

# PLANNING COMMITTEE AGENDA



**Wednesday, 7<sup>th</sup> June, 2006**

**at 10.00 a.m.**

**in Committee Room "B"**

## MEMBERS OF PLANNING COMMITTEE:

Councillors D Allison, Belcher, R Cook, S Cook, Henery, Iseley, Kaiser, Lauderdale, Lilley, Morris, Payne, Richardson, M Waller, R Waller, Worthy and Wright.

### 1. APOLOGIES FOR ABSENCE

### 2. TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS

### 3. MINUTES

3.1 To confirm the minutes of the meeting held on 17<sup>th</sup> May 2006 (*to follow*)

### 4. ITEMS REQUIRING DECISION

4.1 Planning Applications – *Assistant Director (Planning and Economic Development)*

1. H.2006/0328 PD Teesport – Container Terminal
2. H/2006/0232 Chatham Road / Raby Road
3. H/2006/0282 Slake Terrace
4. H/2005/5639 17 Grange Road
5. H/2006/0050 98 Grange Road
6. H/2005/5411 86 Clifton Avenue
7. H/2007/5387 34 Grange Road

- 4.2 Application to add a public footpath, from Elwick Road to Manor Road, to the Definitive Map and Statement – *Director of Adult and Community Services and Chief Solicitor*
- 4.3 Update on Current Complaints – *Assistant Director, Planning and Economic Development*
- 4.4 Appeal by Paul Gold, Site at 12 Moorhen Road, Hartlepool – *Assistant Director, Planning and Economic Development*

**5. ANY OTHER ITEMS WHICH THE CHAIRMAN CONSIDERS ARE URGENT**

**EXEMPT ITEMS**

Under Section 100(A)(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items of business on the grounds that it involves the likely disclosure of exempt information as defined in the paragraphs referred to below of Part 1 of Schedule 12A of the Local Government Act 1972 as amended by the Local Government (Access to Information) Act 1985”.

**6. ITEMS REQUIRING DECISION**

- 6.1 Complaints Review – Assistant Director, Planning and Economic Development. (para 6)

**7. ANY OTHER CONFIDENTIAL ITEMS WHICH THE CHAIRMAN CONSIDERS ARE URGENT**

**8. FOR INFORMATION**

Site Visits – Any site visits requested by the Committee at this meeting will take place on the morning of Monday 3<sup>rd</sup> July 2006 at 10.00 am

Next Scheduled Meeting – Wednesday 5<sup>th</sup> July 2006 at 10am

# **PLANNING COMMITTEE**

## **MINUTES AND DECISION RECORD**

17<sup>th</sup> May, 2006

**Present:**

Councillor Bill Iseley (In the Chair)

Councillors Stephen Belcher, Rob Cook, Gerard Hall, Geoff Lilley, Dr George Morris, Carl Richardson and Ray Waller

Also Present: In accordance with Paragraph 4.2(ii) of the Council's Procedure Rules, Councillor Denis Waller as substitute for Councillor Maureen Waller

Officers: Richard Teece, Development Control Manager  
Peter Devlin, Legal Services Manager  
Roy Merrett, Principal Planning Officer  
Adrian Hurst, Principal Environmental Health Officer  
Chris Roberts, Development and Co-ordination Technician  
Chris Scaife, Countryside Access Officer  
Garry Hutchison, Building Control Manager  
Derek Wardle, Arboriculturalist  
Russell Hart, Planning Officer  
David Cosgrove, Principal Democratic Services Officer  
Jan Bentley, Democratic Services Officer  
Jo Wilson, Democratic Services Officer

### **148. Apologies for Absence**

Apologies for absence were submitted for Councillors Derek Allison, Stan Kaiser, Maureen Waller and Edna Wright.

### **149. Declarations of interest by members**

Councillor Geoff Lilley declared a personal and prejudicial interest in item H/2006/0269 Seaton Meadows and indicated he would leave the meeting during consideration of this item.

### **150. Confirmation of the minutes of the meeting held on 26<sup>th</sup> April, 2006**

The minutes were confirmed subject to the following amendment:

Item H/2006/0169 Baths Site, Seaton Carew:

Floor levels and flood sensitive equipment shall be sited no lower than 5m AOD and consideration given to the need for the incorporation of flood protection measures in the design and construction of the development.

Reason: To reduce the risk from flooding.

## **151. Planning Applications** (*Assistant Director (Planning and Economic Development)*)

The Committee considered the following applications for planning permission to carry out developments under the Town and Country Planning legislation and in accordance with their delegated powers, made the decisions indicated below:-

### **David Leyland (Agent) and Mr Elner (Objector) addressed the Committee in respect of the following application**

<b>Number:</b>	H/2006/0179
<b>Applicant:</b>	Goodname Estate Co Cleveland House Queens Square Middlesbrough
<b>Agent:</b>	David Stovell & Millwater 5 Brentnall Centre Brentnall Street MIDDLESBROUGH
<b>Date received:</b>	07/03/2006
<b>Development:</b>	Reserved matters application for the erection of 2 houses and details of conversion of coach house and existing house
<b>Location:</b>	NORTON HOUSE THETFORD ROAD HARTLEPOOL
<b>Decision:</b>	<b>Planning Permission Approved</b>

1. Details of all external finishing materials shall be submitted to and approved by the Local Planning Authority before development commences, samples of the desired materials being provided for this purpose.  
In the interests of visual amenity.
2. The window frames to be installed in the new dwellings shall be timber and shall be painted white or such colour as may be agreed in writing with the Local planning Authority before this part of the development commences.
3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any other revoking or re-enacting that Order with or without modification), no garage(s) or other

outbuildings other than those expressly authorised by this permission shall be erected without the prior written consent of the Local Planning Authority.

To enable the Local Authority to exercise control in the interests of the amenities of the occupants of the adjacent residential property.

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order with or without modification), the dwelling(s) hereby approved shall not be extended in any way without the prior written consent of the Local Planning Authority.  
To enable the Local Authority to exercise control in the interests of the amenities of the occupants of the adjacent residential property.
5. Details of all walls, fences and other means of boundary enclosure shall be submitted to and approved by the Local Planning Authority before the development hereby approved is commenced.  
In the interests of visual amenity.
6. No construction work or deliveries on any part of the project shall take place outside the hours 8am - 6pm.  
In the interests of the amenities of the occupants of neighbouring properties.
7. Before the development hereby approved is commenced, the dwelling(s) shall be pegged out on site and its/their exact location agreed in writing by the Local Planning Authority.  
In the interests of the amenities of the occupants of neighbouring properties.
8. The landscaping, tree and shrub planting shall be implemented in accordance with the plans and programme of works to be undertaken as originally submitted.
9. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting season following the occupation of the building(s) or completion of the development, whichever is the sooner. Any trees plants or shrubs which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of the same size and species, unless the Local Planning Authority gives written consent to any variation.  
In the interests of visual amenity.
10. No development shall take place until a scheme for the protection during construction works of all trees to be retained on the site, in accordance with BS 5837:2005 (Trees in relation to construction - Recommendations), has been submitted to and approved in writing by the Local Planning Authority. The scheme shall thereafter be carried out in accordance with the approved details and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development. Nothing shall be stored or placed in any area fenced in accordance with this condition. Nor shall the ground levels within these areas be altered or any excavation be undertaken without the prior written approval of the Local Planning Authority. Any trees which are seriously damaged or die as a result of site works shall be replaced with trees of such size and species as may be specified in

writing by the Local Planning Authority in the next available planting season.

11. In the interests of the health and appearance of the preserved tree(s). If within a period of five years from the date of the planting of any tree that tree, or any tree planted as a replacement for it, is removed, uprooted, destroyed, dies, or becomes in the opinion of the Local Planning Authority seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.  
In the interests of visual amenity.
12. Prior to the commencement of the 2 houses, site sections showing the finished floor levels if the houses and the parking and garden areas in relation to existing site levels shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the levels shall be strictly in accordance with the agreed scheme.  
For the avoidance of doubt
13. Tree no. 52 identified on drawing no. HL/03/002/050 shall be removed in accordance with relevant recommendation of BS 3998:1989  
In the interests of the health and appearance of the preserved tree(s).
14. No development shall commence until details of the proposed means of the disposal of foul and surface water have been submitted to and approved in writing with the Local Planning Authority. The details so approved shall be implemented as approved at the time of development.  
To prevent pollution of the water environment.
15. Notwithstanding the submitted details revised details for the design and elevational treatment of the house on plot 2 shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.  
To prevent overlooking
16. Unless otherwise agreed in writing the kitchen windows in Norton House facing the Coach House shall be glazed with obscure glass which shall be installed within 2 months of the date of this permission and thereafter retained at all times during the lifetime of this development.  
To prevent overlooking

The Committee considered representations in relation to this matter.

**Councillor Ray Waller in the Chair**

**Mr Kratz (Representative of the Applicant) and Alison Tate (Tilly, Bailey and Irvine, representing the Objectors) addressed the Committee in respect of the following application**

**Number:** H/2006/0228

**Applicant:** Shepherd Homes Ltd  
Huntington House, Jocket Lane Huntington York

**Agent:** BSCP Smeaton House Holt Park District Centre Leeds

**Date received:** 21/03/2006

**Development:** Replacement piling and related works

**Location:** 4,5,6,7,9,10 and 11,32,40 and 2,3,18 BARLEY CLOSE,  
MEADOWGATE DRIVE AND HAYFIELD CLOSE  
HARTLEPOOL

**Decision:** **Planning Permission Refused**

### **CONDITIONS AND REASONS OR REASONS FOR REFUSAL**

1. It is considered that the proposed development could due to the proximity of the proposed works to occupied houses lead to problems of noise, general disturbance, vibration, overlooking and the potential for increased crime contrary to policy GEP1 of the adopted Hartlepool Local Plan.

The Committee considered representations in relation to this matter.

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### **Mr Fenny (Applicant) and Iris Ryder (Objector) addressed the Committee in respect of the following application**

**Number:** H/2006/0269

**Applicant:** ALAB ENV  
Able House Billingham Reach Ind Estate Billingham

**Agent:** ALAB ENV Able House Billingham Reach Ind Estate  
Billingham

**Date received:** 03/04/2006

**Development:** Installation of treatment plant for the  
solidification/stabilisation of liquid wastes (revisions to  
approved scheme H/FUL/0043/03) (RESUBMITTED  
APPLICATION)

**Location:** Seaton Meadows Brenda Road Hartlepool

**Decision:** **Planning Permission Refused**

### **CONDITIONS AND REASONS OR REASONS FOR REFUSAL**

1. It is considered that the proposed development would have a detrimental impact on the environment contrary to policy GEP1 of the adopted Hartlepool Local Plan 2006.

The Committee considered representations in relation to this matter.

**Number:** H/2006/0191

**Applicant:** Mr B Claughan  
9 The Green Elwick

**Agent:** Mr B Claughan 9 The Green Elwick

**Date received:** 08/03/2006

**Development:** Use of land for the storage of 20 caravans

**Location:** Potter Farm 9 The Green Elwick Hartlepool

**Decision:** **Planning Permission Approved**

1. The use hereby approved shall be discontinued and the land restored to its former condition on or before 31 May 2007 unless the prior written consent of the Local Planning Authority has been obtained to an extension of this period.  
To enable the Local Planning Authority to assess the use in the light of experience.
2. The hedging along the eastern and western boundary of the site (marked blue on the approved plan) shall be allowed to grow and thereafter be maintained at a height of no less than 1.8m whilst the use hereby approved exists.  
In the interests of visual amenity.
3. There shall be no movement of caravans to and from the site outside the hours of 8am to 8pm any day of the week unless otherwise agreed in writing by the Local Planning Authority.  
In the interests of the amenities of the occupants of neighbouring properties.
4. There shall be no more than 20 touring caravans upon the site at any one time without the prior planning approval of the Local Planning Authority.  
In the interests of the amenities of the occupants of neighbouring properties.
5. The site shall be used for the storage of caravans only and not for occupation upon the site.  
In the interests of the amenities of the occupants of neighbouring properties.

The Committee considered representations in relation to this matter.



**Number:** H/2006/0206

**Applicant:** Mr C Morgan  
30 Forester Close Seaton Carew Hartlepool

**Agent:** Mr C Morgan 30 Forester Close Seaton Carew Hartlepool

**Date received:** 27/03/2006

**Development:** Erection of a three storey building comprising 2 flats with integral garages

**Location:** Land At 71 Elwick Road Hartlepool

**Decision:** **Planning Permission Approved**

1. The development to which this permission relates shall be begun not later than three years from the date of this permission.  
To clarify the period for which the permission is valid.
2. The area(s) indicated for car parking on the plans hereby approved shall be provided before the use of the site commences and thereafter be kept available for such use at all times during the lifetime of the development.  
In the interests of the amenities of the occupants of neighbouring properties and highway safety.
3. Details of all external finishing materials shall be submitted to and approved by the Local Planning Authority before development commences, samples of the desired materials being provided for this purpose.  
In the interests of visual amenity.
4. No machinery shall be operated on site or construction work take place before 0800 or after 1800 Monday to Friday or before 0800 or after 1300 on Saturday. There shall be no construction work, deliveries or machinery operated on the site at all on Sundays.  
In the interests of the amenities of the occupants of neighbouring properties.
5. No materials shall be stored on the public highway (including back street)  
In the interests of the amenities of the occupants of neighbouring properties and highway safety.

The Committee considered representations in relation to this matter.

**Number:** H/2006/0219

**Applicant:** The Hospital Of God Greatham  
Estate Office GreathamHartlepool

**Agent:** The Hospital Of God Greatham Estate Office Greatham  
Hartlepool

**Date received:** 17/03/2006

**Development:** Provision of replacement windows

**Location:** 7,8,9 and 10 THE GREEN GREATHAM HARTLEPOOL

**Decision:** **Planning Permission Approved**

1. The development to which this permission relates shall be begun not later than three years from the date of this permission.  
To clarify the period for which the permission is valid.

The Committee considered representations in relation to this matter.

**Number:** H/2005/5387

**Applicant:** Mr IMiah  
34 GRANGE ROAD HARTLEPOOL

**Agent:** Mr I Miah 34 GRANGE ROAD HARTLEPOOL

**Date received:** 11/07/2005

**Development:** Provision of UPVC windows and door (retrospective application)

**Location:** 34 GRANGE ROAD HARTLEPOOL

**Decision:** **Deferred to enable the Conservation Area Advisory Committee to review the merits of the Article 4 Direction in the Grange Conservation Area**

**Number:** H/2005/5411

**Applicant:** Mr DCook  
86 CLIFTON AVENUE HARTLEPOOL

**Agent:** Mr D Cook 86 CLIFTON AVENUE HARTLEPOOL

**Date received:** 20/05/2005

**Development:** Retention of UPVC windows to front elevation  
**Location:** 86 CLIFTON AVENUE HARTLEPOOL  
**Decision:** **Deferred to enable the Conservation Area Advisory Committee to review the merits of the Article 4 Direction in the Grange Conservation Area**

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**Number:** H/2005/5639  
**Applicant:** Mr S Maxwell  
 17 GRANGE ROAD HARTLEPOOL  
**Agent:** Malcolm Smith & Partners Havelock House 24 Victoria Road HARTLEPOOL  
**Date received:** 06/01/2006  
**Development:** Installation of UPVC windows to front elevation and door and provision of downpipe and guttering (retrospective application)  
**Location:** 17 GRANGE ROAD HARTLEPOOL  
**Decision:** **Deferred to enable the Conservation Area Advisory Committee to review the merits of the Article 4 Direction in the Grange Conservation Area**

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**Number:** H/2006/0050  
**Applicant:** Mr A T Travis  
 98 GRANGE ROAD HARTLEPOOL  
**Agent:** Mr A T Travis 98 GRANGE ROAD HARTLEPOOL  
**Date received:** 23/01/2006  
**Development:** Replacement of wooden sash windows to front elevation with UPVC  
**Location:** 98 GRANGE ROAD HARTLEPOOL  
**Decision:** **Deferred to enable the Conservation Area Advisory Committee to review the merits of the Article 4 Direction in the Grange Conservation Area**

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**152. Creation of a new Public Footpath at Amerston Hall, Elwick Parish** (*Director of Adult and Community Services*)

The Director of Adult and Community Services sought approval for the creation of a new Public Footpath between Public Footpath No 20, Elwick Parish and Public Footpath No 22, Elwick Parish. This would create an important and useful link between the two existing public footpaths. This new public right of way would be a public footpath, pursuant to Highways Act 1980 section 25. Detailed information on the background and legal considerations was given.

Members were informed that the costs, which would be covered by the Rights of Way budget, were expected to be £550 approximately. The only annual budgetary implication would be the regular twice yearly vegetation clearance along the line of the new footpath. This would form part of the ongoing vegetation clearance that already occurred.

**Decision** – That the creation of an new section of public rights of way between Public footpath No 20, Elwick Parish and Public footpath No 22, Elwick Parish be approved.

**153. Update on Current Complaints** (*Head of Planning and Economic Development*)

Members were advised that during the four week period prior to the meeting thirty (30) planning applications had been checked, requiring site visits resulting in various planning conditions being discharged by letter.

Members' attention was drawn to eight (8) current ongoing issues detailed in the report.

**Decision** – That the report be noted

**154. Appeal by EK Investments – Site at Elizabeth Way Shops, Seaton Carew** (*Assistant Director (Planning and Economic Development)*)

A planning appeal had been lodged against the refusal of the Council to grant planning permission for the erection of two single storey shop units at Elizabeth Way Shops. Notification had now been received from the Planning Inspectorate that the appeal had been allowed. A copy of the decision letter was submitted as an appendix.

**Decision** – That the decision be noted

**155. Appeal Site at 65 Seaton Lane** (*Head of Planning and Economic Development*)

Members were advised that a planning appeal had been lodged against the refusal of the Planning Committee to grant planning permission for a house in the rear garden of 65 Seaton Lane. The appeal was to be decided by the written procedure and authority was requested for officers to contest the appeal.

**Decision** – That authority be granted to Officers to contest the appeal.

**156. Any Other Business of Urgency**

THE CHAIRMAN RULED THAT THE FOLLOWING ITEM SHOULD BE CONSIDERED BY THE COMMITTEE AS A MATTER OF URGENCY IN ACCORDANCE WITH THE PROVISIONS OF SECTION 100(B)(4)(B) OF THE LOCAL GOVERNMENT ACT 1972 IN ORDER THAT THE COMMITTEE COULD MAKE THE DECISION AT THE EARLIEST OPPORTUNITY.

