

# **Planning Statement**

**Wappy Spring Inn: Huddersfield Nano Park**

**Frank Marshall Estates**

**September 2024**

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## 1. Introduction

- 1.1 This Planning Statement has been prepared to consider a proposed “Nano Park” development on the site of the former Wappy Spring Inn, Lindley Moor Road, Huddersfield. The application is submitted by Frank Marshall Estates, a local developer originally founded in Brighouse, but now based in Bradford.
- 1.2 The Nano Park concept aims to fill a significant gap in the current space provision for small companies, new start-ups, and larger businesses pioneering new products or new markets. This type of space is not generally being delivered due to unfavourable economics: Higher build costs per sqm; and more fees and effort associated with letting and managing more units per acre than a larger footprint development. Due to this paucity of supply, similar developments in Bradford<sup>1</sup>, Wakefield<sup>2</sup> and Leeds<sup>3</sup> have been fully let before completion.
- 1.3 This application will provide highly flexible, short term space in a “hybrid” format- with either storage or light industrial space on the ground floor and office space above. Whilst the provision of “start-up units” is not a new concept, they are increasingly rare and the local supply in West Yorkshire is extremely poor- particularly for new stock that meets modern standards for fit out and energy efficiency.
- 1.4 The Wappy Spring Inn closed for business since Summer 2022. It will not be reopened as a public house. It was on the market for around 2 years before the applicant purchased it. There were only two interested parties in purchasing the site- one was a popular garage forecourt operator who later pulled out of the deal, and the other was Frank Marshall Estates.
- 1.5 The site is in the Green Belt, but around a third of the site is previously developed.
- 1.6 The site has a history of applications for this type of development:
- An application seeking redevelopment for industrial purposes (2021/91611) was withdrawn in Summer 2022. This was due, primarily, to a lack of agreement about the need to develop new industrial space in the Green Belt and it was not possible to agree that further time was necessary to consider that point in more detail.
  - An application for the same development (2023/93031) was refused in July 2024. The reasons stated were Green Belt, Highways, Drainage and combined Ecology / landscape / BNG issues. The applicant had focussed on the Green Belt issues, but again it was not possible to agree that further time was necessary to consider the technical aspects that were included in the refusal.
- 1.7 This further resubmission seeks to address those remaining points of concern; and to reflect the position that there is now local support for the redevelopment of this site.

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<sup>1</sup> <https://frankmarshallestates.co.uk/2019/04/01/nano-park/>

<sup>2</sup> <https://www.walkersingleton.co.uk/commercial/flanshaw-nano-park-flanshaw-way-wf2-9lp/>

<sup>3</sup> [Nano Units At Armley Snapped Up Before Completion \(yorkshiretimes.co.uk\)](https://www.yorkshiretimes.co.uk/news/local/nano-units-at-armley-snapped-up-before-completion)

- 1.8 This Planning Statement should be read alongside the Need Report and Alternative Sites Assessment, as well as the various technical reports.
- 1.9 There is a clear need for smaller business space in Kirklees. This is supported by policy as well as take up data. This need amounts to around 0.6Ha (or 2,291 sqm) per annum. The Local Plan allocations have not delivered this order of new space for this market, as it is cheaper and easier to provide for the considerable large unit demand that is dominating the national market at this time. The need for smaller units is largely unmet.
- 1.10 As is described in the Alternative Sites Assessment, there is no alternative site which can meet this identified need. The applicant has, therefore, submitted this third application in the absence of any reasonable non-Green Belt alternative.
- 1.11 The remainder of this statement focusses on:
- The changes made since the last application;
  - the changes in policy since the new Government came into power, which occurred close to the time of refusal;
  - the progress made during the negotiation of the previous application on key policy points, and;
  - the necessary justification for making such an application in the Green Belt.
- 1.12 We consider that the benefits from meeting this need outweighs the limited harm this development would cause to the Green Belt.

## 2. Reasons for Refusal

2.1 The previous application on this site was refused on 4 grounds:

*1. The application site is located within the Green Belt. The proposed Nano Park development would cause substantial harm to the Green Belt by reason of inappropriateness, its impact on openness, and its harm to the purposes of including land in the Green Belt. In accordance with paragraph 153 of the National Planning Policy Framework inappropriate development should be refused unless the applicant can demonstrate 'Very Special Circumstances' which clearly outweigh the harm to the Green Belt. It is considered the matters submitted for consideration do not amount to 'Very Special Circumstances' which clearly outweigh the substantial harm to the Green Belt and the proposal would fail to accord with chapter 13 of the National Planning Policy Framework.*

2.2 Section 5 and Appendix 1 address this in detail. Officers will now be familiar with the case put forward by the applicant, but in essence:

- National policy is now supplemented by the WMS which sets out the concept of “grey belt”, which clearly describes the circumstances of this site. The site performs very poorly against Green Belt “purposes” in the Council’s own assessment of the site; it is part previously developed, and; is a rapidly deteriorating urbanised site which has attracted anti-social behaviour and, more recently, arson.
- On this basis, whilst there will clearly be some harm to the Green Belt, that harm is modest.
- The WMS is clear that economic growth is a significant aspiration of this Government, with the aim of improving our prosperity, living standards and ensuring that this occurs for everyone. This site is clearly a good option to help meet development needs that can’t be met elsewhere.
- The applicant has examined all sites within a, now agreed, catchment area and has not found any sites capable of providing for development of this format- the application proposes small units that are less economic to build but are critical to achieving small business growth and supporting start up businesses.
- There is an unmet need, which is not capable of being provided on any brownfield or allocated site.
- There are numerous benefits that arise from the proposal- including socio-economic outputs; addressing deprivation; exceeding biodiversity targets. Legal advice suggests that these, together, are capable of constituting “very special circumstances” and that this type of case has been accepted elsewhere in similar circumstances.

2.3 It is considered that Very Special circumstances do exist. The case put forward by the applicant has been reviewed and verified by a leading barrister. Indeed, based on the case put forward above, legal advice is that:

*“...should the Council refuse planning permission relying on the logic in the policy officer’s response, my view is that approach would be highly vulnerable in the event of an appeal”.*

2.4 The applicant is keen to avoid that outcome.

***2.The application has failed to demonstrate that the proposal would have an acceptable impact on highway safety in respect of site access, site layout, and the impact on the highway network. To approve the application would be contrary to policies LP21, LP22 and LP23 of the Kirklees Local Plan and chapter 9 of the National Planning Policy Framework.***

2.5 This is addressed in the amended layout, Transport Statement and ongoing discussions with highways officers have resulted in the remaining issues being addressed.

***3.The application has failed to demonstrate that the proposal can achieve an acceptable drainage layout for surface and foul water, and to approve the application would be contrary to policies LP27 and LP28 of the Kirklees Local Plan and chapter 14 of the National Planning Policy Framework.***

2.6 This is addressed in the amended drainage strategy, which includes a survey of the culvert, clarifies the storage solution, volumes and invert levels. The site will drain to sub-surface tanks under the yard, through a flow control device and into the culvert which sits some 3m below the site. Discharge will be controlled to greenfield rates.

