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Town and Country Planning Act 1990

PLANNING STATEMENT

**Application by Mr. Stephen Michael Smith and Mr.
Thomas Luke Smith**

For

**Replacement of hardstanding with new hardstanding
(retrospective)**

**ON LAND ON PART OF COCKLEY WOOD, LILEY LANE,
GRANGE MOOR, WAKEFIELD, WEST YORKSHIRE, WF4
4EN**

February 2021

1. Introduction

- 1.1 This application for retrospective planning permission for an engineering operation to replace existing hardstanding following what the applicant believed they could do without the benefit of planning permission. The application is to simply regularise the position.
- 1.2 Whether or not the development amounted to repair, the Applicant has now received an opinion following a Decision Letter from the Secretary of State following an enforcement notice appeal (Ref: APP/Z4718/C/20/3257926)(the '**Enforcement Notice Appeal**') relating to an enforcement notice concerning a change of use and not operational development that the works carried out amount to an engineering operation without planning permission.
- 1.3 For clarity, this application relates only to operational development amounting to what is considered an engineering operation and not any associated change of use or other operational development of the land which would otherwise require planning permission.
- 1.4 For information, the Enforcement Notice Appeal Decision is likely to be challenged in the High Court shortly, as pre-action correspondence to the Secretary of State has been issued. In the meantime, this Application is intended to regularise the unrelated position of only operational development of replacement hardstanding with other hardstanding on the Site.

2. Relevant Site and Planning History

- 2020/92579 - Change of use from woodland to outdoor wedding venue with associated development REFUSED – currently being Appeal (Ref: APP/Z4718/W/21/3268353) ('**Section 78 Appeal**'))
- 2019/93978 – Change of use from woodland to outdoor wedding venue with associated development REFUSED
- Appeal against Enforcement Notice (COMP/19/0170) for alleged unauthorised change of use to wedding venue (the '**Enforcement Notice**') – Appeal REFUSED (PINS Reference: APP/Z4718/C/20/3257926)
- COMP/19/0170 – Alleged unauthorised change of use to wedding venue
- 2017/92218 – Erection of shelter/stable and fence and formation of hardstanding APPROVED (Nineveh)

3. The Site

- 3.1 The site area, as shown on red line of the associated Location Plan included at **Appendix 1(a)** (the '**Site**'), is 0.2ha in area, representing approximately 5% of part of a wider site known as Cockley Wood, which is a private woodland that is not open to the public. The Site lies to the north/north east of Liley Lane (the B6118), approximately 0.8km from the village of Grange Moor to the south-east.
- 3.2 Outside of the red line of the Site itself, the whole of the wider woodland extends to approximately 4ha and forms part of the land ownership of Nineveh, a dwelling which is situated immediately to the south/south-east of the woodland, which is owned and lived in by the Applicants, who are now joint owners of the Site. The woodland has been in the ownership of Nineveh for many years, but the area to the frontage of the wood alongside Liley Lane was previously used as a Council Highways waste tip site and a salt gritting facility until around the 1980s.

- 3.3 In order to protect privacy and to provide some security, a fence has already been provided along the boundary of the site with Liley Lane, which was the subject of a previous planning permission, also including stables at the north eastern side of the woodland (LPA Ref: 2017/92218). Vehicular access to and from the Site is directly from Liley Lane, with the track through the woodland that forms the major part of the Site to the said stables and hardstanding area, allowing access to and from the Stables.
- 3.4 The Site is in the Green Belt as identified in the Local Plan. There are no other designations on the Site, save for a woodland Tree Preservation order ('TPO') as of December 2019.

4. The Application

- 4.1 The application (which shall be referred to as the '**Application**') is development by the replacement of previous mainly tarmacadam hardstanding (with some concrete) with the present crushed stone and tarmac scalping. The Site Layout Plan plan of the Site and the area of the engineering operation is attached at **Appendix 1(b)**. In simple terms: the replacement of previous hardstanding with new hardstanding. As the development has been found by a SoS Planning Inspector that it may go beyond mere repair/replacement, it has been found to be a low-level engineering operation requiring planning permission and therefore this application seeks retrospective consent for such works to regularise that position.
- 4.2 The Statutory Declarations at **Appendix 2** (2(a) to 2(e), inclusive) identify that hardstanding was present throughout the Site for decades. This is accepted by the Council and the Inspector in the Enforcement Notice Appeal, which relates to the separate proposed change of use and the Decision Letter for which is attached at **Appendix 3**.
- 4.3 However, the Applicants believed that the hardstanding could be replaced with the present crushed stone aggregate and scalping material without applying for planning permission. That has been found, as can be seen from **Appendix 3**, to be linked to the wider change of use and other associated operational development. However, again, this application is only for the actual engineering operation being the replacement in the surface of the pre-existing hardstanding, i.e., replacing hardstanding with new hardstanding.

