

Town and Country Planning Act 1990
Planning and Compulsory Purchase Act 2004

Application by

Applegreen plc

for a

Proposed Motorway Service Area on the A1(M) at Kirby Hill

Statement of Objection

by

Kirby Hill RAMS
[Residents Against Motorway Services]

September 2017

PLANNING APPLICATION REFERENCE: 17/03414/EIAMAJ

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1 INTRODUCTION

1.1 Reference is made to the planning application 17/03414/EIAMAJ for a proposed motorway service area on the A1(M) at Kirby Hill, submitted by Applegreen plc on 31 July 2017.

1.2 This statement has been prepared by Kirby Hill RAMS [**R**esidents **A**gainst **M**otorway **S**ervices]. Kirby Hill RAMS is an independent residents' group formed for the sole purpose of objecting to the proposed Kirby Hill MSA. Kirby Hill RAMS represented the local community at the 2003 and 2010/11 MSA Public Inquiries, successfully presenting an objection case on behalf of local people and the seven local Councils surrounding the proposed site.

1.3 Although Applegreen has not seen fit to provide Kirby Hill RAMS with a copy of their planning application, we have completed a thorough review of it online and have assessed all of the material planning considerations. Kirby Hill RAMS has prepared this statement, representing the views and expertise of the local community on this matter, to assist the Local Authority's Planning Officer in making his recommendation and our elected representatives in reaching their decision.

1.4 While Kirby Hill RAMS have no professional qualifications in the field of planning, our extensive local knowledge exceeds that of any of the experts engaged by Applegreen plc. This enables us to present evidence that accurately reflects the first-hand knowledge and day-to-day experiences of local people over many years. We are in a unique position to provide the Local Planning Authority with a valuable, first-hand, local perspective on the material planning considerations.

1.5 On behalf of the local community, Kirby Hill RAMS **strongly objects** to the planning application on the following grounds:

- The planning history is one of repeated refusal for an MSA at this site.
- There is no need for an MSA at Kirby Hill.
- An MSA at Kirby Hill would cause substantial harm to interests of acknowledged importance.
- Overall, the proposed MSA would cause harm that outweighs the benefits to motorists.
- The proposed MSA conflicts with national and local planning policies.

1.6 Each of these grounds of objection is explained in detail, with references to the Applicant's planning documentation and to relevant planning policy documents, in the following pages.

2 PLANNING HISTORY

2.1 Since 1996, the promoter behind the Kirby Hill site, Heather Ive Associates (HIA), has been seeking planning permission for an MSA. HIA holds options over the land at the proposed site from two local landowners. For over 20 years, HIA has consorted with various parties to fund and conduct a series of unsuccessful planning applications, appeals, Public Inquiries and High Court cases related to a proposed MSA at Kirby Hill. During this time, at every stage, Kirby Hill RAMS has opposed the plans on behalf of the local community, presenting a strong, well-argued and repeatedly successful case that there should be **NO MOTORWAY SERVICES AT KIRBY HILL**.

2.2 The latest incarnation of the Kirby Hill MSA proposal is Applegreen plc's planning application, reference number 17/03414/EIAMAJ, submitted on 31 July 2017.

2.3 **Table 2.1** details the planning history of MSA proposals at the site over the last 21 years. During this time, two new MSAs, less than 28 miles apart (as per Government guidance) have been granted planning permission on this stretch of the A1(M). After the 2003 Public Inquiry, the Secretary of State refused permission for a Kirby Hill MSA and granted permission for the new Wetherby MSA. After the 2010/11 Public Inquiry, the Secretary of State refused permission for a Kirby Hill MSA and granted permission for the upgrade of Leeming Bar Services to MSA status.

Date	Action	Reference Number	Outcome	Date of outcome
17/10/1996	Planning application	96/02624/OUT	Non-determination	25/02/1997
10/09/1997	Appeal & Public Inquiry	97/00042/FTDPP	Permission granted	15/03/1999
14/04/2000	High Court Appeal	CO/1562/99, Elias, J.	Permission quashed	14/04/2000
2000	Court of Appeal	n/a	Appeal dismissed	2000
07/10/2002	New Public Inquiry	02/00095/CALLIN	Permission refused	15/09/2005
2005	High Court Appeal	n/a	Appeal withdrawn	2005
18/12/2008	Planning application	08/05860/EIAMAJ	Permission refused	30/03/2009
09/04/2009	Appeal & Public Inquiry	09/00043/CALLIN	Permission refused	16/10/2012
28/10/2013	High Court Appeal	CO/12581/2012, Lindblom, J.	Permission refused	28/10/2013
31/07/2017	Planning application	17/03414/EIAMAJ	TBD	TBD

Table 2.1: Planning history of the proposed Kirby Hill MSA site

2.4 Repeated applications and appeals for an MSA at Kirby Hill have placed a huge burden on the local community and on Harrogate Borough Council over the last 21 years. It seems to us that HIA has attempted to 'wear-down' the system, by altering each MSA proposal for the site just enough to ensure that the Council cannot reasonably refuse to entertain another planning application.

The Secretary of State's 2012 Decision Letter

2.5 Applegreen's proposed MSA development is contrary to the Secretary of State's determination in his Decision Letter dated 16 October 2012 that there should be no motorway service area at Kirby Hill. The Secretary of State's Decision Letter was issued following an extensive Public Inquiry, held when HIA appealed the Council's refusal of planning permission for an MSA at this site in 2009. The required MSA provision on this stretch of the A1(M) has therefore already been determined by the Secretary of State. Moto's new MSA at Wetherby is operational. The permission the Secretary of State gave in his 2012 Decision Letter, to upgrade the existing Leeming Bar services to full MSA status [Hambleton District Council planning reference 15/02200/REM], is about to be implemented.

2.6 Completion of the Highways England project to upgrade the A1(M) between Leeming and Barton to motorway by the target date of end 2017 was a pre-requisite for the upgrade of Leeming Bar services to MSA status. Applegreen's criticisms of 'delay' in bringing forward this MSA are unfounded. One cannot have an MSA without a motorway. Applegreen's planning application is also in error when it says that Leeming Bar MSA will not achieve signing from the A1(M). Moto's planning application to Hambleton District Council confirms that signing of Leeming Bar MSA from the motorway is already agreed with Highways England.

2.7 The Secretary of State's 2012 Decision Letter should therefore be the Council's starting point when assessing this new application by Applegreen. This decision must be given time to be implemented, rather than approving another MSA proposal before the Leeming Bar MSA, for which the Secretary of State granted planning permission in 2012, has even opened. Indeed, approving a new MSA at Kirby Hill now may adversely affect the viability of the two MSAs already approved by the Secretary of State and undermine his decision.

