

**Time and Date**

2.00 pm on Thursday, 27th September, 2018

Place

Committee Room 3 - Council House

Public Business**1. Apologies for Absence****2. Declarations of Interest****3. Exclusion of Press and Public**

To consider whether to exclude press and public for items of private business for the reasons shown in the report.

4. Members Declarations of Contact on Planning Applications

Members are reminded that contacts about any planning applications on this agenda must, unless reported to this meeting by the Head of Planning, be declared before the application is considered.

5. Minutes of Previous Meeting held on 30th August, 2018 (Pages 3 - 6)**6. Late Representations**

To be circulated at the meeting.

7. Outstanding Issues

There are no outstanding issues.

8. Application FUL 2018 1596 - 37 Pershore Place (Pages 7 - 16)

Report of the Head of Planning and Regulation

9. Application S73 2018 2395 - 84 Dawlish Drive (Pages 17 - 24)

Report of the Head of Planning and Regulation

10. Wildlife and Countryside Act 1981 Section 53: Application to add a number of Public Footpaths to the Definitive Map and Statement for Coventry on land lying between Leaf Lane and the A444 Stivichall Cheylesmore by pass (Pages 25 - 42)

Report of the Deputy Chief Executive (Place)

11. **Any other items of public business which the Chair decides to take as matters of urgency because of the special circumstances involved**

Private Business

12. **Enforcement Report** (Pages 43 - 50)

Report of the Director of Finance & Corporate Services and Head of Planning & Regulation

13. **Any other items of private business which the Chair decides to take as matters of urgency because of the special circumstances involved**

Martin Yardley, Executive Director, Place, Council House Coventry

Wednesday, 19 September 2018

Note: The person to contact about the agenda and documents for this meeting is Usha Patel

Membership: Councillors N Akhtar, P Akhtar, R Auluck, R Bailey, S Bains, G Crookes, L Harvard (Chair), J McNicholas, D Skinner, T Skipper and H Sweet (Deputy Chair)

By invitation: Councillor E Ruane

Please note: a hearing loop is available in the committee rooms

If you require a British Sign Language interpreter for this meeting
OR if you would like this information in another format or
language please contact us.

Usha Patel

Tel: 024 7683 3198

Email: usha.patel@coventry.gov.uk

Coventry City Council
Minutes of the Meeting of Planning Committee held at 2.00 pm on Thursday, 30 August 2018

Present:

Members: Councillor L Harvard (Chair)
Councillor N Akhtar
Councillor P Akhtar
Councillor R Auluck
Councillor R Bailey
Councillor S Bains
Councillor G Crookes
Councillor J McNicholas
Councillor D Skinner
Councillor T Skipper
Councillor H Sweet

Employees (by Directorate):

Place: C Horton, A Lynch, V Sharma, C Sinclair, C Whitehouse,

Public Business

39. Declarations of Interest

There were no declarations of interest.

40. Members Declarations of Contact on Planning Applications

The Members named declared a contact on the following applications as indicated:

Application No.	Councillor	From
FUL/2018/1361 – Land to the West of Cryfield Heights, Gibbet Hill Road	Councillor Crookes	Ward Councillor colleagues

41. Minutes of the meeting held on 2 August 2018

The minutes of the meeting held on 2 August 2018 were signed as a true record.

42. Late Representations

The Committee noted a tabled report which summarised late representations and responses on the following:

Application No.	Site	Minute No.
FUL/2017/1532	11-12 King William Street	44

FUL/2018/1361	Land to the west of Cryfield Heights, Gibbet Hill Road	45
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43. **Outstanding Issues**

There were no outstanding issues.

44. **Application FUL/2017/1543 - 11-12 King William Street**

The Committee considered a report of the Head of Planning and Regulation detailing the above retrospective application for extension and change of use to banqueting suite and conference centre, erection of boundary wall and railings and change of use of amenity space to car parking. The application was recommended for refusal.

The Late Representation report indicated that amended drawings had been received to provide a floor layout as viewed on site on 24 August 2018 and removal of roof above the side porch and replaced with flat glazed roof. Revised plans had been received to provide low level shrubs within the existing boundary.

Following consideration of the report and matters raised at the meeting the Committee agreed that the retrospective application be deferred to a future meeting. The applicant is to be given one month to submit further information to resolve the matters of concern raised in the report and at the meeting. These include:

- Car park layout
- Car park management plan
- Cycle parking
- Waste collection management plan
- Details of cooking/heating, odour control, extraction
- Travel plan with the inclusion of alternative parking
- Party wall insulation
- Noise report update to include exact number of occupiers
- Noise report update to include confirmed hours of operation

RESOLVED that application FUL/2017/1543 be deferred to give the applicant one month to submit additional information to seek resolution of outstanding matters

45. **Application FUL/2018/1361 - Land to the west of Cryfield Heights, Gibbet Hill Road**

The Committee considered a report of the Head of Planning and Regulation detailing the above application for erection of 16 dwellings and associated access, landscaping, drainage and substation. The application was recommended for approval.

Two registered speakers attended the meeting and spoke in respect of their objections to the application. The applicant's representative also attended the meeting and spoke in support of the application.

The Late Representation report included an additional condition in respect of utilising local people for construction employment in line with Council policy.

RESOLVED that planning permission be granted in respect of application FUL/2018/1361 subject to the completion of a S106 Agreement to secure the contributions listed within the report and subject to conditions including an additional condition that a scheme for targeting and utilising local people be submitted to and approved in writing by the local planning authority, thereafter the scheme shall be implemented in full accordance with the approved details.

46. Any other items of public business which the Chair decides to take as matters of urgency because of the special circumstances involved

There were no other items of business.

(Meeting closed at 4.20 pm)

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Planning Committee Report	
Planning Ref:	FUL/2018/1596
Site:	37 Pershore Place, Coventry
Ward:	Whoberley
Proposal:	Change of use from single dwelling house (use Class C3) to 8 bedroom House in Multiple Occupation (Use Class Sui Generis)
Case Officer:	Mary-Ann Jones

SUMMARY

The application is for the change of use of a dwellinghouse to an 8 bedrooed House in Multiple occupation including construction of parking area to front of dwelling.

Key issues include the principle of the change of use to a House in Multiple Occupation (HiMO) and the acceptability of the parking provision on-site and compliance with parking standards (Appendix 5 of Coventry Local Plan, 2016).

BACKGROUND

The alterations and extensions to the property which are currently being undertaken (rear dormer window and single storey rear extension) are permitted development and are not the subject of this proposal. A Lawful Development Certificate has been granted in 2017 confirming the alterations are permitted development.

An application (FUL/2018/1011) was withdrawn earlier this year following an objection from the Local Highways Authority on basis of lack of supporting evidence to demonstrate the proposal would not cause harm to the existing on-street parking situation to the immediate locality.

This current proposal now includes additional on-site parking (three spaces off road) and is supported by a parking survey, which was requested by the Local Highways Authority. The Local Highway Authority has now removed their formal objection.

KEY FACTS

Reason for report to committee:	Cllr Tim Sawdon has requested the application be determined at planning committee. He has raised objections on the grounds of overuse of the site, inadequate parking which will cause harm to the occupiers of nearby properties.
Current use of site:	Dwellinghouse (Use Class C3)
Proposed use of site:	Larger House in Multiple Occupation (Use Class Sui Generis)

RECOMMENDATION

Planning committee are recommended to grant planning permission subject to conditions.

REASON FOR DECISION

- The proposal will not adversely impact upon visual amenity or the amenity of neighbours.
- The proposal accords with Policies: H11, DE1, AC3 of the Coventry Local Plan 2016, together with the aims of the NPPF

BACKGROUND

APPLICATION PROPOSAL

The application is for the change of use of a dwellinghouse to an 8 bedroomed House in Multiple Occupation. External alterations are limited to the parking area to the front of the property. A loft conversion with rear dormer window and a single storey rear extension is under construction at the property, however these are permitted development and are not the subject of the proposal.

External changes to the application site relate to the creation of an area of parking to the front of the property with three car parking spaces. There is also indicated to be retaining walls to the parking area. Cycle parking will be located to the rear of the property.

SITE DESCRIPTION

The application site is a mid-terraced dwelling located on the western side of Pershore Place. The area is predominantly residential in character.

Parking in the locality is either on-street or on the forecourt of some dwellings.

PLANNING HISTORY

There have been a number of historic planning applications on this site; the following are the most recent/relevant:

Application Number	Description of Development	Decision and Date
FUL/2018/1011	Change of use from single dwelling house to 8 bedroom House in Multiple Occupation (Use Class Sui Generis)	Withdrawn
LDCP/2017/2131	Application for a Lawful Development Certificate for proposed loft conversion with dormer to rear, velux windows to front and single storey rear extension	Granted 16/01/2017

POLICY

National Policy Guidance

National Planning Policy Framework (NPPF). The revised NPPF published in July 2018 sets out the Government's planning policies for England and how these are expected to be applied. It sets out the Government's requirements for the planning system only to the extent that is relevant, proportionate and necessary to do so. The NPPF promotes sustainable development and good design is recognised as a key aspect of this.

The National Planning Practice Guidance (NPPG) 2018, this adds further context to the NPPF and it is intended that the two documents are read together.

Local Policy Guidance

The current local policy is provided within the Coventry Local Plan 2016, which was adopted by Coventry City Council on 6th December 2017. Relevant policy relating to this application is:

- Policy H5: Managing Existing Housing Stock
- Policy H11: Houses in Multiple Occupation

Policy DE1 Ensuring High Quality Design
Policy AC1: Accessible Transport Network
Policy AC2 Road Network
Policy AC3: Demand Management (Including Appendix 5 of the CLP, 2016)
Policy AC4: Walking and Cycling

Supplementary Planning Guidance/ Documents (SPG/ SPD):

Appendix 5: Car and cycle parking standards

CONSULTATION

No objections subject to conditions have been received from:

- Highways – conditions relating to cycle parking and compliance with proposed plans.

No objections have been received from:

- Environmental protection.
- Waste services – note: the bins required for this development are domestic waste and recycling. Bin sizes should be 2 x 240 and 1 x 140 bins and the same for recycling (6 bins in total)

Immediate neighbours and local councillors have been notified; a site notice was posted on 13/07/2018

No letters of objection have been received from local residents.

