

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

**Date of meeting: 20 February 2024**

**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:**

Richard Seaman  
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 20 February 2024**

<b>Time &amp; No.</b>	<b>App No.</b>	<b>Location</b>	<b>Proposal</b>	<b>Ward</b>	<b>Page No.</b>
14.00	23/00571/FUL	Land North Of Helm Farm Cottages Helm Lane Triangle Sowerby Bridge Calderdale	Construction of two agricultural buildings and access track in connection with a smallholding (Retrospective application)	Ryburn	5 - 23
14.00	23/00733/HSE	Woodland Manor Rose Grove Lane Sowerby Bridge Calderdale HX6 2RJ	Proposed Outbuilding	Luddendenfoot	24 - 32

Time Not Before: 14.00 - 01

Application No: **23/00571/FUL**

Ward: **Ryburn**

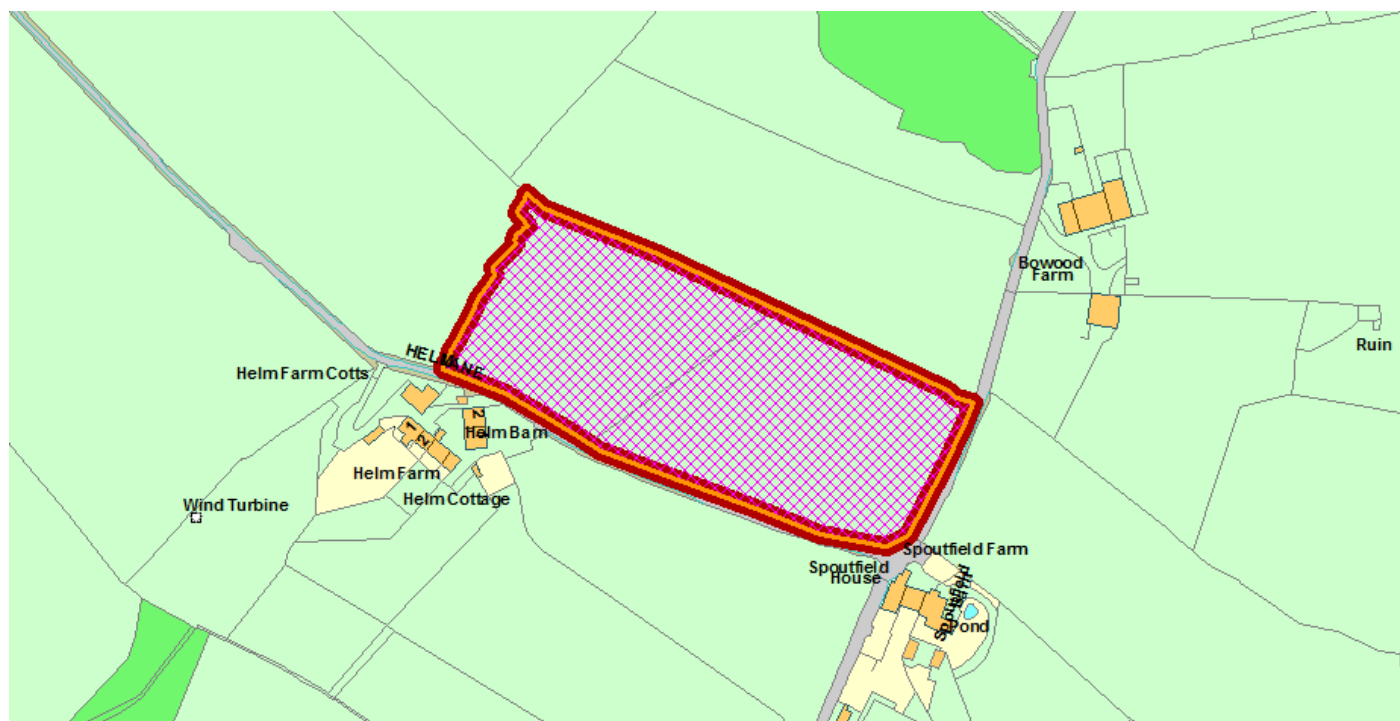
Area Team: **South Team**

Proposal:

**Construction of two agricultural buildings and access track in connection with a smallholding (Retrospective application)**

Location:

**Land North Of Helm Farm Cottages Helm Lane Triangle Sowerby Bridge Calderdale**



Applicant:

**Darren and Kelly Wetherall**

Recommendation: **REFUSE**

Parish Council Representations:

N/A

Representations:

Yes

Departure from Development Plan:

No

**Consultations:**

Flood Risk Manager

Highways Section

Environmental Health Services - Pollution Section (E)

Highways Section

Environmental Health Services - Pollution Section (E)

Biodiversity

Flood Risk Manager

Tree Officer

## **Committee Report on Application 23/00571/FUL**

Land North of Helm Farm Cottages, Helm Lane, Triangle, Sowerby Bridge, Calderdale

**This application has been brought before Planning Committee due the significant number of representations received, in line with the Council's Scheme of Delegation.**

**Councillor Robert Thornber (Ryburn) has called-in this application in the event of a negative recommendation citing Green Belt appropriateness, visual amenity, and highways safety as material planning considerations.**

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

This application is seeking full planning permission for the construction of two agricultural buildings and access track in connection with an agricultural smallholding. The proposed works have already been undertaken. As such, the proposal is considered to be a retrospective application.

Amended plans were received on 14/12/2023 to amend the red line boundary of the site and description of the proposal. The amendments served to clarify exactly what has been applied for and reduce the scale of the proposal site. The proposed works include the construction of an agricultural building to be used for housing animals and the storage of equipment associated with the operation of the smallholding to the north of the site and a sheep hut located centrally within the site.

The revised site is formed from parts of two existing enclosed agricultural fields which are both accessible from the existing site access off Helm Lane. The site measures c. 0.37 hectares and is bounded by Helm Lane and residential dwellings to the west, Birks Lane to the south east, residential dwellings to the south, and by other agricultural fields to the north and east. The site slopes quite significantly from north to south and plateaus slightly in the centre and towards the south western boundary, before dropping sharply down to Birks Lane.

The site lies within the Green Belt and the Blackwood Common Landscape Character Area. The site also lies in the setting of the Grade II Listed Spout Field Farmhouse to the south.

### **Consideration of Development**

A previous version of this committee report assessed the provision of a new access track and site access (both still included within the amended red line boundary) and the siting of an HGV trailer to be used as an agricultural store towards the south east of the wider site. Following receipt of the amended plans, the HGV trailer has been removed from the site's red line boundary and the applicant has confirmed that it is not included in this application for planning permission. It has therefore not been considered by the Local Planning Authority. After further consultation and assessment, the siting of the HGV trailer is currently not considered to meet the *Skerrits test* (*Skerrits of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions and Harrow LBC* (No 2) 2PLR 102)) for determining whether building operations have occurred.

The *Skerrits test* is a two-stage test and involves:

- *Determining whether the proposal is a building.*

To do this, the *Cardiff Rating Authority test* must be applied (set out in *Cardiff Rating Authority and Cardiff Assessment Committee v Guest Keen and Baldwin's Iron and Steel Co. Ltd* [1949] 1KB 385 and approved in *Barvis Ltd v Secretary of State for the Environment* [1971] 22 P&CR 710). The test involves considering the size, permanence and degree of physical attachment.

Officers consider that the siting of the HGV in its current location would likely meet the test requirements in relation to size and permanence. It is a large c. 26-tonne trailer that is not readily accessible from the site entrance and would likely be semi-permanent on the site given its use as an agricultural store. However, the HGV trailer is set atop the ground with no degree of physical attachment to the site. Given this, the siting of the HGV trailer is currently considered to meet 2 out of the 3 of the test conditions only. As such, it is considered to fail the test to be considered as a 'building' in planning terms.

- *Determining whether what had created that building was a building operation.*

The applicant has confirmed that some earthworks were required to level off the site to facilitate the siting of the HGV trailer. However, as the HGV trailer fails the first part of the test as is not considered a 'building', it is considered that the second part of the test is null.