***4.The application has failed to demonstrate that the proposal would achieve acceptable ecological/landscape mitigation, including an 10% biodiversity net gain. To approve the application would be contrary to policies LP30, LP32 and LP33 of the Kirklees Local Plan and chapter 15 of the National Planning Policy Framework.***

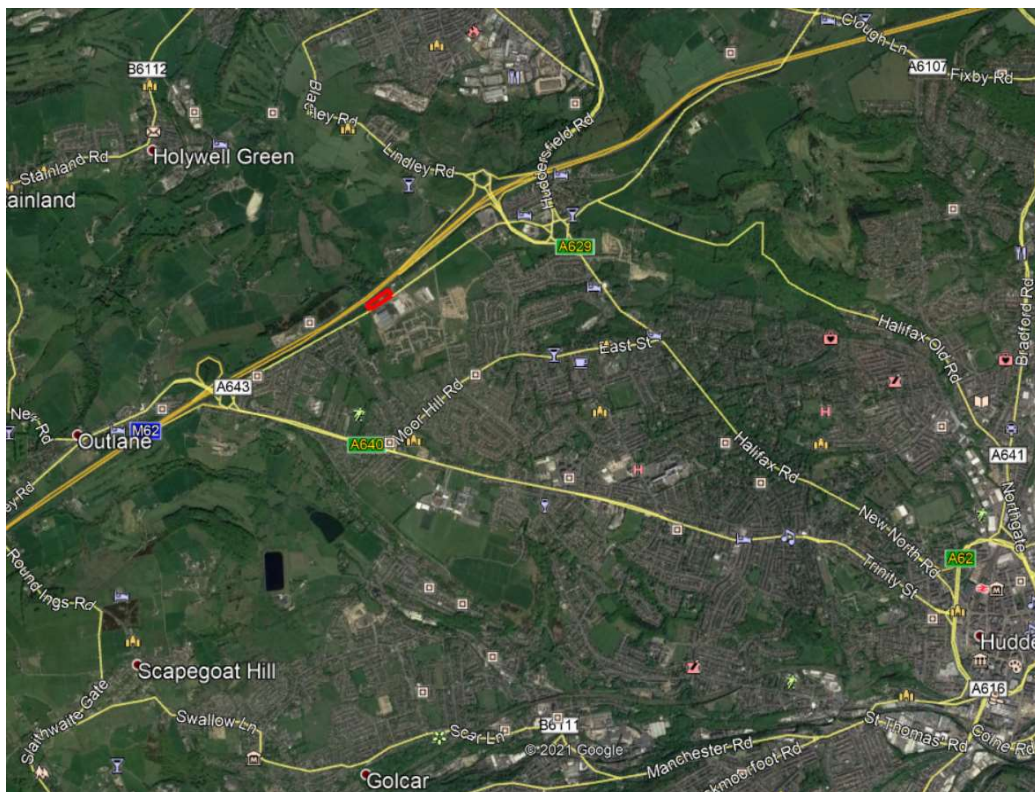
2.7 The revised layout has been reviewed and revised landscape and BNG calculations have been provided. This shows a 92% uplift against current legal requirements.

### 3. Site Location

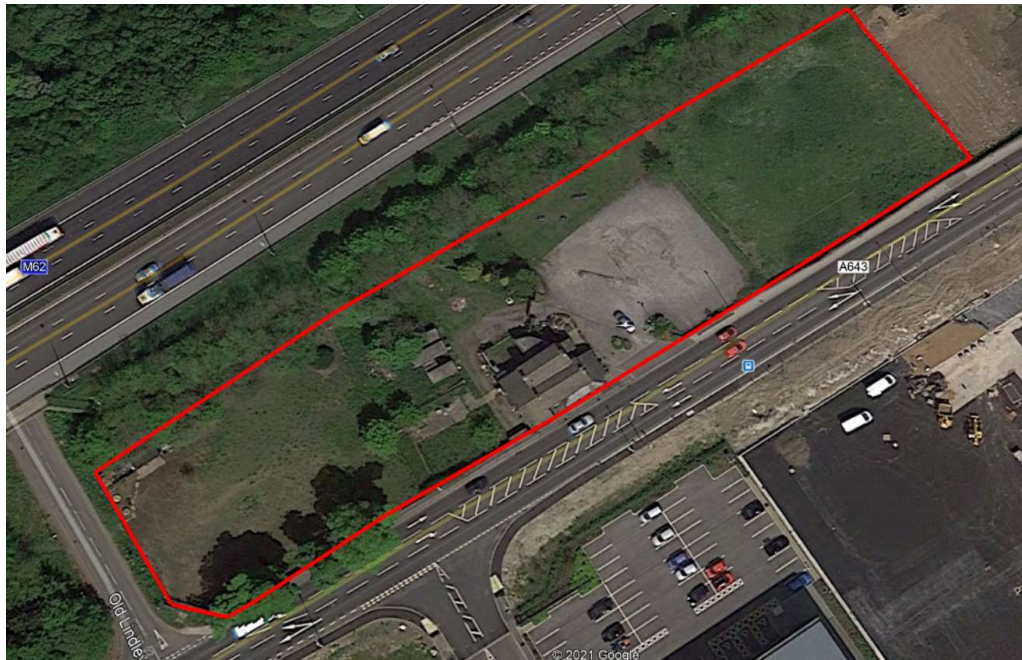
3.1 The application site is the former Wappy Spring Inn on Lindley Moor Road and is shown on the aerial photography below:



3.2 The site is some 1.6km driving distance from the Ainley Top motorway junction (J24 M62) and just over 1km from J23. It has excellent access to the motorway network as well as the wider population living in Huddersfield, as shown below:



- 3.3 The site is partly occupied by the former public house, its parking areas and several outbuildings:



- 3.4 However, as can be seen around 2/3rds of the site is not currently developed.
- 3.5 The site is not visible from the M62, so it can only be seen from Lindley Moor Road. The character of this road in the vicinity of the site is highly urbanised, with recently constructed car dealerships and industrial buildings to the south, and also the urbanising influence of the pub and its various hardstandings, signs, benches and lighting opposite:



- 3.6 This view shows the full extent of the site to the east, which terminates at the post and rail fence seen in the foreground to the left of the image above. The pub and car park are clearly the dominant visual influences, with the strong and mature tree line to the motorway embankment offering clear enclosure to both the view and the physical extent of the site.
- 3.7 Looking from the west, the view is similar, although more dominated by existing mature trees on the boundary- which would be kept as part of the development:



3.8 The road and new industrial buildings are clearly urbanising influences, with the pub buildings and range of domestic paraphernalia just visible through gaps in the mature trees.

3.9 Looking across the length of the site from its far western end, on Old Lindley Road, the open area to the west of the site is clearly visible. However, it remains well contained by the significant planting to the northern boundary of the site (left of the image below) and the extent of existing structures to the rear and west of the pub building become clearly visible and give the impression of complex of buildings:



3.10 This site, therefore, has the character of well utilised urban fringe. There are a number of existing urbanising influences on the site- ranging from equestrian buildings, a polytunnel, the pub, car parking, benches, various tanks and containers, and fencing.

3.11 Therefore, whilst the site is in the Green Belt, it must be noted that this is not open rolling countryside. Rather it is already well occupied, partially previously developed, reasonably well urbanised, and extremely well contained urban fringe.

3.12 The site has also been vacated, and has been subject to antisocial behaviour and vandalism over the course of the last year. The building and site has deteriorated significantly as there is no active use of the property.

