

**CALDERDALE METROPOLITAN BOROUGH COUNCIL****PLANNING COMMITTEE****WARDS AFFECTED: MORE THAN THREE**

**Date of meeting: 22 August 2023**

**Chief Officer: Director of Regeneration and Strategy.**

**1. SUBJECT OF REPORT**

APPLICATIONS FOR DETERMINATION RE PLANNING PERMISSION, LISTED BUILDING CONSENT/CONSERVATION AREA CONSENT, LOCAL AUTHORITY APPLICATIONS, CROWN APPLICATION OR CONSENT TO FELL PROTECTED TREES

- (i) Executive Summary
- (ii) Individual Applications

**2. INTRODUCTION**

- 2.1** The attached report contains two sections. The first section contains a summarised list of all applications to be considered at the Committee and the time when the application will be heard. Applications for Committee consideration have been identified in accordance with Council Standing Orders and delegations.
- 2.2** The second section comprises individual detailed reports relative to the applications to be considered.
- 2.3** These are set out in a standard format including the details of the application and relevant planning site history, representations/comments received arising from publicity and consultations, the officers assessment and recommendation, with suggested conditions or reasons for refusal, as appropriate.
- 2.4** Where the Committee considers that a decision contrary to the recommendation of the Director of Regeneration and Strategy may be appropriate, then consideration of the application may be deferred for further information.
- 2.5** Where a Legal Agreement is required by the Committee, the resolution will be "Mindful to Permit Subject to a Legal Agreement being completed", combined with a delegation to the Director of Regeneration and Strategy.

### **3. IMPLICATIONS ARISING FROM REPORT**

#### **3.1 Planning Policies**

These are set out separately in each individual application report.

#### **3.2 Sustainability**

Effective planning control uses the basic principle of sustainable development by ensuring that development meets the needs of the present without compromising the ability of future generations to meet their own needs. Through the development control system, the Council can enable environmental damage to be minimised and ensure that resources are used efficiently and waste minimised. Particular sustainability issues will be highlighted in individual reports where appropriate.

#### **3.3 Equal Opportunities**

All applications are considered on their merits having regard to Government guidance, the policies of the Development plan and other factors relevant to planning. This will be done using the Development Control Code of Conduct for officers and members as set out in the Council's Standing Orders.

In the vast majority of cases, planning permission is given for land, not to an individual, and the personal circumstances of the applicant are seldom relevant.

However, the Council has to consider the needs of people with disabilities and their needs are a material planning consideration. Reference will be made to any such issues in the individual application reports, where appropriate.

The Council also seeks to apply good practice guidance published in respect of Race and Planning issues.

#### **3.4 Finance**

A refusal of planning permission can have financial implications for the Council where a subsequent appeal is lodged by the applicant in respect of the decision or if a case of alleged maladministration is referred to the Local Government Ombudsman or a Judicial Review is sought through the Courts.

In all cases indirect staff costs will be incurred in processing any such forms of 'appeal'.

There is no existing budget to cover any direct costs should any such 'appeal' result in 'costs' being awarded against the Council. These would have to be found by way of compensatory savings from elsewhere in the Planning Services budget.

Reference: 6/00/00/CM

Richard Seaman  
For and on behalf of  
Director of Regeneration and Strategy

**FOR FURTHER INFORMATION ON THIS REPORT CONTACT:**

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Corporate Lead  
For Planning Services

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**DOCUMENTS USED IN THE PREPARATION OF THIS REPORT:**

1. Planning Application File (numbered as the application show in the report)
2. National Planning Policy and Guidance
3. Calderdale Development Plan(including any associated preparatory documents)
4. Related appeal and court decisions
5. Related planning applications
6. Relevant guideline/good practice documents

**DOCUMENTS ARE AVAILABLE FOR INSPECTION AT:**

[www.calderdale.gov.uk](http://www.calderdale.gov.uk).

**You can access the Council's website at the Council's Customer First offices and Council Libraries.**

**List of Applications at Committee 22 August 2023**

<b>Time &amp; No.</b>	<b>App No.</b>	<b>Location</b>	<b>Proposal</b>	<b>Ward</b>	<b>Page No.</b>
1400	21/01504/FUL	Land South East Of Long High Top Back Lane Hebden Bridge Calderdale HX7 7PF	Two agricultural barns for the housing of animals and the storage of feed, agricultural machinery and equipment together with associated engineering operations, construction of a new access off Back Lane, and regrading of parts of the footpath in order to re-instate it (Part Retrospective) (Amended Plans including relocation of two bays )	Calder	5 - 21
1430	23/00406/VAR	Former Royal Halifax Infirmary Free School Lane Halifax Calderdale	Variation of Conditions 12 and 14 on planning application 03/02356/FUL- request is to insert (excluding the rear new build ground floor extension sections of Crossley & Porter wards) to both conditions allowing the owners to select a material other than timber, such as UPVC	Skircoat	22 - 31

Time Not Before: 1400

Application No: 21/01504/FUL

Ward: **Calder**

Area Team: **North Team**

Proposal:

**Two agricultural barns for the housing of animals and the storage of feed, agricultural machinery and equipment together with associated engineering operations, construction of a new access off Back Lane, and regrading of parts of the footpath in order to re-instate it (Part Retrospective) (Amended Plans including relocation of two bays)**

Location:

**Land South East Of Long High Top Back Lane Hebden Bridge Calderdale HX7 7PF**



Applicant:

**Mr M Stocks**

Recommendation: **PERMIT**

Parish Council Representations:

Representations:

Departure from Development Plan:

Yes Objections

Yes

No

### Consultations:

Heptonstall Parish Council  
Environmental Health Services - Pollution Section (E)  
Highways Section  
Environmental Health Services - Pollution Section (E)  
Highways Section  
Heptonstall Parish Council  
Heptonstall Parish Council  
Highways Section  
Environmental Health Services - Pollution Section (E)  
Highways Section  
Highways Section  
Heptonstall Parish Council

### Description of Site and Proposal

The site comprises an existing landholding off Back Lane (to the north-west of the junction of Smithy Lane and Edge Lane). The land is in agricultural use and the applicant states they currently farm around 500 sheep.

The proposed site is in the rural settlement of Colden which consists of scattered farmsteads and the occasional cluster of dwellings. The applicant has 33.95 ha registered on the RPA with the new land measuring 21.70 ha. The applicant therefore has 55.65 ha in total (137.5 acres).

Access to the site is taken from Back Lane to the north-east of the buildings. The site access and barns sit within the Green Belt whilst land to the west of the barns is identified as Area Around Todmorden. The site is also designated as Special Landscape Area (SLA) and is identified as Calder Terrace in the Calderdale District Landscape Character Assessment and Review of Special Landscape Area. A public footpath (03/34/8) runs in a north-south direction through the site.

The proposal was originally for two agricultural barns for the housing of animals and the storage of feed, agricultural machinery and equipment (Retrospective)

**The application was originally brought to Planning Committee at the request of Ward Councillor Young and due to the sensitive nature of the proposal. It was deferred at Planning Committee on the 2<sup>nd</sup> August 2022 for further information.**

***21/01504/FUL - Two agricultural barns for the housing of animals and the storage of feed, agricultural machinery, and equipment together with new access off Back Lane (Retrospective) at Land South East of Long High Top, Back Lane, Hebden Bridge, Calderdale. HX7 7PF.***

***An objector's representative attended the meeting and addressed the Committee. The applicant's agent sent a statement which was read out to Members in support of the application.***

***RESOLVED that consideration of the application be deferred to allow the applicant to submit accurate site plans, sections through the site including details of engineering operations, and information about the position of the public right of way including an indicative diversion.***

The applicant has looked to address the reasons for deferral and the application is now for two agricultural barns for the housing of animals and the storage of feed, agricultural machinery and equipment together with associated engineering operations, construction of a new access off Back Lane, and regrading of parts of the footpath in order to re-instate it (Part Retrospective) (Amended Plans including relocation of two bays)

### Supporting Information

The proposal is supported by the following documents:

- Cover letter including Planning Statement
- Foul Drainage Assessment Form

### Relevant Planning History

There is a current enforcement file pending on the site reference 21/60033/ENF. This is for Alleged unauthorised agricultural buildings and associated works. No enforcement action is being carried out on the site whilst the current application is pending decision. Once the current application has been determined, further investigations will be carried out on any remaining unauthorised works.