**157. Planning Applications** (*Assistant Director, Planning and Economic Development*)

The Committee considered the following applications for planning permission to carry out developments under the Town and Country Planning legislation and, in accordance with their delegated powers, made the decisions indicated below:-

**Number:** H/2006/0164

**Applicant:** RK Developments  
10 Castlereagh Wynyard Billingham

**Agent:** Peter Fall Cowie Diamond Court Preston Farm Business Park Stockton on Tees

**Date received:** 27/02/2006

**Development:** Erection of a replacement dwelling (5 bedroom)

**Location:** Rose Cottage Wynyard Billingham

**Decision:** **Planning Permission Approved**

**CONDITIONS AND REASONS OR REASONS FOR REFUSAL**

1. The development to which this permission relates shall be begun not later than three years from the date of this permission.  
To clarify the period for which the permission is valid.
2. Details of all external finishing materials shall be submitted to and approved by the Local Planning Authority before development commences, samples of the desired materials being provided for this purpose.  
In the interests of visual amenity.
3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order with or without modification), the dwelling(s) hereby approved shall not be extended in any way without the prior written consent of the Local Planning Authority.  
To enable the Local Authority to exercise control in the interests of the amenities of the occupants of the adjacent residential property.
4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order with or without modification), no fences, gates, walls or other means of enclosure, shall be erected within the curtilage of any dwellinghouse forward of any wall of that dwellinghouse which fronts onto a road, without the prior written consent of the Local Planning Authority.  
To enable the Local Authority to exercise control in the interests of the amenities of the occupants of the adjacent residential property.
5. No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include existing and proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (eg. furniture, play equipment, refuse or other storage units, signs lighting etc); proposed and existing functional services above and below ground (eg drainage, power, communication cables, pipelines etc indicating lines, manholes, supports etc); retained historic landscape features (including existing trees and hedgerows) and proposals for restoration, where relevant.  
In the interests of visual amenity.
6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any other revoking or re-enacting that Order with or without modification) no garage(s) or other curtilage buildings other than those expressly authorised by this permission shall be erected without the prior written consent of the Local Planning Authority.  
To enable the Local Authority to exercise control in the interests of the amenities of the occupants of the adjacent residential property.
7. No development shall take place unless in accordance with the mitigation detailed within the protected species report (a bat survey of a bungalow at Wynyard ROI Draft; E3 Ecology Limited 28/3/06).  
To maintain the favourable conservation status of protected species (bats).

8. No development shall take place until a scheme for the protection during construction works of all trees to be retained on the site, in accordance with BS 5837:2005 (Trees in relation to construction - Recommendations), has been submitted to and approved in writing by the Local Planning Authority. The scheme shall thereafter be carried out in accordance with the approved details and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development. Nothing shall be stored or placed in any area fenced in accordance with this condition. Nor shall the ground levels within these areas be altered or any excavation be undertaken without the prior written approval of the Local Planning Authority. Any trees which are seriously damaged or die as a result of site works shall be replaced with trees of such size and species as may be specified in writing by the Local Planning Authority in the next available planting season.  
To preserve the landscape features on the site in the interests of visual amenity.
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BILL ISELEY  
RAY WALLER  
CHAIRMAN

1	H/2006/0328	PD TEESPORT – CONTAINER TERMINAL	RM
2	H/2006/0232	CHATHAM ROAD/RABY ROAD	JF
3.	H/2006/0282	SLAKE TERRACE	RH
4	H/2005/5639	17 GRANGE ROAD	JF
5	H/2006/0050	98 GRANGE ROAD	RH
6	H/2005/5411	86 CLIFTON AVENUE	PB
7	H/2005/5387	34 GRANGE ROAD	JF

COMPLAINTS UPDATE  
COMPLAINTS REPORT

PB

NEW APPEALS –  
12 MOORHEN ROAD



**No:** 1  
**Number:** H/2006/0328  
**Applicant:** PD Teesport 17-27 Queens Square Middlesbrough TS2  
1AH  
**Agent:** Nathaniel Litchfield & Partners Generator Studios  
Trafalgar Street Newcastle Upon Tyne NE1 2LA  
**Date valid:** 02/05/2006  
**Development:** Outline application for a new gateway deep sea container  
terminal  
**Location:** Teesport Middlesbrough

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## **The Application and Site**

1.1 The Borough Council has received consultations from Redcar and Cleveland Council and from the Department for Transport in respect of a project to create a new gateway deep-sea container port at Teesport. The applications are accompanied by an Environmental Statement.

1.2 The project is split into seaward works for which a Harbour Revision Order is required. This will be decided by the Department of Transport. The landward works are subject to control by Redcar and Cleveland Council. A description of the works is summarised as follows:-

### Landward works

1. A new intermodal rail terminal and provision of new infrastructure
2. Upgrading of existing exchange terminal
3. Vehicular access to new terminal
4. Erection of buildings and workshops
5. Various ancillary works

### Seaward works

1. Construction of proposed quay face (1000 metres in length)
2. Dredging of deep water berth alongside proposed quay face
3. Dredging and realignment of approach channel
4. Reclamation of land currently below mean high water level.

## **Publicity / Consultation**

1.3 Because the Borough Council is a consultee in this case, there is no obligation for it to undertake a publicity exercise. Notwithstanding this the views of internal consultees have been sought and are summarised below:-

**Head of Public Protection & Housing** - Comments awaited  
**Head of Traffic & Transportation** – Comments awaited  
**Economic Development Manager** – Comments awaited

## **Planning Policy**

1.4 The following policies in the adopted Hartlepool Local Plan are relevant to the determination of this application:

GEP1: states that in determining planning applications the Borough Council will have due regard to the provisions of the Development Plan. Development should be located on previously developed land within the limits to development and outside the green wedges. The policy also highlights the wide range of matters which will be taken into account including appearance and relationship with surroundings, effects on amenity, highway safety, car parking, infrastructure, flood risk, trees, landscape features, wildlife and habitats, the historic environment, and the need for high standards of design and landscaping and native species.

PU6: States that development proposals on this land will be approved subject to consideration of visual impact, increased traffic flows and effect on designated nature conservation sites taking into account the advice of the Health and Safety Executive, English Nature and the Environment Agency. An environmental assessment may be required.

WL1: states that development likely to have a significant adverse effect on an international nature conservation site will be subject to the most rigorous examination and will be refused unless there is no alternative solution or there are imperative reasons of over-riding public interest for the development. Where development is permitted, the use of planning conditions or obligations will be considered to avoid and minimise harm to the site, to enhance its interest and to secure any necessary compensatory measures.

WL2: states that developments likely to have a significant adverse effect on SSSIs will be subject to special scrutiny and may be refused unless the reasons for development clearly outweigh the harm to the special nature conservation interest of the site. Where development is approved, planning obligations or conditions will be considered to avoid and minimise harm to the site, to enhance its interest and to secure any necessary compensatory measures.

## **Planning Considerations**

1.5 The Environmental Statement (ES) indicates that trends in the UK economy have led to an increase in demand for containerised imports. It recognises that as the UK economy develops this demand will continue to grow, increasing the requirement for appropriate port facilities capable of handling such imports.

1.6 The formation of the new quayside will be split into 2 phases, with the first phase (700metres) to be operational by 2010 and the completed quay to be operational by 2014.

1.7 The ES estimates that a significant number of jobs will be generated by this project. It projects that the level of direct and indirect employment that will result will be in the region of 564 jobs by 2010, 1089 jobs by 2014 and up to 6595 jobs by

2029. Clearly this is highly likely to generate significant benefits to the local economy, including Hartlepool.

1.8 The ES indicates that the ecological impact of this project was modelled in combination with a number of other plans and projects in the area. Other projects included the proposal to dredge Seaton Channel in connection with the development of the TERRC site and the recharging of the North Tees mudflat.

1.9 The ES concluded that in light of these other potential projects, the proposed scheme would not give rise to an adverse effect on the integrity of the Teesmouth and Cleveland Coast and SPA and Ramsar site either alone or in-combination. Redcar & Cleveland will have sought the views of English Nature to confirm this.

### **Conclusion**

1.10 In summary it is considered that the project offers a substantial economic development opportunity without appearing to give rise to any significant adverse implications. Subject to the various internal consultees raising no objections it is considered that this application should be supported.

### **RECOMMENDATION -**

1. That the Borough Council raises no objection to this proposal subject to no objections from English Nature.

**No:** 2  
**Number:** H/2006/0232  
**Applicant:** George Wimpey NE Ltd Lockhead Court Preston Farm  
Stockton on Tees TS18 3SH  
**Agent:** P & HS Architects The Old Station Station Road  
STOKESLEY TS9 7 AB  
**Date valid:** 20/03/2006  
**Development:** Erection of 174 dwellings including garages and  
associated works  
**Location:** Bounded By Chatham Road/Raby Road/Chester  
Road/Acclom Street Hartlepool

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## The Application and Site

2.1 The application site is an area of predominantly terraced housing within the North Central Hartlepool area. The houses are mainly older terraced houses with some later semi-detached houses and terraces to the western side. The periphery of the site also encompasses commercial premises. The frontage onto Raby Road is largely commercial including a hot food takeaway, newsagents/off licence, bakers, glazers, printers, a second hand shop, an antique shop and a large industrial scale building accommodating a flooring retailer. In the centre of this frontage is the Chester Public House, which will be retained and incorporated into the scheme. There are also commercial properties fronting Chester Road as it approaches the junction with Raby Road including a wine shop/ off licence (empty), a fish shop, hair salon and a housing office. Chatham Road is largely residential in character but the site also incorporates a shop and takeaway on this frontage.

2.2 To the north the site is bounded by Chatham Road on the other side of which are semidetached dwelling houses. To the east is Raby Road on the other side of which are dwelling houses and commercial premises. To the south is Chester Road on the other side of which are residential properties and North Cemetery. To the west, the site encompasses the southern half of Acclom Street. It will be bounded by the remaining northern half of the street including the Sure Start Centre and by an alleyway to the rear of the gardens of properties fronting Wynnstay Gardens.

2.3 It is proposed to demolish the existing housing (some 267 units in total) and commercial properties. In their place 168 detached, semi-detached and terraced dwelling houses and six apartments will be erected. The dwellings will range from bungalows to two, two and a half and three storey dwelling houses with between two and four bedrooms. The apartments will be provided above garaging. The development will incorporate gardens, on and off street parking, garages, public squares and landscaping. Garaging will also be provided as singles, doubles or in blocks in garage courts. The development has been designed with frontages onto the main streets, Raby Road, Chester Road and Chatham Road. Along these frontages three, two and two and a half storey dwelling houses will be provided. On Raby Road, the Chester Public House will be retained, with a new public square provided to the south side, a small car park in front of the Chester and an access to

the rear for servicing. The southern end of Raby Road as it approaches its junction with Chester Road will be narrowed to accommodate parking bays. A wide tree lined pedestrian boulevard will be accommodated along the west side of Raby Road close to this junction. Further into the site the main focus of the development will be a central public square surrounded by housing, which will incorporate landscaping, and an artwork. Elsewhere within the development houses will front onto the main streets or cluster around secondary squares and courts. The main vehicular accesses to the site will be taken from Chatham Road, Chester Road and Acclom Street. Two of the proposed garage courts will take access from Raby Road.

2.4 The North Central Hartlepool area is situated to the north of Hartlepool Town Centre, adjacent to West Central Hartlepool New Deal for Communities area, which has been the subject of extensive regeneration investment since 2001. North Central Hartlepool includes over 3,700 houses comprising of a mix of owner occupied, housing association, private rented and former council housing.

2.5 In 2003 Hartlepool Borough Council commissioned Nathaniel Lichfield Partners to undertake a housing market research study across north central Hartlepool, between December 2003 and April 2004 successive rounds of public consultations were undertaken with stakeholder, resident groups and neighbourhood forums. Following this, incorporating the feedback from residents on solutions for the area, the North Central Hartlepool Housing Regeneration Master plan was produced. The Council's Cabinet accepted the Master plan on the 9<sup>th</sup> August 2004 and the recommendations to regenerate the site covering Harwood Street, Pelham Street, Marston Gardens, Moore Street and parts of Acclom Street, Chatham Road, Raby Road and Chester Road were adopted.

2.6 To progress the market renewal, funding was secured from English Partnership and the Regional Housing Board and subsequently it has become part of the Tees Valley Living Housing Market Renewal programme, so that the site could be assembled for comprehensive redevelopment. A Development Brief for the area was drawn up and the developer, George Wimpey, was selected following a tender process.

2.7 At its meeting on 6th June 2005 Cabinet resolved to make a compulsory purchase order (CPO) in respect of the area encompassed in this application. This Council has identified the redevelopment of this area as a key component of its housing renewal strategy addressing imbalances in housing supply and demand within the Borough and promoting sustainable communities and environmental improvements. In the event that the land within the application area cannot be acquired by agreement the Council intends to rely on its compulsory purchase powers. A compulsory Purchase Order (C.P.O.) in respect of the site was made on 17 November 2005. There are 8 objections to the Order. A Public Local Inquiry to consider the Council's case for compulsory purchase and hear outstanding objections will commence on 18<sup>th</sup> July 2006. It should be noted that in line with national policy guidance the council remains willing to acquire by agreement wherever possible and negotiations are continuing with objectors notwithstanding the forthcoming Public Local Inquiry.

## Publicity

2.8 The application has been advertised by way of neighbour letters (88), site notice and in the press notice. To date, twelve letters of no objection and three letters of objection have been received.

The objectors raised the following issues:

- 1 Concerns car parking in Chester Road will make access to residents drives difficult.
- 2 Object as owner of land affected by the development.
- 3 Access to Chester Public House through garage court may get blocked by careless parking (This part of the proposal since amended access is now from what will be part of the public highway).
- 4 The scheme should incorporate a redesign to the elevation of the Chester Public House so that it overlooks the public square.

Following discussions the original proposals have been amended. Neighbours and those who made representations have therefore been re-consulted. The time period for further representations expires on 2<sup>nd</sup> June 2006. Members will be updated at the meeting as to the outcome of these re-consultations.

Copy letters **A**.

## Consultations

2.9 The following consultation replies have been received:

**Transportation & Traffic** – In response to the amended layout, has asked for various further minor amendments to the layout to ensure adequate provision is made for the turning of refuse vehicles.

**Head of Public Protection & Housing** – No objection in principle. Would have had concerns with regards to the possibility of providing a beer garden to the public house in such close proximity to residential properties. (See para 2.25 below)

In response to the amended layout Public Protection have asked that the applicant consider minor amendments to the layout in the vicinity of the Chester Public House

**Adult & Community Services** – Request a developer contribution of £250.00 per dwelling for off site play facilities which would be invested at the play facilities within the Dyke House area or Grayfield's Recreation ground.

**Environment Protection Manager** – Site Investigation/contamination condition required.

**Northumbrian Water** – No objections subject to location and protection of existing sewers. May be capacity issues for disposal of surface water. All alternative means of disposal should therefore be explored.

**Police** – The Police are satisfied within the amended layout but have asked that two CCTV cameras be provided at the junction of Chatham Road/Raby Road and Chester Road/Raby Road.

**Archaeology** - The current buildings on the site date from the first half of the 20<sup>th</sup> century. They consist of traditional terraced streets. There are at least three basic styles of houses: - 1) smaller street front terraces along most of the north-south aligned streets (particularly in the eastern part of the site), 2) slightly larger terraces with bay windows and forecourt gardens along Chester Road and later short blocks of terraces and semi-detached properties, particularly in the western part of the site. There are also a number of commercial properties along Raby Road.

These terraced houses and commercial properties form a part of our social history. Terraces in general are currently under threat from mass clearances, and indeed many large blocks of such houses have already been cleared in the past 60 years. Most of these clearances have occurred without any record being made of the buildings prior to their demolition meaning that a significant aspect of heritage is disappearing without trace.

Recommends that a historic building survey be carried out in advance of the development. This would cover all of the buildings within the study area. The survey should take the form of a written and photographic study of the streets with detailed photographs and drawn plans of at least ten example properties. This will ensure that a publicly accessible archive for this area is available as a resource for current and future generations. An appropriate condition is suggested.

**One North East** : No objections.

Again following discussions the original proposals have been amended. The consultees have therefore been re-consulted. The time period for further representations expires on 2<sup>nd</sup> June 2006. Members will be updated at the meeting as to the outcome of these re-consultations.

## **Planning Policy**

2.10 The following policies in the adopted Hartlepool Local Plan 2006 are relevant to the determination of this application:

Com5: States that proposals for shops, local services and food and drink premises will be approved within this local centre subject to effects on amenity, the highway network and the scale, function, character and appearance of the area.

Com6: States that the Borough Council will encourage environmental and other improvement and enhancement schemes in designated commercial improvement areas.

GEP1: states that in determining planning applications the Borough Council will have due regard to the provisions of the Development Plan. Development should be located on previously developed land within the limits to development and outside the green wedges. The policy also highlights the wide range of matters which will be taken into account including appearance and relationship with surroundings, effects on amenity, highway safety, car parking, infrastructure, flood risk, trees, landscape features, wildlife and habitats, the historic environment, and the need for high standards of design and landscaping and native species.

GEP15: states intention to acquire sites by compulsory purchase in order to achieve the proper planning of an area in the interests of improving the local economy or the general environment.

GEP2: states that provision will be required to enable access for all (in particular for people with disabilities, the elderly and people with children) in new developments where there is public access, places of employment, public transport and car parking schemes and where practical in alterations to existing developments.

GEP3: states that in considering applications, regard will be given to the need for the design and layout to incorporate measures to reduce crime and the fear of crime.

GEP6: states that developers should seek to incorporate energy efficiency principles through siting, form, orientation and layout of buildings as well as through surface drainage and the use of landscaping.

GEP9: states that the Borough Council will seek contributions from developers for the provision of additional works deemed to be required as a result of the development. The policy lists examples of works for which contributions would be sought.

Hsg3: States that the Council will seek to tackle the problem of imbalance of supply and demand in the existing housing stock through programmes of demolition, redevelopment, property improvement and environmental and street enhancement works. Priority will be given to West Central and North Central areas of the town.

Hsg5: A Plan, Monitor and Manage approach will be used to monitor/housing supply. Planning permission will not be granted for proposals that would lead to the strategic housing requirement being significantly exceeded or the recycling targets not being met. The policy sets out the criteria that will be taken into account in considering applications for housing developments including regeneration benefits, accessibility, range and choice of housing provided and the balance of housing supply and demand. Developer contributions towards demolitions and improvements may be sought.

Hsg9: Sets out the considerations for assessing residential development including design and effect on new and existing development, the provision of private amenity space, casual and formal play and safe and accessible open space, the retention of trees and other features of interest, provision of pedestrian and cycle routes and accessibility to public transport. The policy also provides general guidelines on densities.



Rec2: requires that new developments of over 20 family dwellings provide, where practicable, safe and convenient areas for casual play. Developer contributions to nearby facilities will be sought where such provision cannot be provided.

Tra19: states that residential and industrial estates should be designed to ensure adequate access by modes of transport other than the car. Where appropriate, developer contributions will be sought towards improved public transport and alternative transport accessibility.

Tra8: states that safe and convenient pedestrian routes linking new housing to local facilities and amenities will be provided.

## **Planning Considerations**

2.11 The main issues in this case are considered to be policy, design/impact on the visual amenity of the area, the impact of the development on the amenities of nearby properties, highways, security, drainage, contamination, alterations to the Chester Public House, social history, ownership, and developer contributions.

### Policy

2.12 The site falls within the Housing Regeneration Area identified in Policy Hsg3 of the adopted Local Plan where the Borough Council will seek to tackle the problem of the imbalance of supply and demand in the existing housing stock through co-ordinated programmes to include demolition, redevelopment, property improvement and environmental and street enhancement works.

2.13 In 2003 Hartlepool Borough Council commissioned Nathaniel Lichfield Partners to undertake a housing market research study across North Central Hartlepool, successive rounds of public consultations were undertaken with stakeholder, resident groups and neighbourhood forums. Following this, incorporating the feedback from residents on solutions for the area, the North Central Hartlepool Housing Regeneration Master plan was produced. The Council's Cabinet accepted the Master Plan on the 9<sup>th</sup> August 2004 and the recommendations to regenerate the site were adopted. A Development Brief for the area was drawn up and the developer, George Wimpey was selected following a tender process.

