

# Planning and Highways Committee

Thursday, 18 January 2018

18:30

Meeting Room A, Blackburn Town Hall

---

## AGENDA

### PART I: ITEMS FOR CONSIDERATION IN PUBLIC

- |     |  |         |
|-----|--|---------|
| 1   | Welcome and Apologies  |         |
| 2   | Minutes of the Previous Meeting  |         |
|     | Minutes 21st December 2017   | 3 - 5   |
| 3   | Declarations of Interest in Items on this Agenda   |         |
|     | <i>If a Committee Member requires advice on any items involving a possible Declaration of Interest which could affect his/her ability to speak and/or vote he/she is advised to contact Democratic Services at least 24 hours before the meeting</i> |         |
|     | Declaration of Interest Form   | 6 - 6   |
|     | <b>PLANNING MATTERS</b>  |         |
|     | Material Considerations  | 7 - 8   |
| 4   | Planning Application Summary   | 9 - 9   |
| 4.1 | Planning Application 10-17-1271 - Full Planning Application (Retrospective) for Retention of alley gates   | 10 - 27 |
| 4.2 | Planning Application 10-17-1523 - Land at Pole Lane, Darwen  | 28 - 32 |
| 5   | Report - Increase to fees and Introduction of New Enhanced Services  | 33 - 39 |
|     | Fees schedule 2012 v5 January 2018   | 40 - 43 |
|     | Increase to Fees and Introduction of New Enhanced Services EIA   | 44 - 51 |
| 6   | Petition in relation to Planning Application 10 17 1338 Change of Use, 597 Bolton Road   | 52 - 53 |
|     | <b>HIGHWAY MATTERS</b>   |         |

7	Report - Stopping Up of ginnel between West Park Road and Dukes Brow	54 - 55
	Plan - Stopping Up of ginnel between West Park Road and Dukes Brow	56 - 56
8	Report - Stopping Up of path adjacent to Darwen Market Service Road	57 - 58
	Plan - Stopping Up of path adjacent to Darwen Market Service Road	59 - 59
9	Report - Stopping Up of Alaska Street	60 - 61
	Plan - Stopping Up of Alaska Street	62 - 62
10	Lower Fold Public Path Order Committee Report	63 - 64
	Sandringham Close Public Path Order	65 - 68
	Accompanying Report with plan	

**PART 2: ITEMS FOR CONSIDERATION IN PRIVATE**

**PART II - THE PRESS AND PUBLIC MAY BE EXCLUDED DURING CONSIDERATION OF THE FOLLOWING ITEMS**

11	Enforcement Report - Land Rear of 2 Hawkshaw Avenue, Darwen	
	Enforcement - Land Rear of 2 Hawkshaw Avenue, Darwen - Location Plan	
	Enforcement - Land Rear of 2 Hawkshaw Avenue, Darwen - Photo A	
	Enforcement - Land Rear of 2 Hawkshaw Avenue, Darwen - Photo B	
12	Enforcement Report - Garage Site off Raven Road Taunton Road, Blackburn	
	Enforcement - Garage Site off Raven Road Taunton Road, Blackburn - Location Plan	
	Enforcement - Garage Site off Raven Road Taunton Road, Blackburn - Photo A	

Date Published: Tuesday, 09 January 2018  
Harry Catherall, Chief Executive

**PLANNING AND HIGHWAYS COMMITTEE**  
**21<sup>st</sup> DECEMBER 2017**

**PRESENT** – Councillors; Dave Smith (in the Chair), Brookfield, Casey, Groves, Hardman, Jan-Virmani, Khan Z, Khonat, Mahmood (substitute for I Hussain), Marrow (substitute for Ja Slater), Murray, Nuttall, Oates, Riley, Pearson.

**OFFICERS** – Ian Richardson (Director of Growth and Development), Gavin Prescott (Development Manager), Safina Alam (Highways Development Control Engineer) Michael Green (Legal) and Wendy Bridson (Democratic Services).

**RESOLUTIONS**

**29 Welcome and Apologies**

The Chair welcomed everyone to the meeting. Apologies were received from Cllrs Jacqueline Slater and Iftakhar Hussain.

**30 Minutes of the last Meeting held on 16<sup>th</sup> November 2017**

**RESOLVED** – That the minutes of the last meeting held on 16<sup>th</sup> November 2017 were confirmed and signed as a correct record.

**31 Declarations of Interest**

Cllr John Pearson declared an interest in Item 4.2 – Planning Application 10-17-1380 and 10-17-1391 - being a Member of the Old Blackburnian Association. Cllr Pearson was permitted to stay in the room but took no part during discussion of the item.

**32 Planning Applications**

The Committee considered reports of the Director of Growth and Development detailing the planning applications listed overleaf.

In considering the applications, the Committee took into account representations or submissions provided by individuals with the officers answering points raised during discussion thereon.

**RESOLVED** – (1) That the following decisions be made on the applications set out overleaf:

<u>Application No.</u>	<u>Applicant</u>	<u>Location and Description</u>	<u>Decision under Town and Country Planning Acts and Regulations</u>
------------------------	------------------	---------------------------------	--

10-17-1142	Wates Construction	Former Cattle Market, Sumner Street, Blackburn, BB2 2LD  Full Planning Permission for demolition of existing building and the erection of a school and further education college with associated parking and landscaping.	Approve with conditions as detailed in the Director's report and the Update Report together with the additional highways condition relating to the traffic management plan.
10-17-1380 and 1391	Mr Tattersall	Old Blackburnians Memorial Ground, Lammack Road, Blackburn, BB1 8LA  Proposed development: 10/17/1380 – Variation of Condition No.4 pursuant to planning application 10/16/0077 to replace Drawing No BS 12-106/11 with Drawing BS 12-106/11 Rev A to provide an improved arrangement of the playing pitches  10/17/1391 – Deed of Variation of Section 106 Agreement associated with planning application 10/16/0077 to amend the Blackburn Community Sports Club Junior Pitch Replacement and Orientation Works by Replacing Plan 3 in the Agreement from Drawing No. BS 12-106/11 to Drawing No BS 12-106/11 Rev A and amending the associated Schedule of Works and costings.	10-17-1380 - Approve with conditions as detailed in the Director's report  10-17-1391 - Approve subject to delegated authority being given to the Director for Growth and Development to approve the proposed Deed of Variation associated with an agreement under S106 of the Town & Country Planning Act 1990, relating to the payment of a financial contribution as detailed in the Director's report.  Should the Section 106 agreement not be completed within 6 months of the date of this resolution, the Director for Growth and Development would have delegated powers to refuse the application.

### **33 Petition Report 10-17-1271 Laburnum Road Alley Gates**

A report was submitted to inform Members of the Committee of the receipt of two petitions relating to Planning Application 10/17/1271, Full Planning Application (Retrospective) for Retention of alley gates at Underpass on Laburnum Road – rear to 248 Whalley New Road and ahead of 166 Laburnum Road Blackburn.

The petition received in support of the application to retain the gates on a permanent basis contained 97 signatures; the grounds for supporting the application were outlined in the report.

The petition received objecting to the proposal to retain the gates contained 53 signatures; the grounds for objection to the application were also outlined in the report.

The Committee were informed that determination of this Planning Application would take place at the Planning and Highways Committee scheduled for 18<sup>th</sup> January 2018.

**RESOLVED** – That the petition be noted.

**34**    **Report – Stopping Up of the path between West Park Road and Dukes Brow**

With consent of the Committee this item was withdrawn from the meeting pending amendments to the report.

**RESOLVED** – That consideration of this item be deferred to the next meeting scheduled for 18<sup>th</sup> January 2018.

Signed: .....

Date: .....

Chair of the meeting  
at which the minutes were confirmed

**DECLARATIONS OF INTEREST IN  
ITEMS ON THIS AGENDA**

**Members attending a Council, Committee, Board or other meeting with a personal interest in a matter on the Agenda must disclose the existence and nature of the interest and, if it is a Disclosable Pecuniary Interest or an Other Interest under paragraph 16.1 of the Code of Conduct, should leave the meeting during discussion and voting on the item.**

**Members declaring an interest(s) should complete this form and hand it to the Democratic Services Officer at the commencement of the meeting and declare such an interest at the appropriate point on the agenda.**

MEETING: **PLANNING AND HIGHWAYS COMMITTEE**

DATE:

AGENDA ITEM NO.:

DESCRIPTION (BRIEF):

NATURE OF INTEREST:

DISCLOSABLE PECUNIARY/OTHER (delete as appropriate)

SIGNED :

PRINT NAME:

(Paragraphs 8 to 17 of the Code of Conduct for Members of the Council refer)

## Material Consideration

**“Material Considerations”** are not limited to matters relating to amenity and can cover a range of considerations, in regard to public or private interests, provided that there is some relationship to the use and development of land.

Where it is decided that a consideration is material to the determination of a planning application the courts have held that the assessment of weight is a matter for planning judgement by the planning authority, rather than the court. Materiality is a matter of law for the Court, weight is for the decision maker. Accordingly it is for the Committee to assess the weight to be attached to each material consideration, but if a Council does not take account of a material consideration or takes account of an immaterial consideration then the decision is vulnerable to challenge in the courts.

By section 38(6) of the Planning & Compensation Act 2004 Act every planning decision must be taken in accordance with the development plan (taken as a whole) **unless material considerations indicate otherwise**. The policies and guidance contained in the hierarchy of planning documents are important material considerations and the starting point for the Committee in its assessment of development proposals and most decisions are usually taken in line with them.

However, the Committee is legally obliged to consider all material matters in determining a planning application and this means that some decisions will not follow published policy or guidance. In other words, the Committee may occasionally depart from published policy when it considers this is outweighed by other factors and can be justified in the circumstances of the particular case. Similarly, in making a decision where there are competing priorities and policies the Committee must exercise its judgement in determining the balance of considerations

The following provides a broad guide of what may and may not be material, though as with any broad guidance there will on occasions be exceptions

<b><u>MATERIAL:</u></b>	<b><u>NOT MATERIAL:</u></b>
Policy (national, regional & local)	The identity of the applicant
development plans in course of preparation	Superceded development plans and withdrawn guidance
Views of consultees	Land ownership
Design	Private Rights (e.g. access)
Visual impact	Restrictive covenants
Privacy/overbearing/amenity impacts	Property value
Daylight/sunlight	Competition (save where it promotes a vital and viable town centre)
Noise, smell, pollution	Loss of a private view
Access/traffic/accessibility	“moral issues”
Health and safety	“Better” site or use”
Ecology, landscape	Change from previous scheme
Fear of Crime	Enforcement issues
Economic impact & general economic conditions	The need for the development (in most circumstances)
Planning history/related decisions	

Cumulative impact	
Need (in some circumstances – e.g. green belt)	
Impacts upon and provision of open/amenity space	
existing use/permitted development rights/fall back	
retention of existing use/heritage issues	
fear of setting a precedent	
composite or related developments	
Off-site benefits which are related to or are connected with the development	
In exceptional circumstances the availability of alternative sites	
Human Rights Act 1998 & Equality	

Before deciding a planning application members need to carefully consider an application against the provisions of the Human Rights Act 1998.

Protocol 1 of Article 1, and Article 8 confer(s) a right of respect for a person's private and family life, their possessions, home, other land; and business assets.

Article 6, the applicants (and those third parties, including local residents, who have made representations) have the right to a fair hearing and to this end the Committee must give full consideration to their representation, and comments,

In taking account of all material considerations, including Council policy as set out in the Core Strategy and saved policies of the Unitary Development Plan, the Head of Planning and Transport has concluded that some rights conferred by these Articles on the applicant(s)/objector(s)/resident(s) and other occupiers and owners of nearby land that might be affected may be interfered with but that interference is proportionate, in accordance with the law and justified by being in the public interest and on the basis of the planning merits of the development proposal. Furthermore he believes that any restriction on these rights posed by the approval of an application is proportionate to the wider benefits of approval and that such a decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

Other duties have to be taken into account in determining planning applications for example the promotion of measures to reduce crime, the obligation not to act in a discriminatory manner and promote equality etc.

**NB: Members should also be aware that each proposal is treated on its own merits!**

#### Reasons for Decision

If members decide to go against officer recommendations then it is their responsibility to clearly set out their reasons for doing so, otherwise members should ask for the application to be deferred in order that a further report is presented setting out the background to the report, clarifying the reasons put forward in the debate for overriding the officer recommendation; the implications of the decision and the effect on policy; what conditions or agreements may be needed; or just to seek further information.

If Members move a motion contrary to the recommendations then members must give reasons before voting upon the motion. Alternatively members may seek to defer the application for a further report. However, if Members move a motion to follow the recommendation but the motion is lost. In these circumstances then members should be asked to state clearly their reasons for not following the recommendations or ask that a further report be presented to the next meeting



**REPORT OF THE DIRECTOR OF GROWTH & DEVELOPMENT**

**LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**  
**BACKGROUND PAPERS**

There is a file for each planning application containing application forms, consultations, representations, Case Officer notes and other supporting information.  
Gavin Prescott, Development Manager – Ext 5694.

**NEIGHBOUR NOTIFICATION:** The extent of neighbour notification is shown on the location plans which accompany each report. Where neighbours are notified by individual letter, their properties are marked with a dot. Where a site notice has been posted, its position is shown with a cross.

**PLANNING APPLICATIONS FOR DETERMINATION Date: 18/01/2018**

Application No	Applicant	Site Address	Ward
10/17/1271	Blackburn With Darwen Borough Council Blackburn with Darwen Brough Council Miss Mariyam Emam Floor 3 Old Town Hall King William Street Blackburn BB1 7DY	Underpass on Laburnum Road - rear to 248 Whalley New Road and ahead of 166 Laburnum Road Blackburn	Bastwell
Full Planning Application (Retrospective) for Retention of alley gates			

**RECOMMENDATION: Permits**

10/17/1523	Ruttel Plant Holdings Ltd Lancaster House Ackhurst Road Chorley PR7 1NH	Land at Pole Lane Darwen	Marsh House
Variation of Legal Agreement/S106 for Variation to Section 106 Planning Obligation for Planning Application 10/16/0789			