### Key Policy Context:

<b>Local Plan Designation/Allocation</b>	Green Belt Special Landscape Area Landscape Character Area (Calder Terrace) Calderdale Wildlife Habitat Network
<b>Local Plan Policies</b>	<b>GB1</b> Green Belt <b>GB2</b> Area Around Todmorden <b>GN4</b> Special Landscape Area <b>GN4</b> Landscape Character <b>SD1</b> Presumption in Favour of Sustainable Development <b>BT1</b> High quality, inclusive design <b>EN1</b> Pollution Control <b>EN3</b> Environmental Protection <b>BT4</b> The Design and Layout of Highways and Accesses <b>CC1</b> Climate Change <b>CC2</b> Flood Risk Management (Managing Flood Risk in New Development) <b>CC3</b> Water Resource Management <b>GN3</b> Natural Environment <b>MS2</b> Mineral Safeguarding Areas
<b>National Planning Policy Framework Paragraphs</b>	<b>12. Achieving well-designed places</b> <b>13. Protecting Green Belt Land</b> <b>15. Conserving and enhancing the natural environment</b>

<b>Other relevant planning Constraints</b>	<b>Non-Mains Drainage Leeds Bradford Wind Turbine Consultation Zone Sandstone Mineral Safeguarding Area Hameldon Hill Consultation Zone</b>
<b>Other Material Planning Considerations</b>	<b>Climate Emergency Declaration (Jan 2019)</b>

### **Publicity/ Representations:**

The application was publicised by site notice, press notice and four neighbour notification letters.

Eight letters of objection including one from the Parish Council and one from Councillor Dave Young were received. One letter of representation has also been received.

### **Summary of Points Raised**

#### **Objections**

- Boulders are blocking a public right of way
- Impact on the visual amenity of the area
- Constructed without the benefit of planning permission – unfair advantage
- Lighting on site is extremely bright
- Noise from plant
- Inadequate drainage from sheep sheds
- Pungent smell from site not associated with agriculture
- Inappropriate road surfacing materials
- No need for additional access as one exists from quarry below
- Impact on Wildlife
- Agricultural building and containers blocking PROW
- Cannot divert a PROW retrospectively
- Inappropriate surfacing
- No indication of retaining structures for the reinstated footpath on the plans
- Full structural engineers report should be submitted
- No indication of how other blockages will be removed
- Will the Highways Authority use their legal powers to remove remaining blockages?
- The proposed amended plans would not provide a walkable gradient

#### **Representation**

- Not clear what the barns are to be used for
- Not usually necessary for barns this size for sheep
- Already have a large farm building in the quarry and they have connected this with a tarmac scapings road to the new buildings
- Large amount of material brought on the site for levelling
- Using Back Lane for heavy machinery will damage the road
- Containers are not necessary on site- storage can be in the barns
- No need for welfare unit
- Should not be used for commercial use other than agriculture or for the conversion to a dwelling in the future



- Generator on site causes noise issues
- Not opposed to genuine agricultural reasons subject to conditions re noise, lighting, removal of containers, screening..
- Right of way is not passable and not sure where it could be re-located due to changes to the land levels from tipping

### **Ward Councillor Comments**

Ward Councillor Dave Young has made the following comments:

*“As a Calder Ward Councillor I wish to object to PA 21/01504/FUL on the following grounds Deliberate obstruction of a Public Footpath as the barns have been built across a Public Footpath.*

*Adverse impact on Visual Amenity*

*This is in a Green Belt area.*

*If the Planning Officers recommend refusal then this is OK but if they recommend approval then I would like the Planning Application to go before The Planning Committee following a site visit”*

### **Parish/Town Council Comments**

The development is located within the boundaries of Heptonstall Parish council.

Heptonstall Parish Council have made the following comments:

*“Heptonstall Parish Council wishes to object to this retrospective application.*

*It is considered there is :*

*(A) Adverse impact on Visual Amenity*

*(B) Inappropriate materials - a site of historical worth*

*(C) Earthworks have changed the skyline*

*(D) Toxicity of materials*

*(E) The Roadway should be included as part of the application*

*(F) Public footpaths infringements*

*(G) Potential for light pollution.”*

An assessment regarding the materials is set out below. Some levelling of land is nearly always required for the construction of agricultural buildings. The agent has provided details of the materials that have been brought on site they would appear to be inert. The application now involves the removal of part of the barn blocking the PROW and engineering works to land to re-open the PROW. Access from Back Lane has been identified on the plan. Light pollution can be dealt with as part of a condition. Any outstanding unauthorised works following the planning decision will be investigated.

### **Assessment of Proposal**

#### **Principle of Development**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework (NPPF) compliments this requirement. The NPPF was revised on 20 July 2021 and sets out the Government’s planning policies for England and how these are expected to be applied, alongside other national planning

policies. Paragraph 219 of Annex 1 (Implementation) of the NPPF advises to the effect that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. The closer the policies in the plan to the NPPF policies, the greater the weight they may be given.

The Calderdale Local Plan (CLP) was adopted by the Council on 22 March 2023. Its policies are aligned with those in the NPPF and they carry full weight.

At the heart of the NPPF is a presumption in favour of sustainable development. Paragraph 11 of the NPPF establishes that for decision taking this means:

- approving development proposals that accord with an up-to-date development plan without delay; or
- 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; [for example...Green Belt] 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.
- This is reflected in Policy SD1 of the CLP.

The framework indicates that development should be restricted in the Green Belt if there is a clear reason for refusal and if so the presumption in favour of development does not apply.

According to the NPPF, the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. The NPPF goes on to establish that the purposes of the Green Belt are:

- *to check the unrestricted sprawl of large built-up areas;*
- *to prevent neighbouring towns merging into one another;*
- *to assist in safeguarding the countryside from encroachment;*
- *to preserve the setting and special character of historic towns; and*
- *to assist in urban regeneration, by encouraging the recycling of derelict and other urban land*

In relation to inappropriate development, the NPPF states that:

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

*148. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.’*

CLP policy GB1 which discusses development in the Green Belt states that:

*I. Within the Green Belt, the construction of new buildings is inappropriate development except in the following circumstances (amongst other things) :*

*a Buildings for agriculture and forestry...*

*II. Other forms of development are also not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. These are (amongst other things):*

*b Engineering operations*

Policy GB1 reflects the relevant paragraphs 149a and 150b of section 13 of the NPPF.

The main part of the proposal is for two agricultural barns and as this element of the proposal is appropriate development in the Green Belt. The development is retrospective although the application now includes the removal of two of the bays from the western side of Barn 2 and the relocation of one of the bays to the eastern side of the barn in order to re-instate public footpath 3/34/8. Existing shipping containers, a silo and a generator that are currently on site are to be relocated off site in order to re-instate the PROW. A condition to make sure the removal of the bays blocking the footpath along with other works required to re-instate the PROW will be conditioned to be carried out in an appropriate timescale.