Cllr Tim Sawdon has raised objections on the following material planning grounds;

- a) The kitchen is far too small for 8 people
- b) There are no communal facilities; nowhere to eat a meal
- c) The parking facilities are inadequate. The 'traffic surveys' were conducted in June when the students had left and were carried out in the evening when most students/staff who use the area for parking would have gone home in any case. There is considerable unrest amongst local residents who are campaigning for parking restrictions which they would not be doing if the parking was adequate. This runs a coach and horses through the 'survey'. It is highly unlikely that the occupants of the property would be using their cars to travel to the University and so would leave them parked all day outside the property in any case. The suggested limit of 3 is unenforceable.
- d) There does not appear to be adequate bin storage for 8 people

One letter of support have been received, raising the following material planning considerations:

- e) High quality development;
- f) Support provision of car parking to the front of the site.

Any further comments received will be reported within late representations.

APPRAISAL

The main issues in determining this application are

- Principle of development;
- Impact on amenity – Including parking provision;
- Impact on the of the area;
- Local services.

Principle of development

Policy H11: Homes in Multiple Occupation (HiMO's) states -

“The development of purpose built HiMO's or the conversion of existing homes or non-residential properties to large HiMO's will not be permitted in areas where the proposals would materially harm:

- a) The amenities of occupiers of nearby properties (including the provision of suitable parking provisions);
- b) The appearance or character of an area; and
- c) Local services.”

In respect of the above points, the following report will demonstrate how the proposal is considered to accord with the Policy H11 and is therefore the principle of change of use to an 8 bedrooomed house in multiple occupation acceptable.

Impact on amenity – Including parking provision

Residential amenity

Regarding the residential amenity, Criteria a) of Policy H11 requires that HiMOs must ensure the amenities of occupiers of nearby properties are protected. No objections have been raised in terms of the intensification of the residential use of the property, however this must be a consideration in the assessment of an application of this type. The existing dwelling house could easily accommodate up to 6 persons under Use Class C4 without the need for planning permission. This change of use proposes an increase in 2 persons.

When considering noise and disturbance in a recent appeal for an 8 bedroom HMO nearby at 36 Cannon Hill Road (Ref: APP/U4610/W/16/3152119 and dated 19 September 2016), the Inspector was “not persuaded that the additional noise and general disturbance experienced by local residents from the occupation by 8 people is necessarily greater than from a group of unrelated individuals occupying No 36 as a 6-bedroom HMO.

It is therefore considered that this increase in two persons is unlikely to result in demonstrable or severe harm to nearby residential amenity. Furthermore, Environmental Protection Officers have raised no objection to the proposal and are satisfied that no issues regarding noise and disturbance will result from the propose change of use. It is therefore considered the proposal is acceptable in terms of the impact on residential amenity in this respect and the proposal accords with Development Plan Polices.

One objection has been received which raised concerns that the kitchen is far too small for 8 people and there are no communal facilities and nowhere to eat a meal. The council does not have adopted internal space standards therefore unfortunately this cannot be a material planning consideration in the determination of this proposal.

Bin storage

One objection has been received which raises concerns regarding the under provision of bin storage at the site. Bin storage details will be secured by condition, however it is considered there is adequate space to accommodate bin storage to the front of the property in a manner which will not cause harm to the visual amenity of the streetscene. A total of 4 x 240 litre bins and 2 x 140 litre bins are required (6 bins in total) These could easily be accommodated in two Wheelie bin storage areas either side of the front door. It should also be noted other properties in the street keep wheelie bins at the front of properties, without the benefit of wheelie bin storage areas. Waste services have raised no concerns to the proposal.

Parking provision

Policy AC1 (Accessible Transport Network) of the Coventry Local Plan requires development which is expected to generate additional trips to integrate with existing transport networks and Policy AC3 (Demand Management) requires the provision of car parking to be assessed on the basis of the Parking Standards set out in Appendix 5.

The standards in the City Council's Local Plan require a maximum of 0.75 car parking spaces per bedroom and 1 cycle space per 3 bedrooms. This equates to a maximum of 6 car parking spaces and 3 cycle spaces for the proposed 8 bedroomed HiMO.

The application proposes 3 car parking spaces on the forecourt to the dwelling, therefore there is an under provision of 3 car parking spaces. There will be 5 cycle parking spaces located to the rear, which is two additional spaces over the policy requirements.

Appendix 5 states, it is recognised that in exceptional circumstances there may be occasions when it could be appropriate to have a lower or higher level of parking depending on the specific details of the application. In all cases, any departures from the standards should be fully and appropriately justified with detailed supporting evidence.

- Surveys of parking capacity and occupancy levels on surrounding streets and parking areas.
- Consideration of likely trip generation and parking accumulations for the proposed development with supporting evidence.
- Details of how the parking will be managed and how that will mitigate any under or over provision.

The proposal is supported by a parking survey which has demonstrated there is sufficient capacity within the immediate vicinity to accommodate the additional 3 spaces within the on street parking areas.

The survey was carried out between 5th to 7th March and then again on 5th and 8th June 2018. The Surveys were carried out at various times on a total of 5 separate evenings to assess the availability of on-street car parking.

The parking survey results are as follows;

Parking Survey Results for survey between 5th to 7th March 2018

- Pershore Place (between Nos.27 and 54) has 15 spaces available.

Monday 5 March 2018 at 18.55 hours - 9 parked cars = 6 spaces available

Tuesday 6 March 2018 at 19.30 hours - 8 parked cars = 7 spaces available

Wednesday 7 March 2018 at 19.20 hours - 8 parked cars = 7 spaces available

Parking Survey results for survey 5th and 8th June 2018

- Pershore Place East (to the east of Merynton Avenue) has 21 spaces available

Tuesday 5 June between 17.15 - 17.30 hours - 11 cars parked = 10 spaces available

Tuesday 5 June between 18.00 - 18.15 hours - 11-14 cars parked = 7-10 spaces available

Tuesday 5 June between 18.40 - 18.55 hours - 12-13 cars parked = 8-9 spaces available

Tuesday 5 June between 19.35 - 19.50 hours - 13 cars parked = 8 spaces available

Friday 8 June between 17.25 - 17.40 hours - 9 cars parked = 12 spaces available

Friday 8 June between 18.10 - 18.25 hours - 12-13 cars parked = 8-9 spaces available

Friday 8 June between 18.45 - 19.00 hours - 12 cars parked = 9 spaces available
Friday 8 June between 19.25 - 19.30 hours - 12 cars parked = 9 spaces available

- Pershore Place West (to the west of Merynton Avenue) has 27 spaces available

Tuesday 5 June between 17.15 - 17.30 hours - 12 cars parked = 15 spaces available
Tuesday 5 June between 18.00 - 18.15 hours - 14 cars parked = 13 spaces available
Tuesday 5 June between 18.40 - 18.55 hours - 17 cars parked = 10 spaces available
Tuesday 5 June between 19.35 - 19.50 hours - 17 cars parked = 10 spaces available

Friday 8 June between 17.25 - 17.40 hours - 13 cars parked = 14 spaces available
Friday 8 June between 18.10 - 18.25 hours - 18 cars parked = 9 spaces available
Friday 8 June between 18.45 - 19.00 hours - 17-18 cars parked = 9-10 spaces available
Friday 8 June between 19.25 - 19.30 hours - 17 cars parked = 10 spaces available

- Orlescote Road has 36 spaces available

Tuesday 5 June between 17.15 - 17.30 hours - 12 cars parked = 24 spaces available
Tuesday 5 June between 18.00 - 18.15 hours - 15 cars parked = 21 spaces available
Tuesday 5 June between 18.40 - 18.55 hours - 16 cars parked = 20 spaces available
Tuesday 5 June between 19.35 - 19.50 hours - 17 cars parked = 19 spaces available

Friday 8 June between 17.25 - 17.40 hours - 18 cars parked = 18 spaces available
Friday 8 June between 18.10 - 18.25 hours - 18 cars parked = 18 spaces available
Friday 8 June between 18.45 - 19.00 hours - 17 cars parked = 19 spaces available
Friday 8 June between 19.25 - 19.30 hours - 20 cars parked = 16 spaces available

- Merynton Avenue (up to its junctions with Sefton Road) has 8 spaces available

Tuesday 5 June between 17.15 - 17.30 hours - 6 cars parked = 2 spaces available
Tuesday 5 June between 18.00 - 18.15 hours - 6 cars parked = 2 spaces available
Tuesday 5 June between 18.40 - 18.55 hours - 6 cars parked = 2 spaces available
Tuesday 5 June between 19.35 - 19.50 hours - 6 cars parked = 2 spaces available

Friday 8 June between 17.25 - 17.40 hours - 5 cars parked = 3 spaces available
Friday 8 June between 18.10 - 18.25 hours - 5 cars parked = 3 spaces available
Friday 8 June between 18.45 - 19.00 hours - 4 cars parked = 4 spaces available
Friday 8 June between 19.25 - 19.30 hours - 5 cars parked = 3 spaces available

The parking surveys conclude that there is regularly capacity to park on street and that the impact of the proposed development on the highway network would not be severe. The Local Highways Authority support the findings of the survey and have therefore raised no objections to the proposed change of use. On the basis of the addition of 3 parking spaces included on-site and the results of the parking survey, it is considered the proposal accords with the Coventry Local Plan, 2016 and Appendix 5 car and cycle parking requirements, and the proposal is considered acceptable in response of Highway safety.

One objection has been received on the grounds that the University term time was over at the time the parking survey was carried out in June. The closest university to the application site is Warwick University. The summer term finished on 30th June 2018, therefore Highways officers are content the survey was carried out at the appropriate time.

In terms of the Policy H11 – Houses in Multiple Occupation, it is considered the proposal complies with Criterion a) and the proposal is acceptable in terms of the impact on residential amenity, including parking.

Impact on the character of the area

The proposal will not have any physical alterations to the dwelling house itself, however there will be a parking court constructed to the front of the dwellinghouse. At the time of writing this report this was part constructed.