**RECOMMENDATION: Permits**

**Proposed development: Full Planning Application (Retrospective) for Retention of alley gates**

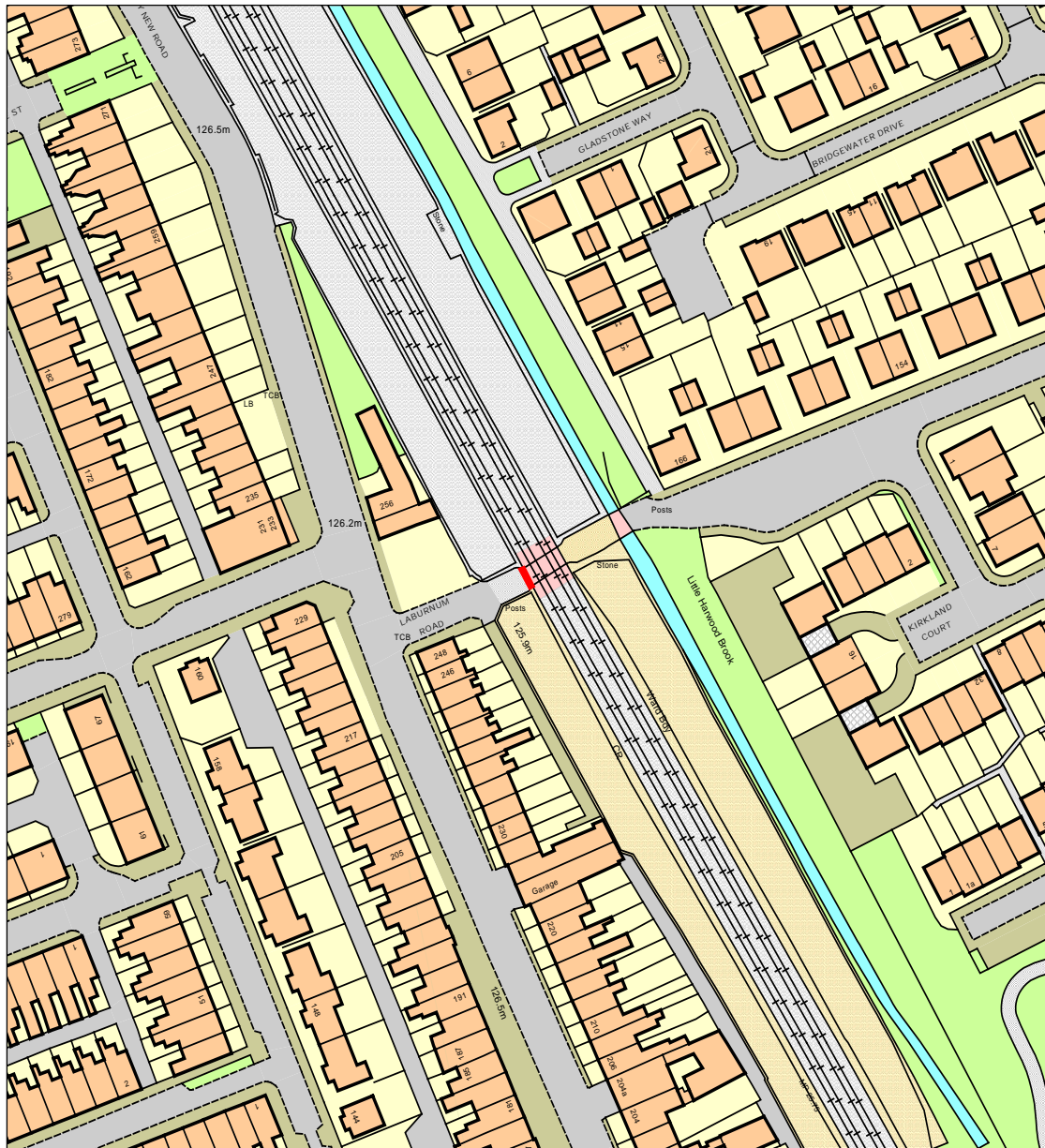
**Site address:**

**Underpass on Laburnum Road - rear to 248 Whalley New Road and ahead of 166 Laburnum Road Blackburn**

**Applicant: Blackburn with Darwen Borough Council**

**Ward: Bastwell**

**Councillor Parwaiz Akhtar  
Councillor Iftakhar Hussain  
Councillor Shaukat Hussain**



## **1.0 SUMMARY OF RECOMMENDATION**

Item 4.1

- 1.1 The proposed development is recommended to be granted planning permission for the following reason:
- The proposed permanent gating is of appropriate design and appearance and would not be detrimental to the residential amenity for occupiers of the dwellings on and adjacent to Laburnum Road or to the businesses and services on and adjacent to Whalley New Road, in accordance with Policies 8 and 11 of the Blackburn with Darwen Borough Local Plan Part 2.
  - The proposed permanent gating is of appropriate location and secures community safety from crime whilst not compromising highway safety, in accordance with Policies 8 and 10 of the Blackburn with Darwen Borough Local Plan Part 2.

## **2.0 KEY ISSUES/SUMMARY OF PLANNING BALANCE**

- 2.1 The application is before the Committee following the receipt of a Member Referral, and in the light of major public concern expressed over the gating issue (with petitions both objecting to and supporting the proposal). A summary of the objections and reasons for support is provided at 6.1.4 and 6.1.5 below.
- 2.2 The key issues to be addressed are as follows:
- Gating principle
  - Human rights, equality and rights of access
  - Design

## **3.0 RATIONALE**

### **3.1 Site and Surroundings**

- 3.1.1 The site of the proposed gate is on the eastern side of the underpass where the Clitheroe to Manchester railway line passes over Laburnum Road. The road through the underpass is narrow and has been closed to traffic for a number of years through bollards placed across the opening. Access for cyclists and pedestrians has been retained.
- 3.1.2 Little Harwood is located to the east of the railway line, with most of the housing closest to the application site being newly completed residential development.
- 3.1.3 To the west is an area of small businesses is located along Whalley Road, with a local primary school and other services within the vicinity.

### **3.2 Proposed Development**

Item 4.1

- 3.2.1 The proposal is for full planning permission to be granted for the retention of the alley gates previously approved for a period of two years.
- 3.2.2 Planning permission 10/14/0614 granted permission for the alley gate, with the proviso that the gate would be opened by 08:00 and closed by 20:00. The East Neighbourhood Management Team was to be responsible for a team of residents and volunteers who would undertake opening and closing the gate.
- 3.2.3 The application has been submitted by the Council's Community Safety Team which has been working with the police, local councillors, and residents of the new residential areas on Laburnum Road to tackle anti-social behaviour carried out by groups of young adults, using the footpath to gain access to the development. They consider the opening and closing of the gate to be a safety issue in that volunteers have been intimidated in carrying out their duties by young adults who congregate by the bridge at night.
- 3.2.4 Members are therefore advised that this application for the retention of the alley gate includes its closure on a permanent basis, and that pedestrian and cycle access between Whalley New Road and Little Harwood will not be retained via this route.

### **3.3 Development Plan**

#### **3.3.1 Blackburn with Darwen Borough Local Plan Part 2**

Policy 8: Development and People  
Policy 10: Accessibility and Transport  
Policy 11: Design

### **3.4 Other Material Planning Considerations**

#### **3.4.1 National Planning Policy Framework (NPPF):**

Section 8: Promoting Healthy Communities  
Section 1: Building a Strong, Competitive Economy  
Section 7: Requiring Good Design

### **3.5 Assessment**

- 3.5.1 The principle of gating. The National Planning Policy Framework (NPPF) requires applications to be considered in the context of the presumption in favour of sustainable development (paragraph 14). The exceptions stipulated by the NPPF concern the impact caused by the proposed development being significantly and demonstrably detrimental, to the extent that the harm outweighs the benefits.

- 3.5.2 Policy 10 of the Local Plan 2 requires development to provide for the safe, efficient and convenient movement of all highway users, including cyclists and pedestrians. Whilst the thoroughfare has not been available for vehicular use for a number of years, principally because of the safety issues associated with the narrowness of the underpass, access has been retained for cyclists and pedestrians. The proposal to permanently gate Laburnum Road would remove this concession.
- 3.5.3 However, Policy 8 also requires the incorporation into development of measures aimed at reducing crime and improving community safety. This is backed up by the National Planning Policy Framework (NPPF) which aims to achieve places promoting safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion (Paragraph 69).
- 3.5.4 The proposed gate is therefore acceptable in principle, but is subject to the resolution of the issues set out at 2.2 above.
- 3.5.5 Human rights, equality and of access. At the heart of the matter before the Committee lie two seemingly opposing concerns: On the one hand - the right of the residents living in the new housing developments to the east of the railway line to live without the fear engendered by the gangs that gather at the bridge at night-time and who use the underpass to bring an element of fear to residents; on the other, the right of businesses along Whalley New Road to have access to markets which would, as the NPPF puts it, positively and proactively encourage sustainable economic growth in the local area (see Paragraphs 19-21).
- 3.5.6 Section 149 of the Equality Act 2010 outlines the provisions of the Public Sector Equality Duty which requires public authorities to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act; advance equality of opportunity between the persons who share a relevant protected characteristics and persons who do not share it; foster good relations between persons who share a relevant protected characteristic and persons who do not share it
- 3.5.7 The relevant protected characteristics are age, race, disability, gender reassignment, pregnancy and maternity, religion or belief, sex and sexual orientation. The duty also covers marriage and civil partnership, but to a limited extent. The broad purpose of the duty is to include equality considerations into decision making processes and keep them under review as appropriate so as to potentially mitigate or remove the any negative impact of decisions on the protected groups. In balancing these concerns in paragraph 3.5.5, Members are advised of the potential for discriminating against those who, by reason of age and/or disability, rely on ease of access within the locality in order to live, shop and socialise within the local community.

- 3.5.8 The Community Safety Team, in applying for the permanent gating of the Laburnum Road underpass, has submitted a current checklist supporting the decision not to carry out a full Equality Impact Assessment (“EIA”). Despite concluding that a full EIA is unnecessary, the Team makes six statements and comments in supporting this decision.
- 3.5.9 Firstly, it states that the activity (i.e. the permanent gating of the underpass) does not involve decommissioning a service or changing existing Council policy. In Planning terms, this is not considered to be necessarily the case, with Policy 10 of Local Plan 2 being geared towards ease of movement for all users of the highway, and that “the needs of disabled people are fully provided for”. However, Members are advised that Policy 8 also requires development to incorporate positive measures aimed at reducing crime; whilst Policy 10 accepts that, where a public right of way is affected, development might be permissible if the right of way is replaced by “an equally attractive, safe and convenient route”. The application is supported by the provision of alternative non-vehicular routes, one from Kirkland Court via Cherry Gardens to Willow Street and back onto Whalley New Road, the other via a footpath north along the eastern side of the railway to Clarendon Road and back onto Whalley New Road. The estimated time added onto a normal walking journey would be about five minutes. The former route is a diversion of approximately 385 metres, wheelchair friendly, well lit, and the bridge at Willow Street, being open to vehicles, has the advantage of natural surveillance as a safety feature. It is therefore considered that the ‘decommissioning’ of the footway under the Laburnum Road bridge would not unduly impact on residents, businesses or disabled pedestrians owing to the availability of nearby means of access, or that – at the least – the benefits of a safe route readily outweigh the dis-benefit of a more convenient route.
- 3.5.10 The second statement on the EIA checklist refers to the impact of the proposal on any of the protected characteristics as stated within the Equality Act (2010). While it is accepted that the activity may negatively impact on some of the protected characteristics, it has been considered it as equivocal or, at most, minimally negative.
- 3.5.11 The third statement asks, is there sufficient information/intelligence with regards to service uptake and customer profiles to understand the activity’s implications? The Design and Access Statement – standard to all gating schemes submitted to the Local Planning Authority – states that gating requests come about at the request of residents and other interested parties. It is considered that the applicant has demonstrated a full awareness of the range of views held by local people and businesses concerning the gating scheme. The original planning approval (10/14/0614), by permitting a gating scheme that allowed the gates to be open during the working day but closed at night, attempted to secure a working arrangement that would be suitable to all parties. However, the temporary permission was granted to allow time to review how the arrangement worked. It would appear that the operation of opening and shutting the gates has led to an increase in harassment and intimidation of residents, contrary to Policy 8 of the Local Plan 2. It is considered that the consultation between the Community Safety Team, police,

ward councillors for Little Harwood and local people has provided an understanding of the people – comprising both those with protected characteristics and those without – affected by the proposal. With the demonstration of suitable, viable alternative access arrangements between the development off Laburnum Road and the services along Whalley New Road, it is considered that the proposal takes into account the differing profiles presented by residents and businesses and has sufficiently addressed all concerns.

3.5.12 The fourth statement, the elimination of discrimination, harassment and victimisation, is considered to be met by the proposal. The principle reason for submitting the application is to prevent harassment and victimisation of residents by gangs using the underpass to enter the new housing development. The proposed gating scheme is considered an acceptable balance in terms of securing the human rights of residents and being in accordance with Policy 8 of Local Plan 2.

3.5.13 The fifth statement is to have regard to advancing equality between those who share a protected characteristic and those who do not. The applicant has stated that the proposal achieves this, or at least does not detrimentally affect this. Whilst it is considered that this is not necessarily the case (the closing of the underpass permanently will make longer journeys to Whalley New Road a necessity), nevertheless the well-lit and open alternative route meets the needs of protected characteristics equally as well those that are not.

3.5.14 Finally the EIA Assessment checklist asks whether the proposal will foster good relations between people who share a protected characteristic and those who do not. It is clear that the issue of permanently gating the underpass has produced strongly held views from both sides of the debate and that the proposal is unlikely to satisfy everyone in the community. However, it is considered that, whilst leaving the route open will not alleviate the potential for continued criminal activity, the closure of the route will not cut off access to businesses and services. On balance, therefore, it is considered that an Equality Impact Assessment would only demonstrate what has already been expressed through consultations and the completed EIA Checklist. It is suggested that this report provides Members with a clear recommendation but also provides sufficient information for them to make an informed decision. The quality of life expressed in the NPPF is preserved for residents; and access to businesses is retained via Willow Street and Clarendon Road, thereby maintaining community cohesion and supporting the economic well-being of the local area.

3.5.15 Design. Policy 8 of Local Plan 2 requires design features aimed at crime prevention to be appropriate to their context; and a balance needs to be struck between security and amenity. Policy 11 further requires development to present an attractive façade that is sympathetic to its location. The proposed gate is considered, through design and colour, to integrate tolerably into the architectural structure that is the railway bridge.

3.5.16 Policy 11 requires development to demonstrate an understanding of the wider context. Whalley New Road is an arterial road linking the town with the Ribble

Valley and beyond. Typical characteristics of the transport corridors that feed into Blackburn Town Centre include a poor environment, which is seen as creating a poor impression to residents and visitors and which hampers beneficial investment. The railway bridge is a visually prominent feature within the corridor. The fitting of a gate across the opening may not be considered to enhance its appearance. However, its position on the farther side of the underpass is considered to limit its visibility from the A666. Moreover, its potential for reducing criminal activity is considered to contribute to the overall improvement of the local area. The proposed gate is therefore considered to be acceptable under Policy 11 of the Local Plan 2.

#### **4.0 RECOMMENDATION**

4.1 Approve

#### **5.0 PLANNING HISTORY**

- 5.1 10/14/0614 – Installation of alley gates. Temporary consent of two years was granted by the Planning and Highways Committee on 29<sup>th</sup> May 2015. The two years' permission expired on 28<sup>th</sup> May 2017. The reason cited for the permission being temporary was *“in order that the effect of the development upon the amenities of the neighbouring area can be assessed during this period, and that any future application can be decided on this assessment in accordance with Saved Policy T9 of the Blackburn with Darwen Borough Local Plan.”*
- 5.2 10/14/0107 – Installation of alley gates. Refused under delegated powers 25<sup>th</sup> March 2014.

#### **6.0 CONSULTATIONS**

- 6.1.1 One neighbouring property was consulted and two site notices were erected. No individual letters of objection or support have been received.
- 6.1.2 Members at the December meeting of the Planning and Highways Committee were requested to note two petitions received in connection with the proposal: a petition in support of the application containing 97 signatures, and a petition objecting to the proposal containing 32 signatures. Seven signatories appear on both petitions. A further signatory gives the same first name and address and uses the same signature on both petitions, although giving different surnames.
- 6.1.3 Members' attention is drawn to the receipt of a third petition, also containing 32 signatures, supporting the application.