Barn one measures 30m x 9m and has a monopitch roof with an eaves height of 3.5m rising to 4m. It is clad in timber and the roof is constructed out of a dark coloured single ply roofing system. Access is via the open sided east elevation and via a roller shutter door in the south elevation. This barn is mainly used for the storage of machinery and feed.

Barn two would measure 25.5m x 9m following the removal of the bay and has an eaves height 3.5m with the highest point of the monopitch roof measuring 4m. It is also clad in timber and the roof is constructed out of a dark coloured single ply roofing system. Access is via the open sided west elevation. This barn is mainly used for the storage of agricultural vehicles and livestock.

The Council's Animal Welfare Officer has been consulted and has confirmed the number of sheep is around that the applicant has stated. They have also confirmed that given the location which is at a high altitude, the barn would be necessary for lambing purposes due to the number of sheep, in order increase the rate of survival.

An assessment on openness is not required for agricultural buildings in the Green belt.

With regard to the engineering operations required to reinstate the public right of way, the proposal would involve regrading of land. Given the steepness of the path to the south, the regraded sections shall be no steeper than 1:4 and preferable as close to 1:7 as possible. The path must be a level 2m wide through the development site. Appropriate way markers are to be installed to avoid walkers straying from the route. The engineering works would involve both visual and spatial changes to reintroduce the public right of way and therefore there would be a minor impact on openness.

Policy GB1 requires any harm to openness be outweighed by very special circumstances. However, in this case, the very special circumstances are considered to be demonstrated as the proposed barns are necessary for lambing purposes and as such it considered to outweigh any minor harm there may be in terms of the engineering operations in order to facilitate this. The improvements to the right of way clearly marking the path and creating a 2m wide access area through the site with an acceptable gradient are a public benefit of the proposal.

A small area of the engineering operations would fall on land identified as being within the Area Around Todmorden and as such policy GB2 is also relevant.

Policy GB2 Development in the Area Around Todmorden establishes that

*I. Within the Area Around Todmorden, development proposals which are considered appropriate will generally be supported providing they do not have a negative impact upon the openness or character of the countryside or upon the Special Protection Area (SPA) or Special Area of Conservation (SAC). The types of appropriate development include (amongst others):*

- a. Uses necessary for agriculture, forestry or equestrian activity or other social and economic uses which have a functional need to locate in the countryside*
- b. Uses which support sustainable growth and diversification of the rural economy, including for tourism*
- f. Sport and recreation uses appropriate to a rural area which do not conflict with other land uses...*

*II. Development which is appropriate should not detract from the visual amenity of the open countryside or lead to traffic, amenity, environmental or other problems which cannot be effectively mitigated.*

The engineering operations are in connection with the agricultural use and have a functional need to be located in the open countryside, given the justified need for the barns in this location in relation to lambing and the reinstatement a public right of way through the field. Only a small area of the development falls within the Area Around Todmorden and the proposed works within this area are not considered to detract from the open countryside as the works are reinstating a PROW which was previously in situ.

For the reasons given above the barns and engineering operations are acceptable in principle subject to satisfying other relevant policies set out below and would satisfy CLP policies GB1 and GB2 and the criteria set out in Section 13 of the NPPF.

#### Visual Amenity, Layout, Design and Materials

Paragraph 23.13 of the CLP states: “... *The most important landscapes of the Borough need to be safeguarded and the following seven Special Landscape Areas have been designated:*

- *Northern Calderdale Moorlands and Fringes*
- *Hardcastle Crags,*
- *Hebden Water and Colden Water*
- *Luddenden Dean*
- *Shibden Valley*
- *Ringstone Edge and Norland Moor Fringes*
- *Southern Calderdale Moorland and Fringes*
- *Cragg Vale*

The site falls under Northern Calderdale Moorlands and Fringes

The site lies within such an area where CLP policy GN4 applies. It sets out that:

- I. Proposals for development within or affecting the Special Landscape Area (SLA) or its setting should be carefully designed to ensure they are in keeping with their location in the SLA in terms of density, height, massing, scale, form, siting and materials.

- II. Proposals for development within or affecting the Special Landscape Area (SLA) will only be supported if the proposal:
  - a. Does not adversely affect the scenic quality of the SLA. Consideration should be taken to protecting important and distinctive views and protecting remoteness and tranquillity.
  - b. Does not adversely affect opportunities for access and recreation, and
  - c. Protects and enhances landscape quality, sense of place and local distinctiveness, including retention and enhancement of features and habitats of significant landscape, historic, ecological and wildlife importance.
- III. In determining whether a proposed development may affect the SLA, consideration will be given to how the proposed development may impact its setting. Proposals should preserve or enhance those elements that contribute to the SLA's significance, and development which will adversely affect the setting of the SLA resulting in harm to the significance of the SLA will not be supported.
- IV. Proposals within or affecting the SLA or its setting should be accompanied by a Landscape Impact Assessment setting out how the proposal protects and enhances the landscape, taking into account the requirements of this policy.

With regard to 'Landscape Character Areas' the site falls within the area 'Calder Terrace' This LCA covers a large part of Calderdale, rising up either side of the main Calder Valley (LCA F2) and forming a transition to the adjacent upland moorland (LCA A1). The LCA is fragmented due to the presence of river valleys cutting through it.

Policy GN4 sets out:

*"New development should be designed in a way that is sensitive to its landscape setting, retaining and enhancing the distinctive qualities of the landscape area in which it would be situated. For each Landscape Character Area, planning permission will only be granted if the proposed development would:*

- II. a Make adequate provision as far as is practicable for the retention of features and habitats of significant landscape, historic, geological and wildlife importance;*
- b. Where possible, enhance the character and qualities of the landscape area through appropriate design and management;*
- c. Reflect and enhance local distinctiveness and diversity; and*
- d. Provide appropriate landscape mitigation proportionate in scale and design, and/or suitable off-site enhancements."*

NPPF Section 15 Conserving and enhancing the natural environment states in paragraph 174:

*"The planning system should contribute to and enhance the natural and local environment by (amongst other things):*

- *Protecting and enhancing valued landscapes ...*

RCUDP policy BT1 discusses the need for high quality, inclusive design and establishes that developments will ensure high quality, inclusive design and demonstrate a holistic approach to design quality.

Section 12 of the NPPF Achieving well-designed places paragraph 126 states that:

*“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....”*

The design, materials and siting of the two barns are set out above under ‘Principle of Development’.

The proposed design is acceptable, and the siting of the barns especially due to the topography of the land and the low-level height of the barns which would be a maximum of 4 m, the barns are not considered to have a significant impact on the visual amenity of the landscape. The setting is rural in nature and consists of several farmsteads dotted around the area. Given the siting and height of the agricultural barns they are not considered to be out of character with the area. Furthermore, the design of the barns would be in keeping with other agricultural buildings in Calderdale and the timber facing would help reduce its impact in the open countryside.

Existing tracks have been re-surfaced and comments regarding a new track being created linking the quarry site have been made. This track is not part of the application, but the agent has said the resurfacing of existing tracks comprises scalping’s and stone from digging out for the buildings and materials from demolition of an old building comprising red brick and stone.

The engineering works are proposed to reinstate the PROW that runs through the site. A 2m wide path is proposed and levels that would comply with legislation in terms of the gradient would be implemented as identified on the layout plan. Furthermore, it is acknowledged that there are nearly always some engineering operations required to site agricultural buildings in order to provide a level area.

The proposal would satisfy CLP policies BT1 and GN4 and sections 12 and 15 of the NPPF.

### Residential Amenity

CLP policy EN1 discusses pollution control in particularly noise, smell, vibrations or other emissions.