At the time of writing the report the parking area had been part constructed, however not in accordance with the proposed drawings. Tall brick piers have been erected on top of the retaining walls to the driveway. These brick walls and piers are over 1 metre in height and require planning permission. It is considered the brick piers are not an appropriate feature within the streetscene and introduce an alien and incongruous feature to the locality. Furthermore the parking area and path has been constructed in the wrong location and the surfacing material for the driveway is gravel. Highways officers consider gravel is an inappropriate material for a driveway therefore have requested this element to be amended. The agent has therefore agreed to remove the pillars and change the driveway construction. A condition is recommended to be attached to the decision notice which requires the removal of the brick piers and resurfacing of the driveway within two months of any decision being issued.

Subject to the removal of brick piers and replacement of gravel with permeable hard surfacing the proposal is considered acceptable in terms of the impact on the character of the area and is considered acceptable in this respect.

Local services.

The application site is considered to be located within a highly sustainable location with good access to local services. Cannon Hill Road and Charter Avenue are bus routes giving access to the City Centre and Warwick University (services 18 and 18A) and there are stops located on Tutbury Avenue near Orlescote Road within easy reach of the site. There are also safe and convenient walking and cycling routes to Warwick University campus (which is 20 minutes and 7 minutes away, respectively). There are shops at Cannon Park Centre and local amenities within easy walking distance.

It is therefore considered the proposal criterion c) of Policy H11 and the proposal is acceptable in this respect.

Equality Implications

The proposal has been reviewed and it is considered there are no known equality implications as a result of this proposal, in accordance with the Equality Act 2010.

Conclusion

The proposed development is considered to be acceptable in principle and will not result in any significant impact upon neighbour amenity, highway safety, ecology or infrastructure, subject to relevant conditions. The reason for Coventry City Council granting planning permission is because the development is in accordance with: Policies H5, H11, DE1, AC1, AC2, AC3 and AC4 of the Coventry Local Plan 2016, together with the aims of the NPPF.

CONDITIONS/REASON

1. The development hereby permitted shall begin no later than three years from the date of this permission.

Reason: *To comply with Section 91 of the Town and Country Planning Act 1990.*

2. The development hereby permitted shall be carried out in accordance with the following approved documents;
Existing and proposed plans DWG 26/07/17-01 REV E;
Parking survey carried out by Sykes Planning, Dated 09/06/2018;
Planning Report, prepared by Sykes Planning, Dated 09/06/2018.

Reason: *For the avoidance of doubt and in the interests of proper planning.*

3. Within two months of the date of this decision notice alternative bin storage areas and access ramps shall be provided and made available for use in full accordance with details which have been submitted to and approved in writing by the local planning authority; and once provided such bin storage facilities and access shall not be removed and shall remain available for use at all times. All bins which serve properties within the red line site area must be stored within the approved bin storage area and not positioned on the public highway, unless on bin collection days.

Reason: *In the interests of residential and visual amenity in accordance with Policy DE1 and EM8 of the Coventry Development Plan, 2016 together with the NPPF*

4. Within two months of the date of this decision notice details of cycle parking shall be provided and made available for use in full accordance with details which have been submitted to and approved in writing by the local planning authority; and once provided such cycle parking facilities shall not be removed and shall remain available for use at all times.

Reason: *In the interests of encouraging the use of alternative modes of transport with the aim of creating a more sustainable city in accordance with Policies AC1, AC2, AC3 and AC4 and Supplementary Planning document, 'Delivering a More Sustainable City', of the Coventry Local Plan, 2016*

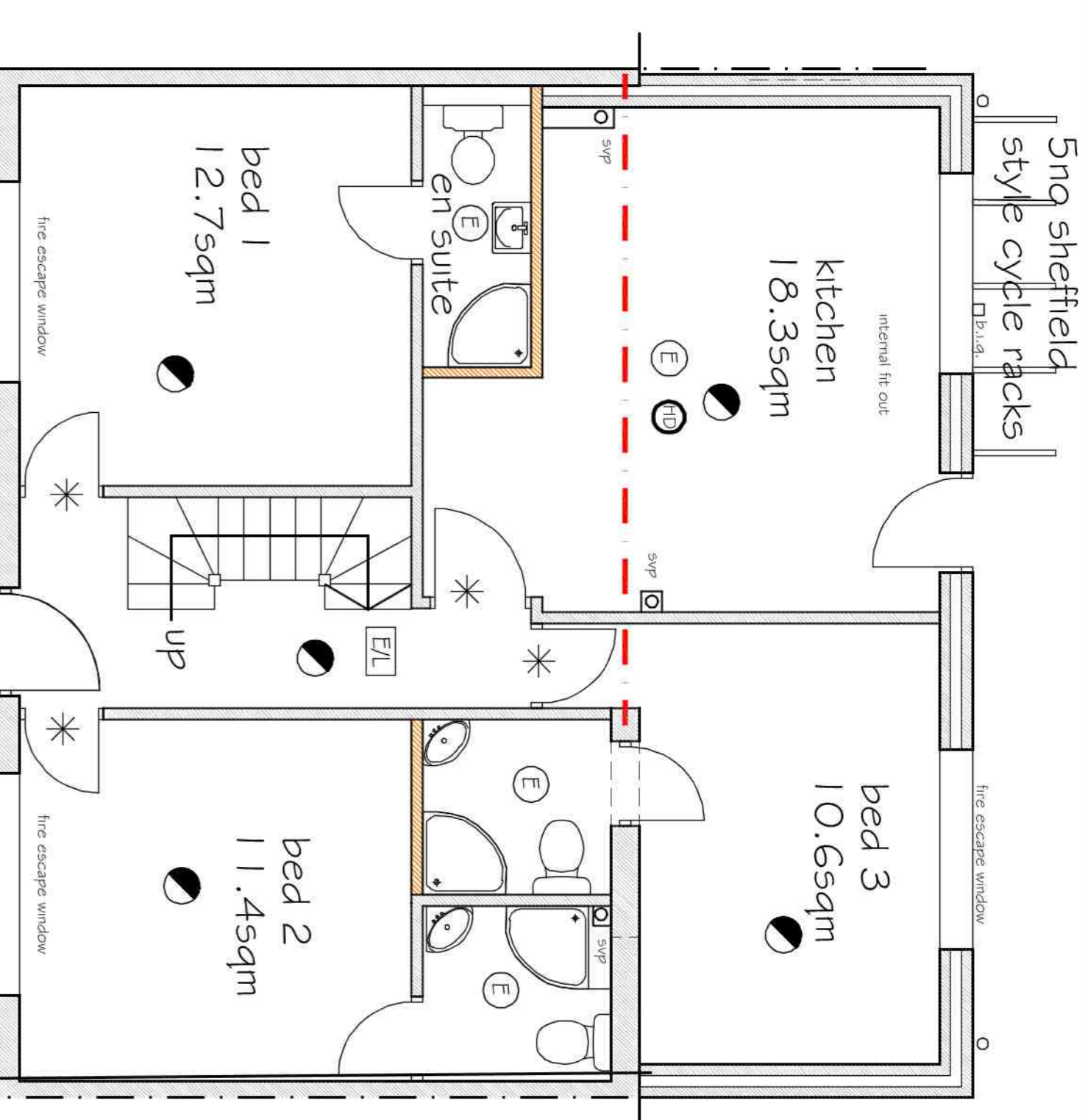
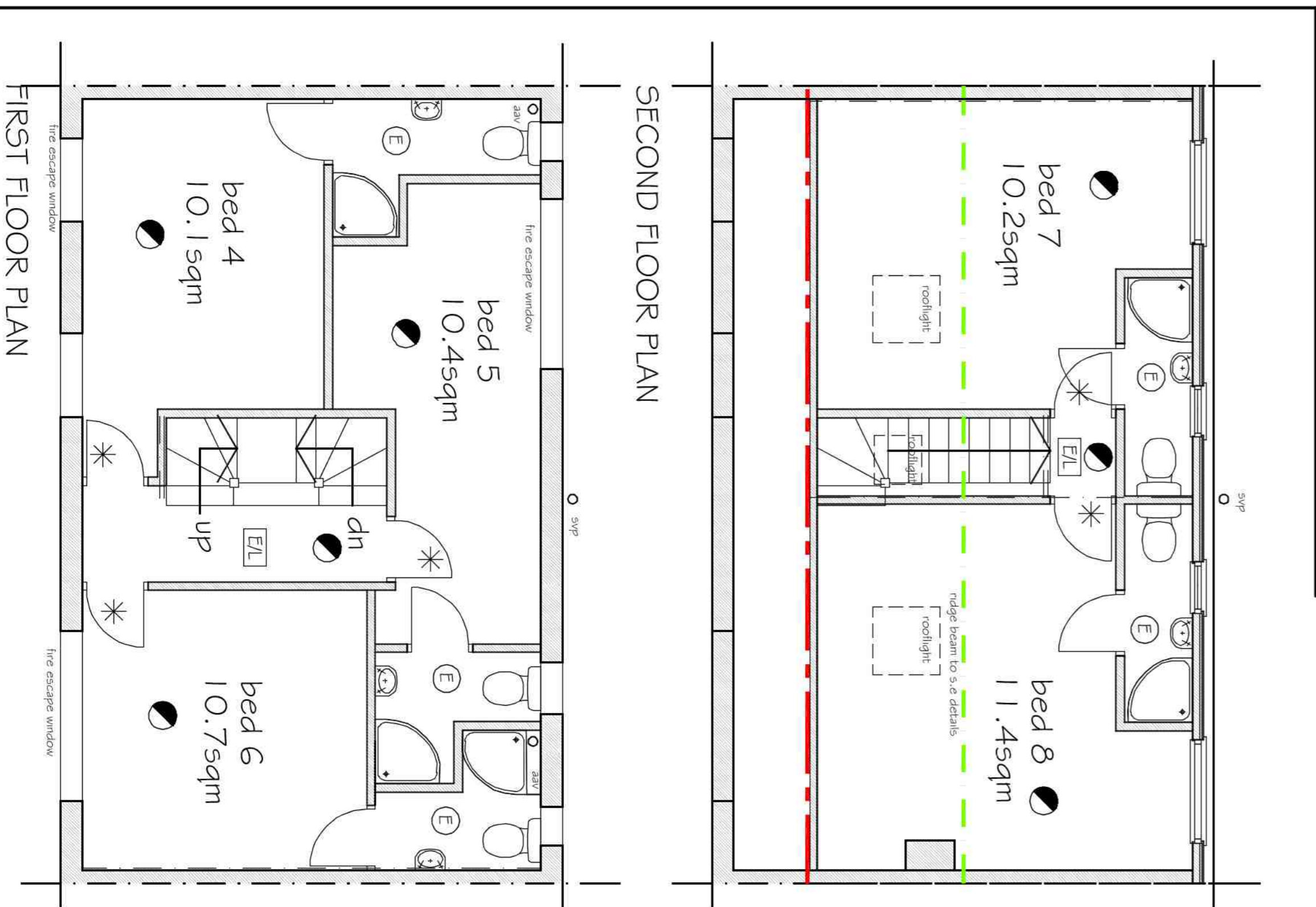
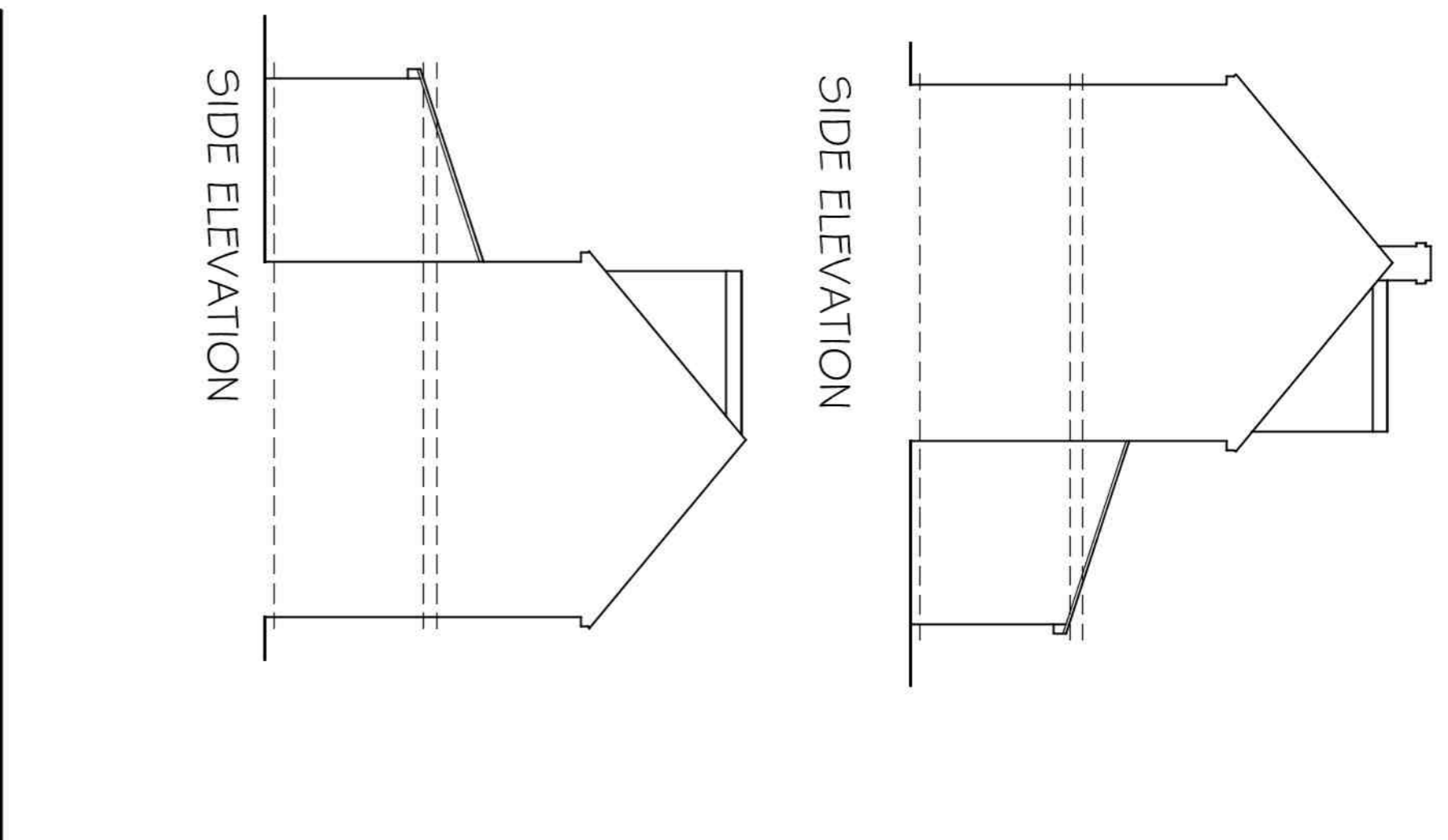
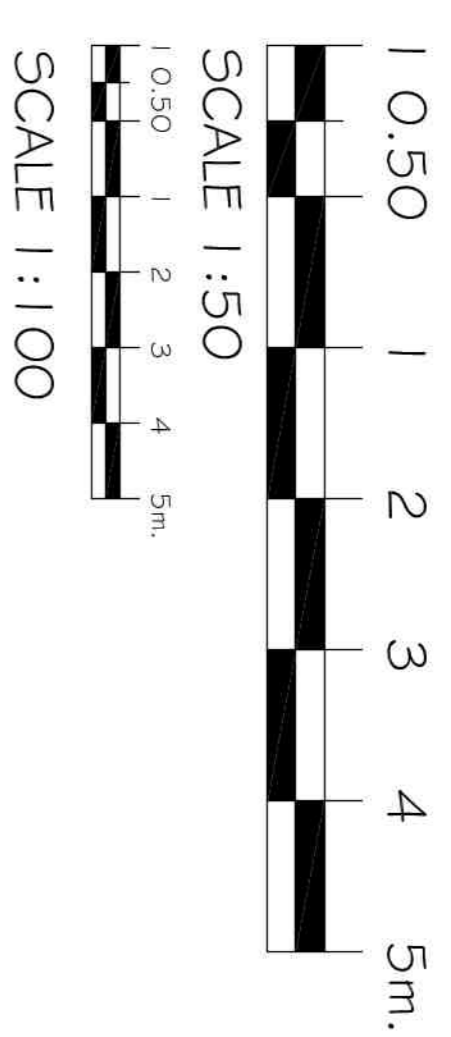
5. Within two months of the date of this decision notice details of the retaining walls to the northern and southern facing boundary of the parking area; and the surfacing material of the parking area hereby permitted shall be modified in full accordance with details that have been submitted to and approved in writing by the local planning authority; and once provided such facilities shall not be removed and shall remain available for use at all times