2.14 It is considered that the proposal complies with policy Hsg3 of the adopted Local Plan and meets the requirements of policy Hsg5 in relation to the management of housing land supply, in that it involves the re-use of cleared housing land, in its positive regeneration benefits, the variety of types of housing provided and its accessibility to bus routes and to local facilities.

### Design/Impact On The Visual Amenity Of The Area

2.15 The proposed new dwellings in terms of their design and layout will not directly copy the densely packed terraced housing they will replace.

2.16 The design and scale of the proposed dwellings is considered acceptable and an improvement on the existing terraced housing and commercial buildings which encompass the site.

2.17 In terms of their layout the proposed dwellings on the periphery will follow the prevailing street pattern with short terraces and semis fronting onto the main streets. In the centre of the site the focus of the development will be a new square elsewhere the houses will be arranged along the streets and grouped around secondary courtyards and squares. The layout allows for the introduction of off street parking, front gardens, squares and landscaping which will add interest, variety and greenery to the street scene.

2.18 In most cases the separation distances between the new dwellinghouses will more than meet the guidelines (20m elevation to elevation, 10m elevation to gable) contained within the Local Plan. As one might expect with older housing areas the current separation distances on the site, typically 11m elevation to elevation, are well below modern standards.

2.19 It is considered that overall the proposed design and layout of the development will transform this area, revitalise the Raby Road frontage in particular and enhance the street scene by provision of the boulevard and public squares. It is considered that the proposal will have a significantly positive impact on the visual amenity of the area and the street scene.

#### The Impact Of The Development On The Amenities Of Nearby Properties

2.20 The proposed housing replaces existing densely packed terraced housing. In terms of the relationship with neighbouring dwellings and commercial properties outwith the site the proposal will meet Local Plan guidance in terms of separation distances. In most cases the separation will be increased in relation to that enjoyed by the existing dwellings. A single objection has been received from a neighbouring property that people parked on the road might restrict vehicular access to his property. This is currently a problem with people visiting the local shops and facilities. The scheme however accommodates adequate off street parking to serve the new dwellings which the existing businesses and dwellings for the most part do not enjoy. Whilst difficulties caused by inconsiderate parking cannot be ruled out given the additional parking opportunities the scheme offers it is considered unlikely that the development will make the situation any worse for the objector. It is not considered that the proposal will unduly affect the existing amenities of neighbouring properties in terms of any loss of privacy, light, outlook or in terms of any overbearing effect.

#### Highways

2.21 Further minor amendments to the layout have been requested to take account of highway concerns regarding the access of refuse vehicles. It is anticipated that these modifications can be accommodated and a suitable amended layout will be available before the meeting.

## Security

2.22 The alleyways to the rear of properties fronting onto Wynstay Gardens will be retained. The developer has worked with the Cleveland Police's Crime Prevention Officer in order to ensure that where practical and appropriate the design incorporates crime prevention measures. In particular parking/garaging courts will be enclosed and gated to discourage unauthorised access. The dwellings will accommodate secure doors and windows and appropriate lighting (These matters are conditioned). The Police are satisfied that the amended layout will accommodate their concerns. They have requested however, that CCTV cameras be provided at the junctions of Raby Road and Chatham/Chester Road. This provision is dependent upon the provision of a suitable cable link being provided along Raby Road. However it is anticipated that part of the receipts from the sale of site will be ring fenced for the future provision of cameras.

## Drainage

2.23 Northumbrian Water have advised that foul sewage can be accepted to the public sewers but that surface water drainage will only be accepted if all alternative means of disposal have been investigated and utilised. The development will reduce the areas of hardstanding, introducing gardens and landscaped areas within a previously build up area. The absorbative capacities of these areas will tend therefore to reduce surface water runoff to the sewers. It is proposed to impose a planning condition requiring that the details for the disposal of surface water be agreed prior to the commencement of development.

## Contamination

2.24 The application site is previously developed land, where there is potential for the infilling or the building up of the land to have occurred historically. It is considered appropriate therefore to impose a planning condition requiring that a site investigation be undertaken prior to the commencement of development and securing remediation measures should contamination be found.

## Alterations to the Chester Public House

2.25 The proposal allows for the retention of the Chester Public House. The removal of the existing houses adjoining the public house will require remedial work to the relevant elevations of the Chester. An objection to the initial proposal was received from the owner in relation to the then access proposals for servicing (through a private garaging court). The owner also raised concerns that any alterations to the elevations of the Chester should allow for a frontage onto the new public square to the south. The applicant has been asked to provide details of the proposed alterations to the Chester however these have not been provided at this time. It is considered in any case that these could be conditioned. The revised layout shows servicing to the Chester accommodated to the rear via a culdesac. The servicing area is adjacent to a dwellinghouse and the applicant has been asked to look again at this relationship to ascertain whether the house can be moved further away in light of the potential disturbance to the occupier and an acoustic barrier incorporated. The

applicant's response is awaited but it is anticipated this can be accommodated. In the original proposal reference was made to a beer garden. The Head Of Public Protection has advised that this would not be acceptable and the applicant has confirmed that a beer garden will not be provided. It is considered appropriate however to impose an appropriate condition on the use of the service area.

### Social History

2.26 In the interests of social history Tees Archaeology have asked that a condition be imposed on any permission requiring that the terraced housing and commercial areas are recorded by the developer in accordance with an agreed scheme prior to their demolition. This will ensure that a record of the area is retained for the benefit of future generations. The applicant however has asked that such a condition not be imposed. Whilst sympathetic with the Tees Archaeology's request given the applicant's resistance to the condition, the fact that the site is not part of a conservation area and does not include any listed buildings, it is not considered that it would be reasonable to impose such a condition. It is understood however that some recording has already been undertaken by Housing Hartlepool staff and that there is a willingness to undertake further work under the guidance of Tees Archaeology. This option is currently being investigated and will be reported to Members before the meeting.

### Ownership

2.27 An objection has been received from the owner of one of the commercial properties on Raby Road on the grounds that they are the owners of land/buildings which are within the application site. The writer has not expanded on their objection. Planning legislation however allows for an applicant to make an application on land he does not own provided he serves notice of his intention upon the owner. The certificates submitted with the application indicate that the objector was notified and he is clearly aware of the proposal as he has responded to the application. The objector of course still retains rights over his land unless the applicant can secure control of the site either through agreement or through a Compulsory Purchase Order.

### Developer Contributions

2.28 The site includes no provision for play areas. The developer has therefore been asked to provide a contribution for the provision/improvement of play areas off site. He has agreed to provide a unilateral undertaking, which will secure a sum of £250 per dwelling (£43,500). It will be used to provide a play area within the –Dyke House area or towards the improvements to the Grayfield's recreation grounds. An appropriate legal agreement will be required.

**RECOMMENDATION** – APPROVE subject to the receipt of a satisfactory amended layout plan, the consideration of outstanding consultations, the completion of a planning obligation pursuant to S106 of the Town & Country Planning Act 1990 (whether by agreement or unilateral undertaking) securing developer contributions for the improvement/provision of play areas and the following conditions.

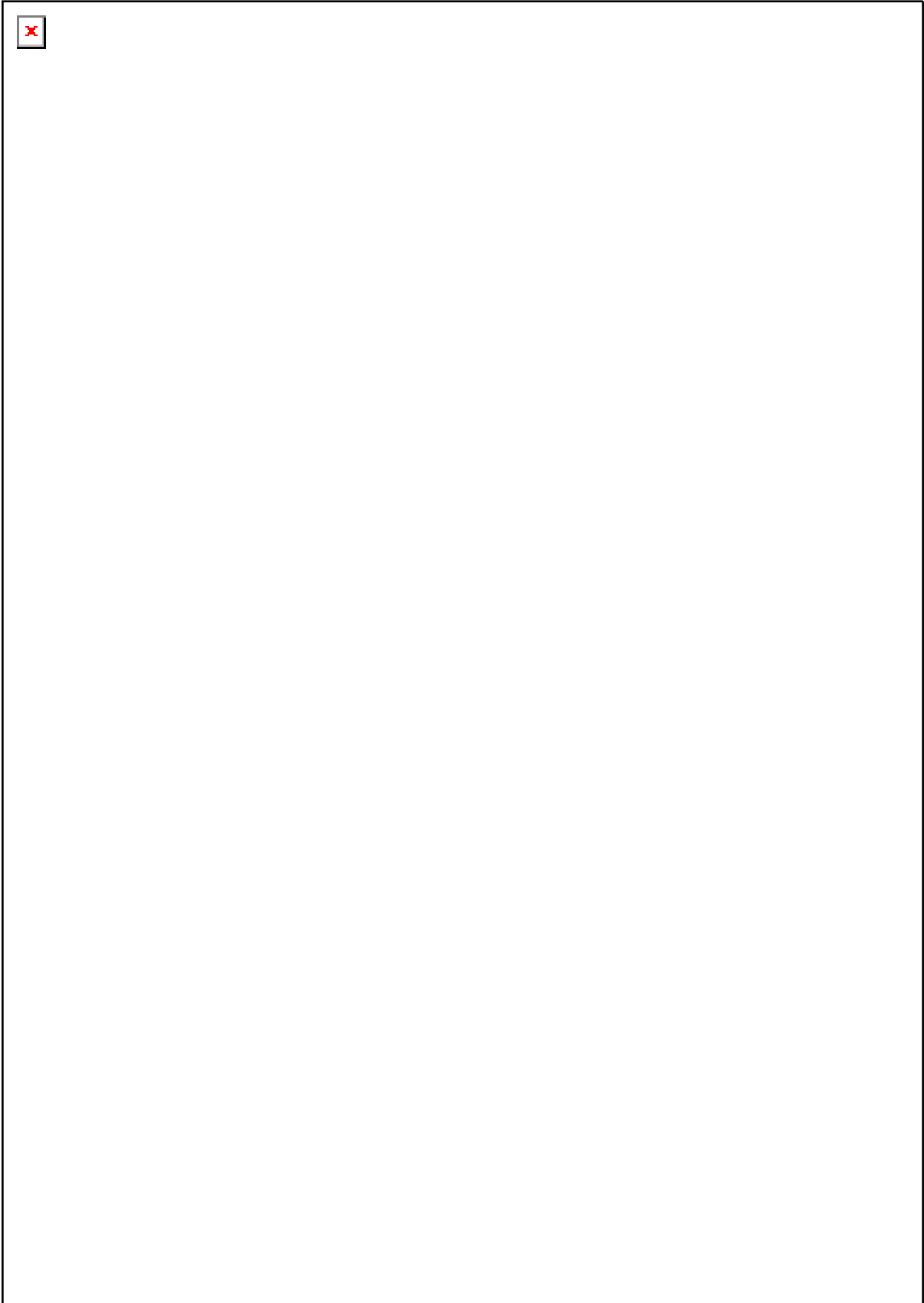
1. The development to which this permission relates shall be begun not later than three years from the date of this permission.  
To clarify the period for which the permission is valid.
2. The development hereby approved shall be carried out in accordance with the amended plan(s) no(s) ##### received on \*\* \*\* \*\*, unless otherwise agreed in writing by the Local Planning Authority. (To be confirmed)  
For the avoidance of doubt
3. Details of all external finishing materials shall be submitted to and approved by the Local Planning Authority before development commences, samples of the desired materials being provided for this purpose.  
In the interests of visual amenity.
4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any other revoking or re-enacting that Order with or without modification), no garage(s) other than those expressly authorised by this permission shall be erected without the prior written consent of the Local Planning Authority.  
To enable the Local Authority to exercise control in the interests of the amenities of the occupants of the adjacent residential property.
5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order with or without modification), the dwelling(s) hereby approved shall not be extended in any way without the prior written consent of the Local Planning Authority.  
To enable the Local Authority to exercise control in the interests of the amenities of the occupants of the adjacent residential property.
6. A detailed scheme of landscaping and tree and shrub planting shall be submitted to and approved in writing by the Local Planning Authority before the development hereby approved is commenced. The scheme must specify sizes, types and species, indicate the proposed layout and surfacing of all open space areas, include a programme of the works to be undertaken, and be implemented in accordance with the approved details and programme of works.  
In the interests of visual amenity.
7. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with the approved programme. Any trees plants or shrubs which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of the same size species, unless the Local Planning Authority gives written consent to any variation.  
In the interests of visual amenity.
8. No dwelling shall be occupied until details of the proposed street lighting provision including a programme of works have been submitted to and approved in writing by the Local Planning Authority. Street lighting shall thereafter be provided in accordance with the approved details.  
In order to ensure that these details are acceptable.
9. The development hereby permitted shall not be commenced until: a) A desk-top study is carried out to identify and evaluate all potential sources of contamination and the impacts on land and/or controlled waters, relevant to

the site. The desk-top study shall establish a 'conceptual site model' and identify all plausible pollutant linkages. Furthermore, the assessment shall set objectives for intrusive site investigation works/ Quantitative Risk Assessment (or state if none required). Two copies of the study shall be submitted to and approved in writing by the Local Planning Authority. If identified as being required following the completion of the desk-top study, b) The application site has been subjected to a detailed scheme for the investigation and recording of contamination, and remediation objectives have been determined through risk assessment, and agreed in writing with the Local Planning Authority, c) Detailed proposals for the removal, containment or otherwise rendering harmless of any contamination (the 'Reclamation Method Statement') have been submitted to and approved in writing by the Local Planning Authority, d) The works specified in the Reclamation Method Statement have been completed in accordance with the approved scheme, e) If during reclamation or redevelopment works any contamination is identified that has not been considered in the Reclamation Method Statement, then remediation proposals for this material should be agreed with the Local Planning Authority.

To ensure that any site contamination is addressed.

10. Where proposed first floor window(s) in the side elevations of houses shall be glazed with obscure glass. Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting the Order with or without modification), no additional window(s) shall be inserted in the side elevations of any dwelling houses without the prior written consent of the Local Planning Authority.  
To prevent overlooking
11. No development shall commence until details of the proposed means for the disposal of surface water arising from the site have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.  
In order to ensure that satisfactory measures for the disposal of surface water are in place.
12. Prior to the commencement of development the existing public sewer within/close to the site shall be accurately located. It shall be protected from damage before and during construction/demolition work unless otherwise agreed in writing with the Local Planning Authority.  
In order to ensure the existing public sewer system is accounted for during the development of the site.
13. Prior to the commencement of development details of any proposal to phase the development of the site shall be submitted to and agreed in writing with the Local Planning Authority.  
In order to ensure that any phased development does not detract from the amenity of the area.
14. The alleygates at the entrances to the alleys to the rear of the properties fronting Wynstay Gardens shall be retained and if temporarily removed shall be reprovided no later than the final substantial completion of the development.  
In the interests of crime prevention and security.
15. Unless otherwise agreed in writing by the Local Planning Authority all the doors and windows in the development shall be provided to meet secured by design principles.

- In the interests of crime prevention and security.
16. Details of all walls, fences and other means of boundary enclosure shall be submitted to and approved by the Local Planning Authority before the development hereby approved is commenced.
- In the interests of visual amenity.
17. Prior to the commencement of development, details of the proposed alterations to the elevations and layout of the Chester Public House, including any provision for noise insulation and extraction/ventilation, shall be submitted to and approved in writing by the Local Planning Authority.
- In the interests of the visual amenity of the area and the amenity of occupiers of neighbouring properties.
18. The servicing area shown to be provided to the rear of the Chester Public House shall not be open to the public. It shall be kept clear of obstruction and retained for the use of vehicles servicing the Chester Public House at all times.
- In the interests of the amenity of neighbouring residents.
19. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order with or without modification), no fences, gates, walls or other means of enclosure, shall be erected within the curtilage of any dwellinghouse forward of any wall of that dwellinghouse which fronts onto a road, without the prior written consent of the Local Planning Authority.
- In the interests of amenity and highway safety.
20. No fence, wall building or other structures shall be placed within the visibility splays of the accesses into the site from Chatham Road or Chester Road unless approved in writing by the Local Planning Authority. No plants, trees bushes within the aforementioned visibility splays shall be allowed to exceed one metre in height above ground level.
- In the interests of highway safety.
21. The wall/enclosure enclosing the service area of the Chester Public House shall be an acoustic wall/enclosure, details of which shall first be submitted and approved in writing by the Local Planning Authority. The acoustic wall/enclosure shall be provided before the first occupation of the dwelling house on plot. (To be confirmed)
- In the interests of the amenity of future occupancy of the nearby dwellinghouse.





**No:** 3  
**Number:** H/2006/0282  
**Applicant:** Mandale Commercial Ltd P.O. Box 29 Stockton on Tees  
TS18 2XW  
**Agent:** Elder Lester Garland McGregor Reeds Mill Atlas Wynd  
Yarm TS15 9AD  
**Date valid:** 03/04/2006  
**Development:** Erection of a small retail/food unit  
**Location:** SLAKE TERRACE HARTLEPOOL HARTLEPOOL

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## **The Application and Site**

3.1 The site to which this application relates is an area of land upon the western side of Slake Terrace, opposite navigation point, to the north of Hungary Jacks sandwich shop.

3.2 The application seeks consent for the erection of a single storey pitched roof retail unit (4.5m x 4.5m) for the sale of hot food and snacks. The proposal incorporates the provision of a service hatch and disabled access ramp to the eastern elevation and provision of a bin store to the rear of the north elevation.

## **Publicity**

3.3 The application has been advertised by way of neighbour letters (42). To date, there have been 3 letters of objection received

3.4 The concerns raised are:

- 1) There is an adequate supply of this type of unit within the Marina and further jeopardise the viability of the existing units.
- 2) Will add to the ongoing litter problem
- 3) Will remove the refuse storage point of the Navigation Point apartments.
- 4) Don't want to spoil Hartlepool's greatest asset to the tourist industry.

The period for publicity expires before Committee.

## **Consultations**

3.5 The following consultation replies have been received:

Head of Traffic and Transportation – No objection

Head of Public Protection – No objection

Northumbrian Water – No objection

Environment Agency – No objection providing Flood Risk Assessment is adhered to.

## Planning Policy

3.6 The following policies in the adopted Hartlepool Local Plan 2006 are relevant to the determination of this application:

COM18: states that proposals for food and drink developments will only be permitted subject to consideration of the effect on amenity, highway safety and character, appearance and function of the surrounding area and that hot food takeaways will not be permitted adjoining residential properties. The policy also outlines measures which may be required to protect the amenity of the area.

Com4A: proposals for a range of uses will be permitted in edge of centre areas providing that they do not adversely affect the character and amenity of the area and that they accord with policies Com 13A, Com 14, Com18, Rec13, Rec14, Tra16, GEP7, HE1, HE7, HE8 and HE10. The policy sets out the 10 edge of centre areas and lists the range of uses which are considered acceptable and unacceptable in each.

DC02: states that the Borough Council will pay regard to the advice of the Environment Agency in considering proposals within flood risk areas including the need for a flood risk assessment. Flood mitigation measures may be necessary where development is approved. Where these are impractical and where the risk of flooding on the land or elsewhere is at a level to endanger life or property development will not be permitted.

GEP1: states that in determining planning applications the Borough Council will have due regard to the provisions of the Development Plan. Development should be located on previously developed land within the limits to development and outside the green wedges. The policy also highlights the wide range of matters which will be taken into account including appearance and relationship with surroundings, effects on amenity, highway safety, car parking, infrastructure, flood risk, trees, landscape features, wildlife and habitats, the historic environment, and the need for high standards of design and landscaping and native species.

