



**D M Textile Machinery Limited, Spa Fields Industrial Estate, Spa Fields, Slaithwaite,
Huddersfield, HD7 5BB ("the Property")**

Advice note in respect of the status of the Site Entrance to the Property

1. Introduction and background

- 1.1 The Property, which is registered at HM Land Registry with title number YY88793, is owned by directors of D M Textile Machinery Limited ("the **Developer**").
- 1.2 The Council of the Borough of Kirklees ("the **Council**") is the local planning authority and local highway authority for the area within which the Property is situated.
- 1.3 The Property is accessed via Spa Fields, which is a cul-de-sac used by vehicular traffic which serves a number of industrial properties including the Property. Spa Fields adjoins a road known as New Street. It appears that Spa Fields was originally part of New Street but was renamed as Spa Fields.
- 1.4 The Property (together with adjoining property) previously benefited from planning permission 2016/62/92825/W granted on 24th November 2016 for "*erection of industrial unit and repositioning of site access*" ("the **2016 Permission**").
- 1.5 The Developer applied for a new planning permission on 16 February 2021 for "*proposed erection of industrial building (use class B1(c))*" on the Property ("the **2021 Application**"). The 2021 Application has reference number 2021/62/90605/W.¹
- 1.6 The Property incorporates land within its boundary which provides a visibility splay and entrance into the site, which abuts and connects with Spa Fields. This part of the Property is hereafter referred to as "the **Site Entrance**".
- 1.7 The local planning authority's consideration of the 2021 Application has stalled as a result of the highway authority's consultation response to the local planning authority dated 7th April 2021, which comprises an objection to the proposal, for reasons associated with the Council's conclusion that the Site Entrance is highway.
- 1.8 Appendices referred to in this note can be located here: [DMT Advice Note Appendices](#).

2. The basis on which the Council considers the Site Entrance is highway

- 2.1 The highway registry team at the Council suggests that the Site Entrance is highway because a new turning head was a "*planning requirement*" of an earlier planning permission relating to premises at the end of Spa Fields.

¹ The red line application site plan forming part of the 2021 Application incorporates part of neighbouring land which is registered with title number WYK555785 and owned by a third party, Vanguard Processing Equipment Limited. (The previous red line application site plan relating to the 2016 Permission included the whole of that neighbouring land). Subsequent references in this advice note to the "**Vanguard building**" and "**Vanguard premises**" are references to this neighbouring land.

- 2.2 The highway registry team at the Council also states that the Site Entrance has been “*open to public use for over 20 years*” and they “*consider*” it to be highway, which suggests that they consider that dedication may have been presumed pursuant to section 31(1) Highways Act 1980.
- 2.3 The Council has not supplied any evidence to substantiate any assertion that there has been dedication of the Site Entrance as highway nor that there has been acceptance by use of the Site Entrance of the requisite manner.
- 3. The 2016 Permission**
- 3.1 The highway authority did not make any suggestion that it considered any part of the Property was highway during its assessment of the application which resulted in the 2016 Permission. The highway consultation response dated 13th September 2016 (**Appendix 1**) clearly states that the proposal is for “*Erection of industrial unit and **repositioning of site access***” (emphasis added) and goes on to include the following comments:
- “Highways Development Management offers no objection to this proposal subject to the applicant providing swept path analysis drawings demonstrating that the turning head proposed is sufficient for vehicles to be able to turn and egress the site in a forward gear.... This can either be provided at application stage or dealt with via... condition”.*
- 3.2 The highway authority suggested that the reason for imposing such a condition would be to “*ensure an appropriate, safe and efficient layout in terms of highway safety*”. The highway authority’s insistence that vehicles should be able to turn within the site and leave the site in a forward gear confirms that it did not want to see vehicles reversing onto Spa Fields from any part of the Property, which is contrary to any suggestion that the Site Entrance was ever considered to be a turning facility for users of Spa Fields.
- 3.3 There was no suggestion in the highway authority’s consultation response of 2016 that any part of the existing Site Entrance within the Property was considered to be highway at that time, nor any suggestion that there would be any requirement to stop up any existing highway nor provide any turning facility for public use as a result of the development proposal.
- 4. The 2021 Application**
- 4.1 An email from the Council’s highway registry team dated 26th January 2021 attached an undated plan “*showing the extent of adoption on Spa Fields coloured green*” (**Appendix 2**). The section of Spa Fields abutting the Property and leading up to the boundary of the Daval Furniture Factory (which is to the north-east / east of the Property) was shown shaded green, and the Site Entrance was shown shaded red – the Site Entrance as shown on that plan incorporates a small part of the neighbouring Vanguard premises. The response goes on to state:
- “Spa Fields did extend a further 110 metres westerly² into a turning head when built but this was stopped up in 1987 when that area was developed. I believe the turning head you are proposing to move was a planning requirement when the original one was stopped up as shown on planning plan. I have no record that this was adopted but would consider it to be part of the public highway and would require a stopping up order if you are proposing to relocate it”.*
- 4.2 Two other plans were attached to the Council’s highway registry team’s email of 26th January 2021, one of which is date stamped both 10th July and 12th November 1987, which shows the extent of highway which was proposed to be stopped up at that time, hatched in black. That length of the then ‘New Street’ which was proposed to be stopped up appears to fall within the boundary of what is now the Daval Furniture Factory site. A third attachment to the email named “*Planning plan*”

