

KIRKLEES METROPOLITAN COUNCIL

PLANNING SERVICE

UPDATE OF LIST OF PLANNING APPLICATIONS TO BE DECIDED BY STRATEGIC PLANNING COMMITTEE

26 JANUARY 2023

Planning Application 2022/91730

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Demolition of former dairy/snooker centre/storage and erection of 9 light industrial units

Land Adjacent, 60, Northgate, Cleckheaton, BD19 3NB

Amended Recommendation

On 23/01/2023, the applicant's solicitor requested that the financial contribution set out in the officer's recommendation be secured via a unilateral undertaking rather than a Section 106 agreement. Having consulted with KC Legal Services, officers advise that the contribution can be secured via this means. This does mean a slight change in the officer recommendation, which is set out as follows:

RECOMMENDATION:

DELEGATE approval of the application and the issuing of the decision notice to the Head of Planning and Development to complete the list of conditions, including those contained within the main report, and to secure a unilateral undertaking to cover the following matter:

1. Financial contribution to deliver offsite habitat improvements (£30,130)

Representations

Regarding paragraph 10.36 of the committee report, an additional representation (in objection to the proposal) has been received. The representation has made by a person who has previously objected to the scheme, rather than a new party. The objector requested the representation be circulated to members of the committee. For the purposes of clarity, this objection has been summarised as follows, along with an officer response where applicable:

Biodiversity

- The applicant has not entered into a planning obligation as such there is no assurances the applicant will enter into such obligation, forming grounds to refuse the application. Furthermore, given this, the application does comply with the Kirklees local Plan and guidance in the National Planning Policy.

Officer Response: It is standard practice that the Section 106 agreement is not signed until an application has been heard at committee and decided by Members. Furthermore, the decision officers are seeking as per the recommendation is approval subject to the applicant entering into the legal agreement to provide the biodiversity related contribution for offsite habitat improvements. The process of a unilateral undertaking has already begun, and officers have it in writing that the applicant will agree to this contribution. If for any reason the agreement was not signed by the applicant, the matter would be referred back to committee, with a different recommendation.

Residential Amenity / Previous Appeal Decision

- Para 10.17 of the Case Officer's report claims that, because the application is for light industrial use which by definition is a use that can be carried out in a residential area without detriment to its amenity, there is no choice but to determine that the principle of such is acceptable in this residential area. This claim is deceptive and misleading. As in the award for costs, pointing out that although the Planning Sub-Committee had reached a different conclusion to the Inspector on the issue of residential amenity, this was a matter of planning judgment.

Officer Response: With regard to the use, the Use Class Order was amended/updated in 2021. To give the light industrial use its full title, it was referred to as 'Light Industrial appropriate in a residential area' when it was formerly known as use class B1. Light industry now falls within use class E subcategory (g). Class E covers:

"use, or part use, for all or any of the following purposes—...

(g)for—

- (i)an office to carry out any operational or administrative functions,
- (ii)the research and development of products or processes, or
- (iii)any industrial process, being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit".

For a use to fall within E(g) it must be one that does not detriment the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit. If it did cause any of these it would then be classed as industrial use within use Class B2 or B8 which would be in breach of this planning permission and would be open to enforcement action. As such, officers stand by their point that as a light industrial use is being applied for (which by definition is a use that can be carried out in a residential area without detriment to its amenity), it is logical to determine that the principle of such is acceptable in this mixed area.

- It was noted by the Inspector that the Sub-Committee considered that the conditions recommended by officers were not adequate to protect residential amenity.

Officer Response: This has been noted. With this current application, officers undertook a full set of consultations and deem the conditions now proposed (which do vary from those previously proposed) to sufficiently protect residential amenity. Officers also point out that the Inspector did not find the previous application unacceptable on residential amenity grounds, the only reason the appeal was dismissed was to do with the biodiversity contribution.

- The Planning Inspector found the council did not act unreasonably in coming to its decision to refuse the application. On a true reading of the Inspector's Decision - including her Costs Decision - the Case Officer's recommendation to approve is based in a misrepresentation of the facts.

Officer Response: Noted, but the cost application has no bearing on the officer's recommendation in the fact decisions to award costs are not based on place shaping policy.

- The Case Officer has a deliberate intention to deceive as well as mislead.

Officer Response: This assertion is incorrect.

- It's not acceptable for the Case Officer to claim at para 11.4 that his conclusion and recommendation is supported by the Planning Inspector's earlier Appeal Decision.