GEP2: states that provision will be required to enable access for all (in particular for people with disabilities, the elderly and people with children) in new developments where there is public access, places of employment, public transport and car parking schemes and where practical in alterations to existing developments.

GEP3: states that in considering applications, regard will be given to the need for the design and layout to incorporate measures to reduce crime and the fear of crime.

GEP6: states that developers should seek to incorporate energy efficiency principles through siting, form, orientation and layout of buildings as well as through surface drainage and the use of landscaping.

To1: states that this area will continue to be developed as a major tourist attraction and that the Borough Council will seek to protect the areas of water from development.

## Planning Considerations

3.7 The main considerations in this case are the appropriateness of the proposal in terms of the policies and proposals within the Hartlepool Local Plan, street scene, highway safety, noise and disturbance, litter and the amenities of the owners of nearby residential properties.

3.8 The application is for the use of the proposed unit for the sale of hot foods/snacks. It is considered that given the mixed use nature of the area and the existing restaurants, takeaways and wine bars at ground floor, the proposed use would be unlikely to appear out of keeping or create a detrimental impact upon the existing character of the area.

3.9 The scale of the proposed structure in relation to the 3 and 4 storey Navigation Point is such that it would be unlikely to appear dominant upon the street scene. It is considered that the design of the proposal is in keeping with the design of the surrounding properties.

3.10 The Council's Head of Traffic and Transportation has raised no objection to the proposed development. It is considered that the siting of the proposed unit is such that it will not create a significant impact upon highway safety by affecting the existing sight lines or affecting existing parking provision. It is considered that the existing public parking facilities in the immediate area are sufficient enough to serve the relatively small development.

3.11 The Council's Head of Public Protection has raised no objection to the proposed use. It is considered that the distance of the proposal from the residential units upon Navigation Point is satisfactory. Given the existing mixed late night uses at ground floor it is not anticipated that the proposal would be create detrimental noise and disturbance issues. The applicant has indicated that the proposed hours of use are to be 9am to 5pm every day of the week. A planning condition can be attached to any approval to restrict the hours of operation.

3.12 The existing bin store serving the upper floor apartments of Navigation Point is to be removed as part of the application. The applicant has indicated that a refuse store is to be created to the north of the structure. A planning condition to agree the final siting and design of the bin store can be reasonably attached to any approval. Further information about the siting of this is awaited.

3.13 Objections have been raised from nearby businesses regarding the potential litter created from such a development and its effect upon the amenities of the area. It is felt there is adequate provision of public waste bins in the immediate surrounding area. Given the surrounding uses (i.e. Hungary Jacks and the nearby fish and chip shop) it is not considered a refusal could be sustained upon the grounds of litter creation.

3.14 A letter of objection has also raised the proposals impact upon the vitality and viability of the surrounding businesses. Due to the size and nature of the proposed unit, a retail impact assessment is not required. Competition between surrounding businesses is not a material consideration.

**RECOMMENDATION** - Subject to the receipt of information showing that the satisfactory relocation of the bin store is possible APPROVE subject to the following conditions.

1. The development to which this permission relates shall be begun not later than three years from the date of this permission.  
To clarify the period for which the permission is valid.
2. The development hereby permitted shall be carried out in accordance with the plans and details received by the Local Planning Authority on 12th of January 2006 and the 23rd of May 2006, unless otherwise agreed in writing by the Local Planning Authority.  
For the avoidance of doubt
3. The premises shall be used for the sale of hot food and snacks and for no other purpose (including any other purpose in Class A5 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 or in any provision equivalent to that Class in any statutory instrument revoking or re-enacting that Order with or without modification.  
In the interests of the amenities of the occupants of neighbouring properties.
4. The development hereby permitted shall not be commenced until: a) A desk-top study is carried out to identify and evaluate all potential sources of contamination and the impacts on land and/or controlled waters, relevant to the site. The desk-top study shall establish a 'conceptual site model' and identify all plausible pollutant linkages. Furthermore, the assessment shall set objectives for intrusive site investigation works/ Quantitative Risk Assessment (or state if none required). Two copies of the study shall be submitted to and approved in writing by the Local Planning Authority. If identified as being required following the completion of the desk-top study, b) The application site has been subjected to a detailed scheme for the investigation and recording of contamination, and remediation objectives have been determined through risk assessment, and agreed in writing with the Local Planning Authority, c) Detailed proposals for the removal, containment or otherwise rendering harmless of any contamination (the 'Reclamation Method Statement') have been submitted to and approved in writing by the Local Planning Authority, d) The works specified in the Reclamation Method Statement have been completed in accordance with the approved scheme, e) If during reclamation or redevelopment works any contamination is identified that has not been considered in the Reclamation Method Statement, then remediation proposals for this material should be agreed with the Local Planning Authority.  
To ensure that any site contamination is addressed.
5. The premises shall only be open to the public between the hours of 9am and 5pm daily.  
In the interests of the amenities of the occupants of neighbouring properties.
6. Prior to the commencement of the development hereby approved final details of the bin store shall be submitted to and agreed in writing by the local Planning Authority. once agreed the bin store shall be retained throughout the lifetime of the development.  
In the interests of the amenities of the occupants of neighbouring properties.
7. The use hereby approved shall not commence until there have been submitted to and approved in writing by the Local Planning Authority plans and details for

ventilation filtration and fume extraction equipment to reduce cooking smells, and all approved items have been installed. Thereafter, the approved scheme shall be retained and used in accordance with the manufacturers instructions at all times whenever food is being cooked on the premises.  
In the interests of the amenities of the occupants of neighbouring properties.



**No:** 4  
**Number:** H/2005/5639  
**Applicant:** Mr S Maxwell 17 GRANGE ROAD HARTLEPOOL TS26 8JE  
**Agent:** Malcolm Smith & Partners Havelock House 24 Victoria Road HARTLEPOOL TS26 8DD  
**Date valid:** 06/01/2006  
**Development:** Installation of UPVC windows to front elevation and door and provision of downpipe and guttering (retrospective application)  
**Location:** 17 GRANGE ROAD HARTLEPOOL

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### **Update :-**

4.1 This is the first of four applications, which relate to alterations in the Grange Conservation Area on today's agenda. The applications have been deferred by Members at recent committees in anticipation of a review by the Hartlepool Conservation Area Advisory Committee (CAAC) of the merits of the Article 4 (2) Direction within the Grange Conservation Area. The CAAC met on the 11<sup>th</sup> of May.

4.2 The CAAC refrained from expressing a view on the specific applications individually or collectively but did acknowledge the quality of the Grange Conservation Area. In that respect the CAAC expressed the following views: -

1. That original features were important to the character of the Grange Conservation Area.
2. That the Article 4 (2) Direction remained an essential tool in preserving the character of the Grange Conservation Area
3. That the removal of the Article 4 (2) designation would then lead to reconsideration of the designation of the conservation area.

4.3 The original committee report has been updated and is reproduced below.

### **The Application and Site**

4.4 The application site is a terraced Victorian dwellinghouse. It is located within the Grange Conservation Area and is typical in terms of its general character and appearance of the older properties which contribute to the special character of the area and led to its designation as a Conservation Area.

4.5 Retrospective planning permission is sought for the retention of UPVC windows, a door, guttering and downpipes which have recently been installed in the front elevation of the property without the benefit of planning permission. Planning permission should have been obtained for the works as permitted development rights for alterations to the front elevations of the properties have been removed by an Article 4(2) Direction in order to ensure that alterations where proposed are appropriate.

4.6 The replaced items include ground floor bay windows which comprised traditional timber sliding sash windows flanking a single pane timber window, three timber sliding sash windows at first floor, a timber top opening dormer window, a door with fanlight, guttering and downpipes.

### **Related Applications**

4.7 Three other applications also on this agenda for works in the Grange Conservation Area are at 98 Grange Road (H/2006/0050), 86 Clifton Avenue (H/2005/5411), and 34 Grange Road (H/2005/5387). The latter two applications like this one seek permission for the retention of unauthorised works.

### **Background to designation of Grange Conservation Area**

4.8 The designation of the Grange Conservation Area, the proposed Article 4 (2) direction and the implications for householders were the subject of a lengthy and extensive public consultation exercise.

4.9 On the 5<sup>th</sup> April 2004 all households were sent;

1. a leaflet outlining information on the proposed conservation area,
2. a leaflet providing general information on conservation areas and explaining the implications of an Article 4 (2) Direction.
3. a ballot paper with a prepaid envelope.

4.10 Residents were asked if they would like to be included in a conservation area, if they didn't want to be included in a conservation area and if they supported the introduction of an Article 4 (2) Direction. There was also space on the paper for residents to write any queries or objections that they had. Alongside this an exhibition was held in the Central Library for two weeks from 17<sup>th</sup> April to 30<sup>th</sup> April 2004 providing information on the proposal and an exhibition was held at the Grange Road Methodist Church on 5<sup>th</sup> May 2004 with Officers present to answer any questions that residents had. In addition articles appeared in the local press on Saturday 10<sup>th</sup> April 2004.

4.11 In total 573 properties were consulted in the area. The first consultation prompted 88 responses (15%), 65 supported the Conservation Area, 23 objected to the proposal and 59 supported the introduction of an Article 4 (2) Direction. This response was reported to the Portfolio Holder for Regeneration and Planning at the time on 7<sup>th</sup> June 2004 who requested that further consultation was carried out in the area.

4.12 The second consultation was in the form of a letter, outlining the results of the first consultation and the request from the Portfolio Holder for further consultation, was sent to all residents on 18<sup>th</sup> June 2004. The implications of a Conservation Area and Article 4 (2) Direction were again explained. Residents were requested to complete a ballot paper (the same as the first) and return it in a prepaid envelope. 229 responses (40%) were received this time. 139 respondents were in favour of the Conservation Area and 90 objected. 114 people indicated their support for the introduction of an Article 4 (2) Direction.



4.13 A report was taken to the Portfolio Holder on 15<sup>th</sup> September 2004 regarding the proposed Conservation Area. He decided to designate the Conservation Area and approve the Article 4 (2) Direction. All households were notified by letter on the 1<sup>st</sup> October 2004 of the Conservation Area designation and the Article 4 (2) Direction. In addition they also received a list of works covered by the Article 4 (2) Direction that would now require planning permission. In addition a public notice was placed in both the Hartlepool Mail and the London Gazette outlining the designation of the Conservation Area and the approval of the Article 4 (2) Direction.

## **Publicity**

4.14 The application has been advertised by way of neighbour letters (2), site notice and in the press. No representations were received.

4.15 The period for publicity has expired.

## **Consultations - None**

## **Planning Policy**

4.16 The following policies in the adopted Hartlepool Local Plan 2006 are relevant to the determination of this application:

GEP1: states that in determining planning applications the Borough Council will have due regard to the provisions of the Development Plan. Where appropriate development should be located on previously developed land within the limits to development and outside the green wedges. The policy also highlights the wide range of matters which will be taken into account as appropriate including appearance and relationship with surroundings, effects on amenity, highway safety, car parking, infrastructure, flood risk, trees, landscape features, wildlife and habitats, the historic environment, and the need for high standards of design and landscaping.

HE1: states that development will only be approved where it can be demonstrated that the development will preserve or enhance the character or appearance of the Conservation Area and does not adversely affect amenity. Matters taken into account include the details of the development in relation to the character of the area, the retention of landscape and building features and the design of car parking provision. Full details should be submitted and regard had to adopted guidelines and village design statements as appropriate.

4.17 In March 2004 the Planning Committee resolved that in considering planning applications in Conservation Areas on buildings subject to an Article 4(2) Direction they would adopt the following policy:

“Any planning application for replacement or alteration of traditional joinery items on the buildings front, side or rear elevations which is not of a type appropriate to the age and character of the building (in terms of design, detailing and materials) and the character and appearance of the conservation area should be denied consent.”

## Planning Considerations

4.18 The main planning considerations in this case are considered to be the impact of the proposal on the character and appearance of the Grange Conservation Area.

4.19 Current Local Plan Guidance, in accordance with national guidance, requires that development in Conservation Areas preserves or enhances the character and appearance of the Conservation Area. In such areas it is important to retain traditional features such as original windows, bays and doors, or, where it is necessary to replace them, to ensure that the replacements are of an appropriate traditional design, detailing and materials in keeping with the age of the property. This is particularly the case on public frontages as these features can make a significant contribution to the character and appearance of the street scene. It is these changes that the Article 4 (2) Direction seeks to control and manage.

4.20 Archive photographs of the property (attached) indicate that the items replaced by the applicant included traditional sliding sash windows. The UPVC replacements do not have the same character and appearance as the traditional joinery and are not considered appropriate for the following reasons:

1. The appearance of the modern UPVC differs significantly from traditional sliding sash windows. The detailing and shape of the frame is flatter and wider than that of a timber sash. The lower sash of the traditional windows would be set back rather than flush. The windows where opening are top hung opening outwards rather than sliding over one another.
2. UPVC as a material has different characteristics to timber. It is smoother with a more regular surface finish and colour and ages differently from painted timber. UPVC retains its regularity of form, colour and reflectivity with little change over time. Newly painted timber is likely to go through a wider range of change and appearance over time. A UPVC window will differ significantly in appearance from a timber windows both at the outset and critically as it ages.
3. The original sash windows at first floor level had an arched head. This detailing has been lost with the introduction of the UPVC windows.
4. Timber windows have tenoned corner joints and the panes of glass are held in with putty. The glazing beads and mitred corner joints found in UPVC windows are unlike the putty beads and tenoned corner joints of a timber window. It is these small but significant details that contribute to the special character of a timber sash window and so to the conservation area.

4.21 The modern UPVC door is not appropriate for a house of this period for the following reasons.

1. The materials, construction and colour are inappropriate for similar reasons to those outlined above.

2. The door style is inappropriate. A property of this age would traditionally have a door with six panels with a fanlight above, the door installed has four panels and a small semi circular window.

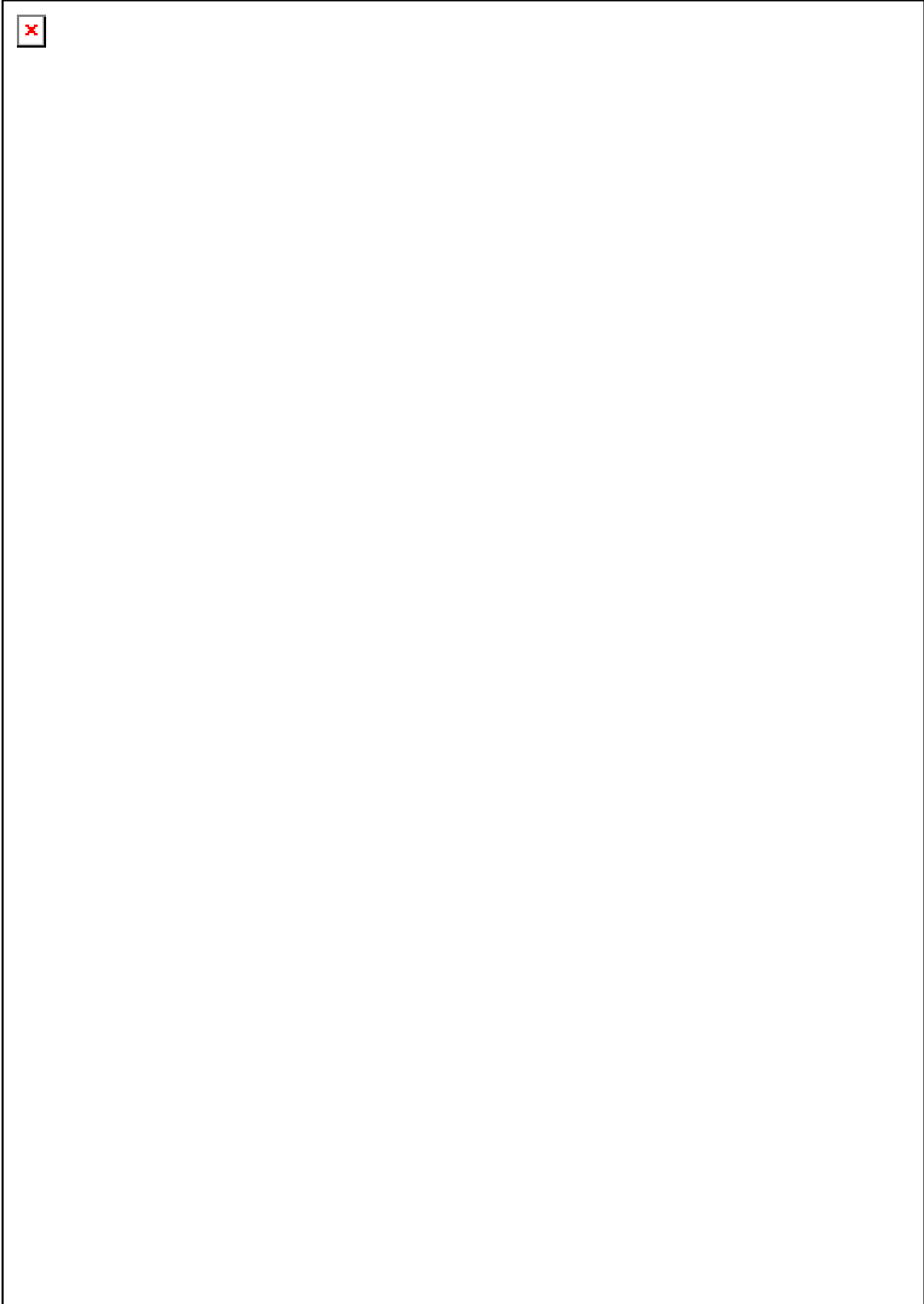
4.22 The UPVC guttering and downpipes is not considered appropriate for a house of this period although in isolation it is considered that it would be difficult to argue that his change requires planning permission.

4.23 It is considered that the UPVC windows, door, downpipe and guttering for reasons of their design, detailing and materials detract from the character and appearance of the building and the Conservation Area. The proposal is therefore contrary to current national and Local Plan policies and the policy adopted by Committee in March 2004. It is recommended therefore that planning permission be refused.

4.24 As the works have already been undertaken it is incumbent on the Planning Authority to consider appropriate enforcement action to rectify the breach of planning control. It is considered that the unauthorised works have harmed the character and appearance of the building and the Conservation Area it is recommended therefore that enforcement action be initiated to secure the removal of the UPVC windows, door, guttering and downpipes and their replacement with windows, doors, guttering and downpipes appropriate in terms of their design, detailing and materials to the age and character of the building. If this cannot be achieved by negotiation then it is recommended an enforcement notice be issued with a compliance period of six months. In this context it should be noted that a new grant regime to help provide traditional detailing has just been agreed and that this does not preclude help in cases such as this.

**RECOMMENDATION – REFUSE – for the following reasons:**

- A It is considered that the UPVC windows and door, by reason of their design, detailing and materials detract from the character and appearance of the building and the Grange Conservation Area contrary to policies GEP1 and HE1 of the adopted Hartlepool Local Plan 2006.
- B It is recommended that enforcement action be initiated, including if necessary the service of an enforcement notice on the owner of the property, to secure the removal of the UPVC windows and door, in the front elevation and their replacement with windows and door, appropriate to the age and character of the building. Any enforcement notice to require compliance within six months.