The Assistant Director for Neighbourhoods (ADN) was originally consulted and made the following comments:

*“Concerns have been raised about noise and lighting. If the application is approved then the following conditions should be attached:*

#### **Artificial Lighting**

*A scheme of artificial lighting shall be submitted to and approved in writing by the Local Planning Authority **within one month of approval being granted**. The scheme so approved shall then be implemented within a further **one month** and shall be retained thereafter.*

### **Policies**

#### **RCUDP Policy EP 5 Control of External Lighting**

*Unless there are exceptional circumstances, urban-type lighting in non-urban, countryside areas will not be supported. In urban areas, development involving the provision of external lighting, including the illumination of existing buildings will only be permitted where:-*

- i. the lighting scheme is designed to limit the lighting levels to those required for the specific working purpose of the scheme and for security; and*
- ii. the design minimises glare and spillage of light from the sight, especially into the night sky, areas of important nature conservation, residential areas and onto the highway.*

**NPPF Para 185.** *Planning policies and decisions should also ensure that new development is appropriate for the location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:*

- c) limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.*

### **Noise From plant and Machinery**

*A scheme of sound insulation for any plant and machinery to be used on the premises should be submitted to and approved in writing by the Local Planning Authority **within one month of approval being granted**. The scheme so approved shall then be implemented within a further **one month** and shall be retained thereafter.*

*Reasons: In order to protect aural amenity of neighbouring properties and to ensure compliance with policy EP8 of the Replacement Calderdale Unitary Development Plan and sections 8c, 174e and 185a of the National Planning Policy Framework 2021”*

As the development has already commenced the wording of the conditions, in terms of giving a timescale is considered to be appropriate. This way a more suitable lighting scheme and a way to reduce noise at the site can be approved and implemented which would help to address the concerns raised.

The ADN has been re-consulted and has no objection subject to the original lighting condition. The reference to RCUDP policy EP8 will be amended to the current CLP policy EN1.

The proposed development would be approximately 50m away from the nearest third-party dwelling which is north west of the site at Long High Top. This distance is considered to be acceptable in planning terms.

Given the above and subject to conditions the proposal is considered to satisfy CLP policy EN1 and paragraphs 8c, 174e and 185a of the NPPF.

### Highway and Movement

CLP policy BT4 seeks to secure highways and accesses whose design and layout ensure the safe and free flow of traffic in the interests of highway safety and to provide an attractive environment.

Paragraph 100 of the NPPF sets out that:

*“Planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails”*

As set out above there have been concerns raised regarding the blocking of the public right of way by boulders, the barns themselves and engineering operations along with the siting of containers and other agricultural structures. Previously the applicant did not consider the barns blocked the PROW and the engineering operations and siting of the cabins etc were not included as part of the

application. After a site meeting and numerous correspondence between the agent, case officer, highways and public rights of way officer, the applicant has agreed to re-instate the proposed PROW.

The Assistant Director – Strategic Infrastructure (Highways) was originally consulted and had no objection as it was considered that the public right of way could be dealt with under highway legislation. However, it was found that the barns did not reflect what was on site in terms of the location.

Amended plans were submitted and the ADSI was re-consulted. The following comments were received:

*“The following comments have been compiled on behalf of CMBC Highways.*

*The updated plan does now accurately show the position of the barn obstructing the public right of way known as Heptonstall 34. In accordance with case law, the footpath cannot be retroactively diverted or extinguished under Section 247 of the Planning Act once the development is complete. The proposal does not meet the tests for a diversion under the Highways Act provisions. No efforts have been made to contact the highway authority with appropriate plans to address the concerns around the public footpath. The proposal is contrary to National Planning Policy Framework, Paragraph 100. Public rights of way are a material consideration to consider when deciding whether to grant a request for planning approval, and local planning authorities should make sure that the potential repercussions are considered anytime such requests are taken into consideration.*

*However we would be willing to process an application to divert the public path, at the applicant's cost, on the basis indicated on the Proposed Site Plan (Amended Position of Building and Diversion of Footpath). No guarantee can be given that such an order can be confirmed. If any objections are received to an order it will need determining by the Secretary of State, through the Planning Inspectorate, usually via a Public Inquiry.*

*The applicant would be liable for all the council's costs in processing a public path diversion order, even if the order is unconfirmed. If a public path diversion order is not confirmed it will mean that the right of way will remain on the existing route and could result in enforcement action, meaning the barn would have to be removed from the route.*

*If the planning application is approved, the appropriate public footpath diversion order application must be obtained from the Public Rights of Way Office.*

*‘In addition there are three new kissing gates indicated across public paths on the Proposed Site Plan. These can only be authorised in specific circumstances under s.147 of the 1980 Highway Act. British Standard BS5709:2018 Gates Gaps and Stiles must be also be followed. Further information on this matter can be obtained from the Public Rights Of Way Officer.*

*Informative:-*

*The granting of planning permission does not give the right to alter, obstruct or move a Public Right of Way (PROW). This can only be achieved by following a statutory procedure.”*

Following the above the applicant has now submitted the latest plans and the ADSI has now been re-consulted given the proposal to reinstate the PROW and has made the following comments:



*"The Rights of way officer made the following observations which have been copied to this comment.*

*The documents submitted satisfy the concerns and there are now no highway objections to this application as submitted subject to condition.*

*That a condition regarding inspection of the reinstated path to the approval of the Rights of Way Officer is included.*

*PROW commented as follows :-*

*' Section A-A is not along the route shown on the location plan but appears to be a section along the line of the path. As such, the detail is acceptable.*

*' Four new kissing gates are detailed over an approximate distance of 128 metres.*

*If planning permission is granted the applicant must apply for authorisation for new gates under section 147 of the 1980 Highways Act. Permission for new gates cannot be granted retrospectively. Gates can only be authorised for the purpose of stock control and must meet the latest British Standard 5709.*

*Further details of this process can be obtained from the Public Rights of Way Team.*

*' Works are proposed to reinstate the path to the south of the path which are welcomed. If the path is to run between fences a minimum width of 2 metres should be provided. To protect amenity, if barbed wire is proposed on any new fences it must be placed on the field side (i.e. away from the public path) of the fence. A corresponding strand of plain wire should be installed on the path side of the fence. This will protect path users from coming into contact with any barbed wire."*

Following the receipt of the amended plans an objector commented that they still had concerns that there had been no indication of retaining structures for the reinstated footpath on the plans and that they considered a full structural engineer's report should be submitted. They were also still concerned how other blockages would be removed and whether there would be a walkable gradient.

The Council's ROW officer following these comments visited the site and walked the path from Edge Lane, along the Pennine Way and then following, as closely as possible, the obstructed path (Heptonstall 34) from the south. The Pennine Way goes up a slope and includes a couple of short flights of steps. As path 34 leaves the Pennine Way it climbs steeply up a grassy bank before approaching the development site on a moderate angle. The banks that have been introduced do give a steeper angle to walk on than the ground the path ran over previously, conversely the now flattened areas are easy to walk across. The ROW officer does not consider that grading out the banks would give a slope that is any steeper than that encountered to the south of the site. In any event, even if the route could not meet similar gradients to those encountered on the rest of the path, steps could be introduced. While this would be less than ideal this would not be unreasonable given the condition of the paths that are encountered further to the south.

The ROW officer does not consider there is a need for a full structural engineer's report to be necessary.

In terms of the blockages and removal of any structures at the site, this could be dealt with under separate planning and highway enforcement legislation.

In any event subject to suitably worded conditions with identified timescales, the proposal is now considered to be acceptable.

Given the above the proposal subject to conditions would now satisfy policy BT4 of the CLP and paragraphs 100 and 104C of the NPPF.

