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## PLANNING SUPPORT STATEMENT

### DETAILED APPLICATION FOR THE FORMATION OF NEW VEHICULAR ACCESS

DENELANDS FARM,  
74 WAKEFIELD ROAD,  
GRANGE MOOR,  
WAKEFIELD,  
WF4 4BG.

MR P CORNELL

DECEMBER 2024

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## 1.0 INTRODUCTION

The proposal which forms the subject of this application for detailed planning permission is for the formation of a new access from Huddersfield Road, to serve the property known as Denelands Farm, 74 Wakefield Road, Grange Moor, Wakefield, WF4 4BG.

The following supporting documents/information are submitted with the application:-

- (i) Full plans and details – Paragon Highways;
- (ii) Highways Statement – Paragon Highways;
- (iii) Tree Report – Tree Care Consultancy;
- (iv) Planning Support Statement – Townsend Planning Consultants; and
- (v) Copies of Planning Officer's Report and Appeal Decision.

The application site a historic equestrian site. The existing access to the site exists from Wakefield Road via a shared access track, which also constitutes a public footpath. It is considered that the current access is unsuitable due to visibility constraints and conflict with pedestrians on the public right of way. A new access is sought from Wakefield Road which more suitable in relation to highways safety and will remove all traffic from the site from the public footpath. The proposed access track has been carefully sited and designed to minimise the impact on the openness or visual amenity of the Green Belt.

This submission seeks to demonstrate to the Council that:

- The application proposals constitute an engineering operation and is therefore not inappropriate development for the purposes of Paragraph 155 (b) of the Framework subject to the impact on openness. It is considered the development will not cause harm to the openness of the Green Belt due to the sensitive detailing of the proposals;
- Without prejudice to the above, there exists “very special circumstances” to justify the application site from a highways safety perspective and betterment in relation to the pedestrian users of the public right way in relation to the removal of traffic off the track; and

- Evidence will be provided of approvals within the district where the form of access proposed in the Green Belt has been considered acceptable.

This statement now proceeds to provide details of the background to the application site, including the planning history. The details of the proposal are then set out. Relevant planning policies contained in the statutory development plan, and relevant sections of the National Planning Policy Framework are then examined in detail. The issues that the proposal raises are also examined, including the application site's location in the Green Belt and Green Belt policy as well as highways safety. In particular, it will be demonstrated that the proposed development is not inappropriate development in the Green Belt due to the application site constituting an engineering operation does not harm openness and as such is not inappropriate development. In any event without prejudice to this, that there also exists "very special circumstances" to justify the granting of planning permission in terms of the benefits to highway safety.

Finally, the conclusion is reached that planning permission should be granted for the proposal to proceed. Nevertheless, the applicant remains willing to discuss all aspects of this proposal with the Council.

## 2.0 THE SITE, PROPOSAL AND BACKGROUND

The proposal which forms the subject of this planning application seeks the construction of a new vehicular access across the site from Wakefield Road to the existing equestrian use and residential dwelling. It will be noted that historic access is shared with farm uses (separate from the landowners) and it also constitutes a public footpath.

The site and landholdings have a longstanding established use for equestrian purposes dating back to at least 1999. The Council granted planning permission in 2019 for “*demolition of stable block and erection of detached dwelling*” (Ref 2019/62/90308/E). The dwelling has now been constructed and has been in occupation. The wider land which extends to 5.5 acres remains in equestrian purposes with movable stables and grazing taking place on land outside the dwelling and its domestic curtilage.

It will be noted that a characteristic of this area, there is a proliferation of varying uses including equestrian, residential and agriculture. Access tracks to these uses is not uncharacteristic or out of place in this area of countryside which is characterised by sporadic development.

The subject site currently and historically is accessed from a track from Wakefield Road, a single track access which also constitutes a public footpath. The track serves the application site, agricultural fields by a local farmer and is also a well trodden footpath route by residents from Flockton and Grange Moor. When leaving the access track onto Wakefield Road, the access is constrained in terms of visibility as set out in the supporting highways report Paragon Highways.

As a consequence, the applicant seeks to construct a new access from Wakefield Road to serve both the equestrian and residential uses on site. The new access will provide benefits in relation to highways safety as detailed in the supporting highways report. The new access point onto Wakefield Road is an improvement in relation to visibility and therefore highways safety (as set out in the supporting highways statement). It will also remove the traffic to and from the site from the public footpath which is well used by pedestrians and as such will remove that conflict.

In relation to the construction of the track, the track will be designed for two tyre track stone chippings to minimise green belt impact. It is also located to the west side of the field to

minimise views in the landscape due to existing topography. The applicant would also be happy to consider native screen hedge planting along the track should it be required.

Of particular relevant to the consideration of the proposal are two cases where permission has been granted for exactly this form of access within the Green Belt. It includes:-

- Ivy Farm, Brocholes Road, Farnley Tyas, Huddersfield, HD4 6UW – Deemed application via enforcement appeal for engineering operation consisting of the laying of a hard-surface vehicular access track - Appeal Ref APP/Z4718/C/22/3313108; and
- Winfield Drive, East Bierley, Braford – S73 Application to Vary Condition No.6 attached to Planning Permission No 2023/62/92029/E ‘Development of Equestrian Centre for Welfare and Education’ – Amendment to the previously approved scheme to include gravel tracks – Ref 2023/70/93433/E.

Copies of those decisions and the Council’s Statement of Case in respect of those applications are appended to this statement.

It is considered that the scheme put forward provides highways benefit in terms of highways safety in terms of reduction of traffic on a well used public footpath and the improved visibility when exiting onto Wakefield Road.

### 3.0 PLANNING POLICY

By virtue of Section 38 (6) of the Planning and Compulsory Purchase Act 2004, the planning authority must determine the planning application in accordance with the statutory development plan (insofar as it is material to the application), unless material considerations indicate otherwise. The NPPF also advises of a presumption in favour of development which accords with the development plan. The importance of the statutory development plan in the decision making process necessitates an examination of the relationship between the policies and proposals of the plan and government guidance.

#### 3.1 Central Government Policy Advice

##### 3.1.1 The National Planning Policy Framework

The following are comments on the advice in the Framework which is considered to be relevant to the consideration of the proposal:

Para 2 of the 'Introduction' sets out that:

*"Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise."*

Paragraph 11 of the Framework identifies how this presumption is to be applied in making decisions on individual applications stating:

- "c) approving development proposals that accord with an up-to-date development plan without delay; or*
  
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*
  - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*

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

Paragraph 12 goes on to state:

*“The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.”*

Section 13 deals with Protecting Green Belt Land. At Para 152 it states:

*“Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances.”*

Section 4 relates to Decision Making. In determining applications, Paragraph 38 states:

*“Local planning authorities should approach decisions on proposed development in a positive and creative way.”*

Paragraph 47 reaffirms that:

*“Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing.”*

Section 13 deals with Protecting Green Belt Land. Paragraph 143 sets out that Green Belt serves five purposes which are:

- a) *to check the unrestricted sprawl of large built-up areas;*
- b) *to prevent neighbouring towns merging into one another;*
- c) *to assist in safeguarding the countryside from encroachment;*

- d) *to preserve the setting and special character of historic towns; and*
- e) *to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.”*

The application proposals will not result in the harms set out against the purposes of Green Belt.

Para 152 states:-

*“Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances”.*

Para 154 goes on to state:

*“A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:*

- ...(b) the provision of appropriate facilities (in connection with the existing use of land or change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of the land within it;”.*

The NPPF considers that the provision of new buildings for outdoor sport and recreation are acceptable and would not constitute inappropriate development in the Green Belt subject to a test of openness. The proposals whilst not for a new building are partially for the existing established equestrian use and will preserve openness for the reasons set out.

Para 155 goes on to state that:-

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

- b) engineering operations;”.*

It is considered that this proposal constitutes an engineering operation, which subject to the preservation of openness and does not conflict with the purposes of Green Belt is acceptable. In this instance, with the proposals as including tyre track only surfacing, this engineering operation and as such will not harmfully impact on openness or the purposes of Green Belt and is therefore not inappropriate development. Recent planning decisions demonstrate that to be the case.

In any event and without prejudice of the above, it is considered that there exists “very special circumstances” in this instance in relation to issues of highways safety to justify the grant of planning permission for the scheme as submitted as set out at Paragraph 4.2.2 of this statement below.

### 3.2 **Local Planning Policy**

#### 3.1.2 **Kirklees Local Plan**

The Development Plan for the Kirklees District is the Kirklees Local Plan (2019). The site on the supporting proposals map is identified as being wholly within the Green Belt.

The following policies are considered relevant to the consideration of this application:-

(i) **Policy LP21 – Highways and Access**

The policy seeks to ensure there is sustainable modes of transport and safe access by all users. The application is supported by a highways statement. The proposals will ensure the reduction of vehicle traffic on a public footpath widely used by local walkers save for sporadic agricultural traffic. The new access and improved visibility ensures improvements to highways safety.