5. Determination

- 5.1 Applications of this type must be determined in accordance with the Development Plan, unless material considerations indicate otherwise (Section 38(6) Planning and Compulsory Purchase Act 2004). The Statutory Development Plan for the area is the Kirklees Local Plan.

Relevant Local Plan Policies

- 5.2 The relevant local plan policies are:
- LP 1 – Achieving sustainable development
 - LP 24 – Design
 - LP30 – Biodiversity and geodiversity
 - LP33 – Trees
 - LP53 – contaminated and unstable land

5.3 Local Plan policies concerning development in the Green Belt, like many Local Plans, accord with and reflect those in the National Planning Policy Framework ('NPPF') and shall be identified separately below.

5.4 The relevant local plan policies, with which the development accords, are briefly covered in the following.

LP 1 – Achieving sustainable development

5.5 LP1 states that proposals that accord with other policies in the Kirklees Local Plan (and, where relevant, with policies in neighbourhood plans) will be approved without delay, unless material considerations indicate otherwise. Where there are no policies relevant to the proposal at the time of making the decision then the council will grant permission unless material considerations indicate otherwise – taking into account whether:

a. any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole; or

b. specific policies in that Framework indicate that development should be restricted.

5.6 There are no adverse impacts of granting planning permission; this is again the replacement of hardstanding with hardstanding.

LP 24 - Design

5.7 This is again simply the replacement of hardstanding with hardstanding. Whilst the majority of Policy LP 24 will not apply, the key consideration is whether the development respects and enhances the character landscape.

5.8 Undoubtedly it is the case that the development respects the character of the landscape, as it is simply hardstanding replacing hardstanding, but in fact with more appropriate material which respects and better integrates into woodland and wider landscape. It will also be identified below that the Secretary of State Inspector has alluded in their Decision Letter in relation to the Enforcement Notice Appeal that the engineering operation of the replacement hardstanding on its own does not amount to inappropriate development in the Green Belt and that openness would be preserved.

5.9 The track through the woods to the far end has been used for decades and is presently used to access and egress the stables beyond the woods, as is acknowledged in the delegated officer report accompanying permission reference: 2017/92218, which resulted in the stables and hardstanding beyond the wood to its far east side, as well as the 2m high fence covering the Site and the wood as it abuts Liley Lane. The track is obscured from view from along Liley Lane by Cockley Wood and the front of the Site is mainly obscured by the large fence which was granted planning permission by virtue of 2017/92218. There is therefore no harm the wider streetscene.

LP 30 – Biodiversity and Geodiversity

5.10 A Biodiversity Enhancement Plan and associated Biodiversity Metric 2.0 calculations have been submitted as part of the previous application and the Enforcement Notice Appeal. This information can be found at **Appendix 4(a), 4(b) and 4(c)**. 4(b) and 4(c) represent the calculations made on the current and 'worst scenario' baselines. Albeit this does relate to the previously applied for wider change of use, the development for only the replacement of

hardstanding with hardstanding, cannot be said to have any negative effect on Biodiversity Net Gain.

- 5.11 The previous bat survey and associated day roost survey are provided at **Appendix 5** and **Appendix 6** respectively. Although these again relate to the previous application for a permanent material change of use, it is clear that the Council's duty in relation to protected species, specifically bats here, is discharged and there is no adverse impact on biodiversity.
- 5.12 More specifically, this development will result in no significant loss or harm to biodiversity and with the loss of dead and deteriorating trees, which there is no question was growing through hardstanding, as identified in **Appendix 2**. Furthermore, whilst the retention of defective or dead trees may (though not necessarily always will) bring some biodiversity benefits, for example saplings and helping to regenerate the wider woodland, this is not the case here, because such trees were growing through historic hardstanding and not all usual natural woodland, obviously with entirely different ground conditions within the Site area.
- 5.13 The development does not prevent and thereby safeguards the function and connectivity of the Kirklees Wildlife Habitat Network. There are accordingly no negative effects on ecology and biodiversity because of the development. Hardstanding has been replaced with more appropriate hardstanding. This is a useful segue into the position on trees.