- 6.1.4 The points raised by the two petitions supporting the retention of the alley gates on a permanent basis can be summarised as follows: Item 4.1
- Drug use, selling and distribution.
  - Consumption of alcohol at the site.
  - Dumping of food and drink waste and fly tipping.
  - Harassment of residents through loitering outside houses, bad language, loud music and threatening behaviour.
  - Vandalism, graffiti and burglary.
  - High speed driving.
- 6.1.5 The petition received objecting to the proposal to retain the gates contains 53 signatures. The reasons given for objecting to the proposals can be summarised as follows:
- Access needed to schools, shops and mosques.
- 6.2.1 Highways. The section of highway that is to be gated will remain as adopted highway. All street furniture in existence will not be affected. Access to services should be maintained hereafter. However, alley gates are supported by policy -Section 2 of the Clean Neighbourhoods and Environment Act 2005 introduces a power that allows councils to make, vary or revoke gating orders in respect of highways within their area. New sections 129A to 129G in the Highways Act 1980 enable councils to restrict public access to any public highway by gating it (at certain times of the day if applicable), without removing its underlying highway status. It is for this reason that Alley Gates are deemed acceptable in principle – on the proviso that they are supported by a gating order.
- 6.2.2 Notwithstanding the above, Highways express concern at the proposal and object to the gating at this location. Access through this underpass is used by pedestrians and cyclists, and is also seen as a connection to the local shops. With the increase of housing along Laburnum Road, this route is seen as a vital link to the wider community.
- 6.3 Network Rail. Although Network Rail was consulted, no comments have been received. In response to consultation over the temporary gate Network Rail were satisfied with the proposal on the understanding, agreed with the Community Safety Team, that a key to the gate would be provided for Network Rail and that, if a single gate did not deter people gathering under the bridge, a second gate would be installed. The Committee is advised that Planning was not involved in this discussion and agreement, and a second gate would require a separate planning application.
- 6.4 Legal. The person who signed off the original EIA checklist will need to confirm that in reviewing the EIA checklist performed back in July 2017, it remains accurate/valid in Jan 2018. The matter also needs to be reconsidered in light of the fact that the Executive member decision and the planning report may cover slightly different areas – for instance, the Executive member decision may be related to a slightly broader issue and the recommendations may be slightly wider than the more narrow planning report issue (and

whether that influences the outcome of the checklist). It may be that the EIA report overlaps the planning report completely; but at least the author has considered and then concluded that they are effectively the same concerns or issues. It cannot be assumed that the assessment requirements have not changed- the community safety officer has to “re-ask” themselves the same question and from a legal perspective the Planning Officer will have to document that this has been done.

**7.0 CONTACT OFFICER: John Wilson, Planner**

**8.0 DATE PREPARED: 5<sup>th</sup> January 2018**

9.0 SUMMARY OF REPRESENTATIONS

Item 4.1

Petition - 53 signatures

We the under signed object strongly to the locking of the gate at the bottom of Laburnum Road, We need access to go to schools, mosques and shops.

Name	Address
ZAFAR AHI	221 WHALLEY NEW RD
M. AGAZ	119 Whalley new Road
M-Imran	227 Whalley new Rd
ASHFAQ NUSAIN	32 KIRKLAND CLOSE B31 S:
HAYAT NORAT	158 LABURNUM RD B31 S:
Kings Peri Peri	217 Whalley New Rd
KHAJIL KHAMAN	51 CLARENDON RD B31 S:
AZIZ BAIS	219 - WHALLEY NEW RD
Saifullah Khan	277 - Whalley New Rd
K. Abaid	232 Whalley New Rd
S. Hussain	77 Clarendon Rd East
M. Hussain	65 Clarendon Rd East
N. Ali	96 Clarendon Rd East
M. Ali	2 - Kirkland Close
I. Mussoyib	30 Kirkland Close
31. Kirkland Close	Altaf Subai.
SUREAN ZAFAR	275 Whalley New Road
SAHMED	375 Whalley New Rd
Farhan	180 Cedar St

Name	Address
K.RIYAD	152 Laburn Road
M. Ahsan	36 Providence St
BABAR MIR	228 Whalley New Rd
Khin Marjoe	27A Duntains Ave
Amer Javed	126 Laburnum Road
Mrs Saddiq	20 Bancroft
Mr Saad Hussain	40 Providence St
Mussarat Hussain	52 Rhyll Avenue
Aysha Hussain	154 St James rd
Aukhona Shaban	127 St James rd
Skudab Akhter	209 Whalley New Rd
Nasim Akhter	207 Whalley New Rd
HAMZIA KHAN	188 Whalley New Rd
Mohamad Ali	160 Laburnum Rd
S. KAKAR	23 LABURNUM RD

Item 4.1

Name	Address
Zsuni Patel	35 Bridgewater Drive
Babar Hussain	37 Bridgewater Drive
N. PATEL	41 BRIDGEWATER DRIVE
Y. Ghanchi	45 Bridgewater Drive
M. MAMMOOD	43 Kirkland Close
G. KHAN	49 BRIDGEWATER
T. Patel	33 Bridgewater Dr
Y. Korgas	39 Bridgewater Dr
N RAFIQ	2 GLADSTONE WAY
T VAID	5 GLADSTONE WAY
M ZAFFAR	30 Bridgewater Drive
To Balg	16 Kirkland Close
M. BANGDIWALA	31 BRIDGEWATER DRIVE
M. TAHIR HUSSAIN	29 BRIDGEWATER DR.
J. KALLINGAL	23 BRIDGEWATER DR
S. SHAIKH	22 BRIDGEWATER DR
K. Callow	24 Bridgewater Dr
HUBO LOBO	6 GLADSTONE WAY
S. Patel	48 Kirkland Close

Petition - 129 signatures

Item 4.1

**PETITION TO REQUEST PERMANENT CLOSURE OF THE BRIDGE GATE ON LABURNUM ROAD BLACKBURN**

**DATE: NOVEMBER 2017**

I am in support of permanently closing the bridge gate on Laburnum Road in order to help reduce or eliminate the excessive levels of anti-social behaviour and criminal activity that occurs in this area. I am a resident in this area and I have witnessed one or more of the following activities occur near my property in the last 5 years. I request Blackburn with Darwen Borough Council to arrange for the permanent closure of the gate immediately. I have provided my contact details and signature below.

- |  |  |  |
|--|--|--|
| <ul style="list-style-type: none"> <li>• smoking and drug-taking</li> <li>• distributing/selling drugs</li> <li>• consuming alcoholic and non-alcoholic drinks and dumping cans/bottles</li> <li>• eating takeaway food and dumping food/food packaging/bags</li> <li>• littering e.g. household waste, furniture</li> </ul> | <ul style="list-style-type: none"> <li>• playing loud music e.g. sat in a car</li> <li>• causing damage to public and private property</li> <li>• hanging around outside residents homes, both on foot and in cars, at all times of the day</li> <li>• Burglary and theft</li> </ul> | <ul style="list-style-type: none"> <li>• driving cars at high speed e.g. over 50mph, and doing wheel spins</li> <li>• using the area as a meeting place for large groups of young males</li> <li>• use of threatening language or behaviour towards residents</li> <li>• vandalism and graffiti</li> </ul> |
|--|--|--|

Full name	Address
Mohamud Ali	160 LABURNUM
Abdullahi Yusuf	"
HAYAT NORAT	158 LABURNUM
Salima Norat	158 LABURNUM
Asif Norat	152 "
Craig Welsh	154 Laburnum Road
Sophie Booth	154 Laburnum Road
<del>Naz</del> MNRIM	152 Laburnum Road
M Bangi	148 LABURNUM
H Bangi	"
Usaid. Hadekeer	146 Laburnum Road

Full name	Address
Uzair-H	146 Laburnum Road
N Jura	144 Laburnum
L. SAADHAN. A-Sa	142 LABURNUM ROAD.
MRS. A. SAADHAN.	"
YAHYA PATEL	140 LABURNUM ROAD
TASNEEM PATEL	"
SARA HOS	134 Laburnum Road
DAVID HORD	134 Laburnum Road.
Zohra Seedat	130 Laburnum Road
Bashir Seedat	"
Bashir if Mohamad	128 Laburnum Rd

Full name	Address
Amer Sheikh	126 Laburnum <sup>road</sup>
Jason Chung	15 Gladstone Way
Moy Chung	" " "
Leah Chung	" "
MARINA Patel Irfan Patel	1 Gladstone way
NAYLA RAFIQ	2 GLADSTONE WAY
ABNAN AHMED	2 GLADSTONE WAY
Brett Drott	4, Gladstone way
Liz Zoro	4, Gladstone way
Cory Drott	4, Gladstone way
Siddique Chaudhary	16 Laburnum Rd BBI SELX

HUHO LOBO	Item 4.1 6 GLADSTONE WAY
MARINA LOBO	6 GLADSTONE WAY
Tahira Hussain	3 GLADSTONE WAY
Baker Hussain	37 Bridgewater Drive
ANISHA BAGAS	37 BRIDGEWATER DRIVE
Esmail Patel Su	35 BRIDGEWATER DRIVE
Sumsun Patel	" " "
	" " "
MUHAMMAD PATIL	41 BRIDGEWATER DRIVE
NOORFATIMA PATIL	" "
Yunus Hassan	39 BRIDGEWATER DRIVE
Rashid Mayat	" "

Firda Patel	164 LABURNUM RD
FARIDA Patel	" "
Ayesha Patel	" "
Umaid Patel	" "
Wassem Ahmad	5 Bridgewater Drive
Nasir	"
R. Bibi	"
Nadeem	"
YUSUF MULLA	9 BRIDGEWATER DRIVE
TAMICA MULLA	"
MOHAMMED TALHA	11 Bridge Drive

Masrura Patel	11 <del>164</del> <sup>Item 4.1</sup> Laburnum Rd
SARIKA NAIR MANOJ NAIR.	15 Bridgewater Drive
SUMAYYA PATEL <del>MUHAMMED PATEL</del>	17 BRIDGEWATER DRIVE
MUHAMMED PATEL	17 BRIDGEWATER DRIVE
SHAZAD Ahmed	21 BRIDGEWATER DRIVE
FARIDA BIBI	"
NoorJehan Ahmed	"
NABEELA AHMED	23 BRIDGEWATER DRIVE
JEVHER KALUNGA	"
Ashfar Shaikh	25 Bridge Water Drive
Sbenaz "	"



A. Majid	27 Bridgewater drive
M. BANGOIWALA E	31 BRIDGEWATER DRIVE
MUBARAK BANGOIWALA	31 BRIDGEWATER DRIVE
Muhammed Chopdett	28 Bridgewater Drive
Ismail Chopdett	28 Bridgewater Drive
Bilkis Sangi	26 Bridgewater Drive BBI SAT
Juned Sangi	26 Bridgewater Drive BBI SAT
Uwais Sangi	"
Rachel Jones	24 Bridgewater Drive
S. Sheikh M. Sheikh	22 Bridgewater drive
M. Sheikh	"

Muhammed I. Sangi	1 BANCROFT AVE Item 4.1
Fahad ELIATH	1 BANCROFT AVE
SHAMAH ELIATH	1 BANCROFT AVE
Beth Reem	5 BANCROFT Avenue
RUSHANA PATEL	7 BANCROFT AVENUE
HASSAN NATLA	7 BANCROFT AVENUE
Tasim Sheikh	15 BANCROFT AVE
Rafia Sheikh	15 BANCROFT AVENUE
J CHARIWALA	17 BANCROFT AVE
R CHARIWALA	17 BANCROFT AVE

SABIR DAT	6 BANCROFT AV
HAWAIDAI	6-BANCROFT AV
MRS LIU	4 Bancroft AVE
MR Liu	4 Bancroft AVE
A Liu	4 bancroft Avenue
S Liu	4 Bancroft Avenue
Abdur-Rahman Patel.	166 LABURNUM ROAD
NOR JAHAN PATEL	166 LABURNUM ROAD
SALEHA PATEL	166 LABURNUM ROAD.
SEEMA PATE	166 LABURNUM ROAD

CHRISTINA CRAWLEY	4 Bridgewater Drive Blackburn
Shane Lunt	6 Bridgewater drive
Stacey Dawe	6 Bridgewater drive
Joshua Lee	10, BRIDGEWATER DRIVE
LOUISE CARMICHAEL	15, BANCROFT AVE, BLACKBURN
DEAN RUSSELL	15, BANCROFT AVENUE, BLACKBURN
AMSHIA M Mohammedali SIDAT	17, Bancroft Ave
MICHAEL BLEASDALE	12 BANCROFT AVE
CHARLOTTE BLEASDALE	12 BANCROFT AVE
ALTAF Sumra	4 Kirkland Court
AMNA Seemro	1, Kirkland Court

FAISAL SHAIKH	8, KIRKLAND COURT
UZMA SHAIKH	8, KIRKLAND COURT
Mary Williams	14 KIRKLAND COURT
ASIF PATEL	11
SALMA PATEL	16, KIRKLAND COURT
JAVID HUSSAIN	22 KIRKLAND COURT
RAHMET HUSSAIN	22 KIRKLAND COURT
JAHANGIR HUSSAIN	30 KIRKLAND COURT
TALIM SULEMAN	11
Imam ul Haq	32 KIRKLAND COURT
A. Kheem	32 KIRKLAND COURT

DENS HORNBY	20 KIRKLAND COURT
CHLOS HORNBY	20 KIRKLAND COURT
Denielle Woodward	10 KIRKLAND CLOSE
AFAQ SARTAJ	12 KIRKLAND CLOSE
AFAISMA SARTAJ	12 KIRKLAND CLOSE
SADRA J PATEL	14 KIRKLAND CLOSE
MARJUDA PATEL	11
AMINA LORGAT	7 KIRKLAND CLOSE
Juneid Lorget	7 KIRKLAND CLOSE
Bhaskar Anand	1 KIRKLAND CLOSE

Item 4.1

**Proposed development: Variation to Section 106 Planning Obligation for Planning Application 10/16/0789**

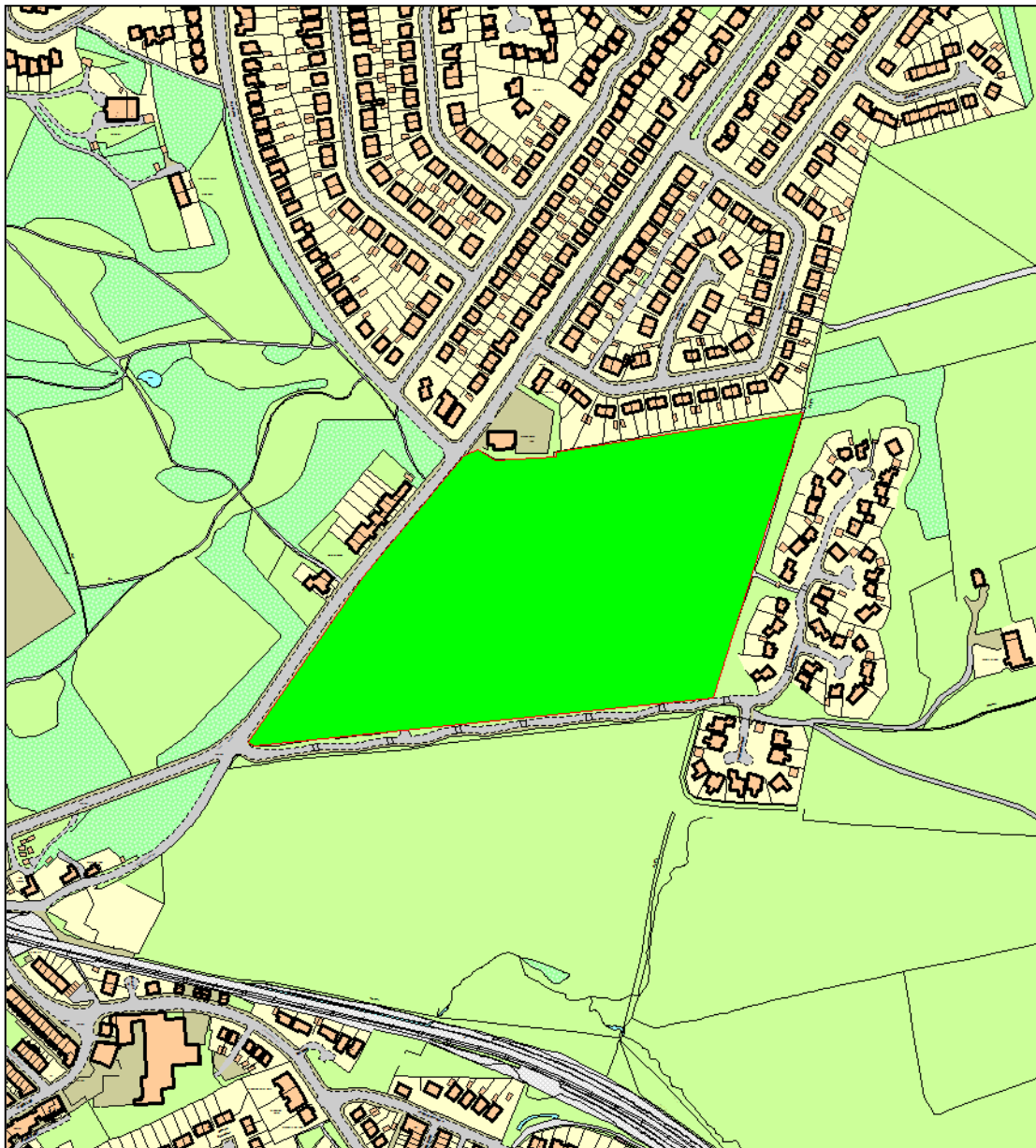
**Site address: Land at Pole Lane, Darwen**

**Applicant: Ruttle Plant Holdings Ltd**

**Ward: Marsh House**

**Councillor Kevin Connor  
Councillor Neil Slater  
Councillor Lynn Perkins**

---



## **1.0 SUMMARY OF RECOMMENDATION**

Item 4.2

- 1.1 It is recommended that Members agree to the suggested amendment to the existing Section 106 Agreement, amounting to additional commuted sum payments of £250,000, in order for the development to proceed fully.