(ii) **Policy LP23 – Core Walking and Cycling Network**

The policy relates to the core walking and cycling network. Whilst the existing access does not form part of the core walking and cycling network the policy aims to ensure public rights of way are protected and enhanced. The proposed new access will ensure an existing right of way is enhanced and protected through the reduction of traffic along the lane.

(iii) Policy LP24 – Design

The policy constitutes the general design policy for all developments. The proposal seeks a new access track which constitutes good design through suitable design, layout and boundary treatment.

(iv) Policy LP33 – Trees

The policy seeks to protect trees and will not grant permission for development which directly or indirectly threatens trees. The proposals seek to retain existing trees and the proposal take into consideration any potential impacts of the proposals on trees.

(v) Policy LP47 – Health, active and safe lifestyles

The policy promotes healthy, active and safe lifestyles. The proposals will reduce traffic along an existing well used public footpath and in doing so promote the Council's aims.

(vi) Policy LP56 – Facilities for outdoor sport, outdoor recreation and cemeteries

The policy sets out that:-

*“In the Green Belt proposals for appropriate facilities associated with outdoor sport, outdoor recreation or cemeteries will normally be acceptable as long as the openness of the Green Belt is preserved and there is no conflict with the purposes of including land within it.”*

The proposals seek a new access which in part will be utilised for an existing longstanding equestrian use. It is considered that the proposals preserve the openness of the Green Belt.

*“b. the facility is unobtrusively located and designed so as not to introduce a prominent urban element into a countryside location, including the impact of any new or improved access and car parking areas;*

## 4.0 THE ISSUES

### 4.1 The Development Plan

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that the Council must determine the planning application in accordance with the Development Plan unless material considerations indicate otherwise.

It is considered that this statement fully demonstrates that the proposal wholly accords with the Development Plan by virtue of the development being “not inappropriate” in accordance with Paragraph 155 (b) of the Framework. In any event there exists “very special circumstances” for the permission to be granted:-

- (a) Improvements in highways safety in the new access in comparison with the existing; and
- (b) Removal of the applicants vehicular traffic from a well used public footpath.

### 4.2 Other Material Considerations

The following are issues which it is considered are material considerations in respect of the determination of this application.

#### 4.2.1 Green Belt - Engineering Operations

By reference to the NPPF, the subject development constitutes an engineering operation which can be deemed to be acceptable and not inappropriate, Paragraph 155 of the Framework provides:-

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

- b) engineering operations”.*

It is considered that the formation of access tracks to equestrian uses and residential uses is a clear characteristic of this part of the Green Belt. It does not involve the construction of any building. Save for at the access with Wakefield Road the predominant part of the

access will remain at natural land levels and therefore the impact on openness will be minimal.

It is considered that the proposals put forward which is surfacing on the wheel track only with additional screen planting of native hedgerow (if required) would ensure no harm to openness.

#### 4.2.2 “Very Special Circumstances”

Without prejudice to the primary contention that the proposal represent “not inappropriate” development for the purposes of Paragraph 155 (b) of the Framework, it is clear that there exists in this instance “very special circumstances” because of which consent for the development ought to be granted. These are as follows:-

##### (a) Highways Safety

The aim of this proposed development is to remove the current vehicular movements in association with both the residential and equestrian activity from the application site from the existing access track from Wakfoeld Road. As demonstrated the submitted highways report by Paragon Highways, the current access has restricted visibility at the junction with Wakefield Road. The new access will improve highways safety from a visibility perspective as demonstrated and will therefore be of benefit.

##### (b) Public Footpath

The current vehicular access is along a public footpath which is well used route by local residents. There is currently potential conflict between the people going to and from the site with cars, horse boxes, tractors etc and pedestrians. In having an alternative access, all visitors to and from the site will no longer use the public footpath and therefore remove the potential conflict.

It is therefore considered that there exists “very special circumstances” which outweigh the potential harms of the development.

#### 4.2.3 Trees

It is noted that there are trees adjacent to the proposed site access and also on the periphery of the site along Wakefield Road. A tree report supports the application and confirms that no harm will be made to any roots on nearby trees and any tree loss will be replaced by planting new trees.

#### 4.2.4 Other Planning Decisions

Whilst it is acknowledged that each application must be judged on its own merits, nevertheless it is considered that two recent planning decisions for exactly the same form of access are relevant and point to the grant of planning permission as follows:-

- (i) Ivy Farm, Farnley Moor, Farnley Tyas, Huddersfield – Appeal Ref: APP/Z4718/C/22/3313108

The appeal decision was issued on the 1<sup>st</sup> September 2023. The subject site was an existing working farm and one of the accesses utilised to the farm was severely constrained in terms of visibility. The farmer, therefore, decided to replace that access with a new access track utilising an existing farm access onto the highway. A full width access track was constructed following which the Council's enforcement officer requested the submission of a planning application. The application to regularise the development was refused and the Council immediately proceeded to serve an enforcement notice to remove the whole of the track.

Through the appeal procedure the Council statement of case (which is appended as well as the decision notice) at Para 2.11 states:

*“The existing agricultural access tracks to the site and the wider area can be characterised by a simple rutted track design. Agricultural vehicles such as tractors carve out rutted tracks across the landscape and aggregates are often used to infill the existing ruts producing the familiar rut and grass verge imprint. This is the familiar agricultural track in the countryside in this area.”*

The Council clearly set out how such forms of tracks have historically evolved and that they are a familiar feature of the countryside. In this context, the appellant submitted a revised design for the access track along the lines suggested by the

Council and the appeal was upheld in respect of the major part of the track subject to reverting the track to the rutted tyre formation referred to by the Council.

In terms of the issue of openness at Para 15, the Inspector states:

*“...I am not persuaded that the development would result in any significant sense of impact on the openness of the Green Belt or encroachment into the countryside. I conclude that the development does not result in visual or spatial harm to the openness of the Green Belt and is therefore not inappropriate development. Accordingly, it does not conflict with the Green Belt objectives of the Framework.”*

In granting permission for the retention of the track, the Inspector required that this be redesigned and at Para 18 stated:

*“I also consider the appellant’s proposal to redesign the surface of the track so that it would comprise of two narrow parallel lines of compacted stone would give the feature a simple more informal appearance thus enabling further visual mitigation.”*

At Para 19 the Inspector goes on to state:

*“Drawing these considerations together I conclude that the development would not result in an incongruous urban element in the landscape.”*

At Para 24 the Inspector goes on to consider the highway benefits of the proposed track and states:

*“I conclude that the better overall visibility available at the new access road junction would offer highway and pedestrian safety improvements.”*

The proposal essentially seeks to replicate the arrangement, which in the quoted case both the Council and Inspector considered acceptable in terms of impact on the openness of the Green Belt on the “purposes” and as such does not constitute inappropriate development. Indeed, the new access both offers pedestrian and safety improvements.

- (ii) Land Adjacent to Winfield Drive, East Bierley, Bradford, BD4 6RJ – App Ref 2023/70/93433/EE

This approval was granted by the Council on the 16<sup>th</sup> January 2024. The subject site was an equestrian site with stables and menage. Consent was granted for a its use from a private equestrian facility to an equestrian centre for welfare and education centre (ref 2023/62/92029/E). Condition 6 attached to the permission (granted on appeal) which required the approved access tracks to be formed by Geogrid.

The applicants sought to vary this condition to the use of a traditional rutted access track with crushed stone which was approved by the Council.

In considering the application the Council's Planning Officer sets out within their Officer Report that the change in surfacing:-

*“However, although this modification would alter the external appearance of the track, it is noted that the material palette would be appropriate to its rural setting. Therefore, it is considered that the materials would be acceptable*

*For the reasons outlined above, It is considered that the variation to the development proposed is acceptable from a visual amenity perspective and would accord with the aims of Policy LP24 of the Kirklees Local Plan and the aims of Chapter 12 of the National Planning Policy Framework.”*

It is considered that the proposed surfacing (in the currently proposals) would be appropriate to its rural setting and is a material palette accepted by the Council.

#### 4.2.5 Biodiversity Net Gain

A Biodiversity Net Gain Statement supports the application by Liz Ecology. Its recommendations can no doubt be dealt with via condition.

## 5.0 CONCLUSION

This application seeks the formation of a new access track on this established residential and equestrian site. The existing lawful access has restricted visibility and is also forms a well used public footpath. Once the new access track is in place it will remove the requirement to use the track for the dwelling and equestrian uses. This will be of significant benefit to highways safety.

It is considered that in this instance the development does not form inappropriate development pursuant to 155 (b) of the Framework, due to the fact the proposals would constitute an engineering operation and would not cause harm to the openness of the Green Belt nor conflict with the purposes of the Green Belt. In any event it is considered “very special circumstances” arise in this instance to justify the development of the application site in terms of highways benefits:-

- (a) Improvements in highways safety in terms of the visibility of the new access in comparison with the existing; and
- (b) Removal of the vehicular traffic from a well used public footpath.

