Save Northorpe residents are very disappointed to note further unlawful behaviour by Kirklees Council regarding the Proposed development of 44 dwellings – Northorpe Lane, Mirfield – App No. **2021/91914** / 2019/ 92378
We make objection to your *planning permission application 2023-91997,*

In the covering letter from Newett Homes of 26 03 23 the developer states that
"We write to submit an application for the approval of details reserved by conditions attached to the planning permission 2021/62/91914/E …
Approval is sought for the discharge of the following pre-commencement conditions : ….
8 (layby works)

The drawing that appears in document 2023-91997_Plan+General_996939 referring to point 8 (layby works) **in no way satisfies the precondition regarding the layby**

All that is provided in the layby section is a general plan, with no engineering or detailed drawings showing how the layby is to be created.
The work of creating the layby is not general "earthwork" or work not requiring more detailed drawings.
The excavation of the raised earth or bank making up the "verge" requires care and calculation for 3 main reasons:
(i) to ensure that the construction / excavation works do not intrude upon land owned by the Northorpe Hall Child and Family Trust, which is not highways land and is simply land owned by a private owner, interference with which is therefore a trespass
(ii) to ensure that the ancient dry stone wall located very close by, namely a few metres higher "up" the verge, is not disturbed or structurally undermined by construction / excavation works (3)for the layby
(iii) to ensure that the grass verge is left undisturbed, being a protected species

Thus the plans provided have wholly failed to in any way satisfy the pre-condition regarding the layby in two ways
(1) the precondition, insofar as it may relate to provision of layby construction plans capable of implementation, has not given any details at all let alone adequate details of safe construction of they layby as per items (i) (ii)and (iii) above
(2) the precondition, in previous versions of the planning applications, and in officers' reports prior to committee hearings leading to approvals of those applications, ***was for the layby to be successfully (and legally) constructed before any building works at all could be initiated.***
This is obviously very different from a pre-condition that a layby construction plan should be created before any building works begin, a pre-condition you have in any case breached under (1)(i)(ii) (iii) as above.

We note that your complete violation (as from 15/06/23) of what the Grampian condition has been said/promised to be all along, namely a precondition that no (other) works at all were to take place until the layby was successfully contructed, was reflected in your Decision Notice *paragraph 8 dated 16/06/23 (substantially the same as in paragraph 8 of the Delegated Report of 15/06/23) which said*

> *8. No development shall take place until a full scheme detailing arrangements, specification and delivery for the layby opposite the site entrance has been submitted to and approved in writing by the Local Planning Authority.*

The plan you have disclosed **in no way satisfies this… A plan showing no detail whatsoever cannot in any way be deemed to demonstrate "a full scheme detailing arrangements"
** i.e. disclosed with the covering letter from Newett Homes refers to, at point 8 regarding the layby, to Item 22—223—100—001 rev A – General Arrangement , elsewhere referred to as 2023-91997_Plan+General_996939

Yet again your conduct has descended into a farce.

Failure to provide proper layby construction plans
We note your Mr Khatibi's further objections to this scheme 02 08 23 17.14, in which he says inter alia that I would like to advise that conditions 4&5 (Retaining walls and Structures) can not be discharged, as the required information has not been provided. We would make a similar point about condition 8, and would ask you to consult him about the maintenance

of the structural integrity of the drystone wall immediately above the proposed layby, given the need to excavate tons of earth, and the need to not disturb facts with which he may not be familiar due to your failure to notice/investigate them.

www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/filedownload.aspx?application_number=2023/91997&file_reference=1001900

Even more importantly we attach a letter from Mr Khatibi of the Structures section of the Highways Department, dated 23 june 2021 where he said the following :

Please arrange for the inclusion of the following conditions for the above:

1. ***Before the development commences a scheme detailing the location and cross sectional information together with the proposed design and construction details for all new retaining walls/ building retaining walls adjacent to the existing/ proposed adoptable highways including any modifications to the existing retaining wall supporting Northorpe Lane shall be submitted to and approved by the Highway Authority in writing*. The approved scheme shall be implemented prior to the commencement of the proposed development and thereafter retained during the life of the development.**

Even more tellingly he goes on to say the following, and why have you completely ignored the words of your own expert who will be responsible for implementing the scheme?

2. . **life of the development. No development shall take place until the design and construction details for all temporary and permanent retaining structures supporting the embankment within the site have been approved in writing by the Highway Authority. The details shall include a design statement, all necessary ground investigations on which design assumptions are based on, method statements for both temporary and permanent works, removal of any bulk excavations, a full slope stability analysis together with structural calculations and all associated safety measures for the protection of adjacent public highway. All highway retaining structures shall be designed and constructed in accordance with the approved details …..**

Either Mr Khatibi's advice has been ignored, or the plans included have totally failed to show "cross-sectional" information or any information of any kind regarding the "existing retaining wall supporting Northorpe Lane".
The Scheme is also according to Mr Khatibi, and conditions appearing in previous officer reports and permissions granted, to be **implemented prior to the commencement of the proposed development**
i.e. the layby is supposed to be constructed prior to the proposed development, not just plans for this to be created(which you have completely failed to do either in any case)

