

LDC Supporting Statement

Spen Valley Greenway-
Whitechapel Rd to Tofts Rd

Supporting statement for a Lawful Development Certificate application



Document control

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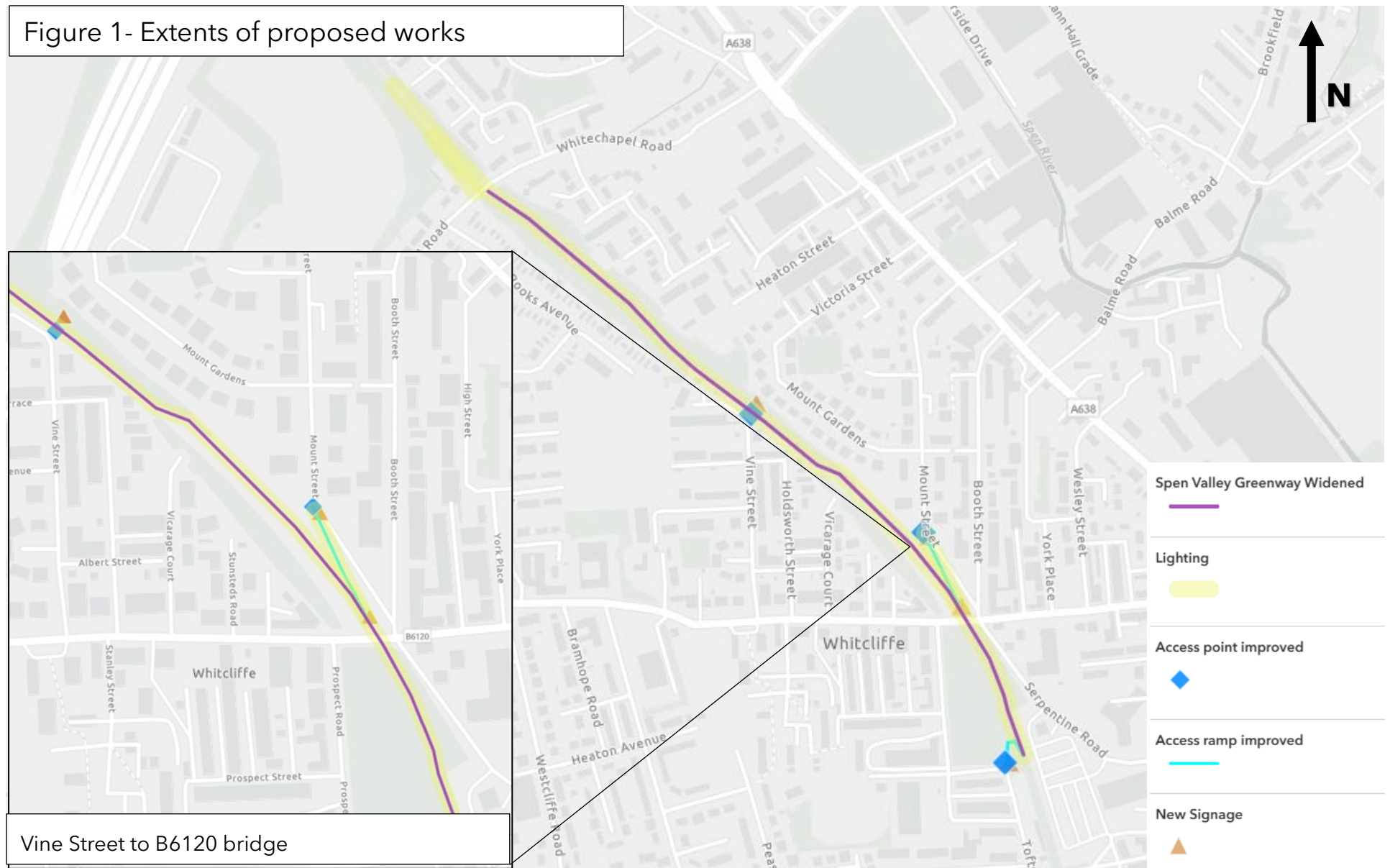
1. Facts