It is clear that the proposal will deliver clear benefits which will not harm the Green Belt and as such the necessary “very special circumstances” are present in this case.

The proposals are no different in terms of design and form of development to those previously accepted by the Council/Government Inspector at Ivy Farm (Appeal Ref APP/Z4718/C/22/3313108) and Winfield Drive (Ref 2023/70/93433/E). It should be noted that in both cases no very special circumstances was required to justify the development proposed.

The applicant remains willing to discuss all aspects of the proposal with the Council. Should any matters arise or further clarification be required, please do not hesitate to contact me.

APPENDICES

APPENDIX 1 – IVY FARM APPEAL DECISION



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## Appeal Decision

Site visit made on 1 August 2023

**by R Merrett Bsc(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 1 September 2023**

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**Appeal Ref: APP/Z4718/C/22/3313108**

**Land at Ivy Farm, Farnley Moor, Farnley Tyas, Huddersfield, HD4 6UW**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr John Dodson against an enforcement notice issued by Kirklees Council.
- The enforcement notice was issued on 25 November 2022.
- The breach of planning control as alleged in the notice is Without the benefit of planning permission, an engineering operation consisting of the laying of a hard-surface vehicular access track.
- The requirements of the notice are a) Completely remove the hard-surface access track (as indicated hatched in blue in the approximate position on Plan 1 attached) and all resulting materials from the site; b) Return the land along the course of the access track, to the condition of the land prior to the development taking place.
- The period for compliance with the requirements is 60 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

**Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails and the enforcement notice is upheld, as corrected, in the terms set out below in the Formal Decision.**

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### Preliminary Matters

1. The drawing denoted 'Site Plan 2'<sup>1</sup> depicts an extension of the unauthorised access track northwards into an adjacent grassed paddock. However, this area is outside that where the unauthorised track has been identified on Plan 1 of the enforcement notice. Accordingly the proposed northward extension into that paddock does not form part of the development targeted by the notice and is not therefore within the scope of the deemed planning application before me, my considerations being limited to the extent of the unauthorised development.
2. If the unauthorised track, as identified in the enforcement notice, is permitted as defined at present, then access to and from the track at its northern end would be via the area within which the proposed car park associated with a recent planning permission for a farm shop on the site is proposed to be sited<sup>2</sup>. The main parties have had the opportunity to comment on this point and do not dispute that the use of the access track in this way would potentially

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<sup>1</sup> Drawing ref 2022-52-01 attached at Appendix 2 to the appellant's statement.

<sup>2</sup> Planning permission reference 2021/62/94724/E.

conflict with and compromise the functioning of the car park. The appellant confirms this is not their intention; indicates they do not need to retain the northern most section of the track, but rather divert the track to the west, over land to the rear of the proposed farm shop<sup>3</sup>.

3. This leads me to conclude that there is no justifiable need for the northern most section of the track. Accordingly I propose to uphold the notice insofar as it relates to this section of the route (which is identified between points B and C on the plan appended to this decision). Going forward in the decision, my considerations are therefore limited to the remainder of the track. As to the proposed extension of the track to the rear of the proposed farm shop, this is outside the scope of the enforcement notice, and therefore outside that of the deemed planning application currently before me. Any proposed extension of the track beyond the area targeted by the enforcement notice may need to be the subject of a future application to the Council for a separate planning permission.
4. I acknowledge that as part of my visit, the occupiers of No 70 Farnley Moor requested I view the unauthorised development from their property, in order to help appreciate its impact. However I am satisfied that I have been able to understand the impact of the development on the occupiers of that property, without needing to enter that site.
5. The appellant has confirmed they propose to restrict use of the access track to vehicles associated with agriculture on the farm, and that it would not therefore be used by vehicles associated with equestrian use there or by any traffic generated by the previously permitted farm shop use. I have therefore assessed the development on this basis.

## **The ground (a) appeal**

### **Main Issues**

6. The appeal on ground (a) is that planning permission should be granted. The main issues are:
  - Whether the development would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework);
  - the effect of the development on the openness of the Green Belt;
  - the effect of the development on the character and appearance of the area;
  - the effect of the development on highway safety;
  - the question of intentional unauthorised development;

### *Green Belt – Inappropriateness and Openness*

7. Paragraph 137 of the Framework sets out that the essential characteristics of Green Belts are their openness and their permanence. It states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 138 notes that the Green Belt has five purposes which include safeguarding the countryside from encroachment.

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<sup>3</sup> email from Townsend Planning Consultants dated 3 August 2023.

8. Paragraph 147 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
9. Paragraph 150 states that certain 'other' forms of development are not inappropriate in the Green Belt, provided they preserve its openness and do not conflict with the purposes of including land within it. The other forms of development referred to include engineering operations.
10. The assessment of impact on openness is about considering the presence of the development in the context of national policy which seeks to keep Green Belt land permanently open, thus avoiding urban sprawl. This specific assessment is not about the quality of the development, including the suitability of materials used, in itself, or its effect on the character and appearance of the area.
11. The Court of Appeal has confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect<sup>4</sup>.
12. That the development subject to the notice comprises an engineering operation is not in dispute. The said track is L-shaped, running in roughly straight lines from the main yard of Ivy Farm, at its northern end, southwards then turning a right-angle eastwards to connect with Thurstonland Road. The track varies in width from around 4 metres to approximately 7 metres in the vicinity of Thurstonland Road. It is constructed of loose pieces of aggregate, generally light grey in colour.
13. Though the length of the track is relatively extensive, it was apparent from my visit that visual receptors outside the farm itself are limited. The track would be seen, at distance, from the rear of adjacent dwellings to the north, including 70 Farnley Moor, extending southwards over the rising land form. Similarly the east-west leg of the track would be visible, at closer range, from the property known as Whinny Wood, situated on Thurstonland Road opposite the site. However there is nothing to persuade me that the use of the track by vehicles associated with agriculture on the farm would be intensive, such that it would serve to draw further attention to the development.
14. There is no significant visibility of the track from the surrounding public rights of way network, due to screening provided by mature trees or man-made features, including farm buildings and boundary walls. Views of the track from Thurstonland Road, to passing motorists and pedestrians, would be in the form of very fleeting glimpses. By its nature the track lacks three dimensional form, and vehicular movement along it, reminding passers-by of its presence, would be limited and fleeting.
15. Drawing these considerations together I am not persuaded that the development would result in any significant sense of impact on the openness of the Green Belt, or encroachment into the countryside. I conclude that the development does not result in visual or spatial harm to the openness of the Green Belt, and is not therefore inappropriate development. Accordingly it does not conflict with the Green Belt objectives of the Framework.

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<sup>4</sup> *Turner v SSCLG & East Dorset Council* [2016].

### *Character and Appearance*

16. Ivy Farm is situated in an upland setting. The surrounding countryside is undulating, with pockets of woodland and settlements visible in some long distance views. The farm itself is characterised by typical, large scale rectangular agricultural buildings, clustered near Brockholes Road to the north; attendant vehicles, plant and machinery and various boundary features subdividing the land.
17. The Council raises the concern that the development would introduce an incongruous urban element to an otherwise open landscape. From my visit I found that the light colouring, generous width and rather formal, straight alignment of the track serves to emphasise its presence in the landscape. However this impact is tempered due to the limited key visual receptors for the development, as I have identified above. In addition, I have taken into account that, from the north, the track would be viewed in the context of adjacent existing buildings and boundary features and from the east would be softened, as a margin of tree planting, implemented immediately adjacent to the track, begins to mature.
18. I consider these features mean that the eye would not tend to be drawn towards the track and would help to soften any potentially jarring visual impact. I also consider the appellant's proposal to re-design the surface of the track, so it comprises two narrow, parallel lines of compacted stone, would give the feature a simple, more informal appearance, thus enabling further visual mitigation. In this context I am not persuaded that the removal of sections of dry stone wall to accommodate the track and the visual impact of the track on remaining sections of wall result in material harm.
19. Drawing these considerations together I conclude that the development would not result in an incongruous urban element in the landscape. Accordingly it would not be in conflict with Policy LP24 of the Kirklees Local Plan 2019 (LP), insofar as it seeks to promote good design, including the need to respect the character of the landscape.

### *Highway Safety*

20. The appellant states that the location of the new access track junction with Thurstonland Road would enable large farm related vehicles to egress more safely onto the highway, when compared to a previously used track serving the farm, which has a junction with Thurstonland Road further to the south<sup>5</sup>. By contrast a number of third-party representations have been received, claiming conversely that the previously used track is the safer alternative.
21. I note the Council does not dispute the standard of visibility available in relation to the new junction<sup>6</sup>, and has raised no objection to the development on highway safety grounds. Having, as part of my visit, considered the probable speeds of traffic, I agree with the appellant that, despite the national speed limit of 60mph being in force along Thurstonland Road as it passes the site, in reality the speed of passing traffic is likely to be lower than this, because of the nearby curved alignment of the road. Typical speeds of around

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<sup>5</sup> It appears the appellant has chosen to close, or at least no longer use, this access point due to concerns regarding highway safety (emails from Townsend Planning Consultants dated 13 December 2021 and 26 September 2022).