## **2.0 KEY ISSUES/SUMMARY OF PLANNING BALANCE**

- 2.1 The developers of the site have indicated that the proposed deed of variation to the existing s106 agreement is required to allow for the existing approved development to be delivered. The current s106 agreement has two elements that cannot be delivered in their existing format; (1) the re-routing of drain S10, which serves Spring Meadows and was to be diverted into an adopted surface water drain (2) The agreed position of the access road on the southern boundary of the site.
- 2.2 Therefore, officers and the developer have been working together to find a practical solution to ensure that the development proceeds, which will enable the approved scheme for 126 dwellings to be delivered. The current proposal seeks to address point (1) via the provision of a commuted sum payment of £150,000 to enable surface water to be directed to an existing watercourse rather than drain S10; and (2) the provision of a £100,000 commuted sum payment to enable the access road position to be adjusted by approximately 1.4m to the south.
- 2.3 Members must determine whether the suggested amendment of the Section 106 Agreement is acceptable in order to facilitate the development at this site.

## **3.0 RATIONALE**

### **3.1 Site and Surroundings**

- 3.1.1 The site is located on the eastern side of Pole Lane and is bounded by Spring Meadows road along the southern boundary, Spring Meadows residential properties to the east and Rudyard Drive and the Craven Heifer Public House are located to the north. The housing development area measures approximately 5.7 hectares, comprising rough grassland, most recently used for the grazing of horses.

### **3.2 Proposed Development**

- 3.2.1 The site has the benefit of an outline planning approval (10/12/0933) for up to 133 dwellings and reserved matters approval (10/16/0789) for 126 units. A number of the conditions within the reserved matters approval has subsequently been varied by application 10/17/1043.
- 3.2.2 The approval granted under 10/16/0789, was subject to the applicant entering into a Section 106 Agreement, to covenant a financial contribution of £30,000

towards the delivery of community benefits; and £40,000 towards the provision of highway improvements. Item 4.2

- 3.2.3 The applicant is seeking to amend the existing s106 agreement by committing to a further £250,000 financial contribution towards the delivery of an alternative surface water drainage solution (£150,000) and revised highway infrastructure arrangements (£100,000). The existing committed commuted sum requirements attached to the 10/16/0789 application are unaffected by these additional payments.

### **3.3 Development Plan**

#### **3.3.1 Core Strategy (January 2011):**

Policy CS1: A Targeted Growth Strategy

Policy CS5: Locations for New Housing

Policy CS7: Types of Housing

#### **3.3.2 Blackburn with Darwen Borough Local Plan Part 2 (December 2015):**

Policy 11: Design

Policy 8: Development and People

Policy 9: Development and the Environment

Policy 10: Accessibility and Transport

Policy 12: Developer Contributions

### **3.4 Assessment**

- 3.4.1 The applicant has advised that the proposed deed of variation to the original s106 legal agreement is required for the development to be delivered and Spring Meadows Road to be widened and upgraded. There are two unforeseen issues that have come to light since the approval of the reserved matters application 10/16/0789 that prevent those outcomes, they are set out below.

- 3.4.2 Issue one: The original s106 agreement allowed for the re-routing of an existing drain (S10) to run into an adopted surface water drain on the site periphery. That solution was based upon discharge rates that were agreed as part of reserved matters application 10/16/0789. Prior to implementation United Utilities, who are the statutory provider of the adopted surface water drain in Pole Lane, has now revised the discharge rates to a minimal level. The impact of this change is that it is no longer possible for the S10 drain to be discharged to the adopted surface water drain. In the absence of an alternative solution, this would effectively prevent the development coming forward.

- 3.4.3 Through dialogue with the Council's drainage team it has been agreed that drain S10 can be discharged to an existing watercourse; that solution being compliant with local and national flood risk planning policy and not liable to place the future development or surrounding uses at an increased risk of

flooding to the scheme currently in place. In order to fulfil this alternative solution it has been agreed that a commuted sum payment of £150,000, to allow for the re-route of the S10 drain under Council powers, is necessary. The figure has been agreed by both the Council and the developer and it is requested that Members sanction this change by supporting the current s106 deed of variation application.

- 3.4.4 Issue two: The original s106 agreement attached to 10/16/0789 included a plan that detailed the realignment of Spring Meadow road. The developer has advised that the position of the proposed and consented roads needs to be adjusted in position by approximately 1.4m to the south. This is in order to allow for minimal disturbance of the existing adopted services in the road and allow for the Council to form the top coat of the carriageway at their discretion.
- 3.4.5 The Council Highway team has been involved in extensive dialogue with the developer that has resulted in the submission of the revised highway layout accompanying this application, which is intended to be appended to the s106 agreement. The construction of the road is now being proposed to be split between the developer and the Council. In order to facilitate this, a negotiated payment of £100,000 is required; the payment is also to be secured through the amended s106 legal agreement. The proposed changes are considered to be without detriment to the safe, efficient and convenient movement of all highway users. Furthermore, it is considered the proposed change will allow the Spring meadows road to be delivered quicker than was likely with the previously consented scheme.
- 3.4.6 In summary, the proposed changes amount to an additional commuted sum payment by the developer of £250,000. The changes to the previously agreed drainage and highway arrangements are considered to be without detriment to flood risk or highway safety interests, whilst the financial contribution has been negotiated to ensure that the payment is appropriate and proportionate. It is considered that the requested change to the s106 is necessary to enable the previously consented scheme for 126 dwellings to be implemented and that this outcome is compliant with the Council's strategic objectives for growth and housing delivery.

#### **4.0 RECOMMENDATION**

- 4.1 **APPROVE** – amend the s106 legal agreement pursuant to application 10/16/0789

#### **5.0 PLANNING HISTORY**

- 5.1 The following applications are of relevance to the assessment of this application;

10/12/0933 – Outline Application for: Erection of up to 133 no. dwellings

10/16/0789 - Reserved Matters Application for erection of 126 dwellings pursuant to Outline Planning Approval 10/12/0933.

10/17/0250 - Works to straighten and upgrade Spring Meadows Road so that it can be adopted  
Item 4.2

10/17/0414 - Variation to Section 106 Planning Obligation for Planning Application 10/12/0933

10/17/0418 - Removal of Condition No. 8 on planning approval 10/12/0933

10/17/1043 - Variation of conditions 1, 3, 4 and 5 relating to planning permission (10/16/0789) Reserved Matters Application for erection of 126 dwellings pursuant to Outline Planning Approval 10/12/0933

**6.0 CONSULTATIONS:**

6.1 Local Highways Authority: See update report

6.2 Local Drainage Authority: See update report

**7.0 CONTACT OFFICER: Martin Kenny, Principal Planner**

**8.0 DATE PREPARED: 4<sup>th</sup> January 2018**





Item 5

**REPORT OF: THE DIRECTOR OF GROWTH & DEVELOPMENT**

**TO: PLANNING AND HIGHWAYS COMMITTEE**

**ON: 18<sup>th</sup> January 2018**

**ORIGINATING SECTION: DEVELOPMENT MANAGEMENT SERVICE**

**WARDS AFFECTED: ALL**

**COUNCILLORS: ALL**

---

**TITLE OF REPORT:**

**Increase to existing Discretionary Planning Fees and Introduction of New Enhanced Services and fees to the Development Management Service – Growth Agenda**

---

**1. PURPOSE OF THE REPORT**

- 1.1 This report outlines proposals to review existing discretionary planning related fees, and the introduction of new enhanced services/fees as part of the changes being introduced in the provision of the Development Management services.

**2. BACKGROUND**

- 2.1 Development Management is central to delivering sustainable growth and is a significant gateway to promoting wider commercial services. The service fulfils a range of statutory duties on behalf of the Council from the determinations of planning applications, planning enforcement, production of planning policy, local authority building control, development control highway engineers, and a range of specialist development functions, ie, ecology, conservation, etc
- 2.2 The new approach will see the provision of enhanced, discretionary development management services which will increase efficiency, improve planning application determination times, generate additional income, and reduce costs to the service and the applicants. It will also allow the planning service to respond effectively to the Government's proposals to introduce private sector competition into the processing of planning applications.
- 2.3 The ODPM's 2003 Guidance (General Power for Best Value Authorities to Charge for Discretionary Services – Guidance on the Power in the Local Government Act 2003) defines discretionary services as *“those services that an authority has the power, but is not obliged, to provide. The Local Government Act*

*2000 gave authorities a general power to promote the economic, social and environmental well-being of local communities. This power gives them very broad discretion to provide additional services, but does not provide a clear power to charge. There are, therefore, a variety of services that an authority can provide. Through the new power to recover via a charge the costs to an authority of providing a service, the Government aims to encourage authorities to provide more wide-ranging and new and innovative services for their communities."*

- 2.4 Since 2011, Blackburn With Darwen Borough Council ("BwD") has introduced charges for the provision of discretionary services, in the form of pre-application advice charges. Feedback from developers has indicated they are more than willing to pay for the type of enhanced services which the new service can tailor to meet the applicant's requirements in terms of speeding up the delivery of development. The enhanced package of services proposed in this report are discretionary, but offer new avenues of revenue to support the costs of providing an efficient Development Management service.
- 2.5 During 2017, the department was restructured forming the Growth & Development Department with a key focus on delivering the Council's Growth Agenda. As part of this restructure, the Planning Service has been restructured, with the Development Management Team having a more lean focussed approach, that maintains growth whilst at the same maintains the efficient well-performing service. In February, the government's Housing White Paper promised to *"take steps to secure the financial sustainability of planning departments; ensure that the planning system has the skilled professionals it needs to assess and make the tough decisions we expect; and provide targeted support to address areas of specialist weakness"*.
- 2.6 As part of this drive, the white paper said that local councils would be able to increase the nationally set planning application fees by 20% from July 2017—as long as they are committed *"to invest the additional fee income in their planning department"*. BwD responded to the Government to confirm the intention to increase the fees by 20%. This proposed increase has been delayed in part by the General Election that occurred. Regulations to introduce the 20% increase in planning fees were made on the 20<sup>th</sup> December 2017, which means that local planning authorities will be able to start applying the fee increase from the 17<sup>th</sup> January 2018. The reference for the Regulations is SI 2017 No.1314. (A copy of the new scale of fees are attached to this report). Whilst the delay was unfortunate, with the new structure in both the Department and the Development Management Service, it was acknowledged that there is a need to drive efficiency, challenge, and be inventive in delivering the service to support growth whilst at the same time maintain excellent performance.
- 2.5 The new service will provide that, in addition to the proposed increase of the nationally set application fees, the existing Pre-Application Advice fees are also increased, and the new Enhanced Services are introduced with appropriately set fees. This will enable the service to be more commercial in its outlook.
- 2.6 Planning Performance Agreements (PPA) will be developed with the Integrated Growth Team, and are aimed to be introduced in 2018. A Planning Performance

Agreement (PPA) is a framework agreed between a local planning authority and a planning applicant for the management of complex development proposals within the planning process. PPA's are referred to later in the report at paragraphs 3.8 and 3.9. This report focusses on the discretionary fees only.

- 2.7 The Development Management Team has been through a new restructure during the summer, and the team has gone through a recent recruitment exercise, which has now lead to the team being fully resourced. The Team under the leadership of the Development Manager now comprises of:
- 1 x Principal Planner
  - 2 x Senior Planner
  - 2 x Planners
  - 2 x Assistant Planners
  - 2 x Planning Enforcement Officers
  - 1 x Senior Planning Technician
  - 1 x Planning Technician/System Administrator
  - 2 x Planning Technical Support Officers
  - 1 x Administrator
- 2.8 The team has been structured so as to focus on the delivery of the Growth Agenda, with the 3no Senior Planners, including the Principal Planner focussing on the delivery of the major developments together with the Integrated Growth Team.
- 2.9 Furthermore, the Planning Service has recently implemented the first phase of the new Digitisation Project in December 2017, which will make the service more efficient.
- 2.10 The levels of fees that are proposed from the Enhanced Services (see paragraph 3.4), have followed a benchmarking exercise with similar placed local planning authorities, notably Salford, Barnet and North Tyneside.
- 2.11 The new Enhanced Services are aimed at the minor and householder type of planning applications, and are effectively a "Fast Track" Service for the customer from receipt of the planning application through to the decision. In essence, it is a "contract" between the applicant and the Council that their planning application will be determined within the specified period. If, for any reason, the application is not determined within the period requested, a refund would be payable of the enhanced service fee. However, should the application be referred to the Planning & Highways Committee in accordance with the Scheme of Delegation, i.e number of objections received, this will have the effect of delaying the determination of the applications, and no refund would be given. It should be noted this enhanced service fee proposal is in addition to the planning application fee set by the government. Developers will be encouraged to use the pre-application advisory service together with the enhanced service to ensure the application is determined within the requested period.
- 2.12 Planning application fees are currently set by the Government and have not been increased since 2012. The revenue generated through charging planning

application fees does not normally cover the costs of deciding planning applications. The shortfall has to be subsidised by local authorities. Item 5

- 2.13 The fees submitted for planning applications are prescribed by Regulation, and cannot be changed by a local planning authority. This report is focussing on the discretionary services provided by the local planning authority to help deliver the Growth Agenda.

### 3. RATIONALE

- 3.1 During the summer of 2017 following the restructure of the department, the Integrated Growth Team introduced independent assessments of viability appraisals pursuant to Section 106 Agreements. These relate to new major housing developments in accordance with the adopted Local Plan Part 2 Policy 7(4-6). The developer will pay for this assessment and this is based on the number of units proposed as follows:

Number of Units	Price
1-24	£1,750
25-99	£2,500
100 – 400	£3,500
400+	£4,500

These prices will remain the same and be included in the Fees & Charges Book for 2018/19.

- 3.2 The existing pre-application advice fees were last increased in January 2017 in line with inflation. It is proposed to increase the fees on a par with the average of the benchmarking local planning authorities. It is anticipated there may be a decrease in the volumes submitted, however with the financial climate continuing to improve and the unprecedented growth activity in the borough witnessed during the past 12 months, the number of major developments are likely to increase, and developers are happy to bear the costs of this valuable service provided.