1.1 Location

This Lawful Development Certificate (LDC) application covers works on the Spen Valley Greenway, which are proposed for the purpose of improving the existing walking, cycling and wheeling shared use path. The section of path for which improvement works are proposed runs from Laithe Hall Avenue to Tofts Road. The works form part of a project, funded by the Department for Transport, to improve the National Cycle Network (NCN) based on 2 strategic priorities:

- **Fix it:** A seamless, safe and stunning Network, built for everyone
- **Connect it:** The Network is a connector, linking transport options, communities and destinations.

Figure 1- Extents of proposed works



1.2 Current Land Use

1.2.1 Spen Valley Greenway is a popular leisure and commuter route and forms part of NCN 66. By making the changes described, this scheme will benefit walkers, wheelers and cyclists, especially those with access difficulties, and should encourage more people in the nearby area to uptake active travel, as well as improving the experience for visitors.

1.2.2 The site, formerly the Spen Valley Railway Line, opened in 1848 and was closed in stages between 1965 and 1981. In 2000, the route re-opened as a cycle and walking path and remains one of the most popular and well-used sections of the National Cycle Network.

1.2.3 It is important to note that the existing shared use path comprises both its main alignment together with several access paths/ramps connecting adjacent residential areas to the main alignment: these are vital for increasing accessibility and permeability of the route as a whole. Path improvements are described in the bulleted list of proposed works below.

1.2.4 The existing shared use path (including both main alignment and access ramps) is a permissive walking, wheeling and cycling route on land owned and maintained primarily by Walk Wheel Cycle Trust, but with some areas owned and maintained by Kirklees Council. It is not a highway maintainable at the public expense within the meaning of the Highways Act 1980. A plan showing the extent of Walk Wheel Cycle Trust' and Kirklees Council's land ownership is included below (see Map 2)