2.8 Harrogate Borough Council has a consistent record of opposing MSA development at this site over the last 20 years. Despite three cycles of Appeal, Public Inquiry and Court case, the Planning Committee's refusal of plans for an MSA at Kirby Hill has always been vindicated by the Secretary of State and by the High Court. **The planning history is one of good, local decision-making by our Councillors, who should once again refuse this application.**

3 NEED FOR AN MSA

3.1 The Secretary of State made clear in his 2012 Decision Letter that he considered a need existed for just one new MSA on the A1(M) between Wetherby and Barton. None of the parties disagreed with this position at the Inquiry, nor subsequently at the High Court. In the 5 years since then, there has been no increase in need that would justify granting planning permission for another MSA. In fact, if anything, since 2012 the need for MSAs on this part of the road network has decreased.

Leeming Bar MSA

3.2 Completion of the A1(M) Leeming to Barton upgrade to motorway status is due by the end of 2017. Moto has purchased the Leeming Bar Services site, with outline planning permission for an MSA, as granted in the Secretary of State's 2012 Decision Letter. Moto has progressed a reserved matters planning application with Hambleton District Council [Planning Reference: 15/02200/REM] and has reached agreement with Highways England for signing of the Leeming Bar MSA from the A1(M). During the reserved matters stage, changes have been made to the proposals in order to maximise the capacity and efficiency of the Leeming Bar site. As a result, the new Leeming Bar MSA will more than meet the need identified by the Secretary of State after the last Public Inquiry.

Spacing of Wetherby and Leeming Bar MSAs

3.3 Nothing has changed on the ground since 2012 that would alter the distances between Wetherby, Kirby Hill, Leeming Bar and Barton. At the 2010/11 Public Inquiry, the Highways Agency measured the relevant distances on the A1(M) and their methodology, measurement points and results were agreed by all parties, including the promoter of the Kirby Hill site, who is Applegreen's partner in this latest application. The agreed table of distances [2010/11 Inquiry Core Document 14.11], to which the Secretary of State referred in his 2012 Decision Letter, gave the following measurements:

- Wetherby to Kirby Hill = 12.4 miles
- Kirby Hill to Leeming Bar = 15.1 miles

3.4 Therefore the distance from Wetherby to Leeming Bar, as measured by the Highways Agency and agreed to by all parties to the 2010/11 Public Inquiry, is 27.5 miles. This is less than the 28-mile spacing envisaged by Circular 02/2013. It provides no justification for another MSA. If it did,

Applegreen would not need to inflate this distance in their planning application and quote it as 28.8 miles. This figure is stated as fact, yet with no evidence of methodology, no indication of whether it has actually been measured on the ground and no explanation of why it is different to the distance agreed by all parties at the 2010/11 Public Inquiry. Given its uncertain provenance and the absence of any actual change on the ground, Applegreen's 28.8 mile distance figure should be ignored. It cannot be considered a material change that justifies a different planning decision now.

DfT Circular 02/2013

3.5 Applegreen argues that the new DfT Circular 02/2013, published since the Secretary of State's decision, supports the need for a new MSA at Kirby Hill. Although policy changes in the new Circular (lobbied for by the MSA industry) allow a new planning application to be brought forward, that does not mean that there is automatically a proven need for another MSA at Kirby Hill. The Local Planning Authority must still assess the planning balance of need vs harm.

3.6 Crucially, the criteria in the new Circular regarding MSAs being spaced a maximum of 28 miles or 30 minutes driving time apart are the same as when the Secretary of State took his decision in 2012. However, Paragraph B5 of the new Circular says that this timing is not prescriptive because '*at peak hours, on congested parts of the network, travel between service areas may take longer*'. The key question therefore is whether the stretch of the A1(M) under consideration meets this definition. Is it a congested part of the UK strategic road network where, in peak hours, travelling the 27.5 miles between Wetherby and Leeming Bar takes longer than 30-minutes? Local people, who travel the road daily to work or to visit friends and relatives, know that it is not. The A1(M) in North Yorkshire is not the M25. The road also benefits from a recent, state-of-the-art upgrade from 2-lane dual carriageway to 3-lane smart motorway. The objective of this upgrade, according to Highways England's project website, was to '*improve safety and journey time reliability*'. Improving safety and journey time reliability has the effect of reducing the need for another MSA. Even Applegreen admits that that on this stretch of motorway, beyond the Dishforth junction, reduced traffic flows mean that an MSA would serve a significantly lower number of motorists and would be less commercially attractive [Planning Statement, para 2.4.1]. These are not the circumstances envisaged by the new Circular, where MSA spacing may be reduced '*on congested parts of the network*'. **Applegreen's need case is not supported by Circular 02/2013 policy.**

3.7 Applegreen argues [ES, para 3.2.9] that higher traffic flows south of junction 49 justify an MSA at Kirby Hill, which would reduce the MSA spacing to 12 miles from Wetherby MSA and 15 miles from Leeming Bar MSA. This is completely contrary to the Circular, which says of the 28-mile/30-mins driving time criteria that: '*The distances set out above are considered appropriate for/to all parts of the strategic road network and to be in the interests and for the benefit of all road users regardless of traffic flows or route choice*.' It is clear from this that the Circular does not consider traffic flow a valid reason for reducing the 28-mile spacing. **Applegreen's traffic-flow argument for locating an MSA at Kirby Hill directly contradicts this Circular 02/2013 policy.**

3.8 A significant material change between Circular 01/2008 and the new Circular 02/2013 is that the Government's advice to motorists to stop and take a rest has been revised. The recommended break from driving is now 15 minutes every two hours, whereas it was previously 20 minutes every two hours – a 25% reduction. This policy change creates shorter duration visits to MSAs and a corresponding increase in the total number of daily visitors an MSA can accommodate. The capacity of existing MSAs is thereby increased by up to 25%. This has the effect of reducing the need for new MSAs, compared to when the Secretary of State made his decision. Contrary to Applegreen's claims, **Circular 02/2013 policy reduces, rather than increases, need for an MSA.**

3.9 Applegreen claims that the new Circular brings the A168/A19 trunk road from Dishforth to Teesside into consideration when assessing the need for an MSA at Kirby Hill. If this is the case, then it must also be considered that there are existing online TRSAs on both sides of the A168 dual carriageway west of Thirsk and only 7 miles from Kirby Hill. Applegreen's proposal, in this context, is to site a new junction MSA at Kirby Hill, in a 19-mile gap between the A1(M) Wetherby MSA and the online A168 TRSAs at Thirsk. Circular 02/2013 says that the online sites must be preferred. **There is no need for a new junction MSA in this 19-mile gap, on an uncongested part of the network.**

3.10 Should an increase in need occur in the future, the existing Wetherby MSA has space and plans to be extended to meet it. In terms of environmental harm and protecting the countryside, increasing the capacity of the existing Wetherby MSA just 12 miles south would be far preferable to building a new MSA on a greenfield site at Kirby Hill.

3.11 **In view of the above, there is no need for a new MSA at Kirby Hill.**

4 CHANGES IN THIS MSA PROPOSAL

4.1 Applegreen has altered a number of design aspects in this latest incarnation of the Kirby Hill MSA proposal. While Applegreen claims that these design changes are beneficial to the scheme, they also create new material issues and impacts that need to be weighed in the planning balance.

