

**KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE**

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) Section 191/192

**DELEGATED DECISION FOR APPLICATION FOR CERTIFICATE OF
LAWFUL DEVELOPMENT**

Reference no.: 2024/CL/92736/E

Site: Cycle Way from Pyenot Gardens to footpath from
Quaker Lane, Cleckheaton, BD19 5AU

Description: Certificate of lawfulness for proposed
improvements to cycling and walking infrastructure

Case Officer: Kevin Walton

Decision Reference: Grant Proposed Operations

**I hereby authorise the approval of this application for the reasons set
out in the officer's report and recommendation annexed below in
respect of the above matter.**

Kirsty Nicholls

AUTHORISED OFFICER

Date 21-Nov-2024

OFFICER REPORT

APPLICATION REF: 2024/92736

SITE: Spen Valley Greenway from Knowler Hill Tunnel to Serpentine Road, Cleckheaton

PROPOSAL: Improvement to cycle and walking infrastructure

1. Summary

- 1.1 This application seeks to confirm the lawfulness of proposed works to improve cycle and walking routes along Spen Valley Greenway between Knowler Hill Tunnel, Liversedge and Serpentine Road, Cleckheaton. The applicant seeks a Certificate of Lawful Development under the provisions of Section 192 of the Town and Country Planning Act 1990.

2. Site Description

- 2.1 The red line boundary (plan ref: 14089-N-DR-04-1000) indicates the site area includes a 2.15 km stretch of the existing Greenway encompassing the boundaries of the former rail cuttings, embankments, bridges and tunnels from the east end of Knowler Hill Tunnel towards the Greenway adjacent Tesco filling station at Cleckheaton.
- 2.2 The existing Greenway is surfaced with a track of varying widths flanked by trimmed grassed and other vegetated areas. Access onto the Greenway can be gained from nine existing access tracks connecting the Greenway to the existing public highway network.
- 2.3 As evidenced by the Highway Register details on the Council's mapping system, use of the Greenway by members of the public for cycling and walking purposes enjoys a permissive use from the landowners. This permissive use has existing well in excess of 20 years.

3. Proposal

- 3.1 The applicant has submitted plans listed below indicating the extent of works:

Plan Ref.	Plan Description	Description
14089-N-DR-04-1001	Knowler Hill Tunnel to Linton Close, Liversedge	Widen and resurface Greenway approx.. 2.5m to 3m. Re-construct 2m wide east link from Linton Close and resurface west link from Linton Close. Erect associated signage
14089-N-DR-04-1002	Linton Close to Primrose Lane,	Resurface Greenway and widen by 500mm in places.

	Liversedge	Re-construct and widen access to 3m, at Darley Road. Erect associated signage and install bollards at Darley Lane access. Fencing at Eddercliffe Bridge
14089-N-DR-04-1003	Primrose Lane to location 570 m west along the Greenway	Re-construct and widen access to 3m, at Primrose Lane. Erect associated signage and install bollards at Primrose Lane access. Install a mural on the surface.
14089-N-DR-04-1004	570m west of Primrose Lane to Pyenot Gardens	Widen and resurface Greenway approx.. 2.5m to 3m. Widen Greenway at Pyenot Hall Bridge to full width between existing parapet bridge walls (21m section). Reconstruct 2m wide access onto Pyenot Gardens. Reconstruct and widen access to Joe Cox Memorial Garden. Erect associated signage and install bollards at Joe Cox access. Erection of fence adjacent parapet walls of Pyenot Hall Bridge . Install a mural on the surface.
14089-N-DR-04-1005	Pyenot Gardens to adjacent west end of Royd Wood, Cleckheaton	Widen and resurface Greenway approx.. 2.5m to 3m. Install bollards at Pyenot Gardens access
14089-N-DR-04-1006	Adjacent west end of Royd Wood, Cleckheaton to Westgate Bridge, Cleckheaton	Widen and resurface Greenway approx.. 2.5m to 3m. Widen Greenway at Thoms Bridge to full width between existing parapet bridge walls (12.5m section). Fencing to be erected either side of bridge parapet. Reconstruct access beneath Thoms Bridge and to Greenway. Erect associated signage and instal bollards at Thoms Bridge access.
14089-N-DR-04-1007	Westgate Bridge, Cleckheaton to Tesco, Cleckheaton access	Widen and resurface Greenway approx.. 2.5m to 3m. Widen Greenway at Westgate Bridge to full width between existing parapet