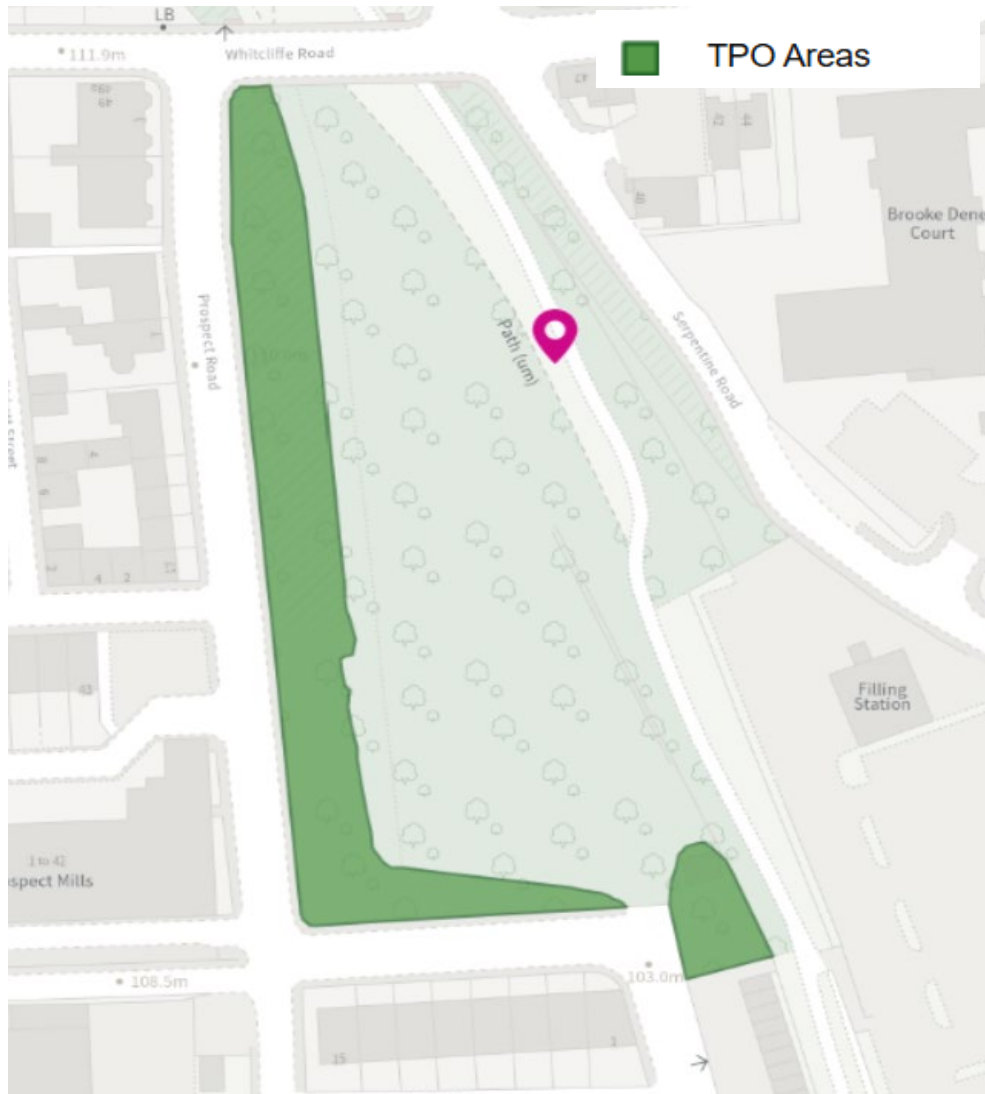
1.2.5 On either side of the metalled surface of the existing path, Spen Valley Greenway corridor has grassed verges, with space for the public to interact with nature, artwork and benches, and to pause to engage with each other. Path users are encouraged to step beyond the surfaced path and enjoy the full extent of the Greenway corridor. Therefore, the extent of the path boundary is considered to extend beyond the metalled surface, and to include the verges and adjacent open space.