Officer Response: It is factual to say the Inspector did not find the previous application unacceptable on residential amenity grounds. The inspector concluded that:

"The proposed development would create employment opportunities in the local area and would improve the currently neglected appearance of the appeal site. These matters weigh in favour of the proposal, and I collectively afford them moderate weight. The lack of harm to living conditions of neighbouring residents is a neutral matter." Officer's emphasis. The inspector also found that 'the locality is mixed in character with a high number of commercial uses' and that 'the development would not result in a significant introduction of noise and disturbance. The proposed development would not therefore harm the living conditions of neighbouring residents and would accord with Policy LP24 of the LP and the Framework which collectively seek to ensure that developments provide a high standard of amenity for neighbouring occupiers'.

As such, the previous appeal was only dismissed due to the matter of the biodiversity contribution not being secured.

Highways

- KC Highways made clear that it required provision of a pedestrian route through the site which has still not been provided. Also issues with conflict between pedestrians and vehicles.

Officer Response: KC Highways Development Management have no objections to the scheme as per their latest consultation response. This follows revisions to the scheme and an update transport statement.

- Choosing to disregard all of the above including the documented requirements of KC Highways, the Case Officer inappropriately and unacceptably comments at para 10.36 that proper provision for pedestrians has been made because the pavements on the surrounding highway network are considered to be safe.

Officer Response: The case officer has worked closely with KC HDM throughout this application. There clearly is existing pavement around the site that are considered to be safe. As such, pedestrians should not be walking through this private site unless visiting one of the units, so the existing pavements on Northgate and Scott Lane are considered a suitable provision for passers-by on foot.

- The Case Officer has knowingly failed to address legitimate objections raised by Councillor Kath Pinnock and in neighbour representations - that no buses or HGVs currently use Scott Lane, and it has not been demonstrated that either a 16.5m HGV or 7.5m panel van can safely turn/manoeuvre at the tight and narrow junctions of Scott Lane with Bradford Road, and Northgate with Scott Lane/Whitcliffe Road, and Northgate with Horncastle Street/Serpentine Road.

Officer Response: Given the late hour this objection was made KC HDM have not been able to response a technical response. However, the case officer deems that is likely that HGVs do serve this area, in order to supply the adjacent Home Bargains store and other industrial uses in the immediate vicinity. Whilst Scott Lane 'potentially' may be narrow for HGVs, given the benefit of two access and egress points, HGVs can suitably access the site from Northgate nonetheless omitting any need for them to use Scott Lane.

- The very recent revised report of Paragon Highways on behalf of the applicant still makes the false and misleading claim at paragraph 2.1.8 that Scott Lane forms part of a bus route. Again, this has been disregarded by the Case Officer.

Officer Response: Noted, Scott Lane may not be a part of a bus route, however the recommendation was not based upon this fact.

- *The Case Officer also inappropriately states that there would be two access points at the site, with vehicles entering and exiting from either of Scott Lane or Northgate. Yet when KC Highways provided its consultation response, it was on the understanding that access would be from Scott Lane only with a one-way route across the site to its egress on Northgate. Two-way access would clearly be impossible given the constraints imposed by the site layout.*

Officer Response: As per submitted information, the applicant has demonstrated that two-way access and egress is clearly possible, suitable and safe. Therefore, conditioning the site be one way would not meet the six tests for conditions as it is unnecessary and unreasonable.

Relevant Planning History and Historic Use

- *Paragraph 10.7 of the Case Officer's Report also makes the misleading claim that the southern part of the site has historically formed only an area of unkempt scrubby land. As previously documented and substantiated, the primary historic use of this part of the site was provision of a public car park with long-standing right of way between Northgate and Bradford Road. As the Case Officer fails to note at para 4.3 of his report, it was a condition of the approval granted for 6 starter units in planning application 91/04914 that this part of the site be maintained for that specific use which is why the title register relating to the land concerned contained a covenant to that effect.*

Officer Response: Officers note this, however standby the point that this development would improve the visual amenity of the site for the reasons set out in the officer report.

- *The case officer fails to consider how these might feasibly be enforced.*

Officer Response: All of the conditions put forwards meet the six tests for planning conditions.

- *Para 10.22 of the present report to Committee states that the number of units has already been reduced since neighbour representations were submitted. This statement is false. In para 3.3.2 of its appeal submission, the applicant made clear that its original plans had been amended to reduce the number of units only because an end user had changed their requirements and not due to any concerns raised by objectors - giving evidence of an intention not to respect conditions imposed on use of the site for the protection of residential amenity if approved.*

Officer Response: Notwithstanding the reasons why the number of units have been reduced, the fact that the number of units proposed has been reduced over the planning history of the site improves the proposal since its original conception. This clearly constitutes no evidence whatsoever as to the council or applicant having no intention not to respect or enforce conditions. If conditions were breached, the Council's Planning Enforcement Team would investigate and act where necessary.

Other matters

Regarding paragraph 10.28 of the committee report, an amended highways statement was received on 18/01/2023 in line with the revised scheme and to commentate on the vehicle tracking information submitted.