Reason: *In the interests of visual amenity in accordance with Policies DE1 of the Coventry Local Plan 2016, together with the NPPF.*

EXISTING



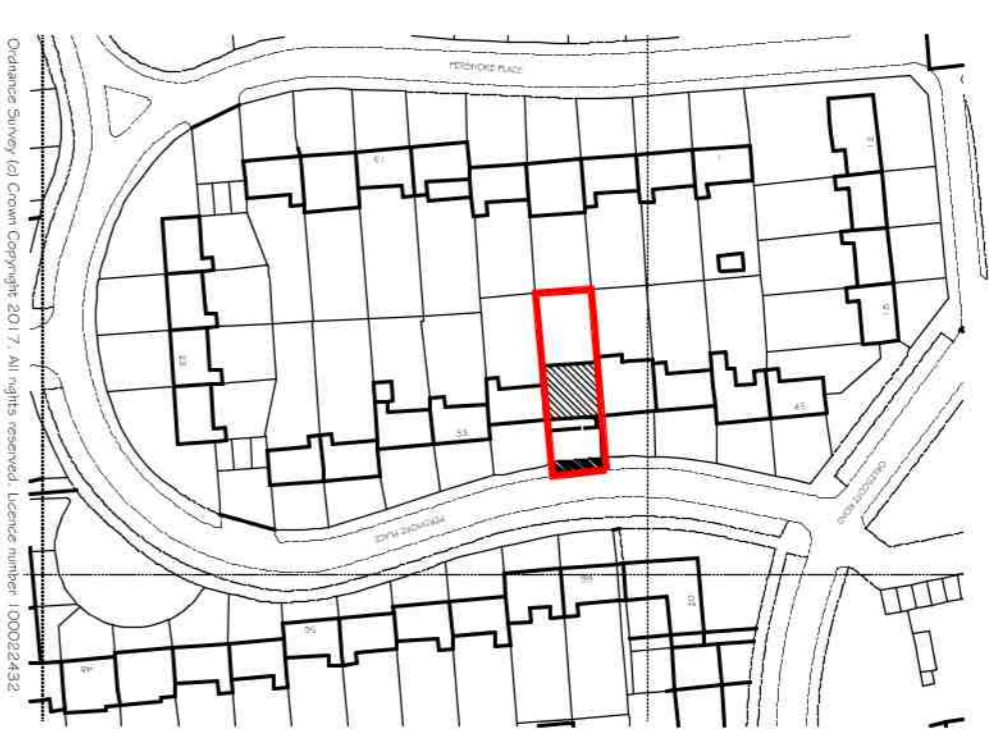
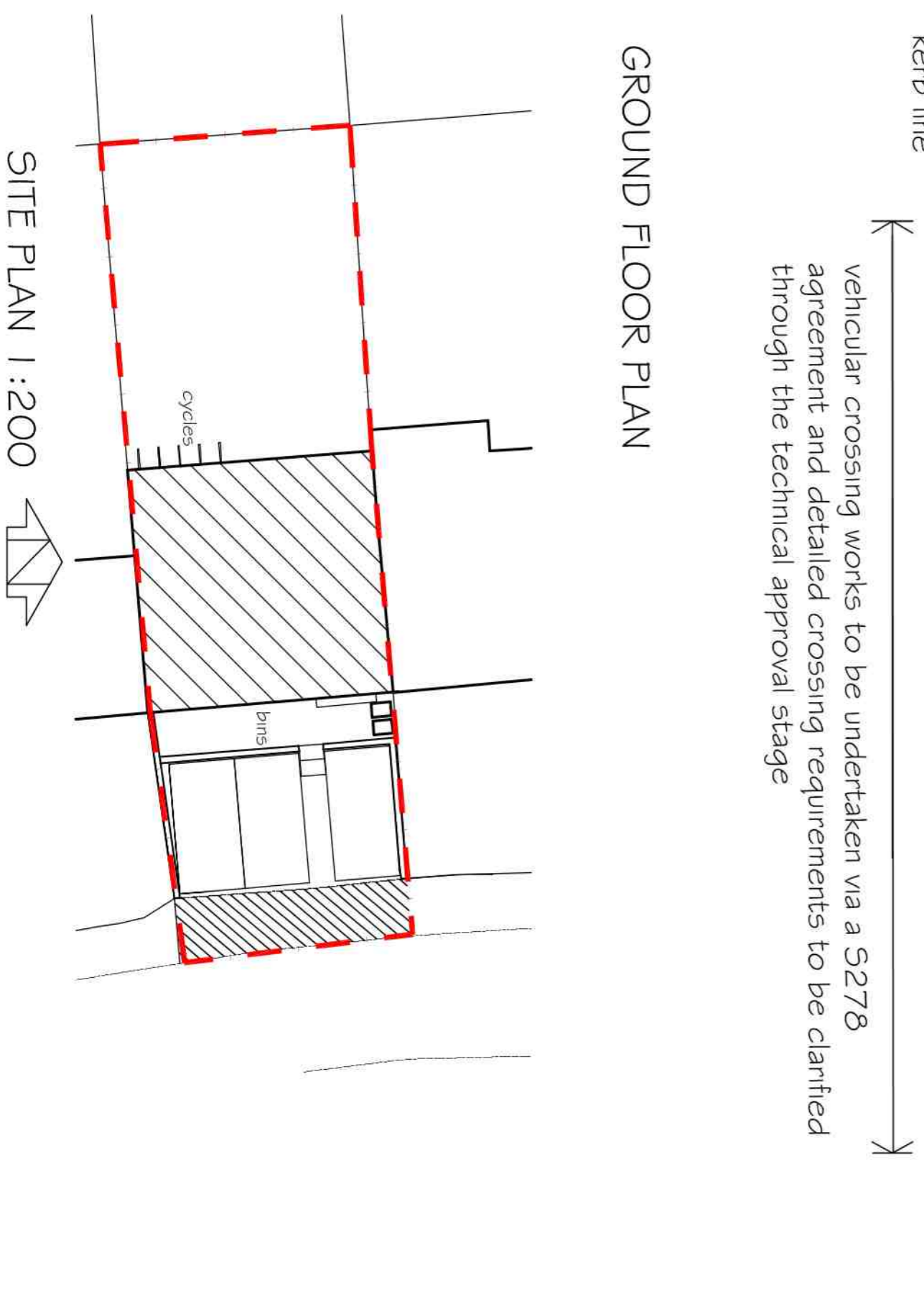
PROPOSED