Single-sided MSA

4.2 Perhaps the most significant change in this new proposal is that the MSA is sited on the western side of the A1(M) only [Planning Statement, para 3.5.2], although there would be associated highways and drainage works and new infrastructure on the eastern side which are discussed later. Despite the change from a 2-sided to a 1-sided strategy, the total land-take of 19ha is only marginally different from the 19.3ha proposal rejected by the Secretary of State in 2012 [Inspector's report of the 2010/11 Public Inquiry, para 11.6.1]. In terms of absolute impact of this land-take on the local landscape and environment, the change to a single-sided MSA makes very little difference.

4.3 Applegreen claims that the change to a single-sided strategy is motivated by a desire to move the MSA away from Kirby Hill village, in order to overcome objections. Yet the principal reason for rejection last time was the significant adverse impact of the proposed MSA on a landscape and environment that is treasured by local people and is protected by the Harrogate District Local Plan. It matters very little whether the proposed 19ha land-take is on one or both sides of the A1(M). There would still be a very significant adverse landscape impact, contrary to the Local Plan.

4.4 A significant consequence of the single-site strategy is the need for a new, elevated, dumb-bell junction above the A1(M) carriageway immediately north of the site. At 45.7m AOD, this would be the highest and most visually-impactful structure in the proposed MSA and indeed in the local area. It would be topped by 10m lighting columns [ES Appendix 4.1, Outline Scheme of Lighting, Sheet 01], making the structure visible, day and night, for many miles around. This would materially alter the skyline as viewed from the northern edge of Kirby Hill. The highest object in the A1(M) corridor currently visible from Kirby Hill is the Ripon Road roundabout, at 40m AOD [ES, para 1.2.10]. Unlike the previous proposals, no mitigation is proposed to shield this structure from Kirby Hill village.

4.5 **The single-side strategy does not reduce the impact of the proposed MSA on Kirby Hill.**

The 'Online' Advantage

4.6 Despite the change to a single-sided MSA strategy, Applegreen claim that their proposal benefits from the advantage of being an 'online' site of the kind preferred by Highways England, as set out in Circular 02/2013. The supposed 'fact' that Kirby Hill would be an 'online' site, preferred by Highways England, is described as a 'key determinant' of Applegreen's choice of Kirby Hill as a location [Planning Statement, para 2.4.1]. This claim is misleading, because by Applegreen's own admission [Planning Statement, para 1.3.3], the proposed MSA requires the creation of a new, grade-separated, dumb-bell junction above the A1(M) at Kirby Hill.

4.7 An 'online' MSA allows motorists easier access to its facilities, via slip-roads that do not involve negotiating a junction. It allows motorists to easily exit the MSA via slip-roads and continue their journey in the direction they were travelling. The entry and exit slip-roads of an 'online' MSA only allow motorists access to/from the services in the direction that they were travelling. Motorists cannot use an 'online' MSA to make a U-turn and change the direction of their journey.

4.8 Applegreen's Parameters Plan [Drawing Ref: 162007-AFL-00-00-DR-A-00120 P01] shows that, in addition to being able to enter and exit the MSA via one or two roundabouts (depending on the direction of travel), motorists would have other choices as they arrived at the new dumb-bell junction over the A1(M). They could continue straight ahead at a roundabout, re-joining the A1(M) without entering the MSA at all. Alternatively, they could use the dumb-bell junction to make a U-turn and return along the opposite carriageway to the one from which they had exited. **Figure 4.1** overleaf illustrates how this new dumb-bell junction would need to be signed, compared to the signage that would be required for an 'online' MSA. Given the options available to motorists to continue their journey without accessing the MSA, or to make a U-turn and join the opposite carriageway of the A1(M), this new junction would almost certainly have to be given a number, probably Junction 48a.

4.9 Since motorists would need to negotiate the new dumb-bell junction, signed as in **Figure 4.1**, to access the MSA, the supposed benefit of easier access to an 'online' MSA has been lost. The proposed dumb-bell junction is identical to those found at Junction MSAs, except for the local traffic. Conflicting traffic is not absent however, as it should be in an 'online' MSA. Northbound motorists accessing the MSA would have to contend at the junction with the presence of southbound traffic

and vice-versa, plus other traffic from both directions that may not be entering the MSA at all**. In practice therefore, Applegreen's new proposal would be a junction MSA, not an 'online' MSA.** The proposed single-sided MSA design with a new, grade-separated, dumb-bell junction no longer warrants Highways England's 'online preference' described in Circular 02/2013.

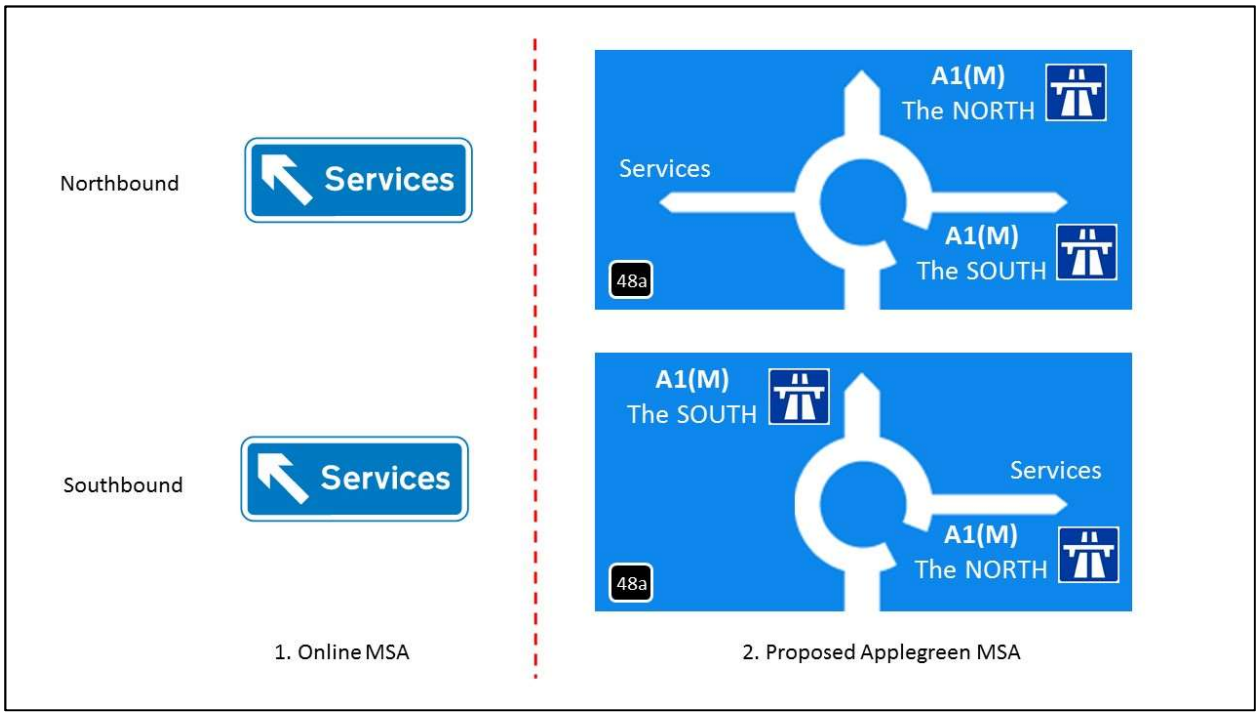


Figure 4.1: Illustrative signage for an 'online' MSA compared with Applegreen's proposed MSA

4.10 One consequence of creating a new Junction MSA is that motorists would be able to travel to it and use the junction to return home the way that they came. This risks making the MSA a destination in its own right, with local people able to travel to and from it via Junction 48 (Boroughbridge) & Junction 49 (Dishforth). This would create additional trips on the Strategic Road Network, a situation that para B11 of Circular 02/2013 says that Highways England will not support.