Officers also consider that no material change of use of the land has occurred from the siting of the HGV trailer. As the site is currently used for agriculture, as defined by Section 336(1) of The Town and Country Planning Act 1990 (as amended) [*the TCPA*], and the trailer used as an agricultural store for straw and hay, it is considered to be in the same use. Officers note, therefore, that as the HGV trailer is not considered to constitute development under Section 55(1) of the TCPA and in any event does not form part of this application for planning permission, no consideration of its impacts can be undertaken under this application, nor can any planning conditions be secured to mitigate any impacts it might have.

#### *Permitted Development*

Although the siting of the HGV trailer is not considered to constitute development under Section 55(1) the TCPA, it is considered to be a temporary structure for planning purposes. Schedule 2 Part 4 Class A (temporary buildings and structures) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) [*the GDPO*] permits the siting of temporary structures. Although no details have been provided about the intended duration of the temporariness of the HGV trailer, it is noted that there is no definition of *temporary* within the GDPO other than *for the duration of operations being or to be carried out on, in, under or over that land*, subject to the condition that the temporary structure is removed. As such, Officers consider that as long as the HVG trailer is used in conjunction with the site's agricultural use and remains [re]movable, and is ultimately removed from the site, it can reasonably be considered to be temporary for the purposes of the GDPO.

Schedule 2 Part 2 Class B relates to the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in this Schedule (other than by Class A of this Part). Officers note that Helm Lane is an unclassified road, and the proposed site access would serve the HGV trailer permitted under Schedule 2 Part 4 Class A. As such, the site access is considered to be Permitted Development.

Schedule 2 Part 6 Class B(d) and (e) of the GDPO relates to the carrying out on agricultural land comprised in an agricultural unit, of not less than 0.4 but less than 5 hectares in area, development consisting of the provision of a private way and provision of a hard surface respectively. The size of the agricultural unit in which the proposal sits is c. 1.7 hectares. As such, the provision of the access track within could be considered to constitute Permitted Development. Notwithstanding this, the applicant has expressly applied for planning permission in the description of the proposal on the submitted application form for the proposed access track. As such, Officers must assess what has been applied for by the applicant.

## Supporting Information

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

- Application Form
- Design and Access Statement
- Species Enhancement Statement

### **Relevant Planning History**

No relevant planning history.

### **Key Policy Context**

<b>Local Plan Designations / Allocations</b>	Green Belt Blackwood Common Landscape Character Area
<b>Local Plan Policies</b>	<b>SD1</b> Presumption in Favour of Sustainable Development <b>CC1</b> Climate Change <b>CC2</b> Flood Risk Management (Managing Flood Risk in New Development) <b>CC3</b> Water Resource Management <b>HW1</b> Health Impacts of Development <b>HW5</b> Sustainable Local Food Production <b>IM4</b> Sustainable Travel <b>IM5</b> Ensuring Development Supports Sustainable Travel <b>BT1</b> High Quality Inclusive Design <b>BT2</b> Privacy, Daylighting and Amenity Space <b>BT3</b> Landscaping <b>BT4</b> The Design and Layout of Highways and Accesses <b>HE1</b> Historic Environment <b>GB1</b> Development in the Green Belt <b>GN3</b> Natural Environment <b>GN4</b> Landscape <b>EN1</b> Pollution Control <b>MS2</b> Mineral Safeguarding Areas
<b>National Planning Policy Framework Chapters</b>	<b>2</b> Achieving sustainable development <b>4</b> Decision-making <b>6</b> Building a strong, competitive economy <b>8</b> Promoting healthy and safe communities <b>9</b> Promoting sustainable transport <b>11</b> Making efficient use of land <b>12</b> Achieving well-designed and beautiful places <b>13</b> Protecting Green Belt land <b>14</b> Meeting the challenge of climate change, flooding and coastal change <b>15</b> Conserving and enhancing the natural environment <b>16</b> Conserving and enhancing the historic environment <b>17</b> Facilitating the sustainable use of minerals



<b>Other Relevant Guidance</b>	Calderdale District Landscape Character Assessment and Review of Special Landscape Area Designation (October 2016)
<b>Other Relevant Planning Constraints</b>	Sandstone Mineral Safeguarding Area Groundwater High Vulnerability Area Water Supply Zone (Mixed – Spring & Mains) Area Not Covered by Mains Drainage Smoke Control Area In Setting of Grade II Listed Spout Field Farmhouse

### **Publicity / Representations**

The statutory public consultation period of 21 days took place between 04/07/2023 to 25/07/2023 by neighbour letters. A second consultation was run between 13/12/2023 and 06/01/2024.

During the public consultations, a total of 14 representations were made. Of these, 5 were made in support and 9 were received as objections. Officers note that 1 of the objections was withdrawn by the objector. As such, there were 13 representations made, with 5 being made in support and 8 received as objections.

The key points raised in SUPPORT are as follows:

- The new site access would improve the existing.
- Agricultural buildings are of an appropriate size for the plot.
- Proposal would not be used in conjunction with the applicant's tree surgery business.
- Proposal would not harm local landscape character.
- Proposed tree planting would be of benefit to the environment.
- Access to a smallholder for food would support local farmers.
- Off-street car parking is needed to tend to the animals.
- Proposed wagon back would replace a previous one and be used in conjunction with the smallholding.

The key points raised in OBJECTION are as follows:

- Agricultural building is too large for the number of animals it would support.
- Agricultural building harm the local landscape character.
- Site access is poor and unsafe, and gravel will wash into the road during heavy rain.
- New access track is described as a 'public access road' which is not accurate.
- Plans suggest the timber yard would be used as a commercial venture.
- There are discrepancies in proposed floor areas on the submitted plans.
- The existing sewage tank does not accurately reflect what is on-site – this is a water supply.
- Agricultural building would not benefit Swifts and bats as stated.
- Existing and proposed tree planting is inappropriate for its location.
- Helm Lane is not suitable for further intensification.
- The new track does not replace any previous one across the site as there was no previous track.
- Proposal does not need access to 3 car parking spaces.
- Application states that it would 'allow the business to grow'.
- Wagon back is an eyesore and effectively a permanent structure.
- External lighting could be detrimental to bats.

## **Local Members**

Cllr Robert Thornber (Ryburn) – Committee call-in.

*"I email you to request planning application 23/00571/FUL Construction of Agricultural Building, Helm Lane Triangle be determined by the Planning Committee if the recommendation is to refuse.*

*I feel the agricultural building is in keeping with other agricultural buildings in the area, and in my view not much bigger than a large field shelter which would be permitted under current Green Belt policy.*

*Also regarding the access to the field, the entrance is existing, and the limited agricultural traffic from the field poses no more highway issues than what was there before." (04/08/2023)*

## **Consultee Comments**

*Calderdale Council:*

Biodiversity – Further information required.

Environmental Services (Pollution Control) – No comments received.

Flood Risk Manager – Objects to the proposal.

Highways Section – Does not support the proposal.

Tree Officer – No objections.

## **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
- Green Belt
- Climate Change
- Design and Visual Amenity
- Landscape Character
- Heritage
- Residential Amenity
- Pollution Control
- Highways and Car Parking
- Flood Risk and Drainage
- Ecology and Biodiversity
- Ground Conditions

## **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) complements this requirement. The NPPF was most latterly revised on 19 December 2023 and sets out the Government's planning policies for England and how these are expected to be applied, alongside other national planning policies. Paragraph 225 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 Development 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 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 (e.g., land designated as Green Belt or designated heritage assets) 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 adopted Calderdale Local Plan.

The proposal is for two agricultural buildings on agricultural land. It is therefore considered that the principle of development of the proposal is acceptable. Additionally, the proposal is considered to be in accordance with Policy HW5 of the adopted Calderdale Local Plan as an application for sustainable local food production.

### **Green Belt**

The NPPF indicates that development should be restricted if it is 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, Chapter 13 of the NPPF states that:

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

*153. 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.*

### *Agricultural Buildings*

Policy GB1 of the CLP pertains to development in the Green Belt and states that:

- I. Within the Green Belt, the construction of new buildings is inappropriate development except in the following circumstances:
  - a. Buildings for agriculture and forestry.

Policy GB1 of the CLP is consistent with the NPPF (Chapter 13) Paragraph 154(a).