First 2.4m section of boundary wall to be no higher than 600mm above existing pavement level

vehicular crossing works to be undertaken via a S278 agreement and detailed crossing requirements to be clarified through the technical approval stage

First 2.4m section of boundary wall to be no higher than 600mm above existing pavement level



LOCATION PLAN 1:1250

The hard standing surface to car park / hard standing shall to be constructed from porous materials
OR
provision shall be made for run off to be directed from the hard surface to permeable or porous area - rain garden, within the curtilage of the building house
Porous surfaces - Surfaces which allow water to soak into it can be built with porous asphalt, porous concrete blocks, concrete or clay block permeable paving or loose gravels
To work effectively permeable surfaces must be laid over a sub-base which differs from traditional hardcore

NOTES:

- Details of adjacent properties are approximate only
- All site dimensions taken from ordinance survey layout & subject to site conditions & standard BS building tolerances
- All levels are given from ground levels directly adjacent to the perimeter of the building and do not take into account any differences in ground levels
- Rev/ E: Note regarding the crossing update 7th September 2018
- Rev/ D: parking area updated 17th August 2018
- Rev/ C: parking area updated 15th August 2018
- Rev/ B: updated to show car parking 30th March 2018
- Rev/ A: updated as client instruction 15th March 2018

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Revision	Description	Drawn	Date	Checked

Project: PROPOSED CHANGE of USE

Client: COVENTRY PROPERTIES LTD
37, PERSHORE PLACE
COVENTRY, CV4 7BZ

Drawn: SMH Date: aug 2017
Scale: 1:50 1:100 (When plotted at A1 format)

S. H. Architectural Services Ltd.
33 Bolestone Road, Edlington, Coventry, CV5 6PS
Telephone (024) 7667 9753, Fax (024) 7667 0667
Email: Ssharper@shsol.com

Drawing number: 26/07117-01

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Planning Committee Report	
Planning Ref:	FUL/2018/2395
Site:	84 Dawlish Drive
Ward:	Earlsdon
Proposal:	Application for the removal of condition no.1 (temporary permission), imposed on planning application ref: FUL/2017/1989 for the change of use from Use Class A1 (retail) to Use Class A3 (restaurant), granted 14th December 2017.
Case Officer:	Emma Spandley

SUMMARY

The application seeks to removal condition one of planning application FUL/2017/1989. Condition one, allowed the use of the building as a restaurant for a temporary period ending on 31st December 2018. The application seeks to remove the temporary consent.

BACKGROUND

There have been applications dating back until 2005, which were subsequently refused and dismissed at appeal for a hot food takeaway (Use Class A5) element together with restaurant use (Use Class A3).

In 2015, the Permitted Development Rights relating to change of uses, changed and included the change of use from a shop (Use Class A1) to a restaurant use (Use Class A3) but only for a temporary period of 2 years.

In 2017, an application was granted for a change of use from shop (Use Class A1) to a restaurant use (Use Class A3). Taking into account the change to permitted development, mentioned above, and the number of objections received, a temporary permission was granted which expires in August 2018.

The temporary consent was given so a full assessment of the impacts of the restaurant use could be established.

KEY FACTS

Reason for report to committee:	The premises, No.84 Dawlish Drive, is owned by Councillor Rois Ali
Current use of site:	Restaurant Use (Use Class A3) for a temporary period
Proposed use of site:	Restaurant use (Use Class A3) to remove the temporary permission.

RECOMMENDATION

Planning committee are recommended to grant permission, subject to the conditions listed.

REASON FOR DECISION

- The restaurant use does not appear to be resulting in significant harm to the living conditions of local residents.
- A temporary consent was given, as, at the time, the Government allowed a temporary change of use from shops (Use Class A1) to a restaurant (Use Class C3). The temporary consent allowed monitoring to be undertaken as to the impacts of the restaurant use on the neighbouring residential uses.
- The proposal accords with Policies: R6 & H5 of the Coventry Local Plan 2016, together with the aims of the NPPF.

BACKGROUND

APPLICATION PROPOSAL

The application seeks to remove condition one, (temporary permission) imposed on planning permission FUL/2017/1989.

SITE DESCRIPTION

The application relates to a mid-terraced shop unit forming part of a small parade with residential accommodation above. There is a service road to the rear and a parking area on street to the front. The wider area is predominately residential.

PLANNING HISTORY

There have been a number of historic planning applications on this site; the following are the most recent/relevant:

Application Number	Description of Development	Decision and Date
R/2005/6674	Change of use from A1 to hot food takeaway and restaurant and single storey extension.	Refused 16 th December 2005 & dismissed on appeal due to the impact on living conditions of nearby uses & impact of extensions on neighbours
FUL/2011/0593	Change of use from A1 to daytime sandwich bar and evening A5 use plus provision of fume extraction system.	Refused 27 th May 2011 & dismissed on appeal due to the impact on living conditions of nearby uses.
FUL/2013/0543	Change of use to pizza restaurant / takeaway and erection of single storey rear extension.	Refused 28 th May 2013 & dismissed on appeal, reasons explained in full below
FUL/2014/2322	Erection of a single storey rear extension (retrospective),	Approved 12 th August 2014
FCU/2015/1906 -	Notification of temporary change of use to A3, date given for the temporary change of use was 15.6.15, which expired on 15.6.17;	Only notification is given 15 th May 2015 – 15 th May 2017h
FUL/2015/1694	Extraction flue to rear	Approved 9 th July 2015
FUL/2015/3518	Shopfront (retrospective) and rear ductwork enclosure	Approved 17 th December 2015
AD/2017/2803	Submission of amended details (changing colour of extract flue) imposed on permission FUL/2015/3518 for shopfront and rear ductwork enclosure	Approved 18 th January 2018
FUL/2017/1989	Change of use from Use Class A1 (retail) to Use Class A3 (restaurant)	Approved 14 th December 2017

POLICY

National Policy Guidance

National Planning Policy Framework (NPPF). The new NPPF published on 24 July 2018 sets out the Government's planning policies for England and how these are expected to be applied. It sets out the Government's requirements for the planning system only to the extent that is relevant, proportionate and necessary to do so. The new NPPF increases the focus on achieving high quality design and states that it is "fundamental to what the planning and development process should achieve

The National Planning Practice Guidance (NPPG) 2014, this adds further context to the NPPF and it is intended that the two documents are read together.

Local Policy Guidance

The current local policy is provided within the Coventry Local Plan 2016, which was adopted by Coventry City Council on 6th December 2017. Relevant policy relating to this application is:

Policy DS3: Sustainable Development Policy

Policy H5: Managing the existing housing stock

Policy R6: R6 Restaurants, bars and Hot Food Takeaways

Supplementary Planning Guidance/ Documents (SPG/ SPD):

N/A

CONSULTATION

No Objections received from:

- Environmental Protection

Immediate neighbours and local councillors have been notified; a site notice was posted on 10th September 2018.

At the time of writing the report, no comments had been received.

APPRAISAL

The main issue in determining this application is the impact upon neighbouring amenity.

Principle of development

The principle of the development has been assessed against policy R6 of the Coventry Local Plan 2016. Policy R6 states catering outlets should be located in defined centres and employment areas and will be discouraged outside those locations.

The assessment is done on the compatibility of the catering use and whether it creates harm to amenity or highway safety.

Therefore, if the proposed use results in harm to amenity or highway safety then it would be contrary to Policy R6. However, if it does not, then the principle is acceptable. These issues are discussed in more detail below.

Impact on residential amenity

Policy H5 of the Coventry Local Plan 2016 called 'Managing Existing Housing Stock', states ...'uses will be supported providing a satisfactory residential environment is created'.

As well as flats above the retail units in the parade, there are houses to the north on Dawlish Drive. It was due to concerns regarding the impact upon living conditions of local residents, that the previous appeals involving hot food takeaway use on the site were dismissed in 2006, 2011 & 2013. Of particular concern was the general noise and disturbance associated with takeaway use of the site, such as car doors slamming, car engines revving and people talking.