4.11 **Based on Circular 02/2013 policy considerations, Highways England should not support the proposed Kirby Hill MSA.**

Diversion of the A168

4.12 One final consequence of the move to a single-sided strategy is that construction of the new junction necessitates diverting the A168 in a wide arc to the east, closer to Kirby Hill village [see

the Landscape Context Plan]. Apparently, despite the MSA including no built development east of the A1(M), it is necessary to undertake a substantial highways infrastructure project to re-route the A168, diverting more than half a mile of its length up to 150m east of its present course. Ostensibly, Applegreen is proposing this diversion in order to create a space between the A168 and A1(M) for a (temporary) construction encampment and a (permanent) lagoon from which surface water can be dispersed into the fields. We would also expect a future planning application for this site. Instead of taking the opportunity to preserve the rural character of the eastern site, Applegreen is happy to dump the ugly consequences of its MSA – the construction encampment, the lagoon and the diverted A168 – east of the A1(M) and closer to Kirby Hill village. Diverting the A168 through four fields of Grade 1 BMV agricultural land in order to do this is not sustainable development. It creates a wholly unnecessary set of new traffic and environmental impacts close to our small rural village.

Rear access

4.13 Previous MSA proposals at this site would have had no access to the local road network. However, Applegreen has included in its plans a rear access on the B6265 Ripon Road for staff, deliveries and construction traffic. This increases the impact of the proposal on the local community, by creating additional traffic and new safety hazards on the local road network. The location of the proposed rear access is a spectacularly bad choice. It lies almost at the bottom of two converging downhill sections of the 60mph B6265 Ripon road, at a known accident blackspot, as is illustrated by the mapping of road accident statistics in **Figure 4.2** [source: crashmap.co.uk].

4.14 The B6265 is the main route connecting the city of Ripon with the A1(M) to/from the south and the A168/A19 to/from Teesside. These local roads are also popular with cyclists, who are particularly vulnerable to increases in HGV traffic. The A168 past the site is used regularly for cycling events.

4.15 It is highly likely that the proposed rear access would increase both the number and severity of road accidents on the B6265, given the number of staff/delivery vehicles using it 24 hours a day, plus up to 42 HGV movements per hour over a 12-hour working day during construction [ES para 8.4.29]. For local people, road accidents are not just statistics. As daily users of the B6265, they are concerned about the risk that they personally, or a close friend, relative or neighbour, may meet with a serious or fatal accident as a direct result of the proposed rear access for staff and HGVs.

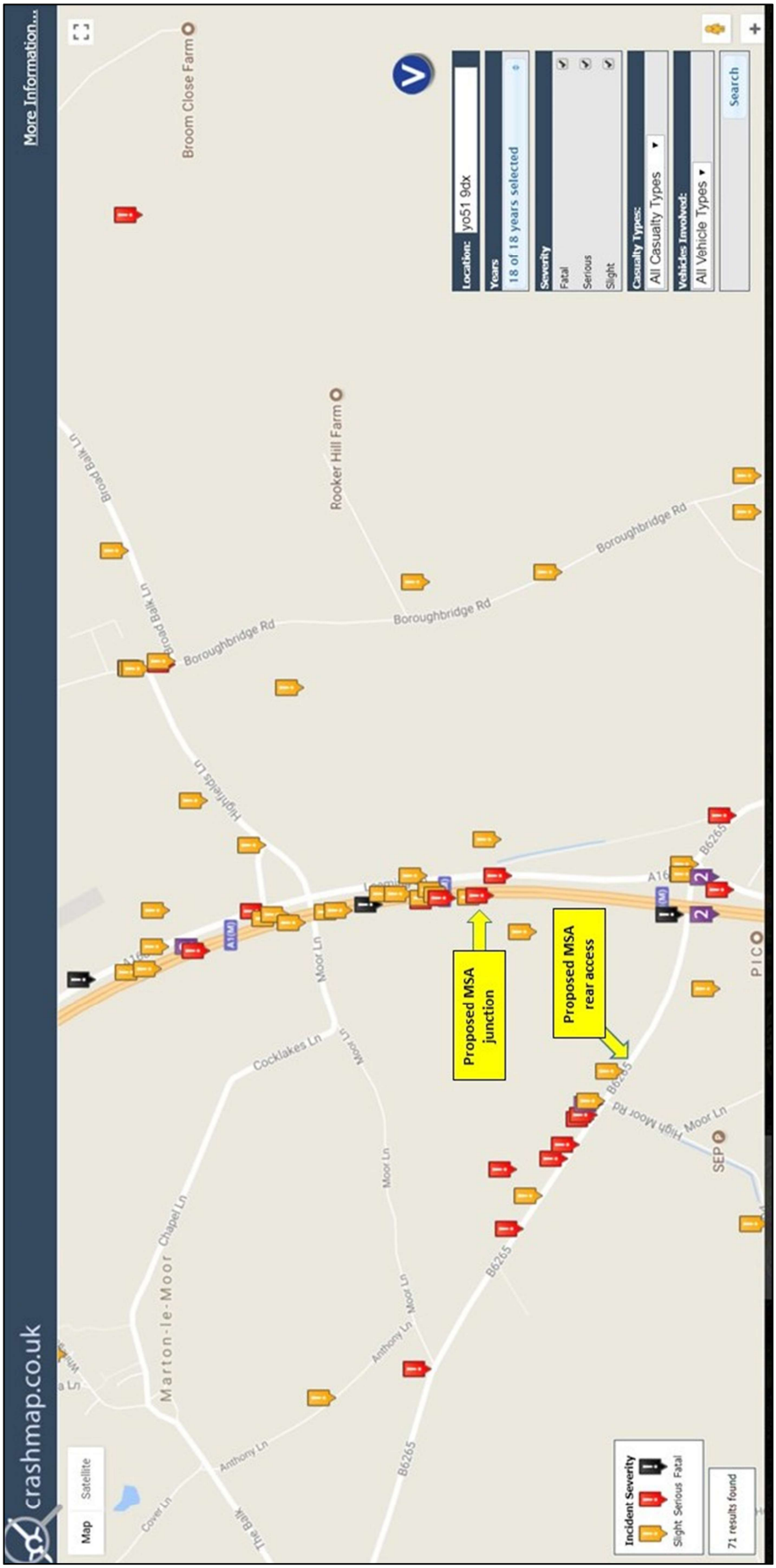


Figure 4.2: Proposed MSA access in the context of 1999-2016 road accident data (crashmap.co.uk)