**No:** 5  
**Number:** H/2006/0050  
**Applicant:** Mr A T Travis 98 GRANGE ROAD HARTLEPOOL TS26  
8JQ  
**Agent:** 98 GRANGE ROAD HARTLEPOOL TS26 8JQ  
**Date valid:** 23/01/2006  
**Development:** Replacement of wooden sash windows to front elevation  
with UPVC  
**Location:** 98 GRANGE ROAD HARTLEPOOL

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### UPDATE:-

5.1 This is the second of four applications on today's agenda, which relate to alterations in the Grange Conservation Area. The applications have been deferred by Members at recent committees in anticipation of a review by the Hartlepool Conservation Area Advisory Committee (CAAC) of the merits of the Article 4 (2) Direction within the Grange Conservation Area. The CAAC met on the 11<sup>th</sup> of May.

5.2 The CAAC refrained from expressing views on the specific applications individually or collectively but did acknowledge the quality of the Grange Conservation Area. In that respect the CAAC expressed the following views: -

1. That original features were important to the character of the Grange Conservation Area.
2. That the Article 4 (2) Direction remained an essential tool in preserving the character of the Grange Conservation Area.
3. That the removal of the Article 4 (2) designation would then lead to reconsideration of the designation of the conservation area.

5.3 The original committee report has been updated where necessary and is reproduced below.

### **The Application and Site**

5.4 This application seeks planning permission for the replacement of existing wooden sash windows with UPVC.

5.5 The site to which this application relates is a large two and a half storey mid terraced town house situated upon the northern side of Grange Road close to the junction with Mulgrave Road.

### **Background to the designation of the Grange Conservation Area.**

5.6 This has been covered in detail in the previous report (H/2005/5639) relating to 17 Grange Road.

## **Publicity**

5.7 The application has been advertised by way of neighbour letters (2), site notice and press notice. There have been no letters of objection.

5.8 The period for publicity has expired.

**Consultations – None**

## **Planning Policy**

5.9 The policies that relate to the applications within the Grange Conservation Area have been covered in the previous committee report for 17 Grange Road.

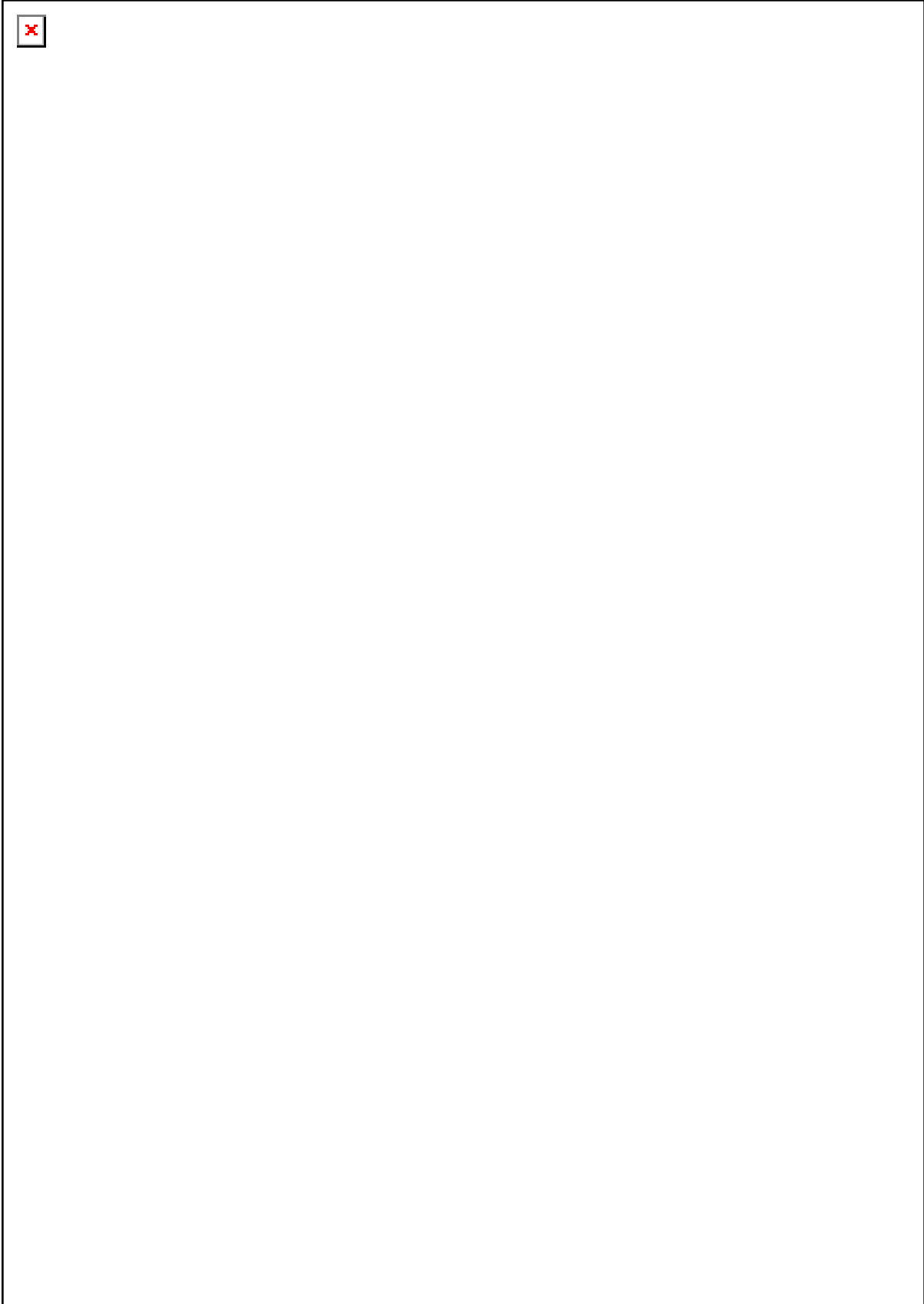
## **Planning Considerations**

5.10 The main considerations in this instance are the policies and proposals held within the adopted Hartlepool Local Plan and the proposals effect upon the character of the conservation area.

5.11 This is an application for new works as opposed to a retrospective application. It is felt that for the reasons stated in the earlier report that the proposal would not make a positive contribution to the conservation area. It is considered that the proposed alterations would harm the character and appearance of the conservation area by reason of the material, appearance and design of the windows being inappropriate to the area thus being contrary to policy GEP1 and HE1 of the adopted Hartlepool Local Plan 2006.

## **RECOMMENDATION - Refuse**

It is the opinion of the Local Planning Authority that the proposed windows would be out of keeping in the Grange Conservation Area by virtue of the proposed materials and design contrary to policies GEP1 and HE1 of the adopted Hartlepool Local Plan 2006.



**No:** 6  
**Number:** H/2005/5411  
**Applicant:** Mr D Cook 86 CLIFTON AVENUE HARTLEPOOL TS26 9QP  
**Agent:** 86 CLIFTON AVENUE HARTLEPOOL TS26 9QP  
**Date valid:** 20/05/2005  
**Development:** Retention of UPVC windows to front elevation  
**Location:** 86 CLIFTON AVENUE HARTLEPOOL HARTLEPOOL

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### **Update :-**

- 6.1. This is the third of four applications on today's agenda, which relate to alterations in the Grange Conservation Area. The applications have been deferred by Members at recent committees in anticipation of a review by the Hartlepool Conservation Area Advisory Committee (CAAC) of the merits of the Article 4 (2) Direction within the Grange Conservation Area. The CAAC met on the 11<sup>th</sup> of May.
- 6.2. The CAAC refrained from expressing views on the specific applications individually or collectively but did acknowledge the quality of the Grange Conservation Area. In that respect the CAAC expressed the following views: -
4. That original features were important to the character of the Grange Conservation Area.
  5. That the Article 4 (2) Direction remained an essential tool in preserving the character of the Grange Conservation Area.
  6. That the removal of the Article 4 (2) designation would then lead to reconsideration of the designation of the conservation area.
- 6.3. The original committee report has been updated where necessary and is reproduced below.

### **The Application and Site**

6.4 This application seeks planning permission to retain the replacement of wooden sash windows with UPVC to the front elevation of 86 Clifton Avenue.

6.5 The site is a large two and a half storey semi detached Victorian property situated on the northern side of Clifton Avenue opposite to the junction with Eldon Grove.

### **Background to the designation of the Grange Conservation Area.**

6.6 This has been covered in detail in the previous report (H/2005/5639) relating to 17 Grange Road.



## **Publicity**

6.7 The application has been advertised by way of neighbour letters (6), site notice and press notice. There have been no letters of objection.

6.8 The period for publicity has expired.

## **Consultations**

None

## **Planning Policy**

6.9 The policies that relate to the applications within the Grange Conservation Area have been covered in the previous committee report for 17 Grange Road.

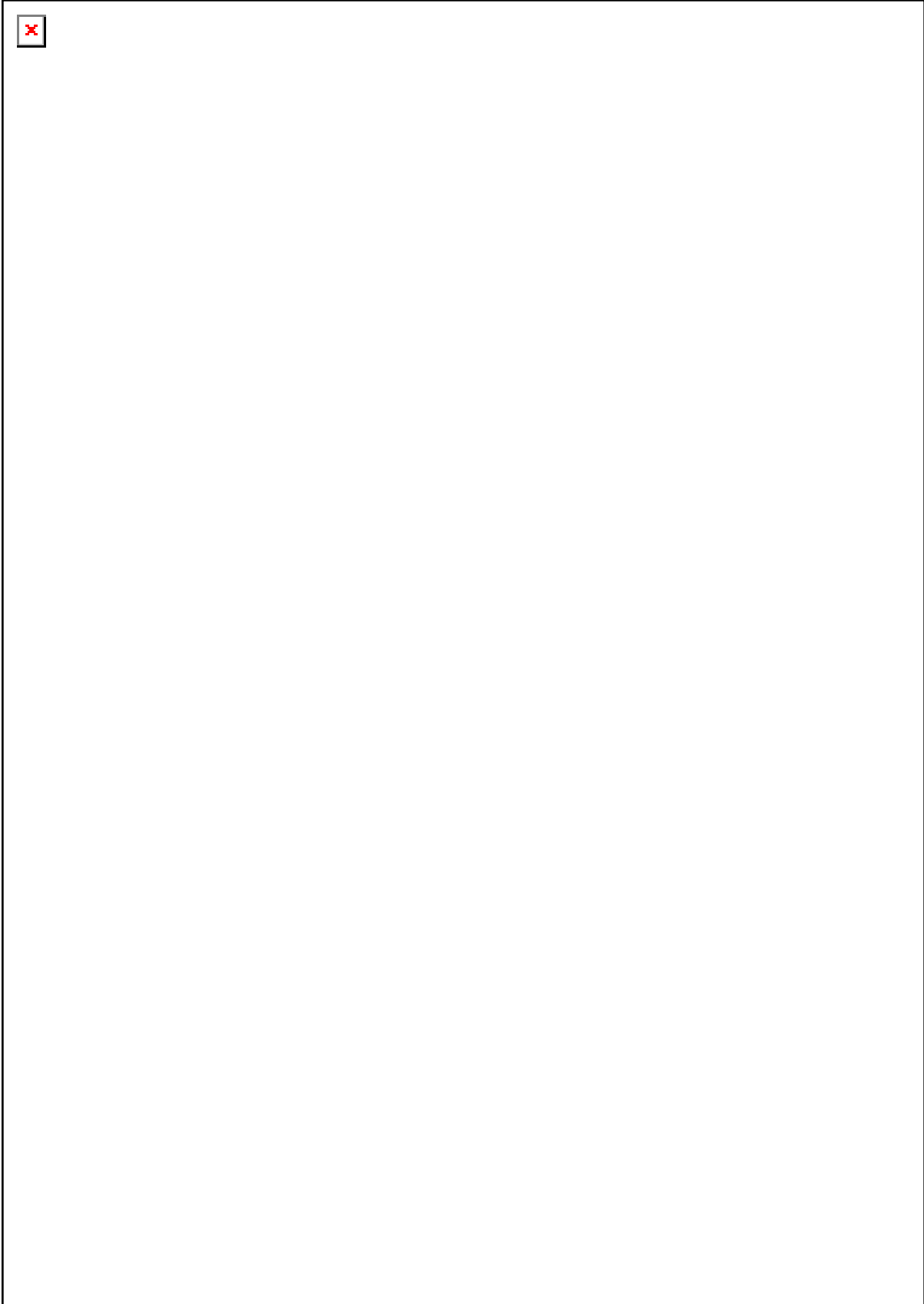
## **Planning Considerations**

6.10 The main considerations in this instance are the policies and proposals held within the adopted Hartlepool Local Plan and the proposals effect upon the character of the conservation area.

6.11 This is a retrospective application. It is felt that for the reasons stated in the earlier report that the proposal would not make a positive contribution to the conservation area. It is considered that the alterations harm the character and appearance of the conservation area by reason of the material, appearance and design of the windows being inappropriate to the area thus being contrary to policies GEP1 and HE1 of the adopted Hartlepool Local Plan 2006.

## **RECOMMENDATION - A REFUSE** for the following reasons:-

1. It is the opinion of the Local Planning Authority that the windows are out of keeping in the Grange Conservation Area by virtue of the materials and design of the windows contrary to policies GEP1 and HE1 of the adopted Hartlepool Local Plan (2006)
- B. It is recommended that enforcement action be initiated, including if necessary the service of an enforcement notice on the owner of the property, to secure the removal of the UPVC windows, in the front elevation and their replacement with windows, appropriate to the age and character of the building. Any enforcement notice to require compliance within six months.



**No:** 7  
**Number:** H/2005/5387  
**Applicant:** Mr I Miah 34 GRANGE ROAD HARTLEPOOL TS26 8JB  
**Agent:** 34 GRANGE ROAD HARTLEPOOL TS26 8JB  
**Date valid:** 11/07/2005  
**Development:** Provision of UPVC windows and door (retrospective application)  
**Location:** 34 GRANGE ROAD HARTLEPOOL

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### **Update :-**

7.1 This is the fourth of four applications in today's agenda, which relate to alterations in the Grange Conservation Area. The applications have been deferred by Members at recent committees in anticipation of a review by the Hartlepool Conservation Area Advisory Committee (CAAC) of the merits of the Article 4 (2) Direction within the Grange Conservation Area. The CAAC met on the 11th May.

7.2 The CAAC refrained from expressing views on the specific applications individually or collectively but did acknowledge the quality of the Grange Conservation Area. In that respect the CAAC expressed the following views:-

1. That original features were important to the character of the Grange Conservation Area.
2. That the Article 4(2) Direction remained an essential tool in preserving the character of the Grange Conservation Area.
3. That the removal of the Article 4(2) designation would then lead to reconsideration of the designation of the conservation area.

7.3 The original committee report has been updated where necessary and is reproduced below.

### **The Application and Site**

7.4 The application site is a Victorian dwelling house. It is located in a residential terrace within the Grange Conservation Area and is typical in terms of its general character and appearance of the older properties which contribute to the special character of the area and led to its designation as a Conservation Area.

7.5 Retrospective planning permission is sought for the retention of UPVC windows and a door which have recently been installed in the front elevation of the property without the benefit of planning permission. Planning permission should have been obtained for the works as permitted development rights for alterations to the front elevations of the properties have been removed, through an article 4 designation, in order to ensure that alterations where proposed are appropriate.

7.6 The replaced items include a ground floor bay window, two first floor windows, a dormer window with sidelights, and a door with fanlight. Archive photographs of the

property clearly show traditional sash & case windows, a traditional bay and what appears to be a panelled door with fanlight.

7.7 Windows have also been replaced to the rear however as the rear elevations of the properties are not covered by the article 4 designation planning permission is not required for these particular works.

### **Publicity**

7.8 The application has been advertised by way of neighbour letters (8), site notice and in the press. Two representations were received both of no objection.

The period for publicity has expired.

### **Consultations**

7.9 None

### **Planning Policy**

7.10 The policies that relate to the applications within the Grange Conservation Area have been covered in the previous committee report for 17 Grange Road.

### **Planning Considerations**

7.11 The main planning considerations in this case are considered to be the impact of the proposal on the character and appearance of the Grange Conservation Area.

7.12 Policy requires that development preserves or enhances the conservation area and that alterations are appropriate to the age and character of the building and the conservation area in terms of their design, materials and detailing.

7.13 Archive photographs of the property clearly show traditional sash and case windows, a traditional bay and what appears to be a panelled door with fanlight. It is not considered that the modern UPVC double glazed windows and doors are appropriate to the age and character of the building for the following reasons:

1. UPVC as a material has different characteristics to timber. It is smoother with a more regular surface finish and colour and ages differently from timber.
2. It is usual for bay windows to be painted in a palette of traditional colours. The archive photographs of the building for example show the bay framework painted blue contrasting with the white painted windows. The new bay however appears as a single unit of white UPVC and the subtleties of contrasting colours which contribute to the character of the area have been lost. Similarly the architectural detailing on the framework has also been lost in the replacement of the bay with a modern mass produced unit.

3. The appearance of the modern windows differs significantly from traditional sliding sash windows. The windows where opening are top hung opening outwards rather than sliding over one another. The lower sash of the traditional windows would be set back rather than flush.
4. Timber windows have tenoned corner joints and the panes of glass are held in putty. The glazing beads and mitred corner joints found in UPVC windows are unlike the putty beads and tenoned corner joints of a timber window. It is these small but significant details that contribute to the special character of a timber sash window and so to the conservation area.
5. The door is a modern UPVC door which is not appropriate in terms of its design detailing and materials for a house of this period.