#### Flooding, Drainage and Private Water Supply

Applicants will need to demonstrate that adequate foul and surface water drainage infrastructure is available to serve the proposed development and that ground and surface water is not adversely affected.

CLP policy CC2 discusses flood risk management and includes areas which fall within critical drainage areas.

CLP policy CC3 discusses water resource management which includes amongst other things:

*“...Ensuring new development has an adequate means of water supply, sufficient foul and surface water drainage and sewage treatment capacity;...”*

There is no mains foul connection at the site. A foul drainage assessment form has been submitted which states the proposal is for agricultural buildings and as such there is no need for mains foul drains. The existing welfare unit currently located in one of the unauthorised containers drains to a tank under the building and is emptied by a ‘portaloo’ contractor.

No information has been submitted regarding surface water drainage. The Flood Risk Manager has been consulted and has requested details of surface water run-off given the location. A condition will therefore be included giving a timescale for full details of surface water drainage to be submitted and for acceptable details to be implemented also within a given timescale.

Subject to condition, the proposal would satisfy CLP policies CC2 and CC3

#### Wildlife Conservation, Trees and Landscape

The proposal is not in a bat alert area but is in the Calderdale Wildlife Network.

Policy GN3 Natural Environment seeks amongst other things to:

*...achieve better management of Calderdale’s natural environment by requiring developments to:*

- a. Conserve and enhance the biodiversity and geological features of the Borough by protecting and improving habitats, species, sites of wildlife and geological value and maximising biodiversity and geodiversity opportunities in and around new developments;...”*

In order to enhance the biodiversity in the area the Council’s Wildlife Conservation Officer recommends the installation of an ECO Barn Owl Nest Box which is a long lasting box be provided on site. Details of the location and type shall be conditioned again with a timescale of 1 month for the details to be provided and a further 1 month to be implemented once the type and location has been agreed.

Subject to the above condition the proposal would satisfy policy GN3 and paragraph 179 of the NPPF.

## Ground conditions

The site is located within a sandstone safeguarding area. Policy MS2 discusses mineral safeguarding areas. However, under the relevant criteria even if it was found that sandstone was present the site is not suitable for the extraction given that it would cause unacceptable impact on neighbouring uses and local amenity.

The proposal site is also located on land with potential land contamination and as such CLP policy EN3 which discusses environmental protection is relevant.

The application is supported by correspondence between the agent and the Assistant Director for Neighbourhoods where it was considered that as the proposal is for agricultural use and the land has been used for agricultural purposes in the past, a Phase 1 report is not required. It is considered that the proposal would therefore satisfy CLP policy EN3

## The Planning Balance

The proposed site is in the Green Belt and the proposal is for two agricultural barns with one being used mainly for the storage of machinery and feed, and the other being mainly used for the housing of livestock and agricultural vehicles. Two bays are to be removed from the lower barn due to it blocking a PROW. One of the bays will be relocated to the east elevation. Buildings for agricultural purposes are considered under policy GB1a and paragraph 149a of the NPPF to be not inappropriate in the Green Belt and therefore the proposal is acceptable in principle. The development also includes engineering operations to regrade the land in order to reinstate the PROW to a suitable gradient and width. These works are considered to outweigh the harm to the openness of the Green Belt due to the very special circumstances including the need for the barn in this location for lambing and there are the public benefits of reinstating the footpath which would be an improvement to what was previously in place with improved gates and signage. Some of the engineering operations would extend on to Area Around Todmorden land but these would be limited and are linked to the agricultural use as well as having a functional need to be located in the countryside.

The design, scale and materials are considered to be acceptable and given the low height and the topography of the landscape, the barns would not significantly impact on the visual amenity of the Special Landscape Area. Although the majority of the development is retrospective it is considered that conditions could be imposed which would overcome the concerns raised regarding the lighting at the site and noise from the generator although this now maybe removed.

The reinstatement of the PROW has overcome the highway concerns regarding the initial retrospective diversion.

Subject to conditions there would be no highway, drainage, or environmental health concerns and the provision of an owl box in terms of biodiversity enhancement is considered to be acceptable.

Given the length of time the unauthorised works have been in place, it is considered that the usual three-year permission for the proposed works that have yet to be implemented should be reduced to one year.

On balance the proposal would be acceptable subject to timescale related conditions.

Any remaining unauthorised works will be investigated following the planning decision.

## **CONCLUSION**

**The proposal is considered to be acceptable subject to conditions. The recommendation to GRANT planning permission has been made because the development is in accordance with the policies and proposals in the Calderdale Local Plan and National Planning Policy Framework set out in the sections above and there are no material considerations to outweigh the presumption in favour of such development.**

Richard Seaman  
For and on behalf of  
Director of Regeneration and Strategy

Date: 10<sup>th</sup> August 2023

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### **Further Information**

Should you have any queries in respect of this application report, please contact in the first instance:-

Gillian Boulton (Case Officer) on 07872100530  
Lauren Spensley (Lead Officer)

### **Conditions**

1. The development shall be carried out in accordance with the schedule of approved plans listed above in this decision notice, unless variation of the plans is required by any other condition of this permission.
2. The facing and roofing of the development shall be constructed in accordance with the details shown on the approved plans and shall be so retained thereafter.
3. A scheme of artificial lighting shall be submitted to and approved in writing by the Local Planning Authority within one month of approval being granted. The scheme so approved shall then be implemented within a further one month and shall be retained thereafter.
4. Within one month of the date of this permission details of one long lasting barn owl nest box shall be submitted to and approved in writing by the Local Planning Authority. The barn owl nest box shall be installed within 1 month of the details so approved and shall be so retained thereafter.
5. A scheme of sound insulation for any plant and machinery to be used on the premises shall be submitted to and approved in writing by the Local Planning Authority within one month of approval being granted. The scheme so approved shall then be implemented within a further one month and shall be retained thereafter.

6. Within one month of the date of this permission full details of the surface water and/or sub-soil drainage and external works for the development (taking into account flood risk on and off site and including details of any balancing works, off-site works, existing systems to be re-used, works on or near watercourses and diversions) shall be submitted to and approved in writing by the Local Planning Authority. The details so approved shall be implemented within a further 2 months and retained thereafter.
7. Prior to the construction and regrading of the footpath identified on the approved plans, details and methodology of the construction and regrading of the footpath shall be submitted to and approved in writing by the Local Planning Authority. The footpath shall be completed in its entirety within 6 months of the Local Planning Authority's approval of the details and methodology and shall be so retained thereafter.

### **Reasons**

1. For the avoidance of doubt as to what benefits from planning permission and to ensure compliance with the Development Plan and National Planning Policy Framework.
  2. To ensure the use of appropriate materials in the interests of visual amenity and to ensure compliance with policies BT1 and GN4 of the Calderdale Local Plan.
  3. In the interests of amenity and to ensure compliance with policy EN1 of the Calderdale Local Plan and paragraph 185c of the National Planning Policy Framework 2021
  4. In the interests of biodiversity enhancement and to ensure compliance with Policy GN3 of the Calderdale Local Plan and paragraph 179 of the National Planning Policy Framework 2021
  5. In order to protect aural amenity of neighbouring properties and to ensure compliance with policy EN1 of the Calderdale Local Plan and sections 8c, 174e and 185a of the National Planning Policy Framework 2021
  6. To ensure proper drainage of the site and to ensure compliance with policies CC2 and CC3 of the Calderdale Local Plan.
  7. For the avoidance of doubt as to what has been permitted and in order that a suitable replacement is achieved. In the interests of policy BT4C of the Calderdale Local Plan and paragraphs 100 and 104C of the National Planning Policy Framework.
-

