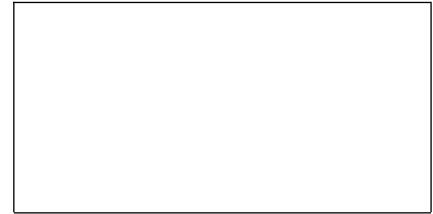


**Calderdale MBC**

**Wards Affected      Greetland and Stainland**

**Cabinet                TBD 2023**



## **Proposed emergency designation of West Vale Conservation Area**

### **Report of Director of Regeneration and Strategy**

#### **1. Purpose of Report**

- 1.1 The Council has learnt of an imminent threat of demolition of a group of key un-listed (non-designated) historic buildings in the core of West Vale and urgent designation of the area as a conservation area is required to prevent their demolition.
- 1.2 A Conservation Area is defined in Section 69 (1) (a) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as an area of 'special architectural or historic interest, the character of which it is desirable to preserve or enhance'.
- 1.3 West Vale has been identified as of sufficient architectural and historic interest to be worthy of designation as a conservation area. The heritage significance of the area is noted in the adopted Calderdale Local Plan which identifies the entire area as a non-designated heritage asset.
- 1.4 Section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) imposes a duty on local planning authorities to review their conservation areas from time to time and under these provisions may designate new areas within its boundaries as conservation areas in order to preserve or enhance the special interests of that area. There are currently no conservation areas in West Vale.

#### **2. Need for a decision**

- 2.1 To consider the emergency designation of a conservation area in West Vale, which is brought into effect by resolution of the Council and therefore needs a resolution from Cabinet to that effect.

#### **3. Recommendation**

- 3.1 It is recommended that Cabinet approve the designation of an area in West Vale, defined in the appendix to this report, as a conservation area.

## 4. Background

- 4.1 The Council is presently considering a planning application from Lidl for the construction of a new retail store, which would involve the demolition of all existing buildings on site (23/00360/FUL). The buildings referred to in the application comprise a group of key un-listed (non-designated) historic buildings in West Vale: the former mill office and a group of two foremen's houses associated with the now demolished West Vale Mill. The buildings are built of local stone and dated to the second half of the 19<sup>th</sup> century and in good condition, having been in part lived in until 2023.
- 4.2 Lidl have presently been advised that Officers are unable to support the application for a number of reasons. This includes an in-principle objection to a single retail use, which would be contrary to the site allocation for mixed use development within Use Classes E(g) (i) (an office to carry out any operational or administrative functions, (ii) (the research and development of products or processes), or (iii) (any industrial process, being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit) and C3 (residential). As it stands, it is the view of Officers that insufficient evidence has been presented to demonstrate that the specified 'Appropriate Uses' are not viable. Nor have exceptional circumstances been demonstrated to justify a single use development. At the time of writing this report, Lidl is presently considering the Council's response.
- 4.3 As the buildings on the site are not listed, planning permission is not required for their demolition. Lidl have since submitted Prior Notice of Proposed Demolition for the demolition of the buildings despite the lack of support for their application. Prior Notice of Proposed Demolition requires 28 days prior to demolition, though more time will be required as additional information is required by Council regarding methodology for demolition and protected species at the site. This will delay but not prevent demolition.
- 4.4 Options have been explored to prevent the demolition of the key un-listed buildings at the site as their loss would harm the significance of West Vale's historic core, which is considered to be a non-designated heritage asset and worthy of designation as a conservation area. It is considered that as the buildings are primarily of local importance, their significance lies in part in their contribution to the historic character of West Vale. The designation of the area as a conservation area is therefore the most appropriate mechanism for their protection as planning permission would be required for their demolition.
- 4.5 The historic core of West Vale meets the statutory criteria for designation as a conservation area under Section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Historic England Guidance. The area is considered worthy of designation as a conservation area due to the historic and architectural interest of development primarily dated to the 19<sup>th</sup> and early 20<sup>th</sup> centuries, with Clay House and its associated barn dated to the 17<sup>th</sup> century. Development is primarily associated with the growth of the textile industry in the area which rapidly increased from the mid-19<sup>th</sup> century and led to the emergence of a distinct settlement at West Vale. This development includes former textile industry buildings, terraced residential buildings and a limited number of higher status

homes, and commercial and civic buildings along the main streets in the centre of the village. Buildings are generally constructed of local stone.