<sup>6</sup> 2.4m x 215m to the north and 2.4m x 123m to the south (appellant's statement (Paragon Highways) Jan. 2023).

- 40mph could therefore reasonably be expected, such that visibility relating to the new access junction would be commensurate with national technical guidance set out in the Design Manual for Roads and Bridges<sup>7</sup>.
22. Furthermore, due to the proximity of a bend in the road, from the information before me I am in no doubt that visibility to the south from the previously used junction is inferior, when compared to that from the new junction, even when considering that the driving height of certain agricultural vehicles may improve visibility to a degree<sup>8</sup>.
23. The occupier of Whinny Wood raises the concern that the delivery of domestic fuel to that property results in a large vehicle parking on the highway opposite the new junction. However, I am not persuaded that this would result in harm to highway safety, when considering that this would be a relatively infrequent occurrence, also that the use of the new access track by farm vehicles is unlikely to be intensive. Neither am I persuaded, based on the information before me, that the location of the access track, broadly opposite two access points serving that property, is a cause for concern.
24. I conclude that the better overall visibility available at the new access road junction would offer highway and pedestrian safety improvements. Furthermore, because I have found, subject to planning conditions, the new access track does not cause harm, there is no need for me to weigh, in a planning balance exercise, the relative significance of this improvement or if visibility at, or the operation of, the previously used junction could be improved if necessary.
25. I acknowledge that the Council does not object to the use of the access onto Brockholes Road for all types of traffic connected with the existing farm yard, riding arena and proposed farm shop. Notwithstanding this, I consider that the new track further promotes safety and flexibility through helping to facilitate the segregation of domestic related and larger agricultural contracting vehicles.
26. Drawing together the above considerations I conclude that the development does not result in harm to highway and pedestrian safety. Accordingly there would not be conflict with Policy LP21 of the LP, or with the Framework, insofar as they are concerned with such matters.

#### *Intentional Unauthorised Development*

27. The government advised in 2015 that intentional unauthorised development (IUD) should be regarded as a material planning consideration to be weighed in the determination of planning applications and appeals. I have taken into account that the appellant explains the purpose of the development was intended to segregate traffic in the interests of safety; that they have sought to regularise the development by pleading ground (a) and that it would be possible to mitigate the development through the imposition of planning conditions. I am also mindful that the Act makes provision for a grant of retrospective planning permission, and planning enforcement that is remedial rather than punitive. In light of these considerations IUD does not weigh against the development in this case.

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<sup>7</sup> This indicates a desirable minimum of 120m in relation to 70kph speeds.

<sup>8</sup> A possible visibility splay of 2.4m x 90m+ to the south is referred to (HDC Support Ltd letter dated 24 February 2023).

### *Other Matters*

28. A number of third parties have raised the concern that the passage of vehicles along the track would result in disturbance arising from awareness of headlight movement. Because of the alignment of dwellings to the north and east of the track I have some sympathy with this point. However I consider that it would only potentially be problematic in relation to traffic associated with clientele of the proposed farm shop, as only traffic related to this use would be likely to use the track regularly in significant numbers. Notwithstanding the lack of a formal connection of the track to the proposed farm shop car park I am satisfied that the imposition of a condition restricting use of the track to agricultural vehicles would be sufficient to overcome this problem.
29. I have considered the argument that the grant of planning permission would set a precedent for other similar developments. However each application and appeal must be determined on its own individual merits and a generalised concern of this nature would not in itself justify withholding planning permission in this case.
30. Concern has been expressed by a third party about the potential development of a boundary wall on the land. This, however, is outside the scope of the enforcement notice and is not therefore before me for consideration. Concerns about the impact of the track on wildlife are unsubstantiated.

### **Conclusion**

31. For the reasons given above I conclude that the appeal should succeed in part only. In accordance with s177(1)(a) of the Act, I will grant planning permission in relation to part of the land the subject of the enforcement notice, but otherwise I will uphold the notice, with a correction, and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.
32. Section 180 of the Act states that where after the service of an enforcement notice planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission. Consequently the notice ceases to have effect with regard to the part of the vehicular access track located between points A and B, as annotated on the plan appended to the decision, because this benefits from planning permission and is therefore lawful for planning purposes. The requirements of the notice relating to the acceptable part of the development will not be deleted, so as to avoid any grant of unconditional planning permission being made through s173(11) of the Act.

### **Conditions**

33. I have given consideration to the need for planning conditions. A condition confirming the loss of the permission unless details are submitted for approval, and implemented in accordance with a specified timetable, concerning the re-design of the track surface, such that compacted stone is limited to the wheel track lines only, is required in order to help safeguard the character and appearance of the area.
34. The condition is imposed to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in

planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and implementation of the outstanding matter before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.

35. A condition requiring the implementation of landscaping works is required, also in the interests of character and appearance. A condition is required limiting use of the track to agricultural vehicles only, in order to mitigate any headlight intrusion on the living conditions of nearby residents.

### **The ground (g) appeal**

36. The ground (g) appeal is that the period for compliance with the requirements of the notice is too short. The appellant requests 12 months.
37. I have concluded that planning permission should be granted for a majority of the track. Only the northern most part of the access track has not been justified; has not been permitted and therefore remains subject to the requirements of the enforcement notice. It therefore follows that the ground (g) appeal now relates only to this limited part of the development.
38. This is a relatively short section of the track and as such the argument that the time for compliance with the enforcement notice should be extended is not compelling. The ground (g) appeal therefore fails.

### **Formal Decision**

39. It is directed that the enforcement notice is corrected by the substitution of the 'Plan 1' annexed to this decision for the 'Plan 1' attached to the enforcement notice.
40. Subject to the correction, the appeal is allowed insofar as it relates to the land hatched in blue between points A and B on annotated Plan 1 and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for an engineering operation consisting of the laying of a hard-surface vehicular access track at Ivy Farm, Farnley Moor, Farnley Tyas, Huddersfield, HD4 6UW and subject to the conditions below.
41. The appeal is dismissed and the enforcement notice is upheld, as corrected, insofar as it relates to the land hatched in blue between points B and C on annotated Plan 1 and planning permission is refused in respect of an engineering operation consisting of the laying of a hard-surface vehicular access track at Ivy Farm, Farnley Moor, Farnley Tyas, Huddersfield, HD4 6UW on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*R Merrett*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

- 1) Unless within 1 month of the date of this decision a scheme for the surface design of the access track is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of the track shall cease and all materials brought onto the land in connection with the development shall be removed until such time as a scheme is approved and implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) The use of the vehicular access track hereby approved shall be limited to agricultural vehicles only.
- 3) Landscaping works shall be carried out in accordance with details shown in green hatching on drawing no 2022-52-01 Rev. B; the Woodland Planting Schedule set out in Appendix 3 of the appellant's 'Brief Grounds of Appeal' and shall incorporate, beneath the trees, the planting specifications set out in sections AB1 and AB8 of Appendix 2 to the appellant's statement of case.
- 4) All planting and seeding comprised in the approved details of landscaping (as set out in condition 3 above) shall be carried out in the first planting and seeding seasons following the completion of the works required by condition 1 above. Any trees or plants which within a period of 5 years from the completion of the approved details of landscaping die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