Landscaping

4.16 The large-scale, open, landscape at Kirby Hill is protected by the Harrogate District Landscape Character Assessment. In Appendix 5.2 of the ES: 'Effects on Landscape Character', Applegreen admits four times that: '*The localised effects of the Proposed Development would be adverse'*. **This key reason for the refusal of previous MSA proposals at this site has not been overcome.**

4.17 Although the required land-take of 19ha is marginally less than that required by previous schemes, Applegreen's latest plans will have a more severe impact on the landscape at Kirby Hill. Unlike previous proposals, where a balance of cut and fill would have been achieved by re-profiling the site, Applegreen intends to excavate the western side of the A1(M) far more extensively. This means that a balance of cut and fill cannot be achieved and that 68,000m^3 (98,000 tonnes) of soil must be removed from the site [ES para 4.13.8 to 4.13.10]. This is a direct result of the new strategy of digging a deeper hole in an attempt to bury the proposed MSA under a green roof. The huge amount of earth-moving and re-profiling required will result in significant adverse landscape impact.

4.18 Applegreen says that '*an interpretation of the traditional Ha-ha has been used at the sensitive western edge of the site*' [ES para 3.4.2.iv.]. In landscaping, a 'Ha-ha' is defined as a '*turfed incline which slopes downward to a sharply vertical face'*. The MSA would therefore sit in a hole, with unnaturally steep-sided embankments bordering the B6265 Ripon Road and the sensitive western site boundary, near to Skelton Windmill. This would be an alien feature in the landscape. Contrary to Applegreen's claims, the 98,000 tonnes of soil removed from the site during construction means that the landscape harm would be irreversible, even if the MSA closes in the future.

4.19 Unlike previous proposals, no mounding is proposed to screen the MSA or its elevated access arrangements from viewpoints to the east in Kirby Hill village. The adverse impact of the MSA and its elevated junction on the landscape would be visible to Kirby Hill residents over open fields and would be a permanent reminder of the harm done to a landscape they treasure.

4.20 Discussion of the degree of landscape harm that the proposed MSA would cause is in many respects academic, when there is no need to cause that harm at all. **Since there is no need for an MSA at Kirby Hill, any landscape harm cannot be justified, let alone the significant harm that would be caused by this proposal.**

Drainage

Surface Water Drainage

4.21 Applegreen proposes excavating a very large hole to the western side of the A1(M) in an attempt to sink the proposed MSA into the landscape and hide it from view under a grass roof. Local people have been presenting evidence for the last 20 years that this site floods in winter, especially in the south-east corner, adjacent to the A1(M), where the fuel forecourt is proposed to be. One only has to look at the photos in **Figure 4.3** below to understand this. This is not a temporary phenomenon. The 1806 Enclosure Map of the site included in Applegreen's ES shows a large pond at this location [ES, Figure 10.4]. Excavating here and building a fuel forecourt and amenity building below the current ground level would result in a significant flooding issue for the MSA, with large quantities of surface water contaminated with oil/fuel constantly having to be managed and drained away.



Figure 4.3: Winter flooding of the proposed MSA site *(photos: Kirby Hill RAMS)*

4.22 Applegreen acknowledges that the bedrock under the proposed site *'is designated a principal aquifer, which may support water supply and/or river base flow on a strategic scale'* [ES para 7.3.8]. The ES states that the proposed MSA '*would increase the risk of contamination of surface water runoff*' and that '*groundwater quality may be affected through the infiltration of surface water runoff into the ground*' [ES para 7.4.9 to 7.4.10]. They further acknowledge that construction activities, in particular ground excavation, '*may create new pollutant pathways from the surface to the underlying aquifer*' [ES para 7.4.4]. Yet the proposed strategy remains deep excavation of the site and the discharge of surface water via soakaways directly above a major aquifer. While Applegreen

is prepared to accept the risk of flooding to the proposed MSA, we as local people will not tolerate such increased risk to our source of drinking water and to our local rivers. It is simply unacceptable.

4.23 Local people are also concerned about the effects on the agricultural viability of the Grade 1 BMV agricultural land that would be expected to absorb surface water runoff from the diverted A168, as well as the risks of contaminated surface water being dispersed towards Kirby Hill village.

4.24 Applegreen is right to be concerned about potential flooding of the MSA site, as **Figure 4.3** shows. However, the proposed solutions, by their own admission, increase the contamination risks to a strategic North Yorkshire aquifer. Local people who would have to live with the consequences consider this infiltration drainage strategy highly irresponsible. **It is not sustainable development.**

Foul Water Drainage

4.25 Applegreen correctly points out in paragraph 4.3.82 of the Planning Statement that it has an obligation under Policy NE2 of the Local Plan to demonstrate that there is appropriate sewerage infrastructure and adequate capacity local to the site. Paragraph 4.9.1 of Applegreen's ES says that correspondence with Yorkshire Water confirms that there is adequate capacity and that this correspondence is included in Appendix 10.1. However, the correspondence from Yorkshire Water is not included in Appendix 10.1. Neither is it included in Appendix 4.3, which the ES Table of Contents lists as 'Yorkshire Water Correspondence'. Kirby Hill RAMS eventually located the relevant correspondence from Yorkshire Water in Appendix 7.1 of the ES. It came as no surprise to us, as locals, to discover that the letter from Yorkshire Water dated 6 April 2017 does not confirm that there is adequate sewerage capacity for the proposed MSA. In fact, this letter states exactly the opposite, saying that the Boroughbridge Waste Water Treatment Works has '*limited spare capacity, if any, available*'. Appendix 7.1 does also contain a later e-mail from Yorkshire Water, dated 8 May 2017, which says '*it has been accepted that there would be capacity at Boroughbridge WWTW*'. This e-mail alone does not satisfy the Policy NE2 criteria, for several reasons:

4.26 Firstly, we do not know what Applegreen said to Yorkshire Water to bring about this change in its position regarding the capacity of the WWTW. Did Applegreen offer to fund an upgrade of the Boroughbridge WWTW? If so, what would that look like and what would the environmental impacts be? If Boroughbridge WWTW is not to be upgraded, how come it suddenly has capacity to service

the proposed MSA, when Kirby Hill RAMS has evidence that it has been over capacity for years and that a major capital investment programme is required to address the problem? We simply do not know the answers to these questions, because Applegreen has not provided all of the correspondence - only Yorkshire Water's side of it. As a minimum, Applegreen should include in the ES a full record of the discussions which persuaded Yorkshire Water that there is indeed capacity at Boroughbridge WWTW and the Planning Officer should verify this independently.