The previous application FUL/2017/1989 which granted the temporary restaurant use, removed the hot food takeaway element for the reasons listed above and also restricted the use of the restaurant stating that no customers shall be present in the building before 09:00 or after 23:00 on any day.

The restaurant use has been in operation since April 2017, there has been one complaint to Environmental Protection with regards to people talking loudly outside, however, this was unsubstantiated. There have been no complaints to Planning Enforcement on the site.

Given the lack of complaints about the business since it opened in April 2017 it is evident that the use of the site as a restaurant does not result in significant noise and disturbance, and therefore harm to living conditions, of nearby residents. It is considered reasonable to carry forward the hours of operation condition, restricting the use of the site between the hours of 09:00 and 23:00.

On this basis, it is considered that the restaurant use is in accordance with Policy R6 of the Coventry Local Plan 2016.

Highway considerations

Policy AM22 seeks to ensure highway safety in new developments. Harm to highway safety was not a reason for refusal in the appeal in 2013, nor in the assessment of the most recent application, FUL/2017/1989 which granted consent for the restaurant use, temporary for 1 year.

There is off street parking in the parking bays to the front of the shops. Therefore, it is considered that the proposal complies with Policy AC3 of the Coventry Local Plan 2016.

Equality Implications

The proposal has been reviewed and it is considered there are no known equality implications as a result of this proposal, in accordance with the Equality Act 2010

Conclusion

The proposed development is considered to be acceptable in principle and will not result in any significant impact upon neighbour amenity or highway safety, subject to relevant conditions. The reason for Coventry City Council granting planning permission is because the development is in accordance with Policies R6 of the Coventry Local Plan 2016, together with the aims of the NPPF.

CONDITION/REASON

1. The development hereby permitted shall be carried out in accordance with the following approved document, location plan.

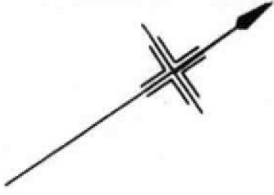
Reason: *For the avoidance of doubt and in the interests of proper planning.*

2. No customers shall be present in the building before 0900 hours or after 2300 hours on any day.

Reason: *In order to protect the amenity of local residents in accordance with Policy R6 of the Local Plan 2016-2031*

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H.M. LAND REGISTRY		TITLE NUMBER	
		WM 407842	
ORDNANCE SURVEY PLAN REFERENCE	SP 3376	SECTION V	Scale 1/1250
COUNTY WEST MIDLANDS	COVENTRY DISTRICT		© Crown copyright 1965



SP 3376 SE
SP 3476 SW



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Public report

Report to
Planning Committee

27th September 2018

Report of
Deputy Chief Executive (Place)

Title:
Wildlife and Countryside Act 1981 Section 53
Application to add a number of Public Footpaths to the Definitive Map and Statement for Coventry on land lying between Leaf Lane and the A444 Stivichall Cheylesmore by pass.

Ward affected: Cheylesmore

Is this a key decision? *No*

Executive Summary:

The City Council has received an application from a local resident to have several routes recorded on the Definitive Map and Statement as public footpaths.

As a result of investigations into the application, authorisation is now being sought to **refuse** to make a Definitive Map Modification Order. This report includes the consultations carried out in respect of the claim, the witness evidence, historical evidence and the legal tests for a Definitive Map Modification Order to be made. The report makes a recommendation based on that information, for quasi-judicial decision by Members as to whether or not an Order should be made to add the routes as public footpaths.

Recommendations:

That Planning Committee are recommended to:

- (1) Authorise the Deputy Chief Executive (Place) to refuse to make an Order on the basis that the application does not satisfy the legal tests required for the making of an Order.
- (2) Authorise the Deputy Chief Executive of Place to give notice of the refusal to make the Order.

List of Appendices included:

Appendix 1. Plan showing the locations and routes of the claimed public footpaths.

Appendix 2. Table showing periods of use of the path as claimed by witnesses.

Appendix 3. List of historical documents consulted.

Other useful background papers:

None

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

No

Report title: - Application to add a number of Public Footpaths to the Definitive Map and Statement for Coventry on land lying between Leaf Lane and the A444 Stivichall to Cheylesmore by-pass.

1. Context (or background)

- 1.1 The Council has received an application from from a local resident to have a number of public footpaths recorded on the Definitive Map and Statement.
- 1.2 No evidence has been submitted to demonstrate that the status of the routes should be anything other than public footpath.

2. Description of the site and claimed routes

- 2.1 The claimed routes are on land comprising approximately 26 acres of Council owned land lying between Leaf Lane and the A444 Stivichall Cheylesmore by-pass north of the Festival roundabout interchange with the A45. The land is largely laid to permanent grass with a belt of planted woodland approximately 30 metres wide running north / south alongside Leaf Lane. Areas of trees and regenerating scrub woodland also exist at the northern end of the land and there is a broken belt of trees forming a barrier between the land and the A444. An area at the south end of the land that is separated from the main area by a band of trees has recently (2015) been fenced from the main area of land and used as a materials store by contractors working on a new slip road and bridge over the A444.
- 2.2 The land was acquired by the Council from Chrysler UK Properties Ltd in 1971 as part of the required land take for the construction of the A444 Stivichall to Cheylesmore by-pass.
- 2.3 The claimed paths form a circuit running round the periphery of the main open area of the land, together with two routes running roughly east / west across the main site and a third route running roughly north / south through the middle of the site. There are also five short spur paths running through the belt of woodland connecting to Leaf Lane and acting as access points to the area of land. A second circuit of footpath is claimed running round the area of land fenced off in 2015 at the south end of the site together with a north / south path and a connecting spur to Leaf Lane. In total this would comprise up to twelve individual paths throughout the area of land.
- 2.4 The paths on the open land comprise of grass surfaces approximately 2 metres wide whilst the paths connecting to Leaf Lane through the belt of woodland consist of a single trodden line approximately 1 metre wide comprised of an earth surface.
- 2.5 A 12ft field gate is present at Ordnance Survey grid reference SP 3420 7619, (point E on the plan). The gate is locked and is presumed to allow access for management and maintenance of the land. Pedestrian access has been acquired round the gate as evidenced by the worn ground. Four signs exist at approximately points B, D, E and F on the plan, fronting onto Leaf Lane prohibiting motorcycling and stating that Coventry City Council permit the public to use footpaths on the

land. Correspondence provided as part of the evidence by the applicant suggests these signs were installed in 2017.

The signs are located at:

- Opposite 83 Leaf Lane in the pull in
- Opposite Okehampton Road
- Opposite Buckfast Close
- Opposite Exminster Road

3. The main issues

- 3.1 Section 53(2)(b) of the Wildlife and Countryside Act 1981 requires that the Coventry City Council shall keep the Definitive Map and Statement under continuous review and make such modifications to the Map and Statement as appear requisite in consequence of the occurrence of certain events.
- 3.2 One such event (section 53(3)(c)(i)) requires modification of the map by the addition of a right of way.

“(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows:-

- (i) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates...;

The evidence can consist of documentary/ historical evidence or user evidence or a mixture of both. All the evidence must be evaluated and weighed and a conclusion reached whether, on the ‘balance of probabilities’ the alleged rights subsist or are reasonably alleged to subsist. **Any other issues, such as safety, security, suitability, desirability or the effects on property or the environment, are not relevant to the decision.**

- 3.3 Where the evidence in support of the application is user evidence, section 31(1) of the Highways Act 1980 applies, this states;-

“Where a way.....has been actually enjoyed by the public as of right and without interruption for a full period of twenty years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.”

This requires that the public must have used the way without interruption and as of right; that is without force, secrecy or permission. Section 31(2) states that “the 20 years is to be calculated retrospectively from the date when the right of the public to use the way is brought into question”.

- 3.4 If for some reason the statutory test fails, the issue of common law dedication can be considered; that is whether the available evidence shows that the owner of the

land over which the way passes has dedicated it to the public. An implication of dedication may be shown at common law if there is evidence from which it may be inferred that a landowner has dedicated a right of way and that the public has accepted the dedication.

- 3.5 In this case the date that must be used to calculate the twenty year period will run backwards from the date when the smaller area of land was fenced off, preventing access and calling it into question, an action which contributed to triggering the application.

4. Results of consultation undertaken

- 4.1 A non-statutory consultation was carried out from 6th April 2018 to 18th May 2018. Consultees included user group representatives and statutory undertakers.
- 4.2 The Open Spaces Society responded supporting the application citing information from the 1990s suggesting that the City Council at the time regarded some of the routes, which are the subject of the claim, to be public rights of way albeit that they were not registered on a Definitive Map. Maps of no formal or legal provenance showing paths had traditionally been made available to the public by the Council in this period although they were subsequently withdrawn by the then Public Rights of Way Officer in 2008.
- 4.3 No other responses were received.

4. Witness evidence

- 4.1 A total of 27 witness evidence forms have been submitted and considered. A table showing the periods of use is attached as Appendix 2. Of the witnesses in general, 19 have claimed use exceeding 20 years with the maximum length of time claimed by two witnesses being 50 years from 1963. The land which is the subject of the claim changed significantly in the period 1971 to 1973 when the Stivichall to Cheylesmore A444 by-pass was constructed and it came to its current layout following that development. However it is clear from many of the witnesses that the land was used in a similar way prior to the construction of the by-pass. Whilst the land may have been regarded as agricultural land and indeed historically it was part of How Lane Farm, (Leaf Lane was originally known as Howes Lane). It is clear from the testimony of many witnesses that the characteristics of the land did not preclude public access. The land was predominantly unimproved pasture and emergent scrubland of the nature of a common. Several witnesses claim to have used routes in this period which they continued to use after the construction of the by-pass, the only change being that routes to the eastern part of the land in the vicinity of the River Sherbourne were lost to the development. It is not clear to what extent if any, use was interrupted by the construction of the by-pass but notwithstanding that, the period after the development was concluded, 1973 to 2016 is adequately in excess of 20 years to demonstrate use as of right.
- 4.2 The witnesses interviewed expressed consistent reasons for using the routes which also mirrored the reasons expressed in the witness evidence forms generally. The reasons used were predominantly exercising dogs where users would walk a variety of the several circuits available on a regular basis with the highest frequency

being twice daily. Others would use the area for exercise and to observe wildlife. The geographical distribution of user's addresses demonstrates that use was predominantly from local people living on the adjacent estates. Amongst the main classes of users, the dog walkers and the general exercise walkers, there is a fundamental division. Whilst some would only ever use the land in question, a significant number of users utilised the routes as part of longer walking journeys. These users, predominantly used the north / south route parallel to Leaf Lane. Some witnesses recall using the route as part of longer walks to Baginton to visit the Mill Public House, whilst others walked as far as Stoneleigh and Kenilworth. Others recall walking in a northerly direction, using the route to access other paths to get to Whitley to visit the shops and again to visit the pub. This latter use came to an end when the access to the Jaguar Engineering Centre was improved with the development of new slip roads from the A444 which cut the path used in this direction.