The proposal is for the construction of two agricultural buildings with an associated access track in connection with a smallholding.

Officers note the applicant's definition of the site as a smallholding. This use was confirmed following a site visit on 12/07/2023. The applicant does note, however, that some wood is stored on-site to later be transported off-site and crafted in a commercial workshop to be worked as part of the applicant's hobby. This is noted, but for the avoidance of doubt, a condition would be secured to prevent any commercial business activities from taking place on this site. This would include the storage of wood to later be used, distributed or sold as part of a business' commercial operations.

Representations and consultee comments regarding the use of the site for operations in association with an existing off-site tree surgery business are noted. Officers note that there are at least c. 10no. 1m x 1m x 1m cages (equating to c. 10m<sup>3</sup> capacity) on-site used for storing firewood sized logs, although not all were in use at the time of the site visit.

Although there is no formal guidance on the amount of wood used by domestic log burners per year, guidance from several commercial fitters suggests that c. 3-4 m<sup>3</sup> of firewood would likely be used per year if the burner were used most evenings between October – April. This could increase to c. 6 m<sup>3</sup> if the burner were to be used more frequently. Officers recognise that this guidance is anecdotal only, but it is considered to be consistent across the industry and, therefore, can be somewhat relied upon in assessing the likely use of the quantum of wood stored on-site.

As the site has the capacity to store c. 10m<sup>3</sup> of wood, this would equate to c. 2-3 years' worth of fuel for a domestic dwelling fitted with a standard log burner. Given how long the process for drying and seasoning firewood takes (c. 6-12 months for softwoods and c. 18 months for hardwoods on average, according to industry advice), Officers consider it unlikely that the quantum of wood stored on-site would be commercially viable and is therefore, in all likelihood, intended for domestic use by the applicant. As such, Officers are content that the proposal would not be used in association with the applicant's off-site tree surgery business.

In noting this, Officers consider that the construction of two agricultural buildings on this site would not be inappropriate development in the Green Belt.

### *Access Track*

Policy GB1 of the CLP also states that:

- 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:
  - b. Engineering operations.

Policy GB1 reflects the requirements of NPPF (Chapter 13) Paragraph 155(b).

The provision of the new access track is considered to be an engineering operation. The track runs from the site entrance and along the existing field boundary running centrally south west to north east through the site and turns north west at the site's northern boundary up to the agricultural building at the north west corner of the site. The track measures c. 200m in length and is formed of parallel tyre tracks at a single vehicle width. The track is laid with stone and has a central grassed area.

Little justification has been provided for the route of the track and its potential impacts on the openness of the Green Belt. Notwithstanding this, Officers consider that due following the topography and natural contours of the site and the use of the existing field boundary running through the site, the route of the track would not introduce a visually or spatially dominant feature within the site which would materially harm the openness of the Green Belt. Furthermore, the access track is not considered to conflict with the purposes of including land in Green Belt as it would not represent encroachment into the Green Belt as a facilitative measure to provide suitable access to the agricultural buildings on the site.

### *Impact on the Green Belt*

Policy GB1 (III) states that development which is not inappropriate should not detract from the visual amenity of the Green Belt by reason of siting, materials or design or lead to traffic, amenity, environmental or other problems which cannot be effectively mitigated.

As will be assessed in further detail later in this report, the siting, materials and design of the proposed two agricultural buildings and access track are considered to be commensurate with and proportionate to their use to provide adequate facilities for animal husbandry and welfare. They are also considered to respect the topography of the site and be sited in such a way so as to minimise the potential impacts on the residential amenities of neighbouring occupiers. Officers recognise the representations received regarding the scale of the agricultural building at the north east of the site, but having seen the building in situ on the Officer site visit, consider it to be proportionate to the scale of the site.

Given the above assessment, the proposal is considered to be in accordance with Policy GB1 of the adopted Calderdale Local Plan and Chapter 13 of the NPPF.

### **Climate Change**

The Council declared a Climate Change Emergency in 2019. In 2022, the Council published the Calderdale Climate Action Plan 2022-25. This sets out the Council's stated aims and targets to achieve net zero by 2038, with significant progress by 2030.

Policy CC1 of the CLP requires that proposals should aim to be net zero emitters of greenhouse gases such as carbon dioxide and must demonstrate appropriate mitigation and adaption measures to address the predicted impacts of climate change.

NPPF (Chapter 14) Paragraph 159 requires that new development should be planned for in ways that avoid increased vulnerability to the range of impacts arising from climate change and which can help to reduce greenhouse gas emissions, such as through its location, orientation and design.

No information has been submitted in support of this application in this regard. Officers note that agricultural buildings are generally exempt from the Building Regulations 2010 (as amended) which would usually cover the energy efficiency (amongst other things) of new buildings. Other matters such as sustainable drainage, Biodiversity Net Gain, and access to public transport are considered later in this report.

### **Design and Visual Amenity**

Policy BT1 of the CLP requires that new developments will ensure high quality, inclusive design and demonstrate a holistic approach to design quality. Proposals should demonstrate their consideration of the aesthetics, function and sustainability over the lifetime of the development.

NPPF (Chapter 12) Paragraph 135 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.

#### *Site Layout*

The site would be accessed centrally via a rearranged existing access point and would lead to the main agricultural building to the north west of the site. The main agricultural building sits at the highest elevation of the site in the corner of the field. The second agricultural building sits towards to centre of the wider site at its northern boundary. Both of the agricultural buildings are accessed from the new access track. The proposed tree planting will be assessed later in this report.

#### *Form, Scale and Massing*

The main agricultural building measures c. 3.6m (h) x c. 14m (w) x c. 10.9m (l) and is roughly 'L'-shaped. The building slopes from front to rear by c. 1m which is visually reduced further by the prevailing site levels. Officers note the representation received about the appropriateness of the size and scale of this building. Notwithstanding this, Officers consider the building to be appropriate to fulfil its function provide space for animal husbandry in association with the proposal's agricultural use and to provide additional storage space for the materials required to run the smallholding.

The proposed sheep hut measures c. 2.25m (h) x c. 3.8m (w) x c. 11.1m (l) and is rectangular in shape. The size and scale of the proposed sheet hut is considered to be acceptable in visual amenity terms and is further considered to be appropriate to fulfil its function.

#### *External Materials*

The proposed agricultural buildings would be constructed from wood and green metal cladding. The proposal materials are considered to be acceptable in terms of their visual amenity and integration with the wider landscape as recognisable agricultural buildings, similar examples of which can be found throughout this area of the Borough.

Given the above, Officers consider the proposal to be in accordance with Policy BT1 of the adopted Calderdale Local Plan and NPPF (Chapter 12) Paragraph 135.

### *Landscaping and Trees*

Policy BT3 of the CLP requires that proposals should provide good quality hard and soft landscaping schemes which will form an integral part of the overall design, appropriately integrates the proposal into its surroundings, and enhances local biodiversity.

The applicant notes that a variety of trees have been planted on-site, which are considered to form part of this retrospective application as they are intended to be used as a BNG generator and act as a visual buffer for the development. The trees have already been planted, in part, along the south eastern side of the access track along the existing field boundary route and to the north west of the site access in a copse arrangement. The trees planted to date include approximately:

- 1000 Hawthorn
- 300+ Beech
- 200+ Hazel and Field Maple
- 25 Spruce
- 50 Holly
- Mixed variety of Silver Birch and Rowan
- 50 Oak
- Mixed variety of Ash and Sycamore
- Multiple small fruit bushes
- 50 Conifers

The applicant notes that further tree planting is also planned to take place on the site in the future. However, no further details have been provided in this regard and as any future tree planting does not form part of this application, Officers are unable to consider it within the assessment of the proposal as submitted.

The Council's Tree Officer has reviewed the submitted information and notes that the proposal would not detrimentally impact on any existing trees in the vicinity of the site. Additionally, the Tree Officers notes that significant new planting has taken place which they support as the area has limited tree cover and even less new planting of trees, meaning as older trees decline and die the cover will become even less.

In considering the tree planting strategy for the site, it is noted that outside of tree planting being proposed as part of a landscaping strategy for a planning application, afforestation on land used for the purposes of agriculture is not considered to represent a form of development under Section 55(2)(e) of the TCPA which requires planning permission.