Time Not Before: 1430

Application No: 23/00406/VAR

Ward: Skircoat

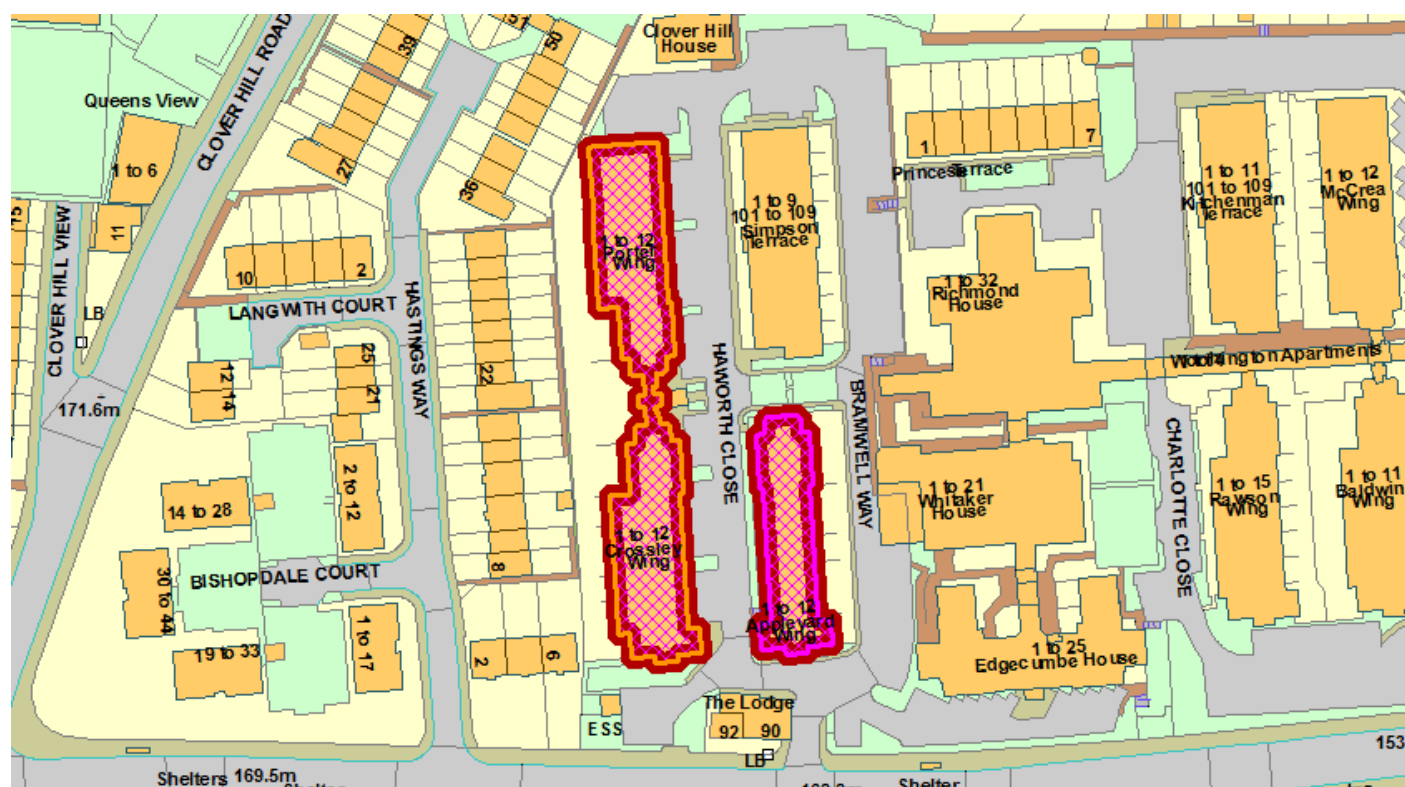
Area Team: South Team

Proposal:

**Variation of Conditions 12 and 14 on planning application 03/02356/FUL- request is to insert (excluding the rear new build ground floor extension sections of Crossley & Porter wards) to both conditions allowing the owners to select a material other than timber, such as UPVC**

Location:

**Former Royal Halifax Infirmary Free School Lane Halifax Calderdale**



Applicant:

**Miss Monica Skubiak**

Recommendation: **REFUSE**

Parish Council Representations:

N/A

Representations:

Yes

Departure from Development Plan:

No

Consultations:

Conservation Officers

**The reason that this application has been brought to Committee is because a written request has been made by a Councillor concerning an application in their ward.**

### **Description of Site and Proposal**

This application is seeking the variation of Conditions 12 and 14 of planning application 03/02356/FUL. The proposed variation seeks to insert the words '*excluding the rear new build ground floor extension sections of Crossley and Porter wards*' to both conditions. The proposed amendment would allow the occupiers to select a material other than timber, such as UPVC, for the windows and doors on the new-build elements of the Listed Building.

The site comprises of the former Halifax Royal Infirmary Hospital site. Permission was granted for the whole site which consisted of 287 residential units comprising of 105 conversions and 182 new build properties. Taylor Woodrow built 118 of the new build units in accordance with the original planning permission. P J Livesey Rural Heritage sought changes to the central part of the site in separate phases. Together the changes in the central part of the site resulted in an increase of 48 units, from 169 originally approved. The site has been fully complete for a number of years.

The Former Royal Halifax Infirmary is a Grade II Listed Building consisting of a central building flanked by wards, lying parallel to the main axis and linked by a cross corridor. Planning permission 03/02356/FUL provided 103 residential units through conversion of the Grade II Listed wards and a new build terraced block, known as Kitchenmann. Blocks known as Appleyard, Crossley, Porter, Whitaker, Central, Rawson and Richmond form part of the Grade II Listed Building. The site also lies in the Savile Park Conservation Area.

An associated Listed Building Consent application (03/02357/LBC) was also approved concurrently with the full planning permission. This also included the same/similar conditions (10 and 12) as the full planning permission as outlined below. No concurrent application has been made to vary the conditions of the associated Listed Building Consent. Works to the Listed Building would not be able to be carried out without all of the relevant permissions in place.

The relevant conditions of planning permission 03/02356/FUL to this application are:

#### Condition 12

*All windows and frames shall be retained and only changed or replaced in accordance with details submitted to and approved in writing by the Local Planning Authority.*

**Reason:** *To ensure windows of appropriate historic character, including openings mechanism and timber section are retained or created, in the interests of retaining the character of the Listed Building and for the avoidance of doubt.*

#### Condition 14

*Before development commences, details of all external joinery shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and so retained thereafter.*

**Reason:** *For the avoidance of doubt and in the interests of the character of the Listed Buildings.*

### ***Supporting Information***

In addition to the submitted plans, the following documents have been submitted in support of this application:

- Application Form
- Supporting Statement
- Windows Specification Sheet I
- Windows Specification Sheet II
- Site Photos

### **Relevant Planning History**

*Application:* 02/00084/FUL

*Description:* Residential development comprising 106 units within converted buildings, 182 new build units, 1255sqm gym and associated works

*Decision:* Approved 06/05/2003

*Application:* 02/00085/LBC

*Description:* Demolition/extension/alteration to provide residential developments comprising 106 units within conversion and 12 new build units and 1255sqm gym and associated works (Listed Building Consent)

*Decision:* Approved 05/11/2002

*Application:* 03/02356/FUL

*Description:* 103 No. residential units to existing Appleyard, Crossley & Porter Wards, Free School Lane, Whitaker & Central Wards & 18 No. units to new Kitchenman Terrace (Phase 2)