#### 3.3 Pre-application advice charges:

It is proposed to make the following changes :

- Significant Majors increase from £1,010 to £2,000 excluding VAT
- Major applications increase from £595 to £800 excluding VAT
- Minor applications increase from £252 to £400 excl VAT
- Householder applications from £63 to £80 excluding VAT.

#### Enhanced Services:

- 3.4 The new Enhanced Services which are aimed at fast tracking planning applications are based on 2 levels of service – *Platinum and Gold*. The services

are aimed at all Minor Planning Application types and Householder applications only, together with Certificates of Lawfulness applications. Item 5

- 3.5 *Platinum* – From receipt of application through to determination within 4 weeks - £300 excluding VAT  
*Gold* – From receipt of application through to determination within 6 weeks - £200 excluding VAT

For Certificate of Lawfulness applications, the following charges will be introduced:

From receipt of application to determination within 1 week - £300 excl VAT

From receipt of application to determination within 2 weeks £200 excl VAT

- 3.6 Any additional income received from the enhanced services would be utilised by the Development Management team in ensuring the service is fast performing and efficient. It is envisaged that a marketing exercise would be undertaken with the general public and the local planning agents via email and the website promoting this new service. The Department's unique selling point compared to other local planning authorities within the region is the level of service provided between the Development Management and Integrated Growth Teams in providing a tailored service to developers that combines a number of specialist skills and experience to help customers to meet the requirements. Delivery of development will be brought forward more efficiently, reducing the costs to the applicant and the Council.
- 3.7 A new "Fast Track" Charter will be drafted and published on the website once the new enhanced services are implemented. This is currently being worked on.
- 3.8 A Planning Performance Agreement (PPA) is a framework agreed between a local planning authority and a planning applicant for the management of complex development proposals within the planning process. A PPA allows both the developer and the local planning authority to agree a project plan and programme which will include the appropriate resources necessary to determine the planning application to a firm timetable. They are most commonly used on the large scale development proposals.
- 3.9 With regards to the introduction of a PPA Charter, research with other local planning authorities who have introduced such charters, show that collaborative work between the Integrated Growth Team and Development Management will ensure such a Charter be successfully implemented at Blackburn With Darwen. This work is programmed for 2018 with fees set on a pro-rata basis depending on the proposed development.

#### **4. POLICY IMPLICATIONS**

- 4.1 None

## **5. FINANCIAL IMPLICATIONS**

- 5.1 The increase of the pre-application enquiry fees and the new fees relating to the enhanced services as suggested could potentially increase income, which will assist to sustain the Development Management in terms of high performing and efficiency.

## **6. LEGAL IMPLICATIONS**

- 6.1 There are powers within legislation that allows the Council to make charges.
- 6.2 Pursuant to section 111(1) Local Government Act 1972 a local authority shall have power to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.
- 6.3 The Local Government Act 2003 enables councils to charge for, or trade in, activities relating to their functions on a commercial basis. Charging is recovering the costs of discretionary services whilst trading generates surpluses and profits. Section 93 of the 2003 Act allows local authorities to charge for discretionary services on a cost recovery basis.
- 6.4 Discretionary services are defined as those services that a local authority has power to provide but are not obliged to provide by law. Charges can be applied for discretionary services which are enhancements to the mandatory service
- 6.5 The Localism Act 2011 introduced a general power of competence “to do anything that individuals generally may do” (unless expressly prohibited by another statutory provision) thus enabling a local authority to provide discretionary services anywhere in the UK or elsewhere for a commercial purpose.
- 6.6 The ODPM’s 2013 Guidance provides that to be able to make use of the power to charge for a discretionary service, authorities must have an existing power to provide that service. Under ordinary legal principles, an authority has power to do anything reasonably incidental to its express powers. In circumstances where an authority wishes to charge, for example for works or supplies, the authority will need to satisfy itself that the enactment which authorises provision of a particular service would also permit the provision of anything reasonably incidental to that service. Where an authority is relying on subsidiary powers under section 111(1) of the Local Government Act 1972 to authorise the provision of a service to facilitate the discharge of a specific function, then the authority may charge under section 93(1) of the 2003 Act for that function related service by virtue of the dis-application at section 93(7)(a) of the 2003 Act.

## **7. RESOURCE IMPLICATIONS**

Item 5

7.1 None

## **8. EQUALITY IMPLICATIONS**

8.1 An Equality Impact Assessment is not required. Attached to this report is the completed checklist.

## **9. CONSULTATIONS**

9.1. The proposed new services and increase to the existing discretionary fees have been presented to the Executive Member for the Department at the meetings on the 27<sup>th</sup> November and 4<sup>th</sup> December 2017, together with the Cross Party Member's Planning Working Group at their meeting on the 19<sup>th</sup> December 2017.

## **10. RECOMMENDATION**

- 10.1 (i) That the Committee note the content of the report.  
(ii) The Committee endorse the increase to the discretionary fees and the introduction of the new enhanced services.  
(iii) The Committee agree for the Charter and marketing of the services to be published on the planning webpages once they have been agreed by the Executive Member and the Cross Party Members Planning Working Group.

Contact Officer: Gavin Prescott, Development Manager  
Date: 4<sup>th</sup> January 2018

Background Papers: none

## Scale of Fees for Planning Applications

Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (as amended)

Effective from 17 January 2018



Category of development	Fee Payable
<b>Outline Applications</b>	
1a, 2a, 3a Outline Applications	<ul style="list-style-type: none"> <li>i. Where the site area does not exceed 2.5 hectares, £462 for each 0.1 Ha of the site area;</li> <li>ii. Where the site area exceeds 2.5 hectares, £11,432; and an additional £138 for each 0.1 hectare in excess of 2.5 hectares, subject to a maximum in total of £150,000</li> </ul>
1A – Permission in principle (land on brownfield register)	<ul style="list-style-type: none"> <li>i. £462 for each 0.1 hectare of the site area</li> </ul>
<b>Full Applications</b>	
1b. The erection of dwelling houses (other than development in category 6)	<ul style="list-style-type: none"> <li>i. 50 or fewer, £462 for each dwelling house;</li> <li>ii. More than 50, £22,859; and an additional £138 for each dwelling house in excess of 50 dwelling houses, subject to a maximum in total of £300,000</li> </ul>
2b. The erection of buildings (other than buildings in categories 1, 3, 4, 5 or 7).	<ul style="list-style-type: none"> <li>i. where no floor space is to be created by the development, or the floor space created does not exceed 40 square meters, £234;</li> <li>ii. where the area of the gross floor space to be created by the development exceeds 40 square metres, but does not exceed 75 square metres, £462;</li> <li>iii. where the area of the gross floor space to be created by the development exceeds 75 square metres, but does not exceed 3750 square metres, £462 for each 75 square metres of that area</li> <li>iv. where the area of gross floor space to be created by the development exceeds 3750 m<sup>2</sup>, £22,859; and an additional £138 for each 75 square metres in excess of 3750 square metres, subject to a maximum in total of £300,000</li> </ul>
3b. The erection, on land used for the purposes of agriculture, of buildings to be used for agricultural purposes (other than buildings in category 4)	<ul style="list-style-type: none"> <li>i. where the area of gross floor space to be created by the development does not exceed 465 square metres, £96;</li> <li>ii. where the area of gross floor space to be created by the development exceeds 465 square metres but does not exceed 540 square metres, £462</li> <li>iii. where the area of the gross floor space to be created by the development exceeds 540 square metres but does not exceed 4215 square metres, £462 for the first 540 square metres, and an additional £462 for each 75 square metres in excess of 540 square metres; and</li> <li>iv. where the area of gross floor space to be created by the development exceeds 4215 square metres,</li> </ul>



	£22,859; and an additional £138 for each 75 square metres in excess of 4215 square metres, subject to a maximum in total of £300,000.
4. The erection of glasshouses on land used for the purposes of agriculture	<ul style="list-style-type: none"> <li>a) Where the area of gross floor space to be created by the development does not exceed 465 square metres, £96 or</li> <li>b) where the area of gross floor space to be created by the development exceeds 465 square metres, £2,580</li> </ul>
5. The erection, alteration or replacement of plant or machinery	<ul style="list-style-type: none"> <li>a) Where the site area does not exceed 5 hectares, £4662 for each 0.1 hectare of the site area</li> <li>b) where the site area exceeds 5 hectares, £22,859; and an additional £138 for each 0.1 hectare in excess of 5 hectares, subject to a maximum in total of £300,000</li> </ul>
6. The enlargement, improvement or other alteration of existing dwelling houses	<ul style="list-style-type: none"> <li>a) Where the application relates to one dwelling house, £206</li> <li>b) where the application relates to 2 or more dwelling houses, £407</li> </ul>
7. The carrying out of operations (including the erection of a building) within the curtilage of an existing dwelling house, for purposes ancillary to the enjoyment of the dwelling house as such, or the erection or construction of gates, fences, walls or other means of enclosure along a boundary of the curtilage of an existing dwelling house	£206
8. The construction of car parks, service roads and other means of access on land used for the purposes of a single undertaking, where the development is required for a purpose incidental to the existing use of the land	£234
9. The carrying out of any operations connected with exploratory drilling for oil or natural gas	<ul style="list-style-type: none"> <li>a) Where the site area does not exceed 7.5 hectares, £508 for each 0.1 Ha of the site area;</li> <li>b) where the site area exceeds 7.5 hectares, £38,070, and an additional £151 for each 0.1 hectare in excess of 7.5 hectares, subject to a maximum in total of £300,000</li> </ul>
10. The carrying out of any operations not coming within any of the above categories	<ul style="list-style-type: none"> <li>a) In the case of operations for the winning and working of minerals– <ul style="list-style-type: none"> <li>i. where the site area does not exceed 15 Ha, £234 for each 0.1 Ha of the site area;</li> <li>ii. where the site area exceeds 15 hectares, £34,934; and an additional £138 for each 0.1 hectare in excess of 15 hectares, subject to a maximum in total of £78,000</li> </ul> </li> <li>b) in any other case, £234 for each 0.1 hectare of the site area, subject to a maximum of £1,690.</li> </ul>
<b>Other Applications</b>	
11. The change of use of a building to use as one or more separate dwelling houses.	<ul style="list-style-type: none"> <li>a) where the change of use is from a previous use as a single dwellinghouse to use as two or more single dwellinghouses– <ul style="list-style-type: none"> <li>i. where the change of use is to use as 50 or fewer dwelling houses, £462 for each additional dwelling house</li> <li>ii. where the change of use is to use as more than</li> </ul> </li> </ul>

	<p>50 dwelling houses £22,859, and an additional £138 for each dwelling house in excess of 50 dwelling houses, subject to a maximum in total of £300,000;</p> <p>b) in all other cases –</p> <p>i. where the change of use is to use as 50 or fewer dwelling houses, £462 for each dwelling house</p> <p>ii. where the change of use is to use as more than 50 dwelling houses £22,859, and an additional £138 for each dwelling house in excess of 50 dwelling houses, subject to a maximum in total of £300,000;</p>
<p>12. The use of land for -</p> <p>a) the disposal of refuse or waste materials;</p> <p>b) the deposit of material remaining after minerals have been extracted from land; or</p> <p>c) the use of land for the storage of minerals in the open.</p>	<p>a) Where the site area does not exceed 15 hectares, £234 for each 0.1 hectare of the site area;</p> <p>b) where the site area exceeds 15 hectares, £34,934; and an additional £138 for each 0.1 hectare in excess of 15 hectares, subject to a maximum in total of £78,000.</p>
<p>12. The making of a material change in the use of a building or land (other than a material change of use in category 11, 12(a) (b) or (c))</p>	£462
<b>Reserved Matters Applications</b>	
<p>Each Reserved Matters application will incur a fee at the full rate. Where multiple applications are submitted for the reserved matters, full fees will be charged until the total of fees paid equals the fee that would have been due had all the reserved matters been submitted on a single application. Any further applications beyond this will be charged at £462 per application.</p>	
<p>Where a Reserved Matters application relates to only one part or phase of the development covered by the outline permission, fees are paid only on that part or phase. However, subsequent applications will attract full fees</p>	
<p>Major revisions to approved Reserved Matters will attract full fees.</p>	
<b>Advertisements</b>	
<p>1. Advertisements displayed externally on business premises, the forecourt of business premises or other land within the curtilage of business premises, wholly with reference to all or any of the following matters –</p> <p>d) the nature of the business or other activity carried on at the premises</p> <p>e) the goods sold or the services provided on the premises; or</p> <p>f) the name and qualifications of the person carrying on such business or activity or supplying such goods or services</p>	£132
<p>2. Advertisements for the purpose of directing members of the public to, or otherwise drawing attention to the existence of, business premises which are in the same locality as the site on which the advertisement is to be displayed but which are not visible from that site</p>	£132
<p>3. All other advertisements</p>	£462
<b>Certificates of Lawfulness</b>	
<p>Applications for a Certificate of Lawfulness of Existing Use or Development under section 191(1)(a) and/ or (b)</p>	Fee as per a full planning application for that development
<p>Applications under section 191(1)(c): Any other matter constituting a failure to comply with any condition or</p>	£234

limitation subject to which planning permission has been granted is lawful	
Application for a Certificate of Lawfulness of a proposed use or development under section 192(1) (a) and/or (b)	Half of the fee as per a full planning application for that development
<b>Determinations</b>	
Agricultural or Forestry Development	£96
Other Prior Notifications	£96
Demolition Determination	£96
Telecommunications Equipment or Antennae, applications for determination of whether the prior approval is required	£462
<b>Other Applications</b>	
Non-Material Amendments to planning permission	a) Where the amendment relates to householder development £28 b) In all other cases £195
<b>Conditions</b>	
Discharge of details required by condition	a) Where the condition or conditions relate to householder development £34 for each request b) Where the condition or conditions relate to any other form of development £116 for each request
Application for removal or variation of a condition following grant of planning permission	£234
Request for confirmation that one or more planning conditions have been complied with	£34 per request for Householder otherwise £116 per request
<b>Prior Approval</b>	
Prior Approval applications for the various Change of Use proposals allowed under Part 3 of GFDO	£96
Prior Approval applications	£206
<b>Concessions</b>	
Applications made by or on behalf of a Parish / Town Council	Half normal fee
Applications by non-profit making clubs or organisations relating to playing fields for their own use	£462
<b>Exemptions – No fee payable</b>	
Extensions and alterations to a dwellinghouse or works within its curtilage for the benefit of people with disabilities and alterations in order to provide access for people with disabilities	
Revised or fresh application of same character submitted by or on behalf of the same applicant within 12 months of the date of a refusal; the making of previous application if withdrawn, or the expiry of the statutory 8 week period where the applicant has appealed on grounds of non-determination	
Applications for Listed Building Consent	
Applications for Certificates of Appropriate Alternative Development	

If you have any queries relating to Planning Fees, please contact the Development Management Support Team on 01254 585960 or email [planning@blackburn.gov.uk](mailto:planning@blackburn.gov.uk)

<b>Name of the activity being assessed</b>	Development Management Technical Support – Changes in the processes/submission requirements for planning applications/pre application advisory service and new enhanced additional services				
<b>Directorate / Department</b>	Growth & Development	<b>Service</b>	Planning – Development Management	<b>Assessment Author</b>	Gavin Prescott
<b>Is this a new or existing activity?</b>	<input type="checkbox"/> New <input checked="" type="checkbox"/> Existing	<b>Responsible manager / director for the assessment</b>		Ian Richardson	
<b>Date EIA started</b>	01/10/2017	<b>Implementation date of the activity</b>		01/01/2018	