LP 33 – Trees

- 5.14 The Council will not grant planning permission for developments which directly or indirectly threaten trees or woodlands of significant amenity. All works to trees that have been carried out were done so prior to a full area Tree Preservation Order ('TPO') being made.
- 5.15 Contrary to what has been stated by the Council and others previously stated, the trees removed were not mature trees, or valuable trees of significant amenity and other value. They were instead dead and deteriorating trees that had previously fought through and against hardstanding, which the evidence in **Appendix 2** now shows were removed on advice from a Tree Surgeon due to their state and impact.
- 5.16 No further trees have been removed or need to or will be removed to accommodate this development of replacing the hardstanding with new hardstanding. All trees are in event now protected by the woodland TPO. For completeness, contrary to the Council's earlier position (which in fairness it did eventually resile on), Cockley Wood is not a Local Wildlife Site, does not contain any ancient or veteran trees and is clearly neither ancient woodland nor are there any plantations on ancient woodland sites (PAWS).
- 5.17 There is no further tree loss as a result of the retrospective grant of planning permission for this development, which is again simply replacing hardstanding with hardstanding.
- 5.18 Furthermore, it will be shown in 'Other Material Considerations and Information', below, as well as 5.9, above, that the 'track' that forms part of the Site through the wood had been in existence for a long time (again, decades, not months or years) and the introduction of new crushed stone aggregate was even facilitated by officers of the Council.
- 5.19 The Arboricultural Impact Assessment and Woodland Management Plan associated with the previous applications, whilst although not being directly relevant as they relate to a material change of use of the Site and beyond its red line, are attached as **Appendix 7** and **Appendix 8** respectively for completeness and context.

LP53 – contaminated and unstable land

5.20 Previous applications in relation to wider land including the Site have shown no issues in relation to contamination, which has also been confirmed by the respective Environmental Health Consultee officers at the Council.

5.21 The Phase 1 Environmental Desk Study is attached as **Appendix 9** for ease of reference.

National Planning Policy Framework ('NPPF')

5.22 The NPPF is a key material consideration in the determination of this Application. Paragraph 11 of the NPPF applies a presumption in favour of sustainable development. Part (c) and (d) of paragraph 11 states:

For decision-taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

5.23 The Site is within the Green Belt. Paragraphs 133 and 134 of the NPPF identifies the purposes of including land within the Green Belt.

5.24 Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt.

5.25 However, for the purposes of this Application, Paragraph 146 of the NPPF states:

146. Certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These are:

a) mineral extraction;

b) engineering operations;

c) local transport infrastructure which can demonstrate a requirement for a Green Belt location;

d) the re-use of buildings provided that the buildings are of permanent and substantial construction;

e) material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds); and

f) development brought forward under a Community Right to Build Order or Neighbourhood Development Order

The Application on the Site, where not found to be repair/restoration, constitutes an engineering operation. Accordingly, it falls to be considered whether the Site and the engineering operation (on its own, and not part of a wider development) preserves openness and does not conflict with the purposes of including land within the Green Belt.

- 5.26 The Application for development is the engineering operation of removing pre-existing hardstanding and replacing it with the present crushed stone scalplings, with very minor contouring and finishing.
- It is (or was) replacing hardstanding with hardstanding. This replacement, which has been found to be an engineering operation, cannot of itself, spatially or visually, be reasonably argued to impact on openness here.
- 5.27 Indeed, an appeal decision (Ref: APP/Z4718/W/19/3232011) on a completely open site just 350 metres north of the Site, the Secretary of State Inspector has permitted the restoration of previous agricultural or derelict land for future agricultural use, which involves the significant importation of 90,000 (ninety thousand) tonnes of topsoil and subsoil in the Green Belt, on land that is completely open and not for example contained within a woodland setting, concluded that openness was preserved in that case. A more significant and impactful engineering operation in the Green Belt compared with this Application.
- 5.28 The impact on openness may be assessed based on spatial and visual perspectives. Spatially this development on the Site is of no greater effect than what existed and visually the development is largely contained within the woodland or is largely shielded from view by the 2m fencing permitted and installed pursuant to part of 2017/92218, as described at 5.9, above. The Inspector in the Decision Letter (paragraph 50) following the Enforcement Notice Appeal, has stated that there were/are “...comparisons with the current case with respect to engineering operations...”. However, in the Enforcement Notice Appeal, the Inspector took account of the wider proposed development of a permanent material change of use to a wider part of the Site to a woodland wedding venue with associated operational development. This is of course not the case here, as this is simply a standalone application for retrospective consent to regularise the engineering operation of replacement of hardstanding with new hardstanding and nothing more.