- 4.3 No witnesses were ever challenged whilst using the routes or recall seeing any signs prohibiting use. All regarded the routes as existing public footpaths or paths on public open space or, in many cases, witnesses regarded the land as part of Whitley Common. Several witnesses recall seeing signs in the 1980s describing the land as being part of Whitley Common and therefore considered that the land was subject to the byelaws that applied to Whitley Common. One witness, who was interviewed, described how over time the signs deteriorated and eventually fell down. He stated that he had recovered one sign and took it home for safe keeping. The sign was exhibited during the interview and states, "City of Coventry Byelaws Pleasure Gardens Whitley Common. It is an offence to wheel, ride or park any vehicle over or upon this area of the common." Others, also recall the much more recent installation of signs facing onto Leaf Lane stating that paths are used by permission of the City Council.
- 4.4 Under section 31(1) of the Highways Act 1980 public footpath rights can come into existence by deemed dedication unless there is evidence to the contrary. Therefore the landowner must provide evidence to that effect, which is normally evidence of a challenge or notices put up during the relevant twenty year period. In this case because the landowner is the City Council, a public authority, it is also necessary to establish on what basis the landowner acquired the land and for what purpose. This is because all Local Authorities are regarded as "statutory corporations". That is, whilst their actions are generally unfettered and they are free to do whatever they wish, they are limited in their actions in that there must be statutory authority for those actions. Thus, it is necessary to explore the statutory authority employed by the Council to acquire and manage the land.

Documentary evidence

- 4.5 As the land was only relatively recently acquired by the Council in 1971 the usual historical sources that are investigated in an inquiry of this nature have not been consulted to any great detail. However it is important, as referred to above at paragraph 4.4 to establish the authority and purpose for which the land was acquired. As such various documents associated with the acquisition of the land have been consulted at the Herbert Museum Archives.

- 4.6 The sale agreement between the City Council and Chrysler UK Ltd on 18th October 1971 makes reference in paragraph (c) of the recitals that “The Council further proposes to provide an open space on the western side of the said Stivichall / Cheylesmore by-pass and to execute ancillary works in connection with the said by-pass and open space”.
- 4.5 The by-pass development was part of a strategic road development undertaken by the City Council in conjunction with the Department of the Environment. The proposals were considered at a joint local public inquiry held on 19th October 1971 and in the Inspector’s decision letter the purpose for the acquisition of the land is discussed. The land formed part of three compulsory purchase orders and was cited as “The Town and Country Planning Act 1968 Acquisition of Land (Authorisation Procedure) Act 1946 City of Coventry (Leaf Lane No2) Compulsory Purchase Order 1971”. A total of 25.96 acres of the land was to be acquired to provide landscaping and grading works to soften the effects of the road on the existing residential areas; to reinforce the existing substantial hedge on the east side of Leaf Lane; to provide a green wedge from the city boundary almost to the central area containing a major pedestrian way linking Whitley Common and the south-east sector of the city with the proposed recreation area to the south of the Stonebridge Highway; to provide additional land, which although laid out in a different manner from that part of Whitley Common taken by the highway scheme would compensate for the part lost.
- 4.8 In the Inspector’s findings of fact at paragraph 74 (i) he states that the scheme provides for a large open space area adjoining Leaf Lane to offset the loss of part of Whitley Common whilst paragraph 74 (m) relates that the compulsory purchase order (Leaf Lane No2) was primarily to compensate for the loss of part of Whitley Common.
- 4.9 The Inspector also refers at paragraph 21 to the management of Whitley Common which was held as public open space to be managed for public resort and recreation under the Public Health Acts following the de-registration of Whitley Common by the Coventry Corporation Act 1927.
- 4.10 The Inspector’s findings and recommendations were supported by the Minister’s confirmation letter of 8th June 1972. In the letter the minister also makes references to the land at Leaf Lane being acquired to replace land lost at Whitley Common.
- 4.11 In the minutes of the Planning and Development Committee of 25th April 1972 the City Architect and Planning Officer reported that a certificate had been issued under the provisions of the Land Compensation Act 1961 S17 to the effect that no other alternative use could be made of the land other than public open space.
- 4.12 The Coventry Corporation Act 1927 referred to by the Inspector at para 4.9 above had the effect of extinguishing all rights over the commons within the city other than the rights of the Corporation. It further stipulated that the Corporation would forever hold the commons in complete ownership, maintained as open spaces and the provisions of the Public Health Acts relating to parks and pleasure grounds are to apply.

- 4.13 The Public Health Act 1875 and the Public Open Spaces Act 1906 are the two statutes that Local Authorities have traditionally used to provide statutory authority to acquire land for public open space. In this case the references to the land being acquired to replace part of land lost at Whitley Common and to be managed in the same way as Whitley Common indicates that the statutory powers applied are those of the Public Health Act 1875.
- 4.14 Section 164 of the Act provides a power for an Urban Authority to acquire land for the purpose of being used as public walks or pleasure grounds, and an authority may make byelaws for the regulation of any such public walk or pleasure ground.
- 4.15 The latest version of the relevant bylaws is from 1962, "The Bylaws as to Pleasure Grounds in the City of Coventry." The bylaws cite that they are formulated under the powers provided by The Public Health Act 1875 S164 and Whitley Common is included in the list of lands to which the bylaws apply.
- 4.16 That the land at Leaf Lane was acquired to replace part of Whitley Common and managed in the same way as Whitley Common is quite conclusive. That the land was acquired and managed in the way described above can have an impact on the ability of the public to acquire public rights of way over the land either by statutory dedication under Highways Act 1980 s31 (1) or by common law dedication. The critical difference is that use of any land acquired by a Local Authority under the provisions described above is by permission and by rights granted in those statutory provisions. Such use, by definition cannot be "as of right" but is "by right". This subtle difference in description of use is critical to an application of this nature which is dependent on user evidence alone.
- 4.17 In recent years the courts have given this argument considerable attention so there are very clear legal principles for us to draw on. Litigation has arisen in the area of claims for village green status, where communities have attempted to register land as village green to protect it from development. The acquisition of village green status by user is predicated on exactly the same legal tests as the acquisition of public rights of way by user. That is, use over a significant period, usually over 20 years and use "as of right" which means the use must be without secrecy, without violence and without permission. A number of these cases have concerned land owned by public authorities where consideration of the interpretation of use has been critical.
- 4.18 The most recent cases that have been considered by the Supreme Court are; *R (on the application of Barkas) v North Yorkshire County Council* [2014] UKSC 31; [2014] 2 WLR 1360 and; *R (on the application of Newhaven Port and Properties Limited) v East Sussex County Council and another* [2015] UKSC 7. Both cases gave considerable attention to the interpretation and application of use "as of right". In *Barkas*, Lord Neuberger gave the leading judgment and accepted the argument that "So long as land is held under a provision such as section 12(1) of the 1985 Act, it appears to me that members of the public have a statutory right to use the land for recreational purposes, and therefore they use the land "by right" and not as trespassers, so that no question of user "as of right" can arise." In *Newhaven*, the nature and effect of the statutory powers used to acquire and manage the land was discussed and it was concluded that such powers precluded use "as of right" because use was by statutory permission so had to be "by right". The point was

made explicitly clear by the court when discussing the application of bylaws. There was no byelaw that expressly permitted the public to use the land. However, the court found that it was necessary and obvious to imply a permission to so do in circumstances where particular byelaws were framed so as to regulate recreational activity. Thus, the byelaw that forbade dogs being brought into the Harbour unless it is on a lead gave rise to an implied permission to walk a suitably controlled dog. It was further held that it did not matter that those byelaws had not been communicated to the users during the relevant 20-year qualifying period. Lords Neuberger and Hodge held that the byelaws represented “*the local law applicable to Newhaven Harbour...*”. The position was, therefore, in the view of the court “*indistinguishable from that in Barkas*” because there was a public law right derived from statute: In *Barkas* it was the Housing Act and in *Newhaven* it was the legislation enabling the imposition of the byelaws. Members of the public were not to be held to be trespassers in these circumstances.

5. Conclusion.

- 5.1 The user evidence submitted shows use of the claimed routes from 1963 to the date of the application in 2016; however the majority of witnesses began using the route in the 1970’s and 80’s after the land had been acquired by the Council and the by-pass had been built. Whilst there may be sufficient use to consider that the requirements of Highways Act 1980 S31(1) may have been fulfilled, the impact of the ownership and the statutory powers used to acquire and manage the land can be fatal to such a claim.
- 5.2 There is insufficient evidence and clarity of routes used to consider that either the statutory test or the common law test had been met prior to the development of the by-pass. Only a total of 6 witnesses claimed to have used the land prior to the 1971 and none of them used it for 20 years.
- 5.3 Both the Highways Act 1980 S31(1) and presumed common law dedication are founded on three basic principles, in addition to use over a period in excess of 20 years. Those principles are that use must be “**as of right**” which is defined by a three part test as; use without secrecy, which means using the route openly, use without force. That is without breaking down fences or barriers and lastly use without permission. If any one of these three parts of the legal test fails then the consequences are that it is fatal to the claim.
- 5.4 It is quite clear that the *Barkas* and *Newhaven* cases considered by the Supreme Court have provided clear legal principles that where a public authority has acquired land under a statutory power that includes a right for the public to use the land then that use is “by right” and not “as of right” thus defeating any attempt to acquire public rights “as of right”. The statutory powers used in the above cases were the Housing Act 1985 and the 1875 *Newhaven* Act respectively which whilst not overtly or directly relevant to recreational access and walking, nevertheless were fatal to the claimed use. The statutory powers used in the case considered here are far more directly relevant.
- 5.5 Whilst the land at Leaf Lane was acquired in 1971 as part of a major road development, the fact that it was acquired as replacement for part of Whitley

Common and was intended to be managed as such means that the same powers that control Whitley Common apply to the land at Leaf Lane. These powers are those contained in the Public Health Act 1875, specifically S164 that provides that any urban authority may purchase or take on lease lay out plant improve and maintain lands for the purpose of being used as public walks or pleasure grounds and S182 of the same Act which provides a power to make byelaws.