It is considered that the tree planting which has been undertaken would offer a good amount of visual screening of the access track and agricultural buildings from viewpoints outside of the site, particularly from the west and south. Notwithstanding this, Officers note their reservations around the quantum of trees which have been and are to be planted on the site, particularly given the strong sense of openness and the rolling nature of the surrounding countryside. The use of conifer hedging at the north of the site in front of the main agricultural building to be used for screening and windbreak purposes is considered to be out-of-keeping with the prevailing arboricultural character of the area. A condition would therefore be secured for the removal of the conifer hedging and its replacement (if necessary, as adequate visual screening of the main agricultural building is likely to be achieved by the tree planting adjacent to the access track across the centre of the site) with an alternative, locationally appropriate species.

Given this, Officers consider that the proposed landscaping strategy would be in accordance with Policy BT3 of the adopted Calderdale Local Plan.

### **Landscape Character**

The proposal also lies in the Blackwood Common Landscape Character Area. Policy GN4(V) of the CLP requires that new development should be designed in a way this it is sensitive to its landscape setting. As such, it should seek to enhance the character and qualities of the LCA, reflect local distinctiveness and diversity, provide landscape mitigation appropriate to its scale and design, and make adequate provision for the retention of features and habitats of significant importance.

The surrounding landscape is characterised by rolling, open farmland with sporadic, traditionally built dwellings and barn conversions. Officers also note the presence of a large, modern dwelling of architectural merit to the south east of the site.

As previously noted, Officers consider the proposed agricultural buildings to be appropriate in the landscape and preserve – but does not necessarily enhance – its character. Furthermore, it is considered that the proposal does not detract from the special qualities of the Landscape Character Area. Given this, the proposal is considered to be in accordance with Policy GN4(V) of the adopted Calderdale Local Plan.

### **Heritage**

Under the provisions of Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and NPPF (Chapter 16) Paragraph 205, 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.

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 weight to.

Policy HE1 of the CLP 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.

The site lies c. 121.5m north west of and in the setting of the Grade II Listed Spout Field Farmhouse to the south. Spout Field Farmhouse is a traditional 17<sup>th</sup> Century farmhouse which has a strong and open agricultural setting. No information assessing the potential heritage impacts of the proposal has been submitted, in line with the requirements of NPPF (Chapter 16) Paragraph 200.

The Council's Conservation Team has been informally consulted on the proposal and raised no concerns with regards to likely heritage impacts. As such, it is considered that the proposal would not harm the setting of the designated heritage asset given the prevailing undulating topography between the site and the Listed Building, and the proposed use of the agricultural buildings being in-keeping with the agricultural use of the site and setting of Spout Field Farmhouse. Given this, the proposal is considered to be in accordance with Policy HE1 of the adopted Calderdale Local Plan and Chapter 16 of the NPPF. Furthermore, the proposal is considered to have regard to Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.



## **Residential Amenity**

Policy BT2 of the CLP states that development should not significantly affect the privacy, daylighting or amenity space of existing and prospective residents and other occupants. Annex 2 sets out guidelines to help assess whether such impacts will arise.

NPPF (Chapter 12) Paragraph 135(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 closest neighbouring residential dwelling to the proposed agricultural buildings is located c. 71m to the south. Given this separation distances and the proposed use of the agricultural buildings, the proposal is considered not to cause unacceptable impacts on the residential amenities of neighbouring occupiers in terms of overbearing, overlooking, overshadowing or causing a loss of outlook. As such, the proposal is considered to be in accordance with Policy BT2 of the adopted Calderdale Local Plan and NPPF (Chapter 12) Paragraph 135(f).

## **Pollution Control**

Policy EN1 of the CLP requires that the Council should seek to reduce the amount of new development that may reasonably be expected to cause pollution or be exposed to it. This includes consideration of light, noise, odour and vibration, environmental and water quality impacts (including ecological impacts), impacts on human health, and impacts on air quality.

Policy HW1 of the CLP requires that developments should contribute to reducing the causes of ill health, improve health, and reduce health inequalities in part by providing a healthy living environment.

NPPF (Chapter 15) Paragraph 191 states that decisions should ensure that new development is appropriate for its 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.

### *Noise and Odour*

As the proposal is used for the keeping of animals associated with the management of a smallholding, there is likely to be some associated noise and odours. Given the size of the smallholding and the site's previous uses to keep horses – as has been highlighted in the public representations – it is considered that good animal welfare and management of the cleanliness of the site would likely reduce the potential for nuisance noise and odour emanating from the site. The site is also surrounding by active farmland, within which some agricultural and animal noise and odours are to be expected. In this regard, and noting that this application is not seeking a change of use of the land, the proposal would not be considered to act as an agent of change.

### *External Lighting*

No external lighting is proposed within the development. To maintain the openness of the Green Belt and the visual amenity and special qualities of the Landscape Character Area in which the site is located, a condition would be secured to keep the site free from external lighting.

## *Refuse and Waste*

No information has been submitted with regard to refuse and waste storage and collection. Notwithstanding this, Officers consider it likely that waste materials generated in the use of the site as a smallholding would likely be recycled on-site or moved off-site by the applicant for appropriate disposal. The site lies in a Smoke Control Area. As such, there should be no burning of materials on-site, which would be secured via conditions.

Given the above, the proposal is considered to be in accordance with Policy EN1 of the adopted Calderdale Local Plan.

## **Highways and Car Parking**

### *Location Sustainability*

Policy IM4 of the CLP states that decision makers will aim to reduce travel demand, traffic growth and congestion through the promotion of sustainable development and travel modes. The policy further notes that the requirement to include mechanisms to promote sustainable travel in proposals will depend on scale, type and form and will be assessed on a case-by-case basis.

Policy IM5 sets out the Council's position regarding provision of and access to public transport accessibility, mobility and accessibility, and car and cycle parking requirements. The policy states that proposals should be located within 400m walking distance of a regular bus service, or 750m of a railway station. Proposals are also required to provide adequate access means to all modes of transport and into/within the built form for those with disabilities and mobility impairments.

As the proposal is for the erection of infrastructure associated with an agricultural smallholding, it is considered that a more rural location is expected. There is a bus stop with an hourly service to Halifax located c. 500m south of the site, although given the narrowness and national speed limit of the local road network, this is not considered to provide a safe sustainable access option, particularly during the darker winter months and the times of day the site is likely to be access (mornings and evenings).

Officers therefore recognise that the site isn't particularly sustainably located, but further consider that it is appropriately located and would be unlikely to result in unsustainable travel generation given its small-scale use. As such, the proposal is considered to be in broad accordance with Policies IM4 and IM5 of the adopted Calderdale Local Plan.

### *Car Parking*

The Council's car and cycle parking standards are set out in Annex 1 'Car & Bicycle Parking Standards' of the adopted Calderdale Local Plan. No car parking standards are set out for smallholding or agricultural uses.

The applicant has proposed the creation of 3 informal car parking spaces. These are not set out on the submitted plans, nor is there evidence of formal car parking arrangements on the site. Officers note, following the site visit, that there is likely sufficient space by the main agricultural building to park 3 cars, but that this has not been in any way formalised. Turning space is also to be limited with multi-points turn necessary to enter and exit the car parking area, which is considered to impact on the available space for on-site car parking.

The creation of 3 car parking spaces is considered to be arbitrary and largely inconsequential to the proposal as the site is used as a private smallholding. Given this, the proposal is considered to be in accordance with Policy IM5 of the adopted Calderdale Local Plan.

The applicant has made reference to a future tractor/machinery store on this site. However, this is not considered to form a substantive part of this application and, as such, is not being considered in the assessment of this proposal. Any future building works on the site, including the proposed creation of 3 formalised car parking spaces, may require planning permission in their own right, at which time the relevant planning policy and other materials considerations of the proposal would be duly assessed.

### *Site Access*

Policy BT4 of the CLP requires that a proposal's design for and layout of highways and site accesses should ensure the free flow of traffic, allow emergency and refuse vehicle access, provide convenient and safe pedestrian routes and promote site permeability, take account of the hierarchy of road users, incorporate traffic calming measures where appropriate, provide an attractive environment, and help reduce opportunities for crime.