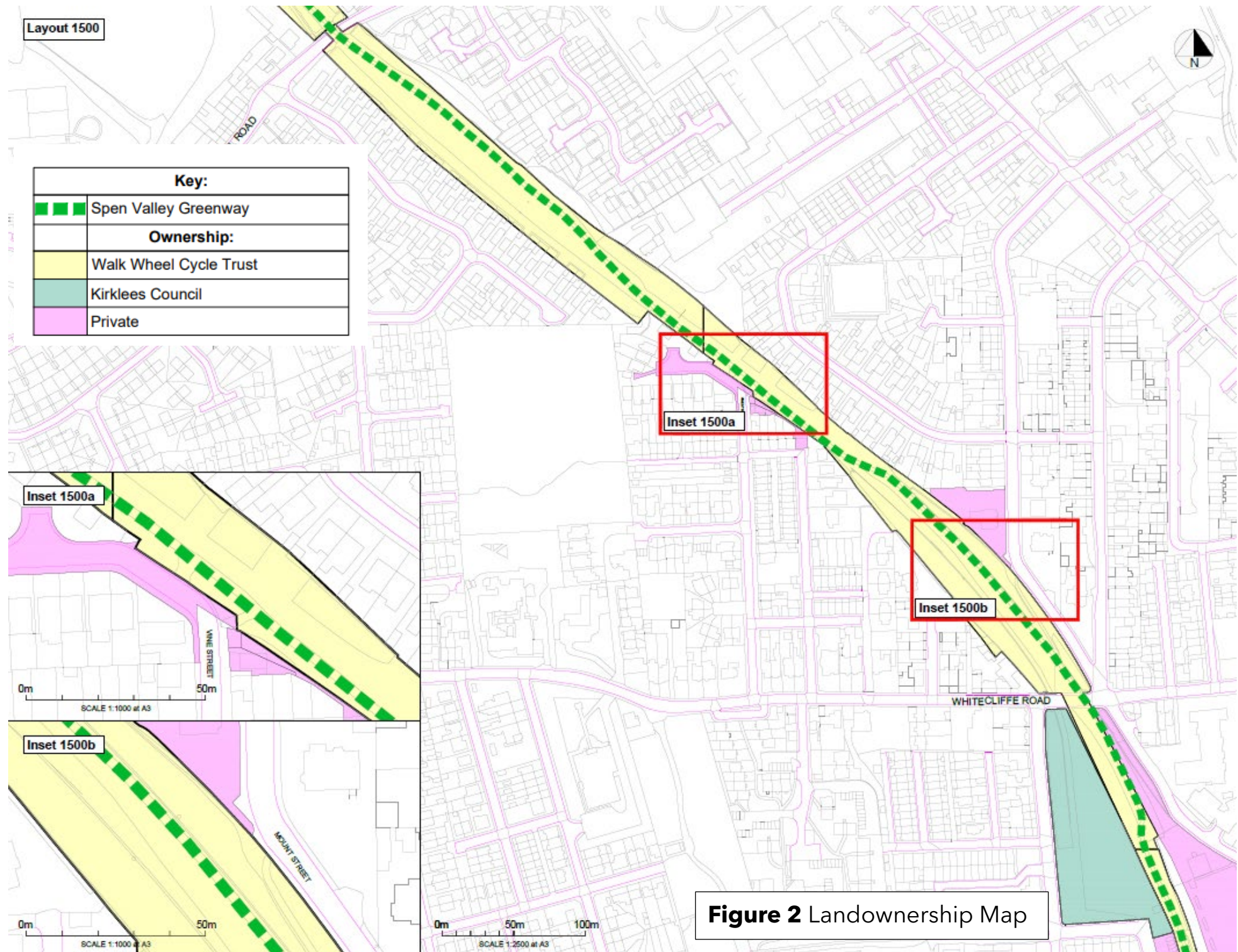
1.2.6 As such, all the proposed improvement works are considered to fall within the path boundary.

Designated Urban Green Space at Tofts Road

- 1.2.7 The urban green space at Tofts Road was formerly part of a goods siding as part of the Spen Valley Line, but is currently an under-utilised space, with some evidence of use by dog-walkers, but relatively significant signs of anti-social behaviour including fly-tipping, fire setting and drinking of alcohol.
- 1.2.8 The area is bounded to its south and western sides by a cutting slope, with a perimeter band of trees covered by a Tree Preservation Order (Figure 2 for TPO extents). A perimeter stone wall c. 1.5m-1.8m tall separates the site from Prospect Road and Tofts Road.
- 1.2.9 The goods station platform is still visible and largely intact, with self-set vegetation having established over the wider platform sides, and areas of more open scrubland. To the northern end of the site, a small BMX/mountain bike track has been formed (from the underlying ground/earth), having small and banked turns, with indication of relatively regular use.

Figure 2: Tree Protection Order extents at Toft Road, a small area southeast of the greenway access and larger area to the northwest, none of the proposed works would interact with these areas.





1.3 Background

- 1.3.1 The Spen Valley Greenway in its entirety, runs approximately 11km from Ravensthorpe to Low Moor, connecting the towns of Cleckheaton, Liversedge and Heckmondwike along the way. NCN 66 then continues to the north into Bradford, and NCN 69 continues to the south into Dewsbury.

In recent years, the popularity of the route has led to reported issues of conflict between path users and, as a result, some people have been put off from using the path. These conflicts can occur along the both the main line of the path and on the access ramps. The existing main asphalt path is insufficiently wide, at 2-2.5m, to accommodate the volume of users particularly at peak times, making it difficult for people to pass each other comfortably. This is narrower than current standards for shared use spaces, which require a minimum of 3m width (Local Transport Note 1/20). Conflict between users can also occur on narrow ramped access paths and entrances, which also do not meet current design standards.

