny Management Committee found a string of errors from Kirklees including:

Areas of confusion between council departments

A lack of urgency by officers

No checks on planning permission until many months into the work

Claims there were no enforcement powers available

Residents demand action at wasteland in Honley beauty spot

Mar 26 2010

RESIDENTS are demanding action after a village beauty spot was left looking like "an eyesore".

Thirstin Mill in Honley was demolished in 2007 – but the site still lies empty.

Richard Slade, who lives on Thirstin Road just yards from where the mill once stood, said: "We've gone from living in a conservation area to living in an eyesore.

"At least six residents have either been unable to sell their homes or have taken hits of up to £10,000 when selling up."

Kirklees Council gave developer NEP Honley outline planning permission to build 29 detached homes in 2000. However, progress was slow, with the mill being demolished in phases between 2003 and 2007.

The £10.5m development was shelved in 2008 when the Grange Moor company went into receivership with lenders HBOS. The land was then sold to HSBC.

There is now no planning permission for any building on the site.

Mr Slade, 57, said a valuable piece of the area's heritage had been lost when the mill was torn down.

"Part of the site was a really attractive art-deco building from the 1930s. There was also a wooded area which was a haven for wildlife."

The mill's stone was also taken away after the demolition. Mr Slade said: "The mill was made of really attractive stone and it's all gone. One of the workers pointed to a lintel and told me it was worth £10,000.

"The developer came in and asset-stripped, they took all the stone they could."

Mr Slade criticised Kirklees Council for not acting. He said: "We've been in touch with the council since 2002 but there's been no evidence of progress. Council officers have just done the bare minimum.

"The council doesn't show any respect to council taxpayers. I'm just asking for people to do their jobs.

"The planning permission for the site has run out so we want Kirklees to come up with a plan for the land. They could turn it into woods or allotments."

Mr Slade added that the mill demolition had destabilised the hillside. "It looks like a solid hillside but it's actually loose shale and boulders."

"The mill building was holding up the hill and now gravity is having its way and the hillside is moving downwards."

And Mr Slade, who lives with his wife Gwen, 60, believes the vacant site is making Thirstin Road more dangerous.

He said: "Because the site is open, drivers accelerate thinking they have a great sight-line. I've seen people go down there at 60mph."

"But there's an extremely tight bend at Dyson Hill which is really dangerous. The road effectively becomes a single carriageway."

Cllr Royston Rodgers, who represents Honley on Kirklees, this week demanded an inquiry into the council's handling of the case.

The council's Overview and Scrutiny Management Committee agreed on Tuesday to investigate Kirklees planners.

Cllr Rodgers told the meeting at Huddersfield Town Hall: "Planning permission was granted 10 years ago but I don't think we've monitored anything. We made this a conservation area. Why aren't we jumping all over these people?"

Committee chairman Cllr Robert Iredale said: "I'm absolutely appalled by this. We've stood back and let someone asset strip the site."

Kirklees development control enforcement officer Kevin Walton told the meeting that the mill site was far from the only vacant land.

He said: "In the current climate, there are quite a number of developments which have stopped. We have to decide how to deal with them."

"We continue to negotiate with the residents to bring something forward for this piece of land."

But committee member Cllr Julie Stewart-Turner said it was wrong to blame the recession.