NPPF (Chapter 9) Paragraph 115 states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

As previously noted, the formation, laying out and construction of the site access is considered to represent Permitted Development under Schedule 2 Part 2 Class B of the GDPO, as Helm Lane is an unclassified road. The Highways Section's comments received regarding the technical inadequacies of the site access are noted. However, as the site access is considered to be Permitted Development, these comments are not actionable as part of this planning application, unless done so at the will of the applicant. Additionally, consideration of the site access against the local and national planning policies regarding site access and highways safety is not applicable in this instance.

## **Flood Risk and Drainage**

### *Flood Risk*

Policy CC2 of the CLP requires that new development should follow a sequential risk based approach and be directed away from Flood Zones 2 and 3 in accordance with the principles of the NPPF. NPPF (Chapter 14) Paragraph 173 states that when determining applications, local planning authorities should ensure that flood risk is not increased elsewhere.

The site lies in Flood Zone 1, meaning it is at the lowest risk of fluvial flooding, and is less than 0.5ha in size. As such, a Flood Risk Assessment is not required. Furthermore, Government flood risk mapping shows the site to be at low risk from surface and groundwater flooding. The proposal would not introduce any forms of vulnerable development on to the site. As such, Officers consider that the proposal would be at low risk of flooding and would be unlikely to increase the risk of flooding elsewhere. The proposal is therefore considered to be in accordance with Policy CC2 of the adopted Calderdale Local Plan and NPPF (Chapter 14) Paragraph 173.

### *Surface and Foul Water Drainage*

Policy CC3 of the CLP requires that proposals protect the quality and quantity of water resources, encourage their efficient use and ensure that they are provided where necessary. This includes the provision of suitable surface and foul water drainage systems (including treatment capacity) and ensuring that proposals have an adequate means of water supply.

No foul water drainage is proposed on-site and there are no plans for WCs to be installed.

The applicant has stated that surface water would be drained into a natural soakaway, although the details (including the location (although it is thought to be towards to north of the site)) of the soakaway have not been provided. Additional rainwater collection capacity would be provided by using IBC storage tanks used at the main agricultural building.

There is also an existing underground tank to the north of the main agricultural building which is used for water storage from a nearby spring water feed to the north which discharges into the ground. An indicative sketch of the tank shows it measuring an estimated c. 3.6m (l) x c. 2.1m (w) x c. 2.4m (h) with an indicative volumetric capacity of c. 18.1m<sup>3</sup>. However, in discussion with the applicant, it was noted that the tank is likely operating at only half-capacity due to an internal divide leading to an inaccessible and silted up portion of the tank. The overall condition of the tank is also unknown.

The Council's Flood Risk Manager has reviewed the submitted information and has objected to the proposed surface water drainage strategy. This objection is predicated on a lack of information provided detailing the location and capacity of the natural soakaway, lack of provision for the detention of surface water runoff downhill towards the south of the wider site, and a lack of information detailing how contaminated water from the agricultural buildings – resulting from animal waste and potential slips from the storage of any fuel on-site for tools/vehicles reasonably associated with the use of the smallholding – would be kept separate from the soakaway to prevent land contamination. Full details of the existing water tank are also required to assess its capacity and functionality.

No further detailed information to address the Flood Risk Manager's concerns and overcome their objection has been submitted. As such, it is considered that the proposal has been unable to demonstrate an acceptable surface water drainage strategy that would not lead to contamination of the site and that would provide a betterment to reduce the flow of surface water runoff from the new areas of hardstanding. As such, the proposal is considered to be contrary to Policy CC3 of the adopted Calderdale Local Plan.

### **Ecology and Biodiversity**

Officers note that the mandatory statutory BNG requirements legislated for in the Environment Act 2021 for small sites do not come into force until April 2024. Notwithstanding this and in line with Section 38(6) of the Planning and Compulsory Purchase Act 2004, this application must be determined in accordance with the Development Plan unless material considerations indicate otherwise. As such, Policy GN3 of the adopted Calderdale Local Plan is the principal planning policy consideration for matters of BNG provision in the Borough.

Policy GN3(g) of the CLP requires that proposals should design-in wildlife to achieve *measurable [emphasis added]* net gains in biodiversity in accordance with the most up to date national and local guidance. Additionally, NPPF (Chapter 15) Paragraph 180(d) requires that proposal should contribute to and enhance the local environment by minimising impacts on and providing net gains for biodiversity.

The applicant has submitted a Species Enhancement Statement detailing the provision of bat and Swift (*Apus apus*) boxes on the main agricultural building. The applicant has confirmed that there are nesting Swifts currently using the site.

The Council's Biodiversity Team have reviewed the submitted information and note that the provision of species enhancement measures such as these are a planning policy requirement in their own right for the enhancement of the site for faunal species. However, the inclusion of these enhancement measures does not mitigate or compensate the loss of habitats resulting from proposed works.

To determine the ecological baseline conditions of the site and whether the proposal can achieve on-site provision of at least 10% Biodiversity Net Gain for the habitats lost, assessment of the site needs to be demonstrated through the submission of the relevant BNG Small Sites Metric and a BNG Management Plan covering a minimum of 30 years. This requirement is set out in Section 2 of the Council's *Biodiversity Net Gain in Calderdale* guidance (dated December 2022) which forms part of the Council's Local Validation List for planning applications. This states that the guidance applies to applications (excluding Householder) falling within semi-natural habitat. This is defined as being all land except previously developed land that has not re-vegetated. As such, the site is considered to be formed from semi-natural habitat which requires at least 10% on-site BNG provision.

Despite ongoing discussions about the adopted planning policy requirements for the provision of the relevant BNG information, no relevant information has been submitted. As such, Officers have been unable to properly assess the proposal in BNG terms as no baseline ecological and/or habitats condition information has been provided.

Officers note the planting of a significant number of trees on the site, as assessed earlier in this report. However, it is important to note that Biodiversity Net Gain requires that habitats lost as a result of development are compensated with the provision of appropriate BNG interventions specific to those habitats. Further to this, submission of a completed BNG Metric would identify whether the BNG Trading Rules have been met in this regard. DEFRA's draft Statutory Biodiversity Metric User Guide (dated November 2023) sets out in relation to the BNG Trading Rules that:

*The trading rules set minimum habitat creation and enhancement requirements to compensate for specific habitat losses, up to the point of no net loss. They are based on the habitat type and distinctiveness of the lost habitat. [...] Once trading rules have been met biodiversity net gain requirements can be met by the creation and enhancement of any habitat within the relevant module.*

Therefore, whilst the planting of trees may result in some level of on-site BNG, whether or not this can be considered a suitable BNG compensatory intervention for the loss of grassland habitat (the amount of which is currently unquantified) has not been able to be assessed. In line with the DEFRA guidance, unless the relevant BNG Trading Rules have been met, Officers are unable to consider that adequate BNG provision has been satisfactorily achieved.

In an attempt to placate the consideration of BNG for this proposal, the applicant has offered to enter into a Section 106 Agreement to ensure that the future planting, referenced in correspondence with Officers, is undertaken and maintained. However, this is not considered to be a relevant consideration as without the submission and assessment of the aforementioned BNG information, the provision of additional trees on the site would not likely demonstrate compliance with the BNG Trading Rules, much in the same way that the provision of those trees already planted do not.

Given the above assessment, it is considered that the proposal has been unable to demonstrate that the proposal would satisfactorily compensate for the loss of habitats resulting from construction of the access track and agricultural buildings and provide at least 10% BNG on-site. Furthermore, it has not been justified that on-site provision would not be feasible and the exploration of off-site compensation has been satisfactorily assessed and ruled out. As such, Officers consider that the proposal is contrary to Policy GN3 of the adopted Calderdale Local Plan and NPPF (Chapter 15) Paragraph 180(d).

## **Ground Conditions**

### *Mineral Safeguarding Area*

The site lies in a Sandstone Mineral Safeguarding Area. Policy MS2 requires that all non-minerals development proposals that fall within the MSA will be encouraged to explore the potential for prior extraction. Furthermore, all proposals will be required to carry out a site-specific mineral resource assessment, which shall identify whether a mineral is present, in what quantity, and whether development would sterilise the mineral lying under the site or adjacent to it.