² It is considered likely this should state “easterly” rather than “westerly”.

outlined the site which included what is now the Daval Furniture Factory site, but also included part of Spa Fields and part of the Property (though not the Site Entrance – please see further at paragraphs 5.5 and 5.6 below). (These three plans are also enclosed in **Appendix 2**).

- 4.3 The highway authority's response to consultation on the 2021 Application dated 7th April 2021 (**Appendix 3**) includes the following comments:

"To facilitate the positioning of the proposed building, the existing site entrance/exit is to be relocated centrally within the site frontage. These proposals result in the loss of the existing turning head to Spa Fields which is not considered acceptable....

Highways Development Management (HDM) have concerns regarding these proposals as follows...

The turning head at the end [of] Spa Fields is part of the public highway and HDM would object to the loss of this existing turning facility. Whilst HDM have no objection to the turning heads being repositioned it must be retained as a turning facility to Spa Fields....

In summary, these proposals in their current form are considered unacceptable to HDM because of the proposed removal of the existing turning head to Spa Fields".

- 4.5 The highway authority's response to consultation on the 2021 Application is in conflict with the response to consultation on the 2016 Application, which sought to prevent reversing on to Spa Fields from the application site.

5. **The 1987 Permission – the site which is now the Daval Furniture Factory site**

- 5.1 In September 2021 an engineer in the Council's highways department contacted the highway registry team and was again advised *"I believe the turning head in question was a planning requirement (see Highways Report) when the original one was stopped up and is shown on planning plan"*. However, on this occasion the highway registry team's reply went on to state *"This has been built and open to public use for over 20 years and although I have no record that this was adopted, I would consider it to be part of the public highway"*. (**Appendix 4**). The 'Highway Report' referred to is also contained in **Appendix 4**.

- 5.2 The Highway Report refers to 'map 1' and 'map 2' which appear to be two of the plans already supplied by the Council (contained within **Appendix 3**). The Highway Report recommends the closure of a section of 'New Street' shown hatched on 'map 1' to accommodate a new factory development in the location shown on 'map 2' (where the Daval Furniture Factory is now located). The Highway Report states that there was originally a turning circle on that land. 'Plan 3', which apparently shows the site layout, has not been supplied. The Highway Report concludes by recommending that no objection is raised to the closure of the relevant section of New Street *"subject to the condition that a new and suitable turning facility is to be provided at the severed end"*.

- 5.3 The Highway Report does not provide any planning application reference number but does name the developer as P Drake (Golcar) Ltd which has enabled a search of planning applications on the Council's website, which has in turn revealed planning permission reference 87/62/01634/C1, which granted permission for *"erection of single storey factory/extension"* (**"the 1987 Permission"**). This appears to be the planning permission referred to in the Highway Report.

- 5.4 The decision notice and plans relating to the 1987 Permission are enclosed (**Appendix 5**). The planning permission was granted on 29th May 1987 or 2nd June 1987 (it is date stamped twice). Condition 6 makes reference to a requirement for a 1.8-metre-wide footway to be constructed *"all around the new highway turning head concurrently with the development taking place, unless otherwise agreed in writing by the Local Planning Authority"*. The plans show a new turning head and contain an annotation describing *"new turning head in accordance with highway design guide"*.

However, the turning head is located to the east of the Site Entrance and is predominantly within the Vanguard premises. It is not in the location of the Site Entrance.

- 5.5 The land around which the Council has plotted the site location of the 1987 Permission also illustrates that the proposed new turning head was not in the same location as the Site Entrance (**Appendix 6**).

6. The 1994 Permissions – the Property and other land (including the Vanguard premises)

- 6.1 The Council has supplied planning permission 94/62/90674 dated 6th May 1994 (“the **May 1994 Permission**”) which granted permission for “*change of use to storage and distribution depot*”, together with the ‘file notes’ which include the highway services consultation response. The Council has also similarly supplied planning permission 94/62/91805/WI dated 12th August 1994, which granted permission for “*erection of a storage shed*” in the location of the current Vanguard building (“the **August 1994 Permission**”). (Together “the **1994 Permissions**”; **Appendix 7**). The red line site boundary plans relating to the 1994 Permissions included the Property and other land (including the Vanguard premises).