*Decision:* Approved 17/05/2004

*Application:* 03/02357/LBC

*Description:* Demolition/alteration/extension to provide 103 No. residential units to Appleyard, Crossley & Porter Wards, Free School House, Joseph Whitaker & Central Wards (Phase 2) (Listed Building Consent)

*Decision:* Approved 17/05/2004

*Application:* 21/00051/REM

*Description:* Removal of Condition 12 (retention of all existing windows) of planning application 03/02356/FUL to allow residents/owners to replace existing doors and windows with UPVC or timber on a like for like basis

*Decision:* Refused 19/04/2021

*Application:* 22/00795/VAR

*Description:* Variation of Conditions 12 and 14 on planning application 03/02356/FUL (Ground floor rear extensions of Crossley & Porter and Appleyard wards comprise of new build extension sections. It is requested that these can be replaced, with UPVC or powder based aluminium frames to doors and windows)

*Decision:* Refused 11/11/2022



## **Key Policy Context**

<b>Local Plan Designations / Allocations</b>	Savile Park Conservation Area
<b>Local Plan Policies</b>	<b>SD1</b> Presumption in Favour of Sustainable Development <b>CC1</b> Climate Change <b>BT1</b> High Quality Inclusive Design <b>BT2</b> Privacy, Daylighting and Amenity Space <b>HE1</b> Historic Environment
<b>National Planning Policy Framework Chapters</b>	<b>2</b> Achieving sustainable development <b>4</b> Decision-making <b>12</b> Achieving well-designed places <b>16</b> Conserving and enhancing the historic environment
<b>Other Relevant Planning Constraints</b>	Grade II Royal Halifax Infirmary Blocks 01, 02, 03, 04, 05, 08, 10, 20, 22, 35, 38 Listed Buildings

## **Publicity / Representations**

The statutory public consultation period of 21 days took place between 15/06/2023 to 06/07/2023 by site notice, press advert, and neighbour letters, as a development affecting the setting of a Listed Building and the character or appearance of a Conservation Area.

During the public consultation, a total of 2 representations were made. Of these, 1 was received in objection, and 1 as general comment.

The key points raised in OBJECTION are as follows:

- The buildings are Grade II Listed and site in a Conservation Area.
- Leasehold Agreement's 'like for like' replacement clause should be respected.

The key points raised as COMMENT are as follows:

- Quality of past workmanship has led to issues with wooden frames rotting.
- Repair of existing frames would be the best option to avoid the use of UPVC which would drastically cheapen the look of the infirmary complex.

A copy of the supporting comments from 2021 were also submitted as part of the application.

## **Local Members**

CLlr Mike Barnes (Skircoat) – Supports the proposal and requests a committee call-in.

*"I am wholly supportive of this proposal - the residents have contacted me regarding issues with both repair and durability of the existing wooden windows. There is also some inconsistency in the various apartments that can have aluminium and those that can't. It does seem rather strange that some apartments can choose yet others are unable to do so.*

*The site has limited visibility from the main road and I am struggling to understand the justification for this covenant.*

*I, therefore, am requesting that should the decision be "not to permit" then this is brought in front of Planning Committee for consideration." (14/06/2023)*

## **Consultee Comments**

*Calderdale Council:*

Conservation – Objects to the proposal.

## **Parish / Town Council Comments**

The site lies in an unparished area.

## **Main Issues**

Taking into consideration the site allocations and constraints, the main issues for consideration as part of the appraisal of the application are:

- Principle of Development
- Heritage
- Design and Materials
- Amenity

## **Assessment of Proposal**

### **Principle of Development**

Section 73 of the Town and Country Planning Act 1990 concerns the ‘determination of applications to develop land without compliance with conditions previously attached’. One of the uses of a Section 73 application is to seek a minor material amendment, where there is a relevant condition(s) that can be varied.

Planning Practice Guidance on ‘Flexible options for planning permissions’ confirms that permission granted under Section 73 takes effect as a new, independent planning permission to carry out the same development as previously permitted subject to new or amended conditions.

The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted. The guidance continues to state that a decision notice describing the new permission should clearly express that it is made under Section 73. It should set out all of the conditions imposed on the new permission, and, for the purpose of clarity, restate the conditions imposed on earlier permissions that continue to have effect.

Planning Practice Guidance on the use of planning conditions also clarifies that in deciding an application under Section 73, the Local Planning Authority must only consider the ‘disputed’ condition(s) that are the subject of the application – it is not a complete re-consideration of the application. As such, there is no requirement to re-consider the principle of development nor other key matters such as highways, access, scale, drainage or biodiversity that are unchanged by this application. Indeed, the use and extent of development (and associated impacts, including highways/air quality) remain consistent with the principles established by the previous planning permission.

This application is therefore restricted to a consideration of the proposed variations to Conditions 12 and 14, as well as those identified as being necessary to be altered following various associated discharge of conditions applications.

The proposal should be considered against the Development Plan and material considerations, under Section 38(6) of the Planning and Compulsory Purchase Act 2004, and conditions attached to the existing permission. The guidance states that Local Planning Authorities should, in making their decisions, focus their attention on national and Development Plan policies, and other material considerations which may have changed significantly since the original grant of permission.

### *Leasehold Agreement*

The proposal's supporting information states that there is a Leasehold Agreement in place with occupiers under which certain conditions must be met *in order to retain the external character, appearance, look and feel of the site*. This is offered as justification for compliance with the extant conditions to keep any proposed changes to the windows and frames to the same styles as have been approved through the planning process, although the materials could be different.

Officers note the existence of the Leasehold Agreement. However, Members should be aware that this carries no weight in planning decision-making as a private contract between the Leaseholder and Occupier. Therefore, Officers consider that the existence of the Leasehold Agreement is not a material consideration for this application.

### Heritage

Under the provisions of Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and NPPF (Chapter 16) Paragraph 197, special attention is to be paid to the desirability of preserving or enhancing the character or appearance and settings of Listed Buildings or any features of special architectural or historic interest, and the character of the Conservation Area.

NPPF (Chapter 16) Paragraph 199 states that 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 assets, 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.

NPPF (Chapter 16) Paragraph 200 states that 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. Officers consider that the justification put forward by the applicant for the proposed changes could be accommodated in other ways which would not harm the significance of the Listed host building or the character of the Conservation Area.

The requirements of Sections 66 and 72 are set out legislation. As such, they are legal duties which must be adhered to rather than planning policy requirements that the Council can choose to attach limited weight to.

Policy HE1 requires that 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. Part (III) of Policy HE1 states that development proposals will be expected to conserve heritage assets in a manner appropriate to their significance. Harm to a designated heritage asset will only be permitted where this is outweighed by the public benefits of the proposal.

The proposal pertains to new build elements built onto the existing Grade II Listed Royal Halifax Infirmary Blocks 01, 02, 03, 04, 05, 08, 10, 20, 22, 35, 38 Listed Buildings. The site also lies in the Savile Park Conservation Area.

Comments have been received from the Conservation team which highlight that:

*“This application appears to be almost identical to one from last year - 22/00795/VAR. This similarly sought variation of Conditions 12 and 14 on the same planning application 03/02356/FUL to allow replacement doors and window frames in UPVC or aluminium. That application was refused in November 2022.”*

It is noted that the proposal under this application removes specific mention of the types of proposed materials to be used. However, this lack of specificity is considered to add to the potential harm on the Listed heritage assets due to the unknown impacts of whichever unrestricted material could be selected.