No information has been submitted in this regard. However, Officers note that the proposal would include minor earthworks associated with the construction of the buildings. As such, any potential impacts on safeguarded minerals are considered to be negligible to minimal and would be highly unlikely to lead to the sterilisation of any minerals present. Officers also consider the extraction of minerals from the site would be disproportionate to the scale of the proposal. Given this, the proposal is considered to be in accordance with Policy MS2 of the adopted Calderdale Local Plan.

## **Planning Balance and Conclusion**

Whilst the proposal is considered to be in accordance with some of the relevant Development Plan policies, it is not considered to be in accordance with the Development Plan as a whole. The proposal is considered to be unacceptable in terms of its proposed surface water drainage arrangements and its inability to demonstrate deliverable Biodiversity Net Gains on the site which would mitigate for the habitat loss caused. These matters are considered to outweigh the other relevant policy and material considerations of the proposal.

## **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 CC3 and GN3 of the Calderdale Local Plan and National Planning Policy Framework (Chapter 15) Paragraph 180, nor have there been any material considerations to indicate that an exception should be made in this case.**

## **REASONS FOR REFUSAL**

1. The Council adopted the Calderdale Local Plan on 22 March 2023 for all planning purposes. The following policy statements are considered relevant to the proposed development:

### Calderdale Local Plan (March 2023)

Policy CC3 – Water Resource Management  
Policy GN3 – Natural Environment

### National Planning Policy Framework (December 2023)

Chapter 15 – Conserving and enhancing the natural environment  
Paragraph 180

The proposed development is considered not to be in accordance with the requirements of the Development Plan, and it has been concluded that there are no material considerations which would justify or outweigh the non-compliance with the relevant policies of the adopted Development Plan.

2. The applicant has failed to demonstrate, through a lack of submitted information, that the proposal would provide a satisfactory surface water drainage strategy. The proposed surface water drainage strategy does not adequately provide for the separation of clean and contaminated water from entering the field's soakaway system, has not provided sufficient location and capacity details of the existing soakaway system, has not demonstrated that it would detain and prevent surface water runoff downhill from the new areas of built form, and has not demonstrated that the existing water holding tank on-site is of sufficient size, capacity and condition to be appropriately re-used. The proposal is contrary to Policy CC3 of the adopted Calderdale Local Plan.
3. The applicant has failed to demonstrate, through a lack of submitted information, that the proposal would provide satisfactory compensation for the loss of habitats resulting from construction of the access track and agricultural buildings and provide at least 10% on-site Biodiversity Net Gain. Furthermore, it has not been justified that on-site provision would not be feasible and the subsequent exploration of off-site compensation and mitigation measures has not been satisfactorily assessed and ruled out. The proposal is contrary to Policy GN3 of the adopted Calderdale Local Plan and National Planning Policy Framework (Chapter 15) Paragraph 180(d).
4. There are no material considerations advanced in favour of the development that would outweigh the identified conflicts with the relevant policies of the adopted Development Plan.

This decision refers only to that required under the Town and Country Planning Acts and does not include any consent or approval under any other enactment, bylaw, order or regulation.

#### **Informative(s)**

1. Whilst the Local Planning Authority has been unable to work positively and proactively with the applicant to secure approval of the proposed development, the decision notice sets out clearly the reasons for the refusal and why an approval has not been possible for this particular scheme.

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

Date: 07 February 2024

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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 Mike Slater (Lead Officer)

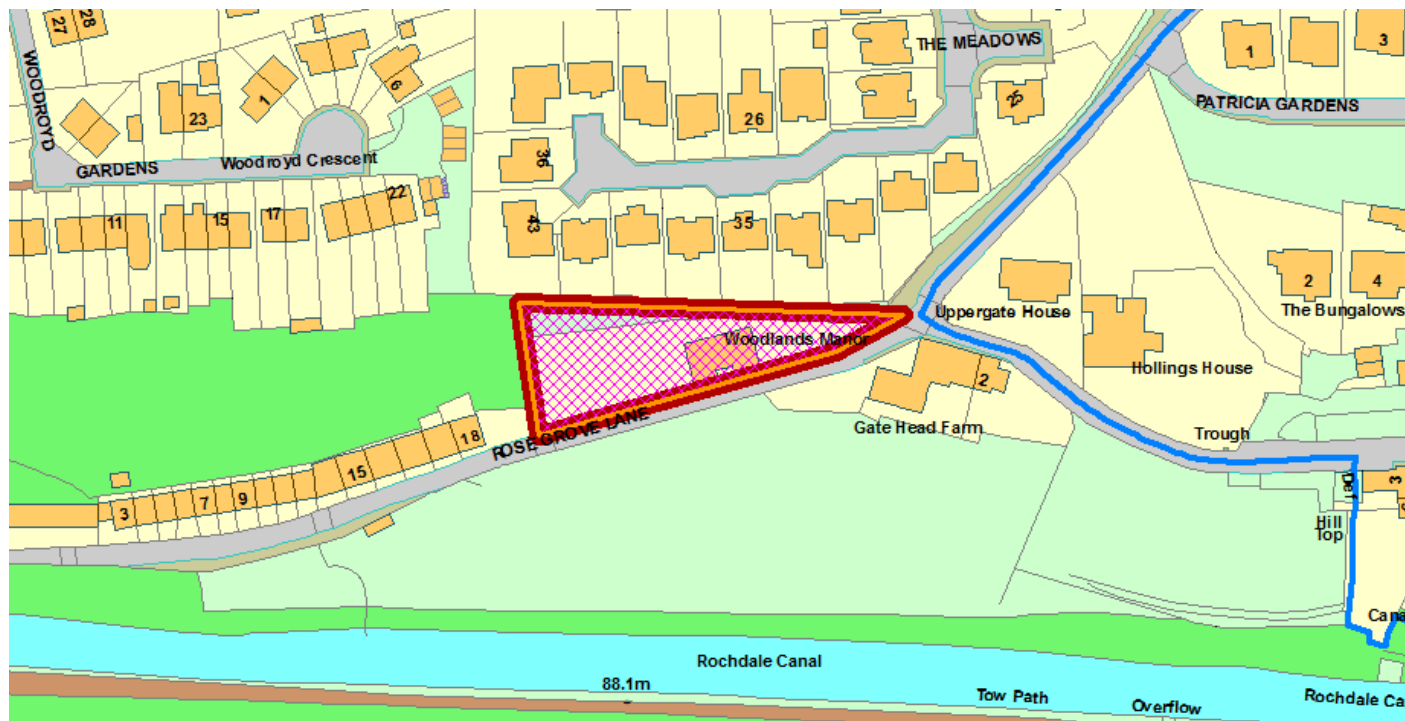
Time Not Before: 14.00 - 02

Application No: **23/00733/HSE**

Ward: **Luddendenfoot**  
Area Team: **North Team**

Proposal:  
**Proposed Outbuilding**

Location:  
**Woodland Manor Rose Grove Lane Sowerby Bridge Calderdale HX6 2RJ**



Applicant:  
**Mr Richard Haigh**

Recommendation: **REFUSE**

Parish Council Representations:	N/A
Representations:	Yes
Departure from Development Plan:	No

Consultations:

Highways Section  
Tree Officer



## **Committee Report on Application 23/00733/HSE**

Woodland Manor, Rose Grove Lane, Sowerby Bridge, Calderdale, HX6 2RJ

**Cllr Scullion has called-in this application to Planning Committee citing Public Rights of Way concerns as a material planning reason.**

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

The application is seeking planning permission for the erection of a proposed outbuilding in the rear garden of an existing dwelling, to be used in connection with the dwelling.

This application site is located on the northern side of Rose Grove Lane and is formed from a large, detached dwelling and its associated outdoor amenity space within its residential curtilage. A Public Right of Way (05/174/1 Sowerby Bridge Footpath 174) crosses the site from west to east. The site also lies in the Calder (Todmorden Hebden Bridge Mytholmroyd) Landscape Character Area, a Bat Alert Area, and the Calderdale Wildlife Habitat Network. Two Tree Preservation Orders have been made on the site.