## **END OF SCHEDULE OF CONDITIONS**

## Plan

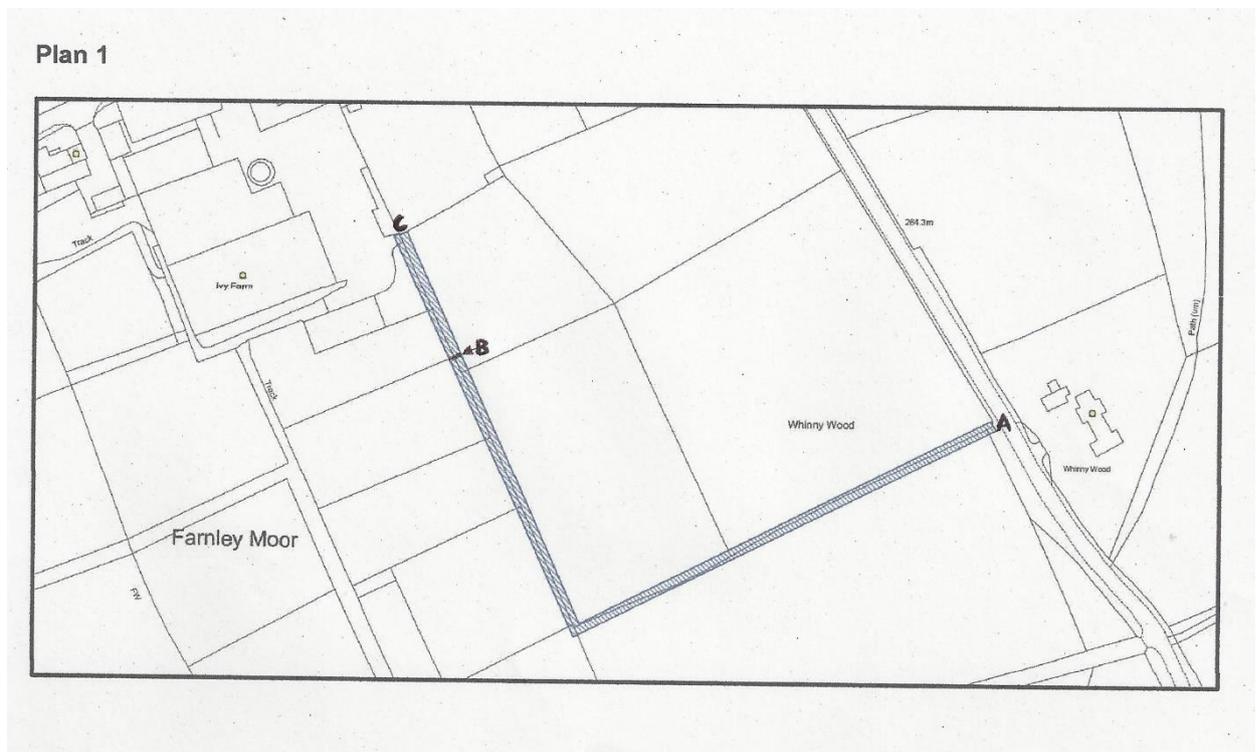
This is the plan referred to in my decision dated: 1 September 2023

by **R Merrett Bsc(Hons) DipTP MRTPI**

**Land at: Ivy Farm, Farnley Moor, Farnley Tyas, Huddersfield, HD4 6UW**

**Reference: APP/Z4718/C/22/3313108**

Scale: Not to Scale



APPENDIX 2 – IVY FARM COUNCIL'S STATEMENT OF CASE



**KIRKLEES METROPOLITAN COUNCIL**

**PLANNING**

**TOWN AND COUNTRY PLANNING ACT 1990 (as amended by the  
Planning and Compensation Act 1991)**

**KIRKLEES PLANNING AUTHORITY'S STATEMENT**

**LOCAL PLANNING AUTHORITY REFERENCE: COMP/21/0455**

**PLANNING INSPECTORATE REFERENCE:**

Case: APP/Z4718/C/22/3313108

**APPEAL BY:** Mr John Dodson

**SITE AT:** Land and Property at: Ivy Farm, Farnley Moor, Farnley Tyas,  
Huddersfield, HD4 6UW

**APPEAL AGAINST ENFORCEMENT NOTICE ALLEGING:**

Without the benefit of planning permission, an engineering operation  
consisting of the laying of a hard-surface vehicular access track.

## **1.0 Introduction**

**1.1** The appellant has appealed the enforcement notice on grounds (a) and (g).

**1.2** This statement will deal with these grounds of appeal in the following order (a) and (g).

## **2.0 Appeal under ground (a) “That planning permission should be granted for what is alleged in the notice”**

**2.1** The Council consider the main issues on this ground of appeal are:

- i. whether the development is inappropriate development in the Green Belt;
- ii. the effect of the development on the openness of the Green Belt;
- iii. the effect of the development on the character and appearance of the appeal site and surrounding area & agricultural need.

## **2.2 Whether the development is inappropriate development in the Green Belt & effect on openness**

**2.3** The National Planning Policy Framework (the Framework) states that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 150 of the Framework states that certain forms of development, such as engineering operations, are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. Paragraph 137 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and the essential characteristics of Green Belts are their openness and their permanence. The Planning Practice Guidance (PPG) identifies factors which can be taken into consideration when assessing the impact of a development on Green Belt openness. It states that openness is capable of both spatial and visual aspects.

**2.4** There is no dispute that the development amounts to an engineering operation, what is disputed by the appellant is what the purpose of the access track was when it was first constructed. The Council maintain that the access track was laid as a precursor to a subsequent planning application as it formed part of the supporting

evidence for planning application 2021/94724 for the '*Change of use of agricultural storage building to farm shop*'. The access track was subsequently omitted from the application, following Officer advice about its unacceptability, and the farm shop use was granted permission with access from the existing main access to the farm from Brockholes Rd, at the time of writing the farm shop permission has not been implemented. Before the access track was omitted from the application, the original supporting information included a Highways Statement from Paragon Highways, which supported the proposed public vehicular access from Thurstonland Road (i.e. the access track enforced against) to the proposed farm shop. The Paragon Highways Highway Statement (Project Number 1898) dated December 2021 states:

*"Para 1.3 'A recently improved access road served directly off Thurstonland Road to the immediate south of Whinny Wood provides a dedicated means of access to the proposed Farm Shop. This much improved dedicated access removes the requirement of the use of the existing operational farm access point off Brockholes Road, presently utilised to access both the building (which is the subject of this application) and the remainder of the family run small holding, including the farmhouse...*

*3.3.1 The site will be accessed via an improved access off Thurstonland Road. Vegetation at the access will be trimmed back and the stone wall will be lowered to improve visibility for emerging motorists.....*

*3.3.2 The development proposals will include passing places where the track reduces in width providing a minimum carriageway width of 5.5 metres at the location of the passing bays. The access has also recently been upgraded in construction from a mud track to stone chippings." (emphasis added).*

**2.5** On the other hand, the appellant states it is for agricultural purposes only and to serve the functional requirements of the farm. Irrespective of its intended purpose at the time it was laid or what it is used for now, the development constitutes inappropriate development in the Green Belt, because it does not preserve openness and it conflicts with one of the purposes of including land within it, namely to assist in safeguarding the countryside from encroachment.

**2.6** The length, width and materials used in its construction form an extensive area of engineered hard-surface track through the fields, introducing an urbanising element to

this part of the countryside. Whilst the track is less visible from outside the site, the track is visually intrusive when viewed from within the site and other fields within the appellants ownership, such as the field to the south whereby the Public footpath (ref KIR/115/40) cuts through. Notwithstanding that parts of the development maybe not so visible from outside the site, in *Turner*<sup>1</sup> Lord Justice Sales states at para 25 of the judgement that “*The openness of the Green Belt has a spatial aspect as well as a visual aspect, and the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt.....*”

**2.7** As such, the access track fails to preserve the openness of the Green Belt and would conflict with the one of the purposes of including land within Green Belt. It is therefore inappropriate development, harmful to the Green Belt by definition but also harmful in terms of its effect on openness and on the purposes of including land within the Green Belt. That harm, the NPPF says, carries substantial weight.

### **2.8 The effect of the development on the character and appearance of the appeal site and surrounding area & agricultural need**

**2.9** In addition to the visual intrusion mentioned above in relation to openness, the development is also contrary to Policy LP24, namely subsection (a) which states “*the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape*” (emphasis added).

**2.10** The Council maintains that the retention of the track in its current form, for agricultural purposes, is not acceptable and is unnecessary. If the track was constructed for agricultural purposes, the Council maintain that it is over engineered for the purposes of agricultural vehicles, its design and construction more suitable for non-agricultural vehicles (see Photos 2, 3 & 4 below). The hard-surface of the access track, contrasts with the adjacent open countryside, the construction materials are ‘urban’ in appearance. Its urban construction has a negative visual impact on the character and appearance of the farm-land through which it runs, and the wider immediate countryside.

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<sup>1</sup> *Turner v Secretary of State for Communities and Local Government [2016] EWCA Civ*



**Photo 2 – Hard-surface access track (facing East)**



**Photo 3 – Hard surface track (facing North)**



**Photo 4 – Hard surface access track (view from Thurstonland Rd)**

2.11 The existing agricultural access tracks to the site, and in the wider area, can be characterised by simple rutted track design. Agricultural vehicles, such as tractors, carve out rutted tracks across the landscape and aggregates are often used to infill the existing ruts, producing the familiar rut and grass verge imprint. This is the familiar agricultural track in the countryside, in this area (see Photos 5 & 6 below).