		bridge walls (22.5m section). Resurface access at Station Approach and replace timber post and rail fence. Erection of fence adjacent parapet walls of Westgate Bridge. Repair and reinstatement of retaining wall at Station Approach access. Resurface and widen access to south side of Tesco car park. Resurface access to west side of Tesco Car Park. Erect associated signage. Paint existing garages with mural.
14089-N-DR-04-2002	Bollard Detail	Plan showing proposed bollards as detailed on the above plans at accesses onto the Greenway. Bollards shown at 950mm above ground level.
14089-N-DR-04-2005	Fence Detail	Plan showing proposed fences as detailed on the above plans adjacent to bridge parapets. Fences shown at 1100mm above ground level.

3.2 In addition to the above plans, a pre-application response from a planning officer is included giving an informal opinion on the lawfulness of the works.

4. Relevant Planning History

4.1 99/91558 – Formation of Cycle Path on Former Dismantled Railway – Full conditional permission – 30 July 1999.

4.2 No enforcement history.

5. Publicity

5.1 No publicity was undertaken and no representations received.

6. The Law

6.1 The following acts are considered relevant to this application:

- The Town and Country Planning Act 1990 [“the Act”]
- The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) [“GPDO”]

- 6.2 Section 55 of the Act provides for the type of operations that may be considered development for the purposes of planning control. Section 55(2) provides for a number of exemptions to the definition of development.
- 6.3 Where operations are deemed to consist of development as defined by section 55, section 57 of the Act provides that planning permission would be required for such work subject to exceptions as listed in section 57(2). No exceptions are considered relevant.
- 6.4 Section 59 of the Act provides for the Secretary of State to set out a Development Order to grant a general planning permission for certain specified works. Section 70 of the Act provides that a Local Planning Authority may grant planning permission for development via a planning application.
- 6.5 By virtue of section 59 of the Act, the Secretary of State has enacted the GPDO which may grant planning permission by virtue of Article 3(1) of the GPDO for development as set out in Schedule 2 of the Order.
- 6.6 Should anyone wish to ascertain from the Local Planning Authority that any works are lawful for the purposes of planning control, Section 192 of the Act allows for the provision for the Local Planning Authority to issue a certificate of lawful development.
- 6.7 Section 191 of the Act states that development is lawful if no enforcement action can be taken in respect of the work either because the works are not development or do not require planning permission or because the time for enforcement action has expired or for any other reason and that the works do not contravene the requirements of any enforcement notice.

7. Assessment

- 7.1 The proposed works to resurface, and in places, reconstruct the existing surface of the Greenway are considered to amount to an engineering operation. The installation of bollards, fences and signage are also considered to amount to building operations. The painting of murals is also considered to be a building operation¹. Consequently, the works are considered to constitute development as defined by section 55 unless any one of the exemptions to the definition of development as set out in section 55(2) apply. If they do not, then the works require planning permission by virtue of section 57 of the Act.
- 7.2 Section 55(2)(b) does provide an exemption to the Highway Authority for any works required for the maintenance or improvement of a road. In this instance it is understood the local authority are undertaking the works to improve the Greenway with the permission of the landowner in order to

¹ *Windsor and Maidenhead Royal Borough Council v Secretary of State for the Environment (1988) 56 P. & C.R. 427,*

enhance and improve sustainable transport links along strategic cycle and walking routes.