**SECTION 1 - ABOUT YOUR ACTIVITY**

<p><b>How was the need for this activity identified?</b>          i.e. Why are we doing this activity?</p>	<p>Following the restructure of the Growth &amp; Development Department, the Planning Service was also restructured during the summer of 2017, with the Development Management team and the Integrated Growth Team being formulated. The Development Management Team, which this activity is focussing on, deals with the processing of planning applications, planning enforcement and technical support.</p> <p>At the same time, a major new Digitisation Project is being implemented which will make the service more efficient and easily accessible to the customer. Changes in the process and submission requirements relating to planning applications were introduced in 2014, and which are still valid. At the same time the Pre-Application Advisory Service was reviewed and introduced new discretionary fees which remain valid. With the new restructure the Development Management service is looking to introduce new additional enhanced services which will sustain the service going forward and maintain the excellent performance in processing planning applications.</p> <p>The Service is looking to maintain the discretionary fees introduced in 2014, relating to the processing and handling of invalid planning applications which are submitted. Since 2014, the number of invalid applications submitted remains high, with approximately 33% being submitted. Of these around 10-15% are never made valid and requires the application to be withdrawn and returned to the applicant/agent. This still requires a certain amount of resource from the Technical Support Team which is never recovered. So it is considered reasonable to maintain the service of returning the fees for these applications minus the administrative charge for the handling of the applications.</p>
<p><b>What is the activity looking to achieve?</b></p>	<p>To maintain performance levels and increase productivity with the continued validation and registration processes set in 2014 relating to planning applications and pre-application enquiries, together with a move towards a paperless office which will post the implementation of the digitisation of the planning service in December 2017.</p> <p>In order to maintain the efficient and effective planning application validation process, and the quality of submitted applications, it is proposed to continue with the formal process relating to the invalid applications. The service will be seeking to determine applications within the statutory time periods, but with regards to minor planning applications, householder applications and certificate of lawfulness, new enhanced services, Platinum and Gold, will be introduced subject to a premium fee where applications will be guaranteed to be determined within a shorter specified period.</p>

<p><b>What are the aims and objectives?</b></p>	<p>The service with regards to the large scale major developments will be looking to introduce a more formalised Development Team Approach where a Planning Performance Agreement (PPA) framework will be implemented for the management of the planning process from inception through to determination.</p> <p><u>Discretionary Fees:</u> The Service is looking to increase the discretionary fees associated with the pre-application advisory service to recover costs incurred in setting up the meetings, responding to telephone enquiries, setting up meetings, ensuring consultees attend meetings, and providing formal responses. The new fees have been set so as to be competitive, and ensure a quality service is provided.</p> <p><u>Invalid applications:</u> By maintaining the formal process relating to the processing of invalid applications set in 2014, this will ensure the quality of planning applications is increased and assist in the productivity of ensuring an efficient service is provided particularly with the implementation of the digitisation of the planning service. This will assist the customer in submitting more valid applications and ensuring their application is processed more efficiently.</p> <p><u>Additional enhanced services:</u> The Development Team Service (DTS) is designed for development proposals that are more complex and likely to raise a large number of issues. With this service good quality advice will be provided that will carry weight in the decision making process. It will involve the use of a dedicated planning case officer who will coordinate the process from inception to determination. A PPA will be used to allow both the developer and the local planning authority to agree a project plan and programme which will include the appropriate resources necessary to determine the planning application to a firm timetable.</p> <p><u>Development Management Enhanced Services:</u> These are aimed at the minor (including changes of use), householder type of planning applications, together with Certificates of Lawfulness. They are effectively a “fast track” service for the customer from receipt of the planning application through to a decision. The new services are split into “platinum” and “gold” services, which are subject to a premium fee in addition to the standard planning application fee. The aim is to deal with the application within the agreed shorter timeframe, and developers/applicants are encouraged to use the pre-application advisory service together with the enhanced services to ensure the application is determined within the requested period.</p>
<p><b>Services currently provided</b> (if applicable)</p>	<p><u>Pre-application advisory service:</u> This service has been provided since 2011, which was reviewed in 2014, when the new processes relating to the submission requirements for planning applications and invalid applications were introduced.</p> <p><u>Major planning applications pre-application advisory service:</u> Presently, all the meetings under this service are held with the Integrated Growth Team, and the One Cathedral Square offices, with all consultees invited. This will continue as part of the more formalised DTS approach.</p>
<p><b>Type of activity</b></p>	<p> <input type="checkbox"/> Budget changes         <input type="checkbox"/> Decommissioning         <input type="checkbox"/> New activity  <input checked="" type="checkbox"/> Change to existing activity         <input type="checkbox"/> Commissioning         <input type="checkbox"/> Other <a href="#">[please state here]</a> </p>

**What resources will support in undertaking the equality analysis and impact assessment?**

*Please identify additional sources of information you have used to complete the EIA, e.g. reports; journals; legislation etc.*

None

**Who are you consulting with? How are you consulting with them? (Please insert any information around surveys and consultations undertaken)**

Cross Party Working Members Planning Group  
 Planning & Highways Committee  
 Executive Member for Regeneration (Growth & Development)  
 - Reports and presentation  
 Email to be sent to all local planning agents informing them when the changes will be coming into force

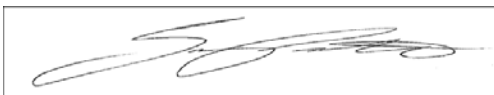

<b>Who does the activity impact upon?*</b>	Service users	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Indirectly			
	Members of staff	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Indirectly			
	General public	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Indirectly			
	Carers or families	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Indirectly			
	Partner organisations	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Indirectly			
<b>Does the activity impact positively or negatively on any of the protected characteristics as stated within the Equality Act (2010)?*</b>  <b>The groups in blue are not protected characteristics (please refer to p. 3 of the guidance notes)</b>	Positive impact	<input type="checkbox"/> Age	<input type="checkbox"/> Disability	<input type="checkbox"/> Gender reassignment	<input type="checkbox"/> Marriage & Civil Partnership	<input type="checkbox"/> Pregnancy & maternity	<input type="checkbox"/> Vulnerable groups
		<input type="checkbox"/> Race	<input type="checkbox"/> Religion or belief	<input type="checkbox"/> Sex	<input type="checkbox"/> Sexual orientation	<input type="checkbox"/> Deprived communities	<input type="checkbox"/> Carers
	Negative impact	<input type="checkbox"/> Age	<input type="checkbox"/> Disability	<input type="checkbox"/> Gender reassignment	<input type="checkbox"/> Marriage & Civil Partnership	<input type="checkbox"/> Pregnancy & maternity	<input type="checkbox"/> Vulnerable groups
		<input type="checkbox"/> Race	<input type="checkbox"/> Religion or belief	<input type="checkbox"/> Sex	<input type="checkbox"/> Sexual orientation	<input type="checkbox"/> Deprived communities	<input type="checkbox"/> Carers
	No impact	<input checked="" type="checkbox"/> Age	<input checked="" type="checkbox"/> Disability	<input checked="" type="checkbox"/> Gender reassignment	<input checked="" type="checkbox"/> Marriage & Civil Partnership	<input checked="" type="checkbox"/> Pregnancy & maternity	<input checked="" type="checkbox"/> Vulnerable groups
		<input checked="" type="checkbox"/> Race	<input checked="" type="checkbox"/> Religion or belief	<input checked="" type="checkbox"/> Sex	<input checked="" type="checkbox"/> Sexual orientation	<input checked="" type="checkbox"/> Deprived communities	<input checked="" type="checkbox"/> Carers

\*If no impact is identified on any of the protected characteristics a full EIA may not be required. Please contact your departmental Corporate Equality & Diversity representative for further information.

**Does the activity contribute towards meeting the Equality Act's general Public Sector Equality Duty?** *Refer to p.3 of the guidance for more information*  
***A public authority must have 'due regard' (i.e. consciously consider) to the following: Not applicable***

DUTY	DOES THE ACTIVITY MEET THIS DUTY? EXPLAIN
<b>Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act</b> <i>(i.e. the activity removes or minimises disadvantages suffered by people due to their protected characteristic)</i>	Not applicable
<b>Advance equality of opportunity between those who share a protected characteristic and those who do not</b> <i>(i.e. the activity takes steps to meet the needs of people from protected groups where these are different from the needs of other people)</i>	Not applicable
<b>Foster good relations between people who share a protected characteristic and those who do not</b> <i>(i.e. the function encourages people from protected groups to participate in public life or in other activities where their participation is disproportionately low)</i>	Not applicable

ASSESSMENT	Is a full EIA required?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Please explain how you have reached your conclusion <i>(A lack of negative impacts must be justified with evidence and clear reasons, highlight how the activity negates or mitigates any possible negative impacts)</i>			
<p>The proposed changes will apply equally to all planning applications and pre-application enquiries, with no exceptions or concessions. The changes will be done in compliance with Section 93 of the Local Government Act 2003.</p>			

<b>Author Signature</b>		<b>Date</b>	<b>06/12/2017</b>
<b>Head of Service/Director Signature</b>		<b>Date</b>	<b>06/12/2017</b>

*The above signatures signify acceptance of the ownership of the Initial EIA and the responsibility to publish the completed Initial EIA as per the requirements of the Equality Act 2010.*

<b>Departmental E&amp;D Lead Signature</b>	Gwen Kinloch	<b>Date</b>	21/12/2017
--	--------------	-------------	------------

**FULL EQUALITY IMPACT ASSESSMENT****SECTION 3 – ANALYSIS OF IMPACT**

Does the activity have the **potential** to:

- **positively** impact (benefit) any of the groups?
- **negatively** impact/exclude/discriminate against any group?
- **disproportionately** impact any of the groups?

Explain how this was identified – through evidence/consultation.

Any negative impacts that are identified within the analysis need to be captured within the action plan in **Section 4**

**N.B.** Marriage & Civil Partnership is only a protected characteristic in terms of work-related activities and NOT service provision

<b>Characteristic</b>	<b>Positive</b>	<b>Negative</b>	<b>Don't know</b>	<b>Reasons for positive and/or negative impact</b> Please include all the evidence you have considered as part of your analysis	<b>Action No.</b>
<b>Age</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No impact identified	
<b>Disability</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No impact identified	
<b>Gender reassignment</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No impact identified	
<b>Marriage &amp; Civil Partnership</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No impact identified	
<b>Pregnancy &amp; Maternity</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No impact identified	
<b>Race</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No impact identified	
<b>Religion or Belief</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No impact identified	
<b>Sex</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No impact identified	
<b>Sexual orientation</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No impact identified	
<b>Vulnerable Groups</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No impact identified	
<b>Deprived Communities</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No impact identified	
<b>Carers</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	No impact identified	
<b>Other [please state]</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		



<p><b>Does the activity raise any issues for community cohesion?</b></p> <p><b>Does the activity contribute positively towards community cohesion?</b></p>	No
<p><b>Does the activity raise any issues in relation to human rights as set out in the Human Rights Act 1998? Details of which can be found <a href="#">here</a></b></p>	No
<p><b>Does the activity support / aggravate existing departmental and/or corporate risk?</b></p>	<p><i>Is the activity on the departmental risk register? If it is not, should it be?</i></p> <p>No</p>

## CONCLUSIONS OF THE ANALYSIS



<p><b>Action following completion of the impact assessment</b></p>			
<p><i>It is important that the correct option is chosen depending on the findings of the analysis. The action plan must be completed as required.</i></p>			
<input type="checkbox"/> No major change in the activity	<input type="checkbox"/> Adjust activity	<input checked="" type="checkbox"/> Continue with activity	<input type="checkbox"/> Stop and reconsider activity
<p><b>Please explain how you have reached your conclusion</b></p>			
<p>The activity is a continuation of existing practice albeit with some changes. No equality impacts have been identified.</p>			

**ACTION PLAN**

Action No.	What is the negative / adverse impact identified?	Actions required to reduce / mitigate / eliminate the negative impact	Resources required	Responsible officer(s)	Target completion date
	None currently identified				

**MONITORING AND REVIEW**

<p>The responsibility for establishing and maintaining the monitoring arrangements of the EIA action plan lies with the service completing the EIA. These arrangements should be built into the performance management framework.</p> <p>Monitoring arrangements for the completion of EIAs will be undertaken by the Corporate Equality &amp; Diversity Group and the oversight of the action plans will be undertaken by the Management Accountability Framework.</p>	
<p>If applicable, where will the EIA Action Plan be monitored?</p>	<p><i>e.g. via Service Management Team; Service Leadership Team; Programme Area Meetings</i></p> <p>Departmental Management Team Meeting</p>
<p>How often will the EIA Action Plan be reviewed?</p>	<p><i>e.g. quarterly as part of the MAF process</i></p> <p>Quarterly</p>
<p>When will the EIA be reviewed?</p>	<p><i>It should be reviewed at least every 3 years to meet legislative requirements</i></p> <p>31<sup>st</sup> January 2021</p>
<p>Who is responsible for carrying out this review?</p>	<p>Gavin Prescott</p>

<b>Author Signature</b>		<b>Date</b>	<b>06/12/2017</b>
<b>Head of Service/Director Signature</b>		<b>Date</b>	<b>06/12/2017</b>
<i>The above signatures signify acceptance of the ownership of the full EIA, the responsibility for the associated Action Plan (if applicable) and the responsibility to publish the completed full EIA as per the requirements of the Equality Act 2010.</i>			
<b>Departmental E&amp;D Lead Signature</b>	Gwen Kinloch	<b>Date</b>	<b>21/12/2017</b>

**DEPARTMENT OF GROWTH & DEVELOPMENT**

Item 6

**ORIGINATING SECTION: Planning (Development Management)**

**REPORT TO: Planning & Highways Committee on 18<sup>th</sup> January 2018.**

**TITLE: Petition regarding submission of Prior Notification of proposed change of use of no. 597 Bolton Road, Blackburn, BB2 4JP from retail (use class A1) to a café (use class A3).**

**(Ref: 10/17/1338)**

**APPLICANT: Mr Abdul Hussain**

**WARD: Fernhurst**

---

**Councillor: John Slater**  
**Councillor: Jacqueline Slater**  
**Councillor: Denise Gee**

---

**1.0 PURPOSE OF THE REPORT**

1.1 To inform Members of the receipt of a petition relating to the aforementioned proposal, a copy of which is available in Democratic Services.

**2.0 BACKGROUND AND DETAILS**

2.1 Prior notification reference 10/17/1338 was submitted to the Local Planning Authority on 2<sup>nd</sup> November 2017, outlining the proposed change of use of 597 Bolton Road, Blackburn from a retail use (A1) to a café / restaurant use (A3). The submission is not a traditional planning application. It is notification of the intended change of use; allowing the local authority the opportunity to assess the following matters, on the understanding that the proposal complies with the permitted development criterion set out in Schedule 2, Part 3, Class C of the (General Permitted Development) Order 2015 (as amended) (GPDO):

*(a) Noise impacts of the development*

*(b) Odour impacts of the development*

*(c) Impacts of storage and handling of waste in relation to the development*

*(d) Impacts of hours of opening of the development*

*(e) Transport and highways impact of the development*

*(f) Whether it is desirable for a building to change to a use falling within Class A3 because of the impact of the change of use-*

*(i) On adequate provision of services of the sort that may be provided by a building falling within Class A1 but only where there is a reasonable prospect of the building being used to provide such services.*

2.2 Public consultation letters were issued on 17<sup>th</sup> November 2017.

2.3 A 32 named petition was received on 8<sup>th</sup> December 2017, objecting to the proposal on a range of grounds including; inadequate parking, no provision of takeaways / food outlets, noise disturbance, litter and vermin. A copy of the petition has been placed in Democratic Services.