- 4.6 The townscape character is defined by a high density of development and pavement fronting properties which results in a high level of enclosure throughout the built area of West Vale.
- 4.7 West Vale's special character also comes from its relationship with its surrounding landscape. Views of surrounding wooded hills can be seen from within the centre of the settlement and impressive views across the proposed conservation area can be seen from surrounding hills.
- 4.8 The special interests of the area have been recognised in a heritage impact assessment undertaken in the preparation of the Local Plan. The assessment recognises the entirety of West Vale as a non-designated heritage asset and significant historic townscape of a quality worthy of designation.
- 4.9 The loss of the buildings concerned would result in harm to the significance of the area through the further loss of buildings associated with the local textile industry. The demolition of a key part of West Vale's historic streetscape would also result in the loss of enclosure which characterises the area. The demolition of the buildings would also expose to the street an undeveloped area of the former West Vale Mill which currently appears as wasteland, diminishing the area's architectural interest. This would also negatively impact upon key views from this junction towards the Grade II listed Railway Viaduct over Stainland Road, resulting in 'less than substantial harm' to its significance.
- 4.10 Despite the harm that would result from the proposed demolition of the buildings concerned, it is considered that the area of West Vale within the appended boundary plan would still be considered as worthy of designation as a conservation area should demolition be taken forward, and would still meet the statutory criteria if the buildings were to be demolished.
- 4.11 Section 69, Planning (Listed Buildings and Conservation Areas) Act (1990) requires that: (1) Every local planning authority—
- (a) shall from time to time determine which parts of their area are areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance, and
  - (b) shall designate those areas as conservation areas.
- (2) It shall be the duty of a local planning authority from time to time to review the past exercise of functions under this section and to determine whether any parts or any further parts of their area should be designated as conservation areas; and, if they so determine, they shall designate those parts accordingly.
- 4.12 It is considered an appropriate measure to bring forward the designation of the area as a conservation area in order to amongst other factors protect the concerned vulnerable buildings from demolition and there is legal precedent for such measures.

- 4.13 The area of Herne Hill in Lambeth was designated as a conservation area in 2007. Lambeth made the decision that the area met the statutory criteria to be designated only after a key building in the area was perceived to be under threat of demolition. The designation report for the Herne Hill Conservation Area states that 'the Council has recently learned that there is an imminent and real threat of demolition to one of the key buildings within the proposed conservation area and that designation should be made immediately to prevent this demolition.' Public consultation was held 2 years after designation, in 2009, and a conservation area statement published in 2012.
- 4.14 In *Metro Construction Limited v London Borough of Barnet* [2009], the judge quashed the designation as a conservation area of a former Carmelite monastery set in a garden of 2.5 acres surrounded by a high wall. The judge observed that while the protection of un-listed buildings is a consideration in the designation of a conservation area, that area must meet the criteria for designation in its own right: 'the conservation area must exist independently of the building, albeit that the building might be an important feature within it'.
- 4.15 In *Trillium (Prime) Property GP Ltd v Tower Hamlets LBC* [2011]. The designation was quashed, however the judge ruled that designation to protect an un-listed building was lawful if the area as a whole met the criteria for designation: 'the decision would not be unlawful merely because the wish to protect 307 Burdett Road from demolition was father to the thought that a Conservation Area should be designated; what matters is whether the Council then genuinely thought that the area met the criteria'. In this instance Tower Hamlets had previously decided the area which was designated did not meet the criteria for designation as a conservation area.
- 4.16 Typically, the Council would undertake public consultation prior to designation of a conservation area, however neither the Planning (Listed Buildings and Conservation Areas) Act 1990 nor Historic England's guidance requires that consultation is undertaken prior to designation. Consultation is undertaken during the production of a conservation area appraisal or management plan, which includes but is not limited to detail about what about the area's character is worthy of protection and the measures required to manage development in the area. An appraisal or management plan can be prepared concurrently with, or after designation of a conservation area. Previously, and in non-time sensitive cases, the Council has taken the approach of preparing an appraisal at the time of designation however time is not available in this case due to the need to protect buildings at West Vale works.
- 4.17 It is currently proposed to designate the area as a conservation area, which will, amongst other things result in a requirement for planning permission to demolish the buildings. A conservation area appraisal and public consultation will be undertaken after designation of the area.
- 4.18 Designation as a conservation area will alter the legal and planning policy context for decision making on planning and related applications. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in exercising functions with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