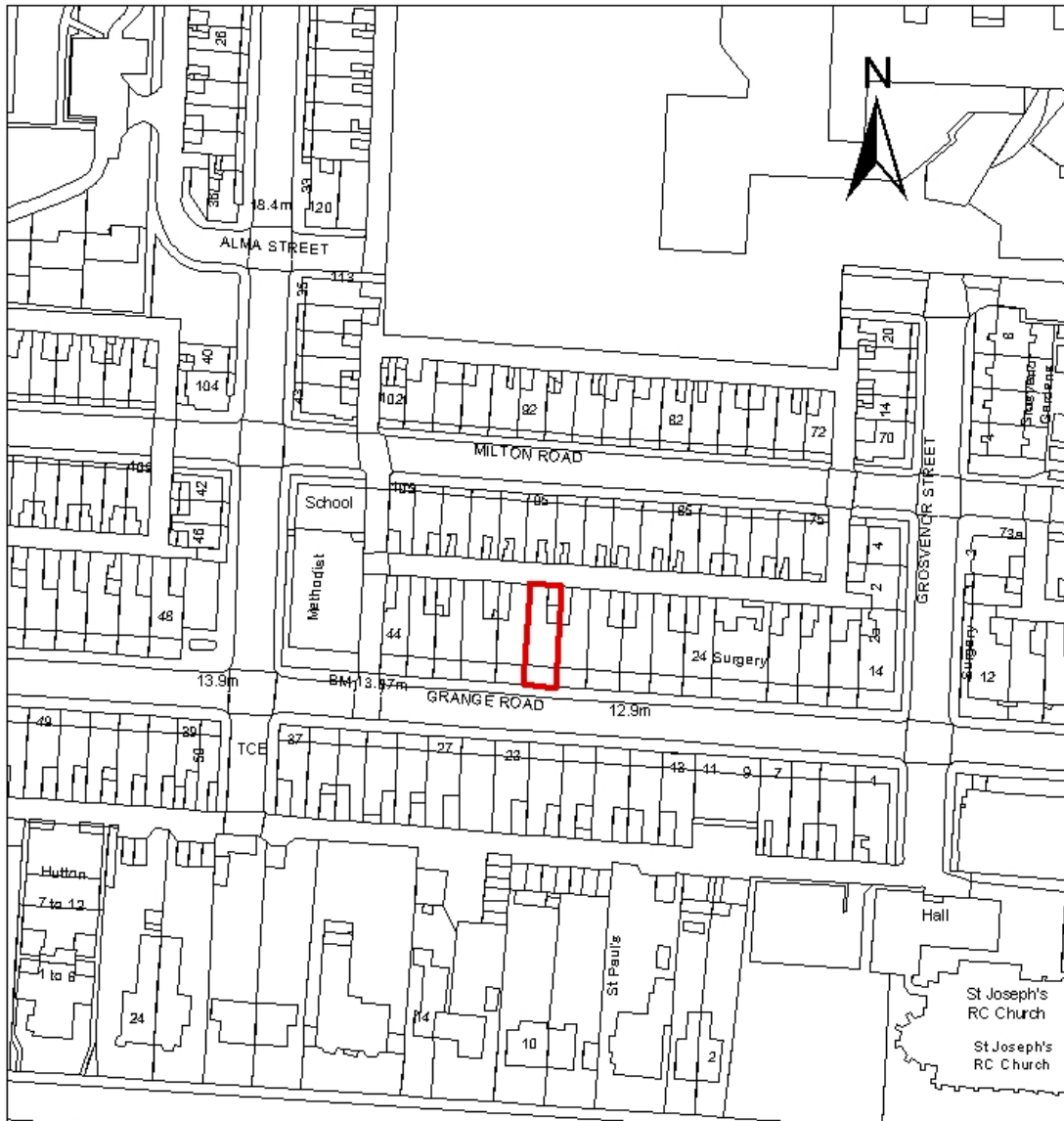
## **CONCLUSION**

7.14 It is considered that the UPVC windows and door for reasons of their design, materials and detailing detract from the character and appearance of the building and the Conservation Area. It is recommended therefore that planning permission be refused for the reasons set out in the recommendation. As the works have already been undertaken it is incumbent on the planning authority to consider appropriate enforcement action to rectify the breach of planning control. It is recommended therefore that the enforcement action be initiated if necessary to secure the removal of the UPVC windows and door and their replacement with windows and doors appropriate to the age and character of the building.

## **RECOMMENDATION – A REFUSE for the following reasons**

- 1 It is considered that the UPVC windows and door by reason of their design, materials and detailing detract from the character and appearance of the building and the Grange Conservation Area contrary to policies GEP1 and HE1 of the adopted Hartlepool Local Plan 2006.
- B. It is recommended that an enforcement notice be served on the owner of the property if necessary requiring that the UPVC windows and door in the front elevation be removed and replaced with traditional painted timber single glazed windows and a painted timber door to match those which have recently been removed.

# 34 Grange Road



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**THIS PLAN IS FOR SITE IDENTIFICATION PURPOSE ONLY**

<h2>HARTLEPOOL</h2> <h3>BOROUGH COUNCIL</h3>	DRAWN <b>GS</b>	DATE <b>15.8.05</b>
	SCALE <b>1:1200</b>	
<b>Department of Regeneration and Planning</b> Bryan Hanson House, Hanson Square, Hartlepool TS24 7BT	DRG.NO <b>H/2005/5387</b>	REV

## PLANNING COMMITTEE

7<sup>th</sup> June 2006



### Joint Report of: Director of Adult and Community Services and Chief Solicitor

**Subject: APPLICATION TO ADD A PUBLIC FOOTPATH,  
FROM ELWICK ROAD TO MANOR ROAD, TO  
THE DEFINITIVE MAP AND STATEMENT**

#### 1. PURPOSE OF REPORT

To seek the Committee's consideration on an application to add a public footpath, from Elwick road to Manor Road, to the Definitive map and Statement. (see **Appendix 1**)

#### 2. BACKGROUND

##### 2.1 General background position

- 2.1.1 One of the functions of the Council, as highway authority, is to record and protect public rights of way. The documentary side of this function is represented by the Definitive Map and Statement which provides conclusive evidence that a public right of way shown on it is a public right of way, whether as a footpath, a bridleway or a BOAT ("byway open to all traffic"). The existence of a public right of way may arise as a matter of
- ancient usage and have been recorded on the earliest maps, or
  - by dedication i.e. the owner of the land entered into an agreement with the authority for the public to have use of the way – perhaps in exchange for maintenance of the way by the authority, or
  - by prescription i.e. the public have made use of the way, as of right, for a period of time from which it may be deduced that the owner has dedicated the land as a public right of way. Prescription can occur with a relatively short period of usage when it is accompanied by clear evidence that the owner of the land has dedicated the land. Where no such clarity exists the law has prescribed that after a period of 20 years public usage as of right and without interruption, a right of way will be deemed to exist.

- 2.1.2** An owner of land is entitled to grant a private right of way over his land for the enjoyment of individuals, such as the owners and occupiers of specified land. The exercise of a right of way in accordance with such a grant and by the persons for whose benefit it is granted can never give rise to a public right of way. An owner, or the parties having the benefit of a grant, may take steps to restrict the use to those persons entitled to use it. Such steps may be by way of a physical barrier excluding unauthorised users. The barrier may be erected or positioned only periodically, but sufficient to demonstrate the owner's right to exclude unauthorised users. Alternatively, an owner may display a notice which proclaims in some appropriate words the private nature of the way.
- 2.1.3** Where a public right of way can be established through usage where previously no public right of way is recorded, legislation provides a process for submission of an application for modification of the Definitive Map and Statement (referred to in this report as the 'DMMO procedure'). Where such an application is lodged, the authority is required to make a determination whether the circumstances and history are such that the requirements for the establishment of a public right of way are fulfilled.
- 2.1.4** The remainder of this report places before the committee information which is considered to be sufficient to enable the committee to determine the issues relevant to the application in question

## **2.2 History**

- 2.2.1** On 25<sup>th</sup> February 2005 Parks and Countryside Business Unit received a request for an application pack, to modify the definitive map. The pack was requested by a local resident.
- 2.2.2** Parks and Countryside Business Unit received the completed application on 23<sup>rd</sup> March 2005. Schedule 14 of the Wildlife and Countryside Act 1981 enables any person or organisation to apply to the surveying authority, for an Order to modify the Definitive Map and Statement. Accompanying the claim were user evidence forms, completed by people who stated that they had used the way in question, between specific dates and describing the reason why the way was used – e.g. recreation, short-cut etc. Each User Evidence Form was supported by a map, showing the route that the individual had used.
- 2.2.3** Since 23<sup>rd</sup> March 2005 the Parks and Countryside's Countryside Access Officer has evaluated all the evidence supplied and undertaken further research if sufficient evidence was provided to support the claim. Where inconsistencies were discovered in supplied user evidence forms, details were checked with the individuals who supplied them.



**2.2.4** On the 14<sup>th</sup> April 2005, Parks and Countryside sent out a letter to the landowner, over which the route of the claimed way ran. The letter set out the Definitive Map Modification Order procedure and enclosed copies of the relevant application forms (as prescribed in law).

### **2.3 The Claimed Path**

**2.3.1** After looking at all the evidence supplied, the majority of claimants (9 out of 11) suggested that the width varied from 4ft within the confines of the alley, to 9ft as part of the wider lane. This approximate measurement runs in accordance with the physical limitations of the claimed route. The claimed route starts at Elwick Road (point A) running in an Easterly direction for 32 metres (to point B) whereupon it carries on in a Easterly direction for 33 metres (to point C) whereupon it runs in a South Easterly direction for 35 metres (to point D) whereupon it runs in a North Easterly direction for 35 metres (to point E) where it ends at Manor Road. The total length of the claimed route is 135 metres

**2.3.2** At the Manor Road end of the claimed route is a locked gate. Only the Owner of the Inglethorpe, over which the claimed route runs, and residents of Manor Road have keys to access the gate. At the southern end of the alleyway section of the claimed route, grid ref' 48802:32773, is a chicane. This access furniture was installed in the 1990's to prevent use by horses, motorbikes and bicycles. (see **Appendix 1**, letter D, for location)

### **2.4 Applicants**

One main applicant applied on behalf of 11 other users who claimed to have used the route prior to it being gated. These other users supplied Public Rights of Way User Evidence Forms (though one has subsequently withdrawn his support).

### **2.5 The Landowner and adjoining Landowners**

**2.5.1** The Landowner of the land over which the claimed route runs, are the current owners of Inglethorpe, Elwick Road, being the property of which the Manor Road properties previously formed part..

**2.5.2** In respect of the length of the stretch of the route from points A – D the adjoining properties are 250 Elwick Road, 18 Manor Road, 1 Woodlands Grove, 2 Woodlands Grove, 3 Woodlands Grove and Bradgate, Elwick Road

**2.5.3** In respect of the stretch from points D – E the owners of the adjoining properties are 12 Manor Road, Hartlepool and Greytiles, 14 Manor Road, Hartlepool. The owners of the above-mentioned properties have been consulted.

See **Appendix 1 – Plan 1** for locations of Landownership

### 3. CONSULTATION

3.1 The following persons and bodies were initially consulted with, regarding the claim:

Landowner (Inglethorpe)  
 Ward Councilbrs Coward, Fortune and Morris  
 The Mayor  
 Hartlepool Borough Council (HBC) Planning, Estates and Highways  
 Ramblers Association  
 Rosemont, 2 Cresswell Road  
 250 Elwick Road  
 Bradgate, Elwick Road  
 Catcote House, Elwick Road  
 Westlands, Elwick Road  
 2 Manor Road  
 12 Manor Road  
 18 Manor Road  
 and 1,2 and 3 Woodlands Grove.  
 Total of 20 recipients to this consultation

3.2 The following table shows the responses received:

Responses	Number
Landowner (Inglethorpe) – bundle of evidence opposing the application	1
Opposing the claim	4
No Comments	8
<b>Total Reponses Received</b>	<b>13</b>

If not referred to above then the consultee provided no response.

3.3 Further consultation was given when an 'Investigation Report' was sent out individually to all claimants and opposers. The report summarised all the information received and discovered at that point, that had any relevance to the application. It made no recommendations, observations or determinations. The Investigation Report was sent to:

The Mayor  
 3 x Ward Councillors

Landowner (Inglethorpe)

4 x opposers of the application whose properties abut the claimed route  
 4 x properties that abut the claimed route but had showed no interest for either side of the application

9 x opposers to the application whose property does not abut the claimed route

and 12 x claimants, two of whom are married and live at the same address.

Total of 34 recipients.

A copy of the Investigation Report is attached (see **Appendix 3**)

3.4 The following table shows the responses received:

Responses	Number
Against the application but supplying no further information	7
Withdrawing support for the application	1
Supporting the application but with no further information	2
Letter of receipt of the report	1
<b>Total Responses Received</b>	<b>11</b>

#### 4. LEGISLATION

4.1 Under Section 53 (2) of the Wildlife and Countryside Act 1981, the Local Authority is under a duty to keep the Definitive Map and Statement under continuous review:

*S53 (2) As regards every definitive map and statement, the surveying authority shall -*

*(a)*

*as soon as reasonably practicable after the commencement date, by order make such modifications to the map and statement as appear to them to be requisite in consequence of the occurrence, before that date, of any of the events specified in subsection (3); and*

*(b)*

*as from that date, keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence, on or after that date, of any of those events, by order make such modifications to*

*the map and statement as appear to them to be requisite in consequence of the occurrence of that event.*

4.2 Section 53 (3), as referred to in S53 (2) (a), goes on to look at the relevant legal event, in S53 (3) C (i):

(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, being a right of way to which this Part applies ;*

4.3 Under Section 31 of the Highways Act 1980, dedication may be presumed following use by the public as of right and without interruption for 20 years.

4.4 All the above legislation has been taken into account when considering all the evidence supplied, discovered or researched.

## 5. **CONSIDERATION OF EVIDENCE – DOCUMENTARY EVIDENCE**

5.1 As part of the process of evaluating the application, the Countryside Access Officer carried out investigations into additional sources of evidence. This evidence includes Historic Maps, Ordnance Survey maps, photographic evidence as well as archived material.

### 5.2 **Ordnance Survey Maps**

The following maps were carefully examined:

5.2.1 Ordnance Survey Maps Series 1, 2, 3, 4.

Series 1 – Pre 1895

Series 2 – 1897

Series 3 – 1916 to 1922

Series 4 – 1938 to 1940

The Series 1 map shows no evidence of any track, way lane etc

In the Series 2 map a short track appears, at the Elwick Road end of the claimed route. This track looks to be part of an access lane to, what is shown as 'Pheasantry'.

On the Series 3 map the track develops into an access lane to what was then named as 'Bradgate' but was then renamed as 'Westlands'

The same track is present on the Series 4 map

**5.2.2** Ordnance Survey Maps Pre Definitive Map 1952

This map does not show any different access routes to the Series 3 and 4 maps

**5.2.3** Ordnance Survey Maps Definitive Map 1952

This map does not show any different access routes to the Series 3 and 4 maps

**5.2.4** Ordnance Survey Maps Present day base map (Extract from the base map data 2005 accessed by the HBC Geographical Information System software)

The base map shows the full claimed route but does not and cannot indicate legal status of the route.

**5.2.5** Based on Ordnance Survey Maps – Property Services (Map showing the adopted highways for the area)

This map shows that the route is not adopted highway and that the land, over which the claimed route runs, is not owned by Hartlepool Borough Council. This is backed up by the Land Registry records of Inglethorpe Landownership

**5.3** **Definitive Map and Statement**

The Definitive Map and Statement was also consulted. No record of any Public right of Way was recorded on the Definitive Map (Register of all recorded public rights of way) and Statement.

**5.4** **Durham Archive Research**

**5.4.1** Archives at both County Hall and Durham University Library were consulted.

**5.4.2** No Enclosure Maps were available, at the University Library or County Hall Archives, for the area covering the claimed route.

No other evidence was available regarding the area encompassing the claimed route.

**5.4.3** As part of the research to look for evidence with regards to the claimed route, the Countryside Access Officer looked at the Tithe Map and Apportionment of Throston (of Hart) 1841. This was available at Durham University Library. There was no evidence of any path, way, footway, footpath, bridlepath, track, lane or road for the area covering the route claimed – Elwick Road to Manor Road. Only fields were evident on the

claimed route and an area called Throston Carrs (boggy area of land) to the east of the claimed route.

**5.5 Installation of the Chicane**

Between November 1993 and May 1995, correspondence was entered into between Manor Road residents and Hartlepool Borough Council regarding the installation of a chicane, at the southern end of the narrow alleyway section of the claimed route. The cost of the chicane was £250.00 and was born by 18 residents of Manor road, each paying £13.89 (£13.89 x 18 = £250.02). This is referred to in extracts from minutes of a meeting at Tilly Bailey and Irvine (solicitors meeting), 22/10/96. The chicane was requested, and paid for, by the residents as there was bicycle, motorbike and equestrian use of the route at that time. This ceased when the chicane was installed.

**5.6 Alleged Public Footpath sign**

It has been alleged that there was a Public Footpath sign, in place, at the Elwick Road end of the claimed route. Nothing in Council records sheds light on this matter. Therefore the Council cannot comment further on this.

**5.7 Development of Manor Road Properties – 6 to 24**

This development took place between 1960 and 1968. During that period of time private access rights were granted to these properties by deeds of conveyance, by the then owner of Inglethorpe, allowing them access along the route. This is recorded within the Land Registry records for Inglethorpe

**5.8 Agreement document**

An agreement was signed between E C Burton Limited (EBC) – developer of the Manor Road properties for the period 1960 to 1968 – and County Borough of West Hartlepool (HBC) dated 29<sup>th</sup> November 1961. The purpose of the agreement was to require EBC to construct foul sewers and then HBC to adopt them under the provisions of the then Public Health Act 1936. This agreement also grants a right of access to the sewers to HBC in perpetuity. This lends weight to the argument that, at the date the agreement was signed, the sewers were located in private land rather than public highway.

**6. CONSIDERATION OF EVIDENCE – EVIDENCE OF USE AND WITNESS STATEMENTS**

**6.1 Section 31 (2) relates to the 20 year rule:**

*(2) The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice such as is mentioned in subsection (3) below or otherwise.*

- 6.2** The following section is the collection of information dealing with the application and information collated from the user evidence forms
- 6.3** 12 user evidence forms were filled in by individual members of the public. Each one recorded any relevant information that could be used in making the determination of the application. There was varying usage periods recorded. **Appendix 2 – Chart 1** – shows this information using a bar chart as the visual representation.
- 6.4** 11 users claimed the path as a footpath status and one user didn't claim a status. All the users regarded it as a public right of way.
- 6.5** There were varying ranges of when the usage occurred from and to. (see **Appendix 2**)
- 6.6** The type of usage was either on foot or by horse. 11 users claimed foot usage and one user claimed using the path whilst riding a horse.
- 6.7** There was a diverse range of answers with regards to where the users were going from and to. The nature of the use was Public and principally for recreation purposes.
- 6.8** All of the users said that the path had always run over the same route.
- 6.9** When asked about Barriers (stiles gates etc), again the answers varied from "No barriers", "No memory of a barrier" to barriers, including a chicane/turnstile, cycle barrier and a metal pedestrian only gateway.
- 6.10** The next three parts of the evidence supplied is to do with notices and what was written on them. The responses varied from "No notices", no answer to "there was a notice in 2002".
- 6.10.1** When asked whether the notices said anything about 'private', 'no road', 'no thoroughfare' or 'trespassers will be prosecuted', there were some differing replies ranging from "No", "Private Drive", "public footpath sign" to "a closure notice from 2002".
- 6.10.2** All of the users said that they had not been stopped or turned away when using the way or path. None had heard of anyone being turned away or stopped when using the way. All of the users said that they had not asked for permission to walk along the route and all said that they had not been told that the way was not public.

**6.10.3** As there has been mention made of locked gates being used, the question was asked of the users as to "was there any gates along the route". The responses differed from there not being a gate, "no gate until recently" to "there was a gate from 2002 onwards".

**6.11** For further information relating to gating dates and prevention information, as well as information on notices, refer to **Appendix 4 – chart 2**

## **7. SUFFICIENT EVIDENCE THAT THERE WAS NO INTENTION TO DEDICATE – LANDOWNERS RESPONSE**

- 7.1** For section 31 (1) Highways Act 1980 to apply and give rise to a presumption of dedication, the following criteria must be satisfied:
- a) The physical nature of the path must be such as is capable of being a public right of way.
  - b) The use must be 'brought' into question, i.e. challenged or disputed in some way.
  - c) Use must have taken place without interruption over the period of 20 years before the date on which the right is brought into question.
  - d) Use must be *as of right*, i.e. without force, without stealth or without permission.
  - e) There must be insufficient evidence that the landowner did not intend to dedicate a right of the type being claimed.
  - f) Use must be by the public at large.