## 4. The Proposed Development

- 4.1 The proposal remains for a total of 2,550 sqm / 27,450 sqft of small scale, hybrid industrial units: a “Nano Park”. The uses proposed are light industrial (E(g) (ii and iii)); general industrial (B2) and warehousing (B8). Each would have ancillary office elements, but there would be no “pure office” uses that would breach the “town centres first” policy approach.
- 4.2 The current layout shows 14 units of 1,830 sqft / 170sqm each, across two floors, and; a single unit of 170sqm / 1,830sqft. The total footprint of the buildings on site would be 1,360sqm / 14,640sqft.
- 4.3 The “Nano Park” concept looks to provide highly flexible space for companies that are a combination of new start-ups, or that are testing new ideas. The park will operate with flexible terms, making these ideal “starter units” which are “hybrid” in nature with either storage or light industrial space on the ground floor and office space above.
- 4.4 Whilst the provision of “start-up units” is not a new concept, they are increasingly rare and the local supply in West Yorkshire is extremely poor- particularly for new stock that meets modern standards for fit out and energy efficiency.
- 4.5 This product is unique in the market as:
- Very little is being provided due to prevailing market conditions,
  - The current supply is generally of poorer quality or just outdated, and
  - The nature of occupiers is strong and represents the best of local businesses who require high quality space. Current Nano Park occupiers in Bradford, Wakefield and Leeds include companies which provide the following services:
    - Engineering component and support services
    - R&D for a multi-national chemical company
    - Solar power design and installation services
    - Domestic energy saving specialists
    - Dental appliance manufacture
    - Camper Van fit out
    - Textile manufacturers
- 4.6 The Nano Park concept provides space for “high end” specialist local businesses, which fit well with the Kirklees Economic Strategy objectives- for which there is no realistic alternative, or adequate property provision in Kirklees at the present time.
- 4.7 The physical development is further described in the Design and Access Statement submitted with this application. It comprises 3 rows of small unit terraces, each with

parking and access doors, with a high quality external appearance and internal fit out standard. There is nothing of it's kind on offer in Kirklees, and where it has been made available elsewhere all of the units have been fully let "off plan" before the buildings were complete. There is a significant dearth of supply of this type and quality across the sub-region.

4.8 Physical elements of the proposal have been revised since the last application, as follows:

- a) The buildings have been relocated to the "rear" (north) of the site. This reduces their visual prominence and makes more vehicle circulation space.
- b) As many trees as possible have been retained. The western end of the site has been altered to retain T10, which officers highlighted as being particularly worthy of retention. The landscaping proposal has been updated accordingly, as has the ecology and BNG assessment.
- c) Various detailed drainage points were raised. The culvert has been mapped and is some 3m bgl and it is only under development for several metres. Opening up the culvert will not be possible due to the space available. Areas for informal open storage and channelling of water will be made in the layout, primarily in the eastern part of the site and attenuation will be in sub-surface tanks. An interceptor will be provided.
- d) Various changes to the site access, circulation and assessment have also been made. Ongoing discussions with Highways officers suggest that issues around off site capacity have been addressed, as have points around the need for a deceleration lane, refuse vehicle access (which will be undertaken by a private contractor) and the provision of turning facilities.

4.9 Some considerable progress was also made on Green Belt matters, although officers did not accept that VSC exists. There has been significant policy change since that discussion - most notably in the form of the WMS<sup>4</sup> which carries weight as a material consideration before the current draft of the NPPF concludes it's consultation.

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<sup>4</sup> Statement UIN HCWS48 [Written statements - Written questions, answers and statements - UK Parliament](#)

## 5. Green Belt

- 5.1 The site is in the Green Belt. This is the critical issue identified during the original pre-application process, is the main reason for refusal, and is the key point that this statement focusses on.
- 5.2 Industrial development here would undoubtedly be “inappropriate development” and harmful to the Green Belt “by definition”. The primary purpose of this statement is to determine whether “very special circumstances” exist.
- 5.3 NPPF says that “very special circumstances” will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations<sup>5</sup>.
- 5.4 It also advises that the construction of new buildings is inappropriate in the Green Belt, except (amongst other instances) where this involves the partial or complete redevelopment of previously developed land, which would not cause substantial harm to the openness of the Green Belt<sup>6</sup>.
- 5.5 Case law<sup>7</sup> has established that the correct approach under these circumstances is to:
- Consider whether a proposed development is inappropriate,
  - Identify the level of harm to the Green Belt,
  - Establish any other harm that may arise,
  - Consider whether benefit / outweigh that harm, so as to constitute very special circumstances.
- 5.6 This process guides the content and structure of the remainder of this report.
- 5.7 However, on 30 July 2024, just 2 weeks after the previous application was refused, a Written Ministerial Statement was made which is highly relevant to the determination of this application<sup>8</sup>. Angela Rayner’s WMS makes several important amendments to current policy:
- It introduces the concept of “grey belt” described as areas of Green Belt which is also “*land on the edge of existing settlements or roads, and with little aesthetic or environmental value*”. This site clearly fits that definition.

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<sup>5</sup> Para 148

<sup>6</sup> Para 149(g)

<sup>7</sup> See for example *Brown v Ealing LBC* [2017] EWHC 467 (Admin); *Redhill Aerodrome Ltd. v Secretary of State for Communities and Local Government* [2014] EWCA Civ 1386; *Samuel Smith Old Brewery (Tadcaster) Limited v North Yorkshire CC* [2018] EWCA Civ 489; Appeal Ref: APP/C2741/W/19/3227359 York, Miller case for 266 homes which considered effects on ‘purposes’.

<sup>8</sup> [Written statements - Written questions, answers and statements - UK Parliament](#)

- It expects Council's to review Green Belt boundaries where they cannot meet commercial development needs. This change is not just about housing. In this application we suggest that there is a shortage of land to meet development needs for industrial space. City Region evidence confirms this, and the policy officer accepts that. We have also provided (and append to this statement) legal advice which confirms that the applicant's approach to need, alternative sites and Very Special Circumstances (VSC) have "*a coherent, robust basis, which accords with national policy*"<sup>9</sup>. In short- there is an unmet need, for the form of development proposed, which requires use of Green Belt land to be satisfied.
- It sets a sequential approach, expecting first consideration to be given to brownfield land; then "grey belt" and then "*higher performing Green Belt land*". This suggests that the Council should look towards poorer performing Green Belt sites before more strategically important areas of Green Belt. This site is partially brownfield, subject to anti-social behaviour, is a visual detractor and is physically well contained by a major earth work associated with the M62. It is a very poor performing area of Green Belt that very clearly meets the definition of Grey Belt land as meant in this WMS.
- Grey Belt is defined by reference to the "purposes" aiming to capture sites that "*are making a limited contribution to the Green Belt's purposes*". Officers will recall that the assessment of this site in the 2017 Green Belt Review was that it was "light green" or scored 2 out of 5 ("less important"). This section of boundary would appear to fall into the Grey Belt category on this definition. The Council's own assessment shows that this is the case.
- The WMS is clear that "*we cannot wait for all release to come through plan making*" and that "*applications for sites not allocated in a plan must be considered where they relate to brownfield and grey belt land*". The WMS actively supports taking action now in order to meet needs. The Council is reviewing it's Plan and thereby acknowledges that development needs can't be met by the current Development Plan<sup>10</sup>.
- Finally, the statement expects development on Green Belt land to benefit communities and nature. It seeks "*at least 50 per cent of the homes onsite being affordable for housing developments; be supported by the necessary infrastructure, like schools, GP surgeries and transport links; and provide accessible green space*". These requirements largely apply to housing development, rather than employment development, but suitable infrastructure to support the development will be provided- including access and drainage improvements.

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<sup>9</sup> See Barristers Opinion at Appendix 1.

<sup>10</sup> [Kirklees Local Plan to undergo full update - Kirklees Together](#)

5.8 The WMS is a material consideration, relevant to the determination of this application, now<sup>11</sup>. It offers considerable encouragement to bring forward development on sites such as the application site.

5.9 The proposed development would clearly meet the mission statement of the WMS:

*Our manifesto was clear: sustained economic growth is the only route to improving the prosperity of our country and the living standards of working people.*

5.10 This development would bring jobs, support local business growth and survival and most importantly address an economic need which the current land supply is not capable of delivering.

5.11 The WMS is clearly in support of proposals such as this, on sites with the characteristics of the application site. There could not be a clearer statement of intent from the first WMS of the new Government.

5.12 The following paragraphs look at the process points from previous policy and case law in a little more detail and signpost to the relevant sections of this report where more detailed can be found.