4.27 Secondly, Policy NE2 requires that Applegreen not only demonstrates that there is adequate capacity, but that there is also appropriate sewerage infrastructure. This does not exist at the proposed greenfield MSA site. A new sewer would have to be constructed from the site, under the A1(M) and across the agricultural land to the east, running close to the northern boundary of Kirby Hill village, as far as the intermediate pumping station, near the Grade 1-listed Church of All Saints [see Yorkshire Water sewer map - ES Appendix 7.1.]. The pumping station would require a major upgrade. Applegreen's ES gives no information about what this work would entail or how the inevitable impact on the local community and the Church of All Saints would be managed and mitigated. The environmental impacts have not been assessed and the mitigations not thought about. **Applegreen's strategy for foul water disposal – pump it under the A1(M) to Kirby Hill and forget about it – is anti-social behaviour and not sustainable development.**

4.28 As explained above, Applegreen's ES does not adequately demonstrate the existence of appropriate sewerage infrastructure or adequate capacity, as required by Policy NE2. From the scant information given, the Council cannot have confidence that the huge amounts of foul waste the proposed MSA creates would be disposed of without significant environmental and community impact. **Applegreen has not met its obligations to demonstrate compliance with Policy NE2 and the MSA proposal is therefore contrary to the Local Plan.**

4.29 Kirby Hill RAMS have discovered that Applegreen has a track record of polluting a local community with foul waste from an MSA. In 2016, the High Court in Ireland granted an injunction to a local community in County Dublin, to prevent Applegreen continuing to pump foul-smelling waste water away from an MSA on the M1 motorway and towards a local crèche [see Appendix A]. We are not prepared to accept the environmental consequences of such an irresponsible, anti-social, 'pump away and forget' strategy at Kirby Hill, although it seems that this is what is proposed.

5 HARM CAUSED BY THE PROPOSED MSA

5.1 An MSA at Kirby Hill would cause substantial harm to interests of acknowledged importance.

5.2 The proposed MSA would cause harm to the open, large-scale, rural landscape at Kirby Hill that would be especially significant. This has been a reason for rejection of all previous MSA proposals at this site. Government policy in this area is very clear that the starting point for any assessment of major development in the open countryside should be the need to protect the countryside from development for its own sake, regardless of whether the area under consideration is the subject of any special designations. Exceptional justification is required to grant planning permission for major development in the open countryside and this simply does not exist at Kirby Hill.

5.3 The proposed MSA would irreversibly damage the identity of the 2,000-year old Kirby Hill village, permanently altering its character, environs and sense of place. The District's rural settlements and the approaches to them are protected by national and local planning policies with which the proposed development does not comply.

5.4 The proposed MSA would result in a significant quantity of best and most versatile agricultural land being lost, in a period when the nation's agricultural land reserves are at an all-time low. The Applicant claims that the agricultural land-take is less than the 20 ha threshold regarded as nationally-significant, however the planning assessment should take into account that, for the reasons stated previously, **there is no need to destroy this land resource** at Kirby Hill.

5.5 The proposed MSA would create damaging visual impacts on sensitive receptors close to the site and on a larger number of receptors over a very wide area, due to the open character of the landscape at Kirby Hill and the long-range views that would be dominated by the proposed MSA. The visual impact of the new illuminated overbridge and roundabouts that form the junction for accessing/egressing the MSA has already been highlighted. Kirby Hill RAMS do not accept that the visual impacts of this structure and its lights could be successfully mitigated.

5.6 The proposed MSA would create noise, air and light pollution that would adversely affect nearby properties 24 hours per day, 365 days per year. While the Applicant's assessment that pollution levels would be minimal is something Kirby Hill RAMS disputes, the more significant point is that

creating any pollution when there is no need is in direct contravention of national and local policies designed to protect residential amenity.

5.7 MSAs are notorious magnets for crime and criminals. For example, over the last year, North Yorkshire Police have logged and investigated a total of 80 crimes at the three existing MSAs in the county: Wetherby, Leeming Bar and Scotch Corner [see the North Yorkshire Police consultation response dated 21 August 2017]. Local residents are concerned that siting the proposed Kirby Hill MSA just 750m from a small rural village will increase crime in the area. This is what happened at Kirk Deighton when the Wetherby MSA opened. Within a year, the village was reclassified as a high-crime area and residents' insurance premiums rocketed. Siting an MSA close to a residential settlement would create adverse socio-economic impacts due to higher crime. These impacts have not been assessed by the applicant. The proposed MSA conflicts with policy on planning out crime.

5.8 The proposal to introduce a new junction on the A1(M) at Kirby Hill risks increasing the number of road accidents. This risk is exacerbated by the proximity of the proposed MSA to A1(M) J49 for Dishforth and to the existing Marton-le-Moor overbridge. Since there is no need for the proposed MSA, the increase in accidents would not be offset by a reduction in fatigue-related accidents due to better-rested drivers. **The road-safety benefits of the proposal do not outweigh the risks.**

5.9 In summary, the proposed MSA at Kirby Hill would cause substantial harm. Local residents have seen the harm caused by the development of the A1(M) corridor itself and many have observed the development of the new Wetherby MSA, which is three times as far from the settlement of Kirk Deighton as the Applicant's proposed MSA would be from Kirby Hill. A significant public perception of harm exists, related to a number of material planning considerations, which the Applicant has failed to address as part of the consultation process.

5.10 Kirby Hill RAMS requests that the local Planning Authority thoroughly assesses the harm that the proposed Kirby Hill MSA would cause to interests of acknowledged importance. We also would place on record that, despite 260 local people attending the public exhibition and 157 formal consultation responses, Applegreen has subsequently failed to engage with the local community on the issues raised and is maintaining a wall of silence in the face of our concerns. We sincerely hope that our elected local Councillors will hear our concerns and reject this harmful proposal.

6 ASSESSMENT OF HARM VS BENEFITS

6.1 Following three Public Inquiries over a 20-year period, the harm that would be caused by an MSA at this site is not in doubt. Even the Applicant accepts that the proposed MSA would cause harm. Appendix 5.2 of the ES: 'Effects on Landscape Character', says no less than four times that: '*The localised effects of the Proposed Development would be adverse'*. The degree of harm is so great that Applegreen proposes extensive deep excavation, a green roof and linear woodland planting, in a vain attempt to screen the proposed MSA from view and protect nearby residential settlements.

6.2 The essence of planning assessment is that potential harm and potential benefits must be weighed in the balance. Since, as we have shown, there is no need for another MSA at this location, the benefits to motorists would be negligible and do not therefore constitute grounds for permitting the substantial harm that would result from this development. Even if there were a need for another MSA, exceptional justification would have to be provided to permit such a harmful development at Kirby Hill, where the large-scale, open, rural landscape, the quality of the Grade 1 agricultural land and the proximity of a small village community combine to create an environment that is particularly sensitive to harm from major development.