- 1.3.2 The surface of some path sections has degraded, or been damaged by tree roots, making the greenway less accessible to many users.
- 1.3.3 In 2024, Walk Wheel Cycle Trust conducted a Route User Intercept Survey (RUIS) along a 2.1 km stretch of the greenway between Cleckheaton and Liversedge. Most respondents (92%) were using the route for recreational purposes. However, 15% reported that the greenway helped them to access public services, and 38% said it supported access to local shops and retail. Despite these benefits, the greenway is limited by perceptions of safety after dark—particularly during the winter months—with approximately 60% of users stating they did not feel safe using the route after dark (RUIS, 2024).
- 1.3.4 Improvement works to the greenway north of this project have already addressed some of these concerns through widening, resurfacing, and access upgrades. A construction project south of Tofts Road is currently underway and will include lighting enhancements.
- 1.3.5 This project will address the remaining section of greenway still to be improved, ensuring it can safely accommodate increased usage. The

proposed improvements aim to create a safer, more inclusive space where everyone feels welcome and no one is excluded. These enhancements will help safeguard the route for decades to come.

1.4 Proposed Works

1.4.1 The works detailed in this LDC application as shown on the submitted drawings have been designed in discussion with Kirklees Council, with reference to LTN 1/20 “Cycle Infrastructure Design” guidelines.

1.4.2 The following proposed works are located within Walk Wheel Cycle Trust’s land boundary for the existing shared use path:

- 1.** Widen to 3m (or as wide as physical constraints allow), resurface and otherwise improve the path along the 1km of route from Whitechapel Road to Tofts Road.
- 2.** Install new public seating along the route to aid use of the route by people requiring frequent rest.
- 3.** Install 4m lighting columns (and associated ducting, cabling & chambers) along the greenway from Laithe Hall Avenue to Tofts Road, and at the access ramps at Mount Street and at Whitechapel Road.
- 4.** Widen, resurface and otherwise improve the access to Mount Street.
- 5.** Widen, resurface and otherwise improve the access to Vine Street.
- 6.** Install new wayfinding signs along the route and at access points.
- 7.** Install appropriate fencing and bollards as required to ensure safety of path users and to exclude unauthorised vehicles.

The following proposed works are located within Kirklees Council’s land boundary:

- 8.** At the existing access ramp to Tofts Road, the path will be widened and resurfaced, and a landing provided at change of direction.
- 9.** An additional access will be installed from Tofts Road, leading northwards onto the greenway.

1.5 Adjacent scheme

1.5.1 The adjoining section of greenway path between Cleckheaton and Liversedge has recently undergone very similar improvements.

Kirklees Council granted a Certificate of Lawful Development in January 2025 to carry out these works (ref. 2024/CL/93391/E).

- 1.5.2 The officer's report concluded that "proposed works to improve the Greenway consisting of resurfacing, reconstruction, widening, installation of lighting columns, 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, Part 9, Class E and Part 12, Class A of Schedule 2 of the GPDO."

2. Law

- 2.1 Although several provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) are relevant to the proposed works, the primary provision being relied on is Class E, Part 9 to Schedule 2 of the GPDO. We consider – for the reasons set out below – that all the proposed works fall within the scope of Class E, except for the highway works bulleted (in 6, 7 and 8) in the list of proposed works. For the avoidance of doubt, although we have sought to apply every relevant provision of the GPDO to the specific works of improvement in the table below, we submit that all the proposed works, except those listed in 6, 7 and 8 fall within the scope of Class E.

Class E, Part 9, Schedule 2 to the GPDO

- 2.1.1 The scope of the permitted works in Class E is described as follows:

Permitted development

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.

Interpretation of Class E

E.1 For the purposes of Class E, “unadopted street” means a street not being a highway maintainable at the public expense within the meaning of the Highways Act 1980.’