**1. Consider whether the proposed development is inappropriate:**

5.13 In this case, the industrial development of this site would undoubtedly be “inappropriate”. It does not fall into any of the exceptions set out in NPPF. Therefore, the development would cause harm by definition, to which substantial weight should be given. However, the site is clearly now considered to be a “grey belt” site, to which some weight can be added in the overall balance. This reduces the amount of harm that needs to be outweighed, tipping the balance in favour of the applicant.

**2. Identify the level of harm to the Green Belt:**

5.14 In this case there is potential for harm to the openness of the Green Belt, and harm to the purposes of including that land in the Green Belt.

5.15 Harm to openness comprises effects on both the spatial dimension (the physical presence of development) and the visual dimension (the visual effect on how the area is perceived). There is a great deal of caselaw around this aspect of planning practice<sup>12</sup>.

5.16 The site is, in part, previously developed land. From a purely volumetric perspective, the site currently includes the following:

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<sup>11</sup> See the principles set out in [Cala Homes \(South\) Ltd, R \(on the application of\) v Secretary of State for Communities and Local Government & Anor \[2011\] EWCA Civ 639 \(27 May 2011\) \(bailii.org\)](#) “...a prospective change to planning policy is capable of being a material consideration for the purposes of sections 70(2) of the 1990 Act and 38(6) of the 2004 Act”.

<sup>12</sup> See for example [Turner v SSCLG \[2016\] EWCA Civ 466 para 14](#); [Para 22 R \(on the application of Samuel Smith Old Brewery \(Tadcaster\) and others\) \(Respondents\) v North Yorkshire County Council \(Appellant\) \[2020\] UKSC](#)

Component	Existing Area	Proposed Area	Net Change
Permanent Buildings	750 m <sup>3</sup>	9,325 m <sup>3</sup>	+8,575 m <sup>3</sup>
Equestrian / agricultural / Ancillary structures <sup>13</sup>	160 m <sup>3</sup>	0	-160 m <sup>3</sup>
Hardstanding	1,375 m <sup>2</sup>	3,455 m <sup>2</sup>	+2,080 m <sup>2</sup>
Open / landscaped areas	5,455 m <sup>2</sup>	2,055 m <sup>2</sup>	-3,400 m <sup>2</sup>

- 5.17 The proposed development increases the amount of development on the site, as well as reducing the open area- which affects the spatial dimension of openness. However, the existing development reduces the extent of that harm.
- 5.18 This site is part of the urban fringe, the openness of which is already compromised by built development and other urbanising influences. It clearly meets the definition of Grey Belt put forward in the WMS, and as such there is encouragement to use this land for development, in order to meet needs support economic growth and address local job needs.
- 5.19 In terms of the visual aspects of openness, this is clearly more subjective- however, when viewed from various publicly achievable positions, the site does not appear as a pristine open area of land.
- 5.20 In views from the east, the site is well contained by mature landscaping and landform. The site is dominated by the pub and it's car park and appears to be an integral part of the urban area due to the level of physical development and urbanising features. Due to this existing development, and the contained nature of the view, development here will not impact the visual perception of openness from a wider area- the visual change will be purely local.
- 5.21 In views from the west, the site also appears urbanised by signage, and the former pub building. Closer views are affected by domestic curtilage structures and features, including fences, hardstanding, sheds, and other curtilage structures. These are largely to the rear and sides of the former public house but are still prominent in views from the main road.
- 5.22 The site has also fallen into considerable disrepair. The building is still structurally sound, but it was recently subject to arson and has attracted considerable anti-social behaviour since the pub closed. It is visually deteriorating and has had to be secured, which adds to the appearance of derelict land on this bit of urban fringe.
- 5.23 With the development completed, new landscaping at the site boundaries will make the site less visually intrusive. From long and middle distance views, the site would appear as a block of landscaping, with building glimpsed between trees, but visually merged with the

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<sup>13</sup> Note that the *Lea Valley v Epping Forest DC* judgement of 2016 (para 28/29) confirms that such buildings do harm openness and can conflict with purposes, but national policy allows this lack of preservation of openness. Therefore, it is relevant to consider the effect of these buildings on the openness of the application site.

motorway planting. This would reduce the effect of the existing built structures on the visual component of openness and represent an improvement over the current situation.

- 5.24 The closer views into the site around the current public house, are already quite heavily urbanised. When developed, there will be a change in character in these closer views, but these would be softened by new and retained landscaping along the site frontage. The buildings proposed have also been set back into the site so that they are less prominent.
- 5.25 Once the landscaping is mature, the key views of the site will likely have similar levels of urbanising development that influence the receptor’s perception of the open nature of the site. When compared to the existing views, which- despite some retained open areas- currently appear to be quite highly urbanised, we consider that the visual aspect of openness would only suffer low levels of harm.
- 5.26 Therefore, from both a spatial and visual perspective, the site will be obviously more developed- but the current extent of urbanisation reduces that harm. The proposed layout and landscaping will considerably reduce the visual effects of the development.
- 5.27 The development will result in some net harm to openness. However, that the harm is materially reduced by the existing urban character of the site which, in turn, reduces the harm that needs to be clearly outweighed by benefits.
- 5.28 The current WMS position on Grey Belt actively encourages Councils to make positive use of land with these characteristics. This can only be because Government attribute less weight to Green Belt which is compromised to this degree, and the WMS seeks to fundamentally shift the balance in order to get houses built and economic development delivered.

**(a) Harm to the Purposes of Including land in the Green Belt**

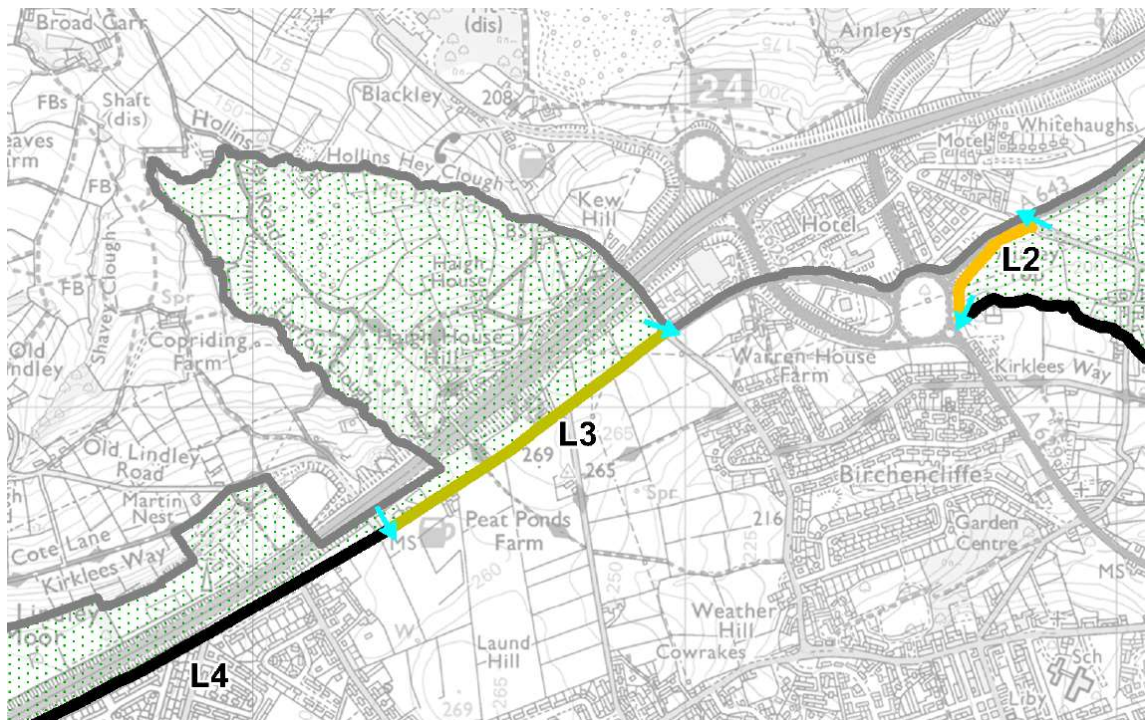
- 5.29 Paragraph 134 of NPPF sets out 5 purposes of including land in the Green Belt. The site is small, very well contained (by the M62, existing commercial development to the south and Old Lindley Road) and is not in close proximity to any other settlement which could merge with Huddersfield if this site is developed.
- 5.30 The Council assessed Green Belt performance of this area to inform the Local Plan preparation. The Plan was adopted in 2019 and the Green Belt Assessment work was undertaken in 2017<sup>14</sup>. It is therefore a fairly recent appraisal of Green Belt performance.
- 5.31 Appendix 2a of the Council’s assessment provides the following assessment of boundary reference L3 against the 5 purposes:

Purpose	Assessment
Checks Sprawl	Limited impact. M62 motorway presents potential new boundary and the strip of land is small and contained.
Prevents Merging	M62 prevents merger with Calderdale.

<sup>14</sup> Kirklees Local Plan Submission Documents SD19 Green Belt Review 2017

Purpose	Assessment
	Development up to eastern Boundary would join Kirklees with the small isolated group of buildings in Calderdale between the motorway junction, Lindley Moor Road and Kew Hill.
Safeguards against encroachment	No impact. Small parcel of land with existing strong physical barriers. This narrow and confined parcel of land has no association with wider countryside
Preserved Setting and Character	No impact.
[Urban regeneration]	[Not part of the assessment framework]
Conclusion	Narrow strip of land between Lindley Moor Road and the motorway. Buffer would be needed to prevent merger with built development in Calderdale. Potential noise and air pollution and constrained by pylons. Extensive area of green belt north of the motorway.
Test Score	2

5.32 The tests are colour coded- green being good, red being bad, and yellow / amber being moderate. The overall test score for this boundary section was 2 out of 5. An extract showing the relevant section of the mapping from this report is provided below:



5.33 The colour coding used in the test conclusions is shown below:

Black	Test 1 indicates that there may be a significant constraint to development, caused by an absolute barrier to development along the edge (railway line for example) or that the land immediately adjacent to the edge is significantly constrained (severe slope, ancient woodland for example)	
Red	Test 2a indicates that the green belt is performing a strategic role such that development may result in the merging of settlements.	
Importance of green belt role based on combination of tests 2b to 2d where the site 'passes' tests 1 and 2a;		
1	Less important	(dark green)
2		(light green)
3		(light yellow)
4		(dark yellow)
5	More important	(pink)

5.34 The conclusion from the Council's assessment is therefore:

- There is no significant constraint to development, as this section of Green Belt boundary did not fail Test 1.
- The boundary here does not perform a strategic role such that development may result in the merging of settlements, as the boundary passed Test 2a.
- This section of boundary is relatively unimportant to the functioning of the Kirklees Green Belt as it scores 2 (light green) which is almost the lowest possible score.

5.35 It is important to remember that the application site is only a small component of the boundary section considered by the Council. We consider that the site does not perform well against the purposes of including land in the Green Belt and that its development would not harm the functioning of the retained Green Belt. This is a highly urbanised and well contained site.

5.36 In addition, it is clear that the application site does very little to prevent sprawl, given its strong boundaries, and plays no role in the merging of "towns"<sup>15</sup> - the nearest town being Elland, some 1.2km to the northeast. We consider that the scoring for the first two purposes should be green rather than yellow.

5.37 We conclude that no harm arises to the purposes of including land in the Green Belt as a result of this application - a view which is shared by the Council based on their wider assessment.

5.38 Whilst that does not alter the fact that the site is in the Green Belt, it does suggest that the harm caused by allowing development on this site will not have wider ramifications for the functioning of the retained Green Belt, which again reduces the harm that needs to be outweighed.

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<sup>15</sup> NPPF 143 b)

5.39 Allied with the Government position on Grey Belt, as set out in the WMS, it is considered that harm to purposes is negligible, and that there is active encouragement to use land of this type to meet development needs.

**3. Establish any other harm that may arise from the development:**

5.40 Having established the harm arising specifically to the Green Belt, we then need to consider harm to any other planning interest.

5.41 We rely on the various technical reports prepared in support of the application. These are summarised later in this statement and consider drainage, highways, ground conditions, trees, ecology and air quality. We find no other harm than needs to be added to the Green Belt harm.

**4. Consider whether benefits clearly outweigh the harm:**

5.42 Having established the harm that needs to be outweighed, we next need to examine the very special circumstances that might outweigh that harm.

5.43 In essence, we consider that the key benefits are:

- 1) The unmet need for small business space in the current supply of both land and buildings;
- 2) The inability of the current supply to meet that need in the remainder of the Plan Period;
- 3) The need to reduce unemployment and deprivation in Kirklees
- 4) The job creation and local economic inputs during operation and construction

5.44 In more detail:

- a. There is an unmet need for start-up and small business space. The separate Need report concludes that there is a requirement for a Nano park of this size, roughly, every year of the current Plan Period- the need extends to:
  - a) 10.8Ha / 443,882 sqft of space for the entire Plan Period, or
  - b) 4.8Ha / 197,288 sqft of space for the remainder of the Plan Period.
- b. There are very few opportunities to meet that need in the current land supply. The separate Alternative Site Assessment Report found several units which exist now (at the Batley and Ray Street Enterprise Centres, run by the Council; more modern spaces at Bizspace, Linthwaite; and 4 proposed units at allocation MX3 at Lindley Moor). These are not adequate to meet the calculated need.
- c. Kirklees is identified as one of the most deprived Authority areas in the UK in the 2019 IMD and is more deprived than it was in the 2015 IMD- with particular concentrations in the urban areas of the District. It also has higher unemployment rates than the rest of Yorkshire and the UK as a whole.

- d. There are also socio-economic benefits associated with the development, these are set out in more detail later in this statement but amount to around 128 direct jobs, 184 jobs in the region and GVA of around £8.8m per year of operation. There would also be 20 jobs during construction, with 54 jobs supported locally and construction period GVA of around £2.6m per year of construction.

5.45 We conclude that:

- i. The harm to the Green Belt by reason of inappropriateness is necessarily substantial, but harm to both openness and purposes is limited due to the existing structure and the poor performance of the area against purposes.
- ii. National policy now encourages the use of this type of site in the Green Belt- it very clearly meets the definition of “grey belt” and is a suitable location to meet development needs. It accords with the WMS of 30 July which is now a material consideration.
- iii. The benefits from the development will be significant: It will meet an unmet need which will help Kirklees to capitalise on it’s strengths and the need to urgently address the economic, work and deprivation issues that is worsening over time.
- iv. There is no other means currently available to provide for the needs of the area’s most active economic sectors: Start-ups, micro businesses and the local advanced manufacturing sector, which are best placed to quickly help address these needs.

5.46 These benefits should attract very substantial weight, and we conclude that the harm caused to the Green Belt is clearly outweighed by the considerable economic benefits that would arise from this unique proposal.

5.47 On this basis we consider that very special circumstances exist and that planning permission for this development should be granted.

