# REPORT OF THE DIRECTOR Plan No: 10/17/1271

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

- 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

- 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 wellbeing of the local area.
- 3.5.15 <u>Design</u>. 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:
  - 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 <u>Highways</u>. 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 is 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 <u>Legal</u>. 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

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 Ali	221 Whylley NEW RO	
M. AGAZ	119 Whalley wew Road	
M-Imran	227 whalley now to	
ASHFA & HUSCAN	32 KIRKLAND CLOSERSIS	
TASKIN TAKAH	158 LABURNAMRO BRIS	
Kings Peri Peri	217 Whalley Molen Rd	
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Farhan	180 Cedar St	
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Name	Address
KNYND	152 Caboun Road
M. Afraal	36 Providence St
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Mrs saddert	20 Bancroft
Mr Sasad Hussin	40 providence St
musseret thisseci	52 Rhyl Avenue
Aysta Hussain	154 ST James rd
Aukhsona Shabon	127 ST James id
Shudab Akhter	209 whaller mird
Nasim Akhter	207 whalley minds
HAMZA KHAN	188 Whalley New RD
Mohamud Al	160 LAburnum Rd
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Name	Address
2 smult Petel	35 Oxidowater Drive
Bahar Hussain	37 Brdyewater Drive.
N. PATEL	41 BRIDGELIATER DRIVE
Y. Ghanchi	45 Bridgewater Drive
M-MALMOCO	43. Kide We lee Rore
i. Kyan	49 BRIDGE WATER
7. Patel	33 Bridgewater DY
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H.BANGDINALA	31 BRIDGEWATER
M. TAHIR HOSSAN	29 BRIDGEWATER DR.
	23 8510HEMATER DIS
S. SHAIKH	22 BRIDGEWATER DR
K. Callow	24 Bridgewaler DR
HUGO LOBO	6 GLADSTONE Way
5	48 Kirkend Clase

## Petition - 129 signatures

# 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.

- smoking and drug-taking
- distributing/selling drugs
- consuming alcoholic and non-alcoholic drinks and dumping cans/bottles
- eating takeaway food and dumping food/food packaging/bags
- littering e.g. household waste, furniture 

  Burglary and theft
- playing loud music e.g. sat in a car
- causing damage to public and private property
- hanging around outside residents homes, both on foot and in cars, at all times of the day

- driving cars at high speed e.g. over 50mph, and doing wheel spins
- using the area as a meeting place for large groups of young males
- use of threatening language or behaviour towards residents
- vandalism and graffiti

Full name	Address
Mohamud Ali	160 LABURNUM
Abdullahi Yusuf	
HAJAT NORAT	158 CASURWUM
SalimaNoral	158 LABURNUM
ASIF poral	1 SP 11
CrangWelsh	Laburnum Road
Sophic Booth	154 Laburnum Road
HOS MNRIMO	Labor Rose
M Bang[	148 LAWENVA
H Ba-(1	11
Usaid. Hodekon	146 Laburnum Road

Full name	Address
Uzair-H	11 Labornan
4 2000	144 Casumus
L. SAOHAU	142 LABURHUM REVAID.
A-S2	7-119
mrs.A.SADHAN.	( (
Marinta Carri	140 LABURNUM
YAHYA BATEL	ROAD
TASNEEM PATEL	1(
SARA HERS	Road Road
DAVID HORD	Road.
Zohra	(30 Latherne
Seedat	Road
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Bencher i) Mohamod	Rd Laburnum

Full name	Address
Amer SheikH	126 Laburnum
Jason Chang	15 Gladston Way
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MUHAMMED PATEL	17 BRIDGEWATER BRIVE
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MUBARAK BANGOIWANA	31 BRIDGEWATER DRIVE	SANA
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Ismail Churdat	28 Brillard	Purstian P77
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UZMA SHAIKH	8, KIRKLAND COURT
Hary Williams	14 KIRKLAND
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TAVID HUSSAIN	22 KIRKLAND COVRT
RAHNET HUSSAN	22 KIRLLAND LOVRT
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