- 5.6 The use of these powers to acquire and manage the land must mean that subsequent use by the public is by statutory permission or “by right” thus the application considered here for the acquisition of public rights of way “as of right” has to fail. Whilst the Council as the landowner has a discretion to manage the land to create paths for the public if it so wishes and indeed, it even has a discretion to dedicate public rights of way, (a provision in the Coventry Corporation Act 1927 provides for the dedication of highways on land held as commons), it has no discretion in the matter considered here. As a Highway Authority it is barred from making an Order to add the claimed paths to the Definitive Map because the claim has to fail in light of the judgements of the Supreme Court referred to above at paragraph 4.18.

6. Options considered and recommended proposal

- 6.1 The options have been considered and the recommended proposal is:-

Refuse to make an Order to record the routes as shown on the attached plan at Appendix 1, as public footpaths.

7. Comments from Director of Finance and Corporate Services

- 7.1 Financial implications

The costs of investigating the claim mainly consist of internal officer time and will be met from existing budgets. If there is an appeal, the costs would mainly be internal officer time, again met from existing budgets.

- 7.2 Legal implications

Upon determination of this application, the authority must serve notice on the applicant to inform them of the decision. Under Schedule 14 of the WCA, if the authority decides not to make an order, the applicant may, at any time within 28 days after service of the notice, appeal against the decision to the Secretary of State. The Secretary of State will then consider the application to determine whether an order should be made and may give the authority directions in relation to the same.

8 Other implications

- 8.1 Equalities / EIA

None

8.2 Implications for (or impact on) the environment

None

8.3 Implications for partner organisations?

None

Report author:

Name and job title:

Alexander Le Marinel (Public Rights of Way Officer)

Directorate:

Place

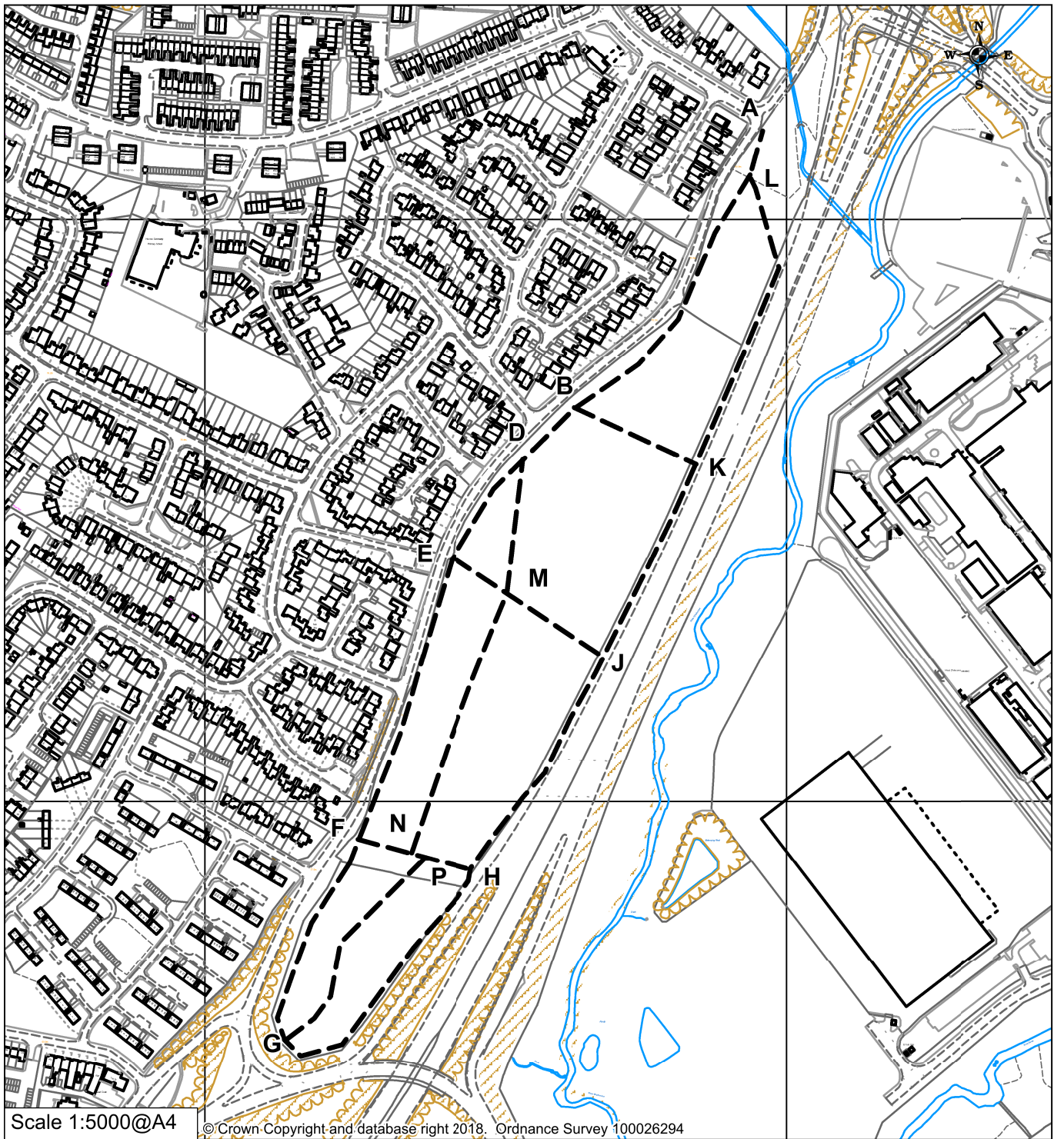
Tel and email contact:

024 7683 1055, alexander.lemarinel@coventry.gov.uk

Enquiries should be directed to the above person reference X0023

Contributor/approver name	Title	Directorate or organisation	Date doc sent out	Date response received or approved
Contributors:				
Colin Knight	Director (Transportation and Highways)	Place	24/08/2018	13/09/2018
Karen Seager	Head of Traffic and Transportation	Place	24/08/2018	
Colin Whitehouse	Highways Development Manager	Place	14/08/2018	14/08/2018
Usha Patel	Governance Services Officer	Place	24/08/2018	31/08/2018
Cathy Horthon	Development Team Manager	Place	24/08/2018	
Names of approvers: (officers and members)				
Finance: Graham Clark	Lead Accountant	Place	24/08/2018	04/09/2018
Legal: Staurt Evans	Solicitor		24/08/2018	05/09/2018
Other members: Jayne Innes	Cabinet Member (City Services)		24/08/2018	

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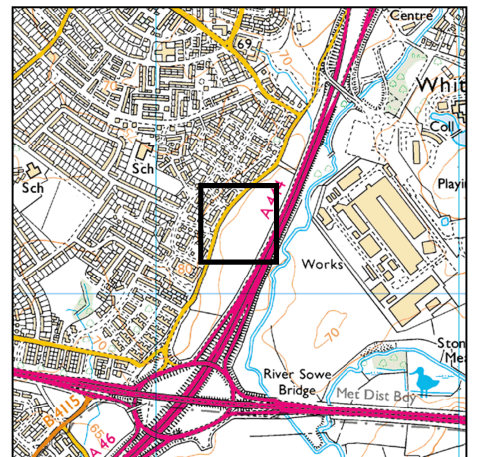
Public Rights of Way
Council House
Earl Street
Coventry
CV1 5RR

Wildlife and Countryside Act 1981
Section 53

Application to add Public Footpaths to Land
Off Leaf Land in the City of Coventry

Key

----- Proposed Public Footpath



Ref: T&T/PROW/ALM/X0023/Cttee2018

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Witnesses																Length of use
Interviewed in orange																Over 20 years in green
Name	1950	1955	1960	1965	1970	1975	1980	1985	1990	1995	2000	2005	2010	2015	2016	
H Hill APPLICANT														2015	2016	
E Shield										1999	2008					9
M Alexander						1976								2016		40
G Hill							1987							2013		26
L Watson					1971										2016	45
L Thompson 1952	1952						1980									28
C Parsons								1986							2016	30
R Waters			1963													
J Harris								1985							2016	31
J Lucas								1987						2015		28
B Lucas								1987					2014			27
P Buckley											2004			2015		11
C Alexander									1994						2016	22
C Satchwell												2006		2016		10
S Reddy					1973										2016	43
M Reddy						1975									2016	41
S young											2004			2016		12
R youden													2013		2016	3
J Fletcher 1960			1960								2002					42
M Fletcher					1970						2001					31
C Parsons								1986							2016	30
S Waters 1963			1963											2016		53
A Butler 1966				1966										2016		53
P Lucas *								1987				2009				22
A Braffell 1963			1963											2016		53
M Newell 1968				1968												50
Mrs C Sanderson								1987						2015		28

Wildlife and Countryside Act 1981 Section 53
Application to add a number of Public Footpaths on land lying between Leaf Lane and the A444 Stivichall Cheylsemore by pass.

List of Documents Consulted.

- | | |
|-----------|---|
| 18/10/71. | Sale Agreement between Chrysler UK Limited and The Lord Mayor Aldermen and citizens of the City of Coventry. |
| 20/10/71. | Inspector's decision letter following Joint Local Public Inquiry. |
| 25/04/72. | Minutes of Coventry City Council Planning Development Committee. |
| 08/06/72. | Secretary of State for the Environment confirmation letter. |
| 01/11/62. | Coventry City Council Byelaws. |
| 19/08/27. | Report of Coventry City Council Town Clerk regarding the effects and intentions of the Coventry Corporation Act 1927. |

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By virtue of paragraph(s) 2, 6, 7 of Part 1 of Schedule 12A of the Local Government Act 1972.

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