- 6.2 There is no indication on any of the plans relating to the 1994 Permissions that any new turning head in the location shown in the 1987 Permission documentation had been provided as at the date the 1994 applications were submitted. Had the turning head shown on the plans relating to the 1987 Permission been provided by that time, given its location appears to be within the red line site boundary relating to the application site identified in the 1994 Permissions documentation, it would be expected to be referenced in the 1994 Permissions documentation.

- 6.3 The Site Entrance is indicated on plans relating to the 1994 Permissions and is annotated as “*proposed access*”. There is no reference to it being a proposed turning head nor to it being required to be dedicated as highway; it sought only to serve the development in the location of the existing Vanguard building.

- 6.4 Condition 9 attached to the May 1994 Permission states that “*the development shall not commence until the access shown on the approved plan has been provided to the satisfaction of the Local Planning Authority*”. This clearly describes the Site Entrance as an access and not a turning head, and demonstrates that the Site Entrance had not been provided as at the date of grant of the May 1994 Permission, some several years after the grant of the 1987 Permission. The equivalent condition is not imposed on the August 1994 Permission. This could indicate that the Site Entrance may have been constructed sometime between May and August 1994, but it is not certain.

- 6.5 Condition 10 attached to the May 1994 Permission states “*Nothing shall be permitted to be planted or erected within a strip of land [3] m deep measured from the carriageway edge of New Street along the full frontage of the site which exceeds 1m in height above the level of the adjoining highway*”. The references to “*full frontage of the site*” and “*adjoining highway*” demonstrate that only New Street, but not any land within the site, was highway at that time.

7. Section 31 Highways Act 1980 - dedication presumed after public use for 20 years

- 7.1 References to a twenty-year time period included in the correspondence from the Council’s highway registry team of 2nd September 2021 demonstrate that they consider the Site Entrance may have become highway as a result of the operation of section 31(1) Highways Act 1980 (“the **1980 Act**”), in the event it has not been expressly dedicated and accepted. Section 31 (1) states as follows:

Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.

7.2 However, subsection 1A of the 1980 Act and section 66 of the Natural Environment and Rural Communities Act 2006 (“the **2006 Act**”) together prevent the creation of new public rights of way for mechanically propelled vehicles via operation of presumed dedication after commencement of section 66 of the 2006 Act, which was 2nd May 2006.

7.3 Consequently, given the Site Entrance was constructed no earlier than 1994, such that twenty years use cannot have accrued by 2nd May 2006, by which point section 66 of the 2006 Act was in force, it cannot have become a highway by virtue of operation of section 31(1) of the 1980 Act.

8. Conclusions

8.1 The Council’s conclusion that the Site Entrance is highway and the basis on which that conclusion has been drawn is unfounded.

8.2 In order for a highway to be created there must be dedication of land and acceptance of it as highway. No evidence of dedication (express, presumed or implied) has been supplied. No evidence of acceptance via use of the manner required has been supplied.

8.3 The Site Entrance was not required to provide a turning head as a result of the 1987 Permission. The new turning head required as a result of the 1987 Permission was in a different location (and there is no evidence that it was ever provided).

8.4 The Site Entrance was not required to provide a turning head as a result of the 1994 Permissions. It was merely required to provide a new site access for the purpose of serving the development permitted by the 1994 Permissions only.

8.5 The documentation relating to the 1994 Permissions demonstrates that the Site Entrance had not been constructed as at May 1994. Consequently, the Site Entrance cannot have become highway by virtue of section 31(1) Highways Act 1980 due to the operation of section 31(1A) of the 1980 Act and section 66 of the 2006 Act, which as of 2nd May 2006, prevented the creation of any vehicular highway via presumed dedication. Twenty years use as required by section 31(1) of the 1980 Act – irrespective of whether or not it was use of the manner which could potentially give rise to an argument that the Site Entrance had become highway (which is disputed) – could not have accrued between 1994 and 2006, by which point dedication by virtue of use was no longer possible.

8.6 The Council did not consider that the Site Entrance was highway at the time of determining the application which resulted in the 2016 Permission. Even if the Site Entrance had been used in such manner which could potentially give rise to an argument that the Site Entrance had become highway since the grant of the 2016 Permission (which is disputed), the above-mentioned legislation would again prevent it being created as vehicular highway via presumed dedication.

8.7 The Site Entrance is not highway; it is private land which forms part of the Property.