A number of observations can be made about Class E of Part 9, Schedule 2:

- 1) A ‘private way’ means ‘a highway not maintainable at the public expense and any other way other than a highway’, see Article 2(1) of the GPDO.
- 2) An ‘unadopted street’ as defined in E.1 above can include any path which is not a highway maintainable at the public expense: the Secretary of State ruled, in an appeal decision (1996) JPL 70, that

permitted development rights in Part 9 (Class A) of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 ('GPDO 1995') were not limited to public highways - provided that the street or way is not a highway maintainable at the public expense (within the meaning of the Highways Act 1980) it could include any road, lane, footway, alley or passage, whether a thoroughfare or not. However, for a development to be 'permitted', there must be a recognisable street or way already in existence. [We note that Class A, Part 9 of Schedule 2 to the GPDO 1995 had identical wording to Class E.]

- 3) Class E is not prescriptive about what works are included within the scope of development in that Class, provided they fall within the scope of 'maintenance' and/or 'improvement' of the path.
- 4) There is no cubic capacity or other limit specified in Class E for the works which fall within its scope.
- 5) The words 'maintenance' or 'improvement' are not defined. They are therefore to be given their natural and ordinary meaning. There is no basis, either in the provisions to the GPDO or in legal principle, for introducing a specific limitation on the meaning of 'improvement', see Cowen v SOE and Peak District National Park Authority [1999] 3 PLR 108 CA.

Definition of 'maintenance' and 'improvement'

2.1.2 We rely on Cowen v SOE and Peak District National Park Authority [1999] 3 PLR 108, CA for the interpretation of (the now) Class E and the word 'improvement' of the street or way. In Cowen, the issue for the Court of Appeal (CA) to decide was the meaning of 'improvement' in Part 9 (Class A), now Class E, Part 9 of the GPDO. The CA held that the inspector was wrong in law when he reached a decision based on the following conclusions set out in his decision letter:

- that the hard surface was a significant change in the physical character of the existing rutted track through the fields and the works of construction of the hard-surface track fell within the definition of an "alteration" to the private way.

- that it was not possible to regard the creation of the hard-surfaced track as an “improvement” permitted by the 1995 order.

2.1.3 The CA found that the Inspector had been wrong when he proceeded to restrict the ordinary meaning of the word “improvement” in Part 9 of Schedule 2 by comparing it with the word “alteration” in Part 6. They concluded that there was no overriding policy or planning objective which justified giving the words of Part 9 a narrower meaning than they ordinarily bear. The CA found that a decision as to what constituted an ‘improvement’ was a matter of fact and degree for the decision maker, properly directed (in law) on the applicable statutory provisions in Part 9. Evans LJ held as follows:

“How then is ‘improvement’ in Part 9 to be defined?

....in my judgment there is no overriding policy or planning objective which justifies giving the words of Part 9 a narrower meaning than they ordinarily bear....

I would agree, however, that the ordinary meaning of ‘improvements’ is limited to changes which do not alter the basic character of the thing which is improved. But to establish this test, it is necessary to establish what the basic character was.

The primary attribute of the rutted farm track for present purposes was its status as a private way, for vehicles as well as pedestrians. In this sense, the hard surface was an improvement of the way, as the inspector found, but it does not follow from this that its character was changed.

What has changed is the construction of the way. This was the “marked change in character” to which the inspector referred. The issue as I see it is whether Part 9 is limited to improvements that do not alter the surface or method of construction of the way.

There are indications in Part 9 itself that the meaning is not so limited. “Improvement” is permitted as well as “maintenance”, and the provision clearly is concerned with the surface of the way.If the relevant character of the way is its status as a vehicular way, then the creation of a hard surface for the way is an improvement without altering its character. Similarly, a pedestrian right of way could be given an appropriate hard surface that was

suitable for pedestrians, but it could not be converted for use by vehicles.' (underlining added).