- 7.3 The Act does not define the term road, although the Road Traffic Regulation Act 1984 defines road as any length of highway or of any other road to which the public has access and includes bridges over which a road passes. Notwithstanding this definition and in the absence of any other reasonable definition of road, the full Oxford English Dictionary defines the word as “*an ordinary line of communication use by persons passing between different places usually one wide enough to admit the passage of vehicles.*”
- 7.4 Section 55(2) only refers to road and not highway although in each definition it is clear for a route to be considered a road it must be open to the public or any persons although not necessarily as if by right. Consequently, it is considered permissible to consider the Greenway as a road and that the local authority acting as highway authority are carrying out the works. However, to qualify for the exemption the maintenance or improvement must be required which under typical circumstances where the highway authority undertake such works on an adopted road, the works are ordinarily required to improve the road in the interest of safety or under some other statutory requirement. In this instance the road is in private ownership where liabilities in the interest of safety rest with that owner. Therefore, the highway authority is not carrying out the works as a requirement but rather to assist the landowner in improving the route and as such the exemption under section 55(2)(b) cannot apply. The improvement works therefore do require planning permission.
- 7.5 As no planning permission granted by the Local Planning Authority exists for the works, section 70 of the Act does not apply. Section 59 permits the Secretary of State to enact an Order to permit certain specified developments planning permission under general regulations.

Improvements / Widening / Installation of Bollards within the Greenway

- 7.6 In this instance the GPDO provides such a general planning permission by virtue of Article 3(1) and Schedule 2. Of potential relevance is Part 9 of Schedule 2 which provides the following:-

“Part 9, Class A

The carrying out by a highway authority

- (a) on land within the boundaries of a road, of any works required for the maintenance or improvement of the road, where such works involve development by virtue of section 55(2)(b)1 of the Act; or*
- (b) on land outside but adjoining the boundary of an existing highway of works required for or incidental to the maintenance or improvement of the highway.”*

&

“Part 9, Class E

The carrying out on land within the boundaries of an unadopted street or private way of works required for the maintenance or improvement of the street or way.”

- 7.7 As considered above, while the Greenway may be considered a road, the works are not required by the highway authority and therefore Class A(a) cannot be relevant. Class A(b) of Part 9 does allow for works to be carried out on land adjoining the boundary of an existing highway that while not required by the highway authority, the works may be incidental to the improvement of the highway such as the widening in this instance. However, this permitted development right only extends to an existing highway and not a road. The status of the Greenway as a highway has not been demonstrated by the applicant although it is understood that access to the Greenway has since construction in 2000 been continually on a permissive basis.
- 7.8 It is possible that over the passage of time, section 31 of the Highway Act may render the Greenway to have deemed to become a highway. Section 31 states:-
- (1)Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.*
- 7.9 The route may be considered deemed to be a highway in 2020 as the route appears to have been open to and enjoyed by the public without force or secrecy or over a 20 year period. However, the route has been enjoyed with the permission of the owner who was aware of persons using the Greenway and at any point may have legally obstructed the way preventing the public to use the route. Consequently, it appears clear that there was no intention to dedicate the route as a highway under the provisions of section 31 of the Highway Act 1980 and as such, given there is no evidence to the contrary, the route is not considered to be a highway and therefore Part 9 Class A(b) cannot apply to the proposed works.
- 7.10 Given that the route is not considered to be a highway, it therefore follows that the Greenway must be considered a private way, albeit used by the public. Therefore Part 9, Class E would apply to the works including resurfacing, reconstructing the Greenway and erection of bollards within the boundaries of the private way including the accesses to and from the public highway network. It is considered these works can reasonably amount to maintenance and/or improvements to the Greenway as a whole

and as such Class E of Part 9 is a description of the works to which Article 3(1) of the GPDO grants planning permission.