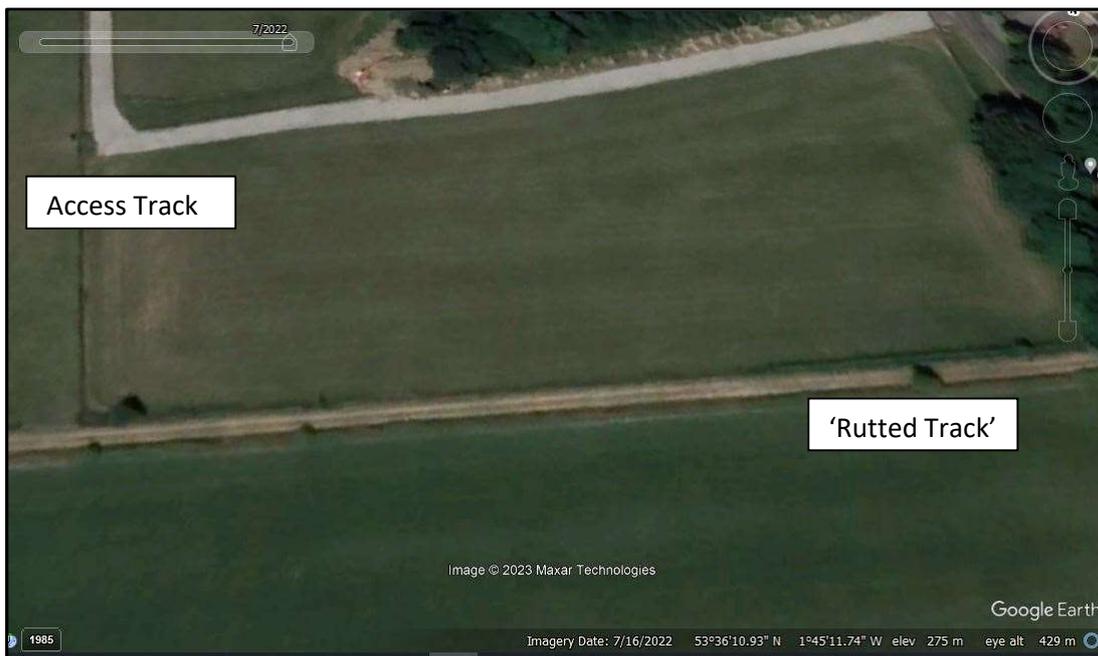


**Photo 5 – ‘Rutted track’ entrance off Thurstonland Road**

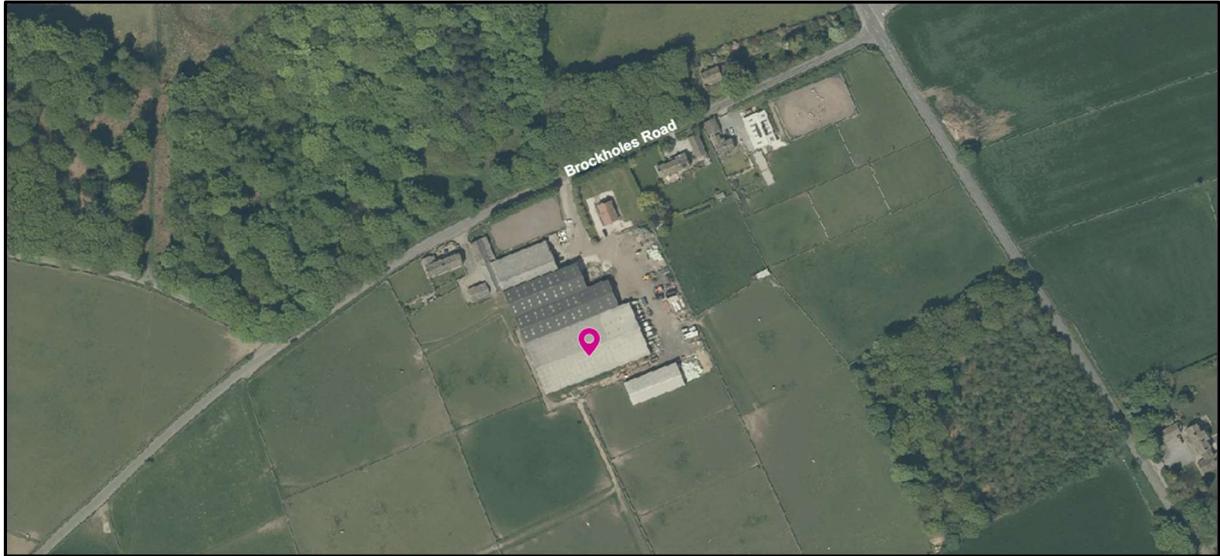


**Photo 6 – ‘Rutted track’ off Thurstonland Road - access to site**

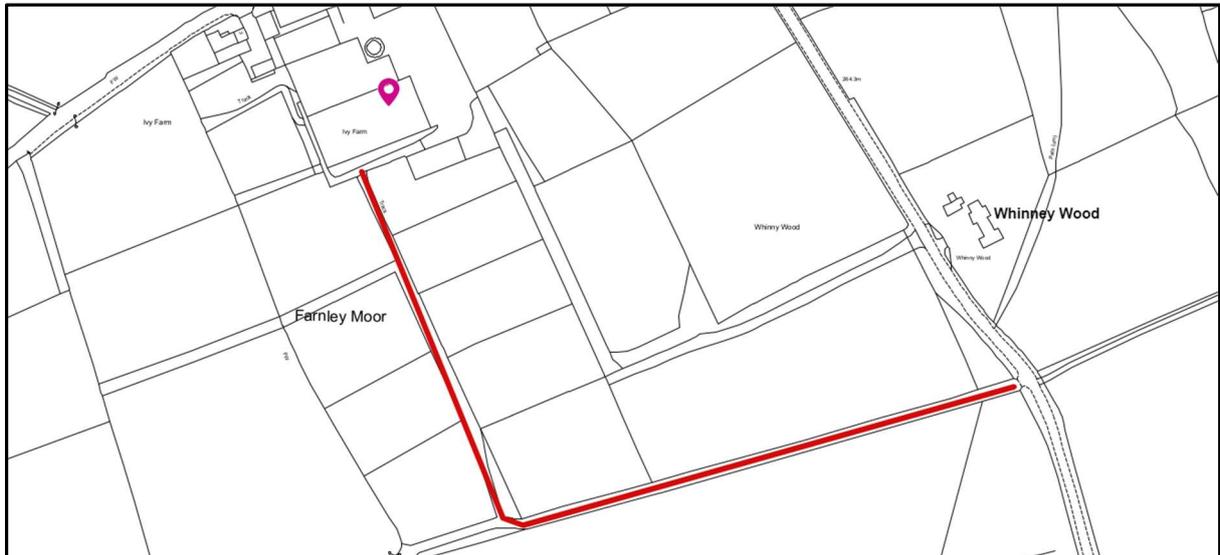
**Photo 7 – Aerial view of hard-surfaced access track and ‘rutted’ track**



**2.12** There are existing access tracks, suitable for access by agricultural vehicles to the site, off Brockholes Road (see Photo 8 below) and the ‘rutted’ track, 100m south of Whinney Wood, off Thurstonland Road (see Photos 5, 6 & 7 above and Map 1 below).



**Photo 8 – Access from Brockholes Road**



**Map 1 – Access track south of Whinney Wood**

**2.13** It is claimed by the appellant that the access track serves the functional needs of the farm, if that is the case then it is a material consideration in the planning balance. But put simply, it has not been demonstrated that there is an agricultural need for the unauthorised access track or that its retention is critical to the agricultural operation. As demonstrated, there is already access to the farm complex from Brockholes Rd and surrounding fields from Thurstonland Rd. The use of the track is not essential and at best just desirable to the appellant who would prefer not to remove it.

**2.14** A further consideration is the written Ministerial Statement of the 17 December 2015 '*Green Belt protection and intentional unauthorised development*', it confirms that

national planning policy makes intentional unauthorised development in the Green Belt a material consideration, that would be weighed in the determination of planning applications and appeals, to provide stronger protection for the Green Belt. The Council believes the construction of the track wasn't an accident, it involved pre-planning and was laid as a precursor to the farm shop application. The appellant has previously applied for planning permission at the site and understands the requirement to do so.

**2.15** To summarise, the unauthorised access track constitutes inappropriate development in the Green Belt, it fails to preserve the openness of the Green Belt and conflicts with one of the purposes of including land within it. Further additional harm is caused by the visual intrusion, by reason of the tracks length, width and materials used and the design of it does not respect and enhance the character and appearance of the landscape.

**3.0 Appeal under ground (g) “that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed;”**

**3.1** The appellant contends that the removal of the access track after 60 days is not sufficient time.

**3.2** The Council consider that a period of 60 days is sufficient in order for them to comply with the Notice, which requires the removal of the hard-surface track and all resulting materials from the site; and to return the land along the course of the access track, to the condition of the land prior to the development taking place. A digger, belonging to the farm, is already on site to undertake the removal of the track.

Therefore, the Inspector is respectfully invited to dismiss the appeal on ground (a) and (g) and uphold the enforcement notice.