Officers consider that the Conservation comments made in November 2022 for application 22/00795/VAR are still relevant. These state that:

*“The introduction of uPVC windows and doors in listed buildings is generally considered to be harmful to their historic character and appearance. In this case, it would be a wholly inappropriate material in relation to the historic and architectural context of the buildings and their significance as a 19th century hospital complex. The use of uPVC generally leads to an unacceptable thickness of frame, changes to methods of opening and a modern patina that is harmful to the special historic character of a listed building. The very nature of uPVC as a modern material sits poorly within the historic context, even those uPVC windows identified as of a ‘Heritage’ design.*

*Aluminium frames can sometimes be more acceptable, if of an appropriate design, detail and finish, and have been successfully introduced in some historic buildings particularly those of relatively simple industrial or agricultural origins such as mill buildings or barn conversions. In this case, however, the windows appear more domestic in scale and appearance, and the historic buildings generally across the site are more formal and refined in their character and appearance. In addition, aluminium windows when finished white tend to have a similar appearance to uPVC. Any proposal to replace with aluminium would need to be very carefully detailed using the same window specification across all openings.*

*For the reasons outlined above, the introduction of alternative materials for windows and doors to these listed buildings, including their extensions, would result in harm to their significance as designated heritage assets. In accordance with the NPPF, any such harm requires clear and convincing justification, and the harm should be weighed against the public benefits of the proposal. Whilst information has been submitted to justify the works, including better thermal performance, security etc, these factors could also be addressed by the installation of better quality timber windows and doors, and this would be the preferred solution here.*

*Thus, it is considered that any proposed replacement of windows and doors on these listed buildings should be in timber rather than an alternative material, and thus there are objections to the application.”*

Officers consider that no material changes in circumstances (including the adoption of the Calderdale Local Plan) have made the proposal any less harmful to the Listed Building than under previous relevant similar applications; all of which were refused on heritage impacts grounds.

Policy HE1 is also considered to strengthen the Council's position in relation to proposals causing harm on Listed heritage assets than previous policies and is in line with Chapter 16 of the NPPF. Furthermore, the potential public benefits of the proposal are considered to be minimal (as outline later in this report) and do not outweigh the harm to the designated heritage assets arising from the proposal and the *great weight* attributed to the conservation of the Listed building under NPPF (Chapter 16) Paragraph 199.

Given the above, the proposal is considered to be contrary to Policy HE1 of the adopted Calderdale Local Plan and NPPF (Chapter 16) Paragraph 200. Furthermore, the proposal is considered not to have regard to Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

### Design and Materials

Policy BT1 requires that proposals are of a high quality and inclusive design across all aspects of development, including aesthetics and visual amenity, functionality and sustainability. The site allocation policy further requires that building heights and materials should be carefully considered.

NPPF (Chapter 12) Paragraph 130 requires that proposals should function well and add to the overall quality of the area, be visually attractive, are sympathetic to local character, establish or maintain a strong sense of place, optimise the potential of the site to accommodate and sustain appropriate development, and create places that are safe, inclusive and accessible.

NPPF (Chapter 12) Paragraph 134 states that development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes.

The materials proposed under this application are vague; being described as *a material other than timber, such as UPVC*. Some indicative uPVC window casings have been submitted for information; however, these are not considered to form a substantive part of the proposal.

Without knowing the proposed materials at this stage, or how many windows are likely to be affected, it is difficult to assess the potential impacts of the proposed variations. Officers consider that the proposed variations would inadvertently allow for unrestricted changes to the affected windows and frames in terms of their size, style, and materials. It is not unreasonable to consider that this could likely lead to the use of overly bright whites and greys and metallic finishes as well as other, potentially incongruous, materials which would have a detrimental impact on visual amenity.

It is acknowledged that the proposed affected windows are located to the rear of the existing buildings. Notwithstanding this, the potential detrimental effects of ad-hoc replacement windows of unknown and unqualified styles and materials on visual amenity would still be considered of detriment, particularly as seen by current and future occupiers, guests, and any other users of the dwellings' rear garden amenity spaces and the shared nature of the access paths running across these areas.

As previously highlighted, reliance on the Leasehold Agreement to protect against the abovementioned concerns is not considered to be acceptable as the Council would have no oversight of this private process or ability to enforce its obligations should they be breached.

Given the above, Officers consider that the proposal is contrary to Policy BT1 of the adopted Calderdale Local Plan and NPPF (Chapter 12) Paragraph 130. As such, NPPF (Chapter 12) Paragraph 134 is considered to be relevant.

## Amenity

Policy BT2 of Calderdale Local Plan state, that development should not significantly affect the privacy, daylighting or amenity space of existing and prospective residents and other occupants.

NPPF (Chapter 12) Paragraph 130(f) requires that proposals create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

The proposal's supporting information sets out its justification for the variations in amenity terms. These matters include the potential use of more energy efficient windows and casings, 'secured by design' certified windows, and improving ventilation to prevent condensation build-up. Officers note that as no substantive details of replacement windows and frames have been submitted at this time, these matters are speculative only and could not be guaranteed to be complied with through the proposed conditions variations, as new conditions cannot be sought to secure these details through the Section 73 application process. As such, these matters are considered to carry no weight in the planning balance as hypothetical 'nice to have' considerations for which there is no mechanism to secure compliance.

Other matters such as the costs and frequency of repair and replacement of timber frames have been put forward as justification, although Officers do not consider these considerations to be material to this application. Furthermore, it is noted in the submitted information that the original windows were poorly fitted which resulted in many of the issues experienced by occupiers. This, again, is considered not to be a material consideration in the planning balance and should be rectified outside of the planning process.

Officers, therefore, consider that the proposal is contrary to Policy BT2 of the adopted Calderdale Local Plan as the potential relatively minor public amenity benefits of any changes in window/frame materials resulting from the proposed varied conditions cannot be secured for compliance and, as such, cannot reasonably be considered as material benefits of the proposal.

## Planning Balance and Conclusion

The proposed variations to Condition 12 and 14 of planning permission 03/02356/FUL are considered to be contrary to Policies BT1, BT2, and HE1 of the adopted Calderdale Local Plan. Furthermore, the reasons for refusal of previous applications 21/00051/REM and 22/00795/VAR for the same/similar removals and variations of Conditions 12 and 14 are considered to still be relevant. The extant conditions are also still considered to meet the tests for securing planning conditions, as set out under NPPF (Chapter 4) Paragraph 55 and NPPG (Use of planning conditions) Paragraph 003 (Reference ID: 21a-003-20190723, dated 23/07/2019).

## **RECOMMENDATION**

**The proposal is not considered to be acceptable. The recommendation to refuse planning permission has been made because the development is not in accordance with Policies BT1, BT2, and HE1 of the Calderdale Local Plan and National Planning Policy Framework (Chapters 12 and 16) Paragraphs 130 and 200, nor have there been any material considerations to indicate that an exception should be made in this case.**

Richard Seaman  
For and on behalf of  
Director of Regeneration and Strategy

Date: 27 July 2023

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### Further Information

Should you have any queries in respect of this application report, please contact in the first instance: -

Richard Riggs (Case Officer) or Lauren Spensley (Lead Officer)

### Reasons

1. The proposal would harm the significance of the Grade II Listed Royal Halifax Infirmary Blocks 01, 02, 03, 04, 05, 08, 10, 20, 22, 35, 38 by allowing the unrestricted use of materials incompatible with the preservation or enhancement of the designated heritage asset for replacement windows and frames on the rear ground floor extensions of the Crossley and Porter ward blocks. No clear or convincing justifications have been set out which would outweigh the great weight attributed to the conservation of the designated heritage asset. There are no public benefits advanced in favour of the development that would outweigh the identified harm. Therefore, the proposal is considered to be contrary to Policies HE1, BT1 and BT2 of the adopted Calderdale Local Plan and National Planning Policy Framework (Chapters 12 and 16) Paragraphs 130 and 200. The proposal is not considered to have regard for Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990
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