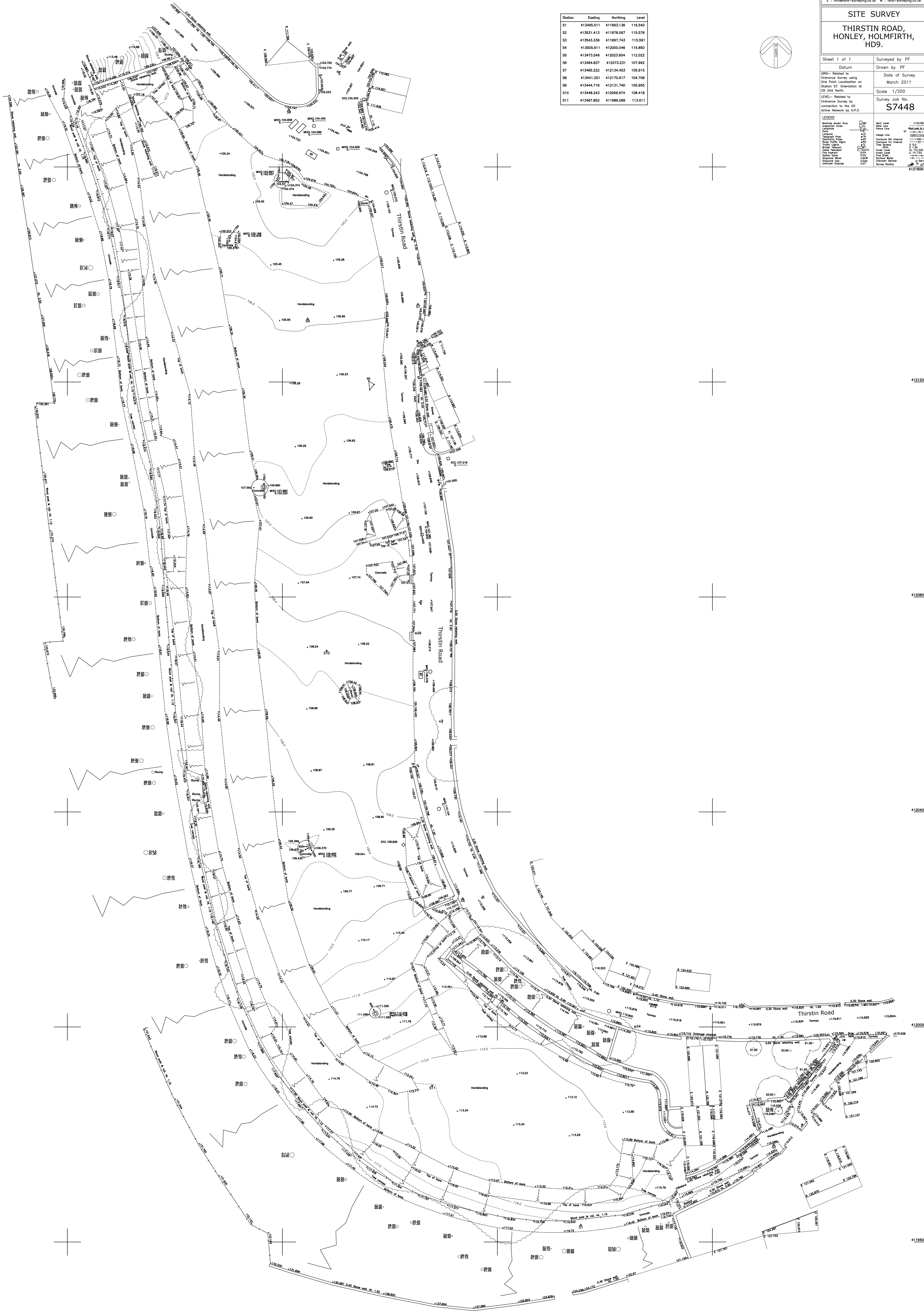
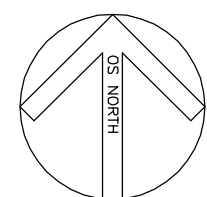
"It's not the current climate – it's the last 10 years," she said.

Cllr Stewart-Turner also criticised an email from Mr Walton to Cllr Rodgers which included a 56-word sentence without any punctuation.

She said: "I'm not happy with the email because it's not in English. It's hard to understand."

APPENDIX K
TOPOGRAPHICAL SURVEY

Station	Easting	Northing	Level
S1	413495.511	419663.136	116.540
S2	413531.413	419786.067	115.578
S3	413543.336	419977.743	115.591
S4	413505.611	412000.046	115.850
S5	413473.549	412023.904	112.022
S6	413464.837	412073.231	107.962
S7	413465.222	412134.453	105.915
S8	413441.201	412070.617	104.708
S9	413444.716	412131.740	105.955
S10	413448.243	412069.974	108.418
S11	413467.852	419869.099	113.611



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