2.1.4 It is clear from Evans LJ's judgment in Cowen, therefore, that:

- It is necessary to establish what the basic character of the path is;
- The path may be improved as well as maintained;
- Part 9 is not limited to improvements that do not alter the surface or method of construction of the way;
- By way of example, a pedestrian right of way could be given an appropriate hard surface that was suitable for pedestrians, but it could not be converted for use by vehicles and fall within the scope of permitted development.

2.1.5 In our submission, the proposed works which form part of this LDC application can properly be described as works of 'improvement' within the scope of Schedule 2, Part 9, Class E (except for the works on land owned by Kirklees Council listed in '8 and 9' bulleted above which are local highway authority works falling within the scope of permitted development as identified in the table below), for the following reasons:

1. The 'basic character' of the existing path is a shared use walking, wheeling and cycling path used by the public. It forms part of the Spen Valley Greenway, adjoining sections of which have recently been upgraded to a 3m width with lighting and other improvements. It is part of the NCN and there is no public motorised vehicular use of the path.
2. The proposed works are all for the purpose of improving this walking, cycling and wheeling path. Any 'improvement' implies a degree of alteration and the works are required for the improvement of the existing street/way within the ordinary meaning of that term. The improved path would continue to be suitable for walking, wheeling and cycling by members of the public but it would not be appropriate or accessible for public motorised vehicular use.

3. The path would, therefore, remain a shared use path for the purposes of walking, wheeling and cycling for the benefit of the public. The path would continue to be a 'traffic free' section of the Spen Valley Greenway and the works would not convert the existing path into something different. The basic character of the path would not change and so the works would not go beyond the scope of an "improvement" of the way permitted by Class E, Part 9, Schedule 2.

2.1.6 In the table below, we have sought to apply all the relevant provisions of the GPDO to the specific works of improvement that we propose, shown on the drawings submitted as part of this LDC application.

	Description of works	Permitted development - relevant provision(s) of the GPDO
1	Resurface the path in asphalt along the 1km of the route from Whitechapel Road to Tofts Road and widen to 3m or as wide as physical constraints allow.	The proposed works of improvement are permitted development (PD) falling within the scope of Schedule 2, Part 9, Class E using the broad definition of 'within the boundaries' of the street or private way to mean the whole width of the path currently available for public use as demarcated by Walk Wheel Cycle Trust's land boundary - see the plan above.
2	Install new public seating along the route to aid use of the route by people requiring frequent rest.	The proposed works of improvement are PD falling within the scope of Schedule 2, Part 9, Class E using the broad definition of 'within the boundaries' of the street or private way to mean the whole width of the path currently available for public use as demarcated by Walk Wheel Cycle Trust' land boundary - see the plan above.
3	Install lighting columns (and associated ducting, cabling & chambers and cabinets) along the greenway from Laithe	The installation of lighting columns will improve the useability and public safety of the path/private way. Therefore, the proposed works of improvement are PD falling within the scope of Schedule 2, Part 9, Class E using the

	Hall Avenue to Tofts Road, and on the access ramps at Mount Street and at Whitechapel Road.	broad definition of 'within the boundaries' of the street or private way to mean the whole width of the path currently available for public use as demarcated by Walk Wheel Cycle Trust' land boundary - see the plan above.
4	Widen, resurface and otherwise improve the access to Mount Street.	The proposed works of improvement are permitted development (PD) falling within the scope of Schedule 2, Part 9, Class E using the broad definition of 'within the boundaries' of the street or private way to mean the whole width of the path currently available for public use as demarcated by Walk Wheel Cycle Trust' land boundary - see the plan above. Alternatively, Part 2, Class B 'means of access to a highway' would also apply. The new access ramp will be a means of access from the Greenway to Tofts Road, which is not a trunk road or a classified road. The new access is required in connection with improvements to the Spen Valley Greenway which are permitted development under Part 9, Class E.
5	Widen, resurface and otherwise improve the access to Vine Street.	The proposed works of improvement are permitted development (PD) falling within the scope of Schedule 2, Part 9, Class E using the broad definition of 'within the boundaries' of the street or private way to mean the whole width of the path currently available for public use as demarcated by Walk Wheel Cycle Trust' land boundary - see the plan above. Alternatively, Part 2, Class B 'means of access to a highway' would also apply. The new access ramp will be a means of access from the Greenway to Tofts Road, which is not a trunk road or a classified road. The new access is required in connection with improvements