6.3 The proposed Kirby Hill MSA is one of the least beneficial and most harmful MSA proposals to have been brought forward in recent years. It would destroy 19 hectares (43 acres) of open countryside and cause substantial harm to interests of acknowledged importance, in order to meet a need that simply does not exist. **Weighed in the balance, the proposal is found wanting, the harm exceeds the benefits and planning permission should be refused.**

7 NATIONAL & LOCAL PLANNING POLICY

7.1 Applegreen accepts that its proposal does not comply with the Local Plan, a fact which should automatically result in refusal of planning permission, under Section 38(6) of the Planning and Compulsory Purchase Act 2004. As in previous applications for this site, the applicant's case is based on an incorrect interpretation of selected national policies, which are then used in an attempt to 'trump' the long-established and properly-adopted policy position of the Harrogate District Local Plan. This strategy flies in the face of the trend towards localism in planning and is exactly the sort of development approach that central Government sought to end by introducing the Localism Bill.

7.2 As local people, Kirby Hill RAMS informed view of the relevant policy considerations is as follows.

NPPF

7.3 Para 6 of the NPPF says that '*The purpose of the planning system is to contribute to the achievement of sustainable development*'. Para 9 adds that '*Pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people's quality of life*'. The proposed MSA would not create positive improvements in the quality of the built, natural and historic environment, nor in people's quality of life. It would cause only harm, for some of which Applegreen proposes weak and ineffective mitigations. The landscape, environment, rural community and quality of life at Kirby Hill would be permanently blighted by the proposed MSA. **This is not sustainable development.**

7.4 Para 10 of the NPPF says that '*Plans and decisions need to take local circumstances into account'*. It follows that the views of local people, who know and understand these local circumstances better than anyone, should be given significant weight in the planning process.

7.5 Para 17 of the NPPF sets out the core planning principles for achieving sustainable development, the first of which is that planning should '*be genuinely plan-led, empowering local people to shape their surroundings*'. Kirby Hill RAMS is a group set up by local people 15 years ago with the specific purpose of shaping our surroundings in response to the threat of MSA development. We have consistently articulated a well-researched and documented view, supported by thousands of local people, that Kirby Hill is an inappropriate site for MSA development. Applegreen's proposal

conflicts with the efforts of local people to shape their surroundings and with their Local Plan. **Approving the planning application would be contrary to this NPPF core principle.**

7.6 Para 109 of the NPPF says that '*The planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes'*. We have demonstrated that the proposal does not protect nor enhance the landscape. It causes significant harm to a national treasure – the North Yorkshire landscape - which is particularly highly-valued by local people and by visitors to 'God's Own Country'.

7.7 **Applegreen's proposal complies with neither the letter nor the spirit of the NPPF. It is not sustainable development and should be rejected.**

DfT Circular 02/2013

7.8 Although Applegreen claim the new Circular supports their case for another MSA at Kirby Hill, we have demonstrated above that it does not and that the proposed Kirby Hill MSA is not compliant with Circular 02/2013 in a number of important respects.

7.9 Consideration must be also given to the application of Circular 02/2013 to the specific situation in Harrogate District. Referring to the 28-mile spacing criterion, Circular 02/2013 says: '*The distances set out above are considered appropriate for/to all parts of the strategic road network and to be in the interests and for the benefit of all road users*.' This of course includes the strategic road network that runs through Harrogate District. Common sense suggests that to achieve the 28-mile spacing the Circular considers appropriate, there is no need to have two MSAs on the 21-mile section of the A1(M) that passes through Harrogate District. Harrogate Borough Council correctly adopted Policy T7 in the Local Plan, recognising that one MSA in the District would meet the need. This policy is entirely consistent with Circular 02/2013. Because there is no need for another MSA in Harrogate District to meet the spacing considered appropriate by Circular 02/2013, no allocation of another MSA site has been made in the Local Plan.

Harrogate District Local Plan

Policy T7

7.10 Policy T7 of the Local Plan, which sets out that there should only be one MSA in Harrogate District, represents a complete bar to any MSA development at Kirby Hill. Applegreen claim that this policy is now 'aged' and that the advent of DfT Circular 02/2013 means that it can be circumvented. This is the same argument the Kirby Hill promoter tried to run at the 2010/11 Public Inquiry, claiming that DfT Circular 01/2008 should 'trump' policy T7 of the Local Plan. The Inspector was having none of it. It is worth quoting him in full on this point [Inspector's Report of the 2010/11 Inquiry]:

"8.1.2 The first part of policy T7 prohibits the construction of more than one MSA in Harrogate District. There is already one MSA in Harrogate District, at Wetherby Services which opened in 2008. ***It follows that each of the three proposals in Harrogate District would be contrary to the development plan.***

8.1.3 The planning witnesses of HIA and JT conceded that their schemes would be contrary to the development plan. REL's planning witness maintained that his scheme would not conflict with the development plan because, he said, when applying Policy T7 we should pretend that Wetherby Services does not exist. This view is nonsensical and can be ignored. He did accept that if, contrary to his case, T7 considered the world as it actually exists, his scheme would also be contrary to the first part of Policy T7.

8.1.4 It follows that the starting point is that, applying s.38(6) of the 2004 Act, each of the Harrogate Schemes must be refused unless material planning considerations indicate otherwise.

8.1.5 Policy T7 should be given substantial weight, as part of the adopted Local Plan that was expressly saved by the Secretary of State (HBC106). Although the promoters of the schemes argue otherwise, the subsequent publication of C01/08 (CD1.14) cannot sensibly be taken as affecting the weight to be given to Policy T7.

8.1.6 HIA's witness argued that the Secretary of State's decision to save Policy T7 was nothing more than a "rubber-stamping exercise". No evidence was produced to support this assertion. In fact the evidence demonstrates that the Secretary of State gave careful consideration to the question of which policies should be saved (e.g. HBC106 shows that account was taken of third party representations when policies GB7 and H4 were not saved). Had HIA thought that it would be inappropriate to save Policy T7 then no doubt they would have made representations to the Secretary of State.

8.1.7 Next, HIA along with JT (JT7/2 paras7.13-15) sought to argue that T7 was somehow undermined by the publication of C01/08. But as HIA's planning witness conceded, the only aspect of C01/08 that could have any bearing on the weight to be given to T7 is the 2 mile reduction in the spacing policy. But as REL's witness rightly agreed, the change is marginal and could not properly be said to alter the weight to be attached to T7. Even HIA's witness conceded that the introduction of C01/08 was "not a significant factor" in his argument as to the weight to be given to T7.