Illegal failure to disclose Counsel advice on highways point

We note that relating to point 1(i) above, namely your proposed illegal conduct in proposing to utilise any part of the verge as highways land when you have done nothing to show that it is, that your failure to disclose your counsel's opinion, when we have disclosed ours, is ongoing.
You are hiding behind a technicality of claimed legal professional privilege in not disclosing your Counsel's opinion, when a lengthy consultation process on all matters including the highways land/layby issue is supposed to occur.
You are deliberately keeping key information secret that should be subject to public consultation.
In any case, by purporting to discuss your counsel's advice, and the highways legal position generally in the Committee meeting of 14 12 23, you waived legal professional privilege and are not entitled to rely on it.

Plainly in the interests of democracy, given that Counsellors in the Committee meeting expressed a keen interest in the Counsel's opinion you have had and wanted to see it, it should be disclosed. It is a travesty of the appearance and actuality of any supposed democratic process that this document has been actively concealed.

We have been upfront with disclosing our Counsel's opinion as long ago as 12 02 21. That opinion comprehensively demolished a number of utterly baseless and frankly silly points that David Reid of Kirklees Highways sought to raise, with which no judge would have any truck. The Council have not raised a single credible point to counter our arguments, let alone any historical evidence. Bearing in mind the Council's case on why the verge is supposedly highways land is entirely historic (and has to be due to being barred from using legislation for trying to use the 20 year user rule) it is wholly disgraceful that the Council have never had a single historical point in favour of your argument at any time. Further, records you have sought to adduce have all been shown to either not exist in your possession when you had claimed they did, or to not say what you said (e.g. the 1854 map, which favours the residents' case, and the claimed internal pre 1925 Council records, which turned out not to exist)

Your failure to disclose your Counsel's advice crowns several years of deliberate obfuscation and secrecy in the correspondence residents have had with planning and highways. This falls very far short of the conduct both of what is reasonably to be expected of individual officers, as well as Kirklees Planning and the Council generally.

On the highways point, you are hardly in position to denounce resident's historico-legal arguments, because they are based (in rebutting your flawed argument about the positioning of the drystone wall by its original creator) upon the assessment of an expert appointed by Kirklees Planning Department itself, which resoundingly (on p2 of the Thornborrow report of 1993) dated the wall to at least earlier than 1704, which is at least 30 years prior to any mention of Northorpe Lane or any precursor Gill Lane in any historical documents whatever, when all the other roads persisting in the locality today were mentioned in those historical documents as existing. A reasonable person would have to take that as very good evidence that Northorpe Lane could not have existed prior to the wall, and hence the wall could not have been built with reference to Northorpe Lane's position. The fact that the position is so clear is no doubt why the planning and highways departments have been so unhelpful and persisted with asserting flawed analysis and hopeless irrelevant points rather than address that main issue, to which the Council/Developer can simply have no answer.

The Statement to the Council's own Definitive Map, maintained as accurate under statutory obligations, says categorically that the verge is not part of the highway, in its description of where the footpaths go. It could not be clearer, and yet Highways' response is to conveniently ignore this.

Illegal failure to disclose topographical survey information

The developer and the council will of course have access to a detailed topographical survey which is almost certain to shed light either way on the issue of the location of the trust verge versus the "non trust owned verge". This a non point since the "non-trust owned verge", apart from being a very small area, is not highways land either, and is more in the nature of public trust of land indeed if it is any more than common land with no identifiable owner.
Since this is the Council's own point with the slightest interest, it behoves the Council in the interests of fairness and ensuring that the Developer is acting legally, to disclose any information from the topographical survey which will inform the debate as to where the edge of the landowners land falls and whether that completely includes the proposed 2.6m incursion into the verge proposed for the layby (and we believe that the entire verge may well fall within the landowning Trust's plot as disclosed on its HMLR title plan).
But the Developer / Council have access to this more detailed information, to which the public do not. But any reluctance to share it suggests that it must support the residents' case, which in litigation would oblige the council/developer to disclose it.
Hence any failure to disclose it suggests a lack of the required transparency for proper democratic conduct.

Risk of undermining the Drystone wall at Northorpe Hall

Given the inevitably that work on the verge to create the layby would inevitably potentially undermine the drystone wall located up-verge of where the parking spaces are said to be moved to, it is truly amazing that no work has been disclosed in drawing/maps disclosing how this is to be achieved without disturbing that wall and ensuring it will not come down or provide a hazard.
Clearly excavation of many tons of earth immediately below the wall, in order to carve out the parking space locations from the bank, will be very risky in this regard.

Regarding the this has only recently been definitively identified, but residents are in possession of firm witness and photographic/video evidence of the existence and the RSPCA are being informed forthwith.

hence any subsidence of that could have very serious consequences which, properly instructing yourselves, you should be keen to avoid

Regards,

For and on behalf of Save Northorpe.
I do not wish my personal details to be published on this objection.