2.4 The proposal details the existing use of the premises as an A1 retail outlet. A site inspection and discussion with the proprietor of the business established the current use as a nail salon; a *sui generis* use. In order for the proposal to qualify as 'Permitted Development', the existing use would need to be either A1 or A2. Consequently, as the proposal fails to comply with the limitations of Schedule 2, Part 3, Class C (a) (i) of the GPDO, further assessment of the aforementioned matters, set out as (a) to (f) of Class C, is not required. Accordingly, the application was refused on 21<sup>st</sup> December 2017.

### **3.0 RECOMMENDATION**

3.1 That the petition be noted and the lead petitioner be kept informed of the recommendation once made and the formal decision relating to the notification application.

**4.0 BACKGROUND PAPERS:** None.

**5.0 CONTACT OFFICER:** Nick Blackledge – Tel. 585112.

**6.0 DATE PREPARED:** 22<sup>nd</sup> December 2017.

**ORIGINATING DIVISION:** HIGHWAYS AND TRANSPORTATION  
CAPITA

**REPORT TO:** BLACKBURN WITH DARWEN BOROUGH COUNCIL  
PLANNING AND HIGHWAYS COMMITTEE

**DATE:** 18<sup>th</sup> January 2018

**TITLE:** STOPPING UP OF THE PATH BETWEEN WEST PARK  
ROAD AND DUKES BROW

**WARD:** Corporation Park      **COUNCILLORS:** John Wright  
Arshid Mahmood  
Tasleem Fazal

---

### **1.0 PURPOSE OF THE REPORT**

To request that Members authorise the Director of HR Legal & Corporate Services to apply to the Magistrates' Court for the necessary Order for the Stopping Up of an adopted path which runs between West Park Road and Dukes Brow, Blackburn.

### **2.0 BACKGROUND AND DETAILS**

On 19<sup>th</sup> October 2017 Capita Highways received a formal request from Queen Elizabeth's Grammar School for a stopping up of a path which runs through the school grounds. The school has agreed to meet the costs of the legal process as described in the Council's Fees and Charges list.

The path, shown hatched black on the plan, is an adopted highway which runs through Queen Elizabeth's Grammar School grounds and basically bisects the school site. During a recent inspection by Ofsted the path was highlighted as a high risk to pupil safeguarding and a general risk to security. In order that the school's rating was not downgraded, the inspectors require, as a minimum, that security fencing is installed either side of this adopted path. This would greatly increase the already disruptive effect that the path has to the smooth running of the school site and also the head teacher fears that the increased lack of permeability across the site could in the event of a serious fire on site increase the risk to pupils.

The path provides access to Corporation Park from Dukes Brow but does not align with the junctions of either Hope Terrace or Adelaide Terrace with Dukes Brow. For persons wishing to gain access to the park from either of these roads, there are entrances at the north westerly and south easterly ends of West Park Road both of which can be easily accessed without the need for the path. It is reasonable to take the view that the path has no role as a public highway and is therefore eligible to be Stopped Up under the terms of Section 116 of the Highways Act 1980.

### **3.0 PROCEDURE**

The power to make a Stopping Up Order under the Highways Act is vested in the Magistrates' Court, and only the Highway Authority for the road to be stopped up may make the application. Section 116 allows the Magistrates' to make this order if they are satisfied that the highway is no longer "necessary" or it "can be diverted so as to make it nearer or more commodious to the public", In this instance the applicable reasoning for the proposed closure is on the grounds of

lack of necessity. The Court will require evidence that the road is unnecessary and that notices and consultations with all affected and interested parties, in accordance with the requirements of the Act, have been made, and that there are no outstanding objections to the making of the Order. Item 7

**4.0 IMPLICATIONS**

<b>Customer</b>	None
<b>Financial</b>	The costs of implementing the change will be met by Queen Elizabeth's Grammar school. Any future cost on the Council as the Highway Authority for maintaining this path following its closure will cease.
<b>Anti-poverty</b>	None
<b>Crime and Disorder</b>	None

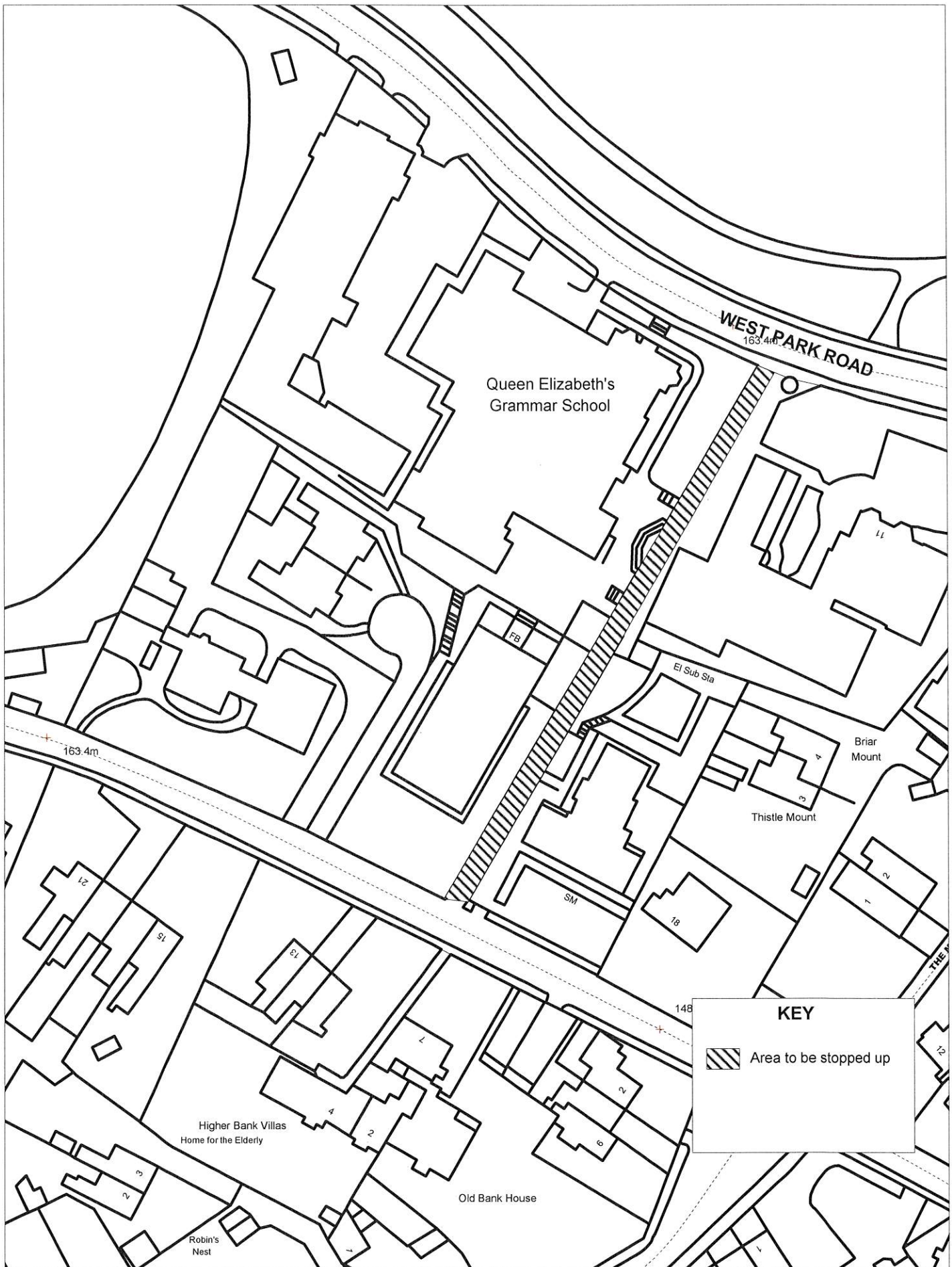
**5.0 RECOMMENDATION**

It is recommended that Committee authorise the Director of HR Legal & Corporate Services to progress with the closure of the path between West Park Road and Dukes Brow, Blackburn and if the Department believes there is a good chance that the application will be successful, to apply to the Magistrates' Court for the necessary Order.

**6.0 BACKGROUND PAPERS:** None

**7.0 CONTACT OFFICERS:** Gina Lambert

**8.0 DATE PREPARED:** 20<sup>th</sup> November 2017





**ORIGINATING DIVISION:** HIGHWAYS AND TRANSPORTATION  
CAPITA

**REPORT TO:** BLACKBURN WITH DARWEN BOROUGH COUNCIL  
PLANNING AND HIGHWAYS COMMITTEE

**DATE:** 18<sup>th</sup> January 2018

**TITLE:** STOPPING UP OF THE STEPPED PATH ADJACENT TO  
DARWEN MARKET SERVICE ROAD

**WARD:** Sunnyhurst                      **COUNCILLORS:** Pete Hollings  
Dave Smith  
Brian Taylor

---

### **1.0 PURPOSE OF THE REPORT**

To request that Members authorise the Director of HR Legal & Corporate Services to apply to the Magistrates' Court for the necessary Order for the Stopping Up of an adopted stepped path adjacent to Darwen Market service road .

### **2.0 BACKGROUND AND DETAILS**

As part of Darwen Market Redevelopment Scheme, it is proposed to stop up a stepped path which was formerly used by pedestrians to gain access to the 3 day market hall. The redevelopment design includes the creation of a new stepped path which will bring pedestrians into the newly developed square from Railway Road.

The new access will provide an equally commodious pathway for pedestrians leading them directly into the newly developed area. It will also allow the existing path to be soft landscaped to better divide the service road and service area from the redeveloped public open space. It is reasonable to take the view that the former path has no role as a public highway and is therefore eligible to be Stopped Up under the terms of Section 116 of the Highways Act 1980.

### **3.0 PROCEDURE**

The power to make a Stopping Up Order under the Highways Act is vested in the Magistrates' Court, and only the Highway Authority for the road to be stopped up may make the application. Section 116 allows the Magistrates' to make this order if they are satisfied that the Highway is no longer "necessary" or it "can be diverted so as to make it nearer or more commodious to the public", In this instance the applicable reasoning for the proposed closure is on the grounds of lack of necessity. The Court will require evidence that the road is unnecessary and that notices and consultations with all affected and interested parties, in accordance with the requirements of the Act, have been made, and that there are no outstanding objections to the making of the Order.

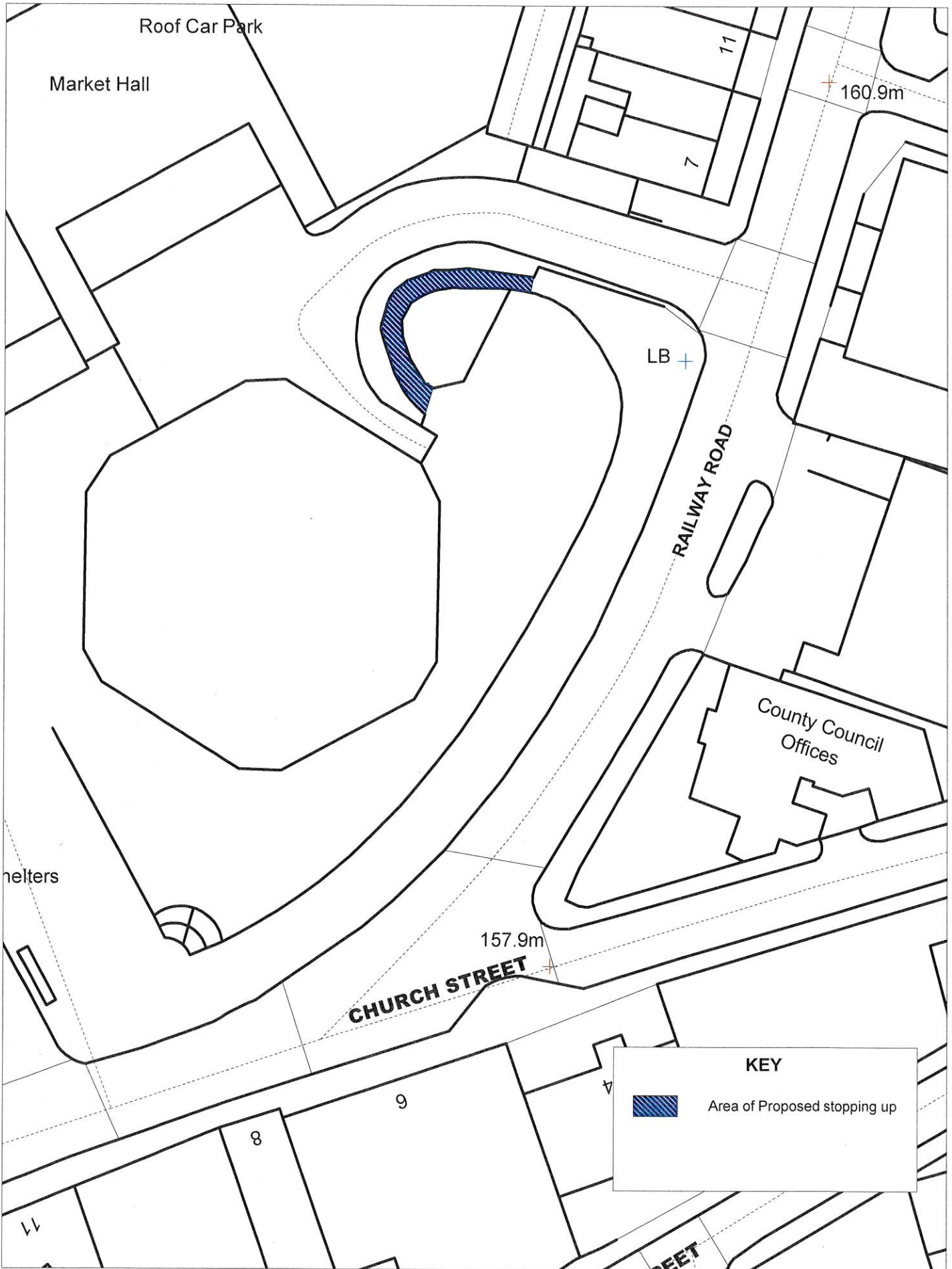
#### 4.0 IMPLICATIONS

<b>Customer</b>	None	Item 8
<b>Financial</b>	The costs of implementing the change will be included within the scheme costs	
<b>Anti-poverty</b>	None	
<b>Crime and Disorder</b>	None	

#### 5.0 RECOMMENDATION

It is recommended that Committee authorise the Director of HR Legal & Corporate Services to progress with the closure of the stepped path adjacent to Darwen Market service road and if the Department believes there is a good chance that the application will be successful, to apply to the Magistrates' Court for the necessary Order.

<b>6.0 BACKGROUND PAPERS:</b>	Plan
<b>7.0 CONTACT OFFICERS:</b>	Gina Lambert
<b>8.0 DATE PREPARED:</b>	4th January 2018



**ORIGINATING DIVISION:** HIGHWAYS AND TRANSPORTATION  
CAPITA SYMONDS

**REPORT TO:** BLACKBURN WITH DARWEN BOROUGH COUNCIL  
PLANNING AND HIGHWAYS COMMITTEE

**DATE:** 18<sup>th</sup> January 2018

**TITLE:** STOPPING UP OF ALASKA STREET SITE BLACKBURN,  
UNDER SECTION 116 OF THE HIGHWAYS ACT 1980

**WARD:** Queens Park                      **COUNCILLORS:** Salim Mulla  
Mustafa Desai  
Faryad Hussain

### 1.0 PURPOSE OF THE REPORT

The purpose of the report is to inform Members of the receipt of a request by Places for People for the Council to progress an Order for the Stopping Up of Alaska Street site to ask Members to authorise the Director of HR & Legal Services to apply to the Magistrates' Court for the necessary Order as per the attached plan.

### 2.0 BACKGROUND AND DETAILS

Capita Highways received a formal request on 28th November 2017 from Places for People, requesting the Stopping Up and gave an undertaking to meet the cost has described in the Council fees and charging list. As the highways serve no other properties within the Alaska site it is reasonable to take the view that it has no role as a public highway and is therefore eligible to be Stopped Up under the terms of S 116 of the Highways Act 1980.