### **Relevant Planning History**

*Application:* 06/01626/OUT

*Description:* Residential house with integral garage (Outline)

*Decision:* Approved 26/10/2006

*Application:* 10/00770/FUL

*Description:* 1 no dwelling

*Decision:* Approved 06/10/2010

*Application:* 13/00149/VAR

*Description:* Variation of condition 3 to use artificial blue slate instead of natural blue slate (Retrospective)

*Decision:* Approved 10/04/2013

*Application:* 15/01143/REM

*Description:* Removal of condition 13 on planning application 10/00770/FUL, requiring a footpath along the northern boundary of the site (Retrospective)

*Decision:* Refused 15/01/2016; Appeal Allowed 14/07/2016

*Application:* 15/01144/COU

*Description:* Change of use of land to form extension of residential garden/amenity space

*Decision:* Approved 16/11/2015

### **Key Policy Context**

<b>Local Plan Designations / Allocations</b>	Landscape Character Area – Calder (Todmorden Hebden Bridge Mytholmroyd)
<b>Local Plan policies</b>	<b>SD1</b> Presumption in Favour of Sustainable Development <b>BT1</b> High Quality Inclusive Design <b>BT2</b> Privacy, Daylighting and Amenity Space <b>BT4</b> The Design and Layout of Highways and Accesses <b>GN2</b> A Joined-Up Green Infrastructure Network <b>GN3</b> Natural Environment

	<b>GN4</b> Landscape Character <b>GN5</b> Trees
<b>National Planning Policy Framework Chapters</b>	<b>2</b> Achieving Sustainable Development <b>8</b> Promoting healthy and safe communities <b>12</b> Achieving well-designed and beautiful places <b>15</b> Conserving and Enhancing the Natural Environment
<b>Other Relevant Guidance</b>	Calderdale District Landscape Character Assessment and Review of Special Landscape Area Designation (October 2016)
<b>Other relevant planning constraints</b>	Bat Alert Area Calderdale Wildlife Habitat Network Public Right of Way (05/174/1 Sowerby Bridge Footpath 174) Tree Preservation Orders (88/00339/C; 93/00734/C)

## **Publicity/ Representations**

The application was publicised by site notice, press advert, and 21 neighbour notification letters. 15 objections have been received. Some of the representations were received following the close of the public consultation period. Under Paragraph 034 of the National Planning Policy Guidance (NPPG) on Consultation and Pre-Decision Matters, dated 23/07/2019 (Reference ID: 15-026-20190722), the Council has, at its discretion, accepted public comments made after the close of the consultation period for due consideration throughout the determination process.

## **Summary of the Objections:**

- The planning application should not be considered until the footpath has been restored.
- The footpath has been blocked already, and the public footpath should be put back.
- The local councillors and residents have spent a long time fighting to protect the public footpath.
- If the proposed outbuilding is built on a public footpath, the development would be considered to be illegal to obstruct the whole or part of a public footpath.
- There is an ongoing issue of blocked access to a public right of way with this property and allowing planning permissions for this addition to the property would interfere, possibly irrevocably, with those proceedings.
- Cannot find any Land Registry information for the property in question, which would state what easements, restrictions, and public rights of access were in existence on the property.
- Based on the documents attached to this case, the boundary of the property appears to have been extended. Without proper registration of the property in question, it is impossible to be sure of this. And this as a major issue for this planning application as well as the ongoing issue regarding the public right of way
- The existing public right of way/footpath was not merely a convenience but allows for much safer passage from Woodroyd Gardens/crescent into town, bypassing Burnley Road, which has multiple safety issues of which the council will be well aware, especially after the recent tragedies. The pavements on Burnley Road are thin on the south side, and cars travel at high speeds making crossing difficult, especially if you have a young family. Being able to avoid this road is not just a shortcut but it increases the quality of life of all residents.

## **Local Members**

Cllr Jane Scullion (Luddendenfoot) – Objects to the proposal and Committee call-in.

*“I am writing as a ward councillor to ask for the application 23/00733/HSE to be called in for consideration by the Planning Committee. I would like to speak in objection to the development. My concerns relate to the long-standing rights of way and footpath issues related to this application and the concerns of neighbouring residents.” (24/01/2024)*

## **Consultee Comments**

*Calderdale Council:*

Highways Section – Unable to support the proposal.

Tree Officer – No objections.

## **Parish/Town Council Comments**

The development is not in Parish Council 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
- Design and Landscape Character
- Residential Amenity
- Access and Public Right of Way
- Ecology and Biodiversity
- Trees

## **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) complements this requirement. The NPPF was most latterly revised on 19 December 2023 and sets out the Government's planning policies for England and how these are expected to be applied, alongside other national planning policies. Paragraph 225 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 Development 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 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:
  - iii. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed (e.g., land designated as Green Belt or designated heritage assets) or

- iv. 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 adopted Calderdale Local Plan.

This application is for an outbuilding to be used in association with and in the curtilage of an existing residential dwelling. As such, the principle of the proposed development is considered to be acceptable.

### **Design and Landscape Character**

Policy BT1 of the Calderdale Local Plan, and National Design Guidance call for development to make a positive contribution to the quality of the existing environment or, at the very least, maintain that quality by means of high standards of design.

This application site is within the Calder (Todmorden Hebden Bridge Mytholmroyd) Landscape Character Area. Policy GN4 of the CLP states 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.

NPPF (Chapter 12) Paragraphs 131 and 135 state that good design is a key aspect of sustainable development, and that planning policies and decisions should ensure that developments function well and add to the overall quality of the area and are visually attractive as a result of good architecture, layout and appropriate and effective landscaping.

NPPF (Chapter 15) Paragraph 180(a) states that the planning system should contribute to and enhance the natural and local environment by – amongst other things – protecting and enhancing valued landscapes.

The proposal would be a single storey outbuilding with single slope roof. The proposed outbuilding would measure c. 10m (l) x c. 4.675m (w) x c. 3.25m (h) to the higher eave and c. 3m (h) to the lower eave. The front elevation would use large areas of glazing to maximise natural light availability within the outbuilding. The proposed single storey outbuilding is lower a lot than the main dwelling, so the proposal would not result in a dominant visual feature in the existing property's setting. The application site is surrounded by an existing wooden fence and stone wall, so this proposed outbuilding would be not visible from roadside.

The proposed external materials of the proposed building would be a rubber roof in black, UPVC double glazed windows, timber and composite cladded walls, and a stone rear elevation to match the existing dwelling. Although the proposed materials would not wholly match the existing main dwelling, they are common materials for outbuildings and would not be considered to be unsympathetic with the surroundings.

Overall, the design and external appearance of the proposal would not be considered to harm the visual qualities of the existing dwelling, street scene or the character of the surrounding area. Therefore, the proposal would comply with Policies BT1 and GN4 of the Calderdale Local Plan.

### **Residential Amenity**

Policy BT2 of Calderdale Local Plan states that development should not significantly adversely affect the privacy, daylighting or amenity space of existing and prospective residents and other occupants. Annex 2 sets out guidelines to help assess whether such impacts will arise. It is considered that the proposal will satisfy the requirements of these for the following reasons.

The proposed detached outbuilding would be single storey and located in the rear garden area of an existing dwelling. The site is already surrounded by a wooden fence and stone walls which restrict views into and out of the site. The distance to the closest neighbouring dwellings to the north and west would be over c.20m. Hence, the development would not be considered to harm the residential amenities of neighbouring occupiers in terms of overbearing, overlooking, overshadowing or causing a loss of outlook. The proposal is therefore considered to be in accordance with Policy BT2.

### **Access and Public Right of Way**

As an outbuilding associated with an existing dwelling, it is considered unlikely that there would be any additional car parking pressures or requirements arising from its post-construction use.

Policy BT1(IV) states that proposals will demonstrate consideration of issues around access and ease of movement within and through the development by all sectors of the community and by all modes of transport and the general layout of the scheme within the context of its surroundings.

Policy BT4(c) seeks to provide convenient and safe pedestrian routes and connectivity within the site and with its surroundings and provide an attractive environment which respects the local character of the area.

NPPF (Chapter 8) Paragraph 104 states that planning decisions should protect and enhance public rights of way and access.