		to the Spen Valley Greenway which are permitted development under Part 9, Class E .
6	Install new wayfinding signs along the route and at access points.	Under The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 traffic signs which meet the relevant conditions may be displayed without express consent or deemed consent. Wayfinding signage is considered to fall within the definition of 'traffic sign' as set out by The Road Traffic Regulation Act 1984 s64(1), and will accord with The Traffic Signs Regulations and General Directions 2016.
7	Install appropriate fencing and bollards as required to ensure safety of path users and to exclude unauthorised vehicles.	Replacement fencing and bollards are permitted under Schedule 2, Part 11, Class C - demolition of gates, fences, walls etc. and Schedule 2, Part 2, Class A - gates, fences, walls etc. The replacements will not exceed the height of existing fencing and bollards. New fencing and bollards are permitted under Schedule 2, Part 2, Class A - gates, fences, walls etc. as the fencing and bollards will be less than 1m in height when adjacent to a highway used by vehicular traffic and less than 2m in height in all other circumstances. Arguably, fencing and bollards could be deemed works required for improvement of the private way and also fall within the scope of Schedule 2, Part 9, Class E.
8	At the existing access ramp to Tofts Road, the path will be widened and resurfaced, and a	Part of the access ramp is within Walk Wheel Cycle Trust's land ownership boundary, therefore falls within the scope of Schedule 2, Part 9, Class E using the broad definition of

	landing provided at change of direction.	'within the boundaries' of the street or private way. The other part of the ramp is owned by Kirklees Council and we have been in discussions with Kirklees about these works. Schedule 2, Part 12, Class A(a) and (b) therefore apply. These are permitted development rights of the local authority or carried out by a third party on behalf of the local authority. These works do not exceed the limitation of 200 cubic metres in capacity set out in A.2, either individually or taken cumulatively with other works where Part 12, Class A is relied on. Alternatively, Part 2, Class B 'means of access to a highway' would also apply. The new access ramp will be a means of access from the Greenway to Tofts Road, which is not a trunk road or a classified road. The new access is required in connection with improvements to the Spen Valley Greenway which are permitted development under Part 9, Class E.
9	An additional access will be installed from Tofts Road northwards onto the greenway through the urban green space.	The land required for these works is owned by Kirklees Council and we have been in discussions with Kirklees about these works. Schedule 2, Part 12, Class A(a) and (b) therefore apply. These are permitted development rights of the local authority or carried out by a third party on behalf of the local authority. These works do not exceed the limitation of 200 cubic metres in capacity set out in A.2, either individually or taken cumulatively with other works where Part 12, Class A is relied on.

		Alternatively, Part 2, Class B 'means of access to a highway' would also apply. The new access ramp will be a means of access from the Greenway to Tofts Road, which is not a trunk road or a classified road. The new access is required in connection with improvements to the Spen Valley Greenway which are permitted development under Part 9, Class E.
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2.1.7 In our submission, the works described in this LDC application are works of improvement for the benefit of members of the public who wish to walk, wheel and cycle along the Spen Valley Greenway. There would be changes to the existing shared use path but these would not alter the basic character of the path. This is consistent with the reasoning in Cowen (supra). These works therefore fall within the scope of permitted development as identified in the above table, namely:

1. Class E of Part 9, Schedule 2 to the GPDO - repairs to unadopted streets and private ways;
2. Class A(a) and (b) of Part 12, Schedule 2 to the GPDO - works by a local authority;
3. Class C of Part 11, Schedule 2 to the GPDO - demolition of gates, fences, walls etc.; and
4. Class A of Part 2, Schedule 2 to the GPDO - gates, fences, walls etc.

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