**7.2** Section 31 (3) relates to landowners and erection of notices:

*S31 (3) Where the owner of the land over which any such way as aforesaid passes -*

*(a)*

*has erected in such manner as to be visible to persons using the way a notice inconsistent with the dedication of the way as a highway; and*

*(b)*

*has maintained the notice after the 1 January 1934, or any later date on which it was erected;*

*the notice, in the absence of proof of a contrary intention, is sufficient evidence to negative the intention to dedicate the way as a highway.*

*(a) 'The physical nature of the path must be such as is capable of being a public right of way'. The claimed route does appear to be physically capable of being a public right of way.*



(b) *'The use must be 'brought' into question'*. There appears to have been a number of events since the 1960's, when the use may have been brought into question. It is considered that the erection of the second gate followed by the article in the Hartlepool mail on 3<sup>rd</sup> May 2000 clearly constitutes an act, which raises the issue of the status of the way sufficient to bring it home to the public that their right to use the way was being challenged. The use therefore has needed to be examined during the period of 20 years which terminated in 2000.

(c) *'Use must have taken place without interruption over the period of 20 years before the date on which the right is brought into question'*.

(i) This is not the case here. Written evidence supplied, by opposers of the application, show that there were two gates in place as far back as the late 1960's. These two gates were placed at either end of the 'alleyway' section of the claimed route (points D and E – see **Appendix 1**) and one of these gates survived into the late 1970's when a lock was added and keys issued to residents of Manor Road. This gate, which was located at point E (refer to **Appendix 1**), survived until 1988, when it was vandalised but not replaced until 2000. The latest gate is still in existence and has been locked since its installation.

(ii) Also notices have been placed at various times throughout the time period of the 1960's to date, by various successive owners of Inglethorpe. The evidence supplied/researched show that the notices stated that the path was private. They were in evidence/existence between 1983 and 1987 and then after 1992.

(iii) The notices were placed in various locations – ranging from the Elwick Road end of the route, Manor Road end of the route, in adjoining gardens of the second location and at the southern end of the alleyway section of the route. (letter D, **Appendix 1 – Plan 1**)

(d) *'Use must be as of right'*. Verbal and preventative challenges have been given by successive owners of Inglethorpe and some of the residents of Manor Road, during the same time period. These challenges were comprised of:

1. Use of a car to stop the general public from accessing the route.
2. A resident challenging people using the path, asking them to leave, as they were climbing the gate/adjacent fences, into private gardens.
3. Residents of Manor Road policing the path, turning away youths and school children.
4. Stopping school children from using the path by taking photos and informing the Headmaster of the local School.
5. Reporting one youth to the Headmaster for rigging up a tripwire across the path – the youth admitted the offence.

(e) *'There must be insufficient evidence that the landowner did not intend to dedicate a right of the type being claimed'*. The fact that notices have

been erected by successive Inglethorpe owners shows that there was no intention to dedicate this route as a public right of way.

(f) *'Use must be by the public at large'*. A handful of users from The Crest and Warkworth Drive as well as some school children are the only users that the Council can account for, with all the evidence thus supplied and this evidence must be considered as they are the Public.

**7.3** It is the Council's understanding that the criteria for Section 31 Highways Act 1980 are not satisfied and that there is not sufficient evidence to suggest any intention by the owner(s) on Inglethorpe to dedicate at common law for the periods between the removal of the first gate and the installation of the second – between 11 and 12 years. This lack of evidence relates to the points below:

1. *Question of dedication at common law is one of fact to be determined on all the evidence.* Strenuous efforts have been made by landowners to prevent public access e.g. notices, gating challenges etc.
2. *use by public is evidence from which a dedication may be inferred at common law – use must be open and unconcealed to carry any weight* A handful of users from The Crest and Warkworth Drive as well as some school children are the only users that the Council can account for, with all the evidence thus supplied and this evidence must be considered as they are the Public.
3. *The extent of the Landowner's acquiescence is also material.* No evidence has been supplied, researched or discovered to give credence to this point. All evidence suggests otherwise.
4. *No specified period must be proved in order to justify an inference of dedication; caselaw has shown that as little as 18 months has been held as sufficient.* No evidence supplied shows that there was any period of time that justifies an inference of dedication.
5. *a single act of interruption by the owner is of much more weight than many acts of enjoyment by the public.* These acts of enjoyment by the public are heavily outweighed by the wealth of evidence supplied by successive Landowners and adjacent Landowners

#### **7.4 Land Registry Records**

Land Registry records for Inglethorpe were obtained from the Land Registry during May 2005. Various points within the records refer to private access. Point 11, in the Charges Register, relates to a private right of way to specified adjacent landowners subject to them contributing to the

maintenance of the way. This right of way was granted to purchasers between 1963 and 1967 as the site was developed, and supports the view that between these dates the right of way was private rather than public.

- 7.5 For further information relating to gating dates and prevention information, as well as information on notices, refer to **Appendix 4 – chart 2**

## 8. SUMMARY

- 8.1 If Members resolve not to make an Order, a letter ‘advising of decision not to make the Order’ will be sent out to the applicant with carbon copies sent out to supporting applicants. The Applicant has a right to appeal to the Secretary of State against the decision, within 28 days of receiving formal notification of the Council’s decision. A similar letter would be sent out to the Landowner stating that the application had been rejected. A copy of ‘A guide to definitive maps and changes to public rights of way’ (Countryside Agency CA142) will be sent out to the Applicant and the Landowner.
- 8.2 If Members resolve to accept the applicant’s claim, an Order should be made after it being passed to the Chief Solicitor. In this case the objector to the claim – the Landowner of Inglethorpe – would have the right of appeal, to the Secretary of State.
- 8.3 Members are requested to determine, having considered all of the available evidence, whether a public right of way does, or does not, exist along the route shown A-B-C-D-E on **Appendix 1 – Plan 1**. Members should note that a decision must be made, based on the balance of probabilities, whether there is sufficient evidence to suggest that public rights are reasonably alleged to exist or not. **No other factors should be considered.**
- 8.4 The available evidence does not lend support to the claim, that a public right of way exists between points A-B-C-D-E on **Appendix 1 – Plan 1**, attached to this report. The evidence suggests that rights do not exist over the width and route of the path, as claimed, due to the fact that it has not been available for public use for an uninterrupted period of 20 years or more and does not support a claim at common law. Evidence has shown that successive owners of Inglethorpe (the land over which the claimed route runs) have taken strenuous efforts to deny access to the public at large, only giving permissive access to residents of Manor Road. Support for this conclusion is based on the wealth of evidence supplied by the present owner of Inglethorpe and neighbouring residents. Other evidence in the form of maps, documents and photographs show that at no time was there any intention to dedicate this path as a public right of way. Site

visit photographs highlight that the path has had notices – present and past – indicating the private nature of the route/track/lane and the intent to deter general and unpermitted use. These photographs also show where a previous gate was situated, at the southern end of the alleyway – point D on **Appendix 1 – Plan 1**.

**8.5** As discussed before Section 53 (3) (c) (i) Wildlife and Countryside Act 1981 has to show that:

*S53 (3)(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, being a right of way to which this Part applies ;*

In this case this does not follow as there is ample evidence supplied to suggest the contrary.

## 9. OPTIONS

Two options are available to the Council when determining this issue:

**Option 1:** If after considering all of the available evidence Members decide that a right of way does not exist, they should resolve that:

- The application for a Definitive Map Modification Order to add the route A-B-C-D-E (on Appendix 1 – Plan 1, attached to this report) to the Definitive Map be refused and that the applicant be advised of their right to appeal to the Secretary of State.

**Option 2:** If after considering all of the available evidence Members decide that a right of way does exist, they should resolve that:

- The director of Neighbourhood Services be authorised to instruct the Chief Solicitor to make a Definitive Map Modification Order to add a public footpath, along the route A-B-C-D-E (on Appendix 1 – Plan 1, attached to this report) to the Definitive Map. The path width would subsequently be recorded as being a minimum of 1.3 metres, widening to 3.0 metres at its widest point, with a limitation of a chicane being present between points D-E on **Appendix 1 – Plan 1**, attached to this report.

## 10 RECOMMENDATIONS

Members are recommended:

1. Not to accept the evidence in support of the claim
2. To instruct Parks and Countryside Section, Adult and Community Services Department to advise the Applicant of their right to appeal to the Secretary of State, consistent with option 1 above.

**CONTACT OFFICER:**

Chris Scaife, Countryside Access Officer, Adult and Community Services Department

**Background Papers**

Bundle of Evidence – Application to add a Public Footpath between Elwick Road and Manor Road, to the Definitive Map Schedule 14, Wildlife and Countryside Act 1981.

This bundle of evidence/set of background papers is available in the Members Library

This document is also available in other languages, large print and audio format upon request.

এই ডকুমেন্ট অন্য ভাষায়, বড় প্রিন্ট আকারে এবং অডিও টেপ আকারেও অনুরোধে পাওয়া যায়।  
(Bengali)

本文件也可應要求，製作成其他語文或特大字體版本，也可製作成錄音帶。(Cantonese)

अनुरोध पर यह दस्तावेज़ अन्य भाषाओं में, बड़े अक्षरों की छपाई और सुनने वाले माध्यम पर भी उपलब्ध है  
(Hindi)

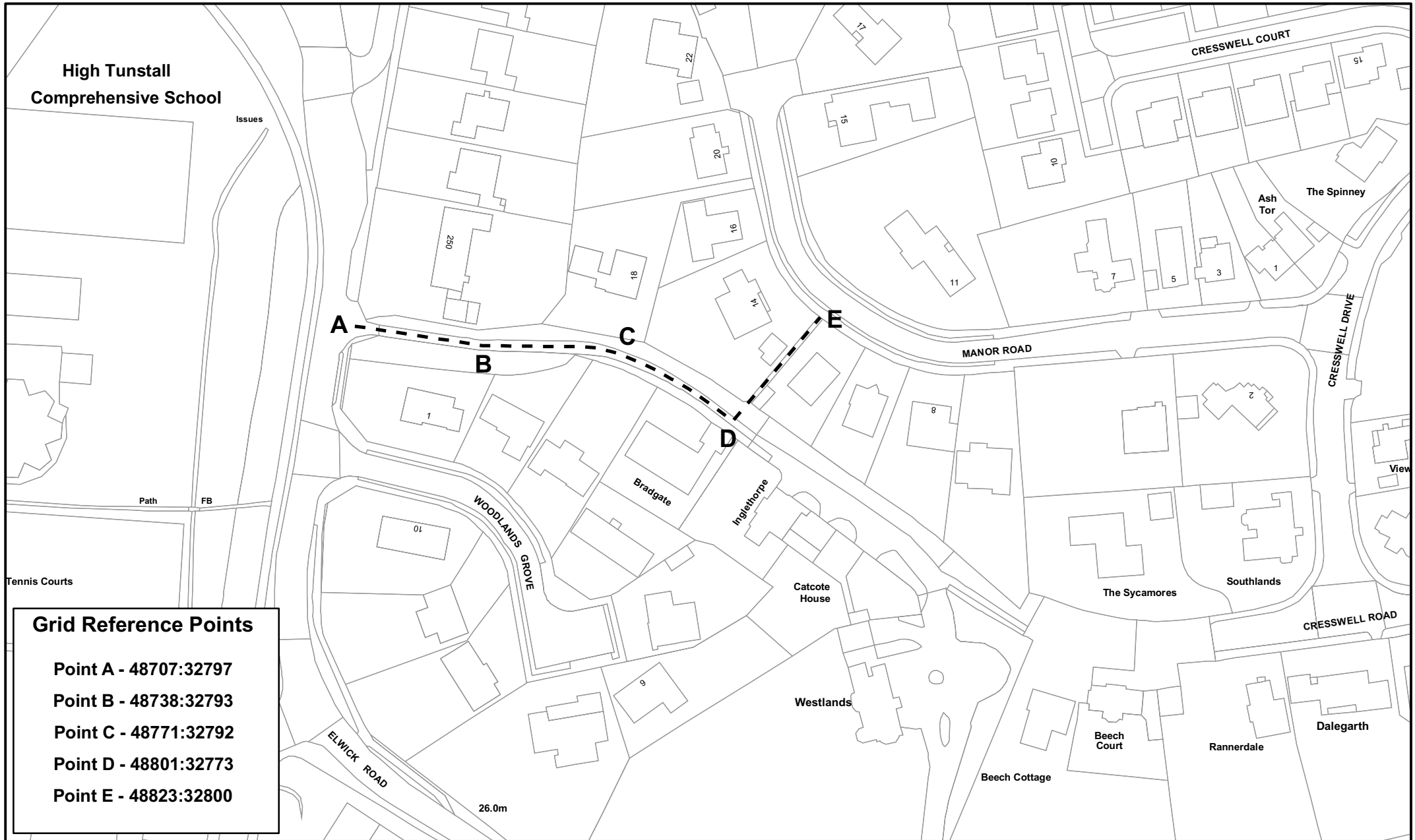
ئەم بەلگەییە ھەرودھا بە زمانەکانی کە، بە چاپی درشت و بە شریقی تەسجیل دەس دەکەوێت (Kurdish)

本文件也可应要求，制作成其它语文或特大字体版本，也可制作成录音带。(Mandarin)

ਇਹ ਦਸਤਾਵੇਜ਼ ਹੋਰ ਭਾਸ਼ਾਵਾਂ ਵਿਚ, ਵੱਡੇ ਅੱਖਰਾਂ ਵਿਚ ਅਤੇ ਆਡੀਓ ਟੇਪ 'ਤੇ ਰਿਕਾਰਡ ਹੋਇਆ ਵੀ ਮੰਗ ਕੇ ਲਿਆ ਜਾ ਸਕਦਾ ਹੈ।  
(Punjabi)

درخواست پر یہ دستاویز دیگر زبانوں میں، بڑے حروف کی چھپائی اور سننے والے ذرائع پر بھی میسر ہے۔  
(Urdu)

# Appendix 1 - Plan 1 - Application to add a Public Footpath between Elwick Road and Manor Road



HARTLEPOOL  
BOROUGH COUNCIL

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**Sub Title:** Elwick Rd to Manor Rd DMMO  
**Scale:** 1:1250  
**Date:** 24th April 2006  
**Drawn By:** Adult & Community Services Dept

Hartlepool Borough Council  
 Parks and Countryside  
 Suite 8, Municipal Buildings  
 Church Square  
 Hartlepool, TS24 7EQ  
 Tel: 01429 523524  
 Fax: 01429 523450



## **APPENDIX 3 - INVESTIGATION REPORT**

### **DEFINITIVE MAP MODIFICATION ORDER (DMMO) – ELWICK ROAD TO MANOR ROAD**

#### **Glossary**

##### **Definitive Map and Statement**

The Council holds the legal record of public rights of way. This is known as the Definitive Map and Statement and it is evidence in law of the public rights recorded on it.

The Definitive Map is the minimum record of public rights of way. There may also exist additional public rights of way which have not yet been recorded on the Definitive Map, or there may be rights which have been incorrectly recorded.

The Definitive Statement is a description of each of the routes recorded on the map and includes any restrictions to their use.

The Definitive Map is legally conclusive proof of the existence of the public rights of way recorded on it.

##### **D.M.M.O.**

(Definitive Map Modification Order)

These are legal orders made, through the Wildlife and Countryside Act 1981, to modify the definitive map and statement to include public rights of way that have been proven to exist but have not previously been recorded on the definitive map.

##### **Public Rights of Way**

These are ways over which all members of the public have a right of passage. Within the Borough of Hartlepool there are various categories of public rights of way. These are:

Footpath - over which the public have a right on foot only

Bridleway - over which the public have a right on foot, bicycle and on horseback. Cyclists were granted the right to use bridleways, in 1968.

BOAT - (Byway Open to All Traffic). Over which the public have a right for all the above and for vehicular traffic. A BOAT is classed as a Carriageway.

On Public Footpaths users are allowed 'Usual Accompaniments'. These consist of: Dogs (on leads), Pushchairs and Wheelchairs. This is not a comprehensive list; however bicycles are not a 'usual accompaniment'.



### **Permissive Path**

This is a path which the landowner permits the public to use, with the intention that it should not become a public right of way. As such, it is not in general subject to rights of way law. The landowner can put restriction as to who can use it e.g. only walkers, no mechanically propelled vehicles etc. The permission for use of this type of path can be removed, by the landowner, at any time he or she wishes. As it is permissive, there will need to be either signage, to explain usage and permission or the landowner will have to close the path for a single 24 hour period every year.

### **REPORT**

The investigation report is a factual account of the application and the subsequent investigation up to this point. It should cover any evidence provided and/or discovered that is relevant to the existence and status of the route.

On 25<sup>th</sup> February 2005 Parks and countryside section received a request for an application pack, to modify the definitive map. The pack was requested by a local resident.

Parks and Countryside received the completed application on 23<sup>rd</sup> March 2005. Schedule 14 of the Wildlife and Countryside Act 1981 enables any person or organisation to apply to the surveying authority, for an Order to modify the Definitive Map and Statement. Accompanying the claim was user evidence forms, completed by people who stated that they had used the way in question, between specific dates and describing the reason why the way was used – e.g. recreation, short-cut etc. Each User Evidence Form was supported by a map, showing the route that the individual had used.

Parks and Countryside's Countryside Access Officer has to look at all the evidence supplied and research for more evidence, if necessary, to determine whether there is sufficient evidence to support the claim or not. This determination should be completed within 12 months of receipt of the application form.

Since 23<sup>rd</sup> March 2005, an investigation has been carried out to check all evidence, wherever possible, that is relevant in showing the existence and status or non-existence of the route. This has included checking the supplied user evidence, to see if there were any inconsistencies. Any such were then rechecked with the individual who supplied the information.

On the 14<sup>th</sup> April 2005, Parks and Countryside sent out a letter to the landowner, over which the route of the claimed way ran. The letter set out the DMMO procedure and enclosed copies of the relevant application forms (as prescribed in law).

The following sections are the collection of documentary information that is relevant to the final determination of the application. The first section deals with the application and information collated from the user evidence forms

### **User Evidence**

12 user evidence forms were filled in by individual members of the public. Each one recorded any relevant information that could be used in making the determination of the application. There was varying usage periods recorded.

1 x 11 years

1 x 17 years

1 x 20 years (no specific dates)

2 x 23 years

1 x 25 years

2 x 30 years

3 x 32 years

1 x 40 years

11 users claimed the path as a footpath status and one user didn't claim a status. All the users regarded it as a public right of way

There were differing ranges of when the usage occurred from and to.

One said until 1999

One until 2001

One until 2002

Two until 2004

One from 1960 until 2004

Three had no specific dates recorded but stated that they had used the path for either 20 plus or 30 plus years

The type of usage was either on foot or by horse. 11 users claimed foot usage and one user claimed using the path whilst riding a horse.

When asked about the width of the claimed path, the answers were again varied.

1 x 3 feet to 4 feet

6 x 4 feet to 9 feet

1 x 1.3 metres to 3 metres (4 feet 3 inches to 9 feet 10 inches)

1 x 4 feet to 10 feet

1 x 5 feet upwards

1 x 5 feet to 6 feet

1 x 9 feet

There was a diverse range of answers with regards where the users were going from and to.

Eight said that it was from Manor Road to Elwick Road

Two used the path to go to Park Drive Cricket Club

One used the route for a walk

and one used it to get to Oakengates, Cresswell Drive

The reasons for using it were stated as:

- 2 x walk
- 2 x daily walk
- 2 x recreational, social and pleasure
- 1 x to ride to Elwick and Dalton Piercy
- 2 x as a short cut
- 1 x visiting friends
- 1 x for walks and to take the children to school
- 1 x as an alternative route on regular walks

All of the users said that the path had always run over the same route.

When asked about Barriers (stiles gates etc), again the answers were of a varying range.