8.1.8 Finally, JT's planning witness sought to argue that when HBC prepared Policy T7 it assessed the need for further MSA provision using Leeming Bar as the northern fixed point. That is wrong as a matter of fact. In preparing the Local Plan, HBC assessed the need for further MSA provision using Barton as the northern fixed point. This is confirmed in 1998IR (CD12.3 para14.7). ***It follows that there is nothing in any of the promoters' arguments that the substantial weight to be attached to policy T7 should be reduced.****"*

7.11 **Applegreen's challenge to policy T7 of the Local Plan has already been rejected at the highest levels of the Planning System. It is without merit and should be rejected again.**

Development Limits

7.12 The proposed site is in open countryside, outside of the agreed Development Limits.

Harrogate District Landscape Character Assessment

7.13 The proposals conflict with the Harrogate District Landscape Character Assessment (HDLCA), which describes the large-scale, open, rural character of the site (treasured by local people) and says that major development cannot easily be integrated into this landscape. The HDLCA was adopted by the Council in 2004. The Inspector at the 2010/11 Public Inquiry noted that the HDLCA '*was adopted following detailed assessment work and extensive stakeholder consultation and as such it must attract substantial weight.*' [Inspector's Report of the 2010/11 Inquiry, para 8.1.10]

Emerging Harrogate Local Plan

7.14 The proposals are contrary to the emerging Harrogate Local Plan. Draft allocations for major development (housing) north of the existing Kirby Hill development limit were removed from the emerging Local Plan at consultation stage. There is no provision for an additional MSA site in the current Harrogate District Local Plan, nor in the emerging Local Plan. Permitting such a major development when no site is allocated in the Local Plan would make a mockery of the investment and extensive stakeholder consultation that has gone into creating the emerging draft Local Plan and would undermine voters' confidence in its effectiveness as an instrument of planning policy. After consultation, the new draft Local Plan reflects the strong local view that the countryside between Kirby Hill and Marton-le-Moor should be protected and should not be the site of major development. Having agreed this with our Council as part of the Local Plan consultation process,

any change in this position, such as approval of a major MSA development at this site, would be robustly challenged, including if necessary at the Local Plan Inquiry.

7.15 In view of all the above issues, the proposed development is in conflict with Local Plan policies, contrary to Section 38(6) of the Planning & Compulsory Purchase Act 2004.

7.16 **The proposed Kirby Hill MSA planning application should be rejected on national and local planning policy grounds, in particular because it conflicts with policy in the NPPF, DfT Circular 02/2013, the Harrogate District Local Plan, the Harrogate District Landscape Character Assessment, and the emerging Harrogate District Local Plan. In view of this, Harrogate Borough Council must refuse planning permission for the development, in accordance with Section 38(6) of the Planning & Compulsory Purchase Act 2004.**

8 CONCLUSION

8.1 In conclusion, on behalf of the local community, Kirby Hill RAMS **strongly objects** to the proposed Kirby Hill MSA on the following grounds:

- The planning history is one of repeated refusal for an MSA at this site.
- There is no need for an MSA at Kirby Hill.
- An MSA at Kirby Hill would cause substantial harm to interests of acknowledged importance.
- Overall, the proposed MSA would cause harm that outweighs the benefits to motorists.
- The proposed MSA conflicts with national and local planning policies.

8.2 The Applicant accepts that the proposed development does not comply with the Harrogate District Local Plan [Planning Statement, para 5.4.1]. Approval of the proposed development would therefore be contrary to Section 38(6) of the Planning and Compulsory Purchase Act 2004.

8.3 Taken together, all of the above constitute an overriding planning objection to the proposed MSA grounded in national and local planning policy. Harrogate Borough Council should reject this planning application and ensure that there will be **NO MOTORWAY SERVICES AT KIRBY HILL.**

8.4 Applegreen's planning application is purely speculative. Any profits would go directly to Applegreen Ireland and would not benefit the UK economy at all. The company's Irish CEO, Bob Etchingham, has said that he expects Applegreen's success rate in securing planning permission for new UK MSAs to be '*about one in three*' [Irish Independent, 14th September 2017]. None of Applegreen's other MSA proposals are at sites where permission has been repeatedly refused by the Secretary of State. No other site has attracted the level of local opposition that is evident at Kirby Hill, which now has a national reputation as the UK's most controversial potential MSA site. **We respectfully request that the Planning Committee of Harrogate Borough Council delivers a decision in line with Mr. Etchingham's expectations and once again refuses planning permission for the proposed Kirby Hill MSA.**

Kirby Hill RAMS

September 2017

APPENDIX A: Applegreen MSA pollutes local community

thejournal.ie

Creche secures injunction over Applegreen station pumping "foul" smelling waste water

The creche's owners claim the station is the cause of noxious gases and odours affecting the health and safety of 80 young children who attend the facility.

BY AODHAN O FAOLAIN | TUESDAY 11 OCT 2016, 6:44 PM | HTTP://JRNL.IE/3021795



Source: Nuria

A CO DUBLIN creche has secured a temporary High Court injunction over foul and obnoxious smells it claims are being caused by waste water coming from an Applegreen Service Station on the M1 motorway.

Gary and Theresa Ryan, trading as the Woodland Creche and Montessori at Dun Emer Rise in Lusk, say the station is the cause of noxious gases and odours affecting the health and safety of the 80 young children who attend the facility and the 12 staff working there.

The creche claims the defendant is allowing the repeated emission of foul and noxious gases, which come from human and other waste from the service station.

The facility has a holding tank for waste water. The creche claims when the service station's tanks reach a certain level waste water is automatically pumped into the main sewer system via an interconnector.

The outfall manhole where the service station's waste water joins the main system is located adjacent to the Woodland Creche.

On Tuesday the creche secured an interim injunction from Mr Justice Paul Gilligan restraining Petrogas Group Limited trading as Applegreen from permitting the escape of noxious gases from effluent from their premises on the M1 through the outfall manhole cover in Lusk.

The injunction was granted, on an ex-parte basis where only one side was present in court. The Judge, who noted the creches concern about the risk to the children and its staff, said he was satisfied to grant the injunction.

However he added that it remained to be seen if the order would result in the station having to be closed.

Overwhelmed

Seeking the injunction Matthew Jolley Bl for the creche said the matter was the subject of previous High Court proceedings in 2014, after the creche said it was overwhelmed by foul and noxious smells two or three times a week.

That action was resolved earlier this year when undertakings were given by the defendant not to pump waste materials from the service station's tanks outside of the hours of between 11pm and 4am, counsel said.

However in the last two weeks the foul smells have returned and parents bringing their young children to the creche have raised concerns over the fumes, counsel said.

Counsel said Mr Gary Ryan and an Environmental Engineer attended at the creche earlier this week at 7am. After opening the doors the foul odour was "so repulsive and nauseating that they had to leave the premises for health and safety reasons".

Counsel said while certain steps have been taken by the defendant since the problem returned, including pumping out the tanks, counsel said those actions have not dealt with the problem.

His client has no confidence in the assurances that have been given, counsel said. Counsel said there is a risk that the children will be permanently removed from the creche due to the stench.

The Judge adjourned the matter to this Friday, 14 October.

Comments are disabled as the case is before the courts