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Included Khatibi letter 23 06 21 - KC highways Structures.PDF _____ < follows >

From: Farhad Khatibi

Subject: FW: 2021/91914 Land to Rear of 28 Northorpe Lane, Mirfield
Date: 14 January 2022 19:06:56

From: Farhad Khatibi
Sent: 23 June 2021 12:26

Subject: RE: 2021/91914 Land to Rear of 28 Northorpe Lane, Mirfield

Please arrange for the inclusion of the following conditions for the above:

1. Before the development commences a scheme detailing the location and cross sectional information together with the proposed design and construction details for all new retaining walls/ building retaining walls adjacent to the existing/ proposed adoptable highways including any modifications to the existing retaining wall supporting Northorpe Lane shall be submitted to and approved by the Highway Authority in writing. The approved scheme shall be implemented prior to the commencement of the proposed development and thereafter retained during the life of the development.

2. No development shall take place until the design and construction details for all temporary and permanent retaining structures supporting the embankment within the site have been approved in writing by the Highway Authority. The details shall include a design statement, all necessary ground investigations on which design assumptions are based on, method statements for both temporary and permanent works, removal of any bulk excavations, a full slope stability analysis together with structural calculations and all associated safety measures for the protection of adjacent public highway. All highway retaining structures shall be designed and constructed in accordance with the approved details and shall be so maintained throughout the life of the development unless otherwise agreed in writing by the Highway Authority.

3. Before the development commences a scheme detailing the location and cross sectional information together with the proposed design and construction details for all new surface water attenuation pipes/manholes located within the proposed highway footprint shall be submitted to and approved by the Highway Authority in writing. The approved scheme shall be implemented prior to the commencement of the proposed development and thereafter retained during the life of the development. See https://www.kirklees.gov.uk/beta/regeneration-and-development/highways-guidance-and-standards.aspx for further details.

   Important Notes:
   All new storm water attenuation tanks/pipes/culverts with internal diameter/ spans exceeding 0.9m must be located off the adoptable highway. Any decision to locate these facilities within the adoptable highway footprint must be accompanied with a full risk evaluation report with particular reference to their proposed inspection, structural assessment and maintenance regime in compliance with the CDM Regulations 2015 requirements.
   The adopting authority (i.e. Yorkshire Water) will also be required to produce and submit a legally binding agreement to the Highway Authority explicitly stating that they will be fulfilling their obligations in relation to the systematic and cyclical inspection and structural assessment of any attenuation structure located within the highway footprint, in full compliance with CS450- Inspection of Highway structures.

Regards

Farhad Khatibi

Bridges & Structures Manager
Structures Section
Highways and Operations
Kirklees Council

Environment Services I Flint Street I Fartown I Huddersfield I HD1 6LG

☏ **External:** 01484 221000 **Internal:** 74199
Mobile: None
✉ **Email:** farhad.khatibi@kirklees.gov.uk

From: Ryan Kinder <Ryan.Kinder@kirklees.gov.uk>
Sent: 22 June 2021 10:02
To: Farhad Khatibi <Farhad.Khatibi@kirklees.gov.uk>; Highways Section38 <Highways.Section38@kirklees.gov.uk>; Highways Streetlighting <Highways.Streetlighting@kirklees.gov.uk>; HighwaysSafety DevelopmentControl <HighwaysSafety.DevelopmentControl@kirklees.gov.uk>; JohnM Hinchliffe <JohnM.Hinchliffe@kirklees.gov.uk>; Landscape Streetscene <Landscape.Streetscene@kirklees.gov.uk>; Keith Bloomfield <Keith.Bloomfield@kirklees.gov.uk>; NeilJ Heppenstall <NeilJ.Heppenstall@kirklees.gov.uk>; Peter Making <Peter.Making@kirklees.gov.uk>; Sean Fisher <Sean.Fisher@kirklees.gov.uk>; Shahzad Mirza <Shahzad.Mirza@kirklees.gov.uk>; Sharon Huddleston <Sharon.Huddleston@kirklees.gov.uk>; Tim Lawrence <Tim.Lawrence@kirklees.gov.uk>; Waste Planning <Waste.Planning@kirklees.gov.uk>; PublicRightsofWay <publicrightsofway@kirklees.gov.uk>
Cc: Christopher Carroll <Christopher.Carroll@kirklees.gov.uk>; Highways DevelopmentControl <Highways.DevelopmentControl@kirklees.gov.uk>
Subject: 2021/91914 Land to Rear of 28 Northorpe Lane, Mirfield

Dear all,

Demolition of existing dwelling and erection of 45 dwellings

I would appreciate your input/comments regarding this planning application. Documents are available via the Planning Portal, via this link:

https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2021%2f91914

If you do wish to comment, it would be appreciated if you could do so on or before Tues 29th June.

Thank you in advance,

Ryan Kinder
Principal Engineer
Highway Development Management
Economy and Infrastructure – Development and Masterplanning