Other Material Considerations and Information

- 5.29 Appeal APP/Z4718/W/19/3232011 for the open Emley Fields Site just 350m north of the Site is identified above at 5.28 and does not require elaboration here. This is a significant material consideration. The associated decision letter for that appeal is attached as **Appendix 10**.
- 5.30 The development does not at all affect or impact on the rest of Cockley Wood, which has been a feature of the Enforcement Notice Appeal and may feature again in the present Section 78 Appeal.
- 5.31 Further, for the avoidance of any doubt and to assist, the Application is an application for the retrospective replacement of the previous hardstanding with new hardstanding on the Site. As this is a standalone application simply for the retrospective engineering operation and is not part of any wider development proposals for a material change of use and associated operations, it is not possible to say that this is a “similar application” for the purposes of Section 70A or 70B of the Town and Country Planning Act 1990 (‘TCPA’).
- 5.32 The development and the land to which this Application and previous applications (including a deemed application as part of the Enforcement Notice Appeal) relate are not the same. For completeness, the Enforcement Notice has been found to relate entirely to a material change of use of a wider site of which the current Site is a part. Accordingly, in addition to

Section 70A and 70B, the Enforcement Notice is not a “*pre-existing enforcement notice*” for the purpose of Section 70C TCPA, as it does not relate to any operational development.

- 5.33 However, the Council is unable to decline to determine this Application for the retrospective operation to replace hardstanding with hardstanding. A standalone application on this Site for the engineering operation to replace the previous hardstanding with new hardstanding has never been made. This Application must accordingly be determined in the usual way on accordance with Section 70(1) TCPA.
- 5.34 Discretionary powers in the TCPA to decline to determine applications under Section 70A, 70B and 70C are raised here, because it is anticipated that the Council may have looked to avoid determining this application and do so without notice. This is because the grant of this Application would have the effect of partly altering the Enforcement Notice. This Application where granted will indirectly impact on the requirements of an Enforcement Notice, insofar it will mean that the present crushed stone hardstanding on the Site would remain, notwithstanding the fact that at present other items are required to be removed.
- 5.35 For the avoidance of any doubt, the law is clear that the effect on alteration of an enforcement notice is not a relevant material consideration and must not be taken into account by the decision-maker: *R. (ex p. Gill) v Central Bedfordshire Council [2015] EWHC 3458 (Admin)*. Such a consideration is therefore entirely irrelevant for the purposes of this Application, as has been established in law.
- 5.36 Although not a relevant material consideration and for information only, at the time of submission, pre-action correspondence is currently before the Secretary of State challenging the outcome of the Enforcement Notice Appeal, which presently is likely to be considered by the High Court under Section 288 and 289 of the Town and Country Planning Act 1990. However, a response to pre-action correspondence has not been received at the time of submission.
- 5.37 Furthermore, one of the applicants, Mr. Stephen Michael Smith, is willing to put in a Statutory Declaration that during a site visit from the then case officer determining application ref: 2017/92218, Ms. Nia Thomas, did state that new crushed stone and tarmac scalping could be placed on the track through the wood without recourse to planning.

6. Conclusion

- 6.1 This development seeks retrospective consent for only the engineering operation to replace previous hardstanding with new crushed stone hardstanding within the Site.
- 6.2 The presence of previous hardstanding and the works carried out are as described in Appendix 2, for which there is no evidence to the contrary and no doubt.
- 6.3 This engineering operation does not amount to inappropriate development in the Green Belt and preserves openness.
- 6.4 The development on the Site, albeit retrospective, accords with the statutory development plan, being the Kirklees Local Plan, as well as the NPPF. There are no material considerations to indicate that this Application should not be granted. Accordingly, this application should be approved without delay.
- 6.5 The applicant is of course willing to provide any further information if required.

Schedule of Appendices

Appendix 1(a)	Site Location Plan
Appendix 1(b)	Site Layout Plan
Appendix 2(a)	Statutory Declaration Thomas Luke Smith
Appendix 2(b)	Statutory Declaration Stephen Michael Smith
Appendix 2(c)	Statutory Declaration Keith J Buckley
Appendix 2(d)	Statutory Declaration Luke Hilton
Appendix 2(e)	Statutory Declaration Alexander Jebson
Appendix 3	Decision Letter Enforcement Notice Appeal 3257926
Appendix 4(a)	Biodiversity Enhancement Plan Jan 2021
Appendix 4(b)	Biodiversity Metric 2.0 Calculation ordinary scenario
Appendix 4(c)	Biodiversity Metric 2.0 Calculation worst case scenario
Appendix 5	Bat Activity Survey July 2020
Appendix 6	Trees Bat Roost Survey Jan 2021
Appendix 7	Aboricultural Impact Assessment Aug 2020
Appendix 8	Woodland Management Plan Aug 2020
Appendix 9	Phase 1 Desktop Environmental Survey Report Dec 2019
Appendix 10	Appeal Decision Ref: 3232011 – Emley Fields, Liley Lane Grange Moor