7.11 The submitted plans refer to the route surface to be widened from 2.5m to 3m except where indicated which would be marginally outside the surfaced part of the existing route, although it does not necessarily follow that the widened areas are outside the boundary of the private way. Ordinarily an improvement to a private way would be limited only to the existing surface as, for example, widening a private track running through a field would not amount to an improvement of the existing track as it would more likely be an alteration of the private way by way of encroachment onto parts not currently used. However, in this instance the existing surfaced path has no hard margin and varies in width across the entire route, with some parts surfaced at 3 metres and other margins within 3 metres defined by trodden areas or trimmed grassed before merging into vegetation/woodlands or grass scrub. Moreover, the entire route is occasionally flanked with public art, benches and other objects of interest further suggesting the owner encourages the public to step beyond the surfaced area to enjoy the route in a wider sense than simply staying on the surfaced path. Consequently, it is considered the marginal widening to 3 metres into areas not formally surfaced but regularly walked/cycled by users of the Greenway does not mean those areas cannot be part of the private way and by formalising with a hard margin the widening improves the usability of the route. Therefore, the marginal widening is considered to amount to an improvement to all the usable areas rather than an alteration simply to give users wider access. It may also be argued that considering the overall 2.15km length of the improvement works, the marginal widening is wholly inconsequential to the overall scale of the development and thus de-minimis. In either case, it is considered the marginal widening can reasonably fall within the description of works set out under Class E of Part 9.

7.12 With regard to the widened areas between the parapet walls of Westgate, Thoms and Pyenot Hall bridges it is considered the bridge structure as a whole is part of the private way in the same way the Road Traffic Regulation Act 1984 defines roads to include bridges. These works are also considered to fall within the description of works set out under Class E of Part 9.

Fences

7.13 The erection of the 1.1m high fencing adjacent to the parapet walls of the bridges shown with a cyan line and access from Station Approach shown dashed blue as indicated on plans 14089-N-DR-04-1002 /1004 / 1006 & 1007 is considered to be a means of enclosing the gap above the wingwalls to the bridges and embankment at Station Approach access. The repair to the sleeper retaining wall is also considered to enclose the access from Station Approach. Therefore, Class A, Part 2 of Schedule 2 of the GPDO can be considered relevant. Class A provides for the erection, construction, maintenance, improvement or alterations of a gate, fence, wall or other means of enclosure but not where:

Development is not permitted by Class A if—

(a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed—

(i) for a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons;

(ii) in any other case, 1 metre above ground level;

(b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level;

(c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater; or

(d) it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building.

7.14 As set out in paragraphs above, the Greenway is not considered to be a highway for the purposes of planning control and thus the maximum height permitted under Class A of Part 2 is 2 metres above ground level. The proposed fencing adjacent to the parapet are not considered to be adjacent to the public highways the bridges cross by reason of the height above those public highways and the position of the fence at the Station Approach access as shown by the dashed blue line and retaining wall hatched black is not considered to be adjacent to Station Approach. Consequently, the 1.1m high fencing and retaining wall fall within the description of development as set out in Class A of Part 2 and thus benefits from a general planning permission by virtue of Article 3(1) of the GPDO.

Other Matters

- 7.15 The layout plans indicate the installation of several signs principally to be erected adjacent to accesses to and from the Greenway. As set out above, it is considered the installation of signage would benefit from Part 9 Class E as an improvement to the private way although the certificate, if issued, would not extend to the lawfulness of the signage under the provisions of the Town and Country Planning (Control of Advertisements) Regulations 2007 (as amended) in the event it is considered the signage amounts to the display of an advertisement.
- 7.16 In addition to the above, plans reference 14089-N-DR-04-1003 / 1004 & 1007 refer to the painting of murals on buildings and surface of the Greenway and while the painting of buildings or work may benefit from a general permission as described in Class C, Part 2 of Schedule 2 of the GPDO, this does not extend to any painting which amounts to being an advertisement. It is considered necessary to add a footnote to this extent.
- 7.17 With regard to Article 3(4) of the GPDO, the 1999 planning permission does not include any planning conditions restricting the proposed development.