## 6. Technical Considerations

6.1 These normal Development Management matters are an important factor in reaching a conclusion about Green Belt harm.

6.2 We have examined the findings of the specialist reports that have been prepared in support of this application:

Topic	Summary	Harm arising?
Transport	The site is on a main road and a new junction capable of accommodating the proposed traffic will be provided. The development is small scale and will not generate significant movements that require major off-site mitigation works.	None, subject to suitable conditions being applied for layout, EV charging, and mitigation.
Tree Survey	The site has several mature trees. These will largely be removed within the development site, and considerable new planting will replace the lost vegetation. The large group of trees to the rear of the site will be protected and retained, as will T10 on the site frontage.	None, subject to suitable conditions being applied to protect retained trees during construction.
Ground Conditions	The ground conditions do not present any issues for the development of the site. Suitable foundations can be designed, and standard remediation conditions will ensure that there is no risk caused by contamination.	None, subject to suitable conditions being applied on remediation.
Drainage and Flooding	The site is in Flood Zone 1 with no record of flooding. The development will attenuate flows to greenfield rates, provide a climate change freeboard and, if infiltration is not possible, discharge to the culverted water course in the north east of the site. The site will not be subject to flooding and will not cause issues of flooding downstream.	None, subject to suitable conditions being applied to control the detailed design of the drainage system.
Ecology	An ecology report has been undertaken and the site does not have any features of value. The scrub land and eaves of the building have been used by birds for nesting, and so any clearance should be outside breeding season or following a check for active nest sites. There were no signs of bats roosting on or near the site, no signs of badgers or amphibians.	None, subject to suitable conditions being applied on vegetation and building clearance times.

Topic	Summary	Harm arising?
Biodiversity Net Gain	Due to the poor quality of the habitats on site, the ecology report indicates a net gain of 92.41%. This is a gain well beyond the legal requirement for a 10% enhancement, and as such is a considerable benefit of this development	None
Air Quality	The site is not in an AQMA and vehicle movements will be moderate given the size of the development. Mitigation measures during construction will control emissions, and travel planning measures will ensure that private car travel is reduced as much as possible.	None, subject to suitable conditions being applied to control dust during construction and require travel planning measures and the provision of EV charging spaces.

- 6.3 In addition, a lighting scheme can be designed to ensure that lighting is no more than is needed for safety and operational purposes and that it is suitably cowled and directed to where it is needed. Detailed design will follow ILP and BCT guidelines to ensure there are no effects on light sensitive species or amenity issues associated with the site's lighting. On this basis, we suggest that a condition be applied which require detailed design which accords with these guidelines.
- 6.4 The above assessment shows that there are no anticipated effects that would arise from the development of the site which can't be controlled by condition. These are all the kind of effects that would normally be expected from a development of this scale, and nothing has been found that weighs towards of refusing the application.

## 7. Planning Balance

7.1 The fundamental balance for this application is whether the benefits clearly outweigh the harm caused to the Green Belt. The applicant’s assessment is below:

Harm	
Issue	Comment
Harm by Definition	The proposed development is inappropriate and therefore harmful by definition. Substantial harm arises.
Harm to Openness	The weight attributed to openness is reduced by the existing urbanising development and existing visual harm to openness- caused primarily by a number of urbanising features on the site and the “offsetting” of some of the spatial harm. The site is visually well contained and already urbanised, so there is low harm to visual aspects of openness.
Harm to Purposes	The site demonstrates extremely poor performance against the five purposes. This is corroborated by the Council’s own assessment of the wider Green Belt boundary in this location.
Other Harm	No issues have been identified with highways, drainage, visual impacts, noise, air quality, ecology, ground conditions, mining, trees, lighting or transport.

7.2 To counter this harm, we have identified the following needs and benefits that will arise:

Benefit	
Issue	Comment
Need for start-up and small business space	<p>The need report shows that Kirklees has one of the highest business start-up rates in Yorkshire, which is recognised as critical to economic success in the KES. Start-up and micro businesses are nearly 90% of Kirklees businesses and account for over 20% of employment.</p> <p>The Need Assessment indicates a requirement for 0.6Ha of land per year- or roughly the equivalent of this application every year. This amounts to 10.8 Ha over the Plan Period, or 4.8Ha for the remaining part of the Plan Period.</p> <p>This application will provide a new high-quality product in a good location which is not available elsewhere in Kirklees. This will help to secure the future of this critical economic sector and address a long-standing shortage of quality space, for which there is no alternative location.</p>
Lack of alternative sites	<p>There is no existing space on the market for this sector; no space with planning permission for this type or scale of use, and; no alternative sites to meet this need.</p> <p>There is a small supply of units in existing buildings, but most of these are poor quality. There are 4 units current proposed at Lindley Moor. This supply will not meet the identified need.</p> <p>There is simply nowhere else for this development to go within Kirklees- where there is a clear need for this type of provision, and an economic imperative to act to address the needs of local businesses.</p>

Benefit	
Issue	Comment
Socio-economic benefits	<p>Kirklees is one of the most deprived districts in the UK, unemployment is higher than the regional and national average.</p> <p>This development will help to address some of this concerning deprivation and lack of access to work, income and the health benefits that brings for the people of Kirklees. This was an enduring problem which is now getting worse.</p> <p>One means by which the Council sought to address this issue was to allocate more employment land to encourage business investment. That was taken away by the Local Plan Inspector causing the shortage of land which has necessitated this application.</p>
Economic benefits	<p>The proposal will generate 20 jobs and £2.6m GVA during its year of construction. After that, it will generate around 184 jobs and £8.8m GVA during each year of operation.</p> <p>This is a considerable economic benefit that will not be realised if the development does not proceed.</p>
Environmental	<p>The development will result in a considerable uplift in the biodiversity value of the site- significantly greater than current policy expectations and more than 9 times the level of the current legal requirement.</p>

- 7.3 There has also been a substantial change in policy direction since the new Government was elected in July. The WMS is a material consideration and directly encourages the use of “grey belt” land. This site clearly meets the definition in the WMS and the general intent of the WMS- to improve prosperity through sustained economic growth- directly relates to the circumstances set out above. It is clear that Government has moved towards a less protectionist position on poorly performing Green Belt and prioritises meeting economic aspirations over needlessly protecting degraded land from development.
- 7.4 The development offers considerable economic benefits and there is no other known means by which these benefits can be realised. This application offers a rare opportunity to provide for business start-up needs focussed on key economic sectors and addressing long running socio-economic issues which have been made more acute by the effects of the pandemic.
- 7.5 Providing these benefits would generate very significant benefits for the people of Kirklees and help shore up its economic fortunes for the future, by helping to grow the product of Kirklees entrepreneurial spirit. These benefits should attract very substantial weight.
- 7.6 In this case, we have established that:
- i. The harm to the Green Belt by reason of inappropriateness is substantial- and largely by definition, rather than practical effect.
  - ii. Harm to openness and purposes is limited because of the poor performance of the area and the existing reductions in openness.

- iii. Policy, in the form of the WMS, encourages the use of this quality of Green Belt land to meet development needs and deliver economic growth.
- iv. The benefits from the development will be very significant. The development will help Kirklees to capitalise on its existing strengths and the need to urgently address the economic, work and deprivation issues that is worsening over time and having a significantly adverse effect on the population of Kirklees.
- v. There is no other means currently available to provide for the needs of the area's most active economic sectors: Start-ups, micro businesses and the local advanced manufacturing sector, which are best placed to quickly help address these needs.
- vi. These benefits should attract very substantial weight- weight which is increased by the pressing need to recover from the pandemic, a need which exists right now and is significantly harming the social and economic well-being of the people of Kirklees.

7.7 We therefore conclude that the harm caused to the Green Belt is clearly outweighed by the considerable economic benefits that would arise from this unique proposal. On this basis we consider that very special circumstances exist and that planning permission for this development should be granted.