- 4.19 Decision makers must give importance and weight to the desirability of avoiding any harm to designated heritage assets, to give effect to the LPA's statutory duties under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The finding of harm to a heritage asset gives rise to a strong presumption against planning permission being granted.
- 4.20 The requirements of section 72 are set out legislation and as such they are legal duties rather than policy requirements that the Council can choose to attach limited weight to.
- 4.21 In addition to the above, certain permitted development rights set under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) are removed or more restricted within a conservation area. Within a conservation area demolition as proposed at the subject site requires planning permission rather than the expedited prior approval process under permitted development rights.
- 4.22 Calderdale Local Plan Policy HE1 requires (amongst other things) that *"Development proposals should conserve, and where appropriate, enhance, the historic environment especially those elements which make a particularly important contribution to the identity, sense of place and local distinctiveness of Calderdale. These include:*
- a. Calderdale's textile/industrial heritage and landscapes."*

The requirements of Policy HE1 need to be read in the context of the legal and policy requirements explained in the NPPF:

*199. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.*

*200. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.*

## **5. Options considered**

### **5.1 The following options are available: -**

- 5.1.1 Agree the proposed boundary and designate as set out above or
- 5.1.2 Decide that the area is not worthy of designation.

### **5.2 It is recommended to designate the conservation area as shown in the attached plan.**

### **5.3 A request to Historic England to have the buildings under threat of demolition spot listed by the Secretary of State has been considered as an alternative measure to ensure their protection from demolition. While the buildings contribute positively to the character and appearance of West Vale and the proposed area of the conservation area, and despite their strong architectural qualities and associative**

value derived from their historic links with the former textile mill, they are not considered by the Council's conservation team to be worthy of designation as listed buildings on their own merit.

## **6. Financial implications**

- 6.1 Approval is sought in the report to designate West Vale as a conservation area. Although there are no specific financial implications attached to the recommendation at this stage, any person aggrieved by the decision may apply for a Judicial Review of the Council decision.

The cost attached to a potential Judicial Review in relation to the Lidl proposed, development, or any future action, has not been considered at this stage.

- 6.2 As commented upon in paragraph 4.21 of the report, approval of the conservation area would remove and/or restrict certain permitted development rights in the area.

## **7. Legal Implications**

- 7.1 The Local Planning Authority has a duty under the provisions of Section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990, from time to time to determine whether any further parts of their area should be designated as conservation areas and shall designate those areas as conservation areas.
- 7.2 Additionally, a designated conservation area is registrable on the register of Local Land Charges.
- 7.3 There is no statutory right of appeal against a decision to designate a conservation area however any person aggrieved by the designation may apply for a Judicial Review of the Council's decision.

## **8. Human Resources and Organisation Development Implications**

- 8.1 There are no implication relating to to Human Resources and Organisation Development

## **9. Consultation**

- 9.1 No consultation is required for the designation of a conservation area under the Planning (Listed Buildings and Conservation Areas) Act (1990). Consultation will take place prior to or during the preparation of a conservation area appraisal or management plan which sets out the key characteristics and principles for the management of a conservation area. A conservation area appraisal or management plan is not required in order to designate an area, though this has typically been undertaken concurrently with the process of designation in recent conservation area designations such as at Northowram when the designation process has not been time sensitive.

## **10. Environment, Health and Economic Implications**

- 10.1 The designation of the area as a conservation area will prevent the demolition of buildings without planning permission and has the potential to reduce carbon emissions associated with demolition of existing buildings and new construction.

10.2 There are no specific health implications. The designation of the area as a conservation area will remove certain permitted development rights, which may affect businesses and have economic implications.

## **11. Equality and Diversity**

11.1 There are no specific implications arising.

## **12. Summary and Recommendations**

12.1 Three buildings, including the former office and foreman's houses at West Vale Works are under imminent threat of demolition. At present the proposals for the wider? site would not be supported by the Council, though permission is not required for the demolition of the buildings. Their loss would have a detrimental effect on the character of the area which is considered worthy of designation as a conservation area.

12.2 Urgent designation of the area as a conservation area is seen as the most appropriate measure to protect the buildings as this would mean planning permission would be required for their demolition. The area would be worthy of designation regardless of the presence of the buildings however.

12.3 Therefore, it is recommended that Cabinet approve and recommend to Council the designation of the area in the appended plan as a conservation area to be known as West Vale Conservation Area.

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### **Appendices:**

**Appendix A\_Proposed West Vale Conservation Area\_Boundary**

**Appendix B\_Proposed West Vale Conservation Area\_Images**

**The documents are available for inspection at:**

**The Town Hall Halifax and online at [www.calderdale.gov.uk](http://www.calderdale.gov.uk).**

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