**Statement prepared by** – Chris Cockroft, *Planning Enforcement Officer*

**Reviewed by** – Lee Stoney BA (Hons) MA MRTPI, *Development Management Compliance Team Leader*

## APPENDIX 3 – WINFIELD DRIVE CASE OFFICER REPORT

# KIRKLEES METROPOLITAN COUNCIL INVESTMENT & REGENERATION SERVICE

## DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) – SECTION 73

### DELEGATED DECISION TO DETERMINE PLANNING APPLICATIONS TO CARRY OUT DEVELOPMENT WITHOUT COMPLIANCE WITH PLANNING CONDITIONS PREVIOUSLY ATTACHED

Reference No:	<b>2023/70/93433/E</b>
Site Address:	Land Adj, Winfield Drive, East Bierley, BD4 6RJ
Description:	Variation of condition 6. (access track) on previous permission no. 2023/92029 for development of equestrian centre for welfare and education
Recommending Officer:	Nicole Helliwell

#### **DECISION – APPROVE VARIATION OF CONDITION 2**

**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.**

Sarah Longbottom

***AUTHORISED OFFICER***

Date: 16-Jan-2024

## **Officer Report**

**Reference No.** 2023/70/93433/E

**Site Address:** Land Adj, Winfield Drive, East Bierley, BD4 6RJ

**Proposal:** Variation of condition 6. (access track) on previous permission no. 2023/92029 for development of equestrian centre for welfare and education.

## **Site Description**

The application site relates to a parcel of land located adjacent to Winfield Drive in East Bierley. The site is situated within the designated Green Belt and is currently accessed via a track off Winfield Drive. The site is not within a conservation area, nor are there any listed buildings or Public Rights of Way (PROW) within close proximity to the site

## **Description of Proposal**

The applicant seeks consent to vary condition 6 on previous permission 2023/92029 for the development of an equestrian centre for welfare and education, which was granted on 6<sup>th</sup> October 2023.

Condition 6 of permission 2023/92029 relates to the proposed access track approved under the application and reads as follows:

*6. Except for the surface treatment of the proposed section of access track between the existing field gate entrance and the proposed parking and turning area, the development hereby approved shall be carried out in accordance with the details shown on Drawing No 1916-101E, dated June 2023 contained within the Highway Statement produced by Paragon Highways (Red: 1916B dated June 2023). The proposed section of access track between the existing field gate and the proposed parking and turning area hereby approved shall be formed from a geogrid system. Reason: To preserve the openness and character of the Green Belt, in accordance with Policy LP56 of the Kirklees Local Plan and Chapter 13 of the National Planning Policy Framework.*

This Section 73 application seeks to vary condition 6 of the previous permission which relates to the materials of the approved access track. The application seeks to replace the geogrid surface with a traditional rutted access track surfaced in crushed stone. The supporting statement confirms that the use of a geogrid system for surfacing will require the use of heavy duty UPVC, a non-sustainable material. The proposed scheme will utilise crushed stone which over time will break down and would be more sustainable than that the materials currently required by the condition.

## **Relevant Planning History**

- **2023/92029**: Development of equestrian centre for welfare and education. [Planning application details | Kirklees Council](#) – Conditional Full Permission
- **2021/92059**: Formation of new access. [Planning application details | Kirklees Council](#) – Refused (Upheld at appeal)
- **2019/93197**: Change of use of livestock building to 5 stables and equestrian storage, erection of menage and use of land for equestrian purposes. [Planning application details | Kirklees Council](#) – Conditional Full Permission
- **2011/92218**: Erection of livestock building and external alterations to existing agricultural storage. [Planning application details | Kirklees Council](#) – Conditional Full Permission

### **Representations**

The application was advertised by neighbour notification letters, which expired on 7th January 2024. As a result of the above publicity, no representations have been received.

### **Consultation Responses**

KC Highways Development Management – No objections

### **Policy**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019).

The site is located within the designated Green Belt on the Kirklees Local Plan Proposals Map. The most relevant policies for consideration in this case are:

### **Kirklees Local Plan Policies**

- **LP 1** - Achieving Sustainable Development
- **LP 2** - Place Shaping
- **LP 10** - Supporting the Rural Economy
- **LP 21** - Highway Safety and Access
- **LP 22** - Parking
- **LP 24** - Design
- **LP 28** - Drainage
- **LP 30** - Biodiversity and Geodiversity
- **LP 52** - Protection and Improvement of Environmental Quality
- **LP 53** - Contaminated and Unstable Land
- **LP 56** - Facilities for Outdoor Sport, Outdoor Recreation and Cemeteries

**In this case, the following SPDs are applicable:**

- Highways Design Guide SPD (adopted 4th November 2019)
- Biodiversity Net Gain Technical Advice Note (adopted 29th June 2021)

**National Policies and Guidance:**

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 20th July 2021, the Planning Practice Guidance Suite (PPGS) first launched 6th March 2014 together with Circulars, Ministerial Statements and associated technical guidance. The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

- **Chapter 2** - Achieving Sustainable Development
- **Chapter 8** - Promoting Healthy and Safe Communities
- **Chapter 12** - Achieving Well-Designed Places
- **Chapter 13** - Protecting Green Belt Land
- **Chapter 14** - Meeting the Challenge of Climate Change, Flooding and Coastal Change
- **Chapter 15** - Conserving and Enhancing the Natural Environment

**Assessment**

**1. Principle of development**

Section 73 of the Town and Country Planning Act 1990 allows for the variation or removal of a condition of a previous permission.

The principle of development for an equestrian centre for welfare and education was established under permission 2023/92029. As such, it is considered that the principle of the development remains established by way of this permission. This assessment will deal with the merits of the proposed variations only.

**2. Impact on openness of Green Belt and Visual Amenity**

Policy LP24 of the Kirklees Local Plan states that proposals should promote good design by ensuring the form, scale, layout, and details of all development respects and enhances the character of the townscape, extensions are subservient to the original building, are in keeping with the existing buildings in terms of scale, materials and details.

The NPPF also offers guidance relating to design in Chapter 12 (achieving well designed places) whereby Paragraph 131 provides a principal consideration concerning design which states: "The creation of high-quality beautiful and sustainable buildings and places is fundamental to what the

planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.”

### Alterations to Materials

The plans confirm that the geogrid surface previously approved would be substituted with a traditional rutted access track surfaced in crushed stone.

At the time of the original upheld appeal relating to application ref 2021/92059 for the formation of the access, the Inspector, in their decision stated that *“even when experienced from localised views, the use of a geogrid surface system would represent a discrete and reversible physical change which would not unduly dissect the land parcel within which it would be located. Of the surfacing options suggested by the appellant, it would be the least visually apparent and would not have an urbanising effect..”*

It is not clear what alternative surfacing options had been suggested by the appellant as these are not located on the application file. However, although this modification would alter the external appearance of the track, it is noted that the material palette would be appropriate to its rural setting. Therefore, it is considered that the materials would be acceptable.

For the reasons outlined above, It is considered that the variation to the development proposed is acceptable from a visual amenity perspective and would accord with the aims of Policy LP24 of the Kirklees Local Plan and the aims of Chapter 12 of the National Planning Policy Framework.

### **3. Impact on Residential Amenity**

Sections B and C of Policy LP24 state that alterations to existing buildings should: *“...maintain appropriate distances between buildings’ and ‘...minimise impact on residential amenity of future and neighbouring occupiers.”* Further to this, Paragraph 135(f) of the National Planning Policy Framework states that planning decisions should ensure that developments have a high standard of amenity for existing and future users.

The submitted plans confirm that there would be no alterations to the location and scale of the approved access track. Therefore, it is considered that the proposed alteration to materials would not result in any significant detrimental harm upon the neighbour’s residential amenity.

Having considered the above factors, the proposal is not considered to result in any adverse impact upon the residential amenity of any

surrounding neighbouring occupants, complying with Policy LP24 of the Kirklees Local Plan (b) in terms of the amenities of neighbouring properties and Paragraph 135 (f) of the National Planning Policy Framework.

#### **4. Impact on Highways Safety**

Local Plan Policies LP21 and LP22 of the Kirklees Local Plan are relevant and seek to ensure that proposals do not have a detrimental impact on highway safety and provide sufficient parking. Furthermore, Paragraph 115 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

KC Highways Development Management were formally consulted on the proposed variation. Officers confirmed that the variation to condition 6 is acceptable to Highways bearing in mind that condition 7 which covers the details of the surface and drainage treatment of the first section of the existing access is not affected by the proposal. On this basis, it is considered that the proposal would not cause any detrimental harm to the safe and efficient operation of the highway network and would comply with Policies LP21 and LP22 of the Kirklees Local Plan, Chapter 9 of the National Planning Policy Framework and the advice contained within the Kirklees Highways Design Guide SPD.

#### **5. Other Matters**

With regard to other matters that were assessed as part of the previous planning permission (ecology, contaminated land, hours of use, coal mining legacy and climate change), the proposal is unchanged in relation to these aspects and any conditions imposed in regard to these matters to make the development acceptable will be repeated as part of this application.

##### Conditions Review

As the application is a Section 73 application to vary conditions, it is necessary to re-impose all conditions which remain relevant.