## **Appendix 1: Barristers Opinion and Instructions**

# Wappy Spring, Lindley Moor, Huddersfield

## Instructions

Frank Marshall Estates / The Nano Park Company

April 2024

### Introduction

1. These instructions seek advice on the case put forward to Kirklees Council in respect of a redevelopment of a now derelict former public house site, which sits in the Green Belt just outside Huddersfield. The proposed development is a number of small employment units, targeting “start-up” businesses, small local advanced manufacturing and other small new businesses. The proposal may need to change during the course of negotiations, but is currently 15 units of 170sqm each, totalling 2,550sqm.
2. Counsel is broadly aware of the background to this case, having advised on the approach to be adopted following the withdrawal of an application on this site that was lodged in 2021.
3. The applicant is currently discussing the resubmitted application with the Council. It seeks guidance that is aimed at assisting both the applicant, and the Council, on the approach that has been adopted to date- and whether this constitutes a reasonable methodology and approach.
4. The Council has accepted part of the case put forward. However, it has reservations about other elements. The applicant is keen to seek an independent view, to help inform ongoing discussions with the Council.
5. The applicant is aware that Counsel can only offer a legal opinion on these matters, and is not qualified to adjudicate on the planning judgements involved in a case of this nature. However, Counsel has considerable experience in these matters and has been involved in a number of similar cases. Therefore, Counsel is asked to offer their opinion on how an Inspector judging these matters *de novo* is likely to approach this case, and in particular whether the content and approach is likely to be seen as both fair and reasonable.
6. The current position is that the Council and applicant agree on the following matters:
  - That there is an unmet need for smaller units, in both Kirklees and the defined catchment area.
  - That the general market need for larger warehouses has being met at the expense of smaller units being delivered- which is a factor of both market conditions and development economics.
  - That the application site could help to meet some of the extant need for smaller units in Kirklees, and the wider City Region.

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7. However, there is disagreement around the sites which are available to meet this need without needing to utilise Green Belt land, and; the benefits arising- including whether these benefits outweigh harm to the Green Belt.
8. In particular, the Council consider that:
  - An allocated site exists at Lindley Moor (MXS3) which could meet some of this need.
  - There is potential within other undeveloped allocated sites to meet some smaller business needs.
  - The job growth, GVA and other socio-economic benefits are not unique to this site, and therefore do not weigh in the balance.
  - The BNG exceedance to be realised (a 20% uplift over current legal expectations) is not a “very special circumstance”- as 10% is a minimum expectation.
9. In essence, the Council consider that the benefits arising from the development do not outweigh harm to the Green Belt, but the applicant is concerned that several key factors are not being given weight in that judgement.
10. The applicant has prepared a case based on their experience that there is a lack of land supply which can cater for smaller businesses. They consider that this results in harm to economic growth, and stifles business growth more generally.
11. The applicant has identified a catchment area (10 minute drive time from a motorway junction) which the Council accepts. Within that catchment, the historic annual trend for small unit take up has been examined. This amounts to around 2,291sqm per annum or 0.6Ha. The application proposal is broadly equivalent to a years supply of small business space. The Council have not queried the principle of this need, nor its extent.
12. The sites available to accommodate that need have also been examined. It is concluded that no sites exist which are suitable or available for this form of development. Critically, this analysis has not been based on whether applicant itself can secure these sites- it is based on whether this form of development can be delivered on that site.
13. The applicant considers that the lack of sites in the catchment area is harmful and that meeting this need is a considerable socio-economic benefit that weighs heavily in favour of the application.
14. The applicant argues that need is not currently being met, which is contrary to the economic objective of the planning system (NPPF 8a). It considers that significant weight should be given to supporting economic growth, in line with NPPF advice at NPPF 85- which encourages decision makers to create the conditions for businesses to invest, expand and adapt; and to counter any local market weaknesses.
15. However, the Council consider that sites do exist which can meet that need. The Council note that there are sites which are both allocated and undeveloped in Kirklees.

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16. However, the applicant notes that none of these sites are within the catchment area on which the need calculation is based. The applicant contends that the existence of these allocations, which are yet to be developed, does not mean that they are suitable to meet the identified need. These sites are both outside the catchment area identified, as well as the parameters of the need assessment and are thus unlikely to meet the requirements of this type of business.
17. There is some agreement between the parties about the ability of the current plan (adopted just 5 years ago) to meet employment needs. The applicant suggests that the deliverable employment land supply is nearly exhausted. The Plan is now being reviewed to seek additional allocations, although the Council note that this is primarily based on housing needs- although accepts that employment land is also needed for the forthcoming Plan period.
18. The applicant suggests that a new Local Plan will not reach adoption for at least 3-5 years, based on experience elsewhere. On this basis, the sector of the market which is subject to this application will continue to suffer supply issues for that extended period. It is noted that the application site will only satisfy 1 year's worth of need, based on the applicant's calculations.
19. The applicant also suggests that the timescales associated with a new Local Plan and the associated lack of new land supply in the catchment, will compound the ongoing effects of larger units being delivered on allocated sites- which has excluded smaller units from the supply. There appears to be some agreement that this is occurring between the parties.
20. The smaller end of the market is already constrained, and there is no potential relief from new allocations for 3-5 years- which will continue to constrain the smaller end of the market. The applicant suggests that failing to address this lack of supply, in the short term, will result in extended economic harm. The application proposal offers the potential to alleviate this concern while the new Local Plan is put in place.
21. The applicant has identified need in a particular catchment area, and sites do not exist to meet that need, within that catchment. The delivery of the application site would not harm the delivery of the sites outside the catchment, as they would serve a different type of requirement.
22. There is a nearby site which has almost identical locational characteristics to the application site, which is both allocated and subject to a current application for employment uses. This site (Lindley Moor MXS3) has potential to meet some of the need considered in this case- but there is no certainty that smaller units will be delivered. The only unit at Lindley Moor with any certainty about it's form is Unit P (which is applied for in full) which is just over 50,000sqft. This is a modest unit in wider market terms, but very clearly in the "mid-box" category and obviously not focussed at a comparable market to the application proposals
23. The applicant also argues that the potential future availability of smaller units at Lindley Moor does not override the requirement to meet the identified need in full. These units would not achieve the level of smaller business space identified in the need assessment. Indeed, Lindley Moor is subject to an outline application, with no certainty that any units of that scale will be delivered, nor any indication of when that will happen.

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24. The applicant is concerned that the Council wish to see non-Green Belt alternatives developed before the application site. Whilst the logic of that position is understood, the applicant suggests that there is no “sequential test”, in local or national policy, which requires the delivery of all non-Green Belt sites, before new Green Belt land should be considered at application stage. Whilst it might be common to maximise urban capacity, before releasing new Green Belt sites in Plan Making- the tests for a planning application is whether the benefits identified can outweigh the harm to the Green Belt.
25. Turning to other benefits: The applicant contends that it is legitimate to include significant biodiversity enhancement as part of the very special circumstances case. Exceeding the legal requirement by 20% is very clearly a benefit, which can be taken to outweigh some of the identified harm to the Green Belt.
26. Similarly, the applicant contends that socio-economic outputs are a legitimate benefit that would arise from the proposal, and thus can be taken into account in the very special circumstances case.
27. The applicant suggests that there are a suite of benefits which together add up to very special circumstances- these are the benefit of addressing an employment deficit for which there is no other likely remedy; the socio-economic benefits of job creation and GVA; the contribution this will make to one of the most deprived districts in the UK; the considerable uplift in biodiversity.
28. The applicant also considers that, as the site is partially brownfield, the harm to the Green Belt is limited by the existing structures on the site- albeit it acknowledges that very special circumstances still need to be demonstrated. Whilst it might be expected to see a pub in the Green Belt, a pub is still inappropriate development that harms openness. The presence of other structures, regardless of their use, can also harm visual aspects of openness (the equestrian buildings on the site do not become invisible, just because they are potentially an appropriate use in the Green Belt). This is not a pristine area of Green Belt, and the Council’s analysis of this area suggested a low performance against Green Belt Purposes.
29. The applicant therefore suggests that the sites openness is already compromised, to a degree, which reduces the amount of harm to be outweighed.
30. The overall balance is clearly a matter of planning judgement. However, it would assist both parties if Counsel could offer their experienced opinion on whether the approach adopted by the applicant is both fair, and rooted in case law and good practice. It would also assist if Counsel could advice on the likely approach an Inspector would adopt in considering this balance, based on other examples where similar considerations are relevant.
31. The applicant has provided the following documents to assist with your review of the case:
  - Planning Statement
  - Need Assessment
  - Alternative Site Assessment

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- Council Policy response dated 6 February 2024

32. Counsel will note that other policy issues are raised in the documents above- including the loss of a community facility (the former pub use) and concerns around potential office use of the proposed units. The applicant intends to address these by providing accounts information from the former pub owners and suggesting the exclusion of pure office uses by Condition.