- 4 x no barriers
- 3 x chicane/turnstile
- 1 x cycle barrier
- 1 x no answer
- 1 x not initially but yes in recent years
- 1 x the Council erected a metal pedestrian only gateway
- 1 x no memory of barriers

The next three parts of the evidence supplied is to do with notices and what was written on them.

- 3 x said that there were no notices
- 1x said not known
- 1 x had no memory of any notices
- 2 x said that there was one in 2002
- 1 x said there was a notice
- 4 x gave no answer

When asked whether the notices said anything about 'private', 'no road', 'no thoroughfare' or 'trespassers will be prosecuted', there were some differing replies.

- 5 x said no
- 5 x said 'public footpath sign
- 1 x said private drive
- 1 x said closure notice from 2002

Further information regarding what was said on notices is as follows:

- 2 x Public Footpath
- 2 x Path to be closed and locked
- 1 x path to be closed

All of the users said that they had not been stopped or turned away when using the way or path. None had heard of anyone being turned away or stopped when using the way. All of the users said that they had not asked for permission to walk along the route and all said that they had not been told that the way was not public.

As there has been mention made of locked gates being used, the question was asked of the users as to was there any gates along the route. The answers are as shown below:

7 x there was a gate from 2002 onwards

2 x there was no gate until recently

1 x said there was no gate until three to four years ago

2 x said there was no gate

Finally the users were asked if they had any extra relevant information regarding the route. They answered as follows:

1 x not used much

1 x not a useful right of way

1 x it is a useful right of way

1 x their children used it to go to school

4 x complained to the Hartlepool Mail and the Council did not respond

4 x had no extra information

### **Objectors to the daim**

All evidence supplied was in the form of letters and minutes. Only relevant extracts from these documents are quoted below and only discuss information that relates to the right of way and whether it is public or private

1. **Letter**, 14/02/64, from solicitors to a previous owner of a Manor Road property. "a private right of way is to be provided at the southern most extremity of the site thereby reinforcing what the Borough Engineer has himself indicated, namely that the Local Authority have no rights and no proposals in relation to the Right of Way"
2. **Minutes of meeting**, 12/06/97, held at Tilley Bailey and Irvine.  
Point 4 mentions "The private right of way".  
Point 5 talks about Anti Social Behaviour on 19/05/97 on the Private Right of Way and that the Police were called but the youths had been dispersed.  
Point 6 mentions 10 years ago a gate was situated "at the end of the path". Residents requested a replacement "to stop those people who do not have a right of way, using the path as a short cut"  
Point 9 "problems of vandalism has worsened over the last 10 years (since the gate was taken down)".
3. **Letter**, 31/05/05, from a resident (R) whose property backs onto the lane. A former owner of Inglethorpe (Ia) (Inglethorpe property is the land over which the claimed route runs) stopped R from creating an access from R's property onto the lane. Ia showed R a legal document of ownership (including the lane), notices – 'Private' and 'No Thoroughfare' and gates at both ends of the lane. The next Inglethorpe owner (Ib) did their best to stop people from using the lane by using their car and turning people away.

4. **Letter**, 06/06/05, from present owner of Inglethorpe.  
“After contacting the Land Registry, (*Solicitor’s name*) informed us it was a private right of way belonging to Inglethorpe”.  
“The gate was erected in April 2000 and residents of Manor Road were given a key for the gate.”.
5. **Letter**, 30/03/99, Tilley Bailey and Irvine.  
Section 4 “No knowledge of approaches to Hartlepool Borough Council to stop the public from using the track marked red on foot, although they did install bollards to stop it being used by motorbikes and horses. There has been no physical attempt to stop the public using the pathway, even though the public do not have a right to use it as the right is limited to residents of certain houses in Manor Road.”.
6. **Letter**, 17/05/05, from Manor Road resident.  
Section 1 “... in September 1987 part of the sales agreement was that we, together with certain other householders, had access to Elwick Road via the pathway and Private Road. We were given a key at this time from the gate on the southern end of the pathway.”.  
Section 2 “We were informed that this gate had been in place since the late sixties in Manor Road.”.  
Section 4 “This gate was in place until some time in 1988.”.  
Part E “by 1995, the use of motorcycles and horses being ridden through the pathway meant residents contributed to the erection of chicane fencing to stop the situations. After all, in the house deeds it categorically stated that this was a footpath.”.  
Section 5 “... in 2000... and erected a gate after an absence of 12 years.”.
7. **Minutes of a meeting**, 22/10/96, at Tilley Bailey and Irvine – a solicitors meeting  
“The Council had been approached in 1995 to install some chicane fencing at one end of the path which had been financed by 18 residents each contributing £13.89.”.
8. **Letter**, 23/05/05, from a Manor Road Resident to the present owner of Inglethorpe. Resident and wife moved into the property in October 1994  
“Between that date and 2000 there were no gates fitted at either end of the pathway.”.  
“Since the gates were re-fitted in 2000, tranquillity has been restored to Manor Road.”.  
“We were aware that the footpath was private and previously only residents of Manor Road were provided with keys to the gate, as advised by the previous owner of our property...”.  
“(previous owner’s name) moved into the Manor Road in 1987 and at that time gates were fitted and locked.”.

“My son, who attended High Tunstall between 1983-85, informs me that school children used the path at the time despite there being a gate fitted and when observed doing so were usually stopped by residents.”.

9. **Letter**, 18/04/05, from neighbouring property to Inglethorpe. This resident moved into his property in 20/04/00.

“At this time you (Inglethorpe) informed me, that there had been a gate erected to prevent anti-social behaviour occurring on the access way to the detriment of ... (*list of 3 properties along the lane*). You subsequently supplied me with the appropriate key to access Manor Road.”.

“From the above date I have resided at ... (*property name*) and the gate has been permanently locked, with access only by the use of a key.”.
10. **Letter**, 17/05/05, from a resident of Manor Road.

“This application affects us directly since the path in question is noted on our Land Registry Deed as a Private Right of Way, with access via the path to the landowners and to the residents of certain properties in Manor Road. In 1983, this access was via a locked gate at the south end of the path, (the house owners in Manor Road all having a key). Notices indicating this was a ‘Private Right of Way’ and ‘inadmissible to the public’ were posted in Manor Road, at the north end of the path, in the garden of the owner of 14 Manor Road which adjoins the path. Also a notice was posted at the west end of the path on to Elwick Road (opposite High Tunstall School). Further notices were posted in Manor Road. This situation prevailed until 1987, when firstly the lock to the gate was broken and the gate itself was vandalised.”.

“... and in a meeting with Manor Road residents, they immediately agreed to have a new gate fitted at the north end of the path, (where it comes out on Manor Road).”.

“... the Police and the Teaching Staff at High Tunstall School were in full agreement that this would curb the actions of trespassers and unruly children. This gate which is locked (and with keys for Manor Road residents), was fitted by (*Landowners name*) in the year 2000.”.
11. **Letter**, 17/05/05, from resident of Manor Road, who moved into Manor Road in July 2003.

“The fact that our deeds mentioned that access through the cut from this private road to Manor Road was restricted to a few specific key holders...”.
12. **Statement**, 07/06/05, of a previous owner of Inglethorpe.

“I the undersigned hereby confirm that I lived in Inglethorpe for a number of years until 1987. During this time the pathway leading from Inglethorpe Drive to Manor Road was closed by a gate at the bottom end of the path and there were signs at both ends of the path that it was a PRIVATE path. The path was always closed when I was in residence and it never has been a public right of way.”.

13. **Letter**, 16/05/05, from a resident of Manor Road.  
“In 1978 my late husband and I purchased (*property name*), Manor Road from (*previous owner's name*), the first owner of this property, our solicitor (*solicitor's name*) explained to us in great detail, that the private road was accessible to the residents in the cul-de-sac (Manor Road) by use of a key to the gate. This key was provided by the then owner (*of Inglethorpe*), details of entry etc is recorded in our deeds.”  
“All went well until the gate was vandalised in the late eighties, this was very distressing for both the owner of the private road and the residents of Manor Road.”  
“The next thing that happened motorbikes found their way through, that was why the barriers were put in place, and finally the gate directly on the Manor road entrance.”
14. **Statement**, 16/05/05, from resident of Manor Road.  
“... we the undersigned hereby confirm that the pathway leading from Manor Road to the Inglethorpe Drive is indicated our house deeds as being a PRIVATE right of way. We can confirm that it had the relevant signs of privacy in 1987. Prior to 1987 the path was gated and the previous owner (*of Inglethorpe*) can confirm this statement.  
In 1987 the gate was vandalised...”
15. **Letter**, 12/06/05, from a resident of Manor Road.  
Point 4 “1962 ... saw building of all the now existing houses by a development company consisting of a builder, a solicitor and a house decorator. The house numbered no 11 was occupied by the parents of one of the directors and because the lady of the house was elderly, care was taken to include a pathway giving her the facility of reaching Elwick Road, thus avoiding the rather steep climb up Manor Road. In fairness to the other ‘new builds’ this pathway was permitted to the new occupants, but not to the original houses in the plateau part of Manor Road.”  
Section 5 “The passage leads through to the carriageway (*Inglethorpe Drive*) and such carriage way is in the ownership of one of the semi-detached houses (*Inglethorpe*). Such PASSAGE of access has been controlled initially as a matter of honour and thence by a gate which hindered or stopped access for bicycles, and alternatively (unless vandalised from time to time) by a padlocked gate. However padlocking was reinforced eventually by (*name of a previous owner of Inglethorpe*)... now deceased ... until he vacated his house in 1988 ... some seventeen years ago.”  
Section 6 “In April 2000 or thereabouts a new owner of the semi-detached carriageway house produced a new and efficient locking system which endures to present date.”
16. **Letter**, 22/06/05, from solicitors to present owner of Inglethorpe.  
“The register Entries confirm beyond doubt that this is a private right of way reserved for those persons listed in the Third Schedule to Entry No 11 (and their successors in title).”

17. **File Note**, 12/09/05 from a conversation between the Countryside Access Officer and a previous owner of Inglethorpe.  
“(previous owner’s name) stated that the alley had been gated all the time that her husband and she were in residence at Inglethorpe. A year after moving into Inglethorpe her husband added the lock to the gate as well as raising the height of the gate, to deter children from climbing over it. Some keys were issued out to some of the residents in Manor Road.  
(previous owner’s name) said that the original reason that the alley was created was to assist an old lady, who lived in Manor Road, so that she could get to the bus stops in Elwick Road, without having to take a very long detour.  
(previous owner’s name) insisted that the route was always a private right of way and not, as claimed, a public right of way.”.

### **Hartlepool Borough Council – documents researched and or Received**

A short summary of the documents follows, with the documents themselves being copies extracted from the originals or electronic versions of maps copies that are held in either Archives in County hall, Durham or Durham University Library, Durham or at Hartlepool Borough Council (HBC) Offices.

The copy documents will be attached at the end of the Report.

1. Copies of letters sent from Highways Section HBC, 10/05/05  
- regarding the correspondence surrounding the erection of the chicane, situated at the south end of the ‘alley’ between the properties of 12 and 14 Manor Road. The cost was £250.00 and was born by 18 residents of Manor road, each paying £13.89 (£13.89 x 18 = £250.02) – refer to extracts from minutes of a meeting at Tilley Bailey and Irvine (solicitors meeting), 22/10/96, (see objectors extract 7)
2. 16/05/05, Official Copies Request  
Copy of the Land Registry documents (CE15136) relating to the property and land of ‘Inglethorpe’, Elwick Road, Hartlepool, TS26 0EG.
3. May 2005 - Maps  
All of this collection of maps has either the claimed route marked out in a red dashed line or has the area of the claimed route enclosed in a red square.
  - (a) Ordnance Survey Maps Series 1, 2, 3, 4.
  - (b) Ordnance Survey Maps Pre Definitive Map 1952
  - (c) Ordnance Survey Maps Definitive Map 1952
  - (d) Ordnance Survey Maps Present day base map
  - (e) Based on Ordnance Survey Maps – Property Services
  - (a) Series 1 – Pre 1895  
Series 2 – 1897  
Series 3 – 1916 to 1922  
Series 4 – 1938 to 1940
  - (b) Extract from the Parish Survey Map (Pre Definitive Map) 1952



- (c) Extract from the first Definitive Map 1952
  - (d) Extract from the base map data 2005 used by the HBC GIS (Geographical system) software.
  - (e) Map showing the adopted highways shown in the lighter of the two shades of green.
4. July 2005, from the present owner of Inglethorpe.  
Office Copy Entry of Register and Plan relating to Inglethorpe – same as document 2.
  5. 02/08/05, Maps from Highways Section HBC  
OS Series 1 to 4 (see documents 3)  
OS Map – 1990  
OS Base Data map – 2005 (see documents 3)
  6. August 2005  
Office Copy Entries of Land Registry Property Details for both 12 and 14 Manor Road.  
12 Manor Road – CE 133905  
14 Manor Road – CE 126029  
Point 2, 2<sup>nd</sup> para “... TOGETHER ALSO with a right of way (in common with all others having the like right) at all times on foot only over and along that part of the private footpath and roadway leading to Elwick Road as the same is more particularly indicated in blue on the said plan ...”.  
Point 2 3<sup>rd</sup> para “Note: The footpath coloured in blue referred to is the footpath between numbers 12 and 14 Manor road.”.
  7. August 2005  
An Agreement as mentioned in the oldest letter, dated 29/11/93, which is part of the documents 1.  
A map and document relating to where the site numbers, mentioned in document 2 (CE 15136), Third Schedule, page 5, of the Manor Road development (1960’s) linked to the actual properties and addresses of the present day manor road. The map is a photocopy, of the map within the agreement (document 7), which has been annotated with extra information, coloured red, green and blue.
  8. 27/10/05, file note  
Rights of Way Historical Research

County Hall Archives and University Library - Durham

As part of the research to look for evidence with regards to the claimed route, I looked at the Tithe Map and Apportionment of Throston (of Hart) 1841. This was available at the University Library. There was no evidence of any path, way, footway, footpath, bridlepath, track, lane or road for the area covering the route claimed - Elwick Road to Manor Road. Only fields were evident on the claimed

route and an area called Throston Carrs (boggy area of land) to the east of the claimed route.

No Enclosure Maps were available, at the University Library or County Hall Archives, for the area covering the claimed route.  
Countryside Access Officer

The Countryside Access Officer was not able to obtain a copy of the relevant Tithe Map at this time. It is hoped that digital images of the Tithe Map will become available in the future.

All the above evidence, from the users, objectors and HBC will assist the Council in making the determination as to the existence of the claimed way. Once comments etc have been received a meeting between the Countryside Access Officer and the Legal Officer will take place to move towards recommendation on a decision. If comments, from this report, have been received that contain further evidence, that may affect the decision, then this new evidence will be circulated to those who have received this report and a specified period of time will be allowed for responses to be given.

A final meeting would then be held by the above mentioned officers to consider and agree upon what the recommendation(s) for determination will be.



	No.
	1
	2
	3
	4
	5
	6
Letter dated 13/11/05 (from Mr McD) states that the PF sign 'was present until about a decade ago'.	7
	8
	9
	10
	11
	12
Prevention Information	
Youths from High Tunstall School - ASB. Headmaster + Youth Club leader called. Youths removed from property	13
Mrs B (the then owner of Inglethorpe) did her best to stop people using the lane, by using her car	14
1999 - Asked youths to leave, rang headmaster of HTS - no success. 2X - lockable gate reinstalled	15
Chicane erected @ S end of alley but still ASB from youths.	16
	17
	18
Reported ASB (one youth) to HTS, youth picked out from photo - he admitted offence - rigging trip wire across footpath	19
1983 - 1987 S end of alley gated. Tried to stop HTS pupils from using path by taking photos and informing Headmaster - early 1980's	20
	21
The 1987 alley gated. 1987 gate vandalised. Post 1987 Residents of Manor Rd police path, turning away youths and school children.	22
The 1983 passage down path/route was controlled by a gate and then a locked gate	23
Dr M - challenged people using the path, asking them to leave the path, as they were climbing the gate/adjacent fences, into private gardens	24
	25

**Report of:** Assistant Director Planning and Economic Development

**Subject:** UPDATE ON CURRENT COMPLAINTS

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**1. PURPOSE OF REPORT**

1.1 During this four (4) week period, seventy one (71) planning applications have been registered as commencing and checked. Thirty three (33) required site visits resulting in various planning conditions being discharged by letter.

**2. BACKGROUND**

2.1 Your attention is drawn to the following current ongoing issues:

1. Five cases regarding the erection of boundary walls/fences requiring planning approval at properties in Fenton Road, Darvel Road, Mardale Avenue, Paignton Drive, and Challoner Road have been investigated. In some cases alternative schemes have been agreed and details are awaited from occupiers. Developments will be reported to a future meeting if necessary.
2. Two 48-sheet advert boards are being displayed on vacant land on Mainsforth Terrace without the benefit of 'deemed consent' under Advert Regulations. The advert company have apologised for there error in failing to apply for consent and an application will be submitted as a matter of urgency. Developments will be reported to a future meeting if necessary.
3. A neighbour complaint about the change of use of a ground floor room to a property letting office at a residential property in Lowthian Road is being investigated. Developments will be reported to a future meeting if necessary.
4. A neighbour complaint about the use of a vacant site for the storage of waste motor vehicles in Graythorpe Industrial Estate has been investigated. The operator has indicated that the site is being used as an overflow to his existing depot. It will be for temporary period and will be kept under review. Developments will be reported to a future meeting if necessary.
5. A neighbour complaint about building works being carried out to a property in Park Road is being investigated. Developments will be reported to a future meeting if necessary.

6. An officer noted the fitting of a UPVC French door in the rear of a property in Radcliffe Terrace. The property lies in the Headland Conservation Area and is also subject to an Article 4 Direction, which removes the owner's rights to alter their property without the need for planning permission. In this case, because the original double French door was plastic no breach of planning permission had occurred in this instance.
7. An officer noted a new UPVC window had been fitted in the 2nd floor of a commercial property in Church Street. A shop front steel shutter had also been fitted. The property lies in the Church Street Conservation Area. Developments will be reported to a future meeting if necessary.
8. A complaint about a proposed change of use from furniture shop to launderette and dry cleaners has been investigated. Not until any change of use has commenced can a planning breach be registered. The matter will be kept under review and developments will be reported to a future meeting if necessary.
9. A neighbour complaint about alterations being made to properties in Hutton Avenue is being investigated. The properties lie in the Grange Road Conservation Area and are subject to an Article 4 Direction, which removes the owner's rights to alter all elevations of their properties facing a highway and open space. Development will be reported to a future meeting if necessary.
10. A neighbour complaint about the erection of an inglenook fireplace at a property in The Vale has been investigated. The owner has agreed to submit drawings for consideration. Developments will be reported to a future meeting if necessary.
11. An officer has noted a section of landscaping may not have been planted in line with the agreed scheme for Middle Warren housing development on Throston Grange Lane. Developments will be reported to a future meeting if necessary.

**Report of:** Assistant Director Planning and Economic  
Development

**Subject:** APPEAL BY PAUL GOLD, SITE AT 12 MOORHEN  
ROAD, HARTLEPOOL

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**1. PURPOSE OF REPORT**

- 1.1 To advise members of an appeal against the refusal of planning permission for the erection of a bedroom extension above an existing conservatory at the above property.
- 1.2 The appeal will be dealt with by written representations. Authority to consent the appeal is requested.

**2. BACKGROUND**

- 2.1 That Members authorise officers to contest this appeal.