### 3.0 PROCEDURE

The power to make a Stopping Up Order under the Highways Act is vested in the Magistrates Court, and only the Highway Authority for the road to be stopped up may make the application. Section 116 allows the Magistrates to make this order if they are satisfied that the Highway is no longer "necessary" or it "can be diverted so as to make it nearer or more commodious to the public", In this instance the applicable reasoning for the proposed closure is on the grounds of lack of necessity. The Court will require evidence that the road is unnecessary and that notices and consultations with all affected and interested parties, in accordance with the requirements of the Act, have been made, and that there are no outstanding objections to the making of the Order.

### 4.0 IMPLICATIONS

<b>Customer</b>	None
<b>Financial</b>	The costs of implementing the change will be met by Twin Valley Homes. Any future cost on the Council as the Highway Authority for maintaining this road following its closure will cease.
<b>Anti-poverty</b>	None
<b>Crime and Disorder</b>	None

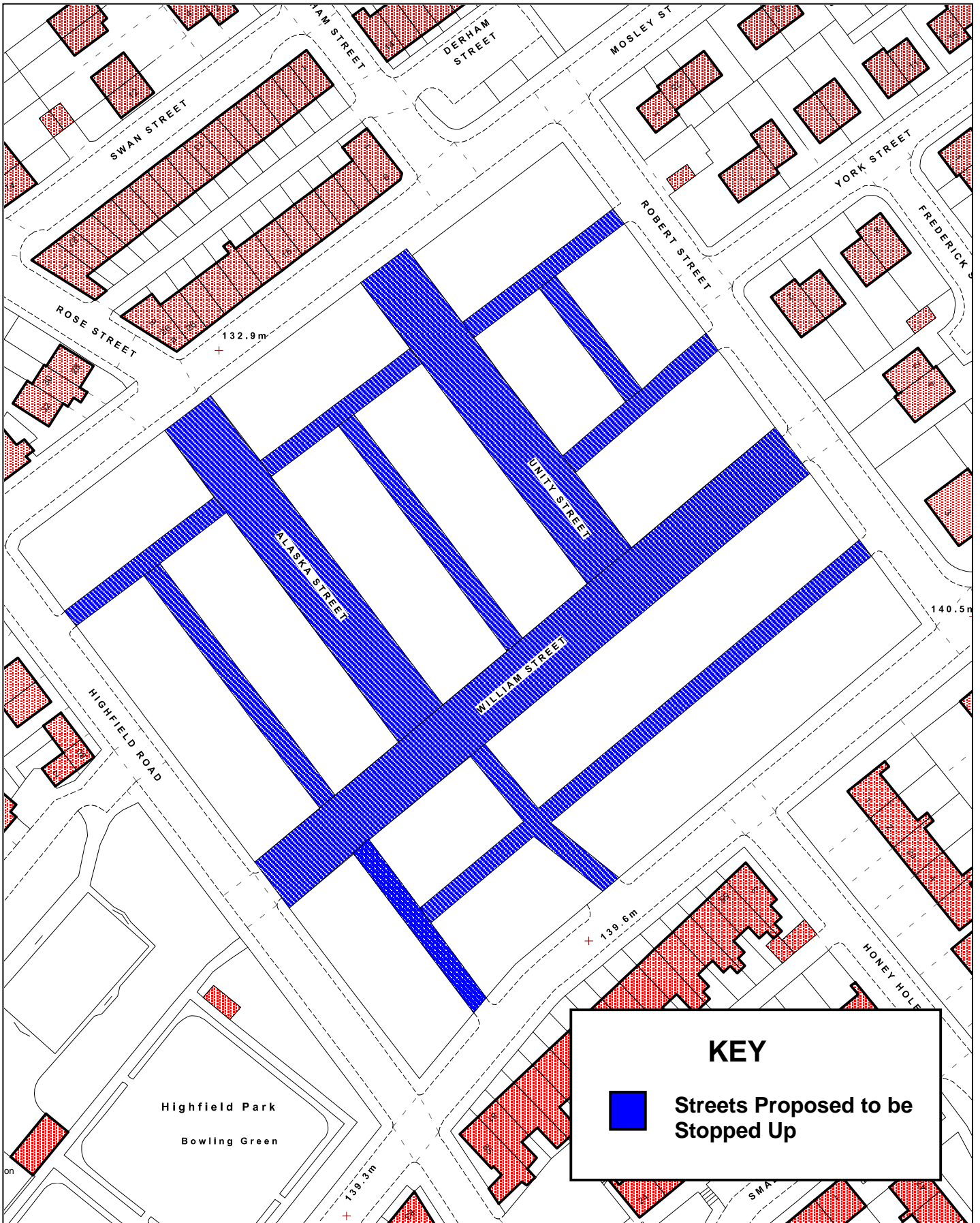
**5.0 RECOMMENDATION**

It is recommended that Committee authorise the Director of HR & Legal Services to progress with the closure of the un-named streets formerly serving a garage colony located off Gretna Street and if the Department believes there is a good chance that the application will be successful, to apply to the Magistrates' Court for the necessary Order.


**6.0 BACKGROUND PAPERS:** Plan

**7.0 CONTACT OFFICERS:** Tammy Rehman

**8.0 DATE PREPARED:** 4<sup>th</sup> January 2017



**KEY**

 Streets Proposed to be Stopped Up



**PROPOSED STOPPING UP OF ALASKA STREET AREA**

ORIGINATING DIVISION: Highways and Transportation

REPORT TO: Blackburn with Darwen Borough Council  
Planning and Highways Committee

COMMITTEE DATE: 18th January 2018

TITLE: Diversion of Public Footpaths 30, 31, 32 and 33 Blackburn

WARDS: Roe Lee

COUNCILLORS: Sylvia Liddle, Phil Riley and Ron Whittle

---

## **1. PURPOSE OF THE REPORT**

1.1 To seek committee approval for a public path order under the Town & Country Planning Act 1990, Section 257 to divert part of public footpaths 30, 31, 32 and 33 Blackburn.

## **2. BACKGROUND**

2.1 Blackburn with Darwen Borough Council received an application for planning permission for "34 No. residential units with associated vehicular access and car parking". This is registered under application reference 10/16/1398 and was been granted in October 2017.

2.2 The proposed development has an impact on the alignment of Public Footpaths 30, 31, 32 and 33 Blackburn, which may be considered to necessitate its diversion.

2.3 Blackburn with Darwen Borough Council (PROW) subsequently has received an application to divert the footpaths.

2.4 A report has been prepared which seeks to address those matters before Blackburn with Darwen Borough Council, namely the application for the public path diversion order to divert the path as shown on the plan attached to this report and enabling them to consider whether, or not to promote the Order requested.

## **3. LAW**

3.1 The relevant legislation is the Town & Country Planning Act 1990, Section 257 to divert part of public footpath. Please see attached report for further details.

## **4. DETAILS**

4.1 Please refer to accompanying report.

## **5. FINANCIAL IMPLICATIONS**

5.1 The cost of the diversion of the new path will be met by the Applicant.

**6. RECOMMENDATION**

Item 10

6.1 The committee may *either* decide to 'Promote the Order' or 'Not to Promote the Order'

6.2 It is the officer's recommendation that the legislative criteria have been met and the committee should resolve to Promote the Order.

BACKGROUND PAPERS

Plan and Report

CONTACT OFFICER

Lorraine Mellodey

DATE 4th January 2017



## **Town & Country Planning Act 1990, Section 257**

### **Application for Public Path Diversion Order**

#### **Diversion of Public Footpaths 30, 31, 32 and 33 Blackburn**

##### **1.0 Introduction**

1.1 This report seeks to assist Blackburn with Darwen Borough Council in their determination of an application to divert part of Public Footpaths 30, 31, 32 and 33 Blackburn.

##### **2.0 Background**

2.1 Blackburn with Darwen Borough Council is the Planning Authority for the area within which the paths proposed for diversion lie. They are also the Highway & Surveying Authority for the area.

2.2 Blackburn with Darwen Borough Council received an application for planning permission for the erection of a new dwellings. This is registered under application reference 10/16/1398 and has been granted.

2.3 The proposed development has an impact on the alignment of Public Footpaths 30, 31, 32 and 33 Blackburn which may be considered to necessitate its diversion.

2.4 This report seeks to address those matters before Blackburn with Darwen Borough Council, namely the application for the public path diversion order to divert the path as shown on plan 1 attached to this report. It seeks to advise the Council of the outcome non-statutory consultations, and an assessment against the relevant legislative criteria, thus enabling them to consider whether, or not to promote the Order requested.

##### **3.0 Legislative Criteria**

3.1 Paragraph 7.2 of Rights of Way Circular 01/09 re-confirms that the effect of development on a public right of way is a material consideration in the determination of applications for planning permission and local planning authorities should ensure that the potential consequences are taken into account whenever such applications are considered.

3.2 The Town and Country Planning (General Development Procedure) Order 1995 (S.I. 1995/419) provides that development affecting a public right of way must be advertised in a local newspaper and by posting a notice on the site, as part of the planning application process. This is entirely separate from any notices and advertisements required when making and confirming a subsequent extinguishment or diversion order.

3.3 Section 257 of the 1990 Act gives local planning authorities the power to make orders to extinguish or divert footpaths, bridleways or restricted byways where it is necessary to enable development for which planning permission has been granted or development by a government department to be carried out.

#### **4.0 Assessment against the Legislative Criteria**

4.1 The decision whether or not to promote a Public Path Diversion Order is discretionary, and does not follow on automatically from the granting of planning permission. There may however be a reasonable expectation, on the part of applicants, that if the Planning Authority has granted planning permission, having considered the impact that the development will have on rights of way across the site as part of that process, they will subsequently be supportive of an application to divert the paths concerned.

4.2 The effect of the proposed development on the public right of way is a material consideration in the determination of the planning application, and therefore should have been considered as part of this process. It is however possible that such matters, so far as they relate to the proposed diversion, may be re-opened, should any Order be subject to duly lodged objections as part of the statutory process.

4.3 For the purposes of determining the applications for the Public Path Diversion Orders the Authority must be satisfied that:

- a) there is a valid planning consent in place;
- b) in order to enable the approved development to take place, it is necessary to divert the public right of way.

4.4 With regard to the first of the criteria, planning consent has been granted by the Planning Authority.

4.5 An assessment of the plans for the proposed development reveals that the current Definitive Map alignment of the path will be, in part built over. As a result it may be reasonable to conclude that the diversion of the path is necessary in order to allow the works to be lawfully undertaken.

#### **5.0 Consultations**

5.1 Consultations have been undertaken with user/interest groups in the area. No objections have been received in respect of the proposals.

#### **6.0 Decision Required**

6.1 If, having considered all of the relevant information, the Authority is minded to approve the application to divert the footpath they should resolve that subject to planning consent being granted:

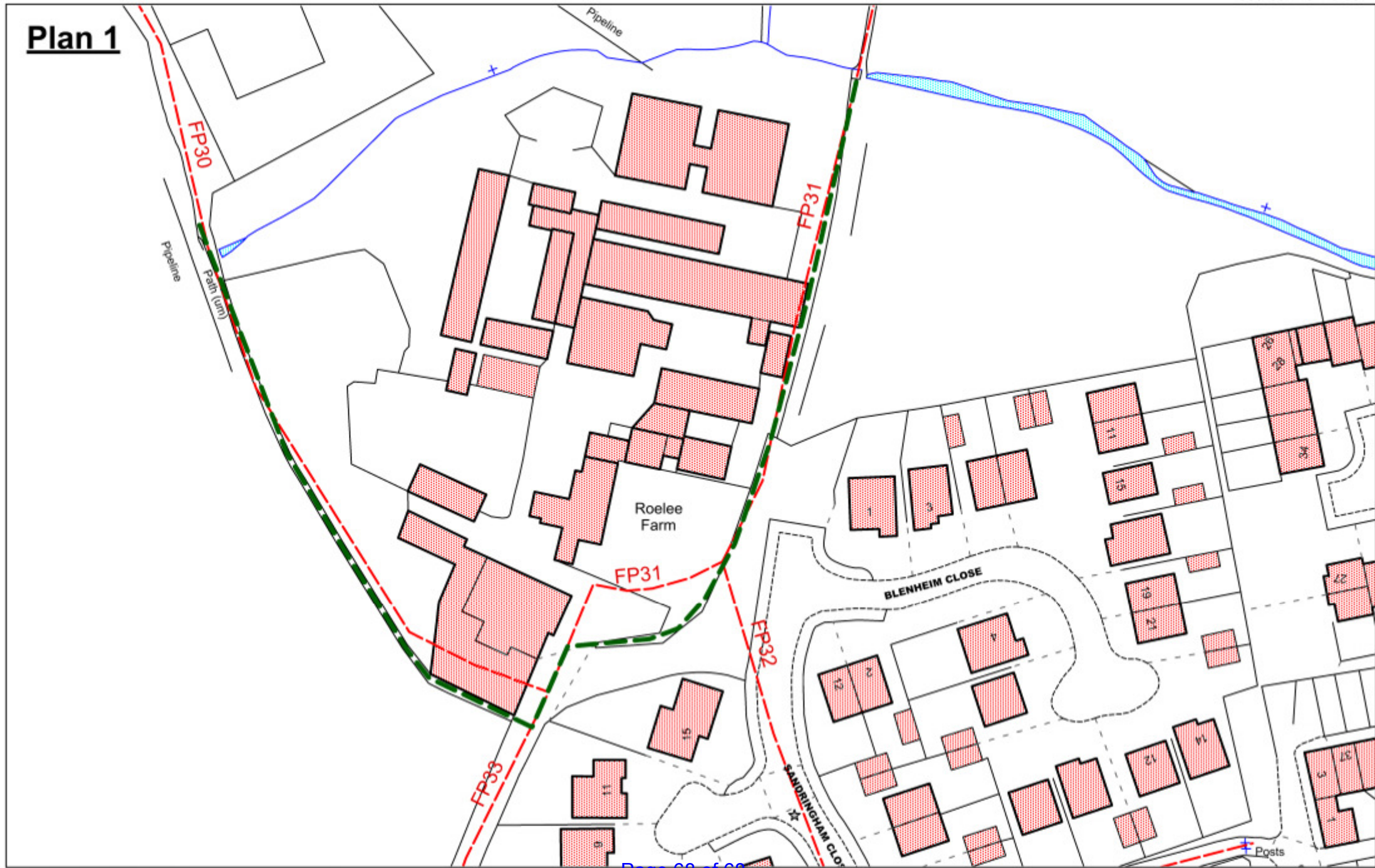
- a) a Public Path Diversion Order be made pursuant to Section 257 of the Town and Country Planning Act 1990 to divert Public Footpath Numbers 30, 31, 32 and 33 Blackburn as shown on Plan 1.
- b) if no objections are duly lodged, the Authority confirm the Orders;
- or
- c) if objections are duly lodged, and not subsequently withdrawn, the Orders be passed to the Secretary of State for confirmation.

6.2 If, having considered all of the relevant information, the Authority are minded to refuse the application, the applicant should be advised of this decision, and that there are no rights of appeal.

## **7.0 Recommendation**

7.1 Whilst the Authority (Planning and Highways Committee) must make its own decision whether or not to promote the requested Order, it is Officer' view that the legislative tests appear to be satisfied, and therefore the Order may be promoted and 'made'.

# Plan 1



Printed on the 05/01/2018

© Crown copyright and database rights 2016.  
 Ordnance Survey licence number: 100019493  
 Indication of PROW - EOA

**PROW - status**

- - - Public footpath which has been altered by order
- - - Path