Officers note that there is a Section 119 public path diversion order application currently being considered by the Council's Public Right of Way Officer. This has been made in conjunction with the original blockage of the PRoW by the existing dwelling on the site. Members should note that consideration of the original blockage does not form part of this application. The merits or otherwise of the diversion order application are also considered to fall outside the scope of factors to be considered in determining whether to grant planning permission for this application.

Should planning permission be granted for this proposal, it would not grant the right to close, alter or build over the public footpath in any way, even temporarily. It is illegal to obstruct a right of way unless the necessary legal order to divert it or stop it up has been made, confirmed and brought into effect. The making and confirmation of such a legal order would be carried out under a separate statutory procedure outwith determination of this planning application. However, the impacts of the proposed development on the PRoW are considered to be a material planning consideration in the overall assessment of the proposal.

Whilst it might be assumed that the applicant wishes to rely on such diversion, should it be confirmed, in relation to the proposed outbuilding, no information has been submitted with the planning application in this regard.

The proposed outbuilding would obstruct the use of Public Right of Way (PRoW), Sowerby Bridge Footpath 174 (05/174/1), which runs west-east through the site. The applicant has been advised that the slight repositioning of the proposed outbuilding would overcome this the harm caused to the PRoW, as the route of the footpath would not be obstructed. The applicant has responded to that no amendment will be made to the location / siting of the proposed outbuilding.

The Council's Highways Development Control Manager has reviewed the proposal and advises that:

*"Following discussions with legal and planning officers, a further assessment of the application has been undertaken including a review of the site's planning history."*

*An application was made to remove a condition in the 2010 consent requiring a footpath along the northern boundary. The application was refused by the Council. In a subsequent appeal the Planning Inspector made comments that the indicated route of the path would run along the side of a steep embankment prior to traversing the top of a gabion wall with a substantial drop beneath. He did not therefore consider that it would provide a safe and convenient walking environment.*

*The diversion of a public right of way would be carried out by a separate process outside of planning process. However given the above comments and in the absence of any identified suitable diversion route submitted with this application, the highway authority is unable to support the application as it would obstruct the right of way.”*

Officers consider that the proposed outbuilding could be reasonably accommodated anywhere within the outdoor amenity/garden area of the host dwelling and perform the same function as proposed without detriment to the applicant or the wider site (which could not be reasonably mitigated). No information has been submitted to demonstrate that the proposed location of the outbuilding over the PRoW is required in planning terms, or that the material public benefits of the proposal (which are considered to be very limited) would outweigh the harm caused to the use of, and accessibility to, the PRoW network.

The existence of a statutory power to divert the PRoW does not, in Officers' view, overcome the detriment to the public in obstructing the footpath, absent any public benefits arising from the building being in this specific location.

Given this, the proposal is considered to be contrary to Policies BT1(IV) and BT4(c) of the CLP and NPPF (Chapter 8) Paragraph 104 as it does not protect or enhance the on-site PRoW network.

### **Ecology and Biodiversity**

The site is located in Bat Alert Area and the Calderdale Wildlife Habitat Network.

Policy GN3(g) requires that proposals should design-in wildlife to achieve measurable net gains in biodiversity in accordance with the most up to date national and local guidance.

Policy GN2(II) states that development will not be permitted in a Wildlife Habitat Network if it would damage the physical continuity of the Network; or impair the functioning of the Network by preventing movement of species; or harm the nature conservation value of the Network.

NPPF (Chapter 15) Paragraph 180(d) requires that proposal should contribute to and enhance the local environment by minimising impacts on and providing net gains for biodiversity.

No ecological information has been submitted in support of this application. However, as the site lies in an area with the potential to host Protected Species (bats) and other sensitive faunal species (CWHN), the proposal should provide proportionate on-site ecological enhancements to mitigate the potential ecological impacts on the site's habitat designations. As a minimum, Officers would require the provision of a Bat Box within the site, along with some other small-scale on-site faunal enhancements such as an invertebrate hibernaculum or hedgehog habitat enhancement. Officers consider that appropriate on-site ecological enhancement measures could be reasonably secured via conditions. Given this, the proposal is considered to be in accordance with Policies GN2 and GN3 of the CLP.

## Trees

The site hosts areas covered by Tree Preservation Orders (TPOs) 88/00339/C and 93/00734/C. Policy GN5 states that proposals will be positively considered where there would be no unacceptable loss of or damage to existing trees, trees not to be retained would be replaced within a well-designed landscaping scheme, and existing trees worthy of retention are sympathetically incorporated into the overall design of the scheme and are protected from construction. Furthermore, Part (II) states that proposals which seek to remove trees that are subject to 'protection' without justification will not be permitted.

The applicant has clarified that the proposed outbuilding is to be constructed upon an elevated timber platform which utilises pile foundations, so that the existing levels can remain undisturbed. They further note that BS 5837:2012 recognises mini-pile foundations as a suitable method of construction within tree RPAs, stating that these can minimise disturbance to tree roots.

The applicant has further noted that the construction process would also be of low intensity, with no heavy machinery or vehicles required. Hence, the position of the tree protection fencing would be considered to provide adequate working space for the construction process. The trees in question form the eastern extent of High Royd Wood. As woodland trees, any future growth is likely to be influenced by phototropism and occur in the upper canopy, rather than at a height that would directly impact the proposed outbuilding.

The Council's Tree Officer has been consulted on the proposals. They note that they are satisfied that the proposal will not impact on the long term retention of the trees, based on the most recent information submitted. Given this, Officers consider the proposal to be in accordance with Policy GN5 of the CLP.

## **Planning Balance and Conclusion**

Whilst the proposal is considered to be in accordance with most of the relevant Development Plan policies, its detrimental impacts on the existing Public Rights of Way network are considered to be unacceptable. The proposal has not sufficiently demonstrated that the impacts of the proposal have been suitably considered in the design stage or that they could be adequately mitigated as part of this application. Furthermore, the very limited public benefits arising from a private residential outbuilding are not considered to outweigh the substantial disadvantage resulting from the obstruction of the Public Right of Way.

## **RECOMMENDATION**

**The proposed development would obstruct a Public Right of Way and 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(IV) BT4(c) of the Calderdale Local Plan and National Planning Policy Framework (Chapter 8) Paragraph 104, nor have there been any material considerations to indicate that an exception should be made in this case.**

## **REASONS FOR REFUSAL**

1. The Council adopted the Calderdale Local Plan on 22 March 2023 for all planning purposes. The following policy statements are considered relevant to the proposed development:

### Calderdale Local Plan (March 2023)

Policy BT1 – High Quality Inclusive Design

Policy BT4 – The Design and Layout of Highways and Accesses

## National Planning Policy Framework (December 2023)

### Chapter 8 – Promoting healthy and safe communities. Paragraph 104

The proposed development is considered not to be in accordance with the requirements of the Development Plan, and it has been concluded that there are no material considerations which would justify or outweigh the non-compliance with the relevant policies of the adopted Development Plan.

2. The proposal would obstruct Public Right of Way Sowerby Bridge Footpath 174 (05/174/1). No information has been submitted to demonstrate that the obstruction is required to facilitate the erection and use of the proposed outbuilding, nor has it been satisfactorily demonstrated that the public benefits of the proposal would outweigh the substantial disadvantage resulting from the obstruction of the Public Right of Way. The proposal does not protect or enhance the on-site Public Right of Way network or sufficiently demonstrate that it would provide convenient and safe pedestrian routes and connectivity within the site and its surroundings. The proposal is contrary to Policies BT1 and BT4 of the adopted Calderdale Local Plan and National Planning Policy Framework (Chapter 8) Paragraph 104.
3. There are no material considerations advanced in favour of the development that would outweigh the identified conflicts with the relevant policies of the adopted Development Plan.

This decision refers only to that required under the Town and Country Planning Acts and does not include any consent or approval under any other enactment, bylaw, order or regulation.

### **Informative(s)**

- 1 Whilst the Local Planning Authority has been unable to work positively and proactively with the applicant to secure approval of the proposed development, the decision notice sets out clearly the reasons for the refusal and why an approval has not been possible for this particular scheme.

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

Date: 08/02/2024

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### **Further Information**

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

Ding Rong (Case Officer) or Mike Slater (Lead Officer)