The following conditions will be re-issued as they are considered to remain relevant:

- 1. Time
- 4. Hours of Use
- 5. Highway Statement
- 7. Surface and drainage treatment
- 8. Landscaping scheme
- 9. Replacement planting

The following conditions shall be reworded:

- 2. Approved plans (The plans and specification table will be amended to reflect the plans approved under this Section 73 application)
- 3. Unexpected Contamination (The condition will be reworded to reflect the update to the NPPF)
- 6. Access Track (This condition will be amended to reflect the plans approved under this Section 73 application)

There are no other matters relevant to the determination of this application.

## **6. Representations**

No representations were received following the statutory publicity.

## **7. Negotiations**

No amendments were sought or received during the course of the application.

## **8. Conclusion**

This proposal is a Section 73 Variation of Condition application to vary condition 6 (development in accordance with the approved plans). In determining a S73, the Local Planning Authority must only consider the 'disputed' condition that is the subject of the application – it is not a complete re-consideration of the application. Therefore, it is a consideration of Condition 6 only. As detailed within the report, given the acceptable design and lack of harm in terms of visual and residential amenity, the variation is considered to be acceptable.

The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice. This application has been assessed against the relevant policies in the development plan and other material considerations. The proposal would remain in accordance with the development plan and there are no material considerations to indicate otherwise. The development would therefore constitute sustainable development and it is recommended for approval.

**Recommendation: Approve**

## **Decision Authorisation - Delegated Powers**

**Application Number:** 2023/93433

**Officer Recommendation:** Grant Variation of Condition 6

### **Conditions and Reasons**

1. The development hereby permitted shall be begun before 5<sup>th</sup> October 2026.

**Reason:** Pursuant to the requirements of Section 91 of the Town and Country Planning Act 1990.

2. The development hereby permitted shall be carried out in complete accordance with the plans and specifications schedule listed in this decision notice, except as may be specified in the conditions attached to this permission, which shall in all cases take precedence.

**Reason:** For the avoidance of doubt as to what is being permitted and to ensure the satisfactory appearance of the development on completion, and to accord with Policies LP21, LP22, LP24, LP28, LP51, LP52 and LP53 of the Kirklees Local Plan, and the aims of the National Planning Policy Framework.

3. If contamination, or the presence of coal not previously identified by the developer prior to the grant of this planning permission is encountered during the development, all works in the affected area (except for site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within 2 working days. Works in the affected area shall not recommence until either (a) a Remediation Strategy by a suitably competent person has been submitted to and approved in writing by the Local Planning Authority or (b) the Local Planning Authority has confirmed in writing that remediation measures are not required. The Remediation Strategy shall

include a timetable for the implementation and completion of the approved remediation measures. Thereafter remediation of the site shall be carried out and completed in accordance with the approved Remediation Strategy. Following completion of any measures identified in the approved Remediation Strategy a Verification Report shall be submitted to the Local Planning Authority. No part of the site shall be brought into use until such time as that part of the site has been remediated in accordance with the approved Remediation Strategy and a Verification Report in respect of those works has been approved in writing by the Local Planning Authority.

**Reason:** To ensure the safe occupation of the site in accordance with Policy LP53 of the Kirklees Local Plan and Paragraph nos. 189 and 190 of the National Planning Policy Framework.

4. The premises shall not be open for business, outside the hours of 09:00 and 17:00 Monday to Sunday.

**Reason:** To ensure that the proposed use does not give rise to the loss of amenity to nearby residential properties, by reason of noise or disturbance at unsociable hours, to accord with the aims of Policies LP24 and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework.

5. The use hereby approved shall be operated in accordance with the Highway Statement produced by Paragon Highways (Ref: 1916B) dated June 2023.

**Reason:** In the interests of highway safety and to accord with Policies LP21 and LP22 of the Kirklees Local Plan.

6. Except for the surface treatment of the proposed section of access track between the existing field gate entrance and the proposed parking and turning area, the development hereby approved shall be carried out in accordance with the details shown on Drawing No 1916-101G produced by Paragon Highways. The proposed section of access track between the existing field gate and the proposed parking and turning area hereby approved shall be formed from two narrow parallel lines of compacted stone as detailed in drawing No. 1916-101G.

**Reason:** To preserve the openness and character of the Green Belt, in accordance with Policy LP56 of the Kirklees Local Plan and Chapter 13 of the National Planning Policy Framework.

7. Details of the surface and drainage treatment of the first section of the existing access, from the back of the existing kerb line on Hunsworth Lane to the existing drainage channel, shall be submitted to and approved in writing by the Local Planning Authority. The agreed details shall be implemented in full prior to the proposed access track being brought into use.

**Reason:** In the interests of highway safety and to ensure adequate drainage in accordance with Policies LP21, LP24 and LP28 of the Kirklees Local Plan.

8. A landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority, which includes the existing and proposed ground levels of the section of track nearest the existing field entrance. The agreed details shall be implemented in full thereafter by the end of the first planting season following the access track hereby approved being brought into use.

**Reason:** In the interests of visual amenity and to preserve the openness and character of the Green Belt, in accordance with Policies LP24 and LP56 of the Kirklees Local Plan, and Chapters 12 and 13 of the National Planning Policy Framework.

9. Any specimens forming part of the approved landscaping scheme which die or become diseased or damaged within the 5-year period following their planting shall be replaced by a specimen of a similar size by the end of the next available planting season.

**Reason:** In the interests of visual amenity and to preserve the openness and character of the Green Belt, in accordance with Policies LP24 and LP56 of the Kirklees Local Plan, and Chapters 12 and 13 of the National Planning Policy Framework.

**NOTE:** All contamination reports shall be prepared by a suitably competent person, as defined in Annex 2 of the National Planning Policy Framework 2021. Reports must be prepared in accordance with the following guidance:

- Land Contamination Risk Management (LCRM)
- BS 10175:2011+ A2:2017 Investigation of Potentially Contaminated Sites. Code of Practice
- Development on Land Affected by Contamination - Technical Guidance for Developers, Landowners & Consultants - (v11.2) June 2020 by the Yorkshire and Lincolnshire Pollution Advisory Group

**NOTE:** The conditions relate to Planning Control only. Approval under the Building Regulations may also be required, and the applicant should contact their Building Control Provider for further information. Any other necessary consent must be obtained from the appropriate authority. If the applicant commences work without discharging conditions, they will be at risk of enforcement action and invalidating the permission if the planning condition is a pre commencement condition.

**NOTE:** The granting of planning permission does not override any private legal rights or consents that may be required. It is the responsibility of the applicant / developer to ensure that all appropriate consents are in place prior to any development commencing; during the period of construction existing

access for neighbouring properties is maintained; and no damage is caused to the access driveway or surrounding properties.

**NOTE:** To minimise noise disturbance at nearby premises it is generally recommended that activities relating to the erection, construction, alteration, repair or maintenance of buildings, structures or roads shall not take place outside the hours of:

- 07.30 and 18.30 hours, Mondays to Fridays
- 08.00 and 13.00 hours, Saturdays
- With no working Sundays or Public Holidays

In some cases, different site-specific hours of operation may be appropriate. Under the Control of Pollution Act 1974, Section 60 Kirklees Environment and Transportation Services can control noise from construction sites by serving a notice. This notice can specify the hours during which the works may be carried out.

**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. Under the Coal Industry Act 1994 any intrusive activities which disturb or enter any coal seams, coal mine workings or coal mine entries (shafts and adits) require the prior written permission of the Coal Authority since these activities can have serious public health and safety implications. 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 permission to enter or disturb our property will result in the potential for court action. Application forms for Coal Authority permission and further guidance can be obtained from The Coal Authority's website at: [www.gov.uk/get-a-permit-to-deal-with-a-coal-mine-on-your-property](http://www.gov.uk/get-a-permit-to-deal-with-a-coal-mine-on-your-property)

**NOTE:** In areas where shallow coal seams are present caution should be taken when carrying out any on site burning or heat focused activities. If any coal mining features are unexpectedly encountered during development, this should be reported immediately to the Coal Authority on 0800 288 4242. Further information is available on the Coal Authority website at: [www.gov.uk/government/organisations/the-coal-authority](http://www.gov.uk/government/organisations/the-coal-authority)

**Plans and Specifications Table:**

<b>Plan Type</b>	<b>Reference</b>	<b>Revision</b>	<b>Date Received</b>
<b>Plans and Details pursuant to 2023/93433</b>			
Prelim Access Track Design	1916-101G	-	21/11/2023
Planning Support Statement			21/11/2023
<b>Plans and Details pursuant to 2023/92029</b>			
Site Location Plan	1544/004	d	23/09/2021
Proposed Equestrian Centre	1544/006	-	23/09/2021
Planning Support Statement	-	-	23/09/2021
Highway Statement	1916B	-	23/09/2021

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 has, where possible, made a pre-application advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application. The Officer did not enter into negotiations with the applicant as the proposal was considered to be acceptable as submitted.

**Dated: 12/01/2024**