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# WAPPY SPRING, LINDLEY MOOR, HUDDERSFIELD

## ADVICE

### Introduction

1. I am asked to advise Frank Marshall Estates on its application to Kirklees Council (“**the Council**”) under reference 2023/62/93031/W for the:

“Erection of mixed industrial development (Use Classes E(g)(i, ii, iii), B2 and B8); including demolition of existing structures, new yard, parking, landscaping, drainage features and ancillary structures [at] Wappy Springs Inn, Lindley Moor Road, Lindley Moor, Huddersfield, HD3 3TD”

2. For reasons I explain below:
  - (i) The determinative question in national policy is whether the scheme’s benefits, taken together, clearly outweigh its harms (including any harm to the Green Belt) so as to comprise the very special circumstances required by §153 NPPF;
  - (ii) Answering that question is, in the end, a matter of planning judgment, not law; nonetheless
  - (iii) My view is that the planning statement, needs assessment and alternative site assessment submitted in support of the application provide a coherent, robust basis which accords with national policy to allow a view to be reached that the test at §153 NPPF has been passed;
  - (iv) The consultation response of the Council’s policy officer is **wrong** in several ways in its treatment of, in particular, (a) alternative sites, (b) BNG and (c) socio-economic benefits; and so

- (v) On account of those errors, should the Council refuse planning permission relying on the logic in the policy officer's response, my view is that approach would be highly vulnerable in the event of an appeal.

### **Background**

- 3. In this case, the Council agrees that:
  - (i) That there is an unmet need for smaller units, in both Kirklees and the defined catchment area;
  - (ii) That the general market need for larger warehouses has been met at the expense of smaller units being delivered - which is a factor of both market conditions and development economics; and
  - (iii) That the application site could help to meet some of the extant need for smaller units in Kirklees, and the wider City Region.
- 4. Differences remain over, in particular, whether and the extent to which this need can be met on alternative sites without using Green Belt land. The background is set out in more detail in my very helpful instructions which I do not repeat here.

### **Question for advice**

- 5. The question for advice is whether or not the applicant's position is fair, rooted in case law and good practice.

## Analysis

6. The parties agree that the scheme comprises inappropriate development in the Green Belt. In consequence, the determinative question in national policy is whether the scheme's benefits clearly outweigh its harms (including any harm to the Green Belt) so as to comprise the very special circumstances required by §153 NPPF.
7. If they do, permission should be granted: §153 NPPF. In those circumstances, the test is passed and very special circumstances are deemed to exist. In particular:
  - (i) There is no *further* test, e.g. the scheme's benefits do not need to be "remarkable" or "unusual" in of themselves.<sup>1</sup> That they clearly outweigh the scheme's harms is enough.
  - (ii) And there is no need for individual benefits *taken on their own* to outweigh the scheme's harms for the test to be passed. The question is whether the benefits *taken as a whole* pass the test at §153 NPPF.
  - (iii) There is no *sequential* test, i.e. that the test at §153 can only be passed if all non-Green Belt land has been definitively ruled *out*.
8. Answering the test at §153 NPPF is, in the end, a matter of planning judgment, not law.
9. My view is that the planning statement, needs assessment and alternative site assessment submitted in support of the application provide a coherent, robust basis which accords with national policy to allow a view to be reached that the test at §153 NPPF has been passed.

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<sup>1</sup> *R. (Wildie) v Wakefield MDC* [2013] EWHC 2769 (Admin) at §29.

10. In particular, on the question of alternative sites:
- (i) It is perfectly legitimate for the applicant to focus on meeting needs for the *particular* kind of scheme being proposed, i.e. the Nano Park concept which aims to fill a gap in the current space provision for small companies, new start-ups etc. by providing flexible, short term space in a “hybrid” format- with either storage or light industrial space on the ground floor and office space above.
  - (ii) It follows that, to be considered reasonable alternatives, other sites would need to be reasonably available and deliverable not just in general, but in order to meet those particular needs. It also follows that alternatives should be considered which fall within a reasonable catchment area of the site for this particular kind of use. The application proposes – and the Council accepts – that e.g. a 10-minute drivetime is appropriate in terms of having good access to the motorway network. In consequence, sites which fall outside that parameter can be excluded as reasonable alternatives.
  - (iii) In the end, the question to consider is not whether any non-Green Belt sites could accommodate this scheme. There is no sequential test to satisfy (i.e. through which all non-Green Belt sites must be developed first). The issue of alternative sites goes to weight – e.g. if meeting the qualitative and quantitative needs identified in the application in full within the catchment area and within a reasonable period of time (normally no longer than 5 years) is likely to require land beyond that currently allocated, then that supports giving greater weight to the meeting of those needs in this case. But even if alternative sites elsewhere could be available, the needs this scheme would meet are still benefits which must be given due weight in the §153 NPPF balance.

(iv) The Council's policy officer asserts that:

"All of the allocated employment and mixed-use sites are considered to be suitable, available and deliverable. The sites may not be available to the applicant or meet their locational requirements, but these sites are available, and as Local Plan allocations they should be developed prior to any green belt land."

In my view, that approach is **wrong** because (i) if sites are not reasonably available to the applicant, they are not reasonably available, (ii) if the sites do not meet what are agreed by the Council to be reasonable locational requirements which respond to the nature of the needs being met by the scheme, it follows that they are not reasonable alternatives to the application scheme, and (iii) as I have explained above, there is no policy requirement that allocated sites be delivered before green belt land.

11. Next, the Council's policy officer dismisses the relevance of socio-economic considerations by saying that:

"This isn't unique to this particular site; it would be the case with any new development within the district."

Again, in my view, that is the **wrong** approach. As above, the courts are clear that uniqueness is not the test. The question is whether the benefits **taken together** clearly outweigh the scheme's harms.

12. Further, the officer dismisses the relevance of BNG by saying that:

**The Environment Act 2021 requires that the development exceeds the pre-development biodiversity value of the onsite habitat by at least 10%. Therefore, this is a minimum value, and 3 times this requirement is not considered as a significant benefit that clearly outweighs the harm caused to the Green Belt.**

Again, in my view, this is the **wrong** approach. The question is not whether BNG provision clearly outweighs the scheme's harms *on its own*. The question is whether the scheme's extent

of BNG provision – which substantially exceeds any policy, or statutory requirement – alongside all of its *other* benefits, clearly outweighs its harms so as to pass the test at §153 NPPF.

13. On account of those errors, should the Council refuse planning permission relying on the logic in the policy officer's response, my view is that approach would be highly vulnerable in the event of an appeal.

ZACK SIMONS

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**16<sup>th</sup> MAY 2024**