8. Conclusion

- 8.1 As reasoned above, it is considered the proposed works to improve the Greenway consisting of resurfacing, reconstruction, widening, installation of bollards, erection of fences/retaining wall, signed and the painting of buildings/works is development that is able to benefit from a general planning permission granted by virtue of article 3(1) and Part 2, Classes A & C and Part 9, Class E of Schedule 2 of the GPDO. It is therefore recommended to issue a certificate to that effect with a footnote regarding the display of advertisements.

Recommendation : Grant Certificate

Decision Notice text:

The proposed improvements to cycling and walking infrastructure as shown on plans listed in the table below benefit from a general planning permission granted by virtue of Article 3(1) and Part 2, Classes A & C and Part 9, Class E of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

This decision is based on the following details(s):-

Plan Type	Reference	Version	Date Received
Location Plan	14089-N-DR-04-1000	-	25/09/2024
Block Plan	14089-N-DR-04-1001	-	25/09/2024
Block Plan	14089-N-DR-	-	25/09/2024

	04-1002		
Block Plan	14089-N-DR-04-1003	-	25/09/2024
Block Plan	14089-N-DR-04-1004	-	25/09/2024
Block Plan	14089-N-DR-04-1005	-	25/09/2024
Block Plan	14089-N-DR-04-1006	-	25/09/2024
Block Plan	14089-N-DR-04-1007	-	25/09/2024
Fence Detail	14089-N-DR-04-2005	-	20/11/2024
Bollard Detail	14089-N-DR-04-2002	-	20/11/2024

Pursuant to article 35 (2) of the Town and Country Planning (Development Management Procedure) Order 2015 and guidance in the National Planning Policy Framework, the Local Authority have, where possible, made a preapplication advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application. The application was determined on the submitted information.

NOTE: This certificate does not extend to the display of any advertisement or any consent that maybe required under the provisions of Town and Country Planning (Control of Advertisements) Regulations 2007 (as amended) particularly with regard to references to the painting of murals as shown on plan 14089-N-DR-04-1003 / 1004 & 1007 and the display of signage.

Development within a Coal Mining Area

DEVELOPMENT HIGH RISK AREA - INFORMATIVE NOTE

The proposed development lies within an area that has been defined by the Coal Authority as containing coal mining features at surface or shallow depth. These features may include: mine entries (shafts and adits); shallow coal workings; geological features (fissures and break lines); mine gas and former surface mining sites. Although such features are seldom readily visible, they can often be present and problems can occur, particularly as a result of new development taking place.

It is recommended that information outlining how former mining activities may affect the proposed development, along with any mitigation measures required (for example the need for gas protection measures within the foundations), is submitted alongside

any subsequent application for Building Regulations approval (if relevant).

Any form of development over or within the influencing distance of a mine entry can be dangerous and raises significant land stability and public safety risks. As a general precautionary principle, the Coal Authority considers that the building over or within the influencing distance of a mine entry should be avoided. In exceptional circumstance where this is unavoidable, expert advice must be sought to ensure that a suitable engineering design which takes into account all the relevant safety and environmental risk factors, including mine gas and mine-water. Your attention is drawn to the Coal Authority Policy in relation to new development and mine entries available at:

www.gov.uk/government/publications/building-on-or-within-the-influencing-distance-of-mine-entries

Any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) requires a Coal Authority Permit. Such activities could include site investigation boreholes, excavations for foundations, piling activities, other ground works and any subsequent treatment of coal mine workings and coal mine entries for ground stability purposes. Failure to obtain a Coal Authority Permit for such activities is trespass, with the potential for court action.

If any coal mining features are unexpectedly encountered during development, this should be reported immediately to the Coal Authority on 0345 762 6848. Further information is available on the Coal Authority website at:

www.gov.uk/government/organisations/the-coal-authority